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## **POLICY FOR PROPRIETARY REFERENCES IN RTCA DOCUMENTS**

### **I. Introduction:**

RTCA has been serving the aviation community since 1935, and operates Federal Advisory Committees in accordance with its Bylaws and FAA Charter. The institutional mechanism that is RTCA enables the FAA and government, and the aviation industry to work together in an open, fair and balanced partnership to produce recommended operational concepts, implementation strategies, performance standards and technical guidance documents. RTCA standards, Minimum Aviation System Performance Standards (MASPS), Minimum Operational Performance Standards (MOPS), Guidance documents and Reports provide the basis for government policy and investment decisions, and serve as a means of compliance with FAA Technical Standard Orders (TSOs), Advisory Circulars (ACs), and related regulatory documents.

RTCA's advice represents the consensus of experts from all areas of the vast and diverse aviation industry, functioning in an open, collaborative, consensus-driven environment.

RTCA establishes Special Committees (SC), normally at the request of the FAA, to leverage the expertise of the broad and diverse aviation community to generate its standards and guidance documents. By ensuring that its standards define the *minimum performance* requirements rather than design specifications, the results encourage innovation and expand the marketplace of solutions. To that end, SC's are highly encouraged to avoid the inclusion of proprietary references (that is proprietary, patented, patent pending, or copyrighted material (hereafter referred to as proprietary information)) in their deliberations or final products. If such a reference is proposed, the SC should exert significant efforts to find an alternative solution that does not embed proprietary information.

When the SC concludes, after such efforts, that the inclusion of proprietary information is the only alternative, this policy outlines the procedure for identifying, reviewing, and preparing a proposal to include proprietary information in RTCA documents.

### **II. Disclosure for Input into RTCA Documents:**

RTCA develops comprehensive, industry-vetted and endorsed recommendations for the regulatory authorities and the aviation community on issues ranging from technical performance standards to operational concepts for air transportation. Supporting this hallmark of RTCA foundational goals to procure consensus for recommended

performance standards, the preferred and highly endorsed method for producing RTCA documents is to do so **without reference to proprietary information**. Although this type of reference in an RTCA document is not prohibited *per se*, it is limited to those circumstances where the objective of the document cannot reasonably be attained without the reference(s). Before incorporation into an RTCA document, three tests must be met:

- 1) A bona fide, public interest basis for the reference and/or usage
- 2) Evidence that private pecuniary interests have not driven any decision to either include or exclude a system from the market
- 3) A commitment to license the relevant technology, patent, patent pending, or copyrighted material by completing a Commitment to License (CtL)<sup>1</sup>

Early in the development of an RTCA document, if proprietary information is identified as relevant, the participant or the proponent *must disclose* to the SC leadership and/or Work Group (WG) leadership that they are personally aware that proprietary information is proposed and/or required for compliance with the RTCA document being developed.

“Personally aware” means that the participant is individually knowledgeable that they or the participant’s proponent may have potential proprietary information, even if the participant is not personally aware of the specific proprietary information claims. This proprietary information can be owned or controlled by the participant, or the proponent the participant is from, employed by, or otherwise represents.

Once proprietary information is identified for inclusion in an RTCA document, it is the responsibility of the SC to determine if the proprietary information is necessary and to ensure that the three Tests referenced above have been met.

### **III. Review/Approval Process:**

#### **a. Special Committee Action:**

The Chairman of the SC proposing to use proprietary information in an RTCA document will provide a presentation early in the “discovery process” of a document under development for a preliminary review by the RTCA Program Management Committee (PMC). The committee’s presentation will have been approved in a SC plenary session and may be in the form of a White Paper. The committee’s presentation to the PMC should be well before the start of the committee’s Final Review and Comment (FRAC) approval process of a document.

To meet Tests 1 and 2, the presentation should include the proprietary information being considered and evidence of applying the tests mentioned above; and indicate how/why the proprietary information is being considered over other options along with the impact of publishing the document without the proprietary information. Additionally, the presentation should show that this proprietary information offers significant technical or economic benefits over nonproprietary technology.

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<sup>1</sup> A sample “Commitment to License” letter is included in Appendix A.

To meet Test 3, the SC Chairman will ensure the proponent has committed to provide a signed CtL. As outlined in Section V, a completed CtL should be included with the presentation to the PMC.

The committee's presentation and CtL will have been reviewed/approved at a Plenary session of the SC. After committee approval, discussion of the proposed proprietary information should be deferred by the SC and at any Work Group/Subgroup levels until a determination is made by the PMC on the committee's recommendations. The presentation and CtL will be assigned RTCA Paper Numbers and forwarded to the PMC for the next scheduled PMC meeting.

**b. Program Management Committee Action:**

The PMC provides executive management of all SCs and ongoing peer review of SC activities to assure the work is properly focus, is responsive to the PMC tasking, is operationally and technically sound; and conforms to RTCA quality standards. In this capacity, the PMC will review the recommendations of a SC requesting to include proprietary information in a document. PMC experience has substantiated that consideration of a SC's intent to include proprietary information in a document at the time of PMC final review/approval is too late in the process.

The PMC will review the proprietary information presented by SC to determine if the committee's recommendations are in accordance with the committee's Terms of Reference, promote inclusion of the best technologies and ensure access to those technologies. The review will confirm that the three Tests have been met. The review may be accomplished by the PMC's Integration and Coordination Committee or an appropriate Ad Hoc. PMC electronic coordination may be necessary for any expeditious review.

The PMC will make recommendation(s) – approve or disapprove or suggest alternatives in response to the SC request. The PMC determination will be documented in the PMC meeting Summary and communicated to the SC.

**c. Special Committee Follow-on Action.**

The SC will proceed as directed by the PMC's response.

**IV. Notification in Documents:**

If the proposal to include proprietary information in a document is adopted in accordance with the Review/Approval Process Section above, the following guidelines will apply:

- a. Within the document, when a proprietary system is specified, the words "or equivalent" will follow.
- b. A List of References will be included in the document that contains a list of all documents referenced in the publication. Referenced documents with proprietary

information will be so identified. The List of References will contain a note directing the reader to the proprietary disclaimer.

- c. A copy of any CtL's associated with the document will be included in an appropriate Appendix.

The following notice will appear in all RTCA documents **with** Proprietary Information after the FOREWORD:

“Proprietary Disclaimer”

This publication makes references to written material or systems that are protected by copyrights and/or patents. RTCA offers no opinion on the validity of the proprietary claims of the specified holder(s) of copyrights and/or patents. Neither does RTCA endorse or warrant the product of specific manufacturers or holders of copyrights and/or patents. RTCA has no economic stake in the use of any proprietary product.”

The following notice will appear in all RTCA documents **without** Proprietary Information after the FOREWORD:

“Disclaimer”

This publication is based on material submitted by various participants during the SC approval process. Neither the SC nor RTCA has made any determination whether these materials could be subject to valid claims of patent, copyright or other proprietary rights by third parties, and no representation or warranty, expressed or implied is made in this regard. Any use of or reliance on this document shall constitute an acceptance thereof “as is” and be subject to this disclaimer.”

## V. RTCA Document Content

The content of an RTCA published document is considered RTCA proprietary information. Individuals can request to reference this information by receiving approval from RTCA President.

By providing material to the RTCA document, the providing party grants RTCA the nonexclusive, paid-up, worldwide perpetual license:

- a. To use, copy, distribute and publish the material in any form and in any medium, for review, copying, use and modifications by SC participants, directly or indirectly, in the development of an RTCA document,
- b. To use, copy, distribute, publish, modify, and create derivative works from such material with respect to a meeting report or RTCA document,
- c. To allow another industry standards organization (e.g. EUROCAE) to include portions of a final RTCA document (which may include or encompass such material) in standards published by such organizations, and
- d. To designate a third party as its agent to distribute RTCA documents in printed, electronic or optical form.

In addition, RTCA shall have the right to sublicense others to exercise the foregoing rights. By way of example, but not by way of limitation, RTCA may, for the purposes described above, (i) copy and distribute any documents, correspondence or other materials (electronic, written, or otherwise), including attachments thereto obtained (directly or indirectly) by RTCA in association with RTCA document development, (ii) use, copy, modify, revise, publish, or create the derivative works from such materials as part of creating an RTCA document.

Any legends or statements purporting to limit the rights granted above in this policy directive and/or asserting confidentiality or other proprietary rights inconsistent with the rights granted in accordance with this policy shall be null and void and without effect and RTCA specifically disavows any duty to provide confidential or proprietary treatment to such materials.

To facilitate the efficient development of standards by ICAO, EUROCAE, and similar standards organization, RTCA will consider requests to provide such organizations the appropriate material extracted from RTCA documents for use in the development of other industry standards documents.

## **VI. Policy Awareness and Adherence:**

SC Member Adherence to Policy for Proprietary References in RTCA Documents: By volunteering to support a SC as Chairman or member, individuals agree to adhere to this Policy for Proprietary References in RTCA Documents (Policy). Individuals who do not wish to have their material subject to this policy, should refrain from participating in these meetings and/or from submitting materials or other content.

SC Member Awareness of Policy for Proprietary References in RTCA Documents: Individuals will be made aware of and reminded of this Policy through:

- a. Special Committee Membership Application: Under applicant requirements, the following is included on SC Membership Applications:

“Applicant by submitting this “Application for SC-XXX” confirms that he/she understands the Policy for Proprietary References in RTCA Documents and agrees to comply with it. RTCA Policy is available at:

<http://www.rtca.org/Files/Terms%20of%20Reference/Proprietary%20Ref,%20Scan.PDF>

Adherence to these Applicant Requirements is mandatory to remain on the committee. Members will be removed if they do not meet these requirements.”<sup>2</sup>

- b. Meeting Sign-In Sheets: SC sign Sign-In Attendance sheets include:

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<sup>2</sup> A sample Special Committee Membership Application is included in Appendix B

“By signing this Attendance Sheet or by submitting information for consideration at this meeting, you confirm that you understand the Policy for Proprietary References in RTCA Documents which include Intellectual Property, Copyrighted Material and Patented Technology and agree to comply with same. Further, during SC meeting activities, any presentation of information that’s proprietary in nature will be so identified to meeting participants and subject to RTCA Policy before any inclusion or reference in a RTCA document. Copies of RTCA’s Policies are available for review on the RTCA web site and/or upon request from the RTCA Program Director.”

Note: Participation in a meeting (including participation via conference telephone or via web cast or similar remote means) shall be deemed to authorize the meeting secretary to sign the attendance sheet on behalf of the participant with the same effect as if such participant has signed it manually.

- c. Plenary SC Meeting Summaries: Boilerplate text to be included in SC meeting Summary stating RTCA’s Policy for Proprietary References in RTCA Documents and the development of RTCA Documents:

“[FIRST NAME, LAST NAME], RTCA staff, provided an overview of the Policy for Proprietary References in RTCA Documents. He/She noted that by signing the attendance sheet at an RTCA SC Plenary meeting or by submitting items for consideration at a meeting (SC, Working Group, Subgroup), participants confirm that they understand the RTCA Policies and agree to comply with same for themselves or the proponent they represent.”

- d. Policy for Proprietary References in RTCA Documents Reminder: Key points of this Policy for Proprietary References in RTCA Documents will be presented at the beginning of each SC Plenary meeting.

Committee Leadership: The SC Chairman or the Chairman’s delegate shall be responsible for informing the participants at the meeting if any individual is presenting proprietary information. That fact shall be made known to the entire committee and duly recorded in the minutes. Any further committee consideration would be in accordance with RTCA’s written Policy outlined here.

RTCA Responsibility: The RTCA Program Director may assist with the processing as outlined here, however he/she shall not be responsible for identifying proprietary information for which a license might be required for compliance with a standard nor for conducting inquiries into the legal validity or scope of such proprietary information brought to its attention.

## **VII. Commitment to License (CtL):**

Before presentation of the White Paper for the inclusion of any proprietary information to the PMC, SC Leadership must obtain a commitment to license the proprietary

information in accordance with the sample in Appendix A. The SC presenting the White Paper/presentation is not expected to make a determination on whether the terms and conditions for licensing are “acceptable.” A signed Commitment to License (CtL) must be obtained before going to the PMC for final document approval.

The proponent (proprietary information owner) must sign a CtL allowing availability of the proprietary information either without compensation (e.g. royalty-free) or under reasonable and non-discriminatory terms. The proponent will sign the CtL if the proponent agrees to license its necessary patents/copyrights to the scope/extent required by the proposed document.

If the proponent does not sign a CtL, the inclusion of the proprietary information is not authorized and the document cannot contain the information. At this point the SC must find an alternative solution.

## **APPENDIX A: COMMITMENT TO LICENSE LETTER SAMPLE**

### COMMITMENT TO LICENSE

Corporation / Organization, Inc., the (“Proponent”) wishes to have RTCA, Inc. (“RTCA”) incorporate into, or refer to in RTCA document DO-XXX, an RTCA published specification, standard or report (“the Standard”), technology that is or may in the future be covered or otherwise subject to a patent or copyright owned or subject to license by Proponent (said technology required for compliance with or implementation of the Standard being defined herein as the “Relevant Technology”). In consideration of RTCA allowing continued consideration of said technology for incorporation into the Standard, and recognizing that RTCA, its members and other potential users of the Relevant Technology intend to rely on this Commitment To License, Proponent unconditionally agrees as follows;

1. Proponent agrees that, if the Relevant Technology is required for compliance with or implementation of the Standard, Proponent shall license (a) the making, using, importing, offering to sell, and selling of all of the Relevant Technology that is covered by or otherwise subject to any patent, and (b) the rights to copy, publicly distribute, transmit digitally and adapt all of the Relevant Technology that is covered by otherwise subject to any copyright, to all interested parties who wish to use said technology in connection with the Standard, either without compensation (e.g. royalty-free) or in a form and substance that is demonstrably free of any unfair discrimination or limitation of access.
2. Proponent agrees that in determining whether terms and conditions are “reasonable”, consideration shall be given to the benefits to Proponent resulting from inclusion of the technology in the Standard.
3. Proponent acknowledges (i) that this Commitment To License is binding upon Proponent, and has been provided to RTCA for the third party benefit of all who wish to obtain a license to the Relevant Technology for use in connection with the Standard or is otherwise necessary, as a practical matter for, compliance with the Standard, and (ii) that if the Relevant Technology is incorporated or otherwise referred to in the Standard, this Commitment To License shall be enforceable by each such third party.
4. Proponent’s submission of this Commitment To License to RTCA does not in any way obligate RTCA to include or otherwise refer to the Relevant Technology in any RTCA Standard (including, without limitation, the Standard), and RTCA may decide for any reason not to do so. RTCA, its committees, its members or standards development participants shall have no obligation to pay any royalties or similar charges for use of the Relevant Technology in the creation or publication of the Standard.
5. By signing below and by initialing this paragraph \_\_\_\_\_, Proponent agrees to submit any dispute concerning whether it is complying with this Commitment To License to binding third party arbitration in Washington D.C., under the rules of the American Arbitration Association.

Company Name (Proponent): \_\_\_\_\_

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Name: \_\_\_\_\_

## APPENDIX B: Membership Application



RTCA, Inc.  
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Fax: (202) 833-9434

### Membership Application Special Committee XXX Name of Committee

<b>DATE:</b>	
<b>NAME:</b>	
<b>JOB TITLE:</b>	
<b>COMPANY:</b>	
<b>PHONE:</b>	
<b>EMAIL:</b>	
<b>Is your company an RTCA Member Organization?</b>	<input type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> I don't know

#### Applicant Requirements:

- 1) Applicant represents an entity active in the aviation community;
- 2) Applicant commits to meeting attendance and contributing to the creation of the products; and
- 3) If Applicant is replacing a current member who can no longer serve on the committee, it is expected that the new member is fully briefed on the actions of the committee;
- 4) Applicant by submitting this "Application Form for SC-XXX" confirms that he/she understands the Policy for Proprietary References in RTCA Documents and agrees to comply with it. RTCA Policy is available at:

<http://www.rtca.org/Files/Terms%20of%20Reference/Proprietary%20Ref,%20Scan.PDF>

- 5) Adherence to these Applicant Requirements is mandatory to remain on the committee. Members will be removed if they do not meet these requirements.

You may apply for membership on Special Committee (SC) XXX by completing this form and returning it to RTCA via:

- EMAIL: [XXXXXXXX@rtca.org](mailto:XXXXXXXX@rtca.org) (preferred)
- MAIL: RTCA, Inc.  
Attn: Program Director (XX XXXXXX)  
1150 18th St., N.W.  
Suite 910  
Washington D.C. 20036

Meetings of SC-XXX will be announced in the Federal Register and are open to the public.

## APPENDIX C: RTCA Proprietary References Policy Summary Slide



### Policy for Proprietary References in RTCA Documents

- Policy for Proprietary References in RTCA Documents covers any patented or patentable technology and copyrighted material (proprietary information) required to comply with an RTCA Document
  - The goal is to develop documents without the inclusion of proprietary information
  - The policy allows RTCA to consider proprietary information for inclusion in an RTCA Document if it provides significant technical or economic benefit over non-proprietary technology
- By participating in an SC/WG meeting, signing the attendance book or by submitting items for consideration at the meeting, you confirm that you understand the RTCA policies and agree to comply with them
- The policy has distinct requirements:
  - A bona fide, public interest basis for the reference and or usage
  - Evidence that private pecuniary interests have not driven any decision to either include or exclude a system from the market
  - A commitment to license (CtL) the relevant technology, patent, patent pending, or copyrighted material either without compensation (e.g. royalty-free) or in a form and substance that is demonstrably free of any unfair discrimination or limitation of access must be obtained from the proponent (proprietary information owner)
    - If a CtL is not obtained, the information must not be included in the document
  - If a participant is personally aware, participant must disclose if the use of any proprietary information is proposed and/or required to comply with an RTCA document being developed
  - The Chairman of a SC proposing to use proprietary information will coordinate with SC's Program Director:
    - Provide a White Paper/presentation covering need
  - Once approved at the SC plenary session, White Paper/Presentation and CtL will be forwarded to the Program Management Committee (PMC) prior to any further discussion within the SC
  - Once reviewed by the PMC, the SC will take appropriate action
- RTCA policies available at: [www.rtca.org](http://www.rtca.org)