

**VOLUME 11A, CHAPTER 14: “AVAILABILITY THROUGH SALE OR FEE FOR USE OF SAMPLES, DRAWINGS, INFORMATION, EQUIPMENT, AND CERTAIN SERVICES BY A GOVERNMENT LABORATORY, CENTER, RANGE, OR TESTING FACILITY”**

**SUMMARY OF MAJOR CHANGES**

All changes are denoted by **blue font**.

Substantive revisions are denoted by an asterisk (\*) preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by **bold, italic, blue and underlined font**.

The previous version dated **May 2011** is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
Chapter Title	Changed the chapter title from “Sales of Samples, Drawings, Information, Equipment, and Certain Services by a Government Laboratory, Center, Range, or Testing Facility” to “Availability Through Sale or Fee for Use of Samples, Drawings, Information, Equipment, and Certain Services by a Government Laboratory, Center, Range, or Testing Facility.”	Revision
1401	Added a General section to introduce the subject and provide the purpose for this chapter.	Addition
140103	Added an Authoritative Guidance paragraph to establish the statutory basis for this chapter.	Addition
1402	Added six new definitions to include “Facilities,” “National Technology and Industrial Base,” “Proceeds,” “Range,” “Research Center,” and “User Fee/User Charge” for clarification of specific terms used in this chapter.	Addition
1403	Renamed the Policy and Procedures section to Delineated Authorities to align with Department of Defense Instruction (DoDI) 5535.11, “Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services to Non-DoD Persons and Entities.” In addition, removed operational procedures, which are promulgated in DoDI 5535.11, and provided details of Title 10, United States Code (U.S.C.), section 2539b, which serves as the principal legal authority of this chapter.	Revision

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
1404	Renamed "Fees" section to "Proceeds or Fees" to account for the sale or rental of property.	Revision
140401	Added a General Policy paragraph to introduce and establish the basis for collecting and using proceeds or fees and ensure internal controls are in place and fee schedules are developed, published, and maintained.	Addition
140401.D	Added the requirement that user fees for transactions with the public must be published in a schedule, list, or table on a publicly available website, reviewed biannually, and the results of the biennial review be published and discussed in the annual DoD Agency Financial Report.	Addition
140402 and 140403	Added specific requirements for calculating sales price and appropriate user fees.	Addition
140404	Added specific requirements for collecting proceeds or user fees.	Addition
140405	Added specific requirements for the disposition of proceeds or user fees.	Addition
Multiple	Updated and added hyperlinks as required.	Addition

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## CHAPTER 14

**AVAILABILITY THROUGH SALE OR FEE FOR USE OF SAMPLES, DRAWINGS,  
INFORMATION, EQUIPMENT, AND CERTAIN SERVICES BY A GOVERNMENT  
LABORATORY, CENTER, RANGE, OR TESTING FACILITY**

**\*1401 GENERAL**

## 140101. Overview

The Department of Defense (DoD) promotes research and development within the commercial sector of the U.S. economy by transferring technology and information from the Government (i.e. the military) to the commercial sector. This policy strengthens both national and economic security by establishing a national technology and industrial base from which military superiority can be sustained and U.S. production capabilities increased. The transfer of technology and information from the Government to the commercial sector benefits critical research and leads to the development of both useful military and/or commercial technology.

## 140102. Purpose

This chapter prescribes reimbursable and disposition (of proceeds or fees) policies for the provision of samples, drawings, information, equipment, and certain services to any person or entity, as authorized by *Title 10, United States Code (U.S.C.), section 2539b*. This chapter does not apply to facilities and ranges of the Major Range and Test Facility Base (MRTFB) (see Chapter 12 for financial management policy regarding the use of MRTFB).

**\*140103. Authoritative Guidance**

A. *10 U.S.C. § 2208*. Sections 2208(a)(2) and 2208(o) of Title 10 provide authority to the Secretary of Defense to establish working-capital funds to provide working capital for activities that provide common services across DoD and to other persons outside DoD when authorized by law.

B. *10 U.S.C. § 2371*. Section 2371 of Title 10 provides authority to the Secretary of Defense and the Secretary of each military department to enter into transactions (other than contracts, cooperative agreements, and grants) in carrying out basic, applied, and advanced research projects.

C. *10 U.S.C. § 2539b*. Section 2539b of Title 10 provides authority to the Secretary of Defense and the Secretaries of the military departments, when determined to be in the interest of national defense, to sell samples, drawings, information, equipment, and certain services to any person or entity.

D. *10 U.S.C. § 2563*. Section 2563 of Title 10 provides authority to the Secretary of Defense to sell to persons outside DoD articles and services that are manufactured or performed by any working-capital funded industrial facility of the armed forces.

E. [10 U.S.C. § 2667](#). Section 2667 of Title 10 provides authority to the Secretary of Defense to lease non-excess real or personal property.

F. [31 U.S.C. § 3302](#). Section 3302 of Title 31 establishes custodial responsibilities of public officials with respect to receipt of public money.

G. [31 U.S.C. § 9701](#). Section 9701 of Title 31 provides criteria for use by Federal agencies in prescribing regulations establishing charges for services or things of value provided by the agency.

H. [51 U.S.C. § 50504](#). Section 50504 of Title 51 provides authority to DoD to allow non-Federal entities to use its space-related facilities on a reimbursable basis.

I. [32 Code of Federal Regulations \(C.F.R.\) Part 204](#), “User Fees.” In conjunction with chapter 4 of this Volume, Part 204 of Title 32 implements the DoD program under Title 31 U.S.C. § 9701 and Office of Management and Budget (OMB) Circular No. A-25, “User Charges,” for assessment of appropriate fees for services provided to identifiable recipients beyond those provided to the general public and for the sale or use of DoD goods or resources.

J. [OMB Circular No. A-25](#), “User Charges.” This Circular establishes Federal policy regarding fees assessed for Government services and for sale or use of Government goods or resources. It provides information on the scope and types of activities subject to user charges and on the basis upon which user charges are to be set. It also provides guidance for agency implementation of charges and the disposition of collections.

K. [DoD Instruction \(DoDI\) 5535.11](#), “Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services to Non-DoD Persons and Entities,” March 19, 2012. This Instruction establishes authority, assigns responsibilities, and prescribes operational procedures in accordance with 10 U.S.C. 2539b for the provision of samples, drawings, information, equipment, materials, and certain services to any person or entity. Please refer to this document for operational procedures prescribed by the Under Secretary of Defense (USD) Acquisition, Technology and Logistics (AT&L).

#### \*1402 DEFINITIONS

The following terms and definitions are provided for the purposes of this chapter:

A. [Drawing](#). A diagram, plan, or list detailing the fabrication and assembly of structural elements, or the installation of materials and equipment. A drawing details the characteristics, or outlines the parts of operation of a product or item.

B. [Equipment or Materials](#). **Personal** property, including machinery, devices, and apparatuses, and components of such items.

C. Friendly Foreign Government. Those countries for which a Presidential Determination has been provided under Section 3(a)(1) of the Arms Export Control Act, codified at 22 U.S.C. § 2753(a)(1), and to which transfer has not been prohibited by the Department of State under the International Traffic in Arms Regulation (22 Code Federal Regulation Part 120).

D. Independent Research and Development (IR&D) Programs. A research and development effort that is not sponsored by, or required in performance of a government contract, or grant for: (1) basic research, (2) applied research, (3) development, and (4) systems and other concept formulation studies. IR&D programs do not include technical efforts expended in developing and preparing technical data specifically to support submitting a bid or proposal.

E. Facilities. Property used for production, maintenance, research, engineering, development, evaluation, and/or testing. It includes equipment, plant equipment, test equipment, tooling, real and personal property, and material.

F. Laboratory. A facility or group of facilities owned, leased, or otherwise under the jurisdiction and control of the Federal Government, a substantial purpose of which is the performance of research, development, engineering, test and evaluation, or otherwise developing or maintaining a technology in accordance with Title 15 U.S.C § 3710a(d)(2).

G. Manufacturing or Other Information. Any blueprints, drawings, plans, instructions, documentation, or other technical information or technical data that can be used or adopted for use to design, engineer, produce, manufacture, operate, repair, overhaul, or reproduce any equipment or material.

H. National Technology and Industrial Base. The persons and organizations that are engaged in research, development, production, integration, services, or information technology activities conducted within the United States.

I. Person or entity. An individual, partnership, corporation, association, State, local, or tribal Government, or an agency or instrumentality of the United States Government other than DoD.

J. Proceeds. Money received as a fee or from the sale (or rental) of an asset, usually before deduction of commissions, fees, and related expenses. From a proprietary accounting standpoint, proceeds result from exchange transactions (i.e. when a Government entity provides goods and services to the public or to another Government entity for a price) and can be recorded as either revenue or a gain/loss. In accordance with the Statement of Federal Financial Accounting Standard 7: “Accounting for Revenue and Other Financing Sources and Concepts for Recording Budgetary and Financial Accounting,” proceeds will be recorded as revenue if the exchange transaction is usual or a recurring event; however, proceeds will be recorded as a gain/loss if the exchange transaction is unusual or a nonrecurring event.

K. Range. A specifically bounded geographic area under the jurisdiction of the DoD that may encompass a landmass, body of water (above or below the surface), and/or airspace used to conduct operations, training, research and development, and test and evaluation of military hardware, personnel, tactics, munitions, explosives, or electronic combat systems. This includes both operational and test ranges as those terms are defined in DoD Directive (DoDD) 3200.15, “Sustaining Access to the Live Training and Test Domain.”

L. Research Center. A facility or group of facilities owned, leased or otherwise under the jurisdiction and control of the DoD, a substantial purpose of which is the performance of research, development, engineering, test and evaluation, or otherwise developing or maintaining a technology in accordance with Title 15 U.S.C § 3710a(d)(2).

M. Sample. A unit or units of a product drawn from a lot or batch that is representative of the product and is constructed in conformance with the requirements and complies with specifications of the product. The item may be from a prototype or final production version of the product.

N. User Fee/User Charge. A fee assessed to users for goods or services provided by the Federal Government. In the context of transactions with the public, user fees generally apply to federal programs or activities that provide special benefits to identifiable recipients above and beyond what is normally available to the public. User fees are normally related to the cost of the goods or services provided.

#### \*1403 DELINEATED AUTHORITIES

##### 140301. Authorization to Sell, Rent, Lend, Give, or Charge an Appropriate Fee

Under 10 U.S.C. § 2539b, the Secretary of Defense and the Secretaries of the military departments, under regulations prescribed by the Secretary of Defense and when determined by the Secretary of Defense or the Secretary concerned to be in the interest of national defense, may each:

A. Sell, rent, lend, or give samples, drawings, and manufacturing or other information (subject to the rights of third parties) to any person or entity;

B. Sell, rent, or lend government equipment or materials to any person or entity:

1. For use in independent research and development programs, subject to the condition that the equipment or material be used exclusively for such research and development; or

2. For use in demonstrations to a friendly foreign government;

C. Make available to any person or entity, at an appropriate fee, the services of any Department laboratory, center, range, or other testing facility for the testing of materials, equipment, models, computer software, and other items; and

D. Make available to any person or entity, through leases, contracts, or other appropriate arrangements, facilities, services, and equipment of any government laboratory, research center, or range, if the facilities, services, and equipment provided will not be in direct competition with the domestic private sector.

#### 140302. Charging Fees

In addition, in providing services or in making facilities, equipment, and other items available under subparagraphs 140301.A.3 and 140301.A.4, the DoD should charge appropriate fees in a manner consistent with Chapter 4, 32 C.F.R. Part 204, and OMB Circular No. A-25.

#### \*1404 PROCEEDS OR FEES

##### \*140401. General Policy

A. Per 31 U.S.C. § 9701, the “User Charge Statute,” it is the sense of Congress that each service or thing of value provided by a Federal agency (except a mixed-ownership Government corporation) to a person (except a person on official business of the United States Government) is to be self-sustaining to the extent possible. Accordingly, the head of each agency may prescribe regulations establishing the charge for a service or thing of value provided by the agency. However, unless otherwise authorized by law, proceeds or fees collected under this authority and 31 U.S.C. § 3302 must be deposited in the General Fund of the Treasury and are generally not available to the agency or the activity generating the fees. An agency may not obligate against proceeds or fees collected without specific statutory authority. Congress may provide agencies with the authority to collect and use proceeds or fees within authorizing legislation or within appropriations legislation, or within both, but in the absence of such statutory authority, user charge collections must be credited to the General Fund of the Treasury as miscellaneous receipts, as required by 31 U.S.C. § 3302.

B. Proceeds received from sales or rentals provided in accordance with subparagraphs 140301.A.1 and 140301.A.2 or fees received for services provided in accordance with subparagraphs 140301.A.3 and 140301.A.4 may include reimbursement for up to the full amount of all direct and indirect costs to the Government. Less than full cost recovery may be charged in accordance with subparagraph 140402.B, or other applicable authorities. DoD Working Capital Fund activities should establish, whenever feasible, standard prices or stabilized rates and unit prices for goods and services in accordance with Volume 11B.

C. Internal management controls must be established in accordance with OMB [Circular No. A-123](#), “Management’s Responsibility for Internal Control,” the Government Accountability Office (GAO)’s [GAO-14-704G](#), “Standards for Internal Control in the Federal Government (the “Green Book”),” and [DoDI 5010.40](#), “Managers’ Internal Control Program Procedures,” to ensure that sales price and fees are developed, published, and

adjusted using current, accurate, and complete data and appropriate audit standards are applied to their collections.

\* D. User fees for transactions with the public must be published in a schedule, list, or table on a publicly available website. Schedules, listings, or tables of fees must be reviewed biennially, in accordance with OMB Circular No. A-25 to ensure proper and adequate costs are being recovered and adjustments are made for changes in costs or market values. The biennial review of user fees must be published and discussed in the annual DoD Agency Financial Report required by the Government Management and Reform Act of 1994 and the Chief Financial Officers (CFO) Act of 1990.

E. When a Government laboratory, center, range, or testing facility makes a decision to sell, rent, lend or give samples, drawings, information, or equipment or charge a fee for services that is subject to DoDI 5535.11, then the financial management policy outlined in paragraphs 140402 through 140405 regarding calculation, collection, and disposition of proceeds or fees must be followed.

\*140402. Calculation of Sales Price

A. In general, the sales price of samples, drawings, information, equipment, or materials in accordance with subparagraphs 140301.A.1 and 140301.A.2 will be calculated or determined prior to or at the time of the sale. When calculating or determining the sales price of such assets, consideration should be given to the following:

1. Fair Value;
2. Historical Cost less Depreciation (Net Book Value);
3. Replacement Cost;
4. Net Realizable Value;
5. Discounted price (may be used when selling an asset to a State or Local agency); or
6. Without charge (may be considered when reutilizing an asset within DoD, transferring an asset to another Federal agency, or donating an asset to a State or Local agency); and
7. The specific mission, goals, and/or objectives of the research and development project associated with a particular asset's sale.
8. Terms identified in subparagraphs 140402.A.1 through 140402.A.4 are defined in the 2014 Federal Accounting Standards Advisory Board (FASAB) Handbook Appendix E, "Consolidated Glossary."

B. Additional guidance on the sale (and disposal) of DoD property can be found on the Defense Logistics Agency (DLA) Disposition Services' [website](#). Moreover, specific guidance regarding property disposal can be found in [DLA Instruction 1403](#), "DoD Property Disposal" and [DoD Manual 4160.21, Volume 1](#), "Defense Materiel Disposition: Disposal Guidance and Procedures."

\*140403. Calculation of Fees

A. When DoD services, facilities, or equipment are made available in accordance with subparagraphs 140301.A.3 and 140301.A.4 and DoDI 5535.11, an appropriate user fee must be imposed by the DoD agency providing the service, facility, or equipment.

1. In accordance with 10 U.S.C. § 2539b, user fees may not exceed the amount necessary to recoup the direct and indirect costs incurred (i.e., total or full costs) by providing the service, facility, or equipment. However, direct costs, at a minimum, must be charged or recouped.

2. Costs may include capital improvement costs, utility costs, depreciation, contractor support, salaries of personnel, and all other ancillary support costs.

3. Specific policy pertaining to the calculation (i.e., identification of specific costs) and reporting of fees for the provision of services, equipment, and facilities pursuant to subparagraphs 140301.A.3 and 140301.A.4 can be found in Chapter 4, 32 C.F.R. Part 204, and OMB Circular No. A-25.

B. When approved by the laboratory directors, facility directors, and/or commander, prior to providing the service or use of facilities and/or equipment, all or a portion of the indirect costs may be eliminated from the fee. Fees charged for services at less than total costs are permitted only when there is a compelling reason or it is determined to be in the best interest of national defense to do so.

1. In addition, special consideration as to recovery of less than full costs may be given when:

a. The recipient of the benefit is engaged in a nonprofit activity designed for public safety, health, or welfare;

b. Payments of full fees by a state, local government, or nonprofit activity would not be in the Federal Government's best interest; or

c. The laboratory directors, facility directors, and/or commander have determined that the administrative costs of determining and collecting the full fees would outweigh the benefits to the activity.

2. When less than full cost is charged, laboratory directors, facility directors, and commander must maintain adequate documentation justifying or supporting each

decision. Such documentation should address the criteria in subparagraphs 140402.A and 140402.B and be available for audits or inspections and for review by higher authorities.

C. DoD Working Capital Fund laboratories and facilities must use standard (stabilized) rates to establish fees in accordance with Volume 11B, and DoD activities designated as “Major Range and Test Facility Bases” must determine costs and fees in accordance with Chapter 12.

\*140404. Collection of Proceeds or Fees

DoD Components should make every effort to collect proceeds or fees electronically, via electronic funds transfer (EFT), and utilize, as applicable, the collection services provided by the Treasury’s Bureau of the Fiscal Service (Fiscal Service) as outlined in the Treasury Financial Management (TFM), Volume 1, “Federal Agencies,” Part 5, Deposit Regulations and Part 6, Chapter 4000, Intra-Governmental Payment and Collection (IPAC) System and further described in Volume 5, Chapter 8. Moreover, support agreements with DoD Components or other Federal Government agencies, contract agreements with private parties or entities established in conjunction with sales, rentals, or lending of property identified in subparagraphs 140301.A.1 and 140301.A.2 and fees received for services identified in subparagraphs 140301.A.3 and 140301.A.4, should include requirements to use, as applicable, the collection services provided by the Fiscal Service.

A. In accordance with OMB Circular No. A-25, user fees must be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided to allow for reimbursable services.

B. All fees for services that incur variable costs over time such as personnel or utility costs may be collected incrementally over time.

\*140405. Disposition of Proceeds or Fees Received

As required by 31 U.S.C. § 3302 and unless another statute provides otherwise, an official or agent of the Government who receives money for the Federal Government from any source must deposit the money in the Treasury as soon as practicable. This law is commonly referred to as the “Miscellaneous Receipts Act.”

A. Proceeds received from sales or rentals provided in accordance with subparagraphs 140301.A.1 and 140301.A.2 must be credited to the General Fund of the Treasury as miscellaneous receipts, unless an exception to the Miscellaneous Receipts Act is available, such as 10 U.S.C. § 2210, which authorizes Working Capital Fund activities to retain a portion of the proceeds from the sale or disposal of certain types of property, with the balance credited to current applicable appropriations of DoD.

B. Under authority of 10 U.S.C. § 2539b, fees collected for services or when making facilities, equipment and other items available under subparagraphs 140301.A.3 and

140301.A.4 may be credited to the appropriations or other funds of the activity making such services available.

140406. Warranties and Liabilities

All transfers of property or services of whatever nature made pursuant to this policy must be without any express or implied warranty. The recipient of the property or services must agree in writing to hold harmless and indemnify the U.S. Government from any liability or claim for damages or injury to any person or property arising out of the property or services provided.

140407. Liability for Loss of or Damage to Property of the Government

The written support agreement or contract with an individual, company, corporation, or organization must include a clause stating that the U.S. Government will be reimbursed for any losses or damages arising out of or in conjunction with the use of government property.