

MEMORANDUM OF UNDERSTANDING (MOU)

BETWEEN

THE DEPARTMENT OF DEFENSE

AND

THE DEPARTMENT OF TRANSPORTATION

CONCERNING

COMMERCIAL AVIATION PROGRAMS

WHEREAS it is the policy of the United States to recognize the importance of the commercial air carrier industry in meeting both peacetime and wartime airlift and associated support for transporting Department of Defense (DoD) personnel and cargo; and

WHEREAS civil air is used to augment military airlift regardless of an activation of the Civil Reserve Air Fleet (CRAF); and

WHEREAS the Secretary of Defense is responsible for both the DoD program for oversight of commercial air safety in the transportation of DoD personnel and the CRAF program for providing augmented airlift and associated support; and

WHEREAS both of these important programs require close coordination with the Department of Transportation (DOT) and the Federal Aviation Administration (FAA) which retains primary oversight of civilian aviation safety; and

COMMERCIAL AIR CARRIER SAFETY INFORMATION

WHEREAS the Secretary of Defense is responsible under Chapter 157 of Title 10, United States Code (U.S.C.), for issues relating to the charter air transportation of members of the Armed Forces, and for the air movement of DoD personnel via commercial airlift in peacetime as well as during contingencies and war; and

WHEREAS the Administrator of the FAA is responsible under Subtitle VII, Part A, of Title 49, U.S.C., (hereafter referred to as "the statute") to ensure that U.S. air carriers remain properly and adequately equipped and able to conduct safe operations in accordance with the rules and regulations applicable to those operations; and

THE CIVIL RESERVE AIR FLEET PROGRAM

WHEREAS it is the policy of the United States to recognize the interdependence of military and civilian airlift and associated support capabilities in meeting national wartime air support requirements, and to promote those national security interests contained within the commercial air carrier industry in order to preserve the industrial mobilization base; and

WHEREAS the Secretary of Transportation is responsible under Executive Order 12656 for developing plans to use civil air transportation resources to meet civil and military needs during national emergencies and defense-oriented situations; and

WHEREAS the Secretary of Transportation and the Administrator of the FAA, in accordance with the statute are responsible for the regulation of air commerce in such manner as to best promote safety and fulfill the needs of national defense; and

WHEREAS the Secretary of Defense in accordance with Executive Orders 12656 and 12919 has developed a cooperative plan, entitled the CRAF program, with the civil air carrier industry to augment DoD organic airlift capability and associated support capabilities; and

WHEREAS the CRAF program may be incrementally activated by order of DoD to meet ascending levels of DoD requirements up to and including the most demanding level of requirements based on plans approved by the Joint Staff; and

WHEREAS all the civil air carrier aircraft included in CRAF are contractually committed to support DoD requirements and, for stage III, are allocated to DoD by DOT, pursuant to the Secretary of Transportation's priorities and allocations authority contained in Title I of the Defense Production Act of 1950, as amended (50 U.S.C. App 2061, et seq) and Executive Order 12919, Part II.

NOW, THEREFORE, it is agreed between DoD and DOT as follows:

SECTION I

1. DoD Commercial Air Safety Programs: DoD, represented by the DoD Air Carrier Survey and Analysis Office and DOT, represented by the FAA Flight Standards Service and the Office of the Secretary of Transportation (OST) Air Carrier Fitness Division (OST), shall share aviation safety-related information that assists both agencies in fulfilling their statutory and regulatory responsibilities regarding air carrier fitness and safety. While not all inclusive, each agency agrees to share the types of data and documentation indicated below:

a. DoD shall provide the following information to FAA and where indicated, to OST: Copies of survey reports prepared after each DoD on-site survey of a civil air carrier; access to

the DoD Air Carrier Automated Support (ACAS) system data base (OST also); immediate notification of any air carrier being considered for suspension or nonuse by the DoD, and any actual nonuse decision by DoD (OST also); and oral or written feedback on any significant aviation safety issue identified by DoD.

b. FAA shall provide the following information to DoD: Copies of each National Aviation Safety Inspection Program (NASIP) inspection report after an FAA air carrier inspection; access to FAA operations, airworthiness and safety automated data bases; access to FAA's automated System Performance Analysis System (SPAS); International Aviation Safety Assessment reports; Regional Safety Inspection Program information; oral feedback and information from appropriate FAA Flight Standards District Office (FSDO) personnel relative to air carriers undergoing DoD periodic tabletop performance evaluations. Preliminary inspection results will be provided to DoD as soon as reasonably possible after the inspection is completed.

c. DOT and DoD, represented by the offices identified in paragraph 1 above, shall meet at least annually to review and discuss air carrier issues of mutual concern (e.g., safety trends, agency program developments, and information sharing).

d. DoD, represented by the office identified in paragraph 1 above, shall annually meet with and brief the FAA Associate Administrator for Regulation and Certification regarding the results of the DoD Air Carrier Oversight Program.

2. A review committee to include the Deputy Under Secretary of Defense for Logistics, the Deputy Assistant Secretary of Transportation for Aviation and International Affairs, and the FAA Associate Administrator for Regulation and Certification, will meet as required to review the status of this information sharing program.

3. DOT, FAA, and DoD shall independently fund all their respective costs associated with the implementation of this MOU.

4. Points of Contact

a. Department of Defense. The DoD Air Carrier Survey and Analysis Office will serve as the point of contact for DoD and will implement and administer section I of this MOU for DoD.

b. Department of Transportation. The Deputy Assistant Secretary of Transportation for Aviation and International Affairs and the FAA Associate Administrator for Regulation and Certification will serve as the points of contact for the DOT and will implement and administer section I of this MOU for DOT.

SECTION II

1. The CRAF is a program:

a. In which DoD, by contractual arrangement, makes provisions for using aircraft of U.S. civil air carriers, certificated under 14 C.F.R. Part 121, that own or otherwise control such aircraft.

b. Under which DoD, through airlift contracts, allocates normal day-to-day peacetime requirements for civil augmentation based on air carriers' commitments to the CRAF program.

c. Which can be incrementally activated by DoD in response to defense-oriented situations, up to and including a declared national emergency or war, to satisfy DoD airlift requirements.

d. In which DOT allocates committed aircraft to Stage III of the CRAF program to augment the military airlift capability of DoD. Allocations are made in accordance with DoD requirements or as mutually agreed upon by DoD and DOT.

2. All civil air augmentation of DoD airlift, regardless of a CRAF activation, will continue to be governed by the appropriate Federal Aviation Regulations (FAR) applicable to civil aircraft operations and comply with those requirements until such time as DoD requests a deviation to the FARs and FAA, if determining the request appropriate, provides the requested deviation. Pre-approved deviations and exemptions approved by DOT or FAA to facilitate the emergency and expedited movement of U.S. forces or the evacuation of non-essential personnel shall be included in a supplemental agreement pursuant to Section V of this MOU.

3. The Department of Defense shall:

a. Determine the number and types of civil aircraft needed to augment military airlift resources in a variety of situations including the most demanding national defense-oriented emergencies.

b. Advise DOT at least annually of the numbers and types of aircraft needed for CRAF Stage III, by segment.

c. Provide timely advice to the Secretary of Transportation when DoD intends to activate CRAF or any portion thereof. United States Transportation Command (USTRANSCOM) will provide information to DOT as needed.

d. Provide access to DOT and FAA, during any activation or contingency, to existing airport surveys, information pertinent to aeronautical infrastructure, and threat information by way of the classified intelligence net.

4. The Department of Transportation shall:

a. Develop plans, through the Research and Special Programs Administration, and allocate civil air carrier aircraft to CRAF Stage III based on DoD requirements pursuant to paragraph 3.a. above, after having considered overall DOT administrative and statutory responsibilities. Aircraft shall be allocated to CRAF by manufacturer, model and series, registration number, manufacturer's serial number, owner/operator, and the intended CRAF segment or section of use. DoD shall have priority consideration in any allocation situation.

b. Advise DoD in the event that DOT plans to allocate to CRAF fewer aircraft of any type than the requirement stated by DoD pursuant to paragraph 3.a., and provide the rationale for such reduced allocations.

c. Notify DoD if a particular level of CRAF activation will have a serious adverse impact on the civil air carrier industry's ability to provide essential service.

5. Allocation Arbitration: Upon notification by DOT that a particular level of CRAF activation will have a significant adverse impact on the civil air carrier industry's ability, as a whole, to provide essential commercial service, DoD will consult with DOT to identify alternatives or determine ways to minimize impact. DoD requests for additional allocations, following activation of stage III, will be expeditiously considered by DOT; however, priority over other competing interests cannot be guaranteed. Either party to this MOU reserves the right, authorized by Executive Order 12656, to present issues regarding the DOT CRAF allocation or the DoD requirement for the CRAF aircraft to the Director of the Federal Emergency Management Agency (FEMA) for resolution, or if not resolved, to the Assistant to the President for National Security Affairs.

6. Activation of the CRAF: The Commander in Chief, United States Transportation Command (USCINCTRANS), with the approval of the Secretary of Defense or the Secretary's designee, may activate any stage of CRAF during national emergencies and defense-oriented situations when expanded civil augmentation of military airlift activity is required. Once activation of a stage is approved, USCINCTRANS may activate and deactivate the segments (e.g., international, national, or aeromedical), or sections (e.g., long range international passenger or cargo, short range international passenger or cargo, etc.) within that stage, or in increments, as required.

7. Points of Contact:

a. Department of Defense:

(1) The Deputy Under Secretary of Defense for Logistics will serve as the point of contact in DoD for issues associated with Section II of the MOU.

(2) USCINCTRANS, as the DoD single manager for DoD common user transportation, will administer and implement the policies set forth in Section II of this MOU for DoD.

b. Department of Transportation:

(1) The Director of Emergency Transportation, Research and Special Programs Administration, as DOT's principal departmental staff officer for all civil transportation emergency preparedness matters, is the DOT point of contact for all CRAF activities, including allocations to the CRAF, and will implement and administer Section II of this MOU for DOT.

(2) The Manager, Emergency Operations Staff of the FAA is the operational point of contact for all CRAF activities.

SECTION III

1. The Aviation Insurance Program, Established under Chapter 443 of Title 49, U. S. C., is a Program:

a. In which the Administrator of the FAA, under a delegation from the Secretary of Transportation, may insure certain aircraft operations where commercial insurance is not available on reasonable terms, and is authorized to respond, evaluate, settle and pay third-party liability claims arising out of an accident or incident insured pursuant to Chapter 443.

b. In which DoD is required to reimburse DOT for payments made under non-premium insurance policies issued pursuant to Chapter 443 of the statute arising from DoD contracted airlift incidents or accidents.

c. In which DoD is the primary agency using the non-premium aviation insurance program under Chapter 443 of the statute and DoD has both a national defense and fiscal interest in prompt claims resolution.

d. In which DoD has a present capability to respond, evaluate, settle and pay third-party liability claims under non-premium insurance issued by the FAA pursuant to Chapter 443. It is an efficient use of government resources for DOT to use the claims personnel resources available within DoD and for DoD to provide those claims resources.

2. The Department of Defense shall:

a. Through USTRANSCOM and its component command contracting officer, submit a timely request to the FAA to activate non-premium aviation insurance coverage, consistent with commercial insurance programs, pursuant to Chapter 443 of the statute when needed for peacetime civil air support and for the CRAF program. DoD and FAA will jointly develop and maintain notification and other coordination procedures to be used in the event of an accident or incident involving an aircraft insured under Chapter 443 of the statute.

b. Pursuant to the Indemnification Agreement between the Secretary of Defense and the Secretary of Transportation, upon notification by the Department of Transportation of a Chapter 443 non-premium insurance claim pursuant to a DoD contract, the Department of Defense shall transfer funds necessary to pay the claim to the Aviation Insurance Revolving Fund in accordance with the provisions of 10 U.S.C., section 9514.

c. Pursuant to the delegation from FAA of third-party claims response authority and the authority to evaluate and settle such claims, the Secretary of Defense shall re-delegate to such claims personnel as he or his designee deems appropriate, the authority to respond, evaluate and settle claims using DoD claims procedures and drawing from funds in the aviation fund established under Chapter 443 of the statute.

d. The Secretary of Defense or his designee shall notify FAA within 90 days of the execution of this MOU of the Secretary of Defense's designees and re-delegations. DoD will notify FAA within 90 days of any change in designees and re-delegations.

3. The Federal Aviation Administration shall:

a. Assess the availability of commercial insurance coverage when requested for peacetime civil air support and for CRAF activation, and, if unavailable under reasonable terms, provide non-premium aviation insurance coverage pursuant to Chapter 443 of the statute. DoD and FAA will jointly develop and maintain notification and other coordination procedures to be used in the event of an accident or incident involving aircraft insured under Chapter 443 of the statute.

b. Delegate hereby third-party claims response authority and the authority to evaluate and settle such claims for incidents or accidents arising from DoD-contracted airlift insured under Chapter 443 of the statute to the Secretary of Defense, with authority to re-delegate. The Administrator of the FAA further authorizes the Secretary of Defense or his designees to pay such claims using standard DoD claims procedures and drawing from funds in the aviation fund established under Chapter 443 of the statute. Aggregate payments made under this authorization for any one insured accident or incident shall not exceed the amounts agreed to in a Supplemental Agreement pursuant to Section V of this MOU without first obtaining increased funds authority from the Administrator of the FAA, or his designee. The agreed amounts should be adequate to enable payment of the majority of claims which may reasonably be expected in the event of an accident or incident, but in no event shall the agreed amount be less than \$5,000,000.

4. Points of Contact:

a. Department of Defense: USTRANSCOM, or its designated component, shall be the point of contact for DoD on insurance issues.

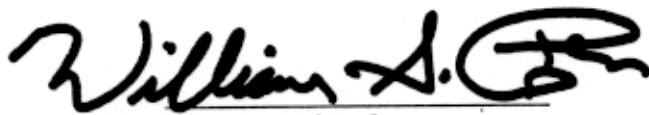
b. Department of Transportation: The FAA Office of Aviation Policy and Plans shall be the point of contact for the DOT.

SECTION IV

1. In accordance with title 49, U. S. C., section 40105, DOT shall consult with DoD on broad policy goals and individual negotiations, to include international aviation issues affecting the viability of the CRAF program. Consultation will be made through the Assistant Deputy Under Secretary of Defense for Transportation Policy or designee and the Deputy Assistant Secretary of Transportation for Aviation and International Affairs, or designee.
2. In support of the CRAF program and FEMA's disaster response obligations under the Federal Response Plan, DOT can forward air requirements for FEMA to DoD, which will procure the civil airlift through USTRANSCOM and its components.

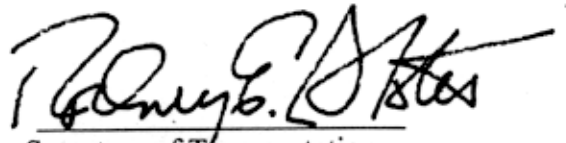
SECTION V

1. Supplemental Agreement: The Deputy Under Secretary of Defense for Logistics and the DOT Administrator, Research and Special Programs Administration, the Deputy Assistant Secretary of Transportation for Aviation and International Affairs, and the Administrator of the FAA may enter into supplemental memorandum(s) of agreement required to carry out the provisions of Sections II, III, and IV of this MOU.
2. Amendment: This MOU may be amended at any time by mutual consent.
3. Effective Date: This MOU supersedes the MOUs between the Secretary of Defense and the Secretary of Transportation dated 25 September 1987 and 24 September 1987. It will be effective as of the date of last signature indicated below and shall continue indefinitely, unless amended by mutual agreement or terminated.
4. Termination: Either party may terminate this MOU with six months written notice to the other party.



Secretary of Defense

Date: 10 JUN 1998



Secretary of Transportation

Date: November 10, 1998