

1 **SEC. ____ . IMPROVED PAYMENT PROCESS FOR INDEMNIFICATION CLAIMS**
2 **FOR CONTRACTORS PROVIDING AIR OR OCEAN**
3 **TRANSPORTATION FOR THE DEPARTMENT OF DEFENSE.**

4 (a) INDEMNIFICATION FOR LOSSES OF AIR CARRIERS.—Section 9514 of title 10, United
5 States Code, is amended by inserting after subsection (e) the following new subsection:

6 “(f) CONTRACTUAL INDEMNIFICATION.—In the event that insurance or reinsurance is not
7 available through the Federal Aviation Administration at the time such insurance must be issued,
8 the Secretary of Defense shall use the indemnification process under this section to adjudicate
9 promptly the claims of the air carrier and third party claimants if contractual indemnification
10 pursuant to Public Law 85-804 has been provided to the air carrier. The Secretary shall develop
11 an expedited process for the adjudication and, if approved, payment of air carrier and crew
12 claims under such indemnification process. The Secretary may accept insured value or other
13 reasonable amount determined by the Secretary for the value of the hull and equipment. To the
14 extent possible, the Secretary may use commercial insurance practices to resolve and pay
15 indemnification claims, and the Secretary may exercise the same authorities as the Secretary of
16 Transportation would have if insurance had been provided. If the Secretary of Defense issues a
17 contractual indemnification to an air carrier eligible for insurance under chapter 443 of title 49,
18 the Secretary shall notify the Secretary of Transportation that such indemnification was issued.”.

19 (b) INDEMNIFICATION FOR LOSSES OF OCEAN CARRIERS.—Section 2645 of such title is
20 amended by inserting after subsection (f) the following new subsection:

21 “(g) CONTRACTUAL INDEMNIFICATION.—In the event that insurance or reinsurance is not
22 available through the Maritime Administration, the Secretary of Defense shall use the
23 indemnification process under this section to adjudicate promptly the claims of the vessel

1 operator and third party claimants if contractual indemnification pursuant to Public Law 85-804
2 has been provided to the operator. The Secretary shall develop an expedited process for the
3 adjudication and, if approved, payment of vessel operators and crew claims under such
4 indemnification process. The Secretary may accept insured value or other reasonable amount
5 determined by the Secretary for the value of the hull and equipment. To the extent possible, the
6 Secretary may use commercial insurance practices to resolve and pay indemnification claims,
7 and the Secretary may exercise the same authorities as the Secretary of Transportation would
8 have if insurance had been provided.”.

Section-by-Section Analysis

This proposal would amend section 9514 of title 10, United States Code, to authorize the Secretary of Defense to use the procedures of that statute to pay contractual indemnification claims for air carriers who participate in the Civil Reserve Air Fleet program in the event that war risk insurance is unavailable from the Federal Aviation Administration. While government provided insurance is best situated to respond to aircraft accidents involving war risks or all risks, lapses in the statutory authority for that program or other causes may result in only contractual indemnification being available to protect air carriers providing support to the Civil Reserve Air Fleet program. The Civil Reserve Air Fleet program is essential to the defense of the United States. Approximately 96 per cent of all soldiers and approximately 40 per cent of all cargo during a major contingency will be transported on Civil Reserve Air Fleet aircraft. As commercial aviation war-risk insurance cancels immediately upon a hostile detonation of a nuclear weapon and at the outbreak of a war between any two of the five named major countries, resort to government provided insurance programs may be necessary. As other conditions also may cause cancellation of commercial aviation war-risk insurance within seven days or less of notification by the insurance companies, little time is available to negotiate contracts or other arrangements with the commercial insurance markets. As modern aircraft may cost in excess of \$300 million, United States air carriers supporting the Civil Reserve Air Fleet program cannot assume the risk of loss and must have insurance coverage for the hull and third party liability. The Department of Defense has in place agreements for the provision of war-risk insurance coverage pursuant to Chapter 443 of title 49, United States Code, by the Department of Transportation to cover the cost of the hull and up to \$2 billion in third party liability claims. However, that program sunsets approximately every five years and on occasion has lapsed pending congressional action. The Department of Defense must be prepared to respond regardless of the status of the Chapter 443 insurance program.

Because most of the aircraft placed in the Civil Reserve Air Fleet program by United States air carriers are leased rather than owned, the prompt payment for the hull in the event of a loss is very important. Lease terms common in the aviation industry require the hull to be insured at all times and payment to the Lessor for full value of the loss must be made within 30 to 45 days of loss. As the leases commonly cover more than one aircraft (e.g., fleet leases), an air carrier that cannot meet the terms of their lease risk significant losses to their operations. As a result, air carriers have indicated that if the government cannot make payment within the time frames required by the lease, the air carrier may have to pay such loss from their operating funds and may be forced into bankruptcy before the government is able to respond. Section 9514 of title 10, United States Code, was written to provide a vehicle to allow the prompt payment to the Department of Transportation of sufficient funds to repay that department for any payment for losses insured at the request of the Department of Defense. That section was also designed, in situations where the funds in the Department of Transportation Aviation Insurance fund were insufficient to pay the full value of a hull, to allow payment to the air carrier through the aviation insurance program to meet the required time frame. By adding the proposed section to Section 9514, the same ability to use commercial insurance industry practices to reach agreement with the air carrier on hull value and to rapidly reimburse the air carrier and the Lessor for the loss of the aircraft will be available to the Department of Defense where it has provided contractual indemnification to the air carriers.

A similar need exists in the marine insurance area. The Department of Transportation provides vessel war-risk insurance to vessel owners and operators supporting the Department of Defense during contingencies. Although industry practice allows for a longer time for repayment of the insured loss, the need is the same. The Department of Transportation program, contained in chapter 59 of title 46, United States Code, also sunsets approximately every five years unless extended by Congress. Contractual indemnification by the Department of Defense may be the only method available to protect vessel owners and operators supporting the Department, and a provision to allow rapid adjudication and transfer or payment of the funds to the contractor is necessary to provide a realistic backup to the vessel war-risk insurance program administered by the Maritime Administration.

Budget Implications: The actual cost of this proposal is zero. The amount which may be transferred to the Federal Aviation Administration under current law would be the same amounts paid to the air carriers, crews, and third parties pursuant to the new subsection. Likewise, the amount which would have been transferred to the Department of Transportation, Maritime Administration, for vessels insured under their programs are in the same amounts as would be paid directly to the vessel owners and operators under a contractual indemnification program.

Changes to Existing Law: This section would add a new subsection (f) to section 9514, and a new subsection (g) to section 2645, of title 10, United States Code, as follows:

§ 9514. Indemnification of Department of Transportation for losses covered by defense-related aviation insurance

(a) Prompt Indemnification Required. - (1) In the event of a loss that is covered by defense-related aviation insurance, the

Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification -

(A) in the case of a claim for the loss of an aircraft hull, not later than 30 days after the date on which the Secretary of Transportation determines the claim to be payable or that amounts are due under the policy that provided the defense-related aviation insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of an aircraft hull that is (or may be) covered by defense-related aviation insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such aircraft. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the aircraft hull to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is payable, any amount paid under this paragraph arising from such claim shall be credited against the amount payable under the aviation insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) Source of Funds for Payment of Indemnity. - The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

(c) Notice to Congress. - In the event of a loss that is covered by defense-related aviation insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of \$1,000,000, the Secretary of Defense shall submit to

Congress -

(1) notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss; and

(2) semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of those funds, pending litigation, and estimated total cost to the Government.

(d) Implementing Matters. - (1) Payment of indemnification under this section is not subject to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

(e) Construction With Other Transfer Authority. - Authority to transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

(f) CONTRACTUAL INDEMNIFICATION.—In the event that insurance or reinsurance is not available through the Federal Aviation Administration at the time such insurance must be issued, the Secretary of Defense shall use the indemnification process under this section to adjudicate promptly the claims of the air carrier and third party claimants if contractual indemnification pursuant to Public Law 85-804 has been provided to the air carrier. The Secretary shall develop an expedited process for the adjudication and, if approved, payment of air carrier and crew claims under such indemnification process. The Secretary may accept insured value or other reasonable amount determined by the Secretary for the value of the hull and equipment. To the extent possible, the Secretary may use commercial insurance practices to resolve and pay indemnification claims, and the Secretary may exercise the same authorities as the Secretary of Transportation would have if insurance had been provided. If the Secretary of Defense issues a contractual indemnification to an air carrier eligible for insurance under chapter 443 of title 49, the Secretary shall notify the Secretary of Transportation that such indemnification was issued.

(g) Definitions. - In this section:

(1) Defense-related aviation insurance. - The term

"defense-related aviation insurance" means aviation insurance and reinsurance provided through policies issued by the Secretary of Transportation under chapter 443 of title 49 that pursuant to section 44305(b) of that title is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) Loss. - The term "loss" includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the defense-related aviation insurance.

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§ 2645. Indemnification of Department of Transportation for losses covered by vessel war risk insurance

(a) Prompt Indemnification Required. - (1) In the event of a loss that is covered by vessel war risk insurance, the Secretary of Defense shall promptly indemnify the Secretary of Transportation for the amount of the loss consistent with the indemnification agreement between the two Secretaries that underlies such insurance. The Secretary of Defense shall make such indemnification -

(A) in the case of a claim for the loss of a vessel, not later than 90 days after the date on which the Secretary of Transportation determines the claim to be payable or that amounts are due under the policy that provided the vessel war risk insurance; and

(B) in the case of any other claim, not later than 180 days after the date on which the Secretary of Transportation determines the claim to be payable.

(2) When there is a loss of a vessel that is (or may be) covered by vessel war risk insurance, the Secretary of Transportation may make, during the period when a claim for such loss is pending with the Secretary of Transportation, any required periodic payments owed by the insured party to a lessor or mortgagee of such vessel. Such payments shall commence not later than 30 days following the date of the presentment of the claim for the loss of the vessel to the Secretary of Transportation. If the Secretary of Transportation determines that the claim is payable, any amount paid under this paragraph arising from such claim shall be credited against the

amount payable under the vessel war risk insurance. If the Secretary of Transportation determines that the claim is not payable, any amount paid under this paragraph arising from such claim shall constitute a debt to the United States, payable to the insurance fund. Any such amounts so returned to the United States shall be promptly credited to the fund or account from which the payments were made under this paragraph.

(b) Source of Funds for Payment of Indemnity. - The Secretary of Defense may pay an indemnity described in subsection (a) from any funds available to the Department of Defense for operation and maintenance, and such sums as may be necessary for payment of such indemnity are hereby authorized to be transferred to the Secretary of Transportation for such purpose.

(c) Deposit of Funds. - Any amount transferred to the Secretary of Transportation under this section shall be deposited in, and merged with amounts in, the Vessel War Risk Insurance Fund as provided in the second sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(d) Notice to Congress. - In the event of a loss that is covered by vessel war risk insurance in the case of an incident in which the covered loss is (or is expected to be) in an amount in excess of \$1,000,000, the Secretary of Defense shall submit to Congress -

(1) notification of the loss as soon after the occurrence of the loss as possible and in no event more than 30 days after the date of the loss; and

(2) semiannual reports thereafter updating the information submitted under paragraph (1) and showing with respect to losses arising from such incident the total amount expended to cover such losses, the source of such funds, pending litigation, and estimated total cost to the Government.

(e) Implementing Matters. - (1) Payment of indemnification under this section is not subject to section 2214 or 2215 of this title or any other provision of law requiring notification to Congress before funds may be transferred.

(2) Consolidation of claims arising from the same incident is not required before indemnification of the Secretary of Transportation for payment of a claim may be made under this section.

(f) Construction With Other Transfer Authority. - Authority to

transfer funds under this section is in addition to any other authority provided by law to transfer funds (whether enacted before, on, or after the date of the enactment of this section) and is not subject to any dollar limitation or notification requirement contained in any other such authority to transfer funds.

(g) CONTRACTUAL INDEMNIFICATION.—In the event that insurance or reinsurance is not available through the Maritime Administration, the Secretary of Defense shall use the indemnification process under this section to adjudicate promptly the claims of the vessel operator and third party claimants if contractual indemnification pursuant to Public Law 85-804 has been provided to the operator. The Secretary shall develop an expedited process for the adjudication and, if approved, payment of vessel operators and crew claims under such indemnification process. The Secretary may accept insured value or other reasonable amount determined by the Secretary for the value of the hull and equipment. To the extent possible, the Secretary may use commercial insurance practices to resolve and pay indemnification claims, and the Secretary may exercise the same authorities as the Secretary of Transportation would have if insurance had been provided.

(h) Definitions. - In this section:

(1) Vessel war risk insurance. - The term "vessel war risk insurance" means insurance and reinsurance provided through policies issued by the Secretary of Transportation under title XII of the Merchant Marine Act, 1936 (46 U.S.C. App. 1281 et seq.), that is provided by that Secretary without premium at the request of the Secretary of Defense and is covered by an indemnity agreement between the Secretary of Transportation and the Secretary of Defense.

(2) Vessel war risk insurance fund. - The term "Vessel War Risk Insurance Fund" means the insurance fund referred to in the first sentence of section 1208(a) of the Merchant Marine Act, 1936 (46 U.S.C. App. 1288(a)).

(3) Loss. - The term "loss" includes damage to or destruction of property, personal injury or death, and other liabilities and expenses covered by the vessel war risk insurance.