



Republic of the Philippines

DEPARTMENT OF SCIENCE AND TECHNOLOGY
CENTRAL OFFICE



OFFICE OF THE SECRETARY

SEP 09 2019

DOST ADMINISTRATIVE ORDER NO. 016
Series of 2019

**SUBJECT: THE DEPARTMENT OF SCIENCE AND TECHNOLOGY
INTELLECTUAL PROPERTY POLICY, AS AMENDED**

CHAPTER 1
INTRODUCTION

Section 1. Rationale. The Philippine Technology Transfer Act of 2009 (Republic Act No. 10055) took effect on May 8, 2010. Chapter IX of the Act's Implementing Rules and Regulations (IRR) requires that the DOST define its policy on intellectual property and lay down the institutional mechanisms for technology transfer activities. The DOST IP Policy shall guide its attached agencies in the performance of their roles as government funding agencies (GFAs) and research and development institutions (RDIs). Likewise, it shall define the engagements of DOST and its attached agencies with stakeholders including, but not limited to, other public RDIs, private RDIs, public and private higher education institutions (HEIs), and technology adopters. This is in accordance with the DOST's twin mandate of providing central direction, leadership and coordination of scientific and technological efforts and ensuring that the results therefrom are geared and utilized in areas of maximum economic and social benefits for the people.

The DOST IP Policy issued as DOST Administrative Order No. 004 dated April 13, 2015 is hereby amended to be consistent with Joint DOST-IPOPHL A.O. No. 001 s. 2019, Amending the Implementing Rules and Regulations of R.A. No. 10055.

Section 2. Declaration of Policies and Principles. The State fully recognizes that science, technology, and innovation are essential for national development and progress. It shall therefore give priority to research and development (R&D), invention, innovation, and their utilization. It shall also encourage the widest and most systematic participation of all stakeholders including marginalized groups like elderly, indigenous people, physically challenged, and women in policymaking related to science and technology, and in the generation, transfer, and utilization of intellectual property (IP), especially for the benefit of the public.

The State shall also facilitate the transfer and promote the utilization of IP for the national benefit and shall call upon all RDIs that perform government-funded R&D to take on technology transfer as their strategic mission and to effectively translate results of government-funded R&D into useful products, processes, and services that will redound to the benefit of Filipinos, notwithstanding the revenue generated from intellectual property rights (IPRs) and technology transfer activities.

The State likewise acknowledges that the successful transfer of government-funded R&D results depends on the proper management of IP, development of capacity of RDIs to be competitive, and on enhancing interaction and cooperation with the private sector, particularly small and medium enterprises through collaborative and contract research based on equitable, fair access, and mutual benefit for all involved partners.

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The State shall further establish the means to ensure greater public access to technologies and knowledge generated from government-funded R&D while enabling, where appropriate, the management and protection of related IP.

Finally, the State recognizes that an effective intellectual and industrial property system is vital to the development of domestic creative environment, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products.

Section 3. Objectives. In accordance with the State Policies and the Philippine Technology Transfer Act of 2009, its IRR, as amended, and the Guidelines on IP Valuation, Commercialization and Information Sharing, the amended DOST IP Policy aims to define the roles of DOST and its attached agencies in the ownership, protection and management, utilization, transfer and commercialization of IPs generated from DOST-funded R&D activities.

CHAPTER 2 COVERAGE

Section 1. DOST as GFA and/or RDI. The DOST and its attached agencies may perform the role of GFA and/or RDI. As a GFA, the DOST and/or its agencies provide research grants and other technical and material support from government appropriations and resources and those sourced from government-managed Official Development Assistance (ODA) funds. As an RDI, the DOST and/or its agencies perform R&D activities.

The following DOST agencies primarily perform the role of GFA:

a) DOST Central Office (DOST-CO) and its Regional Offices; b) three (3) Sectoral Planning Councils, namely: Philippine Council for Agriculture, Aquatic and Natural Resources Research and Development (PCAARRD), Philippine Council for Health Research and Development (PCHRD), and the Philippine Council for Industry, Energy and Emerging Technology Research and Development (PCIEERD); and c) one (1) Collegial and Scientific Body which is the National Research Council of the Philippines (NRCP).

The following DOST agencies primarily perform the role of RDI:

a) Advanced Science and Technology Institute (ASTI), b) Food and Nutrition Research Institute (FNRI), c) Forest Products Research and Development Institute (FPRDI), d) Industrial Technology Development Institute (ITDI), e) Metals Industry Research and Development Center (MIRDC), f) Philippine Nuclear Research Institute (PNRI), and g) the Philippine Textile Research Institute (PTRI).

The agencies mentioned above primarily perform the role of GFA and/or RDI and are identified as such. But in certain projects, a GFA may perform R&D activities in which case, said GFA may also be considered RDI. On the other hand, an RDI may grant research funding in which case, said RDI may also be considered as GFA. In some instances, an agency may be both a GFA and RDI.

The agencies that are not mentioned in this section may be considered either a GFA or RDI, or both depending on the roles that they perform.

Section 2. DOST as Parent Agency. The DOST, through the Office of the Secretary (OSEC), performs the role of a Parent Agency that exercises control and supervision over its attached agencies functioning as GFA and/or RDI.

Section 3. Agencies and Personnel Covered.

1. All DOST agencies performing the functions of GFA and/or RDI as defined in this Chapter;
2. All DOST Officials, researchers and support staff undertaking research and/or creative activities pursuant to any program, project, grant, or contract and all those involved in providing research grants, and other technical and material support under the auspices of the DOST system; and
3. All other institutions, research personnel, and stakeholders that implement DOST-funded R&D.

Section 4. Rights Covered. This Policy shall cover all types of IPRs recognized under Philippine laws, such as, but not limited to the amended IP Code of the Philippines (R. A. 8293), and the Philippine Plant Variety Protection Act of 2002 (R.A. 9168) and international laws and treaties, such as the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights) under the World Trade Organization, to include patents, utility models, trademarks and service marks, industrial design registrations, layout design (topography) of integrated circuit, copyrights and related rights, trade secret or undisclosed information, geographical indications, and new plant varieties.

Section 5. Matters Covered. This Policy shall cover all research, innovation and/or creative activities, tangible research properties with or without IP protection, whether for commercial or non-commercial purpose, supported by DOST funds or undertaken by DOST and DOST-attached agencies, and including all technology transfer arrangements.

For consistency purposes, definition of terms used in this Policy is provided in Annex 1.

CHAPTER 3 OWNERSHIP OF IP AND IPR FROM DOST-FUNDED R&D ACTIVITIES

Section 1. Ownership of IP. In recognition of the fact that agencies involved in R&D are in better position to identify the social and economic potentials and can better utilize the IPs and IPRs generated from their activities, the law provides that these agencies are given ownership to these IPs and IPRs. As such, IPs and IPRs derived and generated from R&D activities funded by DOST, whether such funding is in whole or in part, shall, in general, be vested in the RDI that actually performed the activities, except the following:

1. When the RDI has entered into a public, written agreement sharing, limiting, waiving or assigning its ownership of the IPs or IPRs generated from its research in favor of the GFA: *Provided*, That the same may only be voluntarily executed by the RDI to protect public interest, and in particular involves national security, nutrition, health, or the development of other vital sectors;
2. In case of failure of the RDI to disclose potential IPRs to the GFA, whereupon the GFA shall assume the rights to the potential IPR;
3. In case of failure of the RDI to initiate the protection of potential IPRs within a reasonable time from confidential disclosure to the GFA, which shall in no case exceed three (3) months from public disclosure, whereupon the GFA shall assume the rights to the potential IPR; and
4. In case the RDI ceases to become a Filipino corporation as defined in Article I, Section 4(i) of the R.A. No. 10055.

Section 2. Classification of Ownership.

a. Ownership of IPs and IPRs and Sharing of Revenues Derived from Work Jointly Done by Two or More RDIs

1. IPs and IPRs generated from complementing activities of two (2) or more DOST agencies as RDIs and funded from their own budgets shall be jointly owned by them and any revenues generated shall be shared in a manner agreed upon by them in a Research Funding Agreement (RFA) or, if none, equally among themselves;
2. In case of collaborative research where two (2) or more RDIs conducted the activity funded by DOST, the concerned RDIs shall own the IPRs jointly or in a manner otherwise stipulated in the RFA; and
3. In reaffirming RDIs ownership over these IPs and IPRs, the DOST was guided by the assurance that an RDI's primary mission in conducting an R&D activity is to advance public interest and the general welfare of people which, as a matter of policy, should take precedence over maximizing revenue earned from these IPs and IPRs.

b. Ownership of IPs and IPRs and Sharing of Revenues Derived from Work supported by Multiple Funding Agencies

1. Where funding is from DOST and other funding agency/ies, the RFA shall determine ownership of IP and sharing of revenues derived therefrom;
2. In case of funding from ODA, whether in full or in part, the terms and conditions of ODA shall be considered in crafting the necessary RFA; and
3. The provisions of this DOST IP Policy shall also be observed in all bilateral/multilateral R&D agreements which must be followed by all concerned parties.

Section 3. Assumption of Ownership Rights by the GFA. The GFA shall assume ownership of IPs and IPRs, whether potential or otherwise, which were originally vested with the RDI under the following circumstances:

- a. When it involves protecting public interest, particularly national security, nutrition, health, or the development of other vital sectors;
- b. In case of failure of the RDI to disclose potential IPRs to the GFA;
- c. In case of failure of the RDI to submit confidential disclosure to the GFA and initiate IP protection within three (3) months from public disclosure; and
- d. In case the RDI ceases to become a Filipino corporation as defined in Article I, Section 4(i) of the Act.

Section 4. Recovery of Ownership by an RDI. The GFA shall allow the RDI to recover the IP and IPR without prejudice to existing contractual obligations and negotiations on any of the following instances:

- a. That there is a viable commercialization taker for the IP as identified by the RDI. The interested commercialization taker shall submit a letter of intent to the DOST and the GFA which shall also be endorsed by the RDI; or

- b. That the IP or IPR is an integral part of a portfolio of technologies owned and managed by the RDI.

The GFA may require the RDI to reimburse the expenses incurred in pursuing protection and commercialization of the IP being recovered.

CHAPTER 4 DOST AS A GOVERNMENT FUNDING AGENCY (GFA)

Section 1. Protection of Government Interest. The GFA shall protect government interests on IPs and IPRs generated from the R&D activities which it funds through suitable provisions in all RFAs it enters into. Such provisions shall include the following:

- a. The RDI shall make a confidential disclosure to the head of the GFA within three (3) months from the generation of the technology or as may be agreed upon by the parties, but should not be beyond six (6) months from the time the RDI transmits the technical accomplishment report to the GFA. The confidential disclosure should include a patent search report to evidence the novelty of the technology generated in order to facilitate a subsequent determination of the method of protection.;
- b. The RDI shall inform the GFA if an IP or potential IPR is best protected as undisclosed information or trade secret. Protection of undisclosed information shall be allowed in any of the following or other similar instances:
 - 1. Upon the joint determination by the GFA and RDI, circumstances are such that well-defined interests of the general public will better be served by claiming legal protection of information or technology as trade secrets and complying with the law on the conditions for its protection; and
 - 2. Protection is necessary in order to comply with contractual obligations with other research collaborators.;
- c. The RDI must notify GFA of the filing of IP applications within three (3) months from the date of filing, and shall report annually the progress of said application. The RDIs must also extend protection of the IPs or IPRs outside the Philippines when necessary by filing overseas applications for technologies with high usage potential in other countries. This is to prevent the unauthorized appropriation of Filipino-generated technologies without consent of the Filipino inventor, thus, ensuring him/ her to enjoy a share on the benefits of his invention. The GFA, in turn, may provide assistance in the filing of IP protection as necessary.;
- d. The RDI shall likewise inform GFA within six (6) months of all licenses and assignments made out of their IPs and IPRs, and shall report annually the progress of IPR commercialization efforts and of all technology transfer agreements concluded and implemented within and outside the Philippines, involving the IPs and IPRs generated.;
- e. The RDI shall execute with the researchers the RFA containing the provisions pertaining to the sharing of royalties and revenues, the obligation to disclose and assign to the RDI the rights to the IP produced through the project, and to maintain the confidentiality of information, among others.;
- f. In case of joint funding, where research is partly funded by DOST, the RDI shall submit a complete copy of the RFA and/or other relevant agreements involving the RDI and the

other funding agencies. This shall include agreements executed after the expiration of the original RFA between the DOST and the RDI,;and

- g. Any issue on the protection, ownership, settlement and valuation of IPs and IPRs generated out of DOST-funded R&D activities shall not impede the expedient transfer, rollout or commercialization of the needed technology, as may be determined essential by the DOST Secretary in case of national emergencies or the need to advance national and local interest.

Section 2. Withholding from Public Disclosure of Potential IPRs. The GFA is authorized to withhold from public disclosure for a reasonable time not to exceed six (6) months from confidential disclosure by the RDI any information relating to potential IPR of the RDI to allow the RDI to pursue full protection of such IPR.

In this regard, the following additional guidelines shall apply:

- a. Proposal evaluation and review of ongoing R&D activities with strong IP potential shall be conducted after the execution of confidentiality agreements by all persons and entities given access to the same. It shall be the responsibility of RDIs to cause the execution of these confidentiality agreements, take custody over said documents and present whenever necessary to proper authorities especially when the novelty of the invention is being questioned due to the disclosure;
- b. The GFA shall immediately notify in writing the RDI of its planned public disclosure of information pertaining to potential IPs or IPRs in compliance with a legal or statutory obligation or duty. The RDI may, within thirty (30) days upon receipt of notice, review and suggest revisions to said planned public disclosure, or contest such disclosure or take such other appropriate actions in order to protect its rights and/or to comply with its obligations under the provisions of non-disclosure, confidentiality, materials transfer or other similar agreements;
- c. If the public disclosure by the GFA is to be made (i.e. DOST Annual Report, R&D Highlights, press releases, technology bulletin, etc.) before the RDI files for IP protection, the GFA shall ensure that the public disclosure contains only so much information or elements about the subject matter contained in the potential IPR that will not constitute a prejudicial disclosure or enable a third party to practice it by using the information or elements contained in the said disclosure. It shall forward the proposed publication to the Technology Licensing Officer (TLO) of the concerned GFA for clearance before public disclosure.;
- d. The RDI must include confidentiality provisions in any research agreement to be executed with other collaborators, or any other related agreements. Both the GFA and RDI shall, however, allow the researchers involved to present or publish their findings or results covered by the project; provided, that it will not constitute a prejudicial disclosure prior to filing an IP application or a disclosure that will destroy the protection of trade secrets or confidential information. To ensure that it will not constitute prejudicial disclosure, the researcher shall forward the proposed publication to the TLO of the concerned RDI for clearance before publication.;
- e. The GFA may direct the immediate filing of an application for registration of an IP or IPR in accordance with the provisions of the IP Code, as amended, to make full disclosure of this IP or IPR when warranted by public interest or necessity as determined by the DOST Secretary in his pronouncement that the immediate rollout or transfer of IPs/IPRs will undoubtedly contribute to the inclusive growth of the Philippine economy. The GFA shall, as far as practicable, secure the consent of the RDI and the concerned researcher.

Section 3. Monitoring and Evaluation of IP Development. The GFA shall monitor efforts and effectiveness of the RDIs in securing IP protection and pursuing IP commercialization. IP monitoring shall form part of the periodic technical monitoring activities of R&D programs and projects.

The GFA shall develop monitoring mechanisms such as time-bound performance milestones that include the following:

- a. submission of IP management plan by the RDI once a proof of concept has been established;
- b. semi-annual monitoring of IP development from DOST-funded programs and projects, including submission of reports on IP protection and commercialization; and
- c. execution and implementation of pertinent forms such as, but not limited to, confidentiality agreements.

Should the reports include patent or utility model filings, they shall contain the following minimum information:

- a. number and type of filings;
- b. main patent claims;
- c. local or foreign filing; and
- d. date of filing and status of each application

The GFA shall submit copies of all semi-annual reports generated from the monitoring and evaluation to the Office of the Secretary through the Office of the Undersecretary for R&D within thirty (30) days from the generation of said reports.

Section 4. Provision of Assistance to RDIs. The GFA shall provide alternative solutions and assistance in case of shortfall in the RDI's performance in protecting, utilizing and/or commercializing the IP.

- a. The GFA shall encourage non-DOST RDIs to adopt their own institutional IP Policy and implement their respective Technology Transfer Protocol.
- b. If the non-DOST RDIs have no such existing IP policy in place at the start of the implementation of the DOST-funded R&D activity, the RDI shall be required to adopt the DOST IP Policy.
- c. When the situation requires and with the agreement between GFA and the RDI, the DOST may extend assistance to the RDI in protecting, utilizing and/or commercializing the IP.
- d. The GFA shall provide alternative solutions to the RDI, which may include, but not be limited to, additional funding support for filing of IP applications, technical assistance in the preparation of applications and other documents, and provision of experts whether in-house or outsourced.
- e. The GFA shall strengthen its IP and technology management mechanism to effectively manage and monitor all IPs and IPRs generated by the RDIs, and transfer and/or commercialize the same whenever DOST assumes ownership over the IPRs.



- f. The GFA may indemnify the RDIs and the concerned inventor-researchers for IPs/IPRs that were made available royalty-free to the public for national interest. The compensation may come in varied forms permitted by existing government policies and programs consistent with government accounting and auditing rules and regulations.

Section 5. Freedom to Use IP. The freedom to use IP shall not be prejudicial to the filing of application for IP protection.

- a. The GFA shall give the RDI the right to make use of R&D results and the IP generated for educational, scholarly, and other non-commercial research purposes;
- b. All RFAs and other technology transfer agreements which either the DOST or the RDI may contract with other parties shall contain the reservation of the right mentioned in the immediately preceding paragraph;
- c. The GFA shall require the RDI to acknowledge its support in any publication that may arise from the use of generated IPs or IPRs; and
- d. The DOST Secretary may compel the RDI for the non-exclusive and/or royalty-free use of the IPs/IPRs when public interest is involved.

Section 6. Revenue Sharing. All revenues from the commercialization of IPs/IPRs from R&D funded by GFAs shall accrue to the RDI, unless otherwise agreed upon in the RFA, provided that in no case shall the total share of the GFAs be greater than the share of the RDI.

As a matter of policy, for the R&D activities of public non-profit RDIs it funded, the GFA shall waive its share in the revenue from commercialization of IP generated therefrom. For public profit-oriented RDIs and the private non-profit oriented RDIs, the GFA may claim a share not exceeding ten percent (10%) of the gross royalty fee. For private profit-oriented RDIs, the GFA may share in the gross revenues from the IP commercialization subject to the RFA and/or technology transfer agreements.

In the crafting of any license or other agreements with any other party, the RDIs which are the beneficiary of DOST R&D funds must be guided by the principle that the interest and general well-being of the people shall be given priority consideration over income to be generated by them out of these IPs and IPRs, including the assurance of greater accessibility and affordability to all persons or entities who may need the technologies covered by the IPs and IPRs.

Section 7. Intellectual Property Management Protocol. The DOST and all its agencies shall adhere to the IP Management Protocol of the GFAs. The DOST shall enjoin all its beneficiaries that IPs and IPRs generated from its DOST funded R&D activities shall be made readily accessible and affordable to any government agency, non-government organization (NGO), and micro, small and medium enterprise, thereby becoming effective instruments for inclusive growth.

CHAPTER 5 DOST AS A RESEARCH AND DEVELOPMENT INSTITUTION

Section 1. Research Agreement

- a. All RDIs shall execute an RFA with their personnel directly involved in any R&D activity, which may include scientists, engineers, researchers, and commissioned/auxiliary/temporary/contractual/part-time staff.

- b. All RDIs shall identify in the RFA the authors and inventors from the research teams.
- c. The RFA shall include provisions in cases when a member of the research team resigns or is terminated during the course of developing an IP.

Section 2. Management of Intellectual Property

- a. The management of IPs and IPRs in the RDIs shall be subject to the provisions of the DOST as RDI's Technology Transfer Protocol and consistent with the DOST as GFA's IP Management Protocol.
- b. As a matter of policy, all IPs generated from DOST-funded R&D activities shall be disclosed in accordance with the established protocol except in special cases as expressly approved by the DOST Secretary.
- c. RDIs are required to establish a set of criteria in the proper selection of technology transferees consistent with the principles subscribed hereto.
- d. RDIs shall determine the most appropriate mode of commercializing the IP assets subject to existing laws requiring transparency and accountability. In the process of commercializing IPs, RDIs should be cognizant of their strategic mission to effectively translate publicly-funded R&D results into useful goods and services for the benefit of the public.
- e. The RDI shall allow its employee-researchers to commercialize IP assets through spin-offs subject to their Technology Transfer Protocol and Rule 11 of the IRR, as amended of R.A. No. 10055.
- f. Unless agreed upon by the concerned parties and subject to the recommendation of the TLO, the RDIs may choose any manner of payment for the use of the IP either an upfront fee with running royalties or in lump sum. This does not preclude the RDIs from opting for other revenue payment schemes. In cases involving non-monetary payment, a minimum of forty percent (40%) of the gross revenue shall be paid in cash to protect the interest of the researchers.
- g. As a matter of policy, all IP applications shall be made in the name of the RDI, being the IP owner, as the applicant. In cases where a patent application will be eventually filed through the PCT, and in consideration of filing costs, the RDI may allow the Researchers/Inventors to file as applicants, provided, however, that a deed of assignment shall be executed by the Researchers/Inventors naming the RDI as the patent owner.

Section 3. Sharing of IP Proceeds between Researcher(s) and RDI.

- a. Regardless of the mode of commercialization and manner of payment, proceeds accruing from IP commercialization shall be shared fairly and proportionately between the RDIs and researcher(s) following the ratio of 60%-40% of the gross proceeds, respectively.
- b. In cases when several RDIs are involved, the revenue sharing of RDIs shall be subject to the provisions of the RFA.
- c. Distribution of Share among Researchers. The apportionment/distribution of the share among the researchers shall be clearly stipulated in a MOA/Special Order/RFA. In the absence of a written agreement among the researchers regarding the apportionment of

share, the 40% share in the revenue shall be distributed among involved researchers as follows:

1. For technologies/IPS/IPRs with only one researcher, one hundred percent (100%) shall be vested on the sole researcher;
 2. For technologies/IPS/IPRs with two researchers, sixty percent (60%) shall be given to the main author/researcher and forty percent (40%) to the co-researcher; and
 3. For technologies with three or more researchers, forty percent (40%) shall go to the main author/researcher and sixty percent (60%) shall be distributed among the other researchers.
- d. **Duration of Payment.** The researchers shall continue to receive their share under the following conditions:
1. Researchers of technologies/IPs/IPRs with or without protection shall continue to receive their share within their lifetime for as long as there are technology fees, royalties and revenues derived from the transfer or commercialization of the technology/IP/IPR; and
 2. Researchers, whether regular or contractual, who have retired or have severed their employment ties with DOST as RDI shall continue to receive their share within their lifetime for as long as there are royalties and revenues derived from the commercialization of the technology/IP/IPR.

In no case shall the researcher assign, convey, or transfer his/her right, title, or interest in and to the share in royalties.

CHAPTER 6 INSTITUTIONAL SUPPORT AND MECHANISMS

Section 1. DOST as a Parent Agency. The DOST shall ensure that overall national interest takes precedence over income to be generated from IPs from DOST-funded R&D activities. Correspondingly, the DOST shall:

- a. Ensure that competent personnel shall perform their duties as provided for in this IP Policy and in accordance with the Act, and that its attached agencies performing the functions of GFA and/or RDI shall establish their respective IP management and technology transfer protocols;
- b. Encourage all external stakeholders to develop their respective IP policies that define technology transfer mechanisms and establish TLOs;
- c. Guarantee public access, to the maximum extent possible, to technologies and knowledge generated from publicly-funded R&D activities through the establishment of a centralized technology information access facility;
- d. Call an annual national conference for all GFAs and RDIs in partnership with other government agencies such as DA, DOH, CHED, DOE, DPWH, DND, DENR, and IPOPHL; and

- e; Develop templates, toolkits, and other materials in capacitating TLOs in the pursuit of IP generation, protection, and utilization.

Section 2. Establishment of Technology Licensing Office (TLO)

The services of the TLOs of each DOST agency may include:

- a; *Patent Mapping* that will provide patent information services including state of the art searches/prior art searches/patent family searches;
- b; *IPR Assistance* that will provide assistance in the protection of IPs and IPRs generated from publicly-funded R&D;
- c; *Licensing Service* that will provide assistance in negotiation and licensing;
- d. *IP Valuation Service* that will review IP assets and will establish their worth;
- e, *IP Management* that will develop strategies and plans for IP protection, management, technology transfer and commercial exploitation of IP assets generated from DOST R&D funds;
- f; *Marketing* that will promote IP assets ready for transfer and/or commercialization including identification of potential takers;
- g, *Information Access* that will establish and manage the Technology Information Access Facility pursuant to Section 19 of the Act;
- h, *Monitoring and Evaluation (M&E)* that will keep track and safeguard all M&E forms submitted to the DOST;
- i. *Financial Review and Advice* that will conduct financial evaluation of commercialization offers and manage and/or keep track of revenues generated from DOST IP assets; and
- j; *Institutional Support and Development* that will identify technical trainings and consultancy services needed in setting-up Intellectual Property Technology Management (IPTM) systems at DOST RDIs and other agencies, as well as recommend projects that will strengthen IP mechanism and human capital of DOST.

Section 3. The Constitution of the Fairness Opinion Board and Issuance of Fairness Opinion Report. The constitution of the Fairness Opinion Board (FOB) and issuance of the Fairness Opinion Report (FOR) shall be consistent with Rule 11, Chapter III of the amended IRR of R.A No.10055. The DOST shall issue the necessary guidelines for this purpose.

Section 4. Issuance of Written Recommendation. Upon receipt of the Fairness Opinion Report (FOR) from the FOB Secretariat, the DOST Secretary, with assistance of the Technology Application and Promotion Institute (TAPI), shall issue the Written Recommendation as to the fairness of the proposed technology transfer transaction.

The Written Recommendation may cover areas such as technical legal, socio-economic and environmental aspects of the written request. It may also consider areas that may not be covered by the FOB, or the DOST Secretary, at his/her discretion, may use the FOR as basis for the Written Recommendation.



Section 5. Role of the DOST Regional Offices and the Technology Application and Promotion Institute

1. The DOST Regional Offices shall be the Receiving Office for requests of FOR and shall act as the FOB Secretariat in their respective regions.
2. The TAPI shall serve as repository institution of all requests, issued FOR, and written recommendation of the DOST Secretary. It shall keep an active registry of all forwarded documents for whatever purpose that the DOST Secretary may deem appropriate.

**CHAPTER 7
CONFLICT RESOLUTION**

As a general rule, any dispute between the parties on the determination of government ownership shall be resolved amicably. Otherwise, the administrative procedure for resolving any dispute on the determination for government ownership shall be subject to the mediation and arbitration rules of IPOPHL. The DOST shall serve as the final arbiter for any dispute between parties on technological aspects.

**CHAPTER 8
TRANSITORY PROVISIONS**

This DOST IP Policy shall apply to all IPs, IPRs and technologies generated through R&D activities funded by the DOST before and after the enactment of RA 10055. Non-conformance to this IP Policy which transpired prior to its passage will not, however, warrant the institution of an administrative, civil, or criminal action against the offender. Non-impairment of existing contracts shall be respected, but the DOST shall exert earnest efforts to renegotiate its terms and conditions to make it consistent to the provision of this IP Policy.

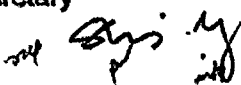
**CHAPTER 9
FINAL PROVISIONS**

Section 1. Administrative Liability. Violation of this IP Policy by any person or entity, natural or juridical, may constitute an administrative liability subject to pertinent DOST Administrative Rules of Procedure on Disciplinary Cases and other pertinent laws and regulations for any violation or offenses emanating from acts covered by this IP Policy.

Section 2. Repealing Clause. All existing DOST IP-related policies or part thereof, which may be contrary to or inconsistent with the provisions of this newly-established DOST IP Policy, are hereby repealed or modified accordingly.

Section 3. Effectivity. This DOST IP Policy shall take effect fifteen (15) days after publication in a newspaper and upon filing copies thereof at the UP Law Center.


FORTUNATO T. DE LA PEÑA
Secretary



Annex 1. Definition of Terms

For purposes of this Administrative Order, the following terms shall be defined as follows:

1. **"Act"** refers to Republic Act No. No. 10055.
2. **"Author"** refers to the natural person who has created the work.
3. **"Commercialization"** refers to the process of deriving income or profit from a technology, such as the creation of a spin-off company, or through licensing, or the sale of the technology and/or IPRs.
4. **"Copyrights"** pertains to the rights given to creators or authors for their literary and artistic works. The domain of the works includes writings, music, fine art (photography, paintings and sculptures) and technology-based works (computer software programs, websites, and electronic databases).
5. **"Fairness Opinion Board"** refers to an independent third party body composed of experts from the public and private sector as may be determined by the DOST. Members of this body shall have no conflict of interest as to the transaction that it shall evaluate and shall be bound with the confidentiality of the documents in accordance with Rule 11.
6. **"Fairness Opinion Report"** refers to the report submitted by the Fairness Opinion Board expressing its opinion as to the fairness to the GFA or RDI of the proposed transaction, particularly its financial terms
7. **"Genetic Material"** refers to any material of plant, animal, microbial or other origin containing functional units of heredity.
8. **"Genetic Resources"** refers to any genetic material of actual or potential value.
9. **Geographical Indications** – identifies products in relation to their place of origin.
10. **"Indigenous Knowledge Systems and Practices"** refer to systems, institutions, mechanisms, and technologies comprising a unique body of knowledge evolved through time that embody patterns of relationships between and among peoples and between peoples, their lands and resource environment, including such spheres of relationships which may include social, political, cultural, economic, religious spheres, and which are the direct outcome of the indigenous peoples, responses to certain needs consisting of adaptive mechanisms which have allowed indigenous peoples to survive and thrive within their given socio-cultural and biophysical conditions.
11. **"Industrial Design"** refers to the right granted to protect the original, ornamental and non-functional features of a product that result from design activity. The right concerns merely the appearance (the 'design') of a product, not the product itself. An industrial design has a term of protection of five years. It can be renewed for two consecutive periods of five years.
12. **"Intellectual Property (IP)"** is the term used to describe intangible assets resulting from the creative work of an individual or organization. IP also refers to creations of the mind, such as inventions, literary and artistic works, and symbols, names, images, and designs used in commerce. IP can also refer to future tangible and/or intangible assets that may be recognized as intellectual property.



13. **"Intellectual Property Rights (IPRs)"** refer to those rights recognized and protected in Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended. IPRs shall also include Plant Variety Protection as the term is defined under Title II, Sec 3(j) of Republic Act No. 9168.
14. **"Intellectual Property Rights Management"** refers to the principles, mechanisms and processes involved in the identification, assessment, protection, utilization and enjoyment of intellectual property rights.
15. **"IP Code"** refers to Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended.
16. **"New Plant Varieties"** comprise of given genotype or a combination of genotypes distinguished from any other plant groupings by at least one characteristic. The plant varieties are therefore new, distinct, uniform, and stable. For trees and vines, the term of protection is 25 years from the grant of the Certificate of Plant Variety Protection. For all other types, the term of protection is 20 years from the grant of certificate.
17. **"Official Development Assistance Fund"** refers to: a) a loan; or, b) loan and grant; or, c) grant which follow all the criteria under the R.A. No. 8182, otherwise known as the "Official Development Assistance Act of 1996", and other existing laws.
18. **"Parent Agency"** refers to the Department or agency, which exercises the power of control and supervision over the GFAs, RDIs or RDI acting as the GFA itself. In general, where multiple GFAs are involved, the department or agency, which has the largest financial contribution, shall be deemed as the Parent Agency, except as may otherwise be specifically provided by this Act.
19. **"Patent"** is an exclusive right which provides the inventor and/or the applicant with the exclusive right for a product, process, or an improvement of a product to prevent others from possessing, using, selling, manufacturing and importing the patented invention or offering to do any of these things within a definite geographical area. It is granted by the State through the IPOPHL to a patent owner for a period of 20-years from the filing date of application.
20. **"Potential IPRs"** refer to intellectual property, or the products of creation and research that form the subject matter of IPRs, but which are not yet protected by the statutory grant of IP rights.
21. **"Protection of IPs"** refers to the statutory grant of rights upon which the basis of enforcing the right rests, such as issuance of patents; registration of utility models, industrial designs, and trademarks or availment of protection of undisclosed information and other rights as may be provided by law. "Protected IPs", therefore may refer to issued or pending patents; registered utility models, industrial designs, and trademarks. In the case of pending patent applications that have already been published under Sec 44 of RA 8293 such pending patent application will still be considered as potential IPRs. In the same manner, pending applications for Plant variety protection that have also been published under Sec 42 of R.A. No. 9168 will still be considered as potential IPRs.
22. **"Public Disclosure"** refers to the act of making information or data readily accessible and available to all interested individuals and institutions. Different forms of public disclosure include verbal or written statements released to a public forum, to the news media, or to the general public; publication in an official bulletin, gazette, report, or stand-alone document; and information posted on a website (oecd.org).

23. **"Receiving Office"** shall refer to the regional office of the DOST which received the request for a Fairness Opinion Report.
24. **"Research Agreement"** refers to a contract entered into by RDIs and researchers, including the agreements between the RDI and collaborating RDIs.
25. **"Research and Development (R&D)"** refers to creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and to use this stock of knowledge to devise new applications.
26. **"Researcher"** refers to a natural person who is engaged by the RDI by employment or other contract, to conduct research with or for the RDI. This also covers students who conduct research as part of their academic requirements subject to the existing policies of their respective academic institutions.
27. **"Research Funding Agreement (RFA)"** refers to a contract entered into by and among the GFA and other funding agencies and the RDI. It governs ownership of IP, duties and responsibilities of GFAs and RDIs, technology disclosure, exclusivity of the license, use for commercialization, establishment of spin-off firms, technologies for research use, and sharing of income and benefits from technology commercialization. It may likewise be in the form of a Memorandum of Agreement, Conforme Letter and other legal instruments.
28. **"Revenue"** refers to all monetary and non-monetary benefits derived as a result of the development, production, transfer, use and/or commercialization of IPRs, including income from assignments and royalties from licenses.
29. **"Rules"** refers to the Implementing Rules and Regulations for R.A. 10055.
30. **"Spin-off firm or company"** refers to a juridical entity that is an independent business technology taker with a separate legal personality from the GFA, RDI and researcher created through the initiative of the researcher-employee who generated the technology. As distinguished from a spin-off firm or company, a startup firm or company refers to a juridical entity that is an independent business technology recipient with a separate legal personality from the GFA, RDI and researcher, which is created independently of the researcher-employee who generated the technology.
31. **"Technology"** refers to knowledge and know-how, skills, products, processes, practices, inventions and/or innovations.
32. **"Technology Application and Promotion Institute"** refers to a government agency under the DOST which is mandated to promote and support the commercialization of locally developed technologies under Executive Order 128 of 1986 establishing the DOST and its instrumentalities, and Republic Act No. 7459 otherwise known as the "Inventors and Invention Incentives Act of the Philippines".
33. **"Technology Licensing Officer / Office and/or Technology Licensing and Business Development Office"** refers to a person or persons or an office that is mandated by the RDI to manage technology transfer and/or intellectual property commercialization activities.
34. **"Technology Transfer"** refers to the process by which one party systematically transfers to another party the knowledge for the manufacture of a product, the application of a process, or rendering of a service, which may involve the transfer, assignment or licensing of IPRs.

35. **"Technology Transferee"** refers to the party to whom the knowledge for the manufacture of a product, the application of a process, or rendering of a service, is systematically transferred.
36. **"Technology Transfer Protocol"** refers to policies, strategies and processes or procedures, which RDIs adopt to identify, protect, manage and commercialize IPs and/or IPRs and undertake technology transfer activities. These include, but are not limited to, the following:
- i. Policies and procedures governing incentives to researchers to produce and to disclose IP derived and generated from publicly funded research and development to the RDI including the sharing of revenues between the RDI and its researchers as provided under these Rules;
 - ii. Policies and procedures for evaluating and processing invention and other IP disclosures in order to determine (1) who shall be recognized as the inventor(s), author(s), creator(s) of the IP and who will therefore be entitled to a share in any revenues as provided under the Act and these Rules including mechanisms for resolving disputes on inventorship, authorship and creatorship "Research and Development (R&D)" refers to creative work undertaken on a systematic basis in order to increase the stock of knowledge, including knowledge of man, culture and society, and to use this stock of knowledge to devise new applications. The aforementioned creative work not only refers to work subject of copyright protection but also to all potential IPRs, and revenue sharing; (2) patentability/registrability; (3) commercial potential of IP; and (4) the most efficient mode for protecting and commercializing or transferring the IP;
 - iii. Policies and procedures for determining meritorious cases in which a researcher-employee can commercialize or pursue commercialization or participate in spin-off companies;
 - iv. Appropriate guidelines for the management of conflict of interest between the RDIs and the researcher-employee;
 - v. Policies and procedures governing trade secrets and other similar confidential information pursuant to the objectives of these Rules;
 - vi. The employer-employee contract and all other related agreements shall contain, but shall not be limited to, the following: duties and responsibilities of the parties, membership of the research team, degree of involvement of the researchers and the support staff, ownership of IP, sharing of monetary and non-monetary benefits, technology disclosure and management of conflict of interest.
37. **"The layout design (topography) of integrated circuits"** is an original three-dimensional rendition of integrated circuits used in microchips and semiconductor chips intended for manufacturing. It has a term of protection of 10 years, which cannot be renewed.
38. **"Trade Secret"** is defined as a plan or process, tool, mechanism or compound known only to its owner and those employees to whom it is necessary to confide it.
39. **"Trade and Service Marks"**. Mark is any visible sign that distinguishes the products (Trademark) or services (Service Mark) of an enterprise, which includes the container of the products or the packaging. A registered trademark enjoys a 10-year term of protection, which can be renewed for succeeding periods of 10 years. Within that period, a trademark owner is guaranteed exclusive rights to (i) use the mark in relation to the good or services with respect to which it is registered and (ii) prevent others from using a substantially identical or deceptively similar mark in relation to the goods or services registered by the mark.

40. **"Utility Model"** also known as petty patent, is an invention that is new and industrially applicable. Utility models are usually sought for technically less complex inventions or for inventions that have a short commercial life and normally do not meet the patentability criteria. A utility model has a term of protection of seven years which cannot be renewed.
41. **"Written Recommendation"** refers to the recommendation in writing of the DOST Secretary pertaining to the proposed transaction. It may include technical, legal, social, economic, administrative, and other matters depending on his/her appreciation.

Sources:

1. Intellectual Property Code of the Philippines (Republic Act No. 8293)
2. OECD Glossary of Statistical Terms, 2004. Public Disclosure. Retrieved from <http://stats.oecd.org/glossary/detail.asp?ID=6139>
3. Philippine Technology Transfer Act of 2009 (Republic Act No. 10055) and its Implementing Rules and Regulations, as amended (Joint DOST-IFOPHL Administrative Order No. 001, s. 2019)