

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****Proposed Issuance of Policy
Memorandum 99-XX, Issuance of an
Experimental Airworthiness Certificate
for Show Compliance Flight Testing or
Research and Development****AGENCY:** Federal Aviation
Administration (FAA), DOT.**ACTION:** Notice of availability.

SUMMARY: After reviewing a 1995 guidance memorandum, it has been noted that changes are needed to better ensure compliance with Title 14 Code of Federal Regulations and Title 49 of the United States Code. This notice announces the availability of proposed Policy Memorandum (PM) 99-XX for review and comment. The purpose of this memorandum is to address the issuance of an experimental airworthiness certificate to perform each flight test required for the purpose of showing compliance to the airworthiness regulations or for research and development. To add clarification, the PM also defines the differences in a show compliance flight test versus an operational flight check after installation of an FAA-approved modification or alteration, and emphasizes showing compliance through analysis and/or ground testing when appropriate.

DATES: Comments submitted must be received no later than January 18, 2000.**ADDRESSES:** Copies of proposed PM 99-XX can be obtained from and comments may be returned to the following: Federal Aviation Administration, Production and Airworthiness Certification Division, AIR-200, Room 815, 800 Independence Avenue, SW., Washington, DC 20591.**FOR FURTHER INFORMATION CONTACT:** Loyal Woodworth, Federal Aviation Administration, Production and Airworthiness Certification Division, AIR-200, Room 815, 800 Independence Avenue, SW., Washington, DC 20591, (202) 267-8361. E-mail address: loyal.woodworth@faa.gov.**SUPPLEMENTARY INFORMATION:** Interested persons are invited to comment on the proposed PM 99-XX listed in this notice, by submitting such written data, views, or arguments as they desire to the aforementioned address. Comments must be marked "Comments to PM 99-XX." The Director, Aircraft Certification Service, will consider all communications received on or before the closing date, before issuing the final PM. Comments received on the proposed PM 99-XX may be examined

before and after the comment closing date in Room 815, FAA headquarter building (FOB-10A), 800 Independence Avenue, SW., Washington, DC 20591, between 8:30 a.m. and 4:30 p.m.

Section 21.181(a)(1) of Title 14 of the CFR states that a standard airworthiness certificate remains effective as long as maintenance, preventive maintenance, and alterations are performed in accordance with 14 CFR parts 4 and 91. Section 91.407(a)(1) states that an aircraft that has undergone maintenance, preventive maintenance, rebuilding, or alteration may not be operated unless it has been approved for return to service by a person authorized under 14 CFR 43.7, and the maintenance record entry required by §§ 43.9 or 43.11 has been made. The impact of the above regulations is that a standard airworthiness certificate for an aircraft that has undergone alteration is not effective until the aircraft is returned to service in accordance with part 43. Operation of that aircraft prior to return to service would violate 14 CFR 91.203(a)(1) and 49 U.S.C. 44.711(a)(1), because there would not be an effective airworthiness certificate for the aircraft.

Part 21 of Title 14 contains the requirements for amending type certificates and for issuing supplemental type certificates. A type certificate (TC) may be amended (ATC) for the purpose for incorporating a major change into the type design; a supplemental type certificate (STC) is issued for a major change to type design made by someone other than the TC holder (although nothing prohibits the TC holder from obtaining an STC). In order to issue an ATC or STC, the FAA must find that the altered product complies with the airworthiness standards incorporated in the TC.

In many instances, a flight test of the altered aircraft is required in order to show compliance with the applicable airworthiness requirements; some regulations specifically require flight testing. A major alteration must be performed in accordance with FAA-approved data (see, e.g., 14 CFR §§ 65.95(a)(1), 121.379(b), 135.437(b), and 145.51), and a successful flight test, if required, is necessary for the FAA to approve the data. Because the flight test is performed after the alterations are made to the aircraft, but before the aircraft is returned to service, there is no effective airworthiness certificate for the aircraft unless the FAA issues an experimental airworthiness certificate. The FAA issues that experimental certificate under 14 CFR § 21.191(b),

Experimental certificates for showing compliance with regulations.

In addition, an aircraft may be altered for the purpose of conducting research and development. For the purpose of conducting that kind of flight before returning the aircraft to service in its unaltered state, the FAA will issue an experimental certificate under 14 CFR § 21.191(a). Experimental certificates for research and development. Similarly, aircraft may be flown after a major alteration or major repair is made to it, but before the aircraft is returned to service; in that case, and experimental airworthiness certificate or another special airworthiness certificate is issued.

The 1995 guidance memorandum, No. 95-4, Issuance of Experimental Certificates for Flight test of Modified Aircraft, dated March 7, 1995, improperly described situations where an aircraft with a major alteration "could" be operated "under" its standard airworthiness certificate before it was returned to service. That part of the memorandum was contrary to the regulatory and statutory requirements described above. Proposed Policy Memorandum No. 99-XX would cancel 95-4, and would provide correct guidance to FAA field offices that deal offices that deal with applications for ATCs and STCs.

Part of the confusion created by 95-4 was because it did not adequately explain the difference between the above-described flight test for showing compliance with regulations, and the "operational flight check" required by 14 CFR § 91.407(b). Section 91.407(b) states (in pertinent part):

No person may carry any person (other than crewmembers) in an aircraft that has been * * * altered in a manner that may have appreciably changed its flight characteristics or substantially affected its operation in flight until an appropriately rated pilot with at least a private pilot certificate flies the aircraft, makes an operational check of the * * * alternation made, and logs the flight in the aircraft records.

(In addition, paragraph (c) of § 91.407 provides an exception to paragraph (b), where ground tests and/or inspections show conclusively that the alteration has not appreciably changed the flight characteristics or substantially affected the flight operation of the aircraft.)

As noted above, paragraph (a) of § 91.407 prohibits all persons from operating an altered aircraft prior to return to service; in contrast, paragraph (b) addresses operation of the aircraft with passengers aboard. Thus, paragraph (b) of § 91.407 is premised on the operator of the aircraft complying

with paragraph (a), and the flight check required by paragraph (b) is conducted after the aircraft is returned to service. After the aircraft is returned to service, the standard airworthiness certificate is effective, and there is no need for an experimental airworthiness certificate to be issued for the operational flight check.

Issued in Washington, DC, on November 15, 1999.

Frank P. Paskiewicz,

Manager, Production and Airworthiness Certification Division, AIR-200.

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DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

[FHWA Docket No. FHWA-98-4370]

Transportation Equity Act for the 21st Century (TEA-21); Implementation of the Transportation and Community and System Preservation Pilot Program

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice; request for applications for Fiscal Year (FY) 2001 Transportation and Community and System Preservation grants; request for FY 2001 TCSP research proposals; request for comments on program implementation and research needs.

SUMMARY: This document provides guidance on section 1221 of the Transportation Equity Act for the 21st Century (TEA-21), which established the Transportation and Community and System Preservation Pilot (TCSP) Program. The TCSP provides funding for grants and research to investigate and address the relationship between transportation and community and system preservation. The States, local governments, metropolitan planning organizations (MPOs), tribal governments, and other local and regional public agencies are eligible for discretionary grants to plan and implement transportation strategies which improve the efficiency of the transportation system, reduce environmental impacts of transportation, reduce the need for costly future public infrastructure investments, ensure efficient access to jobs, services and centers of trade, and examine development patterns and identify strategies to encourage private sector development patterns which achieve these goals. FY 2001 is the third year of the TCSP program.

The FHWA seeks requests for FY 2001 TCSP grants, recommendations for FY 2001 TCSP research, and public comments from all interested parties regarding implementation of the TCSP program and research related to the program in FY 2001 and beyond.

DATES: Applications for FY 2001 grants should be received in the appropriate FHWA Division Office by January 31, 2000. Recommendations for FY 2001 TCSP research activities also should be received in the FHWA's Office of Planning and Environment by January 31, 2000. Comments on program implementation, research needs, and priorities should be received by the DOT Docket Clerk on or before January 31, 2000.

ADDRESSES: Grant requests should be submitted to the FHWA's Division Office in the State of the applicant. Division addresses and telephone numbers are provided in an attachment to this notice. Research recommendations should be submitted to the Office of Human Environment, Planning and Environment, Federal Highway Administration, 400 Seventh Street, SW., Washington, D.C. 20590.

Your signed, written comments on program implementation should refer to the docket number appearing at the top of this notice and you should submit the comments to the Docket Clerk, U.S. DOT Dockets, Room PL-401, 400 Seventh Street, SW., Washington, DC 20590-0001. All comments received will be available for examination at the above address between 9 a.m. and 5 p.m., e.t., Monday through Friday, except Federal holidays. Those desiring notification of receipt of comments should include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Ms. Susan B. Petty, Office of Human Environment, Planning and Environment, (HEPH), (202) 366-0106; or Mr. S. Reid Alsop, Office of the Chief Counsel, (HCC-31), (202) 366-1371, Federal Highway Administration, 400 Seventh Street SW., Washington D.C. 20590. Office hours are from 8:00 a.m. to 5:00 p.m., e.t., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Electronic Access

All comments received by the U.S. DOT Dockets, Room PL-401, are available through the Docket Management System internet web site at: <http://dms.dot.gov>.

An electronic copy of this document may be downloaded using a modem and suitable communications software from the Government Printing Office's

Electronic Bulletin Board Service at (202) 512-1661. Internet users may reach the Office of the Federal Register's home page at: <http://www.nara.gov/fedreg> and the Government Printing Office's database at: <http://www.access.gpo.gov/nara>. Information is also available on the FHWA Web page at: <http://www.fhwa.dot.gov/programs.html> or the TCSP web site at: <http://tcsp-fhwa.volpe.dot.gov/>.

Background

Section 1221 of the TEA-21 (Public Law 105-178, 112 Stat. 107 (1998)) established the TCSP. The Department of Transportation's Strategic Plan (1997-2003) includes a series of goals related to safety, mobility and access, economic growth and trade, enhancement of communities and the natural environment, and national security. The TCSP pilot program furthers each of these goals and provides funding for grants and research to investigate and address the relationship between transportation and community and system preservation. By funding innovative activities at the neighborhood, local, metropolitan, regional, and State levels, the program is intended to increase the knowledge of the costs and benefits of different approaches to integrating transportation investments, community preservation, land development patterns, and environmental protection. It will enable communities to investigate and address important relationships among these many factors.

The TCSP program offers the States, local governments, MPOs, tribal governments, and other public agencies the opportunity to develop, implement and evaluate current preservation practices and activities that support these practices, as well as to develop new and innovative approaches to meet the purposes of the TCSP grant program (see Section II). Funding for the TCSP was authorized at \$25 million per year for FY's 2000 through 2003 by TEA-21. The Administration's FY 2000 budget proposed increased funding for TCSP to \$50 million as part of the President's Livability Initiative. Under the Department of Transportation and Related Appropriations Act, FY 2000, (Public Law 106-69, 113 Stat. 986 (1999)), the Congress authorized \$25 million for 39 special projects and provided an additional \$10 million to the TCSP to fund FY 2000 applications. The FHWA received 292 grant proposals for FY 2000 which are being reviewed. FY 2000 awards are planned to be made in December 1999.

This notice includes three sections: Section I—TCSP Program Information;