

DEPARTMENT OF DEFENSE**Office of the Secretary****32 CFR Part 204**

[DoD-2006-OS-0005]

RIN 0790-AH93

User Charges**AGENCY:** Department of Defense.**ACTION:** Proposed rule.

SUMMARY: The Department of Defense is revising 32 CFR Part 204 to better align it with OMB Circular A-25, "User Charges." This part provides guidelines to establish appropriate charges for authorized services supplied by Department of Defense organizations when such services provide special benefits to an identifiable recipient beyond those that accrue to the general public.

DATES: Comments must be received by March 27, 2006.

ADDRESSES: You may submit comments, identified by docket number and or RIN number and title, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- Mail: Federal Docket Management System Office, 1160 Defense Pentagon, Washington, DC 20301-1160.

Instructions: All submissions received must include the agency name and docket number or Regulatory Information Number (RIN) for this **Federal Register** document. The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing on the Internet at <http://regulations.gov> as they are received without change, including any personal identifiers or contact information.

FOR FURTHER INFORMATION CONTACT: Mr. T. Summers, 706-697-3193.

SUPPLEMENTARY INFORMATION:**Executive Order 12866, "Regulatory Planning and Review"**

It has been determined that 32 Code of Federal Regulations (CFR) Part 204 is not a significant regulatory action. The rule does not:

- (1) Have an annual effect to the economy of \$100 million or more or adversely affect, in a material way, the economy; a section of the economy; productivity; competition; jobs; the environment; public health or safety; or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another Agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs, or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Unfunded Mandates Reform Act (Sec. 202, Pub. L. 104-4)

It has been certified that this rule does not contain a Federal mandate that may result in the expenditure by State, local and tribal governments, in aggregate, or by the private sector, of \$100 million or more in any one year.

Public Law 96-354, "Regulatory Flexibility Act" (5 U.S.C. 601)

It has been certified that 32 CFR part 204 is not subject to the Regulatory flexibility Act (5 U.S.C. 601) because it would not, if promulgated, have a significant economic impact on a substantial number of small entities. The rule being promulgated provides guidelines to establish appropriate charges for authorized services supplied by Department of Defense organizations when such services provide special benefits to an identifiable recipient beyond those that accrue to the general public.

Public Law 96-511, "Paperwork Reduction Act" (44 U.S.C. Chapter 35)

It has been certified that 32 CFR Part 204 does not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1995.

Executive Order 13132, "Federalism"

It has been certified that this rule does not have federalism implications, as set forth in Executive Order 13132. This rule does not have substantial direct effects on:

- (1) The States;
- (2) The relationship between the National Government and the States; or
- (3) The distribution of power and responsibilities among the various levels of government.

List of Subjects in 32 CFR Part 204

Accounting, Armed forces, Government property.

Accordingly, 32 CFR Part 204 is proposed to be revised to read as follows:

PART 204—USER CHARGES

Sec.

204.1 Purpose.

204.2 Applicability.

204.3 Policy and procedures.

204.4 Responsibilities.

204.5 Charges and fees.

204.6 Collections.

204.7 Legislative proposals.

204.8 Benefits for which no charge shall be made.

Authority: 31 U.S.C. 9701.

§ 204.1 Purpose.

This part implements the Department of Defense (DoD) program under Title 31, United States Code, section 9701 and Office of Management and Budget (OMB) Circular No. A-25, "User Charges," to establish appropriate charges 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 charge 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 charge 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) and authorized by the Director of the OMB. A special benefit will be considered to accrue, and a user charge 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 measurable in monetary terms) than those which accrue to the general public; 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 charge 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 charges 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 charges need not be limited to the recovery of full cost and may yield net revenues.

(3) User charges 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, charges 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 to 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.

(ii) Sale or disposal of surplus property under approved programs (Chapter 5 of DoD 7000.14-R¹).

(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. Charges for such participation are governed by the provisions of DoD Instruction 5410.19.²

(vi) Records made available to the public, under the Freedom of

Information Act, pursuant to DoD Directive 5400.7.³ Charges for such record searches and copies of records are governed by Chapter 6 of DoD 5400.7d-R.⁴

(vii) Services furnished to non-Federal audio-visual media. Charges for such services are governed by the provisions of DoD Instruction 5410.15.⁵

(viii) Government-developed computer programs released to non-Federal customers. Charges for software packages are governed by DoD Instruction 7930.2.⁶

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

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

(xi) Records made available to Privacy Act requesters shall be according to DoD Directive 5400.11⁷ and DoD 5400.11-R.⁸

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

(i) Furnishing of their service without charge 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 Component of his designee, justifies the exception.

§ 204.4 Responsibilities.

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

(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 charge 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 charges biennially, to include:

(i) Assurance that existing charges 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 annual 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 four years to ensure that 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 charges and the specific methods used in their determination.

(v) The collections from each user charge imposed.

(7) Maintain adequate records of the information used to establish charges and provide them upon request to OMB for the evaluation of the schedules and provide data on user charges to OMB according to the requirements in Circular No. A-11.

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

§ 204.5 Charges and fees.

(a) *General.* (1) All charges and fees shall be based on total 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

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

² See footnote 1 to § 204.3(c)(1)(ii).

³ See footnote 1 to § 204.3(c)(1)(ii).

⁴ See footnote 1 to § 204.3(c)(1)(ii).

⁵ See footnote 1 to § 204.3(c)(1)(ii).

⁶ See footnote 1 to § 204.3(c)(1)(ii).

⁷ See footnote 1 to § 204.3(c)(1)(ii).

⁸ See footnote 1 to § 204.3(c)(1)(ii).

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) Charges and 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 Directive 5010.38⁹) 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. 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.* These charges 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.

(d) *Lease or sale of property.* Charges 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 charge will be based on the procedures attached 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 to Volume 11A, Chapter 1 of DoD 7000.14-R.

§ 204.6 Collections.

(a) Collections of charges and 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 Directive 5010.38, shall be used in accounting, controlling, and managing cash and debt collections.

(b) Unless a statute provides otherwise, user charge 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 that is 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 collections is appropriate, the DoD Components(s) concerned may submit appropriate 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 charges 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 charges. The user charge 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 charge shall be made.

(a) Documents and information requested by members of the Armed Forces when the documents or information requested 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.

⁹ See footnote 1 to § 204.3(c)(1)(ii).

(2) Document showing membership and military record in the Armed Forces if discharge or release was under honorable conditions, except as 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 that are 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 DoD 5400.11-R, "DoD Privacy Act Program" (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 that 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), that are 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 charge."

Dated: January 20, 2006.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

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OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9904

Cost Accounting Standards Board; Accounting for Insurance Costs

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Staff discussion paper.

SUMMARY: The Cost Accounting Standards (CAS) Board, Office of Federal Procurement Policy, invites public comments on the staff discussion paper (SDP) regarding CAS 416, "Accounting for Insurance Costs." In particular, this staff discussion paper addresses the use of the term "catastrophic losses" in CAS 416-50(b)(1).

DATES: Comments must be in writing and must be received by March 27, 2006.

ADDRESSES: Due to delays in OMB's receipt and processing of mail, respondents are strongly encouraged to submit comments electronically to ensure timely receipt. Electronic comments may be submitted to cash2@omb.eop.gov. Please put the full body of your comments in the text of the electronic message and also as an

attachment readable in either MS Word or Corel WordPerfect. Please include your name, title, organization, postal address, telephone number, and e-mail address in the text of the message. Comments may also be submitted via facsimile to (202) 395-5105.

FOR FURTHER INFORMATION CONTACT: Rein Abel, Cost Accounting Standards Board (telephone: 202-395-3254).

SUPPLEMENTARY INFORMATION:

A. Regulatory Process

The Board's rules, regulations and Standards are codified at 48 CFR Chapter 99. The Office of Federal Procurement Policy Act, 41 U.S.C. 422(g)(1), requires the Board, prior to the establishment of any new or revised CAS, to complete a prescribed rulemaking process. The process generally consists of the following four steps:

1. Consult with interested persons concerning the advantages, disadvantages and improvements anticipated in the pricing and administration of government contracts as a result of the adoption of a proposed Standard (e.g., prepare and publish a SDP).

2. Promulgate an Advance Notice of Proposed Rulemaking (ANPRM).

3. Promulgate a Notice of Proposed Rulemaking (NPRM).

4. Promulgate a Final Rule.

This SDP is issued by the Board in accordance with the requirements of 41 U.S.C. 422(g)(1)(B), and is step one of the four-step process.

B. Background and Summary

The Office of Federal Procurement Policy, Cost Accounting Standards Board, is releasing a SDP on the use of the term "catastrophic losses" in CAS 416-50(b)(1). Section 26(g)(1) of the Office of Procurement Policy Act, 41 U.S.C. 422(g)(1), requires that the Board, prior to the promulgation of any new or revised CAS, consult with interested persons concerning the advantages, disadvantages, and improvements anticipated in the pricing and administration of Government contracts as a result of the adoption or revision of an existing Standard. The purpose of the SDP is to solicit public views with respect to the Board's consideration of whether the word "catastrophic" should be replaced with a term such as "significant" or "very large" in 48 CFR 9904.416-50(b)(1) in order to (a) more closely align the Standard with what was intended by its original promulgators and (b) eliminate any confusion between 48 CFR 9904.416 and FAR 31.205-19, Insurance cost.