

U.S. Department of Energy
Washington, D.C.

ORDER

DRAFT DOE O 522.1A

Approved: XX-XX-XXXX

SUBJECT: PRICING OF DEPARTMENTAL MATERIALS AND SERVICES

1. **OBJECTIVE.** To establish Department of Energy (DOE) requirements for prices and charges for materials and services sold or provided to external organizations, other Federal agencies, or the private sector 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. This Order applies to all DOE elements with exceptions and special provisions noted. This Order applies to all site facility contractors and any other contractors where the Contractor's Requirement Document (CRD) is included in the contract. The CRD specifies those requirements applicable to the contractor.
 - b. 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 directly funded by ratepayers.
 - (2) Other reimbursable work not directly funded by ratepayers 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 shall provide biennial attestations to the Department's CFO that detail their assessments performed to satisfy the biennial pricing review requirement. This includes an attestation that prices charged for ratepayers are in conformance with the CFO Act. Additionally, the power marketing administrations must provide assessments demonstrating that the pricing of reimbursable work not funded by ratepayers meets full-cost recovery requirements.

- (4) The statute establishing the Federal Administrative Charge does not apply to the power marketing administrations. Power marketing administrations shall not assess a separate Federal Administrative Charge, but instead shall calculate full-cost recovery in accordance with the cost accounting practices at the respective power marketing administration.
- c. Exclusions. The general pricing policy will not apply when prices or charges are otherwise established or prohibited by statute or regulation. This exclusion applies to the specific pricing described below or any other situation governed by a separate statute or regulation:
 - (1) Prices for uranium enrichment and related services and source material (to include enriched, natural, and depleted material), which shall be priced according to the provisions of 3112(d)(2) of the United States Enrichment Corporation (USEC) Privatization Act;
 - (2) Prices for processing information requests submitted under the Freedom of Information and Privacy Acts, which are established by 5 USC 552 and 10 CFR 1004;
 - (3) Prices for energy data and information provided by the Energy Information Administration to the public in accordance with 42 USC 7135(g). ;
 - (4) Prices for crude oil and related materials and services from the Strategic Petroleum Reserve, which are determined according to the provisions of the Energy Policy and Conservation Act (Public Law 94-163);
 - (5) Prices for the sale of excess personal property, which are governed by General Services Administration Regulation (41 CFR 102-36.35);
 - (6) Fees and costs for the storage and disposal of radioactive waste, which are determined in accordance with the provisions of the Nuclear Waste Policy Act of 1982;
 - (7) Prices for the sale of isotopes and related products and services, which are governed by Public Law 103-316, 108 Stat 1715. The DOE isotope program separately promulgates the prices for isotopes and related products and services;
 - (8) Royalty rates established by DOE contractors when the contractors have title to the intellectual property that is being licensed; and
 - (9) The sale of real property, which is priced according to 41 CFR 102 and DOE Order 430.1B, *Real Property Asset Management*.
 - (10) 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 CFR 381) and ensures compliance with the biennial pricing review requirements of the CFO Act.

4. 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 by statute (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. The Federal Administrative Charge applies to all work priced under the General Pricing Policy unless an exception applies as described in section 4(b) of this policy.
- (2) In no case will any depreciation or imputed interest charges be imposed on a non-DOE entity requesting 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.
- (3) Materials and services provided are those which the Department is authorized to provide by law.
- (4) 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 order (section 3c) and when a special pricing consideration applies as noted in section 5 of this order.
- (5) Application of the Federal Administrative Charge to work performed for foreign governments will satisfy full-cost recovery requirements. No additional charges shall be assessed to foreign governments for Federal administrative overhead, depreciation, or imputed interest.
- (6) 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.

- (7) Materials that are excess to DOE requirements may be provided to other Federal agencies at no cost, though the receiving agencies shall pay the cost of transport or other costs if those costs exceed the cost of disposing of the surplus items or material. Before transferring excess items and material to other agencies, DOE offices shall first ensure that no other DOE office requires the items or material.

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 non-DOE entities:
 - (a) Agreements with domestic entities as follows: small business concerns, as defined by 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; and
 - (d) Loan program fees established under the authority of section 1702(h) of the Energy Policy Act of 2005, Public Law 109-58; 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 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.

c. Applicability of the Federal Administrative Charge to Cosponsored Work, Cooperative Research and Development Agreements (CRADAs), and Other

Technology Transfer Mechanisms. The Federal Administrative Charge will be assessed on all 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.

- d. Recertification of Pricing Exceptions. The head of the DOE element with responsibility for each pricing exception/agreement must certify to the Departmental 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, 2017, and biennially thereafter.
- e. Other Pricing Exceptions. The Department's 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 CFO for approval;
 - (2) The requested exception shall apply for a maximum of four years, with recertification required after two years in accordance with section 4.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 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.

5. ACTIVITIES REQUIRING SPECIAL PRICING CONSIDERATION.

- a. Information Dissemination Products. These include any book, paper, map, machine-readable material, audiovisual production, or other documentary material, regardless of physical form or characteristic, disseminated by an agency to the public. In accordance with Office of Management and Budget (OMB) Circular A-130, *Management of Federal Information Resources*, charges for Information Dissemination Products will be set at a level sufficient to recover the cost of dissemination but no higher. Charges must exclude the cost of the original collection and processing of the information. No charge will be assessed for access to a DOE public internet site. Other exceptions to this policy are:
 - (1) Statutory requirements at variance with the policy;

- (2) Collecting, processing, and disseminating information for the benefit of a specific identifiable group beyond the benefit to the general public, in which case full costs associated with the original collection, processing, and dissemination of the information shall be charged;
 - (3) User charges at less than the cost of dissemination because it has been determined that higher charges would constitute a significant barrier to properly performing its functions, including informing the public; and
 - (4) Determinations by the Director of OMB that an exception is warranted.
- b. Byproduct Material. Prices and charges for byproduct material, as defined by 42 U.S.C 2014 and sold pursuant to 42 U.S.C. 2111 and 2112, shall be either the full cost recovery price or the commercial price, whichever is higher. This provision does not pertain to byproduct material provided by the Department's Isotope Program (Public Law 103-316, 108 Stat 1715), which is discussed under paragraph 3.c (7) of this order.
- c. Special Nuclear Materials. Special Nuclear Materials held by DOE that are not needed for current or anticipated future DOE missions may be provided to other federal agencies at no cost. This provision does not pertain to material provided by the Department's Isotope Program (Public Law 103-316, 108 Stat 1715), which is discussed under paragraph 3.c (7) of this order.
- d. Foreign Research Reactor Spent Nuclear Fuel Program. Because this program supports the DOE nonproliferation mission, pricing at less than full cost recovery is approved as noted in the Federal Register (see 61 FR 25092, May 17, 1996; and 77 FR 4807, Jan. 31, 2012). Under this program, DOE charges a fee for accepting, managing, storing, and disposing of material originating from high-income countries. The fee does not include the costs of shipping the fuel (e.g., inspection, documentation, and canning if necessary) to the Department as those costs will be separately borne by high-income countries. DOE bears the full cost of shipping and managing foreign research reactor fuel received from other countries, including at-reactor preparation.
- e. 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 and disposal of fuel. When reactor operations support both the DOE R&D mission and other commercial applications, the reactor operators will pay a share of the full cost of DOE support that is proportional to use of the reactor for commercial purposes.

- f. 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).
- g. Museums and Exhibits. Unless there is specific authority to collect admission fees, visitors to DOE museums and exhibits will not be charged for admission.
- h. Use of DOE Real Property.

DOE may allow other Federal agencies to use DOE real property through issuance of a permit, as long as the use does not interfere with the Departmental mission. Other Federal agencies must pay market rate, as established by the Certified Realty Specialist, for use of the real property. Exceptions to the requirement to pay market rate may be granted by the DOE site office manager for (1) facilities that are excess to DOE mission needs and scheduled for disposition or (2) use by other federal agencies that supports the DOE mission.

Non-federal government users may be granted a license to use DOE real property. Payment of fair market value is required, unless (a) the proposed use will benefit only the Government, or (b) the user is a local Government entity or a community reuse organization.

When a commercial user, such as a bank or service station, requests a license to use DOE land, the field element may grant a license if there is a justifiable need for the offered service that cannot be filled offsite. When granting the license, the field element should give all other like organizations the right to compete in providing the commercial service and require the recipient of the license to pay not less than fair market value for the use of the Government property.

- i. Departmental User Facilities.
 - (1) Designation of User Facilities that Warrant Special Pricing Consideration. User facilities are those facilities managed 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 section 2203(a)(2) of the Energy Policy Act of 1992 (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 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 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 4a), except as noted below.

During the build-out period of a new user facility, proprietary users may be charged a modified rate that is equivalent to the estimated full-cost recovery rate for the facility if current year operations were at the facility's planned practical capacity when the facility is fully built-out. Practical capacity is defined in accounting standards (SFFAS 4) as the "maximum

units of output that the available capacity can produce taking the normal stoppage and interruptions into consideration.” This 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.

- j. Intergovernmental Personnel Act (IPA).
 - (1) Participating DOE organizations may negotiate the financial arrangements governing an assignment, including pay, fringe benefits, relocation costs, travel and per diem expenses, and supplemental pay in unique circumstances. When a DOE site/facility management contractor employee is involved, a reduced allocation of general and administrative costs that includes only those functions or categories that provide benefit to the IPA agreement may be included.
 - (2) Organizations may agree to establish an assignment on a wholly reimbursable, partially reimbursable, or nonreimbursable basis.
 - (3) If DOE is to bear full cost, justification must be attached or included in the assignment agreement. DOE M 321.1-1, *Intergovernmental Personnel Act Assignments*, dated 8-24-00, provides additional details regarding those assignments.
- k. Royalties for DOE-owned intellectual property. Royalty rates are negotiated between the DOE and licensee based on the parties’ assessment 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.
- l. 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.
- m. 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 section 1702(h) of the Energy Policy Act of 2005, Public Law 109-58.

6. BIENNIAL PRICING REVIEW.

- 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." The Departmental CFO oversees the biennial pricing review process that is executed by all responsible Departmental organizations. The Departmental 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 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 provide reasonable assurance that:

- (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. Pricing for the following activities shall be subject to sampling when performing the biennial review:
 - (a) Sale of products;
 - (b) Sale of nuclear or other materials;
 - (c) Rents and services;
 - (d) Strategic Partnership Projects;
 - (e) Cooperative Work Agreements;
 - (f) Cooperative Research and Development Agreements (CRADAs);
 - (g) Charging of royalties; and
 - (h) Agreements for Commercializing Technology (ACT).

- (2) Objectives and Methodology. A valid 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 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 CAS disclosure statement, if work is performed by a contractor;
 - (d) Exceptions to full-cost recovery requirements are limited to those authorized by DOE policy 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 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, 2018, and each biennial period thereafter. The submission must include an attestation 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 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 attestation;
 - (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 attestation 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 attestation 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 attestation to the Department's 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 equivalent, and heads of Headquarters elements must prepare and maintain corrective action plans to address any deficiencies identified through the biennial review. The cognizant Field CFO, or equivalent, or the Head of the Headquarters element shall approve corrective action plans and ensure timely implementation of recommended corrective actions.
- 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 the Energy Policy and Conservation Act of 1992 (P.L. 94-163). 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 CFO with a biennial attestation 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. The Nuclear Waste Policy Act of 1982 (P.L. 97-425) 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. The Office of Environmental Management shall report biennially to the CFO that the audit of the uranium transactions were priced in accordance with the provisions of 3112(d)(2) of the United States Enrichment Corporation (USEC) Privatization Act. The annual independent audit of the Department's consolidated financial statements involving the review of uranium 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 Production and Distribution 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 CFO on cost reviews performed during the biennial period that inform Isotope Program pricing decisions and an attestation 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 equivalent, of the power marketing administrations shall ensure compliance with the CFO Act requirements for biennial pricing reviews. In addition to providing the Departmental CFO attestation that prices charged for ratepayers are in conformance with the CFO Act, the power marketing administration CFOs, or equivalent, shall provide biennial attestations to the Department's CFO that detail what assessments have been performed to ensure that prices for reimbursable work not funded by ratepayers 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 CFO with an attestation that current fees have been reviewed and are consistent with section 1702(h) of the Energy Policy Act of 2005, Public Law 109-58.
7. BILLING. 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 of the *DOE Financial Management Handbook*, Receivables.

8. RESPONSIBILITIES.a. 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 4(c) of this policy. At its discretion, the CFO may refer a request to waive costs to the Secretary if the request does not meet the requirements of section 4(c).
- (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 that 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 CFO for approval in accordance with the provisions of this Order.
- (3) Consult with the Departmental CFO on matters relating to pricing and full cost recovery. When appropriate, submit proposals for legislative changes on pricing matters to the CFO for consideration in accordance with OMB Circular A-25.
- (4) Ensure that 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 that 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.
- e. Contracting Officers.
 - (1) After being notified that the requirements of this Order apply to site/facility management 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.
 - (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.

9. REFERENCES.

- a. Public Law (P.L.) 105-261, National Defense Authorization Act for Fiscal Year 1999, Section 3137, 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. P.L. 101-576, the Chief Financial Officers Act of 1990, and DOE O 520.1 Chg 1, *Office of Chief Financial Officer*, dated 11-27-01, 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 481.1B, *Work for Others (Non-Department of Energy Funded Work)*, dated 9-28-01, 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, Economy Act of June 1932, as amended, which authorizes 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, Fees and Charges for Government Services and Things of Value, which establishes policy for selling services and products.
 - g. 42 U.S.C. 2051, 2053, 2073, 2074, 2093, 2094, 2111, 2112, and 2201, Atomic Energy Act of 1954, as amended, which authorizes the Department to establish prices and charges for nuclear materials and other related materials and services sold or provided by the Department.
 - h. 5 CFR 334, Intergovernmental Personnel Act, which provides policy and procedures for temporary assignment of employees between Federal agencies and State, local, and Indian tribal governments, institutions of higher education, and other eligible organizations.
 - i. OMB Circular A-25, *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, *Management of Federal Information Resources*, dated 11-30-00, which establishes policy for pricing information dissemination materials.
10. CONTACT. For information about this Order, contact the CFO Office of Finance and Accounting.

BY ORDER OF THE SECRETARY OF ENERGY:

Logo
after
signature

ELIZABETH SHERWOOD-RANDALL
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT

1. General Requirements. The site/facility management 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 site/facility management 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. In doing so, the site/facility management contractor must not flow down requirements to subcontractors unnecessarily or imprudently. That is, the site/facility management contractor will ensure that it and its subcontractors comply with the requirements of this CRD and incur only those costs that would be incurred by a prudent person in the conduct of competitive business.

2. Exclusions. The general pricing policy will not apply when prices or charges are otherwise established or prohibited by statute or regulation. This exclusion applies to the specific pricing described below or any other situation governed by a separate statute or regulation:
 - a. Prices for uranium enrichment and related services and source material (to include enriched, natural, and depleted material), which shall be priced according to the provisions of 3112(d)(2) of the United States Enrichment Corporation (USEC) Privatization Act;
 - b. Prices for processing information requests submitted under the Freedom of Information and Privacy Acts, which are established by 5 USC 552 and 10 CFR 1004;
 - c. Prices for crude oil and related materials and services from the Strategic Petroleum Reserve, which are determined per the provisions of the Energy Policy and Conservation Act (Public Law 94-163);
 - d. Prices for the sale of excess personal property, which are governed by General Services Administration Regulation (41 CFR 102-36.35);
 - e. Prices for the sale of isotopes and related products and services, which are governed by Public Law 103-316, 108 Stat 1715. The DOE isotope program separately promulgates the prices for isotopes and related products and services; and
 - f. Royalty rates established by DOE contractors when the contractors have title to the intellectual property that is being licensed.
 - g. The sale of real property, which is priced according to 41 CFR 102 and DOE Order 430.1B, "Real Property Asset Management."

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 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. 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 any depreciation or imputed interest charges be imposed on a non-DOE entity. 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 will satisfy full-cost recovery requirements for federal administrative overhead, depreciation, and imputed interest. No other charges shall be assessed to foreign governments for Federal administrative overhead, depreciation, or 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, though the receiving agencies shall pay the cost of transport or other costs if those costs exceed the cost of disposing of the surplus items or material. Contractors must obtain the approval of the contracting officer before providing contractor-held items to other Federal agencies at no cost.

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 non-DOE entities:
 - (1) Agreements with domestic entities as follows: small business concerns, as defined by 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 U.S.C. 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 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 Department's 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), and Other Technology Transfer Mechanisms. 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.

7. Activities Requiring Special Pricing Consideration.

- a. Information Dissemination Products. DOE must comply with Office of

Management and Budget (OMB) Circular A-130, Management of Federal Information Resources. The site facility management contractor will assist DOE in compliance with this circular. Circular A-130 requires DOE to set charges for Information Dissemination Products at a level sufficient to recover the cost of dissemination but no higher. Charges must exclude the cost of the original collection and processing of the information. Should an exception to this policy be warranted, DOE will provide additional guidance.

- b. Byproduct Material. Prices and charges for byproduct material, as defined by 42 U.S.C 2014 and sold pursuant to 42 U.S.C. 2111 and 2112, shall be set at either the full cost recovery price or the commercial price, whichever is higher. Contractors shall notify the Field CFO when prices are set in excess of full-cost recovery to ensure appropriate disposition of amounts collected in excess of costs incurred. This provision does not pertain to byproduct material provided by the Department's Isotope Program (Public Law 103-316, 108 Stat 1715).
- c. Special Nuclear Materials. Pricing shall be in accordance with DOE Order 522.1, Section 5b. The pricing for individual agreements must be approved by the contracting officer.
- d. 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 (see 61 FR 25092, May 17, 1996; and 77 FR 4807, Jan. 31, 2012). Under this program, the Department charges a fee for accepting, managing, storing, and disposing of material originating from high income countries. The fee does not include the costs of shipping the fuel (e.g., inspection, documentation, and canning if necessary) to the contractor as those costs will be separately borne by high income countries. DOE bears the full cost of shipping and managing foreign research reactor fuel received from other countries, including at-reactor preparation.
- e. 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 and disposal of fuel for these types of studies. 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.
- f. 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 Code of Federal Regulations (CFR) 725. Fees shall be assessed in accordance with 10 CFR 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).

- g. Museums and Exhibits. Unless there is specific authority to collect admission fees, visitors to DOE museums and exhibits will not be charged for admission.
- h. Use of DOE Real Property.

 - (1) DOE may allow other Federal agencies to use DOE real property through issuance of a permit, as long as the use does not interfere with the Departmental mission. Other Federal agencies must pay market rate, as established by the Certified Realty Specialist, for use of the real property. Exceptions to the requirement to pay market rate may be granted by the DOE site office manager for (1) facilities that are excess to DOE mission needs and scheduled for disposition or (2) use by other federal agencies that supports the DOE mission.
 - (2) Non-federal government users may be granted a license to use DOE real property. Payment of fair market value is required, unless (a) the proposed use will benefit only the Government, or (b) the user is a local Government entity or a community reuse organization.
 - (3) When a commercial user, such as a bank or service station, requests a license to use DOE land, the field element may grant a license if there is a justifiable need for the offered service that cannot be filled offsite. When granting the license, the field element should give all other like organizations the right to compete in providing the commercial service and require the recipient of the license to pay not less than fair market value for the use of the Government property.
- i. 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.
 - (2) Classified research that can be shared in classified journals or classified publications is considered to be non-proprietary for the purposes of this policy.
 - (3) 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.

- (4) 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.
 - (5) During the build-out period of a new user facility, proprietary users may be charged a modified rate that is equivalent to the estimated full-cost recovery rate for the facility if current year operations were at the facility's planned practical capacity when the facility is fully built-out. Practical capacity is defined in accounting standards (SFFAS 4) as the "maximum units of output that the available capacity can produce taking the normal stoppage and interruptions into consideration." This rate shall be recalculated annually to account for revised estimates of capacity, operating costs, or other factors.
 - (6) 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.
- j. Intergovernmental Personnel Act (IPA). For DOE site/facility management contractors participating in an Intergovernmental Personnel Act agreement, contractors may provide for a reduced allocation of general and administrative costs that includes only those functions or categories that provide benefit to the IPA agreement.