

traditional allocation of tort liability between the owner on the one hand, and the pilot, mechanic, or other independent contractor on the other, that change results only because the owner has in fact chosen to exercise actual control. The management company should not be led to believe that its tort exposure has been diminished by the mere characterization of the arrangement as fractional, or by the owner's acknowledgment of operational control, when the true essence of the relationship is the total entrustment of all operational functions to the management company.

FAA Response: As stated previously, the FAA believes that the idea that each fractional owner will, at times, have operational control of an aircraft being used on his or her behalf is at the heart of the fractional ownership concept. Many of the details of the contractual relationship between a prospective or actual fractional owner and a program manager are not safety related and therefore are not a concern of the FAA. However, the FAA believes that it is important for prospective or actual fractional owners to know and understand the responsibilities they will assume as a fractional owner.

The FAA agrees that this type of requirement has not been imposed on other regulated entities. Because of the unique aspects of the fractional ownership arrangement, the number of the owners, and the varying levels of owner expertise, the FAA believes the implications of operational control, including liability risk and enforcement actions, must be clearly expressed and acknowledged by the owners. Fractional owners need to understand that when safety requirements are not met they are subject to FAA enforcement actions or liability risks. Suspension or revocation of management specifications would affect the operation of the entire fractional ownership program, impacting the program manager and all of the fractional owners in the program.

Section 91.1014 Manager's Responsibility for Ensuring Compliance

NWJ and an individual state that the proposed paragraph further demonstrates the need to designate an individual as "Program Manager" rather than an entity. They believe that, in order for a fractional ownership program manager to "ensure that its program * * * (is) sufficient to ensure owner compliance * * *," the accountability of an entity alone may not be sufficient. PASS believes that this paragraph should be deleted, as it confuses owner compliance with operational control.

FAA Response: The FAA agrees that there is a need to have a system to identify contacts within a program management company. The program operating manual required under § 91.1023 and § 91.1025 will spell out procedures and identify responsibilities. To avoid the confusion raised by the PASS comment, the FAA has inserted subheadings into the final rule so that it is clear that §§ 91.1014–91.1443 address program manager responsibilities. Furthermore, § 91.1014 has been revised to clarify the operation process and requirements for issuance of management specifications. This issuance is based on a finding that the program manager meets the applicable requirements, is properly and adequately equipped, and is able to conduct a safe operation. The section title has been changed to "Issuing or denying management specifications."

Sections 91.1015, 91.1017 Management Specifications and Amending Program Manager's Management Specifications

NBAA states that, in addition to defining the contents of the program manager's management specifications as well as the process for amending them, the FAA also must develop rules that define the management specification application process (including any information required as part of the application) and define a process to issue or deny management specifications.

NATA and Flexjet state that all fractional program managers, both existing and start-up, will be required to make application for management specifications from the FAA. However, the NPRM does not identify the process by which a prospective program manager would apply and receive management specifications. Therefore, NATA and Flexjet support clear information within the regulation specifying how application is to be made, what supporting materials must be submitted with a formal application and what criteria the FAA will use as a basis to deny or issue management specifications.

PASS believes that a list of items should be added to the management specifications, such as carrying hazardous materials, geographic operating area for fractional operations, VMC or IMC operating capabilities, navigation authorizations, and cargo carrying capabilities. PASS states that Management Specifications should be handled just as Operation Specifications are currently handled by part 135 certificate holders.

FAA Response: The management specification application process will be similar to the process for issuing operations specifications under part 119 for persons conducting operations under parts 121 and 135. Additional rule language has been added in § 91.1014 to make it clear that management specifications are issued to the program manager on behalf of the owners if the program meets the regulatory requirements of subpart K. The management specifications will be processed on the FAA operations specifications subsystem and will be managed by the same procedures used to manage operations specifications for air carriers operating under parts 121 and 135. The application process is referenced in the final rule and will be detailed in guidance documents. Section 91.1015(a)(10) allows the Administrator to specify additional items to be contained in management specifications. This gives the FAA and the program manager the flexibility to amend or revise the management specifications as appropriate.

Section 91.1016 Confidential Information (Suggested)

NATA and Flexjet comment that, because subpart K will require fractional owners and program managers to provide commercial and/or financial information from time-to-time, they strongly recommend that certain information be protected as confidential. NATA and Flexjet recommend the addition of a separate section to address this issue.

FAA Response: As is the case with all Freedom of Information Act issues, the FAA will handle requests that information be treated as privileged or confidential commercial or financial information under the Department of Transportation rules in 49 CFR part 7, particularly §§ 7.13 and 7.14. Whether specific information about fractional owners (for example, names, addresses) is made available to the public by program managers will depend on the contractual relationship between these parties. Fractional owners will be identified in the files of the FAA's Aircraft Registry in Oklahoma City and these files are available to the general public. Section 91.1015(b) allows the program manager to keep a current list of fractional owners at its principal base of operations or other location and referenced in its management specifications, instead of listing all owners' names in that document. This provides for a degree of confidentiality of owner information.