

aircraft would be temporarily out of service for maintenance or repair. Further, because of aircraft sales or other factors, there may be short periods when the two aircraft requirement cannot be met. A key element of a fractional ownership program is the dry lease exchange provision that will mandate that two or more aircraft be available in the long term.

Dry Leasing

An individual states that § 91.1002(b)(2) and (b)(7), discussing dry lease requirements without crew members and fractional ownership program management services requirements to provide aircraft, crews, maintenance, crew training and record keeping, are hard to understand and appear to be in conflict with each other.

FAA Response: The arrangements described in § 91.1001(b)(2) and (b)(7) ((b)(8) in final rule) are distinct and different, but they are not in conflict with each other. The dry lease arrangement described in § 91.1001(b)(2) is an agreement among fractional owners that allows them to use aircraft owned by other fractional owners within the same program. The dry lease exchange provision facilitates the use of the owners' aircraft. The program manager does not provide the aircraft, rather the program manager's role is to schedule the aircraft from within the dry lease exchange pool and to provide other aviation expertise and services to the owners, as described in renumbered paragraph (b)(8).

Affiliate Fractional Ownership Program

PASS believes that an affiliate fractional ownership program, as provided in § 91.1001(b)(6)(ii), should not be allowed because there would not be effective controls for FAA oversight and surveillance. FAA inspectors could not schedule inspections and surveillance efficiently. Additionally, PASS believes it would be very confusing in determining operational control of program aircraft between affiliate program management companies.

NATA and Flexjet believe that the decision about whether program managers are affiliated should be made once at the time of initial FAA approval of a program (or at the time a new program is started by an affiliated manager) at the national level by a headquarters-based FAA official who has developed an expertise in an area and who can make uniform decisions in the matter. Once the determination is made at the national level, the program management specifications should include a reference to any affiliated

program managers and there should be no revisiting of the issue without good cause.

The Teamsters disagree with the proposal to allow "affiliates" to be part of the "interchange agreement" where an individual who purchases a share of an aircraft operated by a specific program manager can now be "sold off" to an affiliate while maintaining the same rights and benefits as if he was in the original program manager's operation. The commenter believes that there is no guarantee of proportional and equal aircraft use between owners, or that an affiliate aircraft is even a fractionally owned aircraft. In response to the FAA's request for comments on this issue, the Teamsters state that this concept would not ensure that owners have legal possession, custody, and use of an affiliate aircraft. The Teamsters believe that, under the proposal, if a part 135 on-demand charter company became an affiliate, it would not have to comply with part 135 regulations when chartering out one of its aircraft to a fractional owner.

FAA Response: For an affiliate relationship to exist, the parties must be part of the same umbrella company and the relationship would have to be identified in the management specifications. The 40 percent holding of equity and voting power is presumed to be an adequate controlling interest to define an affiliate. Any affiliates will be identified in the management specifications and will be referenced in contractual and lease documents among the owners and the program manager. These management specifications and guidance are reviewed by FAA national and regional headquarters.

The comment that an on-demand operation under part 135 could become an affiliate to circumvent the part 135 requirements and operate under subpart K is not a correct assumption. An affiliate represents a business or corporate organizational structure and does not define the operational requirements. Each affiliate program will need to be reviewed on a case by case basis to determine if it meets the applicability of this subpart.

Program Manual

EJA comments that proposed § 91.1001(b)(7)(v) defines the provision of fractional ownership program management services to include the development and use of a maintenance program manual. There is no other mention of this manual in the NPRM. Proposed §§ 91.1023 and 91.1025 require only a written program operating manual. Since maintenance manuals are not required under part 135

for aircraft with less than 10 seats, EJA believes it is unlikely that the FAA intends for part 91, subpart K to require maintenance manuals for all aircraft.

FAA Response: The FAA agrees with the EJA comment, and has deleted the reference to a maintenance manual.

Section 91.1003 Management Contract Between Owner and Program Manager

EJA suggests clarifying language for paragraphs (b) and (c) of this section that would replace the phrase "program log books and maintenance records" with the phrase "log books and maintenance records maintained by the program manager."

Flexjet recommends deletion of either paragraph (b) or (c) of this section because they are duplicative.

NBAA recommends that paragraph (d) of this section be deleted because this commenter believes that the "FAA must retain full, unrestricted access to every aircraft owner of U.S.-registered aircraft, regardless of contractual arrangements designed for efficiency * * *" At the same time, NBAA recommends that "in the development of inspector guidance and additional preamble mentioned, that the FAA, under ordinary circumstances but at its sole discretion, communicate primarily with the fractional program manager on issues related to program aircraft."

FAA Response: The FAA agrees with this suggestion that the phrase "program log books and maintenance records" should be replaced with the phrase "log books and maintenance records maintained by the program manager." This change appears in the final rule language. In addition the FAA has combined paragraphs (b) and (c) into one paragraph (b) that addresses both the right to inspect and the right to audit. The FAA has also removed the word "solely" from proposed paragraph (d) and has redesignated the paragraph as paragraph (c). Also, to clarify the FAA's relationship with the fractional owner, a new paragraph (d) has been added to state that the contract must acknowledge the FAA's right to contact the owner directly, should it choose to do so.

Section 91.1007 Advance Notice of Non-Program Aircraft Substitutions

Several commenters state concern with the proposed language of this section, which states that 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."

EJA states that the rule should be revised to make clear, as does the NPRM