

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.

§ 2206. Disbursement of funds of military department to cover obligation of another agency of Department of Defense

As far as authorized by the Secretary of Defense, a disbursing official of a military department may, out of available advances, make disbursements to cover obligations in connection with any function, power, or duty of another department or agency of the Department of Defense and charge those disbursements on vouchers, to the appropriate appropriation of that department or agency. Disbursements so made shall be adjusted in settling the accounts of the disbursing official.

(Added Pub. L. 87–651, title II, §207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 97–258, §2(b)(1)(A), Sept. 13, 1982, 96 Stat. 1052.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2206	5:172h. 5:171n(a) (as applicable to 5:172h).	July 26, 1947, ch. 343, §409; added Aug. 10, 1949, ch. 412, §11 (24th par.), 63 Stat. 590. July 26, 1947, ch. 343, §308(a) (as applicable to §409), 61 Stat. 509.

The word “agency” is substituted for the word “organization”. The last sentence is substituted for the proviso in 5 U.S.C. 172h.

AMENDMENTS

1982—Pub. L. 97–258 substituted “official” for “officer” wherever appearing.

§ 2207. Expenditure of appropriations: limitation

(a) Money appropriated to the Department of Defense may not be spent under a contract other than a contract for personal services unless that contract provides that—

(1) the United States may, by written notice to the contractor, terminate the right of the contractor to proceed under the contract if the Secretary concerned or his designee finds, after notice and hearing, that the contractor, or his agent or other representative, offered or gave any gratuity, such as entertainment or a gift, to an officer, official, or employee of the United States to obtain a contract or favorable treatment in the awarding, amending, or making of determinations concerning the performance, of a contract; and

(2) if a contract is terminated under clause (1), the United States has the same remedies against the contractor that it would have had if the contractor had breached the contract and, in addition to other damages, is entitled to exemplary damages in an amount at least three, but not more than 10, as determined by the Secretary or his designee, times the cost incurred by the contractor in giving gratuities to the officer, official, or employee concerned.

The existence of facts upon which the Secretary makes findings under clause (1) may be reviewed by any competent court.

(b) 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).

(Added Pub. L. 87–651, title II, §207(a), Sept. 7, 1962, 76 Stat. 520; amended Pub. L. 104–106, div. A, title VIII, §801, Feb. 10, 1996, 110 Stat. 389; Pub. L. 111–350, §5(b)(5), Jan. 4, 2011, 124 Stat. 3842.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2207	5:174d.	June 30, 1954, ch. 432, §719, 68 Stat. 353.

The following substitutions are made: “spent” for “expended”; “United States” for “Government”; “if a contract is terminated under clause (1)” for “that in the event any such contract is so terminated”; and “has . . . that it would have had if” for “shall be entitled . . . to pursue . . . as it could pursue in the event of”. The word “official” is inserted for clarity. The words “entered into after June 30, 1954” are omitted as executed.

AMENDMENTS

2011—Subsec. (b). Pub. L. 111–350 substituted “section 134 of title 41” for “section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11))”.

1996—Pub. L. 104–106 designated existing provisions as subsec. (a) and added subsec. (b).

§ 2208. Working-capital funds

(a) To control and account more effectively for the cost of programs and work performed in the Department of Defense, the Secretary of Defense may require the establishment of working-capital funds in the Department of Defense to—

(1) finance inventories of such supplies as he may designate; and

(2) provide working capital for such industrial-type activities, and such commercial-type activities that provide common services within or among departments and agencies of the Department of Defense, as he may designate.

(b) Upon the request of the Secretary of Defense, the Secretary of the Treasury shall establish working-capital funds established under this section on the books of the Department of the Treasury.

(c) Working-capital funds shall be charged, when appropriate, with the cost of—

(1) supplies that are procured or otherwise acquired, manufactured, repaired, issued, or used, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment; and

(2) services or work performed;

including applicable administrative expenses, and be reimbursed from available appropriations or otherwise credited for those costs, including applicable administrative expenses and costs of using equipment.

(d) The Secretary of Defense may provide capital for working-capital funds by capitalizing in-

ventories. In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law.

(e) Subject to the authority and direction of the Secretary of Defense, the Secretary of each military department shall allocate responsibility for its functions, powers, and duties to accomplish the most economical and efficient organization and operation of the activities, and the most economical and efficient use of the inventories, for which working-capital funds are authorized by this section. The accomplishment of the most economical and efficient organization and operation of working capital fund activities for the purposes of this subsection shall include actions toward the following:

(1) Undertaking efforts to optimize the rate structure for all requisitioning entities.

(2) Encouraging a working capital fund activity to perform reimbursable work for other entities to sustain the efficient use of the workforce.

(3) Determining the appropriate leadership level for approving work from outside entities to maximize efficiency.

(f) The requisitioning agency may not incur a cost for supplies drawn from inventories, or services or work performed by industrial-type or commercial-type activities for which working-capital funds may be established under this section, that is more than the amount of appropriations or other funds available for those purposes.

(g) The appraised value of supplies returned to working-capital funds by a department, activity, or agency may be charged to that fund. The proceeds thereof shall be credited to current applicable appropriations and are available for expenditure for the same purposes that those appropriations are so available. Credits may not be made to appropriations under this subsection as the result of capitalization of inventories under subsection (d).

(h) The Secretary of Defense shall prescribe regulations governing the operation of activities and use of inventories authorized by this section. The regulations may, if the needs of the Department of Defense require it and it is otherwise authorized by law, authorize supplies to be sold to, or services to be rendered or work performed for, persons outside the Department of Defense. However, supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense. Working-capital funds shall be reimbursed for supplies so sold, services so rendered, or work so performed by charges to applicable appropriations or payments received in cash.

(i) For provisions relating to sales outside the Department of Defense of manufactured articles and services by 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, see section 7543 of this title.

(j)(1) The Secretary of a military department may authorize a working capital funded indus-

trial facility of that department to manufacture or remanufacture articles and sell these articles, as well as manufacturing, remanufacturing, and engineering services provided by such facilities, to persons outside the Department of Defense if—

(A) the person purchasing the article or service is fulfilling a Department of Defense contract or a subcontract under a Department of Defense contract, and the solicitation for the contract or subcontract is open to competition between Department of Defense activities and private firms; or

(B) the Secretary would advance the objectives set forth in section 2474(b)(2) of this title by authorizing the facility to do so.

(2) The Secretary of Defense may waive the conditions in paragraph (1) in the case of a particular sale if the Secretary determines that the waiver is necessary for reasons of national security and notifies Congress regarding the reasons for the waiver.

(k)(1) Subject to paragraph (2), a contract for the procurement of a capital asset financed by a working-capital fund may be awarded in advance of the availability of funds in the working-capital fund for the procurement.

(2) Paragraph (1) applies to any of the following capital assets that have a development or acquisition cost of not less than \$500,000 for procurements by a major range and test facility installation or a science and technology reinvention laboratory and not less than \$250,000 for procurements at all other facilities:

(A) An unspecified minor military construction project under section 2805(c) of this title.

(B) Automatic data processing equipment or software.

(C) Any other equipment.

(D) Any other capital improvement.

(l)(1) An advance billing of a customer of a working-capital fund may be made if the Secretary of the military department concerned submits to Congress written notification of the advance billing within 30 days after the end of the month in which the advanced billing was made. The notification shall include the following:

(A) The reasons for the advance billing.

(B) An analysis of the effects of the advance billing on military readiness.

(C) An analysis of the effects of the advance billing on the customer.

(2) The Secretary of Defense may waive the notification requirements of paragraph (1)—

(A) during a period of war or national emergency; or

(B) to the extent that the Secretary determines necessary to support a contingency operation.

(3) The total amount of the advance billings rendered or imposed for all working-capital funds of the Department of Defense in a fiscal year may not exceed \$1,000,000,000.

(4) In this subsection:

(A) The term “advance billing”, with respect to a working-capital fund, means a billing of a customer by the fund, or a requirement for a customer to reimburse or otherwise credit the

fund, for the cost of goods or services provided (or for other expenses incurred) on behalf of the customer that is rendered or imposed before the customer receives the goods or before the services have been performed.

(B) The term "customer" means a requisitioning component or agency.

(m) CAPITAL ASSET SUBACCOUNTS.—Amounts charged for depreciation of capital assets shall be credited to a separate capital asset subaccount established within a working-capital fund.

(n) SEPARATE ACCOUNTING, REPORTING, AND AUDITING OF FUNDS AND ACTIVITIES.—The Secretary of Defense, with respect to the working-capital funds of each Defense Agency, and the Secretary of each military department, with respect to the working-capital funds of the military department, shall provide for separate accounting, reporting, and auditing of funds and activities managed through the working-capital funds.

(o) CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH THE FUND.—(1) Charges for goods and services provided for an activity through a working-capital fund shall include the following:

(A) Amounts necessary to recover the full costs of the goods and services provided for that activity.

(B) Amounts for depreciation of capital assets, set in accordance with generally accepted accounting principles.

(2) Charges for goods and services provided through a working-capital fund may not include the following:

(A) Amounts necessary to recover the costs of a military construction project (as defined in section 2801(b) of this title), other than a minor construction project financed by the fund pursuant to section 2805(c) of this title.

(B) Amounts necessary to cover costs incurred in connection with the closure or realignment of a military installation.

(C) Amounts necessary to recover the costs of functions designated by the Secretary of Defense as mission critical, such as ammunition handling safety, and amounts for ancillary tasks not directly related to the mission of the function or activity managed through the fund.

(p) PROCEDURES FOR ACCUMULATION OF FUNDS.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of a military department, with respect to each working-capital fund of the military department, shall establish billing procedures to ensure that the balance in that working-capital fund does not exceed the amount necessary to provide for the working-capital requirements of that fund, as determined by the Secretary.

(q) ANNUAL REPORTS AND BUDGET.—The Secretary of Defense, with respect to each working-capital fund of a Defense Agency, and the Secretary of each military department, with respect to each working-capital fund of the military department, shall annually submit to Congress, at the same time that the President submits the budget under section 1105 of title 31, the following:

(1) A detailed report that contains a statement of all receipts and disbursements of the

fund (including such a statement for each subaccount of the fund) for the fiscal year ending in the year preceding the year in which the budget is submitted.

(2) A detailed proposed budget for the operation of the fund for the fiscal year for which the budget is submitted.

(3) A comparison of the amounts actually expended for the operation of the fund for the fiscal year referred to in paragraph (1) with the amount proposed for the operation of the fund for that fiscal year in the President's budget.

(4) A report on the capital asset subaccount of the fund that contains the following information:

(A) The opening balance of the subaccount as of the beginning of the fiscal year in which the report is submitted.

(B) The estimated amounts to be credited to the subaccount in the fiscal year in which the report is submitted.

(C) The estimated amounts of outlays to be paid out of the subaccount in the fiscal year in which the report is submitted.

(D) The estimated balance of the subaccount at the end of the fiscal year in which the report is submitted.

(E) A statement of how much of the estimated balance at the end of the fiscal year in which the report is submitted will be needed to pay outlays in the immediately following fiscal year that are in excess of the amount to be credited to the subaccount in the immediately following fiscal year.

(r) NOTIFICATION OF TRANSFERS.—(1) Notwithstanding any authority provided in this section to transfer funds, the transfer of funds from a working-capital fund, including a transfer to another working-capital fund, shall not be made under such authority unless the Secretary of Defense submits, in advance, a notification of the proposed transfer to the congressional defense committees in accordance with customary procedures.

(2) The amount of a transfer covered by a notification under paragraph (1) that is made in a fiscal year does not count toward any limitation on the total amount of transfers that may be made for that fiscal year under authority provided to the Secretary of Defense in a law authorizing appropriations for a fiscal year for military activities of the Department of Defense or a law making appropriations for the Department of Defense.

(s) LIMITATION ON CESSATION OR SUSPENSION OF DISTRIBUTION OF FUNDS FOR CERTAIN WORKLOAD.—(1) Except as provided in paragraph (2), the Secretary of Defense or the Secretary of a military department is not authorized—

(A) to suspend the employment of indirectly funded Government employees of the Department of Defense who are paid for out of working-capital funds by ceasing or suspending the distribution of such funds; or

(B) to cease or suspend the distribution of funds from a working-capital fund for a current project undertaken to carry out the functions or activities of the Department.

(2) Paragraph (1) shall not apply with respect to a working-capital fund if—

(A) the working-capital fund is insolvent; or
 (B) there are insufficient funds in the working-capital fund to pay labor costs for the current project concerned.

(3) The Secretary of Defense or the Secretary of a military department may waive the limitation in paragraph (1) if such Secretary determines that the waiver is in the national security interests of the United States.

(4) This subsection shall not be construed to provide for the exclusion of any particular category of employees of the Department of Defense from furlough due to absence of or inadequate funding.

(t) MARKET FLUCTUATION ACCOUNT.—(1) From amounts available for Working Capital Fund, Defense, the Secretary shall reserve up to \$1,000,000,000, to remain available without fiscal year limitation, for petroleum market price fluctuations. Such amounts may only be disbursed if the Secretary determines such a disbursement is necessary to absorb volatile market changes in fuel prices without affecting the standard price charged for fuel.

(2) A budget request for the anticipated costs of fuel may not take into account the availability of funds reserved under paragraph (1).

(u) USE FOR UNSPECIFIED MINOR MILITARY CONSTRUCTION PROJECTS TO REVITALIZE AND RECAPITALIZE DEFENSE INDUSTRIAL BASE FACILITIES.—

(1) The Secretary of a military department may use a working capital fund of the department under this section to fund an unspecified minor military construction project under section 2805 of this title for the revitalization and recapitalization of a defense industrial base facility owned by the United States and under the jurisdiction of the Secretary.

(2)(A) Except as provided in subparagraph (B), section 2805 of this title shall apply with respect to a project funded using a working capital fund under the authority of this subsection in the same manner as such section applies to any unspecified minor military construction project under section 2805 of this title.

(B) For purposes of applying subparagraph (A), the dollar limitation specified in subsection (a)(2) of section 2805 of this title, subject to adjustment as provided in subsection (f) of such section, shall apply rather than the dollar limitation specified in subsection (c) of such section.

(3) In this subsection, the term “defense industrial base facility” means any Department of Defense depot, arsenal, shipyard, or plant located within the United States.

(4) The authority to use a working capital fund to fund a project under the authority of this subsection expires on September 30, 2023.

(Added Pub. L. 87–651, title II, §207(a), Sept. 7, 1962, 76 Stat. 521; amended Pub. L. 97–295, §1(22), Oct. 12, 1982, 96 Stat. 1290; Pub. L. 98–94, title XII, §1204(a), Sept. 24, 1983, 97 Stat. 683; Pub. L. 98–525, title III, §305, Oct. 19, 1984, 98 Stat. 2513; Pub. L. 100–26, §7(d)(2), Apr. 21, 1987, 101 Stat. 280; Pub. L. 101–510, div. A, title VIII, §801, title XIII, §1301(6), Nov. 5, 1990, 104 Stat. 1588, 1668; Pub. L. 102–172, title VIII, §8137, Nov. 26, 1991, 105 Stat. 1212; Pub. L. 102–484, div. A, title III, §374, Oct. 23, 1992, 106 Stat. 2385; Pub. L. 103–160, div. A, title I, §158(b), Nov. 30, 1993, 107 Stat. 1582;

Pub. L. 105–85, div. A, title X, §1011(a), (b), Nov. 18, 1997, 111 Stat. 1873; Pub. L. 105–261, div. A, title X, §§1007(e)(1), 1008(a), Oct. 17, 1998, 112 Stat. 2115; Pub. L. 105–262, title VIII, §8146(d)(1), Oct. 17, 1998, 112 Stat. 2340; Pub. L. 106–65, div. A, title III, §§331(a)(1), 332, title X, §1066(a)(16), Oct. 5, 1999, 113 Stat. 566, 567, 771; Pub. L. 106–398, §1 [[div. A], title III, §341(f)], Oct. 30, 2000, 114 Stat. 1654, 1654A–64; Pub. L. 108–375, div. A, title X, §1009, Oct. 28, 2004, 118 Stat. 2037; Pub. L. 111–383, div. A, title XIV, §1403, Jan. 7, 2011, 124 Stat. 4410; Pub. L. 112–81, div. B, title XXVIII, §2802(c)(1), Dec. 31, 2011, 125 Stat. 1684; Pub. L. 114–92, div. A, title XIV, §§1421, 1422, Nov. 25, 2015, 129 Stat. 1083, 1084; Pub. L. 115–91, div. A, title II, §212, Dec. 12, 2017, 131 Stat. 1324; Pub. L. 115–232, div. A, title III, §321, title VIII, §809(a), title XIV, §1422, Aug. 13, 2018, 132 Stat. 1718, 1840, 2093; Pub. L. 116–92, div. A, title III, §352, title XVII, §1731(a)(29), Dec. 20, 2019, 133 Stat. 1320, 1813.)

HISTORICAL AND REVISION NOTES
 1956 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2208(a)	5:172d(a).	July 26, 1947, ch. 343, § 405; added Aug. 10, 1949, ch. 412, §11 (8th through 15th pars.), 63 Stat. 587.
2208(b)	5:172d(b).	
2208(c)	5:172d(c) (less 2d sentence).	
2208(d)	5:172d(d).	
2208(e)	5:172d(e).	
2208(f)	5:172d(f).	
2208(g)	5:172d(h).	
2208(h)	5:172d(g).	
2208(i)	5:172d(c) (2d sentence).	

In subsection (a)(1), (c)(1), (f), (g), and (h), the words “stores, . . . materials, and equipment” are omitted as covered by the word “supplies”, as defined in section 101(26) of title 10.

In subsection (c), the word “used” is substituted for the word “consumed”. The words “and costs of using equipment” are inserted to reflect an opinion of the Assistant General Counsel (Fiscal Matters), Department of Defense, February 2, 1960.

In subsection (d), the first sentence (less 1st 18 words) of 5 U.S.C. 172d(d) is omitted as executed.

In subsection (h), the following substitutions are made: “prescribe” for “issue”; and “persons” for “purchasers or users”. The word “shall” is substituted for the words “is authorized to” in the first sentence and for the word “may” in the last sentence to reflect the opinion of the Assistant General Counsel (Fiscal Matters), October 2, 1959, that the source law requires the action in question.

1982 ACT

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2208(h) (3d sentence).	10:2208 (note).	Dec. 21, 1979, Pub. L. 96–154, § 767, 93 Stat. 1163.

The word “hereafter” is omitted as executed.

PRIOR PROVISIONS

Provisions similar to those in subsecs. (m) to (q) of this section were contained in section 2216a of this title prior to repeal by Pub. L. 105–261, § 1008(b).

AMENDMENTS

2019—Subsec. (u). Pub. L. 116–92, § 1731(a)(29), inserted “of this title” after “2805” wherever appearing.

Subsec. (u)(1). Pub. L. 116–92, § 352(1), substituted “to fund” for “to carry out”.

Subsec. (u)(2). Pub. L. 116–92, § 352(2), designated existing provisions as subpar. (A), substituted “Except as

provided in subparagraph (B), section 2805” for “Section 2805” and “carried out with” for “funded using”, and added subpar. (B).

Subsec. (u)(4). Pub. L. 116-92, §352(3), substituted “to fund” for “to carry out”.

2018—Subsec. (e). Pub. L. 115-232, §1422, inserted at end “The accomplishment of the most economical and efficient organization and operation of working capital fund activities for the purposes of this subsection shall include actions toward the following:

“(1) Undertaking efforts to optimize the rate structure for all requisitioning entities.

“(2) Encouraging a working capital fund activity to perform reimbursable work for other entities to sustain the efficient use of the workforce.

“(3) Determining the appropriate leadership level for approving work from outside entities to maximize efficiency.”

Subsec. (i). Pub. L. 115-232, §809(a), substituted “section 7543” for “section 4543”.

Subsec. (u). Pub. L. 115-232, §321, added subsec. (u).

2017—Subsec. (k)(2). Pub. L. 115-91 substituted “\$500,000 for procurements by a major range and test facility installation or a science and technology re-invention laboratory and not less than \$250,000 for procurements at all other facilities” for “\$250,000” in introductory provisions.

2015—Subsec. (s). Pub. L. 114-92, §1421, added subsec. (s).

Subsec. (t). Pub. L. 114-92, §1422, added subsec. (t).

2011—Subsec. (c)(1). Pub. L. 111-383, §1403(1), inserted before semicolon “, including the cost of the procurement and qualification of technology-enhanced maintenance capabilities that improve either reliability, maintainability, sustainability, or supportability and have, at a minimum, been demonstrated to be functional in an actual system application or operational environment”.

Subsec. (k)(2). Pub. L. 111-383, §1403(2), substituted “\$250,000” for “\$100,000” in introductory provisions.

Subsec. (k)(2)(A). Pub. L. 112-81, §2802(c)(1)(A), substituted “section 2805(c)” for “section 2805(c)(1)”.

Subsec. (o)(2)(A). Pub. L. 112-81, §2802(c)(1)(B), substituted “section 2805(c)” for “section 2805(c)(1)”.

2004—Subsec. (r). Pub. L. 108-375 added subsec. (r).

2000—Subsec. (j)(1). Pub. L. 106-398 substituted “contract, and the solicitation” for “contract; and” at end of subpar. (A) and all that follows through “(B) the solicitation”, substituted “; or” for period after “private firms”, and added a new subpar. (B).

1999—Subsec. (j). Pub. L. 106-65, §§331(a)(1), 332, designated existing provisions as par. (1), redesignated former pars. (1) and (2) as subpars. (A) and (B), respectively, substituted “, remanufacturing, and engineering” for “or remanufacturing” in introductory provisions, inserted “or a subcontract under a Department of Defense contract” before the semicolon in subpar. (A), substituted “solicitation for the contract or subcontract” for “Department of Defense solicitation for such contract” in subpar. (B), and added par. (2).

Subsec. (l)(2)(A). Pub. L. 106-65, §1066(a)(16), inserted “of” after “during a period”.

1998—Subsec. (l)(3), (4). Pub. L. 105-261, §1007(e)(1), and Pub. L. 105-262 amended subsec. (l) identically, adding par. (3) and redesignating former par. (3) as (4).

Subsecs. (m) to (q). Pub. L. 105-261, §1008(a), added subsecs. (m) to (q).

1997—Subsec. (k). Pub. L. 105-85, §1011(a), added subsec. (k) and struck out former subsec. (k) which read as follows: “The Secretary of Defense shall provide that of the total amount of payments received in a fiscal year by funds established under this section for industrial-type activities, not less than 3 percent during fiscal year 1985, not less than 4 percent during fiscal year 1986, and not less than 5 percent during fiscal year 1987 shall be used for the acquisition of capital equipment for such activities.”

Subsec. (l). Pub. L. 105-85, §1011(b), added subsec. (l).

1993—Subsec. (i). Pub. L. 103-160 amended subsec. (i) generally. Prior to amendment, subsec. (i) required

that regulations under subsec. (h) authorize working-capital funded Army industrial facilities to sell manufactured articles and services to persons outside the Department of Defense in specified cases.

1992—Subsec. (j). Pub. L. 102-484 substituted “The Secretary of a military department may authorize a working capital funded industrial facility of that department” for “The Secretary of the Army may authorize a working capital funded Army industrial facility”.

1991—Subsecs. (j), (k). Pub. L. 102-172 added subsec. (j) and redesignated former subsec. (j) as (k).

1990—Subsec. (i)(1). Pub. L. 101-510, §801, added par. (1), redesignated par. (3) as (2), and struck out former pars. (1) and (2) which read as follows:

“(1) Regulations under subsection (h) may authorize an article manufactured by a working-capital funded Department of the Army arsenal that manufactures large caliber cannons, gun mounts, or recoil mechanisms to be sold to a person outside the Department of Defense if—

“(A) the article is sold to a United States manufacturer, assembler, or developer (i) for use in developing new products, or (ii) for incorporation into items to be sold to, or to be used in a contract with, an agency of the United States or a friendly foreign government;

“(B) the purchaser is determined by the Department of Defense to be qualified to carry out the proposed work involving the article to be purchased;

“(C) the article is not readily available from a commercial source in the United States; and

“(D) the sale is to be made on a basis that does not interfere with performance of work by the arsenal for the Department of Defense or for a contractor of the Department of Defense.

“(2) Services related to an article sold under this subsection may also be sold to the purchaser if the services are to be performed in the United States for the purchaser.”

Subsec. (k). Pub. L. 101-510, §1301(6), struck out subsec. (k) which read as follows: “Reports annually shall be made to the President and to Congress on the condition and operation of working-capital funds established under this section.”

1987—Subsec. (i)(3). Pub. L. 100-26 inserted “(22 U.S.C. 2778)” after “Arms Export Control Act”.

1984—Subsecs. (i) to (k). Pub. L. 98-525 added subsecs. (i) and (j) and redesignated former subsec. (i) as (k).

1983—Subsec. (d). Pub. L. 98-94 substituted “In addition, such amounts may be appropriated for the purpose of providing capital for working-capital funds as have been specifically authorized by law” for “If this method does not, in the determination of the Secretary of Defense, provide adequate amounts of working capital, such amounts as may be necessary may be appropriated for that purpose”.

1982—Subsec. (h). Pub. L. 97-295 inserted provision that supplies available in inventories financed by working capital funds established under this section may be sold to contractors for use in performing contracts with the Department of Defense.

EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by section 809(a) of Pub. L. 115-232 effective Feb. 1, 2019, with provision for the coordination of amendments and special rule for certain redesignations, see section 800 of Pub. L. 115-232, set out as a note preceding section 3001 of this title.

EFFECTIVE DATE OF 1998 AMENDMENT

Pub. L. 105-261, div. A, title X, §1007(e)(2), Oct. 17, 1998, 112 Stat. 2115, and Pub. L. 105-262, title VIII, §8146(d)(2), Oct. 17, 1998, 112 Stat. 2340, provided that: “Section 2208(l)(3) of such title, as added by paragraph (1), applies to fiscal years after fiscal year 1999.”

EFFECTIVE DATE OF 1983 AMENDMENT

Pub. L. 98-94, title XII, §1204(b), Sept. 24, 1983, 97 Stat. 683, provided that: “The amendment made by sub-

section (a) [amending this section] shall apply only with respect to appropriations for fiscal years beginning after September 30, 1984.”

PILOT PROGRAM FOR ACQUISITION OF COMMERCIAL SATELLITE COMMUNICATION SERVICES

Pub. L. 113–291, div. A, title XVI, §1605, Dec. 19, 2014, 128 Stat. 3623, as amended by Pub. L. 114–92, div. A, title XVI, §1612, Nov. 25, 2015, 129 Stat. 1103; Pub. L. 114–328, div. A, title XVI, §1606(a), Dec. 23, 2016, 130 Stat. 2586, provided that:

“(a) PILOT PROGRAM.—

“(1) IN GENERAL.—The Secretary of Defense shall develop and carry out a pilot program to effectively and efficiently acquire commercial satellite communications services to meet the requirements of the military departments, Defense Agencies, and combatant commanders.

“(2) FUNDING.—Of the funds authorized to be appropriated for any of fiscal years 2015 through 2020 for the Department of Defense for the acquisition of satellite communications, not more than \$50,000,000 may be obligated or expended for such pilot program during such a fiscal year.

“(3) CERTAIN AUTHORITIES.—In carrying out the pilot program under paragraph (1), the Secretary may not use the authorities provided in sections 2208(k) and 2210(b) of title 10, United States Code.

“(4) METHODS.—In carrying out the pilot program under paragraph (1), the Secretary may use a variety of methods authorized by law to effectively and efficiently acquire commercial satellite communications services, including by carrying out multiple pathfinder activities under the pilot program.

“(b) GOALS.—In developing and carrying out the pilot program under subsection (a)(1), the Secretary shall ensure that the pilot program—

“(1) provides a cost-effective and strategic method to acquire commercial satellite communications services;

“(2) incentivizes private-sector participation and investment in technologies to meet future requirements of the Department of Defense with respect to commercial satellite communications services;

“(3) takes into account the potential for a surge or other change in the demand of the Department for commercial satellite communications services in response to global or regional events;

“(4) ensures the ability of the Secretary to control and account for the cost of programs and work performed under the pilot program; and

“(5) demonstrates the potential to achieve order-of-magnitude improvements in satellite communications capability.

“(c) DURATION.—The pilot program under subsection (a)(1) shall terminate on October 1, 2020.

“(d) REPORTS AND BRIEFINGS.—

“(1) INITIAL REPORT.—Not later than 270 days after the date of the enactment of this Act [Dec. 19, 2014], the Secretary shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] a report that includes—

“(A) a plan and schedule to carry out the pilot program under subsection (a)(1); and

“(B) a description of the appropriate metrics established by the Secretary to meet the goals of the pilot program.

“(2) BRIEFING.—At the same time as the President submits to Congress the budget pursuant to section 1105 of title 31, for each of fiscal years 2017 through 2020, the Secretary shall provide to the congressional defense committees briefing on the pilot program.

“(3) FINAL REPORT.—Not later than December 1, 2020, the Secretary shall submit to the congressional defense committees a report on the pilot program under subsection (a)(1). The report shall include—

“(A) an assessment of the pilot program and whether the pilot program effectively and efficiently acquires commercial satellite communica-

tions services to meet the requirements of the military departments, Defense Agencies, and combatant commanders; and

“(B) a description of—

“(i) any contract entered into under the pilot program, the funding used under such contract, and the efficiencies realized under such contract;

“(ii) the advantages and challenges of using the pilot program;

“(iii) any additional authorities the Secretary determines necessary to acquire commercial satellite communications services as described in subsection (a)(1); and

“(iv) any recommendations of the Secretary with respect to improving or extending the pilot program.

“(e) IMPLEMENTATION OF GOALS.—In developing and carrying out the pilot program under subsection (a)(1), by not later than September 30, 2017, the Secretary shall take actions to begin the implementation of each goal specified in subsection (b).”

ADVANCE BILLING FOR FISCAL YEAR 2006

Pub. L. 109–234, title I, §1206, June 15, 2006, 120 Stat. 430, provided in part that: “Notwithstanding 10 U.S.C. 2208(l), the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in fiscal year 2006 shall not exceed \$1,200,000,000”.

ADVANCE BILLING FOR FISCAL YEAR 2005

Pub. L. 109–13, div. A, title I, §1005, May 11, 2005, 119 Stat. 243, provided that for fiscal year 2005, the limitation under subsec. (l)(3) of this section on the total amount of advance billings rendered or imposed for all working capital funds of the Department of Defense in a fiscal year would be applied by substituting “\$1,500,000,000” for “\$1,000,000,000”.

OVERSIGHT OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103–337, div. A, title III, §311(b)–(e), Oct. 5, 1994, 108 Stat. 2708, which related to purchase from other sources, limitation on inclusion of certain costs in DBOF charges, procedures for accumulation of funds, and annual reports and budget, was repealed and restated in section 2216a(d)(2)(B), (f) to (h)(3) of this title by Pub. L. 104–106, div. A, title III, §371(a)(1), (b)(1), Feb. 10, 1996, 110 Stat. 277–279.

Pub. L. 103–337, div. A, title III, §311(f), (g), Oct. 5, 1994, 108 Stat. 2709, required Secretary of Defense to submit to congressional defense committees, not later than Feb. 1, 1995, a report on progress made in implementing the Defense Business Operations Fund Improvement Plan, dated September 1993, and required Comptroller General to monitor and evaluate the Department of Defense implementation of the Plan and to report to congressional defense committees not later than Mar. 1, 1995.

CHARGES FOR GOODS AND SERVICES PROVIDED THROUGH DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 103–160, div. A, title III, §333(a), (b), Nov. 30, 1993, 107 Stat. 1621, which provided that charges for goods and services provided through Defense Business Operations Fund were to include amounts necessary to recover full costs of development, implementation, operation, and maintenance of systems supporting wholesale supply and maintenance activities of Department of Defense and use of military personnel in provision of goods and services, and were not to include amounts necessary to recover costs of military construction project other than minor construction project financed by Defense Business Operations Fund pursuant to section 2805(c)(1) of this title, and which required full cost of operation of Defense Finance Accounting Service to be financed within Defense Business Operations Fund through charges for goods and services provided through Fund, was repealed and restated in section 2216a(d)(1)(A), (C), (2)(A) of this title by Pub. L. 104–106,

div. A, title III, §371(a)(1), (b)(2), Feb. 10, 1996, 110 Stat. 277-279.

CAPITAL ASSET SUBACCOUNT

Pub. L. 102-484, div. A, title III, §342, Oct. 23, 1992, 106 Stat. 2376, as amended by Pub. L. 103-160, div. A, title III, §333(c), Nov. 30, 1993, 107 Stat. 1622, which provided that charges for goods and services provided through the Defense Business Operations Fund include amounts for depreciation of capital assets which were to be credited to a separate capital asset subaccount in the Fund, authorized Secretary of Defense to award contracts for capital assets of the Fund in advance of availability of funds in the subaccount, required Secretary to submit annual reports to congressional defense committees, authorized appropriations to the Fund for fiscal years 1993 and 1994, and defined terms, was repealed and restated in section 2216a(d)(1)(B), (e), (h)(4), and (i) of this title by Pub. L. 104-106, div. A, title III, §371(a)(1), (b)(3), Feb. 10, 1996, 110 Stat. 277-279.

LIMITATIONS ON USE OF DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102-190, div. A, title III, §316, Dec. 5, 1991, 105 Stat. 1338, as amended by Pub. L. 102-484, div. A, title III, §341, Oct. 23, 1992, 106 Stat. 2374; Pub. L. 103-160, div. A, title III, §§331, 332, Nov. 30, 1993, 107 Stat. 1620; Pub. L. 103-337, div. A, title III, §311(a), Oct. 5, 1994, 108 Stat. 2708, which authorized Secretary of Defense to manage performance of certain working-capital funds established under this section, the Defense Finance and Accounting Service, the Defense Industrial Plan Equipment Center, the Defense Commissary Agency, the Defense Technical Information Service, the Defense Reutilization and Marketing Service, and certain activities funded through use of working-capital fund established under this section, directed Secretary to maintain separate accounting, reporting, and auditing of such funds and activities, required Secretary to submit to congressional defense committees, by not later than 30 days after Nov. 30, 1993, a comprehensive management plan and, by not later than Feb. 1, 1994, a progress report on plan's implementation, and directed Comptroller General to monitor and evaluate the plan and submit to congressional defense committees, not later than Mar. 1, 1994, a report, was repealed and restated in section 2216a(a)-(c) of this title by Pub. L. 104-106, div. A, title III, §371(a)(1), (b)(4), Feb. 10, 1996, 110 Stat. 277, 279.

DEFENSE BUSINESS OPERATIONS FUND

Pub. L. 102-172, title VIII, §8121, Nov. 26, 1991, 105 Stat. 1204, which established on the books of the Treasury a fund entitled the "Defense Business Operations Fund" to be operated as a working capital fund under the provisions of this section and to include certain existing organizations including the Defense Finance and Accounting Service, the Defense Commissary Agency, the Defense Technical Information Center, the Defense Reutilization and Marketing Service, and the Defense Industrial Plant Equipment Service, directed transfer of assets and balances of those organizations to the Fund, provided for budgeting and accounting of charges for supplies and services provided by the Fund, and directed that capital asset charges collected be credited to a subaccount of the Fund, was repealed by Pub. L. 104-106, div. A, title III, §371(b)(5), Feb. 10, 1996, 110 Stat. 280.

SALE OF INVENTORIES FOR PERFORMANCE OF CONTRACTS WITH DEFENSE DEPARTMENT

Pub. L. 96-154, title VII, §767, Dec. 21, 1979, 93 Stat. 1163, which had provided that supplies available in inventories financed by working capital funds established pursuant to this section could, on and after Dec. 21, 1979, be sold to contractors for use in performing contracts with the Department of Defense, was repealed and restated in subsec. (h) of this section by Pub. L. 97-295, §§1(22), 6(b), Oct. 12, 1982, 96 Stat. 1290, 1315.

§ 2209. Management funds

(a) To conduct economically and efficiently the operations of the Department of Defense that are financed by at least two appropriations but whose costs cannot be immediately distributed and charged to those appropriations, there is the Army Management Fund, the Navy Management Fund, and the Air Force Management Fund, each within its respective department and under the direction of the Secretary of that department. Each such fund shall consist of a corpus of \$1,000,000 and such amounts as may be appropriated thereto from time to time. An account for an operation that is to be financed by such a fund may be established only with the approval of the Secretary of Defense.

(b) Under such regulations as the Secretary of Defense may prescribe, expenditures may be made from a management fund for material (other than for stock), personal services, and services under contract. However, obligation may not be incurred against that fund if it is not chargeable to funds available under an appropriation of the department concerned or funds of another department or agency of the Department of Defense. The fund shall be promptly reimbursed from those funds for expenditures made from it.

(c) Notwithstanding any other provision of law, advances, by check or warrant, or reimbursements, may be made from available appropriations to a management fund on the basis of the estimated cost of a project. As adequate data becomes available, the estimated cost shall be revised and necessary adjustments made. Final adjustment shall be made with the appropriate funds for the fiscal year in which the advances or reimbursements are made. Except as otherwise provided by law, amounts advanced to management funds are available for obligation only during the fiscal year in which they are advanced.

(Added Pub. L. 87-651, title II, §207(a), Sept. 7, 1962, 76 Stat. 522.)

HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
2209(a)	5:172e(a), (b).	July 3, 1942, ch. 484; re-
2209(b)	5:172e(c) (last sentence).	stated Aug. 10, 1949, ch.
2209(c)	5:172e(c) (less last sentence).	412, §11 (16th through
	5:172e(d).	19th pars.), 63 Stat. 588.

In subsection (a), the second sentence is substituted for the second sentence of 5 U.S.C. 172e(a) and the first sentence (less last 21 words) of 5 U.S.C. 172e(b) which are omitted as unnecessary.

In subsection (c), the 13th through 33d words of 5 U.S.C. 172e(d) are omitted as surplusage.

§ 2210. Proceeds of sales of supplies: credit to appropriations

(a)(1) A working-capital fund established pursuant to section 2208 of this title may retain so much of the proceeds of disposals of property referred to in paragraph (2) as is necessary to recover the expenses incurred by the fund in disposing of such property. Proceeds from the sale or disposal of such property in excess of amounts necessary to recover the expenses may be credited to current applicable appropriations of the Department of Defense.