

the crew for the purposes of section 3304 of title 46, United States Code.”

**LONG-TERM LEASE OR CHARTER AUTHORITY FOR CERTAIN DOUBLE-HULL TANKERS AND OCEANOGRAPHIC VESSELS**

Pub. L. 103-160, div. A, title I, §126, Nov. 30, 1993, 107 Stat. 1567, as amended by Pub. L. 104-106, div. D, title XLIII, §4321(i)(1)(A), Feb. 10, 1996, 110 Stat. 676, provided that:

“(a) **AUTHORITY.**—The Secretary of the Navy may enter into a long-term lease or charter for any double-hull tanker or oceanographic vessel constructed in a United States shipyard after the date of the enactment of this Act [Nov. 30, 1993] using assistance provided under the National Shipbuilding Initiative.

“(b) **CONDITIONS ON OBLIGATION OF FUNDS.**—Unless budget authority is specifically provided in an appropriations Act for the lease or charter of vessels pursuant to subsection (a), the Secretary may not enter into a contract for a lease or charter pursuant to that subsection unless the contract includes the following provisions:

“(1) A statement that the obligation of the United States to make payments under the contract in any fiscal year is subject to appropriations being provided specifically for that fiscal year and specifically for that lease or charter or that kind of vessel lease or charter.

“(2) A commitment to obligate the necessary amount for each fiscal year covered by the contract when and to the extent that funds are appropriated for that lease or charter, or that kind of lease or charter, for that fiscal year.

“(3) A statement that such a commitment given under paragraph (2) does not constitute an obligation of the United States.

“(c) **INAPPLICABILITY OF CERTAIN LAWS.**—A long-term lease or charter authorized by subsection (a) may be entered into without regard to the provisions of section 2401 or 2401a of title 10, United States Code.

“(d) **DEFINITION.**—For purposes of subsection (a), the term ‘long-term lease or charter’ has the meaning given that term in subparagraph (A) of section 2401(d)(1) of title 10, United States Code.”

**LIMITATION ON USE OF FUNDS FOR CONTRACTS FOR LEASE OR CHARTER OF ANY VESSEL, AIRCRAFT, OR VEHICLES**

Pub. L. 101-165, title IX, §9081, Nov. 21, 1989, 103 Stat. 1147, directed that no funds available to Department of Defense could be used to enter into any contract with term of eighteen months or more or to extend or renew any contract for term of eighteen months or more, for any vessel, aircraft, or vehicle, through lease, charter, or similar agreement without previously having been submitted to Committees on Appropriations, with further requirement with respect to contractual agreements which imposed certain termination liability on Government, prior to repeal by Pub. L. 103-355, title III, §3065(b), Oct. 13, 1994, 108 Stat. 3337. See section 2401a of this title.

**ISSUANCE OF GUIDELINES**

Section 1232(a)(2) of Pub. L. 98-525 provided in part that guidelines required to be issued under subsec. (f) of this section shall be issued not later than Oct. 31, 1984.

**LIMITATION ON FUNDS AVAILABLE TO DEPARTMENT OF DEFENSE TO ENTER INTO CONTRACTS DURING FISCAL YEAR 1984**

Section 1202(d) of Pub. L. 98-94 provided that: “Funds available to the Department of Defense may not be used to enter into any contract during fiscal year 1984 under section 2401 of title 10, United States Code, as added by subsection (a), the term of which is for 3 years or more, inclusive of any option for contract extension or renewal, for any vessels, aircraft, or vehicles, through a lease, charter, or similar agreement, that

imposes an estimated termination liability (excluding the estimated value of the leased item at the time of termination) on the United States exceeding 50 percent of the original purchase value of the vessel, aircraft, or vehicle involved for which the Congress has not specifically provided budget authority for the obligation of 10 percent of such termination liability.”

**LIMITATION ON USE OF FUNDS APPROPRIATED PURSUANT TO AUTHORIZATIONS CONTAINED IN DEPARTMENT OF DEFENSE AUTHORIZATION ACT, 1984**

Section 1202(b) of Pub. L. 98-94, as amended by Pub. L. 99-514, §2, Oct. 22, 1986, 100 Stat. 2095, provided that: “Funds appropriated pursuant to an authorization contained in this Act may not be used to indemnify any person under the terms of a contract entered into with the United States under section 2401 of title 10, United States Code (as added by subsection (a))—

“(1) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986 [Title 26, Internal Revenue Code]; or

“(2) to pay any attorneys’ fees in connection with such contract.”

**§ 2401a. Lease of vehicles, equipment, vessels, and aircraft**

(a) **LEASING OF COMMERCIAL VEHICLES AND EQUIPMENT.**—The Secretary of Defense may use leasing in the acquisition of commercial vehicles and equipment whenever the Secretary determines that such leasing is practicable and efficient.

(b) **LIMITATION ON CONTRACTS WITH TERMS OF 18 MONTHS OR MORE.**—The Secretary of Defense or the Secretary of a military department may not enter into any contract with a term of 18 months or more, or extend or renew any contract for a term of 18 months or more, for any vessel, aircraft, or vehicle, through a lease, charter, or similar agreement, unless the Secretary has considered all costs of such contract (including estimated termination liability) and has determined in writing that the contract is in the best interest of the Government.

(Added Pub. L. 103-355, title III, §3065(a)(1), Oct. 13, 1994, 108 Stat. 3337; amended Pub. L. 104-106, div. A, title VIII, §807(a)(1), Feb. 10, 1996, 110 Stat. 391; Pub. L. 105-85, div. A, title X, §1073(a)(52), Nov. 18, 1997, 111 Stat. 1903.)

**PRIOR PROVISIONS**

Provisions similar to those in subsec. (b) were contained in Pub. L. 101-165, title IX, §9081, Nov. 21, 1989, 103 Stat. 1147, which was set out as a note under section 2401 of this title, prior to repeal by Pub. L. 103-355, §3065(b).

A prior section 2401a was renumbered section 2350f of this title.

**AMENDMENTS**

1997—Subsec. (a). Pub. L. 105-85 substituted “such leasing” for “leasing of such vehicles”.

1996—Pub. L. 104-106 substituted “Lease of vehicles, equipment, vessels, and aircraft” for “Lease of vessels, aircraft, and vehicles” as section catchline, designated existing text as subsec. (b), inserted subsec. (b) heading, and added subsec. (a).

**LEASES FOR TANKER AIRCRAFT UNDER MULTIYEAR AIRCRAFT-LEASE PILOT PROGRAM**

Pub. L. 107-314, div. A, title I, §133, Dec. 2, 2002, 116 Stat. 2477, provided that: “The Secretary of the Air Force may not enter into a lease for the acquisition of tanker aircraft for the Air Force under section 8159 of

the Department of Defense Appropriations Act, 2002 (division A of Public Law 107-117; 115 Stat. 2284; 10 U.S.C. 2401a note) until—

“(1) the Secretary submits the report specified in subsection (c)(6) of such section; and

“(2) either—

“(A) authorization and appropriation of funds necessary to enter into such lease are provided by law; or

“(B) a new start reprogramming notification for the funds necessary to enter into such lease has been submitted in accordance with established procedures.”

#### MULTI-YEAR AIRCRAFT LEASE PILOT PROGRAM

Pub. L. 108-136, div. A, title I, §135, Nov. 24, 2003, 117 Stat. 1413, as amended by Pub. L. 108-375, div. A, title I, §133, Oct. 28, 2004, 118 Stat. 1829, which prohibited the leasing of tanker aircraft pursuant to the multiyear aircraft lease pilot program under Pub. L. 107-117, §8159, set out below, and authorized the Secretary of the Air Force to enter into a multiyear contract for the purchase of such aircraft, was repealed by Pub. L. 110-417, [div. A], title I, §132, Oct. 14, 2008, 122 Stat. 4377.

Pub. L. 107-206, title I, §308, Aug. 2, 2002, 116 Stat. 841, provided that: “During the current fiscal year and hereafter, section 2533a of title 10, United States Code, shall not apply to any transaction entered into to acquire or sustain aircraft under the authority of section 8159 of the Department of Defense Appropriations Act, 2002 (division A of Public Law 107-117; 115 Stat. 2284) [set out below].”

Pub. L. 107-117, div. A, title VIII, §8159, Jan. 10, 2002, 115 Stat. 2284, as amended by Pub. L. 107-248, title VIII, §8117, Oct. 23, 2002, 116 Stat. 1564, provided that:

“(a) The Secretary of the Air Force may, from funds provided in this Act [see Tables for classification] or any future appropriations Act, establish and make payments on a multi-year pilot program for leasing general purpose Boeing 767 aircraft and Boeing 737 aircraft in commercial configuration.

“(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

“(c) Under the aircraft lease Pilot Program authorized by this section:

“(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee, but only those that are not inconsistent with any of the terms and conditions mandated herein. Notwithstanding the provisions of Section 3324 of Title 31, United States Code, payment for the acquisition of leasehold interests under this section may be made for each annual term up to one year in advance.

“(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years, inclusive of any options to renew or extend the initial lease term.

“(3) The Secretary may provide for special payments in a lessor if the Secretary terminates or cancels the lease prior to the expiration of its term. Such special payments shall not exceed an amount equal to the value of 1 year’s lease payment under the lease.

“(4) Subchapter IV of chapter 15 of title 31, United States Code shall apply to the lease transactions under this section, except that the limitation in section 1553(b)(2) shall not apply.

“(5) The Secretary shall lease aircraft under terms and conditions consistent with this section and consistent with the criteria for an operating lease as defined in OMB Circular A-11, as in effect at the time of the lease.

“(6) Lease arrangements authorized by this section may not commence until:

“(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services of the Senate and House of Representatives and Subcommittees on Defense of the

Committees on Appropriations of the Senate and House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and describe the expected savings, if any, comparing total costs, including operation, support, acquisition, and financing, of the lease, including modification, with the outright purchase of the aircraft as modified.

“(B) A period of not less than 30 calendar days has elapsed after submitting the report.

“(7) Not later than 1 year after the date on which the first aircraft is delivered under this Pilot Program, and yearly thereafter on the anniversary of the first delivery, the Secretary shall submit a report to the congressional defense committees describing the status of the Pilot Program. The Report will be based on at least 6 months of experience in operating the Pilot Program.

“(8) The Air Force shall accept delivery of the aircraft in a general purpose configuration.

“(9) At the conclusion of the lease term, each aircraft obtained under that lease may be returned to the contractor in the same configuration in which the aircraft was delivered.

“(10) The present value of the total payments over the duration of each lease entered into under this authority shall not exceed 90 percent of the fair market value of the aircraft obtained under that lease.

“(d) No lease entered into under this authority shall provide for—

“(1) the modification of the general purpose aircraft from the commercial configuration, unless and until separate authority for such conversion is enacted and only to the extent budget authority is provided in advance in appropriations Acts for that purpose; or

“(2) the purchase of the aircraft by, or the transfer of ownership to, the Air Force.

“(e) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

“(f) The authority provided under this section may be used to lease not more than a total of 100 Boeing 767 aircraft and 4 Boeing 737 aircraft for the purposes specified herein.

“(g) Notwithstanding any other provision of law, any payments required for a lease entered into under this Section, or any payments made pursuant to subsection (c)(3) above, may be made from appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the lease takes effect; appropriations available for operation and maintenance or for lease or procurement of aircraft at the time that the payment is due; or funds appropriated for those payments.”

Pub. L. 106-79, title VIII, §8133, Oct. 25, 1999, 113 Stat. 1267, provided that:

“(a) The Secretary of the Air Force may establish a multi-year pilot program for leasing aircraft for operational support purposes, including transportation for the combatant Commanders in Chief, on such terms and conditions as the Secretary may deem appropriate, consistent with this section.

“(b) Sections 2401 and 2401a of title 10, United States Code, shall not apply to any aircraft lease authorized by this section.

“(c) Under the aircraft lease Pilot Program authorized by this section:

“(1) The Secretary may include terms and conditions in lease agreements that are customary in aircraft leases by a non-Government lessor to a non-Government lessee.

“(2) The term of any individual lease agreement into which the Secretary enters under this section shall not exceed 10 years.

“(3) The Secretary may provide for special payments to a lessor if either the Secretary terminates

or cancels the lease prior to the expiration of its term or aircraft are damaged or destroyed prior to the expiration of the term of the lease. Such special payments shall not exceed an amount equal to the value of one year's lease payment under the lease. The amount of special payments shall be subject to negotiation between the Air Force and lessors.

“(4) Notwithstanding any other provision of law, any payments required under a lease under this section, and any payments made pursuant to subsection (3) above may be made from:

“(A) appropriations available for the performance of the lease at the time the lease takes effect;

“(B) appropriations for the operation and maintenance available at the time which the payment is due; and

“(C) funds appropriated for those payments.

“(5) The Secretary may lease aircraft, on such terms and conditions as the Secretary may deem appropriate, consistent with this section, through an operating lease consistent with OMB Circular A-11.

“(6) The Secretary may exchange or sell existing aircraft and apply the exchange allowance or sale proceeds in whole or in part toward the cost of leasing replacement aircraft under this section.

“(7) Lease arrangements authorized by this section may not commence until:

“(A) The Secretary submits a report to the congressional defense committees [Committees on Armed Services and Subcommittees on Defense of the Committees on Appropriations of the Senate and the House of Representatives] outlining the plans for implementing the Pilot Program. The report shall describe the terms and conditions of proposed contracts and the savings in operations and support costs expected to be derived from retiring older aircraft as compared to the expected cost of leasing newer replacement aircraft.

“(B) A period of not less than 30 calendar days has elapsed after submitting the report.

“(8) Not later than 1 year after the date on which the first aircraft is delivered under this Pilot Program, and yearly thereafter on the anniversary of the first delivery, the Secretary shall submit a report to the congressional defense committees describing the status of the Pilot Program. The Report will be based on at least 6 months of experience in operating the Pilot Program.

“(9) No lease of operational support aircraft may be entered into under this section after September 30, 2004.

“(d) The authority granted to the Secretary of the Air Force by this section is separate from and in addition to, and shall not be construed to impair or otherwise affect, the authority of the Secretary to procure transportation or enter into leases under a provision of law other than this section.

“(e) The authority provided under this section may be used to lease not more than a total of six aircraft for the purposes of providing operational support.”

#### LEASE OF FIREFIGHTING, CRASH RESCUE, AND SNOW REMOVAL EQUIPMENT

Pub. L. 105-262, title VIII, § 8126, Oct. 17, 1998, 112 Stat. 2333, provided that:

“(a) The Secretary of the Army and the Secretary of the Air Force may each enter into one or more multi-year leases of nontactical firefighting equipment, nontactical crash rescue equipment, or nontactical snow removal equipment. The period of a lease entered into under this section shall be for any period not in excess of 10 years. Any such lease shall provide that performance under the lease during the second and subsequent years of the contract is contingent upon the appropriation of funds and shall provide for a cancellation payment to be made to the lessor if such appropriations are not made.

“(b) Lease payments made under subsection (a) shall be made from amounts provided in this or future appropriations Acts.

“(c) This section is effective for all fiscal years beginning after September 30, 1998.”

#### PILOT PROGRAM FOR LEASING COMMERCIAL UTILITY CARGO VEHICLES

Pub. L. 104-106, div. A, title VIII, § 807(c), Feb. 10, 1996, 110 Stat. 392, as amended by Pub. L. 106-65, div. A, title X, § 1067(6), Oct. 5, 1999, 113 Stat. 774, authorized the Secretary of the Army to conduct a pilot program for leasing commercial utility cargo vehicles, directed the Secretary to submit to committees of Congress a report prior to commencement of the program containing plans for its implementation and setting forth the savings in operating and support costs expected to be derived from retiring older commercial utility cargo vehicles, as compared to the expected costs of leasing newer commercial utility cargo vehicles, directed the Secretary to submit to committees of Congress a report on the status of the program not later than one year after the date on which the first lease under the program had been entered into, and provided that no lease could be entered into under the program after Sept. 30, 2000.

#### § 2402. Prohibition of contractors limiting subcontractor sales directly to the United States

(a) Each contract for the purchase of supplies or services made by the Department of Defense shall provide that the contractor will not—

(1) enter into any agreement with a subcontractor under the contract that has the effect of unreasonably restricting sales by the subcontractor directly to the United States of any item or process (including computer software) made or furnished by the subcontractor under the contract (or any follow-on production contract); or

(2) otherwise act to restrict unreasonably the ability of a subcontractor to make sales to the United States described in clause (1).

(b) This section does not prohibit a contractor from asserting rights it otherwise has under law.

(c) This section does not apply to a contract that is for an amount not greater than the simplified acquisition threshold (as defined in section 134 of title 41).

(d)(1) An agreement between the contractor in a contract for the acquisition of commercial items and a subcontractor under such contract that restricts sales by such subcontractor directly to persons other than the contractor may not be considered to unreasonably restrict sales by that subcontractor to the United States in violation of the provision included in such contract pursuant to subsection (a) if the agreement does not result in the United States being treated differently with regard to the restriction than any other prospective purchaser of such commercial items from that subcontractor.

(2) In paragraph (1), the term “commercial item” has the meaning given such term in section 103 of title 41.

(Added Pub. L. 98-525, title XII, § 1234(a), Oct. 19, 1984, 98 Stat. 2601; amended Pub. L. 103-355, title IV, § 4102(f), title VIII, § 8105(g), Oct. 13, 1994, 108 Stat. 3340, 3392; Pub. L. 111-350, § 5(b)(25), Jan. 4, 2011, 124 Stat. 3844.)

#### AMENDMENTS

2011—Subsec. (c). Pub. L. 111-350, § 5(b)(25)(A), substituted “section 134 of title 41” for “section 4(1) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(1))”.