

SUBJECT: PRICING OF DEPARTMENTAL MATERIALS AND SERVICES

1. **OBJECTIVE.** To establish Department of Energy (DOE) requirements for prices and charges for materials and services that are sold or provided to non-DOE entities (e.g., other Federal agencies; the private sector; state, local, or foreign governments), either directly or through a Departmental site/facility management contract.

2. **CANCELLATION.** DOE 522.1, *Pricing of Departmental Materials and Services*, dated November 3, 2004. Cancellation of an Order does not, by itself, modify or otherwise affect any contractual obligation to comply with the Order. Canceled Orders that are incorporated by reference in a contract remain in effect until the contract is modified to delete reference to the requirements in the canceled Orders.

3. **APPLICABILITY.**
 - a. **Departmental Elements.** This Order applies to all DOE elements with exceptions and special provisions noted.

 - b. **Contractors.** The term “contract” or “contractor” as used in this document includes site/facility management contracts or contractors, all Management and Operating (M&O) contracts or contractors, and any other contracts or contractors that require the establishment of prices for materials and services provided to non-DOE entities. Except for the equivalencies and exemptions in paragraph 4, the Contractor Requirements Document (CRD) (Attachment 1) sets forth requirements of this Order that apply to contracts that include the CRD. The CRD must be included in all site/facility management contracts (including management and operating contracts) and any other contracts that require the establishment of prices for materials and services provided to non-DOE entities.

The cognizant Field Chief Financial Officers (CFOs) or equivalent officials identified in paragraph 9.d. are responsible for notifying the contracting officer of the contracts that are affected. Once notified, the contracting officer is responsible for incorporating the CRD into each affected contract via the “Laws, Regulations, and DOE Directives” clause of the contract (DEAR 970.5204-2), or via negotiation and modification, as appropriate.

4. **EQUIVALENCIES AND EXEMPTIONS.**
 - a. **Power Marketing Administrations.**
 - (1) The power marketing and related activities of the Bonneville, Southeastern, Southwestern, and Western Area Power Administrations are exempt from the provisions of this Order when those activities are

carried out under rate making authority or other authorities unique to the power marketing administrations.

- (2) Other reimbursable work not covered by 4.a.(1) that is performed by the power marketing administrations shall be priced at a rate that recovers all direct costs incurred plus an equitable share of indirect costs as determined by the cost accounting practices at the respective power marketing administration.
 - (3) The Chief Financial Officers or equivalent officials of the power marketing administrations shall ensure compliance with the Chief Financial Officers Act of 1990 (CFO Act) requirements for biennial pricing reviews. The power marketing administration CFOs or equivalent officials shall provide biennial assurances to the Department's Office of the CFO that detail their assessments performed to satisfy the biennial pricing review requirement. This includes an assurance that prices charged for rate payers are in conformance with relevant CFO Act requirements. Additionally, the power marketing administrations must provide assessments demonstrating that the pricing of reimbursable work not funded by rate payers meets full-cost recovery requirements.
 - (4) If a power marketing administration performs reimbursable work under the authority of section 33 of the Atomic Energy Act of 1954 (Atomic Energy Act) (42 U.S.C. §2053), the statute that established the Federal Administrative Charge (42 U.S.C. § 7259a) will apply, and the power marketing administration shall apply the Federal Administrative Charge to such work in lieu of other charges for Federal administrative overhead, depreciation, or imputed interest. Power marketing administration work that is not performed under the Atomic Energy Act shall not include assessment of the Federal Administrative Charge, and shall instead calculate full-cost recovery in accordance with the cost accounting practices at the respective power marketing administration.
- b. Exemptions. The general pricing policy does not apply when prices or charges are otherwise established or prohibited by statute or regulation. Exemptions apply to the specific pricing described below or any other situation governed by a separate statute or regulation:
- (1) Charges or other compensation for source material, special nuclear material, and byproduct material, which are determined in accordance with the Atomic Energy Act, as amended, 42 U.S.C. Chapter 23. Such charges or other compensation are established by the cognizant DOE official serving in a position requiring appointment by the President of the United States with the advice and consent of the Senate.
 - (2) Prices for uranium inventory sales or transfers subject to the provisions of 42 U.S.C. § 2297h-10(d).

- (3) Prices for processing information requests submitted under the Freedom of Information and Privacy Acts established by 5 U.S.C. §552(a)(4)(A) and 10 C.F.R. § 1004.9.
- (4) Prices for energy data and information provided by the Energy Information Administration to the public in accordance with 42 U.S.C. § 7135(g).
- (5) Prices for crude oil and related materials and services from the Strategic Petroleum Reserve determined according to the provisions of 42 U.S.C. § 6241.
- (6) Prices for the sale of excess personal property under 41 C.F.R. § 102-36.35.
- (7) Fees and costs for the storage and disposal of radioactive waste, which are determined in accordance with 42 U.S.C. § 10222.
- (8) Prices for the sale of isotopes and related products and services, which are governed by 42 U.S.C. § 2061 Note, "Isotope Production and Distribution Program Fund." The DOE Isotope Program separately sets the prices for isotopes and related products and services.
- (9) Royalty rates established by DOE contractors when the contractors have title to the intellectual property that is being licensed.
- (10) The sale and use of real property shall be executed by a DOE Certified Realty Specialist in accordance with the appropriate statutory authority and in compliance with DOE O 430.1C.
- (11) Prices for goods or services provided by the Federal Energy Regulatory Commission (FERC). FERC, as an independent regulatory commission, sets and promulgates its prices in accordance with applicable laws and regulations (including 18 C.F.R. § 381) and ensures compliance with the biennial pricing review requirements of the CFO Act.
- (12) Transactions related to projects prosecuted in cooperation with other agencies, Federal, State, private, or foreign under the authority of 42 U.S.C. § 7278.
- (13) Intergovernmental Personnel Act Assignments, which are governed by DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*, dated 8-24-00. The assignment of DOE site/facility management personnel to a non-federal entity is not considered an Intergovernmental Personnel Act Assignment.

5. PRICING REQUIREMENTS.a. General Pricing Policy.

- (1) For research and other activities, including the provision of materials and other services, provided to or performed for the benefit of non-DOE entities, the Department will charge full cost as defined in 42 U.S.C. § 7259a. The statute sets out three required elements of pricing:
 - (a) Direct cost incurred;
 - (b) Indirect costs, including general and administrative expenses and other allocated overheads such as Lab-Directed Research and Development, incurred at any Departmental facility that performs work on behalf of non-DOE entities; and
 - (c) A Federal Administrative Charge, which includes charges for Federal administrative overhead, depreciation, and imputed interest, and is not to exceed 3 percent of the direct and indirect costs. DOE has set the Federal Administrative Charge at 3 percent of these costs. The Federal Administrative Charge applies to all work priced under the General Pricing Policy unless an exception applies as described in section 5.b. of this policy.
 - (d) In no case will separate depreciation or imputed interest charges be assessed on a non-DOE entity for materials or services. The Federal Administrative Charge is intended to reimburse these costs in addition to the cost of the Department's Federal administrative overhead, and the Department is statutorily prohibited from assessing separate charges for depreciation or imputed interest.
- (2) Materials and services provided are those which the Department is authorized to provide by law.
- (3) The General Pricing Policy applies to work performed for all non-DOE entities, including foreign governments, except as noted in the Exemptions section of this Order (section 4.b.) and when a special pricing consideration applies as noted in Section 6 of this Order.
- (4) Application of the Federal Administrative Charge to work performed for foreign governments satisfies the cost recovery requirements involving Federal administrative overhead, depreciation, and imputed interest.
- (5) For materials delivered from stock, the full-cost recovery price is the cost of replacing the items or material, if the items or material can be replaced, and the cost of packaging, shipping, preparation, and other ancillary costs associated with providing items or material from stock. If the materials cannot be replaced, additional pricing methods may include

the market value of the asset, market value of similar assets, or other appropriate valuation methods that reimburse DOE for the fair value of the assets transferred/sold and provide reasonable compensation to DOE.

- (6) Materials that are excess to DOE requirements may be provided to other Federal agencies at no cost, but the receiving agencies shall pay the cost of transport or other ancillary costs if those costs exceed the cost of disposing of the excess items or materials. Before transferring excess items and materials to other agencies, DOE offices shall first ensure that no other DOE office requires the items or materials. Disposition guidance for excess materials, personal property is provided in DOE G 580.1-1A, *Personal Property*, dated 6-9-15.

b. Pricing Exceptions for Assessing the Federal Administrative Charge.

- (1) There are a limited number of exceptions to the requirement to assess the 3 percent Federal Administrative Charge for reimbursable work performed for a non-DOE entity:
 - (a) Agreements with the following domestic entities: small business concerns as defined by the Small Business Administration, institutions of higher education, nonprofit entities, and State and local governments;
 - (b) Work performed for the Department of Homeland Security;
 - (c) Work performed by the Federal Energy Management Program for services rendered to other Federal agencies under the authority of 42 U.S.C. § 8287;
 - (d) Loan program fees established under 42 U.S.C. § 16512(h); and
 - (e) Other specific exceptions approved or retained by the Secretary.
- (2) Pricing exceptions are based on who the primary customer is regardless of the source of funds. The primary customer is the entity that enters into a reimbursable work agreement with the DOE.
- (3) The Departmental Office of the CFO promulgates the current list of approved pricing exceptions, including interagency agreements approved by DOE that provide a pricing exception.
- (4) The Federal Administrative Charge shall not be applied to reimbursable work performed by the power marketing administrations if the work is conducted under authorities outside of section 33 of the Atomic Energy Act.

- c. Applicability of the Federal Administrative Charge to Cosponsored Work, Cooperative Research and Development Agreements (CRADAs), Other Technology Transfer Mechanisms, Agreements for Commercializing Technology (ACT), and Federally funded ACT (FedACT). The Federal Administrative Charge shall be assessed on all costs reimbursed by non-DOE entities, except as noted in 5.b. above, including foreign governments, regardless of the level of Departmental participation in funding the work effort. In-kind contributions are not subject to the Federal Administrative Charge. The Federal Administrative Charge shall be assessed on all costs reimbursed by non-DOE entities under (ACT) and FedACT.
- d. Recertification of Pricing Exceptions. The head of the DOE element with responsibility for each pricing exception/agreement must certify to the Departmental Office of the CFO that (1) the exception/agreement remains current and relevant to ongoing and planned future work, and (2) the materials or services specified by the exception continue to be provided to the customer(s) as anticipated by the original approved pricing exception. The certification shall be provided to the CFO Office of Finance and Accounting by March 31, 2019, and biennially thereafter.
- e. Other Pricing Exceptions. The Departmental Office of the CFO may approve other exceptions to the general pricing policy because of unique circumstances that are not anticipated by this pricing policy. Such exceptions must meet the following requirements:
- (1) The request shall be approved by the cognizant Field CFO, the head of the Departmental element, and the cognizant Undersecretary prior to submission to the Departmental Office of the CFO for approval;
 - (2) The requested exception shall apply for a maximum of 4 years, with recertification required after 2 years in accordance with section 5.d. of this policy; and
 - (3) The costs not recovered as a result of a request for pricing at less than full cost must be funded entirely by the DOE organization/program requesting the exemption using funds available for that purpose. The request for an exception must provide an estimate of forgone revenue and detail the budgetary impact for DOE.

6. ACTIVITIES REQUIRING SPECIAL PRICING CONSIDERATION.

- a. Information Dissemination Products. Charges for information dissemination products will be governed by Office of Management and Budget (OMB) Circular A-130, *Managing Federal Information as a Strategic Resource*. Information dissemination product means any recorded information, regardless of physical form or characteristics, which is disseminated by an agency, or a contractor thereof, to the public. Dissemination means the government-initiated distribution

of information to a nongovernment entity, including the public. The term “dissemination,” as used within OMB Circular A-130, does not include distribution limited to federal government employees, intra- or interagency use or sharing of federal information, and responses to requests for agency records under the Freedom of Information Act (5 U.S.C. § 552) or the Privacy Act (5 U.S.C. § 552a). In accordance with OMB Circular A-130, the Department shall avoid charging fees or royalties for public information or establishing unnecessary restrictions on the resale or re-dissemination of public information by the public. Additionally, the Department shall not, unless specifically authorized by statute, establish fees that exceed the cost of dissemination to the public, restrict or regulate the use, resale, or re-dissemination of public information by the public, or establish any mechanism that interferes with the timely and equitable availability of public information to the public. No charge will be assessed for access to a DOE public internet site.

- b. Foreign Research Reactor (FRR) Spent Nuclear Fuel (SNF) Acceptance Program. Because this program supports the DOE nonproliferation mission, pricing at less than full cost recovery was approved as published in Federal Register (FR) Notice 61 FR 26507, May 28, 1996; and 77 FR 4807, Jan. 31, 2012. Under this program, DOE charges a fee for accepting, managing, storing, and disposing of FRR SNF containing uranium that was enriched in the U.S. from high-income-economy countries as identified in the World Bank Development Report. The fee for high-income-economy countries does not include the costs of preparing the SNF for shipment to the U.S. (e.g., inspection, documentation, and canning if necessary) or shipping the SNF to the Department. Such costs are separately borne by high-income-economy countries. DOE continues to pay the full cost of shipping, receipt, and management of FRR SNF from other than high-income-economy countries, including at-reactor preparation.
- c. Support of Domestic Research Reactors under the Research Reactor Infrastructure Program. The Research Reactor Infrastructure Program is authorized by section 31 of the Atomic Energy Act and supports the Department’s interest in research and development of nuclear energy. Under this program, the Department is permitted to provide, at no charge, support and other services to participating domestic research reactors. These activities include, but are not limited to, the supply of nuclear fuel and disposal of DOE- owned spent nuclear fuel. When reactor operations support both the DOE R&D mission and other commercial applications, the reactor operators shall pay a share of the full cost of DOE support that is proportional to use of the reactor for commercial purposes.
- d. Access Permits. An access permit is a permit issued by DOE authorizing access by the named party to Restricted Data applicable to civil uses of atomic energy in accordance with the terms and conditions stated on the permit. DOE rules for granting access permits can be found under 10 C.F.R. §725. Pricing for access permits shall not follow the Department’s General Pricing Policy but instead shall be consistent with the specific provisions of 10 C.F.R. §725, which includes charges for services DOE may furnish in connection with the access permit

(e.g., granting of personnel access authorizations, DOE consulting services, and publication and reproduction of documents).

- e. Museums and Exhibits. Unless there is specific authority to collect admission fees, visitors to DOE museums and exhibits will not be charged for admission.
- f. Departmental User Facilities.
 - (1) Designation of User Facilities that Warrant Special Pricing Consideration. User facilities are those facilities managed and funded by a DOE Program and operated with the express purpose of being available for research by a broad community of qualified users on the basis of programmatic interest, scientific merit of research proposals, technical feasibility, capability of the experimental group, and availability of the resources required.

The term user facility includes, but is not limited to: (1) a user facility as described in 42 U.S.C. §13503(a)(2); (2) a National Nuclear Security Administration Defense Programs Technology Deployment Center/User Facility; and (3) any other Departmental facility designated by the Department as a user facility. Examples of Departmental user facilities include accelerators, supercomputers, and x-ray light sources. User facilities are not restricted to a particular type, technical discipline, or size.

User facilities not specifically designated by statute must meet the following criteria to be eligible for special pricing consideration (see paragraphs 2 and 3 of this section):

 - (a) Designation of a Departmental facility as a user facility has been approved by the cognizant Under Secretary;
 - (b) Full-cost recovery from non-DOE users is not required to pay the full cost of operating the facility;
 - (c) The designation of the user facility and its availability for research is publicly disclosed to the research community;
 - (d) Arrangements for managing intellectual property generated through use of the facility have been approved by the DOE General Counsel and have been disclosed to potential users.
 - (2) Pricing for Non-Proprietary Research. Access to user facilities will be authorized at no charge for non-proprietary research that is approved by laboratory management, usually with the advice of a technical advisory committee. The facility manager will determine which requests meet those criteria and report periodically to the cognizant DOE Program Office.

Classified research that can be shared in classified journals or classified publications is considered to be non-proprietary for the purposes of this policy.

Non-proprietary users may be charged for incremental costs incurred over and above normal use of the facility at the discretion of the facility manager. Such costs may include operating a facility outside of the normal operating mode or schedule; unusual security, safety, or technical arrangements; and consumables.

- (3) Pricing for Proprietary Research. When a user facility is made available for proprietary research, the user will be charged a fee that realizes full cost recovery (see paragraph 5.a.), except as noted below.

During the build-out period (start-up) of a new user facility, proprietary users may be charged a modified annual rate that is equivalent to the estimated full-cost recovery rate for the year at the facility's planned practical capacity. Practical capacity is defined as the maximum units of output that the available capacity can produce taking the normal stoppage and interruptions into consideration. The modified rate shall be recalculated annually to account for revised estimates of capacity, operating costs, or other factors.

Proprietary users shall be charged for all incremental costs incurred over and above normal use of the facility. Such costs may include operating a facility outside of the normal operating mode or schedule; unusual security, safety, or technical arrangements; and consumables.

- g. Royalties for DOE-Owned Intellectual Property. Royalty rates are negotiated between DOE and the licensee based on the parties' assessments of the future commercial value of the technology. The setting of royalty rates is not based on the cost of developing the technology. Royalty rates shall be stipulated in the DOE licensing agreement and approved as part of the licensing agreement.
- h. Services Provided to Other Federal Agencies by the Federal Energy Management Program. The Assistant Secretary, Energy Efficiency and Renewable Energy, shall establish prices and payment schedules for services provided by the program to other Federal agencies. The established prices and payment schedules shall consider the funding needs of the program and shall be informed by the cost incurred by the program in providing those services. Per the authority of 42 U.S.C. § 8287d, pricing is not restricted to full-cost recovery.
- i. Loan Program Fees. The Director of the Loan Program Office shall establish and promulgate fees for the loan program that are consistent with the requirements of 42 U.S.C. § 16512(h) and Section 1702(h) of the Energy Policy Act of 2005, Public Law 109-58.

7. BIENNIAL PRICING REVIEWS.

- a. Basic Requirement. The CFO Act (31 U.S.C. § 902) includes a requirement for a biennial review of the Department's "fees, royalties, rents, and other charges imposed by the agency for services and other things of value it provides." The Departmental Office of the CFO oversees the biennial pricing review process that is executed by all responsible Departmental organizations. The Departmental Office of the CFO collects and reviews all pricing reviews conducted by Departmental elements and assists Field CFOs and other responsible officials with pricing issues.

Cognizant Field CFOs, or equivalent, and heads of Headquarters elements must perform biennial reviews of prices for all materials and services that are under their cognizance in accordance with the requirements of this Order. The Departmental Office of the CFO may provide additional instructions as necessary to clarify requirements for the reviews, highlight best practices, and address deficiencies noted in past biennial review submissions.

- b. Review Objectives. The review is intended to assess whether:
- (1) Prices conform to the requirements of OMB Circular A-25, *User Charges*, Departmental pricing policy, and relevant regulations and statutes;
 - (2) Adequate documentation exists for prices established for materials and services; and
 - (3) Exceptions to the Department's full cost recovery policy are limited only to those specified in this Order.

c. Review Requirements.

- (1) Review Scope. The scope of the review shall include the following:
- (a) Sale of products;
 - (b) Sale of nuclear or other materials;
 - (c) Rents and services;
 - (d) Fees;
 - (e) Strategic Partnership Projects;
 - (f) Cooperative Work Agreements;
 - (g) Cooperative Research and Development Agreements (CRADAs);
 - (h) Charging of royalties;

- (i) Agreements for Commercializing Technology (ACT); and
 - (j) FedACT.
- (2) Objectives and Methodology. A sample of reimbursable work performed and/or sales of materials to non-DOE entities shall be assessed during the biennial period. The review should be adequate to assess whether:
- (a) Written procedures exist for developing cost estimates/budgets and assigning costs to reimbursable work projects;
 - (b) Documentation supports billed invoices;
 - (c) Costs assigned to reimbursable work are in accordance with the contractor's approved Cost Accounting Standards (CAS) disclosure statement, if work is performed by a contractor;
 - (d) Exceptions to full-cost recovery requirements are limited to those authorized in 4.b., *Exemptions*, and are correctly applied;
 - (e) The Federal Administrative Charge is applied unless an approved exception applies;
 - (f) Any cost transfers or adjustments between separately-funded projects or final cost objectives are proper;
 - (g) Royalty and patent invoices are consistent with the underlying agreements; and
 - (h) Related-party transactions, including contractor payments for ACT work performed, are consistent with Departmental full cost recovery requirements.
- (3) Report to the Office of the CFO. Biennial reviews and the associated corrective action plans must be prepared and submitted to the CFO Office of Finance and Accounting no later than March 31, 2020, and each biennial period thereafter. The submission must include an assurance that fees and rates for materials and services comply with OMB Circular A-25 and Departmental Pricing, with any necessary exemptions or disclosures noted. Specific report requirements include:
- (a) The name of the Federal site or field office performing the review and the name of the laboratory and operating contractor, if applicable;
 - (b) The time period covered by the review;

- (c) The number of agreements subject to the DOE pricing policy and revenue generated for each agreement during the past two fiscal years;
 - (d) An overview of the review methodology and any decisions to limit sampling or exclude items from the sample based on assessed risk or materiality;
 - (e) Information on sampling methodology, including whether sampling is statistical or judgmental, and the number of samples tested;
 - (f) Documentation of any other audit, review, or assessment performed or obtained to support the assurance;
 - (g) Identification of any exceptions or deficiencies identified;
 - (h) Updated information on corrective actions taken to address deficiencies or issues identified in prior biennial pricing reviews;
 - (i) A root cause analysis of any deficiencies identified during the current review and corrective action plan for those deficiencies, including estimated completion dates for the corrective actions; and
 - (j) An assurance that prices comply with OMB Circular A-25 and DOE pricing policy, including the correct application of pricing exceptions, with any qualifications noted. Any qualifications affecting the assurance should be addressed by the submitted corrective action plan.
- d. Reliance on Outside Auditors or Reviewers. Field CFOs, or equivalent, and heads of Headquarters elements may rely on outside auditors or reviewers, including contractor internal auditors, when performing biennial reviews but need to address in their assurance to the Departmental Office of the CFO (1) any qualifications or scope limitations with the audit or review, and (2) procedures used to determine that the outside audit or review can be relied upon.
- e. Corrective Action Plans. Cognizant Field CFOs, or equivalents, and heads of Headquarters elements shall approve and maintain corrective action plans to address any deficiencies identified through the biennial review. To perform this function, cognizant Field CFOs may require contractors, or other organizations responsible for the deficiencies to prepare and implement timely corrective action plans to address any deficiencies identified through the biennial review.

f. Special Provisions.

- (1) Sale of Oil from Strategic Petroleum Reserves (SPR). The Annual Strategic Petroleum Reserve Report may be used by the Office of Fossil Energy to satisfy the biennial pricing review requirement. The authority for the SPR sales program is 42 U.S.C. § 6241. Sales are based on market bid prices, with the Secretary of Energy given authority to determine if the bids are appropriate. The Office of Fossil Energy shall provide the Departmental Office of the CFO with a biennial assurance on pricing of any sales from the SPR, or a statement that no sales have been made in the biennial period, if applicable.
- (2) Nuclear Waste Fund. 42 USC § 10222 provides specific provisions for establishing the fees that are assessed to civilian nuclear power plants. The fund is subject to an annual independent audit that satisfies the biennial review requirement.
- (3) Uranium Enrichment Decontamination and Decommissioning (D&D) Fund, Stockpile Management Transactions. The Office of Environmental Management shall report biennially to the Departmental Office of the CFO that the audit of the uranium stockpile management transactions showed that they were priced in accordance with the provisions of 42 U.S.C. § 2297h-10(d). The annual independent audit of the Department's consolidated financial statements involving the review of uranium stockpile management transactions may be used by the Office of Environmental Management to satisfy the biennial pricing review requirement.
- (4) Sale of Isotopes and Related Services. The annual cost review of the Isotope Program may be used by the Office of Nuclear Physics to satisfy the biennial pricing review requirement. In addition, the process of updating the Isotope Program's current price list for isotopes satisfies the biennial pricing review requirement. The Office of Nuclear Physics shall report biennially to the Departmental Office of the CFO on cost reviews performed during the biennial period that inform Isotope Program pricing decisions and an assurance that prices charged are in accordance with Isotope Program pricing policies.
- (5) Power Marketing Administration (PMA) Revenue. The PMAs may use annual power repayment studies to satisfy the biennial pricing review requirement for work funded by ratepayers. The CFOs, or equivalents, of the power marketing administrations shall ensure compliance with the CFO Act requirements for biennial pricing reviews. In addition to providing the Departmental Office of the CFO assurance that prices charged for ratepayers are in conformance with the CFO Act, the power marketing administration CFOs, or equivalents, shall provide biennial assurances to the Departmental

Office of the CFO that detail the assessments that have been performed to ensure prices for reimbursable work not funded by rate payers meet the cost recovery requirements applicable to the PMAs as specified in this Order.

- (6) Loan Program Fees. The Director of the Loan Program Office shall review program fees biennially and shall provide the Departmental Office of the CFO with an assurance that current fees have been reviewed and are consistent with 42 U.S.C. § 16512(h).
8. BILLING & FINANCING. Invoices for materials and services will be prepared and issued promptly in accordance with the terms of contracts or agreements. Billing procedures will follow the requirements in Chapter 8, "Receivables," of the *DOE Financial Management Handbook*. Additionally, offices will follow the financing requirements in Chapter 13, "Reimbursable Work, Revenues, and Other Collections," of the *DOE Financial Management Handbook*.
9. RESPONSIBILITIES.
 - a. Office of the Chief Financial Officer.
 - (1) Develops and interprets DOE pricing policy.
 - (2) Approves requests to waive costs incurred on behalf of non-DOE entities in accordance with the provisions of section 5.e. of this policy. The Departmental Office of the CFO may refer a request to waive costs to the Secretary if the request does not meet the requirements of section 5.e.
 - (3) Provides the Departmental listing of approved exceptions to the Federal Administrative Charge and any other approved pricing exceptions.
 - (4) Oversees the biennial pricing review.
 - b. Heads of DOE Headquarters Organizations.
 - (1) Ensure prices for materials and services provided by organizations under their cognizance are set in accordance with requirements of this Order.
 - (2) Submit requests for waiver of costs incurred on behalf of non-DOE entities to the Departmental Office of the CFO for approval in accordance with the provisions of this Order.
 - (3) Consult with the Departmental Office of the CFO on matters relating to pricing and full cost recovery. When appropriate, submit proposals

for legislative changes on pricing matters to the Departmental Office of the CFO for consideration in accordance with OMB Circular A-25.

- (4) Ensure biennial reviews of prices for materials and services under their cognizance are performed in accordance with the provisions of this Order.

c. Heads of Field Organizations.

- (1) Ensure the policies, procedures, and reporting requirements contained in this Order are followed.
- (2) Develop and approve prices for materials and/or services when the prices are based on full cost recovery.
- (3) Disseminate new and revised prices and charges.

d. Cognizant Field CFOs or Equivalent.

- (1) Notify contracting officers when site/facility management contracts are affected by requirements of this Order.
- (2) Conduct the biennial pricing review for all materials and services provided by facilities under their oversight responsibility in accordance with the provisions of this Order and coordinate with the contracting officer to ensure that the Department's pricing policy is followed by DOE site/facility management contractors and that pricing exceptions are correctly applied.
- (3) Support the site/facility management contractors and DOE contracting officers on pricing matters.
- (4) Reviews and concurs with exceptions to the general pricing policy prior to submitting them to the Departmental Office of the CFO for approval.

e. Contracting Officers.

- (1) After being notified that the requirements of this Order apply to site/facility management or other contracts under their cognizance, ensure that the Contractor Requirements Document (CRD) is incorporated into affected site/facility management contracts in accordance with the "Laws, Regulations, and DOE Directives" clause (DEAR 970.5204-2) or via negotiation and modification, as appropriate.

- (2) Works with the cognizant Field CFO to ensure that site/facility management contractors price reimbursable work in accordance with Departmental policy, as specified by this Order.
 - (3) Works with the cognizant Field CFO to ensure that site/facility management contractors address any issues identified by the biennial pricing reviews.
 - (4) Consults with the cognizant Field CFO or equivalent on pricing matters.
- f. General. Authority and responsibility for establishing prices and charges for materials or services being provided by DOE or through a DOE contractor to a third party cannot be delegated to a non-DOE official.

10. REFERENCES.

- a. 42 U.S.C. § 7259a, which provides specific authorities regarding the conduct of research and other activities at Departmental facilities on behalf of non-DOE persons and entities; and establishes a standard Federal Administrative Charge in an amount not to exceed 3 percent to be applied to work performed on behalf of these entities.
- b. 31 U.S.C. § 902(a)(8) and DOE O 520.1A, *Chief Financial Officer Responsibilities*, dated 11-21-06, which require biennial pricing reviews of the fees, royalties, rents, and other charges for services and things of value the Department provides.
- c. DOE O 534.1B, *Accounting*, dated 1-6-03, and the DOE Accounting Handbook, which prescribe the requirements and responsibilities for the accounting and financial management of DOE.
- d. DOE O 481.1D, *Strategic Partnership Projects [Formerly Known As Work For Others (Non-Department of Energy Funded Work)]*, dated 12-05-16, which establishes policy, responsibilities, and procedures for authorizing and administering non-DOE funded work performed under DOE contracts.
- e. 31 U.S.C. § 1535 and 1536, which authorize agencies to place orders with other Federal agencies when the head of the ordering agency determines it to be in the best interest of the Government.
- f. 31 U.S.C. § 9701, which establishes the requirements for selling services and products.
- g. 42 U.S.C. Chapter 23, which authorizes the Department to establish prices and charges for materials and services sold or provided by the Department.
- h. DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*, dated 8-24-00.

- i. OMB Circular A-25, Transmittal Memorandum #1, *User Charges*, dated 7-8-93, which establishes Government policy of recovering full cost for services, goods or resources and the basis for setting user charges and provides guidance for agency implementation of charges and the disposition of collections.
 - j. OMB Circular A-130, *Managing Federal Information as a Strategic Resource*, dated 7-28-16, which establishes policy for pricing information dissemination materials.
 - k. DOE G 580.1-1A, *Personal Property*, dated 6-9-15.
11. CONTACT. For information about this Order, contact the CFO Office of Finance and Accounting.

BY ORDER OF THE SECRETARY OF ENERGY:



DAN BROUILLETTE
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 522.1X, PRICING OF DEPARTMENTAL MATERIALS AND SERVICES

1. General Requirements. The term “contract” or “contractor” as used in this document includes site/facility management contracts or contractors, all Management and Operating (M&O) contracts or contractors, and any other contracts or contractors that require the establishment of prices for materials and services provided to non-DOE entities. The contractor is responsible for complying with the requirements of this Contractor Requirements Document (CRD) when establishing prices for materials and services provided to non-DOE entities.

The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure the contractor’s compliance with the requirements and remains responsible for complying with the requirements of this CRD. Contractors and subcontractors at all tiers shall provide timely pricing of direct and indirect costs covered by this DOE Order.

2. Exemptions. The general pricing policy will not apply when prices or charges are otherwise established or prohibited by statute or regulation. This exemption applies to the specific pricing described below or any other situation governed by a separate statute or regulation:
 - a. Charges or other compensation for source material, special nuclear material, and byproduct material, which are determined in accordance with the Atomic Energy Act of 1954, as amended, 42 U.S.C. Chapter 23. Such charges or compensation are established by the cognizant DOE official serving in a position requiring appointment by the President of the United States with the advice and consent of the Senate;
 - b. Prices for uranium inventory sales or transfers subject to the provisions of 42 U.S.C. § 2297h-10(d);
 - c. Prices for processing information requests submitted under the Freedom of Information and Privacy Acts, which are established by 5 U.S.C. § 552(a)4(A) and 10 Code of Federal Regulation (C.F.R.) § 1004.9;
 - d. Prices for crude oil and related materials and services from the Strategic Petroleum Reserve, which are determined per the provisions of 42 U.S.C. § 6241.
 - e. Prices for the sale of excess personal property, under 41 C.F.R. § 102-36.35;
 - f. Fees and costs for the storage and disposal of radioactive waste, which are determined in accordance with 42 U.S.C. § 10222;
 - g. Prices for the sale of isotopes and related products and services, which are governed by 42 U.S.C. § 2061 Note, “Isotope Production and Distribution

Program Fund.” The DOE Isotope Program separately sets the prices for isotopes and related products and services;

- h. Royalty rates established by DOE contractors when the contractors have title to the intellectual property that is being licensed;
- i. Transactions related to projects prosecuted in cooperation with other agencies, Federal, State, private, or foreign under the authority of 42 U.S.C. § 7278.
- j. Intergovernmental Personnel Act Assignments, which are governed by DOE M 321.1-1, Intergovernmental Personnel Act Assignments, dated 8-24-00. The assignment of DOE site/facility management personnel to a non-federal entity is not considered an Intergovernmental Personnel Act Assignment.

3. General Pricing Policy.

- a. For research and other activities, including the provision of materials and other services, provided to or performed for the benefit of non-DOE entities, the site/facility management contractor (including management and operating contracts), and any other contractors or contracts that require the establishment of prices for materials and services provided to non-DOE entities, will charge full cost as defined by statute 42 U.S.C. § 7259a. The statute sets out three required elements of pricing:
 - (1) Direct cost incurred;
 - (2) Indirect costs, including general and administrative expenses and other allocated overheads such as Lab-Directed Research and Development incurred by a site/facility management contractor that performs work on behalf of non-DOE entities; and
 - (3) A Federal Administrative Charge, which includes charges for Federal administrative overhead, depreciation, and imputed interest, and is not to exceed 3 percent of the direct and indirect costs. DOE has set the Federal Administrative Charge at 3 percent of these costs. The Federal Administrative Charge applies to all work priced under the General Pricing Policy unless an exception applies as described in section 4 of this CRD.
- b. In no case will separate depreciation or imputed interest charges be assessed on a non-DOE entity for materials or services. The Federal Administrative Charge is intended to reimburse these costs, in addition to the cost of the Department’s Federal administrative overhead, and the Department, via its site facility management contractors, is statutorily prohibited from assessing separate charges for depreciation and imputed interest.

- c. Materials and services provided are those which the Department, via its site facility management contractors, is authorized to provide by law.
 - d. The General Pricing Policy applies to work performed for all non-DOE entities, including foreign governments, except as noted in the exclusions section of this CRD (Section 2) and when a special pricing consideration applies as noted in Section 7 of this CRD.
 - e. Application of the Federal Administrative Charge to work performed for foreign governments satisfies the cost recovery requirements for federal administrative overhead, depreciation, and imputed interest.
 - f. For materials delivered from stock, the full-cost recovery price shall be the cost of replacing the materials, if the materials can be replaced, and the cost of packaging, shipping, preparation, and other ancillary costs associated with providing items or material from stock. If the items or material cannot be replaced, additional pricing methods may include the market value of the asset, market value of similar assets, or other appropriate valuation methods that reimburse DOE for the fair value of the assets transferred/sold and provide reasonable compensation to DOE.
 - g. Materials that are excess to DOE requirements may be provided to other Federal agencies at no cost, but the receiving agencies shall pay the cost of transport or other ancillary costs if those costs exceed the cost of disposing of the excess items or materials. Contractors must obtain the approval of the contracting officer before providing contractor-held items to other Federal agencies at no cost. Disposition guidance for excess materials, personal property is provided in DOE G 580.1-1A, Personal Property, dated 6-9-15.
4. Exceptions for Assessing the Federal Administrative Charge.
- a. There are a limited number of exceptions to the requirement to assess the 3 percent Federal administrative charge for reimbursable work performed for a non-DOE entity:
 - (1) Agreements with domestic entities as follows: small business concerns as defined by the Small Business Administration, institutions of higher education, nonprofit entities, and State and local governments;
 - (2) Work performed for the Department of Homeland Security;
 - (3) Work performed by the Federal Energy Management Program for services rendered to other Federal agencies under the authority of 42 USC § 8287; and
 - (4) Other specific exceptions approved or retained by the Secretary.

- b. Pricing exceptions are based on who the primary customer is, regardless of the source of funds. The primary customer is the entity that enters into a reimbursable work agreement with the Department of Energy.
 - c. The Departmental Office of the CFO promulgates the current list of approved pricing exceptions, including interagency agreements approved by DOE that provide a pricing exception.
5. Other Pricing Exceptions. The Departmental Office of the CFO may approve other pricing exceptions because of unique circumstances that are not anticipated by the Department's General Pricing Policy. Approved exceptions will be provided to contractors by the contracting officer.
6. Applicability of the Federal Administrative Charge to Cosponsored Work, Cooperative Research and Development Agreements (CRADAs), Other Technology Transfer Mechanisms, Agreements for Commercializing Technology (ACT), and Federally funded ACT (FedACT). The Federal administrative charge will be assessed on costs reimbursed by non-DOE entities, including foreign governments, regardless of the level of Departmental participation in funding the work effort. In-kind contributions will not be subject to the Federal administrative charge. The Federal Administrative Charge shall be assessed on all costs reimbursed by non-DOE entities under ACT and FedACT.
7. Activities Requiring Special Pricing Consideration.
 - a. Information Dissemination Products. DOE must comply with Office of Management and Budget (OMB) Circular A-130, Managing Federal Information as a Strategic Resource. The site facility management contractor will assist DOE in compliance with this Circular. Circular A-130 provides that the Department shall not, unless specifically authorized by statute, establish fees that exceed the cost of dissemination to the public. Should an exception to this policy be warranted, DOE will provide additional guidance.
 - b. Foreign Research Reactor Spent Nuclear Fuel Program. Because this program supports the DOE nonproliferation mission, pricing for less than full cost recovery is approved as noted in the Federal Register (61 Fed. Reg. 26,507, May 28, 1996; and 77 Fed. Reg. 4,807, Jan. 31, 2012). Under this program, the Department charges a fee for accepting, managing, storing, and disposing of research reactor spent nuclear fuel containing uranium that was enriched in the U.S. from high income-economy countries as identified in the World Bank Development Report. The fee for high-income-economy countries does not include the costs of preparing the spent nuclear fuel for shipment to the U.S. (e.g., inspection, documentation, and canning if necessary) or shipping the spent nuclear fuel to the Department. Such costs are separately borne by high-income-economy countries. DOE bears the full cost of shipping, receipt, and management of foreign research reactor spent nuclear fuel received from other than high-income-economy countries, including at-reactor preparation.

- c. Support of Domestic Research Reactors under the Research Reactor Infrastructure Program. The Research Reactor Infrastructure Program is authorized by section 31 of the Atomic Energy Act and supports the Department's interest in research and development of nuclear energy. Under this program, the Department is permitted to provide, at no charge, support and other services to participating domestic research reactors. These activities include, but are not limited to, the supply of nuclear fuel and disposal of DOE owned spent nuclear fuel. When reactor operations support both the DOE R&D mission and other commercial applications, the reactor operators shall be charged a share of the full cost of DOE support that is proportional to use of the reactor for commercial purposes.
- d. Access Permits. An access permit is a permit issued by DOE authorizing access by the named party to Restricted Data applicable to civil uses of atomic energy in accordance with the terms and conditions stated on the permit. DOE rules for granting access permits can be found under 10 C.F.R. § 725. Fees shall be assessed in accordance with 10 C.F.R. § 725, which includes charges for services DOE may furnish in connection with the access permit (e.g., granting of personnel access authorizations, DOE consulting services, and publication and reproduction of documents).
- e. Museums and Exhibits. Unless there is specific authority to collect admission fees, visitors to DOE museums and exhibits will not be charged for admission.
- f. Designated Departmental User Facilities.
 - (1) Pricing for Non-Proprietary Research. Access to user facilities will be authorized at no charge for non-proprietary research that is approved by laboratory management, usually with the advice of a technical advisory committee. The facility manager will determine which requests meet those criteria and report periodically to the cognizant DOE Program Office.

Classified research that can be shared in classified journals or classified publications is considered to be non-proprietary for the purposes of this policy.

Non-proprietary users may be charged for incremental costs incurred over and above normal use of the facility at the discretion of the facility manager. Such costs may include operating a facility outside of the normal operating mode or schedule; unusual security, safety, or technical arrangements; or consumables.
 - (2) Pricing for Proprietary Research. When a user facility is made available for proprietary research, the user will be charged a fee that realizes full cost recovery as defined by the DOE General Pricing Policy (section 3 of this CRD) except as noted below.

During the build-out period (start-up) of a new user facility, proprietary users may be charged a modified annual rate that is equivalent to the estimated full-cost recovery rate for the year at the facility's planned practical capacity. Practical capacity is defined as the maximum units of output that the available capacity can produce taking the normal stoppage and interruptions into consideration. The modified rate shall be recalculated annually to account for revised estimates of capacity, operating costs, or other factors.

Proprietary users shall be charged for all incremental costs incurred over and above normal use of the facility. Such costs may include operating a facility outside of the normal operating mode or schedule, unusual security, safety, or technical arrangements, and consumables.