

## HISTORICAL AND REVISION NOTES

Revised section	Source (U.S. Code)	Source (Statutes at Large)
4536 .....	10:1334.	June 13, 1890, ch. 423 (1st proviso under “Quartermaster’s Department”), 26 Stat. 152.

The words “Money necessary \* \* \* may be spent” are substituted for the words “There may be expended \* \* \* the amounts required”. The word “bakeries” is substituted for the words “bake house to carry on post bakeries”. The words “each and all” are omitted as surplusage.

## AMENDMENTS

2018—Pub. L. 115-232 renumbered section 4536 of this title as this section.

## EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by 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.

## § 7540. Architectural and engineering services

(a) Whenever he considers that it is advantageous to the national defense and that existing facilities of the Department of the Army are inadequate, the Secretary of the Army may, by contract or otherwise, employ the architectural or engineering services of any person outside that Department for producing and delivering designs, plans, drawings, and specifications 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, § 4540; 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; renumbered § 7540, Pub. L. 115-232, div. A, title VIII, § 808(d), Aug. 13, 2018, 132 Stat. 1839.)

## 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

2018—Pub. L. 115-232 renumbered section 4540 of this title as this section.

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 2018 AMENDMENT

Amendment by 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 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.

## § 7541. 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 associ-

ated 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, §4541; renumbered §7541, Pub. L. 115-232, div. A, title VIII, §808(d), Aug. 13, 2018, 132 Stat. 1839.)

#### PRIOR PROVISIONS

Prior sections 7541 to 7541b were renumbered sections 8761 to 8761b of this title, respectively.

#### AMENDMENTS

2018—Pub. L. 115-232 renumbered section 4541 of this title as this section.

#### EFFECTIVE DATE OF 2018 AMENDMENT

Amendment by 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.

### § 7542. 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 production 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.