

**DEPARTMENT OF TRANSPORTATION****Federal Aviation Administration****14 CFR Parts 13, 61, 91, 119, 125, 135, and 142**

[Docket No. FAA-2001-10047; Notice No. 01-08]

[RIN 2120-AH06]

**Regulation of Fractional Aircraft Ownership Programs and On-Demand Operations**

**AGENCY:** Federal Aviation Administration (FAA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** The Federal Aviation Administration (FAA) proposes to update and revise the regulations governing operations by aircraft in fractional ownership programs. This action is undertaken because the FAA has determined that current regulations do not adequately define fractional ownership programs and do not clearly allocate responsibility and authority for safety and compliance with the regulations. The proposed revisions would define fractional ownership programs and their various participants, allocate responsibility and authority for safety of flight operations for purposes of compliance with the regulations, and ensure that fractional ownership program aircraft operations maintain a high level of safety. Elements of this proposal would provide in certain of the regulations applicable to fractional ownership programs a level of safety equivalent to certain regulations that apply to on-demand operators. Changes are also proposed to some regulations that apply to on-demand operators meeting certain criteria to permit these operators an alternate means of compliance for certain commercial operations.

**DATES:** Comments must be received on or before October 16, 2001.

**ADDRESSES:** Address your comments to the Docket Management System, U.S. Department of Transportation, Room Plaza 401, 400 Seventh Street, SW., Washington, DC 20590-0001. You must identify the docket number FAA-2001-XXXXX at the beginning of your comments, and you should submit two copies of your comments. If you wish to receive confirmation that the FAA received your comments, include a self-addressed, stamped postcard.

You may also submit comments through the Internet to <http://dms.dot.gov/>. You may review the public docket containing comments to

these proposed regulations in person in the Dockets Office between 9:00 a.m. and 5:00 p.m., Monday through Friday, except Federal holidays. The Dockets Office is on the plaza level of the Nassif Building at the Department of Transportation at the above address. Also, you may review public dockets on the Internet at <http://dms.dot.gov>.

**FOR FURTHER INFORMATION CONTACT:**

Katherine Hakala Perfetti, Flight Standards Service (AFS-200), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267-3760, email: [katherine.perfetti@faa.gov](mailto:katherine.perfetti@faa.gov).

**SUPPLEMENTARY INFORMATION:****Comments Invited**

Interested persons are invited to participate in the making of the proposed action by submitting such written data, views, or arguments as they may desire. Comments relating to the environmental, energy, federalism, or economic impact that might result from adopting the proposals in this document also are invited. Substantive comments should be accompanied by cost estimates. Comments must identify the regulatory docket or notice number and be submitted in duplicate to the DOT Rules Docket address specified above.

All comments received, as well as a report summarizing each substantive public contact with FAA personnel concerning this proposed rulemaking, will be filed in the docket. The docket is available for public inspection before and after the comment closing date.

All comments received on or before the closing date will be considered by the Administrator before taking action on this proposed rulemaking. Comments filed late will be considered as far as possible without incurring expense or delay. The proposals in this document may be changed in light of the comments received.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this document must include a pre-addressed, stamped postcard with those comments on which the following statement is made: "Comments to Docket No. [FAA-2000-XXXX]." The postcard will be date stamped and mailed to the commenter.

**Availability of NPRMs**

You may download an electronic copy of this document, using a modem and suitable communications software, from the FAA regulations section of the FedWorld electronic bulletin board service (telephone: (703) 321-3339), the

Government Printing Office (GPO)'s electronic bulletin board service (telephone: (202) 512-1661), or, if applicable, the FAA's Aviation Rulemaking Advisory Committee bulletin board service (telephone: (800) 322-2722 or (202) 267-5948).

Internet users may reach the FAA's web page at <http://www.faa.gov/avr/arm/nprm/nprm.htm> or the GPO's web page at <http://www.access.gpo.gov/nara> for access to recently published rulemaking documents.

Any person may obtain a copy of this document by submitting a request to the Federal Aviation Administration, Office of Rulemaking, ARM-1, 800 Independence Avenue SW., Washington, DC 20591, or by calling (202) 267-9680. Communications must identify the notice number or docket number of this NPRM.

Persons interested in being placed on the mailing list for future rulemaking documents should request from the above office a copy of Advisory Circular No. 11-2A, Notice of Proposed Rulemaking Distribution System, which describes the application procedure.

**History and Background**

In 1986, Executive Jet Aviation, Inc. created a new program that offered to aircraft owners increased flexibility in the ownership and operation of aircraft by individuals and corporations. This program used existing aircraft acquisition concepts, including shared aircraft ownership, and provided for the management of the aircraft by an aircraft management company. The aircraft owners participating in the program agreed not only to share their aircraft with others having an ownership interest in that aircraft, but also to lease their aircraft to other owners in the program. The aircraft owners used the common management company to maintain the aircraft and administer the leasing of the aircraft among the owners. An FAA regional determination allowed this "fractional ownership" program to operate under 14 CFR part 91.

Since that time, the number of companies offering fractional ownership programs has grown. During the 1990s this growth was substantial and sustained. As of early 2000, the leading fractional ownership programs managed approximately 465 aircraft on behalf of 3,446 shareowners. Growth in fractional ownership programs is expected to increase.

While the vast majority of these programs are conducted under 14 CFR part 91, some are conducted under 14 CFR part 135. Of those operating under part 91, the FAA believes that most follow the "best practices" of corporate

aviation. FAA and NTSB accident data for U.S.-registered turbine-powered aircraft during the ten-year period from 1987–1998 demonstrates that fractional ownership aircraft operations are very safe.

As fractional ownership programs have grown in size, complexity and number, there has been considerable controversy within the aviation community as to their appropriate regulatory structure. Additionally, the FAA has had evolving concerns regarding issues of accountability and responsibility for compliance. Consequently, the FAA has continued its analysis of the appropriate regulatory environment for these programs.

### **Fractional Ownership Aviation Rulemaking Committee**

In October of 1999, the FAA convened a special aviation rulemaking committee, the Fractional Ownership Aviation Rulemaking Committee (FOARC), pursuant to the Administrator's authority under 49 U.S.C. 106(p)(5), to address the issues surrounding the regulation of fractional ownership program operations. Pursuant to the order of October 6, 1999 that established the FOARC, the committee's objective was to "propose such revisions to the Federal Aviation Regulations and associated guidance material as may be appropriate with respect to fractional ownership programs."

The FOARC was composed of 27 members selected by the FAA as representative of the various constituencies interested in regulation of fractional ownership program operations. Designated advisors and counsel assisted the FOARC.

FOARC members represented on-demand charter operators, fractional ownership program managers and owners, aircraft manufacturers, corporate flight departments, traditional aircraft management companies, aircraft financing and insurance companies, and industry trade associations. Representatives of the FAA, the U.S. Department of Transportation and foreign civil aviation authorities were also included.

The FOARC met for nine days in November and December 1999. Within the FOARC's meeting schedule, two days were set aside for public hearings to provide the public an opportunity to comment or present positions on this issue. Notice of these public meetings was provided in the **Federal Register** and through the media. The FAA reviewed and considered all material presented by participants at the public meetings. The FOARC presented its

initial recommendations to the FAA on February 23, 2000. The order that established the FOARC was further extended to allow continued discussions with the committee and to reconvene the committee to discuss issues and to provide further input following FAA internal review of the FOARC's recommendations.

Early in its deliberations, the members of the FOARC agreed that the committee would attempt to reach consensus recommendations and that, absent consensus, majority and minority reports would be provided to the FAA. In the end, the members of the FOARC reached unanimous consensus on all the committee's recommendations, including those with respect to changes in both parts 91 and 135. Those recommendations, delivered to the FAA in the form of the FOARC's final proposed NPRM, are the basis of this NPRM.

### **General Discussion of the Proposal**

#### *Operational Control and Regulatory Responsibility*

Safety is the shared responsibility of the entire aviation community. The FAA's objective is to ensure the appropriate level of safety for aircraft operations. Prior to the introduction of fractional ownership programs, the regulations recognized differing levels of operational control and regulatory responsibility among persons traveling by air, and provided levels of oversight intended to maintain an appropriate level of safety in view of these differences.

Airline passengers exercise no control over and bear no responsibility for the airworthiness or operation of the aircraft aboard which they are flown. Because the traveling public has no control over, or responsibility for, airline safety-of-flight issues, the FAA has determined that an appropriate level of public safety is provided by imposing on scheduled airline service very stringent regulations and oversight under part 121 and part 135.

Passengers who are transported by part 135 on-demand operators or by part 121 supplemental operators bear no responsibility for the operation of the aircraft aboard which they are flown. On-demand or supplemental air charter passengers negotiate the point and time of origin and destination of the flight, and may have the ability (subject to the pilot's supervening authority) to direct or redirect the flight. Under these circumstances, the FAA has determined that the appropriate level of public safety is provided by imposing stringent

regulations and oversight under part 121 or part 135.

Aircraft owners flying aboard aircraft they own or lease exercise full control over and bear full responsibility for the airworthiness and operation of their aircraft. Under these circumstances, the FAA has determined that the appropriate level of public safety is provided by imposing general operating and flight regulations and oversight under part 91.

These policies and differing levels of responsibility were reflected in the development of part 91, subpart D, subsequently subpart F, which governs much of business aviation today. On July 25, 1972, the FAA promulgated Amendment 91–101 to 14 CFR part 91 (37 FR 14758, July 25, 1972). This Amendment added to part 91 a new subpart D, applicable to large and turbojet-powered multiengine aircraft. Subpart D was the predecessor to the current subpart F of part 91 (54 FR 34314, Aug. 18, 1989). Section 91.181 of subpart D was the predecessor of current § 91.501 (54 FR 34314).

In creating the new subpart, the FAA continued its longstanding policy that individuals and corporations may operate their aircraft under part 91 and included these operations as the cornerstone of the new subpart. This policy is currently embodied in § 91.501(b)(4), which allows a person to operate his or her aircraft "for his personal transportation, or the transportation of his guests when no charge, assessment, or fee is made for the transportation," and in § 91.501(b)(5), which allows for the "[c]arriage of officials, employees, guests, and property of a company on an airplane operated by that company \* \* \* when the carriage is within the scope of, and incidental to, the business of the company \* \* \*"

In preserving these uses under part 91, the FAA chose to focus on the commercial (on-demand charter) or non-commercial (business or personal) motive a company or individual has in operating an aircraft, rather than on the form of the arrangements that led to the acquisition of the aircraft interest. In proposing the new subpart, the FAA pointed out that, "in order to augment or more fully utilize their fleets, many corporate aircraft operators entered into agreements for the loan, exchange, or sharing of their aircraft" (36 FR 19509). The FAA permitted such arrangements to continue under the new subpart, and specifically allowed for even more complex arrangements, such as time-sharing arrangements, interchange agreements, and joint ownership arrangements. In explaining its

determination that such arrangements do not affect which part of the regulations the aircraft should operate under, the FAA stated in the preamble to the final rule (37 FR 14758):

“[T]he decision to proceed with the upgrading of part 91 for large and turbine-powered multiengine airplanes is an important threshold step in the FAA policy to remove, to the extent possible, those differences in the safety standards that [are] primarily economic in nature and result in unnecessary restrictions or limitations on aircraft operators. In accordance with that policy, the need for different or additional safety standards for corporate operations should be resolved on the basis of safety, rather than economics or juristic semantics. Safetywise, we have determined that neither the relationship of the corporations nor the type of compensation received for the services rendered should be relevant or controlling under the standards of the new subpart D for the various corporate kinds of operations that do not involve common carriage.

“In order to make this change in policy clear to all interested persons, § 91.181(b) includes a list of the kinds of operations that may be conducted under subpart D. In addition, § 91.181(c) of subpart D expressly provides that charges covering the normal operating expenses of the aircraft and the salary of the crew may be made under a time sharing or interchange agreement as defined in that section. This policy also applies to a corporation regardless of its relationship, if any, to the corporation for which the carriage is conducted. Accordingly, the application of subpart D to a corporate operator will no longer be dependent on whether that operator is a parent or subsidiary corporation or a member of a conglomerate. It should be noted, however, that if a corporation is established solely for the purpose of providing transportation to the parent corporation, a subsidiary or other corporation, the foregoing policy does not apply. In that case, the primary business of the corporation operating the airplane is transportation and the carriage of persons or goods for any other corporation, for a fee or charge of any kind, would require the corporation operating the airplane to hold a commercial operator certificate under part 121 or 135, as appropriate.”

This statement of the intent of subpart D highlights the importance of identifying, in the context of shared aircraft ownership and use arrangements, the person in operational control of the aircraft at any given time. Historically, this information has been used to determine whether an operation may be conducted under part 91 with adequate assurance of public safety, or must be conducted under the requirements of on-demand air passenger service under part 135. This statement also highlights the longstanding ability of aircraft owners to purchase aviation expertise for the purpose of managing, maintaining or

otherwise aiding the operation of the aircraft they operate under part 91.

Current § 91.501 authorizes, under part 91, operations involving the personal use of aircraft (§ 91.501(b)(4)), the use of aircraft within the same corporate group (§ 91.501(b)(5)), and the use of time sharing agreements (§ 91.501(c)(1)), interchange agreements (§ 91.501(c)(2)), and joint ownership agreements (§ 91.501(c)(3)) within or outside of the same corporate group (§ 91.501(b)(6)).

#### *FOARC Discussions and Consensus*

It is within the context of the operational control and regulatory responsibility discussion above that the FOARC considered the regulation of fractional ownership programs. During these deliberations, the FOARC determined that fractional owners flying aboard fractionally-owned aircraft contractually acknowledge substantial control over and bear substantial responsibility for the airworthiness and operation of their aircraft. Like whole aircraft owners, fractional owners can initiate, conduct, redirect and terminate a flight. Fractional owners also operate their aircraft under part 91 only for themselves and their guests and may not offer transportation for hire to the general public unless they do so under part 135 or part 121. Additionally, the FOARC noted that both fractional owners and whole aircraft owners have other shared characteristics that relate at least in part to safety: (1) They conduct research so that they can be assured that they will select the right aircraft and realize an adequate return from their capital investment; (2) they possess an interest in an aircraft acquired through a significant capital investment; (3) they purchase aviation expertise for the purpose of managing, maintaining or otherwise aiding the operation of the aircraft they operate under part 91, including the option to select flight crews; and (4) they bear the risk of loss or damage to the aircraft and the risk of diminution of value of the aircraft. On-demand charter passengers, on the other hand, do not assume any of these risks and responsibilities nor do they have any significant financial investment in the chartered aircraft.

Based on its analysis of fractional ownership program arrangements, the FOARC concluded that fractional owners flying aboard fractionally-owned and operated aircraft share more of their regulatory characteristics with the owners of non-commercially operated aircraft than with passengers using on-demand operators. Consequently, the FOARC concluded that fractional ownership programs are properly

regulated under part 91 of the Federal Aviation Regulations. Fractional owners operating under part 91 are engaged in non-commercial operations and, as such, may not offer air transportation services (common carriage), air commerce services for compensation, chargeback, or hire without appropriate air carrier certification and appropriate economic authority, although fractional owners may be compensated to the extent permitted under applicable existing sections of part 91.

Fractional owners differ from a majority of whole business or personal aircraft owners in that (1) fractionally-owned aircraft typically have multiple owners, (2) their aircraft's availability is a component of a pooled fleet under a dry lease exchange program with the other fractional owners, (3) the owners of a fractionally-owned aircraft agree to use the services of a single company to manage their aircraft, and (4) all owners agree to a uniform aircraft configuration. With the exception of item 3 above, these characteristics also constitute the differences between fractional ownership programs and situations where aircraft are managed by traditional aircraft management companies. The FOARC concluded that these distinctions, unique among general aviation operations, suggest the need for definition and appropriate regulation under part 91.

To clearly define the safety responsibilities of fractional owners and fractional ownership program managers under the regulations, the FOARC recommended that a new subpart K of 14 CFR part 91 be established to regulate fractional ownership programs. Proposed subpart K further establishes a clear regulatory infrastructure for fractional owners to exercise their operational control responsibilities, including the responsibility for the operation and airworthiness of program aircraft. It also specifies a fractional aircraft program manager's obligations with respect to its provision of aircraft management services related to the airworthiness and operation of fractional ownership program aircraft.

The FOARC recommended that proposed subpart K of part 91 should apply only to fractional ownership program aircraft and not to other business aircraft arrangements including traditional flight departments, the use of management companies providing aviation expertise, flying clubs, partnerships or other ownership forms such as joint ownership. These types of operations do not meet the new definitions of “fractional ownership program,” and components of those programs, set forth in proposed subpart

K. These definitions clearly delineate the differences between fractional ownership program requirements, other types of ownership and traditional management arrangements. A fractional ownership program manager may elect to conduct its programs under part 121 or part 135, instead of proposed subpart K of part 91, if such operations comply with the certification requirements of part 119 and the operating requirements of part 121 or 135, as appropriate. Part 119 certification to operate under part 121 or 135 would allow the program manager to provide air transportation services to the general public, and not be limited to providing fractional ownership program management services only to fractional owners and their guests.

Most fractional ownership program operations today are conducted in accordance with industry best practices that exceed part 91 requirements. These practices have resulted in an excellent safety record. The FOARC recommended that many of those best practices, together with new requirements, be codified in proposed subpart K. The FOARC recognized that the regulatory requirements proposed in subpart K impose a significant new regulatory standard upon all current and future fractional owners and program managers. The FOARC believed that this standard was necessary in the public interest to maintain this level of public safety for fractional ownership program operations.

The FOARC concluded that certain changes to part 135 are required. As the FOARC evaluated existing best practices in the industry and parallel provisions of parts 119, 121 and 135 in developing proposed subpart K, the FOARC determined that certain provisions of proposed subpart K provide a level of safety equivalent to the parallel provisions of part 135. Corresponding amendments are proposed to the pertinent sections of part 135 to permit an alternative means of compliance for on-demand operators under these sections of part 135, as appropriate. These changes also reflect improvements in technology and the ability to operate safely as proven by the operating experience of business aircraft operators, including fractional owners.

The FOARC recommended that, if this proposal is adopted, the FAA work closely with the affected parties and the industry to develop guidance and to implement the changes proposed to parts 91 and 135. The FOARC also recommended that the FAA commit sufficient resources to implement these changes.

The FOARC recommended that the FAA establish a national point of contact for fractional ownership operational and airworthiness issues to ensure standardization of the implementation process and policy application. The FOARC recommended that the FAA should put procedures in place to ensure that fractional ownership program managers also are subject to FAA oversight and surveillance equal to that experienced by part 135 or part 121 operators. The FOARC also recommended that approvals for fractional ownership program operations (such as MELs, RVSM, manual reviews and maintenance programs) be conducted through a process similar to part 135 and/or part 121 processes and procedures, as appropriate.

The FOARC recommended that the FAA provide equivalent assistance to part 135 operators endeavoring to meet the revised part 135 regulations. Finally, the FOARC recommended that the FAA conduct appropriate training and ensure that any internal administrative changes, necessary for on-going oversight of compliance with these regulations, are made. The consensus achieved by the FOARC was contingent upon the FAA's commitment to fully implement the FAA inspection and oversight requirement of part 91, subpart K to the degree currently employed in part 135 operations.

The FAA agrees with the FOARC recommendations and is publishing this NPRM to reflect those recommendations. The FAA believes that this proposed rule, if adopted, will satisfy FAA concerns regarding fractional owners' and fractional ownership program managers' accountability and responsibility for compliance with these proposed regulations, particularly with respect to operational control issues. The FAA believes that the proposals pertaining to crewmember training, experience, rest and duty will provide an appropriate level of safety for these kinds of operations. The FAA further agrees that implementation of this proposed rule will require the development of guidance material, inspector training, inspector assignment, and oversight and surveillance policies. The FAA intends to invite industry to assist in the development of the implementation strategy and documents. Further, the FAA agrees that oversight and surveillance policies, and approval processes, need to be modified appropriate to these operations and consistent with the recommendations of the FOARC.

The FAA intends to implement this proposed rule, if adopted, within a fifteen month compliance period using a phased-in compliance schedule which would allow continued operations under existing part 91 while incrementally transitioning to the new regulatory requirements. The FAA invites comments on this compliance proposal.

## Section-by-Section Analysis

### 14 CFR Part 13

#### *Section 13.19 Certificate and Management Specifications Action*

One aspect of this proposal would be the creation of a requirement for all persons conducting operations under proposed subpart K or furnishing fractional ownership program management services to do so under management specifications issued by the FAA. Provisions are included in § 91.1017 for amending the management specifications. However, because the management specifications are a prerequisite to all program operations, the FOARC believed that a suspension or revocation of those management specifications would affect program operations to the same extent that a certificate suspension or revocation would affect the operations of certificated entities. For that reason, FOARC recommended amending § 13.19 to ensure that the suspension or revocation of management specifications would be handled like analogous certificate actions, and that the users of the management specifications would be afforded similar procedural protections, including the right to appeal any suspension or revocation to the National Transportation Safety Board.

The FAA recognizes that proposed § 13.19 would require a statutory amendment to authorize the proposed process. However, the FAA believes that the treatment of the revocation or suspension of management specifications should be similar to the analogous treatment of certificates. The FAA seeks comments to determine whether such a process would be appropriate if the statutory authority existed. The FAA also seeks comments on whether these proposed amendments can be effectively implemented without the right to appeal any suspension or revocation to the National Transportation Safety Board. After review of the comments, the FAA will consider whether it is necessary to seek this legislative authority.

#### 14 CFR Part 61

##### Section 61.57 *Recent Flight Experience: Pilot in Command*

In the course of examining the details of fractional ownership and on-demand charter operations, the FOARC found differences in pilot requirements between proposed subpart K and part 135, one of which relates to the night currency requirement. In response to operator safety concerns, the FAA amended § 61.57(e) on April 30, 1999 to provide an alternate means of compliance for meeting FAA's night currency requirement. The new alternative allowed operators to maintain currency by using both the aircraft and part 142 approved training programs.

The applicability of the alternative was unclear, however, because in order to qualify for the alternate means of compliance, a pilot must "operate more than one type of aircraft." Under this definition, operators were uncertain how to determine if a pilot "operated" more than one type of aircraft.

The proposed change to § 61.57(e) would clarify the existing alternative and provide a second alternate means of compliance for pilots of turbine-powered aircraft that require more than one pilot and that meet additional experience requirements. The first alternative allows pilots to maintain night currency through the performance of three takeoffs and landings to a full stop over a 6 calendar month period. The second alternative allows pilots to maintain night currency through the performance of 6 takeoffs and landings to a full stop in a simulator training program approved under part 142 of this chapter. The FAA believes these alternatives provide an equivalent level of safety for night flying operations.

#### 14 CFR Part 91

##### Section 91.501 *Applicability*

A number of proposed changes are necessary to conform existing regulations to the proposed subpart K and for other technical purposes. Several substantive changes to § 91.501 regarding the applicability of subpart F to fractional ownership program aircraft are being proposed. They are discussed below.

Current § 91.501(a) limits the applicability of the exceptions-to-certification options and other requirements of subpart F to large airplanes and multiengine turbine-powered airplanes of U.S. registry. Small airplanes and other aircraft regardless of size (e.g., helicopters and single-engine turbine-powered airplanes) require exemption authority

to operate under current subpart F. Such authority has been routinely granted to members of the National Business Aviation Association (NBAA) by Exemption No. 1637, first issued on October 23, 1972, and has been renewed periodically. Individual exemptions also have been granted to non-NBAA members operating these aircraft.

Proposed § 91.501(a) would extend the applicability of subpart F to all aircraft in a fractional ownership program regardless of size, type or the number of engines without the need for exemption authority so long as these fractional ownership program aircraft are operating under proposed subpart K.

In addition, proposed § 91.501(b)(10) would be added to the types of operations permitted by current section 91.501(b)(1)–(9) and would clarify that fractional ownership program aircraft operated by a fractional owner may engage in any of those types of operations, such as personal use of aircraft (§ 91.501(b)(4)), use of aircraft within the same corporate group (§ 91.501(b)(5)), and use of time sharing and interchange agreements (§ 91.501(c)(1)–(2)) so long as any compensation is limited to amounts permitted by § 91.501(b) for the type of operation being conducted, and such operations otherwise comply with the applicable rules of subpart F and proposed subpart K. Thus proposed § 91.501 would place fractional owners on an equal footing with other owners utilizing the exception-to-certification options currently available in § 91.501(b) or by exemption to § 91.501(b). Flights operated by a fractional ownership program manager for administrative purposes, such as training, ferrying, positioning, maintenance, or demonstration purposes without carrying passengers or cargo for compensation or hire, except as permitted for demonstration flights under Section 91.501(b)(3), would be permitted to be operated under subparts A through J of part 91, as applicable, rather than under subpart K of part 91.

##### *Sections 91.509 and 135.167 Overwater Operations*

The proven reliability of turbine engines provides safety justification for amending §§ 91.509 and 135.167 to allow pressurized turbine-powered aircraft which are operated for thirty minutes or no more than 100 nautical miles from the nearest shore, whichever is greater, above 25,000 feet to operate without life raft and related equipment requirements. A person operating a flight planned for an altitude above 25,000 feet may deviate below that altitude in the interest of safety without

violating the requirements of these sections.

In reviewing the overwater equipment requirements of § 91.509, members of the FOARC noted that some FAA offices interpret the "30 minutes or 100 nautical miles" standard to mean that whichever measure is less is the one that applies. Given the speed of pressurized turbine-powered aircraft and the flight levels at which they operate, the difference between 30 minutes and 100 nautical miles could be substantial. The FOARC recommended that if an aircraft can operate at high speed and high altitude, they should be given the option of meeting either standard, i.e., typically the 30 minute standard, weather conditions permitting. Section 91.509 would be revised to make it clear that the additional overwater equipment requirements do not apply to pressurized turbine-powered aircraft that plan to operate at an altitude greater than 25,000 feet if the flight does not proceed "more than 30 minutes or 100 nautical miles from the nearest shore, whichever is greater."

The FOARC believed that the same requirement should apply to on-demand operations under § 135.167. Although the overwater equipment requirements for such operations apply when the flight will proceed more than 50 nautical miles from the nearest shore, they are often operated with equipment substantially similar to the equipment in the fractional aircraft programs. Accordingly, an exception is proposed for § 135.167 identical to that in the proposed revision to § 91.509.

##### *Sections 91.1001 Through 91.1007 Defining Fractional Ownership*

Since proposed subpart K would establish new regulatory requirements to fractional ownership programs, program managers and owners, it is important that these terms be clearly defined. Proposed §§ 91.1001 through 91.1007 would do so, relying in substantial part on industry guidelines developed early in 1999. If an aircraft ownership arrangement does not fit within these definitions, it may well fit within one or more of the existing operating models in part 91, subpart F, i.e., an interchange, joint ownership or a time share. In these circumstances proposed subpart K would not apply.

Proposed § 91.1001(b)(1) states five requirements for a fractional ownership program:

1. A designated program manager;
2. One or more owners per fractional ownership program aircraft, with at least one aircraft having multiple owners;

3. Possession of a fractional ownership interest in one or more program aircraft by each fractional owner consisting of a minimum fractional ownership interest of at least one-sixteenth ( $\frac{1}{16}$ ) for a subsonic, fixed-wing or powered-lift fractional ownership program aircraft or at least one-thirty-second ( $\frac{1}{32}$ ) for a rotorcraft fractional ownership program aircraft;

4. A dry lease aircraft exchange agreement among all the owners; and

5. Multi-year program agreements.

These five characteristics, when present in a program, distinguish a fractional ownership program from other arrangements that involve aircraft multiple ownership.

The core of the definition of a fractional ownership program is the concept of a "minimum fractional ownership interest." In setting a minimum fractional ownership interest, and throughout proposed subpart K, the FOARC sought to prevent potential abuse by persons who might try to offer air charter transportation under the guise of a fractional ownership program. For example, it was noted that a  $\frac{1}{4000}$  interest in a used light piston single-engine airplane might be sold profitably for a very small dollar amount, entitling the purchaser thereof to an "ownership" interest equivalent to a few hours of occupied flight time in the aircraft, with pilot provided. The FOARC determined and the FAA agrees that aviation safety would be compromised if persons were permitted to offer what would amount to air charter services under proposed subpart K, thereby evading the important safety and supervision requirements of part 135 applicable to such service. Therefore, ownership interests that meet all the other criteria of fractional ownership but are less than the minimum ownership interest would not be eligible to operate under subpart K.

The FOARC concluded that a minimum fractional ownership interest of one sixteenth ( $\frac{1}{16}$ ) of a subsonic, fixed-wing or powered-lift fractional ownership program aircraft, or one thirty-second ( $\frac{1}{32}$ ) of a rotorcraft, would constitute a sufficient ownership interest to deter possible abuse.

In addition, the FOARC discussed the ownership of supersonic business aircraft. However, since no supersonic business aircraft exist today, the FOARC recommended that specific regulatory language addressing the operations of supersonic business aircraft not be developed until such aircraft are available.

As to rotorcraft, it was determined that abuse would be sufficiently deterred by setting the minimum

fractional ownership interest at one thirty-second ( $\frac{1}{32}$ ). Although rotorcraft offer unique vertical take-off and landing capabilities, require much smaller prepared landing and take-off surfaces, and are able to operate to and from unprepared sites more effectively than airplanes, the cruising speeds, range, and passenger capacity of business rotorcraft are small compared to those of comparably priced business airplanes. Moreover, while business airplanes that participate in fractional ownership programs are expected to operate frequently between airports separated by significant distances—often measured in thousands of miles—rotorcraft that participate in fractional ownership programs are not expected to operate outside of a range of, at most, a few hundred miles. In light of these factors, the FOARC determined that a smaller minimum fractional ownership interest would impose an equivalent burden on the ownership of rotorcraft as that imposed on airplane operations under subpart K.

Proposed § 91.1001(b)(6) would define fractional ownership program aircraft. A fractional ownership program aircraft would be an aircraft in which a fractional owner has a minimum ownership interest, as the term has been defined in § 91.1001(b)(3), and is included in a dry-lease aircraft exchange. Aircraft which are owned at least in part by a fractional ownership program manager meeting the definition of "fractional owner" under paragraph (b)(5) of proposed § 91.1001, and which meet the conditions set forth in paragraph (b)(6) of that section, would be considered to be fractional ownership program aircraft. In the situation where a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate (as discussed below) of the owner's program manager, "fractional ownership program aircraft" means the aircraft which is in the program managed by the affiliate of the owner's program manager and is being operated by the owner.

In at least one existing fractional ownership program, the multi-year program agreements permit a fractional owner not only to use the aircraft in the program which the owner has joined, but also aircraft in a different program which is managed by a manager affiliated with the owner's program manager. The program agreements make clear that for purposes of such flights the affiliate program manager has the flight-related responsibilities of the program manager. The FOARC members wanted to permit this type of operation under subpart K so long as an

appropriate definition of "affiliate of a program manager" could be developed and agreed to. Proposed § 91.1001(b)(9) would define an "affiliate of a program manager" for the purposes of determining whether the owner's program and the program managed by the affiliate of the owner's program manager are related closely enough to permit the owners to use (i) the program management services provided by the affiliate of the owner's program manager, and (ii) aircraft in the program managed by the affiliate of the owner's program manager. The FOARC members were concerned about the possible consequences if fractional ownership programs could be franchised and the owners in the resulting franchise programs were allowed to use aircraft in any of the franchised programs. The FOARC members believed that there should be a sufficient common influence in the related programs to ensure that the programs adhere to similar safety practices. The FOARC members further desired to preclude the possibility that large networks of fractionally-owned aircraft could be established among unrelated programs where there is not a sufficient common influence to ensure that the programs are administered safely. In the FOARC's view, this common influence is most likely to be evidenced by a significant commitment by the manager of one program (or the manager's parent, affiliate or subsidiary) to the financing and/or strategic decision making of the other program or programs. The definition creates a presumption that where both a 40% equity interest and 40% of the voting power of a program manager is held by another program manager, or its parent, affiliate, or subsidiary, the companies are related closely enough to permit owners in each related program to use the aircraft in the other program or programs.

Because this definition creates only a presumption, the FAA would be free to find that there is a sufficient nexus between programs to justify owners in one program to use aircraft in another related program even when the equity or voting interest in a program manager owned by the other program manager (or its parent, affiliate, or subsidiary) is less than 40%. In such cases, the FAA would expect the program manager(s) to shoulder the burden of showing that a sufficient nexus existed between the programs to justify owners in one program using aircraft in another related program. Likewise, the FAA could find evidence that there is an insufficient nexus to justify owners in one program using aircraft in another related program

in cases where the 40% equity and voting interest requirement is met. In this case, the burden would be on the FAA to show that a sufficient nexus did not exist between the programs to justify owners in one program using aircraft in another related program.

The test for determination of an affiliate of a program manager under proposed § 91.1001(b)(9) should not be confused with other tests of corporate control or with control in the sense of operational control. For instance, under the § 91.1001(b)(9) test, more than one company may be in "control" of a program manager. So long as the appropriate common influence exists between the programs, the owners in each program may use the aircraft in the other related program or programs. Likewise, the 40% equity and voting interest requirements are unrelated to the operational control requirements applying to owners and program managers. The test applies only for purposes of defining an affiliate of a program manager and does not affect the determination of what entity is in operational control of a flight. When a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate of the owner's program manager, the references in proposed subpart K to the flight-related responsibilities of the program manager apply to the affiliate of the owner's program manager rather than to the owner's program manager. Thus, for that particular flight, it is the affiliate of the program manager that is responsible for carrying out the flight-related responsibilities of the program manager under subpart K. The FAA invites comments on the affiliate program concept and regulatory language, specifically,

(1) Whether the definition adequately defines an affiliate program,

(2) Whether the contractual multi-year program agreements and dry lease exchange arrangements are sufficiently detailed to ensure owners have legal possession, custody and use of an aircraft when using aircraft from an affiliate company, and

(3) Additional input to assist the FAA to develop guidance and oversight of this area.

Proposed § 91.1003 specifies the terms of the mandatory contract between the program fractional owners and the program manager. The contract must ensure that each owner has the right to inspect and to conduct audits of the program manager. This is the practice in most, if not all fractional ownership programs today. It is not the intention of proposed subsection 91.1003(b) to require a program manager

to provide to the owner the manager's financial records or records pertaining to the confidential movements of other owners.

Proposed § 91.1005 prohibits a fractional owner from receiving any compensation other than that permitted by §§ 91.321 and 91.501. Proposed § 91.1005 also makes it clear that the total hours flown by a fractional owner may not exceed the total hours associated with that fractional owner's share of ownership, consistent with current industry practice. Any hours in excess of that ownership share must be flown under part 121 or 135.

The purpose of § 91.1005 is to prevent the use of sham fractional ownership programs to avoid the air carrier requirements of parts 121 and 135. A sham program would be one that only requires an owner to make a small capital outlay or pay unreasonably small fees in relation to the value of the aircraft that the owner actually will use in the program. For example, if an owner could buy into a program by purchasing a fractional interest in smaller aircraft with the intent of using only the program's larger aircraft, the program would be a sham and would not be considered a fractional ownership program under subpart K.

Proposed § 91.1007 requires a fractional owner to be notified in advance, when possible, that a charter aircraft will be substituted for a fractional ownership program aircraft on a flight. This reflects the current fractional ownership program practice.

#### *Sections 91.1009 Through 91.1013 Clarification of Operational Control Issues*

It is important to clarify the concept of "operational control" in the context of fractional ownership programs. The FAA in the past has held that when more than one entity has some involvement in the operation of an aircraft, the entity which has "operational control" is the "operator" for purposes of legal responsibility for the safe operation of the flight and compliance with the regulations with respect to the flight. The traditional criteria applied by the FAA in determining who has operational control have focused on which entity makes certain decisions related to the flight, particularly decisions that bear on the safety of the flight and thus require an adequate level of aviation expertise.

While the FOARC felt that it was important for the FAA to continue to hold the entity in operational control of a flight responsible for the safe operation of the flight and compliance

with the regulations with respect to the flight, the FOARC also felt that traditional notions of "operational control" are not obviously useful in the situations where owners of business aircraft do not possess aviation safety-related expertise and thus contract with an expert to provide such expertise (as is often the case in fractional ownership programs as well as in the case of wholly-owned business aircraft).

It was the view of the FOARC that, in the context of fractional ownership programs, safety is best served by the FAA applying a definition of operational control specific to these programs, clarifying the regulatory compliance implications of operational control for all participants, and ensuring that those in operational control of fractional ownership program flights clearly understand and acknowledge the responsibilities attendant to that operational control.

Proposed § 91.1009 clarifies current law and policy by providing that the fractional owner is in operational control whenever the owner has directed that a fractional ownership program aircraft carry passengers or property designated by that owner and the aircraft is in fact carrying those passengers or property. This section requires, as a condition to the owner being considered to be in operational control, that the owner have the rights and be subject to the limitations set forth in proposed § 91.1003 through 91.1013. These proposed sections are intended to ensure that the owner: (1) Has the ability to obtain adequate information to determine that the program is being conducted safely, (2) does not engage in commercial operations without the appropriate authority, (3) has advance notice when a chartered aircraft is substituted for a fractional ownership program aircraft on a flight for the owner, and (4) is fully aware of the responsibilities and implications of the owner being in operational control.

The owner, as the entity in operational control, remains responsible for the safe operation of the flight and compliance with the regulations with respect to the flight under this definition. The FOARC concluded, in the context of fractional ownership programs, that safety is best served by placing additional responsibility for safety decisions on the expert fractional ownership program manager who is subject to direct FAA safety regulation under proposed subpart K. Under this proposal, the fractional ownership program manager is jointly and severally responsible with the owner for the safe operation of the flight and for



compliance with the Federal Aviation Regulations affecting that flight. Consequently, regulatory responsibility for the safe operation of a fractional ownership program aircraft is shared with equal and concurrent force, and with equal exposure to FAA enforcement, between the fractional owner operating the fractional ownership program aircraft and the fractional ownership program manager.

Proposed § 91.1011 specifies the regulatory compliance implications of fractional owners being in operational control. It provides that when a fractional owner is in operational control of a flight, that owner is responsible for compliance with all applicable regulations pertaining to that flight. The section acknowledges that the owner may delegate some or all of the tasks associated with regulatory compliance to the program manager and may rely on the program manager's expertise. Nevertheless, the section specifies that, in the event of such a delegation, the owner, as the entity in operational control, remains responsible for compliance. Since the program manager also has responsibilities for ensuring compliance under proposed subpart K and other proposed revisions to part 91, this regulatory structure provides to the FAA the option of taking enforcement action against the program manager, the owner in operational control of the pertinent flight, or both.

Proposed § 91.1013 requires the program manager to brief each fractional owner on the owner's operational control responsibilities, and requires the owner to review and sign an acknowledgement of fractional owner's operational control responsibilities. The acknowledgement must state that the owner is in operational control of any fractional ownership program aircraft being used to carry persons or property designated by the owner. It must further state that when the owner is in operational control, the owner is: (1) Responsible for compliance with the management specifications and all regulations applicable to the flight, even when the owner has contracted with the program manager to carry out tasks related to compliance, (2) exposed to FAA enforcement action for any noncompliance, and (3) exposed to significant liability risk in the event of any personal injury or death resulting from the flight. The acknowledgement form must further state that the owner has read, understands, and accepts the operational control responsibilities described in the acknowledgement, and understands that program flights over which the owner has operational control will be operated under part 91 rules

rather than the part 121 or 135 rules that apply to commercial or air carrier operations. The acknowledgment also must state that the owner understands that the failure of either the program fractional owners or the program manager to comply with the regulations may result in enforcement action.

*Sections 91.1014 Through 91.1035, 91.1047, 91.1109 Through 91.1115 and 135.21 Responsibility of Fractional Ownership Program Managers*

One of the major concerns leading to formation of the FOARC was whether, and to what extent, fractional ownership program managers properly were subject to FAA surveillance and enforcement under the existing regulations when conducting program operations. The information developed by the FOARC indicated that most program managers agree that they should be subject to FAA surveillance and enforcement and voluntarily have adopted as standard practices systems and procedures that are intended to facilitate FAA surveillance and enforcement. The FOARC recommended that it would be prudent to conform part 91, subpart K to the existing industry practices and to the extent consistent with those practices, parts 119 and 135.

Proposed §§ 91.1014 and 91.1109 through 91.1115 would make it clear that the fractional ownership program manager, in addition to the owners, is responsible for the airworthiness and safe operation of fractional ownership program aircraft. Under the proposed sections, the program manager is subject to both the surveillance and enforcement authority of the FAA. This responsibility is not predicated on operational control, which remains with the owner. Rather, it is based on the fractional ownership program manager's status as a provider of certain program management services, the proper delivery of which is critical to aviation safety. The program manager's status in this regard is similar to that of a repair station.

Subpart K imposes on fractional ownership programs certain maintenance requirements, including requirements for initial and annual recurrent training of maintenance personnel. For purposes of complying with the initial and annual recurrent training requirements of § 91.1111, the FAA intends to permit on-the-job training, where appropriate.

The FOARC recommended that management specifications be issued to fractional ownership program managers. The issuance of management specifications that detail program managers' practices and procedures, and

that state the program managers' authorized deviations and exemptions, would facilitate the oversight activities of the Flight Standards District Offices. The program manager, the fractional aircraft owners, and flight crew and ground and maintenance personnel would be responsible for compliance with the management specifications. The management specifications would include the registration number and serial number for each program aircraft. A current listing of names and addresses of each fractional owner must be available at the program manager's principal base of operations for FAA review. The management specifications must be available at the program manager's principal base of operations for owner and FAA review.

Accordingly, proposed § 91.1015 requires each fractional ownership program manager to hold management specifications and describes the content and application of the management specifications. The list of owners required by § 91.1015(a) may be considered proprietary. Section 91.1015(b) authorizes the program manager to keep this list at its principal base of operation or another location referenced in its management specifications. This list, in addition to the management specifications, must be made available for inspection by the Administrator.

Proposed §§ 91.1017 and 91.1019 describe the procedures for amending management specifications and for tests and inspections. The FAA intends to work with program managers and part 135 operators to develop procedures to allow expedited changes to management and operations specifications, such as adding aircraft that are substantially similar to aircraft currently approved for operation, through use of the Automated Operations Specification Subsystem.

Proposed § 91.1021 adds a requirement for the program manager to establish an internal safety reporting procedure and procedures to respond to aviation accidents or incidents.

Each fractional ownership program manager is required by proposed §§ 91.1023 and 91.1025 to create and maintain a "program operating manual." Proposed § 91.1023 further requires each fractional ownership program aircraft to have aboard the program operating manual. A similar amendment of § 135.21 is proposed to require a manual setting forth the certificate holder's flight procedures and policies aboard each aircraft.

Recordkeeping requirements are the responsibility of the program manager under proposed § 91.1027. Proposed § 91.1027 would authorize program



managers that also hold a certificate to operate under part 121 or 135 to use records they maintain under those parts to satisfy the equivalent requirements and recordkeeping provisions of §§ 91.1027 and § 91.1113. Thus, program managers that hold an air carrier certificate or operating certificate would not be required to keep separate records for equivalent regulatory requirements to satisfy the independent obligations imposed by subpart K and part 121 or 135.

Proposed §§ 91.1029 through 91.1035 would require the program manager to establish an aircraft scheduling system to designate a pilot in command and second in command for each program flight, to provide all designated operating information to the pilot to carry aboard the aircraft and to ensure that a detailed pre-flight passenger briefing is conducted prior to the operation of a fractional ownership program aircraft on a program flight. Each pre-flight passenger briefing under proposed § 91.1035 must include the name of the program manager or other person operating that flight and whether the flight is a program flight or a commercial operation. The briefing requirements of this section are used in lieu of the briefing requirements of § 91.519 when the aircraft is operated in a fractional ownership operation.

*Sections 91.1025, 91.1037, 135.23, 135.385 and 135.387 The "60% Rule"*

Section 135.385 prohibits an air carrier subject to that section from taking off for a destination airport unless the Airplane Flight Manual indicates that the airplane at normal loads is capable of a full stop landing at that airport within 60% of the effective length of the runway. There is no similar requirement in part 91 applicable to general aviation operations. As a consequence of the so-called "60% rule," on-demand

operators may not operate into many airports that are safely served by business jets under part 91.

The 60% rule reflects the inability to predict airplane landing performance that existed during the 1930s and 1940s. During this period, performance variations existed among airplanes of the same model produced by the same manufacturer, and these differences were often significant. Maintenance regulations and mechanic training relied extensively on an individual mechanic's capabilities, compared to today's development of approved airplane repair manuals. Replacement of parts and components occurred upon failure, and failures occurred more often when compared to today's operations. Modern pilot training is far more sophisticated, and emergency training is performed in simulators that have far greater capabilities than existed in previous decades. The physics of stopping an airplane are better understood today. Airport designs have been largely standardized, and pavement standards have been developed. Moreover, weather forecasts of wind or precipitation are far more accurate than in the past.

In the former environment, the Civil Aeronautics Board (CAB), which regulated all commercial operations at the time, felt it necessary to institute the 60% rule to compensate for the many unknown or unpredictable factors affecting airplane-landing distances. In 1958, the CAB was petitioned to modify the 60% rule. In issuing an update in July of 1958 to CAR SR-422, the CAB stated:

Strong representation has been made to the Board to the effect that the numerical factors applicable to the aforementioned rules are too high and should be reduced pending further experience. The Board considers that it would not be in the public interest to reduce any of these factors until such time as further experience indicates that they are

in fact overly conservative. Realizing, however, that the issues are of considerable importance in prescribing a practical level of performance, the Board stands ready to reconsider the relevant provisions of this regulation at such time as substantiating information is received.

No review of the 60% rule has been conducted in the intervening four decades.

In the interim, the FAA has continually improved its guidelines regarding the accuracy and reliability of published airplane performance data. First adopted in 1964, FAR 25.21, "Airworthiness Standards: Transport Category Airplanes," states that each flight certification requirement must be demonstrated "by systematic investigation of each probable combination of weight and center of gravity." Additional guidance is published in AC 25-7, "Flight Test Guide For Certification Of Transport Category Airplanes." This Advisory Circular states that "[w]here variation in the parameter on which a tolerance is allowed will have an effect on the results of the test, the results should be corrected to the most critical value of the parameter within the operating envelope being approved."

With regard to determining landing distance for an Airplane Flight Manual (AFM), AC 25-7 also states, "[m]ore (flight) tests will be necessary if the distribution of the data does not give sufficient confidence in the parametric correlation. Past experience has shown that 40 landings would establish a satisfactory confidence level without further analysis."

The following table indicates some of the landing distance factors that contribute to safe aircraft operations and are required for aircraft certification under current FAA regulations but were not required when the FAA instituted the 60% rule.

Manufacturer's requirements	Result	Added safety margin
<i>Airborne Distance.</i> Engines must be set to the high side of the flight idle trim band.	During landing at flight idle, engines will contribute the maximum amount of forward thrust when the throttles are in the flight idle position.	Actual landing distance will be shorter than calculated landing distance.
<i>Airborne Distance.</i> Steep approaches and high touchdown sink rates, formerly considered "traditional", are "no longer considered acceptable".	Actual glideslope must be within -2.5 degrees to -3.5 degrees. Touchdown sink rates must be 8 feet per second or lower.	Actual landing distance will be shorter than calculated landing distance.
<i>Airborne Distance.</i> If derived, data must show an upper bound to the Part 25 zero-wind airborne distances achieved in past certifications and minimum speed ( $V_{REF}$ ) loss.	The only time a manufacturer may approximate landing distance using a standard (FAA approved) equation is when data from past certifications is consistent and "clustered".	Actual landing distance will be shorter than calculated landing distance.
<i>Airborne Distance.</i> If derived, touchdown speed is assumed to be $V_{REF} - 3$ knots.	Most touchdowns are at $V_{REF} - 5$ knots .....	Actual landing distance will be shorter than calculated landing distance.

Manufacturer's requirements	Result	Added safety margin
<i>Airborne Distance.</i> If a manufacturer includes data from steeper approaches and higher touchdown rates in a parametric analysis, the most the air distance (or speed) from 50 feet can be reduced is ten percent. (The max. allowed glideslope is $-3.5$ degrees and the max. touchdown rate is 8 feet per second.).	Somewhat steeper approaches over the threshold, or slightly higher touchdown rates, will reduce landing distances more than is predicted in the AFM.	Actual landing distance will be shorter than calculated landing distance.
<i>Landing Distance.</i> Wheel brake assemblies must be at the fully worn limit of their allowable wear range.	In practice, wheel brake assemblies are most likely to be above the fully worn limit.	Actual landing distance will be shorter than calculated landing distance.
<i>Landing Time Delays.</i> It is assumed that the pilot delays activating the first deceleration device (brakes etc.) until at least one second after touchdown.	This is a conservative estimate of pilot reaction time.	Actual landing distance will be shorter than calculated landing distance.
<i>Landing Time Delays.</i> It is assumed that the pilot delays activating the second deceleration device (brakes etc.) until at least one second after activating the first deceleration device.	This is a conservative estimate of pilot reaction time.	Actual landing distance will be shorter than calculated landing distance.

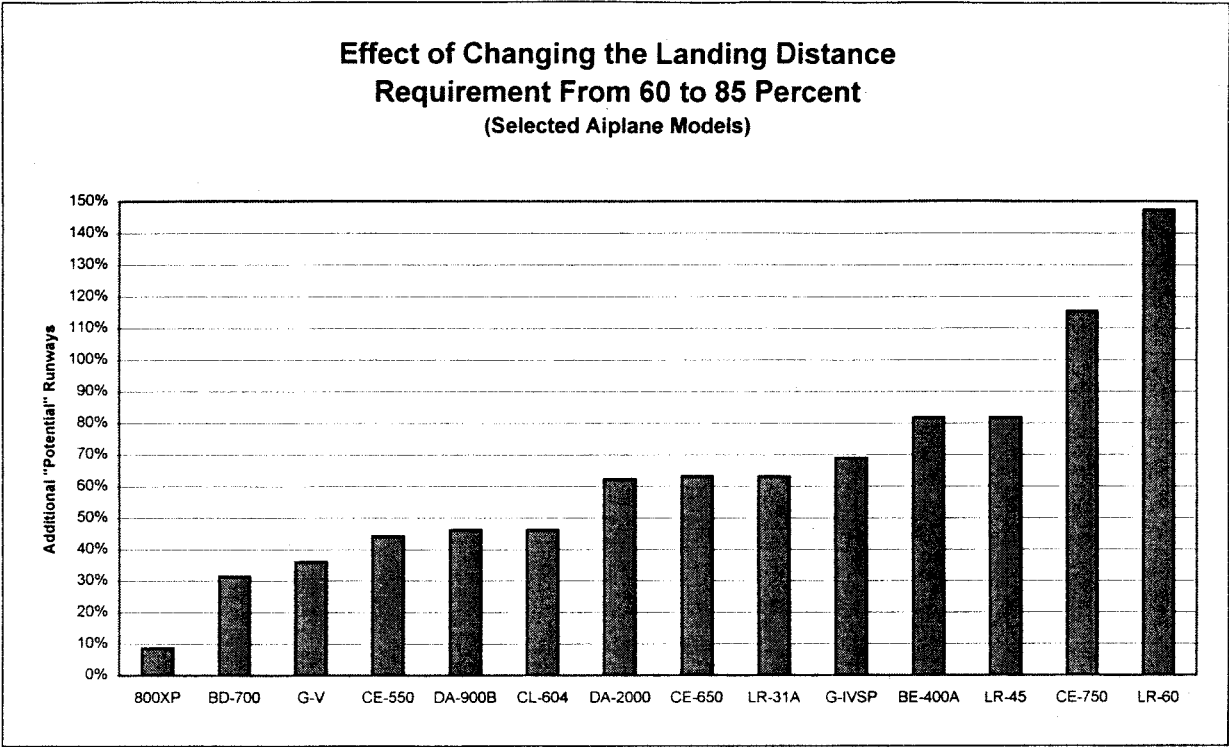
Business jets have operated in an identical environment as aircraft operated in part 135 on demand operations, but without the 60% rule, for many years. If the rule were necessary for this type of operation, business jets operated under part 91 should have a higher rate of runway overshoot events than on-demand operators under part 135. However, such a difference has not been observed. Aviation safety data indicate that the landing accident rates under part 91 and 135 during the previous twelve-year period were nearly identical. A report prepared by Robert E. Breiling Associates of Boca Raton, Florida concluded, "it would appear that the 40% safety factor in present use for FAR 135 is excessive. A factor based on actual aircraft performance on contaminated runways with the inclusion of a 10% to 20% safety factor would be more appropriate."

Since the 1940s, when the 60% rule was first instituted, there have been significant advances in the accuracy of aircraft performance data and substantial technological improvements in aircraft stopping-system engineering

and design. Consequently, the FOARC recommended changing the landing distance limitations requirement of part 135 to 85% for eligible on-demand operators. Over forty years of operating experience indicates this proposed rule would provide an appropriate margin of safety and, additionally, would subject both fractional ownership aircraft operations and eligible on-demand air charter flights to the same requirements. Proposed §§ 91.1025, 91.1037, 135.23, 135.385 and 135.387 would accomplish this in two ways. First, the full stop landing distance would be increased to 85% of the effective runway length for both the destination and alternate airports, consistent with the recommendations of the FOARC. Second, a fractional ownership program manager or an eligible on-demand operator would be allowed to include a Destination Airport Analysis procedure in its operating manual. This procedure, which would be reviewed and approved by the FAA using standards identical to those imposed on on-demand operators under amended § 135.23, would allow the 85% stopping distance requirement to be exceeded if appropriate planning

in the circumstances indicated that there would be no compromise of safety and an alternate airport is selected. The FAA invites comments on the criteria contained in §§ 135.23 and 91.1025 for approval of a destination airport analysis. These options would be available only to fractional ownership program managers, who do not have any runway stopping requirement today, and to eligible on-demand operators who meet the flight crew experience, pilot operating limitations and pairing requirements of proposed §§ 91.1053 and 91.1055.

These proposed changes would ensure that the current best practices of fractional ownership program managers continue, while applying those same best practices to on-demand operators with equivalent crew training and experience requirements. The result would be a substantial expansion of the opportunities for on-demand operators without any compromise of safety. The table below, prepared for the FOARC by the General Aviation Manufacturers Association (GAMA), shows the effect of changing the landing distance for popular business aircraft types.



The most critical impact of the proposed rule is at airports with a single-runway. The table below, also prepared by GAMA for the FOARC, presents examples of single-airport runways where the proposed rule would allow part 135 operations previously restricted by the 60% rule.

Example of single-runway airport	Runway length	Example of airplanes excluded solely by the 60% rule	Example of airplanes excluded solely by an 85% rule
Meigs Field, IL .....	3,899	BE-400A, BE-800XP, CE-550, CE-650, CE-750, CL-604, DA-900B, DA-2000, GIVSP, LR-31A, LR-45, LR-60.	Lear 60.
Bonifay, FL .....	4,014	BE-400A, CE-650, CE-750, DA-2000, GIVSP, LR-31A, LR-45, LR-60	None.
Los Angeles, CA (Whitman) .....	4,120	BE-400A, CE-650, CE-750, DA-2000, GIVSP, LR-45, LR-60 .....	None.
Covington, GA .....	4,203	BE-400A, CE-750, DA-2000, GIVSP, LR-45, LR-60 .....	None.
Hilton Head, SC .....	4,300	BE-400A, CE-750, G-IVSP, LR-45, LR-60 .....	None.
Glaskow, KY .....	4,586	BE-400A, CE-750, LR-45, LR-60 .....	None.
Washington Court House, OH .....	5,100	LR-60 .....	None.

Sections 91.1039, 135.1 and 135.225  
IFR Takeoff, Approach and Landing  
Minimums

IFR Destination Airport Weather  
Reporting

Section 135.225(a) prohibits an air carrier subject to that section from initiating an instrument approach at a destination airport unless that airport has a weather reporting facility on the field. Part 91 does not impose a similar restriction on general aviation aircraft. The majority of U.S. airports used by general aviation aircraft do not have on-field weather reporting facilities, relying instead on the facilities at nearby airports.

The FAA has considered several petitions for exemption from the

requirement of § 135.225(a). In most cases these petitions were denied, in part, because the petitioners failed to identify how their circumstances were different from the general class of regulated persons in order to justify relief by exemption. In a pending petition for rulemaking, the National Air Transportation Association, on behalf of its part 135 on-demand air charter membership, has asked for relief from the requirement subject to certain operational limitations.

Following extensive discussion of the regulation, the FOARC concluded that the public can best be served, and an equivalent level of safety maintained, by permitting an alternative means of compliance with the destination airport

weather reporting facility requirements under part 135, and applying the same provision in part 91, subpart K. This alternative requires the destination airport to have approved weather reporting or, if weather reporting is not available at the destination airport, then an alternate airport must be selected that does have weather reporting. Both the destination and the alternate airport, if required, must have a current local altimeter setting or a current alternate altimeter setting provided by the facility designated on the approach chart for that airport. Fractional ownership program aircraft operated under part 91 have successfully and safely operated under conditions and circumstances similar to those experienced by part 135

operators. The FOARC examined available safety information, finding no evidence that safety has been compromised in part 91 fractional operations when an approved weather reporting facility is not available at a destination airport.

The FAA is proposing that “eligible on-demand charter operators” be permitted to use an alternative means of compliance with the weather reporting requirement. The alternative means of compliance requires a weather report from a weather reporting facility at either the destination or an alternate airport and a current local altimeter setting for the destination and alternate airport. To ensure an equivalent level of safety, only “eligible on-demand operators,” as defined in proposed § 135.1(b), may use this alternative means of compliance. “Eligible on-demand operators” would be those which meet the flight crew experience, pilot operating limitations and pairing requirements of proposed §§ 91.1053 and 91.1055.

An alternative means of compliance with § 135.225(a) would benefit the public in that numerous communities would be able to gain access to air transportation via air charter operations to and from local airports that presently do not have an approved weather reporting facility. The benefits of air charter include emergency medical transportation, disaster relief, transportation of critical materials and personnel, and various economic benefits.

#### IFR Takeoff Minimums

Currently, operators under part 91 may take off with zero visibility and ceiling. The best practices of many corporate operators have shown that a visibility requirement of approximately 600 feet, as determined by the pilot in command, provides a practical method for improving take off safety. Pilots can determine runway visibility by taxiing the length of the runway and using runway markings and lights as distance references.

#### *Sections 91.1041 and 135.145 Aircraft Proving Tests*

The FOARC recommended that when a fractional ownership program first includes in its fleet an aircraft for which two pilots are required under the type certification requirements, or when such a program first includes in its fleet a turbojet airplane, a 25-hour proving test requirement similar to the one in existing § 135.145 should apply. However, the FOARC noted that § 135.145(a) has been interpreted by the FAA to require proving tests whenever

a new type of aircraft is added, even if that aircraft type is similar to existing aircraft in the operator's fleet. For several reasons, FOARC believed that the current proving test requirements of § 135.145, as interpreted, are excessive, and that a narrowing of these requirements would not adversely affect aviation safety.

First, the demonstrated historical safety of business aviation operations under part 91, which does not require proving tests, indicates that new aircraft types may be safely introduced in some circumstances without proving tests. Further, with respect to more complex types of aircraft utilization, e.g., those involving more complex systems of aircraft release and aircraft and personnel scheduling, the value of proving tests is primarily to demonstrate that satisfactory support systems are in place to facilitate the safe operation of the aircraft. The FOARC observed, however, that these support systems largely function independently of the aircraft make or design and do not require additional proving tests each time a different aircraft make or dissimilar aircraft design is introduced. Finally, the FOARC noted that the FAA retains its authority to inspect many aspects of early operations of new types of aircraft even when proving tests are not required, and that this broad authority applies to both simple and complex types of aircraft utilization.

For these reasons, the FOARC recommended that proving tests be required for fractional ownership programs only for the initial operations of aircraft that fundamentally differ from aircraft already in a program's fleet. Recognizing that these reasons applied equally to part 135 operations, the FOARC recommended applying the narrowed proving test requirements to both fractional ownership program operations and part 135 operations. Accordingly, under proposed § 91.1041 and proposed amendment to § 135.145(a), proving tests would be required both for fractional ownership program aircraft and for part 135 aircraft only before the initial use of either an aircraft for which two pilots are required under the aircraft type certification requirements or a turbojet powered airplane.

#### *Section 91.1045 Additional Equipment Requirements*

The FOARC recommended that a fractional ownership program aircraft on a program flight must be equipped with a cockpit voice recorder, flight recorder, ground proximity warning system, terrain awareness warning system, airborne thunderstorm detection

equipment or airborne weather radar, and a traffic alert and collision avoidance system to the extent that such equipment would be required if that aircraft were operating under part 121 or 135. This conforms to the existing best practices of fractional ownership program managers and is consistent with maintaining an equivalent level of safety. Proposed § 91.1045 would extend these requirements to fractional ownership program aircraft, with the same accompanying applicability requirements as to size and type of aircraft currently applied to aircraft operated under part 121 or 135.

#### *Sections 91.1047, 135.251 and 135.255 Drug and Alcohol Misuse Programs and Required Maintenance*

Proposed § 91.1047(a) requires fractional ownership program managers to implement drug and alcohol misuse education programs for flight crew, flight instructors, flight attendants, and maintenance personnel who are the direct employees of the program manager. Proposed § 91.1047(b) requires fractional ownership program managers who employ flight crew, flight instructor, flight attendants, or maintenance personnel indirectly, through contractors, to verify that each indirect employee has completed a drug and alcohol misuse education program.

Although the FOARC did not support federally mandated testing programs for fractional ownership programs, the FOARC recognized the widespread voluntary implementation by industry of company testing programs. The FOARC unanimously recommended that fractional ownership program managers be required to disclose to owners and prospective owners the scope of the program manager's company drug and alcohol testing program, if any, and to compare it with the scope of federally mandated programs for air carriers. The FOARC believes that this disclosure requirement is necessary to permit the public to make educated decisions among the various air transportation and purchase options available in the marketplace. The FOARC stated that its intent was that this disclosure requirement, regarding prospective owners, would be satisfied if the required detailed disclosure is provided to a prospective owner sufficiently in advance of a share purchase to permit meaningful review.

Although proposed subpart K does not contain a federally mandated alcohol or drug testing requirement, nothing in proposed subpart K is intended to prevent a fractional ownership program manager from voluntarily implementing a company

drug or alcohol testing program, consistent with applicable federal and state law that is separate and distinct from a federally mandated program required by Appendices I and J to part 121. Fractional ownership program managers can satisfy the requirements of § 91.1047(a) and (b) by implementing drug and alcohol misuse and education programs modeled on air carrier programs, or by developing their own company programs. However, they cannot hold themselves as testing under the authority of the federally mandated drug and alcohol program (e.g., they cannot advise individuals that the company program is federally mandated nor can they use the federal drug and alcohol custody and control forms). The requirements of § 91.1047(a) and (b) are satisfied if the subject employee has completed the training required under an air carrier drug and alcohol program, regardless of whether that program is operated by the fractional ownership program manager, an affiliated or related company, a subcontractor of the fractional ownership program manager or an unrelated company.

During the course of the FOARC's deliberations on this subject, representatives of on-demand operators pointed out an issue in the comparable part 135 requirements. When emergency maintenance is required, such as a tire change, existing part 135 does not allow such maintenance to be performed at an airport that does not have available a maintenance provider properly enrolled and subject to the provisions of an FAA-approved drug and alcohol misuse program. Accordingly, the FOARC recommended that the drug and alcohol misuse program requirements in both part 91, subpart K and part 135 should provide an exception for emergency maintenance, provided that the FAA is advised in writing within 10 days after such an event. The emergency maintenance exception is limited to maintenance that is not scheduled and is made necessary by an aircraft condition that is not discovered prior to the departure for that location. Further, the airport must be one at which there are no available maintenance personnel subject to the drug and alcohol testing requirements of Appendices I and J of part 121. Finally, the part 135 exception would apply only to on-demand charter flights, flights that operate on a non-scheduled basis to diverse airports. The added requirement that all such emergency maintenance be reported to the Drug Abatement Program Division within ten days of its occurrence discourages abuse of this exception. This exception is set forth in proposed

§§ 91.1047(d), 135.251(c) and 135.255(c).

*Sections 91.1049 Through 91.1107, 135.291, 135.321, 135.324, and 142.1 Personnel Requirements; Flight, Duty and Rest Time Requirements; and Testing and Training*

The requirements relating to the qualifications, testing and training of crewmembers and flight, duty and rest time received considerable attention from the FOARC. Using previously developed industry guidelines and best practices as a starting point the FOARC recommended that proposed subpart K should include a comprehensive set of requirements intended to ensure that fractional ownership program managers continue to maintain a high level of safety. Those requirements are set forth in proposed §§ 91.1049 through 91.1107. These sections establish new requirements for part 91 fractional ownership operations and reflect the unique characteristics of those operations.

Proposed § 91.1049(b) and (d) would require each program manager to staff, at a minimum, with three pilots per fractional ownership program aircraft and to operate with at least two qualified pilots on a flight when passengers are onboard. Proposed § 91.1053(a) would require that each pilot of a program aircraft holds, in addition to applicable type ratings, an airline transport pilot rating (for multi-engine turbine-powered fixed-wing or powered lift aircraft) or a commercial pilot rating (for all other aircraft). The three pilots per aircraft staffing requirement, the two pilots per aircraft operating requirement and the ratings requirement are based on the best practices of business aviation and are in substantial part responsible for the excellent safety record of that segment of general aviation. These requirements ensure that fully qualified and rested crews always are available and are onboard every passenger flight.

The FOARC recognized that these requirements could impose an unnecessary burden on some operators of smaller equipment. Accordingly, proposed § 91.1049(b) and (d) would allow the Administrator to make exceptions, as necessary, and proposed § 91.1053(b) would allow the Administrator to grant deviations based on the size and scope of the operation or the type of aircraft operated. The intent of these provisions is to retain a high safety standard but to permit reasonable exceptions as justified by the facts of individual situations.

Proposed § 91.1051 would require a fractional ownership program pilot safety background check.

Proposed § 91.1055 would establish operating limitations and pairing requirements. For example, a second in command with fewer than 100 hours of flight time flying for the program manager in that type of aircraft could not make a takeoff or landing in the designated situations where safety might be compromised.

Proposed § 91.1057 through 91.1061 would establish flight, duty and rest time requirements for pilots flying fractional ownership program aircraft on program flights. A comprehensive set of flight, duty and rest time requirements is proposed by the FOARC. The FOARC believes that the proposed flight crew duty and rest requirements are adequate to prevent undue fatigue, ensure the safety of fractional ownership program aircraft operations, and provide for these operations a degree of rest equivalent to or greater than that provided under regulations applicable to air carriers. For example, by defining standby status as a type of duty, proposed § 91.1057 establishes a requirement that exceeds the requirements imposed on air carriers under either part 121 or part 135. Similarly, proposed § 91.1057 would not only define reserve status, but would also require pilot acceptance of reserve status and require a minimum of ten hours of uninterrupted rest prior to entering that reserve status. Again, these provisions exceed the requirements currently imposed on air carriers.

The FOARC believes that the requirements of proposed § 91.1059 also equal or exceed virtually all air carrier requirements. The sole exception is where flight time exceeds ten hours, with total duty time less than sixteen hours. In this case, part 135 would require sixteen hours of rest, while proposed § 91.1059 would require a rest period equal to the total hours on duty. The FOARC believed that the stringent requirements that, in many cases, exceeded those imposed on air carriers created, in the context of the fractional ownership operating environment, a level of safety sufficient to justify the regulations.

The duty and rest regulations proposed by the FOARC in this NPRM apply only in the context of fractional ownership programs.

The proposed limitations are displayed in chart form consistent with the concept of "plain language" regulation. Because of concerns about Circadian rhythm patterns, minimum rest periods are established for east/west

flights that cross five or more time zones.

Proposed § 91.1057:

- (1) Defines a duty period,
- (2) Addresses "Multi-time Zone" flying,
- (3) Defines "Standby" status as duty,
- (4) Defines "Reserve Status" as not being duty but requires pilot acceptance and a minimum of 10 hours uninterrupted rest prior to entering reserve status,
- (5) Defines "Extension of Normal Duty" as an increase in the period of duty due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather) that are not known at the time of departure and that prevent the flightcrew from reaching the destination within the planned flight time,
- (6) Defines "Planned Expanded Duty" as the planned maximum flight and duty time and minimum rest that may be scheduled for long-range aircraft capable of exceeding 10 hours of flight unless the flightcrew is augmented by a third pilot,
- (7) Restricts a program manager from assigning duty during a rest period,
- (8) Requires that "time spent in transportation not local in nature" not be part of any rest period,
- (9) Requires a minimum of 10 consecutive hours of rest during the 24-hour period that precedes that planned completion time of a duty assignment, and
- (10) Requires 13 rest periods in each calendar quarter.

Since the FOARC presented its proposal to the FAA, a great deal of thinking has gone on in the aviation industry and the FAA regarding the flight and duty time issue. For example, a part 135 on-demand air charter industry task force has developed a concept paper proposing a new flight and duty time regulatory structure for that segment of the industry. The FAA is also considering several different approaches.

One approach may be that part 91, subpart K flight, duty and rest requirements would be governed by the same flight, duty and rest rules that the part 135 on demand industry has to meet, i.e., sections 135.267 and 135.269.

Another approach might be to establish different flight, duty and rest standards for part 91, subpart K operators than the standards that would apply to the part 135 on demand industry.

The FAA is open to different ideas regarding how to structure the flight and duty time portion of the proposed rule, and therefore solicits comments not only on the flight, duty and rest rules

proposed in the NPRM, but also other possible regulatory structures, such as the one developed by the part 135 on-demand air charter industry task force. The FAA is presenting this proposal as it was proposed by the FOARC. The FAA may decide to adopt this proposal, substantially revise the proposal, or propose a completely new approach in a subsequent rulemaking. The FAA invites comments on the following provisions of this proposal:

(1) Whether this proposal is appropriate for a single pilot operation permitted under the deviation provision contained in proposed section 91.1049.

(2) Whether the FAA would be justified in promulgating different flight, duty, and rest requirements for this segment of the industry as compared to the requirements that apply to those operators subject to the requirements of 14 CFR parts 121 and 135.

(3) Whether the reserve status definition contained in this proposal is adequate and would provide sufficient opportunity for rest outside of a flight crewmember's normal sleep cycle before that person is called to perform a flight assignment that could extend up to the proposed duty time limits in this proposal and whether this proposal should even contain a reserve status definition.

(4) Whether duty limitations and rest requirements should be provided for flight attendants.

Proposed §§ 91.1063 through 91.1107 set forth the testing and training requirements for fractional ownership program flight crews. The requirements reflect the existing best practices of fractional ownership program managers and are tailored to reflect certain training and testing requirements of part 135. If authorized by the Administrator, a program manager may use the applicable training and testing requirements of subparts N and O of part 121. This reflects a similar provision currently available in part 135. Many program managers are also certificated as air carriers, and the same pilots and aircraft are used to support both operations. Where the training and testing program elements are the same for both the fractional program and a part 121 or 135 operation, the program manager may be authorized to use the applicable training and testing provisions of the part 121 or 135 program to meet the training and testing requirements of subpart K. Where there are differences in the training and testing provisions of these programs, the flight crewmember must be trained and tested with respect to those differences. Similarly, where the training and testing program elements are the same for

different fractional programs, the fractional ownership program manager may be authorized to use the applicable training and testing provisions of the other approved fractional training program to meet the training and testing requirements of subpart K, so long as the flight crewmember is trained and tested with respect to those differences.

The requirement in section 91.1073 to conduct annually at least one "flight training session" in an approved simulator may be satisfied by conducting the flight training portion of any training session otherwise required by subpart K of part 91 in an approved simulator. There would be no specific amount of simulator time necessary to satisfy this requirement.

Minor corrections were made in sections 135.291, 135.321 and 135.324 to change the term "provide" to "conduct", in reference to the conduct of training by part 142 training centers. Sections 91.1063 and 91.1075 permit training center personnel authorized under part 142 to conduct training, testing, and checking for fractional ownership programs. Conforming changes were made to section 142.1.

#### 14 CFR Part 119

##### Section 119.1 and 125.1 Applicability

Section 119.1 and 125.1 would be amended to include a reference to part 91, subpart K to make it clear that parts 119 and 125 are not applicable to administrative flights conducted by the program manager or flights conducted by fractional owners using fractional ownership program aircraft. This would make it clear that operations of fractional ownership program aircraft having more than 20 seats or a maximum payload capacity of 6,000 pounds or more may be conducted under part 91, subpart K without the need for part 125 certification or a deviation from part 125, which is warranted based on the equivalent level of safety provided in subpart K for aircraft utilized in fractional ownership programs.

#### 14 CFR Part 135

##### Section 135.247 Pilot Qualifications: Recent Experience

On April 30, 1999, the FAA amended § 61.57 to provide an alternate means of compliance for pilots of type-rated aircraft to maintain night recency of experience. The FOARC recommended that due to the similar nature of operations and aircraft used, pilots used for on-demand part 135 operations also should be able to maintain night recency of experience using this alternate means of compliance.

### Paperwork Reduction Act

The proposed amendment to 14 CFR part 91 contains information collection requirements. In accordance with the Paperwork Reduction Act of 1995, 44 U.S.C. 3501 *et seq.*, the information collection requirements associated with this rule are being submitted to the Office of Management and Budget (OMB) for review. Following is a summary of the information requirement that was sent to OMB.

This rule proposes new regulations governing fractional ownership operations and revisions to certain sections of part 135 on demand operations. This proposed rule would require fractional ownership aircraft program managers, aircraft owners, and certain air carriers to provide information to determine if they are operating in accordance with the minimum safety standards of these proposed regulations. The burden is required for application for operating authority, pilot record keeping, management specifications, contractual requirements, manual and training program development and approvals, and other reporting and record keeping items. The total paperwork burden is estimated at approximately 178,400 hours annually.

The FAA considers comments by the public on the proposed collection of information in order to:

- a. Evaluate whether the proposed collection of information is necessary for the proper performance of functions of the agency, including whether the information will have practical utility;
- b. Evaluate the accuracy of the agency's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;
- c. Enhance the quality, utility, and clarity of the information to be collected; and
- d. Minimize the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Comments on the proposed information collection requirements should be submitted to the rulemaking docket at the address indicated in the **ADDRESSES** section of this notice.

According to the regulations implementing the Paperwork Reduction Act of 1995, (5 CFR 1320.8(b)(2)(vi)), an agency may not conduct or sponsor and a person is not required to respond to

a collection of information unless it displays a currently valid OMB control number. The OMB control number for this information collection will be published in the **Federal Register** after it is approved by the Office of Management and Budget.

### Regulatory Evaluation Summary

#### Overview

Proposed and final rule changes to Federal regulations must undergo several economic analyses. First, Executive Order 12866 directs that each Federal agency propose or adopt a regulation only upon a reasoned determination that the benefits of the intended regulation justify its costs. Second, the Regulatory Flexibility Act of 1980 requires agencies to analyze the economic impact of regulatory changes on small entities. Third, the Trade Agreements Act (19 U.S.C. 2531–2533) prohibits agencies from setting standards that create unnecessary obstacles to the foreign commerce of the United States. In developing U.S. standards, the Trade Agreements Act also requires agencies to consider international standards and, where appropriate, use them as the basis of U.S. standards. Fourth, the Unfunded Mandates Reform Act of 1995 requires agencies to prepare a written assessment of the costs, benefits, and other effects of proposed or final rules that include a Federal mandate likely to result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, of \$100 million or more annually (adjusted for inflation).

In conducting these analyses, the Federal Aviation Administration (FAA) has determined that the proposed rule (1) has benefits that do justify its costs, is significant as defined in the Executive Order, and is significant as defined in the Department of Transportation's Regulatory Policies and Procedures; (2) will not have a significant impact on a substantial number of small entities; (3) will not constitute a barrier to international trade; and (4) does not impose an unfunded mandate on State, local, or tribal governments, or on the private sector. These analyses are available in the docket and are summarized below.

#### Background

The FAA proposes to develop new regulations for fractional aircraft ownership programs. The proposed rule, if adopted, would create a new subpart K within part 91 of Title 14, Code of Federal Regulations (14 CFR) and make significant changes to 14 CFR part 135. The proposed rule would

establish new requirements and revisions in a variety of areas, including crew training, pilot qualifications, pilot rest, flight time and duty time limits, landing distance performance, operating limitations, program operating manuals, and administrative requirements. The codification of rules under part 91, subpart K for this segment of aviation, which previously had been regulated like corporate aviation, is in response to a significant increase in the number of fractional aircraft ownership operations and some concerns pertaining to who has responsibility for operational control. The proposed requirements are based primarily on corporate aviation "best practices." Many of these practices, while not currently mandated by part 91 regulations, are used by most fractional aircraft ownership program entities.

Except for the statutory amendment relating to management specifications, discussed above, the proposed rule is consistent with the FAA's authority to regulate fractional aircraft ownership programs under Title 49 of the United States Code. Exercise of this authority, as implemented by the proposed regulation, is intended to regulate and ensure aviation safety. Specifically, the FAA is committed to providing an aerospace system that efficiently meets the needs of users.

The proposed rule is expected to impose a total estimated cost of approximately \$22.6 million (undiscounted) in 1999 dollars on fractional operations and the FAA over the 15-year period from 2002 to 2016. Fractional aircraft ownership operations are expected to incur approximately 91 percent of these total costs, or \$20.5 million (undiscounted), complying with the regulatory requirements. Only eligible fractional aircraft ownership program managers and the fractional aircraft owners (fractional aircraft ownership entities) who would be subject to the proposed part 91, subpart K requirements would incur compliance costs. The FAA is expected to incur the remaining 9 percent of the total estimated cost, or approximately \$2.1 million (undiscounted), administering the proposed rule.

### Fractional Aircraft Ownership Operations Compliance Costs

Certain sections of the proposed rule are expected to impose compliance costs on fractional aircraft ownership operations. These compliance costs are summarized below.



*Section 91.519, Passenger Briefing, and Section 91.1035, Passenger Awareness*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur costs of \$100 for every aircraft to comply with the proposed requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would incur compliance costs of approximately \$61,000.

*Section 91.1003, Management Contract Between Owner and Program Manager*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs represented by attorney fees of \$500 and mailing expenses of \$20 for each shareholder to comply with the requirement of the proposed rule. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately \$143,000.

*Section 91.1015, Management Specifications*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of \$120,000 in the first year of operation and \$6,000 annually in subsequent years to comply with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately \$2.1 million.

*Section 91.1017, Amending Program Manager's Management Specifications*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of \$150 annually to comply with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately \$19,400.

*Section 91.1019, Conducting Tests and Inspections*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in § 91.1027. Additional costs to accommodate an inspection or test would be negligible and are estimated to be zero.

*Section 91.1023, Program Operating Manual Requirements*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of \$10,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of \$120,000.

*Section 91.1027, Recordkeeping<sup>1</sup>*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of \$5,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of \$60,000.

*Section 91.1033, Operating Information Required*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

*Section 91.1037, Large Transport Category Airplanes: Turbine Engine Powered: Limitations: Destination and Alternate Airports*

There are insufficient data to estimate the opportunities available to fractional aircraft ownership program entities and the associated positive impact on revenues. The FAA solicits information to resolve this matter.

*Section 91.1039, IFR Takeoff, Approach, and Landing Minimums*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

*Section 91.1041, Aircraft Proving Tests<sup>2</sup>*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of \$9,000 for proving tests per aircraft. One-third of each entities existing fleet in the first year of operation and one-third of all new aircraft acquired in subsequent years of operation would

require proving tests. (The number of new aircraft in subsequent years of operation is the difference between the subject year and the previous year.) Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of approximately \$1.6 million.

*Section 91.1045, Additional Equipment Requirements*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of \$150,000 for 30 percent of the year 2002 fleet only, as subsequent aircraft would be appropriately equipped voluntarily by the manufacturer consistent with regulatory requirements and evolving technology. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 91, subpart K) collectively would incur compliance costs of approximately \$13.9 million.

*Section 91.1047, Drug and Alcohol Misuse Program*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

*Section 91.1051, Pilot Safety Background Check*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

*Section 91.1057, Flight, Duty, and Rest Time Requirements*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in the analysis of § 91.1027.

*Section 91.1061, Augmented Flight Crews*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur recordkeeping costs to comply with this requirement. These costs are captured in the analysis of § 91.1027.<sup>3</sup>

<sup>1</sup> Captures recordkeeping compliance costs attributable to §§ 91.1057 and 91.1061.

<sup>2</sup> Estimated by Phaneuf Associates Incorporated based on information developed by the Federal Aviation Administration, Office of Aviation Policy and Plans contained in the report title Final Regulatory Evaluation and International Trade Impact Assessment, Commuter Operations and General Certification and Operations Requirements, Final Rule (14 CFR Parts 119, 121, 125, 127, and 135), October 17, 1995.

<sup>3</sup> Operating costs associated with augmenting flight crews, such as salaries, training, drug and alcohol misuse program, and other administrative program costs are captured under the specific requirements addressing these areas.

*Section 91.1063 Through 91.1107, Various Training*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur compliance costs of \$200,000 in the first year of operation only. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would incur compliance costs of \$2.4 million.

*Section 91.1115, Minimum Equipment Lists and Letters of Authorization*

A fractional aircraft ownership program entity operating under part 91, subpart K would incur costs of \$5,000 in the first year of operation only to comply with this requirement. Negligible compliance costs would be incurred in subsequent years of operation and are estimated as to be zero. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would incur compliance costs of \$60,000.

*Section 135.21, Operating Requirements: Commuter and On-Demand Operations: Applicability*

A fractional aircraft ownership program entity operating under part 135 would incur negligible costs to comply with this requirement. Accordingly, these costs are estimated to be zero.

*Section 135.23, Operating Requirements: Commuter and On-Demand Operations: Applicability*

There are insufficient data to estimate the cost to a fractional aircraft ownership program entity to comply with this requirement. The FAA solicits information to resolve this matter.

**Federal Aviation Administration Costs**

The current FAA workforce would be sufficient to perform the monitoring and surveillance activities associated with administering the requirements of the proposed rule. However, the FAA would need to develop a training course and associated instructional materials to educate its inspectors and supervisors in their responsibilities to administer the proposed rule. Accordingly, the FAA estimates that it would incur \$700,000 in the first year to appropriately train its workforce and would incur \$50,000 in subsequent years for refresher training. Additionally, the FAA would incur \$653,000 in the first year to prepare and implement management specifications for the requirements in the proposed rule. Over the 15-year period from 2002 to 2016, the FAA would incur costs of approximately \$2.1 million to administer the requirements of the proposed rule.

**Benefits**

Most fractional aircraft ownership program operations today are conducted in accordance with industry best practices that exceed part 91 requirements. It is the consensus of the FAA and fractional aircraft ownership program entities that these practices have resulted in an excellent safety record. The FAA has determined that the proposed rule is necessary to maintain the level of safety of these operations. The FAA has further determined that the preservation of the current safety levels justifies the costs of this rule.

**Other Impacts of the Proposed Rule**

Cost savings and revenue-increasing business opportunities that may be realized by fractional aircraft ownership program entities and on-demand air charter operations as a result of the proposed rule. These impacts are summarized below.

*Section 61.57, Exceptions, and Section 135.247, Pilot Qualifications: Recent Experience*

A fractional aircraft ownership program entity operating under either part 91, subpart K or part 135 would realize annual cost savings of \$3,000 per pilot as a result of complying with the proposed requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations collectively would realize cost savings of approximately \$149.5 million.

*Section 91.509, Survival Equipment for Over-Water Operations, and Section 135.167, Emergency Equipment: Extended Over-Water Operations*

A fractional aircraft ownership program entity operating under either part 91, subpart K or part 135 would realize cost savings of approximately \$3,500 per trip. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would realize cost savings of \$252.6 million.

*Section 135.145, Aircraft Proving Tests*

A fractional aircraft ownership program entity operating under part 135 would realize cost savings of \$35,000 per proving test complying with this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (under part 135) collectively would realize cost savings of approximately \$9.4 million.

*Section 135.225, IFR: Takeoff, Approach, and Landing*

A fractional aircraft ownership program entity operating under part 135

would realize \$35,000 annually in revenue as a result of this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership program operations (operating under part 135) collectively would realize approximately \$1.5 million in revenue.

*Section 135.251, Testing for Prohibited Drugs*

This proposal would represent a narrowly defined exception and is expected to be exercised only occasionally. Accordingly, there are insufficient data to estimate the potential additions to fractional aircraft ownership program revenue that may result from this section of the proposed rule. The FAA solicits information to resolve this matter.

*Section 135.255, Testing for Alcohol*

This proposal would represent a narrowly defined exception and is expected to be exercised only occasionally. Accordingly, there are insufficient data to estimate the potential additions to fractional aircraft ownership program revenue that may result from this section of the proposed rule. The FAA solicits information to resolve this matter.

*Section 135.385, Large Category Airplanes: Turbine Engine Powered: Landing Limitations: Destination Airports, and Section 135.387, Large Category Airplanes: Turbine Engine Powered: Landing Limitations: Alternate Airports*

A fractional aircraft ownership program entity operating under part 135 would realize \$40,000 annually in increased revenues as a result of this requirement. Over the 15-year period from 2002 to 2016, fractional aircraft ownership operations collectively would realize approximately \$1.7 million in revenue.

**Summary of Costs and Benefits**

The total costs of the proposed rule are approximately \$22.6 million (undiscounted 1999 dollars). Fractional aircraft ownership program entities would incur approximately 91 percent of these costs, while the FAA would incur approximately 9 percent of the total costs. Fractional aircraft ownership program entities would realize approximately \$413 million in cost savings and \$1.7 million in potential additional revenue. The public is expected to benefit from enhanced aviation safety directly attributable to the proposed rule. These costs are summarized in Table S-1.

TABLE S-1.—SUMMARY OF COSTS AND BENEFITS  
[In 1999 Dollars]

Category	Undiscounted	Discounted <sup>a</sup>
Fractional Aircraft Ownership Program Operations Compliance Costs for Entities Operating Under:		
Part 91, subpart K .....	\$20,514,870	\$17,756,346
Part 135 .....	0	0
Total .....	20,514,870	1,673,153
FAA Administrative Costs .....	2,053,000	1,673,153
Total Costs .....	22,567,870	19,429,499
Potential Costs Savings to Fractional Aircraft Ownership Program Entities Operating Under:		
Part 91, subpart K .....	116,286,000	66,389,038
Part 135 .....	296,676,000	171,104,030
Total .....	412,962,000	237,493,068
Potential Revenue Opportunities to Fractional Aircraft Ownership Program Entities Operating Under:		
Part 91, subpart K .....	0	0
Part 135 .....	1,720,000	975,551
Total .....	1,720,000	975,551

<sup>a</sup> Discounted at 7 percent over a 15-year period from 2002 to 2016.

### Initial Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) establishes “as a principle of regulatory issuance that agencies shall endeavor, consistent with the objective of the rule and applicable statutes, to fit regulatory and informational requirements to the scale of the business, organizations, and governmental jurisdictions subject to regulation.” To achieve that principle, the Act requires agencies to solicit and consider flexible regulatory proposals and to explain the rationale for their actions. The Act covers a wide-range of small entities, including small businesses, not-for-profit organizations, and small governmental jurisdictions.

Agencies must perform a review to determine whether a proposed or final rule will have a significant economic impact on a substantial number of small entities. If the determination is that it will, the agency must prepare a regulatory flexibility analysis as described in the Act.

However, if an agency determines that a proposed or final rule is not expected to have a significant economic impact on a substantial number of small entities, section 605(b) of the 1980 act provides that the head of the agency may so certify and an regulatory flexibility analysis is not required. The certification must include a statement providing the factual basis for this determination, and the reasoning should be clear.

The FAA has determined that the proposed rule would potentially impact

12 small businesses, and for the purposes of this analysis, has assumed all these firms would operate under subpart K of part 91, imposing on an entity average compliance costs of approximately \$1.7 million over the 15-year period (in 1999 dollars). The annualized compliance cost to each small business would be approximately \$157,000 (in 1999 dollars) which the current operators have stated would be voluntarily incurred. Furthermore, 6 of these 12 entities would be new entrants. The FAA has determined that the proposed rule would potentially impose on each new (small business) entrant an average compliance cost of approximately \$655,100 over the 15-year period (in 1999 dollars). The annualized compliance cost to each new entrant is approximately \$69,500 (in 1999 dollars). The FAA does not have information on the revenues of these small entrants but based on information about one of the current operators, the FAA estimates that a program aircraft generates approximately \$4.6 million in revenues. If a new entrant has two aircraft, the cost that this proposed rule would impose on it is less than one percent of the approximate revenues generated by those two aircraft. Hence, the FAA has determined that the estimated compliance costs expected to be incurred by existing fractional aircraft ownership programs and new entrants over the 15-year period would be marginal. Therefore, the proposed rule would not result in a significant economic impact to a substantial number of small entities. The FAA

invites comments on the validity of all data, assumptions, and assertions, and any related potential impacts.

### International Trade Impact Assessment

The Trade Agreement Act of 1979 prohibits Federal agencies from engaging in any standards or related activities that create unnecessary obstacles to the foreign commerce of the United States. Legitimate domestic objectives, such as safety, are not considered unnecessary obstacles. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards. In addition, consistent with the Administration's belief in the general superiority and desirability of free trade, it is the policy of the Administration to remove or diminish to the extent feasible, barriers to international trade, including both barriers affecting the export of American goods and services to foreign countries and barriers affecting the import of foreign goods and services into the United States.

In accordance with the above statute and policy, the FAA has assessed the potential effect of this proposed rule and has determined that it would impose the same costs on domestic entities and on international entities and thus has a neutral trade impact.

### Unfunded Mandates Act of 1995 Assessment

The Unfunded Mandates Reform Act of 1995 (the Act), enacted as Public Law 104-4 on March 22, 1995, is intended, among other things, to curb the practice

of imposing unfunded Federal mandates on State, local, and tribal governments.

Title II of the Act requires each Federal agency to prepare a written statement assessing the effects of any Federal mandate in a proposed or final rule that may result in a \$100 million or more expenditure (adjusted annually for inflation) in any one year by State, local, and tribal governments, in the aggregate, or by the private sector; such a mandate is deemed to be a "significant regulatory action."

This proposed rule does not contain such a mandate. Therefore, the requirements of Title II of the Unfunded Mandates Reform Act of 1995 do not apply.

### Federalism Implications

The regulations proposed herein would not have substantial direct effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, dated August 4, 1999, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

### Compatibility With ICAO Standards

In keeping with the U.S. obligation under the Convention of International Civil Aviation, it is the FAA's policy to comply with the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO) to the maximum extent practicable. ICAO does not specifically address fractional ownership. However, in view of the FAA's conclusion that fractional ownership program operations conducted in conformity with proposed subpart K of 14 CFR part 91 are general aviation activities, this proposed rule is not expected to conflict with ICAO international standards applicable to international general aviation operations.

### Environmental Analysis

FAA Order 1050.1D defines the FAA actions that may be categorically excluded from preparation of a National Environmental Policy Act (NEPA) environmental assessment or environmental impact statement. In accordance with the FAA Order 1050.1D, appendix 4, paragraph 4(j), this rulemaking action qualifies for a categorical exclusion.

### Energy Impact

The energy impact of the proposed rule has been assessed in accordance with the Energy Policy and Conservation Act (EPCA) and Pub. L. 94-163, as amended (42 U.S.C. 6362). It has been determined that it is not a major regulatory action under the provisions of the EPCA.

### List of Subjects

#### 14 CFR Part 13

Administrative practice and procedure, Investigations, Law enforcement, Penalties.

#### 14 CFR Part 61

Aircraft, Airmen, Recreation and recreation areas, Reporting and recordkeeping requirements.

#### 14 CFR Part 91

Aircraft, Airworthiness directives and standards, Aviation safety, Safety.

#### 14 CFR Part 119

Administrative practice and procedure, Air carriers, Aircraft, Aviation safety, Charter flights, Reporting and recordkeeping requirements.

#### 14 CFR Part 125

Aircraft, Airmen, Aviation safety, Reporting and recordkeeping requirements.

#### 14 CFR Part 135

Aircraft, Airplanes, Airworthiness, Airmen, Rotorcraft, Aviation safety, Safety.

#### 14 CFR Part 142

Training center.

### The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend parts 13, 61, 91, 119, 125, 135 and 142 of Title 14, Code of Federal Regulations (14 CFR parts 13, 61, 91, 119, 125, 135, and 142) as follows:

### PART 13—INVESTIGATION AND ENFORCEMENT PROCEDURES

1. The authority citation for part 13 continues to read as follows:

**Authority:** 18 U.S.C. 6002; 28 U.S.C. 2461 (note); 49 U.S.C. 106(g), 5121–5124, 40113–40114, 44103–44106, 44702–44703, 44709–44710, 44713, 46101–46110, 46301–46316, 46501–46502, 46504–46507, 47106, 47111, 47122, 47306, 47531–47532.

2. Amend § 13.19 by redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and revising them, and by adding a new paragraph (c) to read as follows:

### § 13.19 Certificate and management specifications action.

\* \* \* \* \*

(c) If, as a result of any inspection, examination, or other investigation of a fractional ownership program manager managing a fractional ownership program operating under the authority of subpart K of part 91 of this chapter, the Administrator determines that the public interest and safety in air commerce requires it, the Administrator may issue an order suspending or revoking all or part of the management specifications previously issued to the program manager under subpart K of part 91 of this chapter. This authority is also exercised by the Chief Counsel; the Assistant Chief Counsel, Enforcement; the Assistant Chief Counsel, Regulations; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; each Regional Counsel; and the Aeronautical Center Counsel.

(d)(1) Before issuing an order under paragraph (b) or (c) of this section, the Chief Counsel; the Assistant Chief Counsel, Enforcement; the Assistant Chief Counsel, Regulations; the Assistant Chief Counsel, Europe, Africa, and Middle East Area Office; each Regional Counsel; or the Aeronautical Center Counsel advises the certificate holder or management specifications holder of the charges or other reasons upon which the Administrator bases the proposed action and, except in an emergency, allows the holder to answer any charges and to be heard as to why the certificate should not be amended, suspended, or revoked, or in the case of management specifications, why the management specifications should not be suspended or revoked. The holder may, by checking the appropriate box on the form that is sent to the holder with the notice of proposed certificate action, elect to—

(i) Admit the charges and surrender his or her certificate or management specifications;

(ii) Answer the charges in writing;

(iii) Request that an order be issued in accordance with the notice of proposed certificate action or notice of proposed management specifications action so that the certificate holder may appeal to the National Transportation Safety Board, if the charges concerning a matter under Title VI of the FA Act;

(iv) Request an opportunity to be heard in an informal conference with the FAA counsel; or

(v) Request a hearing in accordance with Subpart D of this part if the charges concern a matter under Title V of the FA Act.

(2) Except as provided in § 13.35(b), unless the certificate holder or

management specifications holder returns the form and, where required, an answer or motion, with a postmark of not later than 15 days after the date of receipt of the notice, the order of the Administrator is issued as proposed. If the certificate holder or management specifications holder has requested an informal conference with the FAA counsel and the charges concern a matter under Title V of the FA Act, the holder may after that conference also request a formal hearing in writing with a postmark of not later than 10 days after the close of the conference. After considering any information submitted by the certificate holder or management specifications holder, the Chief Counsel, the Assistant Chief Counsel for Regulations and Enforcement, the Regional Counsel concerned, or the Aeronautical Center Counsel (as to matters under Title V of the FA Act) issues the order of the Administrator, except that if the holder has made a valid request for a formal hearing on a matter under Title V of the FA Act initially or after an informal conference, Subpart D of this part governs further proceedings.

(e) Any person whose certificate or management specifications is affected by an order issued under this section may appeal to the National Transportation Safety Board. If the certificate holder or management specifications holder files an appeal with the Board, the Administrator's order is stayed unless the Administrator advises the Board that an emergency exists and safety in air commerce requires that the order become effective immediately. If the Board is so advised, the order remains effective and the Board shall finally dispose of the appeal within 60 days after the date of the advice. This paragraph does not apply to any person whose Certificate of Aircraft Registration is affected by an order issued under this section.

#### **PART 61—CERTIFICATION: PILOTS, FLIGHT INSTRUCTORS, AND GROUND INSTRUCTORS**

3. The authority citation for part 61 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44703, 44707, 44709–44711, 45102–45103, 45301–45302.

4. Amend § 61.57 by revising paragraph (e)(3) as follows:

#### **Subpart A—General**

##### **§ 61.57(e) Exceptions.**

\* \* \* \* \*

(3) Paragraph (b) of this section does not apply to a pilot in command of a

turbine-powered airplane that requires more than one pilot crewmember, provided that pilot has complied with the requirements of paragraph (e)(3)(i) or (ii) of this section:

(i) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) That pilot has accomplished and logged at least 3 takeoffs and 3 landings to a full stop, as the sole manipulator of the flight controls, in a turbine-powered airplane that requires more than one pilot crewmember. The pilot must have performed the takeoffs and landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise within the preceding 6 calendar months prior to the month of the flight.

(ii) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) Within the preceding 12 calendar months prior to the month of the flight, the pilot must have completed a training program that is approved under part 142 of this chapter. The approved training program must have required and the pilot must have performed, at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in

a flight simulator that is representative of a turbine-powered airplane that requires more than one pilot crewmember. The flight simulator's visual system must have been adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

#### **PART 91—GENERAL OPERATING AND FLIGHT RULES**

5. The authority citation for part 91 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1155, 40103, 40113, 40120, 44101, 44111, 44701, 44709, 44711, 44712, 44715, 44716, 44717, 44722, 46306, 46315, 46316, 46504, 46506–46507, 47122, 47508, 47528–47531, articles 12 and 29 of the Convention on International Civil Aviation (61 stat. 1180).

6. Amend § 91.415 by revising paragraphs (a) and (c) as follows:

#### **Subpart E—Maintenance, Preventive Maintenance, and Alterations**

##### **§ 91.415 Changes to aircraft inspection programs.**

(a) Whenever the Administrator finds that revisions to an approved aircraft inspection program under § 91.409(f)(4) or § 91.1109 are necessary for the continued adequacy of the program, the owner or operator shall, after notification by the Administrator, make any changes in the program found to be necessary by the Administrator.

\* \* \* \* \*

(c) The petition must be filed with the Director, Flight Standards Service within 30 days after the certificate holder or fractional ownership program manager receives the notice.

\* \* \* \* \*

#### **Subpart F—Large and Turbine-Powered Multiengine Airplanes and Fractional Ownership Program Aircraft**

7. Amend § 91.501 by revising paragraph (a), republishing the introductory text of paragraph (b) and adding paragraph (b)(10) to read as follows:

##### **§ 91.501 Applicability.**

(a) This subpart prescribes operating rules, in addition to those prescribed in other subparts of this part, governing the operation of large airplanes of U.S. registry, turbojet-powered multiengine civil airplanes of U.S. registry, and fractional ownership program aircraft of U.S. registry that are operating under subpart K of this part in operations not involving common carriage. The operating rules in this subpart do not apply to those aircraft when they are required to be operated under parts 121,

125, 129, 135, and 137 of this chapter. (Section 91.409 prescribes an inspection program for large and for turbine-powered (turbojet and turboprop) multiengine airplanes and turbine-powered rotorcraft of U.S. registry when they are operated under this part or part 129 or 137.)

(b) Operations that may be conducted under the rules in this subpart instead of those in parts 121, 129, 135, and 137 of this chapter when common carriage is not involved, include—

\* \* \* \* \*

(10) Any operation identified in paragraphs (b)(1) through (b)(9) of this section when conducted—

(i) By a fractional ownership program manager, or

(ii) By a fractional owner in a fractional ownership program aircraft operated under subpart K of this part.

\* \* \* \* \*

8. Amend § 91.509 by revising paragraphs (b) introductory text, (c), (d) and (e) and adding paragraph (f) to read as follows:

**§ 91.509 Survival equipment for overwater operations.**

\* \* \* \* \*

(b) Except as provided in paragraph (c) of this section, no person may take off an airplane for flight over water more than 30 minutes flying time or 100 nautical miles from the nearest shore unless it has on board the following survival equipment:

\* \* \* \* \*

(c) For a pressurized turbine-powered aircraft operating at an altitude greater than 25,000 feet, a person may elect not to comply with the equipment requirements in § 91.509(b)(2) through (5) of this part provided that the flight does not proceed more than 30 minutes or 100 nautical miles from the nearest shore, whichever is greater.

(d) The required liferafts, life preservers, and signaling devices must be installed in conspicuously marked locations and easily accessible in the event of a ditching without appreciable time for preparatory procedures.

(e) A survival kit, appropriately equipped for the route to be flown, must be attached to each required liferaft.

(f) As used in this section, the term shore means that area of the land adjacent to the water which is above the high water mark and excludes land areas which are intermittently under water.

9. Amend § 91.519 by adding paragraph (d) as follows:

**§ 91.519 Passenger briefing.**

\* \* \* \* \*

(d) For operations under subpart K of this part, the passenger briefing requirements of § 91.1035 apply.

10. Add subpart K to part 91 of title 14 Code of Federal Regulations to read as follows:

**Subpart K—Fractional Ownership Operations**

Sec.

- 91.1001 Applicability.
- 91.1003 Management contract between owner and program manager.
- 91.1005 Owner's use of program aircraft.
- 91.1007 Advance notice of non-program aircraft substitution.
- 91.1009 Clarification of when owner is in operational control.
- 91.1011 Implications of owner being in operational control.
- 91.1013 Owner's understanding and acknowledgement of operational control responsibilities.
- 91.1014 Manager's responsibility for ensuring compliance.
- 91.1015 Management specifications.
- 91.1017 Amending program manager's management specifications.
- 91.1019 Conducting tests and inspections.
- 91.1021 Internal safety reporting.
- 91.1023 Program operating manual requirements.
- 91.1025 Program operating manual contents.
- 91.1027 Recordkeeping.
- 91.1029 Flight scheduling and locating requirements.
- 91.1031 Pilot in command or second in command: Designation required.
- 91.1033 Operating information required.
- 91.1035 Passenger awareness.
- 91.1037 Large transport category aircraft: Turbine engine powered; limitations; destination airports and alternate airports.
- 91.1039 IFR takeoff, approach and landing minimums.
- 91.1041 Aircraft proving tests.
- 91.1043 [Reserved].
- 91.1045 Additional equipment requirements.
- 91.1047 Drug and alcohol misuse program.
- 91.1049 Personnel.
- 91.1051 Pilot safety background check.
- 91.1053 Flight crew experience.
- 91.1055 Pilot operating limitations and pairing requirement.
- 91.1057 Flight, duty and rest time requirements.
- 91.1059 Flight time limitations and rest requirements: One or two pilot crews.
- 91.1061 Augmented flight crews.
- 91.1063 Testing and training: Applicability and terms used.
- 91.1065 Initial and recurrent pilot testing requirements.
- 91.1067 Initial and recurrent flight attendant crewmember testing requirements.
- 91.1069 Flight crew: Instrument proficiency check requirements.
- 91.1071 Crewmember: Tests and checks, grace provisions, training to accepted standards.
- 91.1073 Training program: General.

- 91.1075 Training program: Special rules.
- 91.1077 Training program and revision: Initial and final approval.
- 91.1079 Training program: Curriculum.
- 91.1081 Crewmember training requirements.
- 91.1083 Crewmember emergency training.
- 91.1085 Hazardous materials recognition training.
- 91.1087 Approval of aircraft simulators and other training devices.
- 91.1089 Qualifications: Check pilot (aircraft) and check pilot (simulator).
- 91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).
- 91.1093 Initial and transition training and checking: Check pilot (aircraft), check pilot (simulator).
- 91.1095 Initial and transition training and checking: Flight instructors (aircraft), flight instructors (simulator).
- 91.1097 Pilot and flight attendant crewmember training programs.
- 91.1099 Crewmember initial and recurrent training requirements.
- 91.1101 Pilots: Initial, transition, and upgrade ground training.
- 91.1103 Pilots: Initial, transition, upgrade, and differences flight training.
- 91.1105 Flight attendants: Initial and transition ground training.
- 91.1107 Recurrent training.
- 91.1109 Aircraft maintenance: Inspection program.
- 91.1111 Maintenance training.
- 91.1113 Maintenance recordkeeping.
- 91.1115 Minimum equipment lists and letters of authorization.

**§ 91.1001 Applicability.**

(a) This subpart prescribes rules, in addition to those prescribed in other subparts of this part, governing—

- (1) The operation of a fractional ownership program aircraft in a fractional ownership program; and
- (2) The operation by a fractional owner of a program aircraft included in a fractional ownership program managed by an affiliate of the manager of the program to which the owner belongs.

(b) As used in this part—

(1) A *fractional ownership program or program* means any system of aircraft exchange involving two or more airworthy aircraft that consists of all of the following elements:

(i) The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners;

(ii) One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner;

(iii) Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner;

(iv) A dry-lease aircraft exchange arrangement among all of the fractional owners; and

(v) Multi-year program agreements covering the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program.

(2) A *dry-lease aircraft exchange* means an arrangement, documented by the written program agreements, under which the program aircraft are available, on an as needed basis without crew, to each fractional owner.

(3) A *fractional ownership interest* means the ownership of an interest or holding of a multi-year leasehold interest and/or a multi-year leasehold interest that is convertible into an ownership interest in a program aircraft.

(4) A *minimum fractional ownership interest* means—

(i) A fractional ownership interest equal to, or greater than, one-sixteenth ( $\frac{1}{16}$ ) of at least one subsonic, fixed-wing or powered-lift program aircraft; or

(ii) A fractional ownership interest equal to, or greater than, one-thirty-second ( $\frac{1}{32}$ ) of at least one rotorcraft program aircraft.

(5) A *fractional owner* or *owner* means an individual or entity which possesses a minimum fractional ownership interest in a program aircraft and which has entered into the applicable program agreements; provided, however, that in the case of the flight operations described in paragraph (b)(6)(ii) of this section, and solely for purposes of requirements pertaining to those flight operations, the fractional owner operating the aircraft shall be deemed to be a fractional owner in the program managed by the affiliate.

(6) A *fractional ownership program aircraft* or *program aircraft* means:

(i) An aircraft in which a fractional owner has a minimal fractional ownership interest and which has been included in the dry-lease aircraft exchange pursuant to the program agreements, or

(ii) In the case of a fractional owner from one program operating an aircraft in a different fractional ownership program managed by an affiliate of the operating owner's program manager, the aircraft being operated by the fractional owner, so long as the aircraft is:

(A) Included in the fractional ownership program managed by the affiliate of the operating owner's program manager, and

(B) Included in the operating owner's program's dry-lease aircraft exchange pursuant to the program agreements of the operating owner's program.

(7) *Fractional ownership program management services* or *program management services* mean administrative and aviation support services furnished in accordance with the applicable requirements of this subpart or offered by the program manager to the fractional owners, including, at a minimum, the establishment and implementation of program safety guidelines, and the coordination of the following:

(i) The scheduling of the program aircraft and crews;

(ii) Program aircraft maintenance;

(iii) Crew training for crews employed, furnished or contracted by the program manager or the fractional owner;

(iv) Satisfaction of recordkeeping requirements; and

(v) Development and use of a program operations manual and maintenance program manual.

(8) A *fractional ownership program manager* or *program manager* means the entity that offers fractional ownership program management services to fractional owners, and is designated in the multi-year program agreements referenced in paragraph (b)(1)(v) of this section to fulfill the requirements of this chapter applicable to the manager of the program containing the aircraft being flown. When a fractional owner is operating an aircraft in a fractional ownership program managed by an affiliate of the owner's program manager, the references in this subpart to the flight-related responsibilities of the program manager apply, with respect to that particular flight, to the affiliate of the owner's program manager rather than to the owner's program manager.

(9) *Affiliate of a program manager* means a manager which, directly, or indirectly, through one or more intermediaries, controls, is controlled by, or is under common control with, another program manager. The holding of at least forty percent (40%) of the equity and forty percent (40%) of the voting power of an entity shall be presumed to constitute control for purposes of determining an affiliation under this subpart.

#### **§ 91.1003 Management contract between owner and program manager.**

Each owner shall have a contract with the program manager that—

(a) Requires the program manager to ensure that the program conforms to all applicable requirements of this chapter.

(b) Provides the owner the right to inspect, or have a designee of the owner inspect, the records of the program manager pertaining to the operational

safety of the program, including all program log books and maintenance records.

(c) Provides the owner the reasonable right to audit, or have a designee of the owner audit, the operational safety aspects of the program, including all program log books and maintenance records.

(d) Designates the program manager as the owner's agent solely to receive service of notices pertaining to the program that the FAA seeks to provide to owners and authorizes the FAA to send such notices to the program manager solely in its capacity as the agent of the owner for such service.

#### **§ 91.1005 Owner's use of program aircraft.**

(a) Except as provided in paragraph (b) of this section, no owner may engage in the carriage of persons or property as a common carrier for compensation or hire using program aircraft unless the owner possesses an appropriate FAA air carrier or operating certificate and appropriate economic authority from the Department of Transportation, and such operations are conducted under part 121 or 135 of this Title, as applicable.

(b) Notwithstanding any other requirement of this subpart, an owner may receive compensation as is permitted by § 91.321 or § 91.501 for the owner's operation of a program aircraft.

(c) During the term of the multi-year program agreements under which a fractional owner has obtained a minimum fractional ownership interest in a program aircraft, the flight hours used during that term by the owner on program aircraft shall not exceed the total hours associated with the fractional owner's share of ownership.

#### **§ 91.1007 Advance notice of non-program aircraft substitution.**

The program manager shall make an effort to notify a fractional owner prior to the flight when a non-program aircraft is substituted for a program aircraft for the use of the fractional owner. Notification shall include the name of the person providing the non-program aircraft.

#### **§ 91.1009 Clarification of when owner is in operational control.**

(a) The owner is in operational control of a program flight when the owner—

(1) Has the rights and is subject to the limitations set forth in §§ 91.1003 through 91.1013;

(2) Has directed that a program aircraft carry passengers or property designated by that owner; and

(3) The aircraft is carrying those passengers or property.



(b) The owner is not in operational control of a flight in the following circumstances:

(1) A program aircraft is used for a flight for administrative purposes such as demonstration, positioning, ferrying, maintenance, or crew training, and no passengers or property designated by such owner are being carried; or

(2) The aircraft being used for the flight is being operated under part 121 or 135 of this chapter.

**§ 91.1011 Implications of owner being in operational control.**

Each owner in operational control of a program flight shall be responsible for complying with all applicable requirements of this chapter, including those related to airworthiness and operations in connection with the flight. Each owner may delegate some or all of the performance of the tasks associated with carrying out this responsibility to the program manager, and may rely on the program manager for aviation expertise and program management services. When the owner delegates performance of tasks to the program manager or relies on the program manager's expertise, the owner and the program manager shall be responsible to the FAA for compliance.

**§ 91.1013 Owner's understanding and acknowledgement of operational control responsibilities.**

(a) Upon the signing of an initial program management services contract, or a renewal or extension of a program management services contract, the program manager shall brief the owner on the owner's operational control responsibilities, and the owner shall review and sign an acknowledgement of the fractional owner's operational control responsibilities. The acknowledgement shall be included with the program management services contract. The acknowledgement shall state that the owner is in operational control of the aircraft used and is aware of that person's operational control responsibilities in the program when the operation of a program aircraft for the owner will be conducted as a non-commercial operation under part 91.

(1) The acknowledgement also shall state that:

(i) The owner has responsibility for compliance with the management specifications and all applicable regulations;

(ii) The owner may be exposed to enforcement actions for any noncompliance; and

(iii) The owner may be exposed to significant liability risk in the event of a flight-related occurrence that causes personal injury or property damage.

(2) The owner's signature on the acknowledgement will serve as the owner's affirmation that the owner has read, understands, and accepts the operational control responsibilities described in the acknowledgement.

(b) Each program manager shall ensure that the owner and owner's representatives have access to the acknowledgements for such owner's program aircraft. Each program manager shall ensure that the FAA has access to the acknowledgements for all program aircraft.

**§ 91.1014 Manager's responsibility for ensuring compliance.**

The fractional ownership program manager shall ensure that its program management services are sufficient to ensure owner compliance with all applicable sections of this part in program operations where a fractional owner has operational control.

**§ 91.1015 Management specifications.**

(a) Each person conducting operations under this subpart or furnishing fractional ownership program management services to fractional owners shall do so in accordance with management specifications issued by the Administrator to the fractional ownership program manager under this subpart. Management specifications shall include:

(1) The current list of all fractional owners and types of aircraft, registration markings and serial numbers;

(2) The authorizations, limitations, and certain procedures under which these operations are to be conducted,

(3) Certain other procedures under which each class and size of aircraft is to be operated;

(4) Authorization for an inspection program approved under § 91.1109, including the type of aircraft, the registration markings and serial numbers of each aircraft to be operated under the program. No person may conduct any program operation using any aircraft not listed.

(5) Time limitations, or standards for determining time limitations, for overhauls, inspections, and checks for airframes, engines, propellers, rotors, appliances, and emergency equipment of aircraft.

(6) The specific location of the program manager's principal base of operations and, if different, the address that shall serve as the primary point of contact for correspondence between the FAA and the program manager and the name and mailing address of the program manager's agent for service;

(7) Other business names the program manager may use;

(8) Authorization for the method of controlling weight and balance of aircraft;

(9) Any authorized deviation and exemption granted from any requirement of this chapter; and

(10) Any other information the Administrator determines is necessary.

(b) The program manager may keep the current list of all fractional owners required by paragraph (a)(1) of this section, at its principal base of operation or other location approved by the Administrator and referenced in its management specifications. Each program manager shall make this list of owners available for inspection by the Administrator.

(c) Management specifications issued under this subpart are effective unless—

(1) The management specifications are amended as provided in § 91.1017 of this part; or

(2) The Administrator suspends or revokes the management specifications, in which case, the provisions of § 13.19 shall apply.

(d) At least 30 days before it proposes to establish or change the location of its principal base of operations, its main operations base, or its main maintenance base, a program manager must provide written notification to the Flight Standards District Office which issued the program manager's management specifications.

(e) Each program manager shall maintain a complete and separate set of its management specifications at its principal base of operations, or at a place approved by the Administrator, and shall make its management specifications available for inspection by the Administrator and the fractional owner(s) to whom the program manager furnishes its services for review and audit.

(f) Each program manager shall insert pertinent excerpts of its management specifications, or references thereto, in its program manual and shall—

(1) Clearly identify each such excerpt as a part of its management specifications; and

(2) State that compliance with each management specifications requirement is mandatory.

(g) Each program manager shall keep each of its employees and other persons who perform duties material to its operations informed of the provisions of its management specifications that apply to that employee's or person's duties and responsibilities.

**§ 91.1017 Amending program manager's management specifications.**

(a) The Administrator may amend any management specifications issued under this subpart if—

(1) The Administrator determines that safety and the public interest require the amendment of any management specifications; or

(2) The program manager applies for the amendment of any management specifications, and the Administrator determines that safety and the public interest allows the amendment.

(b) Except as provided in paragraph (e) of this section, when the Administrator initiates an amendment of a program manager's management specifications, the following procedure applies:

(1) The Flight Standards District Office that issued the program manager's management specifications shall notify the program manager in writing of the proposed amendment.

(2) The Flight Standards District Office which issued the program manager's management specifications shall set a reasonable period (but not less than 7 days) within which the program manager may submit written information, views, and arguments on the amendment.

(3) After considering all material presented, the Flight Standards District Office that issued the program manager's management specifications shall notify the program manager of—

(i) The adoption of the proposed amendment,

(ii) The partial adoption of the proposed amendment, or

(iii) The withdrawal of the proposed amendment.

(4) If the Flight Standards District Office which issued the program manager's management specifications issues an amendment of the management specifications, it becomes effective not less than 30 days after the program manager receives notice of it unless—

(i) The Flight Standards District Office which issued the program manager's management specifications finds under paragraph (e) of this section that there is an emergency requiring immediate action with respect to safety; or

(ii) The program manager petitions for reconsideration of the amendment under paragraph (d) of this section.

(c) When the program manager applies for an amendment to its management specifications, the following procedure applies:

(1) The program manager must file an application to amend its management specifications—

(i) At least 90 days before the date proposed by the applicant for the amendment to become effective, unless a shorter time is approved, in cases of mergers; acquisitions of operational assets that require an additional

showing of safety (e.g., proving tests); resumption of operations following a suspension of operations as a result of bankruptcy actions.

(ii) At least 15 days before the date proposed by the applicant for the amendment to become effective in all other cases.

(2) The application must be submitted to the Flight Standards District Office that issued the program manager's management specifications in a form and manner prescribed by the Administrator.

(3) After considering all material presented, the Flight Standards District Office that issued the program manager's management specifications shall notify the program manager of—

(i) The adoption of the applied for amendment;

(ii) The partial adoption of the applied for amendment; or

(iii) The denial of the applied for amendment. The program manager may petition for reconsideration of a denial under paragraph (d) of this section.

(4) If the Flight Standards District Office which issued the program manager's management specifications approves the amendment, following coordination with the program manager regarding its implementation, the amendment is effective on the date the Administrator approves it.

(d) When a program manager seeks reconsideration of a decision of the Flight Standards District Office that issued the program manager's management specifications concerning the amendment of management specifications, the following procedure applies:

(1) The program manager must petition for reconsideration of that decision within 30 days of the date that the program manager receives a notice of denial of the amendment of its management specifications, or of the date it receives notice of an FAA-initiated amendment of its management specifications, whichever circumstance applies.

(2) The program manager must address its petition to the Director, Flight Standards Service.

(3) A petition for reconsideration, if filed within the 30-day period, suspends the effectiveness of any amendment issued by the Flight Standards District Office which issued the program manager's management specifications unless that District Office has found, under paragraph (e) of this section, that an emergency exists requiring immediate action with respect to safety.

(4) If a petition for reconsideration is not filed within 30 days, the procedures of paragraph (c) of this section apply.

(e) If the Flight Standards District Office which issued the program manager's management specifications finds that an emergency exists requiring immediate action with respect to safety that makes the procedures set out in this section impracticable or contrary to the public interest—

(1) The District Office amends the management specifications and makes the amendment effective on the day the program manager receives notice of it; and

(2) In the notice to the program manager, the District Office shall articulate the reasons for its finding that an emergency exists requiring immediate action with respect to safety or that makes it impracticable or contrary to the public interest to stay the effectiveness of the amendment.

#### **§ 91.1019 Conducting tests and inspections.**

(a) At any time or place, the Administrator may conduct an inspection or test, other than enroute inspections, to determine whether a program manager under this subpart is complying with title 49 of the United States Code, applicable regulations, and the program manager's management specifications.

(b) The program manager must—

(1) Make available to the Administrator at the program manager's principal base of operations the program manager's management specifications; and

(2) Allow the Administrator to make any test or inspection, other than enroute inspections, to determine compliance respecting any matter stated in paragraph (a) of this section.

(c) Each employee of, or person used by, the program manager who is responsible for maintaining the program manager's records must make those records available to the Administrator.

(d) The Administrator may determine a program manager's continued eligibility to hold its management specifications on any grounds listed in paragraph (a) of this section, or any other appropriate grounds.

(e) Failure by any program manager to make available to the Administrator upon request, the management specifications, or any required record, document, or report is grounds for suspension of all or any part of the program manager's management specifications.

#### **§ 91.1021 Internal safety reporting.**

(a) Each program manager shall establish an internal anonymous safety reporting procedure that fosters an environment of safety without any potential for retribution.

(b) Each program manager shall establish procedures to respond to an aviation incident/accident.

**§ 91.1023 Program operating manual requirements.**

(a) Each program manager shall prepare and keep current a program operating manual setting forth procedures and policies acceptable to the Administrator. This manual shall be used by each program manager's management, flight, ground, and maintenance personnel in conducting its operations. However, the Administrator may authorize a deviation from this paragraph if the Administrator finds that, because of the limited size of the operation, part of the manual is not necessary for guidance of management, flight, ground, or maintenance personnel.

(b) Each program manager shall maintain at least one copy of the manual at its principal base of operations.

(c) No manual may be contrary to any applicable U.S. regulations, foreign regulations applicable to the program operations in foreign countries, or the program manager's management specifications.

(d) A copy of the manual, or appropriate portions of the manual (and changes and additions) shall be made available to maintenance and ground operations personnel by the program manager and furnished to—

- (1) Its flight crewmembers; and
- (2) Representatives of the Administrator assigned to the program manager.

(e) Each employee of the program manager to whom a manual or appropriate portions of it are furnished under paragraph (d)(1) of this section shall keep it up to date with the changes and additions furnished to them.

(f) Except as provided in paragraph (h) of this section, the appropriate parts of the manual shall be carried on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) For the purpose of complying with paragraph (d) of this section, a program manager may furnish the persons listed therein with all or part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the program manager furnishes all or part of the manual in other than printed form, it shall ensure there is a compatible reading device available to those persons that provides a legible image of the maintenance information and instructions, or a system that is able to retrieve the maintenance information

and instructions in the English language.

(h) If aircraft inspections or maintenance are conducted at specified stations where the approved inspection program operations manual is available, the program manager is not required to ensure that the program operating manual is carried aboard the aircraft enroute to those stations.

**§ 91.1025 Program operating manual contents.**

Each program operating manual must have the date of the last revision on each revised page. Unless otherwise authorized by the Administrator, the manual shall include the following:

- (a) Procedures for ensuring compliance with aircraft weight and balance limitations;
- (b) Copies of the program manager's management specifications or appropriate extracted information, including area of operations authorized, category and class of aircraft authorized, crew complements, and types of operations authorized;
- (c) Procedures for complying with accident notification requirements;
- (d) Procedures for ensuring that the pilot in command knows that required airworthiness inspections have been made and that the aircraft has been approved for return to service in compliance with applicable maintenance requirements;
- (e) Procedures for reporting and recording mechanical irregularities that come to the attention of the pilot in command before, during, and after completion of a flight;
- (f) Procedures to be followed by the pilot in command for determining that mechanical irregularities or defects reported for previous flights have been corrected or that correction of certain mechanical irregularities or defects have been deferred;
- (g) Procedures to be followed by the pilot in command to obtain maintenance, preventive maintenance, and servicing of the aircraft at a place where previous arrangements have not been made by the program manager or owner, when the pilot is authorized to so act for the operator;
- (h) Procedures under § 91.213 for the release of, and continuation of flight if any item of equipment required for the particular type of operation becomes inoperative or unserviceable en route;
- (i) Procedures for refueling aircraft, eliminating fuel contamination, protecting from fire (including electrostatic protection), and supervising and protecting passengers during refueling;

(j) Procedures to be followed by the pilot in command in the briefing under § 91.1035.

(k) Procedures for ensuring compliance with emergency procedures, including a list of the functions assigned each category of required crewmembers in connection with an emergency and emergency evacuation duties;

(l) The approved aircraft inspection program, when applicable;

(m) Procedures for the evacuation of persons who may need the assistance of another person to move expeditiously to an exit if an emergency occurs;

(n) Procedures for performance planning that take into account take off, landing and enroute conditions;

(o) At the program manager's election for reduced runway operating length requirements under § 91.1037, an approved Destination Airport Analysis establishing procedures for establishing runway safety margins at destination airports beyond those otherwise permitted by § 91.1037, taking into account the following factors as supported by published aircraft performance data supplied by the aircraft manufacturer for the appropriate runway conditions—

- (1) Pilot qualifications and experience;
- (2) Aircraft performance data to include normal, abnormal and emergency procedures as supplied by the aircraft manufacturer;
- (3) Airport facilities and topography;
- (4) Runway conditions (including contamination);
- (5) Airport or area weather reporting;
- (6) Appropriate additional runway safety margins, if required; and
- (7) Other criteria that affect aircraft performance.

(p) A suitable system (which may include a coded or electronic system) that provides for preservation and retrieval of maintenance recordkeeping information required by § 91.1113 in a manner acceptable to the Administrator that provides—

- (1) A description (or reference to date acceptable to the Administrator) of the work performed;
- (2) The name of the person performing the work if the work is performed by a person outside the organization of the program manager; and
- (3) The name or other positive identification of the individual approving the work.

(q) Flight locating and scheduling procedures; and

(r) Other procedures and policy instructions regarding program operations that are issued by the program manager or required by the Administrator.

**§ 91.1027 Recordkeeping.**

(a) Each program manager shall keep at its principal business office or at other places approved by the Administrator, and shall make available for inspection by the Administrator the following:

(1) The program manager's management specifications;

(2) A current list of the aircraft used or available for use in operations under this subpart, the operations for which each is equipped (e.g., MNPS, RNP5/10, RVSM, etc.), and the owners of each aircraft;

(3) An individual record of each pilot used in operations under this subpart, including the following information:

(i) The full name of the pilot.

(ii) The pilot certificate (by type and number) and ratings that the pilot holds.

(iii) The pilot's aeronautical experience in sufficient detail to determine the pilot's qualifications to pilot aircraft in operations under this subpart.

(iv) The pilot's current duties and the date of the pilot's assignment to those duties.

(v) The effective date and class of the medical certificate that the pilot holds.

(vi) The date and result of each of the initial and recurrent competency tests and proficiency checks required by this subpart and the type of aircraft flown during that test or check.

(vii) The pilot's flight time in sufficient detail to determine compliance with the flight time limitations of this subpart.

(viii) The pilot's check pilot authorization, if any.

(ix) Any action taken concerning the pilot's release from employment for physical or professional disqualification.

(x) The date of the completion of the initial phase and each recurrent phase of the training required by this subpart; and

(4) An individual record for each flight attendant used in operations under this subpart, including the following information:

(i) The full name of the flight attendant, and

(ii) The date and result of training required by § 91.1063, as applicable.

(b) Each program manager must keep each record required by paragraph (a)(2) of this section for at least 6 months, and must keep each record required by paragraphs (a)(3) and (a)(4) of this section for at least 12 months. When an employee is no longer employed or affiliated with the program manager or fractional owner, each record required by paragraphs (a)(3) and (a)(4) of this section shall be retained for at least 12 months.

(c) Each program manager shall be responsible for the preparation and accuracy of a load manifest in duplicate containing information concerning the loading of the aircraft. The manifest shall be prepared before each takeoff and shall include—

(1) The number of passengers;

(2) The total weight of the loaded aircraft;

(3) The maximum allowable takeoff weight for that flight;

(4) The center of gravity limits;

(5) The center of gravity of the loaded aircraft, except that the actual center of gravity need not be computed if the aircraft is loaded according to a loading schedule or other approved method that ensures that the center of gravity of the loaded aircraft is within approved limits. In those cases, an entry shall be made on the manifest indicating that the center of gravity is within limits according to a loading schedule or other approved method;

(6) The registration number of the aircraft or flight number;

(7) The origin and destination; and

(8) Identification of crewmembers and their crew position assignments.

(d) The pilot in command of the aircraft for which a load manifest must be prepared shall carry a copy of the completed load manifest in the aircraft to its destination. The program manager shall keep copies of completed load manifest for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

(e) Each program manager shall be responsible for providing a written document that states the name of the entity having operational control on that flight and the part of this chapter under which the flight is operated. The pilot in command of the aircraft shall carry a copy of the document in the aircraft to its destination. The program manager shall keep a copy of the document for at least 30 days at its principal operations base, or at another location used by it and approved by the Administrator.

(f) Records may be kept either in paper or other form acceptable to the Administrator.

(g) Program managers that are also certificated to operate under part 121 or 135 may satisfy the recordkeeping requirements of this section and of § 91.1113 with records maintained to fulfil equivalent obligations under part 121 or 135.

**§ 91.1029 Flight scheduling and locating requirements.**

(a) Each program manager shall establish and use a system to schedule and release program aircraft.

(b) Except as provided in paragraph (d) of this section, each program manager shall have procedures established for locating each flight, for which a flight plan is not filed, that—

(1) Provide the program manager with at least the information required to be included in a VFR flight plan;

(2) Provide for timely notification of an FAA facility or search and rescue facility, if an aircraft is overdue or missing; and

(3) Provide the program manager with the location, date, and estimated time for reestablishing radio or telephone communications, if the flight will operate in an area where communications cannot be maintained.

(c) Flight locating information shall be retained at the program manager's principal base of operations, or at other places designated by the program manager in the flight locating procedures, until the completion of the flight.

(d) The flight locating requirements of paragraph (b) of this section shall not apply to a flight for which a FAA flight plan has been filed and the flight plan is canceled within 25 nautical miles of the destination airport.

**§ 91.1031 Pilot in command or second in command: Designation required.**

(a) Each program manager shall designate a—

(1) Pilot in command for each program flight; and

(2) Second in command for each program flight requiring two pilots.

(b) The pilot in command, as designated by the program manager, shall remain the pilot in command at all times during that flight.

**§ 91.1033 Operating information required.**

(a) Each program manager shall, for all program operations, provide the following materials, in current and appropriate form, accessible to the pilot at the pilot station, and the pilot shall use them—

(1) A cockpit checklist;

(2) For multiengine aircraft or for aircraft with retractable landing gear, an emergency cockpit checklist containing the procedures required by paragraph (c) of this section, as appropriate;

(3) At least one set of pertinent aeronautical charts; and

(4) For IFR operations, at least one set of pertinent navigational enroute, terminal area, and approach and letdown charts.

(b) Each cockpit checklist required by paragraph (a)(1) of this section shall contain the following procedures:

(1) Before starting engines;

(2) Before takeoff;

- (3) Cruise;
- (4) Before landing;
- (5) After landing; and
- (6) Stopping engines.

(c) Each emergency cockpit checklist required by paragraph (a)(2) of this section must contain the following procedures, as appropriate:

- (1) Emergency operation of fuel, hydraulic, electrical, and mechanical systems.
- (2) Emergency operation of instruments and controls.
- (3) Engine inoperative procedures.
- (4) Any other emergency procedures necessary for safety.

#### **§ 91.1035 Passenger awareness.**

(a) Prior to each takeoff the pilot in command of an aircraft carrying passengers on a program flight, shall ensure that all passengers have been orally briefed on—

(1) Smoking: Each passenger shall be briefed on when, where, and under what conditions smoking is prohibited. This briefing shall include a statement, as appropriate, that the regulations require passenger compliance with lighted passenger information signs and no smoking placards, prohibit smoking in lavatories, and require compliance with crewmember instructions with regard to these items;

(2) Use of safety belts, shoulder harnesses, and child restraint systems: Each passenger shall be briefed on when, where and under what conditions it is necessary to have his or her safety belt and, if installed, his or her shoulder harness fastened about him or her, and if a child is being transported, the appropriate use of child restraint systems, if available. This briefing shall include a statement, as appropriate, that the regulations require passenger compliance with the lighted passenger information sign and/or crewmember instructions with regard to these items;

(3) The placement of seat backs in an upright position before takeoff and landing;

(4) Location and means for opening the passenger entry door and emergency exits;

(5) Location of survival equipment;

(6) Ditching procedures and the use of flotation equipment required under § 91.509 for a flight over water;

(7) The normal and emergency use of oxygen installed in the aircraft; and

(8) Location and operation of fire extinguishers.

(b) Prior to each takeoff, the pilot in command of an aircraft carrying passengers on a program flight shall ensure that each person who may need the assistance of another person to move expeditiously to an exit if an emergency

occurs and that person's attendant, if any, has received a briefing as to the procedures to be followed if an evacuation occurs. This paragraph does not apply to a person who has been given a briefing before a previous leg of a flight in the same aircraft.

(c) Prior to each takeoff, the pilot in command shall advise the passengers of the name of the entity in operational control of the flight and whether the flight is conducted as a program flight or a commercial operation under part 121 or 135 of the regulations.

(d) The oral briefing required by paragraphs (a), (b), and (c) of this section shall be given by the pilot in command or another crewmember.

(e) The oral briefing required by paragraph (a) of this section may be delivered by means of an approved recording playback device that is audible to each passenger under normal noise levels.

(f) The oral briefing required by paragraph (a) of this section shall be supplemented by printed cards that must be carried in the aircraft in locations convenient for the use of each passenger. The cards shall—

(1) Be appropriate for the aircraft on which they are to be used;

(2) Contain a diagram of, and method of operating, the emergency exits; and

(3) Contain other instructions necessary for the use of emergency equipment on board the aircraft.

(g) The briefing required by paragraphs (a), (b) and (c) of this section do not apply if passengers have been briefed before a previous leg of a flight in the same aircraft.

#### **§ 91.1037 Large transport category airplanes: Turbine engine powered; Limitations; Destination and alternate airports.**

(a) No program manager or any other person may permit a turbine engine powered large transport category airplane on a program flight to take off at a weight at which (allowing for normal consumption of fuel and oil in flight to the destination or alternate airport) the weight of the airplane on arrival would exceed the landing weight in the Airplane Flight Manual for the elevation of the destination or alternate airport and the ambient temperature anticipated at the time of landing.

(b) Except as provided in paragraph (c) of this section, no program manager or any other person may permit a turbine engine powered large transport category airplane on a program flight to take off unless, its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight

Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing), would allow a full stop landing at the intended destination airport within 85 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport, the following is assumed:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of that airplane, and considering other conditions such as landing aids and terrain.

(c) A program manager or other person flying a turbine engine powered large transport category airplane on a program flight may permit that airplane to take off at a weight in excess of that allowed by the runway margin in paragraph (b) of this section if such operation is permitted by an approved Destination Airport Analysis in that person's program operating manual and an alternate airport meeting the criteria of paragraph (d) of this section is selected.

(d) A program manager or other person may select an airport as an alternate airport for a turbine engine powered large transport category airplane if (based on the assumptions in paragraph (b) of this section) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 85 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

(e) Unless, based on a showing of actual operating landing techniques on wet runways, a shorter landing distance (but never less than that required by paragraph (b) of this section) has been approved for a specific type and model airplane and included in the Airplane Flight Manual, no person may take off a turbojet airplane when the appropriate weather reports or forecasts, or any combination of them, indicate that the runways at the destination or alternate airport may be wet or slippery at the estimated time of arrival unless the effective runway length at the destination airport is at least 115 percent of the runway length required under paragraph (b) of this section.

**§ 91.1039 IFR takeoff, approach and landing minimums.**

(a) No pilot on a program aircraft operating a program flight may begin an instrument approach procedure to an airport unless—

(1) Either that airport or the alternate airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by the weather reporting facility includes a current local altimeter setting for the destination airport. If no local altimeter setting is available at the destination airport, the pilot may use the current alternate altimeter setting provided by the facility designated on the approach chart for the destination airport.

(b) For flight planning purposes, if the destination airport does not have a weather reporting facility described in paragraph (a)(1) of this section, the pilot must designate as an alternate an airport that has a weather reporting facility meeting that criteria.

(c) The MDA or DH and visibility landing minimums prescribed in part 97 of this chapter or in the program manager's management specifications are increased by 100 feet and ½ mile respectively, but not to exceed the ceiling and visibility minimums for that airport when used as an alternate airport, for each pilot in command of a turbine-powered aircraft who has not served at least 100 hours as pilot in command in that type of aircraft.

(d) No person may take off an aircraft under IFR from an airport where weather conditions are at or above takeoff minimums but are below authorized IFR landing minimums unless there is an alternate airport within one (1) hour's flying time (at normal cruising speed, in still air) of the airport of departure.

(e) Each pilot making an IFR takeoff or approach and landing at an airport shall comply with applicable instrument approach procedures and take off and landing weather minimums prescribed by the authority having jurisdiction over the airport. In addition, no pilot may, at that airport take off when the visibility is less than 600 feet in the latest weather report issued by a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S. National Weather Service, or a source approved by the Administrator, or, in the absence of such a weather reporting facility, as determined by the pilot in command, and the pilot in command shall have ensured that this visibility is

maintainable for the entire length of the runway.

**§ 91.1041 Aircraft proving tests.**

(a) No program manager may permit the operation of an aircraft for which two pilots are required by the type certification requirements of this chapter for operations under VFR, if it has not previously proved such an aircraft in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(b) No program manager may permit the operation of a turbojet airplane if it has not previously proved the same or another turbojet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(c) No program manager may carry passengers in an aircraft during proving tests, except those needed to make the tests and those designated by the Administrator to observe the tests. However, pilot flight training may be conducted during the proving tests.

(d) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

**§ 91.1043 [Reserved]****§ 91.1045 Additional equipment requirements.**

No person may operate a program aircraft on a program flight unless the aircraft is equipped with the following—

(a) A cockpit voice recorder conforming to § 121.359 or § 135.151 of this chapter as applicable to the aircraft specified therein.

(b) A flight recorder conforming to § 121.343, § 121.344 or § 135.152 of this chapter as applicable to the aircraft specified therein.

(c) A ground proximity warning system conforming to § 121.360 or

§ 135.153 of this chapter as applicable to the aircraft specified therein.

(d) A terrain awareness and warning system conforming to § 121.354 or § 135.154 of this chapter as applicable to the aircraft specified therein.

(e) A traffic alert and collision avoidance system conforming to § 121.356 or § 135.180 of this chapter as applicable to the aircraft specified therein.

(f) Either:

(1) Airborne thunderstorm detection equipment conforming to § 135.173 of this chapter as applicable to the aircraft specified in that section; or

(2) Airborne weather radar conforming to § 121.357 or § 135.175 of this chapter as applicable to the aircraft specified in that section.

**§ 91.1047 Drug and alcohol misuse program.**

(a) Each program manager shall provide each direct employee performing flight crew member, flight attendant, flight instructor, or aircraft maintenance duties with drug and alcohol misuse education.

(b) No program manager may use any contract employee to perform flight crew member, flight attendant, flight instructor, or aircraft maintenance duties for the program manager unless that contract employee has been provided with drug and alcohol misuse education.

(c) Program managers shall disclose to their owners and prospective owners the existence or absence of a drug and alcohol misuse education program and/or a company testing program. If the program manager has implemented a testing program, the program manager's disclosure shall include the following:

(1) Information on the substances that they test for, e.g., alcohol and a list of the drugs;

(2) The persons tested, the types of tests, e.g., pre-employment, random, reasonable cause/suspicion, post accident, return to duty and follow-up; and

(3) The degree to which the program manager's company testing program is consistent with or not consistent with the federally mandated drug and alcohol misuse prevention program on these points.

(d) If a program aircraft is operated on a program flight into an airport at which no maintenance personnel are available that are subject to the requirements of paragraphs (a) or (b) of this section and emergency maintenance is required, the program manager may use persons not meeting the requirements of paragraphs (a) or (b) of this section to provide such emergency maintenance. A program

manager shall notify the Drug Abatement Program Division, AAM-800, 800 Independence Avenue, SW., Washington, DC 20591 in writing within 10 days after being provided emergency maintenance in accordance with this paragraph. A program manager shall retain copies of all such written notifications for two years.

(e) For purposes of this section, emergency maintenance means maintenance which—

(1) is not scheduled, and  
(2) is made necessary by an aircraft condition not discovered prior to the departure for that location.

(f) Notwithstanding paragraphs (a) and (b) of this section, drug and alcohol misuse education conducted under an FAA-approved drug and alcohol misuse prevention program may be used to satisfy these requirements.

#### **§ 91.1049 Personnel.**

(a) Each program manager and each fractional owner shall use in program operations on program aircraft flight crews meeting § 91.1053 criteria and qualified under the appropriate regulations. The program manager shall provide oversight of those crews.

(b) Unless otherwise authorized by the Administrator, each program manager shall employ at least three (3) pilots per program aircraft. Additional flight crew staffing shall be determined based on the following factors, at a minimum:

(1) Number of program aircraft.  
(2) Program manager flight, duty, and rest time considerations, and in all cases within the limits set forth in §§ 91.1057 through 91.1061 of this part.  
(3) Vacations.  
(4) Operational efficiencies.  
(5) Training.

(c) Each program manager shall publish pilot and flight attendant duty schedules sufficiently in advance to follow the flight, duty, and rest time limits in §§ 91.1057 through 91.1061 of this part in program operations.

(d) Unless otherwise authorized by the Administrator, when any program aircraft is flown in program operations with passengers onboard, the crew shall consist of at least two (2) qualified pilots employed or contracted by the program manager or the fractional owner.

(e) The program manager shall ensure that trained and qualified scheduling or flight release personnel are on duty to schedule and release program aircraft during all hours that such aircraft are available for program operations.

#### **§ 91.1051 Pilot safety background check.**

Within 90 days of an individual beginning service as a pilot, the program

manager shall request the following information:

(a) FAA records pertaining to—  
(1) Current pilot certificates and associated type ratings.  
(2) Current medical certificates.  
(3) Summaries of legal enforcement actions resulting in a finding by the Administrator of a violation.  
(b) Records from all previous employers during the five years preceding the date of the employment application where the applicant worked as a pilot. If any of these firms are in bankruptcy, the records shall be requested from the trustees in bankruptcy for those employees. If the previous employer is no longer in business, a documented good faith effort shall be made to obtain the records. Records from previous employers shall include, as applicable—

(1) Crew member records.  
(2) Drug testing—collection, testing, and rehabilitation records pertaining to the individual.  
(3) Alcohol misuse prevention program records pertaining to the individual.

(4) The applicant's individual record that includes certifications, ratings, aeronautical experience, effective date and class of the medical certificate, etc.

(c) Motor vehicle driving record of the pilot candidate from the National Driver Register (NDR) database from the chief driver licensing official of the state.

#### **§ 91.1053 Flight crew experience.**

(a) No program manager or owner may use any person, nor may any person serve, as a pilot in command or second in command of a program aircraft, or as a flight attendant on a program aircraft, in program operations under this subpart unless that person has met the applicable requirements of part 61 of this chapter and has the following experience and ratings:

(1) Total flight time for all pilots:  
(i) Pilot in command—A minimum of 1,500 hours.  
(ii) Second in command—A minimum of 500 hours.

(2) For multi-engine turbine-powered fixed-wing and powered-lift aircraft, the following FAA certification and ratings requirements:

(i) Pilot in command—Airline transport pilot and applicable type ratings

(ii) Second in command—Commercial pilot and instrument ratings

(iii) Flight attendant (if required or used)—Appropriately trained personnel  
(3) For all other aircraft, the following FAA certification and rating requirements:

(i) Pilot in command—Commercial pilot and instrument ratings

(ii) Second in command—Commercial pilot and instrument ratings

(iii) Flight attendant (if required or used)—appropriately trained personnel

(b) The Administrator may authorize deviations from paragraph (a) of this section if the Flight Standards District Office which issued the program manager's management specifications finds that the crewmember has comparable experience, and can effectively perform the functions associated with the position in accordance with the requirements of this chapter. Grants of deviation under this paragraph may be granted after consideration of the size and scope of the operation, the qualifications of the intended personnel and the circumstances set forth in § 91.1055(b)(1)–(3). The Administrator may, at any time, terminate any grant of deviation authority issued under this paragraph.

#### **§ 91.1055 Pilot operating limitations and pairing requirement.**

(a) If the second in command of a fixed-wing program aircraft has fewer than 100 hours of flight time as second in command flying for the program manager in the type aircraft being flown, and the pilot in command is not an appropriately qualified check pilot, the pilot in command shall make all takeoffs and landings in any of the following situations:

(1) The prevailing visibility for the airport is at or below  $\frac{3}{4}$  mile.  
(2) The runway visual range for the runway to be used is at or below 4,000 feet.

(3) The runway to be used has water, snow, slush or similar contamination that may adversely affect aircraft performance.

(4) The braking action on the runway to be used is reported to be less than "good."

(5) The crosswind component for the runway to be used is in excess of 15 knots.

(6) Windshear is reported in the vicinity of the airport.

(7) Any other condition in which the pilot in command determines it to be prudent to exercise the pilot in command's authority.

(b) No program manager may release a program flight under this subpart unless, for that type aircraft, either the pilot in command or the second in command has at least 75 hours of program flight time, either as pilot in command or second in command. The Administrator may, upon application by the program manager, authorize deviations from the requirements of this paragraph by an appropriate



amendment to the management specifications in any of the following circumstances:

(1) A newly authorized program manager does not employ any pilots who meet the minimum requirements of this paragraph.

(2) An existing program manager adds to its fleet a new category and class aircraft not used before in its operation.

(3) An existing program manager establishes a new base to which it assigns pilots who will be required to become qualified on the aircraft operated from that base.

(c) No flight crew may be assigned in any capacity in a program operation to more than two (2) aircraft types that require a separate type rating.

**§ 91.1057 Flight, duty and rest time requirements.**

(a) For purposes of this subpart—  
*Augmented flight crew* means at least three (3) pilots.

*Calendar day* means the period of elapsed time, using Coordinated Universal Time or local time that begins at midnight and ends 24 hours later at the next midnight.

*Duty period* means the period of elapsed time between reporting for an assignment involving flight time and release from that assignment by the program manager. The time is calculated using either Coordinated Universal Time or local time to reflect the total elapsed time.

*Extension of normal duty* means an increase in the period of duty due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather) that are not known at the time of departure and that prevent the flightcrew from reaching the destination within the planned flight time.

*Multi-time zone flight* means a continuous east or west flight crossing five (5) or more time zones that is not north of 60 degrees north latitude or south of 60 degrees south latitude.

*Planned expanded duty* means the planned maximum flight and duty time and minimum rest time that may be scheduled for long-range aircraft capable of exceeding 10 hours of flight unless the flightcrew is augmented by a third pilot.

*Reserve status* means that status in which a flight crew member, by

arrangement with the program manager: Holds himself or herself fit to fly to the extent that this is within the control of the flight crew member; remains within a reasonable response time of the aircraft as agreed between the flight crew member and the program manager; and maintains a ready means whereby the flight crew member may be contacted by the program manager. Reserve status is not part of any duty period. A flight crew member on reserve status who is called to duty may perform a normal duty period under § 91.1059 or § 91.1061 if, following the flight crew member's last duty period, the flight crew member received the minimum rest before duty required by § 91.1059 or § 91.1061, respectively, before entering reserve status.

*Rest period* means a period of time required pursuant to this subpart that is free of all responsibility for work or duty prior to the commencement of, or following completion of, a duty period, and during which the flight crew member cannot be required to receive contact from the program manager for purposes of program operations.

*Standby* means that portion of a duty period during which a flight crew member is subject to the control of the program manager and holds himself or herself in a condition of readiness to undertake a flight.

(b) A program manager may assign a flight crewmember and a flight crewmember may accept an assignment for program flight time only when the applicable requirements of this section are met.

(c) No program manager may assign any flight crewmember to any program duty during any required rest period.

(d) Time spent in transportation, not local in character, that a program manager requires of a flight crewmember and provides to transport the crewmember to an airport at which he is to serve on a flight as a crewmember, or from an airport at which he was relieved from duty to return to his home station, is not considered part of a rest period.

(e) A flight crewmember may continue a flight assignment if the flights to which he is assigned normally terminate within the limitations, but due to circumstances beyond the control of the program manager or flight crewmember (such as adverse weather

conditions), are not at the time of departure expected to reach their destination within the planned flight time.

(f) Each flight assignment shall provide for at least 10 consecutive hours of rest during the 24-hour period that precedes the planned completion time of the assignment.

(g) The program manager shall provide each flight crewmember at least 13 rest periods of at least 24 consecutive hours each in each calendar quarter.

(h) Any extension of planned duty or flight time shall be approved by the program manager with the concurrence of the flight crew but in no event may exceed the maximum time limits set forth in §§ 91.1059 and 91.1061 of this part, as applicable.

(i) A flight crew member on standby status may decline to undertake flight activities if, in the flight crew member's determination, to do so would not be consistent with the standard of safe operation required under this subpart, this part, and applicable provisions of this title.

**§ 91.1059 Flight time limitations and rest requirements: One or two pilot crews.**

(a) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, for flight time as a member of a one- or two-pilot crew if that crewmember's total flight time in all commercial flying will exceed—

(1) 500 hours in any calendar quarter;

(2) 800 hours in any two consecutive calendar quarters; or

(3) 1,400 hours in any calendar year.

(b) Except as provided in paragraph (c) of this section, during any 24 consecutive hours the total flight time of the assigned flight, when added to any commercial flying by that flight crewmember, may not exceed—

(1) 8 hours for a flight crew consisting of one pilot; or (2) 10 hours for a flight crew consisting of two pilots qualified under this subpart for the operation being conducted.

(c) No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, if that crewmember's flight time or duty time will exceed, or rest time will be less than—

	Normal duty	Extension of normal duty	Planned expanded duty
(1) Minimum Rest Before Duty .....	10 Hours .....	10 Hours .....	10 Hours.
(2) Duty Time .....	Up to 14 Hours .....	Exceeding 14 Hours up to 16 Hours.	Exceeding 14 Hours up to 16 Hours.
(3) Flight Time .....	Up to 10 Hours .....	Exceeding 10 Hours up to 12 Hours.	Up to 12 Hours.

	Normal duty	Extension of normal duty	Planned expanded duty
(4) Minimum After Duty Rest .....	10 Hours .....	12 Hours .....	Equal to Duty Time but never less than 10 Hours.
(5) Minimum After Duty Rest Period for Multi-Time Zone Flights.	14 Hours .....	18 Hours .....	24 Hours.

**§ 91.1061 Augmented flight crews.**

No program manager may assign any flight crewmember, and no flight crewmember may accept an assignment, if that crewmember's flight time or duty time will exceed, or rest time will be less than—

	Normal duty	Planned expanded duty
(a) Minimum Rest Before Duty .....	10 Hours .....	10 Hours.
(b) Duty Time .....	14 Hours–16 Hours .....	16 Hours–18 Hours.
(c) Flight Time .....	Up to 12 Hours .....	Up to 16 Hours.
(d) Minimum After Duty Rest .....	12 Hours .....	18 Hours.
(e) Minimum After Duty Rest Period for Multi-Time Zone Flights.	18 hours .....	24 hours.

**§ 91.1063 Testing and training: Applicability and terms used.**

(a) Sections 91.1065 through 91.1107 of this part:

(1) Prescribe the tests and checks required for pilots and flight attendant crewmembers and for the approval of check pilots in operations under this subpart;

(2) Prescribe the requirements for establishing and maintaining an approved training program for crewmembers, check pilot and instructors, and other operations personnel employed or used by the program manager in program operations;

(3) Prescribe the requirements for the qualification, approval and use of aircraft simulators and flight training devices in the conduct of an approved training program; and

(4) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of § 91.1075 to conduct training, testing and checking under contract or other arrangements to those persons subject to the requirements of this subpart.

(b) If authorized by the Administrator, a program manager may comply with the applicable sections of subparts N and O of part 121 instead of §§ 91.1065 through 1107, except for the operating experience requirements of § 121.434 of this chapter.

(c) If authorized by the Administrator, a program manager may use the applicable training and testing requirements of subparts G and H of part 135 or the applicable sections of subparts N and O of part 121 to meet the training and testing requirements of this subpart.

(d) For the purposes of this subpart, the following terms and definitions apply:

(1) *Initial training.* The training required for crewmembers who have not qualified and served in the same capacity on an aircraft.

(2) *Transition training.* The training required for crewmembers who have qualified and served in the same capacity on another aircraft.

(3) *Upgrade training.* The training required for crewmembers who have qualified and served as second in command on a particular aircraft type, before they serve as pilot in command on that aircraft.

(4) *Differences training.* The training required for crewmembers who have qualified and served on a particular type aircraft, when the Administrator finds differences training is necessary before a crewmember serves in the same capacity on a particular variation of that aircraft.

(5) *Recurrent training.* The training required for crewmembers to remain adequately trained and currently proficient for each aircraft crewmember position, and type of operation in which the crewmember serves.

(6) *In flight.* The maneuvers, procedures, or functions that shall be conducted in the aircraft.

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that conducts training, testing, and checking under contract or other arrangement to program managers subject to the requirements of this subpart.

(8) *Requalification training.* The training required for crewmembers previously trained and qualified, but who have become unqualified due to not having met within the required period the—

(i) Recurrent pilot testing requirements of § 91.1107;

(ii) Instrument proficiency check requirements of § 91.1069.

**§ 91.1065 Initial and recurrent pilot testing requirements.**

(a) No program manager or owner may use a pilot, nor may any person serve as a pilot, unless, since the beginning of the 12th calendar month before that service, that pilot has passed a written or oral test, given by the Administrator or an authorized check pilot, on that pilot's knowledge in the following areas—

(1) The appropriate provisions of parts 61 and 91 of this chapter and the management specifications and the operating manual of the program manager;

(2) For each type of aircraft to be flown by the pilot, the aircraft powerplant, major components and systems, major appliances, performance and operating limitations, standard and emergency operating procedures, and the contents of the accepted operating manual or equivalent, as applicable;

(3) For each type of aircraft to be flown by the pilot, the method of determining compliance with weight and balance limitations for takeoff, landing and enroute operations;

(4) Navigation and use of air navigation aids appropriate to the operation or pilot authorization, including, when applicable, instrument approach facilities and procedures;

(5) Air traffic control procedures, including IFR procedures when applicable;

(6) Meteorology in general, including the principles of frontal systems, icing, fog, thunderstorms, and windshear, and, if appropriate for the operation of the program manager, high altitude weather;

(7) Procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft aircraft pilots are not required to be tested on escaping from low-altitude windshear); and

(iii) Operating in or near thunderstorms (including best penetration altitudes), turbulent air (including clear air turbulence), icing, hail, and other potentially hazardous meteorological conditions; and

(8) New equipment, procedures, or techniques, as appropriate.

(b) No program manager or owner may use a pilot, nor may any person serve as a pilot, in any aircraft unless, since the beginning of the 12th calendar month before that service, that pilot has passed a competency check given by the Administrator or an authorized check pilot in that class of aircraft, if single-engine aircraft other than turbojet, or that type of aircraft, if rotorcraft, multiengine aircraft, or turbojet airplane, to determine the pilot's competence in practical skills and techniques in that aircraft or class of aircraft. The extent of the competency check shall be determined by the Administrator or authorized check pilot conducting the competency check. The competency check may include any of the maneuvers and procedures currently required for the original issuance of the particular pilot certificate required for the operations authorized and appropriate to the category, class and type of aircraft involved. For the purposes of this paragraph, type, as to an airplane, means any one of a group of airplanes determined by the Administrator to have a similar means of propulsion, the same manufacturer, and no significantly different handling or flight characteristics. For the purposes of this paragraph, type, as to a rotorcraft, means a basic make and model.

(c) The instrument proficiency check required by § 91.1069 may be substituted for the competency check required by this section for the type of aircraft used in the check.

(d) For the purpose of this subpart, competent performance of a procedure or maneuver by a person to be used as a pilot requires that the pilot be the obvious master of the aircraft, with the successful outcome of the maneuver never in doubt.

(e) The Administrator or authorized check pilot certifies the competency of each pilot who passes the knowledge or flight check in the program manager's pilot records.

(f) All or portions of a required competency check may be given in an

aircraft simulator or other appropriate training device, if approved by the Administrator.

**§ 91.1067 Initial and recurrent flight attendant crewmember testing requirements.**

No program manager or owner may use a flight attendant crewmember, nor may any person serve as a flight attendant crewmember unless, since the beginning of the 12th calendar month before that service, the program manager has determined by appropriate initial and recurrent testing that the person is knowledgeable and competent in the following areas as appropriate to assigned duties and responsibilities—

(a) Authority of the pilot in command;

(b) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety;

(c) Crewmember assignments, functions, and responsibilities during ditching and evacuation of persons who may need the assistance of another person to move expeditiously to an exit in an emergency;

(d) Briefing of passengers;

(e) Location and operation of portable fire extinguishers and other items of emergency equipment;

(f) Proper use of cabin equipment and controls;

(g) Location and operation of passenger oxygen equipment;

(h) Location and operation of all normal and emergency exits, including evacuation chutes and escape ropes; and

(i) Seating of persons who may need assistance of another person to move rapidly to an exit in an emergency as prescribed by the program manager's operations manual.

**§ 91.1069 Flight crew: Instrument proficiency check requirements.**

(a) No program manager or owner may use a pilot, nor may any person serve, as a pilot in command of an aircraft under IFR unless, since the beginning of the 6th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(b) No program manager or owner may use a pilot, nor may any person serve, as a second command pilot of an aircraft under IFR unless, since the beginning of the 12th calendar month before that service, that pilot has passed an instrument proficiency check under this section administered by the Administrator or an authorized check pilot.

(c) No pilot may use any type of precision instrument approach

procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot satisfactorily demonstrated that type of approach procedure. No pilot may use any type of nonprecision approach procedure under IFR unless, since the beginning of the 6th calendar month before that use, the pilot has satisfactorily demonstrated either that type of approach procedure or any other two different types of nonprecision approach procedures. The instrument approach procedure or procedures shall include at least one straight-in approach, one circling approach, and one missed approach. Each type of approach procedure demonstrated shall be conducted to published minimums for that procedure.

(d) The instrument proficiency checks required by paragraphs (a) and (b) of this section consists of an oral or written equipment test and a flight check under simulated or actual IFR conditions. The equipment test includes questions on emergency procedures, engine operation, fuel and lubrication systems, power settings, stall speeds, best engine-out speed, propeller and supercharger operations, and hydraulic, mechanical, and electrical systems, as appropriate. The flight check includes navigation by instruments, recovery from simulated emergencies, and standard instrument approaches involving navigational facilities which that pilot is to be authorized to use.

(e) Each pilot taking the instrument proficiency check shall show that standard of competence required by § 91.1065(d).

(1) The instrument proficiency check must—

(i) For a pilot in command of an aircraft, include the procedures and maneuvers for an airline transport pilot certificate in the particular type of aircraft, if appropriate; and

(ii) For a pilot in command of a rotorcraft or a second in command of any aircraft include the procedures and maneuvers for a commercial pilot certificate with an instrument rating and, if required, for the appropriate type rating.

(2) The instrument proficiency check must be given by an authorized check pilot or by the Administrator.

(f) If the pilot is assigned to pilot only one type of aircraft, that pilot shall take the instrument proficiency check required by paragraph (a) of this section in that type of aircraft.

(g) If the pilot in command is assigned to pilot more than one type of aircraft, that pilot shall take the instrument proficiency check required by paragraph (a) of this section in each type of aircraft

to which that pilot is assigned, in rotation, but not more than one flight check during each period described in paragraph (a) of this section.

(h) If the pilot in command is assigned to pilot both single-engine and multiengine aircraft, that pilot shall initially take the instrument proficiency check required by paragraph (a) of this section in a multiengine aircraft, and each succeeding check alternately in single-engine and multiengine aircraft, but not more than one flight check during each period described in paragraph (a) of this section.

(i) All or portions of a required flight check may be given in an aircraft simulator or other appropriate training device, if approved by the Administrator.

**§ 91.1071 Crewmember: Tests and checks, grace provisions, training to accepted standards.**

(a) If a crewmember who is required to take a test or a flight check under this subpart, completes the test or flight check in the calendar month before or after the calendar month in which it is required, that crewmember is considered to have completed the test or check in the calendar month in which it is required.

(b) If a pilot being checked under this subpart fails any of the required maneuvers, the person giving the check may give additional training to the pilot during the course of the check. In addition to repeating the maneuvers failed, the person giving the check may require the pilot being checked to repeat any other maneuvers that are necessary to determine the pilot's proficiency. If the pilot being checked is unable to demonstrate satisfactory performance to the person conducting the check, the program manager may not use the pilot, nor may the pilot serve, as a flight crewmember in operations under this subpart until the pilot has satisfactorily completed the check.

**§ 91.1073 Training program: General.**

(a) Each program manager shall have a training program and shall:

(1) Establish, obtain the appropriate initial and final approval of, and provide a training program that meets this subpart and that ensures that each crewmember, including each flight attendant if the program manager uses a flight attendant crewmember, flight instructor, check pilot, and each person assigned duties for the carriage and handling of hazardous materials (as defined in 49 CFR 171.8) is adequately trained to perform these assigned duties.

(2) Provide adequate ground and flight training facilities and properly

qualified ground instructors for the training required by this subpart.

(3) Provide and keep current for each aircraft type used and, if applicable, the particular variations within the aircraft type, appropriate training material, examinations, forms, instructions, and procedures for use in conducting the training and checks required by this subpart.

(4) Provide enough flight instructors, check pilots, and simulator instructors to conduct required flight training and flight checks, and simulator training courses allowed under this subpart.

(b) Whenever a crewmember who is required to take recurrent training under this subpart completes the training in the calendar month before, or the calendar month after, the month in which that training is required, the crewmember is considered to have completed it in the calendar month in which it was required.

(c) Each instructor, supervisor, or check pilot who is responsible for a particular ground training subject, segment of flight training, course of training, flight check, or competence check under this subpart shall certify as to the proficiency and knowledge of the crewmember, flight instructor, or check pilot concerned upon completion of that training or check. That certification must be made a part of the crewmember's record. When the certification required by this paragraph is made by an entry in a computerized recordkeeping system, the certifying instructor, supervisor, or check pilot, shall be identified with that entry. However, the signature of the certifying instructor, supervisor, or check pilot, is not required for computerized entries.

(d) Training subjects that apply to more than one aircraft or crewmember position and that have been satisfactorily completed during previous training while employed by the program manager for another aircraft or another crewmember position, need not be repeated during subsequent training other than recurrent training.

(e) Aircraft simulators and other training devices may be used in the program manager's training program if approved by the Administrator.

(f) Each program manager shall be responsible for establishing safe and efficient crew management practices for all phases of flight in program operations including cockpit resource management training for all crew members used in program operations.

(g) If an aircraft simulator has been approved by the Administrator for use in the program manager's training program, the program manager shall ensure that each pilot annually

completes at least one flight training session in an approved simulator for at least one program aircraft. The training session may be the flight training portion of any of the pilot training or check requirements of this subpart, including the initial, transition, upgrade, requalification, differences, or recurrent training, or the accomplishment of a competency check or instrument proficiency check. If there is no approved simulator for that aircraft type in operation, then all flight training and checking must be accomplished in the aircraft.

**§ 91.1075 Training program: Special rules.**

(a) Other than the program manager, only another program manager operating under this subpart or a training center certificated under part 142 of this chapter is eligible under this subpart to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A program manager may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to conduct training, testing, and checking required by this subpart only if the training center—

(1) Holds applicable training specifications issued under part 142 of this chapter;

(2) Has facilities, training equipment, and courseware meeting the applicable requirements of part 142 of this chapter;

(3) Has approved curriculums, curriculum segments, and portions of curriculum segments applicable for use in training courses required by this subpart; and

(4) Has sufficient instructors and check pilots qualified under the applicable requirements of §§ 91.1089 through 91.1095 to conduct training, testing, and checking to persons subject to the requirements of this subpart.

**§ 91.1077 Training program and revision: Initial and final approval.**

(a) To obtain initial and final approval of a training program, or a revision to an approved training program, each program manager must submit to the Administrator—

(1) An outline of the proposed or revised curriculum, that provides enough information for a preliminary evaluation of the proposed training program or revision; and

(2) Additional relevant information that may be requested by the Administrator.

(b) If the proposed training program or revision complies with this subpart, the Administrator grants initial approval in

writing after which the program manager may conduct the training under that program. The Administrator then evaluates the effectiveness of the training program and advises the program manager of deficiencies, if any, that must be corrected.

(c) The Administrator grants final approval of the proposed training program or revision if the program manager shows that the training conducted under the initial approval in paragraph (b) of this section ensures that each person who successfully completes the training is adequately trained to perform that person's assigned duties.

(d) Whenever the Administrator finds that revisions are necessary for the continued adequacy of a training program that has been granted final approval, the program manager shall, after notification by the Administrator, make any changes in the program that are found necessary by the Administrator. Within 30 days after the program manager receives the notice, it may file a petition to reconsider the notice with the Administrator. The filing of a petition to reconsider stays the notice pending a decision by the Administrator. However, if the Administrator finds that there is an emergency that requires immediate action in the interest of safety, the Administrator may, upon a statement of the reasons, require a change effective without stay.

#### **§ 91.1079 Training program: Curriculum.**

(a) Each program manager must prepare and keep current a written training program curriculum for each type of aircraft for each crewmember required for that type aircraft. The curriculum must include ground and flight training required by this subpart.

(b) Each training program curriculum must include the following:

(1) A list of principal ground training subjects, including emergency training subjects, that are provided.

(2) A list of all the training devices, mockups, systems trainers, procedures trainers, or other training aids that the program manager will use.

(3) Detailed descriptions or pictorial displays of the approved normal, abnormal, and emergency maneuvers, procedures and functions that will be performed during each flight training phase or flight check, indicating those maneuvers, procedures and functions that are to be performed during the inflight portions of flight training and flight checks.

#### **§ 91.1081 Crewmember training requirements.**

(a) Each program manager must include in its training program the following initial and transition ground training as appropriate to the particular assignment of the crewmember:

- (1) Basic indoctrination ground training for newly hired crewmembers including instruction in at least the—
  - (i) Duties and responsibilities of crewmembers as applicable;
  - (ii) Appropriate provisions of this chapter;
  - (iii) Contents of the program manager's management specifications (not required for flight attendants); and
  - (iv) Appropriate portions of the program manager's operating manual.
- (2) The initial and transition ground training in §§ 91.1101 and 91.1105, as applicable.

(3) Emergency training in § 91.1083.

(b) Each training program shall provide the initial and transition flight training in § 91.1103, as applicable.

(c) Each training program must provide recurrent ground and flight training as provided in § 91.1107.

(d) Upgrade training in §§ 91.1101 and 91.1103 for a particular type aircraft may be included in the training program for crewmembers who have qualified and served as second in command on that aircraft.

(e) In addition to initial, transition, upgrade and recurrent training, each training program must provide ground and flight training, instruction, and practice necessary to ensure that each crewmember—

(1) Remains adequately trained and currently proficient for each aircraft, crewmember position, and type of operation in which the crewmember serves; and

(2) Qualifies in new equipment, facilities, procedures, and techniques, including modifications to aircraft.

#### **§ 91.1083 Crewmember emergency training.**

(a) Each training program shall provide emergency training under this section for each aircraft type, model, and configuration, each crewmember, and each kind of operation conducted, as appropriate for each crewmember and the program manager.

(b) Emergency training must provide the following:

(1) Instruction in emergency assignments and procedures, including coordination among crewmembers.

(2) Individual instruction in the location, function, and operation of emergency equipment including—

- (i) Equipment used in ditching and evacuation;

(ii) First aid equipment and its proper use; and

(iii) Portable fire extinguishers, with emphasis on the type of extinguisher to be used on different classes of fires.

(3) Instruction in the handling of emergency situations including—

- (i) Rapid decompression;
- (ii) Fire in flight or on the surface and smoke control procedures with emphasis on electrical equipment and related circuit breakers found in cabin areas;
- (iii) Ditching and evacuation;
- (iv) Illness, injury, or other abnormal situations involving passengers or crewmembers; and
- (v) Hijacking and other unusual situations.

(4) Review of the program manager's previous aircraft accidents and incidents involving actual emergency situations.

(c) Each crewmember must perform at least the following emergency drills, using the proper emergency equipment and procedures, unless the Administrator finds that, for a particular drill, the crewmember can be adequately trained by demonstration:

- (1) Ditching, if applicable.
- (2) Emergency evacuation.
- (3) Fire extinguishing and smoke control.
- (4) Operation and use of emergency exits, including deployment and use of evacuation chutes, if applicable.
- (5) Use of crew and passenger oxygen.
- (6) Removal of life rafts from the aircraft, inflation of the life rafts, use of life lines, and boarding of passengers and crew, if applicable.

(7) Donning and inflation of life vests and the use of other individual flotation devices, if applicable.

(d) Crewmembers who serve in operations above 25,000 feet must receive instruction in the following:

- (1) Respiration.
- (2) Hypoxia.
- (3) Duration of consciousness without supplemental oxygen at altitude.
- (4) Gas expansion.
- (5) Gas bubble formation.
- (6) Physical phenomena and incidents of decompression.

#### **§ 91.1085 Hazardous materials recognition training.**

No program manager may use any pilot to perform, and no pilot may perform, any assigned duties and responsibilities for the handling or carriage of hazardous materials (as defined in 49 CFR 171.8), unless that pilot has received training in the recognition of hazardous materials.

**§ 91.1087 Approval of aircraft simulators and other training devices.**

(a) Training courses using aircraft simulators and other training devices may be included in the program manager's training program if approved by the Administrator.

(b) Each aircraft simulator and other training device that is used in a training course or in checks required under this subpart must meet the following requirements:

(1) It must be specifically approved for—

- (i) The program manager; and
- (ii) The particular maneuver, procedure, or crewmember function involved.

(2) It must maintain the performance, functional, and other characteristics that are required for approval.

(3) Additionally, for aircraft simulators, it must be—

(i) Approved for the type aircraft and, if applicable, the particular variation within type for which the training or check is being conducted; and

(ii) Modified to conform with any modification to the aircraft being simulated that changes the performance, functional, or other characteristics required for approval.

(c) A particular aircraft simulator or other training device may be used by more than one program manager.

(d) In granting initial and final approval of training programs or revisions to them, the Administrator considers the training devices, methods, and procedures listed in the program manager's curriculum under § 91.1079.

**§ 91.1089 Qualifications: Check pilots (aircraft) and check pilots (simulator).**

(a) For the purposes of this section and § 91.1093:

(1) A check pilot (aircraft) is a person who is qualified to conduct flight checks in an aircraft, in a flight simulator, or in a flight training device for a particular type aircraft.

(2) A check pilot (simulator) is a person who is qualified to conduct flight checks, but only in a flight simulator, in a flight training device, or both, for a particular type aircraft.

(3) Check pilots (aircraft) and check pilots (simulator) are those check pilots who perform the functions described in §§ 91.1073(a)(4) and (c).

(b) No program manager may use a person, nor may any person serve as a check pilot (aircraft) in a training program established under this subpart unless, with respect to the aircraft type involved, that person—

(1) Holds the pilot certificates and ratings required to serve as a pilot in command in operations under this subpart;

(2) Has satisfactorily completed the training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1093;

(5) Holds at least a Class III medical certificate unless serving as a required crewmember, in which case holds a Class I or Class II medical certificate as appropriate; and

(6) Has been approved by the Administrator for the check pilot duties involved.

(c) No program manager may use a person, nor may any person serve as a check pilot (simulator) in a training program established under this subpart unless, with respect to the aircraft type involved, that person meets the provisions of paragraph (b) of this section, or—

(1) Holds the applicable pilot certificates and ratings, except medical certificate, required to serve as a pilot in command in operations under this subpart;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the appropriate proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1093; and

(5) Has been approved by the Administrator for the check pilot (simulator) duties involved.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) or (c)(2), (3), and (4) of this section, as applicable, shall be entered in the individual's training record maintained by the program manager.

(e) A check pilot who does not hold an appropriate medical certificate may function as a check pilot (simulator), but may not serve as a flightcrew member in operations under this subpart.

(f) A check pilot (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding

the performance of any check pilot duty in a flight simulator; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program and that shall precede the performance of any check pilot duty in a flight simulator.

(g) The flight segments or line-observation program required in paragraph (f) of this section are considered to be completed in the month required if completed in the calendar month before or the calendar month after the month in which they are due.

**§ 91.1091 Qualifications: Flight instructors (aircraft) and flight instructors (simulator).**

(a) For the purposes of this section and § 91.1095:

(1) A flight instructor (aircraft) is a person who is qualified to instruct in an aircraft, in a flight simulator, or in a flight training device for a particular type, class, or category aircraft.

(2) A flight instructor (simulator) is a person who is qualified to instruct in a flight simulator, in a flight training device, or in both, for a particular type, class, or category aircraft.

(3) Flight instructors (aircraft) and flight instructors (simulator) are those instructors who perform the functions described in § 91.1073(a)(4) and (c).

(b) No program manager may use a person, nor may any person serve as a flight instructor (aircraft) in a training program established under this subpart unless, with respect to the type, class, or category aircraft involved, that person—

(1) Holds the pilot certificates and ratings required to serve as a pilot in command in operations under this subpart or part 121 or 135;

(2) Has satisfactorily completed the training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart;

(4) Has satisfactorily completed the applicable training requirements of § 91.1095; and

(5) Holds at least a Class III medical certificate.

(c) No program manager may use a person, nor may any person serve as a flight instructor (simulator) in a training program established under this subpart, unless, with respect to the type, class, or category aircraft involved, that person meets the provisions of paragraph (b) of this section, or—

(1) Holds the pilot certificates and ratings, except medical certificate, required to serve as a pilot in command in operations under this subpart or part 121 or 135;

(2) Has satisfactorily completed the appropriate training phases for the aircraft, including recurrent training, that are required to serve as a pilot in command in operations under this subpart;

(3) Has satisfactorily completed the appropriate proficiency or competency checks that are required to serve as a pilot in command in operations under this subpart; and

(4) Has satisfactorily completed the applicable training requirements of § 91.1095.

(d) Completion of the requirements in paragraphs (b)(2), (3), and (4) or (c)(2), (3), and (4) of this section, as applicable, shall be entered in the individual's training record maintained by the program manager.

(e) A pilot who does not hold a medical certificate may function as a flight instructor in an aircraft if functioning as a non-required crewmember, but may not serve as a flightcrew member in operations under this subpart.

(f) A flight instructor (simulator) must accomplish the following—

(1) Fly at least two flight segments as a required crewmember for the type, class, or category aircraft involved within the 12-month period preceding the performance of any flight instructor duty in a flight simulator; or

(2) Satisfactorily complete an approved line-observation program within the period prescribed by that program and that must precede the performance of any check pilot duty in a flight simulator.

(g) The flight segments or line-observation program required in paragraph (f) of this section are considered completed in the month required if completed in the calendar month before, or in the calendar month after, the month in which they are due.

**§ 91.1093 Initial and transition training and checking: Check pilot (aircraft), check pilot (simulator).**

(a) No program manager may use a person nor may any person serve as a check pilot unless—

(1) That person has satisfactorily completed initial or transition check pilot training; and

(2) Within the preceding 24 calendar months, that person satisfactorily conducts a proficiency or competency check under the observation of an FAA inspector or an aircrew designated examiner employed by the program

manager. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

(b) The observation check required by paragraph (a)(2) of this section is considered to have been completed in the month required if completed in the calendar month before or the calendar month after the month in which it is due.

(c) The initial ground training for check pilots must include the following:

(1) Check pilot duties, functions, and responsibilities.

(2) The applicable provisions of the Code of Federal Regulations and the program manager's policies and procedures.

(3) The applicable methods, procedures, and techniques for conducting the required checks.

(4) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics of an applicant that could adversely affect safety.

(5) The corrective action in the case of unsatisfactory checks.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.

(d) The transition ground training for a check pilot must include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the aircraft to which the check pilot is in transition.

(e) The initial and transition flight training for a check pilot (aircraft) must include the following—

(1) The safety measures for emergency situations that are likely to develop during a check;

(2) The potential results of improper, untimely, or nonexecution of safety measures during a check;

(3) Training and practice in conducting flight checks from the left and right pilot seats in the required normal, abnormal, and emergency procedures to ensure competence to conduct the pilot flight checks required by this subpart; and

(4) The safety measures to be taken from either pilot seat for emergency situations that are likely to develop during checking.

(f) The requirements of paragraph (e) of this section may be accomplished in full or in part in flight, in a flight simulator, or in a flight training device, as appropriate.

(g) The initial and transition flight training for a check pilot (simulator) must include the following:

(1) Training and practice in conducting flight checks in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight checks required by this subpart. This training and practice must be accomplished in a flight simulator or in a flight training device.

(2) Training in the operation of flight simulators, flight training devices, or both, to ensure competence to conduct the flight checks required by this subpart.

**§ 91.1095 Initial and transition training and checking: Flight instructors (aircraft), flight instructors (simulator).**

(a) No program manager may use a person nor may any person serve as a flight instructor unless—

(1) That person has satisfactorily completed initial or transition flight instructor training; and

(2) Within the preceding 24 calendar months, that person satisfactorily conducts instruction under the observation of an FAA inspector, a program manager check pilot, or an aircrew designated examiner employed by the program manager. The observation check may be accomplished in part or in full in an aircraft, in a flight simulator, or in a flight training device.

(b) The observation check required by paragraph (a)(2) of this section is considered to have been completed in the month required if completed in the calendar month before, or the calendar month after, the month in which it is due.

(c) The initial ground training for flight instructors shall include the following:

(1) Flight instructor duties, functions, and responsibilities.

(2) The applicable Code of Federal Regulations and the program manager's policies and procedures.

(3) The applicable methods, procedures, and techniques for conducting flight instruction.

(4) Proper evaluation of student performance including the detection of—

(i) Improper and insufficient training; and

(ii) Personal characteristics of an applicant that could adversely affect safety.

(5) The corrective action in the case of unsatisfactory training progress.

(6) The approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures in the aircraft.



(7) Except for holders of a flight instructor certificate—

(i) The fundamental principles of the teaching-learning process;

(ii) Teaching methods and procedures; and

(iii) The instructor-student relationship.

(d) The transition ground training for flight instructors must include the approved methods, procedures, and limitations for performing the required normal, abnormal, and emergency procedures applicable to the type, class, or category aircraft to which the flight instructor is in transition.

(e) The initial and transition flight training for flight instructors (aircraft) must include the following—

(1) The safety measures for emergency situations that are likely to develop during instruction;

(2) The potential results of improper or untimely safety measures during instruction;

(3) Training and practice from the left and right pilot seats in the required normal, abnormal, and emergency maneuvers to ensure competence to conduct the flight instruction required by this subpart; and

(4) The safety measures to be taken from either the left or right pilot seat for emergency situations that are likely to develop during instruction.

(f) The requirements of paragraph (e) of this section may be accomplished in full or in part in flight, in a flight simulator, or in a flight training device, as appropriate.

(g) The initial and transition flight training for a flight instructor (simulator) must include the following:

(1) Training and practice in the required normal, abnormal, and emergency procedures to ensure competence to conduct the flight instruction required by this subpart. These maneuvers and procedures must be accomplished in full or in part in a flight simulator or in a flight training device.

(2) Training in the operation of flight simulators, flight training devices, or both, to ensure competence to conduct the flight instruction required by this subpart.

#### **§ 91.1097 Pilot and flight attendant crewmember training programs.**

(a) Each program manager shall establish and maintain an approved pilot training program, and each program manager who uses a flight attendant crewmember shall establish and maintain an approved flight attendant training program, that is appropriate to the operations to which each pilot and flight attendant is to be

assigned, and will ensure that they are adequately trained to meet the applicable knowledge and practical testing requirements of §§ 91.1065 through 91.1071. However, the Administrator may authorize a deviation from this section if the Administrator finds that, because of the limited size and scope of the operation, safety will allow a deviation from these requirements.

(b) Each program manager required to have a training program by paragraph (a) of this section shall include in that program ground and flight training curriculums for—

(1) Initial training;

(2) Transition training;

(3) Upgrade training;

(4) Differences training;

(5) Recurrent training; and

(6) Requalification training.

(c) Each program manager required to have a training program by paragraph (a) of this section shall provide current and appropriate study materials for use by each required pilot and flight attendant.

(d) The program manager shall furnish copies of the pilot and flight attendant crewmember training program, and all changes and additions, to the assigned representative of the Administrator. If the program manager uses training facilities of other persons, a copy of those training programs or appropriate portions used for those facilities shall also be furnished. Curricula that follow FAA published curricula may be cited by reference in the copy of the training program furnished to the representative of the Administrator and need not be furnished with the program.

#### **§ 91.1099 Crewmember initial and recurrent training requirements.**

No program manager may use a person, nor may any person serve, as a crewmember in operations under this subpart unless that crewmember has completed the appropriate initial or recurrent training phase of the training program appropriate to the type of operation in which the crewmember is to serve since the beginning of the 12th calendar month before that service.

#### **§ 91.1101 Pilots: Initial, transition, and upgrade ground training.**

Initial, transition, and upgrade ground training for pilots must include instruction in at least the following, as applicable to their duties:

(a) General subjects—

(1) The program manager's flight locating procedures;

(2) Principles and methods for determining weight and balance, and runway limitations for takeoff and landing;

(3) Enough meteorology to ensure a practical knowledge of weather phenomena, including the principles of frontal systems, icing, fog, thunderstorms, windshear and, if appropriate, high altitude weather situations;

(4) Air traffic control systems, procedures, and phraseology;

(5) Navigation and the use of navigational aids, including instrument approach procedures;

(6) Normal and emergency communication procedures;

(7) Visual cues before and during descent below DH or MDA; and

(8) Other instructions necessary to ensure the pilot's competence.

(b) For each aircraft type—

(1) A general description;

(2) Performance characteristics;

(3) Engines and propellers;

(4) Major components;

(5) Major aircraft systems (i.e., flight controls, electrical, and hydraulic), other systems, as appropriate, principles of normal, abnormal, and emergency operations, appropriate procedures and limitations;

(6) Knowledge and procedures for—

(i) Recognizing and avoiding severe weather situations;

(ii) Escaping from severe weather situations, in case of inadvertent encounters, including low-altitude windshear (except that rotorcraft pilots are not required to be trained in escaping from low-altitude windshear);

(iii) Operating in or near thunderstorms (including best penetration altitudes), turbulent air (including clear air turbulence), inflight icing, hail, and other potentially hazardous meteorological conditions; and

(iv) Operating airplanes during ground icing conditions, (i.e., any time conditions are such that frost, ice, or snow may reasonably be expected to adhere to the aircraft), if the program manager expects to authorize takeoffs in ground icing conditions, including:

(A) The use of holdover times when using deicing/anti-icing fluids;

(B) Airplane deicing/anti-icing procedures, including inspection and check procedures and responsibilities;

(C) Communications;

(D) Airplane surface contamination (i.e., adherence of frost, ice, or snow) and critical area identification, and knowledge of how contamination adversely affects airplane performance and flight characteristics;

(E) Types and characteristics of deicing/anti-icing fluids, if used by the program manager;

(F) Cold weather preflight inspection procedures;

- (G) Techniques for recognizing contamination on the airplane;
- (7) Operating limitations;
- (8) Fuel consumption and cruise control;
- (9) Flight planning;
- (10) Each normal and emergency procedure; and
- (11) The approved manual.

**§ 91.1103 Pilots: Initial, transition, upgrade, requalification, and differences flight training.**

(a) Initial, transition, upgrade, requalification, and differences training for pilots must include flight and practice in each of the maneuvers and procedures contained in each of the curriculums which are a part of the approved training program.

(b) The maneuvers and procedures required by paragraph (a) of this section must be performed in flight, except to the extent that certain maneuvers and procedures may be performed in an aircraft simulator, or an appropriate training device, as allowed by this subpart.

(c) If the program manager's approved training program includes a course of training using an aircraft simulator or other training device, each pilot must successfully complete—

(1) Training and practice in the simulator or training device in at least the maneuvers and procedures in this subpart that are capable of being performed in the aircraft simulator or training device; and

(2) A flight check in the aircraft or a check in the simulator or training device to the level of proficiency of a pilot in command or second in command, as applicable, in at least the maneuvers and procedures that are capable of being performed in an aircraft simulator or training device.

**§ 91.1105 Flight attendants: Initial and transition ground training.**

Initial and transition ground training for flight attendants must include instruction in at least the following—

(a) General subjects—

(1) The authority of the pilot in command; and

(2) Passenger handling, including procedures to be followed in handling deranged persons or other persons whose conduct might jeopardize safety.

(b) For each aircraft type—

(1) A general description of the aircraft emphasizing physical characteristics that may have a bearing on ditching, evacuation, and inflight emergency procedures and on other related duties;

(2) The use of both the public address system and the means of

communicating with other flight crewmembers, including emergency means in the case of attempted hijacking or other unusual situations; and

(3) Proper use of electrical galley equipment and the controls for cabin heat and ventilation.

**§ 91.1107 Recurrent training.**

(a) Each program manager must ensure that each crewmember receives recurrent training and is adequately trained and currently proficient for the type aircraft and crewmember position involved.

(b) Recurrent ground training for crewmembers must include at least the following:

(1) A quiz or other review to determine the crewmember's knowledge of the aircraft and crewmember position involved.

(2) Instruction as necessary in the subjects required for initial ground training by this subpart, as appropriate, including low-altitude windshear training and training on operating during ground icing conditions, as prescribed in § 91.1097 and described in § 91.1101, and emergency training.

(c) Recurrent flight training for pilots must include, at least, flight training in the maneuvers or procedures in this subpart, except that satisfactory completion of the check required by § 91.1065 within the preceding 12 calendar months may be substituted for recurrent flight training.

**§ 91.1109 Aircraft maintenance: Inspection program.**

Each operator or program manager of a program aircraft must establish an aircraft inspection program and ensure the aircraft is inspected in accordance with that inspection program.

(a) The inspection program must be in writing and include at least the following information:

(1) Instructions and procedures for the conduct of inspections for the particular make and model aircraft, including necessary tests and checks. The instructions and procedures must set forth in detail the parts and areas of the airframe, engines, propellers, rotors, and appliances, including survival and emergency equipment required to be inspected.

(2) A schedule for performing the inspections that must be performed under the inspection program expressed in terms of the time in service, calendar time, number of system operations, or any combination thereof.

(3) The name and address of the person responsible for scheduling the inspections required by the inspection program. A copy of the inspection

program must be made available to the person performing inspections on the aircraft and, upon request, to the Administrator.

(b) Each person desiring to establish or change an approved inspection program under this section must submit the inspection program for approval to the local FAA Flight Standards district office having jurisdiction over the area in which the aircraft is based. The inspection program must be derived from one of the following programs:

(1) An inspection program currently recommended by the manufacturer of the aircraft, aircraft engines, propellers, appliances, and survival and emergency equipment;

(2) An inspection program that is part of a continuous airworthiness maintenance program currently in use by a person holding an air carrier or operating certificate issued under part 119 of this chapter and operating that make and model aircraft under part 121 or 135 of this chapter;

(3) An aircraft inspection program approved under § 135.419 of this chapter and currently in use under part 135 of this chapter by a person holding a certificate issued under part 119 of this chapter; or

(4) An aircraft inspection program approved under § 125.247 of this chapter and currently in use under part 125 of this chapter by a person holding a certificate issued under part 125 of this chapter.

(c) The Administrator may require revision of the inspection program approved under this section in accordance with the provisions of § 91.415.

**§ 91.1111 Maintenance training.**

The program manager shall ensure that all personnel who are employed by the program manager or fractional owner and responsible for maintenance related to program aircraft undergo appropriate initial and annual recurrent training and are competent to perform those duties.

**§ 91.1113 Maintenance recordkeeping.**

Each fractional ownership program manager shall keep (using the system specified in the manual required in § 91.1025) the records specified in § 91.417(a) for the periods specified in § 91.417(b).

**§ 91.1115 Minimum equipment lists and letters of authorization.**

Any Minimum Equipment Lists, Letters of Authorization, Dispatch Deviation Guides, Deferred Discrepancy Lists or any other approvals covering the program aircraft will be issued to,

and in the sole name of, the program manager on behalf of the fractional owners collectively. No Minimum Equipment Lists, Letters of Authorization, Dispatch Deviation Guides, and Deferred Discrepancy Lists shall be affected by any change in ownership of a program aircraft, as long as the aircraft remains a program aircraft in the program identified on the respective approval.

#### **PART 119—CERTIFICATION: AIR CARRIERS AND COMMERCIAL OPERATORS**

11. The authority citation for part 119 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 1153, 40101, 40102, 40103, 40113, 44105, 44106, 44111, 44701–44717, 44722, 44901, 44903, 44904, 44906, 44912, 44914, 44936, 44938, 46103, 46105.

##### **Subpart A—General**

12. Amend § 119.1 by revising paragraph (d) to read as follows:

##### **§ 119.1 Applicability.**

\* \* \* \* \*

(d) This part does not govern operations conducted under part 91, subpart K (when common carriage is not involved) nor does it govern operations conducted under part 129, 133, 137, or 139 of this chapter.

\* \* \* \* \*

#### **PART 125—CERTIFICATION AND OPERATIONS: AIRPLANES HAVING A SEATING CAPACITY OF 20 OR MORE PASSENGERS OR A MAXIMUM PAYLOAD CAPACITY OF 6,000 POUNDS OR MORE**

13. The authority citation for part 125 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 44701–44702, 44705, 44710–44711, 44713, 44716–44717, 44722.

##### **Subpart A—General**

14. Amend § 125.1 by revising paragraphs (b)(4) and (5) and by adding paragraphs (b)(6) and (b)(7) as follows:

##### **§ 125.1 Applicability.**

\* \* \* \* \*

(b) \* \* \*

(4) They are being operated under part 91 by an operator certificated to operate those airplanes under the rules of parts 121, 135, or 137 of this chapter, they are being operated under the applicable rules of part 121 or part 135 of this chapter by an applicant for a certificate under part 119 of this chapter or they are being operated by a foreign air carrier or a foreign person engaged in

common carriage solely outside the United States under part 91 of this chapter;

(5) They are being operated under a deviation authority issued under § 125.3 of this chapter;

(6) They are being operated under part 91, subpart K by a fractional owner as defined in § 91.1001; or

(7) They are being operated by a fractional ownership program manager as defined in § 91.1001, for training, ferrying, positioning, maintenance, or demonstration purposes under part 91 and without carrying passengers or cargo for compensation or hire except as permitted for demonstration flights under § 91.501(b)(3).

\* \* \* \* \*

#### **PART 135—OPERATING REQUIREMENTS: COMMUTER AND ON-DEMAND OPERATIONS**

15. The authority citation for part 135 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 44113, 44701–44702, 44705, 44709, 44711–44713, 44715–44717, 44722.

##### **Subpart A—General**

16. Amend § 135.1 by adding paragraph (b) to read as follows:

##### **§ 135.1 Applicability.**

\* \* \* \* \*

(b) For the purpose of §§ 135.23, 135.225 and 135.385, eligible on-demand operator means an on-demand operator that meets the flight crew experience, pilot operating limitations and pairing requirements of §§ 91.1053 and 91.1055.

17. Amend § 135.21 by revising paragraphs (f) and (g) and adding paragraph (h) to read as follows:

##### **§ 135.21 Manual requirements.**

\* \* \* \* \*

(f) Except as provided in paragraph (h) of this section, each certificate holder shall carry appropriate parts of the manual on each aircraft when away from the principal operations base. The appropriate parts must be available for use by ground or flight personnel.

(g) For the purpose of complying with paragraph (d) of this section, a certificate holder may furnish the persons listed therein with all or part of its manual in printed form or other form, acceptable to the Administrator, that is retrievable in the English language. If the certificate holder furnishes all or part of the manual in other than printed form, it shall ensure there is a compatible reading device available to those persons that provides a legible image of the information and

instructions, or a system that is able to retrieve the information and instructions in the English language.

(h) If a certificate holder conducts aircraft inspections or maintenance at specified stations where it keeps the approved inspection program manual, it is not required to carry the manual aboard the aircraft en route to those stations.

18. Amend § 135.23 by revising paragraph (r) and adding paragraph (s) to read as follows:

##### **§ 135.23 Manual contents.**

\* \* \* \* \*

(r) If required by § 135.385, an approved Destination Airport Analysis establishing procedures for establishing runway safety margins at destination airports, taking into account the following factors as supported by published aircraft performance data supplied by the aircraft manufacturer for the appropriate runway conditions—

(1) Pilot qualifications and experience;

(2) Aircraft performance data to include normal, abnormal and emergency procedures as supplied by the aircraft manufacturer;

(3) Airport facilities and topography;

(4) Runway conditions (including contamination);

(5) Airport or area weather reporting;

(6) Appropriate additional runway safety margins, if required; and

(7) Other criteria affecting aircraft performance.

(s) Other procedures and policy instructions regarding the certificate holder's operations issued by the certificate holder.

##### **Subpart C—Aircraft and Equipment**

19. Revise § 135.145 to read as follows:

##### **§ 135.145 Aircraft proving tests.**

(a) No certificate holder may operate an aircraft for which two pilots are required by this chapter for operations under VFR, if it has not previously proved such an aircraft in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(b) No certificate holder may operate a turbojet airplane if it has not previously proved the same or another

turbojet airplane in operations under this part in at least 25 hours of proving tests acceptable to the Administrator including—

(1) Five hours of night time, if night flights are to be authorized;

(2) Five instrument approach procedures under simulated or actual conditions, if IFR flights are to be authorized; and

(3) Entry into a representative number of enroute airports as determined by the Administrator.

(c) The Administrator may authorize deviations from this section if the Administrator finds that special circumstances make full compliance with this section unnecessary.

20. Amend § 135.167 by revising paragraph (a) introductory text and adding paragraph (d) to read as follows:

**§ 135.167 Emergency equipment: Extended overwater operations.**

(a) Except as provided in paragraph (d) of this section, no person may operate an aircraft in extended overwater operations unless it carries, installed in conspicuously marked locations easily accessible to the occupants if a ditching occurs, the following equipment:

\* \* \* \* \*

(d) For a pressurized turbine-powered aircraft operating at an altitude greater than 25,000 feet, a person may elect not to comply with the equipment requirements in § 135.167(a)(2), (b) and (c) of this part provided that the flight does not proceed more than 30 minutes flying time or 100 nautical miles from the nearest shore, whichever is greater.

**Subpart D—VFR/IFR Operating Limitations and Weather Requirements**

21. Amend § 135.225 by revising paragraph (a) introductory text, redesignating paragraphs (b) through (h) as paragraphs (c) through (i), adding new paragraph (b), and revising redesignated paragraphs (d) and (h) to read as follows:

**§ 135.225 IFR: Takeoff, approach and landing minimums.**

(a) Except to the extent permitted by paragraph (b) of this section, no pilot may begin an instrument approach procedure to an airport unless—

\* \* \* \* \*

(b) A pilot employed by an eligible on-demand operator may begin an instrument approach procedure to an airport if—

(1) Either that airport or the alternate airport has a weather reporting facility operated by the U.S. National Weather Service, a source approved by the U.S.

National Weather Service, or a source approved by the Administrator; and

(2) The latest weather report issued by the weather reporting facility includes a current local altimeter setting for the destination airport. If no local altimeter setting for the destination airport is available, the pilot may use the current altimeter setting provided by the facility designated on the approach chart for the destination airport.

(3) For flight planning purposes, if the destination airport does not have a weather reporting facility described in paragraph (b)(1) of this section, the pilot must designate as an alternate an airport that has a weather reporting facility meeting that criteria.

\* \* \* \* \*

(d) If a pilot has begun the final approach segment of an instrument approach to an airport under paragraph (c) of this section and a later weather report indicating below minimum conditions is received after the aircraft is—

\* \* \* \* \*

(h) Except as provided in paragraph (i) of this section, if takeoff minimums are not prescribed in part 97 of this chapter for the takeoff airport, no pilot may takeoff an aircraft under IFR when the weather conditions reported by the facility described in paragraph (a)(1) of this section are less than that prescribed in part 91 of this chapter or in the certificate holder's operations specifications.

\* \* \* \* \*

**Subpart E—Flight Crewmember Requirements**

22. Amend § 135.247 by adding paragraph (a)(3) to read as follows:

**§ 135.247 Pilot qualifications: Recent experience.**

(a) \* \* \*

(3) Paragraph (a)(2) of this section does not apply to a pilot in command of a turbine-powered airplane that requires more than one pilot crewmember, provided that pilot has complied with the requirements of paragraph (a)(3)(i) or (ii) of this section:

(i) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent

flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) That pilot has accomplished and logged at least 3 takeoffs and 3 landings to a full stop, as the sole manipulator of the flight controls, in a turbine-powered airplane that requires more than one pilot crewmember. The pilot must have performed the takeoffs and landings during the period beginning 1 hour after sunset and ending 1 hour before sunrise within the preceding 6 calendar months prior to the month of the flight.

(ii) The pilot in command must hold at least a commercial pilot certificate with the appropriate category, class, and type rating for each airplane that pilot seeks to operate under this alternative, and:

(A) That pilot must have logged at least 1,500 hours of aeronautical experience as a pilot;

(B) In each airplane the pilot seeks to operate under this alternative, that pilot must have accomplished and logged the daytime takeoff and landing recent flight experience of paragraph (a) of this section, as the sole manipulator of the flight controls;

(C) Within the preceding 90 days prior to the operation of that airplane, the pilot must have accomplished and logged at least 15 hours of flight time in the type of airplane that the pilot seeks to operate under this alternative; and

(D) Within the preceding 12 calendar months prior to the month of the flight, the pilot must have completed a training program that is approved under part 142 of this chapter. The approved training program must have required and the pilot must have performed, at least 6 takeoffs and 6 landings to a full stop as the sole manipulator of the controls in a flight simulator that is representative of a turbine-powered airplane that requires more than one pilot crewmember. The flight simulator's visual system must have been adjusted to represent the period beginning 1 hour after sunset and ending 1 hour before sunrise.

23. Amend § 135.251 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

**§ 135.251 Testing for prohibited drugs.**

\* \* \* \* \*

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator may use any contractor to perform a function listed in appendix I

to part 121 of this chapter unless that contractor tests each employee performing such a function for the certificate holder or operator in accordance with that appendix.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of appendix I to part 121 and emergency maintenance is required, the certificate holder may use persons not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance. A certificate holder shall give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM-800, 800 Independence Avenue, Washington, DC, 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder shall retain copies of all such written notifications for two years.

(d) For purposes of this section, emergency maintenance means maintenance which—

- (1) Is not scheduled and
- (2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

24. Amend § 135.255 by revising paragraph (b) and adding paragraphs (c) and (d) to read as follows:

**§ 135.255 Testing for alcohol.**

\* \* \* \* \*

(b) Except as provided in paragraph (c) of this section, no certificate holder or operator shall use any person who meets the definition of “covered employee” in appendix J to part 121 to perform a safety-sensitive function listed in that appendix unless such person is subject to testing for alcohol misuse in accordance with the provisions of appendix J.

(c) If a certificate holder conducts an on-demand operation into an airport at which no maintenance providers are available that are subject to the requirements of appendix J to part 121 and emergency maintenance is required, the certificate holder may use persons not meeting the requirements of paragraph (b) of this section to provide such emergency maintenance. A certificate holder shall give written notification of the emergency maintenance to the Drug Abatement Program Division, AAM-800, 800 Independence Avenue, Washington, DC, 20591, within 10 days after being provided same in accordance with this paragraph. A certificate holder shall retain copies of all such written notifications for two years.

(d) For purposes of this section, emergency maintenance means maintenance which—

- (1) Is not scheduled, and
- (2) Is made necessary by an aircraft condition not discovered prior to the departure for that location.

**Subpart G—Crewmember Testing Requirements**

25. Revise § 135.291 paragraph (b) to read as follows:

\* \* \* \* \*

(b) Permits training center personnel authorized under part 142 of this chapter who meet the requirements of sections 135.337 and 135.339 to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

**Subpart H—Training**

26. Amend § 135.321 by revising paragraph (b)(7) to read as follows:

**§ 135.321 Applicability and terms used.**

\* \* \* \* \*

(b) \* \* \*

(7) *Training center.* An organization governed by the applicable requirements of part 142 of this chapter that conducts training, testing, and checking under contract or other arrangement to certificate holders subject to the requirements of this part.

\* \* \* \* \*

27. Amend § 135.324 by revising paragraphs (a) and (b) introductory to read as follows:

**§ 135.324 Training program: Special rules.**

(a) Other than the certificate holder, only another certificate holder certificated under this part or a training center certificated under part 142 of this chapter is eligible under this subpart to conduct training, testing, and checking under contract or other arrangement to those persons subject to the requirements of this subpart.

(b) A certificate holder may contract with, or otherwise arrange to use the services of, a training center certificated under part 142 of this chapter to conduct training, testing, and checking required by this part only if the training center—

\* \* \* \* \*

**Subpart I—Airplane Performance Operating Limitations**

28. Amend § 135.385 by revising paragraph (b) and adding paragraphs (f) and (g) to read as follows:

**§ 135.385 Large transport category airplanes: Turbine engine powered: Landing limitations: Destination airports.**

\* \* \* \* \*

(b) Except as provided in paragraph (c), (d), (e), (f), or (g) of this section, no person operating a turbine engine powered large transport category airplane may take off that airplane unless its weight on arrival, allowing for normal consumption of fuel and oil in flight (in accordance with the landing distance in the Airplane Flight Manual for the elevation of the destination airport and the wind conditions anticipated there at the time of landing), would allow a full stop landing at the intended destination airport within 60 percent of the effective length of each runway described below from a point 50 feet above the intersection of the obstruction clearance plane and the runway. For the purpose of determining the allowable landing weight at the destination airport the following is assumed:

\* \* \* \* \*

(f) Eligible on-demand operators flying a turbine engine powered large transport category airplane on an on-demand flight may not take off that airplane unless, on arrival at its destination or alternate airport, the airplane is able to come to a full stop landing within 85 percent of the effective length of the runway, from a point 50 feet above the intersection of the obstruction plane and the runway, considering the runway elevation, airplane weight, ambient temperature and wind conditions anticipated upon arrival at that airport. The computation of landing weight and stopping distance must be done in accordance with the Airplane Flight Manual for that airplane, assuming:

(1) The airplane is landed on the most favorable runway and in the most favorable direction, in still air.

(2) The airplane is landed on the most suitable runway considering the probable wind velocity and direction and the ground handling characteristics of the airplane, and considering other conditions such as landing aids and terrain.

(g) Eligible on-demand operators flying a turbine engine powered large transport category airplane on an on-demand flight may take off that airplane at a weight in excess of that allowed by the runway margin in paragraph (f) of this section if such operation is permitted by an approved Destination Airport Analysis in that person's operations manual and an alternate airport meeting the criteria of § 135.387(b) is selected.

29. Revise § 135.387 to read as follows:

**§ 135.387 Large transport category airplanes: Turbine engine powered: Landing limitations: Alternate airports.**

(a) No person may select an airport as an alternate airport for a turbine engine powered large transport category airplane unless (based on the assumptions in § 135.385(b)) that airplane, at the weight anticipated at the time of arrival, can be brought to a full stop landing within 70 percent of the effective length of the runway for turbo-propeller-powered airplanes and 60 percent of the effective length of the runway for turbojet airplanes, from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

(b) Eligible on-demand operators may select an airport as an alternate airport for a turbine engine powered large transport category airplane if (based on the assumptions in § 135.385(f)) that airplane, at the weight anticipated at the time of arrival, can be brought to a full

stop landing within 85 percent of the effective length of the runway from a point 50 feet above the intersection of the obstruction clearance plane and the runway.

**PART 142—TRAINING CENTERS**

The authority citation for part 142 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40113, 40119, 44101, 44701–44703, 44705, 44707, 44709–44711, 45102–45103, 45301–45302.

**Subpart A—General**

30. Amend § 142.1 by revising paragraph (a), republishing paragraph (b) introductory text, revising paragraphs (b)(1), (b)(4) and (b)(5) and adding paragraph (b)(6) set forth below, and by removing paragraph (c):

**§ 142.1 Applicability.**

(a) This subpart prescribes the requirements governing the certification and operation of aviation training centers. Except as provided in paragraph (b) of this section, this part

provides an alternative means to accomplish training required by parts 61, 63, 91, 121, 125, 127, 135, or 137 of this chapter.

(b) Certification under this part is not required for training that is—

(1) Approved under the provisions of parts 63, 91, 121, 127, 135, and 137;

\* \* \* \* \*

(4) Conducted by a part 121 certificate holder for another part 121 certificate holder;

(5) Conducted by a part 135 certificate holder for another part 135 certificate holder; or

(6) Conducted by a part 91 fractional ownership program manager for another part 91 fractional ownership program manager.

Issued in Washington, DC, on June 28, 2001.

**Nicholas A. Sabatini,**

*Director, Office of Flight Standards.*

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