

program aircraft to provide transportation to others for compensation or hire. In addition, we have added a new paragraph (c) to § 91.1005 addressing the sale or sublease of an aircraft interest by either a program manager or fractional owner. This paragraph would make it clear that if the sale or sublease of an aircraft interest would result in less than the minimum aircraft interest prescribed in § 91.1001(b)(10), then subpart K does not apply. Flights conducted for associated reduced share sizes are required to be conducted under part 121 or part 135, as appropriate, by a part 119 certificate holder.

Further, the FAA added a new paragraph (c) to § 91.1001 to clarify that the rules of subpart K apply to persons who engage in programs meeting the new definitions of this subpart without first obtaining management specifications under subpart K.

Any penalties for non-compliance with this rule and all other FAA rules are explained in 14 CFR part 13, subpart C, Legal Enforcement Actions. In addition, we note that any unlawful commercial operations may also be subject to enforcement action by the Office of the Secretary for violations associated with its economic licensing requirements. (See 49 U.S.C. 46101 and 46301.) Further, § 91.1013 requires each owner to sign an acknowledgment of the fractional owner's operational control responsibilities, including compliance with management specifications and applicable regulations and penalties for non-compliance.

Over-water Operations (§§ 91.509 and 135.167)

Several comments were received on the proposal to revise part 91 and part 135 equipment requirements for over-water operations.

NATA, Flexjet, and a flight operations manager state that they support the revision because the proven reliability of turbine engines shows that there would be no compromise of safety.

Columbia Helicopters supports the provisions for part 91 because of the altitude requirement, but not for part 135. According to the commenter, the current part 135 provisions are for "extended over-water operations," which is defined in 14 CFR part 1. (The definition in part 1 for "extended over-water operations" for aircraft other than helicopters is more than 50 nautical miles from the nearest shoreline; for helicopters it is more than 50 nautical miles from the nearest shoreline or from an offshore heliport structure.) The commenter states that the revision would make an exception to the part 1

definition and that such an exception should be done by exemption. The commenter believes that the change will jeopardize lives because any survivors of a ditching would have no means of surviving in the water until they are rescued.

Two commenters support the amendments, but want stipulations or clarifications based on the type of engine. One of these commenters would change "turbine-powered aircraft" to "turbine-powered multiengine aircraft." Since there are pressurized single engine turbine-powered aircraft in fractional programs, the commenter hopes that FOARC and the FAA did not intend to allow single engine turbine-powered aircraft to operate without appropriate survival equipment. An engine failure above flight level (FL) 250 in a multiengine turbine-powered aircraft yields a very different result than in a single engine aircraft. This commenter believes that allowing the exception for single engine turbine-powered aircraft would not provide an appropriate level of safety.

Four commenters oppose both amendments for safety reasons. Two of these commenters, an individual and an EJA Pilot, state that the recent case where an Airbus A330 had a dual engine flameout over the Atlantic Ocean because of fuel problems is a perfect example why this equipment should be on every over-water aircraft.

An EJA Pilot, one of the opposing commenters, states that it would decrease safety to allow flights beyond 50 nautical miles or 30 minutes flight time (whichever is greater), before requiring safety devices. This commenter recommends the FAA require over-water survival equipment for all flights beyond 50 nautical miles from the shoreline.

NATA points out that the proposed rule does not revise the current requirement to carry a life preserver for each occupant.

Two individual commenters believe that 30 minutes over water without safety equipment is too much time. If the plane was on fire or had other reasons for an immediate landing, the lack of a life raft could be fatal. With the addition of "whichever is greater," jet aircraft traveling in excess of 500 knots could be 250 nautical miles or greater out to sea. This exceeds the distance that rapid response search and rescue helicopters or rescue equipment could realistically be expected to deploy for search and rescue efforts. One of these commenters also states that the limit should be the same for all operators/types of operations.

The Teamsters state that the unstated reason for amending part 135 is to let part 135 charter operators "compete" with the fractional providers. Part 135 operators have traditionally been held to a higher standard of safety than a private aircraft operator. According to this commenter, the reduction in safety from the change in part 135 is solely to reach a deal with charter industry groups. The commenter states that no data support any changes to § 135.167.

PASS does not see a reason for having these special rules regarding aircraft under subpart K. This commenter believes that the part 91 rules that are in effect should stand; however, if the rule needs to be changed, then the entire rule should be changed, not just the part that applies to subpart K.

Kaiser Air, Inc. strongly supports the change to § 135.167(d) but notes that the rule does not contain the statement in the proposed rule preamble that a deviation below 25,000 feet is allowed in the interest of safety.

FAA Response: The FAA agrees with the safety concerns of these commenters. In the final rule, the FAA has included language in §§ 91.509(c) and 135.167(a) similar to that in § 121.339 that allows the FAA to amend management specifications or operations specifications, as applicable, to require the carriage of any or all over-water emergency equipment or to allow a fractional ownership program or on-demand operation to request a deviation for a particular over water operation. Commenters are correct that only turbine-powered multi-engine airplanes would qualify. The proposed rule was not intended to apply to helicopters; the use of the word "aircraft" instead of "airplane" in the proposed rule was in error. The specific airplane types for which an operator requests exception would need to have a reliability program under which the operator is able to demonstrate and ensure the reliability of the airplane engines. Other conditions and limitations would be imposed on the operator to ensure that safety and survivability are maintained. The FAA will develop guidance for fractional ownership programs and part 135 operations based on the guidance for part 121 operations in the Air Transportation Operations Inspectors Handbook (Order 8400.10, Volume 3, Paragraph 87).

In addition, the FAA has researched the relevant regulatory provisions and has reviewed relevant rules applicable to current air carrier operations. This research reveals that the "whichever is more" language is inconsistent with the FAA's past interpretation of the relevant regulations. Therefore, the final rule