



OPERATION AND USE OF PENNSYLVANIA'S STATE-OWNED AIRCRAFT

**A SPECIAL PERFORMANCE AUDIT OF THE
PENNSYLVANIA DEPARTMENT OF TRANSPORTATION**

SEPTEMBER 2007

**PENNSYLVANIA DEPARTMENT OF THE AUDITOR GENERAL
JACK WAGNER, AUDITOR GENERAL**

September 28, 2007

The Honorable Edward G. Rendell
Governor
Commonwealth of Pennsylvania
225 Main Capitol Building
Harrisburg, Pennsylvania 17120

Dear Governor Rendell:

The enclosed report presents the results of our special performance audit of the Pennsylvania Department of Transportation, or PennDOT, regarding its oversight of the operation and use of Pennsylvania's state-owned aircraft for travel by state officials. The audit period was July 1, 2004, through November 15, 2006, with certain information updated through September 2007.

We conducted this performance audit in accordance with generally accepted government auditing standards as issued by the Comptroller General of the United States.

Overall, we found that operation and use of the state-owned aircraft suffered from an interpretation by PennDOT's leadership that the state's Aviation Code did not make PennDOT responsible for oversight of travel on the aircraft. Instead, PennDOT deflected responsibility to the state agencies that used the aircraft and failed to require passengers—even passengers from PennDOT itself—to submit advance documentation confirming the purpose and cost justification for each trip. As a result, as stated in our first finding, PennDOT could not prove that its aircraft always carried passengers on official Commonwealth business, or that flight reimbursements originated only from the Commonwealth rather than from outside sources.

Our other finding is that PennDOT booked flights using procedures that strayed from the state's written policy and therefore did not demonstrate the highest level of accountability to taxpayers.

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In addition to the two findings, we discuss the status of a related prior audit. In total, we present 11 recommendations to address the two findings in this current report, plus an additional recommendation to address a finding from the prior audit.

One recommendation in particular that I will highlight here is the need for PennDOT to implement a Fly or Drive Program as part of a revised aircraft-use policy. By requiring potential passengers to utilize such a program, PennDOT will help state agencies to evaluate whether use of taxpayer-funded aircraft is the most cost-effective mode of travel.

Proper management of the state's aircraft by PennDOT is critical because it affects safety and liability issues for the Commonwealth of Pennsylvania. PennDOT officials cooperated with us during our audit, and we acknowledge and appreciate that cooperation. However, PennDOT's written response to our audit does not always reflect the importance of our findings and recommendations as they relate to the issues of safety and liability.

Sincerely,

JACK WAGNER
Auditor General

Enclosure

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Results in Brief

Safety in state-owned aircraft is dependent on, at a minimum, complying with stringent federal aviation regulations as well as state law. PennDOT must not only do better at making itself accountable for such compliance but should also go beyond the requirements in order to ensure the safety of those using the aircraft and protect the Commonwealth and its taxpayers from liability.

The Pennsylvania Department of Transportation, known as PennDOT, must improve its administration and oversight of travel on state-owned aircraft. That conclusion summarizes the findings of this special performance audit by the Department of the Auditor General for the period of July 1, 2004, through November 15, 2006, with certain additional information through September 2007.

We conducted the audit in accordance with generally accepted government auditing standards issued by the Comptroller General of the United States.

The audit report explains how state government officials can book passage on aircraft owned and operated by PennDOT for travel on official state business; what laws, regulations, policies, and procedures that PennDOT and other state agencies must follow; and why the administration of the flight program is important.

We found that PennDOT's performance fell short primarily in two areas:

- Finding One: PennDOT could not prove that its state-owned aircraft always carried passengers on official Commonwealth business only, or that flight reimbursements originated only from the Commonwealth rather than from outside sources.
- Finding Two: PennDOT booked flights using procedures that strayed from the state's written policy—a policy that already had weaknesses of its own—and therefore did not demonstrate the highest possible level of accountability to state taxpayers.

Discussion of Finding One. The first finding resulted from our request to PennDOT that it identify the reason for a sample of 68 flights taken by PennDOT officials during the audit period. PennDOT provided an after-the-fact listing that it put

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together in response to our inquiry but provided no other documentation to support that list. We then asked for supporting pre-flight documentation for 22 of those flights and found that the flight request form PennDOT used to book flights did not ask for information regarding the trip's purpose. PennDOT nevertheless asserted that the flights were all taken for official state business, and we were subsequently able to corroborate that assertion for 7 of the 22 flights by reviewing e-mails that had accompanied the flight request forms. However, we could not corroborate the stated purpose for the remaining 15 flights through documentation that PennDOT had on hand.

We also asked PennDOT for its records of trips by passengers from other state agencies, but PennDOT told us it maintained little or no documentation from the other state agencies.

The inability of PennDOT to provide pre-flight documentation affirming the purpose of every flight resulted from its initial position that it was only the facilitator of flights booked by other state agencies, that state law did not make PennDOT responsible for oversight, and that PennDOT was therefore not responsible for such oversight. That position was exemplified by PennDOT's practice of booking flights over the telephone without requiring written documentation from user agencies.

PennDOT has since acknowledged in meetings with various officials from our office that it should and would accept responsibility for oversight of the use of state-owned airplanes by government officials. However, PennDOT's attached written response backs away from its verbal acknowledgements of responsibility as well as from its duty under state law. Our position is solid: The state's Aviation Code places responsibility on PennDOT for oversight of the flight program, just as we explain in our report and have explained to PennDOT officials throughout our audit work.

Regarding the specific problems with documenting the purpose of flights, PennDOT said it would improve its performance, that it had identified the same problem prior to the start of our

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audit work, and that it had intended to use our audit work as additional support for resolving the problems. In preparation for this resolution, PennDOT began testing a new flight request form in June 2007 whereby passengers were required to submit signed pre-flight documentation certifying that flights were for official business only.

Also part of our Finding One is the issue of the state's acceptance of payment by guests (i.e., non-Commonwealth employees) on the state-owned aircraft. PennDOT is not a commercial air carrier, and federal aviation regulations strictly prohibit non-commercial operators from charging for flights and accepting outside reimbursement except for certain actual costs—and only in instances where the guests of the Commonwealth are also traveling on official state business. In other instances, the federal regulations permit only commercial air carriers to charge for flights because they must adhere to higher safety standards than non-commercial carriers.

If PennDOT breaches the federal aviation regulations, the Commonwealth could be sanctioned by the Federal Aviation Administration and, as a result, jeopardize PennDOT's credibility as the flight program administrator and also risk impacting the state's liability in the event of a tragedy. We looked at the reimbursement issue specifically with respect to one widely publicized instance in 2005 when a lobbyist reimbursed the state after accompanying a state official on a flight. On one hand, PennDOT has maintained that the flight was for official business; on the other hand, PennDOT told us the state does not charge guests who travel on official state business. Flight program officials at PennDOT were adamant in saying they had no knowledge that a different state office had requested and received reimbursement; we could make no further conclusions on this matter because our audit scope was purposefully focused on the administration of the flight program by PennDOT only, as we clearly indicate in the "Objectives, Scope, and Methodology" section of the audit report.

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We conclude Finding One with four recommendations. In its response, PennDOT concurs with parts of the recommendations and resists others.

Discussion of Finding Two: During our audit period, PennDOT operated its flight program under a Commonwealth policy dated June 16, 2004, which addressed topics such as the priority of flight requests, criteria for the requests, scheduling of aircraft, and charges and billing. We tested the policy against actual procedures and found that PennDOT did not comply with the policy. For example, only 1 of 50 flight request forms that we reviewed contained a written approval from a top agency official as required.

The state's aircraft policy also noted that travelers should document *why* it was more cost effective to take the state plane than to drive or to fly commercially. We found, however, that PennDOT had no such written cost justifications for travelers from other state agencies or for travelers from PennDOT itself.

The cause of PennDOT's noncompliance with the policy and procedures once again stemmed from PennDOT's attempts to make travel more convenient for passengers by allowing them to book flights over the phone. In making it easier for state government officials to use the state planes, PennDOT made it more difficult for taxpayers to see how the flights were justified. PennDOT should not only make sure the policy and procedures are followed, but it should also ensure that the policy is revised to make it more comprehensive, informative, and authoritative. In so doing, PennDOT would educate user agencies about the reasons for the policy and the importance of following it.

On a positive note, PennDOT began an initiative in October 2006 that went beyond written policy by posting flight logs on its Web site. This action represents a significant step in showing government accountability and could be taken even further if PennDOT listed the purpose and justification for each

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flight and also the complete names of passengers, as well as their employer, instead of just the passengers' last names.

The online flight logs also helped the public to see how often the state planes were used and the costs billed to the user agencies. In total, over the five years from 2002 through March 31, 2007, PennDOT billed user agencies for 1,083 flights totaling just under \$2.2 million.

Following our presentation of Finding Two, we offer seven recommendations. Again, PennDOT concurs with some recommendations or parts of them but resists others.

Status of findings from prior audit. As part of this audit, we also followed up on a prior audit released by the Department of the Auditor General in October 2003. The prior audit covered the period of January 1, 1998, to December 31, 1999.

We address the status of prior findings beginning on page 52 of this report. We also present a new recommendation on page 56 to address the prior finding that discussed taxpayer subsidization of flights made for political reasons. PennDOT's response asks us to recognize that the prior finding has been satisfied. However, as we discuss in that section of the report, the prior finding has not been addressed based on the work we have done for this new audit, which is why we present a new recommendation.

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*Introduction
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Introduction and Background

The Pennsylvania Department of Transportation (PennDOT), through its flight services division in the Bureau of Aviation, is responsible for scheduling, operating, and maintaining PennDOT-owned aircraft that are used to transport elected officials, state legislators, and state employees to locations both inside and outside the Commonwealth. PennDOT became responsible for aircraft maintained for official use when it was established in 1970.¹

According to its flight logs, PennDOT coordinated 207 flights for passengers on its aircraft in calendar year 2005, 164 flights in 2006, and 43 flights in the first quarter of 2007. The two PennDOT aircraft used for these flights include a 6-passenger Beechcraft King Air 200 and an 8-passenger Beechcraft King Air 350. The airplanes are based at the Capital City Airport in New Cumberland; the pilots are employed by PennDOT.

PennDOT owns two other aircraft, a 4-passenger Cessna 182, and a Piper PA-31-325. According to PennDOT, the Cessna is used for PennDOT business and for special operations in support of state agencies such as the Game Commission; it is not used to transport passengers other than PennDOT personnel unless approved by PennDOT's Deputy Secretary for Aviation. The Piper is used primarily for aerial survey work conducted by PennDOT's Bureau of Design and is not used for passenger transport.

During most of our audit work, PennDOT's Web site included the following description of its flight services:

The Commonwealth's Flight Services
[Division] of the Bureau of Aviation
provides World Class safe, comfortable,
efficient and reliable, on-demand air

¹ PennDOT was established through the Act of May 6, 1970 (P.L. 356, No. 120), at which time it assumed all the powers and duties of the Department of Military Affairs with respect to the Aeronautics Code and the Pennsylvania Aeronautics Commission. The Aeronautics Code was replaced by the current Aviation Code, 74 Pa.C.S. § 5101 *et seq.*, through the Act of October 10, 1984 (P.L. 837, No. 164).

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transportation for Commonwealth
agencies and the General Assembly.

PennDOT operates its aircraft under part 91 of the Federal Aviation Regulations (FAR), a point that becomes significant in our first finding. The part 91 regulations govern the operation of aircraft that are not being flown commercially, meaning that the aircraft are not being operated for compensation.

Pursuant to Section 5302 of the Commonwealth's Aviation Code,² PennDOT is responsible for any aircraft purchased or leased for official use and, as such, administers a policy pertaining to the use of state aircraft. The most recent policy, "Operation and Use of State Aircraft," was issued on June 16, 2004, to the Governor's senior staff and cabinet members by two senior officials in the Governor's office; the policy details *who* may use the aircraft, *when* they may use the aircraft, and *how* to request use of the aircraft. The policy states this:

All passengers must be officials or employees of the Commonwealth or members of the public needed for the conduct of the official Commonwealth business for which the flight request is made.

Under the policy, state user agencies reimburse PennDOT for the costs of operating and maintaining the aircraft, while the Governor's office pays PennDOT a flat annual charge of \$150,000 to cover the Governor's travel for the year.³

² Section 5302 of the Aviation Code, 74 Pa.C.S. § 5302, provides as follows: "The Department may purchase or lease and maintain aircraft required for the proper conduct of the business of the Commonwealth agencies and the General Assembly. The total cost, including all ordinary and necessary expenses for the use of such aircraft, shall be charged by the department to the using agency or the General Assembly. The amount of such charge shall be paid into the Aviation Restricted Account and be credited to the amounts appropriated therefrom for the use of the department. All amounts so credited are hereby appropriated to the department for the same purposes as other appropriations out of the Aviation Restricted Account for the use of the department."

³ PennDOT and the Governor's Office have agreed that the Governor's Office will pay a guaranteed fixed amount annually. For 2004-05, this amount began as \$100,000 based on the prior year's usage; for 2006-

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On October 21, 2006, *The Patriot-News*, Harrisburg, published an article that questioned whether state aircraft were being used appropriately.⁴ Four days later on October 25, PennDOT's Web site began to include flight logs (see Appendix C) dating back to January 1999. The logs list general flight information, such as the date of the flight, destinations traveled to, and the last names of passengers.

The table on the next page lists all Commonwealth agencies that PennDOT said it billed for flights taken from July 1, 2002, through March 31, 2007, a period of almost five state fiscal years.⁵ Based on this data, PennDOT arranged and billed for 1,083 flights totaling \$2.18 million during that entire period.

In analyzing PennDOT's list of billed agencies for just the period covered by our audit—July 1, 2004, to November 15, 2006—we found that PennDOT did not have evidence to verify either the purpose of the flights (specifically that passengers were on official state business) or the justification for flying rather than using another mode of transportation (specifically that it was more cost- or time-effective to use a state plane).

Our work also raised a serious question about PennDOT's compliance with strict federal aviation regulations under which all United States aircraft must operate. PennDOT must resolve this question—and other questions that we have raised—to assure taxpayers that Pennsylvania's state-owned airplanes were operated appropriately.

07, the amount was adjusted to \$150,000. If costs exceed usage, PennDOT does not charge the Governor's Office for additional specific flights.

⁴ Other newspapers, such as the *Pittsburgh Post-Gazette* and the *Pittsburgh Tribune-Review*, published similar stories around this same time.

⁵ The table includes all Commonwealth agencies that PennDOT said it billed for flights during the period. We present this table under the unaudited presumption that any agency not listed did not use the state planes during the period.

State Plane Usage: List of state agencies that PennDOT said it billed for flights over a five-year period

User Agency*	FY 2002-03		FY 2003-04		FY 2004-05		FY 2005-06		FY 2006-07 (through March 31, 2007)		Totals	
	No. of flights	Amount billed	No. of flights	Amount billed	No. of flights	Amount billed	No. of flights	Amount billed	No. of flights	Amount billed	No. of flights	Amount billed
Governor's Office	87	\$148,978	60	\$115,882	55	\$162,422	86	\$275,994	48	\$131,829	336	\$835,105
PennDOT	40	51,303	51	62,772	95	194,057	22	46,798	27	44,374	235	399,304
Community & Econ. Dev.	18	19,880	12	15,182	12	34,263	29	47,085	28	48,502	99	164,912
PHEAA	7	13,457	18	40,770	18	66,733	9	21,376	1	7,310	53	149,646
Environmental Protection	3	4,655	20	24,521	15	33,692	15	25,145	9	20,683	62	108,696
Lieutenant Governor's Ofc.	5	8,589	9	12,038	19	39,352	8	14,776	7	17,894	48	92,649
House of Representatives	10	19,403	22	37,063	8	19,742	3	6,006	1	1,681	44	83,895
Cons. & Natural Resources	6	9,100	7	10,118	9	23,132	8	19,519	5	10,990	35	72,859
Education	13	12,920	3	5,658	3	4,888	12	14,678	8	15,622	39	53,766
Agriculture	0	0	2	876	7	13,499	9	18,671	9	15,113	27	48,159
PEMA	3	4,200	2	3,186	4	9,968	3	4,044	0	0	12	21,398
Corrections	4	9,426	1	3,242	0	0	1	4,921	1	2,657	7	20,246
Office of the Budget	3	4,182	3	2,617	0	0	5	8,643	1	2,402	12	17,844
State System of Higher Ed.	1	4,036	0	0	4	12,648	0	0	0	0	5	16,684
Public Welfare	3	3,787	3	4,238	1	468	4	6,132	2	2,053	13	16,678
Military Affairs	4	9,096	0	0	0	0	3	2,127	2	2,999	9	14,222
Revenue	1	1,262	2	3,916	1	3,891	1	3,663	1	746	6	13,478
Human Relations Com.	0	0	0	0	0	0	1	3,027	1	5,292	2	8,319
Health	1	1,026	2	2,173	0	0	4	3,642	1	535	8	7,376
Aging	1	282	0	0	2	4,431	1	753	1	1,624	5	7,090
Treasury	0	0	2	3,536	1	2,955	0	0	0	0	3	6,491
Labor & Industry	1	3,200	1	495	0	0	3	1,530	1	571	6	5,796
General Services	0	0	0	0	0	0	0	0	3	3,135	3	3,135
Crime/Delinquency	1	2,436	0	0	0	0	0	0	0	0	1	2,436
Lottery	0	0	0	0	1	1,784	0	0	0	0	1	1,784
Senate	0	0	1	719	0	0	1	1,001	0	0	2	1,720
Ofc. of Administration	0	0	0	0	1	1,168	1	332	0	0	2	1,500
Fire Commission	0	0	1	1,343	0	0	0	0	0	0	1	1,343
Attorney General	1	1,236	0	0	0	0	0	0	0	0	1	1,236
Ofc. of Healthcare Reform	0	0	0	0	0	0	0	0	1	866	1	866
Insurance	0	0	0	0	0	0	0	0	1	866	1	866
Turnpike Commission	0	0	0	0	0	0	1	524	0	0	1	524
Commission for Women	0	0	0	0	1	468	0	0	0	0	1	468
Ofc. of General Counsel	0	0	0	0	1	468	0	0	0	0	1	468
Banking	0	0	1	282	0	0	0	0	0	0	1	282
Totals	213	\$332,454	223	\$350,627	258	\$630,029	230	\$530,387	159	\$337,744	1,083	\$2,181,241

Note: We obtained the information for fiscal years 2005-06 and 2006-07 from the flight logs posted on PennDOT's Web site. The information for fiscal years 2002-03, 2003-04, and 2004-05 was provided to us by PennDOT on a spreadsheet to which we made minor corrections after reconciling the information to the posted flight logs; the information for those three years also showed 18 additional flights for which a private plane had been chartered for various users. The 18 chartered flights cost the Commonwealth a total of \$44,527.

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*Objectives, Scope,
and Methodology*

*Pennsylvania Department of the Auditor General
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Objectives, Scope, and Methodology

The Department of the Auditor General conducted this special performance audit in order to provide an independent assessment of PennDOT's monitoring of the operation and use of state aircraft. We conducted our work according to *Government Auditing Standards* as issued by the Comptroller General of the United States.

Objectives

We began our audit with one primary objective, stated in the form of this question:

- Did PennDOT limit the use of its state-owned aircraft to Commonwealth business as required by state law and state policy? (Finding One)

As we addressed that question, we developed several others:

- Did PennDOT accept reimbursement from any entity outside the Commonwealth's common treasury, an action prohibited by federal law as administered by the Federal Aviation Administration? (Finding One)
- Did PennDOT know the purpose of all flights taken on its aircraft? (Findings One and Two)
- Did PennDOT know whether all flights taken on its aircraft were cost- or time-justified when compared with other modes of transportation? (Finding Two)
- How did the Commonwealth's policy on the operation and use of state aircraft compare to the state-owned aircraft policies from other states? (Finding Two and also Appendix A)

Some of these same questions were raised in a previous special audit about travel on state-owned aircraft. The audit was conducted by the prior administration of the Department of the Auditor General and covered the period of January 1, 1998, to

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December 31, 1999. The report was released in October 2003. See Status of Prior Audit section following Finding Two.

Scope

Our audit covered the use of state aircraft and the flight services activities of PennDOT beginning July 1, 2004, shortly after the current aircraft policy was issued, through November 15, 2006, unless otherwise indicated.

Methodology

To carry out our objectives, we did the following:

- Analyzed the Commonwealth's flight logs that were posted on PennDOT's Web site.
- Reviewed 68 flights to determine if PennDOT documented the purpose for the flights.
- Reviewed 50 flight request forms to determine the information they contained.
- Conducted interviews with key PennDOT staff members familiar with the state aircraft program.
- Visited the hangar where the aircraft are based; toured the aircraft.
- Conducted interviews with Federal Aviation Administration staff, including FAA legal staff familiar with Federal Aviation Regulations as they pertain to state flight programs.
- Reviewed pertinent laws, regulations, policies, and procedures.

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- Contacted all the other 49 states for their state aircraft policies.
 - Reviewed the previous special audit conducted by the prior administration of the Department of the Auditor General; determined if the findings were still relevant and, if so, whether or not they had been addressed.

We completed most of our field work, including follow-up questions and research, by June 4, 2007, and provided an initial draft report to PennDOT on that same date. We received an initial response from PennDOT on August 8, 2007, and subsequently conducted additional audit work to test some improvements PennDOT said it made after our audit had begun. We submitted a final draft report to PennDOT on September 4, 2007, and PennDOT then submitted its final response to us on September 19, 2007. We have summarized PennDOT's response after each finding in the report and added our evaluation to that response. PennDOT's full written response is included starting on page 70 of this report.

Findings and Recommendations

We developed **2 findings** during our review of PennDOT's performance for the audit period, and we present **11 recommendations** to address the 2 findings, plus another recommendation in our discussion of prior audit findings. We included time frames for the implementation of our recommendations, and we will follow up within the next 12 to 24 months to determine the status of the findings. In so doing, we will work collaboratively with PennDOT to meet an important government auditing standard that promotes government accountability:

Providing continuing attention to significant findings and recommendations is important to ensure that the benefits of audit work are

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realized. Ultimately, the benefits of an audit occur when officials of the audited entity take meaningful and effective corrective action in response to the auditors' findings and recommendations. Officials of the audited entity are responsible for resolving audit findings and recommendations directed to them and for having a process to track their status. If the audited entity does not have such a process, auditors may wish to establish their own process.⁶

At the time of our follow-up, we will determine a subsequent course of action. For example, we may issue a status update jointly with the audited entity, issue an update independently, or conduct a new audit entirely.

⁶ Standard 7.30, *Government Auditing Standards*, 2003 revision, U.S. Government Accountability Office.

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Finding One

PennDOT could not prove that its state-owned aircraft always carried passengers on official Commonwealth business only, or that flight reimbursements originated only from the Commonwealth rather than from outside sources.

During most of our audit work, PennDOT said it considered itself only the facilitator of flights on its state-owned aircraft. More specifically, PennDOT said it was the job of the *other* state agencies⁷ who booked flights through PennDOT to certify that passengers were state employees conducting official state business or that, if passengers were not state employees, they were nonetheless on official Commonwealth business.

PennDOT also said it did not determine the original source of payments for flights—that is, whether state agencies paid their PennDOT flight bills with money that originated from sources outside the state's treasury. This issue becomes significant when looking at federal aviation regulations under which all aircraft must operate and the circumstances under which such compensation is prohibited.⁸

Near the end of our audit work, PennDOT modified its position by saying that it could indeed accept more responsibility for (1) ensuring that state-owned aircraft always carried passengers on official Commonwealth business and (2) collecting more evidence to verify that such was the case. However, PennDOT was adamant that it had already been taking steps to ensure the official usage of state planes even though it had not always created a paper trail.

⁷ Under the Commonwealth's state aircraft policy, "other state agencies" who book flights through PennDOT can include an agency, board, commission, or legislative entity.

⁸ Only commercial flight operators may charge non-employees for flights. Under federal regulations that govern non-commercial flight operators such as PennDOT, non-employees of the operator may not pay for or be charged for flights except in very limited circumstances. Generally speaking, those circumstances are that flights must be within the scope of the company's business and that any payment for those flights must not exceed the actual costs of operating the plane. See footnote 16 for our reference to the actual provision. One other exception is discussed in footnote 20.

Finding One

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There are two significant questions that we raised based on PennDOT's initial position that it should serve as simply a "facilitator" for the state aircraft program. We answered those questions via our testing:

Question 1:

(Relates to state requirements)

Were state planes used only for official Commonwealth business?

Our conclusion:

PennDOT could not prove it was accountable for ensuring that state airplanes were used only for official business as required by state law and policy.

Question 2:

(Relates to federal requirements)

Did PennDOT violate strict federal aviation regulations that prohibit non-commercial operators, including PennDOT, from accepting compensation except under very limited circumstances [see footnote 8]?

Our conclusion:

PennDOT could not prove it ensured that the state complied with federal aviation regulations that prohibit non-commercial flight operators from taking compensation for flights except under very limited circumstances.

We will discuss each of the above questions in turn.

1. Were state planes used only for official state business as required by state law and state policy?

PennDOT could supply no concrete evidence that state agencies—including PennDOT itself—followed state law and state policy. Such evidence is necessary for PennDOT to demonstrate its capability of executing the powers vested in it by the General Assembly in enforcing the state's

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Aviation Code, which is critical to the proper conduct of the state aircraft program and the assurance of air safety in the Commonwealth.⁹

Section 5302 of the state's Aviation Code authorizes PennDOT to "purchase or lease and maintain aircraft required for the proper conduct of the business of the Commonwealth agencies and the General Assembly."¹⁰ The Commonwealth's aircraft policy issued on June 16, 2004, seems to be in keeping with this legal provision by requiring state agencies to "certify" that every flight they take is in furtherance of official Commonwealth business.

Ultimately, however, PennDOT requested no proof of this certification for flights booked during our audit period either by its own agency or by other state agencies. By way of explanation, PennDOT officials said the following:

It is the responsibility of the customer to keep their own records for the purpose of the flight. We are just the facilitator.¹¹

Trying to determine the accuracy and the reasonableness of that response, we attempted to audit PennDOT both as a customer of flight services (to see whether, as a customer, PennDOT fulfilled its responsibility to keep its own records for the purpose of each flight) and as a facilitator (to see whether being "just the facilitator" of flights for itself and other state agencies was a responsible way for PennDOT to

⁹ Please note that Section 5301(a) of the Aviation Code, 74 Pa.C.S. § 5301(a), requires PennDOT to administer all the provisions of the Aviation Code and to "promulgate and enforce regulations as necessary to execute the powers vested in it by this part and other laws relating to aviation, airports and air safety within this Commonwealth." Furthermore, pursuant to Section 5301(d) of the Aviation Code, 74 Pa.C.S. § 5301(d), "[a]ll rules and regulations promulgated by the department under the authority of this part shall be consistent with and conform to **Federal statutes and regulations** governing aeronautics." [Emphasis added.]

¹⁰ 74 Pa.C.S. § 5302. [Emphasis added.]

¹¹ December 8, 2006. PennDOT's written response to questions submitted by the Department of the Auditor General.

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execute its powers under the state Aviation Code). Our methodology included (a) providing PennDOT with a list of its own agency's passengers who flew on the state planes during our audit period, (b) analyzing what PennDOT—as both facilitator and customer—did or did not know about each flight, and (c) asking PennDOT—as the facilitator for other state agencies' flights—for records of those flights taken by other state agencies.

When looking at the flights PennDOT booked for passengers representing its own agency, we found that PennDOT billed itself for 131 flights during the audit period. We reviewed 68 of these flights to determine whether PennDOT had maintained records to evidence the purpose of each flight.

In response to our questions, PennDOT prepared an after-the-fact table that listed each of the 68 flights, noting that they were all related to official business. PennDOT explained that the information had been prepared for our auditors by a senior PennDOT official “who oversees the operation of the Flight Services Division and is knowledgeable regarding the business meetings and events that require the use of the state aircraft.”¹² But we were given no additional evidence to show what documents or materials were used to prepare this after-the-fact listing of “business meetings and events” for the 68 flights, or to show that the Flight Services Division knew at the time of all flights whether they were taken in furtherance of official state business.

Attempting to provide another opportunity for PennDOT to validate the information in the table, we chose a sample of 22 of the 68 flights to test further. In response to our request for any documents to support the business purpose

¹² February 27, 2007. PennDOT's written response to questions submitted by the Department of the Auditor General.

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of the 22 flights, PennDOT provided us with its flight request forms and any related documents.

The flight request forms were not as comprehensive as they could have been because they asked only for information such as flight dates, times, destinations, and names of passengers, but not for the flight's purpose.¹³ (See Appendix B for a copy of the flight request form that was in use during our audit work and, in fact, is the same form that was in use during our previous audit.) Ultimately, we were able to corroborate the stated purpose for only 7 of the 22 flights. In six cases, we relied on e-mails that had accompanied the flight request forms; in the seventh case, we relied on a customized flight request form developed by the PennDOT employee/passenger who had added his own "reason for trip" section.

We could not corroborate the purpose of the 15 remaining sampled flights. Based on our communications with PennDOT staff, we learned that PennDOT had a practice of arranging flights only through telephone conversations, a practice that explains why no audit trail had been available for us from PennDOT as we reviewed those flights.

Again, the flights we have just discussed were all flights that PennDOT booked for passengers who represented PennDOT itself. When we asked PennDOT for its records related to passengers representing other state agencies, PennDOT said it maintained little or no central documentation for those other state agencies just as it maintained little or no documentation for its own agency. Overall, then, PennDOT's role as merely a flight facilitator meant that neither PennDOT nor any other single source in the Commonwealth was accountable for ensuring that state airplanes were used only for official business as required by state law and policy.

¹³ The actual process of how flights are booked is discussed in more detail in Finding Two of this report.

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In addition to compromising accountability, PennDOT's failure to maintain documents relating to the purpose of each flight could potentially have a significant impact on the Commonwealth's liability. Specifically, the underwriter for the Commonwealth's self-insurance program indicated that insurance coverage for passengers on state-owned aircraft would be in effect as long as any "guest" on a state plane is a "business traveler" (i.e., on official Commonwealth business). Therefore, as further confirmed by the underwriter, if a guest is not documented as being a "business traveler" on legitimate Commonwealth business, the policy would not provide coverage for that particular traveler. Accordingly, it is all the more imperative for PennDOT to ensure that all passengers flying on state airplanes are engaging in official state business.

In conclusion, PennDOT—as the agency responsible for operating the state flight program—deferred that responsibility to others and deflected accountability away from itself. Although other state agencies should also share in the responsibility of ensuring that the aircraft are used only for state business, PennDOT should know the purpose of all flights, and it should seek out that information actively. PennDOT must be able to assure Pennsylvania taxpayers that the taxpayer-owned airplanes are used only for official Commonwealth business.

In its defense, PennDOT explained that it strongly disagreed with our conclusion that it was not accountable to taxpayers. Specifically, PennDOT officials said their staff typically has been able to confirm identities of flight requestors even over the phone because of having worked with them previously; therefore, PennDOT believed that no further corroboration had been necessary. However, as discussed previously, PennDOT has now changed its position and has committed to requesting written confirmation of flight requests made by telephone. In fact, shortly after it received the initial draft report, PennDOT

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officials said they had revised the flight request form they were using to schedule flights so that they captured more information, and they are currently testing the form. As a good faith effort, we decided to test PennDOT's statement in order to give PennDOT credit for the improvements it said it made. Therefore, we reviewed flight request forms for May through August of 2007. We first located PennDOT's revised flight request form on a flight of June 26, 2007, which is consistent with when PennDOT told us it began testing the form. For each flight on and after June 26, 2007, we found an original flight request form and a revised flight request form which included the signature of the lead passenger, the purpose of the flight, and the justification for the flight. We found the new flight request form to be a significant improvement compared to the form that was in effect for most of our audit period. PennDOT must now ensure that it requires this same documentation process for all flights taken by itself and by other agencies.

2. Did PennDOT violate strict federal aviation safety regulations that prohibit non-commercial operators, including PennDOT, from accepting compensation except under very limited circumstances?

All United States aircraft must comply with regulations issued by the Federal Aviation Administration (FAA). The Federal Aviation Regulations (FAR) are part of Title 14 of the federal government's Code of Federal Regulations¹⁴ and prescribe rules and requirements for aircraft and their operators. Under these regulations, only commercial aircraft operators are permitted to accept compensation from passengers. Non-commercial operators such as PennDOT may accept compensation only under very

¹⁴ The United States Government Printing Office, at <http://www.gpoaccess.gov/cfr/index.html>, defines the Code of Federal Regulations as follows: "The Code of Federal Regulations (CFR) is the codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the Federal Government. It is divided into 50 titles that represent broad areas subject to Federal regulation." Title 14 is called "Aeronautics and Space."

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limited circumstances, as explained in footnote 8 of this report.

Commercial operators invest considerable time and expense to obtain and maintain their FAA commercial operating certificates. For example, part 135 of the Federal Aviation Regulations applies to commuter and “on-demand” operations. As defined in the context of air carriers and commercial operators of aircraft, “on-demand operation” essentially means any operation for compensation or hire in which departure times, departure locations, and arrival locations are specifically negotiated with passengers or their representatives.¹⁵ However, even though PennDOT is not certificated under FAR part 135 and does not operate under those regulations, PennDOT’s Web site during most of our audit included the term “on-demand air transportation” to describe the flight services that PennDOT offers. Illustrated on the next page is the section of the Web site that made the “on-demand” reference.

¹⁵14 CFR 119.3.

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From PennDOT's Web site on May 23, 2007:

Flight Services



The Commonwealth's Flight Services Section of the Bureau of Aviation provides World Class safe, comfortable, efficient and reliable, on-demand air transportation for Commonwealth agencies and the General Assembly. Flight Services' pilots are FAA certified professionals. Each pilot holds an FAA Airline Transport Rating. Our aircraft are meticulously maintained to standards exceeding FAA requirements by our own FAA certified technicians.

To schedule a flight, contact Flight Services at (717) 346-4303.

Throughout the audit, we accessed the section of PennDOT's Web site, above, at <http://www.dot.state.pa.us/Internet/Bureaus/pdBOA.nsf/AviationHomepage> by clicking on "Services," then on "Flight Services." Although the Web site indicates that PennDOT offers "on-demand" air transportation, there is nothing to explain that PennDOT is not certificated as an "on-demand" operator and is therefore not subject to all the stringent air safety and maintenance rules that federal aviation regulations require "on-demand" operators to follow.

The Commonwealth of Pennsylvania—specifically PennDOT—is not certificated as a commuter or on-demand operator, or as any other type of commercial operator, and this information must be made indisputably clear. Accordingly, PennDOT has since removed the words "on-demand" from its Web site and explained that it used that term only to indicate that its flights are scheduled in response to the individual needs of travelers. As noted previously, PennDOT operates the Commonwealth's aircraft under FAR part 91, "General Operating and Flight Rules," that prohibits aircraft operators from receiving compensation for flights except in very limited

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circumstances¹⁶ and that, overall, is not as restrictive as the other parts of the FAA's regulations that apply to commercial aircraft operators such as commuter and on-demand operators.¹⁷

This issue originally came to our attention after several news outlets, including *The Patriot-News*, Harrisburg,¹⁸ reported that a non-Commonwealth employee reimbursed the state \$1,114 for a trip on one of the state's airplanes in September 2005. According to the news story, the passenger was a lobbyist who reimbursed the state based on his understanding that non-Commonwealth employees must reimburse the state at a first-class ticket rate.

We confirmed that the lobbyist did indeed give the Commonwealth a personal check for \$1,114 after PennDOT issued an invoice to the state office that had booked passage for the lobbyist.

From our research as well as our discussions with FAA legal staff, we confirmed that an FAR part 91 operator may be reimbursed for certain actual costs of a flight under the limited circumstances spelled out in the regulations (i.e., when the flight is within the scope of the operator's business). We also confirmed that no payment from any

¹⁶ Section 91.501 of the Federal Aviation Regulations states that "operations that may be conducted . . . when common carriage is not involved, include . . . carriage of officials, employees, guests, and property of a company on an airplane operated by that company . . . when the carriage is within the scope of, and incidental to, the business of the company . . . and no charge, assessment or fee is made for the carriage in excess of the cost of owning, operating, and maintaining the airplane, except that no charge of any kind may be made for the carriage of a guest of a company, when the carriage is not within the scope of, and incidental to, the business of that company."

¹⁷ Material advantages of FAR part 91 over commercial operating requirements include the absence of minimum rest periods or maximum hours of operation by crew members, the availability of shorter runways and airports without FAA-approved weather reporting services, the operation of aircraft with lower levels of visibility, and the absence of certain additional onboard systems and equipment. Rex E. Reese, Esq., "Avoid Illegal Part 91 Operations – Protect You[r] Assets By Avoiding Illegal Part 91 Operations." Accessed on February 7, 2007, at <http://www.jetviser.com/Publications.jsp>.

¹⁸ Murphy, Jan, "Plane trip draws flak from Swann," *The Patriot-News*, Harrisburg, Pa., October 21, 2006.

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source outside the operator's own treasury¹⁹ may be accepted when those circumstances do not exist, such as when the trip is not within the scope of the company's business.²⁰ In that case, compensation is not allowed regardless of whether it occurs before, during, or after a flight.

PennDOT has maintained that it handled the lobbyist's reimbursement appropriately because it (1) did not bill the passenger, (2) billed the applicable state office instead of the passenger, (3) received payment from that state office and not from the passenger, and (4) does not believe the FAA would consider it relevant that an outside source was responsible for the payment. PennDOT has also said that its Flight Services Division—which booked the flight—had no knowledge of any reimbursement and that the lobbyist's flight was within the scope of the Commonwealth's business. Conversely, PennDOT has also told us that non-Commonwealth employees have not been charged when they fly on official Commonwealth business.

If the trip in question had not been within the scope of the Commonwealth's business, the fact that one office of state government accepted the lobbyist's personal check for \$1,114 but paid to use the state plane with a "different" \$1,114 does not change the result that the lobbyist paid for the flight. In that case, the Commonwealth would be

¹⁹ According to FAA legal staff with whom we conferred during the audit, reimbursement from one state government agency to another state agency within the same state is not compensation as long as the reimbursement involves strictly an "internal accounting procedure" among the agencies. This is consistent with Section 5302 of the Aviation Code, which provides as follows in pertinent part: "The total cost, including all ordinary and necessary expenses for the use of such aircraft, shall be charged by the department to the using agency or the General Assembly." Please also see FAA Advisory Circular 00-1.1, issued on April 19, 1995, which further explains this matter online at [http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/f13648f3433d1c24862569ba00688e3f/\\$FILE/AC00.1-1.pdf](http://rgl.faa.gov/Regulatory_and_Guidance_Library/rgAdvisoryCircular.nsf/0/f13648f3433d1c24862569ba00688e3f/$FILE/AC00.1-1.pdf).

²⁰ As discussed later in this report, section 91.321 of the part 91 regulations discusses another exception to this no-compensation rule. That section allows part 91 operators to receive payment for carrying a candidate seeking office in a federal, state, or local election campaign as long as there is a federal, state, or local law that requires reimbursement to be made.

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circumventing federal aviation safety regulations by saying that the original source of flight payments is ultimately unimportant. At the same time, PennDOT would be sending a message that state government does not have to abide by the same rules applied to other part 91 operators.

We cannot emphasize enough that the federal regulations relate to safety, and that any aircraft operator who accepts compensation must be certificated as a commercial operator who is subject to federal safety rules more stringent than those set forth in FAR part 91.

In further defending its position, PennDOT said that the local FAA Flight Standards District Office (FSDO) in New Cumberland concurred with PennDOT that its operations were compliant with FAR part 91. But according to the FAA legal staff based in Cincinnati, Ohio, with whom we spoke, it is the role of FSDO staff to answer basic questions about operations in each respective district (i.e., regional areas), while it is the role of FAA attorneys to render legal determinations. Therefore, PennDOT should not turn to the New Cumberland FSDO for an opinion related to PennDOT's legal compliance. Instead, PennDOT should request a determination from the FAA legal staff, something that PennDOT has not done.

The state of Kansas also faced the issue of accepting compensation as an FAR part 91 operator. In 2002, Kansas petitioned the FAA for a permanent exemption from the part 91 provision that prohibits accepting compensation from outside the common treasury. Kansas sought to allow reimbursement for personal use of the aircraft only by the Kansas Governor, the Governor's family, and guests.

The FAA denied Kansas' petition on August 17, 2005, finding that an exemption "is not in the public interest

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and could adversely affect safety.”²¹ The FAA also raised other points in its denial, including the following:

- “The FAA notes that part 135 mandates compliance with safety requirements that are more rigorous than those contained in part 91.”²²
- “The relief the petitioner [Kansas] proposes would permit a part 91 operator to receive compensation while complying with only the lowest safety standards.”²³
- “The FAA notes that the petitioner’s statement regarding the death of [Missouri] Governor [Mel] Carnahan [on October 16, 2000] while a passenger in a privately operated aircraft supports the FAA’s finding that the safety of operations for compensation are best achieved by those certificated to conduct part 135 or 121 operations.” [FAR part 121 sets forth requirements for larger air carrier operators.]²⁴
- “Additionally, the FAA finds that a pilot who receives periodic recurrent training has not been shown to be as qualified as a pilot who maintains all the training and qualification standards required of a pilot conducting operations for a person or entity certificated to conduct part 135 or 121 operations.”²⁵

The FAA’s denial left Kansas with the choice of either accepting no reimbursement that originated from outside the state’s common treasury or attempting to

²¹ *In the Matter of the Petition of State of Kansas for an Exemption from § 91.501(b)(5) of Title 14, Code of Federal Regulations*, Docket No. FAA-2002-12179, August 17, 2005, p. 5.

²² *Ibid.*

²³ *Ibid.*

²⁴ *State of Kansas*, p. 6.

²⁵ *Ibid.*

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become certificated under FAR part 135. Kansas contended that the additional cost for certification under FAR part 135 would create an unnecessary economic burden on the citizens of Kansas.²⁶

The outcome of the Kansas case further weakens PennDOT's specific position that the Pennsylvania lobbyist's compensation was allowable, particularly where the purpose of the trip might be questionable, and also weakens PennDOT's overall general position that compensation is allowed from an outside source as long as the payment first passes through the state treasury.

What complicates this matter is that, while the state policy ("Operation and Use of State Aircraft" as issued on June 16, 2004) appears to allow payment from a source outside the common treasury as in the lobbyist's case,²⁷ federal regulations (which the state law should conform to) clearly prohibit the practice outside the allowable limited circumstances. PennDOT should examine how and why the Commonwealth might have a policy seemingly in conflict with FAA regulations, particularly because—as noted previously, the state's Aviation Code requires PennDOT to follow both state and federal requirements.

In our discussions with the FAA, we were informed that aircraft operators who violate FAR part 91 can incur FAA-imposed penalties that can range from warnings to fines of more than \$10,000 per violation.²⁸ But even

²⁶ *State of Kansas*, p. 4.

²⁷ Pennsylvania's policy, "Operation and Use of State Aircraft," is dated June 16, 2004. The policy states, "The Governor's office may seek full or partial reimbursement where appropriate." This statement appears to conflict directly with the language in FAR part 91 and also appears inconsistent with the requirement in Section 5302 of the Aviation Code that "[t]he total cost, including all ordinary and necessary expenses for the use of such aircraft, shall be charged by the Department to the using agency or the General Assembly."

²⁸ Pursuant to Section 1320 of FAR part 13 (relating to Investigative and Enforcement Procedures), the FAA also has the authority to issue cease-and-desist orders.

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more significant than fines are the safety issues pointed out by the FAA in the Kansas case. Also important are the questions of liability that could implicate an aircraft operator and affect its non-employee guests who have paid that operator for passage. Any such payments could logically—but incorrectly—suggest to the passenger that the aircraft operator is abiding by the commercial operating rules that are a prerequisite to accepting compensation.

PennDOT's acceptance of compensation could also pose a risk for the aircraft crew: Because the pilot-in-command of an aircraft is directly responsible for the aircraft's operation and is the final authority during that operation, and because pilots must themselves comply with strict federal requirements to maintain the flight credentials essential to their livelihood, a non-commercial operator that accepts compensation in questionable circumstances also compromises the FAA-issued certifications and ratings of its employee pilots.

An important note: Our testing related to this issue was initially limited to the reported incident involving the lobbyist, whose flight was billed to a state office not within PennDOT. But we subsequently looked at flights that PennDOT billed to itself for flights taken by its own employees or guests. For these flights, PennDOT maintains that it billed itself only for the passengers who were actual PennDOT employees and that, alternatively, it did not bill or accept compensation from any non-Commonwealth employees who traveled on behalf of PennDOT.

Conversely, PennDOT said it did not know whether other state agencies or offices billed non-Commonwealth employees or accepted reimbursement from them (as in the case of the lobbyist). Specifically, when we asked PennDOT for a list of all state plane passengers who were not Commonwealth employees,

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PennDOT wrote, "We have no list to provide since we do not know if a passenger is a non commonwealth employee and we do not get involved regarding any reimbursement from any non commonwealth employees."²⁹

As long as PennDOT continues to operate under its own concept by which a "facilitator" is not accountable for the purposes of flights or the source of payments, taxpayers will have no assurance that PennDOT is operating its flight program in compliance with state or federal requirements that promote safety and accountability. However, as previously noted, when our audit was concluding, PennDOT appeared to back away from its original position that it is solely a flight facilitator. Implementing procedures to reflect that changed position will go a long way toward assuring taxpayers that a single agency in state government is accepting responsibility for proper state plane usage.

Summary

PennDOT is responsible for the proper operation of the state's aircraft, including following federal aviation laws and regulations, but for much of our audit PennDOT deferred responsibility to individual agencies and deflected overall program accountability away from itself. As a result, PennDOT did not have documentation to prove that it operated its aircraft according to either state or federal requirements, a problem compounded by the state's adoption of a policy that may be in conflict with federal aviation regulations. Looking at state requirements, we found that, overall, for flights taken during our audit period, PennDOT could not assure taxpayers that planes were used only by state employees and/or only for

²⁹ December 8, 2006. PennDOT's written response to questions submitted by the Department of the Auditor General.

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official Commonwealth business as required. Looking at federal regulations, we confirmed a publicized case in which a lobbyist paid for carriage on the state plane, a case that raises questions because the Commonwealth is not certified (and is therefore prohibited) by the FAA from accepting reimbursement from sources outside the Commonwealth's treasury for trips if the trips are not within the scope of the Commonwealth's business. We also found that PennDOT had not requested an official determination from the FAA about the Commonwealth's acceptance of such reimbursements.

Recommendations

1. PennDOT must make itself more accountable for operating the Commonwealth's aircraft in accordance with state law and policy. Specifically, with respect to any agency, board, commission, or legislative entity making use of the state flight program, PennDOT should always know the purpose of each flight and ensure that it is taken in furtherance of official state business. In addition, PennDOT should know—and should report on the public flight logs—each passenger's affiliation with the state. *Target date: Immediately*
2. PennDOT should ensure that it operates its aircraft according to federal aviation regulations. If PennDOT operates its aircraft in a way that results in state and federal requirements conflicting with one another, PennDOT should modify its operations to resolve such conflicts. *Target date: Immediately*
3. PennDOT should request an official determination from the Federal Aviation Administration to determine if the FAA agrees with PennDOT that the Commonwealth was FAA-compliant to accept a passenger payment originating from outside sources. Alternatively, PennDOT should ensure that all Commonwealth agencies and offices are warned that no Commonwealth agency or office may accept

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reimbursement or payment from non-Commonwealth employees who are passengers, whether such payment is made directly or indirectly to the Commonwealth. *Target date: Immediately*

4. PennDOT should revise its flight request form to include an area for recording the purpose of the flight; PennDOT should make that purpose public as part of the flight logs posted on the PennDOT Web site. *Target Date: Immediately*

Summary of PennDOT's response to Finding One

followed by, *in italic type*,

Evaluation of PennDOT's response by the Department of the Auditor General

[**Note: See PennDOT's full response beginning on page 70.**]

- PennDOT's response to Finding One reiterates that the policy governing the use of state aircraft for the period covered by this audit generally restricted the use of the aircraft to official Commonwealth business, that all state agencies had received the policy and had been instructed to provide written flight requests along with certification that the flights were in furtherance of official Commonwealth business, that PennDOT did not enforce the instructions, that the lack of an audit trail violated the policy, and that PennDOT pledges to rectify the matter.

Although state agencies may have been instructed to maintain records that include written justification for the use of state aircraft, PennDOT—as the oversight agency—did not take responsibility for ensuring that the agencies followed those instructions. The Department of the Auditor General will evaluate PennDOT's pledge to rectify this

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*matter when we follow up on this audit within 24 months
after its release.*

- PennDOT says there is an implication in the report that trips were not made for official business, and that this implication reveals a flaw in the methodology of the auditors because they “made no effort” to look to other state agencies for flight documentation but looked only to PennDOT for the other state agencies’ flight documentation.

The Department of the Auditor General notes that its audit methodology was based on the clearly stated audit objective to determine if PennDOT limited the use of its state planes to official business only. PennDOT is the registered owner and the operator of the state planes and is required by the state’s Aviation Code to maintain aircraft for the proper conduct of state business. Accordingly, we purposefully and correctly directed our inquiries to PennDOT to evaluate whether PennDOT did or did not ensure that it limited the use of its state planes to official business only.

Second, we have made no “implication” that the trips were not for official business. Instead, we have stated a fact that PennDOT could not prove that its state-owned aircraft always carried passengers on official Commonwealth business.

Third, even in the absence of an “implication,” PennDOT still cannot prove that every trip on its aircraft was made for official business. The reason PennDOT cannot provide that proof is because it did not require such proof from either its own travelers or those from state agencies. Based on the admission by PennDOT itself that it neither required nor had that proof, we did not have to ask the agencies to confirm PennDOT’s lack of oversight.

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- PennDOT says that, regarding flights taken by PennDOT employees only, those trips cannot be considered improper just because the auditors were unable to corroborate the purpose for 15 of the flights. Moreover, PennDOT says it used available information to verify that the trips were for official business.

The Department of the Auditor General concurs that the 15 trips cannot be considered improper based on our inability to corroborate the purpose of those trips; in fact, we did not say the trips were improper, and we reported PennDOT's verbal assertions that the trips were proper. Unfortunately, at the same time and based solely on those verbal assertions without backup documentation, we cannot declare that the 15 trips were proper, either.

- PennDOT says it has difficulty understanding the assumption by the auditors that lack of documentation may impact the Commonwealth's liability in the event of an accident. PennDOT says that coverage is determined separate from and regardless of whether there is written flight justification prepared in advance and that, furthermore, a variety of other sources can provide evidence of the official character of a trip.

We disagree. Liability could be related to the purpose of the flight. Going forward, knowing the purpose of flights in advance would allow PennDOT to ensure that flights are taken solely for official business, thereby eliminating the risk that—in the event of an accident—coverage will be denied for trips unrelated to official business.³⁰

³⁰ We make two additional points in this footnote. First, the Commonwealth could face having its self-insurance underwriter reject coverage for the claim of a non-Commonwealth employee involved in a state aircraft accident. Such rejection would lead to a payout of monies from the Commonwealth's General Fund and could undermine the viability of the state's self-insurance program. The underwriter of the Commonwealth's self-insurance program confirmed to us that if a guest were not "documented" as being a "business traveler" on legitimate Commonwealth business, the policy would not provide coverage for that particular travel. PennDOT claims that the "official character" of the trip can be proven through a variety

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- PennDOT says there is no evidence of which it is aware, and no evidence suggested by the report, that the operation of state aircraft during the audit period violated Part 91 of the Federal Aviation Regulations as they relate to accepting reimbursement from sources outside the Commonwealth. PennDOT describes at length the circumstances related to the audit report's discussion about the trip reported by *The Patriot-News* in which a lobbyist accompanied Mr. John Estey, who was then chief of staff for the Governor. PennDOT explains that it has discussed the matter with Mr. Estey and provides details at length, concluding by saying that the auditors' concerns with the trip are difficult to understand, that the auditors declined the opportunity to discuss the matter with Mr. Estey, that the detailed discussion of the federal regulations should be removed from this audit report, and that this report should acknowledge "that no improprieties were uncovered in connection with the trip."

PennDOT has maintained that, for official business trips, the state does not require reimbursement from guests who are

of other sources, but provides no examples of what these sources may be. If the underwriter were to question the legitimacy of the use of the state plane by a non-Commonwealth employee involved in a state plane accident and there is no contemporaneous documentation for the purpose of the trip, it is difficult to understand how PennDOT could conclude that other unidentified "sources of proof" unequivocally resolve the underwriter's questions. In all likelihood, this would become a matter for a court to decide. Under the sovereign immunity provisions of the Judicial Code, 42 Pa.C.S. § 8521 *et seq.*, the Commonwealth could face having to pay for a lawsuit judgment out of the Commonwealth's General Fund for certain acts arising from the use of the state aircraft.

Our second point is this: The doctrine of sovereign immunity represents the legal principle that the "sovereign" (in this case, the Commonwealth) is immune from suit unless the sovereign explicitly waives such immunity in certain cases. As PennDOT is aware, the Commonwealth has waived its sovereign immunity for damages arising out of nine acts of negligence (i.e., the failure to use reasonable care) that are set forth in 42 Pa.C.S. § 8522(b) and include damages for the negligent operation of a vehicle "in the air." We concede that the availability of contemporaneous documentation will have no bearing on whether the Commonwealth is held liable for the negligent operation of a state aircraft. However, a Commonwealth agency and any employee thereof enjoy absolute immunity only for claims arising out of all torts (i.e., deliberately or carelessly causing harm or loss to another person or their property) and for all negligent acts that are not specifically included in one of these nine enumerated exceptions **if the act was "within the scope of an employee's official duties."** A lack of contemporaneous documentation could call into question whether an employee was acting within the scope of his or her duties for such a tort or negligent act arising out of the use of the state aircraft.

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not Commonwealth employees (and whose payment would therefore originate from outside the state's treasury). The fact that the state accepted such reimbursement has created the ambiguity about the trip's purpose. PennDOT's continued unwillingness to accept responsibility and accountability for oversight is further illustrated by its explanation that it "discussed" this matter with Mr. Estey to ascertain the facts. PennDOT should have already known the facts in advance without having had to discuss them with anyone, but it could not. Nor did PennDOT produce documentation for this trip that was submitted pre-flight.

- PennDOT's response to Recommendation 1 of the audit report says the existing policy governing the use of state aircraft sets forth clear criteria that state agencies under the Governor's jurisdiction are required to employ; that the policy restricts use of the state aircraft to official business only; and that, for security reasons, that restriction may not necessarily apply to travel by the Governor. At the same time, PennDOT acknowledges that it did not do a good job of ensuring it maintained written flight requests; that it is finalizing a revised policy to strengthen the documentation requirement; that the stronger documentation will enable the Auditor General to determine whether state agencies have used the state aircraft appropriately; and that, regarding the use of state planes by PennDOT's own employees, PennDOT provided justifications for all those flights.

We agree with PennDOT that, for security reasons, the policy restrictions should not necessarily apply to the Governor. Where we disagree with PennDOT is on its continued references to the existing policy in such a way as to deflect oversight responsibility to the individual state agencies. It is not enough for PennDOT to have relied on the user agencies to police themselves and then to have also allowed those same agencies to ignore providing all applicable flight information prior to each flight. As the gatekeeper, PennDOT must be able to deny the use of its airplanes in

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advance if it does not know precisely who the passengers are, where they are going, whether the travel is solely for official business, and whether use of the aircraft is cost effective. During our audit period, PennDOT should already have made those determinations before each and every flight left the ground, but such was not the case.

- PennDOT's response to Recommendation 2 of the audit report says that this recommendation should be eliminated from the report along with the report's discussion of part 91 of the Federal Aviation Regulations. PennDOT also says that, if the recommendation and discussion are not eliminated, its response is that the suggestion that "strict federal safety regulations" were violated is incorrect; that, in fact, the emphasis on safety is hard to understand; that it is "unfair and unsubstantiated" to suggest that PennDOT somehow has jeopardized the safety of passengers on its aircraft; that "neither the FAA nor anyone else ever has questioned the safety of our operations"; that PennDOT has "no reason to believe that [it] has failed to comply with all applicable federal aviation regulations"; and that, in sum, "PennDOT's flight operations comply with all applicable federal and state laws and regulations."

Again, PennDOT has told us that the Commonwealth of Pennsylvania does not request payment from outside guests for travel on state-owned aircraft when the travel is in furtherance of official business. But the Commonwealth did request payment in the widely publicized case we referenced, leading to the questions about the purpose of the flight and whether the aircraft had been used in a manner not permitted under part 91 of the Federal Aviation Regulations. For that reason, our finding remains unchanged.

- PennDOT's response to Recommendation 3 is that there is "no basis for including this recommendation" in the audit report, that the FAA is aware of PennDOT's operation under

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part 91 of the Federal Aviation Regulations, that the FAA has never expressed concern about PennDOT's operations, that those operations comply with part 91, that the single instance of reimbursement from the lobbyist was "clearly proper," and that PennDOT will review the policies of other states to determine whether its own revised policy will include information about the limitations on reimbursement under part 91 of the Federal Aviation Regulations.

Our basis for retaining this recommendation remains unchanged. PennDOT should seek a determination from the Federal Aviation Administration about the acceptance of passenger payments that originate from sources outside the Commonwealth, particularly based on PennDOT's early statements to us that it did not believe the FAA would find it relevant if outside sources were responsible for payments.

- PennDOT's response to Recommendation 4 is that its new flight request form will include a place for the using agency to record the flight's purpose, and that PennDOT "will also take into consideration the recommendation that this information should be posted on our Web site."

The Department of the Auditor General acknowledges, as we did in Finding One of this report, that we have reviewed PennDOT's new flight request form and have found it to represent a positive step in resolving the issues we have identified. Regarding PennDOT's response that it will consider posting the purpose of flights on its Web site, we believe it is vitally important that this information be part of the published flight logs.

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PennDOT booked flights using procedures that strayed from the state's written policy—a policy that already had weaknesses of its own—and therefore did not demonstrate the highest possible level of accountability to state taxpayers.

A significant part of our testing and analysis looked at the actual procedures used by PennDOT when it allowed passengers to use the state planes. In conducting our analysis, we evaluated how the actual procedures compared to the state's written policy, "Operation and Use of State Aircraft," as issued on June 16, 2004. Our conclusion is that the actual procedures and the written policy differed in ways that did not demonstrate the highest level of accountability to citizens whose taxes paid for the operation of the state planes.

We also compared Pennsylvania's state-owned aircraft policy to the state-owned aircraft policies of other states. Overall, we found that Pennsylvania's policy was generally similar in content when compared to the policies of most of the 25 other states that responded to our request for written information. But some states included additional information that made their policies more clear. In this finding, we discuss Pennsylvania's policy and provide information about three of the states that had additional relevant information. At the end of this report in the question-and-answer section, we discuss the policies of all the states that responded to us.

**Written policy distributed in 2004;
PennDOT named as
entity responsible for aircraft**

As noted in Finding One, Pennsylvania's policy entitled "Operation and Use of State Aircraft" was issued on June 16, 2004. The policy was distributed via a cover memorandum from two senior officials in the Governor's office and

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addressed to “Senior Staff and Cabinet Members.” The cover memorandum indicated that questions should be directed to the particular agency’s chief counsel or to PennDOT’s chief counsel.

The memorandum also advised recipients to review the policy and “keep in mind” three points, which we state verbatim as follows:

1. State aircraft is to be used only when necessary for Commonwealth business.
2. Agencies are responsible for reimbursing the Department of Transportation the *actual cost* of flights.
3. Please pay close attention to the requirement that the agency using the aircraft determine, using the criteria set forth in the policy, that the use of the aircraft is cost effective or otherwise necessary. The reasons supporting the use of the aircraft must be documented in writing and maintained by the agency for use in the event of a future audit.³¹

At the outset, the five-page policy notes that it applies to the “use of all aircraft owned, leased, rented or chartered by the Commonwealth and piloted by licensed professional pilots of the Department of Transportation. . . .” The policy also notes that the aircraft are the responsibility of PennDOT, and that PennDOT (through its Bureau of Aviation) is further responsible for “maintaining the aircraft operationally ready and properly crewed.” The policy goes on to discuss such topics as the priority of flight requests, criteria for flight requests, making of flight requests, scheduling of aircraft, and charges and billing.

³¹ Memorandum dated June 16, 2004, which accompanied the Commonwealth of Pennsylvania’s “Operation and Use of State Aircraft” policy.

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Written policy versus actual procedures

The policy says that all flight requests should be directed to PennDOT (through its Flight Services Division in the Bureau of Aviation) at least 48 hours in advance of the flight and must be in writing, including the following:

- The date(s) of the planned travel.
- The flight destination(s).
- The agency(ies) to be charged for the flight.
- The identity of all persons to be carried on the flight.
- Justification for the use of commonwealth aircraft.³²

However, when we met with the PennDOT officials who coordinate the flight requests, we found that the actual procedures for submitting flight requests differ from the written policy in the following ways:

1. PennDOT often booked flights via a phone call without a written request prepared by the passenger.

According to our interviews with PennDOT officials, the flight-booking process works as follows: State officials can schedule flights on one of the Commonwealth's aircraft by calling PennDOT's Flight Services Division within the Bureau of Aviation. A dispatcher takes the flight information from the caller and writes it on a flight request form. Deputy secretaries or higher-ranking officials typically call in their own requests because the Flight Services Division will send bills only to officials with the rank of deputy secretary or higher. Our interviewees explained that, if someone in a lower-ranking position calls in a flight request, that person is required to forward a written approval containing a deputy secretary's signature, at which point the PennDOT dispatcher would attach the written approval to the flight request form that the dispatcher had completed.

³² June 16, 2004, Commonwealth of Pennsylvania, *Operation and Use of State Aircraft*.

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We reviewed 50 flight request forms that PennDOT provided to us, but only 1 of the forms contained a signature of approval. In that single case, the passenger was a PennDOT bureau director, and the approving signature was that of a PennDOT deputy secretary who had signed the passenger's customized form that we referenced earlier in this report in Finding One.

By booking flights via phone calls rather than through written requests, PennDOT not only deviated from the policy but also precluded itself from getting user-prepared documentation that would have provided a better accounting for all involved. For example, user-prepared flight requests would have helped to ensure greater accuracy in the flight logs. The need for greater accuracy became apparent when we found some passenger names that were misspelled on the flight logs posted on PennDOT's Web site. We also found that PennDOT posted only the last names of passengers on the flight logs, and no job titles for each passenger or his/her affiliation with the state, a practice that results in the public's not having complete information.³³ At a minimum, PennDOT itself must maintain this information in the event of an emergency.

PennDOT did tell us that it captures the "full names including the first name"³⁴ of its passengers in its internal database, and we found numerous such examples when we viewed the database. However, we also found at least one example in the internal database that had no first or last name at all. Specifically, on a flight dated May 30, 2007, the internal database shows only "Security. (Gov.)" and

³³ The name of the lobbyist referenced in Finding One was misspelled on the flight logs. It was spelled to match the way it was pronounced. Furthermore, as with all other names on the flight logs, there was no first name listed. The misspelling was repeated by PennDOT when it prepared and sent the invoice to the state office that had booked the flight. The complete names of passengers, plus accurate spellings, would become most significant in the event of flight emergencies or tragedies.

³⁴ December 8, 2006. PennDOT's written response to questions submitted by the Department of the Auditor General.

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“PSP” [for Pennsylvania State Police] to refer to one of the two passengers. Furthermore, PennDOT’s internal database does not capture the titles and/or positions of any passengers. The database does capture the name and address of a billing contact from the user agency, but there is no emergency phone number shown either for that contact, for the passenger, or for the passenger’s family.

Aside from a potential need to have more precise and more comprehensive data in the event of an emergency, PennDOT should also maintain and report additional information for the publicly available flight logs on the Web site as we have noted previously. For example, the Web site flight logs show a “Mr. King” on a flight taken on May 11, 2006, on behalf of PennDOT. However, according to our search of the July 2006 Commonwealth employee telephone directory (which does not list all employees), there are four employees with the last name of King listed as PennDOT employees, and 18 other employees with the last name of King listed for other state agencies.

Through May 29, 2007, PennDOT continued to reinforce its call-in procedures on the Flight Services section of its Web site, which states the following: “To schedule a flight, contact Flight Services at (717) 346-4303.”³⁵

2. PennDOT had on hand—but did not promote the use of—a flight request form that would have documented passenger information consistently and uniformly.

Although PennDOT did have a standard flight request form available to capture most of the necessary information for a flight, that form was not routinely completed by the

³⁵ Flight Services’ Web site address is <http://www.dot.state.pa.us/Internet/Bureaus/pdBOA.nsf/AviationHomepage?openframeset>. Accessed May 29, 2007. Click on “Services,” and then click on “Flight Services.”

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agencies that booked flights. Instead, rather than being completed by the user agency, the form was completed primarily by a PennDOT dispatcher. PennDOT's dissemination of the form and enforcement of its use could have resulted in agencies' completing the form ahead of time and submitting it in writing as anticipated by the policy.

A relevant analogy can be made by comparing the procedures for this audit to the procedures that PennDOT used to book flights. Specifically, PennDOT required us to submit all our information requests in writing, a reasonable request with which we have complied. At a minimum, PennDOT should enforce that same reasonable request when passengers ask to use airplanes paid for and operated with taxpayer dollars.³⁶

First, however, PennDOT will have to revise the form itself to address some inadequacies in the amount of information requested. As we noted in the first finding, PennDOT's form did not include a section for the passenger to document the flight's purpose. We also found that the existing form did not include an area for the signature of a deputy secretary or higher-ranking official. Other inadequacies are pointed out later in this narrative. It is important to note here, however, that PennDOT officials told us they are in the process of revising the Commonwealth's aircraft policy so that the policy is more explanatory. The officials also told us that the policy will address better documentation of aircraft use and improved justification procedures for using the aircraft.

**3. PennDOT did not require or request written
documentation to justify why passengers chose to travel**

³⁶ The Beechcraft King Air 350, manufactured in 1999, was purchased on August 29, 1999, for \$4.9 million, a figure that includes \$975,000 for the trade-in of a 1976 Beechcraft King Air 200. The state's current Beechcraft King Air 200, manufactured in 1981, was purchased on November 23, 1992, for \$1.1 million.

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**by state plane rather than by another mode of
transportation.**

The Commonwealth's aircraft use policy requires that, prior to making a flight request, any agency, board, commission, or legislative entity should determine that use of state aircraft is cost-effective or otherwise necessary. Specifically, the policy states the following:

The agency, board, commission or legislative entity that is requesting aircraft services should document in writing the reason(s) for choosing use of Commonwealth aircraft over other modes of transportation. The justification for the use of Commonwealth aircraft shall be included in the flight request and also shall be maintained by the agency, board, commission, or legislative entity making the request.³⁷

Because our audit was conducted of PennDOT, we did not audit other state agencies to determine if they maintained their own documents to justify the use of the state plane. Therefore, we do not know if those other user agencies had such files or even if they prepared written justifications in the first place. Of greater concern, however, is that PennDOT could not prove that the other state agencies complied with this requirement, or even whether passengers from PennDOT itself had complied with this requirement. We have drawn those conclusions based on the following:

- **PennDOT had no flight justifications for passengers from other state agencies.** We asked PennDOT to

³⁷ June 16, 2004, Commonwealth of Pennsylvania, *Operation and Use of State Aircraft*. [Emphasis added.]

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provide us with other state agencies' flight request forms for a total of 30 passenger flights that occurred between July 1, 2004, and November 15, 2006. We expected the forms to contain the flight justification information as required by the policy. However, not one of the 30 flight requests contained information to show why it was more cost- or time-effective to use the state plane than another mode of transportation.

- **PennDOT had no flight justifications for passengers from PennDOT itself.** In the discussion in Finding One about the purpose of flights, we said we identified 131 flights that PennDOT billed to itself. We also explained that we first looked at a sample of 68 of the flights and then narrowed our sample to 22 flights. Eventually we were able to document the purpose for 7 of those 22 flights by looking at other available evidence instead of flight request forms. Now, in this finding, in looking at the same available evidence to see how many of the 22 flights contained justification for using the state plane instead of another form of transportation, we found no such justifications whatsoever.

For state fiscal year 2004-2005, PennDOT used the fee schedule as shown on page 43 to bill itself and other state user agencies for flights. PennDOT also provided us with summary information about the number of flights and the amount billed per agency over several years, which we have summarized in the bullets that follow. (A complete summary of flight and billing information for the five fiscal years from 2002 through March 31, 2007, is shown in the table on page 4.) However, we have no comparative data to show how the flights were justified.

- Between 2004 and 2005, the average billing for each flight rose by 55 percent, from \$1,572 in 2004 to \$2,442 in 2005. In 2006, the average billing decreased

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slightly to \$2,306. Through March 31, 2007, of the 2006-07 fiscal year, the average billing was \$2,124.

- PennDOT billed 213 flights to state agencies or offices in 2002-03; 223 in 2003-04; 258 in 2004-05; 230 in 2005-06; and 159 in 2006-07 through March 31. (Please note that more than one agency can be billed for the same flight if passengers from different agencies shared that flight.)
- PennDOT's own usage of the planes increased from 40 flights in 2003 to 95 flights in 2005. PennDOT told us its usage for 2005 was particularly high because it was conducting an outreach initiative involving its 11 engineering district offices. During the same period, the Lieutenant Governor's Office usage increased from 5 to 19 flights, while usage by the Governor's office decreased from 87 flights to 55 flights.
- Overall, the Governor's office was the most frequent user of the aircraft. The charges for 336 flights from July 1, 2002 through March 31, 2007, amounted to \$835,105. PennDOT was the second most frequent user. PennDOT's charges for 235 flights in the same timeframe amounted to \$399,304.
- In total, over the past five fiscal years, PennDOT has billed user agencies for 1,083 flights totaling \$2,181,241.

Again, PennDOT did not have justification data available, so we do not know whether the \$2.1 million was money well spent for the 1,083 flights reported by PennDOT for the five years. Before booking a flight, user agencies should have determined if their passengers could travel more cost effectively by car or commercial airliner, and whether users' schedules limited their travel options. In some cases, the intended destination may not have been served by commercial flights; in other cases, commercial

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schedules may not have afforded enough flexibility or may have been fully booked. By not requiring and retaining written justifications for use of the state planes, PennDOT lost sight of its responsibility to taxpayers.

PennDOT officials did tell us that, going forward, they are implementing an Internet-based program called "Fly or Drive" to assist user agencies in determining whether or not their use of state aircraft is cost effective. The officials also said they would include a related code on the flight logs that are posted on PennDOT's Web site, thereby letting the public know how the user agency has justified its use of the plane. However, if PennDOT simply posts the user agencies' own justifications on the Web site without checking them on its own, or at least a sample of them, PennDOT will continue to distance itself from accountability.

There is at least one case in which it should be argued that flight justifications can be somewhat less restrictive in light of other prevailing issues. Specifically, the Governor is the state's top executive who is duty-bound to represent the Commonwealth on many varied occasions and whose security is of vital importance. That security is most likely enhanced by the privacy of traveling on a state plane as opposed to using a commercial air carrier for which flight schedules are widely publicized, routes are easily tracked, and layovers or wait times occur in crowded terminals.

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State Airplane Fee Schedule Fiscal Year 2004-2005³⁸

Use of Aircraft by Governor and his staff:

Lump Sum Appropriation – A lump sum of \$100,000 [changed to \$150,000 in 2006] shall be allocated from the budget of the Office of the Governor to be transferred to [PennDOT] as compensation for the use of Commonwealth aircraft by the Governor and his staff.

Use of Aircraft by other Commonwealth Agencies and Officials:

Pilot Charges – Charges for pilot services will be based on the individual pilots' salaries. Individual salaries range from \$25.42/hr to \$29.02/hr. Services will be charged for 1 hour preflight for each pilot, the actual flight time for both pilots, wait time at the out location for both pilots, and ½ hour post-flight for each pilot. Overtime, subsistence and pilot lodging costs will also be charged when applicable.

Aircraft Charges – The rate for use of the aircraft will be as follows:³⁹

King Air 350	King Air 200
\$1,285	\$1,055

Other Fees – A dispatch fee representing 1 hour of the dispatcher's time and 1 hour of the Flight Services Manager's time will also be charged for each flight. Landing fees at the out destination and any other costs incidental to the flight will also be charged to the aircraft user.

³⁸ Information taken verbatim from page 5, "Operation and Use of State Aircraft," Commonwealth of Pennsylvania, June 16, 2004.

³⁹ The policy does not indicate whether the amounts of \$1,285 and \$1,055 are flat fees or hourly rates. However, PennDOT confirmed that the rates are hourly.

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**Several other states had information about
using their aircraft that went beyond
the information in Pennsylvania's policy**

In our analysis of other states' policies as compared to Pennsylvania's aircraft policy, we found several states with relevant information that went beyond that included in the Commonwealth's policy:

- **Arizona** requires user agencies to include in their flight requests the purpose(s) of the flights. In Finding One, we already discussed that PennDOT does not require this information, nor does PennDOT follow up to find out.⁴⁰
- **Missouri** requires the designation of a lead passenger who is responsible for authenticating the identity of each passenger and attesting to the business purpose of the flight. If Pennsylvania's policy required implementation of this procedure, PennDOT would have a form of evidence—and taxpayers would have greater assurance—that passengers on state aircraft were state employees or authorized guests traveling on official state business.
- Both **Mississippi**⁴¹ and **Missouri**⁴² include information in their policies to reference Federal Aviation Regulations part 91 that we discussed in Finding One. Both states explain how these regulations affect travel on state-owned aircraft. If PennDOT were to add this information to the Commonwealth's policy, PennDOT would be taking proactive measures to make itself more accountable for the state's compliance with federal aviation regulations.

⁴⁰Arizona Department of Public Safety, Aviation Bureau, *Guidelines for Utilization and Scheduling of Department Fixed-Wing Aircraft*. This document was sent to our auditors via fax on November 16, 2006.

⁴¹Mississippi's state aircraft policy was accessed online on January 30, 2007, at <http://www.dfa.state.ms.us/air/aircraftpolicy.pdf>.

⁴²Missouri's state aircraft policy was accessed online on January 30, 2007, at http://www.oa.mo.gov/co/policies/SP-8_State_Aircraft.pdf.

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Summary

The Commonwealth's written policy, "Operation and Use of State Aircraft," as issued on June 16, 2004, addresses how user agencies should book flights on state airplanes. The policy also requires user agencies to justify their use of the state plane over other modes of travel. During our audit period, however, PennDOT routinely did not follow procedures required by the policy in either of those two areas. Specifically, in booking flights, PennDOT encouraged agencies to call in their flight requests rather than make them in writing; in justifying the use of state planes, PennDOT did not require or request state user agencies to document the justification so that PennDOT would have evidence of such justification. PennDOT should require that all user agencies make their flight requests in writing and include the justification. PennDOT should also revise its flight request form so that the form captures whatever additional information is needed to ensure that passengers follow all required procedures and policies. Finally, PennDOT should make sure that the Commonwealth aircraft policy itself includes additional information to make sure that user agencies understand the reasons for the policy and the importance of following it.

Recommendations

5. PennDOT should revise the Commonwealth's state aircraft policy that was issued on June 16, 2004, to make it more clear and precise, and should also include several other topics that would make it more comprehensive, such as the following:
 - a. Requiring user agencies to record the purpose of the flight on their flight requests.
 - b. Describing part 91 of the Federal Aviation Regulations and explaining its relevancy.
 - c. Defining key terms within the policy.
 - d. Explaining flight charges more clearly (e.g., hourly rate or flat rate) and communicating procedures for

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calculating those charges so that user agencies can confirm them.

Target date: Immediately

6. As part of a revised policy as just referenced in the preceding recommendation, PennDOT should prioritize the implementation of a program (for example, the planned Fly or Drive Program) to assist state agency personnel to evaluate whether using the state plane would be cost- or time-justified. *Target date: Immediately*
7. PennDOT should ensure the correct spelling of each passenger's name—first, last, plus middle name or initial—and post the complete and accurate names (as well as the passenger's affiliation with the state as previously recommended) on the flight logs that appear on the PennDOT Web site. *Target date: Immediately*
8. PennDOT should also ensure that, while passengers are in flight, the Bureau of Aviation maintains the complete and accurate name of passengers, their titles, and contact information to be used as necessary in the event of an emergency. *Target date: Immediately*
9. PennDOT should revise its flight request form to include an area for detailed justification of the flight, and also a signature from the agency head or deputy. *Target date: Immediately*
10. PennDOT should distribute the revised flight request form to all state agency heads, using both an initial mailing and by posting a link to the form on its Web site. A Web site user should then be able to mail or fax the form to PennDOT. *Target date: Immediately*
11. When flight requests are made verbally, PennDOT should require all user agencies who make such requests to follow up in writing by submitting signed

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flight request forms with all information completed.
Target date: Immediately

Summary of PennDOT's response to Finding Two

followed by, *in italic type,*

**Evaluation of PennDOT's response by the Department of the
Auditor General**

[Note: See PennDOT's full response beginning on page 70.]

- PennDOT's response to Finding Two says that PennDOT did not sacrifice accountability to taxpayers, that it adhered to the "spirit and intent" of the policy to ensure the appropriateness of flights, that it did not document flight justifications in accordance with the policy, and that it did produce written reports about the flights taken by its own officials. PennDOT notes again that the auditors declined to question other agencies on their use of the aircraft, that the lack of documentation does not mean that flights were inappropriate, and that the audit report contains no evidence that any use of the aircraft was improper. PennDOT says that it is nevertheless "committed to strengthening the policy and in taking steps to insure that the reasons supporting use of the state aircraft and the purpose of the trips are documented."

The Department of the Auditor General stands by its finding and repeats that, although the lack of documentation does not mean that flights were improper, the absence of documentation likewise does not make the flights proper. Indeed, every flight may have been proper, but PennDOT could not and cannot provide proof of that propriety. We also restate our position that it was and is PennDOT's duty to question other state agencies about their use of state aircraft in accordance with the state's Aviation Code because it is PennDOT's responsibility to administer the Aviation Code, not the responsibility of other state agencies

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or of the Department of the Auditor General. It is, however, our responsibility to audit PennDOT's performance in administering the state's Aviation Code, and we will follow up on this audit accordingly. In the meantime, we acknowledge that PennDOT has said it will strengthen the aircraft use policy and take steps to ensure its enforcement.

- PennDOT's response to Recommendation 5 is (a) that PennDOT has been revising the state aircraft policy prior to the beginning of this audit and has held off on implementing changes—including a new flight request form—pending the audit's outcome; (b) that it will review the policies of other states and plans to include language about the limitations of operating under part 91 of the Federal Aviation Regulations; (c) that it is not sure what terms it should define in the policy as Recommendation 5 suggested; and (d) that it would ensure its pricing policy is explained clearly in the policy so user agencies can properly estimate costs and validate charges.

The Department of the Auditor General acknowledges PennDOT's responses: (a) a new state aircraft policy requiring the purpose of each flight will be a major improvement; (b) PennDOT's review of other states' policies will be helpful; and (d) PennDOT's clear explanation of pricing will also be helpful. However, regarding "(c)" above, we cannot tell PennDOT which terms should be defined in a new policy that we have not seen. Generally, PennDOT should define terms that are ambiguous or that could be misunderstood, misconstrued, or "stretched." Examples: For trips to be "in furtherance of official Commonwealth business," do they have to be solely for business or can they be partly for official business and partly for personal or social reasons? Do travelers know the difference between the "purpose" of a trip (the reason for it) and its "justification" (whether it is less costly than driving)?

- PennDOT's response to Recommendation 6 is that it will "consider" how to help other agencies in deciding whether

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their employees can cost-justify usage of the state plane. PennDOT also says that there has been no policy decision made about whether to implement the Fly or Drive Program.

On one hand, PennDOT has said in written and verbal statements to us that its Fly or Drive Program would be a significant addition to the new aircraft-use policy. On the other hand, PennDOT's written response to this audit is now noncommittal about implementing the Fly or Drive Program as part of its policy. The program is already accessible on PennDOT's Web site as shown below, and PennDOT should now publicize the program aggressively and require its use by potential passengers as a critical tool to ensure cost-effective use of taxpayer-funded aircraft.

www.flyordrive.state.pa.us/flyordrive/about.vm. [accessed most recently on 09-27-07]

The screenshot displays the Microsoft Internet Explorer browser window. The title bar reads "Fly Or Drive - About - Microsoft Internet Explorer". The address bar contains the URL "http://www.flyordrive.state.pa.us/flyordrive/about.vm". The website content is visible, featuring a navigation menu with "Home", "Calculate Estimates", "Contact", "FAQ", and "About". The "About" page is active, showing a list of links: "Overview", "Who Can Use the Aircraft and How to Schedule a Flight", "Advantages", "The Decision - Fly Commonwealth Aircraft, drive, or fly commercially", "Employee Productivity", "Increased Productivity", "Security and Safety", "Scheduling Flexibility", "Reports", "Car Travel Costs Worksheet", "PennDOT Base Salary Multiplier", "Air Travel - State Plane", "Airplane Passenger Capacity", and "Definitions". A "Printable Version (P)" link is also present. The browser status bar at the bottom shows the URL "http://www.flyordrive.state.pa.us/flyordrive/about.vm#decision" and the Internet icon.

Finding Two

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- PennDOT's response to Recommendation 7 says that full names of all passengers will be required on flight request forms; that it expects requesting organizations to spell the names correctly; and that full names will be listed on the flight logs posted on PennDOT's Web site.

*The Department of the Auditor General appreciates
PennDOT's acknowledgement of this issue.*

- PennDOT's response to Recommendation 8 says that it will "maintain a listing of all passengers including contact information for each organization in case notification is required due to an emergency."

*The Department of the Auditor General appreciates
PennDOT's acknowledgement of this issue.*

- PennDOT's response to Recommendation 9 says that a revised flight request form will include an area for flight justification, as well as a signature block for an official ranked as deputy secretary or higher, and that the revised form will be incorporated into the revised flight policy.

*The Department of the Auditor General appreciates
PennDOT's acknowledgement of this issue.*

- PennDOT's response to Recommendation 10 says that PennDOT is working with a vendor to automate the flight request process and will distribute the new flight policy when it is ready to be implemented.

*The Department of the Auditor General appreciates
PennDOT's acknowledgement of this issue.*

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- PennDOT's response to Recommendation 11 states, "We agree."

*The Department of the Auditor General appreciates
PennDOT's acknowledgement of this issue.*

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**Status of
Findings from
Prior Audit**

As reported in the Objectives and Methodology section of this report, the prior administration of the Department of the Auditor General conducted a special audit about travel on state-owned aircraft. The audit covered the period of January 1, 1998, to December 31, 1999, and the report was released in October 2003.

**Objectives and findings of prior audit; status of findings
during the current audit period**

The prior audit consisted of two parts. Part 1, *Travel on Aircraft Owned or Chartered by the Commonwealth*, had two objectives, which we list below with a summary of the accompanying findings and a status for the current audit period:

Prior objective:

Determine if the Flight Services Division of PennDOT's Bureau of Aviation billed Commonwealth agencies at rates commensurate with actual costs.

Prior finding:

1. PennDOT billed Commonwealth agencies at the same reduced rate for both business and nonbusiness use of state planes, a practice that resulted in taxpayer subsidization of flights made by the Governor and the Lieutenant Governor for political or personal reasons.

Status of prior finding:

The prior audit did not include an analysis of federal aviation regulations and therefore made assumptions that passengers could reimburse PennDOT for political and personal travel. We have discussed the federal regulations in Finding One of this report as those regulations relate to compensation allowable under limited circumstances (i.e., flights must be within the

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scope of the flight operator's business and compensation must be based on actual flight costs).

Our research of federal regulations has shown there is another exception to the no-compensation rule under FAR part 91. Specifically, effective January 31, 2005, section 91.321⁴³ allows part 91 operators to receive payment for carrying a candidate seeking office in a federal, state, or local election campaign, or for carrying someone acting on the candidate's behalf, as long as certain conditions are met. One such condition is that reimbursement must be required by federal, state, or local law. However, until we received PennDOT's written response [appended to this report], PennDOT indicated that it knew of no such law—at least at the state level—that would require this reimbursement.⁴⁴ Moreover, state law and state policy allow use of the planes only for official business.

The issue of political trips appears to be relevant in the case of Pennsylvania's Governor, who reportedly reimbursed the state \$71,711 for 42 state-plane flights that involved some campaign business between July 1, 2005, and June 30, 2006.⁴⁵ We neither proved nor disproved these numbers because, as we have already reported, our audit scope included only PennDOT who, as the agency responsible for the operation and use of PennDOT-owned aircraft, told us it did not maintain

⁴³ Section 91.321 of FAR part 91 states in part that part 91 aircraft operators "may receive payment for carrying a candidate, agent of a candidate, or person traveling on behalf of a candidate, running for Federal, State, or local election, without having to comply with the rules in parts 121, 125 or 135 of this chapter, under the following conditions: (1) Your primary business is not as an air carrier or commercial operator; (2) You carry the candidate . . . under the rules of part 91; and (3) By Federal, state or local law, you are required to receive payment for carrying the candidate, agent, or person traveling on behalf of a candidate."

⁴⁴ Although we have not found a law requiring specific reimbursement for use of a state plane, on page 55 of this report we cite a provision of the Public Official and Employee Ethics Act, which we believe is applicable.

⁴⁵ The Governor's press secretary was cited as the source of this information in a news story, "Rendell's idea to sell planes never took off," by Jan Murphy, *The Patriot News*, on October 7, 2006.

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centralized documentation for trips taken by any state agency or office.

As the owner and operator of state aircraft, PennDOT must be accountable for knowing the purpose of trips and how they are reimbursed. Otherwise, PennDOT is failing to execute its powers according to the requirements of the state Aviation Code, including the requirement to follow federal aviation laws and regulations. Without making itself more accountable, PennDOT is putting itself and the Commonwealth at risk for violating those laws, compromising safety, and incurring potential liability.

There are several options that PennDOT could consider to remedy this problem:

- PennDOT could pursue the enactment of legislation that specifically allows state aircraft to be used by the Governor and others for political purposes and that also specifically makes reimbursement mandatory.
- PennDOT could prohibit political travel altogether by anyone on state-owned planes and instead require any such travel to be carried out at the passenger's expense on privately chartered or other commercial aircraft.
- In the case of travel by the Governor, PennDOT could argue reasonably that a governor, as head of state, must be immediately accessible 24 hours a day, 7 days a week, to tend to state business or state emergencies as necessary. Furthermore, any governor is expected to travel frequently as part of gubernatorial duties. Therefore, it follows that a governor who is already using a state-owned airplane to travel principally to an "official" function, for example, might logically continue to a

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second destination for “political” business while still remaining officially accessible as governor, and then continue to yet a third destination for another “official” function. In cases where that similar scenario has applied to Pennsylvania’s Governor and he has reimbursed the state as reported, PennDOT should acknowledge that reimbursement and make it comply with federal law by citing the state’s Public Official and Employee Ethics Act, which we believe is the state law that should be cited in the absence of specific law to require such reimbursement for “political” portions of flights.⁴⁶

We also believe, however, that taxpayers expect that, for travel that is predominantly or solely political, the Governor should charter a plane privately, which he reportedly already does for trips that are solely political,⁴⁷ or he should fly commercially.

Whatever the case—past, present, or future—PennDOT should know the facts, acknowledge the practice, and ensure that it complies with state and federal law.

Our overall conclusion is that PennDOT has not fully reconciled the usage of state aircraft for political or campaign travel as allowed under the FAA’s

⁴⁶ It is reasonable to conclude that the general prohibition on the use of government staff, time, equipment, facilities, or property for non-governmental purposes—including for political purposes—without proper payment would be a violation of Section 1103(a) of the Public Official and Employee Ethics Act, 65 Pa. C.S. § 1103(a). Section 1103(a), which provides that “[n]o public official or public employee shall engage in conduct that constitutes a conflict of interest,” has consistently been interpreted by the State Ethics Commission to be a requirement that the Commonwealth be compensated for the use of government staff, time, equipment, facilities, or property for political purposes (*see* for example, Confidential Advisory Opinion 05-001, dated February 28, 2005). PennDOT should request a definitive advisory opinion from the State Ethics Commission on this issue.

⁴⁷ In the news story, “Rendell’s idea to sell planes never took off,” by Jan Murphy, *The Patriot News*, on October 7, 2006, it was reported that Governor Rendell said he charters aircraft if trips are solely for campaign purposes.

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regulations when there is a corresponding requirement under state law. PennDOT must do more to assure taxpayers that it operates the Commonwealth's aviation program in full compliance with both state and federal requirements.

Recommendation:

PennDOT should address the issue of political travel on state-owned aircraft and should reconcile such usage to the federal regulations as we have discussed. PennDOT has several options: One option is to request a definitive advisory opinion from the State Ethics Commission to allow passengers to reimburse PennDOT for any political portions of flights that are otherwise taken primarily for official business; a second option is to cite another relevant state law, if any, that allows passengers to reimburse PennDOT for political portions of flights. In the meantime, PennDOT should discontinue the political portions of flights until it can show that any reimbursements for those flights comply with federal law. *Target date: Immediately*

PennDOT's response to the above recommendation

followed by, *in italics,*

**Department of the Auditor General's evaluation of
PennDOT's response:**

PennDOT's complete response to this recommendation is as follows:

- "The prior audit criticized [PennDOT] for, in effect, subsidizing political trips by charging a rate that did not fully recover all of the costs for operating the aircraft. We subsequently revised the rates to include all applicable costs. This recommendation should be modified to simply refer to the prior audit

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finding and recognize that we have satisfied that finding.”

The Department of the Auditor General disagrees that this prior audit finding has been satisfied. Based on the audit work that we have done for this new audit, we have made the preceding new recommendation.

Prior objective:

Ascertain whether agencies had, and properly documented, valid reasons for using state-owned or state-chartered aircraft.

Prior findings:

2. Although the Governor's Office frequently disregarded PennDOT's policy on the use of state planes, PennDOT made no effort either to enforce its policy or to harmonize policy and practice.
3. Members of the Governor's cabinet and other high-level state officials used state and chartered aircraft for numerous short trips without reasonable justification and without regard to cost.
4. The secretary of the Department of Community and Economic Development [during the prior audit period] repeatedly abused the privileges of his office by using state aircraft for his personal convenience.
5. Commonwealth agencies, including the Governor's office, consistently failed to document the purpose and justification for flights on state aircraft, displaying thereby a disregard for both statutory and policy requirements.

Status of prior findings:

Following the release of the prior audit, the Commonwealth developed its current aircraft policy

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dated June 16, 2004, in an attempt to address the issues that had been identified in the audit. As we explain in this current report, we have found that PennDOT was deficient in enforcing the new policy as it relates to documenting the purpose of flights and the justification for using the state planes. Therefore, we know today that prior findings 2 and 5, above, are not resolved as they relate to PennDOT's performance in addressing those issues. Regarding the use of the state-owned planes by the Governor's Office, members of the Governor's cabinet, and other high-ranking officials, we did not audit state agencies or offices other than PennDOT and, accordingly, we cannot conclude now on the prior findings that relate to the performance of those other state agencies and offices.

Part 2 of the audit was titled *Commercial Flights Booked Through the Commonwealth Travel Center*. There were three objectives and two findings, all of which focused on the then-existing Commonwealth Travel Center, an operation managed by a travel agency pursuant to a Commonwealth contract. The Travel Center, which was monitored by the Commonwealth's Department of General Services, booked commercial flights for Commonwealth employees. Because the Travel Center no longer exists, and because the scope of this audit did not extend to an analysis of how Commonwealth agencies book commercial flights, we cannot conclude about any prior findings related to the Commonwealth Travel Center.

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Appendix A

**Questions and answers about the use of
Pennsylvania's state-owned aircraft**

The following is information that we obtained during the course of our audit but that did not necessarily fall directly within our focused audit objectives. Readers should find the information helpful in understanding how state-owned aircraft are operated in Pennsylvania. The information also serves to raise questions that may be looked at in future audits.

- Q. Describe the aircraft used to transport the Governor and other state officials.**
- A.** PennDOT owns two aircraft that are used for executive transport—a Beechcraft King Air Model 200 and a Model 350. The King Air 200 seats six passengers and can hold a maximum of 12,500 pounds. The 350 is slightly bigger in that it seats 8 passengers and can hold a maximum of 15,000 pounds. In both airplanes, the seating area is very small, and the cabin height at its highest is just 4 feet, 9 inches. The noise level is not loud enough to interfere with conducting business. There is no separate restroom, although one of the seats in each plane can convert into restroom facilities, and there is a curtain that can be drawn to separate that seat from the others.
- Q. Why is the model number for the Beechcraft King Air 350 listed as “B300” on the flight logs on PennDOT’s Web site?**
- A.** In simple terms, the design variation is designated as B300, but it is marketed as the Model 350.

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Q. Does the state own any other aircraft?

- A.** PennDOT owns two additional aircraft. One is a Cessna 182, which the Department uses primarily for PennDOT business and for special flight missions such as aerial surveys, airport inspections, and game and wildlife tracking. The other aircraft is a Piper PA-31-325. The Piper is owned by PennDOT's Bureau of Design and is used for photogrammetry and aerial surveys.

Regarding other aircraft owned by the state, the FAA's online registry lists the Pennsylvania State Police as the registered owner of 14 aircraft, most of which are helicopters.

Q. Are the state aircraft utilized as much as they could be?

- A.** PennDOT officials told us that the Commonwealth's passenger aircraft are underutilized. Officials stated that both of the passenger airplanes should be in use approximately 300 hours per year, for a total of 600 hours per year. During our audit period, the aircraft were in use for 858.2 hours. Since our audit period covered approximately 2 ½ years, the optimum utilization for that timeframe based on PennDOT's criteria would have been 1,500 hours. Therefore, the aircraft operated at about 57 percent of their optimum usage.

The officials said they hoped their planned Fly or Drive Program will help state agencies to see that using state aircraft can be an efficient and cost-effective means of travel.

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Q. How many other states did you contact, and what did you find?

- A.** We contacted all 49 other states between October 26 and November 15, 2006, and found that 40 of the 49 states owned their own aircraft. Officials in 28 of those 40 states told us they had policies for aircraft use, and 25 of the 28 states followed up with written information as we asked.⁴⁸

The 25 states are Arizona, Florida, Georgia, Illinois, Kentucky, Louisiana, Massachusetts, Michigan, Mississippi, Missouri, Nebraska, New Mexico, Ohio, Oklahoma, Oregon, South Dakota, Tennessee, Texas, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, and Wyoming.

Unlike Pennsylvania, it was not necessarily a state's transportation agency that was responsible for purchasing, maintaining, and operating state-owned aircraft. In some states, for example, the aviation program fell under the jurisdiction of agencies responsible for commerce, administration, public safety, or another area.

Sixteen of the 25 states sent us actual policies, while the remaining 9 states sent us statutes which reference state aircraft. It must be noted that, when we analyzed the information sent to us, we found that the differences in presentation and scope did not always allow us to make direct point-by-point comparisons. In such cases, we utilized our professional judgment and applied that judgment consistently using the information that each state provided.

⁴⁸ New York, North Carolina, and South Carolina would not provide us with a copy of their state aircraft policies.

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Q. Who in general is permitted to use Pennsylvania's state-owned aircraft, and how does the permissible usage compare with that in other states?

- A.** Pennsylvania's policy prioritizes the use of the aircraft. The Governor and Lieutenant Governor receive first and second priority, respectively. Statewide elected officials, members of the Governor's cabinet and senior staff, board and commission chairpersons, and legislative leadership receive next priority. Last priority goes to other legislators and Commonwealth employees.

Of the 25 responding states, 21 addressed this question by either including a list of authorized personnel or, similar to Pennsylvania, by including another list showing which passengers receive priority for use of the aircraft.

Q. Are members of the public permitted to use PennDOT's aircraft? How did Pennsylvania's policy on this topic compare with that in other states?

- A.** Pennsylvania's policy allows members of the public to be passengers on state aircraft, but only if they are needed for the conduct of official Commonwealth business for which the flight request is made.

Of the 25 responding states, 13 addressed this question. Most of those states allowed either family members or other individuals with specific approvals to use state aircraft.

Q. When can the Governor use PennDOT's aircraft?

- A.** Pennsylvania's policy did not specifically state *when* the Governor could use the aircraft, only that the Governor has first priority in using the plane, as mentioned previously.

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Only 10 of the 25 responding states addressed this question in the same manner as Pennsylvania by giving the Governor first or second priority in the use of the aircraft. In addition, Nebraska's statute states that aircraft "shall be subject at all times to the written orders of the Governor for use." Tennessee's policy was the only policy we reviewed that specifically recognized the Governor's need to utilize air transportation to fulfill the duties of his or her office. The other 13 policies or statutes made no reference to the Governor's use of state aircraft.

Q. Can the Governor use state-owned aircraft to fly home or on vacation?

- A.** Pennsylvania's policy isn't clear. The policy states, "In no event shall state aircraft be used to enable a state employee to commute to or from his or her residence to his or her assigned worksite." The policy also states, "The agency, board, commission or legislative entity submitting the flight request must certify that the flight is in furtherance of official Commonwealth business." While this language clearly prohibits commuting from home to work in state aircraft and also restricts the use of the state aircraft to Commonwealth business only, the policy further notes that the outlined restrictions "do not necessarily apply to the Governor."

Most of the other states' policies or statutes weren't clear on this topic, either. Only 2 of the 25 responding states—Illinois and Kentucky—permitted personal business specifically for their governors. In addition, West Virginia's policy, though it didn't refer specifically to personal travel, states that aircraft may be used as directed by the Governor.

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Q. Must flight logs be made available to the public?

- A. Pennsylvania's policy did not address this topic but, as we previously reported, Pennsylvania began making its flight logs available in October 2006.⁴⁹ However, the information on the flight logs does not enable the public to know the purpose of each flight, whether or not the passengers were state employees, or even the first names of the passengers.

None of the 25 responding states addressed this question in the information that was provided to us.

Q. For flights taken, must state agencies reimburse the state agency in charge of flight services?

- A. Yes, Pennsylvania's policy contains a section on charges and billing which gives PennDOT the authority to establish a fee schedule for use of the aircraft and to charge users of the aircraft for certain expenses. Attached to the policy is a fee schedule that outlines charges and fees for each of the two passenger aircraft.

Of the 25 responding states, 17 addressed this question by discussing that reimbursement was required.

Q. What is the price of jet fuel, and has the price been increasing?

- A. According to PennDOT, the price of jet fuel in May 2007 was \$2.81 per gallon. PennDOT said it anticipates that jet fuel prices will begin to rise slightly.⁵⁰ In fact, by

⁴⁹ Throughout our audit and as this report was being finalized, the flight logs were accessed at <http://www.dot.state.pa.us/>.

⁵⁰ May 30, 2007. PennDOT's written response to questions submitted by the Department of the Auditor General.

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August 2007, PennDOT said it way paying \$3.23 per gallon for jet fuel.⁵¹

Q. How far can the state planes fly without refueling?

- A.** PennDOT said the exact distance varies between 1,390 and 1,695 nautical miles depending on various factors, including weather and speed of the aircraft. The flight planning range for a maximum weight aircraft, standard day, calm winds, normal power settings yields 1,390 nautical miles.⁵²

⁵¹ August 30, 2007.

⁵² Ibid. PennDOT's written response to questions submitted by the Department of the Auditor General.

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Appendix B Example of PennDOT's flight request form

This is a reproduction of the flight request form that was in use by PennDOT's Bureau of Aviation during our audit work.

**PA BUREAU OF AVIATION
FLIGHT DEPARTMENT**

FLIGHT REQUEST FORM

TELEPHONE: _____ DEPARTURE DATE: _____

CONTACT NAME: _____ DEPARTMENT: _____ DATE REQUESTED: _____

CONFIRMED _____ CANCELED _____ PENDING _____

ARE YOU WILLING TO SHARE THE AIRCRAFT? YES OR NO

<u>DEPARTURE TIME</u>	<u>DEPARTURE AIRPORT</u>	<u>DESTINATION AIRPORT</u>	<u>FLIGHT TIME</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

PASSENGERS:

1. _____	7. _____
2. _____	8. _____
3. _____	9. _____
4. _____	10. _____
5. _____	11. _____
6. _____	12. _____

PASSENGER SERVICES REQUIRED, SPECIAL NEEDS/INSTRUCTIONS: _____ TRIP COST ESTIMATE: _____

BILLING INFO:

AIRCRAFT ASSIGNED N _____ CHARTER COMPANY _____

CAPTAIN _____ TELEPHONE NO. _____

CO-PILOT _____ FLIGHT REQUEST RECEIVED BY: _____

PennDOT should amend this form to include the purpose of the flight, the title of each passenger, whether or not he/she is a state employee, and the justification for using the state's aircraft rather than another mode of transportation. In addition, the form should be signed by a deputy from the agency requesting the flight.

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Appendix C

Example of PennDOT's flight logs

PennDOT should show the full names of passengers and their position or affiliation with the state.

It is not clear to readers that this caption means number of passengers.

Most important of all, what is the purpose of the flight or, if more than one destination, what is the purpose of each leg of the flight?

FlightDate	FlightID	AgencyName	Aircraft	Destination	PassN	Passengers	TotalHrs	InvoiceAmount
1/3/2006	F06102	Governor's Office	Beech King Air 350	Capital City Airport to Philadelphia International to Greater Pittsburgh to Capital City Airport	2	Gov. Rendell, Tpr. Nelson	2.5	\$3,859.96
1/3/2006	F06103	Department Community Economic Development	Beech King Air 200	Capital City Airport to Allegheny County to Philadelphia International to Capital City Airport	3	Sec. Yablonsky, Dr. Johnson, Ms. Bagley	2.3	\$1,584.79
1/3/2006	F06103	PA Department of Health	Beech King Air 200	Capital City Airport to Allegheny County to Philadelphia International to Capital City Airport	3	Sec. Yablonsky, Dr. Johnson, Ms. Bagley	2.3	\$1,584.79
1/6/2006	F06104	PA Department of Transportation	Beech King Air 200	Capital City Airport to Allegheny County to Capital City Airport	2	Mr. Hoffman, Mr. Christie	1.4	\$2,068.69
1/12/2006	F06106	Department of Community/Economic Development	Beech King Air 200	Capital City Airport to Altoona-Blair County to Erie International/Tom Ridge Field to Capital City Airport	2	Mr. Wheeler, Mr. Vernon	0.6	\$834.95
1/13/2006	F06109	PA Department of Transportation	Beech King Air 200	Capital City Airport to Washington County to Capital City Airport	4	Mr. Hoffman, Mr. Rogers, Mr. Patel, Mr. Kirkpatrick	1.5	\$2,060.37
1/17/2006	F06110	Department Community Economic Development	Beech King Air 200	Capital City Airport to Port Meadville to Capital City Airport	1	Sec. Yablonsky	1.6	\$2,112.46
1/21/2006	F06111	Governor's Office	Beech King Air 350	Capital City Airport to Greater Pittsburgh to Philadelphia International to North Philadelphia to Capital City Airport	2	Gov. Rendell, Cpl. Browning	2.4	\$4,058.96
1/21/2006	F06112	PA Department of Agriculture	Beech King Air 200	Capital City Airport to Venango Regional to Capital City Airport	1	Mr. Wolf	1.6	\$2,401.60
1/26/2006	F06113	Governor's Office	Beech King Air 200	Capital City Airport to Philadelphia International to Allegheny County to Capital City Airport	2	Gov. Rendell, Cpl. Farthing	2.2	\$2,845.69

Appendix D

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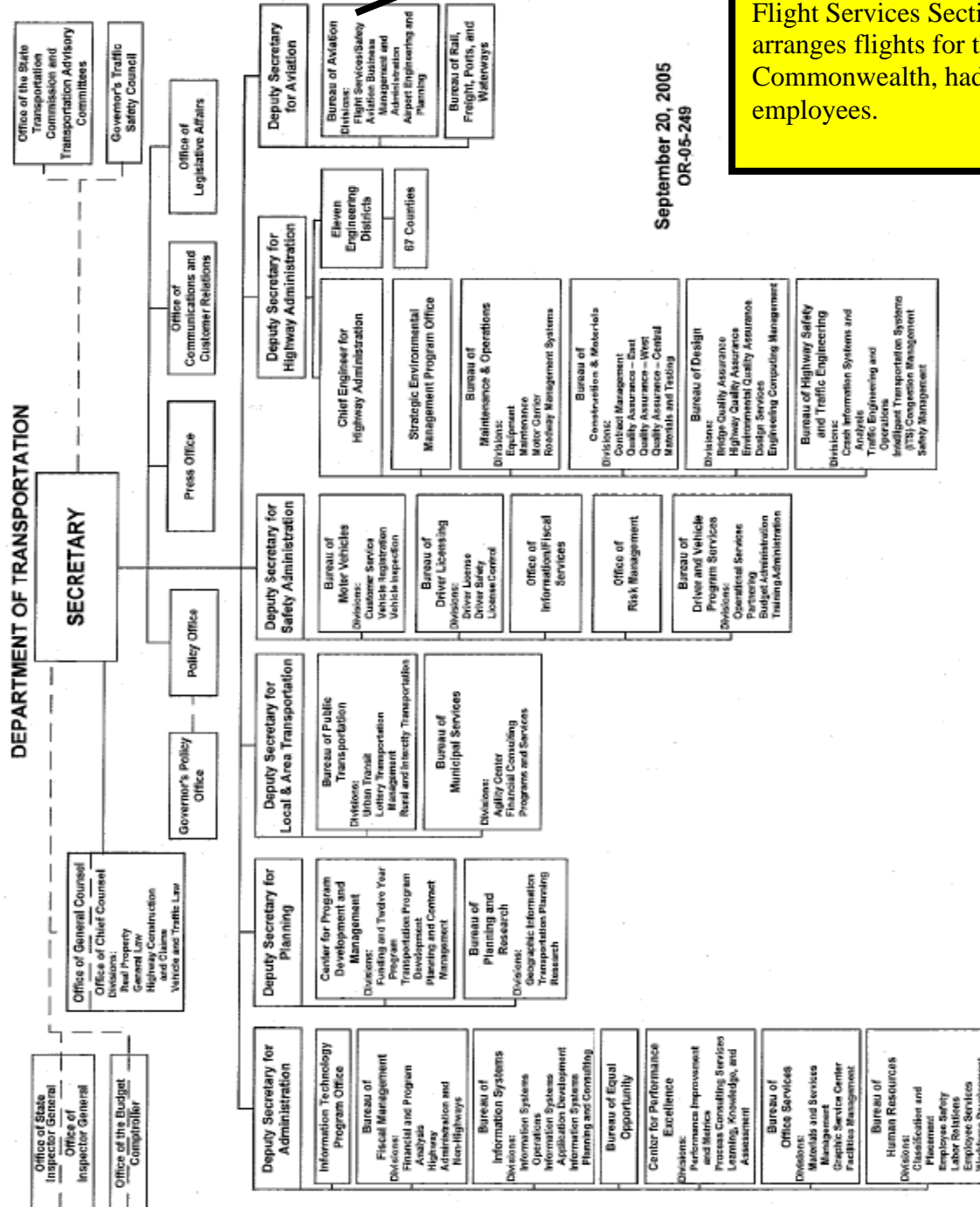
**Appendix D Full names of state user agencies that were
shortened or abbreviated in the table on page 4**

User agency name as listed on page 4	Full name of state user agency
Governor's Office	Governor of Pennsylvania
PennDOT	Department of Transportation
Community & Econ. Dev.	Department of Community and Economic Development
PHEAA	Pennsylvania Higher Education Assistance Agency
Environmental Protection	Department of Environmental Protection
Lieutenant Governor's Ofc.	Office of Lieutenant Governor
House of Representatives	House of Representatives
Cons. & Natural Resources	Department of Conservation and Natural Resources
Education	Department of Education
Agriculture	Department of Agriculture
PEMA	Pennsylvania Emergency Management Agency
Corrections	Department of Corrections
Office of the Budget	Governor's Office of the Budget
State System of Higher Ed.	Pennsylvania State System of Higher Education
Public Welfare	Department of Public Welfare
Military Affairs	Department of Military and Veterans Affairs
Revenue	Department of Revenue
Human Relations Com.	Human Relations Commission
Health	Department of Health
Aging	Department of Aging
Treasury	Department of Treasury
Labor & Industry	Department of Labor and Industry
General Services	Department of General Services
Crime/Delinquency	Commission on Crime and Delinquency
Lottery	Pennsylvania Lottery
Senate	Senate
Ofc. of Administration	Office of Administration
Fire Commission	Office of the State Fire Commissioner
Attorney General	Office of Attorney General
Ofc. of Healthcare Reform	Governor's Office of Health Care Reform
Insurance	Insurance Department
Turnpike Commission	Turnpike Commission
Commission for Women	Commission for Women
Ofc. of General Counsel	Office of General Counsel
Banking	Department of Banking

▪ Included are the Commonwealth agencies that PennDOT said it billed for flights taken between July 1, 2002, and March 31, 2007. If an agency is not listed, we can conclude (unaudited) that it did not use the state plane.

Appendix E

PennDOT's Organization Chart



The Bureau of Aviation had 32 employees as of May 2007. Its Flight Services Section, which arranges flights for the Commonwealth, had 8 of the employees.

September 20, 2005
OR-05-249

**Operation and Use of Pennsylvania's
State-Owned Aircraft**

*Pennsylvania Department of the Auditor General
Jack Wagner, Auditor General
September 2007*

**Response
from
PennDOT**

Note from the Department of the Auditor General: Beginning below and on the pages that follow, we have copied PennDOT's full written response to our audit. Readers should also refer to applicable sections of this report for our summary of significant points in PennDOT's response and our evaluation of those points.

Operation and Use of Pennsylvania's State Aircraft

**PennDOT Response
September 19, 2007**

Finding 1:

PennDOT could not prove that its state-owned aircraft always carried passengers on official Commonwealth business only, or that flight reimbursements originated only from the Commonwealth rather than from outside sources.

The policy governing use of state aircraft in effect during the period covered by this audit generally restricted the use of the aircraft to official Commonwealth business (an exception was noted for the Governor based on security concerns). This policy was disseminated to all state agencies. Agencies using the aircraft were instructed to maintain records which include justification for the use of state aircraft. They also were required by the policy to include in a written flight request sent to PennDOT the justification for the use of Commonwealth aircraft and a certification that the flight was in the furtherance of Commonwealth business. But as the audit disclosed, PennDOT did not require that all flight requests be made in writing, that they include justification for the flight or that the using agency certify that the flight was taken in furtherance of Commonwealth business. This lack of an "audit trail" violated the policy and made it difficult for the auditors to review documentation regarding the use of the aircraft. We acknowledge that failure and pledge to rectify it.

On the other hand, the implication in the draft report that this lack of records means that the trips were not for official business reveals a flaw in the auditors' methodology. The auditors limited their inquiries to PennDOT and so made no effort to reach out to the using agencies to determine whether they had documentation to support use of the aircraft. In the absence of such an effort we are left solely with the conclusion that

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PennDOT's documentation was insufficient. We concede this point and have, as the draft report recognizes, already taken steps to tighten-up the process and strengthen the documentation. We were in the process of revising the policy, including the flight request form, when this audit commenced and have held off on finalizing these changes pending completion of the audit.

In response to the auditor's inquiries we did review available information regarding the flights that Department employees took on the airplanes. In every case, we were able to verify that the aircraft were used for Commonwealth business. The statement in the draft report that the auditors were unable to corroborate the purpose of 15 flights does not mean that they were improper. We used available information to corroborate the purposes of those trips and the auditors have not questioned those conclusions.

The comment in the report regarding the assumed impact that the lack of documentation may have on the Commonwealth's liability is difficult to understand. So long as the trips were for official business, there was coverage through the Commonwealth's self-insurance program. Should there be an accident, the coverage determination is made separate from, and regardless of, whether there is a written justification for the flight prepared in advance. The official character of the trip can be proven through a variety of other sources.

Finding 1 also references Part 91 of the Federal Aviation Regulations (FAR Part 91) which limits the circumstances under which the Department can accept reimbursement from sources outside the Commonwealth. Again, there is no evidence of which we are aware, and the report suggests none, that the operation of the state aircraft during the audit period violates these regulations. The report discusses a trip reported by *The Patriot-News* on which a private individual accompanied the Governor's Chief of Staff. We discussed this matter with Mr. Estey and, as we have told the auditors during the course of the audit, the facts are as follows. On September 28, 2005, John Estey, then-Chief of Staff, Office of the Governor, and Richard Gmerek, a lobbyist with Wolf, Block, Schorr & Solis-Cohen LLP, traveled on state aircraft to Pittsburgh for official Commonwealth business. Mr. Estey had meetings scheduled with the University of Pittsburgh (Pitt), a state-related institution, to discuss Pitt's extraordinary capital budget requests. Mr. Estey believed that Mr. Gmerek's knowledge and experience would be invaluable and asked Mr. Gmerek to attend one of the meetings with Pitt to provide insight on the capital budget process, the potential structuring of a plan, and the packaging of a request for extraordinary funding. Mr. Gmerek intended to fly commercially to Pittsburgh and join Mr. Estey in the city. On hearing Mr. Gmerek's

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plans, Mr. Estey invited Mr. Gmerek to fly on the state aircraft with Mr. Estey so they could travel together and prepare for the meeting during the flight.

Mr. Gmerek sent a check to the Governor's Office for \$1114, which was the first-class fare for a round-trip ticket between Harrisburg and Pittsburgh. It amounted to slightly less than half of the cost of the flight as calculated by PennDOT (the flight had two passengers and the cost was \$2617.77). The Governor's Office did not forward the reimbursement from Mr. Gmerek to PennDOT, instead using it to augment the Governor's Office travel budget.

The auditors' concerns with this trip are difficult to understand. Federal regulations clearly permit reimbursement for trips which, like this one, are for official Commonwealth business, so long as it does not exceed the cost of the flight. 14 C.F.R. §91.501(a) (5). We are at a loss to understand what more the auditors require. Nevertheless, we offered the auditors the opportunity to discuss this trip with Mr. Estey but they declined. In light of these facts, the detailed discussion of FAR Part 91 should be removed from the audit report and the report should acknowledge that no improprieties were uncovered in connection with this trip.

Recommendations:

- 1. PennDOT must make itself more accountable for operating the Commonwealth's aircraft in accordance with state law and policy. Specifically, with respect to any agency, board, commission, or legislative entity making use of the state flight program, PennDOT should always know the purpose of each flight and ensure that it is taken in furtherance of official state business. In addition, PennDOT should know – and should report on the public flight logs – each passenger's affiliation with the state.**

Response: The existing policy governing the use of state aircraft sets forth clear criteria which agencies under the Governor's jurisdiction are required to employ when deciding whether to travel on the state airplanes. The policy also requires that the justification for the use of a state airplane be maintained by the using agency and that it be included in the flight request. Finally, the policy provides that the state airplanes are to be used only for official Commonwealth business, although the policy also recognizes that, for security reasons, the restriction may not necessarily apply to travel by the Governor.

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Having said this, we acknowledge that PennDOT did not do a good job of insuring that it maintained written flight requests that included the justifications for the flights and the purposes of the trips. We are in the process of finalizing a revised policy on the use of state aircraft which will strengthen the documentation requirement and make it easier for the using agencies to comply. This will better enable the Auditor General to determine, if he wishes, whether agencies using state aircraft have used this resource appropriately. Although PennDOT did not itself keep contemporaneous records justifying its use of the state airplanes, we were able to review available information and provide justifications for all of our flights.

- 2. PennDOT should ensure that it operates its aircraft according to federal aviation regulations. If PennDOT operates its aircraft in a way that results in state and federal requirements conflicting with one another, PennDOT should modify its operations to resolve such conflicts.**

Response: The audit was commenced to determine if PennDOT operates its airplanes in accordance with the policy governing the use of state aircraft and to examine whether the single trip by John Estey and Richard Gmerek was proper. We have outlined above our response to those issues. The detailed discussion of FAR Part 91 and this recommendation should be eliminated.

If the recommendation remains we offer the following: PennDOT operates its airplanes as "civil aircraft" under FAR Part 91. We are required to adhere to the safety standards set forth in Part 91 and other regulations referenced in Part 91. The suggestion that we violated "strict federal safety regulations" is incorrect. In fact, this emphasis on safety is hard to understand. To be sure, different safety standards apply to different classes of aircraft depending on how they are operated; not surprisingly stricter standards apply, as the draft report notes, to commercial service carriers. But to suggest that PennDOT somehow has jeopardized the safety of the passengers on its aircraft is unfair and unsubstantiated. Neither the FAA nor anyone else ever has questioned the safety of our operations, nor could they. We have no reason to believe that PennDOT has failed to comply with all applicable federal aviation regulations.

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In sum, PennDOT's flight operations comply with all applicable federal and state laws and regulations.

- 3. PennDOT should request an official determination from the Federal Aviation Administration to determine if the FAA agrees with PennDOT that the Commonwealth was FAA – compliant to accept a passenger payment originating from outside sources. Alternatively, PennDOT should ensure that all Commonwealth agencies and offices are warned that no Commonwealth agency may accept reimbursement or payment from non-Commonwealth employees who are passengers, whether such payment is made directly or indirectly to the Commonwealth.**

Response: In light of the conclusions reached above we see no need to seek an opinion from FAA counsel. And there is no basis for including this recommendation in the audit report. We have flown under Part 91 for many years, the FAA is aware of this, and never has expressed concerns over our operations. We are confident that our current operations comply with FAR Part 91. The single instance of reimbursement mentioned in the report was clearly proper. The report points out that some states include in their policies an explanation of the limitations on reimbursement in FAR Part 91. We will review those other policies and determine whether it is appropriate to include that information in a revised policy.

- 4. PennDOT should revise its flight request form to include an area for recording the purpose of the flight; PennDOT should make that purpose public as part of the flight logs posted on the PennDOT Web site.**

Response: As mentioned earlier, we are in the final stages of revising the aircraft policy and we anticipate that a new flight request form will include an appropriate place for the using agency to record the purpose of the flight. We will also take into consideration the recommendation that this information should be posted on our Web site.

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Finding 2:

PennDOT booked flights using procedures that strayed from the state's written policy—a policy that already had weaknesses of its own – and therefore did not demonstrate the highest possible level of accountability to state taxpayers.

The Department did not sacrifice accountability to taxpayers. We adhered to the spirit and intent of the policy to ensure that the flights were for official purposes and that only appropriate people used the state owned aircraft. It is true that justification for the use of state aircraft was not documented in accordance with the policy. But at the request of the auditors the Department accurately produced written reports for PennDOT travel that documented the business purpose of flights, justification for the use of the aircraft and who traveled. The auditors declined to question other agencies on their use of the aircraft.

As we acknowledged above, the policy required that the purposes of the flights be recorded on the flight request forms. But this does not mean that the flights were inappropriate. There is no evidence in the draft report that any use of the aircraft was improper. Nevertheless, we are committed to strengthening the policy and in taking steps to insure that the reasons supporting use of the state aircraft and the purpose of the trips are documented.

Recommendations:

5. **PennDOT should revise the Commonwealth's state aircraft policy that was issued on June 16, 2004, to make it more clear and precise, and should also include several other topics that would make it more comprehensive, such as the following:**
 - a. **Requiring user agencies to record the purpose of the flight on their flight requests.**

Response: As we informed the auditors, the policy was undergoing revision when the audit was commenced. The Department held off on revising the policy pending the outcome of the audit. As noted above, one of the anticipated changes under the revised policy is a new flight request form. We anticipate that the new form will include a place for the using agency to record the purpose of each flight.

- b. **Describing Part 91 of the Federal Aviation Regulations and**

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explaining its relevancy.

Response: As mentioned earlier, we will review the policies of other states and plan to include language highlighting the FAR Part 91 limitations on reimbursement.

c. Defining key terms within the policy.

Response: We are not sure what terms need to be defined but we will make every effort to insure that the revised policy is clear.

d. Explaining flight charges more clearly (e.g., hourly rate or flat rate) and communicating procedures for calculating those charges so that user agencies can confirm them.

Response: The rate schedule seems clear to us. In any case, we will ensure that the pricing policy is clear so that the user agencies can properly estimate costs and validate charges.

6. As part of a revised policy as just referenced in the preceding recommendation, PennDOT should prioritize the implementation of a program (for example, the planned Fly or Drive Program) to assist state agency personnel to evaluate whether using the state plane would be cost- or time-justified.

Response: We feel that it is important to provide tools to help users determine and document justification for using the state aircraft versus other travel options. We will consider how to assist agency personnel in deciding whether using the state plane is cost justified. No policy decision has been made on the Fly or Drive Program to date and we will continue to evaluate it.

7. PennDOT should ensure the correct spelling of each passenger's name-first, last, plus middle name or initial-and post the complete and accurate names (as well as the passenger's affiliation with the state as previously recommended) on the flight logs that appear on the PennDOT web site.

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Response: Full names of all passengers will become a requirement on the flight request form. We expect that the names will be spelled correctly by the requesting organizations. The full names will be posted on the flight logs that appear on PennDOT's web site.

- 8. PennDOT should also ensure that, while passengers are in flight, the Bureau of Aviation maintains the complete and accurate name of passengers, their titles, and contact information to be used as necessary in the event of an emergency.**

Response: PennDOT will maintain a listing of all passengers including contact information for each organization in case notification is required due to an emergency.

- 9. PennDOT should revise its flight request form to include an area for detailed justification of the flight, and also a signature from the agency head or deputy.**

Response: The revised flight request form will include an area for flight justification and also a signature block for the designated individual(s) from the requesting organization. The signatory will be a deputy secretary or higher. The final version of the flight request form will be incorporated into the final revised policy.

- 10. PennDOT should distribute the revised flight request form to all state agency heads, using both an initial mailing and by posting a link to the form on its Web site. A Web site user should then be able to mail or fax the form to PennDOT.**

Response: PennDOT is currently working with a vendor in order to automate the flight request process and make it more user-friendly. An initial mailing distribution will be made once the revised policy is ready to be implemented.

- 11. When flight requests are made verbally, PennDOT should require all user agencies that make such requests to follow up in writing by submitting signed flight request forms with all information completed.**

Response: We agree.

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Status of Findings from Prior Audit

New Recommendation:

- 12. PennDOT should address the issue of political travel on state-owned aircraft and should reconcile such usage to the federal regulations as we have discussed. PennDOT has several options: One option is to request a definitive advisory opinion from the State Ethics Commission to allow passengers to reimburse PennDOT for any political portions of flights that are otherwise taken primarily for official business; a second option is to cite another relevant state law, if any, that allows passengers to reimburse PennDOT for political portions of flights. In the meantime, PennDOT should discontinue the political portions of flights until it can show that any reimbursements for those flights comply with federal law.**

Response: The prior audit criticized the Department for, in effect, subsidizing political trips by charging a rate that did not fully recover all of the costs for operating the aircraft. We subsequently revised the rates to include all applicable costs. This recommendation should be modified to simply refer to the prior audit finding and recognize that we have satisfied that finding.

**Operation and Use of Pennsylvania's
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*Audit Report
Distribution List*

*Pennsylvania Department of the Auditor General
Jack Wagner, Auditor General
September 2007*

**Audit Report
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