

§ 204.5

32 CFR Ch. I (7–1–10 Edition)

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

Office of the Secretary of Defense

§ 204.8

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

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