

published the NPRM and provided a public comment period in accordance with the Administrative Procedure Act. This comment period allowed all interested parties, whether they were FOARC members or not, to provide added insight, comments, and suggestions for changes to the proposal. The FAA received over 230 public comments and has carefully reviewed the many views and suggestions provided in those comments. Therefore, the FAA does not agree that this rulemaking suffered from a lack of balance or a lack of opportunity for all interested parties to express their views.

Environment and Noise

Many commenters are concerned about the environmental and noise impacts of this proposed rule on local airports. Most of these comments (approximately 60) are from organizations and individuals in the neighborhood of the Santa Monica, CA, Airport. Commenters from the vicinity of Flying Cloud Airport in Minnesota and East Hampton Airport in New York also address this issue.

Most of these commenters state that the FAA must comply with the National Environmental Policy Act (NEPA) before proceeding to a final rule. An individual asks that the FAA conduct "an environmental assessment or environmental impact statement to fully and fairly define and disclose the environmental impacts that will flow" from the proposed rule. Santa Monica Airport, the North Westdale Neighborhood Association, the East Hampton Airport Noise Abatement Committee (EHANAC), and Friends of Sunset Park Neighborhood Association believe that the FAA should study the impact of fractional ownership on communities and schools that are near general aviation airports. Residents of Sunset Park are concerned that altering the 60 percent rule and creating subpart K will significantly increase the volume of business jet traffic, bringing with it an increase in air and noise pollution. The Los Angeles Unified School District is concerned about regulatory changes that may increase noise levels and air emissions at several of their schools underlying the approach to Santa Monica Airport.

An individual states that relaxing an existing limit on runway use and requirement for instrument flight rules (IFR) destination airport weather reporting would authorize a whole new class of airports to be opened to a new class of aircraft. This would increase noise and adversely impact the quality of the human environment for unknown numbers of individuals. This

commenter does not believe that this rulemaking qualifies for a "categorical exclusion" from the requirements of NEPA, stating that "The FAA has an affirmative obligation to disclose adverse environmental impacts that will flow from an agency action."

NATA submitted a comment in response to these comments stating that the FAA was not obligated to do an environmental assessment or prepare an environmental impact statement in situations where the FAA is promulgating safety rules that are not likely to have a significant impact on the environment. The commenter points out that the FAA is not responsible for the growth of fractional ownership programs. According to the commenter, if the rulemaking results in a greater use of small airports, this may have a positive effect because of a more efficient allocation of aircraft activity among large and small airports.

FAA Response: The FAA understands its obligations under NEPA and takes its responsibilities seriously. The FAA based its determination that this rulemaking qualifies for a categorical exclusion from the requirement to prepare an Environmental Assessment under NEPA on the instructions in FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. Appendix 4, section 4, lists issuance of "regulations, standards, and exemptions" as one of the categorically excluded actions that the FAA's Associate Administrator for Regulation and Certification may take. As with most of FAA's operating rules, any environmental impact would come not from issuing the rule, but from approving specific operations under the rules. For example, Order 1050.1D spells out how the FAA considers environmental impacts when issuing operations specifications for part 121 and part 135 operators. The FAA normally prepares an environmental assessment before issuing operations specifications for scheduled operations. For on-demand operations, an environmental assessment would not be prepared unless the proposed operation would significantly change the operating environment of the airport that serves as the home base for the operator. NEPA requires the FAA to consider the "foreseeable environmental impacts" of its actions. Therefore it is difficult for the FAA to assess impacts on destination airports for particular on-demand operators, because those destinations are unknown at the time of the approval. Similarly, for fractional ownership programs, it would be difficult to identify destination airports, since fractional owners may choose to

go to any airport. Again, the FAA can only look at the potential impacts on the home base airports. It has been determined that management specifications will be treated the same as operations specifications for NEPA purposes. Therefore, the same principles will apply.

On the weather reporting issue, the FAA does not expect a significant impact because the number of part 135 operators who can do this will be limited. The rule applies only if the airport has no weather reporting but has instrument approach procedures, the operator is authorized to conduct IFR operations, the weather is instrument meteorological conditions, and the operator meets the eligible on-demand conditions. Therefore the FAA cannot make an estimate of the number of operations that would be increased. Fractional ownership programs can currently operate into airports without weather reporting. This rulemaking imposes extra restrictions that could limit some operations.

The requirements for performance planning could potentially increase the number of airports that part 135 operators could use, but would impose limits on some part 91 fractional operations that can currently use any suitable airport runway. Under the final rule, only eligible on-demand operators under part 135 would be able to take advantage of reduced runway requirements and only under certain conditions. The changes to the performance rules will restrict some fractional ownership operations, which currently have no regulatory limits. The FAA cannot estimate the number of airports or operations that would be affected, as performance planning incorporates many variables and, because of the on-demand nature of these operations.

FAA Oversight and Staffing

Professional Airways System Specialists (PASS) is concerned that the proposed rule would not require the necessary oversight and surveillance by FAA safety inspectors to ensure the level of safety desired. The management specifications, training manual and program managers operating manual need to be clear and approved by the Administrator so there is little controversy on what the program managers, flightcrews, maintenance personnel and fractional owners are required to do to ensure compliance with the regulations. Similarly, Style Air comments that the FAA currently does not have sufficient staff to service part 135 operators efficiently. This commenter believes that the addition of