

## § 204.1

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SOURCE: 51 FR 16024, Apr. 23, 1986, unless otherwise noted. Redesignated at 56 FR 64482, Dec. 10, 1991.

### § 204.1 Reissuance and purpose.

This part reissues 32 CFR part 204 and implements the DoD program under 31 U.S.C. 9701, and OMB Circular A-25 for establishing appropriate charges for authorized services provided by DoD organizations.

[51 FR 16024, Apr. 23, 1986. Redesignated and amended at 56 FR 64482, Dec. 10, 1991]

### § 204.2 Applicability.

This part applies to the Office of the Secretary of Defense, the Military Departments, the Organization of the Joint Chiefs of Staff, the Unified and Specified Commands, and the Defense Agencies (hereafter referred to collectively as "DoD Components"). None of the provisions in this part should be construed as providing 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. The user charge policy is applicable except when other statutes or directives specifically direct other practices or procedures.

### § 204.3 Definitions.

*Recipient.* One who requests or receives the benefits of the service(s) provided.

### § 204.4 Policy.

(a) *General.* It is DoD policy not to compete with available commercial facilities (see 32 CFR part 169a) 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 sale is made that conveys special benefits to recipients, above and beyond those accruing to the public at large, a reasonable charge shall be made to each identifiable recipient, except as other-

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wise authorized by the Secretary of Defense. A special benefit will be considered to accrue, and a charge shall be imposed when the service rendered:

(1) Enables the recipient to obtain more immediate or substantial gain or values (which may or may not be measureable in monetary terms) than those which accrue to the general public; or

(2) Is performed at the request of the recipient and is above and beyond the services regularly received by or available without charge to the general public.

(b) *Costing.* (1) A charge shall be imposed to recover the full cost to the Federal Government of rendering a service or the fair market value of such service, whichever is higher. Fair market value shall be determined in accordance with commercial rates in the local geographical area. In the absence of a known market value, charges shall be made based on recovery of full costs to the Federal Government.

(2) When federally owned resources or property are leased or sold, a fair market value shall be obtained. Fair market value shall be determined by the application of sound business management principles and, so far as practicable and feasible, in accordance with comparable commercial practices. Charges based on fair market value need not be limited to the recovery of costs; they may produce net revenues to the Government.

(c) *Exclusions and exceptions.* (1) The provisions of this part do not apply when other statutes or directives 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 in accordance with § 204.9.

(ii) Sale or disposal of surplus property under approved programs (See DoD Instruction 7310.1<sup>1</sup>).

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

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

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

(v) U.S. Armed Forces participation in public events. Charges for such participation are governed by the provisions of 32 CFR part 238.

(vi) Records made available to the public, under the Freedom of Information Act, pursuant to 32 CFR part 286. Charges for such record searches and copies of records are governed by § 286.61.

(vii) Services furnished to non-Federal audio-visual media. Charges for such services are governed by the provisions of DoD Instruction 5410.15.<sup>2</sup>

(viii) Government-developed computer programs released to non-Federal customers. Charges for software packages are governed by DoD Instruction 7930.2.<sup>3</sup>

(ix) Pricing of performance by industrial fund activities which shall be in accordance with DoD Directive 7410.4.<sup>4</sup>

(2) Charges may be waived or reduced when:

(i) The recipient of the benefits is engaged in nonprofit activity designed for public safety, health, or welfare.

(ii) Payment of the full fee by a state, local government, or nonprofit group would not be in the interest of the program.

(iii) Furnishing of the service without charge is an appropriate courtesy to a foreign country or international organization, or comparable fees are set on a reciprocal basis with a foreign country.

(iv) The incremental cost of collecting the fees would be an unduly large part of the receipts from the activity.

[51 FR 16024, Apr. 23, 1986. Redesignated and amended at 56 FR 64482, Dec. 10, 1991; 63 FR 33248, June 18, 1998; 63 FR 36992, July 8, 1998]

#### § 204.5 Responsibilities.

*Head of DoD Components*, or designees, shall:

(a) Identify each service or activity covered by this part.

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

<sup>2,3,4</sup> See footnote 1 to § 204.4(c)(1)(ii).

(c) Determine applicable cost and fair market value.

(d) Establish appropriate charges and collect from recipients of special services.

(e) Grant cost waivers or reductions consistent with guidance in this part.

(f) Recommend to the Comptroller of the Department of Defense necessary additions and revisions to § 204.10.

[51 FR 16024, Apr. 23, 1986. Redesignated and amended at 56 FR 64482, Dec. 10, 1991]

#### § 204.6 Charges and fees.

(a) *General.* (1) All charges and fees shall be based on total cost to the U.S. Government or fair market value, whichever is higher. Total cost shall be based on actual cost or replacement cost when property is to be replaced and expense data accumulated in accordance with DoD 7220.9-M.<sup>5</sup> Estimates from the best available records may be used if actual cost or expense data is not available.

(2) Cost accounting systems shall not be established solely for the purpose of determining charges, but the results of existing cost accounting systems shall be used. Total cost shall include all direct and indirect costs (see Chapter 71, DoD 7220.9-M).

(3) Charges and fees established in advance must be projected to the midpoint of the future period. Projected amounts shall be reviewed annually or whenever significant changes in cost or value occur.

(4) Internal management controls (see DoD Directive 5010.38<sup>6</sup> must be established to ensure that charges and fees are developed and adjusted, using current, accurate, and complete data, to provide reimbursement conforming to statutory requirements. Such controls also must ensure compliance with cash management and debt collection policies (see DoD Directive 7045.137).

(b) *Services*—(1) *Basic requirements.* The maximum charge for a special service shall be governed by its total cost or fair market value, whichever is higher, and not by the value of the service, to the recipient. The cost computation shall include the direct and indirect costs to the Government of

<sup>5-8</sup> See footnote 1 to § 204.4(c)(1)(ii).