Federal Aviation Administration

Memorandum

Date: June 8, 2009

To: Office of Accident Investigation, Hooper Harris, AAI-100

From: Assistant Chief Counsel for Regulations, AGC-200

Subject: Public Aircraft Operation Status of Carson Helicopter Services, Inc. N61AZ

You have requested that the Office of the Chief Counsel render its opinion on the public aircraft operation status of a helicopter that crashed in Weaverville, California.

The helicopter, a Sikorsky S-61N, U.S. registration N61AZ, was owned by Carson Helicopter Services, Inc. and was under contract to the United States Forest Service (USFS) for firefighting at the time it crashed. On August 5, 2008, the helicopter was transporting firefighters departing from Helispot 44 in the Shasta Trinity National Forest when it experienced a loss of power to the main rotor during initial takeoff climb. The accident resulted in fatal injuries to the pilot and eight firefighters; the second pilot and three other firefighters were seriously injured.

Based on the information available to us, we believe the flight to have been a public aircraft operation within the meaning of the statute and FAA guidance material.

The applicable statutory provisions are 49 USC 40125, Qualifications for Public Aircraft Status, and the definition of public aircraft found in 49 USC 40102(a)(41). An aircraft may qualify for public aircraft operation status if used only for the United States Government in the performance of a governmental function. An exception in §40125(b) states that an aircraft does not qualify as public when it is used for commercial purposes or to carry an individual other than a crewmember or a qualified non-crewmember.

The statute includes in the definition of governmental function "an activity undertaken by a government, such as ... firefighting...." (§40125(a)(2))," as was contracted for by the USFS. There is nothing in the information we reviewed to indicate that it was being operated for any commercial purpose. Finally, the only persons on board were the pilots and the firefighters being transported. The firefighters qualify as individuals "whose presence is required to perform, or is associated with the performance of, a governmental function."

Accordingly, under the information available to us at this time, we consider the flight of N61AZ to have been a public aircraft operation at the time the accident occurred.

We are aware that internal agency materials may not be consistent in the consideration of the statutory factors or historical decisions. Those materials are being updated, and persons using them are cautioned to consult with us for consideration of specific factors when making a determination of public aircraft operations.