AC NO: 91-37A

DATE: 1/16/78

ADVISORY CIRCULAR

DEPARTMENT OF TRANSPORTATION
FEDERAL AVIATION ADMINISTRATION

SUBJECT: TRUTH IN LEASING

1. PURPOSE. This advisory circular provides information and guidance for lessees and conditional buyers of U.S.-registered large civil aircraft. 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.

2. CANCELLATION. Advisory Circular 91-37, dated November 9, 1972, is canceled.

3. INTRODUCTION. There have been instances wherein users of charter aircraft became the victims of certain operators. Illegal and unsafe operations have occurred which have developed into tragedies. A study of air charter operations was conducted and a report written which, among other things, recommended increasing the safety of operations involving U.S.-registered large civil aircraft that are being operated under a lease or contract of conditional sale arrangement.

a. The report indicates that in many instances lessees and conditional buyers of aircraft did not realize that they were legally responsible for operational control of the aircraft as defined in Part 1 of the Federal Aviation Regulations (FARs). In other cases, the report indicates that even if the lessee or conditional buyer did realize it, very few recognized their responsibilities for compliance with the FARs.

b. The report also indicates that a number of owners of large airplanes have evaded compliance with the applicable certification and operating rules of FAR Part 121 governing air carriers and commercial operators, through the use of devious leases and conditional sales contracts. This evasion of compliance made it appear that the lessees and conditional buyers were responsible for operational control, when in fact they did not have that responsibility. This knowing or unknowing assumption of responsibility creates a serious problem in air safety and may involve legal liabilities.

c. 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 the 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.

d. To legitimately engage in charter service, a company must be FAA-certificated as a supplemental or scheduled air carrier, as a small aircraft *air taxi/commercial operator, or as a large aircraft air taxi/commercial operator operating under the appropriate Civil Aeronautics Board exemption * authority, or as a large aircraft commercial operator. The latter is usually involved in long term contract operation. No one may legally offer charter air service for compensation or hire unless he has a valid operating certificate issued by the FAA.

e. The FAA-issued operator's certificate for large aircraft requires aircraft maintenance, servicing and operating procedures, generally equivalent to those required of scheduled air carriers. The FAA proficiency standards for the pilots of these operators are equivalent to those for scheduled air carrier pilots. There are also standards for flight engineers and navigators if they are required for the flight. Pilots, crewmembers, and the aircraft are checked periodically by FAA inspectors.

f. There are bona fide aviation companies certificated to offer charter flights. However, there are also dozens of other companies or individuals who have no operator's certificate but who are willing, for the sake of profit, to violate the law by evading safety requirements. Before you sign for a charter, ask to see the air carrier, commercial operator or air taxi operating certificate issued by the FAA. You may desire to check with the nearest FAA Flight Standards district office as outlined in paragraph 8.

4. TERMINOLOGY. The parties to a lease or contract of conditional sale should be familiar with the meaning of the following terms as used in the Federal Aviation Act of 1958 and the Federal Aviation Regulations:

a. "Lease" - For the purpose of FAR § 91.54, 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, that is not a contract of conditional sale under § 101 of the Federal Aviation Act of 1958. 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.

b. "Conditional Sale" is defined in the Federal Aviation Act of 1958 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."

c. "Conveyance" is defined in the Federal Aviation Act as "a bill of sale, contract of conditional sale, mortgage, assignment of mortgage, or other instrument affecting title to, or interest in, property."

d. "Large Aircraft" is defined in the FARs as ". . . aircraft of more than 12,500 pounds, maximum certificated takeoff weight."

e. "Operation of Aircraft" or "operate aircraft" is defined in the Act as ". . . 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, 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."

f. "Operational Control" is defined in the FARs as "with respect to a flight, means the exercise of authority over initiating, conducting or terminating a flight."

5. TYPES OF LEASES. A lease involving aircraft is sometimes referred to as a "wet lease" or a "dry lease." Neither the Federal Aviation Act of 1958 nor the Federal Aviation Regulations (FARs) define the terms "wet" or "dry" lease. However, the Civil Aeronautics Board describes "wet leases" in section 399.19 of its regulations as ". . . leases in which the lessor provides both the aircraft and the crew . . . ." Leasing of an aircraft without the crew is considered to be a "dry lease."

a. 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.

b. There may be situations during which the lessor provides both the aircraft and the flightcrew (pilots, flight engineers, and flight navigators) but the lessee provides the cabin crew (flight attendants). 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.

a. 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. You do need to know how to maintain and operate the aircraft in accordance with the FARs. 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.

b. 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. For example, the sham "dry lease," has been used, whereby 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.

c. Some groups seeking charter 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 charters, you may forego the protection of certain safety standards required by FAA. You may also violate the law.

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.

a. FAR section 47.5(c) 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."

b. FAR section 47.3(b) states "No person may operate an aircraft that is eligible for registration under section 501 of the Federal Aviation Act of 1958 unless the aircraft - (1) has been registered by its owner; . . . ."

c. 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 FAR section 91.54, it is also subject to the "Truth in Leasing" clause requirements.

8. DETERMINING RESPONSIBILITY FOR OPERATIONAL CONTROL. Personnel from an FAA General Aviation District Office, Air Carrier District Office or Flight Standards District Office will gladly explain the factors bearing on

responsibility for operational control, and the pertinent FARs. If you have any doubt about the legitimacy or the operating authority concerning the charter flights you are arranging, check with the nearest FAA district office located in most major cities and listed in the telephone book under U.S. Government. District office personnel will probably need several days to investigate and determine the facts of the case.

a. It is to be noted that operational control may in fact 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 to the lease has operational control.

b. If requested, the FAA will determine whether the lessor or lessee has operational control under the Federal Aviation Regulations. 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 having operational control.

c. Insofar as our safety regulations are concerned, 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 Subpart D to Part 91, the operation of the aircraft is subject to FAR Parts 121, 123, 127, 129 or 135 depending upon the type or size of the aircraft. 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.

a. Under FAR section 91.54, 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, Airmen and Aircraft Registry, P. O. Box 25724, Oklahoma City, Oklahoma 73125.

b. Filing a lease or contract of conditional sale under FAR section 91.54 to satisfy the "Truth in Leasing" requirements does not constitute filing under FAR Part 47 or Part 49 to register the aircraft, or to record for public notice. Under FAR sections 47.11 and 49.11, the buyer in possession, the bailee, or the lessee of an aircraft under a contract of conditional sale must submit (or mail) the contract, as evidence of ownership for the purpose of registration, to the FAA Aircraft Registry, P. O. Box 25504, Oklahoma City, Oklahoma 73125.

*10. FAA NOTIFICATION OF PROPOSED FLIGHT. In addition to the lease mailed to Oklahoma City, FAR 91.54 requires the lessee or conditional buyer (or the *

*registered owner if the lessee is not a United States citizen) to provide notification to the FAA at least 48 hours prior to the first flight of an aircraft under that lease or contract.

a. This notification must be made to the Flight Standards District Office (FSDO), General Aviation District Office (GADO), Air Carrier District Office (ACDO) or International Field Office (IFO) nearest the airport where the lease or contract flight will originate. The notification must be in person or by telephone.

b. 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 is discretionary with the district office 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 district office and prior surveillance of the proposed operator. *

11. TRUTH IN LEASING CLAUSE. A sample of the type of written "Truth in Leasing" clause that is required by FAR section 91.54 as a concluding paragraph in large print immediately preceding the signature of the parties is as follows:

SAMPLE

_____ (insert type, model and registration number of airplane, such as Convair 240; N124W) HAS BEEN MAINTAINED AND INSPECTED UNDER _____ (insert FAR 91 or FAR 121 as appropriate) 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 FAR 91 during part of the preceding 12 months and under FAR 121 during other parts of the 12 months, the dates and FARs under which it was maintained for each period should be specified.

IT WILL BE MAINTAINED AND INSPECTED UNDER _____ (insert FAR 91 or 121 as appropriate) 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.

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.

a. Prepare the lease or conditional sales contract so that it complies with FAR section 91.54.

b. Mail or deliver a copy of the contract to the FAA, Airmen and Aircraft Registry, P. O. Box 25724, Oklahoma City, Oklahoma 73125, within 24 hours of the execution and signing.

* c. Provide personal or telephonic notice to the appropriate district office at least 48 hours prior to first flight under the contract. *

d. Carry a copy of the contract in the airplane.

e. If you have any questions, check with the nearest FAA Flight Standards district office located in most major cities and listed in the telephone book under U.S. Government.

13. HOW TO OBTAIN THIS PUBLICATION. Request copies of this circular AC 91-37A, Truth in Leasing, by writing to the Department of Transportation, Publications Section, TAD-443.1, Washington, D. C. 20590. (FAA personnel will obtain additional copies through their normal distribution channels.)

J. A. Ferrarese

J. A. FERRARESE
Acting Director
Flight Standards Service