



DoD INSTRUCTION 5535.08

DoD DOMESTIC TECHNOLOGY TRANSFER PROGRAM

Originating Component:	Office of the Under Secretary of Defense for Research and Engineering
Effective:	September 22, 2022
Releasability:	Cleared for public release. Available on the Directives Division Website at https://www.esd.whs.mil/DD/ .
Reissues and Cancels:	DoD Instruction 5535.08, "DoD Technology Transfer (T2) Program," May 14, 1999, as amended
Incorporates and Cancels:	DoD Directive 5535.03, "DoD Domestic Technology Transfer (T2) Program," May 21, 1999, as amended
Approved by:	Heidi Shyu, Under Secretary of Defense for Research and Engineering

Purpose: In accordance with the authority in DoD Directive 5137.02, this issuance establishes policy, assigns responsibilities, and prescribes procedures for implementation of the DoD Components' technology transfer (T2) activities.

TABLE OF CONTENTS

SECTION 1: GENERAL ISSUANCE INFORMATION	3
1.1. Applicability.	3
1.2. Policy.	3
1.3. Information Collections.	4
SECTION 2: RESPONSIBILITIES	6
2.1. Deputy Chief Technology Officer for Science and Technology (DCTO(S&T)).	6
2.2. DoD Component Heads.	7
SECTION 3: PROCEDURES	9
3.1. DoD Component Interagency T2 Participation.	9
3.2. T2 Authorities.	9
3.3. DoD Use of T2 Authorities.	9
3.4. DoD Component T2 Reporting.....	10
a. Annual T2 Program Metrics.....	10
b. Annual T2 Plan.	11
3.5. Identifying, Protecting, Negotiating, and Licensing DOD INVENTIONS and Intellectual Property.....	11
3.6. Guidance and Factors to Consider When Using CRADAS.....	15
3.7. Guidance and Factors to Consider When Using PARTNERSHIP INTERMEDIARIES.	16
GLOSSARY	19
G.1. Acronyms.	19
G.2. Definitions.....	19
REFERENCES	22

SECTION 1: GENERAL ISSUANCE INFORMATION

1.1. APPLICABILITY.

This issuance:

a. Applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

b. Does not apply to branding and trademark licensing by DoD Components covered by DoD Directive 5535.09 and DoD Instruction (DoDI) 5535.12.

1.2. POLICY.

a. T2 is the intentional sharing of knowledge, expertise, facilities, equipment, and other resources that benefit the DoD and/or non-DoD entities. T2 is an integral element of the DoD national security mission in accordance with Section 4811 of Title 10, United States Code (U.S.C.). T2 activities play a high-priority role in all DoD programs and are recognized as key activities of DoD laboratories and all other DoD entities that can or may make use of or contribute towards T2.

b. T2 activities improve the economic, environmental, and social well-being of U.S. citizens in accordance with Sections 3702 and 3710 of Title 15, U.S.C. T2 activities utilizing DoD assets support a strong national technology and innovation base that the DoD may use to meet its needs.

c. T2 activities provide the DoD a means to access and assess the full spectrum of research and technology advancements being developed by non-Federal entities.

d. T2 activities are encouraged to facilitate innovation and creative thinking. Accordingly, DoD laboratories are encouraged to utilize the full range of T2 authorities discussed in Paragraph 3.2.

e. The DoD will evaluate for disclosure information resulting from, or related to, U.S. Government innovation in order to:

- (1) Provide a cost-effective way for the DoD to access and obtain new technology.
- (2) Help reduce procurement costs for new technology.
- (3) Transfer DoD innovation to the private sector.

(4) Participate in the intellectual property generation and protection system that is critical for private investment, collaboration, innovation, and economic growth.

f. T2 is promoted through:

(1) The use of the authorities provided in Paragraph 3.2.

(2) U.S. and foreign patenting, patent licensing, and protection of other intellectual property rights. DoD inventions applicable for licensing should be publicized to accelerate T2 into the U.S. economy in accordance with the guidelines in Section 3.

g. When using T2 authorities, preference or special consideration, as applicable, is given to:

(1) U.S.-based entities in support of Paragraph 1.2.b.

(2) Underserved communities and their members pursuant to Section 8 of Executive Order 13985.

(3) Small businesses and their participation in T2 activities to encourage and facilitate collaboration between small businesses and DoD Components and laboratories pursuant to, among others, Section 4007 of Title 10, U.S.C.; Sections 200, 631, 638, 3710a(c)(4)(A), and 3715 of Title 15, U.S.C.; Section 209(c) of Title 35, U.S.C.; and Executive Order 12591.

(4) Historically black colleges and universities and other minority institutions pursuant to Section 2914 of Title 10, U.S.C.

(5) Others as cited within specific authorities.

h. Non-Federal parties may use independent research and development funding, in accordance with Subsection 31.205-18(e) of the Federal Acquisition Regulation, as a part of their contributions to T2.

i. T2 activities must be accomplished without actual or apparent personal or organizational conflicts of interest or violations of ethics standards, in accordance with the DoD 5500.07-R.

j. T2 activities with foreign owned, controlled, or influenced (FOCI) entities must be conducted in accordance with export control laws, regulations, and policies, including DoDI 2040.02, DoDI 2030.08, and Executive Order 12591. Additional guidance is provided in Paragraph 3.3.i.

k. The Science and Technology Reinvention Laboratories are hereby designated as Centers for Science, Technology, and Engineering Partnerships (CSTEPs) pursuant to Section 4124 of Title 10, U.S.C.

1.3. INFORMATION COLLECTIONS.

a. The report required by Office of Management and Budget Circular A-11, referred to in Paragraph 3.4.b. as the Office of Management and Budget Circular A-11 Report, does not

require licensing with a report control symbol in accordance with Paragraph 10 of Volume 1 of DoD Manual (DoDM) 8910.01.

b. The DoD Component business plans, referred to in Paragraph 3.4.b., do not require licensing with report control symbols in accordance with Paragraph 9 of Volume 1 of DoDM 8910.01.

SECTION 2: RESPONSIBILITIES

2.1. DEPUTY CHIEF TECHNOLOGY OFFICER FOR SCIENCE AND TECHNOLOGY (DCTO(S&T)).

Under the authority, direction, and control of the Under Secretary of Defense for Research and Engineering, the DCTO(S&T):

- a. Implements Section 4832 of Title 10, U.S.C., and oversees DoD T2 activities in accordance with DoD Directive 5137.02.
- b. Authorizes the directors of DoD laboratories to enter into:
 - (1) Educational partnerships pursuant to Section 3710(i) of Title 15, U.S.C.; Section 2194 of Title 10, U.S.C.; and Executive Order 12999.
 - (2) Cooperative research and development agreements (CRADAs) pursuant to Section 3710a of Title 15, U.S.C.
 - (3) Partnership intermediary agreements (PIAs) pursuant to Section 3715 of Title 15, U.S.C., and Section 4124 of Title 10, U.S.C., for Directors of CSTEPs.
 - (4) Licensing agreements pursuant to Sections 207 and 209 of Title 35, U.S.C., and Section 801 of Public Law 113-66, as amended.
- c. Provides guidance for implementation of T2 policy, including coordination with other DoD officials for matters under their respective oversight.
- d. Monitors DoD research, development, and other activities for the potential to leverage investments through the use of T2 authorities.
- e. Encourages T2 in accordance with Sections 4832(a) and 4124 of Title 10, U.S.C.; Sections 3701, 3702, 3710, and 3715 of Title 15, U.S.C.; and any other applicable statutes, regulations, or policies.
- f. Collaborates with the DoD Components to encourage and improve T2 activities.
- g. Coordinates and resolves policy issues and other matters in the conduct of T2 activities.
- h. Coordinates with the Assistant Secretary of Defense for Homeland Defense and Global Security on matters involving T2 with Federal, State, and local first responders in accordance with DoDI 5535.10.
- i. Monitors and coordinates best practices, models, procedures, and processes necessary to promote, as appropriate, a uniform DoD approach to T2 between the DoD and its partners.

j. Coordinates input from the DoD Components and prepares T2 reports, including those to Congress as required by statute and the Office of Management and Budget.

k. Coordinates DoD T2 awards programs.

l. Coordinates DoD T2 professional development requirements and programs.

m. Coordinates DoD T2 strategy and priorities with DoD Components and other relevant stakeholders.

2.2. DOD COMPONENT HEADS.

The DoD Component heads:

a. Ensure that T2, in accordance with Section 3710(a) of Title 15, U.S.C., is:

(1) A responsibility of each DoD laboratory, including striving, where appropriate, to transfer federally owned or originated technology to State and local governments and the private sector.

(2) A responsibility of each DoD laboratory's science and engineering professionals, consistent with their mission responsibilities.

(3) Considered positively in DoD laboratory job descriptions, employee promotion policies, and evaluation of the job performance of scientists and engineers in DoD laboratories.

b. Make T2 a priority in accomplishing the Component's programs at laboratories within their cognizance and all other Component organizations that engage in T2 activities.

c. Ensure compliance with this instruction within their respective Components.

d. Provide reports and inputs for reports, as required by the Director, Technology Industrial Innovation Base (TIIB), pursuant to Paragraph 3.4.

e. Ensure their respective laboratories establish, resource, and execute the functions of an Office of Research and Technology Application (ORTA) in accordance with Section 3710(b) and (c) of Title 15, U.S.C.

f. Ensure there is a T2 professional development program for the Component's laboratories' ORTA staff and applicable education and training for the Component's laboratories' technical and management staff to implement Section 3710(a) and (c) of Title 15, U.S.C.

g. Recognize the Component's successful and noteworthy T2 accomplishments through the use of T2 authorities in accordance with Section 3710b of Title 15, U.S.C., and Volumes 451 and 2008 of DoDI 1400.25, including, but not limited to:

(1) Establishing an awards program, including cash awards.

(2) Participating in other applicable awards programs such as, but not limited to, DoD's George Linsteadt Technology Transfer Award and the Federal Laboratory Consortium for Technology Transfer's (FLC's) regional and national award programs.

h. Establish Component T2 policies:

(1) For protecting inventions and other intellectual property arising from federally supported research, development, and other activities producing innovation.

(a) This includes, but is not limited to, policies for patenting inventions and maintaining patents.

(b) Costs and expenses to acquire and maintain those patents will be funded by the Component. Collaborating parties are not precluded from paying costs and expenses associated with protecting intellectual property rights.

(2) For licensing intellectual property, including guidance and processes for establishing financial terms to license innovation.

(3) Under which DoD laboratories or appropriate DoD entities may be authorized to license, assign, or waive rights to intellectual property and distribute royalties and other payments, in accordance with Paragraph 3.5.

(4) For partnership intermediaries (PIs), including guidance, processes, and training to establish and manage PIAs.

(5) For implementing small business policy for T2 activities pursuant to Paragraph 1.2.g.(3).

(6) For T2 activities with FOCI entities and foreign governments.

(7) For other T2 authorities and activities as appropriate.

i. License computer software and related documentation in accordance with Section 801 of Public Law 113-66, as amended.

j. When applicable, transfer funds to the National Institute of Standards and Technology in accordance with Section 3710(e)(7) of Title 15, U.S.C., for the FLC.

k. Provide guidance to all subordinate organizations, as appropriate, for use of T2 authorities.

l. Prepare and distribute, as appropriate, scientific and technical information as specified in DoDI 3200.12 and DoDI 5230.27.

SECTION 3: PROCEDURES

3.1. DOD COMPONENT INTERAGENCY T2 PARTICIPATION.

The DoD Components and laboratories are encouraged to participate in interagency working groups, the FLC, and other collaborative efforts among other Federal agencies, DoD Components, and DoD laboratories.

3.2. T2 AUTHORITIES.

The DoD Components promote the use of T2 authorities that provide for cooperation and partnership by the DoD with non-Federal parties, including, but not limited to:

- a. Sections 3371 through 3375 of Title 5, U.S.C.
- b. Sections 2194, 2474, 2563, 4143, 4124, and 4892 of Title 10, U.S.C.
- c. Sections 207 and 209 of Title 35, U.S.C.
- d. Sections 3710, 3710a, 3710b, 3710c, 3710d, and 3715 of Title 15, U.S.C.

3.3. DOD USE OF T2 AUTHORITIES.

a. The DoD Components and laboratories are encouraged to use any combination(s) of T2 authorities to accomplish their missions pursuant to Paragraphs 1.2.a. and 1.2.b.

b. DoD Components' and laboratories' use of T2 authorities and involvement in T2 activities are in pursuit of spin in, spin out, and/or dual use.

c. Use of T2 authorities and funding of T2 activities can occur across the full spectrum of DoD laboratory missions and budget activities, as permitted by specific authorities.

d. T2 authorities can be used in conjunction with other non-T2 transactions such as cooperative agreements, other transactions, contracts, grants, etc., pursuant to Paragraphs 1.2.a. and 1.2.b. and small business programs as defined by DoDI 4205.01. When T2 authorities are used, clear provisions must be included in the T2 agreement(s) for the appropriate retention of rights for government purposes to any intellectual property developed thereunder.

e. Public-private partnerships, commercial test agreements, and other forms of what are commonly referred to as "work for others," as further defined and described in DoDI 4151.21 and DoDI 5535.11, are encouraged to make DoD laboratory assets available in accordance with applicable authorities.

f. In using T2 authorities, DoD Components and laboratories must protect proprietary information (e.g., trade secrets or commercial or financial information that is privileged or confidential in accordance with Paragraph 5.2.d. of DoDM 5400.07).

g. Use of T2 authorities requires education and training of ORTA personnel as well as DoD technical and management staff. The DoD Components are encouraged to institute applicable organization-wide T2 training programs and resources. The education and training should include, among other appropriate topics, relevant aspects of legal, security, financial, and ethics. Sources of education and training include the FLC and Defense Acquisition University, among other Federal and non-Federal organizations.

h. Equipment provided under an education partnership agreement in accordance with Section 2194(b) of Title 10, U.S.C., is not subject to Federal property disposal regulations implementing separate authorities. Additionally, ownership of such equipment will transfer to the educational partner if the equipment is transferred to the educational partner as a gift.

i. T2 authorities are intended to improve the economic, environmental, and social well-being of the United States as well as support the mission of the DoD. There are instances where T2 activities with FOCI entities and in rare cases, with foreign governments, may be useful to the DoD.

(1) Prior to entering into T2 activities with foreign governments, DoD laboratory or other DoD Component personnel must consult the Office of the U.S. Trade Representative and the Component's T2 point of contact on applicable DoD Component policy and guidance. If there is no DoD Component policy, then approval and guidance to engage is required from DoD Component legal, security, and international program office(s). T2 activities with foreign governments related to export controlled articles, technical data, or defense services fall outside the scope of this instruction.

(2) T2 activities with FOCI entities must be consistent with DoD Component policy (if available) and Section 4 of Executive Order 12591.

3.4. DOD COMPONENT T2 REPORTING.

As the coordinator for DoD T2, the Director, Science and Technology Futures requires various reports from the DoD Components. These reports, which help OSD highlight DoD T2 successes as part of the reporting requirements to Congress, include:

a. Annual T2 Program Metrics.

The DoD Components must annually provide their laboratories' T2 program metrics as required by Section 3710(f) of Title 15, U.S.C. The metrics must be provided in accordance with the applicable National Institute of Standards and Technology guidance along with any additional guidance provided by the Director, TIIB.

b. Annual T2 Plan.

The DoD Components must provide T2 plans to the Director, TIIB, as directed. The T2 plans must include, at a minimum, the past fiscal year's T2 accomplishments, initiatives, and goals for the coming year, as well as items such as awards, training, highlights of key programs and activities, investments, and success stories.

3.5. IDENTIFYING, PROTECTING, NEGOTIATING, AND LICENSING DOD INVENTIONS AND INTELLECTUAL PROPERTY.

a. DoD inventions and intellectual property licensable from the DoD include, but are not limited to:

(1) Patents, trademarks, trade secrets, and copyrights as assigned or licensed to the DoD.

(2) Software and its accompanying documentation, with the following considerations:

(a) In accordance with Section 801 of Public Law 113-66, the software has commercial value that will assist in improving the economic environment or has a military use.

(b) In accordance with Office of Management and Budget Memorandum M-16-21 or DoD policy, the software has no direct commercial or military economic impact but is shareable and other software communities both inside and outside the Federal Government could leverage the software.

(3) Inventions that are patent-eligible subject matter under Section 101 of Title 35, U.S.C., whether or not the invention is protected as a trade secret or covered by a patent or patent application.

b. The U.S. economy and the DoD benefit when DoD inventions and intellectual property are commercialized in accordance with Sections 200-209 of Title 35, U.S.C. Additionally:

(1) Software licensing is encouraged in accordance with Section 4832 of Title 10, U.S.C., and Section 801 of Public Law 113-66. DoD activities may grant nonexclusive, exclusive, or partially exclusive licenses that are:

(a) Royalty free; or

(b) For royalties in exchange for rights to intellectual property, including computer software and its related documentation developed by the DoD.

(2) DoD inventions and intellectual property made available for licensing should be catalogued and promoted through a publicly available, online, and searchable database. Efforts should be made to encourage licensing of dual-use inventions by offering financial incentives such as reduced or waived royalty rates for commercial sales upon achievement of documented sales of products based on these inventions to the U.S. military. In addition, efforts should be

made to offer special incentives, such as online license transactions at favorable terms for patents approaching a termination decision if the patents are not likely to be licensed otherwise.

(3) The primary purpose of licensing DoD inventions to industry is to achieve final development and practical application of these inventions in support of Paragraph 1.2.b.; it is not primarily to generate licensing revenues. Accordingly, licensing fees and royalty terms should be as low as reasonable to incentivize licensing of these inventions.

(4) Humanitarian licensing is encouraged to facilitate rapid response by licensees during crises to meet urgent societal needs. Humanitarian licenses may include such things as time-limited, nonexclusive, and royalty-free terms.

c. Use of DoD inventions and intellectual property by the DoD or other Federal agencies is to be tracked as follows:

(1) License agreements should include reporting requirements on sales of products or services back to the Federal Government.

(2) No-cost license agreements should be used when no commercial sales are anticipated. The license should include reporting requirements on the sale of products or services to the DoD or other Federal Government agencies, with as much specificity as possible as to how these inventions are being used.

(3) Use of DoD intellectual property by the DoD or other Federal agencies should be reported as part of the DoD Component's annual metrics report pursuant to Paragraph 3.4.

d. Procedures for protecting intellectual property will include:

(1) Requiring DoD personnel to disclose all inventions in a timely way so that these innovations can be evaluated for possible intellectual property protection. Invention disclosures need to be submitted prior to any public disclosure describing the innovation, including presentations at conferences or submission of publications.

(2) Evaluating inventions arising from the DoD and determining whether intellectual property protection for those inventions is in the best interest of the U.S. Government and, if so, an appropriate form of intellectual property protection such as patents, trade secrets, trademarks, and copyrights. Inventions are to be reviewed for patent security in accordance with DoD Directive 5535.02.

(3) Filing and prosecuting patent applications for those inventions selected as having sufficient benefit to justify obtaining patent protection.

(4) Determining which patents will remain enforceable through payment of required maintenance fees.

(5) Paying the costs and expenses to acquire and maintain patents and other intellectual property from program funds, overhead accounts, royalties or other payments, or other DoD

Component sources, as applicable. Collaborating partners, both Federal and non-Federal, may pay for all or part of the costs of protecting intellectual property.

(6) Protecting other intellectual property or products of innovation besides inventions including but not limited to creative works, software, and data under trade secret law, copyright law, or trademark law, or as confidential research and development information, where possible and appropriate.

e. Royalties and other payments received by the DoD Components will be distributed as follows:

(1) Inventors are to annually receive the first \$2,000 and thereafter share at least 20 percent of any remaining royalties or other payments received on any invention licensed by a DoD Component. For co-inventors, each is to receive \$2,000 and thereafter share at least 20 percent of any remaining royalties or other payments received on any invention licensed by a DoD Component.

(a) Without extrinsic evidence that co-inventors made unequal contributions to the invention, subject to review and approval by the legal counsel for the DoD Component or laboratory, as applicable, it will be presumed that the co-inventors made equal contributions to the invention and are entitled to equal shares of the royalties or other payments.

(b) If the royalties or other payments received in any given year are less than or equal to \$2,000 or, for co-inventors, less than or equal to \$2,000 times the number of inventors, the entire amount of royalties and payments will be paid to the inventor; for co-inventors, the entire amount will be divided equally among them.

(c) DoD Components will typically distribute a share of royalties to co-inventors who are not Federal employees at the time of invention in exchange for their assignment of all rights to the DoD or its subcomponents pursuant to Section 3710c of Title 15, U.S.C., and Section 207(a)(3) of Title 35, U.S.C. These royalties will normally be as an equal share distribution among all inventors.

(2) Royalties or other payments from inventions to any one person will not exceed the statutory limit in Section 3710c(a)(3) of Title 15, U.S.C., for each year, subject to Presidential approval, in accordance with Section 4504 of Title 5, U.S.C., or as permitted by the Secretary of the Military Department concerned, in accordance with Section 233(b)(2) of Public Law 115-91 or as amended.

(3) Royalties or other payments resulting from licensing of unpatented software or its accompanying documentation will be payable in accordance with the provisions of Paragraphs 3.5.e.(1) and (2).

(4) A DoD Component or, if delegated the authority, a DoD laboratory, may provide incentives from royalties or other payments to DoD employees who are not the inventors or co-inventors but substantially increase the technical value of an invention.

(a) When the incentive is a monetary payment, such payment may be at any level subject to the authority of the DoD Component or activity that approves the payment, but it will not exceed the limits established in Paragraphs 3.5.e.(1) and (2).

(b) Payments may be on a one-time or annual basis and will terminate when the individual receiving them is no longer employed by the DoD Component that awarded the payments.

(5) Inventors or co-inventors will be entitled to royalties or other payment income as described in Paragraphs 3.5.e.(1) through (3).

(6) Funds from license royalties and other payment income will be applied in accordance with this schedule:

(a) Royalties and other payments typically need to be spent or obligated within the fiscal year of receipt or the 2 subsequent fiscal years.

(b) After assignment of royalties and other payments to inventors or co-inventors consistent with Paragraph 3.5.e.(1), remaining royalties and other payments may be used for any of the following:

1. Payment of expenses incidental to administration and licensing of inventions and other intellectual property.

2. Other T2 activities, such as training, marketing, and showcases, that increase the licensing potential or transfer of DoD technology.

3. Technical work consistent with the DoD Component's mission.

4. Rewarding the DoD Component's technical staff, including developers of sensitive or classified technology, regardless of whether the technology has commercial applications.

5. Furthering of technical exchange among other DoD Components and laboratories.

6. Educating and training employees consistent with the DoD Component's mission and for other activities that increase the potential for T2.

(7) The DoD Components, in managing royalty payments, will exercise due diligence to maintain information necessary to make payments to inventors and co-inventors. Royalty payments that have not been distributed by the end of the fiscal year after the DoD Component receives the payment because the inventor or co-inventors cannot be located will be transferred to the Department of the Treasury Trust Account until:

(a) The payments can be disbursed to the inventor or co-inventors; or

(b) The payments are transferred to the Department of the Treasury Trust Fund for unclaimed moneys.

3.6. GUIDANCE AND FACTORS TO CONSIDER WHEN USING CRADAS.

a. DoD laboratories may enter into CRADAs with non-Federal parties (CRADA partners) including parties that are Federal contractors, grantees, cooperative agreement awardees, other transactions awardees, licensees of DoD or other Federal inventions, Small Business Innovation Research program and Small Business Technology Transfer program awardees, etc. Such arrangements will be in accordance with Section 3710a(f) of Title 15, U.S.C., and Part 17.3 of Title 15, Code of Federal Regulations, and in compliance with export control laws and regulations and DoD conflict of interest rules established in DoD 5500.07-R.

b. DoD laboratories will give special consideration to small businesses pursuant to Section 3710a(c)(4)(A) of Title 15, U.S.C. Further, CRADAs with small businesses seeking or receiving Small Business Innovation Research program and Small Business Technology Transfer program awards must comply with protections prescribed in Section 638(ee) of Title 15, U.S.C., and the Small Business Administration's Small Business Innovation Research and Small Business Technology Transfer Program Policy Directive.

c. CRADAs are not subject to the requirements of the Federal Acquisition Regulation, Defense Federal Acquisition Regulation Supplement, or DoD Grant Regulations; however, CRADAs are legally enforceable agreements. CRADAs will not be used when another mechanism, such as a procurement contract, is more appropriate as prescribed by statute, regulation, or DoD policy.

d. A DoD laboratory's cost to develop, negotiate, and establish CRADAs should be funded from the laboratory's resources. DoD laboratories are, however, permitted to accept funds from CRADA partners in accordance with Section 3710a of Title 15, U.S.C., and DoD 7000.14-R.

e. CRADAs will contain provisions covering the DoD laboratory's interests in data rights, patents and patent applications, computer software, licensing rights, and the allocation of rights to future inventions, proprietary interests, and intellectual property.

f. DoD laboratories may provide appropriate protections against dissemination of certain information that has commercial value resulting from work under a CRADA from public access for up to 5 years, in accordance with Section 3710a(c)(7)(B) of Title 15, U.S.C.

g. DoD laboratories may contribute resources, such as personnel, services, facilities, equipment, materials, and intellectual property, with or without reimbursement, to a CRADA but may not provide funds to the non-Federal partner as part of a CRADA. Non-Federal parties may provide funds to the Federal partner(s) to a CRADA, in addition to personnel, services, facilities, equipment, materials, intellectual property, or other resources, without reimbursement.

h. DoD laboratories may receive funds from a non-Federal party up to the actual cost incurred by the laboratory, including direct and indirect costs. DoD laboratories receiving funds

from a non-Federal party under a CRADA will maintain separate and distinct accounts, records, and evidence supporting expenditures under the CRADA.

i. When licensing or assigning government-owned intellectual property under CRADAs, the DoD laboratory will retain a nonexclusive, irrevocable, and royalty free license in that intellectual property for use by the U.S. Government.

j. The CRADA partner has the option to choose an exclusive license (except for the license retained by the U.S. Government) for a pre-negotiated field of use for any invention created in whole or in part by a DoD laboratory employee under the CRADA.

k. CRADAs may be used to assist in the further development and commercialization of DoD inventions that have been licensed.

l. CRADAs may be used to co-sponsor a conference, seminar, or similar event, as detailed in Paragraph 3-206 of DoD 5500.07-R. The subject matter of the event must comprise scientific or technical issues relevant to the DoD mission. The purpose of the event is to transfer DoD-developed technology or stimulate interest and inquiry in the subject matter. The CRADA partner must be a recognized scientific, technical, educational, or professional organization.

m. Additional detailed guidance on the use of CRADAs is found in Section 3710a of Title 15, U.S.C.

3.7. GUIDANCE AND FACTORS TO CONSIDER WHEN USING PARTNERSHIP INTERMEDIARIES.

a. The purpose of PIs, pursuant to Section 4124(f) of Title 10, U.S.C., and Section 3715 of Title 15, U.S.C., is to perform services for DoD laboratories that increase the likelihood of success in the conduct of cooperative or joint activities between DoD laboratories and applicable non-Federal parties. These non-Federal parties need, or can make demonstrably productive use of, technology-related assistance from DoD laboratories. Applicable non-Federal parties are defined as follows:

(1) Industry or academic partners as described in Section 4124(f) of Title 10, U.S.C.

(2) Small business firms, institutions of higher education or educational institutions as defined in Section 3715 of Title 15, U.S.C.

b. To be eligible, a DoD PI must be:

(1) An agency of a State or local government, or

(2) A non-profit institution that is owned in whole or in part by, chartered by, funded in whole or in part by, or operated in whole or in part by or on behalf of a State or local government. Evidence of the institution's relationship to the State or local government must be provided to the DoD laboratory to make a determination of eligibility.

c. When establishing a PIA, the DoD laboratory must determine the outcomes and activities to be accomplished pursuant to the PIA, taking into account:

(1) Whether a PIA is best suited to accomplish the desired outcomes.

(2) Whether the PIA aligns with ongoing and planned PI efforts occurring within the DoD Component as well as the DoD.

d. The scope of the PI's services will be to assist, counsel, advise, evaluate, or otherwise cooperate with applicable non-Federal parties in pursuit of increased cooperative or joint activities with the DoD laboratory. The actual cooperative or joint activity will be between the DoD laboratory and the non-Federal party(ies).

e. PI services that are prohibited under a PIA include:

(1) Services beyond an intermediary role that resemble technical work where the development of intellectual rights by the PI is likely.

(2) Efforts in which there is an actual or apparent conflict of interest.

(3) Performance of inherently governmental functions pursuant to Part 7.503 of the Federal Acquisition Regulation.

f. Competition may not be appropriate since PIAs are with State and local governments and their agents. When there are multiple State and local governments being considered for a PIA, a competitive approach should be considered, with the advice of appropriate legal counsel, contracting/agreements officers, and other officials in making the determination.

g. Allowable agreements with a PI are:

(1) A DoD laboratory may enter into a contract or memorandum of understanding to establish a PIA under Section 3715 of Title 15, U.S.C.

(2) A CSTEP may enter into a contract, memorandum of understanding, or other transaction to establish a PIA under Section 4124 of Title 10, U.S.C.

h. Funding PIAs:

(1) Funding a PIA is not required but is allowed in accordance with Section 4124 of Title 10, U.S.C., and Section 3715 of Title 15, U.S.C.

(2) A DoD laboratory may utilize any funds to support a PIA that are available to support T2 activities pursuant to Section 3710(b) of Title 15, U.S.C.

i. Where appropriate, DoD Components should establish PI guidance and training for their laboratory personnel on establishing, managing, and using PIAs in accordance with this instruction. Training objectives in any guidance and training should include:

(1) Understanding the appropriate scope of activities under a PIA.

(2) Understanding the unique intermediary relationship between a PI and the DoD laboratory (compared to a typical U.S. Government and contractor relationship).

(3) Developing and reviewing PIAs including the financial, legal, security, and contractual aspects.

(4) Managing PIAs.

GLOSSARY

G.1. ACRONYMS.

ACRONYM	MEANING
CRADA	cooperative research and development agreement
CSTEP	Centers for Science, Technology, and Engineering Partnerships
DCTO(S&T)	Deputy Chief Technology Officer (Science and Technology)
DoDI	DoD instruction
DoDM	DoD manual
FLC	Federal Laboratory Consortium for Technology Transfer
FOCI	foreign owned, controlled, or influenced
ORTA	Office of Research and Technology Applications
PI	partnership intermediary
PIA	partnership intermediary agreement
T2	technology transfer
TIIB	Technology Industrial Innovation Base Office
U.S.C.	United States Code

G.2. DEFINITIONS.

Unless otherwise noted, these terms and their definitions are for the purpose of this issuance.

TERM	DEFINITION
co-inventor	Any one of the individuals, who generally contributed to the conception of the invention, invented or discovered the subject matter of a joint invention. The term co-inventor is synonymous with joint inventor.
CRADA	Defined in Section 3710a of Title 15, U.S.C.
DoD laboratory	Defined in Section 2194 of Title 10, U.S.C., for educational partnerships. Defined in Section 3710a(d)(2)(A) of Title 15, U.S.C., for CRADAs and partnership intermediary agreements.

TERM	DEFINITION
dual use	Technology that has both DoD and private sector applications.
Federal employee	Defined in Section 2105 of Title 5, U.S.C.
non-Federal parties	Units of State or local government; private or publically held business concerns (including companies, corporations, partnerships, limited partnerships, and industrial development organizations); educational and academic institutions (public or private); public and private foundations; non-profit institutions (including universities); or other persons (including licensees of inventions owned by the Federal agency).
non-profit institution	Defined in Section 3703(3) of Title 15, U.S.C.
ORTA	Defined in Section 3710(b) and (c) of Title 15, U.S.C. The term ORTA is used interchangeably with T2 office and formally designated key T2 personnel.
PI	Defined in Section 4124 of Title 10, U.S.C., for CSTEPs. Defined in Section 3715 of Title 15, U.S.C., for DoD laboratories.
spin in	Transition of technology into the DoD in support of a planned or projected capability advancement by the DoD, which may be useful in any project or effort typically involving technology selection and/or technology maturation. These activities are typically supported by acquisition and/or collaboration (e.g. CRADAs). T2 related spin in includes the use of at least one T2 authority. Sources of spin in technologies are: Non-DoD originated technology into the DoD for its own purposes. DoD originated technology brought back into the DoD after additional private sector development.
spin out	Transfer of DoD originated technology to non-DoD activities including the private sector and other public sectors for conversion into new products and services. These activities:

TERM

DEFINITION

Are beneficial to U.S. citizens in supporting the advancement of technology and industrial innovation, offering an improved standard of living, increased public and private sector productivity, creation of new industries and employment opportunities, improved public services, and enhanced competitiveness of U.S. products in world markets.

Are beneficial to the DoD in supporting the national technology and industrial base as well as gaining access to resulting products and services of potential interest to DoD.

May also include making available and use of DoD technology by non-DoD entities for non-military purposes.

T2

Technology transfer, the intentional sharing of knowledge, expertise, facilities, equipment, and other resources that benefit the DoD and/or non-DoD entities.

T2 activities

Efforts, agreements, events, etc. that are conducted in furtherance of T2 in accordance with the authorities provided in Paragraph 3.2. and pursuant to the policies in Paragraph 1.2. of this issuance.

REFERENCES

- Code of Federal Regulations, Title 15, Part 17.3
- DoD 5500.07-R, “Joint Ethics Regulation,” current edition
- DoD 7000.14-R, “Department of Defense Financial Management Regulation,” current edition
- DoD Directive 5137.02, “Under Secretary of Defense for Research and Engineering (USD(R&E)),” July 15, 2020
- DoD Directive 5535.02, “DoD Patent Security Review Process,” March 24, 2010, as amended
- DoD Directive 5535.09, “DoD Branding and Trademark Licensing Program,” December 19, 2007
- DoD Instruction 1400.25, Volume 451, “DoD Civilian Personnel Management System: Awards,” November 4, 2013
- DoD Instruction 1400.25, Volume 2008, “DoD Civilian Personnel Management System: Defense Civilian Intelligence Personnel System (DCIPS) Awards and Recognition,” September 12, 2012, as amended
- DoD Instruction 2030.08, “Implementation of Trade Security Controls (TSCs) for Transfers of DoD Personal Property to Parties Outside of DoD Control,” February 19, 2015, as amended
- DoD Instruction 2040.02, “International Transfers of Technology, Articles, and Services,” March 14, 2014, as amended
- DoD Instruction 3200.12, “DoD Scientific and Technical Information Program (STIP),” August 22, 2013, as amended
- DoD Instruction 4151.21, “Public Private Partnerships for Product Support,” November 21, 2016
- DoD Instruction 4205.01, “DoD Small Business Programs (SBP),” June 8, 2016, as amended
- DoD Instruction 5010.44, “Intellectual Property (IP) Acquisition and Licensing,” October 16, 2019
- DoD Instruction 5230.27, “Presentation of DoD-Related Scientific and Technical Papers at Meetings,” November 18, 2016, as amended
- DoD Instruction 5535.10, “Coordination of DoD Efforts to Identify, Evaluate, and Transfer DoD Technology Items, Equipment, and Services to Federal, State, and Local First Responders,” November 24, 2009, as amended
- DoD Instruction 5535.11, “Availability of Samples, Drawings, Information, Equipment, Materials, and Certain Services to Non-DoD Persons and Entities,” March 19, 2012, as amended
- DoD Instruction 5535.12, “DoD Branding and Trademark Licensing Program Implementation,” April 29, 2020, as amended
- DoD Manual 5400.07, “DoD Freedom of Information Act (FOIA) Program,” January 25, 2017
- DoD Manual 8910.01, Volume 1, “DoD Information Collections Manual: Procedures for DoD Internal Information Collections,” June 30, 2014, as amended
- Executive Order 12591, “Facilitating Access to Science and Technology,” April 10, 1987
- Executive Order 12999, “Educational Technology: Ensuring Opportunity for All Children in the Next Century,” April 17, 1996

Executive Order 13985, “Advancing Racial Equity and Support for Underserved Communities Through the Federal Government,” January 20, 2021

Federal Acquisition Regulation, current edition

National Institute of Standards and Technology, “Guidance for Preparing Annual Agency Technology Transfer Reports Under the Technology Transfer Commercialization Act,” current edition

Office of Management and Budget Circular No. A-11, “Preparation, Submission, and Execution of the Budget,” June 2018

Office of Management and Budget Memorandum M-16-21, “Federal Source Code Policy: Achieving Efficiency, Transparency, and Innovation through Reusable and Open Source Software,” August 8, 2016

Public Law 113-66, Section 801, “National Defense Authorization Act for Fiscal Year 2014,” December 26, 2013

Public Law 115-91, Section 233, “National Defense Authorization Act for Fiscal Year 2018,” December 12, 2017

Small Business Administration, “Small Business Innovation Research (SBIR) and Small Business Technology Transfer (STTR) Program Policy Directive,” current edition

United States Code, Title 5

United States Code, Title 10

United States Code, Title 15

United States Code, Title 35