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FINAL RULES FOR FRACTIONAL OWNERSHIP

Today, the FAA issued its final rules governing fractional ownership of aircraft. 68 Fed. Reg. 54520. The rulemaking began in July 2001, following nearly two years of work by the Fractional Ownership Aviation Rulemaking Committee. *See, Aviation Advisor Special Edition* (July 18, 2001).

The rules largely are set forth in a new Subpart K added to 14 C.F.R. Part 91, the regulatory regime for general aviation. The core of the rule is the recognition that if a fractional ownership program meets the definition in the rule, and operates in accordance with the rule, it need not comply with the requirements of Parts 121 or 135, the regulatory regime for air carrier operations. If a program does not meet these requirements, it will not enjoy the safe harbor of Subpart K. The FAA “recommends” that programs not meeting these requirements “discontinue the use of the term ‘fractional ownership’ to avoid confusion.”

The FAA makes it clear that Subpart K does not apply to the traditional types of business aviation operations conducted under Subpart F, *i.e.* .time

sharing, interchanges, and joint ownership.¹ The FAA also makes it clear that the minimum 1/16 fractional ownership share is inviolate and cannot be circumvented by leases or other devices. Part 91.1005(c).

Effect of the Rules

The rules should have relatively little impact on existing fractional ownership programs. Although programs that begin operating before October 17, 2003 do not have to comply with the rule until December 17, 2004, most existing programs substantially comply today.

The major effect of the rule is to address, and eliminate, any question with respect to the legality of fractional ownership programs, the private carriage vs. common carriage issue. That is a significant accomplishment

given the fact that the FAA estimates that there were more than 650 aircraft in fractional ownership programs by the end of 2001.

Although there are substantial similarities in the operating requirements imposed by the new Subpart K and Part 135, important distinctions remain. A Part 135 on-demand charter operator can hold out its services to the public. A fractional ownership program cannot do so. On the other hand, while an on-demand charter operator and its passengers are subject to the full panoply of federal excise taxes and fees on air transportation, the exposure of a fractional ownership operator in that regard is more limited.² Finally, a fractional program operator, unlike an on-demand charter operator, need not be a citizen of the United States.

¹ A fractional ownership program differs from these other types of operations primarily in the fact that the fractional owner has access to program aircraft in which he or she does not have an ownership interest.

² Flight hour-based fees paid by a fractional owner to the program operator are subject to the federal transportation tax. *Executive Jet Aviation, Inc. v. U.S.*, 125 F.3d 1463 (Fed. Cir. 1997).

Changes to the Proposed Rules

Although the final rule has numerous language changes, clarifications and technical additions as compared to the rule proposed in 2001, the more significant changes are relatively few:

60% rule

In the interest of establishing an equivalent level of safety for fractional aircraft operators under Part 91 and on-demand charter operators under Part 135, the proposed rule would have eliminated the "60% rule." This rule (Part 135.385) prohibits an air carrier from departing for a destination airport unless the airplane is capable of making a full stop landing at that airport within 60% of the effective length of the runway. The proposed rule applied this requirement to fractional ownership operators as well as air carriers, increased the full stop landing distance to 85% and permitted operators to develop other procedures with FAA approval.

The final rule backs off from this to some extent. It applies the 60% rule to both fractional and air carrier operators. An operator may increase the full stop landing distance to within 80% for a destination airport if the FAA has approved an appropriate analysis in the operator's manual. Parts 91.1037 and 135.385.

Flight and Duty Time Requirements

There are numerous technical changes to the requirements as proposed, but there is one significant addition -- the requirements are extended to

flight attendants. Part 91.1062.

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