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Aircraft Leasing—How to Comply with the Regulations and What Happens When You Don't

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**AIRCRAFT LEASING—HOW TO COMPLY WITH THE
REGULATIONS AND WHAT HAPPENS
WHEN YOU DON'T**

DAVID T. NORTON* AND GREGORY J. REIGEL**

ABSTRACT

The Federal Aviation Administration's (FAA) increased emphasis on investigating improper leasing/illegal charter presents a challenge for aircraft operators. Understanding the regulatory requirements related to aircraft leasing is critical for operators to ensure their aircraft operations are compliant. Equally important is the need for aircraft operators to understand how the FAA exercises its oversight when it investigates alleged improper leasing/illegal charter operations, the consequences to which an aircraft operator may be subject in the event of non-compliance, and how an operator who is the target of such an investigation may respond to and/or work with the FAA to successfully resolve the investigation.

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TABLE OF CONTENTS

I.	INTRODUCTION.....	576
II.	AIRCRAFT LEASING REGULATORY COMPLIANCE – “WET” LEASING, “DRY” LEASING AND ILLEGAL AIR CHARTER	577
	A. BACKGROUND: WHAT AIRCRAFT ARE WE TALKING ABOUT AND HOW DID WE GET HERE?	577
	B. PRELIMINARY REGULATORY DEFINITIONS	579
	C. AIRCRAFT LEASING-“WET” LEASES VS. DRY LEASES	580
	D. WHY DOES IT MATTER	581
III.	RESPONDING TO IMPROPER LEASING/ ILLEGAL CHARTER INVESTIGATIONS	585
	A. HOW DOES AN OPERATOR GET ON THE FAA’S RADAR?	585
	B. HOW DOES THE FAA INVESTIGATE?	586
	C. HOW DOES THE FAA HANDLE REGULATORY VIOLATIONS?	588
	1. <i>Compliance Action</i>	588
	2. <i>Administrative Action</i>	589
	3. <i>Legal Enforcement Action</i>	590
	4. <i>Certificate Action</i>	590
	5. <i>Civil Penalty</i>	592
	6. <i>Criminal Prosecution</i>	596
	D. HOW TO RESPOND TO AN FAA LETTER OF INVESTIGATION.....	596
	E. HOW TO WORK WITH THE FAA IN A COMPLIANCE ACTION	597
IV.	CONCLUSION.....	598

I. INTRODUCTION

SOME SAY THAT TIME IS THEIR most precious possession, and that business or privately-owned aircraft can be “time machines” that make their businesses and their personal lives much more efficient and effective. But aircraft are expensive equipment to own and operate, and many business or personal aircraft owners and operators often want to find ways to mitigate those costs by allowing for additional use of the aircraft by others when not being flown in support of the aircraft owner’s own purposes, often in the form of aircraft lease agreements to individuals who are looking for the least expensive way to access private aviation for their own travel needs.

While that makes sense at a high level, trying to mesh those desires with the statutes, rules and policies that apply to our national air transportation system quite often leads to what amounts to illegal charter operations as far as the U.S. Department of Transportation (DOT) and U.S. Federal Aviation Administration (FAA) are concerned. The purpose of this discussion is to provide a high-level overview of the FAA's (and to some extent the DOT's) rules and regulations that apply to the proper leasing of business and personal-use aircraft, and some of the ramifications that can occur if those rules are not followed.

Part II discusses the regulatory background for aircraft leasing, defines relevant terms, explains and clarifies the distinctions between "wet" and "dry" aircraft leases, and the significance of those distinctions in the current regulatory enforcement environment. Part III outlines the process and procedure an aircraft operator may expect in an FAA investigation into improper leasing/illegal charter, including possible FAA enforcement actions when it believes regulatory violations have occurred, as well as how to respond to and work with the FAA during this type of investigation. Finally, Part IV summarizes the continuing confusion aircraft operators face when considering aircraft leasing operations and FAA's ongoing oversight emphasis in this area.

II. AIRCRAFT LEASING REGULATORY COMPLIANCE – "WET" LEASING, "DRY" LEASING, AND ILLEGAL AIR CHARTER

A. BACKGROUND: WHAT AIRCRAFT ARE WE TALKING ABOUT AND HOW DID WE GET HERE?

This discussion focuses on aircraft ranging from small, single-engine piston aircraft (such as a Cessna 177B) to large and complex multi-engine jet aircraft (such as a Gulfstream G650ER) that have seating configurations of less than twenty passenger seats and maximum payload capacities of less than six thousand pounds,¹ and where such aircraft are not being held-out and op-

¹ The FAA defines a "large aircraft" as an "aircraft of more than 12,500 pounds, maximum certificated takeoff weight" for the purposes of truth-in-leasing requirements and other FAA safety regulations. *See* 14 C.F.R. § 1.1 (2021). The DOT, on the other hand, defines "large aircraft" as "any aircraft originally designed to have a maximum passenger capacity of more than 60 seats or a maximum payload capacity of more than 18,000 pounds" for the purposes of deter-

erated in scheduled service. In other words, it does not apply to aircraft that are considered transport category aircraft (such as a Boeing 737) that are being operated by a major scheduled airline (such as American Airlines or United Airlines).

The conduct of flight operations of this category of aircraft, and therefore the focus of this discussion, are generally regulated by the FAA under 14 C.F.R. Parts 91 (General Operating and Flight Rules) and 135 (Operating Requirements: Commuter and On Demand Operations and Rules Governing Persons on Board Such Aircraft) with respect to safety issues, and by the DOT under 14 C.F.R. Parts 212 (Charter Rules for U.S. and Foreign Direct Air Carriers) and 298 (Exemptions for Air Taxi and Commuter Air Carrier Operations) with respect to economic issues.² The main concern discussed here is a situation where an aircraft operator is conducting flights solely under the FAA's Part 91 rules (acting simply as a non-commercial operator with no DOT economic oversight involved), when they should instead be conducted under the FAA's 14 C.F.R. Part 135 rules (dealing with on-demand commercial operations) and the DOT's 14 C.F.R. Part 298 rules (providing an exemption to on-demand small aircraft operations, as defined by the DOT, from the need to obtain economic authority from the DOT, who meet the applicable requirements).³

How we arrived here appears to primarily boil down to cost. Anecdotally, the aviation press for the last several years (and commentary from the FAA itself) has been full of articles noting that the improper use of aircraft leasing—leases styled as “dry” leases (as discussed further below) and operated under the FAA's non-commercial rules when the operations should have in fact been operated under the FAA's and DOT's commercial rules—can be blamed on a combination of owners who wish to mitigate their cost of the ownership and operation of their aircraft and on passengers who wish to obtain the benefits of private aviation at the lowest possible cost.⁴

mining whether certain operators are exempt from obtaining economic authority from the DOT when conducting commercial operations. *See* 14 C.F.R. § 298.2 (2021). Both definitions must be kept in mind when analyzing which FAA and DOT regulatory provisions apply to operators conducting flights under lease agreements.

² 14 C.F.R. pts. 91, 135, 212, 298 (2021).

³ 14 C.F.R. pts. 91, 135, 298 (2021).

⁴ Various articles are available on the FAA's website providing multiple tools to address illegal charter operations. *See, e.g.*, Safe Charter Toolkit for Pilots, Consumers and Media, FED. AVIATION AUTH., <https://www.faa.gov/initiatives/safe>

B. PRELIMINARY REGULATORY DEFINITIONS

In order to fully understand the appropriate categorization of aircraft leasing under the FAA's federal aviation regulations (commonly referred to as the FAR),⁵ it is necessary to first understand the FAA's definition of certain fundamental concepts related to the operation of aircraft in the United States. Specifically:

"*Operate*, with respect to aircraft, means use, cause to use or authorize to use aircraft, for the purpose . . . of air navigation including the piloting of aircraft, with or without the right of legal control (as owner, lessee, or otherwise)."⁶

"*Operational control* . . . means the exercise of authority over initiating, conducting or terminating a flight."⁷

"*Commercial operator* means a person who, for compensation or hire, engages in the carriage by aircraft in *air commerce* of persons or property Where it is doubtful that an operation is for 'compensation or hire,' the test applied is whether the carriage by air is merely incidental to the person's other business or is, in itself, a major enterprise for profit."⁸

"*Air commerce* means [, among other things,] *interstate* . . . *air commerce* or the transportation . . . within the limits of any Federal airway or any operation or navigation of aircraft which directly affects, or which may endanger safety in, interstate . . . air commerce."⁹

"*Interstate air commerce* means [, among other things,] the carriage by aircraft of persons or property for compensation or hire

charteroperations/safe-air-charter-toolkit-pilots-consumers-and-media [https://perma.cc/4H36-Y42F] (last visited July 10, 2023); Jeff Wieand, *The FAA Steps Up Its Response to Illegal Charters*, BUSINESS JET TRAVELER (Jan. 2022), https://www.bjtonline.com/business-jet-news/the-faa-steps-up-its-response-to-illegal-charters [https://perma.cc/4UHW-3M5K]; Mike Stones, *Illegal Charter: Combatting the 'Careless, Clueless and Criminal'*, CORPORATE JET INVESTOR (Sept. 19, 2021), https://www.corporatejetinvestor.com/opinion/132981-123/ [https://perma.cc/RH8K-VGML]; Keri Allan, *Illegal charter – still under the radar?*, BUSINESS AIRPORT INTERNATIONAL (June 9, 2020), https://www.businessairportinternational.com/features/illegal-charter-under-the-radar.html [https://perma.cc/9UBQ-XM2E].

⁵ "FAR" is the term frequently used by practitioners, but formal citation is to 14 C.F.R. Parts 1–199. Generally, the parts and section numbers of the FAR and 14 C.F.R. are interchangeable. This discussion will use "FAR" in its main text but, where helpful, provide further specification in endnotes to particular parts and sections of 14 C.F.R. See 14 C.F.R. pts. 1-199 (2021).

⁶ 14 C.F.R. § 1.1 (2021) (emphasis added).

⁷ *Id.* (emphasis added).

⁸ *Id.* (emphasis added).

⁹ *Id.* (emphasis added).

. . . or the operation or navigation of aircraft in the conduct or furtherance of a business or vocation, in commerce between” or over the airspace of places in two different States, or the District of Columbia, in the United States.¹⁰

“*Air carrier* means a person who undertakes directly by lease, or other arrangement, to engage in *air transportation*.”¹¹

“*Direct air carrier* means a person who provides or offers to provide *air transportation* and *who has control* over the operational functions performed in providing that transportation.”¹²

“*Air transportation* means [,among other things,] *interstate . . . air transportation*.”¹³

“*Interstate air transportation* means the carriage by aircraft of persons or property as a *common carrier for compensation or hire*,” in commerce between or over the airspace of places in two different states, or the District of Columbia, in the United States.¹⁴

Finally, note at least one key distinction within these basic definitions: Both “commercial operators” and “direct air carriers” conduct commercial operations, *but* “direct air carriers” are operating in “common carriage,” *i.e.*, “holding out” to the public, whereas “commercial operators” are not.

Taking all of these definitions into account, for the purposes of this discussion and as is further explained in more detail below, the definition of a “commercial operator” boils down to an operator of an aircraft that conducts flights that are in or may effect either interstate air commerce or interstate air transportation (which, for all practical purposes, is going to be just about any flight) and that are carrying either persons or property (*i.e.*, someone other than a required crew member or some property of value not belonging to one of those crew members) from point A to point B and for which that operator is either simply receiving some form of compensation or is holding out to the public as being fit, ready, willing and able to provide those flights.

C. AIRCRAFT LEASING-“WET” LEASES VS. DRY LEASES

With the basic regulatory definitions above setting the table, it is possible to turn to the regulatory definitions that directly ad-

¹⁰ *Id.* (emphasis added).

¹¹ *Id.* (emphasis added).

¹² 14 C.F.R. § 110.2 (2021) (emphasis added).

¹³ 14 C.F.R. § 1.1 (2021) (emphasis added).

¹⁴ *Id.* (emphasis added).

dress aircraft leasing. A “lease” in and of itself is not generally defined in the FAR with respect to the discussions here¹⁵—a lease is generally a state law concept and can be generically defined for the purposes of this discussion as the transfer of the right to possess and use some tangible personal property, such as an aircraft, in exchange for some amount of consideration—but once a lease exists, the applicable FAR definitions do categorize the lease as one of two kinds of leases for FAA regulatory purposes. Specifically:

“*Wet lease* means any leasing arrangement whereby a person agrees to provide an entire aircraft and at least one crewmember [to a lessee].”¹⁶

“*Dry lease*” means . . . actually, the term “dry” lease is not specifically defined in the FAR, but is generally considered to simply be the opposite of “wet” lease.¹⁷

That is it. Those are the key—and only—specific regulatory definitions that establish when a lease is a “wet” lease or a “dry” lease. But this then raises the questions: Why does it matter and is that all there is?

D. WHY DOES IT MATTER?

The real importance of whether or not a lease is categorized as “wet” or “dry” goes back to the fundamental definitions noted above, namely who is acting as the “operator” of the aircraft in question, i.e., who is exercising “operational control” over that aircraft? The key and absolutely fundamental distinction is that in the FAA’s view, under a “wet” lease the lessor retains opera-

¹⁵ The FAA does not generally define a “lease” in either of its two primary definitions sections in the FAR. *See* 14 C.F.R. §§ 1.1, 110.2 (2021). But solely for the purposes of applying 14 C.F.R. § 91.23, “Truth-in-leasing clause requirements in leases and conditional sales contracts,” § 91.23(e) provides that “For the purpose of this section, 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. The person furnishing the aircraft is referred to as the lessor, and the person to whom it is furnished the lessee.” 14 C.F.R. § 91.23(e) (2021).

¹⁶ *See* 14 C.F.R. § 110.2 (2021).

¹⁷ *See, e.g.*, FAA Order No. 8900.1, vol. 3, ch. 13, § 3, 3-498 (Apr. 28, 2020) (Flight Standards Information Management System) [Order No. 8900.1 is also hereinafter generally referred to as FSIMS]; FAA Order No. 8900.1, vol. 3, ch. 25 (Apr. 12, 2018). While this FAA Order is not a regulation that is binding on aircraft operators, it is binding on FAA safety inspectors and provides great insight as to how the FAA will interpret its regulations when applying them to those aircraft operators.

tional control, and under a “dry” lease operational control is transferred to the lessee.¹⁸

And why is this important? First, because, under years of FAA law and practice, the party who is exercising operational control—who is exercising the authority over the commencement, conduct, and termination of a flight—is the party who is ultimately responsible for the safe conduct of that flight. And second, because the identity of an operator is key to determining if that operator is a non-commercial operator or is in fact acting as a commercial operator or direct air carrier—the important concepts noted above.

With respect to the first point (i.e., identifying the party who is ultimately responsible for the safe conduct of the flight), in addition to the fundamental regulatory definition of wet lease noted above (i.e., the lease of an aircraft with at least one crewmember), the FAA has, over the years, provided various forms of guidance and non-regulatory materials to assist in determining who really has operational control of an aircraft when a lease is involved. This includes sources and background information that have been developed over the years by Congress, the FAA, and applicable case law such as the following: (a) the basic regulatory definitions for terms such as “operational control” and “wet lease” as found in FAR §§ 1.1 and 110.2; (b) the requirements of who must hold what types of air carrier or operating certificates as found in FAR Part 119; (c) fundamental guidance to safety inspectors on whether a lease is a wet lease or a dry lease as found in various parts of the FSIMS;¹⁹ and (d) various FAA Advisory Circulars and other FAA guidance materials such as policy statements and FAA Chief Counsel interpretation letters that have been published over many years. In taking all of these sources together, arguably the proper method for assessing whether or not a lease is in fact a dry lease and operational control has been properly transferred to the lessee boils down to: (a) answering the question of who is providing the flight crew; and (b) making an assessment of various other factors that the FAA has enumerated over time to assist in making this determination.

¹⁸ See FAA Order No. 8900.1, vol. 3, ch. 13, § 3, 3-498 (Apr. 28, 2020).

¹⁹ See, e.g., FAA Order No. 8900.1, vol. 3, ch. 13, § 6, 3-498(B)(1)-(2) (Apr. 28, 2020).

For example, FAA Advisory Circular 91-37B, “Truth in Leasing,” lists seven “indicia of operational control,” which include the following questions:

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 the 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?²⁰

Again, it is important to note that these “indicia of operational control” are not regulations—they appear in a non-binding advisory circular—and it is very arguable that who is paying for rental cars or even the fuel goes far beyond a rational analysis as to who is actually exercising control over the conduct of the flight. But this list is very supportive of the concept that it should be the actual “operator” who is tending to the safety of the flight.²¹

This, in turn, leads to the second point: Once the operator has been identified, what kind of operator is that? Namely, is the operator a “commercial operator” (one carrying persons or property for compensation or hire) or a “direct air carrier” (an operator that is not only a commercial operator but that is also acting as a common carrier)? If it is neither, then that operator is a non-commercial operator and can conduct its flights under Part 91 with very little interaction with or oversight required by the FAA.²² But if that operator is in fact a commercial operator

²⁰ FAA Advisory Circular 91-37B.

²¹ Perhaps the discussion that best synthesizes the FAA’s view on this is found in the opening paragraphs of FAA Advisory Circular 91-37B, where the introduction notes, for example: “Operational control is not dependent on aircraft size or the number of aircraft operated; *it is instead a matter of legal responsibility.*” FAA Advisory Circular 91-37B (emphasis added).

²² See 14 C.F.R. pt. 91 (2021).

or direct air carrier, then in addition to complying with Part 91, it must also obtain an operator or air carrier certificate and meet significantly more regulatory hurdles in the conduct of its flights.²³

And why is this? Because a fundamental concept of our air transportation system is that if you are flying yourself around, you are paying for the flights yourself, and you face regulatory—and therefore civil—liability for the conduct of that flight, then very little additional regulatory oversight is needed by the FAA. But if you are a fee-paying passenger who has little to no say over how that flight is conducted, then one of the fundamental roles of the FAA is to provide sufficient oversight of that operator to ensure the flight is conducted safely for your benefit.²⁴

Hence, it comes back to the question of leasing. Does the agreement entered into by the parties for the use of the aircraft contemplate that a lessor will provide airplane, crew, and other indicia of operational control to a passenger and do so in exchange for some form and amount of compensation? If so, then the lease is a wet lease, the lessor has retained operational control, and the lessor is acting as a commercial operator with all of the additional regulatory obligations that attach to that status. In such a case, the FAR dictates that the operator must obtain the

²³ See *id.* More specifically, if the operator is a mere “commercial operator,” it must first obtain an operating certificate and comply with FAR Part 135. See 14 C.F.R. §§ 119.5(b)–(c) (2021); 14 C.F.R. § 119.21(a)(5) (2021). An “operating certificate” is the actual, one-page license issued to a commercial operator that is not holding out and acting as a direct air carrier, which, when combined with the Operations Specifications issued to that operator, define the scope of the operations it may conduct. If the operator is not only acting as a commercial operator but is also holding out to the public, then it must instead obtain a direct air carrier certificate. See 14 C.F.R. § 119.5 (2021); 14 C.F.R. § 119.21(a)(5) (2021). An “air carrier certificate” is the actual, one-page license issued to a direct air carrier, which, when combined with the detailed Operations Specifications that are issued to the air carrier together with that license, and in either event provide the full description of the scope of operations that the air carrier can conduct. See, e.g., 14 C.F.R. pt. 135(2021). With respect to operations conducted with the type of aircraft being discussed here (as distinct from 14 C.F.R. Part 125, for example), in practice there is essentially no distinction between receiving a direct air carrier certificate and receiving an operating certificate because both must receive Operations Specifications and follow the same rules and procedures set forth in Part 135. See 14 C.F.R. pt. 135 (2021).

²⁴ See, e.g., 49 U.S.C. § 40101(d)(1) (providing in part, and in general, that in carrying out the various mandates on the FAA as found in the act: “[T]he Administrator shall consider the following matters, among others, as being in the public interest: (1) assigning, maintaining, and enhancing safety and security as the highest priorities in air commerce . . .”).

appropriate certification to conduct those flights and meet significant regulatory requirements with respect to the maintenance and piloting of those aircraft.

Conversely, is the agreement a mere transfer of the right to possess and use a piece of equipment (the airplane), will the lessee then be obligated to obtain its own crew members and meet the other indicia of operational control? If so, then that lease is a dry lease, and operational control has been transferred to the lessee. But does that mean the lessee can go forth and simply comply with Part 91? Not necessarily.

The final point to make with respect to wet versus dry leasing is that the existence of a dry lease does not automatically turn the operation of the aircraft into a non-commercial operation. The effect of a dry lease is to simply transfer operational control of the aircraft to a lessee, i.e., it just pushes the analysis down one rung of the ladder. Once that is done, the fundamental question remains: Is that lessee operator conducting the flight for her, his, or its own purposes and paying for it out of her, his, or its own pockets with no compensation (i.e., not even any cost sharing or reimbursement) occurring (in which case, it truly is a non-commercial operation), or is the lessee in fact receiving compensation of any kind and any amount for its flights and therefore required to have some authority to act as a commercial operator such that appropriate certification and additional regulatory compliance is required?

At the end of the day, what are the ramifications when the answer to that last question is that this is not a lessee who properly acting as a non-commercial operator, but instead the lease in question is either a wet lease or a dry lease that transfers operational control to another lessee who then in turn becomes a commercial operator in its own right, and neither of those operators have the FAA or DOT authority to do so?

III. RESPONDING TO IMPROPER LEASING/ILLEGAL CHARTER INVESTIGATIONS

A. HOW DOES AN OPERATOR GET ON THE FAA'S RADAR?

The FAA may become interested in an aircraft operator through a variety of occurrences. An FAA inspector may be conducting ramp checks at an airport from which the operator is conducting flights and he or she may randomly select the opera-

tor for a ramp check.²⁵ The FAA may receive a report to either its hotline, the illegal charter hotline, or via other methods.²⁶ Or someone may file a formal complaint against the alleged illegal operator.²⁷

An operator may be involved in an aircraft accident or incident triggering FAA and/or National Transportation Safety Board (NTSB) investigations.²⁸ Or the FAA may learn of the operator and its flights via the operator's compliance with 14 C.F.R. § 91.23—Truth in Leasing requirements.²⁹

In any event, if the FAA is presented with a situation in which the parties were purportedly conducting dry leasing operations under Part 91 when it appears the situation actually involved a wet lease or some other form of commercial operation and should have been conducting the flights under Part 135, an investigation will most likely ensue.

B. HOW DOES THE FAA INVESTIGATE?

14 C.F.R. § 13.3 provides the FAA with general authority to conduct investigations to determine whether regulatory violations have occurred.³⁰ An investigation may be handled by inspectors from the local Flight Standards Office (FSDO), the FAA's Special Emphasis Investigation Team (SEIT), or a combination of FSDO and SEIT inspectors.

Once the FAA begins investigating a possible regulatory violation, it follows FAA Order 2150.3C Compliance and Enforcement Program.³¹ This order provides the guidance and procedures an FAA inspector must follow when performing an investigation.³²

This usually involves sending a letter of investigation to the target (or targets) of the investigation, which may include the

²⁵ FAA Order No. 8900.1, vol. 6, ch. 1, § 4.

²⁶ See 14 C.F.R. § 13.2 (2021) (stating that persons with knowledge of a regulatory violation "should report the violation to FAA personnel"); See also FED. AVIATION AUTH., FAA HOTLINE (2023), https://www.faa.gov/about/office_org/headquarters_offices/aae/programs_services/faa_hotlines [https://perma.cc/MU4U-85D2].

²⁷ See 14 C.F.R. § 13.5 (2021).

²⁸ See 49 C.F.R. pt. 830 (2021); FAA Order No. 8900.1, vol. 7, ch. 1, § 1.

²⁹ See 14 C.F.R. § 91.23 (2021).

³⁰ See 14 C.F.R. § 13.3 (2021).

³¹ FAA Order No. 2150.3C, *FAA Compliance and Enforcement Program*, http://www.faa.gov/documentLibrary/media/Order/FAA_2150.3C_with_CHG_10.pdf (hereinafter "Order 2150.3C"); See also FAA Order No. 8900.1, vol. 7, ch. 1, § 2.

³² Order 2150.3C, ch. 1, § 2, *Whom this Order Affects*.

aircraft owner, aircraft operator, and/or the pilots involved in any flights.³³ Inspectors will also interview these same parties and their personnel, as well as passengers and other third-party witnesses.³⁴

Documents may also be requested from operators and other parties.³⁵ In the illegal charter context, these requests will include copies of leases and other agreements, invoices, payment information, correspondence, banking records, as well as aircraft and pilot records. Typically, these requests are made with an expectation that the information will be produced voluntarily. However, a recipient of such a request is under no legal obligation to voluntarily respond or produce records simply because the request is made in the context of an FAA investigation.³⁶ If the recipient of such a request does not respond to the request or otherwise produce documents, however, the FAA does have the power to issue administrative subpoenas requiring production.³⁷

While investigating possible regulatory violations, FAA inspectors are required to follow the FAA's "compliance philosophy." Prior to 2015, that philosophy was heavily focused on taking enforcement action against an alleged violator as a deterrent to future violations.³⁸

However, in June, 2015 the FAA adopted a new compliance philosophy.³⁹ Under the new philosophy: "[T]he FAA's goal is to use the most effective means to return an individual or entity

³³ Order 2150.3C, ch. 4, § 6, *Letter of Investigation and Response*.

³⁴ Order 2150.3C, ch. 4, § 10(a), *Witness Interviews and Witness Statements*.

³⁵ Order 2150.3C, ch. 4, § 6, *Letter of Investigation and Response*.

³⁶ This is especially true in the certificate holder context where the Pilot's Bill of Rights, Pub. L. No. 112-153 (2012), as amended by Pub. L. No. 115-524 (2018), states that the certificate holder is not obligated to respond to the letter of investigation and that the FAA may not act or hold an adverse inference against the certificate holder for failure to respond. However, a certificate holder is still required to produce for inspection records required to be kept or made available under specific regulatory provisions, although a request for those records is not generally included in the letter of investigation. Order No. 2150.3C, ch. 4, § 6(a)(5).

³⁷ 49 U.S.C. § 46104(a). *See also* 14 C.F.R. § 13.3(c)(3).

³⁸ *See* FAA Order No. 2150.3B, *FAA Compliance and Enforcement Program*, ch. 2, § 3(f). <https://www.faa.gov/documentLibrary/media/Order/ND/2150.3B.pdf> [<https://perma.cc/3LAN-XJGL>].

³⁹ FAA Order No. 8000.373, *Flight Standards Compliance Philosophy* (hereafter "Order 8000.373").

that holds an FAA certificate, approval, authorization, permit or license to full compliance and to prevent recurrence.”⁴⁰

The new compliance philosophy applies to most FAA lines of business including Flight Standards, the office that will typically investigate illegal charter cases. FAA personnel investigating possible regulatory violations are guided by this philosophy and are required to assume that any violation will be handled with a compliance action (discussed below) until the investigation reveals evidence that a compliance action would not be appropriate.⁴¹

C. HOW DOES THE FAA HANDLE REGULATORY VIOLATIONS?

As with investigations, when the FAA determines that a regulatory violation has occurred, the FAA’s options are guided by Order 2150.3C.⁴² The primary tools used by the FAA to achieve its compliance philosophy goal when faced with regulatory violations include compliance actions, administrative actions, and legal enforcement actions.⁴³ However, criminal prosecution is also a possibility when the regulatory violation involves criminal conduct.⁴⁴

1. Compliance Action

In 2015, the FAA’s new compliance philosophy added an informal tool for FAA Inspectors to use to resolve apparent violations.⁴⁵ According to the FAA’s guidance, a “compliance action” is appropriate in cases where the alleged violation resulted from flawed procedures, simple mistakes, a lack of understanding, or diminished skills.⁴⁶

A compliance action is not appropriate when the behavior resulting in the alleged violation was intentional, reckless, repeated, criminal, evidences a lack of qualification, or where applicable law requires enforcement action.⁴⁷

⁴⁰ FAA Order No. 8000.373, § 4(d).

⁴¹ FAA Order No. 8900.1, vol. 14, ch. 1, § 2, ¶ 1(B).

⁴² See Order 2150.3C.

⁴³ Order 2150.3C, ch. 5, § 2, *FAA Responses to Statutory or Regulatory Noncompliance and Other Safety Risks*.

⁴⁴ Order 2150.3C, ch. 8, § 36, *Criminal Violations Related to Enforcement Cases*.

⁴⁵ FAA Order No. 8000.373A, *Federal Aviation Administration Compliance Program* (Oct. 31, 2018); FAA Order No. 2150C, ch. 5, § 3.

⁴⁶ FAA Order No. 8000.373, at § 4(e).

⁴⁷ *Id.* §§ (e)-(h).

To qualify for resolution of a violation, the certificate holder must (1) acknowledge the alleged violations, and (2) be willing and able to comply with the regulations.⁴⁸ The certificate holder then works with the investigating FAA inspector to develop a corrective action plan in which the certificate holder provides a root cause analysis of how and why the violations occurred, actions for correcting the violations and preventing future non-compliance, and how the FAA will be able to verify future compliance.⁴⁹

An educational component may be required as a part of the corrective action plan which may include oral or written testing, counseling, remedial training, or other actions to ensure that the certificate holder has the knowledge necessary to avoid future violations.⁵⁰ The FAA documents regulatory compliance actions for future reference, but it does not become part of the certificate holder's official file.⁵¹

The FAA will also perform future surveillance to confirm the certificate holder has complied with the agreed upon corrective action.⁵² If corrective action has not been taken, the FAA may pursue legal enforcement action.⁵³

2. *Administrative Action*

An administrative action is an informal action that results in a record in the certificate holder's file but is short of a legal enforcement action.⁵⁴ The two types of administrative actions are warning letters and letters of correction.⁵⁵

A warning letter states the basic facts discovered by the FAA during its investigation.⁵⁶ It also recites that the FAA believes the conduct violated the regulations.⁵⁷ However, the warning letter then indicates that the FAA will not be taking any action in connection with the alleged violation.⁵⁸ But the warning letter also

⁴⁸ Order 2150.3C, ch. 5, § 3(a).

⁴⁹ *See id.*

⁵⁰ *See id.*

⁵¹ *See* Order 2150.3C, ch. 5, § 2.

⁵² *See* FAA Order No. 8900.1, vol. 14, ch. 1, § 2, ¶ 7(E); Order 2150.3C, ch. 5, § 4(c).

⁵³ *See* Order 2150.3C, ch. 5, § 4(d).

⁵⁴ *See id.* § 4(a).

⁵⁵ *Id.* § 4(b).

⁵⁶ *See* Order 2150.3C, ch. 5, § 4(b)(1); *see also* FAA Order No. 8900.1, vol. 14, ch. 2, § 3, Figure 14-2-3B, *Warning Notice*.

⁵⁷ *See* FAA Order No. 8900.1, vol. 14, ch. 2, § 3, Figure 14-2-3B, *Warning Notice*.

⁵⁸ *See* Order 2150.3C, ch. 5, § 4(a).

admonishes the recipient “not to do it again” and suggests that similar conduct in the future could result in more serious action being taken by the FAA (e.g., legal enforcement action).⁵⁹ Importantly, the warning letter is not a “finding of violation.”⁶⁰

A letter of correction is similar to a warning letter but goes farther in that it requires certain action by the recipient to resolve the matter.⁶¹ Specifically, it will require the recipient to take certain corrective action such as remedial training.⁶² Like the warning letter, the letter of correction does not result in a “finding of violation.”⁶³ And, like the compliance action, if the agreed upon corrective action has not been taken, the FAA may pursue legal enforcement action.⁶⁴

3. *Legal Enforcement Action*

When the FAA believes a certificate holder (whether an airman, air carrier, repair station, or otherwise) has violated a regulation, it may pursue legal enforcement action against the alleged violator. The action can be against the party’s certificate, also known as a “certificate action.”⁶⁵ In this situation, the FAA seeks to suspend or revoke the party’s certificate.⁶⁶ Alternatively, the FAA could seek to impose a civil penalty or fine against the alleged violator, also known as a “civil penalty action.”⁶⁷ And in some situations, the FAA could both take certificate action against the certificate holder and also assess a civil penalty.⁶⁸

4. *Certificate Action*

In a certificate action, the FAA acts against a certificate it has issued, whether an airman or medical certificate issued to an individual, or a certificate held by a business entity such as a certificate issued under FAR Parts 121 or 135 (air carrier certificates) or under FAR Part 145 (repair station certificate).⁶⁹ The

⁵⁹ *See id.*

⁶⁰ Order 2150.3C, ch. 5, § 2.

⁶¹ *See* Order 2150.3C, ch. 5, § 4(b)(2); *See also* FAA Order No. 8900.1, vol. 14, ch. 2, § 3, Figure 14-2-3C, *Letter of Correction*.

⁶² *See* FAA Order No. 8900.1, vol. 14, ch. 2, § 3, Figure 14-2-3C, *Letter of Correction*.

⁶³ Order 2150.3C, ch. 5, § 2.

⁶⁴ *See* Order 2150.3C, ch. 5, § 4(d).

⁶⁵ *See* 49 U.S.C. 44709(b).

⁶⁶ *See id.*

⁶⁷ *See* 49 U.S.C. 46301; *see also* 14 C.F.R. § 13.18 (2021).

⁶⁸ *See* 14 C.F.R. § 13.18 (2022).

⁶⁹ *See* 14 C.F.R. § 13.19 (2022).

action may seek to temporarily suspend a certificate, or seek a permanent revocation of the certificate.⁷⁰

A certificate action proposing suspension of a certificate involves suspension of the certificate for some specified period of time.⁷¹ The FAA will issue a “Notice of Proposed Certificate Action” (NPCA) reciting the facts, the alleged violations, the duration of the proposed suspension, as well as options for responding.⁷² In response to the NPCA, the recipient may take one of the following actions:

1. Admit the allegations and surrender the certificate as proposed;
2. Respond to the allegations in writing;
3. Request an informal conference; or
4. Request that the FAA issue its order of suspension so that it may be appealed.⁷³

If the certificate is physically surrendered to the FAA, either voluntarily or after an order of suspension has become final, the certificate holder is prohibited from exercising the privileges of that certificate while it is suspended.⁷⁴ At the end of the specified period of time the certificate is automatically returned to the certificate holder who may then once again exercise the privileges of that certificate.⁷⁵

A certificate action imposing revocation of a certificate is a more drastic sanction. In a certificate revocation case, the FAA takes the position that the certificate holder is no longer qualified to hold the certificate and, as a result, revocation of the certificate is required.⁷⁶ For this reason, when revoking a certificate, the FAA will usually do so on an emergency basis where the revocation is effective immediately.⁷⁷

In this instance, the certificate holder must immediately surrender the certificate to the FAA.⁷⁸ In contrast to certificate suspension, revocation of a certificate means the certificate must be surrendered and will not be returned.⁷⁹

⁷⁰ *See id.*

⁷¹ *See* Order 2150.3C, ch. 7, § 4(a)(4).

⁷² 14 C.F.R. § 13.19(b) (2022).

⁷³ *See* Order 2150.3C, ch. 8, § 15(e); *See also* 14 C.F.R. § 13.19 (2022).

⁷⁴ *See* Order 2150.3C, ch. 7, § 4(a)(4).

⁷⁵ *See id.*

⁷⁶ *See* Order 2150.3C, ch. 9, § 8(a).

⁷⁷ *See* Order 2150.3C, ch. 7, § 4(a)(2).

⁷⁸ *See id.* § 4(a)(2)(i).

⁷⁹ *See id.* § 4(a)(3).

Typically, a former certificate holder must wait some period of time after the revocation before the certificate holder may reapply for the certificate.⁸⁰ However, it is important to understand that the applicant is applying for a “new” certificate, rather than applying to have the previously revoked certificate reissued or returned.⁸¹

Order 2150.3C provides guidance for determining the level and extent of the sanction (e.g., suspension of some duration up to and including revocation) in a certificate action.⁸² For most violations, a range of sanctions is available to the FAA where the sanction is determined based upon the type of violation as well as consideration of any aggravating or mitigating circumstances.⁸³

5. *Civil Penalty*

In a civil penalty enforcement case, the FAA proposes to assess a civil penalty or fine against the alleged violator.⁸⁴ Civil penalty actions are typically used against companies or entities, as opposed to individuals, that hold FAA certificates.⁸⁵ However, in an illegal charter case, the FAA could assess a civil penalty against not only the aircraft operator or the aircraft owner, but also against the pilot(s).⁸⁶

A Civil Penalty Action is initiated when the FAA serves the alleged violator with a “Notice of Proposed Civil Penalty” (NPCP).⁸⁷ The NPCP recites the relevant facts (usually discovered by the FAA during an investigation, inspection, or audit), the regulations the FAA believes were violated, and the proposed civil penalty.

⁸⁰ See *id.* § 4(a)(3)(ii).

⁸¹ See *id.* § 4(a)(3).

⁸² See generally Order 2150.3C, ch. 9 (including various sanction guidance tables).

⁸³ See generally Order 2150.3C, ch. 9, §§ 6(c), (g).

⁸⁴ See Order 2150.3C, ch. 7, § 4(l).

⁸⁵ See Order 2150.3C, ch. 9, § 6.

⁸⁶ Sometimes, the FAA will bring a civil penalty action to avoid the six-month limitation of the NTSB’s stale complaint rule in a certificate action, and benefit from the longer two-year limitation applicable to civil penalty actions. For example, if the FAA fails to initiate a certificate action within six months of discovering an alleged violation, it will resort to a civil penalty action which allows the FAA two years within which to initiate the action.

⁸⁷ For civil penalties assessed against certificate holder, see 14 C.F.R. § 13.18(d) (2021). For civil penalties assessed against a party who does not hold a certificate, see 14 C.F.R. § 13.16(f) (2021). See also Order 2150.3C, ch. 8, § 18(b).

The NPCP is accompanied by an explanation of options for responding to the NPCP. The alleged violator of the NPCP has the choice of the following seven options:

1. Pay the penalty as proposed by the FAA;
2. Submit written information and evidence demonstrating that a violation of the regulations was not committed or that; if it was, the facts and circumstances do not warrant the proposed civil penalty. The FAA will then consider this information in determining whether a civil penalty should be assessed and the amount of any such civil penalty, or whether continued action is appropriate;
3. Submit written information and records indicating that the alleged violator is financially unable to pay the proposed civil penalty, or showing that payment of the proposed penalty would put the alleged violator out of business;
4. Submit a request that a civil penalty be assessed in a specific amount less than that proposed in the Notice, or that no civil penalty be assessed and provide the reasons and support for the requested reduction. The FAA will then consider this information when it determines whether the reduced amount should be assessed. If the FAA accepts the reduced amount that constitutes the alleged violator's agreement that an Order Assessing Civil Penalty in that amount may be issued and the alleged violator waives its right to a hearing regarding the civil penalty;
5. Request an informal conference during which the alleged violator can discuss the matter with an FAA attorney and present any information the alleged violator might otherwise have wanted to provide under options (a)-(d);
6. Request that the FAA impose a civil penalty without making findings of violations, providing reasons and any supporting documentation along with the request. If the FAA accepts the request, that constitutes the alleged violator's agreement that a Compromise Order in that amount may be issued, and the certificate holder waives its rights to a hearing; or
7. Request a formal evidentiary hearing at which issues of fact and law will be determined, including whether, and

in what amount, a civil penalty will be assessed against the alleged violator.⁸⁸

A response must be submitted to the FAA electing one of the options after receiving the NPCP.⁸⁹ If any option other than option seven is selected, and the case settles, either the case will be dismissed, which doesn't happen very often, or an order for a reduced civil penalty will be issued, which happens frequently.⁹⁰ If the latter, then the alleged violator simply pays the penalty, and the case is closed. If the case does not settle, or if the alleged violator elects option seven, then a hearing is held.⁹¹

As a policy matter, the FAA will issue a press release about its proposed assessment of a civil penalty action in an illegal charter case in the event the proposed penalty equals or exceeds \$50,000.00.⁹² In some instances, the penalties proposed by the FAA may be millions of dollars.⁹³ And while the FAA's press release may cite to some of the violations allegedly committed, the FAA never explains exactly how it arrived at the amount of the civil penalty it proposes to assess.

In order to determine the appropriate civil penalty for a given regulatory violation, the FAA uses the Sanction Guidance Tables contained in Order 2150.3C. If the proposed civil penalty is less than \$50,000 for an individual or \$400,000 for a small business concern, then the FAA handles the action.⁹⁴ However, if the proposed civil penalty is more than \$50,000 for an individual or \$400,000 for a small business concern, the United States Attorney's office handles prosecution of the action.⁹⁵

The Sanction Guidance Table provides a recommended range of penalties based upon the type and size of the violator, the type of alleged violation, and the number of alleged viola-

⁸⁸ 14 C.F.R. § 13.18(d) (2021). *See also* Order 2150.3C, ch. 8, § 18(b).

⁸⁹ *See* 14 C.F.R. §§ 13.16(f), 13.18(e) (2021) (discussing civil penalties to be handled administratively by the FA; *See also* 14 C.F.R. § 13.15(c)(2) (2021) (discussing civil penalties that may ultimately be handled by the U.S. Department of Justice).

⁹⁰ *See generally* Order 2150.3C, ch. 8.

⁹¹ *See* 14 C.F.R. § 13.15(c)(5) (2021); 14 C.F.R. § 13.16(h) (2021); 14 C.F.R. § 13.18(g) (2021).

⁹² *See* Order 2150.3C, ch. 7, § 11.

⁹³ *See generally* Order 2150.3C, ch. 9 (including various sanction guidance tables).

⁹⁴ *See* 49 U.S.C. § 46301(d)(8) (2021); *see also* Order 2150.3C, ch. 7, § 4(l)(1).

⁹⁵ *See* 14 C.F.R. § 13.16(b) (2021) (discussing civil penalties assessed against persons who do not hold certificates); 14 C.F.R. § 13.18(a)(2) (2021) (discussing civil penalties assessed against persons who do hold certificates).

tions.⁹⁶ The sanction guidance indicates a minimum and maximum range civil penalty for each instance of a violation of various regulations.⁹⁷ While the Sanction Guidance Table's sanction ranges account for different types of violations, as well as the nature, extent, and gravity of each general type of violation, a sanction isn't calculated through a "strict mathematical formula," but rather is determined based upon a judgment "of where a case lies along a spectrum of gravity."⁹⁸

In some cases, where the degree of the violator's fault is minimal, the potential hazard is very low, and no aggravating circumstances are present, the FAA may select a civil penalty amount that is below the range specified in the Sanction Guidance Table.⁹⁹ Conversely, the FAA may select a civil penalty above the range if the violator's fault was significant, the violation involved significant safety risks, the violator failed to take corrective action over an extended period of time, the violator has a poor compliance attitude or history, or the FAA feels it needs to make an example of the violator (or, as the FAA puts it, "to provide an economic disincentive for regulatory noncompliance").¹⁰⁰

What happens if the case involves multiple violations (e.g., multiple violations of a single regulation, a single violation of multiple regulations, or multiple violations of multiple regulations)? Fortunately, the FAA doesn't just determine the amount for each violation and then add them up. Rather, the FAA is required to consider the totality of the circumstances relating to the multiple violations, paying special attention to the seriousness of the potential hazard caused by the violations as well as the degree of the violator's fault for the multiple violations.¹⁰¹

At the end of the day, the Sanction Guidance Table is just that, general guidance.¹⁰² And while the FAA, and its inspectors and attorneys, are required to consider, and in most cases fol-

⁹⁶ See generally Order 2150.3C, ch. 9 (including various sanction guidance tables).

⁹⁷ *Id.*

⁹⁸ Order 2150.3C, ch. 9, § 6(b).

⁹⁹ See generally Order 2150.3C, ch. 9 (including various sanction guidance tables).

¹⁰⁰ *Id.*

¹⁰¹ See Order 2150.3C (including guidance for calculating penalty based upon alleged violations resulting from multiple occurrences); Order 2150.3C, ch. 9, § 6(j).

¹⁰² See Order 2150.3C, ch. 9, § 1.

low, the guidance, the FAA still has prosecutorial discretion.¹⁰³ That is, the FAA ultimately has the discretion and authority to determine not only whether to pursue a civil penalty action, but also the type and amount of the sanction.¹⁰⁴ But at least the Sanction Guidance Table provides some insight as to how the FAA may have arrived at a proposed sanction and what aggravating or mitigating circumstances it may, or should, have considered.

6. *Criminal Prosecution*

In addition to FAA's pursuit of remedies in connection with alleged illegal charter operators, in some instances those operators may be subject to criminal prosecution. Defendants can be charged with operating illegally under 49 U.S.C. § 44711(a).¹⁰⁵ Depending upon the circumstances and the information provided to the FAA by an operator, that operator could also be charged with making a false statement under 18 U.S.C. 1001.¹⁰⁶

Additionally, if an operator is alleged to be conducting illegal charter operations and the operator has not collected and remitted federal excise tax on the amounts it has been paid, it could also be prosecuted for violating Internal Revenue Code § 4261-1 et seq.¹⁰⁷

D. HOW TO RESPOND TO AN FAA LETTER OF INVESTIGATION

It is important to understand that the recipient of a letter of investigation is under no legal requirement to reply. So, should you respond to the inspector or a letter of investigation? Yes, if for no other reason than to acknowledge the inspector's contact

¹⁰³ See Order 2150.3C, ch. 9, § 2; see also *Heckler v. Cheney*, 470 U.S. 821, 831 (1985).

¹⁰⁴ See Order 2150.3C, ch. 9, § 2.

¹⁰⁵ 49 U.S.C. § 44711(a)(4) (stating that a "a person may not. . . operate an air carrier without an air carrier operating certificate. . .").

¹⁰⁶ 18 U.S.C. § 1001 (providing for a fine and/or imprisonment of up to 5 years for someone who "(1) falsifies, conceals, or covers up by any trick, scheme, or device a material fact; (2) makes any materially false, fictitious, or fraudulent statement or representation; or (3) makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry"). The authors have also seen the government argue in an illegal charter case that the defendant violated 18 U.S.C. 371, where it alleged that the defendant committed a scheme and artifice to defraud the FAA and its customers by impeding, impairing, obstructing, and defeating the lawful government functions of the FAA to regulate the operations of commercial aircraft. See generally 18 U.S.C. § 371.

¹⁰⁷ See 26 U.S.C. § 4261 (imposing certain taxes on "taxable transportation").

or your receipt of the letter. But should your response provide anything more than that acknowledgement? The lawyerly answer to that question is: "It depends."

In the past, knowledgeable counsel's typical advice would be to either not speak with the inspector or to at least not volunteer any information that could later come back to bite the recipient. Under the current compliance philosophy, that answer is not necessarily the best advice.

Now, counsel must carefully analyze the situation to try and determine whether the situation will qualify for a compliance action before information is volunteered to the inspector. For the situation to be handled as a compliance action, it will be necessary to provide the inspector with the information he or she needs to do that. While resolution of the case through a compliance action is definitely preferable, during that process counsel must try and avoid disclosing information that could preclude a compliance action or that will put the target of the investigation in a more difficult position if the FAA pursues legal enforcement action.

Sometimes it makes sense to simply acknowledge the inspector's request, advise that no additional information will be produced, and offer to respond to any specific questions or requests the inspector may have as may be appropriate, preferably in writing. After all, by the time the inspector sends the letter of investigation, he or she may have already discovered enough evidence to determine that a violation may have occurred. So why disclose anything that could help the FAA's case? And if the violation is not the type that can be handled with a compliance action, then explaining the situation to try and "make it go away" could, and likely would, later be used against the alleged violator.

E. HOW TO WORK WITH THE FAA IN A COMPLIANCE ACTION

First, confirm that the FAA is, in fact, offering to resolve the alleged violations through a compliance action. Next, the FAA will require the alleged violator to acknowledge the possible violations. At that point, the FAA will want to collect data on the non-compliant flights, including information on pilots and customers, as well as invoices and payment information for the past five years.¹⁰⁸ While this may seem intrusive, full disclosure will ensure that all non-compliant flights will be included in the

¹⁰⁸ See 28 U.S.C. § 2462.

compliance action and cannot later be the basis for enforcement action, assuming the compliance action is brought to a successful resolution.

Once the disclosures are completed and accepted by the FAA, a root cause analysis will need to be done to identify the casual factors that led to the non-compliance. A corrective action plan must also be formulated stating all actions that have been or will be taken to return to compliance and to ensure future compliance. The corrective action plan must also include a means of verification that will permit the FAA to verify continued compliance for some specified period of time into the future.

The FAA may also require an education component in which aircraft owners, operators, lessees, and pilots involved in the situation are provided information to educate the parties on the regulatory requirements and methods of compliance. In the illegal charter context, the FAA may want the parties to review the following information:

- a. FAA Advisory Circular AC 120-12(a) – Private Carriage Versus Common Carriage of Persons or Property;
- b. Advisory Circular AC 91.37(b) – Truth in Leasing; and
- c. The FAA's Safe Air Charter Toolkit at: <https://www.faa.gov/initiatives/safecharteroperations/safe-air-charter-toolkit-pilots-consumers-and-media>.

Once the FAA accepts the corrective action plan, implementation of the plan must be completed to the FAA's satisfaction for the compliance action to be closed. If the corrective action plan is not completed to the satisfaction of the FAA in the agreed-upon manner and time, a legal enforcement action evaluation will be completed and if appropriate, the FAA will initiate a legal enforcement action.

IV. CONCLUSION

Within our national airspace system and general and business aviation communities, aircraft leasing is an important and appropriate tool for, among other things, aircraft owners to obtain financing; individuals and companies to possess and control the aircraft they use for various business, risk management and tax planning purposes; private pilots to train, fly and enjoy their aircraft for leisure; and properly certificated air charter operators to gain access to additional aircraft for their charter fleets. That being said, one of the most confusing issues facing business and general aviation aircraft operators is the question of whether

they can operate their aircraft solely under the FAA's general, or noncommercial, operating rules, or whether they must also obtain certification as a commercial operator or direct air carrier and operate their aircraft under the applicable commercial rules, and this is especially complicated when their aircraft are leased to other parties.

Although the FAA's position on this question has been consistent since the 1970s, its enforcement of these rules has been sporadic. But improper dry leasing and other forms of illegal charter have become a high priority for the FAA within the last several years, and will be for the foreseeable future. As a result, the agency will continue to investigate complaints of illegal charter. It is therefore important to understand how the FAA defines the differences between wet and dry leasing, how it conducts these investigations, and the extent of its authority when the FAA believes the incorrect operating rules are being followed.