

*FAA Response:* With respect to aircraft certificated under part 23, FAA believes that the deviation authority provided in § 91.1049 is adequate to cover situations where a two-pilot crew is not necessary.

#### Management Specifications

NATA and Flexjet state their belief that the FOARC intended that all fractional programs would be required to operate under part 91, subpart K, unless they elect to obtain certification under part 119. The commenters' concern is that the proposed rule language would not cover a person who is actually operating as a fractional owner but who does not apply for management specifications. The commenters recommend the addition of a new § 91.1002 that would contain language clearly stating that the rules of subpart K apply "to a person who engages in any operation governed by this subpart without appropriate management specifications."

*FAA Response:* FAA agrees with NATA and Flexjet that the intent of the NPRM was for all persons conducting fractional ownership operations to be subject to subpart K unless they elect to obtain certification under part 119. Therefore, a new paragraph (c) has been added to § 91.1001 to make it clear that the subpart applies to any person who engages in a fractional ownership operation as described and defined in § 91.1001.

#### Program Manager

NWJ and an individual believe that under § 91.1001(b)(8) an individual or individuals should be specifically designated for accountability within the fractional operator's management specifications, not just the entity. This would be similar to the part 119 requirements for required personnel that apply to on-demand part 135 operations. The commenters believe that, at a minimum, an individual designated as "Program Manager", "Director of Operations", and "Director of Maintenance" should be required positions within the fractional operators' management specifications. PASS also believes that it will be necessary to identify a Director of Maintenance (DOM), with qualifications determined by the Administrator that are based on the size, scope and complexity of the fractional ownership program. The DOM would be the focal point for all correspondence and questions between the FSDO and the program management company concerning maintenance related issues.

*FAA Response:* The FAA recognizes a need for management personnel and

individuals designated for accountability within a program. Instead of designating specific positions, program managers will be asked to identify individuals that the FAA can contact on specific issues, such as operations and maintenance, and who are authorized to sign the management specifications. However, if a fractional ownership program manager elects to maintain program aircraft using a continuous airworthiness maintenance program (CAMP), the position of Director of Maintenance would be required (*See* § 91.1413(b)(1)).

#### Minimum Fractional Ownership Share

PASS believes that § 91.1001(b)(4) should be changed so that the requirement for  $\frac{1}{16}$ th share minimum ownership includes a monetary cost for the fractional aircraft along with the minimum share requirement. For instance, an aircraft valued at over 2 million dollars could be a  $\frac{1}{16}$ th minimum share but an aircraft under 2 million dollars should be  $\frac{1}{8}$ th share as a minimum. This would help prevent the possibility of a program manager selling many shares of a 1973 Cessna 172 at low cost shares, circumventing the meaning of the fractional ownership program and actually conducting low fee air charter operations without a part 135 air charter operating certificate. Additionally, under the proposed definition a person could purchase a  $\frac{1}{17}$ th share and not be under the umbrella of fractional ownership. PASS does not believe this was the FAA's intent.

Jet Sales & Services, Inc. objects to the proposed concept of "minimum fractional ownership interest" when there are many other ways to control an asset in the dynamic U.S. business environment other than ownership, such as exclusive lease arrangements which should be given the same constructive treatment as ownership. Jet Sales states that an on-demand air charter certificate holder can lease aircraft and, in fact, that aircraft may have joint uses such as serving as private and/or corporate aircraft transportation. Also, scheduled airlines lease aircraft as well as other assets. Jet Sales believes that lease arrangements must be allowed in fractional programs.

Aviation Charter Services expresses concern that subleasing arrangements by a share owner would violate the  $\frac{1}{16}$ th requirement and that if subleasing of a share is allowed, the person subleasing should have to hold an operating certificate and follow part 135 regulations.

EJA believes that the final rule should clarify the regulatory ramifications of a

fractional ownership interest not meeting the minimum requirement of an interest equal to, or greater than, one-sixteenth of a subsonic, fixed-wing aircraft or one-thirty-second of a rotorcraft aircraft. EJA suggests that the final rule should specify that any system of aircraft exchange which meets the definition of "fractional ownership program" in all respects except that one or more of the fractional owners possess less than a "minimum fractional ownership interest" will be required to conduct program operations for such owners under appropriate air carrier regulations rather than under subpart K.

*FAA Response:* The FAA has determined that the minimum share requirement is adequate to define an ownership interest and the addition of a monetary cost does not add any value.

In response to the comments about lease arrangements, the FAA considers a long-term lease to be equivalent to an ownership interest. Therefore, leasing is allowed under subpart K. Any lease or sublease arrangement may not be smaller than the minimum  $\frac{1}{16}$ th share requirement.

The FAA agrees with the suggestion by EJA that the regulation should explain the ramifications of a fractional operation not meeting the minimum interest requirements. The regulation has been modified to add § 91.1005(c) to make it clear that fractional ownership programs with more than 16 owners per aircraft, including sublease shares that result in an ownership interest smaller than  $\frac{1}{16}$ th, must be operated by a part 119 certificate holder under part 135 or 121, as applicable.

#### Two or More Aircraft

NATA and Flexjet support the requirement for two or more airworthy aircraft as an essential element of a fractional ownership program. However, a bona fide fractional aircraft program, especially a new entrant, might only have two aircraft in the program. While this satisfies the requirement of the rule, there may be times when one of the program aircraft is temporarily unairworthy because of mechanical failure or required maintenance or inspection. Such brief and routine occurrences should not affect the ability of the program to continue to operate under subpart K. NATA and Flexjet recommend that the FAA make this clear in the Final Rule.

*FAA Response:* The FAA does not believe that a rule change is necessary since this kind of intermittent occurrence is in the course of normal business and would not be considered a violation of the two airworthy aircraft requirement. It is expected that an