UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
Washington, D.C. 20460

OFFICE OF
GENERAL COUNSEL

MEMORANDUM

SUBJECT: Request for Authorization for Government (Military) Aircraft Travel

FROM: Kevin S. Minoli
Acting General Counsel

TO: Ryan Jackson
Chief of Staff

This memorandum responds to your request for my review of whether the circumstances regarding the Administrator's schedule and obligations on June 7, 2017 and June 8, 2017, satisfy the standard for the authorized use of a government aircraft for one portion of the necessary transportation between those obligations, and, if so, your request for my authorization, pursuant to 41 CFR sec. 301-70.803(b). Because I conclude that the regulatory and other standards are satisfied by the circumstances as they have been provided to me, this memo provides authorization for the Administrator and required accompanying EPA staff to travel from Cincinnati, Ohio, to the John F. Kennedy International Airport (JFK Airport) in New York, New York,on a military aircraft operated by the United States Department of the Air Force. The travel will occur today, June 7, 2017.

The Administrator is currently scheduled to depart Washington, DC, to travel to Rome, Italy, later today (June 7, 2017) as the lead official on a diplomatic mission for the United States Government. While in Italy, the Administrator is schedule to represent the Unites States at the G-7 Environment Ministerial, in bi-lateral meetings with individual Environment Ministers, in bi-lateral meetings with the Vatican, and in meetings with United States businesses that have locations in Italy. This official, mission-critical travel has been coordinated with the Department of State and the local United States Embassy. See attachment 1, "Notional Itinerary for EPA Administrator Mission to Italy."

In addition, the President directed Administrator Pruitt to accompany the President today (June 7, 2017) aboard Air Force One and travel to Cincinnati, Ohio, to attend and participate in water infrastructure-related public events. See attachment 2, "The Visit of the President to Cincinnati, OH Wednesday, June 7, 2017." As explained in the June 7 memoranda from the Deputy Chief of Staff respectively, the Administrator's original travel itinerary had to be changed to depart for Italy from Cincinnati, Ohio, instead of Washington, D.C., given the need to immediately travel to Cincinnati to support the Presidential event. See attachment 3, Email from John Reeder, Deputy Chief of Staff, to Kevin Minoli, Acting General Counsel, and Elise Packard, Acting

Principal Deputy General Counsel, June 7, 2017. According to the attached schedules, the Administrator will not complete his obligations with the President until 2:05 p.m. Currently, the Administrator is scheduled to depart JFK Airport at 7:35 p.m. I understand from the information provided to me by you and the attached email from the Deputy Chief of Staff that there are no commercial flights leaving Cincinnati, Ohio for JFK Airport that would arrive in time for the scheduled flight to Italy. I also understand from you that there are no other viable flight itineraries that would arrive in Italy on schedule have been identified.

EPA's use of non-commercial travel services is governed by OMB Circular A-126, OMB Bulletin 93-11, and the Federal Travel Regulations at 41 CFR parts 301-10 and 301-70. Under these policies and procedures, the "agency's senior legal official or his/her principal deputy must authorize all travel on Government aircraft by senior Federal officials on a trip-by-trip basis, in advance and in writing." 41 CFR sec. 301-70.803(b). Travel can be authorized on government aircraft in three situations:

a) Mission Requirements. The activities undertaken on the trip are operational functions that are necessary to discharge an agency's official responsibilities. Examples include transportation of troops or equipment, evacuation, intelligence gathering or counter narcotics work, search and rescue, transportation of prisoners, and scientific applications such as research that requires the use of aircraft for experiments;

b) Required Use. Travel via government aircraft is authorized if it is for the purposes of bona fide communications (e.g., 24-hour secure communications) or security reasons (e.g., highly unusual circumstances that present a clear and present danger) or exceptional scheduling requirements (e.g., a national emergency or other compelling operational considerations); or

c) Other Official Travel. Official travel that does not qualify as a "mission requirement" or "required use" travel may be undertaken in a government aircraft in limited circumstances. EPA must determine that no commercial service is reasonably available to effectively fulfill its requirements (i.e., no commercial service must be able to meet the traveler's departure and/or arrival times within a 24-hour period unless extraordinary circumstances justify a shorter period or that the actual cost of using a chartered aircraft is less than the cost of commercial airline service).

See, OMB Circular A-126, OMB Bulletin 93-11, and the Federal Travel Regulations at 41 CFR parts 301-10 and 301-70. I evaluated this travel request under the "required use" and "other official travel" Standards. Regarding "required use", OMB Circular A-126 states that a "required use" travel determination must be consistent with established agency policies for determining when such use is permitted. The EPA's Travel Manual states in relevant part:

> ...use of a federal government aircraft, chartered or federal government owned, must comply with the OMB Circular A-126. The EPA must need the service to fulfill a mission requirement, exceptional scheduling, communication or security requirements, or there is a substantial cost savings to the federal government.

Referring back to the standard for a "required use" authorization described above, use of a government aircraft may be authorized for one of three reasons: 1) bona fide communications; 2) security; or 3) exceptional scheduling considerations. The requested travel on a government aircraft is not necessary for communications or security reasons. There are, however, exceptional scheduling considerations that satisfy the standard for authorizing this travel on a government aircraft. The Administrator's schedule requires him to accompany the President in Cincinnati, Ohio, today, June 7, 2017, and requires him to represent the United States Government at previously-scheduled meetings in Rome, Italy tomorrow, June 8, 2017. Both obligations have been deemed critical to the mission of the agency. The temporal proximity and geographic distance between the two obligations jointly constitute an exceptional scheduling requirement.

In order to authorize travel on a government aircraft under the "other official use" standard, it must be determined that no commercial service is reasonably available to fulfill the agency's requirements. This is generally established when there is no commercial service available to meet the traveler's departure and/or arrival times within a 24-hour period, unless extraordinary circumstances justify a shorter period. Here, the extraordinary circumstances described above justify a shorter period of consideration other than 24-hours. Additionally, based on the information provided to me by you and in the attachments, there is no commercial service available to meet the agency's travel need.

Based on the information provided to me, I authorize the use of government aircraft for the Administrator's travel today (June 7, 2017) from Cincinnati, Ohio, to JFK Airport based on the conclusion that the travel satisfies both the "required use" standard and the "other official travel" standard for such an authorization. My review and authorization is limited to the authorization to travel on a government aircraft; it does not represent any other required authorizations or approvals, such as those necessary under EPA's Travel Policy, nor does it represent the authorization or approval of the individual trips themselves.

Attachments

cc: John Reeder, Deputy Chief of Staff