

VOLUME 3 AIR OPERATOR TECHNICAL ADMINISTRATION**CHAPTER 13 OPERATIONS SPECIFICATIONS****Section 4 FAA Defined Wet Lease Agreements**

3-456 GENERAL. As defined in Title 14 of the Code of Federal Regulations (14 CFR) part 110, § 110.2, a wet lease is any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember. A wet lease is a commercial arrangement whereby an aircraft owner leases both the aircraft and at least one crewmember to another person for his/her exclusive use for a specified period or a defined number of flights. This section of the Handbook applies only to the wet lease of any aircraft between U.S. air carriers or operators holding out to the public. See Volume 12, Chapter 2, Section 9, Lease, Interchange, and Charter Arrangements for the wet lease of any aircraft by a U.S. air carrier to a foreign air carrier or foreign person engaged in common carriage operations wholly outside the United States. While Federal Aviation Administration (FAA) review and approval of wet leases applies only to a genuine wet lease as defined in § 110.2, the FAA will review charter arrangements that may, by commercial custom, be termed wet leases by U. S. and foreign operators. Such reviews will be performed in support of public interest determinations by the Office of the Secretary of Transportation (OST) under 14 CFR part 212.

3-457 PROCESSING WET LEASE ARRANGEMENTS. The lessor must submit a copy of the lease arrangement or a written memorandum of the terms of the lease to the certificate-holding district office (CHDO) for processing. A wet lease must contain four attributes:

- Identification of a specific aircraft by serial number,
- Grant of exclusive possession and use of that aircraft to the lessee,
- Defined duration for the grant of possession and use, and
- Provision by the lessor of at least one crewmember with the aircraft.

A. Principal inspectors (PI) immediately review the lease arrangement to ensure that it is complete. Inspectors should pay particular attention to the requirements of part 119. These requirements prohibit any part 119 certificate holder conducting operations under 14 CFR parts 121 or 135 from conducting any flight operation unless the operator is authorized by its operations specifications (OpSpecs) to conduct that kind of operation, i.e., domestic, flag, supplemental, commuter, or on-demand operations (OpSpec A001). An operator also must meet each part 121 or 135 requirement applicable to the kind of operation specified in the wet lease arrangement. Following this review, PIs make a written operational assessment of whether the lessor or the lessee will have operational control under the terms of the lease.

B. Expeditiously forward a copy of the lease arrangement and the PI's written operational assessment to the regional Flight Standards division (RFSD). The regional counsel then makes a determination as to which party to the arrangement holds responsibility for operational control and to the applicability of the Code of Federal Regulations (CFR) and associated OpSpecs. For making proper determination of operational control, it may be necessary

to ask the lessor to submit any clarifying or supplemental information regarding the lease arrangement.

NOTE: When the OST characterizes a lease as a wet lease the OST definition and application of the term wet lease applies purely to economic authority. The OST characterization of wet lease does not necessarily make the lessor responsible for operational control, which is one of the safety considerations to a wet lease when assessed by the FAA. The FAA definition of wet lease in § 110.2 and in OpSpec A002 is different than the OST definition and applies solely to the safety authority falling under FAA oversight.

C. Once the regional counsel determines the operational control aspect of the lease arrangement, the regional counsel advises the CHDO without delay. Record this decision in writing and maintain it in the district office files.

3-458 DETERMINATION OF OPERATIONAL CONTROL. Part 119, § 119.53 provides that the FAA shall determine that a party has operational control of flights if that party exercises authority and responsibility for a specified number of operational functions. In cases where doubt or controversy exists, the Administrator shall also consider additional factors such as who is responsible for maintenance, servicing, and crewmember training. Operational functions include:

- Provision of one or more crewmembers,
- Provision of the training of those crewmembers,
- Assigning crewmembers for particular flights,
- Directly paying crewmembers for services,
- Responsibility for airworthiness,
- Responsibility for performance of maintenance,
- Dispatch of flights, and
- Initiating and terminating flights.

A. The responsible region will determine whether the lessor or lessee has operational control. Normally That will be the region holding the certificate of the lessor. Such determination will be based on a careful review of the lease arrangement, the Department of Transportation (DOT) order, and any other circumstances regarding the actual operation.

B. The FAA region responsible for the U.S. carrier or operator (certificate holder) that has operational control shall have primary responsibility for the OpSpecs authorization and surveillance of the operation. If two FAA regions are involved in the leasing arrangement, the regions will coordinate the matter and agree on respective responsibilities based on the terms of the lease arrangement and, if applicable, the pertinent DOT order.

3-459 AMENDING OPERATIONS SPECIFICATIONS. After the appropriate Flight Standards Division and Regional Counsel jointly determine which party to the arrangement has operational control, they advise the manager of the appropriate CHDOs in writing within 5-working days. The district office having responsibility for the certificate holder which the FAA has determined to have operational control shall amend the OpSpecs of that certificate holder to

include paragraph A028. The amendment to the OpSpecs shall contain the following information:

- The names of the parties to the arrangement and the duration of the arrangement;
- The make, model, and series of each aircraft involved in the arrangement;
- The kind of operation (for example, domestic, flag, supplemental, commuter, or on-demand);
- The expiration date of the lease arrangement;
- A statement specifying the party deemed to have operational control; and
- Any other item, condition, or limitation the Administrator determines necessary.

RESERVED. Paragraphs 3-460 through 3-475.