

of the General Aviation Safety Inspector's Handbook, Order 8700.1 Change 9, as Paragraph 19 in Volume 2.)

The NPRM notes that a reduced margin would allow a substantial expansion of opportunities for on-demand operators, particularly at airports with a single short runway. The FAA does not believe that the effect would be as large as the NPRM suggests. Although it depends on the specific airplane's performance capabilities, the takeoff distance requirements are usually more limiting than the landing distance requirements, even under the "60 percent rule." For operations predicated on the use of a single runway, a reduction in the landing distance required would not ensure the viability of an operation into an airport. The airplane may not be able to make a subsequent takeoff, or the allowable takeoff weight may be significantly below the weight at which the airplane landed. For example, in the case of the accident at Catalina Island noted previously, if the airplane had landed safely, it would not have been able to take off again at the same weight because it would have needed a longer takeoff distance than was available. Generally, unless the purpose of the flight was to drop off payload, the allowable takeoff weight will need to be higher than the weight at which the airplane landed due to the need to load additional fuel for the return trip.

Based on its consideration of the above issues, the FAA has made changes in the final rule that maintain the level of safety provided by the current 60 percent rule, while providing operators an alternative for seeking approval to use a higher percentage under certain conditions that maintain the level of safety deemed appropriate for these types of operations. The changes are as follows:

1. The FAA withdraws the proposal to allow a landing distance in excess of 85 percent of the effective runway length if appropriate planning, documented in an approved Destination Airport Analysis, shows no compromise of safety. The FAA has determined that planning for landing distances in excess of 85 percent of the effective runway length would not provide an adequate margin of safety.

2. The final rule requires that both fractional ownership programs under subpart K of part 91 and operations conducted under part 135 must, for planning purposes, show that a turbine engine powered large transport category airplane is able make a full stop landing at the intended destination airport within 60 percent of the effective length of the runway. This maintains the safety

level provided by the current 60 percent in part 135 and codifies for fractional ownership programs the FAA's recommendation in Operations Bulletin 86-2 that general aviation operators of transport category airplanes use safety margins consistent with those required by part 135.

3. The final rule modifies the 85 percent proposal. Fractional ownership program managers under subpart K of part 91 and eligible on-demand operators under part 135 may apply for approval to plan for a full stop landing at the intended destination airport within 80 percent of the effective length of the runway if the program manager or certificate holder has an approved Destination Airport Analysis in its operating manual. The rule further modifies the alternate airport requirement and provides an 80 percent planning requirement at the alternate airport. The Destination Airport Analysis would establish additional runway safety margins to be applied when the planned landing weight would use more than 60 percent, but less than 80 percent, of the effective runway length, and would be based on analysis of such factors as pilot qualifications and experience, airplane performance data, airport facilities and topography, runway conditions, airport or area weather reporting, appropriate additional runway safety margins, if required, or any other criteria that may affect airplane performance. The Analysis must be approved by the Administrator, not just "accepted," and the operation must be authorized in the management specifications or operations specifications, as applicable.

#### Operational Control

Ten of the comments on the issue of operational control question the concept, set out in proposed §§ 91.1009 through 91.1013, that a fractional owner is in operational control of an aircraft being operated in a fractional ownership program. These commenters question the NPRM concept of fractional owner operational control from a legal, practical, or technical viewpoint, or from some combination of these viewpoints. Since a significant number of comments, many from individual dispatchers, focus on the need to have qualified dispatchers as part of the operational control team, we have treated the dispatch issue separately in the following section.

In questioning the legal basis for asserting that a fractional owner has operational control, the Teamsters cite a Federal court decision (*Executive Jet Aviation, Inc. v. The United States*) that held that for certain tax purposes

fractional ownership operators are considered to be commercial rather than non-commercial operations.

Many of the negative comments on the issue of operational control, including those by PASS, cite practical and technical reasons why fractional owners cannot be considered to have operational control. Examples are:

1. The International Brotherhood of Teamsters, AFL-CIO (IBT) states that "most fractional owners know little about the aircraft, of which they own a part, and they comprehend even less the responsibilities and accountability associated with aircraft airworthiness, safety of flight issues, or the knowledge and accountability associated with the release of or the redirection of a flight for operational or safety reasons."

2. Jet Sales & Services, Inc. states "In the real world, it is naïve to think that under any circumstances the owner of the fractional share has operational control other than the scheduling of his or her itinerary. In most cases, that fractional participant has never even seen the aircraft that they own or lease."

3. The CAA states "it seems to us that, in practice, the fractional owner will have little or no involvement in the operation other than selecting a competent fractional ownership program manager."

4. Style Air states that aircraft owners who operate under part 91 "are usually familiar with who crews and maintains their airplanes" and that often these owners "are involved with the decision making process for acquisition, budgets, equipment procurement, and employee issues." Style Air states that "The fractional owner generally has no interest in the specifics of aircraft management," and that "The benefit of the fractional program is to relieve the aircraft owner of these responsibilities."

5. The Teamsters state that "the most telling of all parts of a fractional owner's lack of the most basic operational control resides in the management agreements" and that the "so-called owner of an aircraft in the program cannot even sell 'his' share of 'his' aircraft to anyone without permission of the program manager."

**FAA Response:** Fractional ownership is based on models of traditional aircraft management or corporate aviation in which an owner directly or indirectly employs an individual or entity to provide aviation expertise and services. It is also based on principles of shared aircraft operations defined in part 91. In these models the owner may or may not have the aviation expertise to conduct the operation, but retains the operational control responsibility to ensure the operation is conducted