

Proposed 14 CFR Section 91.1013(a)(1) provides that the written acknowledgment of the fractional owner's operational control responsibilities shall state:

"(iii) The owner may be exposed to significant liability risk in the event of a flight-related occurrence that causes personal injury or property damage."

For the reasons stated below, this Comment recommends that the above language be stricken from the final rule.

A. The proposed provision is inappropriate.

The Federal Aviation Regulations are an inappropriate means of alerting members of the aviation community to the tort ramifications of their activities. One's exposure to liability in a civil lawsuit, although clearly capable of being affected by one's compliance or noncompliance with the Regulations, has typically remained outside the domain of the Administration. The Administration has not seen fit to alert pilots, mechanics or traditional owners of aircraft to the potential for tort exposure for their conduct under the Regulations, and presumably would view this task as falling outside of the Administration's mission. There does not appear to be any reason for the Administration to enunciate an exception now, in its Regulations pertaining to fractional ownership.

B. The proposed provision is unnecessary.

The provision does not alert fractional owners of anything that has not always been true for all owners of aircraft, fractional or not. The provision's apparent premise that the fractional arrangement causes the owner to bear a greater exposure to tort liability than would be the case if he or she were a typical nonfractional owner is mistaken. Whether or not an owner is a fractional owner, the owner's exposure to tort liability is a function of the degree of control he or she actually exercises over the operation of the aircraft (setting aside those state statutes which provide that aircraft owners are always liable for the negligent operation of their aircraft by others). Notwithstanding the proposed Regulation's proclamation that the fractional owner is deemed to exercise operational control, and notwithstanding that the fractional owner may have signed the required acknowledgment of operational control, tort liability will likely continue to be based on actual control, independently of the fractional characterization of the arrangement.

C. The proposed provision is potentially harmful.

The proposed provision will cause confusion in the courts. Judges throughout the nation have long struggled with the issue of an aircraft owner's liability for accidents in cases where the owner entrusted operation and/or maintenance to third parties. The language in the proposed rule will inevitably result in courtroom clashes over whether, in drafting the provision, the Administration expressly contemplated civil liability and, if so, whether that liability was to be based solely on one's status as a fractional owner rather than on actual control. The interplay between state law and the Regulations has always been a thorny issue for the courts to deal with, and it would be inappropriate for the Administration to further complicate matters through this provision.

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. As urged above, if the fractional arrangement causes a change to the

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.