

VOLUME 2 AIR OPERATOR AND AIR AGENCY CERTIFICATION AND APPLICATION PROCESS

CHAPTER 5 THE APPLICATION PROCESS—TITLE 14 CFR PART 91, SUBPART K

Section 1 General

2-536. DIRECTION AND GUIDANCE.

A. General. This chapter provides direction and guidance on the application process of Title 14 of the Code of Federal Regulations (14 CFR) part 91, subpart K (part 91K), Fractional Ownership. This process, if followed, will lead to successful compliance with Title 49 of the United States Code (49 U.S.C.)—formerly the Federal Aviation Act (FA Act of 1958)—and 14 CFR. Under no circumstances will an applicant be issued management specifications (MSpecs) until Flight Standards District Offices (FSDO) and Regional Flight Standards Division (RFSD) offices are confident that the prospective applicant is capable of fulfilling the required responsibilities, is willing to comply with 14 CFR in an appropriate and continuing manner and can conduct all requested authorizations safely.

B. Three Gates. Included in the five phases of the application process are three gates. The three gates are particular points in the process at which requirements must be met before proceeding to the next part of the application process.

NOTE: In some cases, the guidance and suggested sequence of events in this document may not be entirely appropriate. In such situations, the Federal Aviation Administration (FAA) and applicant should consider existing conditions and circumstances.

C. Fraction Ownership Programs. Fractional ownership programs are subject to an FAA oversight program similar to that provided to air carriers, with the exception of line checks and en route inspections. FAA aviation safety inspectors (ASI) conduct scheduled and unscheduled inspections and surveillance of personnel, aircraft, records, and other documents to ensure compliance with the regulations.

2-537. BACKGROUND.

A. Historical. Before the publication of part 91K, there was no regulatory definition of fractional ownership. Most fractional ownership programs were operated under part 91. Some programs incorporated the fractional ownership principles related to sale and purchase of aircraft, but aircraft were then leased to an air carrier and operated under 14 CFR part 135 of the regulations. Other programs operated under part 91, aircraft were leased to an air carrier, and owners had the option of operating rules. Further, numerous programs were marketed as “fractional ownership programs” or variations of fractional ownership programs that do not meet the regulatory definitions or program elements.

B. Current. Title 14 CFR part 91K establishes regulatory requirements for fractional ownership programs and their program managers and owners. This regulation defines the

program and program elements, allocates operational control responsibilities and authority to the owners and program manager, and provides increased operational and maintenance safety requirements for fractional ownership programs. Title 14 CFR section (§) 91.1001 defines the applicability and elements of a fractional ownership program. Subpart K further defines the owner and program manager responsibilities and safety standards. Fractional ownership programs and operations are subject to the applicable provisions of part 91, in addition to the specific requirements for these programs defined in part 91K. Title 14 CFR § 91.501 assigns rights and responsibilities of owners, fractional owners, and program managers. Additional requirements can be found in part 91, subpart F.

C. Programs Not Fitting Regulatory Definitions. Shared aircraft ownership or management arrangements that do not fit within the regulatory definitions or applicability of part 91 subpart K should be reviewed on a case-by-case basis to determine the appropriate regulatory requirements. For example, a shared aircraft arrangement where the owners pilot their own aircraft might more appropriately fit the definition of a flying club or other ownership option not subject to part 91K. Operations that involve compensation should be closely examined to determine if they can be operated under the provisions of 14 CFR § 91.501 (interchange, joint ownership, or time share), under exceptions to part 119, 135, or 121, or whether they are subject to the rules applicable to air carriers or commercial operators. Programs marketed as fractional ownership programs that do not meet the regulatory definitions of a fractional ownership program should not continue to market the program as a fractional ownership program. These programs are encouraged to change their marketing names to reflect the appropriate regulatory requirements.

2-538. DEFINITIONS AND ELEMENTS. Definitions of a fractional ownership program and the elements of that program are summarized below.

A. Affiliate of a Program Manager. A manager that directly or indirectly controls, is controlled by, or is under common control with another program manager through one or more intermediaries. The holding of at least 40 percent of the equity and 40 percent of the voting power of an entity will be presumed to constitute control for purposes of determining an affiliation.

B. Dry-Lease Aircraft Exchange. 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.

C. Dry-Lease Aircraft Exchange Agreement Among All the Owners. This agreement requires all owners to provide their share(s) of their aircraft to other owners in the program. It allows an owner to use any aircraft in the “program aircraft pool” for that program manager or affiliate of that program manager. An owner’s share of an aircraft equates to a predetermined number of flight hours, or ratio of flight hours, in the type or types of aircraft in the program fleet. The dry-lease exchange provision applies to affiliate programs, but does not allow the dry-lease exchange among other fractional ownership programs that are not affiliates.

D. Fractional Owner or Owner. An individual or entity that possesses a minimum fractional ownership interest in a program aircraft and that has entered into the applicable

program agreements, provided, however, that in the case of the flight operations described in 14 CFR § 91.1001(b)(6)(ii), and solely for purposes of requirements pertaining to those flight operations, the fractional owner operating the aircraft will be deemed to be a fractional owner in the program managed by the affiliate.

E. Fractional Ownership Interest. The ownership of an interest or holding of a multiyear leasehold interest and/or a multiyear leasehold interest that is convertible into an ownership interest in a program aircraft.

F. Fractional Ownership Program or Program. Any system of aircraft ownership and exchange that consists of all of the following elements:

- The provision for fractional ownership program management services by a single fractional ownership program manager on behalf of the fractional owners
- Two or more airworthy aircraft
- One or more fractional owners per program aircraft, with at least one program aircraft having more than one owner
- Possession of at least a minimum fractional ownership interest in one or more program aircraft by each fractional owner
- A dry-lease aircraft exchange arrangement among all of the fractional owners
- Multiyear program agreements that cover the fractional ownership, fractional ownership program management services, and dry-lease aircraft exchange aspects of the program

G. Fractional Ownership Program Aircraft or Program Aircraft.

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

2) 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 included:

a) In the fractional ownership program managed by the affiliate of the operating owner's program manager, and

b) In the operating owner's dry-lease aircraft exchange pursuant to the program agreements of the operating owner's program; or

3) An aircraft owned, in whole or part, by the program manager or affiliate that has been included in the dry-lease aircraft exchange and is used to supplement program operations.

H. Fractional Ownership Program Flight or Program Flight. A flight, under part 91, subpart K, when one or more passengers or property designated by a fractional owner are on board the aircraft.

I. Fractional Ownership Program Management Services or Program Management Services. Administrative and aviation support services furnished in accordance with the applicable requirements of part 91K, or provided by the program manager on behalf of the fractional owners include, but are not limited to, the:

- Establishment and implementation of program safety guidelines;
- Employment, furnishing, or contracting of pilots and other crewmembers;
- Training and qualification of pilots and other crewmembers and personnel;
- Scheduling and coordination of the program aircraft and crews;
- Maintenance of program aircraft;
- Satisfaction of recordkeeping requirements;
- Development and use of a program operations manual and procedures; and
- Application for and maintenance of management specifications and other authorizations and approvals.

J. Fractional Ownership Program Manager or Program Manager. The entity that offers fractional ownership program management services to fractional owners and is designated in the multiyear program agreements referenced in 14 CFR § 91.1001(b)(5)(vi), to fulfill the requirements of the rule 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.

K. Management Services. The provision for management services by a single program manager or affiliate program manager on behalf of the fractional owners.

1) Specific program manager operational control and operating responsibilities are specified in part 91K. Examples of management services are listed in 14 CFR § 91.1001(b)(8), and include, but are not limited to:

- The hiring, qualification, and scheduling of personnel, pilots, and other crewmembers;
- The development of program manuals, training programs, recordkeeping systems, and other documents;

- Application and maintenance of FAA approvals, management specifications, and other authorizations; and
- Maintenance of the program aircraft.

2) Program approvals are issued to the program manager on behalf of the owners. The program manager provides an agent for service on behalf of the fractional owners. This does not prohibit the FAA from contacting an individual owner, if warranted. However, most correspondence, program approvals and coordination, and other contact will take place between the FAA and the program manager's agent for service or identified points of contact.

L. Minimum Fractional Ownership Interest. Either:

- 1) A fractional ownership interest equal to or greater than, 1/16 of at least one subsonic, fixed-wing or powered-lift program aircraft, or
- 2) A fractional ownership interest equal to or greater than, 1/32 of at least one rotorcraft program aircraft.

M. Multiyear Program Agreements that Cover Fractional Ownership, Management Services, and the Dry-Lease Exchange Aspects of the Program. An owner and program manager will sign contracts concerning the sale or long-term lease of the aircraft, provision of management services, and for the dry-lease exchange provisions of the program. Contracts generally last 3 to 5 years and reflect an ownership interest in the aircraft. Additional contractual requirements and elements are specified in part 91K, including:

- Requirements for the program manager to comply with specified regulations,
- The owners' right to audit programs,
- The designation of the program manager as an agent for service, and
- Provisions for the FAA to contact the owner.

N. One or More Owners per Fractional Ownership Program Aircraft, With at Least One Aircraft Having More Than One Owner. The owners' names are depicted on the aircraft's registration certificate. A long-term lease arrangement is considered to be a method of financing an ownership interest and is considered equivalent to an ownership interest. At any time, the program manager may own an entire aircraft or shares in an aircraft. The program manager may also buy back shares in accordance with contract requirements. These aircraft or aircraft shares are called "core aircraft" and are considered a necessary element of the aircraft fleet. The percentage of core aircraft in a fleet may vary. However, this percentage should be a minority percentage, except for the initial inception of the program.

O. Possession of a Minimum Fractional Ownership Interest in One or More Program Aircraft by Each Fractional Owner. A substantive ownership interest is the essential element to validate fractional ownership as a private operation under part 91. A minimum share

is at least 1/16 for a subsonic, fixed-wing or powered-lift fractional ownership program aircraft or at least 1/32 for a rotorcraft fractional ownership program aircraft. Programs that provide more than 16 owners per aircraft, including subleased shares that result in an ownership interest smaller than 1/16 (or 1/32 for rotorcraft), are required to be operated under part 135 or part 121, as applicable. Ownership interests are converted to a number of hours based on a predetermined ratio or formula. Each owner's use of the program aircraft cannot exceed the ownership share. Other methods of allocating owner's hours of use may be used such as a point system or allocated number of days of use provided the formula is predetermined, and equates to hours of use, and the owner's use does not exceed the ownership share. The need for additional hours or use can be obtained through a number of means, including:

- Charter
- Purchase of additional shares within that program
- Purchase of additional aircraft outside of that program

P. Two or More Airworthy Aircraft. A minimum of two aircraft is required in order to establish the dry-lease exchange element of the program. A program with a single aircraft and multiple owners does not meet the definition of fractional ownership and might more appropriately be classified as joint ownership, partnership, or another form of shared aircraft ownership. An aircraft that is briefly or temporarily unairworthy because of mechanical failure or required maintenance or inspection does not affect this definition of airworthy aircraft or the ability of the program to continue to operate under part 91K.

2-539. OPERATIONAL CONTROL.

A. Operational Control Responsibilities. Title 14 CFR sections (§§) 91.1003 through 91.1013 define operational control responsibilities inherent in a fractional ownership program.

1) The owner is in operational control when that owner directs the carriage of persons or property and the aircraft is carrying those persons or property. That owner has operational control of that flight regardless of whether that aircraft is owned by that individual owner, or is an aircraft from the dry-lease exchange pool.

2) The program manager has operational control when using the aircraft for training, sales demonstration, ferry, or positioning flights.

3) A program aircraft can also be leased to an air carrier and operated under part 135 or 121, as appropriate, to the seating configuration and payload capacity of the aircraft. When the aircraft is operated by an air carrier, the air carrier has operational control.

B. Safe Operations and Compliance with Regulations. The owner of the aircraft or share of the aircraft is ultimately responsible for safe operations and compliance with the regulations. The owner(s) may delegate the performance of tasks to the program manager and can rely on the program manager for aviation expertise and management services. In addition,

part 91K, specifies certain responsibilities of the program manager, including recordkeeping, establishing safety programs, preparing manuals and training programs, maintaining management specifications (MSpecs), and other aviation services. When tasks are delegated, both the owner and the program manager are jointly and individually responsible for compliance. Any enforcement will be reviewed on a case-by-case basis to determine which party or parties had responsibility for operational control of any flight or operation. Enforcement could result in suspension or revocation of MSpecs, which could ultimately affect all owners in the program.

C. Operational Control and Management Service Contracts. Part 91K, requires certain contracts pertaining to operational control and management services responsibilities. These include:

1) A contract between the owners and program manager that requires the program manager to comply with the applicable regulations.

2) A contract that provides the owner the right to audit the records of the program manager that pertain to operational safety of the program and show compliance with the regulations and MSpecs.

3) A contract that designates the program manager as the owner's agent for service to receive correspondence from the FAA. While the FAA will generally correspond through the agent for service or other designated contacts, the FAA has the right to contact the owner(s) directly, if necessary.

D. Owner's Operational Control Responsibilities. The program manager is required to brief the owner on the owner's operational control responsibilities at the time the initial, renewal, or extension of a program contract is signed. The owner must review and sign an acknowledgement of these responsibilities. The details that must be contained in this acknowledgement are contained in 14 CFR § 91.1013.

E. Basic Contracts and Agreements. Basic contracts and agreements must be signed as part of the overall program. These include documents pertaining to the sale of the aircraft share(s) and multiyear program agreements pertaining to management services and the dry-lease exchange program. The industry standard is 3-5 years contract duration.

F. Owner Acknowledgement/Contract Certification Statement. As part of the certification process, the program manager can submit an owner acknowledgement/contract certification statement instead of individual contracts. This statement certifies that the required contracts contain the necessary regulatory provisions. See Figure 2-17.

RESERVED. Paragraphs 2-540 through 2-555.

Figure 2-17, Certification of the Execution of Agreements

I, _____, an officer of _____ (the Program Manager), which manages the _____ fractional ownership program (the Program), certify that the Program satisfies the eligibility requirements of Title 14 of the Code of Federal Regulations

(14 CFR) part 91, subpart K and that the agreements required under 14 CFR part 91, subpart K have been executed. These agreements include:

- 1) A Dry Lease Exchange Agreement,
- 2) A Management Contract, and
- 3) Statements of Acknowledgement of Fractional Owner's Operational Control Responsibilities.

The owners and I understand that the Federal Aviation Administration (FAA) has the right to inspect all contracts.

I. The Dry Lease Exchange Agreement or other program agreements between the program manager and owners related to aircraft exchange address the following:

- 1) Mandate that two or more airworthy aircraft be available in the long term.
- 2) Allow the fractional owners of an aircraft to use (through the program manager) aircraft owned by other fractional owners within the same program.
- 3) Clarify that the program manager will schedule the aircraft from within the dry lease exchange pool and provide other aviation expertise and services to the owners.
- 4) Specify this is a multiyear program agreement.

II. The Management Contract or other agreements between the program manager and the owners related to program management services address the following:

- 1) Specify this is a multiyear program contract
- 2) Require the program manager to ensure that the program conforms to all applicable requirements of part 91, subpart K
- 3) Provide the owner or owner's designee the right to inspect and to audit the records of the program manager that related to the operational safety of the program and those records required to show compliance with the management specifications and all applicable regulations
- 4) Designate the program manager as the owner's agent to receive service of notices from the FAA
- 5) Acknowledge the FAA's right to contact the owner directly
- 6) Prohibit an owner from carrying persons or property for compensation or hire on a program flight except if such operations are carried out in compliance with 14 CFR part 121 or 135
- 7) Limit the flight hours used during the term of the multiyear agreement to the total hours associated with the owner's share of ownership

- 8) Prohibit the sale or lease of aircraft interest that is lesser than the “minimum fractional ownership interest” unless the flights associated with that interest are operated under part 121 or 135 and are conducted by an air carrier or commercial operator certificated under part 119
- 9) State that the program manager will provide the owner the following operating services and functions:
 - Establishment and implementation of safety program guidelines
 - Employment, furnishing or contracting of pilots and other crewmembers
 - Training and qualification of pilots and other crewmembers and personnel
 - Scheduling and coordination of the program aircraft and crews
 - Maintenance of program aircraft under the terms of this Agreement
 - Satisfaction of record keeping requirements
 - Development and use of a program operations manual and procedures
 - Application for and maintenance of management specifications and other authorizations and approvals from the FAA
 - Training in the recognition of hazardous materials

III. Each owner in the fractional ownership program has signed an Acknowledgment of Owner’s Operational Control Responsibilities, and under the Acknowledgment, the owner understands that owner is in operational control of a program aircraft and the owner must operate that program aircraft in accordance with 14 CFR Part 91, Subpart K when:

- 1) Owner has the rights and is subject to the limitations applicable to the owner as set forth under sections 91.1003 through 91.1013,
- 2) Owner has directed that a program aircraft carry passengers or property designated by the owner, and
- 3) The program aircraft is carrying those passengers or property.

The owner understands that the owner is in operational control of a program aircraft, even where the owner leases the program aircraft from another owner through the Dry-Lease Aircraft Exchange (or Interchange) arrangement.

The owner understands and agrees to the responsibilities and potential liabilities described below. When the owner is in operational control, the following apply:

- 1) Owner is responsible for safe operations and for complying with all applicable laws and regulations and the management specifications issued to program manager

- 2) Even though owner may delegate to the program manager performance of some or all of the tasks associated with carrying out owner’s responsibilities, owner continues to be jointly and individually responsible, along with the program manager, for performance of these tasks and for compliance with applicable requirements
- 3) Owner may have liability risks in connection with the operation of the program aircraft, including possible liability risks for at least enforcement actions for any noncompliance, and liability if a flight-related occurrence causes personal injury or property damage

Name

Title

Signature

Date