



Department of Energy  
San Francisco Field Office  
1333 Broadway  
Oakland, California 94612

FEB 26 1993

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Dr. Charles V. Shank  
Director  
Lawrence Berkeley Laboratory  
1 Cyclotron Road  
Berkeley, CA 94720

SUBJECT: Restatement of Departmental Technology Transfer Policy on  
U. S. Competitiveness

Dear Dr. Shank:

*Chank*

Enclosed for your information is a copy of the "Restatement of Departmental Technology Transfer Policy on U. S. Competitiveness" and "U. S. Competitiveness Work Sheet." This memorandum serves as a clarification of DOE policy regarding U. S. Competitiveness requirements for technology transfer activities.

You are already familiar with the Department's intention that all cooperative activities will benefit the U. S. economy and enhance U. S. competitiveness in the international market. The development of manufacturing capabilities and creation of jobs within the U.S. is the preferred objective of technology transfer, and the vast majority of cooperative agreements are achieved in compliance with the U. S. Competitiveness clause. However, in some highly exceptional cases, the U. S. economy may derive greater benefit from alternatives to substantial U. S. manufacture. The enclosed memorandum and accompanying work sheet rearticulate the DOE U. S. Competitiveness standard and provide guidance where the primary policy objective is impractical.

I anticipate you will find the enclosed memorandum informative. If you or your staff require further assistance with this or any other technology transfer issue, please contact me or Dick Fredlund, Director, Technology Transfer Program Office at (510) 273-6439.

Sincerely,

*Donald W. Pearman, Jr.*

Donald W. Pearman, Jr.  
Manager

RECEIVED LBL  
Technology Transfer Department  
MAR 10 1993

Enclosure

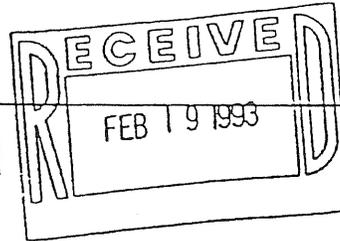
*2/11/93 by R. Fleischman*

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United States Government

Department of Energy

**memorandum**

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DATE: February 10, 1993

REPLY TO  
ATTN OF: ST-1SUBJECT: Restatement of Departmental Technology Transfer Policy on  
U.S. CompetitivenessTO: Program Secretarial Officers  
Field Office Managers

At the Technology Transfer Process Workshop, held in Albuquerque, New Mexico, on December 8-10, 1992, a request was made, and endorsed by the participants, for a restatement of Departmental technology transfer policy on U.S. competitiveness, especially regarding the negotiation of Cooperative Research and Development Agreements (CRADAs). This memorandum is a response to that request.

In order for the Field Offices and laboratories to implement effectively the Department's policy on U.S. competitiveness it is important that the policy be understood in its proper context. The research that produced the technologies we are commercializing was financed by taxes paid by U.S. citizens. The taxpayers have invested billions of dollars in the R&D performed by the DOE laboratories, and before we transfer their technologies from the taxpayers' laboratories, it is the responsibility of their negotiator/agent to ensure that the taxpayers will receive some return on their investment. We have identified perhaps the most desirable return or dividend as increased jobs. However, if a potential partner cannot identify increased U.S. jobs as a result of the technology being transferred, some other substantial economic benefit to the U.S. taxpayer must be identified.

It is the policy of the Department of Energy that its laboratories should, as part of the CRADA selection process, give preference to business units located in the United States that agree to substantially manufacture in the United States technology resulting from cooperative activities. In some circumstances, such substantial manufacture is not economically or otherwise feasible. It is not the intention of DOE policy to permanently debar from cooperative activities firms that can not appropriately meet the requirement for substantial U.S. manufacture. In such circumstances, other substantial benefits to the U.S. economy can be substituted for the requirement of substantial U.S. manufacture. The reasons why substantial U.S. manufacture for technology, which is the subject of a specific CRADA, are not feasible in each separate case should be clearly and appropriately described. Such current or projected benefits

to the U.S. taxpayer should be clearly and appropriately described. If there are circumstances in which there are two [or more] possible partners for a CRADA, there is comparable technical merit in each corresponding proposal, and only one of the potential partners is willing to accept the U.S. competitiveness provision of the DOE Model CRADA, then the statutory direction regarding U.S. preference would lead to a decision to select the proposal that accepts the Model CRADA provision. This policy is rearticulated in the attached U.S. Competitiveness Work Sheet and has been included in the technology transfer clause negotiated with a number of DOE's Management and Operating (M&O) contractors.

The basis for this policy is clear. In statute, in legislative intent, and in former Administration policy statements, it is clear that Federal technology transfer activities are intended to benefit the U.S. economy and to enhance U.S. competitiveness in the global economy. The incorporation of manufacturing process improvements in U.S. facilities, the creation of jobs in the U.S., and the production of new technologies and products in U.S. facilities clearly respond to this mandate. It is less clear how facilitating the use of U.S. taxpayer supported research, for example, into the overseas manufacture of automotive parts used in cars sold in the U.S. provides an economic benefit to the U.S. economy or enhances U.S. competitiveness. Such an example might in fact be beneficial in a larger or more specific context. This other benefit can not be assumed--it must be specifically demonstrated, for example, by the participant(s) furnishing a description of economic or other benefits that will accrue to the U.S. economy through commercial use of the CRADA technology.

The Department of Energy has over 340 CRADAs with various partners. The vast majority have been accomplished without the need for a variance from the basic agreement for substantial U.S. manufacture. The norm for DOE laboratory CRADAs is, and should be acceptance by the CRADA participant of substantial U.S. manufacturing. The Department has also recognized that in some cases, such as with some specific aspects of computer software, a greater benefit is derived to the U.S. economy from maintaining research and development in the U.S. rather than from manufacturing. In other situations, comparable or greater benefits may be achieved from alternatives to substantial U.S. manufacture.

The acceptance of an alternative to substantial U.S. manufacture can only be obtained by a specific decision on the part of a DOE Field Office, or DOE Headquarters, when presented with a specific case. It is the responsibility of the laboratory, with input from its partner(s), to present to the Field Office clear and sufficient justification for

accepting a clearly defined alternate benefit to the U.S. economy. The attached U.S. Competitiveness Work Sheet provides the primary basis for identifying such alternate benefits.

The Field Offices are the primary decision makers in accepting or rejecting alternatives to substantial U.S. competitiveness. The criteria for Headquarters approval of CRADAs have been articulated in Interim Consideration #24. At the present time, there has not been a body of precedent established or Departmentwide training on this aspect of the CRADA process. We would appreciate being informed on how specific issues are resolved by the Field Offices to enable areas where further clarification or need for consistent application of policy may be needed. In the interest of ensuring consistency across the Department, the Field Offices are encouraged to communicate with each other and to refer specific questions and the results of specific decisions to the pertinent (i.e., primary funding) Program Office. If a Field Office determines that a specific case decision would benefit from Headquarters participation, they may refer the issue to the appropriate Program Office for appropriate Headquarters review and coordination.

In terms of U.S. competitiveness policy, one size does not fit all. However, the requirement for substantial U.S. manufacture fits most situations DOE has encountered and reflects our understanding of the legislative and Administration mandates. As a matter of law, the requirement for substantial manufacture for laboratory-developed, invention-patented technology is clear. As a matter of policy, this requirement is extended to patents developed by laboratories and/or participants, other intellectual property, and other collaborative results. Therefore, obtaining a commitment for substantial U.S. manufacture, as an up-front matter, is our primary policy objective. For those rare situations where achievement of the primary policy objective is not practical, alternative benefits to the U.S. economy may be obtained.

So that there is no confusion, let me again state the DOE policy and expectations:

- o It is DOE policy for the laboratories, in their selection of CRADA partners, to give preference to business units located in the United States that agree to substantially manufacture resulting technology in the U.S.
- o Where substantial U.S. manufacture has been shown not to be feasible, DOE will approve, as exceptions, agreements with some partners on the

basis of contractual commitments to appropriate alternate benefits to the U.S. economy. Exceptions must be based on specific information (not generic assertions) related to each proposed CRADA, per the criteria provided in the U.S. Competitiveness Work Sheet.

- o In situations where there are multiple partnering opportunities in a common technical or technology area, and limitations on resources for partnering, preference should be given to partnerships that accept the requirement for substantial U.S. manufacturing.
- o The U.S. competitiveness aspects of prospective CRADA partners and CRADAs will be resolved as an up-front matter, before completion of any Joint Work Statements. Where Joint Work Statements are forwarded to Program Offices, they will be preceded by either written assurances that the participant intends to accept the model CRADA U.S. competitiveness language in toto or else a signed agreement in which the participant agrees to provide specific economic benefit to the U.S. economy under one or more criteria of the U.S. competitiveness work sheet. This signed agreement must set forth specific detailed measures. Departure from U.S. competitiveness commitments made by CRADA partners can be a basis for stopping work under the CRADA and will be considered as background information in any future CRADA negotiation with the same CRADA partner. It should also be emphasized to prospective CRADA partners that, once they give these U.S. competitiveness related assurances to DOE, their departure from them in subsequent stages of the CRADA negotiation will result in prolonged negotiations and could be taken as evidence of negotiating in bad faith.
- o In instances where the Field Offices are unable or unwilling to make a determination as to whether U.S. competitiveness requirements have been satisfied, they should refer the matter to the appropriate Program Office for a determination. The Program Office may then consult with the Office of Technology Utilization and may also choose to seek the advice of the Technology Transfer Committee.

The attached work sheet contains criteria for Field Office and Program Office use in deciding whether U.S. competitiveness requirements have been satisfied. The Office

of Technology Utilization, in cooperation with the Program Offices involved, will develop appropriate training so as to achieve and maintain an adequate and consistent approach to U.S. competitiveness determinations within and across Field Offices.



Roger A. Lewis  
Director  
Office of Technology Utilization

Attachment

## U. S. COMPETITIVENESS WORK SHEET

For Use in Resolving Issues of U.S. Competitiveness  
Regarding Prospective Technology Transfer  
Agreements and Partners at DOE Laboratories

The Government, in funding CRADAs, is seeking to transfer technology to companies with significant manufacturing and research facilities in the United States in a way which will provide short and long term benefits to the U.S. economy and the industrial competitiveness of such companies.

The preferred benefit to the U.S. economy is the creation and maintenance of manufacturing capabilities and jobs within the U.S.

1. Will the Participant(s) agree, as part of the CRADA, to substantially manufacture any products or use any processes or perform any services in the United States incorporating or resulting from inventions, copyrights, mask works or protectable data arising from the CRADA work in which the Participant(s) has some commercial rights? Yes\_\_\_\_\_ No\_\_\_\_\_
2. If no, Participant(s) must furnish sufficient information to justify that substantial U.S. manufacture of the resulting CRADA technology is not feasible.
3. If no, Participant(s) must furnish a description of specific economic or other benefits to the U.S. economy which are related to the commercial use by Participant(s) of the technology being funded under the CRADA and which are commensurate with the Government's contribution to the proposed work.
4. The above-described agreement and/or description of benefits will be provided by the laboratory to the Field Office before submission of the Joint Work Statement by the laboratory to the Field Office.

Appropriate recognition of U.S. taxpayer support for the technology, e.g., a quid-pro-quo commensurate with the economic benefit that would be domestically derived by the U.S. taxpayer from U.S.-based manufacture must be demonstrated.

Such benefits may include one or more of the following:

- o Direct or indirect investment in U.S.-based plant and equipment.
- o Creation of new and/or higher quality U.S.-based jobs.
- o Enhancement of the domestic skills base.

- o Further domestic development of the technology.
- o Positive impact on the U.S. balance of payments in terms of product and service exports as well as foreign licensing royalties and receipts.
- o Cross-licensing, sublicensing, and reassignment provisions in licenses which seek to maximize the benefits to the U.S. taxpayer.
- o Leveraging of government resources in furtherance of DOE program goals.