

within the scope and context of the regulations. The size and complexity of the program, the number of owners, and elements such as the dry lease aircraft exchange and aircraft and crew positioning that are unique to fractional ownership programs limit the ability of an individual owner to direct the operation. Therefore, elements and conduct of the program must be established and agreed to by the owners and implemented by regulatory requirements and contractual agreement. Further, the FAA is defining operational control responsibilities and safety standards appropriate to these operations that enable an owner to effectively exercise operational control.

The FAA disagrees with the CAA comment that the fractional owner will have little or no involvement other than selecting a competent fractional ownership program manager. An individual or a corporation has many options to meet their transportation needs. This could include airlines, charter, their own flight department or aircraft, fractional ownership, or others. Each option has benefits and limitations, including costs, operational control responsibilities, flexibility, risk levels, liability, and other factors. These criteria are weighed against the individual's operational needs to make business decisions about which form or forms of air travel best meet their requirements.

Once a person makes a decision to enter into a fractional ownership program as a transportation option, he or she then makes decisions as to the aircraft type, management company, program elements, safety compliance, and size of share to meet their individual travel needs. Moreover, fractional owners may use their own flight crew, provided they meet the requirements of the program and this rule. The fractional owner has the ultimate responsibility to ensure the safety of the operation and compliance with the rules. This regulation specifies the program requirements and assigns responsibilities for these requirements. Owners have a responsibility not only to choose a program and a program manager, but also to ensure that the tasks are completed in accordance with the regulations and the contractual agreements. The owners have a right to inspect and audit the records of program manager pertaining to the operational safety of the program and regulatory compliance. Enforcement of violations of the regulations could penalize the fractional owner, the program manager, or both, depending on the nature of the violation.

Based on the comments, the FAA amended the operational control sections to clarify operational control responsibilities and delegation of task performance. See the discussion below under §§ 91.1003 and 91.1009–91.1013.

#### **Aircraft Dispatchers**

The Airline Dispatchers Federation (ADF), Teamsters, and at least 30 individual dispatchers state that a full aircraft dispatching system, as required under part 121, is needed to ensure adequate operational control.

One individual commenter states that Executive Jet, the “founder” firm of fractional ownership, has, in the interest of the highest level of safety, instituted a dispatch and flight following system. This commenter included a list of operational control considerations (for example continuing weather evaluation, appropriate aircraft performance computations) that warrant requiring a qualified dispatcher.

ADF believes that the NPRM's greatest fault concerns operational control, defined by the FAA as the authority over initiating, conducting, and terminating a flight. Although many years of operating experience has shown that the safest aviation operations utilize positive operational control through the joint responsibility of the Aircraft Dispatcher and Pilot-in-Command (PIC), this NPRM does not require this type of operational control. As an example, perhaps one of the most important Federal Aviation Regulations governing airline operations is § 121.601(c), which requires the aircraft dispatcher, during flight, to provide the PIC any additional information that may affect the safety of the flight. This NPRM does not require this in-flight monitoring/communication for Fractional Operators.

NBAA opposes the mandatory use of FAA-certified dispatchers for fractional aircraft ownership programs. NATA states that commenters who recommend aircraft dispatchers in fractional ownership programs are not considering the safety record of these programs or the burden dispatcher requirements would place on small businesses entering the market.

According to Alpha Flying, Inc., dispatcher certification would be an unfair burden on fractional programs which already would be required to comply with requirements far beyond existing part 91 and even some part 119/135 requirements. The FAA dispatcher exam also bears no relevance to today's business and private aircraft management practices, especially those of fractional ownership. It should be noted here, again, that the practices of

existing fractional ownership programs have led to the best safety record of any segment of aviation.

**FAA Response:** The FAA agrees with the commenters that aircraft dispatchers provide benefits with respect to safety and efficiency. The FAA also supports the use of aircraft dispatchers in fractional ownership programs as a program option and safety benefit. However, the final rule does not apply a mandatory requirement for certificated aircraft dispatchers in subpart K. Certificated aircraft dispatchers and dispatch systems are currently required for part 121 domestic and flag operations. They are not required for any operation under part 91, part 135, or for supplemental operations under part 121.

The final rule requires a flight locating system in § 91.1029 of subpart K, comparable to that required in § 135.79. Section 91.1029 further requires a system for scheduling and releasing program aircraft. The size and complexity of the operation will dictate the level of sophistication and adequacy of the system. In addition § 91.1049(e) requires that the program manager ensure that trained and qualified scheduling or flight release personnel are on duty to schedule and release program aircraft during all hours that such aircraft are available for program operations. The FAA recognizes that some companies have employed certificated aircraft dispatchers to accomplish these duties, however the final rule allows the flexibility for the program manager to determine the qualification of the scheduling or release personnel as appropriate to the aircraft, size and complexity of the operation, and the geographical area served. In all cases the program must provide adequate procedures for locating each flight, if a flight plan is not filed.

#### **Night Currency (§§ 61.57 and 135.247)**

Seven commenters (two individuals, NBAA, NATA, Flexjet, Kaiser Air Inc., and General Motors Air Transportation Section (GM)) that address the proposed changes to these sections generally support the proposed changes. Kaiser questions whether the words “requires more than one pilot” relates to type design requirements or operating rule requirements. An individual commenter suggests that the “preceding six months” requirement be changed to “seven months” to cover the possibility that a pilot might, under § 135.297, take a check ride one grace month early and the following check ride one grace month late.