Proposal to Rescind and Replace Rules 3335-13-06 and 3335-13-07

Rules 3335-5-06 and 3335-13-07 concern the university’s role in managing intellectual property, patents and copyrights (IPPCs) and participation in technology commercialization companies. The drafting of new IPPC policies requires revision of these rules. The old IPPC policy was contained within the rules, but this structure makes it difficult to modify policy to meet the rapidly changing needs of university employees who create intellectual property and commercializable technology. We therefore submit this proposal to rescind and replace rules 3335-13-06 and 3335-13-07 with the attached revisions.

WHEREAS The university has drafted policies concerning intellectual property, patents and copyrights to be approved by the University Senate and forwarded to the Board of Trustees for their approval; and concerning

3335-13-07 Rules governing faculty, staff, and student participation in companies commercializing university research.

(A) Objectives.

(1) Pursuant to section 3345.14 of the Revised Code, the university board of trustees has determined that the interests of the university will be served if faculty and categories of staff and students defined in paragraph 3 of section B of this rule are afforded the opportunity to hold personal financial interests in university technology commercialization companies. This rule enables the university to realize the benefits of entrepreneurial activities while protecting the integrity of its research, educational, and service mission and to comply with university policies regarding actual and potential conflicts and applicable federal and state laws.

(2) A university technology commercialization company is a private commercial entity that is owned in whole or in part by a university employee and that has as one of its purposes the development and/or commercialization of:

   (a) university-owned technology, or

   (b) university affiliate-owned technology if any university employee holds a 5% or greater equity interest in the company and the company receives or anticipates receiving consideration from the university as part of a business transaction with the university.

(3) Faculty and defined categories of staff and students are encouraged to develop discoveries and inventions with commercial potential; however, they shall do so with due regard to the broader teaching, research, and service mission of the university.

(4) Companies owned in whole or in part by a university employee that has as one of its purposes the development and commercialization of university affiliate-owned technology and any university employee holds less than 5% equity interest in the company and/or the company
receives or anticipates receiving consideration from the university as part of a business transaction with the university may seek to, but are not obligated to, obtain approval pursuant to Section D below. If such approval is received, the company shall thereafter be accorded status as a university technology commercialization company for the purposes of this rule.

(B) Jurisdiction.

(1) The university's ownership of intellectual property created by its faculty and defined categories of staff and students is determined in accordance with section 3345.14 of the Revised Code, federal law, and the university policy on intellectual property, patents, and copyrights.

(2) This rule shall apply to all faculty who create intellectual property owned by the university or a university affiliate and who hold an ownership interest in a university technology commercialization company.

(3) This rule shall apply to staff members holding unclassified appointments, graduate associates, and student employees who:

(a) Are specifically assigned to engage in research and development activities;
(b) Create intellectual property owned by the university or a university affiliate; and
(c) Hold an ownership interest in a university technology commercialization company.

(C) Administration.

(1) Faculty, staff, and students participating in university technology commercialization companies shall follow all applicable university policies.

(2) Participation in university technology commercialization companies must be approved by the university, including but not limited to the supervisor, tenure initiating unit head, or unit leader; the conflicts of interest administrator; the technology commercialization office; and the office of legal affairs. Such participation shall comport with:

(a) formal consulting and conflict of interest management plans signed by the employee;
(b) all applicable policies including but not limited to: faculty professional leave; faculty conflict of commitment; conflict of interest and work outside the university; faculty financial conflict of interest; faculty paid external consulting; and intellectual property, patents, and copyrights; and
(c) any formal agreement with the university technology commercialization company.

(3) The board of trustees has authorized the technology transfer oversight committee as the university body responsible for the approval and oversight of university technology commercialization companies.

(4) The university shall designate a conflicts of interest administrator who is the university official responsible for assisting faculty and other employees in identifying, managing, reducing, or eliminating actual or potential conflicts of interest, and in particular for facilitating the
development of conflict of interest management plans for faculty, staff, and students participating in university technology commercialization companies.

(5) Faculty and defined categories of staff and students shall adhere to applicable conflict of interest policies and shall disclose to the appropriate supervisor, tenure initiating unit head, or unit leader any financial interests held in a firm, corporation, or other association.

(6) Supervisors, tenure initiating unit heads, and unit leaders are responsible for ensuring that faculty and defined categories of staff and students who participate in university technology commercialization companies comply with all applicable university policies.

(D) Approval process for university technology commercialization companies.

(1) Faculty and defined categories of staff and students who wish to participate in a university technology commercialization company must first obtain approval from the appropriate supervisor(s) as described in section (C)(2) of this rule. The technology commercialization office will be responsible for establishing the business terms of the transaction between the company and the university or a university affiliate, and the conflicts of interest administrator will facilitate the development of a conflict of interest management plan.

(2) The technology transfer oversight committee will review the sufficiency of business terms and conflict of interest management plans relating to university technology commercialization companies. Written approval from the technology transfer oversight committee must be obtained before any business agreements relating to a university technology commercialization company are finalized.

(3) Faculty and defined categories of staff and students who wish to participate in a university technology commercialization company shall not participate in the ongoing negotiation of option and licensing terms between the company and the university or a university affiliate.

(4) The faculty, staff, or student's supervisor, tenure initiating unit head, or unit leader must be active participants in the development of the conflict of interest management plan relating to a university technology commercialization company.

(5) If a supervisor, tenure initiating unit head, or unit leader has a financial interest or is a co-participant with faculty, staff, or students in a university technology commercialization company, another administrator must be appointed to perform the responsibilities of the supervisor, tenure initiating unit head, or unit leader.

(6) If the technology transfer oversight committee determines that, for any reason, it is not possible for the supervisor, tenure initiating unit head, unit leader, or another administrator to provide effective oversight of a transaction involving a university technology commercialization company, the transaction shall not be approved.

(E) Responsibilities to the university.

(1) Faculty should not allow their financial interests in a university technology commercialization company to influence their teaching, or to interfere with their relationships with other faculty. In particular, research assignments for students should be based on the students' interests and
academic development. While faculty are permitted by the policy on faculty paid external consulting and this rule to engage in authorized private business activities relating to their university positions, they continue to be responsible for the performance of all of their university teaching, research and service obligations.

(2) Staff may engage in activities relating to a university technology commercialization company during regularly assigned working hours only if they take approved leave. Staff may pursue only those research projects that will advance the missions of the university and the employing unit, without regard to the financial interests of individual employees, and that are authorized by their supervisor, tenure initiating unit head, or unit leader.

(3) Student employees may not engage in activities relating to a university technology commercialization company during regularly assigned working hours.

(F) Conflict of interest management standards.

(1) University facilities, equipment and other resources may be used for research benefiting a university technology commercialization company pursuant only to a sponsored research agreement, facilities use agreement, or other appropriate contractual arrangement.

(2) Faculty and defined categories of staff and students should not hold permanent management positions in university technology commercialization companies. To ensure the application of this principle, agreements between the university or a university affiliate and a university technology commercialization company should contain enforceable milestones for the reduction of any management responsibilities.

(3) Faculty shall not allow their activities with university technology commercialization companies to consume a disproportionate amount of their professional attention. Faculty engaged in authorized private business activities who are unable to perform all of their university responsibilities must reduce those business activities or request a reduction of appointment or other approved leave in accordance with university policies. Faculty professional leave authorized under section 3345.28 of the Revised Code shall not be used for private business purposes.

(4) Staff who are unable to perform all of their university duties because of activities in connection with university technology commercialization companies must reduce those business activities or request a reduction of appointment or other approved leave in accordance with university policies.

(5) As stipulated in the graduate school handbook, research benefiting a university technology commercialization company may not be used to satisfy the criteria for a thesis or dissertation if the material is restricted from publication. Faculty must inform the student in writing of this publication restriction prior to the start of the student’s research.

(6) A student may not be employed by or hold equity interest in a university technology commercialization company in which a faculty member has an ownership interest if the faculty member has a supervisory, teaching, evaluation, advising, coaching, or counseling relationship with the student.

(7) Students may be employed by a university technology commercialization company, subject to the limitation set forth in paragraph (F)(6) of this rule. Student employment by a university
technology commercialization company requires a sponsored research agreement or other formal internship agreement through the university in which the student’s rights and obligations are disclosed.

(8) The university may not enter into any agreements with university technology commercialization companies for the purchase, sale, or rental of equipment, supplies or services other than those explicitly authorized by the technology transfer oversight committee.

(9) Faculty and staff who are not directly involved with research and development of technology licensed to a university technology commercialization company or the development of that company may hold equity interests in that company, barring the presence of undue influences (e.g., supervisory, teaching, evaluation, advising, coaching, or counseling relationships) and subject to university policies and Ohio Revised Code, particularly section 2921.42.

(10) University regulatory review boards including, for example, the institutional review board and the institutional animal care and use committee, may be used for research benefiting a university technology commercialization company pursuant only to a sponsored research agreement and any other university policies.

(11) Faculty or staff may not be the principal investigator in sponsored research projects funded by university technology commercialization companies in which they have an interest if the projects involve approval by the institutional review board or if they are veterinary clinical trials involving the use of animals unless provided for by other university policies. For sponsored research not requiring institutional review board or institutional animal care and use committee oversight, faculty or staff may assume the role of principal investigator if a formal research integrity plan approved by the technology transfer oversight committee, the conflicts of interest administrator, and the office of legal affairs is in place.

(12) Agreements for sponsored research projects funded by university technology commercialization companies must include, at a minimum, a requirement for full university publication rights and fully negotiated cost recoveries. The office of research must approve exceptions to these conditions.

(13) Faculty and staff participating in university technology commercialization companies approved pursuant to this rule continue to be bound by the university policy on intellectual property, patents and copyrights and all other applicable university policies.

(14) New inventions and/or discoveries made as a result of a faculty or staff member’s research efforts for a licensee of university-owned technology or a licensee of a university affiliate-owned technology, where the faculty or staff member holds in whole or in part an ownership interest in the licensee, including those made under formal consulting agreements, will be owned by the university, and the licensee will be offered an exclusive option to the technology. New inventions and/or discoveries developed by the faculty, staff member or student for the company must be disclosed to the technology commercialization office as required by the policy on intellectual property, patents, and copyrights.