U.S. Department
of Transportation
**Federal Aviation
Administration**

Office of the Chief Counsel

800 Independence Ave., S.W.
Washington, D.C. 20591

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John G. White
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102 N. Torch Blvd.
Building 155
Cannon AFB, NM 88103-5100

Dear Mr. White,

This letter responds to your October 3, 2010, letter to the Federal Aviation Administration's (FAA) Flight Standards District Office (FSDO) in Lubbock, Texas. In your letter, you present several operational scenarios and request an interpretation whether they qualify as public aircraft operation in accordance with the United States Code. That letter was forwarded to my office for issuance of an interpretation.

For reference, we understand the following about Sierra Nevada Corporation (SNC) after speaking with the Lubbock FSDO.

SNC functions as a contractor to the United States Air Force (USAF). SNC owns but does not operate several aircraft, and does not hold any kind of operating certificate issued by the FAA. We understand that the USAF suggested to SNC that it acquire a Part 125 certificate, but that the FAA found that issuance of the certificate was not appropriate.

SNC owns and leases several aircraft to the USAF. SNC is also modifying the aircraft under USAF contract, and when the modifications are completed, the aircraft will be purchased by the USAF outright. Your questions concern the operation of those aircraft using USAF crews on USAF missions. You also include scenarios that include USAF-owned aircraft with USAF crews on USAF missions.

In general, the FAA does not issue advisory interpretations regarding public aircraft operations. The nature of the public aircraft statute (49 USC Sections 40102(a)(41) and 40125) is to define and describe application in terms of individual flights. The law is sensitive to who owns the aircraft, who operates it, the purpose of an individual operation, and the persons on board the aircraft during the flight. The variables are such that advisory opinions are often so broad as to be of no use and simply add confusion to a complex topic. However, we do think we are able to provide some guidance for your specific situation.

We must point out that the public aircraft statute applies only to operations that occur in the airspace of the United States. Once an aircraft leaves U.S. airspace, the law no longer applies, and the aircraft will have a different status. It is no longer a public aircraft under the law, even if it departed a location within U.S. airspace with that legal status. Some of your operational scenarios include operation outside the United States.

Further, we do not routinely review aircraft operations conducted by any part of the U.S. Department of Defense (DoD) when they appear to be validly conducted under Title 10 of the United States Code. The public aircraft statute includes specific requirements for such operations in Section 40125 (c). Unless our input is requested, we rely on the DoD to comply with the statute as a day to day matter. The DoD is also fully aware that when aircraft leave U.S. airspace, they lose public aircraft status; DoD agencies have their own procedures for having those flights properly redesignated as part of their routine operations without any involvement of the FAA.

The operations you describe do appear to be valid DoD operations as anticipated under the statute. If flights are conducted on USAF-owned (or contracted) aircraft by USAF crews in accordance with Title 10, or for a purpose described in Title 50, there does not appear to be any further analysis required, presuming all of those conclusions are correct. That the aircraft may be owned by SNC at the time of the flights does not change the analysis. If SNC was chartered as a carrier to provide transportation or other commercial air service to the USAF, then the provisions of Section 40125(c)(1)(C) might be at issue as to whether the flights remained under the FAA's oversight as a commercial operation. Since SNC does not have a commercial operating certificate and does not operate the airplanes, there appears to be no issue of whether the flights described were ever civil operations subject to FAA oversight. If the USAF requests our input on some facet of their operations under the public aircraft statute, we are ready to assist them in making a determination.

I hope this letter has helped to clarify your situation. This response was prepared by Karen Petronis, Senior Attorney in the Regulations Division of the Office of the Chief Counsel, and coordinated with the General Aviation and Commercial Division of the Office of Flight Standards. If you have additional questions regarding this matter, please contact us at your convenience at (202) 267-3073.

Sincerely,

Rebecca B. MacPherson
Assistant Chief Counsel for Regulations, AGC-200