



U.S. DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

[Docket Number: 180220199-819-01]

Request for Information Regarding Federal Technology Transfer Authorities and Processes

AGENCY: National Institute of Standards and Technology, Department of Commerce.

ACTION: Notice of public meetings; Request for Information (RFI).

SUMMARY: The Federal government invests approximately \$150 billion annually¹ in research and development (R&D). For the results of this investment to produce economic gain and maintain a strong national security innovation base, the results must be transferred to private companies to create new products and services. In order to advance the President's Management Agenda to modernize government for the 21st century, including the associated Lab-to-Market cross-agency priority (CAP) Goal in coordination with the White House Office of Science and Technology Policy (OSTP), the National Institute of Standards and Technology (NIST) is initiating an effort to refocus Federal technology transfer on sound business principles based on private investment. NIST requests information from the public regarding the current state of Federal technology transfer and the public's ability to engage with Federal laboratories and

¹ Analytical Perspectives, Budget of the United States Government, Fiscal Year 2019, Ch. 18. Available at <https://www.gpo.gov/fdsys/pkg/BUDGET-2019-PER/pdf/BUDGET-2019-PER.pdf>

access federally funded R&D through collaborations, licensing, and other mechanisms. Responses to this RFI will inform NIST's evaluation of Federal technology transfer practices, policies, regulations, and/or laws that promote the transfer of Federal technologies and the practical application of those technologies, including through commercialization by the private sector. NIST will hold public meetings regarding the initiative and the stakeholder engagement process at the times and locations indicated below.

DATES:

For Comments:

Comments must be received by 5:00 PM Eastern time on [INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]. Written comments in response to the RFI should be submitted according to the instructions in the ADDRESSES and SUPPLEMENTARY INFORMATION sections below. Submissions received after that date may not be considered.

For Public Meetings/Webcast:

A meeting will be held on May 17, 2018 from 9 a.m. to noon Pacific Time at the Silicon Valley USPTO Regional Office in San Jose, CA. Requests to participate must be received via the meeting website no later than May 15, 2018.

A meeting will be held on May 21, 2018 from 9 a.m. to noon Mountain Time at the Renaissance Denver Downtown City Center Hotel in Denver, CO. Requests to participate must be received via the meeting website no later than May 17, 2018.

A meeting will be held on May 31, 2018 from 9 a.m. to noon Central Time at the Hilton Chicago/Oak Lawn in Oak Lawn, IL. Requests to participate must be received via the meeting website no later than May 29, 2018.

A meeting and simultaneous webcast will be held on June 14, 2018 from 9 a.m. to noon Eastern Time at the NIST Campus in Gaithersburg, MD. Requests to participate must be received via the meeting website no later than June 8, 2018.

ADDRESSES:

For Comments:

Responses can be submitted by either of the following methods:

- Agency Website: <https://www.nist.gov/tpo/roi-rfi-response>. Follow the instructions for sending comments on the agency website.
- E-mail: roi@nist.gov. Include “RFI Response: Federal Technology Transfer Authorities and Processes” in the subject line of the message.

Instructions: Attachments will be accepted in plain text, Microsoft Word, or Adobe PDF formats. Comments containing references, studies, research, and other empirical data that are not widely published should include copies or electronic links of the referenced materials.

All submissions, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. NIST reserves the right to publish comments publicly, unedited and in their entirety. Sensitive personal information, such as account numbers or Social Security numbers, or names of other individuals, should not be included. Submissions will not be edited to remove any identifying or contact information. Do not submit confidential business information, or otherwise sensitive or protected information. Comments that contain profanity, vulgarity, threats, or other inappropriate language or content will not be considered.

For Public Meetings/Webcast:

A May 17, 2018 public meeting will be held in the Silicon Valley USPTO Regional Office, California Room, 26 S. Fourth Street, San Jose, CA.

A May 21, 2018 public meeting will be held in the Renaissance Denver Downtown City Center Hotel, Beauty Ballroom, 918 17th Street, Denver, CO.

A May 31, 2018 public meeting will be held in the Hilton Chicago/Oak Lawn, Oak Room, 9333 S Cicero Ave, Oak Lawn, IL.

A June 14, 2018 public meeting and simultaneous webcast will be held in Building 101, West Square on the NIST Campus, 100 Bureau Drive, Gaithersburg, MD.

Details about attending the meetings and accessing the June 14 webcast are available at <https://www.nist.gov/tpo/return-investment-public-forums>.

FOR FURTHER INFORMATION CONTACT: Dr. Courtney Silverthorn, Deputy Director, Technology Partnerships Office, National Institute of Standards and Technology, 100 Bureau Drive MS 2201, Gaithersburg, MD 20899, 301-975-4189, or by email to courtney.silverthorn@nist.gov.

SUPPLEMENTARY INFORMATION:

I. Background

The Federal government invests approximately \$150 billion per year in R&D. Of this total, approximately one-third is invested at over 300 Federal laboratories² across the country and approximately two-thirds is invested at universities and private sector R&D institutions. For the results of this investment to produce economic gain and maintain a strong national security innovation base, the results must be put to productive use through applied research, services to the public, and transfer to private companies to create new products and services.

Federal technology transfer policies and procedures are governed by legislation, much of which dates to the 1980s. A compilation of Federal technology transfer legislation, including the Stevenson-Wydler Technology Innovation Act of 1980 and the Bayh-Dole Act of 1980 is available online from the Federal Laboratory Consortium.³

² Includes federally funded laboratories, i.e., government owned/government operated, government owned/contractor operated (GOCO), and federally-funded research and development centers (FFRDCs).

³ “The Green Book: Federal Technology Transfer Legislation and Policy”. Federal Laboratory Consortium for Technology Transfer, 2013. Available at <https://www.federallabs.org/learning-center/on-demand/reference-materials/federal-technology-transfer-legislation-and-policy>

Existing Federal technology transfer laws have served the Nation well over nearly four decades. These laws, which continue to support U.S. innovation, have been widely emulated by other countries. However, in an increasingly competitive environment, it is important to ask whether and how current laws, regulations, policies, and practices could more effectively promote technology transfer to productive uses, and, where appropriate, commercialization of federally developed technologies and Federal research capabilities, and also encourage public-private partnerships to reach their full potential to create value for the U.S. economy in the 21st Century. For America to maintain its position among the world's innovation leaders, it is essential that our technology transfer system functions effectively. NIST intends to engage broadly with private- and public-sector stakeholders to assess the ability of Federal technology transfer policies, practices, and efforts to meet current and future needs in a rapidly shifting technology marketplace, and to best serve U.S. competitiveness globally.

In order to advance the President's Management Agenda to modernize government for the 21st century, including the associated Lab-to-Market CAP Goal in coordination with the White House's OSTP, NIST is initiating a Return on Investment (ROI) Initiative⁴ with the intent of conducting a comprehensive assessment of the Federal technology transfer system that will identify opportunities to improve Federal technology transfer efforts, policies, and practices. The goal of this effort is to, where appropriate, streamline and accelerate transfer of technology from Federal R&D investments to attract greater private-sector investment for innovative products, processes, and services, as well as new

⁴ <https://www.nist.gov/tpo/return-investment-roi-initiative>

businesses and industries that will create jobs, grow the economy, and enhance national security.

NIST is seeking broad input and participation from stakeholders in Federal R&D, intellectual property, and technology transfer to assist in identifying and prioritizing issues and proposed solutions. This assessment will address: (a) core Federal technology transfer principles and practices that should be protected, and those which should be adapted or changed; (b) approaches to improve efficiency and reduce regulatory burdens for technology transfer to attract private sector investment in later-stage R&D, commercialization, and advanced manufacturing; (c) new partnering models and technology transfer mechanisms with the private sector, academia, other Federal agencies, state, and other public-sector entities to support technology development and maturation; (d) new approaches that will reduce or remove barriers, and enable accelerated technology transfer, with a focus on areas of strategic national importance; (e) better metrics and methods to evaluate the ROI outcomes and impacts arising from Federal R&D investment; and (f) new approaches to motivate significantly increased technology transfer outcomes from the Federal sector, universities, and research organizations.

The systemic challenges to effective transfer of technology, knowledge, and capabilities from Federal R&D have been discussed in studies, some of which are highlighted on the ROI Initiative website: www.nist.gov/tpo/roi. These challenges include:

- High transaction costs and slow response times associated with negotiating intellectual property terms and indemnification provisions,
- Inconsistent interpretation of requirements and authorities by Federal agencies,
- Inconsistent practices across Federal agencies,
- Limitations to intellectual property rights such as (i) inability to copyright software and digital products developed by government operated laboratories and transfer copyright protection for software and digital products to benefit U.S. companies, (ii) difficulties to protecting trade secrets and know-how when Federal laboratories work in collaboration with U.S. companies, and (iii) industry concern about the scope of required government use licenses and whether and under what circumstances the government may exercise march-in rights, and
- Requiring Federal employees to leave government service to engage in entrepreneurship and spin-off of technology companies as well as Conflict of Interest ethics provisions that make it difficult for them to access the resources they need to be successful in developing and commercializing the technology.

To address these challenges, and others identified through this RFI and associated Public Forums, the ROI Initiative will utilize a multipronged process in which NIST will consider all available approaches, including:

- Identifying agency policies and best practices to promote consistent interpretation of existing authorities,
- Promulgating regulations that provide consistent interpretation of authorities across Federal agencies, consistent with agency mission, and

- If appropriate, seeking legislation to promote effective technology transfer.

II. Public Meetings

Four public meetings will be held as indicated in the DATES and ADDRESSES section.

Requests to participate must be received via the meeting website at

<https://www.nist.gov/tpo/return-investment-public-forums> by the dates noted for each meeting in the DATES section. Fifty (50) seats for each meeting are available on a first-come, first-served basis. All public meetings will be recorded and transcribed for internal NIST use only.

For participants attending the May 17 meeting at the USPTO Regional Office in San Jose, a government-issued photo ID is required for building access.

For participants attending the June 14 meeting at the NIST Gaithersburg campus, please note that NIST can only accept a state-issued driver's license or identification card for access to Federal facilities if such license or identification card is issued by a state that is compliant with the REAL ID Act of 2005 (Pub. L. 109–13), or by a state that has an extension for REAL ID compliance. NIST currently accepts other forms of Federal-issued identification in lieu of a state-issued driver's license. For detailed information please contact Mary Lou Norris at 301-975-2002 or visit: http://nist.gov/public_affairs/visitor/.

To request accommodation of a disability, please contact the person listed under FOR FURTHER INFORMATION CONTACT, no later than seven (7) calendar days prior to the selected meeting to allow as much time as possible to process your request.

III. Request for Information

Respondents are encouraged – but are not required – to respond to each question and to present their answers after each question. The following questions cover the major areas about which NIST seeks comment. Respondents may organize their submissions in response to this RFI in any manner. Responses may include estimates, which should be identified as such.

All responses that comply with the requirements listed in the DATES and ADDRESSES sections of this RFI will be considered.

NIST is interested in receiving responses to the following questions from the stakeholder community:

- 1) What are the core Federal technology transfer principles and practices that should be protected, and those which should be adapted or changed?
- 2) What are the issues that pose systemic challenges to the effective transfer of technology, knowledge, and capabilities resulting from Federal R&D? Please consider those identified in the RFI as well as others that may have inhibited collaborations with Federal laboratories, access to other federally funded R&D, or commercialization of technologies resulting from Federal R&D.

- 3) What is the proposed solution for each issue that poses a systemic challenge to the effective transfer of technology, knowledge, and capabilities resulting from Federal R&D? Please consider the approaches identified in the RFI.
- 4) What are other ways to significantly improve the transfer of technology, knowledge, and capabilities resulting from Federal R&D to benefit U.S. innovation and the economy? What changes would these proposed improvements require to Federal technology transfer practices, policies, regulations, and legislation?

Authority: 15 U.S.C. 3710(g); Department Organization Order 30-2A

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