

FRACTIONAL OWNERSHIP AVIATION RULEMAKING COMMITTEE
WASHINGTON, DC

February 23, 2000

The Honorable Jane F. Garvey, Administrator
Mr. Thomas E. McSweeney, Associate Administrator for Regulation and Certification
Federal Aviation Administration
800 Independence Avenue, SW
Washington, DC 20591

Dear Administrator Garvey and Associate Administrator McSweeney,

On behalf of the Fractional Ownership Aviation Rulemaking Committee, I am pleased to submit the enclosed recommended proposal of the Committee in the form of a draft *Notice of Proposed Rulemaking*.

As you know, the Federal Aviation Administration created the Fractional Ownership Aviation Rulemaking Committee ("FOARC") through an order dated October 6, 1999. The objective of the FOARC 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 supported by counsel and experts. The 27 Committee members directly represented at least nine part 135 operators, seven fractional ownership program managers, four airframe manufacturers, three traditional part 91 corporate flight departments, nine traditional aircraft management companies, and five industry trade associations who, in turn, represent thousands of constituents, both large and small. There were also representatives of FAA, DOT, and financing and insurance companies. Representatives of the Civil Aviation Authority – United Kingdom and Transport Canada participated in the Committee's activities, but recused themselves from the decision making process. Expert legal representatives, many of whom have substantial experience with FAA regulations, supported many Committee members.

The Committee participated in three meeting sessions of three days each, totaling nine meeting days in November and December 1999. In addition, a meeting was held on January 20, 2000 to review the final draft and to finish the report. These sessions were intense, educational and productive. During these sessions, we agreed as a Committee that our overarching goal was that a consensus solution be developed regarding the appropriate regulatory environment for fractional ownership programs. During the second meeting session, two days were set aside for public hearings. Three public presentations were made. In addition, three letters were received from members of the public. The Committee believes that the low participation of the public in part reflected the fact that virtually all positions were represented strongly on the Committee.

Fractional ownership has generated significant interest within the aviation community. As these programs have experienced rapid growth, strong polarization of various constituencies has resulted. The dispute has centered on whether fractional ownership programs should be regulated under part 91 or part 135 of the Federal Aviation Regulations. Although there were differences of opinion around the table, all parties agreed that any changes should continue to ensure high levels of safety as fractional ownership programs expand and new entrants join the field. It should be noted that an analysis of 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 among the safest in aviation. The Committee reached consensus that fractional ownership program operations should continue to be regulated under part 91. Nevertheless, in part to ensure that the

managers of these programs maintain appropriate safety standards and are directly subject to FAA oversight and enforcement, the Committee recommends that a new subpart be added to part 91 especially to regulate fractional ownership programs.

Specifically, the Committee's recommendations include a proposed new subpart K to part 91 designed for fractional ownership programs as defined by this subpart, and reflecting the actual current practices of the leading fractional ownership program managers. It incorporates extremely safe management standards. It also includes issuance of "Management Specifications" to fractional ownership program managers. These management specifications either codify the "best practices" of corporate operators or are modeled after part 135 or part 121 Operations Specifications. It is the Committee's recommendation that procedures be used by the FAA which ensure that fractional ownership program managers are subject to FAA oversight and surveillance equal to that experienced by part 135 or part 121 operators. For instance, program approvals (such as MELs, RVSM, manual reviews and maintenance programs) should be conducted through a process similar to part 135 or part 121 processes and procedures, as appropriate.

The Committee's recommendations further include revisions to part 135 based upon technological improvements and the operational experience of fractional ownership programs and other business aircraft operators. These changes should serve as an alternate means of compliance for certain existing provisions of part 135 for operators meeting qualifying criteria. It was recommended by the Committee that since fractional ownership program and part 135 charter flights often use the same aircraft types piloted by similarly qualified crews flying to the same locations, many of the same safe operating standards should be available to both. Consequently, the Committee recommends parallel regulatory standards for fractional ownership program managers under part 91, subpart K, and certain existing part 135 provisions for part 135 operators meeting specified qualifying criteria. The Committee believes that these recommendations will provide for continued safety of fractional ownership programs and needed modernization of part 135 to reflect improvements in technology and the ability to operate safely using alternative means that have been proven to provide equivalent or improved levels of safety.

It is important to note that the Committee specifically does not intend its recommendations to influence or affect the regulation of any other part 91 operations besides fractional ownership programs. The Committee also notes that these recommendations address only safety-related regulatory issues and not any economic regulatory matters properly within the purview of the United States Department of Transportation. Nevertheless, it is the recommendation of the Committee that the Department of Transportation not take any actions that are inconsistent with the recommendations of this Committee.

The Committee recommends that the FAA work closely with the affected parties in implementing the proposed changes to parts 91 and 135. This includes active oversight, the development of guidance and policy documents, and appropriate efforts by the FAA's field offices, to both (a) assist existing and future fractional ownership program managers and part 135 operators in meeting respectively the requirements of part 91, subpart K, and the revised provisions of part 135 and, (b) provide the requisite oversight of compliance and enforcement.

The Committee stands ready to assist in the implementation of these recommendations, including the development of materials in support of the new regulations. To accelerate this process, the Committee recommends that the FAA establish a national point of contact for operational and airworthiness issues to ensure standardization of the implementation process and policy application.

The creation of part 91, subpart K and the amending of part 135 successfully resolves all major safety issues of all constituents:

1. It provides the FAA with a regulatory solution that clearly defines operational control responsibilities, reinforces the responsibility of fractional owners for compliance with all applicable FARs, imposes safety regulatory requirements directly on the program manager, and subjects program managers to FAA oversight and enforcement. It also creates an effective compliance vehicle through the “Management Specifications” that will be issued to each approved fractional ownership program manager.
2. It continues the past FAA practice of permitting fractional ownership program operations under part 91, which is justified by the excellent safety record of this segment of business aviation and is very important to fractional owners and fractional ownership program managers because of the flexibility and efficiency part 91 provides.
3. It modernizes certain provisions of part 135, permitting the use of an alternate means of compliance reflecting improvements in technology and the extensive operational experience of fractional ownership programs and other business aircraft operators, which have demonstrated that these means provide for an equivalent or improved level of safety.
4. It should prove to be relatively simple to implement, with minimum economic impact, because it utilizes the “practice to rule” concept whereby currently accepted industry practices are the foundation for much of the new regulation.
5. It does not affect traditional part 91 flight departments, including conventional business, corporate and management company flight activities, which have a longstanding and excellent safety record.

These recommendations are the result of a tremendous amount of thought and thousands of hours of work, contributed by a number of knowledgeable members of the general aviation community. Committee members’ organizations have spent thousands of dollars on legal representation and consultants to assist in the creation, review and documentary support of the proposed part 91, subpart K, and modifications to part 135. The recommendations also are the result of the development of a significant amount of trust and respect within the Committee and between the Committee and the FAA on this issue. Without the development of this level of trust, the Committee would never have been able to achieve such promising results. We are convinced that this Committee represented the most evenhanded approach possible, with full participation by all members, and produced a process that was fair to all constituents. Consequently, the Committee believes this is an excellent model for cooperative industry-government development of FAA regulations on complex or contentious subjects.

This proposed rulemaking package and the recommendations in this letter are presented as an integrated whole representing the unanimous agreement of the Committee. The Committee has developed the proposed rulemaking package to include changes to part 91 as it applies to fractional ownership and conforming changes to parts 119, 125, and 135. While we understand that some wording changes may result from FAA’s review, deletion or alteration of any of the proposed concepts contained in the document is inconsistent with the Committee’s intentions and would result in a loss of the Committee’s unanimous agreement, which all members of the Committee have worked so hard to build. It is imperative that the FAA utilize this work product in the manner that the Committee envisioned, which is to create a regulatory environment that reflects the needs of the public, the industry, and the users of affected aviation activities. Positive, timely action on this proposal on the part of the FAA and the dedication of the necessary FAA resources to this project also will justify the industry’s substantial expenditure of its resources in the work of this Committee.

Because these recommendations represent unanimous agreement, the Committee requests that the document be redistributed to the Committee for final review prior to its publication as a *Notice of Proposed Rulemaking*, and that that the Committee have the ability to reconvene to consider any changes proposed by FAA prior to issuance of the *Notice*. We strongly request that, in order to

maintain the positive momentum established by the FOARC, FAA complete its review and provide feedback to the Committee by the end of March, 2000. The required economic analysis cannot proceed until the recommendation is finalized. Finally, the Committee offers to reconvene after the NPRM comment period to provide the FAA with advice on any matter on which the FAA seeks the Committee's advice as the agency reviews the comments received from the public.

I am available at your convenience to discuss the details of the Committee proceedings and our recommendation.

Sincerely,

James C. Christiansen
Chairman, for the Committee:

David Harrington – Airbus Industries
Gary Arber – Alpha Flying
Michael Pittard – Aviation Charter Services
Thomas Ciotti – Aviation Resource
Management
Lee D. Monson – Boeing
Dennis Keith – Bombardier Business Jet
Solutions
Frederick Gevalt, III – The Air Charter Guide
William Yek – DaimlerChrysler Aviation
Paul Stinebring – Emerson Electric
Richard G. Smith, III – Executive Jet Aviation
Edward Kammerer – Fleet Capital Leasing
Darnell Martens – Flight Options
Ed Bolen – General Aviation Manufacturers
Association (“GAMA”)
W. W. Boisture, Jr. – Gulfstream
Joseph Corrao – Helicopter Association
International
Marc Fruchter – Marc Fruchter Aviation
Andrew Cebula – National Air Transportation
Association (“NATA”)
John W. Olcott – National Business Aviation
Association (“NBAA”)
James C. Christiansen – TAG Aviation USA,
Inc.
Donald Baldwin – Texaco
Gary Hart – Raytheon TravelAir

Timothy McSwain – U. S. Aviation
Underwriters Group
Government Participants
Geoff Parker – British Civil Aviation
Authority
Patricia Thomas – Department of
Transportation
Dayton Lehman – Department of
Transportation
Katherine Perfetti – Federal Aviation
Administration
Trevor Owen – Transport Canada