

APR 11 2005

MEMORANDUM

TO: Heads of OPDIVs and STAFFDIVs

FROM: Alex M. Azar II
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SUBJECT: Changes in Regulations Regarding Use of Charter Planes
and other Government Aircraft

This memorandum is to notify you of new government-wide regulations concerning the management and use of charter flights (considered one type of Government aircraft).¹ These revised regulations (41 C.F.R. Parts 101-37, 300-3, 301-10 and 301-70) require agencies and travelers to follow certain procedures and obtain certain authorizations when using Government aircraft (e.g., authorization from ASAM and, in some cases, additional authorization from the General Counsel). All travel on charter aircraft is reported to the General Services Administration and is likely to be subject to great public scrutiny. Therefore, we expect that approval will be granted in only the rarest of circumstances. In addition, particular ethics concerns, as well as government travel restrictions, apply with regard to travel on private aircraft not chartered by the government. Such travel, if ever permitted, requires close consultation with and approval by the Office of the General Counsel (OGC).

Official Travel

The Department's designated aircraft approving official must approve all "official travel" on Government aircraft for Department employees. In most cases, the Department's designated aircraft authorization official is the Assistant Secretary for Administration and Management. However, in some cases, the Assistant Secretary may have delegated this authority to heads of

¹ "Government aircraft" does not include aircraft owned by employees and utilized for their travel, and as a result the procedures outlined in this memo do not apply to such aircraft. Guidance for use of such employee-owned aircraft may be found at 41 C.F.R. §341.10-300.

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OPDIVs or STAFFDIVs.

All "official travel" by agency employees on Government aircraft must first be justified in writing and approved. Such justifications must demonstrate either (1) that no scheduled commercial airline service is reasonably available to fulfill the travel requirement, or (2) that use of Government aircraft is more cost effective than using commercial airline service. 41 C.F.R. §301-10.261(a). Each operating division (OPDIV) and staff division (STAFFDIV) must prepare the justification documents. Justifications must set forth the relevant supporting facts or other necessary information (e.g., airline schedules, cost-comparisons between Government and commercial aircraft, etc.) The regulations do not provide specific guidance as to how cost-comparisons should be completed.¹ As a result, we recommend that travelers take a common sense approach in preparing justifications.. For example, although the regulations do not provide guidance on cost-comparisons to remote or inaccessible locations to or from which no or limited commercial flights are available, travelers should examine the costs of other non-air travel alternatives such as boat passage or car rentals in such cost comparisons. In addition, travelers should follow any applicable HHS policy when preparing such justifications. Finally, justifications should be provided to the appropriate approving official sufficiently in advance of the trip for review.

Furthermore, in addition to the required approval from the Department's designated aircraft approval official, under the new regulations the General Counsel must also approve, in advance, all "official travel" on Government aircraft by senior federal officials; and non-federal travelers. 41 C.F.R. §301-10.262(b), (c). All "official travel" includes what used to be called "mission requirements travel" and "other than mission requirements travel." "Mission requirements" travel must also now meet heightened justification requirements. Requests for approval should be provided to the General Counsel to the extent possible at least 30 days in advance of the trip to ensure OPDIVs and STAFFDIVs have adequate time to provide any additional information that may be requested by OGC. The General Counsel will look to ASBTF for concurrence in those cases in which justifications are premised upon the fact that use of Government aircraft is the most cost effective alternative. *See* 41 C.F.R. §301-10.261(a)(2).

Required Use Travel

In certain cases, even where the criteria to justify use of Government aircraft for "official travel"

¹ The regulation does provide however that information on costs included in cost comparisons may be found in the "U.S. Government Aircraft Cost Accounting Guide," which is available from the General Services Administration, Office of Government-wide Policy, MTA, 1800 F Street, N.W., Washington, DC 20405. 41 C.F.R. §301-10.261(a)(2).

"Senior federal officials" are those individuals who are paid according to the Executive Schedule established by federal law, including (1) Presidential appointees who are confirmed by the Senate, (2) members of the U.S. Government's Senior Executive Service or an equivalent "senior" service, and (3) contractors who perform senior executive responsibilities and are paid at a rate equal to or more than the minimum rate for the Senior Executive Service. *See* 41 C.F.R. §300-3.1.

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cannot be met, use of Government aircraft may be necessary to meet bona fide communications or security requirements (e.g. when the agency must maintain contact with an individual at all times) or due to an emergency. 41 C.F.R. § 101-37.100. This travel is considered "required use travel" and must be approved in advance by the designated aircraft approval official and the General Counsel on a trip-by-trip basis, regardless of the position or pay-level of the traveler. 41 C.F.R. §301-10.261(a). Furthermore, "required use travel" is only permitted in accordance with written standards established by the Department.' 41 C.F.R. §301-70.803(a).

Space Available Travel

Federal and non-federal travelers may fly Government aircraft on a "space available" basis if the aircraft is already scheduled for "official travel" and a larger aircraft is not needed to accommodate the space available travelers (or if a larger aircraft is needed, it does not result in more than a minor additional cost to the Government). 41 C.F.R. §301-70.801(c). In addition, federal travelers and their dependants may be permitted to fly on a space available basis when the Federal traveler is stationed by the Government in a remote location not accessible to commercial airline service. 41 C.F.R. §301-70.801(c). Whether appropriate circumstances exist to permit "space available travel" will be reviewed on a case-by-case basis. Furthermore, senior federal officials or any non-federal travelers who desire to fly "space available" must obtain advance approval from the Department's designated aircraft approving official as well as the General Counsel. All other travelers must obtain approval from the Department's designated aircraft approval official.

Personal and Political Travel

Finally, the revised regulations also provide guidance with respect to when travelers must reimburse the Department for use of Government aircraft. For example, travelers are normally required to reimburse the Government for personal or political travel on Government aircraft. *See* 41 C.F.R. §301-10.264. In addition, under guidance from the White House Counsel, certain approvals are required for political travel on some private aircraft. Please direct inquiries regarding political travel to the Ethics Division of OGC. Inquiries regarding personal travel may be directed to OGC's General Law Division.

Contracting for Chartered Aircraft

Government contracts for goods and services, such as aircraft charters, are governed by the Federal Acquisition Regulation (FAR). *See* FAR § 1.104; FAR 2.101. Therefore, any contract with a charter service contractor should be executed by a contracting officer in accordance with the procedures, terms, and conditions provided for by the FAR. *See* FAR 2.101. If the contract for charter services will be less than \$100,000, the contracting officer may use the procedures set forth at FAR Part 13. Under FAR Part 13, the contracting officer must promote competition to

"Required use travel" only pertains to travel under exigent circumstances. Travel by the President is a good example of "required use travel."

5 The Department's standards for "required use travel" are currently being developed.

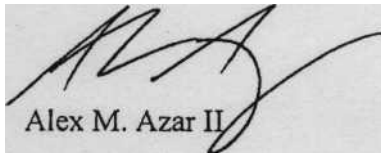
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the maximum extent practicable, and ideally should solicit offers from three sources. FAR 13.104. Therefore, offices should confer with the appropriate contracting staff with respect to contracting for chartered aircraft. In addition, we recommend that although contracting officers should be informed of a potential need to charter aircraft as soon as possible, travelers secure all necessary approvals (described above) before requesting the contracting office to actually award a contract or purchase order to a charter aircraft service.

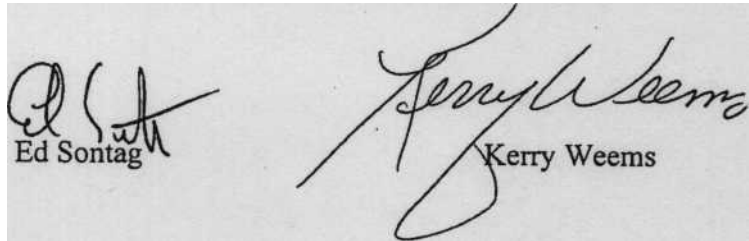
POINT OF CONTACT

All authorizations for charter flights or other government aircraft sent to the General Counsel must be approved by the Department's designated aircraft approval official prior to submission to the General Counsel.

Should you have any additional questions regarding legal requirements for the use and management of Government aircraft, please contact the General Law Division at (202) 619-0153.



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