

October 18, 1995

Mr. Donald P. Oulton  
Chief, International Law Branch  
Contract Support Division  
Office of the Staff Judge Advocate  
35 Hamilton Street  
Hanscom AFB, Massachusetts 01731-2012010

Dear Mr. Oulton:

This letter is in response to your questions concerning the registration of a Boeing 767 aircraft in the United States while it is being equipped for AWACS operations and flight tested. The objective of placing the aircraft on the U.S. registry is to allow the FAA to issue an airworthiness certificate for the AWACS -equipped aircraft. In connection with the airworthiness certification, I understand that either the U.S. Air Force or Boeing will seek FAA type certification of the modifications required for the AWACS installation.

Information provided by you indicates that the basic B-767 aircraft is currently under construction at a Boeing facility. Upon completion of the basic aircraft in April 1996, ownership is to be transferred to the Itochu Corporation (a Japanese company) and then retransferred to the Government of Japan, the ultimate purchaser of the aircraft. The Government of Japan will immediately bail the aircraft to the USAF performance of the modifications required for the AWACS installation. Boeing, as a contractor to the USAF, will perform the modifications. The USAF will have exclusive use of the aircraft during period of the bailment, and, at the request of the Japanese Government, will seek to have the aircraft placed on the U.S. registry and issued an FAA certificate of airworthiness for the duration of the bailment.

We have concluded that the aircraft can be registered by the USAF given the facts you have presented to us. Under 49 U.S.C. § 44102(a)(2)(A), an aircraft is eligible for registration by the U.S. Government if the aircraft is exclusively used by the U.S. Government. This eligibility provision does not require that the U.S. Government own the aircraft. Because the bailment agreement between Japan and the USAF will provide the USAF with exclusive use of the aircraft, we conclude that the eligibility test of § 44102(a)(2)(A) will be satisfied. (I understand that you are reviewing the terms of the draft bailment agreement with this issue in mind, and have discussed specific provisions in the agreement with Joseph Standell, the Assistant Chief Counsel for the FAA's Aeronautical Center.) A duplicate original of the bailment agreement between the Japanese government and the USAF should be attached to

the application for registration.

The FAA may issue a certificate of airworthiness to the aircraft (which is a public aircraft under 49 U.S.C. § 44102(a)(37)) while registered to the USAF provided that the USAF makes a proper application for the certificate and complies with the requirements for the certificate. In the case of the unmodified B-767, an airworthiness certificate could be issued if the aircraft is shown to conform with the type design and is in a condition for safe operation. Assuming the FAA type certifies the modifications required for the AWACS installation, the FAA then could issue a standard or restricted airworthiness certificate to the modified B-767 provided that it conforms with the type design for those modifications and any special conditions that the FAA may impose, and it is in a condition for safe operation. The airworthiness certificate will be effective as long as the maintenance, preventive maintenance, and alterations are performed in accordance with 14 C.F.R. Parts 43 and 91 and the aircraft is registered in the United States. The USAF also would be required to make the B-767 available for inspection by the FAA upon request.

The type certification of the modifications required for the AWACS installation would not depend on the registration of the referenced B-767 in the United States. Type certification is related to the design of an aircraft and not the conformity of a particular aircraft with that design. I understand that the USAF and Boeing have been discussing type certification issues for the project with the Large Aircraft Certification Directorate in the FAA's Northwest Mountain Region and the Wichita Aircraft Certification Office in the FAA's Central Region. You should continue to direct all type certification issues to those offices. I have been advised that among the issues under discussion are whether a type certificate or supplemental type certificate will be issued for the modifications, and whether the aircraft type certificate will be in the transport or restricted category. I also have been told that the type certification will only address the modifications required for the installation of the AWACS equipment and the effect of the installation and operation of that equipment on the systems and operation of the B-767 aircraft. The design and functions of the AWACS equipment will not be approved under the type certificate

Specific questions on the registration process and the terms of the bailment agreement

should be directed to Mr. Standell. Mark Bury, the attorney on my staff assigned to this project, also will continue to be available to assist you on this matter.

Thank you for bringing this issue to our attention.

Sincerely,  
Michael B. Jennison  
Assistant Chief Counsel, International  
Affairs & Legal Policy Staff, AGC-7

File: JAPAN AWACs: Registration & Certification  
WP: C:\DOCS\REGISTRY\JAWACLTR.DOC

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cc: Joseph Standell, AMC-7  
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