

VOLUME 3 GENERAL TECHNICAL ADMINISTRATION**CHAPTER 13 LEASE AND INTERCHANGE AGREEMENTS****Section 6 Process an Aircraft Lease Agreement for Regulatory Compliance Under § 91.23****3-496 PROGRAM TRACKING AND REPORTING SUBSYSTEM (PTRS) ACTIVITY CODE. 1440.**

3-497 OBJECTIVE. The objective of this task is to determine if an aircraft lease complies with Title 14 of the Code of Federal Regulations (14 CFR) part 91, § 91.23. Successful completion of this task results in a determination of whether the lease is in compliance or not with § 91.23.

3-498 GENERAL.**A. Definitions.**

- 1) The lessor is the person furnishing the aircraft.
- 2) The lessee is the person to whom the aircraft is furnished.
- 3) For the purpose of § 91.23, a lease means any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without crewmembers, which is not a contract of conditional sale under section 101 of the Federal Aviation Act of 1958 (FA Act).
- 4) Conditional sale is defined in the FA Act as:
 - a) “[A]ny 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”
 - b) “[A]ny 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.”
- 5) 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.”
- 6) Operation of aircraft or operate aircraft is defined in the FA Act as “... the use of aircraft, for the purpose of air navigation and includes the navigation of the aircraft. Any person who causes or authorizes the operation of aircraft, whether with or without the right of legal control (in the capacity of owner, lessee, or otherwise) of the aircraft, shall be deemed to be engaged in the operation of the aircraft within the meaning of this Act.”

7) Operational control is defined in 14 CFR as “with respect to a flight, ... the exercise of authority over initiating, conducting, or terminating a flight.”

8) In a wet lease the lessor normally exercises operational control. There may be situations during which the lessor provides the aircraft and flightcrew (pilots and Flight Engineer (F/E)), but the lessee provides the cabin crew (Flight Attendants (F/A)). In this case, the lease would be a wet lease.

B. Regulatory Authority. Section 91.23 establishes truth-in-leasing requirements in leases and conditional sales contracts of large civil aircraft of U.S. registry.

1) Illegal and unsafe operations may occur when leases or contracts do not specify who is legally responsible for operational control of the aircraft. In some cases, the lessee may be aware of his or her responsibility for operational control of the aircraft but does not recognize responsibility for compliance with 14 CFR.

2) Some owners of large airplanes may attempt to evade complying with the certification and operating requirements of 14 CFR part 121, 125, or 135 by using devious leases or conditional sales contracts. Usually this attempt appears as though the lessee or conditional buyer has operational control of the aircraft, when, in fact, he or she does not. This assumption of responsibility creates a safety problem and can involve legal liability.

3) To engage legitimately in “charter” service for compensation or hire, a company must be certificated as an air carrier or commercial operator. The inspector’s primary concern in processing or evaluating an aircraft lease or contract is determining evidence of operational control and that common carriage is not involved. Evasively worded lease agreements should be questioned and brought to the attention of the regional counsel.

4) The regulation requires that the lease identify the maintenance program that the aircraft has been under for the preceding 12 months and the person or parties considered responsible for operational control of the aircraft. A copy of the agreement is required to be carried in the aircraft during all operations conducted under the terms of the lease or contract.

3-499 NOTIFICATION. Unless otherwise authorized, the operator is required to give the district office (nearest to the airport where the lease or contract flight will originate) a 48-hour advance notification of the flight.

A. Method. Notification is usually either by telephone or in person.

B. Deviation. To provide some relief in cases where the 48-hour notification requirement would create a hardship, the office manager may allow receipt of notification in less time. Factors to be considered in doing so are:

- 1) Inspector availability.
- 2) Location of departure airport.
- 3) Results of prior surveillance of the proposed operator.

C. Required Information. Under § 91.23, the following information must be provided to the district office:

- 1) Location of the airport.
- 2) Departure time.
- 3) Registration number of aircraft involved.

D. Planning Information. The district office needs the following information for planning purposes:

- 1) Who is going to fly the aircraft (crew names, if known)?
- 2) Where the aircraft is presently located?
- 3) Aircraft destination and en route stops, if any.
- 4) Nature of mission (cargo, passenger, or both).
- 5) Where and when the aircraft can be seen before departure?
- 6) Type of aircraft.
- 7) Who is the lessee?
- 8) Who is the lessor?
- 9) Name of the person or parties considered to be responsible for operational control of the aircraft.
- 10) Type of inspection and maintenance program the aircraft has been under during the preceding 12 months.
- 11) Status of compliance with applicable maintenance and inspection requirements.

3-500 FACTORS TO BE CONSIDERED AFTER RECEIPT OF A LEASE

NOTIFICATION. The inspector, in coordination with the office manager, is in the best position to decide if a ramp inspection is necessary. Not all lease notifications require an inspection. The following suggestions may assist in evaluating a lease notification to determine if an inspection is necessary.

A. Personal Knowledge of the Lessee or Lessor. No purpose would be served in conducting a ramp inspection of an aircraft leased from an owner that the district office knows to have a good compliance and safety record.

B. Personnel Qualifications. Effective ramp inspections can be conducted without the inspector being personally qualified in or familiar with the aircraft involved. However, if there is reason to suspect either the condition of the aircraft or the qualifications of the flightcrew,

personnel should be assigned who have the expertise to conduct the appropriate inspection. At times, it might be necessary to request outside assistance from the appropriate Regional Office (RO).

C. Type of Mission. It may be appropriate to give greater consideration toward conducting a ramp inspection of an aircraft involved in passenger carrying operations than one limited to cargo only.

D. Type of Inspection and Maintenance Program. A determination should be made as to the type of inspection and maintenance program the aircraft has been under during the preceding 12 months. If the aircraft is currently maintained under a known program, such as a continuous airworthiness inspection program of a part 121 operation or an approved aircraft inspection program of a part 135 operator, there may be little need for an airworthiness inspection. If the aircraft has been operated as a public aircraft immediately preceding the current lease agreement, consideration should be given to an inspection to determine if the airworthiness certificate is still valid.

E. Conduct of Ramp Inspections. If a ramp inspection is to be conducted, the inspector should also follow the procedures in Volume 6, Chapter 1, Section 4, Conduct a Part 91 Ramp Inspection.

3-501 ALLOWABLE COMPENSATION. The lessor may charge for the aircraft and services as provided in part 91 subpart D. The lessor does not need to be certificated under part 121, 125, or 135.

3-502 PART 91 SUBPART F. Section 91.501 prescribes those operations of large and turbine-powered U.S. civil airplanes and allows certain compensation and charges without requiring certification under part 121, 125, or 135. Additionally, certain small aircraft (less than 12,500 pounds) may be operated under part 91 subpart F through an exemption issued to the National Business Aircraft Association (NBAA).

A. Corporate Aircraft. In general, the use of corporate aircraft is noncommercial in nature and a corporation may make charges to subsidiaries, affiliates, or divisions for the use of the aircraft incidental to and within the scope of its business. The key element here is that the aircraft operator does not engage in common carriage (i.e., “holding out” to the public).

B. Types of Agreements. There are three types of agreements in which certain compensatory charges may be allowed.

1) A time-sharing agreement means an arrangement whereby a person leases an airplane with a flightcrew to another person. No charge is made for the flight conducted under that arrangement other than for the items listed in § 91.501(d). Absent from the list are pilot salaries, a pro rata share of the overhead, hangar and maintenance expenses, and interest or amortization costs for the airplane. The Federal Aviation Administration (FAA) feels that permitting the additional 100 percent of the fuel costs approximates the other overhead costs while limiting the financial return below a profit level.

a) Time sharing is essentially a wet lease of the aircraft and an agreement or lease is required by regulations. Operational control and the relationship of the parties using the aircraft are the keys to how agreements may be handled. Operational control is deemed to rest with the pilot in command (PIC) and, by extension, to the employer of the pilot. In a wet lease where the pilot is furnished by the owner of the aircraft, that pilot is deemed in operational control.

b) The FAA requires that a copy of any operating agreement or lease covering operations under time sharing (and also interchange) be mailed to the FAA Civil Aviation Registry (AFS-700), P.O. Box 25724, Oklahoma City, OK 73125, within 24 hours of its execution. In addition, a copy of the lease, contract, or agreement should be carried in the aircraft when the aircraft is being operated under the terms of the lease or agreement (§ 91.23). This does not imply the need for FAA approval either before or ultimately for the terms of the contract. Filing is for record purposes only.

2) An interchange agreement means an arrangement whereby a person leases an airplane to another person in exchange for equal time, when needed, on the other person's airplane or for a monetary payment that does not exceed the difference between the cost of owning, operating, and maintaining the exchanged airplanes.

a) Interchange covers the case where a company that operates an airplane wishes to borrow another company's airplane for a trip. The agreement can provide for the mutual exchange of airplanes and crews with provisions to equalize the expenses with an appropriate payment. For instance, a company using a business jet can interchange use of the aircraft with a company using a turboprop airplane. Total costs per hour of use would be different and payment is allowed to compensate for the cost differential.

b) The provisions for recording an interchange agreement are the same as for time sharing.

3) A joint-ownership agreement means an arrangement whereby one of the registered owners of an airplane employs and furnishes the flightcrew for that airplane and each of the other registered owners pays a share of the charges specified in the agreement between the owners.

a) Under joint ownership, an agreement may be reached as to the percentage of ownership and location of operational control. Two companies can agree to purchase the airplane and share it 60 – 40 with the pilot, maintenance, etc., being the responsibility of one company. That company is deemed to exercise operational control by the FAA. All costs for owning, operating, and maintaining the aircraft can be divided according to the agreement.

b) The joint owners must file joint-ownership records with the FAA Aircraft Registration Branch (AFS-750), P.O. Box 25504, Oklahoma City, OK 73125-0504, and secure the appropriate registration for the airplane. Failure to file the appropriate title and bill of sale showing joint ownership can be considered a violation of the rule.

3-503 SECURITY OF LEASES/AGREEMENTS. The lease or agreement furnished by an operator may contain sensitive commercial or financial information. It is, therefore, privileged and confidential and will not be made available to the public or copied by the inspector.

3-504 PREREQUISITES AND COORDINATION REQUIREMENTS.

A. Prerequisites. This task requires knowledge of the regulatory requirements of part 91 and FAA policies and qualification as an aviation safety inspector (ASI) (Operations).

B. Coordination. This task may require coordination with the Regional Counsel, Airmen Certification Branch (AFS-760), and AFS-750.

3-505 REFERENCES, FORMS, AND JOB AIDS.

A. References (current editions):

- Title 14 CFR Parts 1; 61; 63; 67; 91, §§ 91.23 and 91.501; 121; 125; and 135.
- Advisory Circular (AC) 91-37, Truth in Leasing.
- FAA Order 8720.1, Truth in Leasing Notification (FAR Section 91.23).
- PTRS Field Office Manual.

B. Forms. FAA Form 8000-36, Program Tracking and Reporting System Data Sheet.

C. Job Aids. Sample letters and figures.

3-506 PROCEDURES.

A. Request Lease. After being notified that a lease has been agreed upon, request a copy of the lease. Inform the lessee that he or she can either mail the copy or bring it in personally to the district office.

B. PTRS. Open the PTRS file.

C. Review Lease. Review the lease (see Figure 3-64, Sample Lease) to determine compliance with § 91.23. Check for:

- Aircraft maintenance program.
- Operational control of aircraft.
- Name and address of operator.
- Not contrary to part 121, 125, or 135 applicability.
- Signature certifying acknowledgment of responsibilities.

D. Lease Not in Compliance. Return the lease to the operator. Inform the operator in writing (see Figure 3-65, Sample Letter Informing Operator of Needed Corrections in Lease) of the corrections needed for compliance.

E. Lease in Compliance. If the lease is in compliance with § 91.23, inform the district office manager that the lease is in compliance. Determine whether a ramp inspection is necessary, taking into account the following:

- Whether the aircraft owner (the lessor) has a good compliance and safety record known to the office manager.
- Availability of qualified inspectors to conduct the inspection.
- Type of operation to be conducted (passenger carrying or cargo carrying).
- Type of inspection and maintenance program the aircraft has been under during the preceding 12 months.

F. Conduct the Ramp Inspection. If a ramp inspection is necessary, see Volume 6, Chapter 1, Section 4.

G. Questions Concerning Compliance. If there are still questions regarding either the lease format or who has specific operational control of the aircraft, contact the Regional Counsel for guidance and proceed with the Counsel's instructions.

H. Forward the Report. If the aircraft is not based in the inspector's district, forward a copy of the PTRS report to the appropriate district office.

I. File the Lease Agreement. File the lease agreement (and the job aid, if applicable) according to office procedures.

J. PTRS Report. Complete FAA Form 8000-36, Program Tracking and Reporting System Data Sheet.

3-507 TASK OUTCOMES. Successful completion of this task results in either:

- An approved lease, or
- A disapproved lease.

3-508 FUTURE ACTIVITIES.

- Process additional leases from operator.
- Future ramp inspections involving the lessee.
- Possible enforcement investigation.

Figure 3-64. Sample Lease

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

IT WILL BE MAINTAINED AND INSPECTED UNDER_____(insert 14 CFR Part 91 or 14 CFR part 121 as appropriate) FOR OPERATIONS TO BE CONDUCTED UNDER THIS_____(insert lease OR contact 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 REGULATIONS CAN BE OBTAINED FROM THE NEAREST FAA FLIGHT STANDARDS DISTRICT OFFICE.

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 REGULATIONS.

Signature and Title (lessor) Date and time of execution

Signature and Title (lessee) Date and time of execution

Figure 3-65. Sample Letter Informing Operator of Needed Corrections in Lease

FAA LETTERHEAD

[DATE]

[APPLICANT'S NAME AND ADDRESS]

Dear ____:

We have reviewed the lease which you submitted for [identify aircraft by make, model, and N-number]. We are unable to process the lease until corrections are made to the following clauses to bring them into compliance with 14 CFR part 91, § 91.23:

List all unsatisfactory clauses and their appropriate 14 CFR references.

If you require assistance in adjusting the above clauses, please contact this office at [include the telephone number and operating hours of the district office].

Sincerely,

[Signed by the reviewing inspector]

RESERVED. Paragraphs 3-509 through 3-525.