

## CHAPTER 13. LEASE AND INTERCHANGE AGREEMENTS

### SECTION 1. GENERAL

#### 1883. BACKGROUND AND DEFINITIONS.

A. Economic deregulation of the U.S. air transportation industry, and increasing international cooperation between the United States and other governments working through bilateral and multilateral agreements have resulted in greater numbers of aircraft lease and interchange agreements. These agreements are widely used to meet certain market demands and seasonal fluctuations in both the domestic and global air transportation systems.

B. The FA Act and the FAR's do not contain definitions of the terms lease, lessee, lessor, dry lease, or interchange. For the purpose of standardization concerning surveillance, enforcement, and compliance with applicable FAR requirements, the following definitions apply to lease and interchange agreements:

(1) "Lease" - Any agreement by a person (the lessor) to provide an aircraft to another person (the lessee) who will use the aircraft for compensation or hire purposes. A lease is not an agreement for the sale of an aircraft or a contract of conditional sale under Section 101 of the FA Act.

(2) "Dry lease" - Any agreement in which a lessor such as an air carrier, bank, or leasing company leases an aircraft without any crewmembers to an air carrier (the lessee) and in which the lessee maintains operational control.

(3) "Wet lease" — Any agreement in which a U.S. air carrier (the lessor) leases an aircraft with at least one crewmember to either a U.S. air carrier, for-

either a foreign air carrier, or a foreign person (the lessee). A wet lease requires that a written agreement between the lessor and the lessee be executed by authorized officers of the two parties. Either a copy of the lease agreement or a written memorandum of the terms of the lease agreement must be provided to the Administrator.

(4) "Interchange agreement" - Any agreement in which the operational control of an aircraft is transferred for short periods of time from one air carrier to another air carrier and in which the latter air carrier assumes responsibility for the operation of the aircraft at the time of transfer.

(5) "Operational control," "operation of aircraft," or "operate aircraft" - As defined in Section 101(31) of the FA Act, means the use of aircraft, for the purpose of air navigation and includes the navigation of aircraft. Any person who causes or authorizes the operation of aircraft, with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be considered to be engaged in the operation of aircraft. "Operational control" and "operate" with respect to aircraft are also defined in FAR 1.1.

**NOTE: Determination of operational control rests with the FAA and shall be made in accordance with FAR 121.6. Notwithstanding the preceding sentence and the definition of wet lease, in any wet lease by any U.S. air carrier to any foreign air carrier, the U.S. air carrier shall retain operational control.**

**1884. - 1888. RESERVED.**

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