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DEPARTMENT OF DEFENSE

Under Secretary of Defense for
Acquisition (703) 274-6884

DOMESTIC TECHNOLOGY TRANSFER PROGRAM REGULATION

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WASHINGTON, DC 20301

27 DEC 1988

FOREWORD

This Regulation is reissued under the authority of DoD Directive 3200.12, "DoD Scientific and Technical Information Program," February 15, 1983. DoD 3200.12-R-4 "Domestic Technology Transfer Program Regulation," April 1985, is hereby canceled. This Regulation applies to all DoD components that perform or fund research and development (R&D) efforts that may be appropriate for transfer to state and local governments and to the private sector.

This Regulation authorizes the DoD Domestic Technology Transfer Program and responds to the requirements of Public Law 96-480, the "Stevenson-Wydler Technology Innovation Act of 1980," as amended by Public Law 99-502, the "Federal Technology Transfer Act of 1986" (reference (a)) and Executive Order 12591, (reference (b)) "Facilitating Access to Science and Technology." Its purpose is to ensure the full use of the nation's federal investment in R&D, stimulating improved use by state and local governments and the private sector.

The DoD Domestic Technology Transfer Program is separate and distinct from international technology transfer control programs, and nothing in this Regulation is intended to modify or rescind any of the responsibilities and procedures for technology transfer control stated in other DoD directives, instructions, and publications. This Regulation is effective immediately and is mandatory for use by all DoD components. Heads of the military departments shall issue supplementary documents within 90 days of the effective date of this Regulation. This is required by Public Law 96-480 Section 4 of reference (a), which defines each military department as a separate agency under the Act. Heads of all other DoD components may supplement this Regulation with additional documents as necessary to provide for any internal administration of this Regulation within their respective components.

Send recommended changes to this Regulation through channels to:

Director, Office of Research and Laboratory Management
Office of the Deputy DDRE (Research and Advanced Technology)
Office of the Under Secretary of Defense for Acquisition
The Pentagon
Washington, DC 20301-3080

DoD components may obtain copies of this Regulation through their own publication channels. Other federal agencies and the public may obtain copies from the U.S. Department of Commerce, National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

Milton L. Lohr
Deputy Under Secretary

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REFERENCES

- (a) Public Law 96-480, "Stevenson-Wydler Technology Innovation Act of 1980," October 21, 1980, as amended by Public Law 99-502, "Federal Technology Transfer Act of 1986," October 20, 1986
- (b) Executive Order 12591, "Facilitating Access to Science and Technology," April 10, 1987
- (c) Title 31, United States Code, Section 6303-6305, "Using Procurements, Grants and Cooperative Agreements"
- (d) Title 35, United States Code, Section 1-376, "Patent Act"
- (e) Title 7, United States Code, Section 2321-2583, "Plant Variety Protection Act"
- (f) DoD Directive 2040.2, "International Transfers of Technology, Goods, Services and Munitions," January 17, 1984
- (g) DoD Directive 5230.24, "Distribution Statements on Technical Documents," March 18, 1987
- (h) DoD Directive 5230.25, "Withholding of Unclassified Technical Data from Public Disclosure," November 6, 1984
- (i) DoD Instruction 5120.16, "Department of Defense Incentive Awards Program: Policies and Standards," July 15, 1974
- (j) DoD Directive 2140.2, "Recoupment of Nonrecurring Costs on Sales of U.S. Products and Technology," August 5, 1985
- (k) Title 5, United States Code, Section 4504 "Presidential Awards"

DEFINITIONS

Application Assessment. A summary emphasizing the potential application of each technological development from DoD R&D projects that has potential usefulness to State and local governments or private industry.

Cooperative Research and Development Agreement (CRDA). Any agreement between one or more Federal laboratories and one or more non-Federal parties under which the Government, through its laboratories, provides personnel, services, facilities, equipment, or other resources with or without reimbursement (but not funds to non-Federal parties) and the non-Federal parties provide funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts that are consistent with the missions of the laboratory; except that such term does not include a procurement contract or cooperative agreement as those terms are used in 31 U.S.C. 6303-6305 (reference (c)) and as such the Federal Acquisition Regulation (FAR) and the DoD FAR Supplement are not applicable to these agreements.

Federal Laboratory. Any federally funded R&D facility that is owned, leased, or otherwise used by a Federal Agency and funded by the Federal Government, whether operated by the Government or by a contractor. A substantial purpose of such a facility or activity is the performance of research, development, or engineering by employees of the Federal Government or a contracted facility having such a prescribed Government purpose.

Federal Laboratory Consortium (FLC) for Technology Transfer. An organization of Federal Research and Development Laboratories and Centers chartered by P.L. 96-480 as amended by P.L. 99-502 (reference (a)) to identify and mobilize the necessary resources to provide the environment, the organization, and the necessary technology transfer mechanisms required to facilitate the fullest possible use of federally sponsored R&D results by both public and private sector potential users.

Government Inventor. For purposes of this regulation Government inventors are all employees of the Federal Government and military personnel.

Invention. As defined by reference (a) this is any innovation or discovery which is or may be patentable or otherwise protected under 35 U.S.C. (reference (d)), or any novel variety of plant which is or may be protected under the Plant Variety Protection Act, 7 U.S.C. 2321-2583, (reference (e)).

Office of Research and Technology Applications (ORTA). A function established in each DoD R&D activity to coordinate the Domestic Technology Transfer Program and to perform the actions specified in reference (a) and other responsibilities as outlined in this Regulation.

Research and Development Laboratory Budget. For the purpose of computing the monetary transfers required by Section 11 of reference (a) the research and development laboratory budget consists of all Program 6 "Research and Development" resources as defined in the DoD Planning, Programming, and Budget System that are allocated to the DoD Component's laboratories.

CHAPTER 1

THE DOMESTIC TECHNOLOGY TRANSFER PROGRAM

A. Policy

To achieve the maximum national benefit from DoD scientific and technical efforts as required by P.L. 96-480 and E.O. 12591 (references (a) and (b)), it is DoD policy to:

1. Encourage the dissemination of scientific and technical information, data, and know-how developed by or for the Department of Defense to State and local governments and to the private sector, consistent with the requirements of U.S. national security.
2. Promote the sharing of technology that fosters the advance of science or that has commercial potential and thus should be employed to best advantage for the security and socio-economic well-being of the United States.
3. Support coordination between the industrial, academic, and Government R&D activities of the United States by cooperating in the sharing of plans for future research efforts and the sharing of facilities as appropriate.
4. Support cooperative efforts to stimulate industrial innovation, especially in small businesses.
5. Support and encourage the exchange of scientific and technical personnel among academic, industry, and the DoD laboratories.
6. Support the domestic technology transfer process as an integral part of the R&D effort and incorporate domestic technology transfer objectives into the mission of each appropriate R&D activity.
7. Encourage domestic technology transfer in the workplace through its recognition in position descriptions, in promotion policies, in monetary awards, and in performance evaluations for appropriate scientific and engineering personnel.
8. Ensure that R&D activities have at least one full-time equivalent position responsible for performing the functions of an Office of Research and Technology Applications (ORTA) at any activity having over 200 full-time equivalent professional scientific, engineering, and related technical personnel. A full-time position for any activity with less than 200 professional scientific and engineering personnel is optional.
9. Ensure that domestic technology transfer functions do not compete substantially with similar services available in the private sector.
10. Ensure that the Domestic Technology Transfer Program does not conflict with export control regulations, policies governing militarily critical technology, policy requirements of recouping DoD nonrecurring costs, or any of the responsibilities and procedures for technology transfer control in DoD Directives, Instructions, and publications. Control policies are addressed in DoD

Directives 2040.2, 5230.24, and 5230.25 (references (f), (g), and (h)). Recoupment of nonrecurring cost policies are addressed in DoD Directive 2140.2 (reference (j)).

11. Identify and encourage persons to act as conduits between and among Federal laboratories, universities, and the private sector for the transfer of technology developed from federally funded R&D efforts.

12. Ensure that State and local governments, universities, and the private sector are provided with information on the technology, expertise, and facilities available in Federal laboratories.

B. Responsibilities

1. The Under Secretary of Defense for Acquisition (USD(A)) shall:

a. Establish departmental policies and procedures for domestic technology transfer.

b. Coordinate interservice activity under the Domestic Technology Transfer Program.

c. Cooperate with other Federal agencies, particularly the Department of Commerce and the National Science Foundation, to maximize the effectiveness of federal domestic technology transfer efforts.

2. The Heads of DoD Components shall:

a. Designate, at the Headquarters level, a point of contact for domestic technology transfer activities who shall participate with the appropriate ORTAs from the DoDs laboratories as a voting member in the Federal Laboratory Consortium (FLC).

b. Be authorized to license, assign, or waive rights to intellectual property developed by the DoD laboratories through cooperative R&D agreements or solely within or under the direct control of the laboratories.

c. Ensure review by legal counsel of the DoD Components and/or activities of CRDAs for consistency with the standards of conduct requirements before final approval and participation in a CRDA. As prescribed by P.L. 96-480 (reference (a)) a Headquarters level review must be completed within 30 days of submission by the DoD laboratory.

d. Specify the appropriate R&D activities that may require a full-time equivalent position to be responsible for performing the ORTA functions. This includes any activity having 200 or more full-time equivalent professional scientific, engineering, and related technical personnel.

e. Provide for the participation of ORTA designated personnel in appropriate management development programs.

f. Transfer through the National Institute for Standards and Technology for use by the FLC on an annual basis, from fiscal year 1987 to 1991, an amount equal to eight thousandths of one percent (0.008%) of the Components' R&D laboratory budget that is to be used by the laboratories of the Component as defined in this regulation.

g. Cooperate with other Federal Agencies to maximize the effectiveness of Federal domestic technology transfer efforts.

h. Establish an ORTA at laboratories and other activities to perform, as a minimum, the domestic technology transfer functions specified in this Regulation. Each ORTA shall:

(1) Perform the following functions as specified in P.L. 96-480 and P.L. 99-502 (reference (a)).

(a) Prepare an application assessment of selected R&D projects that have potential commercial applications.

(b) Provide and disseminate information on federally owned or originated products, processes, and services having potential application to State and local governments and to private industry.

(c) Cooperate with and assist the National Technical Information Service (NTIS), the FLC, and other organizations that link the R&D resources of that laboratory and the Federal Government as a whole to potential users in State and local government and private industry.

(d) Participate, where feasible, in regional, State, and local programs designed to facilitate technology transfer for the benefit of the region, State, or local jurisdiction in which the activity is located.

(2) Participate in appropriate activities of the public and private sector that provide the opportunities to achieve technology transfer objectives; e.g., local government meetings or small business conferences.

(3) Assist program managers and technical department heads in identifying technologies suitable for transfer and for which application assessments need to be developed.

(4) Coordinate domestic technology transfer activities with patent counsel to determine rights to technical data, patent and licensing implications, and the commercial potential of patentable technology.

(5) Ensure that no domestic technology transfer functions substantially compete with similar services available in the private sector.

(6) Ensure that no domestic technology transfer functions conflict with export control regulations, policies governing militarily critical technology, or any of the responsibilities and procedures for technology transfer control in DoD Directives, Instructions, and publications.

i. Encourage and cooperate with the establishment of technical volunteer programs as a resource to complement and support domestic technology transfer activities.

j. Establish a mechanism for coordinating domestic technology transfer efforts with Small and Disadvantaged Business Utilization Specialists for the purpose of stimulating commercialization of appropriate technologies by small business.

k. Make available for use within the Component not less than one half of one percent, (0.5%) of the total R&D budget, to support the domestic technology transfer functions of that Component as specified in Section 11 of P.L. 96-480 (reference (a)). This provision may be waived by notification to Congress on an annual basis at the same time as the budget submission to the Congress including explanation of reasons for the waiver and alternate methods of conducting the technology transfer function.

l. Document and input a description of all CRDAs to the Defense Technical Information Center (DTIC) Work Unit Information System within 30 working days of the initiation of such agreements.

m. Maintain permanent records of all CRDAs at Components or their designated activities.

C. Principles

The principles of the domestic technology transfer program as established by the DoD Components must include but are not limited to the following:

1. DoD Components and their Government-operated laboratories may enter into CRDAs. Within CRDAs, and subject to national security limitations, DoD Components may:

a. Be party to an agreement that includes other Federal Agencies, State and local governments, industrial organizations, public and private foundations, nonprofit organizations, or other persons (including licensees of inventions owned by the Federal Agency). Such agreements, to the maximum extent possible, shall give special consideration to small business firms and consortia involving small business firms, and give preference to business units located in the United States that agree that products embodying inventions made under a CRDA or produced through the use of such inventions will be manufactured substantially in the United States and, in the case of any industrial organization or other person subject to the control of a foreign company or government, take into account whether or not such foreign government permits U.S. agencies, organizations, or other persons to enter into CRDAs and licensing agreements.

b. Provide personnel, services, facilities, equipment, or other resources with or without reimbursement (but not funds to non-Federal parties), and non-Federal parties may provide to the laboratory funds, personnel, services, facilities, equipment, or other resources toward the conduct of specified research or development efforts that are consistent with the mission of the Component's activity.

c. Grant or agree to grant in advance, to a collaborating party, patent licenses or assignments, or options thereto, in any invention made in whole or in part by a Federal employee under the agreement, retaining a nonexclusive, nontransferable, irrevocable, paid-up license to practice the invention, or have the invention practiced throughout the world by or on behalf of the Government and such other rights as the DoD Component and/or activity deems appropriate.

d. Waive, subject to reservation by the Government of a nonexclusive, irrevocable, paid-up license to practice an invention or have an invention practiced throughout the world by or on behalf of the Government, in advance, in whole or in part, any right of ownership which the Federal Government may have to any subject invention made under an agreement by a collaborating party or employee of a collaborating party.

e. To the extent consistent with established DoD Component requirements, standards of conduct, and subject to national security considerations, permit employees or former employees to participate in efforts to commercialize inventions made while in U.S. Government service.

f. In addition the principles stated in paragraphs C.1.a. through e. above, where appropriate, shall apply to the patenting and licensing of Government inventions that are accomplished independent of a CRDA.

2. Awards

a. Within the appropriate awards programs as established by DoD Instruction 5120.16 (reference (h)), the DoD Components shall establish and promote appropriate monetary and professional excellence recognition of Federal employees who contribute materially to the objectives of the domestic technology transfer program. Such awards shall include recognition of:

(1) Inventions, innovations, or other outstanding scientific or technological contribution to the missions of the Components, their activities and/or throughout the Federal Government.

(2) Exemplary activities that promote domestic transfer of science and technology development within the Federal Government and result in the use of such science and technology by American industry or business, universities, State or local governments, or other non-Federal parties.

b. Such awards shall not be given in place of or in lieu of any monetary gain obtained by current or former employees as a result of royalties, licenses, or the other such agreements as negotiated under the guidelines of this program.

3. Distribution of royalties or other income received by DoD Components

a. Royalties or other income received on account of any invention shall be payable to the inventor(s), if such persons were employed by the Agency at the time of the invention. Such payments shall continue as long as the Agency receives economic benefit regardless of the inventor's future

employment status. If an invention is licensed for commercial use, and if royalty or other income results from the license, the Government inventor(s) are to receive income as prescribed in the remainder of this paragraph. If the income received by the Government is less than \$1000 times the number of inventor(s), (one or more), the Government inventor(s) shall receive the entire amount of income in equal shares. If the income is greater than \$1000 times the number of Government inventor(s), the inventor(s) shall share equally 20% of the total income or \$1000 each, whichever is greater, and subject to the conditions prescribed in subsection C.2., above. Inventor(s) employed by the agency at the time the invention was made shall receive payment of their prescribed share of any royalties or other income received by the Government on an annualized basis.

b. Payments of royalties or other income from inventions to an employee shall not exceed \$100,000 per year without Presidential approval as provided in 5 U.S.C. 4504 (reference (k)).

c. Government inventors shall be entitled to income as discussed in this section for all income derived by the Government starting October 20, 1986, the effective date of P.L. 99-502 (reference (a)). This applies to royalties or other income received for inventions since that date regardless of the date of the invention.

d. Assignment and use of income should be applied in accordance with the following schedule:

(1) It must be used within the fiscal year received plus the succeeding year.

(2) It should be used principally by the activity that participated in the development of the invention.

(3) After assignment of royalties or other income to inventors under paragraph C.3.a. above, income may be used for:

(a) Payment of expenses incidental to administration and licensing of inventions.

(b) Reward of scientific, engineering, and technical employees at that activity.

(c) Promotion of scientific exchange among other activities of the DoD Component.

(d) Education and training of employees consistent with the R&D mission and objectives of the Department of Defense.

(e) Other activities that increase the licensing potential for transfer of the technology of the Government laboratory.

e. DoD Components shall develop criteria and guidelines with time-frames for Government participation with inventors and/or for instances for which it is appropriate for Government to relinquish patent and licensing rights to inventors. Criteria for determining the sharing of rights with multiple inventors also shall be specified.

CHAPTER 2

REPORTING

As specified in PL 99-502 (reference (a)), each DoD Component shall provide an annual report to Congress, as part of their input to the annual DoD budget submission. The report shall include summaries of the amount of royalties and other income received and expenditures made, including inventor awards.