

preamble, that when a non-program aircraft is substituted, it must be operated by a certificate holder with the appropriate authority. EJA also suggests that the final rule should clarify that a program manager may elect to conduct a particular fractional ownership program flight for a fractional owner under part 121 or 135, assuming that the program manager is properly certificated to undertake those operations under those parts of the regulations.

PASS believes that if non-program aircraft are to be used, they should be identified in the contract and that a list of non-program aircraft should be provided to each fractional owner and to the Administrator.

The Teamsters and an individual believe that the program manager should be required to do more than just "make an effort" to notify the fractional owner.

A pilot in a fractional ownership program states that customer notification of sell-offs "when possible" clearly highlights that fractional companies need to change operational aspects of the flight to the extent that safety is compromised. Large problems occur in communication with crew and passengers. There have been continual problems where aspects of flights have been changed and either/both crew and passengers were not notified. This commenter believes customer sell-offs will compromise the safety and security of flight operations regarding many aspects of 14 CFR 61/135/121.

FAA Response: The FAA agrees with the commenters that the proposed § 91.1007 was not sufficiently clear. In addition, we question the practicality of the term "make an effort to notify" the fractional owner prior to the flight. However, we agree there must be a method for parties to know who is in operational control of that flight. Procedures and notification of aircraft substitution should be discussed as part of the contract between the program manager and the owner. This is done to ensure the owner knows that some flights may be conducted by an air carrier, that there is a clear understanding of who is in operational control of each flight, and to track program flight hours.

In the final rule, the section title has been changed and the section has been revised. The text of paragraph (a) has been revised to state that "Except as provided in § 91.501(b), when a non-program aircraft is used to substitute for a program flight, the non-program aircraft must be operated in compliance with part 121 or part 135." The phrase "shall make an effort" has been

removed and the revised language makes clear that when a non-program aircraft is substituted, it must be operated by a certificate holder with the appropriate authority.

New paragraph (b) makes it clear that a program manager may conduct a flight under part 121 or 135, either at his own election or at the request of a fractional owner, only if the program manager holds a part 119 certificate authorizing those operations. In this case a program manager is no longer acting as a program manager, but instead is a certificate holder who is in operational control of that flight. A fractional owner's aircraft could be used in an operation under part 121 or 135, if it is dry leased to a part 119 certificate holder and authorized in that certificate holder's operations specifications. That certificate holder must conduct the operation under the operating rules of part 121 or 135, as appropriate.

New paragraph (c) was added to ensure that a fractional owner is informed whether a flight is being conducted as a program flight or is being conducted under part 121 or part 135 of this chapter. The method and timing of such notification is to be determined between the program manager and fractional owners. Further, § 91.1027(e) requires that the program manager provide a written document to be carried on each flight stating who is in operational control of that flight and under which FAA regulations the flight is being conducted. That paragraph specifies that the document must be carried on board to the flight's destination and includes record retention requirements.

The FAA does not agree with the suggestion by PASS that if non-program aircraft are to be used, they should be identified in the contract and that a list of non-program aircraft should be provided to each fractional owner and to the Administrator. The FAA believes that this kind of scenario would be unworkable and unnecessary. However, the contract should make clear that when a program aircraft is not available, a non-program aircraft will be provided that will be operated under part 121 or 135.

Sections 91.1009, 91.1011 Clarification of When Owner Is in Operational Control and Implications of Owner Being in Operational Control

PASS believes that lines of operational control need to be made clear. The safety of the aircraft lies directly with the program manager for FAA compliance. PASS states that the owner should never be in operational

control; this should remain with the Program Manager.

FAA Response: The FAA believes that the rule language does make clear the lines of operational control. When an aircraft is operated under subpart K on a program flight, the fractional owner for whom the operation is being conducted is in operational control and is responsible for compliance with all applicable regulations. The fact that the fractional owner has delegated certain tasks to the program manager does not relieve the fractional owner of responsibility, similar to situations where aircraft owners contract for maintenance and other required services.

Section 91.1013 Owner's Understanding and Acknowledgment of Operational Control Responsibilities

PASS and the Teamsters believe that the reality that fractional owners are nothing but passengers on their aircraft needs to be recognized. Fractional owners have no decision-making responsibility in the actual operation of the aircraft. The fractional ownership program manager needs to be held liable for compliance with the FAA regulations for the maintenance, aircrew, training and operation of the fractional aircraft. The degree of operational control is not equal between the fractional owners and the program managers.

An individual recommends that § 91.1013(a)(1)(iii) be stricken from the final rule because it is inappropriate, unnecessary and potentially harmful. The commenter states that the FAA's regulations are an inappropriate means of alerting members of the aviation community to the tort ramifications of their activities and states that the FAA has not done so with respect to others in the aviation community (for example, pilots, mechanics or traditional owners of aircraft).

The commenter states that this provision does not alert fractional owners to anything that has not always been true for all owners of aircraft, fractional or not. Whether a fractional owner is deemed to exercise operational control will likely continue to be based on actual control, independently of the fractional characterization of the arrangement.

The commenter states that another potential consequence of the provision is that it might be misinterpreted by the fractional management company as an indication that it is relieved of its tort duties by virtue of the owner's required acknowledgment of his responsibilities. As urged above, if the fractional arrangement causes a change to the