

effective and least burdensome alternative that achieves the objectives of the rule and is consistent with statutory requirements. Section 203 requires EPA to establish a plan for informing and advising any small governments that may be significantly or uniquely impacted by the rule.

The EPA has determined that the proposed approval action promulgated today does not include a Federal mandate that may result in estimated costs of \$100 million or more to either State, local, or tribal governments in the aggregate, or to the private sector. This Federal action approves pre-existing requirements under State or local law, and imposes no new Federal requirements. Accordingly, no additional costs to State, local, or tribal governments, or to the private sector, result from this action.

#### List of Subjects in Part 70

Environmental protection, Administrative practice and procedure, Air pollution control, Intergovernmental relations, Operating permits, and Reporting and recordkeeping requirements.

**Authority:** 42 U.S.C. sections 7401-7671q.  
Dated: May 9, 1995.

**David A. Ullrich,**

*Acting Regional Administrator.*

[FR Doc. 95-12474 Filed 5-19-95; 8:45 am]

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## DEPARTMENT OF ENERGY

### 48 CFR Part 970

RIN 1991-AA63

#### Acquisition Regulation; Technology Transfer Activities of Department of Energy (DOE) Management and Operating Contractors

**AGENCY:** Department of Energy.

**ACTION:** Proposed rule.

**SUMMARY:** The Department of Energy (DOE) today proposes an amendment to codify DOE's implementation of its technology transfer mission for DOE laboratories (including weapon production facilities) operated by management and operating contractors. The National Competitiveness Technology Transfer Act of 1989 required that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the Stevenson-Wylder Technology Innovation Act of 1980 definition of

laboratory to include weapon production facilities of the Department of Energy that are operated for national security purposes and are engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components. DOE is proposing to amend the Department of Energy Acquisition Regulation to specify that each new award for or renewal of an existing management and operating contract for the operation of a DOE laboratory or weapon production facility shall have technology transfer as a mission.

**DATES:** Written comments must be received by July 21, 1995.

**ADDRESSES:** Comments should be addressed to: Howard K. Mitchell, Policy Analyst, Office of Policy (HR-51), Office of the Deputy Assistant Secretary for Procurement and Assistance Management, Washington, D.C., 20585, (202) 586-8190.

**FOR FURTHER INFORMATION CONTACT:** Howard K. Mitchell, (202) 586-8190.

**SUPPLEMENTARY INFORMATION:**

- I. Background
- II. Section by Section Analysis of the Proposed Rule
- III. Procedural Requirements
  - A. Regulatory Review Under Executive Order 12866
  - B. Review Under Executive Order 12612
  - C. Review Under Executive Order 12778
  - D. Review Under the Regulatory Flexibility Act
  - E. Review Under the Paperwork Reduction Act
  - F. Review Under the National Environmental Policy Act (NEPA)
- IV. Public Comments
- V. Public Hearing

#### I. Background

Under Section 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), the Secretary of Energy is authorized to prescribe such procedural rules and regulations as may be deemed necessary or appropriate to accomplish the functions vested in the position. Accordingly, the Department of Energy Acquisition Regulation was promulgated with an effective date of April 1, 1984, (49 FR 11922, March 28, 1984), 48 CFR chapter 9. With this rule, DOE is proposing an addition amending part 970 of the Department of Energy Acquisition Regulation to codify DOE's implementation of its technology transfer mission for DOE laboratories and weapon production facilities operated by management and operating contractors.

Technology advancement is a key component in the growth of the United States industrial economy, and a strong industrial base is an essential element of national security. Further, there is a

continuing need to enhance United States competitiveness in both domestic and international markets. DOE laboratories and weapon production facilities, operated by DOE management and operating contractors, have developed outstanding capabilities in a wide variety of advanced technologies and are staffed with scientists, engineers, technicians and other personnel associated with those technologies. The deployment of these resources to work with the private sector through cooperative efforts, consistent with the laboratory's or facility's program mission assignments, can make a substantial contribution to the competitive posture of United States industry.

In recognition of such capabilities, Congress enacted the National Competitiveness Technology Transfer Act of 1989. This Act extended to Government-owned contractor-operated laboratories the same authority to enter into cooperative research and development agreements (CRADAs) which the Federal Technology Transfer Act of 1986 had given to Government-owned Government-operated laboratories and also provided for the protection from dissemination of certain types of information generated under CRADAs. Section 3133(d) of the Act required, by April 30, 1990, each agency which had contracted with a non-Federal entity to operate a Government-owned laboratory to propose for inclusion in that laboratory's operating contract, appropriate contract provisions to implement the requirements of the Act. The National Competitiveness Technology Transfer Act of 1989, as amended by Sections 3134 and 3160 of the National Defense Authorization Act for Fiscal Year 1994, established technology transfer as a mission for Government-owned, contractor-operated laboratories as well as for weapon production facilities. It also authorized such laboratories and weapon facilities to negotiate and award CRADAs with other Federal agencies, State and local governments, industrial organizations, public and private foundations, nonprofit organizations and other persons for the purposes of transferring technology and conducting research and development. Additionally, Sec. 3133(a)(7) of the Act allows certain types of information generated under CRADAs to be protected from disclosure under the Freedom of Information Act for a period of up to five years.

The promulgation and use of a final version of a technology transfer contract clause for DOE laboratories and weapon production facilities operated by

management and operating contractors, which is proposed in this rulemaking, will minimize unnecessary differences in policies and procedural requirements among various laboratories and weapon production facilities. This is expected to benefit the prospective CRADA or other industrial participants by improving both the speed and certainty of the technology transfer process.

The clause requires that the availability of technology transfer opportunities be well publicized with enough general detail to quickly attract private sector participants with the capabilities to fully exploit the technology's commercial applications while benefitting the U.S. economy. It requires that all aspects of the technology transfer program are handled to avoid real or perceived conflict of interest and that commercially valuable data, including marketing and financial data, are appropriately handled and protected. As required by the Act, the proposed rule requires that all new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts will have technology transfer as a laboratory or facility mission.

## II. Section-by-Section Analysis

A detailed list of additions and changes follows.

1. The authority citation for part 970 is revised to add a reference to the authorities provided by the National Competitiveness Technology Transfer Act of 1989, as amended by Sections 3134 and 3160 of Public Law 103-160.

2. The clause for a laboratory or weapon production facility management and operating contract is added as a new section 970.5204-X, Technology Transfer Mission.

3. A new subpart 970.73, Technology Transfer, and a new section thereunder, 970.7310, General, are added to summarize the DOE technology transfer mission and its conduct in DOE owned-facilities. Two additional new sections, 970.7320, Policy, and 970.7330, Contract Clause, are added to describe the circumstances when technology transfer is to be made a contract requirement of a management and operating contract for the operation of a laboratory or weapon production facility and the clause reference to be used in a solicitation and contract award.

## III. Procedural Requirements

### A. Regulatory Review Under Executive Order 12866

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive

Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

### B. Review Under Executive Order 12612

Executive Order 12612 (52 FR 41285, October 30, 1987) requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the national government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action.

Today's proposed rule, when finalized, will revise certain policy and procedural requirements. However, DOE has determined that none of the revisions will have a substantial direct effect on the institutional interests or traditional functions of the States.

### C. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and (b) of Executive Order 12778.

### D. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96-354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have significant economic impact on a substantial number of small entities. This proposed rule will have no impact on interest rates, tax policies or

liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

### E. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

### F. Review Under the National Environmental Policy Act (NEPA)

DOE has concluded that promulgation of this rule falls into a class of actions (categorical exclusion A5) that are categorically excluded from NEPA review because they would not individually or cumulatively have significant impact on the human environment, as determined by the Department's regulations (10 CFR Part 1021, Subpart D) implementing the National Environmental Policy Act of 1969 (42 U.S.C. 4321, 4331-4335, 4341-4347 (1976)). Therefore, this rule does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

## IV. Public Comments

Interested persons are invited to participate by submitting data, views, or arguments with respect to the proposed Department of Energy Acquisition Regulation amendments set forth in this notice. Three copies of written comments should be submitted to the address indicated in the ADDRESSES section of this notice. All comments received will be available for public inspection in the DOE Reading Room, Room 1E-190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date indicated in the DATES section of this notice and all other relevant information in the record will be carefully assessed and fully considered prior to publication of the proposed amendment as a final rule. Any information considered to be confidential must be so identified and submitted in writing, one copy only. DOE reserves the right to determine the confidential status of the information

and to treat it according to our determination (See 10 CFR 1004.11).

## V. Public Hearing

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Pub. L. 95-91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

### List of Subjects in 48 CFR Part 970

Government procurement.

Issued in Washington, DC on May 17, 1995.

#### Richard H. Hopf,

*Deputy Assistant Secretary for Procurement and Assistance Management.*

For the reasons set forth in the preamble 48 CFR Part 970 is proposed to be amended as set forth below:

### PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for Part 970 is revised to read as follows:

**Authority:** Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201), Sec. 644 of the Department of Energy Organization Act, Pub. L. 95-91 (42 U.S.C. 7254), Sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420), Sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99-145 (42 U.S.C. 7256a), as amended; and Sec. 3131, 3132, 3133, and 3157 of the National Competitiveness Technology Transfer Act of 1989, Pub. L. 101-189 (15 U.S.C. 3710 et seq.), and as amended by Sec. 3134 and 3160 of Pub. L. 103-160.

2. Section 970.5204-X, Technology Transfer Mission, is added to read as follows:

#### 970.5204-X Technology transfer mission.

As prescribed in subpart 970.73, insert the following clause:

#### Technology Transfer Mission (Xxx, 1995)

This clause has as its purpose implementation of the National Competitiveness Technology Transfer Act of 1989 (Sections 3131, 3132, 3133, and 3157 of Pub. L. 101-189 and as amended by Pub. L. 103-160, Sections 3134 and 3160). The Contractor shall conduct technology transfer activities with a purpose of providing benefit from Federal research to U.S. industrial competitiveness.

(a) *Authority.* (1) In order to ensure the full use of the results of research and development efforts of, and the capabilities of, the Laboratory, technology transfer,

including Cooperative Research and Development Agreements (CRADAs), is established as a mission of the Laboratory consistent with the policy, principles and purposes of Sections 11(a)(1) and 12(g) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a); Section 3132(b) of Pub. L. 101-189, Sections 3134 and 3160 of P.L. 103-160, and of Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.); Section 152 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2182); Section 9 of the Federal Nonnuclear Energy Research and Development Act of 1974 (42 U.S.C. 5908); and Executive Order 12591 of April 10, 1987.

(2) In pursuing the technology transfer mission, the Contractor is authorized to conduct activities including but not limited to: identifying and protecting Intellectual Property made, created or acquired at or by the Laboratory; negotiating licensing agreements and assignments for Intellectual Property made, created or acquired at or by the Laboratory that the Contractor controls or owns; bailments; negotiating all aspects of and entering into CRADAs; providing technical consulting and personnel exchanges; conducting science education activities and reimbursable Work for Others (WFO); providing information exchanges; and making available laboratory or weapon production user facilities. It is fully expected that the Contractor shall use all of the mechanisms available to it to accomplish this technology transfer mission, including, but not limited to, CRADAs, user facilities, WFO, science education activities, consulting, personnel, assignments, and licensing in accordance with this clause.

(b) *Definitions.* (1) *Contractor's Laboratory Director* means the individual who has supervision over all or substantially all of the Contractor's operations at the Laboratory.

(2) *Intellectual Property* means patents, trademarks, copyrights, mask works, protected CRADA information, and other forms of comparable property rights protected by Federal Law and other foreign counterparts.

(3) *Cooperative Research and Development Agreement (CRADA)* means any agreement entered into between the Contractor as operator of the Laboratory, and one or more parties including at least one non-Federal party under which the Government, through its laboratory, provides personnel, services, facilities, equipment, intellectual property, 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, intellectual property, or other resources toward the conduct of specified research or development efforts which are consistent with the missions of the Laboratory; except that such term does not include a procurement contract, grant, or cooperative agreement as those terms are used in sections 6303, 6304, and 6305 of Title 31 of the United States Code.

(4) *Joint Work Statement (JWS)* means a proposal for a CRADA prepared by the Contractor, signed by the Contractor's Laboratory Director or designee which describes the following:

(i) Purpose;

(ii) Scope of Work which delineates the rights and responsibilities of the Government, the Contractor and Third Parties, one of which must be a non-Federal party;

(iii) Schedule for the work; and

(iv) Cost and resource contributions of the parties associated with the work and the schedule.

(5) *Assignment* means any agreement by which the Contractor transfers ownership of Laboratory Intellectual Property, subject to the Government's retained rights.

(6) *Laboratory Biological Materials* means biological materials capable of replication or reproduction, such as plasmids, deoxyribonucleic acid molecules, ribonucleic acid molecules, living organisms of any sort and their progeny, including viruses, prokaryote and eukaryote cell lines, transgenic plants and animals, and any derivatives or modifications thereof or products produced through their use or associated biological products, made under this contract by Laboratory employees or through the use of Laboratory research facilities.

(7) *Bailment* means any agreement in which the Contractor permits the commercial or non-commercial transfer of custody, access or use of Laboratory Biological Materials for a specified purpose of technology transfer or research and development, including without limitation evaluation, and without transferring ownership to the bailee.

(c) *Allowable Costs.* (1) The Contractor shall establish and carry out its technology transfer efforts through appropriate organizational elements consistent with the requirements for an Office of Research and Technology Applications (ORTA) pursuant to paragraphs (b) and (c) of Section 11 of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710). The costs associated with the conduct of technology transfer through the ORTA including activities associated with obtaining, maintaining, licensing, and assigning Intellectual Property rights, increasing the potential for the transfer of technology, and the widespread notice of technology transfer opportunities, shall be deemed allowable provided that such costs meet the other requirements of the allowable costs provisions of this Contract. In addition to any separately designated funds, these costs in any fiscal year shall not exceed an amount equal to 0.5 percent of the operating funds included in the Federal research and development budget (including Work For Others) of the Laboratory for that fiscal year without written approval of the Contracting Officer.

(2) The Contractor's participation in litigation to enforce or defend Intellectual Property claims incurred in its technology transfer efforts shall be as provided in the clause entitled "Litigation and Claims" of this Contract.

(d) *Conflicts of Interest—Technology Transfer.* The Contractor shall have implementing procedures that seek to avoid employee and organizational conflicts of interest, or the appearance of conflicts of interest, in the conduct of its technology

transfer activities. Such implementing procedures shall be provided to the Contracting Officer for review and approval within sixty (60) days after execution of this contract. The Contracting Officer shall have thirty (30) days thereafter to approve or require specific changes to such procedures. Such implementing procedures shall include procedures to:

(1) Inform employees of and require conformance with standards of conduct and integrity in connection with the CRADA activity in accordance with the provisions of paragraph (n)(5) of this clause;

(2) Review and approve employee activities so as to avoid conflicts of interest arising from commercial utilization activities relating to Contractor-developed Intellectual Property;

(3) Conduct work performed using royalties so as to avoid interference with or adverse effects on ongoing DOE projects and programs;

(4) Conduct activities relating to commercial utilization of Contractor-developed Intellectual Property so as to avoid interference with or adverse effects on user facility or WFO activities of the Contractor;

(5) Conduct DOE-funded projects and programs so as to avoid the appearance of conflicts of interest or actual conflicts of interest with non-Government funded work;

(6) Notify the Contracting Officer with respect to any new work to be performed or proposed to be performed under the Contract for DOE or other Federal agencies where the new work or proposal involves Intellectual Property in which the Contractor has obtained or intends to request or elect title;

(7) Except as provided elsewhere in this Contract, obtain the approval of the Contracting Officer for any licensing of or assignment of title to Intellectual Property rights by the Contractor to any business or corporate affiliate of the Contractor;

(8) Obtain the approval of the Contracting Officer prior to any assignment, exclusive licensing, or option for exclusive licensing, of Intellectual Property to any person who has been a Laboratory employee within the previous two years or to the company in which he or she is a principal; and

(9) Notify non-Federal sponsors of WFO activities, or non-Federal users of user facilities, of any relevant Intellectual Property interest of the Contractor prior to execution of WFOs or user agreements.

(10) Notify DOE prior to evaluating a proposal submitted by a third party or DOE, when the subject matter of the proposal involves an elected or waived subject invention or one in which the Contractor intends to elect to retain title.

(e) *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.

(f) *U.S. Industrial Competitiveness.* (1) In the interest of enhancing U.S. Industrial Competitiveness, the Contractor shall, in its licensing and assignments of Intellectual Property, give preference in such a manner as to enhance the accrual of economic and technological benefits to the U.S. domestic economy. The Contractor shall consider the following factors in all of its licensing and assignment decisions:

(i) Whether any resulting design and development will be performed in the United States and whether resulting products, embodying parts, including components thereof, will be substantially manufactured in the United States; or

(ii) (A) Whether the proposed licensee or assignee has a business unit located in the United States and whether significant economic and technical benefits will flow to the United States as a result of the license or assignment agreement; and

(B) In licensing any entity subject to the control of a foreign company or government, whether such foreign government permits United States agencies, organizations or other persons to enter into cooperative research and development agreements and licensing agreements, and has policies to protect United States Intellectual Property rights.

(2) If the Contractor determines that neither of the conditions in paragraphs (f)(1) (i) or (ii) of this clause are likely to be fulfilled, the Contractor, prior to entering into such an agreement, must obtain the approval of the Contracting Officer. The Contracting Officer shall act on any such requests for approval within thirty (30) days.

(3) The Contractor agrees to be bound by the provisions of 35 U.S.C. 204.

(g) *Indemnity—Product Liability.* In entering into written technology transfer agreements, including but not limited to, research and development agreements, licenses, assignments and CRADAs, the Contractor agrees to include in such agreements a requirement that the U.S. Government and the Contractor, except for any negligent acts or omissions of the Contractor, be indemnified for all damages, costs, and expenses, including attorneys' fees, arising from personal injury or property damage occurring as a result of the making, using or selling of a product, process or service by or on behalf of the Participant, its assignees or licensees which was derived from the work performed under the agreement. The Contractor shall identify and obtain the approval of the Contracting Officer for any proposed exceptions to this requirement such as where State or local law expressly prohibit the Participant from providing indemnification or where the research results will be placed in the public domain.

(h) *Disposition of Income.* (1) Royalties or other income earned or retained by the Contractor as a result of performance of authorized technology transfer activities herein shall be used by the Contractor for scientific research, development, technology transfer, and education at the Laboratory, consistent with the research and development mission and objectives of the Laboratory and subject to Section 12(b)(5) of the Stevenson-Wydler Technology

Innovation Act of 1980, as amended (15 U.S.C. 3710a(b)(5)) and Chapter 38 of the Patent Laws (35 U.S.C. 200 et seq.) as amended through the effective date of this contract award or modification. If the amounts of such royalties and income received during any fiscal year exceed 5 percent of the Laboratory's budget for that fiscal year, 75 percent of such excess amounts shall be paid to the Treasury of the United States, and the remaining amount of such excess shall be used by the Contractor for the purposes as described above in this paragraph. Any inventions arising out of such scientific research and development activities shall be deemed to be "Subject Inventions" under the Contract.

(2) The Contractor shall include as a part of its annual Laboratory Institutional Plan or other such annual document a plan setting out those uses to which royalties and other income received as a result of performance of authorized technology transfer activities herein will be applied at the Laboratory, and at the end of the year, provide a separate accounting for how the funds were actually used. Under no circumstances shall these royalties and income be used for an illegal augmentation of funds furnished by the U.S. Government.

(3) The Contractor shall establish subject to the approval of the Contracting Officer a policy for making awards or sharing of royalties with Contractor employees, other coinventors and coauthors, including Federal employee coinventors when deemed appropriate by the Contracting Officer.

(i) *Transfer to Successor Contractor.* In the event of termination or upon the expiration of this Contract, any unexpended balance of income received for use at the Laboratory shall be transferred, at the Contracting Officer's request, to a successor contractor, or in the absence of a successor contractor, to such other entity as designated by the Contracting Officer. The Contractor shall transfer title, as one package, to the extent the Contractor retains title, in all patents and patent applications, licenses, accounts containing royalty revenues from such license agreements, including equity positions in third party entities, and other Intellectual Property rights which arose at the Laboratory, to the successor contractor or to the Government as directed by the Contracting Officer.

(j) *Technology Transfer Affecting the National Security.* (1) The Contractor shall notify and obtain the approval of the Contracting Officer, prior to entering into any technology transfer arrangement, when such technology or any part of such technology is classified or sensitive under Section 148 of the Atomic Energy Act (42 U.S.C. 2168). Such notification shall include sufficient information to enable DOE to determine the extent that commercialization of such technology would enhance or diminish security interests of the United States, or diminish communications within DOE's nuclear weapon production complex. DOE shall use its best efforts to complete its determination within sixty (60) days of the Contractor's notification, and provision of any supporting information, and DOE shall promptly notify the Contractor as to whether the technology is transferable.

(2) The Contractor shall include in all of its technology transfer agreements with third parties, including, but not limited to, CRADAs, licensing agreements and assignments, notice to such third parties that the export of goods and/or Technical Data from the United States may require some form of export control license or other authority from the U.S. Government and that failure to obtain such export control license may result in criminal liability under U.S. laws.

(3) For other than fundamental research as defined in National Security Decision Directive 189, the Contractor is responsible to conduct internal export control reviews and assure that technology is transferred in accordance with applicable law.

(k) *Records.* The Contractor shall maintain records of its technology transfer activities in a manner and to the extent satisfactory to the DOE and specifically including, but not limited to, the licensing agreements, assignments and the records required to implement the requirements of paragraphs (e), (f), and (h) of this clause and shall provide reports to the Contracting Officer to enable DOE to maintain the reporting requirements of Section 12(c)(6) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(6)). Such reports shall be made annually in a format to be agreed upon between the Contractor and DOE and in such a format which will serve to adequately inform DOE of the Contractor's technology transfer activities while protecting any data not subject to disclosure under the Rights in Technical Data clause and paragraph (n) of this clause. Such records shall be made available in accordance with the clauses of this Contract pertaining to inspection, audit and examination of records.

(l) *Reports to Congress.* To facilitate DOE's reporting to Congress, the Contractor is required to submit annually to DOE a technology transfer plan for conducting its technology transfer function for the upcoming year, including plans for securing Intellectual Property rights in Laboratory innovations with commercial promise and plans for managing such innovations so as to benefit the competitiveness of United States industry. This plan shall be provided to the Contracting Officer on or before October 1st of each year.

(m) *Oversight and Appraisal.* The Contractor is responsible for developing and implementing effective internal controls for all technology transfer activities consistent with the audit and record requirements of this Contract. Laboratory Contractor performance in implementing the technology transfer mission and the effectiveness of the Contractor's procedures will be evaluated by the Contracting Officer as part of the annual appraisal process, with input from the cognizant Secretarial Officer or program office.

(n) *Technology Transfer Through Cooperative Research and Development Agreements.* Upon approval of the Contracting Officer and as provided in a DOE approved Joint Work Statement (JWS), the Laboratory Director or his designee may enter into CRADAs on behalf of the DOE subject to the requirements set forth herein.

(1) *Review and Approval of CRADAs.* (i) Except as otherwise directed in writing by the Contracting Officer, each JWS shall be submitted to the Contracting Officer for approval. The Contractor's Laboratory Director or designee shall provide a program mission impact statement and shall include an impact statement regarding related Intellectual Property rights known by the Contractor to be owned by the Government to assist the Contracting Officer in his approval determination.

(ii) The Contractor shall also include (specific to the proposed CRADA), a statement of compliance with the Fairness of Opportunity requirements of paragraph (e) of this clause.

(iii) Within ninety (90) days after submission of a JWS, the Contracting Officer shall approve, disapprove or request modification to the JWS. If a modification is required, the Contracting Officer shall approve or disapprove any resubmission of the JWS within thirty (30) days of its resubmission, or ninety (90) days from the date of the original submission, whichever is later. The Contracting Officer shall provide a written explanation to the Contractor's Laboratory Director or designee of any disapproval or requirement for modification of a JWS.

(iv) Upon approval of a JWS, the Contractor's Laboratory Director or designee may submit a CRADA, based upon the approved JWS, to the Contracting Officer. The Contracting Officer, within thirty (30) days of receipt of the CRADA, shall approve or request modification of the CRADA. If the Contracting Officer requests a modification of the CRADA, an explanation of such request shall be provided to the Laboratory Director or designee.

(v) Except as otherwise directed in writing by the Contracting Officer, the Contractor shall not enter into, or begin work under, a CRADA until approval of the CRADA has been granted by the Contracting Officer. The Contractor may submit its proposed CRADA to the Contracting Officer at the time of submitting its proposed JWS or any time thereafter. However, the Contracting Officer is not obligated to respond under paragraph (n)(1)(iv) of this clause until within thirty (30) days after approval of the JWS or thirty (30) days after submittal of the CRADA, whichever is later.

(2) *Selection of Participants* The Contractor's Laboratory Director or designee in deciding what CRADA to enter into shall:

(i) Give special consideration to small business firms, and consortia involving small business firms;

(ii) Give preference to business units located in the United States which agree that products or processes embodying Intellectual Property will be substantially manufactured or practiced 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 consideration whether or not such foreign government permits United States agencies, organizations, or other persons to enter into cooperative research and development agreements and licensing agreements;

(iii) Provide Fairness of Opportunity in accordance with the requirements of paragraph (e) of this clause; and

(iv) Give consideration to the Conflicts of Interest requirements of paragraph (d) of this clause.

(3) *Withholding of Data*

(i) Data that is first produced as a result of research and development activities conducted under a CRADA and that would be a trade secret or commercial or financial data that would be privileged or confidential, if such data had been obtained from a non-Federal third party, may be protected from disclosure under the Freedom of Information Act as provided in the Stevenson-Wydler Technology Innovation Act of 1980, as amended (15 U.S.C. 3710a(c)(7)) for a period as agreed in the CRADA of up to five (5) years from the time the data is first produced. The DOE shall cooperate with the Contractor in protecting such data.

(ii) Unless otherwise expressly approved by the Contracting Officer in advance for a specific CRADA, the Contractor agrees, at the request of the Contracting Officer, to transmit such data to other DOE facilities for use by DOE or its Contractors by or on behalf of the Government. When data protected pursuant to paragraph (n)(3)(i) of this clause is so transferred, the Contractor shall clearly mark the data with a legend setting out the restrictions against private use and further dissemination, along with the expiration date of such restrictions.

(iii) In addition to its authority to license Intellectual Property, the Contractor may enter into licensing agreements with third parties for data developed by the Contractor under a CRADA subject to other provisions of this Contract. However, the Contractor shall neither use the protection against dissemination nor the licensing of data as an alternative to the submittal of invention disclosures which include data protected pursuant to paragraph (n)(3)(i) of this clause.

(4) *Work For Others and User Facility Programs.* (i) WFO and User Facility Agreements (UFAs) are not CRADAs and will be available for use by the Contractor in addition to CRADAs for achieving utilization of employee expertise and unique facilities for maximizing technology transfer. The Contractor agrees to inform prospective CRADA participants, which are intending to substantially pay full cost recovery for the effort under a proposed CRADA, of the availability of alternative forms of agreements, i.e., WFO and UFA, and of the Class Patent Waiver provisions associated therewith.

(ii) Where the Contractor believes that the transfer of technology to the U. S. domestic economy will benefit from, or other equity considerations dictate, an arrangement other than the Class Waiver of patent rights to the sponsor in WFO and UFAs, a request may be made to the Contracting Officer for an exception to the Class Waivers.

(iii) Rights to inventions made under agreements other than funding agreements with third parties shall be governed by the appropriate provisions incorporated, with DOE approval, in such agreements, and the provisions in such agreements take precedence over any disposition of rights

contained in this Contract. Disposition of rights under any such agreement shall be in accordance with any DOE class waiver (including Work for Others and User Class Waivers) or individually negotiated waiver which applies to the agreement.

(5) *Conflicts of Interest.* (i) Except as provided in paragraph (n)(5)(iii) of this clause, the Contractor shall assure that no employee of the Contractor shall have a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA, if, to such employee's knowledge:

(A) Such employee, or the spouse, child, parent, sibling, or partner of such employee, or an organization (other than the Contractor) in which such employee serves as an officer, director, trustee, partner, or employee—

(1) Holds financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA;

(2) Receives a gift or gratuity from any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA; or

(B) A financial interest in any entity, other than the Contractor, that has a substantial interest in the preparation, negotiation, or approval of the CRADA, is held by any person or organization with whom such employee is negotiating or has any arrangement concerning prospective employment.

(ii) The Contractor shall require that each employee of the Contractor who has a substantial role (including an advisory role) in the preparation, negotiation, or approval of a CRADA certify through the Contractor to the Contracting Officer that the circumstances described in paragraph (n)(5)(i) of this clause do not apply to that employee.

(iii) The requirements of paragraphs (n)(5)(i) and (n)(5)(ii) of this clause shall not apply in a case where the Contracting Officer is advised by the Contractor in advance of the participation of an employee described in those paragraphs in the preparation, negotiation or approval of a CRADA of the nature of and extent of any financial interest described in paragraph (n)(5)(i) of this clause, and the Contracting Officer determines that such financial interest is not so substantial as to be considered likely to affect the integrity of the Contractor employee's participation in the process of preparing, negotiating, or approving the CRADA.

(o) *Technology Transfer in Other Cost-Sharing Agreements.* In conducting research and development activities in cost-shared

agreements not covered by paragraph (n) of this clause, the Contractor, with prior written permission of the Contracting Officer, may provide for the withholding of data produced thereunder in accordance with the applicable provisions of paragraph (n)(3) of this clause.

(End of clause)

Alternate I (Xxx 1995). As prescribed in 970.7330(b), add the following definition under paragraph (b) and new paragraph (p):

(b)(8) *Privately funded technology transfer* means the prosecuting, maintaining, licensing, and marketing of inventions which are not owned by the Government (and not related to CRADAs) when such activities are conducted entirely without the use of Government funds.

(p) Nothing in paragraphs (c) Allowable Costs, (e) Fairness of Opportunity, (f) U.S. Industrial Competitiveness, (g) Indemnity—Product Liability, (h) Disposition of Income, and (i) Transfer to Successor Contractor above are intended to apply to the contractor's privately funded technology transfer activities if such privately funded activities are addressed elsewhere in the contract.

Alternate II (Xxx 1995). As prescribed in 970.7330(c), the phrase "weapon production facility" may be substituted wherever the word "laboratory" appears in the clause.

3. A new subpart 970.73, Technology Transfer, consisting of sections 970.7310, 970.7320, and 970.7330, is added to read as follows:

**Subpart 970.73 Technology Transfer**

Secs.  
970.7310 General.  
970.7320 Policy.  
970.7330 Contract Clause.

**Subpart 970.73—Technology Transfer**

**970.7310 General.**

This subpart prescribes policies and procedures for implementing the National Competitiveness Technology Transfer Act of 1989. The Act required that technology transfer be established as a mission of each Government-owned laboratory operated under contract by a non-Federal entity. The National Defense Authorization Act for Fiscal Year 1994 expanded the definition of laboratory to include weapon production facilities that are operated for national security purposes and are

engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

**970.7320 Policy.**

All new awards for or extensions of existing DOE laboratory or weapon production facility management and operating contracts shall have technology transfer, including authorization to award Cooperative Research and Development Agreements (CRADAs), as a laboratory or facility mission under Section 11(a)(1) of the Stevenson-Wydler Technology Innovation Act of 1980, as amended. A management and operating contractor for a facility not deemed to be a laboratory or weapon production facility may be authorized on a case-by-case basis to support the DOE technology transfer mission including, but not limited to, participating in CRADAs awarded by DOE laboratories and weapon production facilities.

**970.7330 Contract clause.**

(a) The contracting officer shall insert the clause at 970.5204-X, Technology transfer mission, in each solicitation for a new or an extension of an existing laboratory or weapon production facility management and operating contract.

(b) If the contractor is a nonprofit organization or small business eligible under 35 U.S.C. 200 *et seq.*, to receive title to any inventions under the contract and proposes to fund at private expense the maintaining, licensing, and marketing of the inventions, the contracting officer shall use the basic clause with its Alternate I.

(c) The contracting officer may substitute the Alternate II phrase "weapon production facility" wherever the word "laboratory" appears in the clause where the facility is operated for national security purposes and engaged in the production, maintenance, testing, or dismantlement of a nuclear weapon or its components.

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