



May 29, 2008

TO: Chief Financial Officer

FROM: Assistant Inspector General for Investigations

SUBJECT: Results of Mission Management Aircraft Investigation

Purpose. This memorandum refers results of an administrative investigation conducted by the NASA Office of Inspector General (OIG) pertaining to allegations of inappropriate use of Mission Management Aircraft (MMA) by former NASA Administrator Sean O’Keefe.

Executive Summary. This office found that Mr. O’Keefe was a frequent MMA traveler in the performance of his NASA duties and that all his MMA trips appeared to have a legitimate government purpose. Accordingly, we found no credible evidence of a criminal violation associated with any of his flights. We did find, however, that two of his MMA flights, one to New York City and one to Syracuse, New York, appeared to be not in compliance with then existing NASA regulations, resulting in a wasteful expenditure of funds, and we refer that matter to you for appropriate action, to include consideration of a possible collection action under the Federal Claims Collection Act¹ and NASA regulations at 14 CFR 1261.403(a)(3).

Background

In August 2005, the U.S. Government Accountability Office (GAO) issued a report entitled, “NASA Travel, Passenger Aircraft Services Annually Cost Taxpayers Millions More Than Commercial Airlines.” In pertinent part, GAO’s report concluded that NASA’s use of MMA was not in keeping with the Office of Management and Budget’s (OMB) policies and that NASA used inaccurate cost calculations in justifying the use MMA instead of commercial air on individual flights.

For example, GAO found that 86 percent of NASA’s MMA flights were taken to support the types of routine business operations expressly prohibited by OMB’s guidance and that it cost NASA five times as much to use MMA than to utilize commercial airlines. GAO also criticized the “formula” NASA used to justify its MMA use instead of using commercial airlines because it failed to include various real costs associated with MMA use, such as depreciation costs associated with the acquisition of new aircraft, liability insurance costs, and the cost of capital improvements. GAO also criticized the use of the “largely unsupported” 2.5 multiplier in calculating the cost of commercial travel versus the use of

¹ 31 U.S.C. § 3701, 3711

MMA, as well as the fact that NASA's cost calculations were based on data that were 6 years out of date.²

In 2006, GAO contacted this office with a view toward sharing their MMA-related work papers – for the purpose of our office examining the propriety of selected MMA flights by NASA officials.³ Accordingly, in late 2006 and 2007, this office coordinated with relevant GAO staff who identified specific MMA flights taken by former NASA Administrator, Sean O'Keefe⁴ that they found to be questionable under then-existing NASA regulations and Standards of Ethical Conduct for Employees of the Executive Branch.

This office expanded upon GAO's focus by reviewing the relevant paperwork for each of Mr. O'Keefe's MMA flights. The purpose of this review was to determine if the documented purpose of the trip, the destination, the cost calculations and/or the passenger list reflected any potential that the trip lacked sufficient government purpose or in any way was improper. Based on our initial review, we found no indications of criminal fraud relevant to Mr. O'Keefe's travel on MMA. We did, however, examine a discrete number of Mr. O'Keefe's flights, described below, for regulatory compliance.

Questioned Flights

GAO representatives related to us that they had identified seven questionable (meaning they facially appeared to be in violation of existing regulations - such as a diminimis government purpose) trips, six of which they never fully investigated. In reviewing the documentation related to these and other trips taken by Mr. O'Keefe, we independently identified an additional five questionable flights in which Mr. O'Keefe was a passenger.

By March 14, 2007, we concluded that three of the 12 seemingly questionable flights warranted further investigation. We viewed the remainder as being consistent with applicable regulations.

The remaining questionable flights were as follows: (1) *Washington, DC, to New York City, February 7, 2005*; (2) *Washington, DC, to Syracuse, NY, April 23, 2004*; & (3) *Washington, DC, to New York City, March 14, 2003*. In particular, we focused on the government purpose and/or the cost justification for each of these trips. Consequently, we examined the relevant available documentation for these flights and conducted nine interviews, including several NASA employees associated with the MMA process - to include the MMA Flight Requester, MMA Trip Coordinator, MMA Approving Officials, former Associate Deputy

² GAO's criticism's of NASA's MMA use was consistent with earlier work performed by the NASA Office of Inspector General in "NASA Aircraft Management" (LA-95-001) dated March 28, 1995, and "A-76 Study of NASA 3 Aircraft" (IG-99-057) dated September 30, 1999.

³ Hurricane Katrina related projects, among other matters, had shifted their investigative priorities.

⁴ Mr. O'Keefe served as NASA's Administrator from December 2001 to February 2005. According to information provided by current NASA Administrator Michael Griffin to the House Committee on Science and Technology's Subcommittee on Investigations and Oversight on April 6, 2007, Mr. O'Keefe took 128 official flights of which 114 were MMA (or other Government aircraft), 9 were commercial air or rail, 3 were combined and 2 were aboard Air Force One.

Administrator, Mr. James Jennings, former NASA General Counsel, Mr. Paul Pastorek, and former NASA Administrator, Mr. Sean O’Keefe.

Washington, DC to New York City, February 7, 2005

Our investigation focused on whether or not this trip was used as a means by which Mr. O’Keefe could gain post-government employment with *Fox News*. NASA’s MMA request documents for this flight indicated that Mr. O’Keefe traveled on MMA to meet with the *New York Times* Editorial Board, and his Executive Itinerary in support of this flight showed that he was scheduled to meet with *Fox News* to discuss his possible role as a “Fox News Contributor for Return to Flight.”

Our interviews with Mr. Pastorek and Mr. Jennings revealed that it was common for Mr. O’Keefe to meet with editorial boards and news stations to talk about NASA. Both opined that the trip was for a legitimate Government purpose and neither had knowledge of Mr. O’Keefe meeting with Fox News to secure post-government employment.

Mr. O’Keefe also told our investigators that his purpose for the trip was to discuss post Columbia “Return to Flight” issues. He related the trip was for NASA business only, and not for personal business. He related that he never discussed any post-government employment opportunities with *Fox News* and was never paid by *Fox News* to be a Return to Flight consultant. Mr. O’Keefe related that the nomenclature used in the Executive Itinerary to describe his meeting with *Fox News* was poorly worded. We found no evidence to the contrary.

Accordingly, we found that the use of MMA was justified (under then existing rules) for this particular trip.

Washington, DC to Syracuse, NY, April 23, 2004

For this flight, we examined whether Mr. O’Keefe’s trip was for a legitimate government purpose, whether the trip was cost justified, and whether Mr. O’Keefe used this trip as a way of obtaining post-government employment with Syracuse University. This particular trip to Syracuse raised questions concerning the government purpose as it involved the use of MMA to fly empty to pick up only Mr. O’Keefe after a round of golf. In regard to post-government employment, this trip was reviewed as it was one of nine separate trips made by Mr. O’Keefe to Syracuse, New York, during the period of June 2002 to September 2004. The high number of trips to this location (and the lack of significant NASA presence in the area) raised suspicion as to the actual purpose of these trips.

NASA’s MMA request documents showed that Mr. O’Keefe traveled to Syracuse, NY, to attend an Explorer School event, to speak at the National Security Management Course (NSMC), and to participate in a NSMC golf tournament. According to MMA request documents, the flight departed on April 23, 2004, from Washington, DC, with four passengers, to include Mr. O’Keefe. The flight returned to Washington, DC, later that day with the other three passengers, but not Mr. O’Keefe. The aircraft subsequently flew back

to Syracuse University the next day, April 24, 2004, with no passengers and returned to Washington, DC, later in the day with Mr. O'Keefe as the only passenger. Although the plane flew to Syracuse without any passengers to pick up only Mr. O'Keefe on April 24, 2004, NASA concluded that all four legs of the flight were cost justified.

Regarding whether the trip pertained to a government purpose, our interviews with Mr. Pastorek and Mr. Jennings related they did not know whether Mr. O'Keefe was looking to obtain employment with Syracuse University. Neither knew about the purpose of the golf tournament and they did not see any problems with Mr. O'Keefe returning alone to Washington, DC, on MMA, as long as all four legs of the trip were cost justified. Mr. O'Keefe informed our investigators that the entire trip had a legitimate NASA purpose. He discussed the important role that NASA serves in participating in Explorer School events. He related that the speech at Syracuse University was given to the NSMC at the Maxwell School of Government, in which he discussed management issues and how they related to NASA. (He had made other presentations at the same course at Syracuse University, thus explaining the number of trips there.) He also related that his attendance at the golf tournament was a good way to interact with other NASA officials who were attending the NSMC (which we confirmed were in the course).

Mr. O'Keefe related that he did not have a role in deciding that he would fly home alone on MMA. He recalled having to leave the golf tournament early on April 24, 2004, in order to attend another engagement. He related that a commercial flight probably was not an option on the 24th, because he was in a rush to return to Washington, DC. He did not see any impropriety with the plane returning for him without passengers and then flying back to Washington, DC, alone. Mr. O'Keefe acknowledged that others could perceive this as a misuse of MMA, but he emphasized that the trip was for a legitimate government purpose. Mr. O'Keefe also related that he never discussed or negotiated post-government employment opportunities with Syracuse University.

While arguments can be made regarding the relative "degree" of government purpose involved in such flights, there comes a point where it's difficult to attach credulity to claims of government purpose justifying the use of a government aircraft when the stated purpose appears to be so dramatically attenuated from NASA's mission and programs. Using NASA's MMA to make a "deadhead" trip to pick up Mr. O'Keefe, as its lone passenger, after playing golf with three NASA employees at a contracted-out training course in upstate New York appears to be such a flight. And we hold this opinion even after giving full faith and credit and deference that should be accorded to an Agency Head as to how he or she decides to use government resources to accomplish an Agency's mission.

In this case, NASA deemed the pick-up trip for O'Keefe alone as cost justified because it was viewed as part of a single trip consisting of four separate legs. Based on this premise, NASA found that the use of MMA over commercial air travel constituted a government savings. While NASA's regulations did not directly address the issue of what constitutes a "flight" for cost calculation (and justification) purposes, we believe that each of the round trips to Syracuse should have been viewed as separate flights with each flight requiring a separate cost justification. Further, we also find that this trip was not in keeping with NPR

7900, “Aircraft Operations Management,” which states that “[e]very effort shall be made to minimize flights that are duplicative, require excessive deadheading, involve long unproductive layovers, or involve short stage-lengths”⁵ in that there were duplicative round trips from Washington, DC, to Syracuse on successive days and that one leg involved deadheading as the plane flew without passengers in order to pick up Mr. O’Keefe.

The first trip consisted of the April 23, 2004, trip from Washington, DC, to Syracuse and the return on the same day. There were four passengers on the first leg of the journey and three on the return. Mr. O’Keefe did not return with the flight as he opted to play golf with the NMSC the following day. Due to the fact that the aircraft returned to its origination point, we believe that this concluded the trip. The second flight consisted of only Mr. O’Keefe’s return to Washington, DC, on April 24, 2004. In our view, two trips were made into one, so that the cost justification formula could justify Mr. O’Keefe flying alone on April 24th.⁶

Consequently, due to the combination of overall non-compliant policies (with OMB) and well-meaning but casual internal oversight, trips such as the April 23, 2004, flight to Syracuse could be considered “cost justified” even though a NASA aircraft flew empty from Washington to Syracuse in order to pick up one passenger so that the passenger could participate in a golf event that morning. It’s hard to conclude that such a trip – as opposed to commercial – was in the taxpayer’s interest.

Washington, DC to New York City, March 14, 2003

We investigated this flight to examine whether or not the trip was for a legitimate government purpose; we also examined why this flight departed without being cost justified/authorized.

According to MMA request documents, Mr. O’Keefe and his wife traveled as sole passengers on an MMA flight to accept an award from the Irish American Magazine as one of the top “100 Irish Americans.” Mr. O’Keefe’s Executive Itinerary originally showed that former NASA employee, Glenn Mahone, would also accompany Mr. O’Keefe and his wife, as NASA’s Public Affairs Representative. However, e-mail records obtained during the course of our investigation showed that on the day prior to departure, Mr. O’Keefe was

⁵ See Chapter 3, Section 3.2.3. This regulation was in effect at the time.

⁶ Under NASA’s cost justification formula at the time, the cost of the four legged MMA flight was \$4,156.25. NASA’s cost calculations for using commercial air for the same trip was \$6,432.00. The commercial cost figure includes the cost of commercial air fare at \$685.00 per round trip for each of the four passengers, the “in-transit” salary costs of \$3,155.03 and additional per diem costs of \$537.00. The in-transit salary costs reflect the savings calculated when taking into account the amount of time saved by using MMA multiplied by the average pay rate of the passengers, multiplied by the number of passengers and then multiplied again by 2.5. If the second trip to Syracuse to pick up Mr. O’Keefe is viewed separately then, based on NASA’s calculations, the cost of using MMA to fly back and forth to Syracuse on April 24, 2004, was \$2,275.00 (hourly rate of \$875.00 x 2.6 hours. According to our approximation, the cost of a one-way commercial ticket from Syracuse to Washington, DC, was \$342.50. This amount, added to the “in-transit” salary costs of \$370.65 calculated by NASA, resulted in a total approximate cost of \$712.15, had a commercial flight been utilized to take Mr. O’Keefe back to Washington.

made aware by his Executive Assistant that Mr. Mahone would not be attending the ceremony and therefore would not be flying on the MMA.

The flight departed on March 14, 2003, with only Mr. and Mrs. O'Keefe as passengers. NASA's MMA policies and procedures, however, did not allow for departure of such flights as they were not "cost justified" under their cost justification formula. Because Mr. Mahone dropped off the flight manifest, this flight lost its cost justification status by \$222.70.

Furthermore, the MMA request documents for this flight revealed that this flight was never reviewed or approved by NASA's General Counsel (Mr. Pastorek) or NASA's Associate Deputy Administrator (Mr. Jennings) until 11 days after the flight departed. On March 25, 2003, Mr. Pastorek subsequently checked the box "does not comply" on the MMA approval form and wrote a remark indicating that the flight had already left before he could speak to the Administrator. Mr. Jennings subsequently signed off on the flight.

On May 8, 2007, the NASA OIG interviewed Mr. Jennings. Mr. Jennings related that he did not know why the flight departed without being cost justified. He did not review the documents any time prior to the flight departing and acknowledged that he approved the flight only after Mr. Pastorek wrote his remarks and checked the box "does not comply." Mr. Jennings also acknowledged the flight was not reviewed and approved in compliance with MMA policy. Mr. Jennings stated that he took no action in following up on the lack of cost justification of this flight.

In our interview of Mr. Pastorek, he related that he did not know the flight was not cost justified until after it departed. And he was unsure as to why he was not informed by his staff about the cost justification problem. He believed there was a process failure by either Mr. O'Keefe's Executive Assistant or the trip coordinator as to why no one was properly informed about the cost justification problem. Mr. Pastorek related that he had no knowledge that Mr. Mahone dropped off the flight one day prior, and no knowledge of the e-mail Mr. O'Keefe received from his Executive Assistant. Mr. Pastorek told us that had he known the flight was not cost justified before departure, he would have told Mr. O'Keefe to fly commercially. Mr. Pastorek acknowledged the flight could be perceived as inappropriate because of the cost justification problem.

We also interviewed Mr. O'Keefe regarding this flight. Mr. O'Keefe related that the trip to New York City to receive the top 100 Irish American award was for a legitimate NASA purpose. Mr. O'Keefe related that he spoke about NASA and the recent Columbia accident at the ceremony. He related that not only was there high visibility of NASA during the ceremony, but that the Irish American Magazine held a fund raising event for the children of the deceased Columbia astronauts. We corroborated that Mr. O'Keefe attended the event.

With respect to the cost justification status of the flight, Mr. O'Keefe related that he never knew the flight departed without being cost justified (and we found no evidence to the contrary). He did not know why it took 11 days for Mr. Pastorek or Mr. Jennings to review

the MMA documents. Mr. O'Keefe related that he should have been informed by his staff or Mr. Pastorek's staff about the cost justification problem a day before the aircraft departed. Had he known, Mr. O'Keefe stated that he would have taken a commercial flight. Mr. O'Keefe also related he was never asked by NASA to reimburse the government for any amount pertaining to that particular flight. If he was asked at the time, Mr. O'Keefe said that he would have paid the difference to avoid any appearances of impropriety.

Finally, it was very clear in examining Mr. O'Keefe's travel that he was extremely busy and fully reliant on his staff in order to keep up with a demanding schedule of government business. Another interesting observation pertained to the collective roles and responsibilities of those in the NASA staff who had the task of coordinating and approving MMA use. For example, our investigation could neither find an example of a trip request being denied during Mr. O'Keefe's tenure, nor did we find anyone who viewed themselves (or their office) in the MMA approval chain as the final arbiter in examining *all* aspects of government regulations and NASA MMA rules in approving a MMA request.

After reviewing all the facts pertaining to this flight, we believe that a legitimate government purpose underpinned this use of MMA, but that the Agency failed to follow its MMA processes and procedures. Specifically, that the MMA flight departed without being cost justified under then existing NASA regulations. Evidence also revealed that there was a reasonable amount of time to prevent the aircraft from departing so there was an opportunity to comply with MMA policy. Furthermore, after the post-flight cost justification issue was brought to the attention of Mr. Pastorek and Mr. Jennings approximately 11 days after the conclusion of the trip, they did not bring this issue to the attention of Mr. O'Keefe or anyone else for resolution.

Management Referral. Accordingly, we refer the two aforementioned flights to your office for appropriate action and possible recoupment consideration under the Federal Claims Collection Act. We ask for your response within 30 days of this letter. If you have any questions, please contact me at 202-358-2580.

signed
Kevin H. Winters

cc:
Chief of Staff/Mr. Morrell
General Counsel/Mr. Wholley