




# Federal Aviation Administration

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## Memorandum

Date: MAR 13 2009

To: Office of Accident Investigation, Tony James, AAI-100

From: Assistant Chief Counsel for Regulations, AGC-2007 

Subject: Public Aircraft Status of Maryland State Police Trooper 2

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You have requested that the Office of the Chief Counsel render its opinion on the public aircraft status of a Maryland State Police helicopter that crashed on September 27, 2008.

The helicopter, registered as N92MD, with a call sign of Trooper 2, was operated by the Maryland State Police. On September 27, 2008, Trooper 2 was being used in the evacuation of injured persons from an automobile accident scene in Waldorf, Maryland, with a destination of Prince Georges County Hospital Center in Cheverly, Maryland. The crash killed the pilot, a flight paramedic, one of the two automobile accident victims, and one other person.

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). The definition in §40102(a)(41)(C) includes as a public aircraft an "aircraft owned and operated by the government of a State ... except as provided in Section 40125(b)."

The 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 operation of Trooper 2 does not meet the exception as being used for commercial purposes. Our understanding is that the funding for Maryland State Police helicopter operations is public, through fees and other taxes, and does not fall within the meaning of "for compensation or hire" under the statute (§40125(a)(1)). The recipients of the service provided by the Maryland State Police (in this case, the accident victims) do not pay for that service in any manner that could be construed as compensation or hire, and are considered to be "qualified non-crewmembers" as they are individuals who are "associated with the performance" of a governmental function. While the statute contains examples of governmental function, it does not specifically call out

flights for medical evacuations. However, the FAA considers helicopter emergency medical services as akin to the 'search and rescue' function used as an example in the statute, and as falling within the statutory intent of governmental function.

Accordingly, under the information available to us at this time, we consider the flight of Trooper 2 to have been a public aircraft operation.

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.