

Avex The New Avex, Inc.
 CAA Civil Aviation Authority of the United Kingdom
 EHANAC East Hampton Airport Noise Abatement Committee
 EJA Executive Jet Aviation, Inc.
 Flexjet Bombardier Business Jet Solutions, Inc.
 GAMA General Aviation Manufacturers Association
 GM General Motors Air Transportation Section
 IBT International Brotherhood of Teamsters, AFL-CIO
 NATA National Air Transportation Association
 NBAA National Business Aviation Association
 NWJ New World Jet Corporation
 PASS Professional Airways Systems Specialists
 SAMA Small Aircraft Manufacturers Association
 Teamsters Teamsters Miscellaneous and Industrial Workers Union, Local No. 284

General Support

Several commenters express general support for the NPRM and for the work of the FOARC. Aviation Resources Management states that it fully supports the proposed rules and that the process used in their development was not only fair and impartial but was a remarkable example of accomplishment through cooperation between industry and government. Eclipse Aviation states that as a manufacturer of an aircraft that will be used extensively in fractional ownership programs, Eclipse strongly endorses the safety measures provided to the fractional customer by proposed subpart K to part 91. General Aviation Manufacturers Association (GAMA) states that as fractionally owned aircraft programs have already demonstrated their safety and efficiency while operating under part 91, it strongly supports the new rule. GAMA adds that these programs benefit the traveling public by dramatically increasing their options for air transportation and that the growth of these programs should not be hindered.

Some commenters identified specific parts of the proposed rules that they believe will be particularly effective. Robert E. Breiling Associates believes the proposed landing requirements, weather criteria for approach and departure and more realistic night operation requirements would give new flexibility to part 135 operators. These proposed requirements would not only allow them to operate to and from many other airports and runways previously not available to them. The proposed requirements would also help reduce traffic at some of the more congested airports. Alpha Flying, Inc. strongly supports the flight and duty time

requirements, and runway length and weather reporting requirements in the proposed rule. Alpha believes the proposed requirements could provide relief to charter operators who have been unnecessarily burdened operationally and economically by rules that are out-of-date. Alpha believes that weather reporting services now available, vast aircraft equipment improvements and aircraft certification rule changes that have been put in place since the runway length and weather reporting rules were written justify the proposed changes.

A flight operations manager comments that it is important that the people who developed the proposed rule actively work with the FAA to develop Handbook guidance for compliance when the proposal becomes a final rule.

FAA Response: The FAA appreciates the support of these commenters. In the final rule the FAA has tried to achieve the goals of FOARC, while carefully considering the comments from both supporters and those who oppose the FOARC proposals. After considering all the comments on the specific proposals and further research by FAA experts, the FAA has made some changes in the final rule. These changes and the reasons for each are discussed below under the specific topics.

In regard to implementation of the final rule, the FAA has set up an implementation team to plan for development of guidance material, inspector training, inspector assignment, and oversight and surveillance policies. The FAA plans to complete these products by the effective date of this rule. The FAA is committed to working closely with industry to implement this final rule.

General Opposition

Most of the commenters who state general opposition to the proposed rule take the position that fractional ownership programs are essentially on-demand operations that the FAA should regulate under part 135. Generally, these commenters believe that the Committee and the FAA fail to recognize that the program manager of a fractional ownership program is essentially promoting on-demand service. In the NPRM, the program manager is the entity that sets up a fractional ownership program and that hires an individual to run the program.

Approximately 28 commenters identify themselves as pilots with fractional ownership programs, of whom at least 10 are with EJA. Most of the pilots oppose the proposed inclusion of fractional ownership in part

91. They believe the FAA should require fractional ownership programs to operate under part 135. In addition to general opposition, some pilots made specific comments that the FAA addresses under the appropriate issue or section.

The Civil Aviation Authority of the United Kingdom (CAA) states that “. . . the proposal appears to be contrary to the provisions of the Chicago Convention which defines a commercial transport operation as an aircraft operation involving transport of passengers, cargo or mail for remuneration or hire.” The French Direction Générale de l’Aviation Civile submitted a similar comment.

One commenter cites a U.S. Federal Circuit court ruling that held a fractional ownership program to be a “commercial operation” for certain tax purposes and questions how the FAA can ignore this ruling.

Jet Sales & Services, Inc., states that the preamble states no justification to require increased regulation. This commenter states that a group of aircraft owners should have the same rights and privileges as those who can afford total and individual ownership.

While not opposing the entire NPRM, the National Transportation Safety Board (NTSB) states its concern for any part 135 changes in this rulemaking. The NTSB states that it will withhold judgment about the adequacy and appropriateness of the proposed subpart K requirements until it has had the opportunity to monitor accidents, incidents, and other developments related to fractional ownership.

Some commenters state that the FAA should issue another NPRM before issuing a final rule on fractional ownership. Commenters think this is necessary for various reasons, including the size of the NPRM and the lack of balance of the FOARC.

FAA Response: The FAA carefully considered the question of where to place the rules governing fractional ownership programs. It studied current fractional ownership programs, finding that this segment of aviation has a very high safety record through compliance with voluntary safety standards that in many cases exceed the regulatory standards. It is the FAA’s goal in this rulemaking to maintain this safety record.

In determining the appropriate regulatory part for fractional ownership programs, the FAA recognizes that fractional ownership programs contain elements of private ownership and use of a management company that are similar to a traditional management company operation under part 91. The