

**UNITED STATES TRANSPORTATION COMMAND
(USTRANSCOM) POLICY DIRECTIVE 24-3
1 June 2008**

Government Provided Insurance for Transportation Programs

A. REFERENCES:

- a. DOD Directive 5158.4, United States Transportation Command (USTRANSCOM), 27 July 2007 incorporating administrative change of 11 September 2007
- b. Memorandum of Understanding between Department of Defense and Department of Transportation Concerning Commercial Aviation Programs, dated 10 November 1998.
- c. Agreement of Indemnity Between the Secretary of Defense and the Secretary of Transportation (Airlift), approved by the President April 12, 1990.
- d - n. See Appendix A

B. PURPOSE: Assigns responsibilities and identifies the approved USTRANSCOM procedures for requesting insurance and reinsurance for commercial aircraft and vessels providing transportation and related services for the Department of Defense (DOD).

C. APPLICABILITY: Applicable to all personnel, military and civilian, assigned or attached to USTRANSCOM and its component commands and all requests for insurance from DOD units made through USTRANSCOM.

D. POLICIES AND PROCEDURES:

1. Aviation Insurance. The authority to request non-premium aviation insurance coverage from the Department of Transportation (DOT), Federal Aviation Administration (FAA), is delegated to the USTRANSCOM Director of Acquisition (TCAQ), for aircraft under contract to USTRANSCOM including the Civil Reserve Air Fleet (CRAF). All other requests for non-premium aviation insurance coverage must be authorized by the Commander or Deputy Commander, USTRANSCOM. A sample insurance request is at Appendix B.

2. Vessel Insurance. The Deputy Commander, USTRANSCOM, is authorized to request non-premium vessel insurance coverage from the DOT, Maritime Administration (MARAD), and to take any of the actions or to perform any of the functions which the Secretary of Defense is or may be authorized to take or perform under Section 53905 of title 46, United States Code (USC), for the procurement of any insurance for common-

user sealift requirements within the scope of section 53905 from the Secretary of Transportation, for vessels entering waters excluded under commercial war risk trading warranties or other areas in which commercial war risk insurance cannot be obtained on reasonable terms and conditions. This authority is also delegated to the Commander, Military Sealift Command (MSC), or such persons under his command as may be designated by the Commander, MSC, to take any actions or to perform any of the functions which the Commander, USTRANSCOM, is or may be authorized to perform with respect to Section 53905 insurance for personnel and vessels under the cognizance of MSC.

3. All requests for insurance to be signed by the Commander or Deputy Commander, USTRANSCOM, shall be coordinated with TCJ2, TCJ3, TCJ5/4, TCJ8 and TCJA. MSC will expeditiously provide copies to TCJA of requests that MSC has made to the MARAD for insurance for common-user sealift vessels.

4. TCJA. TCJA shall review all government-provided insurance or reinsurance policies prior to use with commercial entities under contract with DOD. Offices of primary responsibility for classified programs requiring government-provided insurance should contact TCJA sufficiently in advance of needed coverage to provide in-briefing to TCJA, the DOT Classified Programs Oversight Committee, and applicable program personnel in MARAD or FAA prior to negotiations and the submission of any request for coverage. TCJA is delegated the authority to negotiate any terms and conditions of coverage with DOD units and DOT/FAA/MARAD and other Executive Branch agencies to meet mission needs.

4.1. TCJA shall review the FAA's standard non-premium war-risk and all-risk insurance policies, MARAD's Hull War Risk Perils, War Risk Protection and Indemnity (P&I), and Second Seamen's War Risk insurance policies, and any specialized policies currently considered active, at least annually to ensure DOD needs can be met in an emergency or contingency. TCJA is authorized to negotiate and approve updates or changes to coverage in said insurance or reinsurance policies on behalf of USTRANSCOM and DoD.

4.2. TCJA shall negotiate with the DoD unit (s) on behalf of the Commander, USTRANSCOM, regarding any new special coverage under government-provided insurance or reinsurance programs that is requested by that DoD unit (s) and prepare the request for such coverage for approval and signature by Commander or Deputy Commander, USTRANSCOM.

4.3. TCJA shall oversee the handling of claims and settlements by FAA, MARAD, and their claims adjusters to protect DOD interests and to ensure fair treatment of commercial carriers under contract with DOD. TCJA is authorized to coordinate on behalf of DOD on the settlement or payments of claims proposed by DOT (FAA or MARAD). To the extent Commander, USTRANSCOM is delegated authority to enter

into binding agreements and settlements with DOT and the Department of Justice (DOJ) under references (f) and (i), TCJA is delegated that authority.

5. TCJ2 and TCJ3. TCJ2 and TCJ3 shall review all new USTRANSCOM requests for government-provided insurance coverage to ensure the operation is appropriate for use of commercial aircraft or vessel, identify risks associated with the contracted efforts, and recommend any procedures that should be utilized to mitigate risks to the insured aircraft or vessel if needed.

6. TCJ8 and TCJA. TCJ8 and TCJA shall review annually the payment process in the event of loss to ensure compliance with references (h), (i), (j) and (k). Direct coordination with Under Secretary of Defense (Comptroller) (USD(C)) is authorized. TCJ8 policy letters regarding the notification and payment process shall be updated as necessary.

E. CONTRACTUAL INDEMNIFICATION PROCESS AND PROCEDURES.

1. Requests for contractual indemnification pursuant to the authorities in reference (l) and, on rare occasions, (m) for commercial transportation carriers under contract with DOD, shall be prepared by the contracting office (MSC, SDDC, or USTRANSCOM) and coordinated with TCJA prior to forwarding through channels, with proper notification to the appropriate commander, to a Service Secretary, or the Under Secretary of Defense for Acquisition, Transportation and Logistics (USD (AT&L)) for approval.

2. The indemnification claims process shall be reviewed annually to ensure carriers that incur losses when operating in support of the Defense Transportation System (DTS) are treated fairly and are provided clear guidance on submitting claims.

F. EXERCISES.

1. TCJ3, in coordination with TCJ5/4, will ensure realistic scenarios to exercise government-provided insurance programs are included where appropriate in annual exercises. FAA and MARAD shall be encouraged to participate in planning and actual exercises to the extent their resources permit.

2. Special interest items for exercises should include accident notification process to all impacted agencies, claims response (DOJ, DOT and DOD), handling of payment requests from DOT to DOD, and the ability to locate and transfer of funds IAW statutory time constraints contained in references (i) and (k).

3. The indemnification claims process may be included in exercise scenarios, however, arrangements should be made in advance with contracting officers and Service claims offices to ensure adequate participation.

G. EFFECTIVE DATE AND IMPLEMENTATION:

This directive is effective immediately.


NORTON A. SCHWARTZ
General, USAF
Commander

OPR: TCJA

APPENDIX A

References Continued:

d. Agreement of Indemnity Between the Secretary of Defense and the Secretary of Transportation (U)(Airlift classified), approved by the President, August 31, 2007.

e. Delegation of Authority from Deputy Secretary of Defense to Commander, USTRANSCOM, Designation of Responsibility to Request Non-premium Vessel War Risk Insurance from the Secretary of Transportation, June 14, 2002.

f. Delegation of Authority from Secretary of Defense to Commander, USTRANSCOM, "Designation for the Purpose of Acting for the Secretary of Defense with Respect to his Functions Under Section 44305 of title 49, United States Code and Section 9514 of title 10, United States Code." 13 September 2007.

g. Agreement of Indemnity Between the Secretary of Defense and the Secretary of Transportation (Sealift), Approved by President 29 May 2002, delegated to Commander, USTRANSCOM , 14 June 2002.

h. 49 USC Section 44305, Insuring United States Government Property.

i. 10 USC 9514, Indemnification of Department of Transportation for losses covered by defense-related aviation insurance.

j. 46 USC Section 53901, Insurance of Property of Government Depots and Agencies.

k. 10 USC Section 2645, Indemnification of Department of Transportation for losses covered by Vessel War Risk Insurance.

l. 50 USC Section 1431, Authorization; Official Approval

m. 10 USC Section 2354, Contracts: Indemnification provisions. (R&D)

n. Commander, USTRANSCOM Memorandum of 22 August 2002 to Commander, Military Sealift Command, entitled "Designation of Responsibility to Request Non-Premium Vessel War Risk Insurance from the Secretary of Transportation." (hereby rescinded).

APPENDIX B

Sample Insurance Request:

Ms. _____
Administrator
Federal Aviation Administration
800 Independence Avenue SW
Washington DC 20591

Dear Ms. _____

United States Transportation Command (USTRANSCOM) hereby requests the FAA to provide aviation insurance for [USTRANSCOM][xx] contracted civil air missions supporting [Operation XXX][___] and follow-on operations in the [Southwest Asia AOR][xx], as authorized under title 49, United States Code, Chapter 443. We have determined that commercial air carriers performing these missions may not be able to obtain commercial insurance on reasonable terms or conditions.

USTRANSCOM does not intend to task civil carriers to fly into high-risk airfields; however, due to the tenuous political situation, carriers may incur unusually hazardous risks that impose liability in excess of financial protection reasonably available. We request your approval of non-premium hull, liability, and employee life war risk insurance for cargo, passenger, and aeromedical evacuation missions to cover all carriers not otherwise covered when they are flying missions under contract to USTRANSCOM in support of [Operation XXX][___].

Upon implementation, specific procedures relative to the identification of specific flights to be insured will be developed in consultation with the FAA's Office of Aviation Policy and Plans, AEP-20.

Sincerely

General, [USAF][xx]
Commander

APPENDIX C

DEFINITIONS

Aviation Hull All-Risk Insurance. Aviation hull all-risks insurance covers all perils (unless specified as uninsured) to which the insured aircraft is exposed. War and Allied Perils risks (see definition below) are not covered unless a separate aviation hull war risk insurance policy is purchased. The hull "All Risks" policy will commonly state coverage as "all risks of physical loss or damage to the aircraft from any cause except as hereinafter excluded".

- It should be noted that the term "all risks" is a bit misleading. "All risks of physical loss or damage to the aircraft" does not include loss of use, delay, or any consequential loss. Policies or clauses for loss of use are available on the commercial market, although very expensive. FAA polices only cover "loss of use" if the air carrier has an existing commercial loss of use policy that withdraws coverage due to CRAF activation or because of the risks in the AOR where DOD has contracted for flights.

- The vast majority of airline hull "all risks" policies are arranged on an "Agreed Value Basis." This provides that the Insurers agree with the Insured, for the policy period, as to the value of the aircraft and as such, in the event of total loss, this Agreed Value is payable in full. Under an "Agreed Value" policy the replacement option is deleted. Agreed values commonly exceed the fair market value of the aircraft by several hundred per cent and for US air carriers have been as high as 1400% over FMV. FAA periodically examines "over insuring" for abuses.

Aviation Hull War-Risk Insurance. The hull "All Risks" policy will contain the exclusion of "War and Allied Perils" clause. The hull "War and Allied Perils" insurance will mirror the exclusion so there are no coverage gaps. Generally speaking, throughout the aviation insurance world, "War and Allied Perils" have a defined meaning. In the London Aviation Insurance Market [primarily the Lloyd's syndicate] the standard exclusion is called the War, Hi-jacking and Other Perils Exclusion Clause (currently known by its reference - AVN48B or the newer Lloyd's clause, AVN52, series for short) this lists and defines these so-called war and allied perils.

War Definition (in aviation context)

War - this includes civil war and war where there is no formal declaration.

The detonation of a weapon of war employing nuclear fission or fusion.

Strikes, riots, civil commotions and labour disturbances.

Political or terrorist acts.

Malicious or sabotage acts.

Confiscation, nationalization, requisition and the like by any government.

Hi-jacking or any unlawful seizure or exercise of control of the aircraft or crew in flight.

- The exclusion also applies to any loss or damage occurring whilst the aircraft is outside the control of the operator by reason of any of these "war" perils.
- The majority of the excluded "War and Allied Perils", other than the detonation of a nuclear weapon and a war between the "Great Powers" (an older term – newer policies have just "listed countries" - the aviation insurance world identifies these as the United States, the Russian Federation, China, France and the UK), can normally be covered by way of a separate "War and Allied Perils" policy. Current practice is to allow the air carrier to buy back coverage for some [but not all] of the perils following an incident, but at greater premium with less coverage.

Other common exclusions from coverage are:

- Confiscation etc. by the "state" of registration (this exclusion can often be deleted in respect of financial interests - albeit, in some instances at an additional premium charge)
- Any debt, failure to provide bond or security or any other financial cause under court order or otherwise;
- The repossession or attempted repossession of the Aircraft either by any title holder or arising out of any contractual agreement to which any Insured protected under the policy may be party;
- Delay and loss of use. (Although there is often an extension to the policy for a limited amount for extra expenses necessarily incurred following confiscation or hijacking).

The aircraft hull "War and Allied Perils" policy will normally cover the aircraft on an "Agreed Value" basis against physical loss or damage to the aircraft occasioned by any of those perils. Aircraft deductibles found in all-risk hull policies are not normally applied in respect of losses arising out of "War and Allied Perils".

Aviation Liability Insurance. Available for both "all risk" and "war risk." Liability is normally divided into two areas:

- Liability in respect of Passengers, Baggage, Cargo and Mail. These liabilities result from the operations the airline and are normally the subject of a contract of carriage such as an airway bill or ticket, which provides some ability for the airline to limit its liability.
- Aircraft Third Party Liability - the liability for damage done to property or people outside the aircraft itself.

Both categories are normally contained in a single liability policy. In the US, EU, and many other countries there are minimum limits of liability coverage that must be provided as a prerequisite to operating in that country (or the EU).

Employee Life Insurance Coverage. FAA has agreed to provide substitute insurance at DOD request, on the same terms and conditions (except a war risk exclusion), when a life insurance policy purchased by a crewmember employed by the airline or an associated contractor personnel of the airline, cancels coverage as a result of war risks associated with the duties of that crewmember or contractor personnel while on or performing a DOD contract mission. Only full-time commercial policies for life insurance, accidental death and dismemberment, and business travel accident insurance purchased by the individual are considered. The amounts payable by FAA for each individual is limited to the face value of all such insurance policies or one (1) million U.S. dollars, whichever is less.

Non-Premium FAA or MARAD Insurance. Both the FAA and MARAD have programs available to US carriers for war risk insurance when commercial insurance is not available on reasonable terms and conditions and a US interest would be served in providing the insurance to the carriers. A premium is paid for this coverage and if a loss is incurred, the FAA or MARAD will be responsible for payment of claims under the policies. Both FAA and MARAD have programs available to DOD, Department of State, and other agencies designated by the President to insure aircraft or vessels under contract to those agencies. This program is known as the “non-premium” program and insurance is issued at the request of DOD, DOS, or the other agency. A precondition of issuing a non-premium policy is an agreement of indemnity between the agencies that in the event of loss, the requesting agency, in our case DOD, will reimburse FAA or MARAD for any losses paid. Statutory authority is contained in title 10, United States Code, for the transfer of funds for these purposes.

Protection and Indemnity (P&I). This insurance provides cover to ship owners and charterers against third-party liabilities encountered in their commercial operations. Responsibility for damage to cargo, for pollution, for the death, injury or illness of passengers or crew, and for damage to docks and other installations are examples of typical P&I exposures. It is distinct from other forms of marine insurance purchased by ship owners such as hull insurance and war risk insurance. Liabilities, costs and expenses arising from oil spills have become an increasingly important aspect of P&I insurance. Contractual liabilities (those assumed by the ship owner as a matter of contract) are not generally covered under P&I.

Second Seamen’s War Risk insurance. Insurance against loss of life or disability (including dismemberment and loss of function) or loss of or damage to personal effects or detention for the master, officers and crew resulting from stated war perils, and certain other maritime casualties. The war perils are quite broad and cover war, warlike operations, capture, seizure, sabotage, piracy, takings at sea, arrests, restraints, and detainments, hostilities, scuttling to prevent capture, floating or stationary mines, torpedoes, whether derelict or not, and collisions due to failure to use full peacetime navigation or anchorage lights, stranding due to absence of lights, etc.

Vessel Hull All Risk Perils. The Marine Hull policy insures vessels for losses or damages resulting from stranding, sinking, fire, collision and other perils included under the policy. The usual coverage in the policy for claims by other ships and their cargo for collision damage excludes from coverage one fourth of such damage and is usually limited in amount. (The maximum recovery under hull policies, including both damage to the insured ship and liability for the damage it had caused, is commonly the insured value of the ship). In addition to collision liabilities, Hull insurance in some cases pays liabilities for damage to fixed and floating objects ("FFO")

Vessel Hull War Risk Perils. The War Risk clause of a standard marine insurance policy operates to exclude coverage for damages caused by risks related to war, acts of princes, civil unrest and the like. War risks are broadly defined. War risk insurance, generally available in the commercial marine insurance market for substantially increased premium payments, provides coverage for those risks excluded in the standard policy.

- The Joint War Committee of the Lloyd's Market Association has continued to list areas which are regarded as in jeopardy from war, strikes, terrorism and related perils. This allows the Lloyd's underwriters to cancel vessel policies at seven days' notice and to request a separate premium whenever a ship plans to sail into a region that is considered a war risk area. Ship owners are required to notify the insurer every time they enter dangerous waters. In accordance with some policies, the ship owner must notify the insurer when a vessel sails or deviates toward a place of perceived enhanced risk. Liability for additional premiums, absent special agreement, commences at the time the voyage or the deviation to place of perceived enhanced risk has begun.

- Underwriters set war risk premiums based on information available to them individually or obtained from the Lloyd's Joint War Committee. The information may include a war risk table, such as the one from Swiss Re. In this table, every war risk area is assigned a risk rating that is then translated into a specific rate. The more dangerous a region is considered to be, the higher the percentage of the ship value an owner has to pay as a hull war risk premium for coverage. In the past few years, these rates have varied from 0.0175 to 0.04 percent per annum for a standard war risk rate on hull. In some cases, coverage may not be available at any price.

Terrorism and damage caused by chemical and biological means are excluded from ordinary insurance in line with war losses and damage due to radioactivity. Note that the liability for wreck removal may fall on the war risk insurer. This liability represents a considerable risk in view of the current focus on environmental pollution. Wreck removal operations are required more often than before and can be very costly.

Piracy. According to the ICC International Maritime Bureau, there were 239 pirate attacks against ships in 2006. Piracy is become more sophisticated. Today's pirates, often armed with automatic weapons, approach ships by speedboat, with the goal of holding crew and vessels for ransom or stealing valuable cargo. The marine insurance market handles the risk of piracy in several different ways. In the U.S. marine markets, for example, piracy risks are excluded from hull clauses and instead are covered under

separate hull war risk policies, which also cover terrorism risks. It is sometimes hard to determine whether an attack is by pirates for personal gain, which would be covered under a hull policy, or by terrorists for a religious or political cause, which would be covered by a war risk policy.