

CDL's approved for those operations, as applicable.

FAA Response: The FOARC recommended and the FAA agrees that a process similar to that used for part 121 and 135 operators should be used to approve operations documents, authorizations, and approvals. Specific sections in subpart K refer to those items that must be approved or accepted by the FAA. The actual approval will be given to the program manager on behalf of the fractional owners. The specific approval processes and procedures will be in guidance documents that will be completed on the effective date of this rule. The guidance will reflect a level of oversight and approval that is equivalent to that provided to part 121 and 135 operations.

The FAA also agrees that proposed § 91.1115 does not adequately describe the procedures and approvals needed for operating an aircraft with inoperable instruments or equipment. As suggested, the final rule replaces the proposed language with a new section modeled on § 135.179. The proposed language stating that all approvals, including MEL's, are issued to the program manager and are not affected by changes in ownership has been included in § 91.1011(b). The new section also specifies that aircraft covered by an MEL for part 121 or part 135 operations must not have a separately approved MEL under subpart K, because the FAA issues only one MEL for each aircraft. If the aircraft is used under part 121 or 135, the MEL would be issued under that part.

The FAA agrees with the suggestion by EJA that § 91.213(c) should refer to part 91, subpart K, and has made this change in the final rule.

Part 91, Appendix G Reduced Vertical Separation Minimum Airspace

EJA states that, since Reduced Vertical Separation Minimum ("RVSM") standards may be used by fractionally-owned aircraft, Appendix G to part 91 should reflect the existence of part 91, subpart K.

FAA Response: The FAA agrees with the EJA and has amended appendix G in the final rule to include references to subpart K in sections 3(a) and (3)(b) and in the introductory paragraph to section 7.

Part 135

Applicability

EJA states that the reference to §§ 91.1053 and 91.1055 in proposed § 135.1(b) may create confusion that will require interpretation by the Administrator and/or the certificate

holder to determine applicability. There is a high likelihood that those interpretations might be different. A simpler and clearer solution would be to revise § 135.99 to include the applicable requirements of §§ 91.1053 and 91.1055 using the terminology of part 135.

NATA believes that it was the intention of the FOARC to require eligible on-demand operators to have two-pilot crews when exercising the privileges of an eligible on-demand operator. While the proposed regulations require compliance with the more stringent pilot experience and crew pairing requirements, a two-pilot crew is not specifically required. Proposed § 91.1049 (d) requires two-pilot crews in fractional program operations. Therefore, to fulfill the intent and spirit of the FOARC, NATA recommends amending proposed § 135.1 to specifically include a reference to the flight crew complement requirements of § 91.1049.

NATA also notes that the FAA's ability to grant deviations from certain requirements where appropriate based on the size and complexity of the operation or other relevant factors was critical to the FOARC deliberations. This commenter believes that it was FOARC's intent to provide access to these same deviations for part 135 operators to the extent that they are present in proposed §§ 91.1049(d), 91.1053 and 91.1055.

Kaiser Air, Inc. states that for clarification the language in § 135.1(b) should emphasize an eligible crew rather than eligible operator. An eligible operator may have several crews that may or may not be eligible themselves. Furthermore, Kaiser states that § 91.1055(c) should not be applicable to "Eligible On-Demand Operators." Kaiser states that it is not a part 135 requirement now and is onerous to be added to the eligibility requirements. Kaiser questions how this rule would be interpreted and asks for clarification on whether paragraph (c) applies to SIC's, who do not require a type rating.

FAA Response: The FAA agrees that the proposed change to § 135.1 did not clearly spell out the requirements that apply to eligible on-demand operators. In the final rule, these requirements have been moved to a new § 135.4 that describes, rather than cross-referencing, the attributes of eligible on-demand operations, including the requirement for a two-pilot crew. Section 135.4 incorporates the requirements of §§ 91.1049(d), 91.1053, and 91.1055, including the provision for deviations, that part 135 operators must comply with in order to be eligible to conduct operations using the same standards for

the instrument approach procedures that fractional ownership programs will follow.

Section 135.247 Pilot Qualifications: Recent Experience

Kaiser Air, Inc. supports the proposed changes to § 135.247, but is concerned that the words "each airplane" and "that airplane" will be misinterpreted as meaning the specific serial numbered aircraft, rather than by category, class, and type. Similarly, the rule should state whether " * * * more than one crewmember" is required by type design or by operating rule.

FAA Response: The FAA agrees with these comments and has changed the final rule to clarify that the requirements of paragraph (a)(3) apply to airplanes that are *type certificated* for more than one pilot crewmember and to pilots qualifying in each airplane *type*.

Section 135.299 Pilot in Command: Line Checks

NATA strongly endorses an amendment to § 135.299 that would establish an alternate means of compliance with the regulation by permitting certificate holders to utilize simulation technologies. § 135.299(a) requires each pilot to pass a flight check annually. NATA believes that a well run line check program can provide detection of deficiencies and adverse trends and establish the need for a revision of old procedures or an initiation of new procedures by the certificate holder. Further, NATA believes that current simulation technology can provide a checking environment that would afford a level of safety equal to that currently provided by § 135.299.

The majority of the § 135.299 line checks conducted in on-demand air carrier operations are on flights that are dispatched for the sole purpose of accomplishing that check. Unlike scheduled air carrier operations conducted under part 121, where these checks are conducted during revenue operations, the on-demand operator must bear the total cost of the check. This puts the on-demand carrier at an economic disadvantage. Additionally, there is no line check requirement for any aircraft operated under part 91.

NATA believes that crews professionally trained in the operationally realistic environment of advanced simulation, and comprehensively checked in ways not possible in the airplane, are better disciplined and better prepared to meet the challenges of flight than those trained in airplanes.