

Office of the Secretary of Defense

§ 204.3

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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.)¹

(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

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