

[DA ADMINISTRATIVE ORDER NO. 07, March 12, 2008]

GUIDELINES ON THE COMMERCIALIZATION OF TECHNOLOGIES DEVELOPED BY AGENCIES OF THE DEPARTMENT OF AGRICULTURE AND THE ENJOYMENT OF BENEFITS ARISING THEREFROM

WHEREAS, the 1987 Constitution (Section 10 to 13, Article XIV) recognizes the importance of science and technology in national development and mandates the state to protect and secure the exclusive rights of scientists, inventors, artists, and other gifted citizens to their intellectual property and creations;

WHEREAS, the fundamental law did not discriminate against scientists and inventors in the public sector, therefore, the courts themselves, or the oversight agencies of government should also make no distinction - *ubi lex non distinguit, nec nos distinguere debemus* (United BF Homeowners' Associations, Inv. vs. the Barangay Chairman and the Sangguniang Barangay of BF Homes Paranaque, GR. No. 140092, September 8, 2006);

WHEREAS, the United Nations' Universal Declaration of Human Rights (Article 27(2)) states, that: "Everyone has the right to the protection of the moral and material interests resulting from any scientific, literary or artistic production of which he is the author;"

WHEREAS, the Civil Code of the Philippines (Articles 712, and 721 to 724) recognizes intellectual creation as a mode of acquisition of property and defines ownership of different intellectual property rights in favor of their creator or author;

WHEREAS, the General Appropriations Act of 2007 (Section 28 of General Provisions, as well as those from 2000 to 2005) mandates that research efforts shall be geared towards achieving a wider commercialization of new discoveries and accelerating technology transfer;

WHEREAS, the Code of Conduct and Ethical Standards for Public Officials and Employees (Republic Act No. 6713) which identifies prohibitions against public officials and employees such as directly or indirectly having any financial or material interest in any transaction requiring the approval of their office, owning, controlling, managing or accepting employment as officer, employee, consultant, counsel, broker, agent, trustee or nominee in any private enterprise regulated, supervised, or licensed by their office, also allows exceptions to these prohibitions provided there is express authority provided by law or the Constitution.

WHEREAS, the Magna Carta for Scientists, Engineers, Researchers and Other Science and Technology Personnel in Government (Republic Act No. 8439) provides the general exception to the prohibitions against public servants in general provided

by the Constitution and existing laws, rules and regulations, and expressly authorizes benefits to scientists and researchers engaged in R & D on top of the benefits already provided to them by the existing laws;

WHEREAS, under the Magna Carta, science and technology scientists, engineers, researchers and other personnel are entitled to receive share in royalties on a sixty percent-forty percent (60%-40%) basis in favor of the Government and the personnel involved in the technology/activity which has been produced or undertaken during the regular performance of their functions, and share in royalties is defined as a share in the proceeds of royalty payments arising from patents, copyrights and other intellectual property rights;

WHEREAS, under the same law, scientists, engineers, researchers, technologists, technicians and other S & T personnel are allowed to render consultancy services to the private sector and entitles them to receive such honorarium that may be paid to them by the private entity concerned, and such payments shall be o/er and above their salary from the government during the period of the consultancy and shall not be considered as double compensation, provided, that the consultancy work will not jeopardize or adversely affect the operations or activities of his originating office;

WHEREAS, the Magna Carta also provides that, scientists, engineers, researchers, and other S & T related personnel who are employed on a regular basis in the government, whether or not they are conferred any rank under the Scientific Career System, are allowed secondment to any private entity whenever such services are required;

WHEREAS, the Administrative Code of 1987 (Book I and Book IV, Executive Order No. 292) provides the authority to Heads of DA agencies to enter into technology commercialization contracts in behalf of their agencies with the approval of the DA Secretary. However, where the operations of the DAagency regularly involves the commercialization of technologies, such as research and development agencies, the contracts may be executed by their agency heads;

WHEREAS, the General Accounting and Auditing Manual (GAAM) of the Commission on Audit (COA) authorizes the establishment and maintenance of revolving funds where said funds are expressly authorized by law, such as receipts derived from business-type activities of departments, bureaus, offices or agencies which are authorized by law to constitute these funds into self-perpetuating and self-liquidating revolving funds;

WHEREAS, the GAAM also provides that disposal of public property, including intellectual property, shall be through public bidding, but for justifiable reasons may also be in the following manner: a) public auction, b) sale through negotiation, c) barter, d) transfer to other government agencies, and e) destruction or condemnation;

WHEREAS, the DA Biotechnology Program funded project studies implemented by the Philippine Rice Research Institute (PhilRice) which concluded that commercialization of publicity funded and generated agricultural biotechnology is possible under the DA agencies' existing institutional capacities, limited but useful commercialization experience, the positive perceptions of their scientists and researchers on intellectual property rights and commercialization and the existing

legal frameworks which they operate, particularly the rules and regulations issued by oversight agencies such as the Civil Service Commission and Commission on Audit, and that there is also no need for a new law to effect such commercialization, because the existing laws are already sufficient to provide the legal basis therefor;

WHEREAS, under the intellectual property rights laws, scientists and researchers of the DA or other government agencies who are engaged in science and technology activities, can own or benefit from the commercialized agricultural biotechnology generated by them in the conduct of research and development activities as part of their regular duties, without violating the constitutional prohibitions against indirect, additional or double compensation, the statutory prohibitions on conflict of interest, and other prohibitions;

WHEREAS, there is a strong positive perception of DA scientists and researchers on intellectual property rights protection and its impact on the generation and commercialization of public agricultural biotechnology products despite the differences in their institutions' mandates and the traditional thinking that public agencies produce public goods to be given to the public for free, they appreciate IPR protection;

WHEREAS, the legal implications of IPRs, ownership, and commercialization of publicly generated agricultural biotechnology is tremendously positive and favorable to scientists and researchers who generate them and their respective agencies because if they can generate agricultural biotechnology or intellectual property with high commercial value, they are legally entitled to royalties and other benefits provided by existing laws, and are exempted from the usual prohibitions against double compensation and conflict of interest, and this realization should provide incentives for DA scientists and researchers to continue working in the DA and unleash their creativity to generate highly commercializable agricultural technology; and

WHEREAS, under the Intellectual Property Code of the Philippines and the Plant Variety Protection Act, and the existing laws, rules and regulations, the protection of the DA agencies' intellectual property appears no longer optional but mandatory among government agencies, even though these agencies are also producers of public goods which should be provided to the public for free.

NOW, THEREFORE, for and in consideration of the foregoing premises, I, ARTHUR YAP, Secretary of the Department of Agriculture, by virtue of the authority conferred upon me by the Administrative Code of 1987 and other existing laws, do hereby promulgate the commercialization guidelines of the Department of Agriculture and its attached agencies. as follows:

I. Purposes and objectives

These guidelines shall apply to the commercialization of agricultural biotechnologies and other technologies generated by the scientists and researchers of the DA agencies, in the regular performance of their duties. These technologies include products, processes, or both, whether agricultural biotechnology or otherwise, which are new or novel, inventive or non-obvious, and industrially applicable, or in cases of varieties, new, distinct, uniform and stable, which can be registered as intellectual property rights under the Intellectual Property Code of the Philippines (RA 8293), or

the Plant Variety Protection Act of 2002 (RA 9168), respectively.

Consistent with the public good mandate of the DA, the technologies to be covered under these guidelines may be focused on those which cannot be immediately made available to the farmers and other stakeholders because they require private investments for prototyping, upscaling, marketing, and attainment of economies of scale. Examples of these kinds of technologies are products of agricultural biotechnology such as genetically modified organisms the components of which may be proprietary, and require special technical and management expertise before the final products can be accessed by farmers and consumers.

This administrative order also provides the implementing rules and procedures for the policy pronouncements enshrined in DA Administrative Order No. 03 series of 2005 (DA Policy on the Protection of Intellectual Properties), and the DA Administrative Order No. 03 series of 2006 (National Technology Commercialization Program Document and Operating Guidelines).

Furthermore, this Order also provides general guidance and direction to heads of DA agencies to put in place in their offices appropriate mechanisms such as units, funds and facilities to encourage and support the effective and efficient commercialization of their technologies, consistent with their mandates.

Finally, these guidelines are also aimed at encouraging DA agency heads to enroll or register their respective scientists and researchers with the Department of Science and Technology (DOST) so that they can avail themselves of the benefits and privileges under the Magna Carta for Scientists, Engineers and Other S & T Workers and under these guidelines.

II. Definition of Terms

"Technology commercialization" refers to the transfer of publicly generated proprietary technology by the DA and its agencies to the open market, in partnership with the private sector

"Technology commercialization fund" refers to a revolving fund established by the DA agency from its technology commercialization activities, comprised of royalties, fees, and dividends, and used exclusively to support its technology commercialization efforts, including the payment of the share of the scientists or researcher involved.

"DA agency" refers to any of the various units of the Department of Agriculture, including a bureau, office, unit, instrumentality or government-owned or controlled corporation.

"Technologies" refer to innovations or inventions which can be registered as "intellectual property rights" under the Intellectual Property Code of the Philippines (RA8293) or new plant varieties which can be registered under the Plant Variety Protection Act (RA 9168), generated by a DA agency official or employee in the regular performance of their duties.

"Intellectual Property Rights" or IPR refers to economic and commercial rights accorded to the creator of technologies, which can be registered as patents, utility