SEC. ___. REVISION TO AUTHORITIES RELATING TO TRANSPORTATION OF CIVILIAN PASSENGERS AND COMMERCIAL CARGOES BY DEPARTMENT OF DEFENSE WHEN SPACE UNAVAILABLE ON COMMERCIAL LINES.

(a) TRANSPORTATION ON DOD VEHICLES AND AIRCRAFT.—Subsection (a) of section 2649 of title 10, United States Code, is amended—

(1) by inserting "AUTHORITY.—" before "Whenever"; and

(2) by inserting ", vehicles, or aircraft" in the first sentence after "vessels" both places it appears.

(b) AMOUNTS CHARGED FOR TRANSPORTATION IN EMERGENCY, DISASTER, OR HUMANITARIAN RESPONSE CASES.—

(1) LIMITATION ON AMOUNTS CHARGED.—The second sentence of subsection (a) of such section is amended by inserting before the period the following: ", except that in the case of transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance, any amount charged for such transportation may not exceed the cost of providing the transportation".

(2) CREDITING OF RECEIPTS.—Subsection (b) of such section is amended by striking "Amounts" and inserting "CREDITING OF RECEIPTS.—Any amount received under this section with respect to transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance may be credited to the appropriation, fund, or account used in incurring the obligation for which such amount is received. In all other cases, amounts".

(c) TRANSPORTATION DURING CONTINGENCIES OR DISASTER RESPONSES.—Such section is further amended by adding at the end the following new subsection:

"(c) TRANSPORTATION OF ALLIED PERSONNEL DURING CONTINGENCIES OR DISASTER RESPONSES.—When space is available on vessels, vehicles, or aircraft operated by the Department of Defense and the Secretary of Defense determines that operations in the area of a contingency operation or disaster response would be facilitated if allied forces or civilians were to be transported using such vessels, vehicles, or aircraft, the Secretary may provide such transportation on a noninterference basis, without charge.".

(d) CONFORMING AMENDMENT.—Section 2648 of such title is amended by inserting ", vehicles, or aircraft" after "vessels" in the matter preceding paragraph (1).

(e) TECHNICAL AMENDMENTS.—

(1) The heading of section 2648 of such title is amended to read as follows:

"§2648. Persons and supplies: sea, land, and air transportation".

(2) The heading of section 2649 of such title is amended to read as follows:

"§2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft".

(f) CLERICAL AMENDMENTS.—The table of sections at the beginning of chapter 157 of such title is amended by striking the items relating to sections 2648 and 2649 and inserting the following new items:

"2648. Persons and supplies: sea, land, and air transportation.
"2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft.".

Section-by-Section Analysis

Section 2649 of title 10, United States Code, currently authorizes the Secretary of Defense to transport civilian passengers and commercial cargoes on vessels operated by the

Department of Defense, when such transportation is not commercially available. Reimbursement must be made at rates not less than those charged by commercial companies for the same services, and amounts received are covered into the Treasury as miscellaneous receipts. This proposed section will expand the means by which transportation may be provided to include vehicles and aircraft operated by the Department of Defense. In addition, when such transportation is provided in response to an emergency, disaster response, or humanitarian request, this section proposes to credit any amounts received in reimbursement to the appropriation, fund, or account incurring the expense of providing the transportation.

A number of factors ensure that the authority provided under section 2649 of title 10, United States Code, is, and will continue to be, used sparingly and in exceptional circumstances. Commercial concerns provide comprehensive, worldwide transportation networks, resulting in few instances in which commercial transportation is unavailable. In addition, various international agreements and domestic law and policy either preclude or severely limit circumstances in which state or public vessels, vehicles, and aircraft may be used in a commercial context. Consequently, as a practical matter, the use of the authority granted in section 2649 has been, and will continue to be, limited to emergency, humanitarian, and similar exceptional circumstances. For example, in the wake of the Southeast Asia Tsunami in late 2005, there were few commercial assets available to transport the tremendous amount of humanitarian aid and related assistance needed in the region in a timely fashion. The Department of Defense was significantly constrained by its inability, under existing law, to provide air transportation directly to non-governmental entities, even on a reimbursable basis. The proposed revisions to section 2649 would prevent such difficulties in the future. In addition, because air transportation in particular is costly, and the Department of Defense is not funded to cover the sort of unforeseen, exigent circumstances in which the authority proposed for section 2649 will typically be used, it is imperative that amounts received in reimbursement be credited to the Department appropriation, fund, or account incurring the cost of providing the support. The proposal would not change the application of the Denton program authorized by section 402 of title 10, whereby supplies, meeting the criteria of that section, may be transported without charge on a space available basis even where commercial transportation is available. To ensure uniformity in interpretation, Section 2648 of title 10, would be amended to add “, vehicles, or aircraft” after “vessels” to clarify that space available transportation on vessels under that statute also includes vehicles and aircraft operated by the Secretary.

Finally, in the context of a contingency or disaster response, space is occasionally available on Department of Defense aircraft, vehicles, or vessels scheduled to perform missions. In such cases, it is frequently desirable to permit allied forces and other personnel assisting in the contingency or disaster response to take advantage of such space. However, circumstances surrounding a contingency or disaster response are often such that it is difficult if not impossible to collect the data needed to obtain reimbursement from individuals, companies, or foreign governments. In those instances where such data is captured, the cost of obtaining reimbursement may exceed the revenues generated from the billing of such travel. It may also require additional personnel to be in theater for other than combat or combat support purposes. This proposed provision would provide the Secretary of Defense, in limited circumstances, the flexibility to authorize the carriage of allied and civilian personnel on a non-interference basis, without charge.

Budget Implications: On several recent occasions, DoD has provided emergency response to civilians and provided support for humanitarian causes. DoD does provide transportation to civilians and non-government entities when no commercial transportation is available and circumstances warrant DoD assistance. Examples include the transportation of Maggie, the elephant, from the Alaskan Zoo to a location in the United States where she could be transported by tractor-trailer to her new home; returning Keko, the killer whale, to her home waters of Iceland from California; and the recent (Jan 2008) air-drop mission providing engine repair parts to a commercial vessel, stranded in a remote location near Antarctica and in danger of being crushed by the ice, to save approximately 30 crew members and the vessel. In the case of the air drop of engine parts, the company that owned the ship was willing to pay the cost of a C-17 mission, the only aircraft available with sufficient range to get to the ship, in order to save the ship and crew. The Commander of USPACOM declared that situation to be an emergency and utilized a USTRANSCOM C-17 to rescue the crew and ship. The mission cost approximately $200K to be funded from the operating budget of USPACOM or its components. The money received from the company will go to the U.S. Treasury, not to USPACOM. Combatant commands should not be required to weigh mission needs against responding to civilians in desperate need of assistance.

Costing Methodology (USTRANSCOM): The overall number of flights or vessel movements where this authority might be used would likely increase, but not significantly given the proposed statutory constraints. As the Department of Defense does not charge a profit on transportation provided, any transactions should be budget neutral and recoup only the costs and overhead expended. There may be some slight savings to the Department in not having to absorb the costs on those infrequent occasions when such transportation is approved as an exception to policy. As the amount of funds currently being deposited to the Miscellaneous Receipts Account in the Treasury from these forms of transportation is minimal and infrequent at best, there would be almost no impact on the U.S. Treasury, but there would be potentially significant humanitarian and public relations gains for the Department.

Changes to Existing Law: This section would make the following changes to 10 U.S.C. 2648 and 2649:

§ 2648. Persons and supplies: sea, land, and air transportation

Whenever the Secretary of Defense considers that space is available, the following persons and supplies may be transported on vessels**, vehicles, or aircraft** operated by the Department of Defense:

(1) Members of Congress.

(2) Other officers of the United States traveling on official business.

(3) Secretaries and supplies of the Armed Services Department of the Young Men's Christian Association.

(4) Officers and employees of the Commonwealth of Puerto Rico on official business.

(5) The families of members of the armed forces, officers and employees of the Department of Defense or the Coast Guard, and persons described in paragraphs (1), (2), and (4).

However, a person described in paragraph (4) or (5) may be so transported only if the transportation is without expense to the United States.

§ 2649. Civilian passengers and commercial cargoes: transportation on Department of Defense vessels, vehicles, and aircraft

(a) **AUTHORITY.—**Whenever space is unavailable on commercial lines and is available on vessels**, vehicles, or aircraft** operated by the Department of Defense, civilian passengers and commercial cargo may, in the discretion of the Secretary of Defense, be transported on those vessels**, vehicles, or aircraft**. Rates for transportation under this section may not be less than those charged by commercial lines for the same kinds of service**, except that in the case of transportation provided in response to an emergency, a disaster, or a request for humanitarian assistance, any amount charged for such transportation may not exceed the cost of providing the transportation**.

(b) **CREDITING OF RECEIPTS.—Amounts received under this section when the transportation was provided in response to an emergency, disaster response, or humanitarian request may be credited to the appropriation, fund, or account used in incurring the obligation for which such amount is received. In all other cases, amounts** received under this section shall be covered into the Treasury as miscellaneous receipts.

(c) TRANSPORTATION OF ALLIED PERSONNEL DURING CONTINGENCIES OR DISASTER RESPONSES.—When space is available on vessels, vehicles, or aircraft operated by the Department of Defense and the Secretary of Defense determines that operations in the area of a contingency operation or disaster response would be facilitated if allied forces or civilians were to be transported using such vessels, vehicles, or aircraft, the Secretary may provide such transportation on a noninterference basis, without charge.