

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

- A. Operations:** 1440.
- B. Maintenance:** 3430.
- C. Avionics:** 5430.

**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 or not the lease is in compliance with § 91.23.

NOTE: Section 91.23 only applies to U.S.-registered large civil aircraft.

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

- 1) A “lessor” means the person furnishing the aircraft. Refer to § 91.23(e).
- 2) A “lessee” means the person to whom the aircraft is furnished. Refer to § 91.23(e).
- 3) A “lease” means any agreement by a person to furnish an aircraft to another person for compensation or hire, whether with or without flight crewmembers, other than an agreement for the sale of an aircraft and a contract of conditional sale under section 101 of the Federal Aviation Act of 1958 (FA Act). Refer to § 91.23(e).

- 4) A “conditional sales contract” means a contract:
  - a) For the sale of an aircraft, aircraft engine, propeller, appliance, or spare part, under which the buyer takes possession of the property but title to the property vests in the buyer at a later time on:

- 1. Paying any part of the purchase price;
  - 2. Performing another condition; or
  - 3. The happening of a contingency; or

- b) To bail or lease an aircraft, aircraft engine, propeller, appliance, or spare part, under which the bailee or lessee:

1. Agrees to pay an amount substantially equal to the value of the property; and

2. Is to become, or has the option of becoming, the owner of the property on complying with the contract. Refer to Title 49 of the United States Code (49 U.S.C.) § 40102(a)(18).

**5)** A “conveyance” means an instrument, including a conditional sales contract, affecting title to, or an interest in, property. Refer to 49 U.S.C. § 40102(a)(19).

**6)** A “large aircraft” means an “aircraft of more than 12,500 pounds, maximum certificated takeoff weight.” Refer to part 1, § 1.1.

**7)** To “operate,” with respect to an aircraft, means to use, cause to use or authorize to use aircraft, for the purpose (except as provided in § 91.13) of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise). Refer to 49 U.S.C. § 40102(a)(35) and § 1.1.

**8)** “Operational control,” with respect to a flight, means the exercise of authority over initiating, conducting, or terminating a flight.” Refer to § 1.1.

**9)** “Wet lease” means 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. Refer to 14 CFR part 110, § 110.2.

## B. General Guidance.

**1) Dry Leases.** A dry lease of an aircraft is one in which the lessor provides the aircraft and the lessee supplies the crewmembers and retains operational control of the flight. If the lessor provides one or more crewmembers (whether flight crewmembers or cabin crewmembers) then the lease cannot be characterized as a dry lease.

**2) Wet Leases.** A “wet lease” is any lease whereby the lessor provides both the aircraft and at least one crewmember (whether flight crewmember or cabin crewmember) and retains operational control of the flight. Accordingly, when an agreement provides for the lease of an aircraft with a flight crew employed or procured directly or indirectly by the lessor, operational control normally remains in the hands of the lessor. There might be situations during which the lessor provides the aircraft and flightcrew (pilots and Flight Engineer (FE)), but the lessee provides the cabin crew (flight attendants (F/A)). In such cases, when the lessor provides an entire aircraft and at least one crewmember, the lease would qualify as a wet lease. As with a dry lease, the party in operational control exercises authority and responsibility for a specified number of operational functions. ASIs should review the procedures in Volume 3, Chapter 13, Section 4 for processing wet lease arrangements and determining operational control.

**3) Operational Control.** 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.

- a) Aircrew. Which party 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?
- b) Aircraft. Which party ensures that the aircraft is airworthy and in compliance with applicable regulations?
- c) Flight Management. Which party has to comply with all regulatory requirements that apply to the specific operation, such as, but not limited to, determining weather minimums, proper aircraft loading, center of gravity (CG) limitations, icing conditions, fuel requirements, as well as the maintenance program and minimum equipment list (MEL) to be followed during the term of the dry lease? This includes handling the monetary and logistical issues associated with the aircrew and the operation of the aircraft.

NOTE: Operational control is an important regulatory concept for lessees to understand and it is explained in more detail in Volume 6, Chapter 2, Section 22, Safety Assurance System: Operational Control Inspections, available at <http://fsims.faa.gov>.

- 4) The responsible Flight Standards office is the Flight Standards (FS) office with a Service Area (SA) covering the operator's principal business office location.
- 5) The operator's principal business office location is the physical address from which the operator conducts business. This is a location where the Federal Aviation Administration (FAA) can contact the operator. It must not be a post office box.

**C. 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 or unsafe operations may occur when leases or contracts do not specify who is 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. Even though the lease may explicitly state that one party has operational control, the FAA determines operational control by considering the totality of the circumstances based on the terms of the lease, the specific facts, and how operations under the arrangement actually occur.
- 2) Some owners of large airplanes may attempt to evade complying with the certification and operating requirements of 14 CFR part 119, 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 provision of service for compensation or hire, a person<sup>1</sup> must be certificated as an air carrier or commercial operator. The ASI's primary concern in

<sup>1</sup>Title 14 CFR part 1, § 1.1 defines "person" as "an individual, firm, partnership, corporation, company, association, joint-stock association, or governmental entity. It includes a trustee, receiver, assignee, or similar representative of any of them."

evaluating an aircraft lease or contract is determining which person has operational control over the operation of the aircraft. Questions involving ambiguous lease agreements should be brought to the attention of the Office of the Chief Counsel (AGC).

- 4) Section 91.23(a)(1) requires that the lease identify:
  - a) The regulations under which the aircraft has been maintained and inspected during the 12 months preceding the execution of the lease or contract of conditional sale;
  - b) A certification regarding the aircraft's status of compliance with applicable maintenance and inspection requirements for the operation to be conducted under the lease or contract of conditional sale; and
  - c) The person responsible for operational control of the aircraft and a certification that the person understands his or her responsibilities for compliance with applicable regulations.
- 5) A copy of the agreement must be carried in the aircraft during all operations conducted under the terms of the lease or contract.

NOTE: Refer to the current edition of Advisory Circular (AC) 91-37, Truth in Leasing, for additional information concerning the application of § 91.23.

**3-499 ALLOWABLE COMPENSATION.** When common carriage is not involved, certain operations conducted under part 91 subpart F may occur for compensation without obtaining a certificate under part 119. Such operations are subject to the compensation limitations in subpart F.

**3-500 PART 91 SUBPART F.** Part 91 subpart F contains exceptions to some of the commercial operating rules, allowing certain operations to be conducted under part 91 that would normally be required to be conducted under other commercial regulations. Specifically, when common carriage is not involved, § 91.501(b) permits the operation of large airplanes of U.S. registry, turbojet-powered multiengine civil airplanes of U.S. registry, and fractional ownership program aircraft of U.S. registry that are operating under part 91 subpart K (part 91K) under part 91. The operating rules in part 91 subpart F do not apply to those aircraft when they are required to be operated under parts 121, 125, 129, 135, and 137.

NOTE: Part 91 subpart F does not include an exception for part 125. Therefore, an operator conducting a flight not involving common carriage in an operation required to be conducted under part 125 is not excused from the applicability of part 125. This is because one of the purposes of part 125 is to ensure that all commercial operations conducted under part 125, but not involving common carriage, are conducted in accordance with the additional safety requirements in part 125.

**A. The Authority of Exemption No. 7897.** When common carriage is not involved, certain operations conducted under part 91 subpart F may occur for compensation, subject to the limitations in subpart F, without requiring the person that maintains operational control of the

aircraft to obtain a certificate under part 119. Additionally, operations of certain small aircraft (less than 12,500 lb.) may occur under part 91 subpart F through Exemption No. 7897 issued to the National Business Aviation Association (NBAA). Only those operations that are listed in § 91.501(b)(1)-(7) and (9) may be conducted under the authority of Exemption No. 7897. Operators must follow all of the conditions and limitations set forth in Exemption No. 7897 to operate thereunder, including: (1) notifying the appropriate Flight Standards District Office (FSDO) that the operation will be conducted under the terms of the exemption, and (2) providing a copy of the time-sharing, interchange, or joint-ownership agreement under which each aircraft is operated, if appropriate. The agreement must include the aircraft registration number of each aircraft involved.

### **B. Operations That May be Conducted Under Part 91 Subpart F Include:**

- Ferry or training flights.
- Aerial work operations.
- Sales demonstration.
- Personal transportation for operator and his/her guests when no charge, assessment, or fee is made for the transportation.
- Transportation of officials, employees, guests, and property of a company, within the scope of, and incidental to the business of, the company.
- Transportation of officials, employees, guests, and property of a company on an airplane operated under a time-sharing, interchange, or joint-ownership agreement.
- Carriage of property in furtherance of a business or employment (other than transportation by air) when the carriage is within the scope of, and incidental to, the business or employment.
- Carriage of an athletic team, sports group, choral group, or similar group having a common purposes or objective.
- Carriage of persons in furtherance of a business other than transportation by air for the purpose of selling land, goods, or property, including franchises or distributorships, when the carriage is within the scope of, and incidental to, the business.
- Fractional ownership certificated under part 91K.

### **C. Corporate Aircraft—Use of Aircraft Within the Same Corporate Group.**

- 1) Corporations may have a “business use” for large aircraft, and if they do, certain provisions of § 91.501 may be available to the company. Section 91.501 is aimed primarily at corporate airplane operators that wish to conduct company business without following the more stringent safety and certification requirements that apply to commercial operators responsible for transporting the public.
- 2) A company that is created for the sole purpose of owning and operating an aircraft cannot operate under § 91.501. Such company is a flight department company and is required to obtain a part 119 certificate.

3) Many companies operate under § 91.501(b)(5), which allows the company to carry its “officials, employees, guests, and property on an airplane operated by that company, or the parent or a subsidiary of the company or a subsidiary of the parent, when the carriage is within the scope of, and incidental to, the business of the company (other than transportation by air) and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane.” “No charge of any kind may be made for the carriage of a guest of a company when the carriage is not within the scope of, and incidental to, the business of that company.” Companies could also operate aircraft under other paragraphs or subparagraphs of § 91.501 if the operations comply with the specific terms, conditions, and limitations of the applicable paragraph or subparagraph.

**D. Corporate Aircraft—Use of Aircraft Within or Outside the Same Corporate Group Under a Time-Sharing, Interchange, or Joint-Ownership Agreement.**

Section 91.501(b)(6) allows for companies to carry company officials, employees, and guests of the company on an airplane operated under a time-sharing, interchange, or joint-ownership agreement.

1) Section 91.501(c)(1) defines a time-sharing agreement as an arrangement whereby a person leases his airplane with flight crew to another person, and no charge is made for the flights conducted under that arrangement other than those specified in § 91.501(d). The charges permitted under a time-sharing agreement are limited to: (1) fuel, oil, lubricants, and other additives; (2) travel expenses of the crew, including food, lodging, and ground transportation; (3) hangar and tie-down costs away from the aircraft’s base of operation; (4) insurance obtained for the specific flight; (5) landing fees, airport taxes, and similar assessments; (6) customs, foreign permit, and similar fees directly related to the flight; (7) in flight food and beverages; (8) passenger ground transportation; (9) flight planning and weather contract services; and (10) an additional charge equal to 100 percent of the expenses related to fuel, oil, lubricants, and other additives. Operators under a time-sharing agreement may not get reimbursed for other charges, including but not limited to pilot salaries, a pro rata share of the overhead, maintenance expenses, and interest or amortization costs for the airplane. The FAA believes 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 agreements are similar to wet leases because the timesharer/lessor is providing an entire aircraft and at least one crewmember to the timesharee/lessee. Therefore, when such an agreement provides for the lease of an aircraft with a crewmember employed by the lessor (i.e., a wet lease), operational control normally remains in the hands of the timesharer/lessor. In cases where the aircraft and crew are furnished by separate and unrelated persons, it is presumed that the lessee of the aircraft is the operators of that aircraft. Thus, in those situations where a corporation enters into a time-sharing agreement with an individual, and it is not clear that the individual and the corporation are truly “separate and unrelated,” the FAA may determine that either the corporation was responsible for the operation of the aircraft, or the individual was responsible, or both the corporation and the individual were responsible for the operation of the aircraft.

b) Time-sharing agreements involving large aircraft are subject to the requirements of § 91.23, Truth-in-Leasing. The FAA requires that a copy of any operating

agreement or lease covering operations under timesharing (and also interchange) be mailed to the FAA Aircraft Registration Branch, Attn: Technical Section, P.O. Box 25724, Oklahoma City, OK 73125, within 24 hours of its execution. In addition, a copy of the lease, contract, or agreement must be carried in the aircraft when the aircraft is being operated under the terms of the lease or agreement (refer to § 91.23(c)(2)). This does not imply the need for FAA approval of the terms of the contract. The FS office responsible for oversight of the aircraft may choose to conduct oversight and surveillance of the operator at the discretion of the office manager. The purpose of this oversight is to validate operational control of the aircraft, aircraft airworthiness, and pilot qualification. The frequency of ongoing surveillance and oversight activities are determined based on a safety risk assessment.

2) Section 91.501(c)(2) defines an interchange agreement as an arrangement whereby a person leases his airplane to another person in exchange for equal time, when needed, on the other person's airplane, and no charge, assessment, or fee is made, except that a charge may be made not to exceed the difference between the cost of owning, operating, and maintaining the two airplanes.

a) Under an interchange agreement, as defined, the lease agreement must provide for an equal flight time exchange but allows the person having the airplane that is more expensive to own, operate, and maintain, to charge the person having the other airplane an amount that may not exceed the difference between the cost of owning, operating, and maintaining the two airplanes. If a company profits from the transportation it provides, its operations may require part 119 certification as it may be considered a commercial operator.

b) In an interchange agreement, a party/lessor provides an entire aircraft and at least one crewmember to another party/lessee. Operational control under an interchange agreement is typically vested on the party/lessor furnishing the aircraft and at least one crewmember.

c) An interchange arrangement can be described as the "borrowing" of another company's airplane. For example, Company A (the owner of Aircraft 1) enters into an interchange agreement with Company B (the owner of Aircraft 2) whereby Company B agrees to lease Aircraft 2 and provide the crew to Company A in exchange for Company A agreeing to lease Aircraft 1 and provide the crew to Company B, for equal time and when needed. Under an interchange agreement, no charge, assessment, or fee can be made, except that a party may reimburse the other party for an amount that does not exceed the difference between the cost of owning, operating, and maintaining the two airplanes. For example, a company that owns and operates a business jet might enter into an interchange agreement with a company that owns and operates a turboprop airplane. Because the total costs related to the operation of the aircraft are different, one party could compensate the other to cover the cost differential of owning, operating, and maintaining the planes.

d) Interchange agreements involving large aircraft are subject to the requirements of § 91.23, Truth-in-Leasing. A copy of each interchange agreement must be filed in the Aircraft Registry.

**3)** Section 91.501(c)(3) defines a joint-ownership agreement as an arrangement whereby one of the registered joint-owners of an airplane employs and furnishes the flight crew for that airplane and each of the registered joint-owners pays a share of the charge specified in the agreement.

a) The parties to a joint-ownership agreement enter into certain terms and conditions that delineate the joint-ownership arrangement, including, but not limited to, the ownership percentage of the aircraft, the use of the aircraft, and the vesting of operational control over the flights conducted on the aircraft. For example, two companies could agree to purchase an airplane and divide the ownership stake unequally (e.g., 60:40). The parties could also agree that the maintenance and other expenses related to the ownership and operation of the aircraft would be covered by one of the companies. The joint-owners could decide that the company that uses the aircraft has operational control of the aircraft. In the alternative, they could also decide that one of the joint-owners will operate the aircraft on behalf of all other owners and that such owner will retain operational control. In the case of a joint-ownership agreement, the FAA does not impose any restriction regarding the allocation of expenses; meaning that all responsibilities of the joint-owners and the costs of owning, operating, and maintaining the aircraft can be established in the joint-ownership agreement.

b) The joint-owners must submit a bill of sale and aircraft registration application to the FAA Aircraft Registration Branch, P.O. Box 25504, Oklahoma City, OK 73125-0504, and secure the appropriate registration for the airplane. All joint-owners must be named on the registration certificate of the aircraft. Failure to file the bill of sale and aircraft registration application is a violation of 14 CFR part 47, § 47.11, Evidence of Ownership, and § 47.31, Application for a Certificate of Aircraft Registration.

**3-501 SECURITY OF LEASES/AGREEMENTS.** When the operator provides the lease or contract to the FAA, the FAA generally assumes the documents contain commercial or financial information; as a result, the FAA treats these documents as records that contain information that is confidential. Accordingly, the FAA does not make these documents publicly available.

**3-502 LEASE NOTIFICATION TO AIRCRAFT REGISTRATION BRANCH.** In accordance with § 91.23, the lessee or conditional buyer, or the registered owner if the lessee is not a citizen of the United States, is required to mail a copy of the lease or contract to the Aircraft Registration Branch within 24 hours of its execution. The Aircraft Registration Branch will provide FSDOs a copy of the “Truth in Leasing” document upon request.

**3-503 NOTIFICATION TO THE FAA BEFORE FIRST FLIGHT.** Unless otherwise authorized, the operator is required under § 91.23(c)(3) to give the responsible Flight Standards office a 48-hour advance notification before takeoff in the case of the first flight of that aircraft under the lease or contract.

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

**B. Deviation.** To provide some relief in cases when the 48-hour notification requirement would create a hardship, the office manager may allow receipt of notification in less time upon considering the following factors:

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

**C. Required Information.** Under § 91.23(c)(3), the following information must be provided to the responsible Flight Standards office:

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

**3-504 FACTORS TO BE CONSIDERED BY THE FS OFFICE AFTER RECEIPT OF A LEASE NOTIFICATION OR FIRST FLIGHT NOTIFICATION.** The ASI, in coordination with the office manager, is in the best position to decide whether evaluation of a lease or an aircraft ramp inspection is necessary. Not all leases require evaluation, and not all aircraft require written leases or to be inspected. The following factors might help determine whether evaluation or inspection is necessary:

**A. Knowledge of the Lessee or Lessor.** If the operator or their principals are known to the FSDO and have been subject to oversight in the past, and this oversight has rendered a good compliance and safety record with limited indications of non-compliant behavior, then this data-supported methodology should be applied when considering the appropriate level of scrutiny applied to the operation.

**B. Type of Mission.** It might 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.

**C. 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 Maintenance Program (CAMP) of a part 121 operation or an Approved Aircraft Inspection Program (AAIP) of a part 135 operator, there may be little need for an airworthiness inspection. If not, the appropriate level of diligence should be used to validate the aircraft's current airworthiness status, as well as the maintenance program it will be operated under. If the aircraft has been operated as a public aircraft immediately preceding the current lease agreement, the ASI should consider conducting an inspection to determine whether the airworthiness certificate is still valid and ensure the aircraft meets all regulations necessary to conduct civil operations.

**D. Number of Leases.** If an aircraft is on numerous leases, dry or wet, the office should give greater consideration to conducting a ramp inspection of that aircraft, as a large number of leases may indicate that the lessor is attempting to circumvent part 119 requirements. Inspectors

should understand that it is not the number of leases that is the issue, it is determining who has operational control of that flight that is the issue.

### **3-505 PREREQUISITES AND COORDINATION REQUIREMENTS.**

**A. Prerequisites.** This task requires knowledge of the regulatory requirements of part 91, FAA policies, and ASI qualifications.

**B. Coordination.** This task may require coordination with AGC, the Airmen Certification Branch, and the Aircraft Registration Branch.

### **3-506 REFERENCES, FORMS, AND JOB AIDS.**

**A. References (current editions):**

- Title 14 CFR Parts 1, 61, 63, 67, 91 (especially §§ 91.23 and 91.501), 121, 125, and 135.
- Advisory Circular (AC) 91-37, Truth in Leasing.
- PTRS Procedures Manual (PPM).

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

**C. Job Aids.** Sample letters and figures.

### **3-507 PROCEDURES.**

**A. Request Copy of Lease.** If determination is made that a part 91 lease or contract should be evaluated, request a copy of the lease by emailing the FAA Aircraft Registration Branch at 9-AMC-AFS750-Aircraft@faa.gov, with the subject line “truth in leasing.” Section 91.23 requires that a “copy of the lease or contract shall be made available for review upon request by the Administrator;” however, the FAA should not request information an operator has already provided. This does not preclude an ASI from requesting a copy of the lease or contract during an aircraft inspection. If the aircraft is on multiple leases, the ASI may wish to obtain a copy of all leases in order to determine who is exercising operational control—the single lessor or the numerous lessees. Additionally, if the aircraft is on multiple leases, and is also on one or more Air Carrier Certificates, further investigation should be initiated due to operational control concerns.

**B. PTRS.** Open the PTRS file.

**C. Review Lease.** Review the lease or contract to determine compliance with § 91.23 (see Figure 3-64, Sample Truth-in-Leasing Clause.). Important considerations include:

- 1) Does the lease specifically identify the aircraft by type, model, and registration number?
- 2) Does the lease specify effective dates and length of agreement?

- 3) Is there a truth-in-leasing clause as a concluding paragraph, in large print, immediately preceding the space for signature of the parties?
- 4) Does the lease specify the name, address, and signature of the person responsible for operational control?
- 5) Does the lease specify any of the following operational control elements:
  - Who makes the decision to assign crewmembers and aircraft; accept flight requests; and initiate, conduct, and terminate flights?
  - Who ensures that crewmembers are trained and qualified in accordance with the applicable regulations?
  - For whom do the pilots work as direct employees or agents?
  - Who specifies the conditions under which a flight may be operated?
  - Who determines weather/fuel requirements, and who directly pays for the fuel?
  - Who directly pays for the airport fees, parking/hangar costs, food service, and/or rental cars?
  - Prior to departure, who ensures the flight, aircraft, and crew comply with regulations?
- 6) Does the lease specify any of the following aircraft maintenance elements:
  - Who ensures that the aircraft is airworthy and is in compliance with applicable regulations?
  - Who is maintaining the aircraft and where it is maintained?
  - Who decides when/where maintenance is accomplished, and who directly pays for the maintenance?
  - Under what 14 CFR part has the aircraft been maintained and inspected during the preceding 12 months?
  - Under what 14 CFR part will the aircraft continue to be maintained and inspected?
- 7) Ensure no portion of the lease is contrary to the applicability of part 121, 125, or 135.

NOTE: The ASI should determine that operational control is not vested in the lessor even though the lease might be characterized as a dry lease. The ASI should ensure the lease expressly states that items such as flight following, dispatch, communications, weather, and fueling are to be performed by the lessee. In some instances, it might be necessary to look at the totality of the circumstances and the actual manner in which operations are conducted to determine which party has operational control.

NOTE: An alleged dry lease might actually be a wet lease in disguise. Indications that might denote a wet lease in disguise include, but are not limited to: (1) a provision in the lease or a separate verbal or written agreement whereby

the lessor provides or arranges for the provision of at least one crewmember, whether directly or indirectly; (2) provision of fuel by the lessor; or (3) the performance of maintenance functions. If specific accommodation is made in the lease for charges other than those specified in 91 subparts D or F, the operation of the aircraft might be subject to part 91K, or part 121, 125, 129, or 135, depending on the type or size of the aircraft.

NOTE: If the lessor retains one of the responsibilities in subparagraphs 5 or 6 above, it does not mean that the lessor retains operational control. For example, there are situations when, as part of a lease, a lessor would impose certain requirements on the pilots employed by lessee to meet the lessor's insurance requirements. While this may indicate a certain level of control, it does not singularly create a "wet lease."

**D. Questions Concerning Compliance.** If an ASI has questions regarding either the lease content or who has specific operational control of the aircraft, contact AGC for guidance.

**E. Lease Not in Compliance.** Inform the operator in writing (see Figure 3-65, Sample Letter Informing Operator of Needed Corrections in Lease) that their lease or contract is not in compliance and the corrections necessary for compliance.

**F. Lease in Compliance.** If the lease is in compliance with § 91.23, inform the office manager that the lease is in compliance. There is no requirement to inform the operator. To determine whether a ramp inspection is necessary, consider the following:

- Whether the aircraft owner or operator has a good compliance and safety record known to the office.
- Availability of qualified ASIs 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.

NOTE: Operators may enter into valid leases but might disregard the terms, conditions, and limitations when operating the aircraft. Inspectors should consider the full extent of the operation to determine whether the operation complies with applicable regulatory requirements.

**G. Conduct Ramp Inspections.** If a ramp inspection is to be conducted, the ASI should follow the procedures in Volume 6, Chapter 1, Section 4, Conduct a Part 91 Ramp Inspection. Effective ramp inspections can be conducted without the ASI 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 are unsatisfactory, the responsible Flight Standards office should assign personnel who have the expertise to conduct the appropriate inspection. At times, it might be necessary to request outside assistance. The following information will help the ASI plan for the inspection:

- 1) Aircrew 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) Name of lessee.
- 8) Name of lessor.
- 9) Name of the person responsible for operational control of the aircraft.
- 10) Type of inspection and maintenance program(s) to which the aircraft has been subject throughout the preceding 12 months.
- 11) Status of compliance with applicable maintenance and inspection requirements.

**H. Forward the Report.** If the ASI has conducted a geographic inspection on behalf of the responsible Flight Standards office, forward a copy of the PTRS report to that office.

**I. PTRS Report.** Complete the PTRS report.

**3-508 TASK OUTCOMES.** Successful completion of this task results in a determination of whether the lease is in compliance with § 91.23.

**3-509 FUTURE ACTIVITIES.**

- Review additional leases from the operator, if appropriate.
- Conduct additional ramp inspections involving the operator, if appropriate.
- Conduct an investigation, if appropriate.

**Figure 3-64. 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

**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 registration 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:

- 1) [List all unsatisfactory clauses and their appropriate 14 CFR references.]
- 2)
- 3)

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

Sincerely,

[Signed by the reviewing ASI]

**RESERVED.** Paragraphs 3-510 through 3-525.