

APPENDIX A TO PART 203 - Technical Assistance for Public Participation Request Form

<b>SECTION IV - PROPOSED PROVIDER DATA</b>			
<b>14. PROPOSED PROVIDER</b>			
<b>a. NAME</b>		<b>b. ADDRESS</b> <i>(Street, Apt. or Suite Number, City, State, ZIP Code)</i>	
<b>c. TELEPHONE NUMBER</b> <i>(Include Area Code)</i>			
<b>15. PROVIDER QUALIFICATIONS</b> <i>(Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)</i>			
<b>16. ALTERNATE PROPOSED PROVIDER</b> <i>(If known. Attach additional pages as required.)</i>			
<b>a. NAME</b>		<b>b. ADDRESS</b> <i>(Street, Apt. or Suite Number, City, State, ZIP Code)</i>	
<b>c. TELEPHONE NUMBER</b> <i>(Include Area Code)</i>			
<b>17. ALTERNATE PROVIDER QUALIFICATIONS</b> <i>(Attach separate statement, if necessary. A statement of qualifications from the proposed technical assistance provider will be acceptable.)</i>			
<b>SECT. CN V - CONTRACTING OFFICE APPROVAL</b>			
<input type="checkbox"/>	<b>APPROVED</b>	<b>18. SIGNATURE</b>	<b>19. TITLE</b>
<input type="checkbox"/>	<b>NOT APPROVED</b>		<b>20. DATE</b> <i>(YYYYMMDD)</i>

DD FORM 2749 (BACK), DEC 1997

**PART 204—USER FEES**

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AUTHORITY: 31 U.S.C. 9701.

SOURCE: 73 FR 23954, May 1, 2008, unless otherwise noted.

### § 204.1 Purpose.

This part implements the DoD program under Title 31, United States Code, section 9701 and OMB Circular No. A-25, "User Charges," to establish appropriate fees for authorized services supplied by DoD organizations.

### § 204.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Combatant Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). None of the provisions in this part should be construed as giving authority for the sale or lease of property, or the rendering of special services. Actions to convey such special benefits must be authorized by separate authority. This user fee policy is applicable except when other statutes or directives specifically direct other practices or procedures.

### § 204.3 Policy and procedures.

(a) *General.* It is DoD policy not to compete unfairly with available commercial facilities in providing special services or in the sale or lease of property to private parties and agencies outside the Federal Government. However, when a service (or privilege) provides special benefits to an identifiable recipient, beyond those that accrue to the general public, a fee shall be imposed to recover the full cost to the Federal Government for providing the special benefit (or the market price) except as otherwise approved by the Under Secretary of Defense (Comptroller) (USD(C)) and authorized by the Director of OMB. A special benefit will be considered to accrue, and a user fee shall be imposed, when a Government service:

(1) Enables the beneficiary to obtain more immediate or substantial gain or values (which may or may not be meas-

urable in monetary terms) than those which accrue to the general public (e.g., receiving a patent, insurance, or guarantee provision, or a license to carry on a specific activity or business or various kinds of public land use); or

(2) Provides business stability or contributes to public confidence in the business activity of the beneficiary (e.g., insuring deposits in commercial banks), or

(3) Is performed at the request of or for the convenience of the recipient, and is beyond the services regularly received by other members of the same industry or group or by the general public (e.g., receiving a passport, visa, airman's certificate, or a Custom's inspection after regular duty hours).

(b) *Costing.* (1) Except as provided in § 204.3(c) and § 204.8, a user fee shall be imposed to recover the full cost to the Federal Government of providing the service, resource, or good when the Government is acting in its capacity as sovereign.

(2) User fees shall be based on market prices (as defined in § 204.5(a)(4)) when the Government is not acting in its capacity as sovereign and is leasing or selling goods or resources, or is providing a service (e.g., leasing space in federally owned buildings). Under these business-type conditions, user fees need not be limited to the recovery of full cost and may yield net revenues.

(3) User fees will be collected in advance of, or simultaneously with, the rendering of services unless appropriations and authority are provided in advance to allow reimbursable services.

(4) Whenever possible, fees should be set as rates rather than fixed dollar amounts in order to adjust for changes in costs to the Government or changes in market prices of the good, resource, or service provided.

(c) *Exclusions.* (1) The provisions of this part do not apply when other statutes or DoD issuances require different practices or procedures, such as for:

(i) Morale, welfare, and recreation services to military personnel and civilian employees of the Department of Defense and other services provided according to § 204.8.

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(ii) Sale or disposal of surplus property under approved programs (Chapter 5 of DoD 7000.14-R.)<sup>1</sup>

(iii) Services furnished the general public relating to, or in furtherance of, the Armed Forces recruiting program.

(iv) Services furnished to representatives of the public information media in the interest of public understanding of the Armed Forces.

(v) Armed Forces participation in public events. Fees for such participation are governed by the provisions of DoD Instruction 5410.19.

(vi) Records made available to the public, under the Freedom of Information Act, pursuant to 32 CFR part 285. Fees for such record searches and copies of records are governed by 32 CFR part 286.

(vii) Services furnished to non-Federal audio-visual media. Fees for such services are governed by the provisions of DoD Instruction 5410.15.

(viii) Government-developed computer programs released to non-Federal customers. Fees for software packages are governed by DoD Instruction 7930.2.

(ix) Pricing of performance by DoD Working Capital Fund activities shall be according to Volume 11B of DoD 7000.14-R.

(x) Foreign Military Sales of Defense articles and services shall be according to Volume 15 of DoD 7000.14-R.

(xi) Records made available to Privacy Act requesters shall be according to 32 CFR part 310.

(2) User fees may be waived by the Head of a DoD Component when:

(i) Furnishing of their service without fee is an appropriate courtesy to a foreign government or international organization, or comparable fees are set on a reciprocal basis with a foreign country.

(ii) The Director of the OMB has approved a request for an exception. Such exceptions may be recommended when:

(A) The cost of collecting the fees would represent an unduly large part of the receipts from the activity; or

(B) Any other conditions exists that, in the opinion of the Head of the DoD

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Component or his designee, justifies the exception.

### § 204.4 Responsibilities.

(a) The USD(C) shall develop and monitor policies governing user fees.

(b) The Heads of the DoD Components, or designees, shall:

(1) Identify each service or activity that may properly be the subject of a user fee under this part.

(2) Determine the extent of the special benefit provided.

(3) Apply the principles specified in § 204.5(a) in determining full cost or market price.

(4) Review the user fees biennially, to include:

(i) Assurance that existing fees are adjusted to reflect unanticipated changes in costs or market values; and

(ii) A review of all other programs to determine whether fees should be assessed for Government services or the user of Government goods or services. DoD Components should discuss the results of the biennial review of user fees and any resultant proposals in the Chief Financial Officers Annual Report required by the Chief Financial Officers Act of 1990.

(5) Initiate exception actions outlined in § 204.3(c)(2). All such actions shall be coordinated with the USD(C) prior to forwarding to the OMB.

(i) Exceptions granted under § 204.3(c)(2)(i) shall be renewed every 4 years to ensure conditions warrant their continuation.

(ii) Exceptions granted under § 204.3(c)(2)(ii) shall be resubmitted for approval to the OMB every 4 years when conditions warrant their continuation.

(6) Maintain readily accessible records of:

(i) The services or activities covered by this part.

(ii) The extent of special services provided.

(iii) The exceptions to the general policy of this part.

(iv) The information used to establish fees and the specific methods used in their determination.

(v) The collections from each user fee imposed.

(7) Maintain adequate records of the information used to establish fees and

<sup>1</sup>Copies of unclassified DoD issuances may be obtained at <http://www.dtic.mil/whs/directives/>.

provide them upon request to OMB for the evaluation of the schedules and provide data on user fees to OMB according to the requirements in Circular No. A-11.

(8) Develop legislative proposals as outlined in §204.7 when there are statutory prohibitions or limitations on the assessment of user fees.

#### § 204.5 Fees.

(a) *General.* (1) All fees shall be based on full cost to the U.S. Government or market price, whichever applies.

(2) "Full cost" includes all direct and indirect costs associated with providing a good, resource, or service. These costs are outlined in Volume 11A, Chapter 1, paragraph 010203 of DoD 7000.14-R.

(3) Full cost shall be determined or estimated from the best available records, and new cost accounting systems shall not be established solely for this purpose.

(4) "Market price" means the price for a good, resource, or service that is based on competition in open markets, and creates neither a shortage nor a surplus of the good, resource, or service.

(i) When a substantial competitive demand exists for a good, resource, or service, its market price will be determined using commercial practices, for example:

(A) By competitive bidding; or

(B) By reference to prevailing prices in competitive markets for goods, resources, or services that are the same or similar to those provided by the Government (e.g., campsites or grazing lands in the general vicinity of private ones) with adjustments as appropriate that reflect demand, level of service, and quality of the good or service.

(ii) In the absence of substantial competitive demand, market price will be determined by taking into account the prevailing prices for goods, resources, or services that are the same or substantially similar to those provided by the Government, and then adjusting the supply made available and/or price of the good, resource, or service so that there will be neither a shortage nor a surplus (e.g., campsites in remote areas).

(5) Fees established in advance of performance shall be based on the estimated cost of performance. Projected amounts shall be reviewed biennially or whenever significant changes in cost or value occur.

(6) Management controls (see DoD Instruction 5010.40) must be established to ensure fees are developed and adjusted, using current, accurate, and complete data, to provide reimbursement conforming to statutory requirements. These controls also must ensure compliance with cash management and debt collection policies according to Volume 5 of DoD 7000.14-R.

(b) *Information resources.* The fees for services provided by data processing activities shall be determined by using the costs accumulated pursuant to requirements in OMB Circular A-130, "Management of Federal Information Resources."

(c) User fees for recurring services shall be established in advance, when feasible. The benefit of charging user fees must outweigh the cost of collecting the fees charged.

(d) *Lease or sale of property.* Fees for lease or sale of property shall be based on the following:

(1) *Leases of military equipment or real estate.* (i) In cases involving the lease or rental of military equipment, when there is no commercial counterpart, the fee will be based on the procedures provided in Volume 11A, Chapter 1, paragraph 010203.I of DoD 7000.14-R. The current interest rate in OMB Circular A-94 will be used in the computation of interest on investment in assets. In determining the value, consideration may be given to the responsibility of the lessee to assume the risk of loss or damage to the property and to hold the government harmless against claims or liabilities by the lessee or third parties.

(ii) In cases involving real estate outgrants, the consideration for a lease shall be determined by appraisal of fair market rental value according to 10 U.S.C. 2667.

(2) *Sale of property.* When there is legal authority to sell property to the public, the selling price of the property and related accessorial and administrative costs shall be computed according

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to Volume 11A, Chapter 1 of DoD 7000.14-R.

### § 204.6 Collections.

(a) Collections of fees will be made in advance or simultaneously with the rendering of service unless appropriations and authority allow otherwise. The policies in this part, Volume 5 of DoD 7000.14-R, and DoD Instruction 5010.40, shall be used in accounting, controlling, and managing cash and debt collections.

(b) Unless a statute provides otherwise, user fee collections will be credited to the general fund of the Treasury as miscellaneous receipts, as required by 31 U.S.C. 3302.

### § 204.7 Legislative proposals.

(a) Legislative proposals that allow the DoD Component to retain collections may be appropriate when a fee is levied in order to finance a service intended to be provided on a substantially self-sustaining basis and thus is dependent upon adequate collections.

(1) The authority to use fees credited to an appropriation is generally subject to limits set in annual appropriations language. However, it may be appropriate to request exemption from annual appropriations control, if a provision of the service is dependent on demand that is irregular or unpredictable (e.g., a fee to reimburse an agency for the cost of overtime pay of inspectors for services performed after regular duty hours).

(2) Legislative proposals that permit fees to be credited to accounts shall be consistent with the full-cost recovery guidelines contained in this part. Any fees in excess of full cost recovery and any increase in fees to recover the portion of retirement costs which recoups all (funded or unfunded) accrual costs not covered by employee contributions are to be credited to the general fund of the Treasury as miscellaneous receipts.

(b) Where the retention of the collection is appropriate, the DoD Components(s) concerned may submit legislative proposals under applicable legislative procedures included in OMB Circular A-19. These procedures may be obtained from the Office of Legislative Counsel, General Counsel, 1600 Defense

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Pentagon, Washington, DC 20301-1600. Proposals to remove user fee restrictions or retain collections shall:

(1) Define in general terms the services for which fees will be assessed and the pricing mechanism that will be used.

(2) Specify whether fees will be collected in advance of, or simultaneously with, the provision of service unless appropriations and authority are provided in advance to allow reimbursable services.

(3) Specify where collections will be credited. Legislative proposals should not normally specify precise fees. The user fee schedule should be set by regulation to allow for the administrative updating of fees to reflect changing costs and market values.

### § 204.8 Benefits for which no fee shall be assessed.

(a) Documents and information requested by members of the Armed Forces is required by such personnel in their capacity as Service members.

(b) Documents and information requested by members of the Armed Forces who are in a casualty status, or requested by their next of kin or legal representative.

(c) The provisions of the address of record of a member or former member of the Armed Forces when the address is readily available through a directory (locator) service, and when the address is requested by a member of the Armed Forces or by a relative or a legal representative of a member of the Armed Forces, or when the address of record is requested by any source for the purpose of paying monies or forwarding property to a member or former member of the Armed Forces.

(d) Services requested by, or on behalf of, a member or former member of the Armed Forces and civilian personnel of the Department of Defense (where applicable) or, if deceased, his or her next of kin or legal representative that pertain to the provision of:

(1) Information required to obtain financial benefits regardless of the terms of separation from the Service.

(2) Document showing membership and military record in the Armed Forces if discharge or release was under honorable conditions, except as

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shown in paragraphs (d)(1) and (d)(4) of this section.

(3) Information relating to a decoration or award or required for memorialization purposes.

(4) Information relating to the review or change in type of discharge or correction of records.

(5) Personal documents, such as birth certificates, when such documents are required to be furnished by the member.

(6) Services furnished free according to statutes or Executive Orders.

(7) Information from or copies of medical and dental records or x-ray films of patients or former patients of military medical or dental facilities, when such information is required for further medical or dental care, and requests for such data are submitted by an accredited medical facility, physician, or dentist, or requested by the patient, his or her next of kin, or legal representative. Other requests subject to the Privacy Act shall be according to 32 CFR part 310 (see § 204.3(c)(1)(xi) of this part).

(8) Services requested by, and furnished to, a member of Congress for official use.

(9) Services requested by state, territorial, county, or municipal government, or an agency thereof, that is performing a function related to or furthering a DoD objective.

(10) Services requested by a court, when such services will serve as a substitute for personal court appearance of a military or civilian employee of the Department of Defense.

(11) Services requested by a nonprofit organization that is performing a function related to or furthering an objective of the Federal Government or is in the interest of public health and welfare, including education.

(12) Services requested by donors in connection with the conveyance or transfer of a gift to the Department of Defense.

(13) Occasional and incidental services (including requests from residents of foreign countries), not requested often, when it is determined administratively that a fee would be inappropriate for the occasional and incidental services rendered.

(14) Administrative services offered by reference or reading rooms to inspect public records, excluding copies of records or documents furnished.

(15) Services rendered in response to requests for classification review of DoD classified records, submitted under Executive Order 12065, "National Security Information," and implemented by DoD 5200.1-R. Such services consist of the work performed in conducting the classification review or in granting and completing an appeal from a denial of declassification following such review.

(16) Services of a humanitarian nature performed in such emergency situations as life-saving transportation for non-Armed Forces patients, search and rescue operations, and airlift of personnel and supplies to a disaster site. This does not mean that inter- and intra-governmental agreements to recover all or part of costs shall not be negotiated. Rather, it means the recipients or beneficiary will not be assessed a "user fee".

**§ 204.9 Schedule of fees and rates.**

(a) *Schedule of fees and rates.* (1) This schedule applies to authorized services related to copying, certifying, and searching records rendered to the public by DoD Components, except when those services are excluded or excepted from charges under § 204.3(c) or the "Benefits for Which No Fee Shall Be Assessed" included in Volume 11A, Chapter 4, Appendix 1 of DoD 7000.14-R. All other fees will be based on full cost or market price.

FEE SCHEDULE	
Service	Rate
(i) Copies (Standard size paper up to 8½ x 14)	\$0.13 per page.
(ii) Search and Review	
(A) Managerial .....	\$13.15 per ¼ hour; \$52.60 per hour.
(B) Professional .....	\$9.05 per ¼ hour; \$36.20 per hour.
(C) Clerical .....	\$5.20 per ¼ hour; \$20.80 per hour.
(iii) Other	
(A) Microfiche .....	\$0.08 per page.
(B) Computer and magnetic tapes .....	\$25.00 each.
(C) Computer diskettes .....	\$1.25 each.
(D) Other services (computer time, special mailing).	Actual Cost.

(2) Fees will not be charged if the total amount to process your request is \$30.00 or less.

(b) Criteria for estimating cost of computerized records:

(1) Costs for processing a data request will be calculated using the full cost method as referenced in §204.5.

(2) Itemized listing of operations required to process the job will be maintained (*i.e.*, time for central processing unit, input/output remote terminal, storage, plotters, printing, tape/disk mounting, etc.) with associated costs.

(3) Mailing costs for services (DHL, Express Mail, etc.) when request specifically specifies a means more expensive than first class mail.

## PART 205—END USE CERTIFICATES (EUCs)

Sec.

205.1 Purpose.

205.2 Applicability.

205.3 Definitions.

205.4 Background and policy.

205.5 Responsibilities.

205.6 Procedures.

AUTHORITY: 10 U.S.C. 131.

SOURCE: 56 FR 64194, Dec. 9, 1991, unless otherwise noted.

### § 205.1 Purpose.

This part:

(a) Supersedes the Deputy Secretary of Defense Memorandum, "End Use Certificates," April 9, 1991.

(b) Establishes policies, assigns responsibilities, and prescribes procedures for signing EUCs on foreign defense items.

### § 205.2 Applicability.

This part applies to the Office of the Secretary of Defense; the Military Departments; the Chairman of the Joint Chiefs of Staff and the Joint Staff; the Unified and Specified Commands; the Office of the Inspector General, Department of Defense; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

### § 205.3 Definitions.

(a) *End Use Certificate (EUC)*. For the purposes of this part, a written agreement in connection with the transfer of

military equipment or technical data to the United States that restricts the use or transfer of that item by the United States.

(b) *Use for defense purposes*. Includes direct use by or for the U.S. Government in any part of the world and transfer by means of grant aid, International Military Education and Training (IMET) programs, Foreign Military Sales (FMS), and other security assistance and armaments cooperation authorities.

### § 205.4 Background and policy.

This part is intended to authorize the execution of EUCs when such a certificate is necessary to facilitate purchases of foreign products when the purchase of such products is in the best interest of the United States.

(a) The Military Departments and other DoD Components purchase products produced by allies and friendly countries and participate in cooperative development programs to promote interoperability, standardization, and an expanded procurement base, and to obtain products that best meet U.S. needs at the lowest cost.

(b) U.S. worldwide security responsibilities are extensive and recognition of these special circumstances has resulted in long-time acceptance in international agreements, by allies and friends, of the need for flexibility in the authorized uses or transfer of purchased or co-developed articles and data. In various circumstances, international agreements have recognized that permissible use of an item or data for U.S. "defense purposes" as defined in §205.3(b).

(c) Consistent with paragraphs (a) and (b) of this section, DoD Components may sign EUCs, in accordance with the policy and procedures outlined below. While most EUCs requested by foreign governments use general language, their effects may be divided into three categories, as described in the following paragraphs. Authority to approve their execution is limited as follows:

(1) Category I. Secretaries of the Military Departments and Directors of Defense Agencies may authorize EUCs: