

[6450-01



This document is scheduled to be published in the Federal Register on 02/18/2026 and available online at <https://federalregister.gov/d/2026-03159>, and on <https://govinfo.gov>

DEPARTMENT OF ENERGY

10 CFR Part 1009

[DOE-HQ-2024-0077]

RIN 1920-AA01

General Policy for Pricing and Charging for Materials and Services Sold by the Department of Energy

AGENCY: Office of the Chief Financial Officer, U.S. Department of Energy.

ACTION: Notice of proposed rulemaking and request for comment.

SUMMARY: The Department of Energy (DOE or the Department) is proposing to update the Department's general pricing regulation to establish prices and charges for materials and services sold to organizations and people outside of the Federal Government. DOE's general pricing regulation does not apply to the prices and charges provided for by statute, Executive order, or regulation. This notice of proposed rulemaking (NOPR) proposes to update definitions, exclusions, exemptions, and special pricing activities affecting the general pricing regulation.

DATES: Comments on this proposed rule must be received on or before **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*]**.

ADDRESSES: Interested persons are encouraged to submit comments using the Federal eRulemaking Portal at www.regulations.gov under docket number DOE-HQ-2024-0077. Follow the instructions for submitting comments. The docket for this proposed rule, which includes *Federal Register* notices, comments, and other supporting documents and materials, is available for review at www.regulations.gov. All documents in the docket are listed in the www.regulations.gov index. However, not all documents listed in the index may be publicly available, such as, information that is exempt from public

disclosure. The docket web page contains instructions on how to access all documents, including public comments, in the docket, as well as a summary. In accordance with 5 U.S.C. 553(b)(4), a summary of this proposed rule may be found at *www.regulations.gov*, under the docket number.

Comments may also be submitted by the following methods:

- E-mail: *godard.gozum@hq.doe.gov*. Include docket number DOE-HQ-2024-0077 and/or RIN 1920-AA01 in the subject line of the email. Please include the full body of your comments in the text of the message or as an attachment.
- Mail: Address written comments to Godard Gozum, U.S. Department of Energy, Office of the Chief Financial Officer, Mailstop 4A-253, Room 4A-253, 1000 Independence Avenue, SW, Washington, DC 20585

FOR FURTHER INFORMATION CONTACT: Godard Gozum, U.S. Department of Energy, Office of the Chief Financial Officer, Mailstop 4A-253, Room 4A-253, 1000 Independence Avenue, SW, Washington, DC 20585; (202) 586-8379 or *godard.gozum@hq.doe.gov*.

SUPPLEMENTARY INFORMATION:

Table of Contents

- I. Introduction and Background
- II. Discussion of Proposed Rule
- III. Section-by-Section Analysis
- IV. Regulatory Review
 - A. Review Under Executive Order 12866
 - B. Review Under the National Environmental Policy Act of 1969
 - C. Review Under the Regulatory Flexibility Act
 - D. Review Under the Paperwork Reduction Act of 1995
 - E. Review Under the Unfunded Mandates Reform Act of 1995
 - F. Review Under Executive Order 13132
 - G. Review Under Executive Order 12988
 - H. Review Under the Treasury and General Government Appropriations Act, 1999
 - I. Review Under the Treasury and General Government Appropriations Act, 2001
 - J. Review Under Executive Order 13211
 - K. Review Under Executive Order 13175
 - L. Review Under Additional Executive orders and Presidential Memoranda
- V. Public Participation – Submission of Comments

VI. Approval by the Office of the Secretary of Energy

I. Introduction and Background

The Secretary of Energy is authorized to prescribe rules and regulations for activities of the Department of Energy under 42 U.S.C. 7254 and 42 U.S.C 2011 *et seq.*, including fees and charges for government services and things of value under 31 U.S.C. 9701. Also, federal pricing policy in OMB Circular No. A-25, User Charges, dated July 8, 1993, requires charges be instituted through the promulgation of regulations. The Department of Energy's general pricing regulation, located at 10 CFR part 1009, establishes prices and charges for materials and services sold by DOE to organizations and persons outside of the Federal Government. Part 1009 does not govern prices and charges set by statute, Executive order, or other regulations. DOE's general pricing regulations were issued on October 24, 1980 (45 FR 70429) and have not been updated to reflect new statutes, Executive orders, regulations, and DOE programmatic changes since its original promulgation in 1980. The proposed update to the rule will address developments relating to DOE pricing since 1980, including the adoption of the definition of full costs contained in section 3137 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999, Public Law 105-261 (codified at 42 U.S.C. 7259a). Additionally, the proposed rule will provide greater clarity and enhance transparency by providing a more comprehensive list of prices and charges not governed by part 1009. The proposed rule will also ensure appropriate alignment between the general pricing regulation and DOE's internal pricing policy, which sets the operational requirements for DOE organizations but is not binding to the public. The internal DOE policy, DOE Order 522.1A, *Pricing of Departmental Materials and Services*, was

approved by the Deputy Secretary of Energy on October 28, 2024.¹ The internal DOE policy can be found in DOE's directives website: www.directives.doe.gov.

II. Discussion of Proposed Rule

According to 42 U.S.C. 7259a(b)(2)(A), DOE can only assess administrative charges, including imputed interest and depreciation, at a maximum of 3 percent of the full costs incurred by a site or laboratory when carrying out a service. Pursuant to 42 U.S.C. 7259a(b)(2)(A), DOE may recover a portion of its administrative overhead related to providing services to other entities. The proposed rule would update the language used in the section for consistency with 42 U.S.C. 7259a and adopt the statutory limits that apply to DOE's administrative charges. The proposed rule would also update known exclusions, exemptions, and special pricing considerations changed by statute, Executive order, or regulation since 1980. Additionally, DOE is proposing amendments that would provide greater transparency to the public by providing references to an updated listing of known exclusions to the general pricing policy in § 1009.3. DOE is also proposing to amend § 1009.5, describing the special pricing considerations that DOE has updated and adopted over the years consistent with DOE's statutory authority.

III. Section-by-Section Analysis

The following discussion explains the proposed revisions.

§ 1009.1 Purpose and scope.

DOE is proposing to update § 1009.1, which describes the purpose and scope of part 1009, for clarification and to help the public identify the applicability of the part upfront.

¹ Pricing of Departmental Materials and Services, www.directives.doe.gov/directives-documents/500-series/0522.1-border-a-chg1-ltdchg.

- In § 1009.1(a), DOE proposes to clarify that the pricing regulation is applicable to foreign entities and governments, which is the current practice at DOE but not documented in the current part 1009.
- In § 1009.1(b), DOE proposes to clarify that the National Nuclear Security Administration (NNSA) is an element of the Department to which part 1009 applies. Congress established NNSA as a semi-autonomous agency within DOE in the National Nuclear Safety Administration Act as part of the National Defense Authorization Act for Fiscal Year 2000 (Pub. L. 106-65).
- DOE proposes to add § 1009.1(c) to clarify that DOE contractors are subject to part 1009. This policy is the current practice at DOE but not documented in the current part 1009.

§ 1009.2 Definitions

The proposed rule updates to § 1009.2 reflect statutory and policy changes.

Specifically, DOE proposes to:

- Remove the definition of *Allocable cost* because that term is no longer used in the proposed regulation.
- Remove the definitions of *Byproduct material*, *Source Material*, and *Special nuclear material* since the terms are part of the updated list of exclusions in the proposed § 1009.4 Exclusions.
- Remove the definition of *Charges* to avoid confusion with other terms used, including the Federal Administrative Charge.
- Remove the definition of *commercial price* since the term is common in the financial community and synonymous with fair market value in plain language.
- Add the definition of *cost objective* to be consistent with the definition in the Cost Accounting Standards: 48 CFR 9904.406-30. The definitions in the Cost

Accounting Standards are used by federal contractors when disclosing their allowable costs charged to the government.

- Add the definition of *Department* and *DOE* since the terms are used frequently in the pricing regulation.
- Add the definition of *Federal Administrative Charge*, as discussed in Section II of this NOPR.
- Update the definition of *Full Cost* to be consistent with 42 U.S.C. 7259a which replaces the outdated definition in the current pricing regulation.
- Add the definition of *Indirect Costs* to support the proposed definition of *Full Cost* and provide clarity on the cost.
- Add the definition of *Proprietary Research* to describe the special pricing activity proposed in § 1009.5(e).
- Add the definition of *Non-proprietary research* to describe the special pricing activity proposed in § 1009.5(e).
- Add the definition of *User Facilities* to describe the special pricing activity proposed in § 1009.5(e).

§ 1009.3. Policy

The proposed rule codifies the Federal Administrative Charge rate charged to non-federal entities and makes minor changes to the section to provide clarifying information and details regarding full cost recovery. Specifically:

- In § 1009.3(a), DOE is proposing to rephrase the policy slightly for clarity.
- In § 1009.3(b), DOE proposes to remove the introductory paragraph to current § 1009.3(b) and relocate the substance of the exceptions in the § 1009.3(b)(1) provisions to § 1009.4, Exclusions. DOE proposes to redesignate current § 1009.3(b)(2) as § 1009.3(b) and §1009.3(c). In proposed 1009.3(b), DOE

defines the cost of materials delivered from stock as the replacement cost, not the original acquisition cost.

- In § 1009.3(c), DOE proposes to define the price of materials delivered from stock that cannot be replaced as the fair value. DOE proposes to redesignate current § 1009.3(b)(2) as § 1009.3(b) and § 1009.3(c).
- In § 1009.3(d), DOE proposes to add a new provision to provide additional detail on how the Federal Administrative Charge is applied to the Department's reimbursable work. The new provision codifies the Department's uniform Federal Administrative Charge rate charged for reimbursable work consistent with Executive Order 14192, *Unleashing Prosperity Through Deregulation*. The Federal Administrative Charge paid by non-Federal entities is scheduled to fall from 3 percent to 1 percent on October 1, 2025, consistent with the provisions of DOE Order 522.1A. The reduction in the Federal Administrative Charge is estimated to reduce aggregate costs for non-Federal entities by approximately \$4 million per year, based on 2022 non-Federal reimbursable work volumes.

§ 1009.4 Exclusions.

DOE is proposing to expand the list of exclusions due to new statutes, Executive orders, regulations, and DOE activities since 1980 when DOE's pricing regulations were first issued. Specifically, DOE proposes to:

- In § 1009.4(a), update the provision since the Economic Regulatory Administration is no longer a Departmental Element in DOE. The Economic Regulatory Administration's regulations are covered in 10 CFR parts 580 through 590 which pertains to Natural Gas.

- In § 1009.4(b), remove the to the “Alaska Power Administration” since it is no longer a Departmental Element at DOE. DOE also proposes to add examples of unique authorities of the power marketing administration.
- In §1009.3(c), propose removing Naval Petroleum and Oil Shales Reserves provisions and replace with a provision for the Isotope Production and Distribution Fund. DOE’s original Naval Petroleum and Oil Shales Reserves were divested in 2015 and thus the provisions no longer apply since the Department is not responsible for the sale of materials and good for these reserves. DOE also proposes to add a provision for the Isotope Production and Distribution Fund as a replacement. Sales of the Isotope Production and Distribution Fund are governed by section 41 of Public Law 83-703 (42 U.S.C. 2061) instead of the general pricing policy.
- In § 1009.4(d), propose revision of the exclusion for source material, special nuclear material, and byproduct material which is governed by the Atomic Energy Act and excluded in DOE’s current practices. DOE also proposes to move the uranium sales portion of the current regulation to new standalone provision in § 1009.4(j).
- In § 1009.4(e), revise provision to include references for the pricing of information requests, such as, Public Law 89-487 for the Freedom of Information Act.
- In § 1009.4(f), update to include references for the pricing of data provided by the Energy Information Administration covered by section 205 of Public Law 95-91, Department of Energy Organization Act, as amended (42 U.S.C. 7135(g)).

- In § 1009.4(g), revise to include references for the pricing of the Strategic Petroleum Reserve subject to Section 160 of Public Law 94-163, Energy Policy and Conservation Act, as amended (42 U.S.C. 6241).
- In § 1009.4(h), revise language to include references for the pricing of excess and surplus property covered under 41 CFR part 102-36 to 41 CFR part 102-38.
- In § 1009.4(i), update language on access permits to conform with the current provision in 10 CFR part 725. Over the years, 10 CFR part 725 was broadened to restrict access to data for other types of radioactive material and technology for civilian use, such as, plutonium material.
- In § 1009.4(j), propose removing current provision and replace with uranium sales provisions, to clarify that DOE contractors are subject to the regulation consistent with DOE practice. The language was ambiguous to the applicability to DOE contractors. DOE also proposes to replace current provision with a new standalone uranium sale provision in § 1009.4(j). Sales or transfer of uranium inventory are subject to the provisions of section 3112 of Public Law 104-134, Debt Collection Improvement Act of 1996, Subsection, USEC Privatization Act (42 U.S.C. 2297h-10(d)).
- In § 1009.4(k), add a new provision to reflect updates in 44 U.S.C. 3506 which requires agencies to reduce information collection burdens on the public and not charge fees for the dissemination of public information.
- In § 1009.4(l), propose adding real property to the list of exclusions which is subject to other regulations referenced, such as, 10 CFR part 770.
- In § 1009.4(m), propose adding Nuclear Waste Fund to the list of exclusions which is subject to section 302 of Public Law 97-425, Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

- In § 1009.4(n), propose adding royalty rates subject to 48 CFR part 970.
- In § 1009.4(o), propose adding transactions subject to section 301 of Public Law 102–377, Energy and Water Development Appropriations Act of 1993, (42 U.S.C. 7278).
- In § 1009.4(p), propose adding loan program fees subject to section 1702 of Public Law 109-58, Energy Policy Act of 2005, as amended [42 U.S.C. 16512(h)], or other applicable statute or regulation.
- In § 1009.4(q), propose adding Intergovernmental Personnel Act details subject to 5 CFR part 334.
- In § 1009.4(r), propose adding elemental mercury management and storage fees subject to section 5 of Public Law 110-414, Mercury Export Ban Act of 2008, as amended (42 U.S.C. 6939f).

§ 1009.5 Special Pricing Activities

In this proposed rule, DOE removes the current section “Supersession” and replacing it with a “Special Pricing Activities” section since the supersessions no longer apply and only affected *Federal Register* notices published prior to October 24, 1980. The Supersession section provided a statement that prices published prior to October 24, 1980, have been superseded with the issuance of 10 CFR part 1009. These prices and activities that were superseded have not been tracked since 1980. Special Pricing Activities are deviations from full cost recovery or pricing activities not covered in more specific statute, Executive order, or regulation. Certain statutes provide DOE leeway to charge less than full cost recovery or negotiate the pricing for items without more specific pricing instructions. Here is a summary of the proposed additions to the section:

- In § 1009.5(a), DOE proposes to describe special pricing activities and its relation to the general pricing policy.

- In § 1009.5(b), DOE proposes to add the pricing approach to meet the Department's nuclear nonproliferation mission including cost-sharing and negotiation of acceptance fees. The Department, led by the NNSA, has a nuclear nonproliferation mission which includes the removal, consolidation, and disposal of nuclear material internationally to support permanent threat reduction. Under section 3113 of Public Law 109-364, John Warner National Defense Authorization Act for Fiscal Year 2007, as amended (50 U.S.C. 2569), the Secretary of Energy has authority to retain and use funds contributed under the program through agreements with other parties, including foreign governments. The NNSA's Office of Nuclear Material Removal and Elimination supports high-income economy countries (as identified by the World Bank) on a cost-sharing basis and thus charges a fee for acceptance of spent nuclear fuel and/or separated plutonium. Since the formal end of the Foreign Research Reactor Spent Nuclear Fuel Acceptance Program in 2019, the Office of Nuclear Material Removal and Elimination has negotiated acceptance fees for the limited receipts of spent nuclear fuel exempted from this deadline on a case-by-case basis. The negotiated acceptance fees are based on a number of factors, including the full cost of disposal and nuclear security and nonproliferation considerations.
- In § 1009.5(c), DOE proposes to add the Research Reactor Infrastructure Program to the special pricing activities section. The program permits DOE to provide, at no charge, support to participating in domestic research reactors; and describes a cost sharing arrangement when the reactor is used for commercial purposes. The Research Reactor Infrastructure Program is authorized by section 31 of Public Law 83-703 of the Atomic Energy Act as amended (42 U.S.C. 2051) and supports the Department's interest in research

and development of nuclear energy. Under this program, the Department will provide, at no charge, support and other services to participate in domestic research reactors when approved by DOE management. These activities include, but are not limited to, the supply of nuclear fuel and disposal of DOE-owned spent nuclear fuel. However, when reactor operations support both the DOE research and development 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.

- § 1009.5(d) proposes to add the pricing policy for museums and exhibits. This paragraph establishes that visitors to DOE museums and exhibits will not be charged admission fees unless there is specific authority to charge the fees. This pricing policy has been a historical practice to promote science-based education and has appeared in DOE internal pricing policy since at least 1992.
- § 1009.5(e) proposes to add Departmental User Facilities. This paragraph clarifies that access to non-NNSA user facilities will not be charged fees for non-proprietary research when approved by laboratory management based on section 2203 of Public Law 104-486 of the Energy Policy Act of 1992 (42 U.S.C. 13503). The result of non-proprietary research is published or otherwise shared without charge by the researchers and is not subject to ownership. Thus, access to user facilities without charge by outside researchers advances DOE's science mission. However, the "Servicemember Quality of Life Improvement and National Defense Authorization Act for Fiscal Year 2025" Public Law 118-159 (H.R. 5009) updated section 3264 of the NNSA Act (50 U.S.C. 2464) to state "the cost-reimbursable use" of the capabilities of the national security laboratories by non-NNSA elements. Thus, research and work at a NNSA laboratory must be charged a fee that

realizes full cost recovery. Also, non-proprietary users may be charged incremental costs over and above the normal use of a DOE and NNSA facility. Pricing for proprietary research at user facilities is full cost recovery since the research would be owned by a third party and might be used for profit.

- § 1009.5(f). Royalties for DOE-Owned Intellectual Property. This proposed section clarifies that royalties for DOE-Owned Intellectual Property are subject to negotiation between DOE and the licensee; and not based on the cost for developing the technology. Technology Transfer statutes, such as, Public Law 96-517 the Bayh-Dole Act, seek to incentivize the deployment and commercialization of federal funded intellectual property. The royalty rates will be stipulated in the licensing agreement.

§ 1009.6 Dissemination of prices and charges.

DOE is proposing to update the language and points of contacts in this section to reflect current practice and information.

IV. Regulatory Review

A. Review Under Executive Order 12866

Executive Order (“E.O.”) 12866, “Regulatory Planning and Review,” 58 FR 51735 (Oct. 4, 1993) requires agencies, to the extent permitted by law, to (1) propose or adopt a regulation only upon a reasoned determination that its benefits justify its costs (recognizing that some benefits and costs are difficult to quantify); (2) tailor regulations to impose the least burden on society, consistent with obtaining regulatory objectives, taking into account, among other things, and to the extent practicable, the costs of cumulative regulations; (3) select, in choosing among alternative regulatory approaches, those approaches that maximize net benefits (including potential economic, environmental, public health and safety, and other advantages; distributive impacts; and

equity); (4) to the extent feasible, specify performance objectives, rather than specifying the behavior or manner of compliance that regulated entities must adopt; and (5) identify and assess available alternatives to direct regulation, including providing economic incentives to encourage the desired behavior, such as, user fee or profit or marketable permits, or providing information upon which choices can be made by the public.

Section 6(a) of E.O. 12866 also requires agencies to submit “significant regulatory actions” to OIRA for review. OIRA has determined that this final regulatory action does not constitute a “significant regulatory action” under section 3(f) of E.O. 12866. Accordingly, this action was not submitted to OIRA for review under E.O. 12866.

B. Review Under the National Environmental Policy Act

DOE has determined that promulgation of this proposed rule falls into a class of actions that would not individually or cumulatively have a significant impact on the human environment, as determined by DOE's regulations implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) (NEPA). Specifically, DOE has determined that this proposed rule is covered under the categorical exclusion found in the DOE's NEPA regulations at paragraph A5 of appendix A to subpart D, 10 CFR part 1021, which applies to rulemaking that amends an existing rule or regulation which does not change the environmental effect of the rule or regulation being amended. Accordingly, neither an environmental assessment nor an environmental impact statement is required.

C. Review Under the Regulatory Flexibility Act

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires preparation of an initial regulatory flexibility analysis for any rule that by law must be proposed for public comment, unless the agency certifies that the rule, if promulgated, will not have a significant economic impact on a substantial number of small entities. As required by

Executive Order 13272, “Proper Consideration of Small Entities in Agency Rulemaking,” 67 FR 53461 (August 16, 2002), DOE published procedures and policies on February 19, 2003, to ensure that the potential impacts of its rules on small entities are properly considered during the rulemaking process (68 FR 7990). DOE has made its procedures and policies available on the Office of General Counsel’s Web site:

www.energy.gov/gc/downloads/executive-order-13272-consideration-small-entities-agency-rulemaking.

DOE has reviewed this proposed rule under the provisions of the Regulatory Flexibility Act and the procedures and policies published on February 19, 2003. The proposed rule adopts current policy concerning charges and prices to small business entities, and does not change or amend the pricing applicable to small businesses or other small entities. On the basis of the foregoing, DOE certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities.

Accordingly, DOE has not prepared a regulatory flexibility analysis for this rulemaking. DOE’s certification and supporting statement of factual basis will be provided to the Chief Counsel for Advocacy of the Small Business Administration pursuant to 5 U.S.C. 605(b).

D. Review Under the Paperwork Reduction Act

This proposed rule imposes no new information or recordkeeping requirements. Accordingly, OMB clearance is not required under the Paperwork Reduction Act (PRA). (44 U.S.C. 3501 *et seq.*).

E. Review Under the Unfunded Mandates Reform Act of 1995

Title II of the Unfunded Mandates Reform Act of 1995 (UMRA) requires each Federal agency to assess the effects of Federal regulatory actions on State, local, and Tribal governments and the private sector. Public Law 104-4, sec. 201 (codified at 2 U.S.C. 1531). For a regulatory action likely to result in a rule that may cause the

expenditure by State, local, and Tribal governments, in the aggregate, or by the private sector of \$100 million or more in any one year (adjusted annually for inflation), section 202 of UMRA requires a Federal agency to publish a written statement that estimates the resulting costs, benefits, and other effects on the national economy (2 U.S.C. 1532(a), (b)). The UMRA also requires a Federal agency to develop an effective process to permit timely input by elected officers of State, local, and Tribal governments on a “significant intergovernmental mandate,” and requires an agency plan for giving notice and opportunity for timely input to potentially affected small governments before establishing any requirements that might significantly or uniquely affect them. On March 18, 1997, DOE published a statement of policy on its process for intergovernmental consultation under UMRA. 62 FR 12820. DOE's policy statement is also available at www.energy.gov/sites/prod/files/gcprod/documents/umra_97.pdf.

This proposed rule does not contain a Federal intergovernmental mandate, nor is it expected to require expenditures of \$100 million or more in any one year by the private sector. As a result, the analytical requirements of UMRA do not apply.

G. Review Under Executive Order 13132

Executive Order 13132, “Federalism,” 64 FR 43255 (August 4, 1999) imposes certain requirements on agencies formulating and implementing policies or regulations that preempt State law or that have federalism implications. Agencies are required to examine the constitutional and statutory authority supporting any action that would limit the policymaking discretion of the States and carefully assess the necessity for such actions. DOE has examined this proposed rule and has determined that it would not preempt State law and would not have a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. No further action is required by Executive Order 13132.

H. Review Under Executive Order 12988

With respect to the review of existing regulations and the promulgation of new regulations, section 3(a) of Executive Order 12988, “Civil Justice Reform,” 61 FR 4729 (February 7, 1996), imposes on executive agencies the general duty to adhere to the following requirements: (1) eliminate drafting errors and ambiguity; (2) write regulations to minimize litigation; and (3) provide a clear legal standard for affected conduct rather than a general standard and promote simplification and burden reduction. With regard to the review required by section 3(a), section 3(b) of Executive Order 12988 specifically requires that executive agencies make every reasonable effort to ensure that the regulation: (1) clearly specifies the preemptive effect, if any; (2) clearly specifies any effect on existing Federal law or regulation; (3) provides a clear legal standard for affected conduct while promoting simplification and burden reduction; (4) specifies the retroactive effect, if any; (5) adequately defines key terms; and (6) addresses other important issues affecting clarity and general draftsmanship under any guidelines issued by the Attorney General. Section 3(c) of Executive Order 12988 requires executive agencies to review regulations in light of applicable standards in section 3(a) and section 3(b) to determine whether they are met or it is unreasonable to meet one or more of them. DOE has completed the required review and determined that, to the extent permitted by law, the proposed rule meets the relevant standards of Executive Order 12988.

I. Review Under the Treasury and General Government Appropriations Act, 2001

The Treasury and General Government Appropriations Act, 2001 (44 U.S.C. 3516 note) provides for agencies to review most disseminations of information to the public under guidelines established by each agency pursuant to general guidelines issued by OMB.

OMB’s guidelines were published at 67 FR 8452 (February 22, 2002), and DOE’s guidelines were published at 67 FR 62446 (October 7, 2002). DOE has reviewed this

proposed rule under the OMB and DOE guidelines and has concluded that it is consistent with applicable policies in those guidelines.

J. Review Under Executive Order 13211

Executive Order 13211, "Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use," 66 FR 28355 (May 22, 2001) requires Federal agencies to prepare and submit to the OMB, a Statement of Energy Effects for any proposed significant energy action. A "significant energy action" is defined as any action by an agency that promulgated or is expected to lead to promulgation of a final rule, and that: (1) is a significant regulatory action under Executive Order 12866, or any successor order; and (2) is likely to have a significant adverse effect on the supply, distribution, or use of energy, or (3) is designated by the Administrator of OIRA as a significant energy action. For any proposed significant energy action, the agency must give a detailed statement of any adverse effects on energy supply, distribution, or use should the proposal be implemented, and of reasonable alternatives to the action and their expected benefits on energy supply, distribution, and use. This proposed rule would not have a significant adverse effect on the supply, distribution, or use of energy, nor has it been designated as a significant energy action by the Administrator of OIRA.

Accordingly, DOE has not prepared a Statement of Energy Effects.

K. Review Under Executive Order 13175

Under E.O. 13175, "Consultation and Coordination with Indian Tribal Governments," 65 FR 67249 (Nov. 6, 2000), DOE may not issue a discretionary rule that has Tribal implications or that imposes substantial direct compliance costs on Indian Tribal governments unless DOE provides funds necessary to pay the costs of the Tribal governments or consults with Tribal officials before promulgating the rule. DOE anticipates that this proposed rule will not have substantial direct effects on one or more Indian Tribes, will not impose substantial direct compliance costs on Indian Tribal

governments, and will not preempt Tribal laws. Accordingly, the funding and consultation requirements of E.O. 13175 do not apply, and a Tribal summary impact statement is not required.

L. Review Under Additional executive Orders and Presidential Memoranda

DOE has examined this proposal and has tentatively determined that it is consistent with the policies and directives outlined in E.O. 14154, “Unleashing American Energy,” E.O. 14192, “Unleashing Prosperity Through Deregulation,” E.O. 14219, “Ensuring Lawful Governance and Implementing the President’s ‘Department of Government Efficiency’ Deregulatory Initiative” and Presidential Memorandum, “Delivering Emergency Price Relief for American Families and Defeating the Cost-of-Living Crisis.” This proposal, if finalized as proposed, is expected to be an Executive Order 14192 deregulatory action. The provision in proposed § 1009.3(d) codifies the Department’s uniform Federal Administrative Charge rate paid by non-Federal entities. The Federal Administrative Charge paid by non-Federal entities is scheduled to fall from 3 percent to 1 percent on October 1, 2025. The reduction in the Federal Administrative Charge is estimated to reduce aggregate costs for non-Federal entities by approximately \$4 million per year, based on 2022 non-Federal reimbursable work volumes.

V. Public Participation – Submission of Comments

DOE will accept comments, data, and information regarding this proposed rule before or no later than the date provided in the **DATES** section at the beginning of this proposed rule. Interested persons are invited to participate in this proceeding by submitting data, views, or arguments using one of the methods indicated in the **ADDRESSES** section of this notice of proposed rulemaking. To help DOE review the comments, interested persons are asked to refer to specific proposed rule provisions, if possible.

Submitting comments via www.regulations.gov. The *www.regulations.gov* web page will require you to provide your name and contact information. Your contact information will be viewable to DOE staff only. Your contact information will not be publicly viewable except for your first and last names, organization name (if any), and submitter representative name (if any). If your comment is not processed properly because of technical difficulties, DOE will use this information to contact you. If DOE cannot read your comment due to technical difficulties and cannot contact you for clarification, DOE may not be able to consider your comment.

However, your contact information will be publicly viewable if you include it in the comment itself or in any documents attached to your comment. Any information that you do not want to be publicly viewable should not be included in your comment, nor in any document attached to your comment. Otherwise, persons viewing comments will see only first and last names, organization names, correspondence containing comments, and any documents submitted with the comments.

Do not submit to *www.regulations.gov* information for which disclosure is restricted by statute, such as trade secrets and commercial or financial information (hereinafter referred to as Confidential Business Information (“CBI”). Comments submitted through *www.regulations.gov* cannot be claimed as CBI. Comments received through the website will waive any CBI claims for the information submitted. For information on submitting CBI, see the Confidential Business Information section.

DOE processes submissions made through *www.regulations.gov* before posting. Normally, comments will be posted within a few days of being submitted. However, if large volumes of comments are being processed simultaneously, your comment may not be viewable for up to several weeks. Please keep the comment tracking number that *www.regulations.gov* provides after you have successfully uploaded your comment.

Submitting comments via email, hand delivery/courier, or postal mail. Comments and documents submitted via email, hand delivery/courier, or postal mail also will be posted to *www.regulations.gov*. If you do not want your personal contact information to be publicly viewable, do not include it in your comment or any accompanying documents. Instead, provide your contact information in a cover letter. Include your first and last names, email address, telephone number, and optional mailing address. The cover letter will not be publicly viewable as long as it does not include any comments. Include contact information each time you submit comments, data, documents, and other information to DOE. If you submit via postal mail or hand delivery/courier, please provide all items on a CD, if feasible, in which case it is not necessary to submit printed copies. No faxes will be accepted.

Comments, data, and other information submitted to DOE electronically should be provided in PDF (preferred), Microsoft Word or Excel, WordPerfect, or text (ASCII) file format. Provide documents that are not secured, that are written in English, and that are free of any defects or viruses. Documents should not contain special characters or any form of encryption and, if possible, they should carry the electronic signature of the author.

Confidential Business Information. Pursuant to 10 CFR 1004.11, any person submitting information that he or she believes to be confidential and exempt by law from public disclosure should submit via email two well-marked copies: one copy of the document marked “confidential” including all the information believed to be confidential, and one copy of the document marked “non-confidential” with the information believed to be confidential deleted. DOE will make its own determination about the confidential status of the information and treat it according to its determination.

It is DOE's policy that all comments may be included in the public docket, without change and as received, including any personal information provided in the comments (except information deemed to be exempt from public disclosure).

Campaign form letters. Please submit campaign form letters by the originating organization in batches of between 50 to 500 form letters per PDF or as one form letter with a list of supporters' names compiled into one or more PDFs. This reduces comment processing and posting time

VI. Approval by the Office of the Secretary of Energy

The Secretary of Energy has approved publication of this notice of proposed rulemaking and request for comments.

List of Subjects in 10 CFR Part 1009

Fees.

Signing Authority

This document of the Department of Energy was signed on February 12, 2026, by Christopher S. Johns, Deputy Chief Financial Officer, pursuant to delegated authority from the Secretary of Energy. That document with the original signature and date is maintained by DOE. For administrative purposes only, and in compliance with requirements of the Office of the Federal Register, the undersigned DOE Federal Register Liaison Officer has been authorized to sign and submit the document in electronic format for publication, as an official document of the Department of Energy. This administrative process in no way alters the legal effect of this document upon publication in the *Federal Register*.

Signed in Washington, DC, on February 13, 2026.

Jennifer Hartzell,
Alternate Federal Register Liaison Officer,
U.S. Department of Energy.

For the reasons stated in the preamble, DOE proposes to revise part 1009 of Chapter X, of title 10 of the Code of Federal Regulations to read as follows:

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

Sec.

1009.1 Purpose and scope.

1009.2 Definitions.

1009.3 Policy.

1009.4 Exclusions.

1009.5 Special Pricing Activities.

1009.6 Dissemination of prices and charges.

Authority: 42 U.S.C. 7254; 42 U.S.C. 2011 *et seq*; 42 U.S.C. 2201; 31 U.S.C. 902(a)(8); 31 U.S.C 9701; 42 U.S.C. 7259a; 42 U.S.C. 13503(a)(2).

§ 1009.1 Purpose and scope.

(a) This part establishes Department of Energy policy for establishing prices and charges for Department materials, goods, and services sold to organizations and persons outside the Federal Government, including, foreign entities, governments, and international organizations.

(b) This part applies to all elements of the Department, including the National Nuclear Security Administration. This part does not apply to the Federal Energy Regulatory Commission.

(c) This part applies to Department contractors providing materials, goods, and services to organizations and persons outside the Federal Government when such materials, goods, and services are provided pursuant to a contract with the Department of Energy.

§ 1009.2 Definitions.

In this part:

Cost objective means a function, organizational subdivision, contract, or other work unit for which cost data are desired and for which provision is made to accumulate and measure the cost to processes, products, jobs, capitalized projects, etc. The part adopted the definition in the Cost Accounting Standards: 48 CFR 9904.406-30.

Department or DOE means the U.S. Department of Energy.

Direct cost is any cost which can be identified specifically with a particular final cost objective.

Federal Administrative Charge includes charges for Federal administrative support, overhead associated with departmental operations outside the facility providing the material or service, depreciation, and imputed interest.

Full cost means:

- (1) The direct cost incurred by DOE or a DOE contractor in providing the materials, goods, or services;
- (2) Indirect costs associated with operations at the DOE facility providing the materials, goods, or services; and
- (3) The Federal Administrative Charge.

Indirect Costs are common costs which cannot be directly assigned to specific cost objectives and are, therefore, allocated to cost objectives in a systematic cost allocation process. For contractor-operated facilities, the applicable cost accounting practices are specified in 48 CFR part 9904, as implemented by DOE policy and specific contract provisions.

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

Proprietary Research means research where the results are not intended to be published publicly.

Non-proprietary research means research where the results are published publicly to be used and cited by others for the advancement of science.

User facility means a facility of any particular type, technical discipline, or size that is 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 includes:

- (1) A user facility as described in section 2203(a)(2) of the Energy Policy Act of 1992, Pub. L. 104-486 [42 U.S.C. 13503(a)(2)];
- (2) An NNSA Defense Programs Technology Deployment Center/User Facility; and,
- (3) Any other departmental facility designated by the Department as a user facility.

§ 1009.3 Policy.

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

(b) For materials delivered from stock, DOE charges the replacement cost plus the cost of packaging, shipping, preparation, and other costs incurred in providing material and goods from stock.

(c) For materials delivered from stock that are not replaced, DOE will charge the fair value. In determining the fair value, the Department may consider the market value, the market value of similar assets, or other appropriate valuation methods.

(d) Federal Administrative Charge

(1) Beginning on October 1, 2025, the Federal Administrative Charge is set at 1 percent of the total direct and indirect costs incurred by a DOE facility when performing reimbursable work.

(2) The Federal Administrative Charge is assessed on costs reimbursed by non-Federal entities. This includes the cost of Strategic Partnership Projects, Cosponsored Work between DOE and non-Federal entities, Cooperative Research and Development Agreements (CRADAs), Agreements for Commercializing Technology (ACT), or other Technology Transfer Mechanisms for the deployment and commercialization of technology. In-kind contributions are not subject to the Federal Administrative Charge.

(3) The Secretary of Energy may establish or retain other exemptions to the application of the Federal Administrative Charge when permitted by law. As necessary, the Chief Financial Officer provides clarification regarding pricing situations to which the Federal Administrative Charge does not apply.

§ 1009.4 Exclusions.

This part does not apply to activities for which the price or charge is provided for by statute, Executive order, or regulation, including the following:

- (a) DOE's Natural Gas regulations covered in 10 CFR parts 580 through 590.
- (b) Power marketing and related activities of the Bonneville Power Administration, the Southeastern Power Administration, the Southwestern Power Administration, and the Western Area Power Administration when those activities are carried out under the unique authorities of power marketing administrations, such as, the power rate-making authority for the sale of power and transmission services.
- (c) Sale of isotopes and related products and services from the Isotope Production and Distribution Program Fund, which are governed by section 41 of Public Law 83-703, Atomic Energy Act of 1954, as amended (42 U.S.C. 2061).
- (d) Compensation for source material, special nuclear material, and byproduct material which are determined in accordance with the Atomic Energy Act, Public Law 83-703, Atomic Energy Act of 1954 as amended, (42 U.S.C. Chapter 23).
- (e) Responses to requests for information under the Freedom of Information Act (Public Law 89-487), the Privacy Act (Public Law 93-579), and 10 CFR 1004.9.
- (f) Energy data and information provided by the Energy Information Administration in accordance with section 205 of Public Law 95-91, Department of Energy Organization Act, as amended (42 U.S.C. 7135(g)).

(g) Crude oil, and related materials and services from the Strategic Petroleum Reserve are determined in accordance with section 160 of Public Law 94-163, Energy Policy and Conservation Act, as amended (42 U.S.C. 6241).

(h) Sale of excess and surplus property under 41 CFR part 102-36 to 41 CFR part 102-38.

(i) Issuance of access permits to restricted data applicable to civil uses of atomic energy are specified under 10 CFR part 725.

(j) Sales or transfer of uranium inventory are subject to the provisions of section 3112(d) of Public Law 104-134, Debt Collection Improvement Act of 1996, Subsection, USEC Privatization Act [42 U.S.C. 2297h-10(d)].

(k) Information dissemination products not governed by a more specific statute, Executive order or regulation will be governed by section 3506 of Public Law 104-13, Paperwork Reduction Act of 1995, as amended (44 U.S.C. 3506).

(l) Sale and use of real property subject to 10 CFR part 770, 48 CFR 917.74, and 41 CFR part 102-75.

(m) Storage and disposal of radioactive waste under the Nuclear Waste Fund, which are determined in accordance with section 302 of Public Law 97-425, Nuclear Waste Policy Act of 1982 (42 U.S.C. 10222).

(n) Royalty rates and other licensing fees established by DOE contractors when the contractors have title to the intellectual property that is being licensed subject to 48 CFR part 970.

(o) Transactions related to projects carried out in cooperation with other agencies, federal, state, private, or foreign under the authority of section 301 of Public Law 102-377, Energy and Water Development Appropriations Act of 1993, (42 U.S.C. 7278).

(p) Loan program fees established by the Director of the Loan Program Office for the loan program that are consistent with the requirements of section 1702 of Public Law

109-58, Energy Policy Act of 2005, as amended [42 U.S.C. 16512(h)], or other applicable statute or regulation.

(q) Intergovernmental Personnel Act details between DOE and non-federal organizations covered under 5 CFR part 334.

(r) Elemental mercury management and storage fees covered under section 5 of Public Law 110-414, Mercury Export Ban Act of 2008, as amended (42 U.S.C. 6939f).

§ 1009.5 Special Pricing Activities.

(a) The activities described by this section are not subject to the general pricing policy described in § 1009.3(a). A DOE activity not identified in this section may also be exempt from § 1009.3(a) if special pricing is permitted by statute.

(b) Nuclear Material Removal Program. For high-income economy countries identified by the World Bank, NNSA's Office of Nuclear Material Removal and Elimination may negotiate cost-sharing arrangements at less than full cost, including charging a fee for acceptance of spent nuclear fuel and/or separated plutonium.

(c) Research Reactor Infrastructure Program.

(1) Under this program, the Department is permitted to provide, at no charge, support and other services to participating domestic research reactors. These support activities include, but are not limited to, the supply of nuclear fuel and disposal of DOE- owned spent nuclear fuel.

(2) When reactor operations support both the DOE research and development 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) Museums and Exhibits. Unless there is specific authority to collect admission fees, visitors to DOE museums and exhibits may not be charged for admission.

(e) Departmental User Facilities-

(1) Non-Proprietary Research.

(i) Access to non-NNSA 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.

(ii) At the discretion of the facility manager, a user engaged in non-proprietary research at a user facility should be charged for incremental costs incurred over and above normal facility costs, such as, operating the facility outside of the normal operating mode or schedule; unusual security, safety, or technical arrangements; and consumables.

(iii) Research and work at a NNSA laboratory is charged on a cost-reimbursable basis per section 3264 of the National Nuclear Security Administration Act (50 U.S.C. 2464).

Pricing for non-Proprietary Research at an NNSA laboratory must be charged a fee that realizes full cost recovery as defined in § 1009.3 of this part.

(2) Proprietary Research.

(i) A user engaged in proprietary research at a user facility must be charged a fee that realizes full cost recovery.

(ii) During the build-out period (start-up) of a new user facility, a user engaged in proprietary research at the facility may be charged a modified annual rate that is equivalent to the estimated full cost recovery rate for the facility when it operates at its planned practical capacity.

(iii) A user engaged in proprietary research must be charged for all incremental costs incurred over and above normal use of the facility, which may include the costs of operating the facility outside of the normal operating mode or schedule; unusual security, safety, or technical arrangements; and consumables.

(f) Royalties for DOE-Owned Intellectual Property. Royalty rates and other licensing fees are negotiated between DOE and the licensee. The setting of royalty rates and other licensing fees is not based on the cost of developing the technology. Royalty rates and

other licensing fees shall be stipulated in the DOE licensing agreement and approved as part of the licensing agreement.

§ 1009.6 Dissemination of prices and charges.

(a) Pricing information for specific materials, goods and services is available from the DOE facility or office providing the material, good, or service, or from the responsible DOE Federal program office. When the price represents the full cost of services not yet provided or materials not yet fabricated or procured, the Department can provide only an estimate of costs and cannot provide a fixed price for the material or service requested.

(b) If the appropriate office cannot be determined, inquiries regarding the appropriate contact office should be addressed to the Office of the Chief Financial Officer, 1000 Independence Avenue, SW., Washington, DC 20585.

[FR Doc. 2026-03159 Filed: 2/17/2026 8:45 am; Publication Date: 2/18/2026]