



Department of Energy

Washington, DC 20585

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MEMORANDUM FOR DISTRIBUTION

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SUBJECT: Guidance for providing fairness of opportunity for
Technology Transfer Activities at DOE Facilities

This memo provides guidance, in the form of shared best practices, for disseminating information regarding technology transfer opportunities at DOE Facilities (i.e. National Laboratories, single-purpose research facilities, and other Department facilities, hereafter referred to as "Facilities") in accordance with the Fairness of Opportunity provision of DOE Management & Operating (M&O) Contracts having Technology Transfer as a mission. The provision requires Facilities to develop procedures for providing widespread notice of opportunities for exclusive licensing and joint research arrangements. This memo provides a summary of "best practices" that Facilities may use to update or draft their Fairness of Opportunity procedures to foster consistency across the DOE complex. These identified best practices will help ensure that Facilities consistently provide widespread notice of their technology transfer opportunities while affording Facility operators the flexibility to tailor notice for specific opportunities to the particular technology offered or research arrangement contemplated.

Although this memo focuses on the contractual requirements of DOE M&O Contracts, many of the described best practices are also generally applicable to the Fairness of Opportunity requirement described in the DOE CRADA Order, as well as the Fairness of Opportunity principles described in the Secretarial Policy Statement on Technology Transfer that apply to both contractor and government operated Facilities.¹

Providing widespread notice of technology transfer opportunities is critical to enhancing the impact of the Department's scientific and technological discoveries as well as promoting access to such discoveries by large, mid-size, and small business firms and entrepreneurs. Widespread notice of licensing opportunities helps achieve these goals by increasing the pool of potential licensees and thereby helping maximize potential utilization of Department technology and facilities by public and private entities both big and small.

Similarly, fairness of opportunity encourages collaborations with our Facilities by helping ensure that the best minds from industry and academia are aware of the Department's joint research opportunities. Although Facilities have the ability to select

¹ See, DOE Order 483.1 and the Secretarial Policy Statement on Technology Transfer at DOE Facilities dated March 28, 2011.



the best research partners for each project, widespread dissemination of joint research arrangements increases the likelihood that the most capable organizations are considered.

The following best practices will help Facilities consistently provide widespread notice of their technology transfer activities while ensuring that such activities are conducted in a fair and transparent process befitting the special position of federally funded research centers. While these best practices are provided, it is recognized that Fairness of Opportunity is a flexible standard and that these exemplary practices are meant as illustrative examples and not as limiting or definitive requirements.

1. Contractual Requirement

DOE M&O Prime Contracts state:

Fairness of Opportunity

In conducting its technology transfer activities, the Contractor shall prepare procedures and take all reasonable measures to ensure widespread notice of availability of technologies suited for transfer and opportunities for exclusive licensing and joint research arrangements. The requirement to widely disseminate the availability of technology transfer opportunities does not apply to a specific application originated outside of the Laboratory and by entities other than the Contractor. DEAR 970.5227-3(e)

2. Implementation of Guidance

Facilities are encouraged to develop written Fairness of Opportunity procedures (or update existing ones) in accordance with contractual requirements² and the best practices provided in this memo. These procedures should establish a process for providing widespread notification of opportunities for exclusive licensing and joint research arrangements at the Facility and should ensure that reasonable efforts be made to provide extensive notice of all licensable technologies at the Facility.

3. Guidelines for Providing Fairness of Opportunity

When providing fairness of opportunity, Facilities are encouraged to utilize one or more of the following best practices which include, but are not limited to:

- posting the opportunity on the Facility's technology transfer website, with a suitable designation such as "Technologies Available for Licensing" or "Opportunities for Joint Research;"

² Although government-owned-government-operated (GOGO) facilities do not have the same contractual obligations to provide fairness of opportunity they are subject to the relevant provisions of 37 CFR 404, as well as DOE's CRADA Order, and the Secretarial Policy Statement on Technology Transfer. Therefore, GOGO facilities are encouraged to develop written policies (or update existing ones) in accordance with their regulatory requirements and the applicable best practices provided in this memo.

- posting the available opportunity in Federal Business Opportunities (www.fbo.gov);
- posting the opportunity on third-party websites and newsletters that broadly disseminate availability of technology for licensing (e.g., Federal Laboratory Consortium, etc.) on behalf of technology providers;* and
- publishing the opportunity in a nationally available newspaper or periodical generally read by business people or a technical periodical or journal generally read by technical representatives of companies most likely interested in licensing the technology.*

Although DOE Facilities are encouraged to make reasonable efforts to use one or more of these approaches, providing fairness of opportunity may still be realized in certain situations where the procedures identified above may not have been followed, but where others actions were sufficient to provide widespread notice of a particular opportunity. Such actions may include:

- attendance at trade, industry, and technology transfer meetings for the purpose of actively engaging in discussions of the technology with prospective licensees or research partners and distribution of flyers regarding the available opportunity;
- technical publications and papers by research staff regarding the available technology;*
- press releases and other public media communications regarding the available technology or opportunity;
- documented contacts with several potentially interested unaffiliated parties of the available opportunity through targeted marketing;
- availability of the full text of an issued patent or published patent application on the United States Patent and Trademark Office (www.uspto.gov) or World Intellectual Property Organization (www.wipo.int) website;
- announcement of the available technology on the Facility's general or R&D division website; and*
- promotion of available opportunities on public electronic communication media including but not limited to Internet-based professional/social networking sites and Twitter.

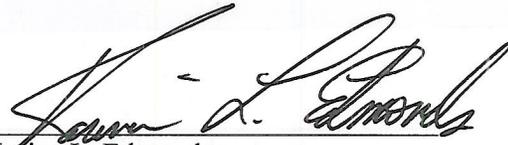
* Actions marked with an asterisk may be used to help provide fairness of opportunity for exclusive licensing opportunities but are generally insufficient for the purpose of providing widespread notice of opportunities to collaborate with DOE-funded programs through a CRADA.

Excluded from the Fairness of Opportunity requirement are specific applications originated outside of a Facility by entities other than the contractor. For example, collaborations between a Facility and an industry partner proposed by an industry partner do not need to be widely disseminated by the Facility, nor do technologies developed under CRADAs or other technology transfer agreements with predetermined intellectual property dispositions.

Facilities are also encouraged to develop procedures for documenting how widespread notice of availability was achieved for each exclusively licensed technology or joint research arrangement, or the circumstances regarding why the opportunity is excluded from the Fairness of Opportunity requirement.

Conclusion

DOE is committed to improving its technology transfer policies and procedures and issues this guidance with the goal of ensuring that DOE's technology transfer activities are undertaken in a fair and transparent process that enhances the impact of the Department's discoveries, while affording Facility operators flexibility to deploy technologies as expeditiously as possible. DOE will periodically reexamine and revise this guidance as appropriate to ensure these goals are being achieved.



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