

CHAPTER 18
FINANCIAL MANAGEMENT OF CONTRACTOR ROYALTIES AND
OTHER LICENSING INCOME

Table of Contents

I. INTRODUCTION.....	2
I.A. Purpose	2
I.B. Applicability	2
I.C. Background.....	2
I.D. Exclusions.....	2
I.E. Financial Management Responsibilities	3
II.REQUIREMENTS.....	4
II.A. Exclusion from DOE Accounting Records	4
II.B. Contractor Accounting.....	5
II.C. Collections	5
II.D. Use of Licensing Revenue for DOE Contract Activities	6
II.E. Excess Income from Licensing Activities	6
II.F. Reporting	6
II.G.Transfer of Assets	6
III.ACRONYMS.....	7
IV.REFERENCES.....	7

I. Introduction

I.A. Purpose

This chapter clarifies DOE and contractor responsibilities and procedures to account for and report royalties and other income resulting from licensing of government-funded inventions at DOE contractor-operated sites.

I.B. Applicability

This chapter applies to contracts containing the clause 48 CFR 970.5227-3, *Technology Transfer Mission* and to DOE offices with financial management oversight responsibilities for applicable contracts.¹ References to contractors in this chapter refer specifically to entities performing contracts that include the clause at 48 CFR 970.5227-3.

I.C. Background

I.C.1. Bayh-Dole Act of 1980

In 1980, Congress passed the Bayh-Dole Act of 1980 (Public Law 96-517) authorizing non-profit and small business contractors to retain the title of government funded inventions to incentivize commercialization. DOE's contractor operated facilities operated by non-profit organizations therefore may retain title to inventions, including the right to collect royalties. Other entities, for example large businesses, are provided similar rights through a DOE patent waiver. In each case, the authorization is reflected in the contract with DOE.

I.C.2. National Competitiveness Technology Transfer Act of 1989

The Department of Energy National Competitiveness Technology Transfer Act of 1989 established technology transfer as a mission for Government-owned, contractor-operated facilities, including weapons production facilities, and authorizes those facilities to negotiate and award cooperative research and development agreements with public and private entities for purposes of conducting research and development and transferring technology to the private sector.

The Department has authorized specified contractors (see I.B of this chapter) to patent and license Intellectual Property (IP) arising from research and development (R&D) activities and through technology partnering arrangements, encouraged its contractors to collaborate with non-federal entities on R&D activities.

I.D. Exclusions

I.D.1. Government-Owned Intellectual Property

This chapter does not apply to government-owned intellectual property or royalties and other income or assets received by licensing government-owned intellectual property.

I.D.2. Use of Funds

This policy does not address compliance with respect to how DOE's M&O contractors use royalties or other income earned pursuant to the performance of authorized technology transfer activities².

I.D.3. Conflicts of Interest

This chapter does not provide requirements or guidance relating to the identification and prevention of conflicts of interest, which are specified in 48 CFR 970.5227-3, *Technology Transfer Mission*, paragraph (d) Conflicts of Interest - Technology Transfer.

I.D.4. Corporate Accounting and Reporting Requirements

This chapter addresses accounting and reporting requirements applicable to DOE's management of technology transfer activities consistent with DOE contract requirements.

This chapter does not address any separate public accounting and reporting requirements applicable to DOE contractors and their corporate parents that are not related to their contractual relationship with DOE.

I.D.5. National Energy Technology Laboratory

This chapter does not apply to the National Energy Technology Laboratory (NETL), a government owned and operated facility. Any licensing revenue or assets received by NETL represent DOE assets and must be accounted for in DOE's accounting records.

NETL must also provide information responsive to the Technology Transfer Annual Data Call.

I.E. Financial Management Responsibilities

I.E.1. Office of Technology Commercialization

As specified by DOE Policy 482.2³, *Laboratory Technology Transfer Data Collection and Management*, the Office of Technology Commercialization (OTC) is responsible for collecting a wide variety of metrics related to technology transfer, including information from DOE contractors regarding royalties and other income earned or retained as a result of technology transfer activities. This data collection activity is referred to as the DOE Annual Technology Transfer Data Call.

I.E.2. CFO Office of Finance and Accounting

The CFO Office of Finance and Accounting (CF-10) is responsible for assessing whether royalties and other income derived from

licensing of inventions requires the remittance of excess funds to the Department of Treasury, as specified at 48 CFR 970.5227-3, *Technology Transfer Mission*, paragraph (h)(1).

I.E.3. Program Offices are responsible for overseeing the management of the M&O contractor's annual laboratory institutional plan, and plans documenting the use of licenses, royalties, and other income, as specified in DOE P 112.1⁴

I.E.4. National Laboratory M&O Contractors

M&O contractors are responsible for managing, monitoring, accounting and reporting their licenses and resulting royalties and other income, consistent with contract requirements, including the clause at 48 CFR 970.5227-3.

Contractors must maintain appropriate internal controls for managing, monitoring, accounting, and reporting on licenses and resulting royalties and other income, consistent with contract requirements. Contractual requirements relating to internal controls include the clause at 48 CFR 970.5203-1, Management Controls, and the Contractor Requirements Document included in DOE Order 520.1B, *Financial Management and Chief Financial Officer Responsibilities*.

II. Requirements

II.A. Exclusion from DOE Accounting Records

Royalty or other income received for licensing contractor-owned intellectual property must 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, unless the threshold for excess income (see section II.E) is met.

Neither the contractor retained intellectual property nor any income deriving from the licensing of those assets are recorded in the DOE's accounting system, STARS⁵, as part of the official Departmental accounting records⁶, unless the threshold for excess income is met per the requirements described in section II.E of this chapter. When the excess income threshold is met (see section II.E. of this chapter), excess income must be accounted for in DOE accounting records. Accounting entries as needed are made by the CFO Office of Finance and Accounting.

II.B. Contractor Accounting

II.B.1. Separate Records and Set of Accounts

Technology transfer activities, including licensing of contractor-owned intellectual property, is performed under the M&O contract in a manner consistent with applicable contract provisions. Thus, contractors must maintain a separate, distinct set of accounts, records, and other supporting evidence or documentation representative of collections (including non-monetary assets such as equity) accruing to the contractor as result of technology transfer activities, consistent with the clause at 48 CFR 970.5232-3, *Accounts, Records, and Inspection*.

II.B.2. Licensing Activities

When contractors enter into license agreements that grant rights to third parties to commercialize technologies that embody or are made using DOE-funded intellectual property, the contractors are required to record financial information from each such license after execution, modification, amendment, and termination.

II.B.3. Financial Intangibles

When licensing or royalty terms include financial intangibles, such as equity holdings, as a part of the negotiated license or royalty consideration, an annual disclosure is required of any equity holdings or other assets received in consideration for licensing IP. This disclosure will be made by M&O contractors through the annual Technology Transfer Data Call.

Any revenues realized from sale or transfer of equity holdings are reported through the annual Technology Transfer Data Call by the contractor in the period in which the revenue is realized by sale or transfer of the equity holdings or other assets.

II.B.4. Expenses for Administration of Inventions

Contractors must comply with the provisions of 48 CFR 970.5227-3, paragraph (h) to report excess income. The calculation of net excess income (see section II.E of this chapter) may exclude expenses for administration of the inventions.

II.C. Collections

Contractor collections related to licenses, royalties, and other income, including revenue from the sale of equity holdings, must be segregated from other DOE collections relating to the performance of the DOE contract—they should not be collected in the DOE Letter of Credit account.

II.D. Use of Licensing Revenue for DOE Contract Activities

Activities funded by contractor licensing revenues that fall under the scope of the DOE contract must be funded in a manner consistent with contract requirements and applicable direction from the Contracting Officer.

II.E. Excess Income from Licensing Activities**II.E.1. General Requirement**

Net income from licensing activities in a given fiscal year that exceeds 5 percent of the annual budget of the contractor-operated facility constitutes excess income.⁷

II.E.2. Disposition of Excess Income

Fifteen percent of excess income shall be paid to the Treasury of the United States as miscellaneous receipts, consistent with requirements of the Stevenson-Wydler Technology Innovation Act of 1980, as specified in 48 CFR 970.5227-3, paragraph (h). The remaining 85 percent is retained by the contractor for allowable uses.

The CFO Office of Finance and Accounting is responsible for the identification of excess income and any required deposits to miscellaneous receipts resulting from excess income.

II.F. Reporting**II.F.1. Contractor Requirements**

DOE contractors must report financial data for technology transfer activities annually in accordance with contract requirements.

II.F.2. OTC Requirements

OTC is responsible for collecting financial information relating to technology transfer activities, consistent with DOE Policy 482.2, *Laboratory Technology Transfer Data Collection and Management*.

II.F.3. Provision of Financial Data to CFO

OTC will coordinate with the CFO Office of Finance and Accounting to ensure that data collection provides sufficient information to meet the requirements specified in II.E of this chapter.

OTC must provide the CFO Office of Finance and Accounting with financial data sufficient to meet the requirements specified in section II.E. of this chapter.

II.G. Transfer of Assets

In the event of termination or upon the expiration of 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. See 48 CFR 970.5227-3, *Technology Transfer Mission*, paragraph (i).

III. Acronyms

ACT	Agreement for Commercializing Technology
CF-10	CFO Office of Finance and Accounting
CFO	Chief Financial Officer
DEAR	Department of Energy Acquisition Regulation
DOE	Department of Energy
FASAB	Federal Accounting Standards Advisory Board
FASB	Financial Accounting Standards Board
GAO	Government Accountability Office
IP	Intellectual Property
M&O	Management and Operating
NNSA	National Nuclear Security Administration
OTC	Office of Technology Commercialization
R&D	Research and Development
SPP	Strategic Partnership Program
STARS	Standard Accounting and Reporting System

IV. References

- IV.1. 15 U.S.C. Section 3701 – *Statement of Findings on Technology Innovation*, which establishes federal policy on the commercialization of federally funded innovations.
- IV.2. Public Law 96-517 – *Bayh-Dole Act of 1980*, authorizing non-profit and small business contractors to retain title to government-funded inventions to incentivize commercialization.
- IV.3. Public Law 101-189 – *National Defense Authorization Act (1990-1991)*, Section 3131, which outlines the guidelines for technology transfer and innovation
- IV.4. 48 CFR 970.2770-3 – *Technology Transfer and Patent Rights*
- IV.5. 48 CFR 970.5227-3 – *Technology Transfer Mission*, Outlining allowable costs and disposition of income.
- IV.6. 48 CFR 970.5232-2 – *Payments and Advances*, addressing government property and contractor royalties

- IV.7.** DOE O 483.1B – *DOE Cooperative Research and Development Agreements*
- IV.8.** DOE O 520.1B – *Financial Management and Chief Officer Responsibilities.*
- IV.9.** DOE P 482.2 – *Laboratory Technology Transfer Data Collection and Management*

¹ As specified by 48 CFR 970.2770-4, the contracting officer shall insert the clause at 970.5227-3, Technology Transfer Mission, in each solicitation for a new or an extension of an existing laboratory or weapon production facility management and operating contract.

² The disposition of income generated from technology transfer activities is addressed in DEAR 970.5227-3(h).

³ On May 15, 2015, DOE issued a press release renaming the *Office of Technology Transitions* to *Office of Technology Commercialization*.

⁴ DEAR 970.5227-3(h)(2) sets forth the requirement of an annual Lab plan to include how license revenues will be applied by the contractor along with an annual accounting of how the funds were, or will be, used.

⁵ DOE Financial Management Handbook, Chapter 4, *Accounting Systems*, contains a description of DOE's accounting systems

⁶ DEAR 970.5232-2(h) excludes contractor royalties and other income resulting from technology transfer activities from government property.

⁷ Excluding inventions subject to 48 CFR 970.5227-3 Alternate I (Privately funded technology transfer),