

1 **SEC. ____ . INAPPLICABILITY TO CONTRACTOR OWNED-CONTRACTOR**
2 **OPERATED (COCO) AVIATION SERVICE CONTRACTS OF**
3 **REQUIREMENT FOR AUTHORIZATION BY LAW OF CERTAIN**
4 **LONG-TERM LEASE OR CHARTER CONTRACTS.**

5 Section 3671 of title 10, United States Code, is amended by adding at the end the
6 following new subsection:

7 “(c) EXEMPTION FOR CONTRACTOR OWNED-CONTRACTOR OPERATED AIRCRAFT SERVICE
8 CONTRACTS.—Subsection (a) does not apply to an indefinite delivery, indefinite quantity type service
9 contract that—

10 “(1) includes annualized option periods;

11 “(2) is awarded following adequate competition; and

12 “(3) requires the use of contractor owned-contractor operated aircraft.”

Section-by-Section Analysis

This proposal would seek an exemption from chapter 257 of title 10, United States Code, for indefinite delivery, indefinite quantity (IDIQ) contracts for Contractor Owned-Contractor Operated (COCO) aircraft services. The Department of the Navy (DoN) has found that it is economical to divest itself of specialized organic aircraft capabilities, replacing them with COCO service contracts, thereby extending the life available of high value modern military aircraft. Recent experience and industry feedback has proven an unwillingness for potential industry partners to compete for contracts that are less than five years due to length of time required for aircraft capability establishment. Currently, the length of time required for aircraft capability establishment limits the potential for an industry partner’s return on investment (ROI) and amortization of their capital assets. Incorporation of this exemption would allow industry the opportunity to amortize service-based contract investments across the full contract period of performance.

The DoN is currently unable to generate adequate resources needed to organically support all Fleet training requirements. The DoN is both manpower and asset limited to field adequate numbers of aircraft with sufficient technological sophistication or capabilities required to satisfy all of its Fleet training requirements. It has proven cost-effective and successful to utilize COCO aircraft contracts to fill these gaps without increasing military manpower or aircraft procurement requirements.

Sections 3671 and 3674 of title 10, United States Code, set forth requirements and limitations for Federal contracts for long-term lease or charter of vessels, aircraft, and combat vehicles. Sections 3671 and 3674 define the types of contracts to which the statutes apply and sets forth the required authorizations for those contracts.

The authorization requirements under section 3671 apply to any “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 [...] 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.”

Under section 3674(a)(1)(A), a “long-term lease or charter” is defined as 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 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. [*italics added*]

The DoN’s interpretation is that service contracts were included in section 3674 to address ownership, whereas leased aircraft would eventually be purchased at the conclusion of the service contracts. The DoN is seeking an exemption for any COCO aircraft service contracts that provide only services and lack provisions for any Government ownership or procurements.

The DoN has mitigated Substantial Termination Liability through the use of Indefinite Delivery, Indefinite Quantity (IDIQ) type contracts, in addition to the use of Clause 5252.216-9506 MINIMUM AND MAXIMUM QUANTITIES (NAVAIR) (MAR 1999) to limit the Government’s liability. IDIQ contract structures are utilized since the service scope and requirements are well-defined and unlikely to change significantly over the life of the contract. Additionally, use of IDIQ contracts provides for a level of budget certainty since the contractor assumes the risk of cost overruns and risk of cost increases, while providing ordering and commitment flexibility in obligation of appropriations. NAVAIR Clause 5252.216-9506 enables the Government to limit its appropriation liability by defining minimum quantities of services and the length of time funds are committed. IDIQ minimums are typically restricted to less than 10% of the total contract value. Additionally, DoN COCO contracts will not involve “substantial termination liability” because they have annual periods of performance rather than a multiyear period.

This exemption that the DoN is seeking would allow for increased competition and lower cost through longer contract periods of performance. Based on feedback received from industry as result of market research and industry days, the DoN expects greater competition and improved affordability. The industrial base is interested in pursuing contracts that allow the amortization of investment costs over the course of a contract to mitigate the impact of capital investments necessary to support the contract requirements. Aircraft modification and capability establishment efforts typically consume 2 years or more of a 5-year contract period, limiting potential Fleet benefits of services and recapitalization of industry investments.

The DoN mitigates concerns about long term obligations through the incorporation of IDIQ Option Years. These services contracts are typically funded with annual Operations and Maintenance (O&M) 1-year appropriation, with the application of options allowing for severable lengths of obligation further reducing long term commitments in advance of appropriation authorization.

The DoN issues contracts to address specific requirements in support of Fleet training, including air to air, air to surface, and electronic warfare. This includes a wide variety of airborne threat simulation capabilities to train, test, and evaluate shipboard and aircraft squadron weapon systems, operators and aircrew on how to counter potential enemy Electronic Warfare (EW) and Electronic Attack (EA) operations in today's Electronic Combat (EC) environment.

Naval Contracted Air Services (CAS) has supported the Fleet for over 20 years providing Fleet training and exercise support as well as support to Test and Evaluation (T&E) of Naval Systems. Recently, services have also expanded to support movement and training of foreign partner and U.S. Air Force aircraft. The services are procured primarily using OM,N (1A1A) Fleet Flying Hour Program (FHP), Flight Other, as well as Fleet Air Training (1A2A) supporting primarily major Fleet pre-deployment exercises (e.g. CSG COMPTUEX), but have been receiving a greater demand signal to provide CAS to mitigate current aviation readiness issues. Naval programs use CAS to support T&E events (e.g. using EW configured contracted aircraft to fly (sometimes like missiles) against shipboard radar systems and ESM tests). T&E flight hours execution has historically been approximately 10 percent relative to the Fleet flight hours executed annually. Due to the amount of flexibility required, IDIQ contracts are generally used.

Additionally, this exemption would allow the Secretaries of the other military departments to more expeditiously enter into contracts for contracted air services to assist their efforts in reducing the DoD's pilot shortfalls and training requirements.

Resource Information: This proposal has no impact on the use of resources requested within the Fiscal Year (FY) 2026 President's Budget.

Changes to Existing Law: This proposal would amend section 3671 of title 10, United States Code, as follows:

§3671. 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) EXEMPTION FOR CONTRACTOR OWNED-CONTRACTOR OPERATED AIRCRAFT SERVICE CONTRACTS.—Subsection (a) does not apply to an indefinite delivery, indefinite quantity type service contract that—

- (1) includes annualized option periods;
- (2) is awarded following adequate competition; and
- (3) requires the use of contractor owned-contractor operated aircraft.

1 **SEC. ____.** **MODIFICATION OF INVENTORY REQUIREMENTS FOR AIRCRAFT OF**
2 **THE COMBAT AIR FORCES.**

3 (a) TEMPORARY EXCEPTION TO MINIMUM COMBAT-CODED TOTAL AIRCRAFT INVENTORY
4 REQUIREMENT.—

5 (1) NUMBER OF AIRCRAFT.—Subsection (a) of section 133 of the National
6 Defense Authorization Act for Fiscal Year 2024 (Public Law 118-31; 137 Stat. 173) is
7 amended—

8 (A) by striking “decrease” and inserting “adjust”;

9 (B) by striking “primary mission aircraft inventory (combat coded)” and
10 inserting “combat-coded total aircraft inventory”; and

11 (C) by striking “1,101 aircraft” and inserting “1,160 aircraft”.

12 (2) EXTENSION OF TERMINATION. —Subsection (c) of such section is amended—

13 (A) in paragraph (1), by striking “2025” and inserting “2026”; and

14 (B) in paragraph (2), by striking “primary mission aircraft inventory” and
15 inserting “combat-coded total aircraft inventory”.

16 (b) MINIMUM COMBAT-CODED TOTAL AIRCRAFT INVENTORY. —Subsection (i) of section
17 9062 of title 10, United States Code, is amended—

18 (1) in paragraph (1)—

19 (A) by striking “a total” and inserting “an overall total”;

20 (B) by striking “total primary mission aircraft inventory (combat coded)”
21 and inserting “combat-coded total aircraft inventory”; and

22 (C) by striking “1,145 fighter aircraft” and inserting “1,160 fighter
23 aircraft”; and

1 (2) in paragraph (2)(B), by striking “primary mission aircraft inventory” and
2 inserting “combat-coded total aircraft inventory”.

3 (c) A-10 AIRCRAFT MINIMUM INVENTORY REQUIREMENT.—Section 134 of the National
4 Defense Authorization Act for Fiscal Year 2017 (Public Law 114–328; 130 Stat. 2038), as most
5 recently amended by section 143(b) of the Servicemembers Quality of Life Improvement and
6 National Defense Authorization Act for Fiscal Year 2025 (Public Law 118–159; 138 Stat. 1809),
7 is amended—

8 (1) by striking subsection (c); and

9 (2) in subsection (d), by striking “96 A-10 aircraft” and inserting “zero A-10
10 aircraft”.

11 (d) TECHNICAL AMENDMENTS TO DATE REFERENCES.—Section 9062 of title 10, United
12 States Code, as amended by subsection (b), is further amended—

13 (1) in subsection (g)(1), by striking “Effective October 1, 2011” and all that
14 follows through “committees, the” and inserting “The”;

15 (2) in subsection (k)(1), by striking “the date of the enactment of the National
16 Defense Authorization Act for Fiscal Year 2023” and inserting “December 23, 2022,”;
17 and

18 (3) in subsections (l)(1) and (m)(1), by striking “the date of the enactment of the
19 National Defense Authorization Act for Fiscal Year 2024” and inserting “December 22,
20 2023,”.

**[Please note: The “Changes to Existing Law” section below sets out in red-line format how
the legislative text would amend existing law.]**

Section-by-Section Analysis

This proposal would authorize the Secretary of the Air Force to make necessary force structure changes over the future-years defense program.

The Air Force strategy is to develop a fighter force that transitions from seven to four platforms, focusing on Next Generation Air Dominance (NGAD) Family of Systems (FoS), F-35, and modernized F-15 and F-16 aircraft. To expedite this transition and free up manpower and resources, we must down-size current fighter aircraft inventories and find the right balance of capability and capacity. The capability we need in the future force is unaffordable at the quantities required to satisfy current NDAA fighter minimums. Accepting capacity as a solution to national security, regardless of capability mix or affordability, puts us on a path of compounding risk from which we may be unable to recover. We must reduce our oldest and least relevant fighter aircraft that cannot be modernized to meet mission requirements. The intent is to focus resources to ensure a more lethal, resilient, sustainable, survivable, agile, and responsive force.

Subsections (a) and (b) of this proposal would modify the statutorily required combat-coded total aircraft inventory of not less than 1,101 fighter aircraft to 1,160 fighter aircraft. Minimum inventories of A-10 aircraft would be lowered to meet the new fighter floors.

Subsection (c) of this proposal would reduce statutory minimum inventory requirements for A-10 aircraft. The FY 2017 and FY 2023 NDAAs (in section 134(d)), as amended by section 137(a) of the FY 2024 NDAA (Public Law 118–31) and section 143(b) of the FY 2025 NDAA (Public Law 118-159), states that the “Secretary of the Air Force shall ensure the Air Force maintains a minimum of 96 A-10 aircraft designated as primary mission aircraft inventory.” The amendment made by subsection (c) would reduce that minimum to zero A-10 aircraft.

The A-10 is the Air Force’s least capable fighter in contested environments and the oldest airframe in the fighter fleet. While it remains a formidable and cost-effective platform to counter violent extremism in the near term, its age, lack of multi-role or homeland defense capability, and lack of survivable characteristics limit usefulness in the coming years. The FY 2025 NDAA lowers the statutory limit for A-10 TAI to 162 and PMAI to 96. In FY 2026 the Department of the Air Force plans to divest the remaining 162 A-10 aircraft.

Subsection (d) of this proposal would update certain references to insert the actual date in place of a reference to a date.

Resource Information: The table below reflects the best estimate of resources requested within the Fiscal Year (FY) 2026 President’s Budget that are impacted by this proposal.

RESOURCE IMPACT (\$MILLIONS)									
Program	FY 2026	FY 2027	FY 2028	FY 2029	FY 2030	Appropriation	Budget Activity	BLI/SAG	Program Element (for all RDT&E programs)

A-10						Operation and Maintenance, Air Force; Operation and Maintenance, Air Force Reserve; Operation and Maintenance, Air National Guard	01	011A, 011Y, 011F	N/A
	(302.718)	(185.070)	(33.329)	0	0				
Total	(302.718)	(185.070)	(33,329)	0	0	---	---	---	

Changes to Existing Law: This proposal would make changes to the text of existing law as follows:

TITLE 10, UNITED STATES CODE

§9062. Policy; composition; aircraft authorization

(a) It is the intent of Congress to provide an Air Force that is capable, in conjunction with the other armed forces, of—

(1) preserving the peace and security, and providing for the defense, of the United States, the Commonwealths and possessions, and any areas occupied by the United States;

(2) supporting the national policies;

(3) implementing the national objectives; and

(4) overcoming any nations responsible for aggressive acts that imperil the peace and security of the United States.

~~(g)(1) Effective October 1, 2011, the Secretary of the Air Force shall maintain a total aircraft inventory of strategic airlift aircraft of not less than 301 aircraft. Effective on the date that is 45 days after the date on which the report under section 141(c)(3) of the National Defense Authorization Act for Fiscal Year 2013 is submitted to the congressional defense committees, the~~
The Secretary shall maintain a total aircraft inventory of strategic airlift aircraft of not less than 275 aircraft.

(2) ***

(i)(1) During the period beginning on October 1, 2017, and ending on October 1, 2026, the Secretary of the Air Force shall maintain ~~a total~~ an overall total aircraft inventory of fighter aircraft of not less than 1,800 aircraft, and a ~~total primary mission aircraft inventory (combat-coded)~~ combat-coded total aircraft inventory of not less than ~~1,145~~ 1,160 fighter aircraft.

(2) In this subsection:

(A) The term “fighter aircraft” means an aircraft that—

- (i) is designated by a mission design series prefix of F– or A–;
- (ii) is manned by one or two crewmembers; and
- (iii) executes single-role or multi-role missions, including air-to-air combat, air-to-ground attack, air interdiction, suppression or destruction of enemy air defenses, close air support, strike control and reconnaissance, combat search and rescue support, or airborne forward air control.

(B) The term “~~primary mission combat-coded total~~ aircraft inventory” means aircraft assigned to meet the primary aircraft authorization to a unit for the performance of its wartime mission.

(k)(1) During the period beginning on ~~the date of the enactment of the National Defense Authorization Act for Fiscal Year 2023~~ December 23, 2022, and ending on September 30, 2027, the Secretary of the Air Force may not—

(A) ***

(l)(1) During the period beginning on ~~the date of the enactment of the National Defense Authorization Act for Fiscal Year 2024~~ December 22, 2023, and ending on September 30, 2029, the Secretary of the Air Force may not—

(A) ***

(m)(1) During the period beginning on ~~the date of the enactment of the National Defense Authorization Act for Fiscal Year 2024~~ December 22, 2023, and ending on September 30, 2029, the Secretary of the Air Force may not—

(A) ***

National Defense Authorization Act for Fiscal Year 2024

(Public Law 118–31)

(as amended by section 143(a) of the Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025 (Public Law 118–159; 138 Stat. 1809));

SEC. 133. TEMPORARY EXCEPTION TO MINIMUM INVENTORY REQUIREMENT FOR FIGHTER AIRCRAFT OF THE AIR FORCE.

(a) TEMPORARY AUTHORITY.—Notwithstanding section 9062(i)(1) of title 10, United States Code, during the covered period, the Secretary of the Air Force may ~~decrease~~ adjust the total quantity of fighter aircraft in the ~~primary mission combat-coded total~~ aircraft inventory of the Air Force to not fewer than ~~1,101~~ 1,160 aircraft.

(b) TERMINATION.—Following expiration of the covered period, the minimum primary mission aircraft inventory requirements specified in section 9062(i)(1) of title 10, United States Code, shall apply as if this section had not been enacted.

(c) DEFINITIONS.—In this section:

(1) The term “covered period” means the period beginning on the date of the enactment of this Act and ending on October 1, ~~2025~~ **2026**.

(2) The terms “fighter aircraft” and “~~primary mission~~ combat-coded total aircraft inventory” have the meanings given those terms in section 9062(i)(2) of title 10, United States Code.

Section 134 of the National Defense Authorization Act for Fiscal Year 2017

(Public Law 114–328)

(as amended by section 141(b) of the James M. Inhofe National Defense Authorization Act for Fiscal Year 2023 (Public Law 117–263; 136 Stat. 2452), section 137(a) of the National Defense Authorization Act for Fiscal Year 2024 (Public Law 118–31; 137 Stat. 174), and section 143(b) of the National Defense Authorization Act for Fiscal Year 2025 (Public Law 118–159; 138 Stat. 1809)):

SEC. 134. PROHIBITION ON AVAILABILITY OF FUNDS FOR RETIREMENT OF A-10 AIRCRAFT.

(a) PROHIBITION ON AVAILABILITY OF FUNDS FOR RETIREMENT.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2017 for the Air Force may be obligated or expended to retire, prepare to retire, or place in storage or on backup aircraft inventory status any A-10 aircraft.

(b) ADDITIONAL LIMITATION ON RETIREMENT.—In addition to the prohibition in subsection (a), the Secretary of the Air Force may not retire, prepare to retire, or place in storage or on backup aircraft inventory status any A-10 aircraft until a period of 90 days has elapsed following the date on which the Secretary submits to the congressional defense committees a report that includes the information described in subsection (e)(2)(C).

~~(c) PROHIBITION ON SIGNIFICANT REDUCTIONS IN MANNING LEVELS.—None of the funds authorized to be appropriated by this Act or otherwise made available for fiscal year 2017 for the Air Force may be obligated or expended to make significant reductions to manning levels with respect to any A-10 aircraft squadrons or divisions.~~

(d) MINIMUM INVENTORY REQUIREMENT.—The Secretary of the Air Force shall ensure the Air Force maintains a minimum of ~~96~~ zero A-10 aircraft designated as primary mission aircraft inventory until a period of 90 days has elapsed following the date on which the Secretary submits to the congressional defense committees the report under subsection (e)(2).