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

JUN 07 2017

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

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

JUL 26 2017

OFFICE OF GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Request for Charter Services

FROM: Elise B. Packard EBP
Acting Principal Deputy General Counsel
Office of General Counsel

TO: Kevin Chmielewski
Deputy Chief of Staff for Operations
Office of the Administrator

This memorandum responds to your request for authorization for the Administrator, seven EPA staff, and a non-federal employee to use charter aircraft on July 27, 2017. I have concluded that the circumstances you have provided in your request satisfy the regulations and policies governing EPA's use of charter aircraft. I am therefore authorizing the individuals listed in your request to travel on the Department of Interior's aircraft on July 27, 2017 from Tulsa, OK to Guymon, OK and from Guymon to Oklahoma City, OK.

As provided in your request, the Administrator, seven EPA staff, and one member of the media, are scheduled to use charter aircraft on the morning of July 27, 2017 to travel from Tulsa to Guymon for the purpose of meeting with landowners impacted by EPA's Waters of the United States Rule. The same individuals will then fly on the charter aircraft from Guymon to Oklahoma City to meet with state officials.

EPA employees

An agency's use of charter services is governed by OMB Circular A-126, OMB Bulletin 93-11, and 41 CFR §§ 102.33, 301-10.260 –10.266. Under these policies and procedures, OGC may authorize EPA employees to travel on charter 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. EPA can charter aircraft for its officials under this type of authorization 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).

c) Other Official Travel. Official travel that does not qualify as a "mission requirement" or "required use" travel may be undertaken by chartered aircraft in limited circumstances. To meet this test, EPA must determine 1) the travel is for the purpose of conducting agency business and 2) no commercial service is reasonably available to effectively fulfill EPA's requirements or that the actual cost of using a chartered aircraft is less than the cost of commercial airline service.

Here, the travel satisfies the criteria of "other official travel" because the travel is for the purpose of conducting agency business and there are no commercial aircraft that offer flights to Guymon. As stated in your request, the purpose of the visit to Guymon is to meet with Gary Weabie of the Panhandle Irrigators Association, and landowners whose farms have been affected by the Waters of the United States Rule. Your request also provides that Guymon is in a remote location and Guymon Municipal Airport is too small to accommodate commercial aircraft.

Non-federal employee

Under 31 U.S.C. § 1345, EPA funds are not available to pay for the transportation of non-federal employees to meetings (a term DOJ's Office of Legal Counsel interprets broadly) unless otherwise authorized by law (such as under invitational travel orders, as authorized by 5 U.S.C. §5703). Absent such authority, a non-federal employee may travel on government aircraft only if he or she is occupying a seat that would otherwise be vacant. That is, non-federal employees may ride along only if the vehicle has available extra seats, and EPA does not expend any additional funds to accommodate the non-federal employees (e.g., EPA does not rent a larger vehicle to accommodate the non-federal employees).

It is permissible for the member of the media noted in the request to accompany the EPA employees on the charter flight because we have determined that s/he will be occupying a seat on the aircraft that would otherwise be vacant. Therefore, EPA will not be spending appropriated funds on a non-federal employee.

Conclusion

Based on the information provided to me, I authorize the use of government aircraft for the requested individuals on July 27, 2017 from Tulsa to Guymon and from Guymon to Oklahoma City. Travel on a charter service is appropriate here because the purpose of the trip is to conduct the Administrator's official business of studying the impact of EPA regulations on farmers, and the town is not accessible through commercial means. The member of the media may also accompany the EPA employees on the flight because there is no additional cost to the Agency to accommodate him or her.

If you have any questions regarding this memorandum, please do not hesitate to contact me (202-564-7729) or Stephanie Rich (202-564-4963).

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

AUG 24 2017

OFFICE OF GENERAL COUNSEL

MEMORANDUM

SUBJECT: Approval of Request for Charter Service from Denver to Durango

FROM: Kevin S. Minoli
Acting General Counsel
Office of General Counsel

TO: Kevin Chmielewski
Deputy Chief of Staff for Operations
Office of the Administrator

This memorandum responds to your request for written approval for the Administrator and three EPA employees to use a charter service to fly from Denver to Durango, CO on August 4, 2017. I have concluded that the circumstances you have provided in your request satisfy the regulations and policies governing EPA's use of charter aircraft. I am therefore, memorializing my prior verbal approval of your request.

On August 4, 2017, the Administrator and his staff were scheduled to attend a meeting at Gold King Mine, near Durango, to discuss the mine spill with the Colorado Congressional delegation, the Colorado Governor, key community leaders, and stakeholders. The Administrator was scheduled to take a commercial flight from Denver at 9:10 a.m. that would arrive in Durango at 11 a.m. When the Administrator and his staff arrived at the airport in Denver for their departure to Durango, they learned that the flight had been delayed. The delay pushed the flight's arrival time beyond the Administrator's scheduled meeting time at Gold King Mine.

Pursuant to OMB Circular A-126, in emergency situations, EPA's General Counsel or Principal General Counsel may give prior verbal approval of the Agency's use of a charter service and after-the-fact written certification. In this case, the Administrator urgently needed a mode of transportation to make his meeting and did not have sufficient time to request formal approval from OGC. I was contacted by the EPA's Chief of Staff, Ryan Jackson, to provide verbal approval of the use of a private charter service. Based on the facts presented to me, I gave my verbal approval for the Agency's use of a charter service, which I believed qualified as "other official travel" under GSA's authorized uses of charter aircraft. Ryan Jackson agreed to deliver the appropriate paperwork to OGC the following week so I could provide my formal approval. This information was documented in an email dated August 4, 2017.

An agency's use of charter services is governed by OMB Circular A-126 and 41 CFR §§ 102.33, 301-10.260 –10.266. Under these policies and procedures, one of the three situations in which OGC may approve EPA's use of a charter service is for "other official travel." To meet this test, EPA must determine 1) the travel is for the purpose of conducting agency business and 2) no commercial service is reasonably available to effectively fulfill EPA's requirements or that the actual cost of using a chartered aircraft is less than the cost of commercial airline service. Here, the travel satisfies the criteria of "other official travel." As stated in your request, the purpose of the Administrator's visit was to meet with state representatives and stakeholders to discuss EPA's response to the Gold King Mine spill. You also state in your request that there were no alternative commercial flights that would allow the Administrator and his team to make the meeting on time.

Based on information provided to me, I am formally authorizing EPA's use of a charter service from August 4, 2017 from Denver to Durango. If you have any questions regarding this memorandum, please do not hesitate to contact me (202-564-8040) or Stephanie Rich (202-564-4963).

CORRESPONDENCE ROUTING AND TRANSMITTAL SLIP

Routed From

printed 08/24/2017 03:09:47 PM

Law Office	Originator	Date Due	ID Number
CRFLO	Stephanie Rich	09/01/2017	OGC-3088

Action Requested

- ☐ Concurrence by GC
- ☐ Signature by GC
- ☐ Concurrence by Front Office
- ☐ Signature by Front Office
- ☐ FYI
- ☐ Other

Routed To

Law Office	Approver		Approved?
1. Front Office	Shaun Trudeau	✔	YES 08/24/2017 02:18:40 PM
2. Front Office	Kevin Minoli		
3.			
4.			
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8.			

Package Information

Document Type

Memorandum

Case Name/Subject	Case or File Number
Approval of Request for Charter Service from Denver to Durango	N/A

Comments from the ORIGINATOR

MEMORANDUM

SUBJECT: Justification for Charter Services for the Administrator

FROM: Kevin Chmielewski,
Deputy Chief of Staff for Operations

TO: Kenneth Redden,
Acting Associate General Counsel,
Civil Rights and Finance Law Office

This memorandum requests that the Office of General Counsel approve the use of charter services for the Administrator under the circumstances set forth below. If you have any questions regarding this matter, please contact me at 202-564-3140 or Millan Hupp of my staff at 202-564-1748.

JUSTIFICATION FOR AIRPLANE CHARTER IN COLORADO

The Administrator and other EPA employees visited Gold King Mine in Durango, Colorado. The following employees are traveled via charter from Denver to Durango on August 4th:

E. Scott Pruitt, Administrator
Pasquale Perrotta, Protective Security Detail
Lincoln Ferguson, Senior Advisor to the Administrator
Amy Graham, Deputy Associate Administrator, OPA

PURPOSE

Administrator was scheduled to be at Gold King Mine for a tour and meeting beginning at 11AM. His flight was scheduled to land in Durango (1 hour, 45 min) from Gold King at 9:10AM. The traveling EPA staff did not learn of the delay until arrival at the airport in Denver that morning. The flight continued to be delayed, all the while they searched for alternative options. None became available and with no indication for an immediate depart for the already scheduled commercial flight, the decision was made to pursue a charter plane in order to fulfill the mission.

Therefore, the Administrator departed from Denver, CO on August 4th, 2017 via a charter aircraft to Durango, CO to make a mission critical meeting at Gold King Mine. This meeting involved the Colorado Congressional delegation, the Governor, and key community leaders and stakeholders, and it was essential that the Administrator attend. The Administrator's original commercial flight was delayed beyond the timeframe for the scheduled meeting. Thus only allowing for the option to use a charter aircraft.

From:	Minoli, Kevin
To:	Redden, Kenneth; Askew, Wendel; Talbert-Duarte, Angelia; Rich, Stephanie; Fugh, Justina
Cc:	Reeder, John; Brown, Reginald; Davis, Gail; Packard, Elise
Subject:	Update on Administrator"s Travel Today
Date:	Friday, August 04, 2017 12:58:12 PM

All- I wanted to provide an update on the Administrator's travel situation today. As those of you who are in the office know, the flight the Administrator intended to take from Denver to Durango today was delayed to such a degree that he would miss a mission critical meeting at Gold King Mine. That meeting involved the Colorado Congressional delegation, the Governor, and key community leaders and stakeholders, and it was essential that the Administrator attend. Based upon my conversation with Ryan Jackson, there were no other available flights from Denver to Durango that would have worked with the scheduled meeting. People also looked into flights from airports near to Denver into Durango or other locations near Gold King Mine. While there was one potential alternative identified that had one seat available (and the airline may have gone as far as to reserve that seat in case we determined it would meet the travel needs and requirements), Ryan's understanding from the security detail was that there was not any additional seat for a Special Agent to accompany the Administrator and, therefore, that flight did not meet the travel and security needs. Similarly, there was only one seat available on a plane with the Governor, so without the Governor removing someone else from the trip that was not an option either. After calling an consulting with me, there was a decision to secure a flight with a commercially-available charter service (http://mayoaviation.com/charter/). Ryan relayed that the cost was approximately $5200. Ryan will deliver all of the paperwork to the AO team and us on Monday when they return to the office. At that point will we document the oral consultation and conclusion more formally.

AO folks, I cc'd you so everyone had awareness of where things stand from my perspective. If you want to talk through any aspect of this understanding today, please give me a call.

Thanks, Kevin

Kevin S. Minoli
Acting General Counsel
Office of General Counsel
US Environmental Protection Agency
Main Office Line: 202-564-8040