SEC. __. INCLUSION OF DEPOT SERVICES AS ELIGIBLE FOR SALES BY INDISTRIAL FACILITIES.

(a) IN GENERAL.—Section 2563 of title 10, United States Code, is amended—

(1) in the heading, by striking "**facilities**" and inserting "**facilities or operations**";

(2) in subsection (a)(2)—

(A) in subparagraph (A), by striking "working-capital funded industrial facility" and inserting "working-capital funded industrial facility or industrial operation"; and

(B) in subparagraph (B), by striking "a working-capital funded Army industrial facility" and inserting "a working-capital funded Army industrial facility or an Army industrial operation";

(3) in subsection (b)—

(A) in the heading, by striking "FACILITIES" and inserting "FACILITIES OR OPERATIONS"; and

(B) by striking "facilities" each place it appears and inserting "facilities or operations";

(4) in subsection (c), by striking "facility" each place it appears and inserting "facilities or operation"; and

(5) in subsection (g)—

(A) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(B) by inserting after paragraph (1) the following new paragraph:

"(2) The term 'industrial operation' means a working-capital funded organization, a depot repair organization, or a product support activity supporting these organizations.".

(b) TABLE OF SECTIONS AMENDMENT.—The table of sections at the beginning of chapter 152 of title 10, United States Code, is amended by striking the item relating to section 2563 and inserting the following new item:

"2563. Articles and services of industrial facilities or operations: sale to persons outside the Department of Defense."

[Please note: The "Changes to Existing Law" section below sets out in red-line format how the legislative text would amend existing law.]

Section-by-Section Analysis

This change would introduce new opportunities to achieve business benefits through the sale of articles and services across a broader sector of Government operations. Under the current statute, Industrial Facilities are affirmatively authorized to sell products and services to the private sector, but other providers in the value chain are not. This proposal shifts the focus from facilities to operations, and extends the authority to sell products and services to the private sector across the full spectrum of product support. The sale of services from industrial facilities to the private sector has garnered substantial operational benefits to the Government since the inception of this statute by providing the means to optimize capacity utilization of the facility, and to keep processes and skills critical to a ready and controlled work force well practiced. The proposed expanded authority would extend further across all of the accepted integrated product support elements which include:

- Reliability engineering, maintainability engineering and maintenance (preventive, predictive and corrective) planning.
- Supply (spare part) support (e.g. ASD S2000M specification)/acquire resources.
- Support and test equipment/equipment support.
- Manpower and personnel.
- Training and training support
- Technical data/publications
- Computer resources support
- Facilities
- Packaging, handling, storage and transportation (PHS&T)
- Design interface

Budgetary Implications: None. Provides enhanced opportunities to gain best value through collaborative agreements between government and industry.

Changes to Existing Law: This proposal would make the following changes to section 2563 of title 10, United States Code:

§2563. Articles and services of industrial facilities <u>or operations</u>: sale to persons outside the Department of Defense

(a) AUTHORITY TO SELL OUTSIDE DOD.—(1) The Secretary of Defense may sell in accordance with this section to a person outside the Department of Defense articles and services referred to in paragraph (2) that are not available from any United States commercial source.

(2)(A) Except as provided in subparagraph (B), articles and services referred to in paragraph (1) are articles and services that are manufactured or performed by any working-capital funded industrial facility or industrial operation of the armed forces.

(B) The authority in this section does not apply to sales of articles and services by a working-capital funded Army industrial facility or an Army industrial operation (including a Department of the Army arsenal) that manufactures large caliber cannons, gun mounts, recoil mechanisms, ammunition, munitions, or components thereof, which are governed by regulations required by section 4543 of this title.

(b) DESIGNATION OF PARTICIPATING INDUSTRIAL FACILITIES OR OPERATIONS.—The Secretary may designate facilities or operations referred to in subsection (a) as the facilities or operations from which articles and services manufactured or performed by such facilities or operations may be sold under this section.

(c) CONDITIONS FOR SALES.—(1) A sale of articles or services may be made under this section only if—

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

(B) the purchaser agrees to hold harmless and indemnify the United States, except as provided in paragraph (3), from any claim for damages or injury to any person or property arising out of the articles or services;

(C) the articles or services can be substantially manufactured or performed by the industrial facility or operation concerned with only incidental subcontracting;

(D) it is in the public interest to manufacture the articles or perform the services;

(E) the Secretary determines that the sale of the articles or services will not interfere with the military mission of the industrial facility or operation concerned; and

(F) the sale of the goods and services is made on the basis that it will not interfere with performance of work by the industrial facility or operation concerned for the Department of Defense.

(2) The Secretary of Defense may waive the condition in paragraph (1)(A) and subsection (a)(1) that an article or service must be not available from a United States commercial source 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.

(3) Paragraph (1)(B) does not apply in any case of willful misconduct or gross negligence or in the case of a claim by a purchaser of articles or services under this section that damages or injury arose from the failure of the Government to comply with quality, schedule, or cost performance requirements in the contract to provide the articles or services.

(d) METHODS OF SALE.—(1) The Secretary shall permit a purchaser of articles or services under this section to use advance incremental funding to pay for the articles or services.

(2) In the sale of articles and services under this section, the Secretary shall—

(A) charge the purchaser, at a minimum, the variable costs, capital improvement costs, and equipment depreciation costs that are associated with the articles or services sold;

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

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

(e) DEPOSIT OF PROCEEDS.—Proceeds from sales of articles and services under this section shall be credited to the funds, including working capital funds and operation and maintenance funds, incurring the costs of manufacture or performance.

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

(g) DEFINITIONS.—In this section:

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

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

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

(2) The term "industrial operation" means a working-capital funded organization, a depot repair organization, or a product support activity supporting these organizations.

(~~2~~3) The term "not available", with respect to an article or service proposed to be sold under this section, means that the article or service is unavailable from a commercial source in the required quantity and quality or within the time required.

(~~3~~4) The term "variable costs", with respect to sales of articles or services, means the costs that are expected to fluctuate directly with the volume of sales and—

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

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