

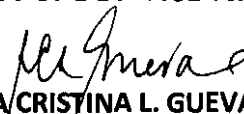
Republic of the Philippines

DEPARTMENT OF SCIENCE AND TECHNOLOGY

JUL 14 2015

Memorandum

FOR : **ALL HEADS OF DOST AGENCIES AND REGIONAL OFFICES**

FROM :  **ROWENA CRISTINA L. GUEVARA, Ph.D.**
Undersecretary for S&T Services

SUBJECT : **ADOPTION OF THE DEPARTMENT OF SCIENCE AND TECHNOLOGY
INTELLECTUAL PROPERTY POLICY**

DATE : **July 13, 2015**

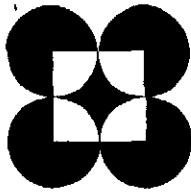
We are transmitting herewith the **Administrative Order No. 004** dated 13 April 2015 entitled, **The Department of Science and Technology Intellectual Property Policy**. It has been filed in the UP Law Center on 5 June 2015 and was published in the Official Gazette on 15 June 2015.

Please take note that the Policy takes effect fifteen (15) days after the satisfaction of the publication requirements. As such, the DOST A.O. No. 004 s. 2015 has took effect starting 1 July 2015.

For agencies that give grants, kindly inform your cooperators, partners, researchers, proponents, and those who will be affected by this Policy.

Please be guided accordingly.

Thank you.



Republic of the Philippines

DEPARTMENT OF SCIENCE AND TECHNOLOGY

OFFICE OF THE SECRETARY

APR 13 2015

DOST ADMINISTRATIVE ORDER NO. 004
Series of 2015

SUBJECT: THE DEPARTMENT OF SCIENCE AND TECHNOLOGY INTELLECTUAL
PROPERTY POLICY

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 from the private sector.

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.

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.

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, and the Guidelines on IP Valuation, Commercialization and Information Sharing, the 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. The DOST and some of its attached agencies perform the role of GFA. As a GFA, the DOST provides research grants and other technical and material support, from government appropriations and resources and those sourced from government-managed Official Development Assistance (ODA) funds. The following agencies perform said function: a) DOST Central Office (DOST-CO); b) sixteen (16) Regional Offices; c) 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); d) one (1) Collegial and Scientific Body which is the National Research Council of the Philippines (NRCP); and e) four (4) Scientific and Technological Service Institutes, namely: Information and Communications Technology Office (ICTO), Philippine Science High School System (PSHSS), Science Education Institute (SEI), and the Technology Application and Promotion Institute (TAPI).

Section 2. DOST as an RDI. As an RDI, the following DOST agencies perform R&D activities: 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 Philippine Atmospheric, Geophysical and

Astronomical Services Administration (PAGASA), Philippine Institute of Volcanology and Seismology (PHIVOLCS), and the Philippine Science High School System (PSHSS) also perform the role of RDI.

Section 3. *DOST as Parent Agency.* The DOST, specifically the Office of the Secretary (OSEC), performs the role of a Parent Agency that exercises control and supervision over its attached agencies functioning either as GFA or RDI, including the monitoring of their efforts and effectiveness in securing IP protection and pursuing IP commercialization towards national progress and inclusive growth.

Section 4. *DOST as Enabler.* The DOST shall institutionalize mechanisms as indicated in Chapter 6 of this Policy to ensure the effective implementation of the provisions of the Technology Transfer Act.

Section 5. *Agencies and Personnel Covered.*

1. All DOST agencies performing the functions of GFA and 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 under the auspices of the DOST system; and
3. All other institutions, research personnel, and stakeholders that implement DOST-funded R&D.

Section 6. *Rights Covered.* This Policy shall cover all types of IPRs recognized under Philippine laws, such as, but not limited to the IP Code of the Philippines (R. A. 8293) and the Philippine Plant Variety Protection Act of 2002 (R.A. 9168), and the TRIPS Agreement (Trade Related Aspects of Intellectual Property Rights) under the World Trade Organization, to include invention 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 7. *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 RDIs, 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:

- a. 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; and
- b. Copyrights over any work derived and generated by an RDI and funded by DOST whether such funding is in whole or in part, shall be vested in the RDI whose researcher(s) actually authored the work pursuant to the Research Funding Agreement (RFA).

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-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 Agreement (RA) 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 RA; 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.

c. Ownership of IPs and Sharing of Revenues Derived from Works of DOST scholars

1. IPs and IPRs from researches of DOST scholars in the undergraduate and graduate programs performed independently of the programs and/or projects of the DOST and its agencies and submitted as part of the requirements in the pursuit of their degrees shall be governed by the IP Policy of the local higher education institution (HEI) or the State College and University (SCU) where the scholars are enrolled;
2. IPs and IPRs generated from researches by DOST scholars in the undergraduate and graduate programs done as part of the programs and/or projects of the DOST or its agencies and submitted as part of the requirements in the pursuit of their degrees shall be jointly owned by the DOST and the HEI where they are enrolled, and shall share ownership and revenues in such proportion as agreed upon by them in a tripartite agreement between the DOST, the HEI, and the concerned scholar. This tripartite agreement must as far as practicable be executed prior to actual commencement of the research;
3. Ownership and revenue sharing over IPs and IPRs generated from research activities of DOST scholars in the PSHSS shall be equally owned and shared between the DOST scholar and the PSHSS in accordance with this DOST IP Policy;
4. Ownership and revenue sharing over IPs and IPRs generated from research activities by DOST scholars in any HEI with an IP Policy, which is not part of the requirements in the pursuit of their degrees shall be subject to negotiation among the DOST, HEI and DOST scholar guided by this DOST IP Policy and its guiding principles; and
5. Ownership and revenue sharing over IPs and IPRs generated from research activities by DOST scholars in any HEI without any IP Policy shall exclusively be owned and appropriated by DOST.

Section 3. Assumption of Ownership Rights by DOST. DOST 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 DOST;



- c. In case of failure of the RDI to initiate the protection of potential IPRs within a reasonable time from confidential disclosure to the DOST, which shall in no case exceed three (3) months from public disclosure; and
- d. In case the RDI, which has a corporate personality, ceases to become a Filipino corporation as defined in Article 1, Section 4 (i) of the Act.

Section 4. *Recovery of Ownership by an RDI.* The DOST 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 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 DOST 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

Section 1. *Protection of Government Interest.* The DOST 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 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. 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 DOST 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 DOST 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 DOST 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 to enjoy a share on the benefits of his invention. The DOST, in turn, may provide assistance in the filing of IP protection when stipulated in the RFA.
- d. The RDI shall likewise inform DOST within six (6) months of all licenses and assignments made out of their IPs and IPRs, which must be compliant of the Fairness Opinion Report (FOR) approved in accordance with Rule 11 of the IRR, 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 RA 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.
- 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, roll-out 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 DOST 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 DOST 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 DOST 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 DOST 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 "destroy the novelty" of the invention in accordance with law;
- d. The RDI must include confidentiality provisions in any research agreement to be executed with other collaborators, or any other related agreements. Both the DOST 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; and
- e. The DOST may immediately initiate the filing of an application for registration of an IP or IPR in accordance with the provision of the IP Code to make full disclosure of this patentable IP or IPR when warranted by public interest or necessity as determined by the DOST Secretary in his pronouncement that the immediate roll- out or transfer of IPs/IPRs will undoubtedly contribute to the inclusive growth of the Philippine economy. The DOST shall, as far as practicable, secure the consent of the RDI and the concerned researcher.

Section 3. *Monitoring and Evaluation of IP Development.* The DOST 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 DOST 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;
- c. annual monitoring of IP development from RDI-funded programs and projects; and
- d. execution and implementation of pertinent forms such as, but not limited to, confidentiality agreements.



Should reports include patent or utility model filings, it 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 thirty (30) days from date of report.

Copies of all reports generated from the monitoring and evaluation of IP shall be submitted to the OSEC through its Technology Licensing Office (TLO).

Section 4. *Provision for Assistance to RDIs.* The DOST 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 DOST, through its TLO, shall require the non-DOST RDI to adopt their own institutional IP Policy and implement its Technology Transfer Protocol.
- b. If the non-DOST RDI has no such existing policy in place at the start of the implementation of the DOST-funded R&D activity, the RDI shall be required to follow the DOST IP Policy.
- c. When the situation requires and with the agreement between DOST and the RDI, the DOST may extend assistance to the RDI in protecting, utilizing and/or commercializing the IP.
- d. The DOST 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 providing of experts whether in-house or outsourced.
- e. The DOST shall strengthen its IP and Technology Management mechanism to effectively manage and monitor all IPs and IPRs generated by the RDIs, transfer and/or commercialize the same whenever DOST assumes ownership over them.
- f. The DOST may indemnify the RDIs and/or 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 DOST 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 RA 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 DOST 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. As a matter of policy, the DOST shall waive its share in the revenue from commercialization of IP generated from R&D activities of public and non-profit RDIs it funded. For public and profit-oriented RDIs as well as for private and non-profit oriented RDIs (e. g., HEIs), the concerned GFA may claim a share not exceeding ten percent (10%) of the gross royalty fee of the RDI on the commercialization of these IPs or IPRs. Conversely, for private profit-oriented RDIs, the concerned GFA must ask a share in the gross revenues from IP commercialization subject to the corresponding RFAs 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 this new technology.

Section 7. Intellectual Property Management Protocol. The DOST and all its agencies shall formulate, adopt and adhere to a common IP management protocol. The DOST shall enjoin all its beneficiaries that technologies later on developed from 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 small and medium enterprise, thereby becoming effective instruments for inclusive growth.

CHAPTER V DOST AS A RESEARCH AND DEVELOPMENT INSTITUTION

Section 1. Research Agreement

- a. All RDIs shall execute a RA 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 RA the authors and inventors from the research teams.



- c. The RA 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 Technology Transfer Protocol and consistent with the DOST'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 adopters and/or commercialization takers 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 the FOR to be issued by the DOST Secretary.
- 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.

Section 3. *Sharing of IP Proceeds between Researcher and RDI.* 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.

In cases when several RDIs are involved, the revenue sharing of RDIs shall be subject to the provisions of the RA.



CHAPTER VI
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 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 every April of each year in partnership with other government agencies such as DA, DOH, CHED, DOE, DPWH, DND, DENR, IPOPHL; and
- e. Develop, together with the Intellectual Property Office of the Philippines (IPOPHL), templates, toolkits, and other materials in capacitating TLOs in the pursuit of IP generation, protection, and utilization.

Section 2. *Establishment of Technology Licensing Offices*

A DOST-TLO shall be established and shall primarily be responsible for the following:

- a. Overseeing of the setting-up and administration of the revolving fund for revenues generated from DOST IPs and IPRs; and
- b. Building and strengthening the capacity of DOST, both as GFA and RDI, in IP management, valuation, and commercialization, including capacity to access global patent information and to prepare technology landscape reports.

The DOST-TLO shall have a Program Management Staff (PMS) composed of regular personnel detailed from different DOST agencies and contractual personnel that will initially be tapped under a five-year Technology Business Development Program.

The DOST-TLO shall be guided by a Program Steering Committee (PSC) composed of the Directors of DOST Councils, RDIs, and TAPI, with the DOST Secretary or his duly designated representative as Chairperson on the following:

- a. institutionalization of the DOST-TLO including staffing and operation;



- b. monitoring of efforts in IP commercialization;
- c. design and set-up facilities to access technology information;
- d. mechanisms on the setting-up, operation, and use of the Department Revolving Fund; and
- e. assist in the conduct of the annual national R&D conference under the guidance of the DOST Undersecretary for R&D.

The DOST shall ensure the establishment of TLOs in its attached agencies performing the functions of GFA and RDI. The services of the TLOs 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* 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 IPTM systems at DOST RDIs and other agencies, as well as recommend projects that will strengthen IP mechanism and human capital of DOST.



The Technology Licensing Officers shall be designated from among the permanent employees of the DOST and its attached agencies who have the necessary technical and/or legal expertise to serve on full-time basis, if warranted. It may also hire project personnel either on job order or contract basis. More importantly, it will be supported by a legal unit or team who may be hired on part time or full time basis. The TLO may likewise engage the services of the Solicitor General's Office on matters deemed necessary by the TLO Head or the DOST Secretary.

Section 3. *Fairness Opinion Report*

- a. The Fairness Opinion Report (FOR) shall be required for all publicly-funded R&D results for commercialization in accordance with the provisions of Sections 1-4 of Rule 11 of the IRR.
- b. The requirements for securing FOR are as follows:
 1. Written request addressed to the DOST Secretary;
 2. Details on the proposed transaction including valuation report and due diligence report on the parties to the transaction;
 3. Other background documents regarding the prospective transferee; and
 4. List of recommended members to the Fairness Opinion Board (FOB).

In case of spin-off, the requirements as prescribed in the Technology Transfer Protocol shall be submitted in addition to the above documents.

- c. The FOR shall include, but not be limited to the following:
 1. A statement expressing the opinion of the FOB as to the fairness to the GFA or RDI of the proposed transaction, particularly its financial terms;
 2. Recommendations, if any, regarding the revision of certain provisions in the proposed transaction;
 3. All citations, references, and all supporting documents; and
 4. A certification and verification signed by all members of the FOB.

Section 4. *The Fairness Opinion Board*

- a. The DOST Secretary shall constitute the FOB within thirty (30) days from receipt of the written request by issuing an official designation of the members of the FOB indicating the specific transaction for which the FOB is being convened.



- b. The designated members of the FOB shall be required to execute an oath of confidentiality, a non-disclosure agreement, and a disclosure of no conflict of interest.
- c. The FOB shall complete and submit the FOR to the DOST Secretary within sixty (60) calendar days upon its constitution.
- d. In cases where the DOST Secretary vetoes the FOR, it may be remanded to the FOB. The DOST Secretary may appoint an additional expert to review the FOR and decide within thirty (30) calendar days upon remanding the FOR to the FOB. The DOST Secretary may also recommend other modes of commercialization in accordance with applicable laws.
- e. All costs and expenses of the FOB shall be shouldered by the GFA and RDI in the proportion as determined by the RFA. In the absence of such a provision, the costs and expenses shall be shouldered by the requesting party.
- f. In instances when the exigency of the situation calls for an immediate roll-out, transfer or commercialization of the developed technology or IP which will result to a significant benefit to the general public as determined by the DOST Secretary, the immediate issuance of the FOR will be given utmost priority for a period not exceeding fifteen (15) days. The FOR, however, may be reviewed, revised, or modified later even after the roll-out, transfer, or commercialization. As a limitation on the extent of the renegotiation of the perfected contracts, the new contract shall contain the same terms and conditions as the original contract except those covered by the reviewed or modified FOR and that any changes in the values and other monetary conditions shall not lead to the substantial financial loss or losses of a significant segment of the business of the technology adopters.

Section 5. *Role of the Technology Application and Promotion Institute*

TAPI shall be the FOB Secretariat in accordance with Section 5 (d), Rule 11 of the IRR, and shall be responsible for the following:

- a. Assist the FOB in the conduct of the business;
- b. Make arrangements for meetings and different activities sessions of the FOB including preparation of agenda papers, detailed meeting proceedings, and final FOB recommendations duly signed by the Chair;
- c. Ensure full confidentiality of all FOB meetings proceedings;
- d. Provide efficient and timely service to the FOB through practical and administrative processes which include the facilitation of submitted data, technical reports, library references, and other bibliographic material as may be requested;



- e. Formulate, update as necessary and upload to the TAPI and DOST websites the Procedures Manual including forms, templates, cost of securing an FOR, and checklist of requirements; and
- f. Report to and coordinate with the OSEC through the DOST-TLO as well as perform other functions deemed necessary that may arise in the course of operation.

**Chapter VII
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 VIII
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.



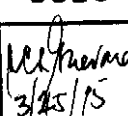
**Chapter IX
Final Provisions**

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 the Official Gazette and upon filing at the UP Law Center.

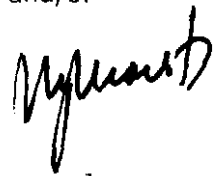

MARIO G. MONTEJO
Secretary

PDPD CHIEF	PES DIRECTOR	USEC
		 3/25/15

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. 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. **“Genetic Material”** refers to any material of plant, animal, microbial or other origin containing functional units of heredity.
6. **“Genetic Resources”** refers to any genetic material of actual or potential value.
7. **“Geographical Indications”** identifies products in relation to their place of origin.
8. **“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.
9. **“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.
10. **“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.



11. **"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.
12. **"Intellectual Property Rights Management"** refers to the principles, mechanisms, and processes involved in the identification, assessment, protection, utilization, and enjoyment of intellectual property rights.
13. **"IP Code"** refers to Republic Act No. 8293, otherwise known as the "Intellectual Property Code of the Philippines", as amended.
14. **"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.
15. **"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.
16. **"Parent Agency"** refers to the Department or agency, which exercises the power of control or 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.
17. **"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.
18. **"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.
19. **"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.

20. **"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).
21. **"Research Agreement (RA)"** refers to a contract entered into by RDIs and researchers, including the agreements between the RDI and collaborating RDIs.
22. **"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.
23. **"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.
24. **"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.
25. **"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.
26. **"Rules"** refers to the Implementing Rules and Regulations for R.A. 10055.
27. **"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.
28. **"Technology"** refers to knowledge and know-how, skills, products, processes, practices, inventions and/or innovations.
29. **"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.



30. **“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.
31. **“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 revenues as provided under the Act and these Rules including mechanisms for resolving disputes on inventorship, authorship and creatorship 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.
32. **“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.



33. **"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.
34. **"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.
35. **"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.

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 (Joint DOST-IPO Administrative Order No. 02-2010)

