

section but "education" appears within the section.

**FAA Response:** By statute, the FAA is obligated to impose the drug and alcohol testing programs on air carriers. The requirements are located in appendices I and J of part 121 and apply to air carriers under parts 121 and 135. No such statutory obligation exists for part 91 operations. Therefore, although the FAA encourages fractional ownership programs and other corporate aviation organizations to consider establishing drug and alcohol testing programs, those programs would be separate and apart from the Federally mandated testing programs. In that regard, the company testing programs may not use the forms that are required for the Federally mandated testing programs to document their testing. These forms are the Federal Drug Testing Custody and Control Form and the U.S. Department of Transportation (DOT) Alcohol Testing Form. Drug and alcohol testing programs that are not part of the Federally mandated systems must develop their own forms.

In any case, with or without a drug and alcohol testing program, all pilots must comply with § 91.17, which prohibits a person from acting or attempting to act as a crewmember of an aircraft while under the influence of drugs or alcohol.

The relief provided to part 135 operations under §§ 135.251(c) and 135.255(c) is based on a practical consideration. There have been times when it has been difficult to locate maintenance personnel who are covered by a DOT drug and alcohol program. However, the FAA agrees with PASS that there should be a follow-up inspection of any emergency maintenance performed under the authority of these sections. The FAA has determined that the appropriate timing for this inspection should be the next time the aircraft is at a location where a person who is qualified under §§ 135.251(c) and 135.255(c) is available. Sections 91.1047(d), 135.251(c), and 135.255(c) have been changed in the final rule to require the reinspection.

#### **Certificate and Management Specifications Action (§ 13.19)**

The six commenters (an individual, a flight operations manager, New World Jet/EJA, NATA, and Flexjet) who address this proposed section agree that holders of management specifications should have appeal rights comparable to those available to certificate holders under current § 13.19. Several commenters state that FAA should seek legislative authority if necessary.

**FAA Response:** The FAA has determined that legislative authority is needed to provide appeal rights for fractional ownership program managers. Therefore, the proposed changes to § 13.19 have not been included in the final rule, pending receipt of such authority.

#### **Part 91, Subpart A, Truth-in-Leasing Clause**

NATA and Flexjet state that proposed §§ 91.1009, 91.1011, 91.1013, 91.1014 and 91.1015(a)(1) would make compliance with § 91.23 duplicative and unduly burdensome for program managers and fractional owners. Since § 91.23 already exempts leases of aircraft to a certificate holder under part 121, 125, 135 or 141, NATA recommends amending § 91.23(b) to add an exception for leases under a fractional ownership program.

**FAA Response:** The FAA disagrees that §§ 91.1009 through 91.1015 adequately address the same content that is specified in § 91.23. Therefore, the FAA is not amending § 91.23 to except fractional ownership programs.

#### **Part 91, Subpart F**

PASS believes that there should be specific delineations about the use of subpart K aircraft in part 121 or 135 programs. PASS expands on this statement in its comment on proposed §§ 91.1009(b)(2) and 91.1035(c) where it states its belief that fractional aircraft should not be used for operating under parts 121 and 135. PASS states that the "only way for FAA to effectively and efficiently provide clear guidance and oversight is by ensuring separate rules for each type of operation."

**FAA Response:** It is not a unique situation for aircraft at different times to be operated under different rules. Currently, an aircraft can serve multiple operational uses, including flight instruction, aircraft rental, or air carrier operations. In all cases each operation must be conducted in accordance with the rules applicable to that operation. Therefore an aircraft that is used in a fractional ownership program under subpart K could also be used by a part 119 certificate holder in an air carrier operation provided the operator or owner meets the regulatory requirements for that operation.

The final rule includes a clarifying change in § 91.501(b)(10). The change makes it clearer that a fractional owner may not use a joint ownership arrangement specified in § 91.501(b)(6) and that, if entering into an interchange agreement under paragraph (b)(6), the exchange of equal time for the operation must be properly accounted for as part

of the total hours associated with the fractional owner's share of ownership. A joint ownership arrangement is incompatible with the definitional elements of a fractional ownership program prescribed in § 91.1001(b)(5). An interchange arrangement is permissible provided the fractional ownership program contracts permit a fractional owner to enter into an interchange agreement with a party outside the fractional ownership program.

#### **Part 91, Subpart K**

##### *Section 91.1001 Applicability* **Citizenship**

One individual commenter questions the constitutionality of not requiring a fractional owner to be a citizen as required by § 119.33 for people certificated under part 119.

**FAA Response:** FAA regulations and aviation law make a distinction between the citizenship requirements for registered owners of aircraft versus certificated air carriers or commercial operators. Part 119 requires that applicants for certificates to operate under part 121 or 135 must be U.S. citizens. It is the FAA's determination in this rule that a fractional ownership program is not an air carrier or commercial operation and that the program manager is not an operator subject to part 119. Therefore the citizenship requirements of part 119 do not apply to these programs or to the program manager.

For aircraft owners, part 47 contains the requirements on citizenship for registration purposes. A foreign citizen may be an owner of a U.S. registered aircraft if he or she is a resident alien. Section 47.9 contains specific rules for corporations that are not U.S. citizens. As long as they comply with the part 47 rules, fractional owners may be foreign citizens.

##### **Two Pilot Crews**

GAMA states that when the FOARC was considering this NPRM, aircraft certificated under part 23 were not part of fractional ownership programs (as defined by the NPRM). However, safe and efficient operations of part 23 aircraft are feasible under fractional programs, and FAA should make allowances for them to operate under the proposed part 91, subpart K. However, part 23 aircraft, including some turboprops, are typically certificated to fly safely with a single pilot. GAMA therefore recommends that two pilots should not be required for part 23 aircraft to qualify for part 91, subpart K operations.