

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

Rule 3335-13-06:

WHEREAS Faculty rule 3335-13-06 supporting the old IPPC policy is now obsolete in light of the new policies; and

WHEREAS The new policies are of particular interest to faculty, staff and students, and should therefore be subject to annual review by the faculty, staff and student members of the Committee on Intellectual Property, Patents, and Copyrights and subject to approval by the University Senate following substantial revision; and

WHEREAS Procedures for appeal of decisions concerning IPPCs are critical for preserving faculty, staff and student rights; and

WHEREAS The revisions to faculty rule 3335-13-06 resulted in greater than 50% change to that rule;

BE IT THEREFORE RESOLVED that the University Senate approve the proposal to rescind and replace rule 3335-13-06 with the following, and respectfully seek approval from the Board of Trustees.

Rule 3335-13-07:

WHEREAS Faculty rule 3335-13-07 contains within it the old IPPC policy and is now obsolete in light of the new policies; and

WHEREAS The Ohio Revised Code allows for faculty, staff, and student participation in university technology commercialization companies under certain conditions; and

WHEREAS Those conditions, together with the rights and responsibilities of faculty, staff, and students must be clearly explained in the Faculty Rules as specified by the Ohio Revised Code 3335.14, which delineates all parties' responsibilities to the university and to each other, and defines minimum acceptable standards for the management of conflicts of interest for the protection of all parties; and

WHEREAS The Rules Committee, together with the assistance from individuals from the Offices of Academic Affairs, Legal Affairs, Compliance and Integrity, and Technology Commercialization, and other University Committees, has revised rule 3335-13-07 to comply with the Ohio Revised Code, to be consistent with the university policy, and to protect the rights and explain the responsibilities of faculty, staff, and students; and

WHEREAS Administration of participation in technology commercialization endeavors requires formal agreements between faculty, staff and students and the university technology commercialization companies that comply with all applicable university policies and provide oversight and mechanisms for the management of conflicts of interest; and

WHEREAS The approval of such formal agreements must involve the faculty, staff and students who are the creators of the technology to be commercialized, the technology transfer oversight committee, supervisors, unit heads or unit leaders, the technology commercialization office, and the office of legal affairs who, together, must avoid conflicts of interest; and

WHEREAS The revision to faculty rules 3335-13-07 resulted in greater than 50% change to that rule;

BE IT THEREFORE RESOLVED that the University Senate approve the proposal to rescind and replace rule 3335-13-07 with the following, and respectfully seek approval from the Board of Trustees.

3335-13-06 Rights to and interests in intellectual property, patents, and copyrights.

(A) The university shall have a policy or policies on intellectual property, patents, and copyrights (hereinafter referred to as “the policy”) to be administered under the direction of the president of the university or his/her designee.

(B) The board of trustees deems it in the best interest of the university, its faculty, staff, and students, and in the interest of the promotion of research and development to provide for participation by faculty, staff, and students in the proceeds from products of research conceived or developed by them as determined by the policy.

(C) The intellectual properties, patents and copyrights committee shall review all changes to the policy. Revisions shall be promulgated through the university policy process and then recommended to faculty council and the university senate.

(1) Membership, duties, and organization of the university senate committee on intellectual property, patents and copyrights shall be in accordance with rule 3335-5-48.19 of the Administrative Code

(2) The policy on intellectual property, patents, and copyrights shall include specific procedures for appeals to the committee on intellectual property, patents and copyrights.

(Board approval dates: 4/12/1963, 5/8/1969, 10/4/1985, 4/4/1986, 11/2/1990, 4/4/1997, 12/4/1998, 5/7/2004, 6/6/2014)

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

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.