

role of the management company is to provide aviation expertise and services to the owner and the program manager does not hold out to the public to provide air transportation. Fractional ownership programs differ from the traditional management company model in the size and complexity of the program operations, reducing the individual owner's ability to exercise operational control. Therefore, the FAA determined that the appropriate approach is to regulate fractional ownership programs under part 91, but to define operational control responsibilities and procedures and to prescribe added safety requirements appropriate to the size and complexity of those operations. These standards mirror corporate best practices, the voluntary standards used by existing fractional ownership programs, and the regulatory standards of part 121 and 135, as appropriate. In response to the CAA and the French Direction Generale de l'Aviation Civile comments, the FAA views fractional ownership programs to be private operations and therefore not subject to the commercial transport standards and definition. A U.S. federal circuit court determined fractional ownership programs are commercial operations for tax purposes. See *Executive Jet Aviation, Inc. v. U.S.*, 125 F.2d 1463 (Fed. Cir. 1997). Tax law does not govern safety rules. The FAA considers fractional ownership programs private operations for safety and operational control purposes.

The changes made to part 135 in this rulemaking are based on a comparison of current part 135 requirements to part 91 fractional ownership and corporate programs. Part 135 was amended where safety could be maintained while offering an alternative method to achieve the same safety goal. These procedures and amendments were based in part on the best practices and demonstrated safety record of corporate aviation and fractional ownership programs.

Like the NTSB, the FAA intends to closely monitor both part 91, subpart K, and part 135 operations following the implementation of this rule to identify any trends or safety concerns related to the requirements of this rule.

Some commenters encouraged the FAA to issue a supplemental NPRM. The FAA is issuing a final rule because the changes made to the rule language are within the scope of what the FAA proposed in the NPRM. Commenters made many helpful suggestions, including suggested technical edits and cross-references, some of which the FAA has incorporated into the rule. Comments that are beyond the scope of

the NPRM, would result in a substantive change to the rules, or identify new issues are being considered for future rulemaking. The FAA has determined that it is in the public interest to publish a final rule now to establish and maintain a safety standard for fractional ownership programs.

Extension of Comment Period

Several commenters asked the FAA to extend the comment period to allow more time for public input. NTSB stated that the September 11, 2001, events have raised public concern about the security of air carrier operations and will likely further increase the demand for fractional ownership and the potential for safety issues associated with expanded operations. The NTSB asked for a 90-day extension of time to evaluate the proposed changes and the related safety issues. The National Business Aviation Association (NBAA) and the National Air Transportation Association (NATA) noted that since September 11, the Nation, and the aviation community in particular, have directed many resources to restore our air transportation system. NBAA and NATA requested an extra 30 days to allow all interested parties more time to prepare well-developed, thoughtful comments on the proposed regulation. An individual sought a nine-month time extension to allow the pilots affected by these proposed changes, but excluded from FOARC, to adequately review the safety implications of this NPRM and suggest changes.

FAA Response: In response to the commenter requests, the FAA extended the comment period to November 16, 2001 (66 FR 52878, October 18, 2001).

FOARC's Membership Balance

Many commenters state that the Committee did not represent all potentially interested parties. They specifically mentioned pilots, fractional owners, airports and airport community interest groups. They also wrote that publication of a Notice of Proposed Rulemaking by itself did not overcome the built in bias of the Committee.

One commenter states that the FOARC was not "fairly balanced" as required by 14 CFR 11.27 and the Federal Advisory Committee Act (FACA) because pilots did not participate in the process.

The Teamsters state that the FOARC consisted essentially of three groups. First, fractional providers who feared that they would be regulated under part 135. Second, on-demand part 135 operators that see fractional owners as running a similar operation but under less stringent, and therefore less costly,

rules. Third, corporate flight departments and their trade organizations that feared negative consequences for them if the FAA were to choose to regulate fractional operators under part 135. This commenter suggests there would have been no committee consensus without the proposed changes to part 135 that benefited persons currently operating under that part. This commenter also questions why a committee set up to address the issue of fractional ownership would have anything to do with part 135 operations. Other commenters make the same point.

NATA states that a notice of public meetings was published in the **Federal Register**. NATA also states that inferences made by some commenters to this rulemaking about "backroom" deals are misleading. The commenter points out that such inferences ignore the opportunity for public involvement in the process and the presence of DOT and FAA representatives at all FOARC meetings.

FAA Response: The Fractional Ownership Aviation Rulemaking Committee was established by an order issued by the FAA Administrator on October 6, 1999, pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5). This section states that "The Federal Advisory Committee Act (5 U.S.C. App.) does not apply to the Council or such aviation rulemaking committees as the Administrator shall designate." Therefore the activities of the FOARC were not subject to the requirements of the Federal Advisory Committee Act. Nevertheless, the FAA balanced the makeup of the committee so that the FAA could learn the various perspectives of persons involved in fractional ownership operations and other segments of the aviation community that the proposed regulations may affect. This included part 135 operators, aircraft manufacturers, corporate flight departments, aircraft financing and insurance companies, and industry trade associations. About the issue of pilot representation, to the FAA's knowledge, only one fractional ownership program has union representatives for a portion of its pilots. Therefore, there is no single, recognized organization that could speak for fractional ownership pilots across-the-board. Nevertheless, there were individual pilots on the FOARC, representing both fractional ownership programs and part 135 operators.

In addition, as described earlier in this preamble, the FAA held a public meeting to invite the views of other interested parties. Finally, the FAA