Notation 8316B
Chairman Hersman, Dissenting:

I understand that the accident flight was operated under the provisions of 14 CFR Part 91, which generally sets forth the requirements for small non-commercial flights. However, I am troubled by other facts revealed during the course of this accident investigation about the owner/operator of this flight, Quest Diagnostics, Inc. ("Quest").

As noted in the accident report, at the time of the accident, Quest owned 30 aircraft, serving 63 cities per night, with 131 legs, and over 28,000 flight hours per year. All of this flight activity is transporting medical specimens. Unlike most other corporate flight departments, Quest used its aircraft for executive transport only 400 hours per year – making this operation more like a Part 135 cargo operation than a traditional corporate flight department. During an interview with an NTSB investigator, Quest's director of flight logistics commented that "[w]e've grown so much that at the level we are now, we are an airline. We are the largest part 91 operator in what we do."[1]

In light of this statement and Quest's high level of activity for a commercial purpose, I question whether the Part 91 regulations provide a sufficient level of safety and oversight for an operator that is essentially in the aviation business, rather than in business aviation.

In contrast, Quest has obtained commercial operating authority from the U.S. Department of Transportation for the ground operations it conducts in different states. Although our investigation did not examine the ground transportation logistics of Quest, given what we know about their air operations, I doubt that the truck transportation is for anything other than Quest's medical specimens. Yet, in the ground transportation business Quest is required to apply for commercial operating authority which elevates the level of accountability, recordkeeping and oversight for its vehicle operations.[2]

The Federal Aviation Regulations (FARs) have evolved to create different safety regimes for various types of private aircraft operations. Specifically, in 2005, the Federal Aviation Administration (FAA) created Part 91K because fractional management companies had far outgrown the limited operations envisioned in FAR 91.501, which were intended to authorize turbojet flight operations of a relatively limited scope. Together with industry stakeholders, the FAA developed new regulations at Part 91K that require fractional managers to maintain Part 135-like procedures and documentation. Similarly, since 1981, the FAA has required large aircraft configured for 6,000 lbs or more of payload capacity and with seating for 20 or more passengers to operate under Part 125. In doing so, the FAA moved these types of operators out of Part 91 in order to elevate the level of safety.[3]

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[1] eADMS Brief Report, Accident Number ERA09LA469, History of Flight discussion, p. 5.
[2] A review of information available from the FMCSA website shows Quest Diagnostics has at least three different DOT numbers for operations in different states: DOT 499823 (Baltimore, MD); DOT 857280 (Lenexa, KS); and, DOT 1994603 (Auburn, MI).
[3] Part 125 operators cannot hold themselves out to the general public to furnish transportation "for hire" or common carriage.

Given the large number of flights operated by Quest, why should there not be a higher standard of safety for its flight operations beyond those in Part 91? It is particularly troubling that when questioned by an NTSB investigator about the regulatory oversight of large Part 91 operations, the FAA responded that "there are no specific oversight requirements for non-certificated Title 14 CFR part 91 operators contained in the FAA Order 1800.56J, National Flight Standards Work Program Guidelines." Further, the FAA states that there is no number of aircraft in a Part 91 operation that would trigger a higher level of oversight.[4] At what point is further scrutiny appropriate? When they operate in 100 cities per night? When they have 50 aircraft? Or after they have another accident?

Many Part 91 corporate flight departments have training, equipment, and operations on par with Part 121, and their record is quite good. It would behoove the industry to take advantage of the information learned from this accident and study this issue further to determine whether revisions to the regulatory scheme are merited to provide a higher level of safety and oversight for these type of corporate operations.

[4] *Letter to Brian C. Rayner from B. Hooper Harris, Manager, Accident Investigations Division of the FAA, dated September 7, 2010.*