Department of Energy
Washington, DC 20585

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TO: DEPARTMENT OF ENERGY NATIONAL LABORATORIES

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PRINCIPAL DEPUTY ASSISTANT SECRETARY FOR NUCLEAR ENERGY

SUBJECT: POLICY GUIDANCE – COMMERCIALIZATION PREFERENCE FOR NE-FUNDED TECHNOLOGIES

POLICY SUMMARY

The U.S. Department of Energy (DOE) Office of Nuclear Energy (NE) is issuing this guidance regarding the commercialization of NE-funded technologies. With this guidance, NE is establishing a policy preference for the dedication to the public of such technology, where it is made freely available to the public with few or no intellectual property restrictions, or the non-exclusive licensing of technology developed with NE funding. This policy is consistent with public statements made previously by NE that Research & Development (R&D) funded by NE should be made available as broadly as possible.[1] This preference is applicable to all NE-funded R&D regardless of the legal mechanism which NE uses to provide the funding.

Recognizing that the contractors who manage National Laboratories for DOE according to Management & Operating (M&O) contracts (DOE National Laboratory contractors) generally have rights under the Bayh-Dole Act[2], including the right to elect title to federally-funded inventions and license those inventions per the technology transfer mission clauses of the M&O contracts, this policy is intended to be a significant factor that the National Laboratory M&O contractors are expected to weigh when structuring and negotiating the licensing of NE-funded technologies, even when owned by the contractor. In the extraordinary circumstance in which a National Laboratory wants to

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[1] For example, DOE Program Review presentations dated May 2020.

[2] With few exceptions, inventions conceived or reduced to practice with the assistance of the Federal funding is subject to the Bayh-Dole Act. Bayh-Dole permits businesses and nonprofit organizations to elect to retain title of such inventions, if certain obligations are met. However, the government retains certain rights to the invention. To allow for a uniform patent policy among the funding agencies, specific obligations of the parties are set out in the Bayh-Dole Act and Federal agencies are required to use standard funding agreement clauses setting out such obligations. 37 C.F.R. §401.14(a). Furthermore, businesses and nonprofits that receive funding under a Federal government agreement (e.g., contract, cooperative agreement, or grant) executed after May 14, 2018, are subject to the updated regulatory provisions of the Bayh-Dole Act. (35 U.S.C. 200 - Policy and objective - Content Details - USCODE-2023-title35-partII-chap18-sec200)

exclusively license a NE funded technology, NE expects the National Laboratory M&O contractor to consult with NE leadership and DOE Patent Counsel prior to entering into such an exclusive license. The purpose of this consultation is to verify that all parties agree that the exclusive license is the best vehicle for advancing DOE's mission and interests, including maximizing commercialization and broadly disseminating the NE-funded technology.

BACKGROUND

The nuclear industry is entering into a renaissance as demand increases for power generation based on carbon-free technologies to meet the ever-increasing needs for electricity, such as powering data centers and modern manufacturing facilities. NE is pursuing policies and programs to enable the global deployment of technologies it funds, to include advanced nuclear reactors and nuclear fuel supply chains. In doing so, NE is working to close gaps in nuclear energy research and development infrastructure, capabilities, and staffing to support innovations in advanced reactor deployment, and reduce risk and the time needed to deploy advanced nuclear technology domestically and abroad. For example, NE seeks to address gaps in the domestic nuclear fuel supply chain for both existing and advanced nuclear reactors by accelerating Research, Development, Demonstration, and Deployment (RDD&D) in nuclear fuel cycle technologies in collaboration with the DOE National Laboratories, private industry, universities, international partners, and others.

NE goals include promoting the rapid deployment and broad dissemination of its funded technologies, including fuel technology developments to encourage expansion of domestic capacity in the front end of the nuclear fuel cycle. NE considers exclusive licensing of NE funded technologies to be generally counterproductive in achieving these goals. Therefore, the exclusive licensing of NE funded technologies should be infrequent and occur only in consultation with the NE funding program director and DOE patent counsel.

This policy is in line with and promotes general Federal policies regarding the commercialization and distribution of Federally funded technologies. Per Administration guidance[3], public access to Federally funded research and data is critical for accelerating discovery, fostering collaboration, advancing equity, ensuring government accountability, and maximizing America's returns on its billions of dollars in investments in research.

GUIDANCE

The following guidance will assist the DOE National Laboratory M&O contractors in implementing this NE policy of prioritizing the public dissemination or non-exclusive licensing of NE-funded technologies.

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[3] New Guidance to Ensure Federally Funded Research Data Equitably Benefits All of America | OSTP | The White House, whitehouse.gov, last accessed December 5, 2024

NE acknowledges that the DOE National Laboratory M&O contractors have established processes to safeguard U.S. Government retained rights by licensing Laboratory-owned technologies, consistent with requirements in their prime contracts, DOE policies, export control laws, and other statutes. This policy is not intended to change or alter any statutory or regulatory right of the DOE National Laboratory M&O contractors, but to give NE an opportunity to assure that its policy preferences and goals are adequately taken into account during the licensing process. Therefore, in addition to the DOE National Laboratory M&O contractor procedures, DOE National Laboratory M&O contractors should include consideration of the following NE policy factors when preparing to license or distribute technology funded by NE, including when such technology is owned by the National Laboratory M&O contractor.

a. For each technology funded partially or in whole with NE funding, NE requests that the DOE National Laboratory M&O contractors shall either:

  - distribute the technology to the public as open technology, e.g., via publication, except as restricted by DOE statutes, regulations, and policies that protect certain Federally funded research from public disclosure; or
  - make the technology available for non-exclusive licensing; or
  - consult with NE on the policy implications of an exclusive licensing arrangement when the DOE National Laboratory M&O contractor determines (or anticipates in the case of a Cooperative Research and Development Agreement (CRADA)) that a request by an external entity for an exclusive license is the best method for commercialization and distribution of the NE funded technology. In this context, the consultation may take the form of:

    engaging with and receiving feedback from the cognizant NE Office Director or Deputy Assistant Secretary for the funding program prior to making the technology available for exclusive license; or

    discussing the licensing arrangement during negotiation of a CRADA[4] with NE.

    For example, an appropriate engagement for either the exclusive license or he CRADA would be briefing the cognizant NE Office Director or Deputy Assistant Secretary and receiving timely written feedback from NE after that briefing. NE will work with the DOE National Laboratory M&O contractor(s) to ensure that the written feedback is provided in a timely fashion.

b. Periodically, but no more than annually, NE intends to conduct a review of each DOE National Laboratory M&O contractor's dissemination and licensing of

[4] This policy does not affect the National Laboratories' statutory obligation to ensure, inter alia, that its CRADA partners have the option to choose an exclusive license for a pre-negotiated field of use for any such invention under the CRADA pursuant to 15 USC 3710a (b).

technology funded by NE programs. NE may use the results of these reviews in making determinations regarding continued funding of any particular DOE National Laboratory M&O contractor or program.

CONCLUSION

For the reasons discussed above, NE intends that the technology developed by DOE National Laboratories under its funding be available for broader nuclear community use to realize the public policy goals of the rapid deployment of its funded nuclear technologies and for securing and promoting robust domestic supply chains for fuel. NE expects that this policy regarding DOE National Laboratory M&O contractor release, dissemination, and commercialization of NE-funded technologies will be taken into consideration within the framework of existing National Laboratory M&O contractor policies and procedures for the release and distribution of technologies funded by NE and owned by DOE National Laboratory M&O contractors.