

trained inspectors should be addressed before any implementation of new regulations, and that specific procedures for FAA oversight and enforcement should be provided in the new regulations. An FAA inspector expresses concern over "how the field inspection will make a determination as to the type of operator he/she is conducting a surveillance on * * *

FAA Response: The FAA agrees that the success of these regulations is dependent on the quality of the oversight and surveillance provided by FAA inspectors and local Flight Standards District Offices (FSDO's). Therefore the FAA has established an implementation team that is developing standards and guidance for the use of both Headquarters and field personnel who will be responsible for reviewing fractional ownership programs policies and procedures, approving training programs, and issuing management specifications. The implementation team has reviewed staffing levels and qualification standards for aviation safety inspectors and made recommendations to ensure that inspectors have the necessary knowledge, skills, and abilities to oversee fractional ownership programs. The implementation team is working with PASS on assessing these staffing needs. In addition, the team is drafting specific guidance for field offices and inspectors to provide instructions and criteria for conducting the reviews and approvals required before fractional ownership programs may operate under subpart K. The level of oversight and surveillance and inspection activities provided to specific companies will be appropriate to the size and complexity of the operations being conducted and will be comparable to that provided to part 135 on-demand operations. The FAA believes that these implementation plans and products fully address the concerns expressed by the commenters.

Owner-Piloted Multiple-Owner Aircraft (See also § 91.1001)

Several comments focus on how the rule would affect co-ownership arrangements of aircraft by pilots, and owner/pilot operation of aircraft.

Four commenters (Aircraft Owners and Pilots Association (AOPA), GAMA, Lawyer Pilots Bar Assoc. and NATA), state that the rule or the preamble should clearly distinguish between the multiple owner/pilot and similar arrangements that would continue to be regulated under the existing part 91 and those arrangements that would be considered fractional ownership programs and be regulated under the proposed subpart K.

NBAA states that the FAA should account for aircraft ownership mechanisms other than fractional ownership programs in the final rule. NBAA believes that any programs that do not precisely fall within the definition of fractional ownership should be subject to regulations other than subpart K. An example would be a company that provides aircraft management services for aircraft that are flown solely by the owner. NBAA is concerned that the qualifications under § 91.1001(b) would inadvertently require owner-flown shared aircraft programs that use a management company to schedule aircraft among owners to comply with subpart K, when they would be better addressed as flying clubs. NBAA provides regulatory changes that would further clarify the types of operations subject to subpart K and prevent the inadvertent application of this regulation on other ownership and service options such as flying clubs, joint ownerships, time-shares and traditional aircraft management.

Another commenter, the Small Aircraft Manufacturers Association (SAMA), notes that the proposed subpart K defines a fractional ownership program in a way that would include owner-pilot shared ownership programs in which the program manager does not offer or provide the flightcrews. According to the commenter, owner-pilot shared ownership programs that would technically meet the proposed definition of a fractional ownership program under § 91.1001(b) did not exist when the FOARC made its recommendations to FAA in early 2000. The FOARC did not hypothesize their formation and therefore did not consider their appropriate regulation. These owner-pilot shared ownership programs have since been established, generally providing piston-powered single engine airplanes, and currently are appropriately regulated under part 91, without reference to subpart F. It appears that neither the FOARC nor the FAA intended to regulate these programs under subpart K. According to the commenter, these programs are similar to flying clubs, partnerships and management services arrangements, but do not exactly match any of these traditional forms of shared aircraft ownership.

The goal of this commenter's proposed amendment is to avoid changing the regulation of owner-pilot shared ownership programs that are permissible today under part 91. Because these programs provide safety benefits, the FAA should facilitate the emergence of these forms of small aircraft ownership and operation by

clearly describing in the rule and in related guidance materials activities under such programs. This commenter suggests specific final rule preamble language that would clarify that the intent of the rule is not to cover the types of operations described by the commenter. In contrast, The New Avex, Inc., (AVEX) states that the proposal is short sighted because it excludes the opportunity for individuals to share ownership of light, single-engine turboprops.

Similarly, NATA and Bombardier Business Jet Solutions, Inc., (Flexjet) understand that some systems of aircraft ownership and use have been created, or soon will be created, that involve only owners that intend to act as the pilot during the owner's use of the aircraft. Some of these programs may include elements commonly found in fractional ownership programs, such as multiple owners of an individual aircraft, a single aircraft manager, and a dry-lease pool of multiple aircraft. Although these programs may technically fit the applicability requirements of subpart K, these commenters do not believe that such programs should be subject to subpart K. According to the commenters, a program that consists solely of owners that will always be the pilots when they use their aircraft is likely to appeal to a far different owner than would the fractional ownership programs that were the focus of FOARC's and FAA's review. Such a program does not require the enhanced provisions of subpart K and would more appropriately be regulated under existing regulations.

SAMA, NATA and Flexjet believe that the fundamental difference between a pilot-owner program and fractional programs as envisioned by subpart K is that the program manager in a pilot-owner program is not responsible for providing any pilots. One of these commenters recommends excluding exclusively pilot-owner programs from subpart K by revising the definition of fractional ownership program management services in proposed § 91.1001(b)(7). Under this recommended definition, subpart K would apply if the manager provided even a single pilot to any aircraft owner. However, if one of the owners served as the pilot in all program operations, the program would not be subject to subpart K. Another commenter recommends amending § 91.1001(b)(7) to include "the offering or provision of flight crews" as well as providing related guidance material that would apply subpart K only to shared ownership programs where the program manager offers or provides the flight crew.