

exchange, and sharing of the aircraft. Current § 91.501(b)(4) allows a person to operate his or her aircraft "for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation." Current § 91.501(b)(5) allows for the carriage of "officials, employees, guests, and property of a company on an airplane operated by that company * * * when the carriage is within the scope of, and incidental to, the business of the company * * * Current § 91.501(b)(6) allows for time-sharing arrangements, interchange agreements, and joint ownership arrangements. Some of these arrangements include the use of a management company that provides maintenance and other services to the owners.

A consideration for applicability under part 91 in any of these arrangements is that the corporation cannot be established solely for the purpose of providing transportation to a parent corporation, subsidiary, or other corporation. In such a case, the corporation operating the aircraft would be in the business of transportation and would have to hold an air carrier certificate under part 121 or part 135, as appropriate.

Fractional ownership programs have some of the elements of traditional management services companies, but because of the size and complexity of today's fractional ownership programs, the part 91 rules are not adequate. The part 121 and part 135 rules are not appropriate either because those rules are directed at air carriers and other entities that hold themselves out to provide transportation to the general public.

Fractional Ownership Aviation Rulemaking Committee

In October 1999, the FAA convened a special aviation rulemaking committee, the Fractional Ownership Aviation Rulemaking Committee (FOARC), pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5), to address the issues surrounding the regulation of fractional ownership program operations. Pursuant to the order of October 6, 1999, that established the FOARC, the committee's objective was to "propose such revisions to the Federal Aviation Regulations and associated guidance material as may be appropriate with respect to fractional ownership programs."

The FOARC was comprised of 27 members selected by the FAA as representative of the various constituencies interested in regulation

of fractional ownership program operations. Designated advisers and counsel assisted the FOARC.

FOARC members represented on-demand charter operators, fractional ownership program managers and owners, aircraft manufacturers, corporate flight departments, traditional aircraft management companies, aircraft financing and insurance companies, and industry trade associations. Representatives of the FAA, the U.S. Department of Transportation and foreign civil aviation authorities were also included.

The FOARC met for nine days in November and December 1999. Within the FOARC's meeting schedule, two days were set aside for public hearings to provide the public an opportunity to comment or present positions on this issue. Notice of these public meetings was provided in the **Federal Register** (64 FR 66229, November 24, 1999) and through the media. The FAA reviewed and considered all material presented by participants at the public meetings. The FOARC presented its initial recommendations to the FAA on February 23, 2000. Those recommendations provided the basis of the FAA's NPRM, published in the **Federal Register** on July 18, 2001 (66 FR 37520). The comment period for the NPRM ended on November 16, 2001. The FAA is issuing this final rule, based on the recommendations of the FOARC committee and the FAA's consideration of the public comments received on the NPRM.

Summary of Final Rule

This rule establishes a new subpart K in part 91 to cover fractional ownership operations. The new Subpart K clarifies what qualifies as a fractional ownership program, clarifies who has operational control, defines operational control responsibilities, codifies many of the "best practices" now being used voluntarily in fractional ownership programs, and incorporates many of the safety standards of part 121 and part 135. By this rulemaking, the FAA establishes safety standards to maintain the safety record of current fractional ownership programs and to ensure that new fractional ownership programs will also meet a high level of safety.

In brief, new subpart K accomplishes the following:

(1) It establishes the criteria for qualifying as a fractional ownership program.

(2) It establishes that fractional owners and the management company share operational control of the aircraft and delineates operational control responsibilities.

(3) It establishes regulatory safety standards for operations under fractional ownership programs, including management operations, maintenance, training, crewmember flight and duty requirements, and others.

This rulemaking also revises certain requirements in part 135 on-demand operations. Many of the requirements in new subpart K of part 91 are based on requirements for on-demand operations in part 135. In the process of reviewing part 135 requirements, the committee and the FAA determined that some of the current part 135 requirements needed to be updated in accordance with new technology and other changes. The FOARC studied the best practices of the fractional ownership programs to determine under what circumstances part 135 operations could use those practices as an alternate means of compliance with part 135 standards. For example, FOARC recommended that on-demand operators be allowed to land at airports without weather reporting facilities, provided the flight plan includes an alternate airport that has such facilities and they carry additional fuel to fly to that alternate airport. Further, this eligible on-demand operation must provide a 2-pilot crew with increased pilot experience and that meets crew pairing standards. In addition proving test requirements for both fractional ownership programs and part 135 on-demand operations were reviewed and amended. A proving test requirement was added for fractional ownership programs and the requirement for multiple proving tests for part 135 operations was amended.

Specific requirements in subpart K and revisions to part 135 are discussed in detail in the public comment discussion that follows.

Discussion of Public Comment

The FAA received approximately 230 comments in response to the NPRM. Approximately 60 comments specifically address a concern related to noise and environmental issues at Santa Monica airport, 30 comments are from aircraft dispatchers, and 28 comments are from individual pilots. The rest of the comments are from major industry associations, aviation companies and interested individuals. The comments can be reviewed on the Internet at <http://dms.dot.gov>.

Commenter Abbreviations Used in This Preamble

ADF Airline Dispatchers Federation
AOPA Aircraft Owners and Pilots Association