

VOLUME 11A, CHAPTER 14: “DISPOSITION OF PROCEEDS OR FEES FOR SERVICES PROVIDED BY OR THROUGH THE USE OF A DOD LABORATORY, CENTER, RANGE, OR OTHER TESTING FACILITY”

SUMMARY OF MAJOR CHANGES

Changes are identified in this table and also denoted by [blue font](#).

Substantive revisions are denoted by an asterisk (*) symbol 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 [January 2016](#) is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
Chapter Title	Changed the chapter title from “Availability Through Sale or Fee for Use of Samples, Drawings, Information, Equipment, and Certain Services by a Government Laboratory, Center, Range, or Testing Facility” to “Disposition of Proceeds or Fees For Services Provided By or Through The Use of a DoD Laboratory, Center, Range, or Other Testing Facility.” This aligns with the title used for Chapter 5. It also better identifies the chapter as providing reimbursable guidance.	Revision
1.3 (140103)	Added four authoritative sources and removed six that are not referenced in the chapter. Also added nine that were previously referenced in the body of the chapter.	Addition/ Deletion
2.0 (1402)	Added five new definitions and revised five definitions for clarification of terms used in this chapter.	Addition/ Revision
3.3 (140303)	Added guidance from Title 10, United States Code, section 2363 (10 U.S.C. § 2363), “Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions.”	Addition
4.1 (140401)	Provided 31 U.S.C. § 9701 definition for “Person.”	Addition
4.5 (140405)	Updated 31 U.S.C. § 3302 requirements.	Revision

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CHAPTER 14

**DISPOSITION OF PROCEEDS OR FEES FOR SERVICES PROVIDED BY OR
THROUGH THE USE OF A DOD LABORATORY, CENTER, RANGE, OR OTHER
TESTING FACILITY**

1.0 GENERAL (1401)

1.1 Overview (140101)

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 Department to the commercial sector. This policy strengthens both national and economic security by establishing a national technology and industrial base to sustain military superiority and increase U.S. production capabilities. The transfer of technology and information from the Department to the commercial sector enables critical research and leads to the development of both useful military and/or commercial technology.

1.2 Purpose (140102)

This chapter prescribes financial management policy for reimbursement through sale or fee and, the disposition of fees and proceeds received by making testing facilities available; and resulting from the provision of samples, drawings, information, and equipment to any person or entity, as authorized. Authorization is provided by Title 10, United States Code, section 2539b (10 U.S.C. § 2539b), “Availability of samples, drawings, information, equipment, materials, and certain services” and implemented in DoD Instruction (DoDI 5535.11), “Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services to Non-DoD Persons and Entities.” This chapter does not apply to facilities and ranges of the Major Range and Test Facility Base (MRTFB) (see Chapter 12 for reimbursable policy applicable to DoD MRTFBs).

*1.3 Authoritative Guidance (140103)

The financial management policy and related requirements prescribed by this chapter are in accordance with the applicable provisions of:

1.3.1. 10 U.S.C. § 2358, “Research and development projects”;

1.3.2. 10 U.S.C. § 2363, “Mechanisms to provide funds for defense laboratories for research and development of technologies for military missions”;

1.3.3. 15 U.S.C. § 3710a, “Cooperative research and development agreements”;

1.3.4. 22 U.S.C. § 2753, “Eligibility for defense services or defense articles”;

1.3.5. 31 U.S.C. § 3302, “Custodians of money”;

1.3.6. [31 U.S.C. § 3512](#), “Executive agency accounting and other financial management reports and plans”;

1.3.7. [31 U.S.C. § 9701](#), “Fees and charges for Government services and things of value”;

1.3.8. Chief Financial Officers [\(CFO\) Act of 1990](#);

1.3.9. Defense Logistics Agency (DLA) Instruction 4160.01 ([DLAI 4160.01](#)), (DoD Common Access Card enabled access only) “DLA’s Guidance on Department of Defense (DoD) Property Disposal”;

1.3.10. Department of Treasury (Treasury) Financial Manual (TFM) Volume I, Part 2, Chapter 4700 ([1 TFM Chapter 4700](#)) “Federal Entity Reporting Requirements for the Financial Report of the United States Government” and [1 TFM Part 5](#), “Deposit Regulations”;

1.3.11. [DoDI 5010.40](#), “Managers' Internal Control Program Procedures”;

1.3.12. DoD Manual Volume 1 ([DoDM 4160.21-VI](#)), “Defense Materiel Disposition: Disposal Guidance and Procedures”;

1.3.13. Federal Accounting Standards Advisory Board (FASAB) Handbook, [FASAB Appendix E: Consolidated Glossary](#);

1.3.14. FASAB Handbook, Statement of Federal Financial Accounting Standards 7 ([SFFAS 7](#)), “Accounting for Revenue and Other Financing Sources and Concepts for Reconciling Budgetary and Financial Accounting”;

1.3.15. Government Accountability Office 14-704G ([GAO-14-704G](#)), “Standards for Internal Control in the Federal Government”;

1.3.16. Office of Management and Budget ([OMB Circular A-25](#)), “User charges”;

1.3.17. [OMB Circular A-123](#), “Management's Responsibility for Enterprise Risk Management and Internal Control.”

*2.0 DEFINITIONS (1402)

2.1 Drawing (140201)

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

2.2 Equipment or Materials (140202)

Equipment or materials are personal property, including machinery, devices, and apparatuses, and components of such items. Personal property also includes systems, equipment, materials, and supplies. This does not include records of the Federal Government and real property (land and improvements to facilities) as specified in the glossary portion of [DoDI 5000.64](#) “Accountability and Management of DoD Equipment and Other Accountable Property.” Personal property normally expected to have a period of service of a year or more after being put into use meets the equipment definition in [OMB Circular A-11](#) “Preparation, Submission and Execution of the Budget.”

2.3 Fair Value (140203)

The amount at which an asset or liability could be exchanged in a current transaction between willing parties, other than in a forced or liquidation sale.

2.4 Friendly Foreign Government (140204)

Those countries for which a Presidential Determination has been provided under 22 U.S.C. § 2753(a)(1), and to which transfer has not been prohibited by the Department of State under Title 22, Code of Federal Regulations, part 126 ([22 CFR 126](#)) of the International Traffic in Arms Regulations.

2.5 Historical Cost less Depreciation (Book Value) (140205)

Historical Cost includes all appropriate purchase, transportation, and production costs incurred to bring items to their current condition and location. Historical cost excludes abnormal costs, which should be expensed in the period incurred rather than capitalized as inventory.

2.6 Independent Research and Development (IR&D) Programs (140206)

IR&D programs are performed by non-government entities that are not sponsored by, or required in performance of government contracts or grants. These efforts include basic research, applied research, development, systems and other concept formulation studies. These programs do not include technical efforts expended in developing and preparing technical data specifically to support submitting a bid or proposal.

2.7 Laboratory (140207)

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 15 U.S.C § 3710a.

2.8 Manufacturing or Other Information (140208)

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.

2.9 National Technology and Industrial Base (140209)

The persons and organizations that are engaged in research, development, production, integration, services, or information technology activities conducted within the U.S., the United Kingdom of Great Britain and Northern Ireland, Australia, and Canada. Reference [10 U.S.C. § 2500](#) “Definitions.”

2.10 Net Realizable Value (140210)

The estimated amount that can be recovered from selling, or any other method of disposing of an item less estimated costs of completion, holding and disposal.

2.11 Person or entity (140211)

An individual, partnership, corporation, association, state, local, or tribal government, or an agency or instrumentality of the U.S. Government other than the DoD.

2.12 Proceeds (140212)

[40 U.S.C. § 571](#) “General rules for deposit and use of proceeds,” defines proceeds as either the transfer of excess property to a Federal agency for agency use; or sale, lease, or other disposition of surplus property. [40 U.S.C. § 574](#) “Other rules regarding proceeds,” defines net proceeds (with respect to the disposition or transfer of property) as proceeds less all expenses incurred for the disposition or transfer, including care and handling. A gain or loss must be recorded for exchange transactions that are unusual or nonrecurring. In contrast, exchange revenue for exchange transactions that are usual and recurring must be reported. Further, exchange revenue is the proceeds from either intragovernmental sales by an organization that maintains an intragovernmental revolving fund; or when each party to a transaction receives and sacrifices something of value (e.g., when a DoD Component provides goods and services to the public). Refer to FASAB SFFAS 7, sections 238 and 314-315 of Appendix B for details.

2.13 Range (140213)

[10 U.S.C. § 101](#) defines a range as a designated land or water area that is set aside, managed, and used for range activities of the DoD. This includes firing lines and positions, maneuver areas, firing lanes, test pads, detonation pads, impact areas, electronic scoring sites, buffer zones with restricted access, and exclusionary areas. It also includes airspace areas designated for military use in accordance with regulations and procedures prescribed by the Administrator of the Federal Aviation Administration. Range activities involve research, development, testing, and evaluation of military munitions, other ordnance, and weapons systems; and the training of members of the armed forces in their use.

2.14 Research Center (140214)

The Secretaries of the Military Departments may execute task order contracts, cooperative agreements, or other arrangements to obtain university technical expertise for up to 30 mission types. These arrangements must be made (to the degree practicable) in consultation with DoD activities in order to provide technical expertise and, to reduce costs and duplicative efforts. Examples of these DoD activities include the Federally Funded Research and Development Centers (FFRDCs), University Affiliated Research Centers (UARCs), and Defense Test Centers. Details may be found in 10 U.S.C § 2358. The [*Defense Innovation Marketplace*](#) gives a listing of FFRDCs and UARCs.

2.15 Sample (140215)

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.

2.16 User Fee/User Charge (140216)

A fee assessed to users for goods or services provided by the DoD. 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.

2.17 Without Charge (140217)

This could be the result of Other Financing Sources resulting from Inflows of resources that increase the net position of a reporting entity during the reporting period but that are not revenues or gains. They include appropriations used, transfers of assets from other government entities, and financing imputed with respect to any cost subsidies. This could also be in the form of a grant as defined by [*31 U.S.C. § 6304*](#). “Using grant agreements.” According to 31 U.S.C. § 6304, an executive agency must use a grant agreement as the legal instrument reflecting a relationship between the U.S. Government and a state, a local government, or other recipient when (1) the principal purpose of the relationship is to transfer a thing of value to the state or local government or other recipient to carry out a public purpose of support or stimulation authorized by a law of the U.S. instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the U.S. Government; and (2) substantial involvement is not expected between the executive agency and the state, local government, or other recipient when carrying out the activity contemplated in the agreement.

3.0 CONDITIONS GOVERNING SELLING, RENTING, LENDING (1403)

3.1 Authorization to Sell, Rent, Lend, Give, or Charge an Appropriate Fee (140301)

10 U.S.C. § 2539b authorizes the Secretary of Defense or the Secretaries of the Military Departments concerned, in the interest of national defense to:

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

3.1.2. Sell, rent, or lend Department equipment or materials to any person or entity:

3.1.2.1. For use in IR&D programs subject to the condition that the equipment or material be used exclusively for such research and development, or

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

3.1.3. 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

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

3.2 Fee Determination Policies (140302)

In selling or leasing property or providing services or in making facilities, equipment, and other items available under subparagraphs 3.1.1 – 3.1.4, the DoD should charge appropriate fees in a manner consistent with 10 U.S.C. § 2363, 31 U.S.C. § 9701, OMB Circular A-25 and Chapter 4.

*3.3 Fees for Defense Laboratories Research and Development (140303)

10 U.S.C. § 2363 authorizes a director of a defense laboratory to charge customer activities a fixed percentage fee (not to exceed four percent of costs), above normal costs of performance, in order to obtain funds to carry out four authorized activities. The defense laboratory director must first consult with the science and technology executive of the military department concerned. Activities eligible for funding are:

3.3.1. Innovative basic and applied research that is conducted at the defense laboratory and supports military missions;

3.3.2. Development programs that support the transition of technologies developed by the defense laboratory into operational use;

3.3.3. Development activities that improve the capacity of the defense laboratory to recruit and retain personnel with necessary scientific and engineering expertise that support military missions;

3.3.4. Repair or minor military construction of the laboratory infrastructure and equipment, only if:

3.3.4.1. The Secretary of Defense notifies the congressional defense committees of the total cost of the project before the start date; and,

3.3.4.2. The Secretary of Defense ensures that the project complies with the applicable cost limitations in 10 U.S.C. §§ 2805(d) and 2811.

4.0 PROCEEDS OR FEES (1404)

*4.1 General Policy (140401)

4.1.1. 31 U.S.C. § 9701 gives DoD the authority to charge fees in order to be self-sustaining as much as possible for services, sales and rentals provided to a person (except a person on official business of the Department). The word person includes groups, associations, organizations, partnerships, corporations, and other businesses. Accordingly, the Secretary of Defense is authorized to prescribe regulations establishing the charge for a service or thing of value that is provided by the Department.

4.1.2. The sales price and rental fees related to subparagraphs 3.1.1 and 3.1.2 must be calculated in accordance with paragraphs 4.2 and 4.3. Fees for services provided in accordance with subparagraphs 3.1.3 and 3.1.4 must be calculated in accordance with paragraph 4.3. 10 U.S.C. § 2539b prohibits these fees from exceeding the full amount of all direct and indirect costs incurred by the Department. DoD Working Capital Fund activities must establish stabilized rates and unit prices for goods and services in accordance with Volume 11B.

4.1.3. Internal controls must be established in accordance with 31 U.S.C. § 3512, OMB Circular A-123, GAO-14-704G and DoDI 5010.40. Managers of DoD Components must be able to identify, measure, and assess risks related to mission delivery in establishing, collecting and reporting sales price and fees. The determination as to the effectiveness of internal controls must be justified, documented, and be able to stand up to audit scrutiny in accordance with the [DoD May 2018 Financial Statement Audit Guide](#) as amended (DoD Common Access Card enabled access only).

4.1.4. OMB Circular A-25 requires DoD to initiate and adopt user charge schedules. In addition, these schedules must be reviewed biennially to ensure the charges are properly applied and adequately adjusted for changes in costs or market values. Furthermore, the biennial review of user fees must be published and discussed in the annual DoD Agency Financial Report (AFR). The CFO Act of 1990 requires the publication of the DoD annual AFR.

4.1.5. When a [Department](#) 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 4.2 through 4.5 regarding calculation, collection, and disposition of proceeds or fees must be followed.

4.2 Calculation of Sales Price (140402)

4.2.1. In general, the sales price of samples, drawings, information, equipment, or materials in accordance with subparagraphs 3.1.1 and 3.1.2 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 must be given to the following:

4.2.1.1. Fair Value ([defined at paragraph 2.4](#));

4.2.1.2. Historical Cost less Depreciation - Book Value ([defined at paragraph 2.6 and in the FMR “Glossary”](#));

4.2.1.3. Replacement Cost ([defined in the FMR “Glossary”](#));

4.2.1.4. Net Realizable Value ([defined at paragraph 2.11](#));

4.2.1.5. Discounted ([Cash](#)) price ([defined in the FMR “Glossary”](#)). This may be used when selling an asset to a state or local agency;

4.2.1.6. Without charge ([as defined at paragraph 2.17](#)). This action 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

4.2.1.7. The specific mission, goals, and/or objectives of the research and development project associated with a particular asset’s sale.

4.2.2. Additional guidance on the sale (and disposal) of DoD property can be found on the website for the [DLA Disposition Services](#). Moreover, specific guidance regarding property disposal can be found in [DoDM 4160.21-V1](#) and [DLAI 4160.01](#).

4.3 Calculation of Fees (140403)

4.3.1. When DoD services, facilities, or equipment are made available in accordance with subparagraphs 3.1.3 and 3.1.4, an appropriate user fee must be imposed by the DoD [Component](#) providing the service, facility, or equipment [to recoup the total cost incurred](#).

4.3.1.1. 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, [DoDI 5535.11](#) allows for the elimination of indirect costs when approved by the director or commander, prior to providing the service or use of facilities and equipment;

4.3.1.2. Costs may include capital improvement costs, utility costs, depreciation, contractor support, salaries of personnel, and all other ancillary support costs. Reference [DoDI 5535.11](#);

4.3.1.3. 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 3.1.3 and 3.1.4, can be found in Chapter 4 under the authority of OMB Circular A-25.

4.3.2. When approved by the laboratory directors, facility directors, and/or commanders, 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.

4.3.2.1. [Special consideration](#) as to recovery of less than full costs may be given when:

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

4.3.2.1.2. Payments of full fees by a state, local government, or nonprofit activity would not be in the [Department's](#) best interest; or

4.3.2.1.3. The laboratory directors, facility directors, and/or commanders have determined that the administrative costs of determining and collecting the full fees would outweigh the benefits to the [Component](#).

4.3.2.2. When less than full cost is charged, laboratory directors, facility directors, and commanders must maintain adequate documentation justifying or supporting each decision. Such documentation [must](#) address the criteria in subparagraphs 4.2.1 and 4.2.2, and be available for audits or inspections and for review by higher authorities.

4.3.3. DoD Working Capital Fund laboratories and facilities must use standard (stabilized) rates to establish fees in accordance with Volume 11B, and DoD [Components](#) designated as [MRTFBs](#) must determine costs and fees in accordance with Chapter 12.

4.4 Collection of Proceeds or Fees (140404)

DoD Components should make every effort to collect proceeds or fees electronically, (e.g., electronic funds transfer), and utilize, as applicable, the collection services provided by the Treasury's Bureau of the Fiscal Service (Fiscal Service) as outlined in the TFM, Volume 1, Part 5, and also Part 2, Chapter 4700, Appendix 5, "Section 3 - Intragovernmental Payment and Collection;" and further described in Volume 5, Chapters 8 and 11. Moreover, support agreements with DoD Components or other Federal Government agencies, contract agreements with private parties or entities that are established in conjunction with sales, rentals, or lending of property identified in subparagraphs 3.1.1 and 3.1.2 and fees received for services identified in subparagraphs 3.1.3 and 3.1.4, should include requirements to use, as applicable, the collection services provided by the Fiscal Service.

4.4.1. In accordance with OMB Circular 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;

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

*4.5 Disposition of Proceeds or Fees Received (140405)

A DoD official or agent must safely keep public money in his/her custody or possession in accordance with 31 U.S.C. § 3302. The code prohibits lending, using public money, depositing the money in a bank, or exchanging it for other amounts. The code requires depositing the money in the Treasury not later than three days upon receipt. The Secretary of the Treasury may prescribe another timeframe requirement. The Secretary of Defense may allow an official or agent to incur expenses to collect, keep, transfer and pay out public money.

4.5.1. Proceeds received from sales or rentals provided in accordance with subparagraphs 3.1.1 and 3.1.2 must be credited to the General Fund of the Treasury as miscellaneous receipts as required by 31 U.S.C. § 3302 and DoDI 5535.11.

4.5.2. Under authority of 10 U.S.C. § 2539b, fees collected for services or when making facilities, equipment and other items available under subparagraphs 3.1.3 and 3.1.4, may be credited to the appropriations or other funds of the Component making such services, facilities, and equipment available.

4.6 Warranties and Liabilities (140406)

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

4.7 Liability for Loss of or Damage to Property of the [Department](#) (140407)

The written support agreement or contract with an individual, company, corporation, or organization must include a clause stating that the [Department](#) will be reimbursed for any losses or damages arising out of or in conjunction with the use of [DoD](#) property. [Refer to Volume 12, Chapter 7 for guidance on how to assess financial liability.](#)