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).