



U.S. Department
of Transportation
Federal Aviation
Administration

Advisory Circular

Subject: Truth in Leasing

Date: 2/10/16

AC No: 91-37B

Initiated by: AFS-800

Change:

- 1 **PURPOSE.** This advisory circular (AC) provides information and guidance for lessees and conditional buyers of U.S.-registered aircraft. While truth-in-leasing requirements are required by regulation for aircraft weighing more than 12,500 pounds, the Federal Aviation Administration (FAA) prepared this AC to ensure any person who is seeking to lease an aircraft understands the meaning of operational control and does not enter into an agreement where operational control is not clearly maintained by the appropriate party.
 - 2 **CANCELLATION.** AC 91-37A, Truth in Leasing, dated January 16, 1978, is canceled.
 - 3 **INTRODUCTION.** Operational control is not dependent on aircraft size or the number of aircraft operated; it is instead a matter of legal responsibility. There are instances where lessees and conditional buyers of aircraft did not realize that they were legally responsible for operational control of the aircraft as defined in Title 14 of the Code of Federal Regulations (14 CFR) part 1. In other cases, even if the lessee or conditional buyer did realize it, very few recognized their responsibilities for compliance with regulations. If you or your company, school, club, athletic team, fraternity, social, or other group are planning to charter an airplane, take a moment to learn about chartered and leased aircraft and how to use them safely to your best advantage.
 - 3.1 It is possible for aircraft owners to evade compliance with the applicable certification and operating rules of 14 CFR parts 121 and 135 governing air carriers and commercial operators, through the use of devious leases and conditional sales contracts. This evasion of compliance makes it appear that the lessees and conditional buyers are responsible for operational control, when in fact they do not have that responsibility. This knowing or unknowing assumption of responsibility creates a serious problem in air safety and may involve legal liabilities.
 - 3.2 To gain better insight and understanding of this matter requires an explanation of charter flights. Generally, a charter flight involves the hiring of a company to fly your group to a given destination and return. The company is required by FAA regulations to provide you with a certificated and properly maintained aircraft, flown by a properly trained and certificated crew. In flight, the captain is in command. The company and the captain are responsible for complying with all applicable Federal safety regulations.
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- 3.3** To legitimately engage in charter air service, a company must be FAA-certificated as a 14 CFR part 121, 125, or 135 operation. No one may legally offer charter air service for compensation or hire unless he or she has a valid air carrier or operating certificate issued by the FAA.
- 3.4** The FAA-issued air carrier certificate requires varying degrees of aircraft maintenance, servicing, and operating procedures. There are more requirements for a part 121 or 135 air carrier certificate than for aircraft operated under 14 CFR part 91 general operating rules. If the operator has an operator's certificate, for example, it is not equivalent to what is required to maintain an aircraft operating under a part 121 air carrier certificate. The FAA safety standards for a part 121 or 135 air carrier certificate require compliance with a higher level of pilot training and certification, aircraft maintenance procedures, and operational safety rules than those required for flights conducted under part 91 general operating rules. Pilots, crewmembers, and the aircraft are checked periodically by FAA inspectors, and crewmembers have regularly required proficiency checks to maintain their certifications by the FAA.
- 3.5** There are aviation companies certificated to offer charter air service; however, there are also dozens of other companies or individuals who have no air carrier or operating certificate but who are willing to violate the law by evading safety requirements. Some evade air carrier certification by using devious leasing schemes intended to appear legitimate. Before you sign for a charter air service, ask to see their air carrier operating certificate issued by the FAA. Additionally, before entering into an aircraft lease, ensure you understand and are willing to accept your responsibilities for compliance with air safety regulations.
- 4** **DEFINITIONS.** The parties to lease or contract a conditional sale should be familiar with the meaning of the following terms as used in the Federal Aviation Act of 1958 (FA Act) and part 1:
- 4.1** **Conditional Sale.** Conditional sale is defined in the FA Act as “(a) any contract for the sale of an aircraft...under which possession is delivered to the buyer and the property is to vest in the buyer at a subsequent time, upon the payment of part or all of the price, or upon the performance of any other condition or the happening of any contingency; or (b) any contract for the bailment or leasing of an aircraft...by which the bailee or lessee contracts to pay as compensation a sum substantially equivalent to the value thereof, and by which it is agreed that the bailee or lessee is bound to become, or has the option of becoming, the owner thereof upon full compliance with the terms of the contract. The buyer, bailee, or lessee shall be deemed to be the person by whom any such contract is made or given.”
- 4.2** **Conveyance.** Conveyance is defined in the FA Act as “a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property.”
- 4.3** **Large Aircraft.** Large aircraft is defined in part 1, § 1.1 as “aircraft of more than 12,500 pounds, maximum certificated takeoff weight.”

- 4.4 Lease.** For the purpose of part 91, § 91.23, a lease means any agreement by a person to furnish an aircraft to another person for compensation or hire, with or without flightcrew members, that is not a contract of conditional sale. The person furnishing the aircraft is referred to as the lessor and the person to whom it is furnished is referred to as the lessee.
- 4.5 Operate.** As defined in § 1.1, operate “with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13 of this chapter) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise).”
- 4.6 Operational Control.** As defined in § 1.1, operational control “with respect to a flight; means the exercise of authority over initiating, conducting or terminating a flight.” Operational control involves three basic areas: Aircrew, Aircraft, and Flight Management. These areas, summarized below, are intended to give a general understanding of operational control. When chartering an aircraft, the charter air carrier has operational control and is responsible for regulatory compliance and the safety of the flight. When an aircraft lessee operates an aircraft under general operating rules, the lessee accepts operational control responsibilities. Operational control is an important regulatory concept for lessees to understand and it is explained in more detail in FAA Order 8900.1, Flight Standards Information Management System (FSIMS), Volume 6, Chapter 2, Section 22, Safety Assurance System: Operational Control Inspections, available at <http://fsims.faa.gov>.
- 4.6.1 Aircrew.** Ensures that crewmembers are trained and qualified in accordance with the applicable regulations and remain in compliance with all applicable flight, duty, and rest requirements including designating a pilot in command (PIC) for each flight.
- 4.6.2 Aircraft.** Ensures that an aircraft is Airworthy and is in compliance with applicable regulations.
- 4.6.3 Flight Management.** Specifies the conditions under which a flight may be operated, such as determining weather minimums, proper aircraft loading, center of gravity (CG) limitations, icing conditions, and fuel requirements. Handles the monetary and logistical issues associated with the aircrew and aircraft.
- 5 TYPES OF LEASES.** A lease involving aircraft is sometimes referred to as a wet lease or a dry lease. Title 14 CFR part 110, § 110.2 defines a wet lease as “any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease does not include a code-sharing arrangement.” Leasing of an aircraft without the crew is considered to be a dry lease.
- 5.1** Normally, in the case of a dry lease, the lessee exercises operational control of the aircraft. Conversely, in a wet lease the lessor normally exercises operational control. The determination in each situation as to whether the lessor or lessee exercises operational control requires consideration of all relevant factors present in each situation. The terms of the lease itself are important but since they may not reflect the true

situation, the actual arrangements and responsibilities should be given very careful consideration.

- 5.2** There may be situations during which the lessor provides both the aircraft and the flightcrew (pilots, Flight Engineers (FE), and flight navigators) but the lessee provides the cabin crew (flight attendants (F/A)). In this case the lease would be considered a wet lease. On the other hand, when the lessor provides the aircraft and the lessee provides the flightcrew and the cabin crew, it would be considered a dry lease.

- 6 LEASING AN AIRCRAFT.** Before a leased aircraft is turned over to you or your group, be sure that specific use purposes are clearly spelled out in the lease. For example, do you or your group have exclusive use of the aircraft? May it be flown internationally? Are more than two parties involved? The important point is that *when you dry lease an aircraft for your use, you normally become the aircraft operator*. Conversely, when you wet lease an aircraft, the lessor is normally the aircraft operator.

- 6.1** When dry leasing, you do not need an FAA-issued operator's certificate as long as you do not carry persons or property for compensation or hire. However, for larger aircraft operating under part 125, please review § 125.1 for the certificate requirements of your intended operations. You will need to know how to maintain and operate the aircraft in accordance with 14 CFR. The minimum safety standards for dry-leased aircraft, with regard to aircraft maintenance and pilot proficiency, are not as exacting as those required when persons or property are carried for compensation or hire.

- 6.2** Wet leasing aircraft is a common and approved practice, carried out by hundreds of legitimate organizations; unfortunately, there are some irresponsible companies which may use various ways to confuse the issue concerning who is the actual aircraft operator. An example of this is a sham dry lease, in which you are provided with an aircraft on a lease basis, although it is actually serviced and flown by the leasing company. Such an arrangement (depending upon the terms of the lease) may make you the operator of the aircraft, although you do not intend this and have in fact assumed no operational responsibilities.

- 6.3** Some groups seeking charter air services may knowingly enter into an evasively worded arrangement if the price is made attractively low. If you are tempted to do so, consider that if you accept what amounts to charter service from a company that is not certificated to operate charter flights, you may forgo the protection of certain safety standards required by the FAA. You may also violate the law. Regardless of how the lease is named, there are a few questions that can clarify who will maintain operational control:

1. Who makes the decision to assign crewmembers and aircraft; accept flight requests; and initiate, conduct, and terminate flights?
2. For whom do the pilots work as direct employees or agents?
3. Who is maintaining the aircraft and where is it maintained?
4. Prior to departure, who ensures the flight, aircraft, and crew comply with regulations?

5. Who decides when/where maintenance is accomplished, and who directly pays for the maintenance?
6. Who determines weather/fuel requirements, and who directly pays for the fuel?
7. Who directly pays for the airport fees, parking/hangar costs, food service, and/or rental cars?

Note 1: If you are responsible for any of the criteria listed above, then you have some operational control and should clarify your leasing arrangements accordingly or you will be held accountable for violations of 14 CFR for operation of the aircraft.

Note 2: If you are not responsible for any or all of the criteria listed above, then you do not have operational control and the aircraft is a wet lease requiring full compliance with the provisions of part 135 for air charter operations to carry passengers for hire.

7 CONTRACT OF CONDITIONAL SALE. When an aircraft is purchased under a conditional sale contract, possession is delivered to the conditional buyer who becomes the new owner for purposes of registration.

1. Title 14 CFR part 47, § 47.5(d) states, “‘owner’ includes a buyer in possession, a bailee, or a lessee of an aircraft under a contract of conditional sale, and the assignee of that person.”
2. Section 47.3(b) states, “No person may operate an aircraft that is eligible for registration under 49 U.S.C. 44101-44104 unless the aircraft—(1) has been registered by its owner...”
3. Accordingly, from the above, it is clear that an aircraft purchased under a contract of conditional sale must be registered by its owner. If this aircraft falls under the criteria of § 91.23, it is also subject to the truth-in-leasing clause requirements.

8 DETERMINING RESPONSIBILITY FOR OPERATIONAL CONTROL. If you have any doubt about the legitimacy or the operating authority concerning the charter flights you are arranging, check with the nearest FAA Flight Standards District Office (FSDO).

8.1 You should note that operational control may remain with the lessor even though the lease is characterized as a dry lease and expressly states that items such as flight following, dispatch, communications, weather, and fueling are to be performed by the lessee. Therefore, in some instances it may be necessary to look at the actual manner in which the operations are conducted to determine which party on the lease has operational control.

8.2 If requested, the FAA will determine whether the lessor or lessee has operational control under 14 CFR. Such determination will be based on a careful review of the lease and any

other circumstances regarding the actual operation. Where a lease agreement is not clear in regard to operational control of the aircraft, the FAA may ask the parties to amend the lease to properly reflect the party that has operational control.

- 8.3** The FAA has taken the position that if a person leases an aircraft to another and also provides the flightcrew, fuel, and maintenance, the lessor of the aircraft is the operator. If the lessor makes a charge for the aircraft and services, other than as provided for in part 91 subpart F, the operation of the aircraft is subject to 14 CFR part 121, 125, 129, 135, or 137 depending upon the type or size of the aircraft as described in § 91.501. This position is supported by *U.S. v. Bradley*, 252 F. Supp. 804 (1966); and *B & M Leasing Corp. v. U.S.*, 331 F.2d 592 (1964).
- 9** **MAILING THE LEASE OR CONTRACT TO FAA.** Under § 91.23, a signed legible copy of the lease or contract of conditional sale is to be mailed within 24 hours of its execution to the FAA Aircraft Registration Branch (AFS-750), Attn: Technical Section, P.O. Box 25724, Oklahoma City, OK 73125. Filing a lease or contract of conditional sale under § 91.23 to satisfy the truth-in-leasing requirements does not constitute filing under 14 CFR part 47 or 49 to register the aircraft, or to record for public notice.
- 10** **FAA NOTIFICATION OF PROPOSED FLIGHT.** In addition to the lease mailed to Oklahoma City, § 91.23 requires the lessee or conditional buyer (or the registered owner if the lessee is not a U.S. citizen) to provide notification to the FAA at least 48 hours prior to the first flight of an aircraft under that lease or contract.
- 10.1** This notification must be made to the FSDO nearest the airport where the lease or contract flight will originate. The notification must be in-person, via telephone, or via email at the discretion of the FSDO.
- 10.2** To provide some relief in cases where the 48-hour requirement would cause a hardship, the Administrator may allow receipt of the notification in less time. This decision is at the discretion of the FSDO representative. Among the factors to be considered in determining whether notification can be accepted in less than 48 hours are inspector availability, location of departure airport in relation to the FSDO, and prior surveillance of the proposed operator.
- 11** **TRUTH-IN-LEASING CLAUSE.** Figure 1, Sample Truth-in-Leasing Clause, is a sample of the truth-in-leasing clause required by § 91.23, which should be written as a concluding paragraph in large print immediately preceding the signature of the parties.

FIGURE 1. SAMPLE TRUTH-IN-LEASING CLAUSE

_____ (insert type, model, and registration number of airplane, such as Convair 240; N124W) HAS BEEN MAINTAINED AND INSPECTED UNDER _____ (insert appropriate 14 CFR part) FROM _____ TO _____ (insert date of execution of lease or contract after the word “to”; then go back 12 months and enter that date after the word “from”). (If the aircraft has been maintained under 14 CFR part 91 during part of the preceding 12 months and under 14 CFR part 121 during other parts of the 12 months, for example, the dates and 14 CFR parts under which it was maintained for each period should be specified.)

IT WILL BE MAINTAINED AND INSPECTED UNDER _____ (insert appropriate 14 CFR part) FOR OPERATIONS TO BE CONDUCTED UNDER THIS _____ (insert lease OR contract of conditional sale, whichever is correct). DURING THE DURATION OF THIS _____ (insert lease OR contract of conditional sale, whichever is correct).

_____ (insert name and address of individual, company, or corporation) IS CONSIDERED RESPONSIBLE FOR OPERATIONAL CONTROL OF ALL AIRCRAFT IDENTIFIED AND TO BE OPERATED UNDER THIS _____ (insert lease OR contract of conditional sale).

AN EXPLANATION OF THE FACTORS BEARING ON OPERATIONAL CONTROL AND THE PERTINENT FEDERAL AVIATION REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA FLIGHT STANDARDS DISTRICT OFFICE (FSDO).

I, THE UNDERSIGNED _____ (insert name and address of responsible party) CERTIFY THAT I AM RESPONSIBLE FOR OPERATIONAL CONTROL OF THE AIRCRAFT AND THAT I UNDERSTAND MY RESPONSIBILITIES FOR COMPLIANCE WITH APPLICABLE FEDERAL AVIATION REGULATIONS.

Signature and Title (lessor)

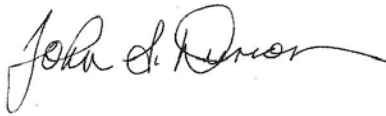
Date and Time of Execution

Signature and Title (lessee)

Date and Time of Execution

12 HOW TO COMPLY WITH TRUTH-IN-LEASING REQUIREMENTS.

1. Prepare the lease or conditional sales contract so that it complies with § 91.23.
2. Mail or deliver a copy of the contract to the FAA Aircraft Registration Branch (AFS-750), Attn: Technical Section, P.O. Box 25724, Oklahoma City, OK 73125, within 24 hours of the execution and signing.
3. Provide in-person or telephonic notice to the appropriate FSDO at least 48 hours prior to first flight under the contract.
4. Carry a copy of the contract in the airplane.
5. If you have any questions, check with the nearest FAA FSDO located nearest to you by searching http://www.faa.gov/about/office_org/field_offices/fsdo/.



John S. Duncan
Director, Flight Standards Service

Advisory Circular Feedback Form

If you find an error in this AC, have recommendations for improving it, or have suggestions for new items/subjects to be added, you may let us know by contacting General Aviation and Commercial Division (AFS-800) or the Flight Standards Directives Management Officer.

Subject: AC 91-37B, Truth in Leasing

Date: _____

Please check all appropriate line items:

An error (procedural or typographical) has been noted in paragraph _____
on page _____.

Recommend paragraph _____ on page _____ be changed as follows:

In a future change to this AC, please cover the following subject:
(Briefly describe what you want added.)

Other comments:

I would like to discuss the above. Please contact me.

Submitted by: _____

Date: _____