

§ 204.4

(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

32 CFR Ch. I (7-1-14 Edition)

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/>.

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