

## Department of Energy

## § 1009.2

provided in paragraph (a) of this section, an opportunity for interested persons to submit written comments consisting of data, views, or arguments regarding such use to DOE, shall be provided.

### § 1008.24 Criminal penalties—failure to publish a system notice.

Subsection (i)(2) of the Act provides that an agency officer or employee who willfully maintains a system of records without publishing a system notice as required by subsection (e)(4) of the Act shall be guilty of a misdemeanor and fined up to \$5,000.

## PART 1009—GENERAL POLICY FOR PRICING AND CHARGING FOR MATERIALS AND SERVICES SOLD BY DOE

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AUTHORITY: Sec. 644 of the Dept. of Energy Organization Act, Pub. L. 95-91, 91 Stat. 565 (42 U.S.C. 7254); Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 *et seq.*) ‘User Fee Statute’, 31 U.S.C. 483a, 42 U.S.C. 2111, 2112 and 2201.

SOURCE: 45 FR 70430, Oct. 24, 1980, unless otherwise noted.

### § 1009.1 Purpose and scope.

(a) This part establishes Department of Energy policy for establishing prices and charges for Department materials and services sold to organizations and persons outside the Federal Government.

(b) This part applies to all elements of the Department except the Federal Energy Regulatory Commission.

### § 1009.2 Definitions.

For the purposes of this regulation:

(a) *Allocable cost* means a cost allocable to a particular cost objective (i.e., a specific function, project, process, or organization) if the costs incurred are chargeable or assignable to such cost objectives in accordance with the relative benefits received or other

equitable relationships. Subject to the foregoing, a cost is allocable if:

(1) It is incurred solely for materials or services sold;

(2) It benefits both the customer and the Department in proportions that can be approximated through use of reasonable methods, or

(3) It is necessary to the overall operation of the Department and is deemed to be assignable in part to materials or services sold.

(b) *Byproduct material* means any radioactive material (except special nuclear material) yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material.

(c) *Charges* means an accumulation of job related costs for materials and services sold by the Department.

(d) *Commercial price* means the price that a willing buyer is currently paying or would pay a willing seller for materials and services in the market.

(e) *Direct cost* is any cost which can be identified specifically with a particular final cost objective.

(f) *Full cost* includes all direct costs and all allocable costs of producing the material or providing the service consistent with generally accepted accounting principles. Direct costs and allocable costs may include, but are not limited to, the following cost elements:

(1) Direct labor.

(2) Personnel fringe benefits.

(3) Direct materials.

(4) Other direct costs.

(5) Processing materials and chemicals.

(6) Power and other utilities.

(7) Maintenance.

(8) Indirect cost, i.e., common costs which cannot be directly assigned to specific cost objectives and are therefore allocated to cost objectives in a systematic cost allocation process.

(9) Depreciation which includes depreciation costs that are directly associated with facilities and equipment utilized, and allocated depreciation costs for support and general facilities and equipment.

(10) Added factor includes general and administrative costs and other support costs that are incurred for the

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benefit of the Department, an organizational unit or a material or service as a whole.

(g) *Prices* means the monetary amounts generally established and published for recurring sales of the same materials and services.

(h) *Source material* means uranium or thorium.

(i) *Special nuclear material* means plutonium, uranium enriched in the isotope 233 or in the isotope 235, or any materials artificially enriched by any of the foregoing. Special Nuclear Material does not include source material.

### § 1009.3 Policy.

(a) The Department's price or charge for materials and services sold to persons and organizations outside the Federal Government shall be the Government's full cost for those materials and services, unless otherwise provided in this part.

(b) Exceptions from the Department pricing and charging policy may be authorized in accordance with the following provisions:

(1) Prices and charges for byproduct material sold pursuant to 42 U.S.C. 2111 and 2112 *et seq.* shall be either the full cost recovery price or the commercial price, whichever is higher, except that lower prices and charges may be established by the Department if it is determined that such lower prices and charges (i) will provide reasonable compensation to the Government for such material, (ii) will not discourage the use of or the development of sources of supply independent of the DOE of such material, and (iii) will encourage research and development. In individual cases, if (ii) and (iii) cannot be equally accommodated, greater weight will be given to encouragement of research and development.

(2) Prices and charges for materials and services sold pursuant to 42 U.S.C. 2201 shall be either the full cost recovery price or the commercial price, whichever is higher, except that lower prices and charges may be established by the Department if it is determined that such lower prices and charges will provide reasonable compensation to the Government and will not discourage the development of sources of sup-

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ply independent of the DOE of such material.

### § 1009.4 Exclusions.

This part shall not apply when the amount to be priced or charged is otherwise provided for by statute, Executive Order, or regulations. This part does not apply to:

(a) Fees, penalties and fines established by the Economic Regulatory Administration of DOE.

(b) Power marketing and related activities of the Alaska Power Administration, the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Power Administration.

(c) Crude oil, natural gas and other petroleum products and services by or from the Naval Petroleum and Oil Shale Reserves.

(d) Uranium enriching services, source material, and special nuclear material.

(e) Requests for information under the Freedom of Information Act and the Privacy Act.

(f) Energy data and information provided by the Energy Information Administration.

(g) Crude oil and related materials and services from the Strategic Petroleum Reserve.

(h) The disposal of excess and surplus property.

(i) Access permits for uranium enrichment technology issued in accordance with 10 CFR part 725.

(j) Materials and services provided pursuant to a cooperative agreement, research assistance contract or grant, or made available to a DOE contractor in connection with a contract, the primary purpose of which is to procure materials or services for DOE.

### § 1009.5 Superseessions.

Prices which appear in FEDERAL REGISTER Notices previously published by the Department, or its predecessor agencies, for materials and services covered by this rule are hereby superseded.

**Department of Energy****§ 1010.104****§ 1009.6 Dissemination of prices and charges.**

Current prices and charges for specific materials and services are available from the DOE laboratory or office providing the material or service, or from the responsible program office. If this office cannot be determined, inquiries regarding the appropriate contact office should be addressed to the Office, of Finance and Accounting, Product Accounting and Pricing Branch, Mail Station 4A-139, 1000 Independence Avenue, SW., Washington, DC 20585.

**PART 1010—CONDUCT OF EMPLOYEES AND FORMER EMPLOYEES**

Sec.

**Subpart A—Conduct of Employees**

1010.101 General.

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1010.103 Reporting wrongdoing.

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**Subpart B—Procedures for Exemption of Scientific and Technological Information Communications From Post-Employment Restrictions**

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1010.202 Definitions.

1010.203 Procedures for review and approval of requests.

AUTHORITY: 5 U.S.C. 301, 303, 7301; 5 U.S.C. App. (Ethics in Government Act); 5 U.S.C. App. (Inspector General Act of 1978); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306; 5 CFR 2635.105; 18 U.S.C. 207, 208.

SOURCE: 61 FR 35088, July 5, 1996, unless otherwise noted.

**Subpart A—Conduct of Employees****§ 1010.101 General.**

This subpart applies to employees of the Department of Energy (DOE), ex-

cluding employees of the Federal Energy Regulatory Commission.

[61 FR 35088, July 5, 1996, as amended at 75 FR 75376, Dec. 3, 2010]

**§ 1010.102 Cross-references to employee ethical conduct standards, financial disclosure regulations, and other conduct rules.**

Employees of DOE are subject to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the DOE regulation at 5 CFR part 3301 which supplements the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634, the executive branch-wide financial interests regulations at 5 CFR part 2640, and the executive branch-wide employee responsibilities and conduct regulation at 5 CFR part 735.

[61 FR 35088, July 5, 1996, as amended at 63 FR 30111, June 3, 1998]

**§ 1010.103 Reporting wrongdoing.**

(a) Employees shall, in fulfilling the obligation of 5 CFR 2635.101(b)(11), report fraud, waste, abuse, and corruption in DOE programs, including on the part of DOE employees, contractors, subcontractors, grantees, or other recipients of DOE financial assistance, to the Office of Inspector General or other appropriate Federal authority.

(b) All alleged violations of the ethical restrictions described in section 1010.102 that are reported in accordance with (a) of this section to an appropriate authority within the Department shall in turn be referred by that authority to the designated agency ethics official or his delegatee, or the Inspector General.

**§ 1010.104 Cooperation with the Inspector General.**

Employees shall respond to questions truthfully under oath when required, whether orally or in writing, and must provide documents and other materials concerning matters of official interest. An employee is not required to respond to such official inquiries if answers or testimony may subject the employee to criminal prosecution.