U.S. Department
of Transportation
**Federal Aviation
Administration**

FEB -9 2015

Kennedy Jones
JJASPP Engineering Services, LLC
511 Harmon Terrace
Arlington, TX 76010

Re: Applicant Showing in a Supplemental Type Certificate Application

Dear Mr. Jones:

This letter responds to your October 16, 2014, request for a legal interpretation regarding an "applicant showing" of compliance with the FAA's airworthiness standards in a supplemental type certificate (STC) application. In your letter, you ask three questions, including (1) whether the applicant showing component of an STC application is legal under § 44704 of Title 49 of the United States Code (49 U.S.C.); (2) assuming the concept of applicant showing is "deemed legal" by the FAA, whether the information in an applicant showing is exempt from FAA audits; and, finally, (3) whether you, as an applicant, may use an applicant showing as part of a project certification plan for your Air Medical Cardiohelp Restraint system. For the reasons set out below, the answer to your first question is yes, the FAA's STC application process, including the applicant showing, complies with both our statutory and regulatory frameworks. The answer to your second question is that the FAA has broad authority to inspect the operations of any production approval holder or applicant for a production approval at any time. The answer to your final question requires a review by an Aircraft Certification Office in accordance with § 21.21 and is beyond the scope of this legal interpretation.

Section 44702 of 49 U.S.C. authorizes the FAA and its designees to issue type certificates, including STCs. Section 44704, which you reference in your letter, gives the FAA Administrator flexibility in determining how to analyze applications for these certificates. In particular, § 44704(a) provides that "[t]he Administrator shall make, *or require the applicant to make*, tests the Administrator considers necessary in the interest of safety." (Emphasis added.) This statute gives the FAA flexibility to tailor its review process as necessary for each application.

The flexibility of the FAA's type certificate application process, authorized in the first instance by our enabling statutes, is also reflected in our regulations. For example, § 21.113(c) of Title 14 of the Code of Federal Regulations (14 CFR) provides that an "application for an STC must be made in the form and manner prescribed by the FAA." In addition, § 21.20 requires any "applicant for a type certificate, including an amended or supplemental type certificate [to] show compliance with all applicable requirements and . . . provide the FAA the means by which such compliance has been shown; and [the applicant must also] provide a statement certifying that the applicant has complied with the applicable requirements." These two regulations, taken together, authorize the FAA to require any

applicant to supply the agency with an "applicant showing" as part of a type certification application.

Under AIR's "applicant showing" program, a TC or STC applicant provides information about its design to the FAA. This data must satisfy the § 21.20(a) requirement that any application for a TC or STC "show compliance with all applicable" airworthiness standards and include "the means by which such compliance has been shown . . . ." After the FAA receives an applicant showing, the agency in its discretion will perform further analysis, and may reinspect or retest the designs as necessary. For example, under § 21.33(a), "[e]ach applicant must allow the FAA to make any inspection and any flight and ground test necessary to determine compliance with" the airworthiness standards.

Your second question is whether the information in your own applicant showing would be "exempt from FAA audits," and you focus in particular on two specific scenarios: (1) if the FAA approves your parts manufacturer approval (PMA) application and (2) if the FAA denies your PMA application. As a preliminary matter, the questions in your letter shift between STCs and PMAs. Whereas a TC or STC is only a design approval, a PMA is a combined design *and production* approval. Nevertheless, the same principles that guide our analysis of STCs apply equally in the context of PMAs. For example, just as § 21.113(c) requires an STC applicant to apply in a form and manner prescribed by the FAA, § 21.303(a) also requires a PMA applicant to "apply in a form and manner prescribed by the FAA."

Returning to the question of auditing an approved PMA, if your PMA application is approved, the Administrator may inspect the technical data underlying your PMA, including any component of your initial applicant showing, at any time. This is because 49 U.S.C. § 44709(a) authorizes the Administrator to "reinspect at any time a . . . design organization [or] production certificate holder," and § 44709(b) further authorizes the Administrator to "issue an order amending, modifying, suspending, or revoking . . . any part of a certificate issued under this chapter if . . . the Administrator decides after conducting [such inspection] that safety in air commerce or air transportation and the public interest require that action . . . ." In the FAA's regulations, § 21.310(a) requires each "holder of a PMA [to] *allow the FAA to inspect* its quality system, facilities, *technical data*, and any manufactured articles *and witness any tests* . . . necessary to determine compliance with this subchapter." (Emphasis added.) Therefore, assuming that you receive a PMA, the agency is at all times authorized to reexamine your underlying data, including the data contained in any previously submitted applicant showing.

With respect to the second subpart of your question, if your PMA application was *denied*, the FAA would not have the authority or a reason to reinspect the data underlying your denied application, except in connection with other applications or existing FAA approvals. One caveat, however, is that when the FAA denies an application for a certificate, we frequently identify for the applicant any deficiencies in the denied application. Our intention is to allow the applicant to correct any known deficiencies and resubmit an acceptable application. In the event that a rejected applicant *reapplies* for certification of the

same part or product, that previously rejected applicant is once again subject to the FAA's inspection authorities described above.

Your final question concerns an information packet, titled "Engineering Report," which you attach to your letter. In your letter, you ask whether you may use this "'applicant showing' as part of [your] project certification plan for installation of Air Medical Cardiohelp Restraint System." The determination of whether to accept an applicant's showing(s), or how much data to accept, is made on a case-by-case basis by the FAA's Aircraft Certification Service. For more information on a particular application, we recommend you contact your local Aircraft Certification Office.

This response was prepared by Benjamin Jacobs, an attorney in the International Law, Legislation, and Regulations Division of the Office of the Chief Counsel, and was coordinated with the Aircraft Engineering Division (AIR-100) of the Aircraft Certification Service. If you need further assistance, please contact our office at (202) 267-3073.

Sincerely,

Mark W. Bury
Assistant Chief Counsel for Regulations