

needed for any public works or utilities project of the Department.

(b) The fee for any service under this section may not be more than 6 percent of the estimated cost, as determined by the Secretary, of the project to which it applies.

(c) Sections 305, 3324, and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5 do not apply to employment under this section.

(Aug. 10, 1956, ch. 1041, 70A Stat. 255; Pub. L. 89-718, § 28, Nov. 2, 1966, 80 Stat. 1119; Pub. L. 95-454, title VII, § 703(c)(3), title VIII, § 801(a)(3)(I), Oct. 13, 1978, 92 Stat. 1217, 1222; Pub. L. 96-513, title V, § 512(16), Dec. 12, 1980, 94 Stat. 2930.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
4540(a)	5:221 (1st sentence, less last 15 words).	Aug. 7, 1939, ch. 511, § 2, 53 Stat. 1240.
4540(b)	5:221 (less 1st sentence).	
4540(c)	5:221 (last 15 words of 1st sentence).	

In subsection (a), the words “and providing that in the opinion” are omitted as covered by the words “whenever he considers”. The words “needed for” are substituted for the words “required for the accomplishment of”.

In subsection (c), reference is made in substance to the Classification Act of 1949, instead of the Classification Act of 1923 referred to in the source statute, since section 1106(a) of the Classification Act of 1949, 63 Stat. 972, provides that all references in other acts to the Classification Act of 1923 should be considered to refer to the Classification Act of 1949.

AMENDMENTS

1980—Subsec. (c). Pub. L. 96-513 substituted “and 7204, chapter 51, and subchapters III, IV, and VI of chapter 53 of title 5” for “5101-5115, 5331-5338, 5341, 5342, and 7204 of title 5 and subchapter VI of chapter 53 of title 5”.

1978—Subsec. (c). Pub. L. 95-454, § 801(a)(3)(I), inserted reference to subchapter VI of chapter 53 of title 5.

Pub. L. 95-454, § 703(c)(3), substituted “7204” for “7154”.

1966—Subsec. (c). Pub. L. 89-718 substituted “Sections 305, 3324, 5101-5115, 5331-5338, 5341, 5342, and 7154 of title 5” for “Sections 1071-1153 of title 5”.

EFFECTIVE DATE OF 1980 AMENDMENT

Amendment by Pub. L. 96-513 effective Dec. 12, 1980, see section 701(b)(3) of Pub. L. 96-513, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by section 703(c)(3) of Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of Title 5, Government Organization and Employees.

Amendment by section 801(a)(3)(I) of Pub. L. 95-454 effective on first day of first applicable pay period beginning on or after 90th day after Oct. 13, 1978, see section 801(a)(4) of Pub. L. 95-454, set out as an Effective Date note under section 5361 of Title 5.

§ 4541. Army arsenals: treatment of unutilized or underutilized plant-capacity costs

(a) ESTIMATE OF COSTS.—The Secretary of the Army shall include in the budget justification documents submitted to Congress in support of the President’s budget for a fiscal year submitted under section 1105 of title 31 an estimate of

the funds to be required in that fiscal year to cover unutilized and underutilized plant-capacity costs at Army arsenals.

(b) USE OF FUNDS.—Funds appropriated to the Secretary of the Army for a fiscal year to cover unutilized and underutilized plant-capacity costs at Army arsenals shall be used in such fiscal year only for such costs.

(c) TREATMENT OF COSTS.—(1) The Secretary of the Army shall not include unutilized and underutilized plant-capacity costs when evaluating the bid of an Army arsenal for purposes of the arsenal’s contracting to provide a good or service to a Government agency.

(2) When an Army arsenal is serving as a subcontractor to a private-sector entity with respect to a good or service to be provided to a Government agency, the cost charged by the arsenal shall not include unutilized and underutilized plant-capacity costs that are funded by a direct appropriation.

(d) DEFINITIONS.—In this section:

(1) The term “Army arsenal” means a Government-owned, Government-operated defense plant of the Department of the Army that manufactures weapons, weapon components, or both.

(2) The term “unutilized and underutilized plant-capacity costs” means the costs associated with operating and maintaining the facilities and equipment of an Army arsenal that the Secretary of the Army determines are required to be kept for mobilization needs, in those months in which the facilities and equipment are not used or are used only 20 percent or less of available work days.

(Added Pub. L. 106-398, § 1 [[div. A], title III, § 342(a)], Oct. 30, 2000, 114 Stat. 1654, 1654A-64.)

PRIOR PROVISIONS

A prior section 4541, added Pub. L. 97-258, § 2(b)(9)(B), Sept. 13, 1982, 96 Stat. 1056, authorized Secretary of the Army to accept gratuitous services of officers of the Army Reserve, prior to repeal by Pub. L. 103-160, div. A, title VIII, § 822(d)(2), Nov. 30, 1993, 107 Stat. 1707. See section 10212 of this title.

§ 4542. Technical data packages for large-caliber cannon: prohibition on transfers to foreign countries; exception

(a) GENERAL RULE.—Funds appropriated to the Department of Defense may not be used—

(1) to transfer to a foreign country a technical data package for a defense item being manufactured or developed in an arsenal; or

(2) to assist a foreign country in producing such a defense item.

(b) EXCEPTION.—The Secretary of the Army may use funds appropriated to the Department of Defense to transfer a technical data package, or to provide assistance, described in subsection (a) if—

(1) the transfer or provision of assistance is to a friendly foreign country (as determined by the Secretary of Defense in consultation with the Secretary of State);

(2) the Secretary of the Army determines that such action—

(A) would have a clear benefit to the preservation of the production base for the pro-

duction of cannon at the arsenal concerned; and

(B) would not transfer technology (including production techniques) considered unique to the arsenal concerned, except as provided in subsection (e); and

(3) the Secretary of Defense enters into an agreement with the country concerned described in subsection (c) or (d).

(c) **COPRODUCTION AGREEMENTS.**—An agreement under this subsection shall be in the form of a Government-to-Government Memorandum of Understanding and shall include provisions that—

(1) prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

(2) require that production by the participating foreign country of the defense item to which the technical data package or assistance relates be shared with the arsenal concerned;

(3) subject to such exceptions as may be approved under subsection (f), prohibit transfer by the participating foreign country to a third party or country of—

(A) any defense article, technical data package, technology, or assistance provided by the United States under the agreement; and

(B) any defense article produced by the participating foreign country under the agreement; and

(4) require the Secretary of Defense to monitor compliance with the agreement and the participating foreign country to report periodically to the Secretary of Defense concerning the agreement.

(d) **COOPERATIVE PROJECT AGREEMENTS.**—An agreement under this subsection is a cooperative project agreement under section 27 of the Arms Export Control Act (22 U.S.C. 2767) which includes provisions that—

(1) for development phases describe the technical data to be transferred and for the production phase prescribe the content of the technical data package or assistance to be transferred to the foreign country participating in the agreement;

(2) require that at least the United States production of the defense item to which the technical data package or assistance relates be carried out by the arsenal concerned; and

(3) require the Secretary of Defense to monitor compliance with the agreement.

(e) **LICENSING FEES AND ROYALTIES.**—The limitation in subsection (b)(2)(B) shall not apply if the technology (or production technique) transferred is subject to nonexclusive license and payment of any negotiated licensing fee or royalty that reflects the cost of development, implementation, and prove-out of the technology or production technique. Any negotiated license fee or royalty shall be placed in the operating fund of the arsenal concerned for the purpose of capital investment and technology development at that arsenal.

(f) **TRANSFERS TO THIRD PARTIES.**—A transfer described in subsection (c)(3) may be made if—

(1) the defense article, technical data package, or technology to be transferred is a product of a cooperative research and development program or a cooperative project in which the United States and the participating foreign country were partners; or

(2) the President—

(A) complies with all requirements of section 3(d) of the Arms Export Control Act (22 U.S.C. 2753(d)) with respect to such transfer; and

(B) certifies to Congress, before the transfer, that the transfer would provide a clear benefit to the production base of the United States for large-caliber cannon.

(g) **NOTICE AND REPORTS TO CONGRESS.**—(1) The Secretary of the Army shall submit to Congress a notice of each agreement entered into under this section.

(2) The Secretary shall submit to Congress a semi-annual report on the operation of this section and of agreements entered into under this section.

(h) **ARSENAL DEFINED.**—In this section, the term “arsenal” means a Government-owned, Government-operated defense plant that manufactures large-caliber cannon.

(Added Pub. L. 99-500, §101(c) [title IX, §9036(b)(1)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-107, and Pub. L. 99-591, §101(c) [title IX, §9036(b)(1)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-107; Pub. L. 99-661, div. A, title XII, §1203(a)(1), Nov. 14, 1986, 100 Stat. 3968; amended Pub. L. 101-189, div. A, title VIII, §806, Nov. 29, 1989, 103 Stat. 1489; Pub. L. 102-190, div. A, title X, §§1061(a)(24), 1086, Dec. 5, 1991, 105 Stat. 1473, 1483.)

CODIFICATION

Pub. L. 99-591 is a corrected version of Pub. L. 99-500. Pub. L. 99-500, Pub. L. 99-591, and Pub. L. 99-661 added identical sections.

AMENDMENTS

1991—Subsec. (b)(1). Pub. L. 102-190, §1086(a), substituted “friendly foreign country” for “member nation of the North Atlantic Treaty Organization or a country designated as a major non-NATO ally”.

Subsec. (c)(3). Pub. L. 102-190, §§1061(a)(24)(A), 1086(b)(1), amended par. (3) identically, substituting “subsection (f)” for “subsection (d)” in introductory provisions.

Subsec. (f). Pub. L. 102-190, §§1061(a)(24)(B), 1086(b)(2), amended subsec. identically, substituting “subsection (c)(3)” for “subsection (b)(3)” in introductory provisions.

1989—Subsec. (b)(1). Pub. L. 101-189, §806(a)(1), substituted “a member nation of the North Atlantic Treaty Organization or a country designated as a major non-NATO ally” for “a friendly foreign country”.

Subsec. (b)(2)(B). Pub. L. 101-189, §806(a)(2), inserted “, except as provided in subsection (e)” after “arsenal concerned”.

Subsec. (b)(3). Pub. L. 101-189, §806(a)(3), inserted “or (d)” after “subsection (c)”.

Subsecs. (d), (e). Pub. L. 101-189, §806(b)(2), added subsecs. (d) and (e). Former subsecs. (d) and (e) redesignated (f) and (g), respectively.

Subsec. (f). Pub. L. 101-189, §806(b)(1), redesignated subsec. (d) as (f). Former subsec. (f) redesignated (h).

Subsec. (f)(1). Pub. L. 101-189, §806(c), inserted “or a cooperative project” after “cooperative research and development program”.

Subsecs. (g), (h). Pub. L. 101-189, §806(b)(1), redesignated subsecs. (e) and (f) as (g) and (h), respectively.

EFFECTIVE DATE

Pub. L. 99-500, § 101(c) [title IX, § 9036(c)], Oct. 18, 1986, 100 Stat. 1783-82, 1783-108, Pub. L. 99-591, § 101(c) [title IX, § 9036(c)], Oct. 30, 1986, 100 Stat. 3341-82, 3341-108, and Pub. L. 99-661, div. A, title XII, § 1203(b), Nov. 14, 1986, 100 Stat. 3969, provided that: "Section 4542 of title 10, United States Code, as added by subsection (a), shall apply with respect to funds appropriated for fiscal years after fiscal year 1986."

RULE OF CONSTRUCTION FOR DUPLICATE AUTHORIZATION AND APPROPRIATION PROVISIONS OF PUBLIC LAWS 99-500, 99-591, AND 99-661

For rule of construction for certain duplicate provisions of Public Laws 99-500, 99-591, and 99-661, see Pub. L. 100-26, § 6, Apr. 21, 1987, 101 Stat. 274, set out as a note under section 2302 of this title.

§ 4543. Army industrial facilities: sales of manufactured articles or services outside Department of Defense

(a) **AUTHORITY TO SELL OUTSIDE DOD.**—Regulations under section 2208(h) of this title shall authorize a working-capital funded Army industrial facility (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof to sell manufactured articles or services to a person outside the Department of Defense if—

(1) in the case of an article, the article is sold to a United States manufacturer, assembler, developer, or other concern—

(A) for use in developing new products;

(B) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States;

(C) for incorporation into items to be sold to, or to be used in a contract with, or to be used for purposes of soliciting a contract with, a friendly foreign government; or

(D) for use in commercial products;

(2) in the case of an article, the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

(3) the sale is to be made on a basis that does not interfere with performance of work by the facility for the Department of Defense or for a contractor of the Department of Defense;

(4) in the case of services, the services are related to an article authorized to be sold under this section and are to be performed in the United States for the purchaser;

(5) the Secretary of the Army determines that the articles or services are not available from a commercial source located in the United States;

(6) the purchaser of an article or service agrees to hold harmless and indemnify the United States, except in a case of willful misconduct or gross negligence, from any claim for damages or injury to any person or property arising out of the article or service;

(7) the article to be sold can be manufactured, or the service to be sold can be substantially performed, by the industrial facility with only incidental subcontracting;

(8) it is in the public interest to manufacture such article or perform such service; and

(9) the sale will not interfere with performance of the military mission of the industrial facility.

(b) **ADDITIONAL REQUIREMENTS.**—The regulations shall also—

(1) require that the authority to sell articles or services under the regulations be exercised at the level of the commander of the major subordinate command of the Army with responsibility over the facility concerned;

(2) authorize a purchaser of articles or services to use advance incremental funding to pay for the articles or services; and

(3) in the case of a sale of commercial articles or commercial services in accordance with subsection (a) by a facility that manufactures large caliber cannons, gun mounts, or recoil mechanisms, or components thereof, authorize such facility—

(A) to charge the buyer, at a minimum, the variable costs that are associated with the commercial articles or commercial services sold;

(B) to enter into a firm, fixed-price contract or, if agreed by the buyer, a cost reimbursement contract for the sale; and

(C) to develop and maintain (from sources other than appropriated funds) working capital to be available for paying design costs, planning costs, procurement costs, and other costs associated with the commercial articles or commercial services sold.

(c) **RELATIONSHIP TO ARMS EXPORT CONTROL ACT.**—Nothing in this section shall be construed to affect the application of the export controls provided for in section 38 of the Arms Export Control Act (22 U.S.C. 2778) to items which incorporate or are produced through the use of an article sold under this section.

(d) **DEFINITIONS.**—In this section:

(1) The term "commercial article" means an article that is usable for a nondefense purpose.

(2) The term "commercial service" means a service that is usable for a nondefense purpose.

(3) The term "advance incremental funding", with respect to a sale of articles or services, means a series of partial payments for the articles or services that includes—

(A) one or more partial payments before the commencement of work or the incurring of costs in connection with the production of the articles or the performance of the services, as the case may be; and

(B) subsequent progress payments that result in full payment being completed as the required work is being completed.

(4) The term "variable costs", with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

(A) in the case of articles, the volume of production necessary to satisfy the sales orders; or

(B) in the case of services, the extent of the services sold.

(Added Pub. L. 103-160, div. A, title I, § 158(a)(1), Nov. 30, 1993, 107 Stat. 1581; amended Pub. L. 103-337, div. A, title I, § 141, Oct. 5, 1994, 108 Stat. 2688.)

AMENDMENTS

1994—Subsec. (a). Pub. L. 103-337 struck out "non-defense-related commercial" after "sell manufactured" in introductory provisions and added pars. (5) to (9).