

DEPARTMENT OF TRANSPORTATION**Federal Aviation Administration****14 CFR Parts 21, 61, 91, 119, 125, 135, and 142**

[Docket No. FAA-2001-10047; Amdt. Nos. 21-84, 61-109, 91-274, 119-7, 125-44, 135-82, 142-5]

RIN 2120-AH06

Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: The Federal Aviation Administration (FAA) is updating and revising the regulations governing operations of aircraft in fractional ownership programs. The FAA has determined that the current regulations do not adequately define fractional ownership programs and do not clearly allocate responsibility and authority for safety and compliance with the regulations. This final rule defines fractional ownership programs and their various participants, allocates responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and ensures that fractional ownership program aircraft operations will maintain a high level of safety. These regulations provide a level of safety for fractional ownership programs equivalent to certain regulations that apply to on-demand operators. The rule also revises some requirements that apply to on-demand operators that meet certain criteria. The revisions permit these operators to follow an alternate means of compliance for certain commercial operations.

EFFECTIVE DATE: November 17, 2003. A person who conducted flights before November 17, 2003 under a program that meets the definition of a fractional ownership program in § 91.1001 may not conduct such flights after December 17, 2004 unless it has obtained management specifications under this final rule.

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SUPPLEMENTARY INFORMATION:

General Abbreviations Used in This Preamble

AFM Aircraft Flight Manual
ATC Air Traffic Control
ATP Airline Transport Pilot
CAMP Continuous Airworthiness Maintenance Program
DOM Director of Maintenance
FACA Federal Advisory Committee Act
FL Flight Level
FOARC Fractional Ownership Aviation Rulemaking Committee
FSDO Flight Standards District Office
GPWS Ground Proximity Warning System
ICAO International Civil Aviation Organization
IFR Instrument Flight Rules
IMC Instrument Meteorological Conditions
MEL Minimum Equipment List
NEPA National Environmental Policy Act
NM Nautical Miles
NTSB National Transportation Safety Board
PIC Pilot in Command
RVSM Reduced Vertical Separation Minimum
SIC Second in Command
STC Supplemental Type Certificate
TCAS Traffic Alert and Collision Avoidance System
VFR Visual Flight Rules
VMC Visual Meteorological Conditions
V_{REF} Designated Landing Approach Speed

History and Background

In 1986, Executive Jet Aviation, Inc. (EJA), created a new program that offered aircraft owners increased flexibility in the ownership and operation of aircraft by individuals and corporations. The program offered shared aircraft ownership (fractional ownership), and provided for the management of the aircraft by an aircraft management company. Aircraft owners participating in the program agreed to share their aircraft with others having an ownership interest in that aircraft, as well as to lease their aircraft to other owners in the program that did not have an interest in that aircraft. The aircraft owners used the common management company to maintain the aircraft and administer the leasing of the aircraft among the owners. An FAA regional determination allowed this fractional ownership program to operate under 14 CFR part 91.

Since that time, the number of companies offering fractional ownership programs has grown. During the 1990s this growth was substantial and sustained. As of early 2000, the leading fractional ownership programs managed approximately 465 aircraft on behalf of 3,446 shareowners. By the end of 2001 there were over 3,500 owners of more than 5,000 shares of 650 aircraft. Growth in fractional ownership programs is expected to continue to increase.

While most fractional ownership programs are conducted under 14 CFR part 91, some are conducted under 14

CFR part 135. Of those operating under part 91, the FAA believes that most follow the "best practices" of corporate aviation. FAA and NTSB accident data for U.S.-registered turbine powered aircraft during the period from 1990—2001 shows that fractional ownership aircraft operations are conducted with a high degree of safety.

As fractional ownership programs have grown in size, complexity and number, there has been much controversy within the aviation community whether the FAA should regulate these programs under part 91 or under part 135 on-demand operations. Also, the FAA has had concerns about accountability and responsibility for compliance and about maintaining a high level of safety. Consequently, the FAA continued its analysis of the appropriate regulatory environment for these programs.

Operational Control and Regulatory Responsibility

The FAA's objective is to establish the appropriate level of regulatory oversight to ensure safe aircraft operations. The FAA regulations have always contained different levels of FAA oversight depending on operational control and compliance responsibility. Airline passengers exercise no control over and bear no responsibility for the airworthiness or operation of the aircraft on which they are passengers. The air carrier exercises control of the operation and bears responsibility for compliance with the regulations. Because the air carrier is a commercial enterprise in the business of air transportation for the public, the FAA imposes on the air carrier stringent regulations and oversight under part 121 or part 135, as appropriate.

In contrast, aircraft owners flying aboard aircraft they own or lease exercise full control over and bear full responsibility for the airworthiness and operation of their aircraft. Under these circumstances, the FAA has determined that the appropriate level of oversight is provided by the regulations in part 91, which are generally less stringent than those of part 121 or part 135. Part 91 regulations cover what is commonly called general aviation, which includes individual pilot/owner operations and corporate owner operations.

Business aviation in large and turbine-powered multiengine airplanes is regulated under part 91, subpart F. In creating subpart F (originally subpart D; 37 FR 14758, July 25, 1972), the FAA continued its long-standing policy that corporations may operate their aircraft under part 91. The FAA allowed for different arrangements in the loan,