

Comments gathered during the Public Hearings

Summary of comments for further consideration in the amended provisions

Rule	Provision	Manila Leg	Davao Leg	TWG/Secretariat
3	(t)	Atty. Raz: “who” to “which”		
3	(bb)	Atty. Raz: “Startup” to “startup” Atty. Decena: clarified the juridical entity status of spinoffs		
3	(ii)	PCAARRD (Ms. Dagaas): From “his” to “his/her” for gender sensitivity.		“Written recommendation” defined by a written recommendation
10			Express statement on student involvement, express waiver of rights	
10	(j)	PNU: to delete “researchers and” as “staff” was already mentioned and defined in the previous sentence	UIC: Is it possible to add “incentives should not be taken in the royalties”?	
11		PNU: subtitles in all sections	Atty. Decena: Include previous provisions on “other modes of commercialization”	Exempted modes? Written Recommendation Receiving Office
11	(1)		Suggest to refine the definition of the “researcher” to consider the students or add “researcher/employee”	
11	(2)			...and written recommendation by the DOST Secretary
11	(6)			...by the receiving office OR ...from the requesting party
11	(7)	Atty. Decena: “GFA” will be changed to “requesting party”		
11	(9)(a)	Benguet SU: for consistency, “his” to “his/her”		
11	(9)(a)	Atty. Decena: Items b and c shall be merged		
			DDSC: Spelling of “amendments”	
			The requests for FOR shall be regionalized so there’s no need to go to the Central Office	

Summary of comments for further consideration in the amended provisions

Rule	Provision	Manila Leg	Cebu Leg	Davao Leg
3	(e)	<p>UP System (Cedrik Gayares, UP-TTBDO): Clarificatory on conflict of interest, on whether employees from other component universities are considered to have conflict of interest with the other component universities of the same university system, such as UP Manila and UP Diliman Atty. Raz: We regard the UP system as one. This is also based on the charter of the university.</p>	<p>Samar State University: How do we determine conflict of interest? Atty. Decena: Any relationship or interaction with any of the licensor or the licensee University of San Carlos: Will the member declare conflict of interest Atty Decena: We ask our members to sign a declaration of no conflict of interest.</p>	<p>ZSCMST: How members of the FOB are selected Atty Raz: The DOST Secretary select the experts among the list of recommendees</p>
3	(f)	<p>Atty. Raz: GFA changed to "requesting party"</p>	<p>Samar State University: Acceptability of the technology (social, economic, environmental) being commercialized will be included in the fairness opinion report Atty. Decena: Based on the law, the fairness opinion shall only be covered by the financial terms of the transaction. Iloilo Science and Technology University: Is a university a GFA or an RDI? Atty. Raz: Yes. If in a research project, an entity is involved in its funding and implementing, the said entity is both the GFA and the RDI. Unv of San Carlos: From a private university's point of view, will we be considered as a GFA or an RDI? How about if we use the public funding to fund another project? Atty. Raz: If you got funding from a GFA, then you are the private RDI. It would still make you an RDI if you fund projects ISATU: Shall we be covered if we received</p>	

			<p>funding from private entities? Atty. Decena: No it is not covered. It would only be covered if funding comes from a government institution.</p>	
3	(t)	Atty. Raz: "who" to "which"	<p>Northern Iloilo State Polytechnic College: Is it possible to submit IP's from other regions?</p> <p>USC: Are we required to submit FOR request for our spinoff? Why is it so, we owned the IP so we can do whatever we want for it?</p> <p>Atty. Decena: If you used government money, then you need to request for an FOR.</p> <p>Atty. Raz: In this proposal to amend the IRR, we are pushing that private RDIs need not request for FOR for direct licensing, but would still need require for spinoffs.</p>	
3	(bb)	<p>Atty. Raz: "Startup" to "startup"</p> <p>Atty. Decena: clarified the juridical entity status of spinoffs</p>	<p>SSU: Clarification on the word "independent". Atty. Raz: The spinoff firm being mentioned is a corporation that will be created as a spinoff firm. The word independent refers to a separate company or firm that has a separate legal personality from the RDI or the researcher, although the researcher may be a professor of the RDI.</p> <p>USC: What about if the faculty only claims that he is not using the facilities of the university? Atty. Raz: It is a matter of evidence to prove that the work is done in the university.</p>	<p>ZSCMST: How many for spin-off Atty. Raz: Spin-off may include as many researcher-employees</p> <p>ZCSPC: Does SUCs also covered by the RA No.10055 Atty. Raz: Any government-funded researches are covered by the law.</p>
3	(ff)			<p>ZCSPC: Are the technology transfer protocol Ms. Opena: RDIs have their own protocol</p> <p>PhilRice: What to do when students are interested to put up a spin-off Atty. Raz: Spin-off terms also applies</p>

				<p>WMSU: Where to ask permission to use the technology from the internet. How to resolve the issue of ownership/copyright?</p> <p>Engr. Lim: Based on the IP Code, government agencies have no authority to own copyright.</p> <p>Atty. Raz: The copyright is different from the technology. Seek the consent of the researchers and the PhilCOA.</p> <p>Atty. Decena: It should be included in the protocol of the institution.</p>
3	(ii)	PCAARRD (Ms. Dagaas): From “his” to “his/her” for gender sensitivity.	<p>Director Sicat: I believe this clarifies a previous comment on the technical aspects of the fairness opinion.</p> <p>CapSU: Why is it that the technical, legal, social, economic, and administrative aspects are in the written recommendation while the financial terms on the fairness opinion report?</p> <p>Director Sicat: It is quite immature to discuss but in Rule 11, there are some exemptions mentioned. There would be better appreciation in this one once we reach Rule 11.</p> <p>Atty. Decena: In the FOB’s report, it will purely focus on the financial aspects. Other aspects will be covered by the Secretary’s written recommendation.</p>	
4				<p>UIC: How to determine if the law applies to any funding activities?</p> <p>Atty. Raz: If R&D is not government-funded, the law does not apply</p>
5			<p>SSU: For instance, I am the innovator while I am a student that the university applied for the IP. Later, I made improvement on the original technology. Who owns it?</p> <p>Atty. Raz: For the original technology, by whoever developed it. During the time that</p>	

			the researcher or the one who developed it is still a student, this will depend on the IP policy of the university. Years later, for the improvement or modification, it would depend on the IP Policy of the university where the former student is employed.	
6				<p>WMSU: Is it possible to withdraw the copyright application? Atty. Raz: Yes.</p> <p>USEP: In the absence of any agreement, how does the ownership? Atty. Vilchez: The author supposed to assigned the work to the government. Atty. Raz: You may have joint ownership but the assumption is equal in the absence of the agreement.</p>
10	(b)	<p>Benguet State University (Feliciano Calora: Whether the law covers SUCs as “RDIs” Atty. Raz, Atty. Decena: Cited Section 4 of the RA10055 that covers SUCs as RDIs</p> <p>UP System: What incentives can be provided in the protocol Atty. Decena: The actual incentive depends on the RDI and shall not need DOST approval for internal policies</p>	<p>ISATU: Wording looks vague Atty. Decena: The word “may” refers to the option of the RDI to develop its own protocol.</p> <p>SSU: Do we need to secure approval of our protocol from the DOST? Atty. Decena: No, as we are not a clearinghouse of your protocols. However, once you developed your own you need to make it consistent with the law.</p> <p>USC: I belong to a private university that is generous to its researchers as we provide IP ownership to the researchers. Atty. Vilchez: If it entails private support, then there is no problem with that.</p>	<p>WMSU: Where to send draft tech trans protocol for review? Atty. Raz: PCAARRD has trainings and seminars for SUCs.</p> <p>Mr. Sancho: Consortia of DOST can also be a venue.</p>
10	(g)		<p>ISATU: In case of multiple GFAs, how do we determine the GFAs? Atty. Decena: It depends on who are mentioned and who signed in the research funding agreement.</p>	<p>(check recording): Noticed that the Technology Review Committee was not included in the amendment. Atty. Raz: Deleted because not all RDIs have that.</p>

10	(j)	<p>Benguet SU: Re: MC, fund is coming from BSU but would need DOST approval Atty. Decena: incentives being referred to by RA10055 is based on IP commercialization, whereas MC-based incentives are accreditation-based</p> <p>PNU: to delete “researchers and” as “staff” was already mentioned and defined in the previous sentence Atty. Decena, Atty. Raz: To note the comment for TWG’s further discussion.</p>	<p>ISATU: This is a commendation to the TWG. In developing our technology transfer policy, it is difficult for us without this. I commend the TWG for this.</p>	<p>WMSU: For clarification of who are “the others” Atty. Raz: This includes the technology licensing officers and those people concerned with the IP identification and commercialization of the technology (i.e. patent agent, ITSO staff) Ms. Florendo: Incentives can be received in any form or manner not only through royalty sharing.</p> <p>UIC: Is it possible to add “incentives should not be taken in the royalties”? Atty. Raz: Noted and will be considered in the deliberation.</p> <p>WMSU: Issue on recovering ownership. Atty. Raz: If the researcher dies, the heirs got nothing based on the DOST IP Policy. The institution can include that in their own policy.</p>
10	(l)		<p>Bohol ISU: We are still in the process of our TT protocol. Is it safe that we include this part? Atty. Decena: Perhaps it is safest that you include your revisions once the revised IRR is approved.</p>	<p>WMSU: Why six months not 12 months? Atty. Raz: If 12 months, you’re application will be prejudice and there will be enough time.</p>
11		<p>UP System: Clarificatory on whether private RDIs are no longer required FOR Atty. Decena: Private RDIs are no longer required FOR, unless there is a tie up with a public RDI</p> <p>PNU: subtitles in all sections TWG: Noted</p>	<p>ISATU: Do we have to satisfy this Rule regardless of the amount of R&D funding? Atty. Decena: We have not yet issued on the operating guidelines for this Rule. Before, we have issued guidelines on the FOR. The concept is that the FOR is regionalized where it is nearer. What is costly here is the fact that the licensors and licensees come from different parts of the country and experts would come from the NCR who will need to travel to the regions. This is also convenient</p>	<p>DDSC: Is there minimum numbers of the FOB? Atty. Raz: Yes. At least 2 from the public sector and 1 from private.</p> <p>UIC: For clarification, if there’s a start-up, is there’s a need FOR? Atty. Decena: Include previous provisions on “other modes of commercialization”</p>

			<p>to the requesting parties and somehow fast-tracked as it is not centralized.</p> <p>ISATU: Thank you for this proposed arrangements as this is our dilemma. Director Sicat: I have discussed this extensively with Director Rowen.</p> <p>ISATU: Based on one of the comments of Director Gellonga, is it possible that with the GFA is also an RDI, can the president form an independent body within the university to fast track the FOR?</p> <p>Atty. Decena: The review is on the transaction. If you are both a GFA or a RDI, you are only considered as one party.</p>	<p>Compostella Valley: If do not apply for FOR, is there a sanction?</p> <p>Atty. Decena: The FOR will be a basis to enter an agreement with the potential licensees. DOST will not sanction but the COA might look for basis. Otherwise, may conduct public bidding.</p> <p>UIC: Be clarified on item (b), is RDI distinct?</p> <p>Atty. Raz: Yes.</p>
11	(1)			<p>DDSC: Will the management of the spin-off company be separate from the RDI?</p> <p>Atty. Raz: Yes. Creation of the firm depends on the RDI.</p> <p>Should the reseach-employee decides to terminate his/her employment?</p> <p>If you are an employee, you only take a leave of absence.</p> <p>If the researcher is a student?</p> <p>Student are referred as a researcher.</p> <p>Atty. Decena: If the students are enrolled in a research subject, students may be defined also as a “researcher”</p> <p>Suggest to refine the definition of the “researcher” to consider the students or add “reseacher/employee”</p> <p>What if the students are under 18?</p> <p>There should be a provision in the policy of</p>

				<p>the institution.</p> <p>UIC: If there a conflict of interest involving the DOST Secretary, what is the fallback? Atty. Decena: Clarifies that Rule 11 has 2 reports. It is GFA/RDI to decide to pursue the licensing.</p>
11	(2)	<p>UP System: Clarificatory on whether the limited manufacturing license is university-based decision Atty. Decena: Yes</p>		<p>PhilRice: Commendation on the amendment of the TWG</p> <p>PhilRice: Concept of parent agency's approval. Atty. Raz: It may also included in the policy of the institution</p>
11	(4)			<p>DDSC: Who initiates the request for the FOR? The GFA/RDI will be the requesting party</p> <p>ICT Davao: What is the experience? Why to set fast track? Suggestion to regionalize the facilitation of the request for FOR. Atty. Decena: Mentioned the current situation in relation to the FOB (i.e. honorarium, procedures)</p>
11	(5)	<p>UP System: clarificatory on "background documents", on what documents are needed Atty. Decena: any document that shall prove existence or legitimacy of the requesting parties. However, there would be a need to amend it further to refer to "parties to the proposed transaction"</p>	<p>SSU: Clarification on what kinds of documents to be specific? Atty. Decena: Usually we require financial statement. ISATU: Clarification as to the process and timeline. Atty. Decena: We already have existing circulars for full blown and fast-tracked opinion.</p> <p>Director Sicat (looking for comments): Relative to the financials, what do you think if someone wants to buy the right to manufacture your technology and does not want to provide his financials?</p>	

			<p>SSU: Requiring financial documents will ensure that the IP owner is protected in the transaction. If possible, the DOST is a witness in technology transfer.</p> <p>ISATU: Perhaps it depends on the negotiation process to determine if the buyer is legitimate. But there is a factor of competition.</p> <p>Atty. Raz: If a licensee is really serious in the license, why would it be difficult for it to submit the said document? Anyway, he already submitted the same to the BIR.</p> <p>Compliance would matter to long-term relationship and in the monitoring of the transfer.</p> <p>Atty. Decena: If a check can be available to buy then there would be no use for the financial documents, unless the check will bounce.</p> <p>USC: What is a buyer is a troll?</p> <p>Atty. Decena: It would depend on your due diligence and the objective of your technology transfer.</p> <p>Atty. Decena: The FOB actually helps to validate the capability of the licensee.</p>	
11	(6)(a)		<p>SSU: Is there a possibility that the FOB connives with the requesting party?</p> <p>Atty. Raz: It is a reason why the law provides that the DOST Secretary will select the members of the FOB, and the conflict of interest that is being checked.</p>	
11	(6)(d)		<p>Atty. Decena: The preparation of the two separate reports can be done simultaneously.</p> <p>Atty. Decena: The law states that you need to undergo the FOB process but not to follow it.</p> <p>[check recording re: third party independent opinion and that they are not supposed to be influenced in their opinion] What we are now correcting is what the law states: The DOST</p>	

			Secretary will issue his written recommendation based on his views on the transaction while an independent third party to issue its fairness opinion. You are not compelled to agree with their opinion.	
11	(6)(f)	UP System: if it is possible that the “requesting party” be amended to “parties to the proposed transaction”		<p>DDSC: What does the cost for the request of FOR. Atty. Decena: Includes honorarium, representation, accommodation of the FOB and its Secretariat.</p> <p>Who sets the venue and date of the meeting? The Secretariat and the FOB based on their availability.</p> <p>DOST XI: Aside from the procedure, may be look at the economics and threshold. Did we consider the small enterprises? Atty. Decena: The TWG considered these on Sec 2 of this Rule. Rule 11 does not apply if there’s no commercialization</p> <p>DDSC: The COA might stand on the public good Atty. Decena: The determination of public good should be included in the institution’s policy. It was not included in the IRR to give the RDIs leeway to decide their own.</p> <p>Mr. Cabagay: PCAARRD has an output analysis to determine a public good. a. Deployment b. Extension c. Commercialization</p> <p>DOST XI: The IRR focuses more on FOR, is there’s a provision for the bidding? Atty. Decena: Noted. To include another</p>

				provisions that the GFA/RDI allowed to transfer/ commercialize through different modes. Comment on the heading of the Rule 11 Atty. Raz: The title is found on the law.
11	(7)	Atty. Decena: "GFA" will be changed to "requesting party"		
	(9)(a)	Benguet SU: for consistency, "his" to "his/her" TWG: Noted UP System: If there are fees or rates that can be included Atty. Decena: Not in the IRR		
11	(9)(b)	UP System: re conflict of interest, if alumni can be engaged as FOB Expert Atty. Raz: shall be treated on a case to case basis		
11	(9)(b) and (c)	Atty. Decena: Items b and c shall be merged		
11	(10)	UP System: Clarificatory on issued FORs and if there are restrictions, and how can the information be accessed Atty. Decena: The process shall operate based on the FOI. A separate policy shall be prepared for this. Atty. Decena: separate policies shall be issued by the DOST after the IRR has been amended	ISATU: Clarificatory on the TAPI and the Regional Offices USC: Are these public documents? Atty. Decena: Yes. As agreed by the TWG, confidentiality is only during the process of evaluating the request but will become public documents once the reports are issued.	
16		UP System: If secondment or leave of absence is paid by the university Atty. Raz: No time devoted to the university, so it should be unpaid leave unless the researcher will be involved in the spinoff as a part-time consultant in order to avoid double compensation.	SSU: Concerning ethical issues, such as allowing a researcher to be a part of a spinoff firm who will be receiving double salary. I propose that the wording be "may" and not "shall". Atty. Decena: The text is based on the law word for word. There is no double compensation because the researcher will be	UIC: Is it possible to do not require a leave of absence or to include a provision to retain the leave of pay PhilRice: There is a statement, "whenever applicable" Atty. Raz: You will only allow to take a leave if you're an employee of the firm.

			<p>required to take a leave without pay, unless his participation in the firm is merely as a consultant with limited authority to practice.</p> <p>Atty. Raz: As incorporator, stockholder, or consultant, he needs not take a leave of absence.</p>	Issues to be considered “no employee-employer relationship”
21		<p>Minscat: re: Section 5, for the purpose of clarifying, IPOPHL is mentioned instead of IPO</p> <p>Atty. Decena: As is with the IPO because the term is generic and shall cover IP applications from other jurisdictions.</p>		
22		<p>UP: Clarifying that SUCs are not covered by the 2nd paragraph.</p> <p>Atty. Raz: Yes.</p> <p>MMSU (Engr. Nabua): Clarifying if consultancy fee is not included</p> <p>Atty. Decena: It depends on the nature of the consultancy</p>		
23			<p>SSU: Who determines the professional fees?</p> <p>Atty. Decena: It depends on the techtrans protocol of the university.</p>	
26		<p>PMSU: On the commercialization abroad, is there a need for a country’s share</p> <p>Atty. Decena: It is needed that the university will be defined as the Applicant in all applications.</p>	<p>Is it the IPOPHL for the “IPO”?</p> <p>Atty. Decena: It is IPO of the country where commercialization will be done.</p>	<p>WMSU: We have to write to IPO?</p> <p>Who shoulder the expenses for the issue?</p> <p>Atty. Canlapan: Yes. As long as there are provisions.</p>
				DDSC: Spelling of “amendments”
				<p>ICTDI: The requests for FOR shall be regionalized so there’s no need to go to the Central Office in Manila. There are many experts in every Region that can evaluate.</p> <p>Atty. Raz: That is one of the proposed amendments on this IRR.</p>

