

and struck out former par. (2) which read as follows: “For each naval vessel program and military satellite program, the Secretary of Defense shall submit to Congress a report providing—

“(A) an explanation of the rate and quantity prescribed for low-rate initial production and the considerations in establishing that rate and quantity;

“(B) a test and evaluation master plan for that program; and

“(C) an acquisition strategy for that program that has been approved by the Secretary, to include the procurement objectives in terms of total quantity of articles to be procured and annual production rates.” 1994—Subsec. (a)(2). Pub. L. 103-355, §3015(1), substituted “this section” for “paragraph (1)” and “engineering and manufacturing development” for “full-scale engineering development”.

Subsec. (a)(4). Pub. L. 103-355, §3015(2), (3), added par. (4) and redesignated former par. (4) as (5).

Subsec. (a)(5). Pub. L. 103-355, §3015(2), redesignated par. (4) as (5) and inserted after first sentence “If the quantity exceeds 10 percent of the total number of articles to be produced, as determined at the milestone II decision with respect to that system, the Secretary shall include in the statement the reasons for such quantity.”

#### EFFECTIVE DATE OF 1996 AMENDMENT

For effective date and applicability of amendment by section 4321(b)(13) of Pub. L. 104-106, see section 4401 of Pub. L. 104-106, set out as a note under section 2302 of this title.

### § 2401. Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles

(a)(1) The Secretary of a military department may make a contract for the lease of a vessel, aircraft, or combat vehicle or for the provision of a service through use by a contractor of a vessel, aircraft, or combat vehicle only as provided in subsection (b) if—

(A) the contract will be a long-term lease or charter; or

(B) the terms of the contract provide for a substantial termination liability on the part of the United States.

(2) The Secretary of a military department may make a contract that is an agreement to lease or charter or an agreement to provide services and that is (or will be) accompanied by a contract for the actual lease, charter, or provision of services only as provided in subsection (b) if the contract for the actual lease, charter, or provision of services is (or will be) a contract described in paragraph (1).

(b)(1) The Secretary may make a contract described in subsection (a)(1) if—

(A) the Secretary has been specifically authorized by law to make the contract;

(B) before a solicitation for proposals for the contract was issued the Secretary notified the congressional defense committees of the Secretary's intention to issue such a solicitation;

(C) the Secretary has notified those committees of the proposed contract and provided a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than providing for the lease, charter, or services involved through purchase of the vessel, aircraft, or combat vehicle to be used under the contract, and a period of 30 days of continuous session of Congress has expired following the date on

which notice was received by such committees; and

(D) the Secretary has certified to those committees—

(i) that entering into the proposed contract as a means of obtaining the vessel, aircraft, or combat vehicle is the most cost-effective means of obtaining such vessel, aircraft, or combat vehicle; and

(ii) that the Secretary has determined that the lease complies with all applicable laws, Office of Management and Budget circulars, and Department of Defense regulations.

(2) For purposes of paragraph (1)(C), the continuity of a session of Congress is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than three days to a day certain are excluded in a computation of such 30-day period.

(3) Upon receipt of a notice under paragraph (1)(C), a committee identified in paragraph (1)(B) may request the Inspector General of the Department of Defense or the Comptroller General of the United States to conduct a review of the proposed contract to determine whether or not such contract meets the requirements of this section.

(4) If a review is requested under paragraph (3), the Inspector General of the Department of Defense or the Comptroller General of the United States, as the case may be, shall submit to the Secretary and the congressional defense committees a report on such review before the expiration of the period specified in paragraph (1)(C).

(5) In the case of a contract described in subsection (a)(1)(B), the commander of the special operations command may make a contract without regard to this subsection if—

(A) funds are available and obligated for the full cost of the contract (including termination costs) on or before the date the contract is awarded;

(B) the Secretary of Defense submits to the congressional defense committees a certification that there is no alternative for meeting urgent operational requirements other than making the contract; and

(C) a period of 30 days of continuous session of Congress has expired following the date on which the certification was received by such committees.

(c)(1) Funds may not be appropriated for any fiscal year to or for any armed force or obligated or expended for—

(A) the long-term lease or charter of any aircraft, naval vessel, or combat vehicle; or

(B) for the lease or charter of any aircraft, naval vessel, or combat vehicle the terms of which provide for a substantial termination liability on the part of the United States,

unless funds for that purpose have been specifically authorized by law.

(2) Funds appropriated to the Department of Defense may not be used to indemnify any person under the terms of a contract entered into under this section—

(A) for any amount paid or due by any person to the United States for any liability arising under the Internal Revenue Code of 1986; or

(B) to pay any attorneys' fees in connection with such contract.

(d)(1)(A) In this section, the term "long-term lease or charter" (except as provided in subparagraph (B)) means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of five years or longer or more than one-half the useful life of the vessel, aircraft, or combat vehicle; or

(ii) the initial term of which is for a period of less than five years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is five years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of five years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of five years or longer.

(B) In the case of an agreement under which the lessor first places the property in service under the agreement or the property has been in service for less than one year and there is allowable to the lessor or charterer an investment tax credit or depreciation for the property leased, chartered, or otherwise provided under the agreement under section 168 of the Internal Revenue Code of 1986 (unless the lessor or charterer has elected depreciation on a straightline method for such property), the term "long-term lease or charter" means a lease, charter, service contract, or conditional sale agreement—

(i) the term of which is for a period of three years or longer; or

(ii) the initial term of which is for a period of less than three years but which contains an option to renew or extend the agreement for a period which, when added to the initial term (or any previous renewal or extension), is three years or longer.

Such term includes the extension or renewal of a lease or charter agreement if the term of the extension or renewal thereof is for a period of three years or longer or if the term of the lease or charter agreement being extended or renewed was for a period of three years or longer.

(2) For the purposes of this section, the United States shall be considered to have a substantial termination liability under a contract—

(A) if there is an agreement by the United States under the contract to pay an amount not less than the amount equal to 25 percent of the value of the vessel, aircraft, or combat vehicle under lease or charter, calculated on the basis of the present value of the termination liability of the United States under such charter or lease (as determined under regulations prescribed by the Secretary of Defense); or

(B) if (as determined under regulations prescribed by the Secretary of Defense) the sum of—

(i) the present value of the amount of the termination liability of the United States under the contract as of the end of the term of the contract (exclusive of any option to extend the contract); and

(ii) the present value of the total of the payments to be made by the United States under the contract (excluding any option to extend the contract) attributable to capital-hire,

is more than one-half the price of the vessel, aircraft, or combat vehicle involved.

(e)(1) Whenever a request is submitted to Congress for the authorization of the long-term lease or charter of aircraft, naval vessels, or combat vehicles or for the authorization of a lease or charter of aircraft, naval vessels, or combat vehicles which provides for a substantial termination liability on the part of the United States, the Secretary of Defense shall submit with that request an analysis of the cost to the United States (including lost tax revenues) of any such lease or charter arrangement compared with the cost to the United States of direct procurement of the aircraft, naval vessels, or combat vehicles by the United States.

(2) Any such analysis shall be reviewed and evaluated by the Director of the Office of Management and Budget and the Secretary of the Treasury within 30 days after the date on which the request and analysis are submitted to Congress. The Director and Secretary shall conduct such review and evaluation on the basis of the guidelines issued pursuant to subsection (f) and shall report to Congress in writing on the results of their review and evaluation at the earliest practicable date, but in no event more than 45 days after the date on which the request and analysis are submitted to the Congress.

(3) Whenever a request is submitted to Congress for the authorization of funds for the Department of Defense for the long-term lease or charter of aircraft, naval vessels, or combat vehicles authorized under this section, the Secretary of Defense—

(A) shall indicate in the request what portion of the requested funds is attributable to capital-hire; and

(B) shall reflect such portion in the appropriate procurement account in the request.

(f)(1) If a lease or charter covered by this section is a capital lease or a lease-purchase—

(A) the lease or charter shall be treated as an acquisition and shall be subject to all applicable statutory and regulatory requirements for the acquisition of aircraft, naval vessels, or combat vehicles; and

(B) funds appropriated to the Department of Defense for operation and maintenance may not be obligated or expended for the lease or charter.

(2) In this subsection, the terms "capital lease" and "lease-purchase" have the meanings given those terms in Appendix B to Office of Management and Budget Circular A-11, as in effect on January 6, 2006.

(g) The Director of the Office of Management and Budget and the Secretary of the Treasury shall jointly issue guidelines for determining under what circumstances the Department of Defense may use lease or charter arrangements for aircraft, naval vessels, and combat vehicles rather than directly procuring such aircraft, vessels, and combat vehicles.

(h) The Secretary of a military department may make a contract for the lease of a vessel or for the provision of a service through use by a contractor of a vessel, the term of which is for a period of greater than two years, but less than five years, only if—

(1) the Secretary has notified the congressional defense committees of the proposed contract and included in such notification—

(A) a detailed description of the terms of the proposed contract and a justification for entering into the proposed contract rather than obtaining the capability provided for by the lease, charter, or services involved through purchase of the vessel;

(B) a determination that entering into the proposed contract as a means of obtaining the vessel is the most cost-effective means of obtaining such vessel; and

(C) a plan for meeting the requirement provided by the proposed contract upon completion of the term of the lease contract; and

(2) a period of 60 days has expired following the date on which notice was received by such committees.

(Added Pub. L. 98-94, title XII, §1202(a)(1), Sept. 24, 1983, 97 Stat. 679; amended Pub. L. 98-525, title XII, §1232(a), Oct. 19, 1984, 98 Stat. 2600; Pub. L. 100-26, §7(h)(1), Apr. 21, 1987, 101 Stat. 282; Pub. L. 103-35, title II, §201(c)(6), May 31, 1993, 107 Stat. 98; Pub. L. 104-106, div. A, title XV, §§1502(a)(20), 1503(a)(21), Feb. 10, 1996, 110 Stat. 504, 512; Pub. L. 106-65, div. A, title X, §1067(1), Oct. 5, 1999, 113 Stat. 774; Pub. L. 106-398, §1 [[div. A], title X, §1087(a)(13)], Oct. 30, 2000, 114 Stat. 1654, 1654A-291; Pub. L. 109-163, div. A, title VIII, §815(a)-(d)(1), Jan. 6, 2006, 119 Stat. 3381, 3382; Pub. L. 110-181, div. A, title VIII, §824, title X, §1011, Jan. 28, 2008, 122 Stat. 227, 303; Pub. L. 111-84, div. A, title X, §1073(a)(24), Oct. 28, 2009, 123 Stat. 2473; Pub. L. 112-239, div. A, title VIII, §821, title X, §1076(f)(26), Jan. 2, 2013, 126 Stat. 1830, 1953.)

#### REFERENCES IN TEXT

The Internal Revenue Code of 1986, referred to in subsecs. (c)(2)(A) and (d)(1)(B), is classified generally to Title 26, Internal Revenue Code. Section 168 of the Internal Revenue Code of 1986 is classified to section 168 of Title 26.

#### AMENDMENTS

2013—Subsecs. (b)(1)(B), (h)(1). Pub. L. 112-239, §1076(f)(26), substituted “the congressional defense committees” for “the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on Armed Services and the Committee on Appropriations of the House of Representatives”.

Subsec. (h)(2). Pub. L. 112-239, §821, substituted “60 days” for “30 days of continuous session of Congress”.

2009—Subsec. (f)(2). Pub. L. 111-84 substituted “January 6, 2006” for “the date of the enactment of the National Defense Authorization Act for Fiscal Year 2006”.

2008—Subsec. (b)(5). Pub. L. 110-181, §824, added par. (5).

Subsec. (h). Pub. L. 110-181, §1011, added subsec. (h).

2006—Pub. L. 109-163, §815(d)(1), substituted “Requirement for authorization by law of certain contracts relating to vessels, aircraft, and combat vehicles” for “Requirement for authorization by law of certain contracts relating to vessels and aircraft” in section catchline.

Subsec. (a)(1). Pub. L. 109-163, §815(a)(1), substituted “vessel, aircraft, or combat vehicle” for “vessel or aircraft” in two places in introductory provisions.

Subsec. (b)(1)(C). Pub. L. 109-163, §815(a)(1), substituted “vessel, aircraft, or combat vehicle” for “vessel or aircraft”.

Subsec. (b)(1)(D). Pub. L. 109-163, §815(b)(1), added subpar. (D).

Subsec. (b)(3), (4). Pub. L. 109-163, §815(b)(2), added pars. (3) and (4).

Subsec. (c)(1). Pub. L. 109-163, §815(a)(2), substituted “aircraft, naval vessel, or combat vehicle” for “aircraft or naval vessel” in subpars. (A) and (B).

Subsec. (d)(1)(A)(i), (2)(A), (B). Pub. L. 109-163, §815(a)(1), substituted “vessel, aircraft, or combat vehicle” for “vessel or aircraft”.

Subsec. (e)(1), (3). Pub. L. 109-163, §815(a)(3), substituted “aircraft, naval vessels, or combat vehicles” for “aircraft or naval vessels” wherever appearing.

Subsec. (f). Pub. L. 109-163, §815(c)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Pub. L. 109-163, §815(a)(4), substituted “aircraft, naval vessels, and combat vehicles” for “aircraft and naval vessels” and “such aircraft, vessels, and combat vehicles” for “such aircraft and vessels”.

Subsec. (g). Pub. L. 109-163, §815(c)(1), redesignated subsec. (f) as (g).

2000—Subsec. (b)(1)(B). Pub. L. 106-398 substituted “Committee on Appropriations of the House” for “Committees on Appropriations of the House”.

1999—Subsec. (b)(1)(B). Pub. L. 106-65 substituted “and the Committee on Armed Services” for “and the Committee on National Security”.

1996—Subsec. (b)(1)(B). Pub. L. 104-106, §1502(a)(20)(A), substituted “the Committee on Armed Services and the Committee on Appropriations of the Senate and the Committee on National Security and the Committees on Appropriations of the” for “the Committees on Armed Services and on Appropriations of the Senate and”.

Subsec. (b)(1)(C). Pub. L. 104-106, §1502(a)(20)(B), substituted “those committees” for “the Committees on Armed Services and on Appropriations of the Senate and House of Representatives”.

Subsec. (c)(2). Pub. L. 104-106, §1503(a)(21), struck out “pursuant to an authorization contained in the Department of Defense Authorization Act, 1984 (Public Law 98-94), or in any other law enacted after September 24, 1983,” before “may not be used”.

1993—Subsec. (c)(2)(A). Pub. L. 103-35 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1987—Subsec. (d)(1)(B). Pub. L. 100-26 substituted “Internal Revenue Code of 1986” for “Internal Revenue Code of 1954”.

1984—Subsec. (c). Pub. L. 98-525, §1232(a)(1), designated existing provisions as par. (1), redesignated as cls. (A) and (B) former cls. (1) and (2), respectively, and added par. (2).

Subsec. (f). Pub. L. 98-525, §1232(a)(2), struck out at end “Such guidelines shall be issued not later than 90 days after the date of enactment of this section [Sept. 24, 1983].”

#### EFFECTIVE DATE

Pub. L. 98-94, title XII, §1202(a)(3), Sept. 24, 1983, 97 Stat. 681, provided that: “Section 2401 of title 10, United States Code, as added by paragraph (1), shall not apply in the case of any lease or charter agreement entered into by the Department of Defense before December 1, 1983.”

#### RIDING GANG MEMBER REQUIREMENTS

Pub. L. 109-364, div. A, title X, §1018, Oct. 17, 2006, 120 Stat. 2380, as amended by Pub. L. 110-417, div. C, title XXXV, §3504, Oct. 14, 2008, 122 Stat. 4762, provided that:

“(a) IN GENERAL.—The Secretary of Defense may not award, renew, extend, or exercise an option to extend any charter of a vessel documented under chapter 121 of

title 46, United States Code, for the Department of Defense, or any contract for the carriage of cargo by a vessel documented under that chapter for the Department of Defense, unless the charter or contract, respectively, includes provisions that—

“(1) subject to paragraph (2), allow riding gang members to perform work on the vessel during the effective period of the charter or contract only under terms, conditions, restrictions, and requirements as provided in section 8106 of title 46, United States Code; and

“(2) require that riding gang members hold a merchant mariner's document issued under chapter 73 of title 46, United States Code, or a transportation security card issued under section 70105 of such title.

“(b) EXEMPTION.—

“(1) IN GENERAL.—In accordance with regulations issued by the Secretary of Defense, an individual shall not be treated as a riding gang member for the purposes of section 8106 of title 46, United States Code, and this section if—

“(A) the individual is aboard a vessel that is under charter or contract for the carriage of cargo for the Department of Defense, for purposes other than engaging in the operation or maintenance of the vessel; and

“(B) the individual—

“(i) accompanies, supervises, guards, or maintains unit equipment aboard a ship, commonly referred to as supercargo personnel;

“(ii) is one of the force protection personnel of the vessel;

“(iii) is a specialized repair technician; or

“(iv) is otherwise required by the Secretary of Defense to be aboard the vessel.

“(2) BACKGROUND CHECK.—

“(A) IN GENERAL.—This section shall not apply to an individual unless—

“(i) the name and other necessary identifying information for the individual is submitted to the Secretary for a background check; and

“(ii) except as provided in subparagraph (B), the individual successfully passes a background check by the Secretary prior to going aboard the vessel.

“(B) WAIVER.—The Secretary may waive the application of subparagraph (A)(ii) for an individual who holds a merchant mariner's document issued under chapter 73 of title 46, United States Code, or a transportation security card issued under section 70105 of such title.

“(3) EXEMPTED INDIVIDUAL NOT TREATED AS IN ADDITION TO THE CREW.—An individual who, under paragraph (1), is not treated as a riding gang member shall not be counted as an individual in addition to 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

Pub. L. 98-525, title XII, §1232(a)(2), Oct. 19, 1984, 98 Stat. 2600, 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

Pub. L. 98-94, title XII, §1202(d), Sept. 24, 1983, 97 Stat. 682, 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

Pub. L. 98-94, title XII, §1202(b), Sept. 24, 1983, 97 Stat. 681, 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; Pub. L. 113-76, div. C, title VIII, §8122, Jan. 17, 2014, 128 Stat. 133, 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) Repealed. Pub. L. 113-76, div. C, title VIII, §8122, Jan. 17, 2014, 128 Stat. 133.]

“(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 au-