Appendix JJ

BOR Policies

401, 401.2, 401.3, 406, and 407

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: RESEARCH AND PUBLIC SERVICE
Policy 401 – Research and Technology Transfer
Approved: May 31, 2007; Revised: November 20, 2015

Board Policy:

A. Purpose. The board of regents recognizes the vital role of the campus research programs in providing an environment that promotes exploration, discovery and the dissemination of new knowledge for students. The board supports the integration of learning and discovery on the campuses and recognizes that the University of Montana-Missoula, Montana State University-Bozeman and Montana Tech of The University of Montana maintain significant research and sponsored programs as an integral part of their academic environment.

The dissemination of knowledge gained through research is an important part of the mission of higher education. The transfer of new discoveries and innovations and new applications of science may lead to the development of useful products, processes and services for the public. Products of this research may translate into new medical devices, diagnostics for human and veterinary use, pharmaceuticals, new grain varieties, innovations in current products, and numerous other products and processes.

Technology transfer also creates a dynamic interface between the universities and the commercial sector which encourages research collaborations, exchanges of materials, information and personnel with industry which enhances the university research programs by offering unique research opportunities for faculty and students.

The board of regents has responsibility for general oversight of all MUS campuses, including research, sponsored programs, and technology transfer activities. Therefore, the board adopts this policy to inform and guide its oversight and provide direction to MUS campuses engaged in these activities.

B. Strategic Planning. The board of regents shall adopt goals for research and technology transfer as part of its strategic plan. Additionally, UM-Missoula, MSU-Bozeman, and Montana Tech shall, and other campuses may, specifically include these items as components of their campus strategic plans.

C. Training for faculty and researchers. UM-Missoula, MSU-Bozeman, and Montana Tech shall each establish mandatory training programs for faculty and researchers who regularly engage in sponsored research activities. At a minimum, the following subjects will be included in the overall training program: compliance with state and federal laws and regulations applicable to university research; institutional policies and procedures governing research and laws and regulations.

Each campus will also develop optional training programs for faculty and researchers concerning board, unit, and campus policies and procedures governing patents, copyrights, and other relevant intellectual property matters and the technology transfer programs at the units.

D. Federal Initiatives Report. Targeted federal initiative funds (commonly referred to as “earmarks”) are funds included in federal appropriations requested by members of congress to fund specific projects or programs. UM-Missoula and MSU-Bozeman, as representatives of the affiliated campuses, shall coordinate requests for federal initiatives for their affiliated campuses and shall each submit to the commissioner of higher education a report of the requests for any non-competitive federal funds which the units anticipate submitting to Montana’s congressional delegation for inclusion in the federal budget. The report will be submitted to the commissioner’s office prior to campus representatives sharing it with Montana’s federal delegation.

Any proposal included in the federal initiatives request that proposes issuance of a sub-award with a non-governmental organization must be approved by the Board of Regents in advance of submission to the

congressional delegation. The requesting campus will submit a statement of work and a detailed proposed budget including the proposed budget for all sub recipients. The Commissioner has authority to approve all requests for projects with federal, state, and local governmental entities, including federal laboratories.

E. Reports. UM-Missoula and MSU-Bozeman, as representatives of the affiliated campuses, shall submit to the commissioner of higher education a report summarizing the research and technology transfer activities for the previous fiscal year. The report shall contain, at a minimum, the following data for the previous fiscal year:

1. All expenditures from sponsored activities (research, instruction, and other sponsored activities) managed by the respective research/business administrative offices as restricted funds via grants, contracts, or cooperative agreements;
2. Number of new invention disclosures filed;
3. Number of new start-up companies which have licensed or commercialized university-developed intellectual property;
4. Number of new intellectual property licenses issued;
5. Total intellectual property licenses in effect at the close of the fiscal year;
6. Total gross revenues from intellectual property licenses; and
7. Assessment of progress toward meeting the goals pertaining to technology transfer outlined in the campus strategic plans.

History:

Research and Technology Transfer (Item 135-105-R0507), approved by the Board of Regents May 31, 2007. Item 142-108-R0309 (Attachment) to change reporting dates approved March 20, 2009. Item 144-103-R0909, approved by the Board of Regents September 25, 2009. Item 169-109-R1115 revised November 20, 2015.

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: RESEARCH AND PUBLIC SERVICE
Policy 401.2 – Inventions and Patents
Revised May 31, 2007; Issued June 11, 2007

I. Board Policy:

A. All employees and units of the Montana university system (MUS) shall adhere to the following procedures with respect to patentable inventions or discoveries. The purpose of these procedures is to define the relationships among the inventor; the MUS; the unit, college, school, branch, division or agency of the MUS; and outside sponsors of research within the MUS.

B. General objectives of this policy include dissemination of existing knowledge together with the acquisition of new knowledge and understanding through research. System research is also conducted to train students and to stimulate a spirit of inquiry, but seldom with regard to practical applications which might result. However, inventions are often by-products of research, and when such inventions are made, it may be in the public interest that the MUS provide the protection and control available under the patent laws. In such cases, it is the intention of the board of regents to provide that protection and control when practicable.

II. Procedures:

A. Ownership of inventions or discoveries. All patentable inventions made by employees of the MUS (including all its various units, colleges, schools, branches, divisions and agencies), in connection with their assigned duties and/or by the use of the MUS' facilities, shall be considered the property of the unit at which the inventor was employed under the following circumstances and to the following extent:

1. Wholly the property of the unit if the person (or persons) responsible for the invention was employed by the unit specifically for that purpose.
2. To the extent specified if the person's (or persons') contract of employment contains specific provision vesting ownership in the unit**.**
3. To the extent recommended by the unit patent management officer or committee and approved by the president if research or endeavors directly resulting in the discovery or development of the invention or marketable product involved use of unit time, materials, property, or facilities.

Under all other circumstances individual employees are free to secure, under the patent laws of the United States, the exclusive right to their inventions, consistent with Article I, Section 8, of the Constitution of the United States which grants to the congress the power "to promote the progress of science and the useful arts, by securing for limited times to authors and inventors the exclusive right to their respective writings and discoveries...".

B. Limitations.

1. This policy shall not include copyrights.
2. Provision of normal academic environment, including library facilities, does not constitute grounds for equity by the unit in a discovery or invention.

C. Inventors' rights and duties. MUS employees retain the right and responsibility for recognizing in their work inventions that may reasonably be marketable; and in every case, complete freedom of publication in both time and scope shall be maintained, unless agreements with outside sponsors provide otherwise as indicated below. Investigators will participate in work under such outside agreements only after they have informed themselves of such provisions and have accepted these provisions. Any employee or student to whom the conditions set forth in Section II A 1, 2 and 3 above applies, who believes an invention or discovery resulting from his work should be patented, shall present the matter to the unit patent management officer or committee for consideration and disposal. Within 18 months of submission of an invention disclosure, the

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patent management officer or committee shall inform the inventor(s) in writing whether it plans to secure the patent or release the discovery to the inventor(s). In the latter case, or in case of failure by the officer or committee to communicate in writing within 18 months, the inventor(s) is free to secure the patent, pay all fees, and receive all benefits therefrom.

D. Submission of patentable inventions or discoveries to patent management officer or committee

1. Invention outside the MUS. If an invention is made and/or developed without MUS support of a significant degree, all rights remain with the inventor. Such inventions may be voluntarily submitted for consideration by the unit in the MUS, but the inventor is under no obligation to do so. Provision of a salary or desk to an inventor by the MUS does not, in itself, constitute significant support. However, any invention by an employee related to an area in which he or she participates in research under unit auspices must be reported to the appropriate unit so that the question of whether the unit has provided sufficient support can be decided by the patent management officer or committee of the unit. This decision may be appealed to the system invention committee.
2. Invention with MUS support. If an invention is made and/or developed with MUS support of a significant degree in time, money, materials, or facilities, the inventor must submit a full disclosure of the invention to the patent management officer or committee of the unit. Additionally, a copy of any manuscript submitted for publication shall simultaneously be submitted to the patent management officer or committee of the unit, if the author considers that it may contain marketable inventions. The unit patent management officer or committee may advise, but not require, deferral of publication in order to protect the patent rights of the unit and the inventor.

E. Prosecution of patents

1. Time Limits. In the event that the unit deems that a patent should be prosecuted, the prosecution shall be carried out diligently and without expense of any kind to the inventor. The inventor must assign to the unit any interest in the patent equivalent to the property interest which the committee determines to belong to the unit or which is required by Section II A 1 or 2. The preliminary patent search must be started within 9 months from the date the matter is presented to the unit or the unit forfeits all right to the invention. If no patent application is filed within a total elapsed time of 18 months following disclosure, all patent rights revert to the inventor(s) unless other agreement is executed between the inventor(s) and the unit.
2. Options available to the MUS unit. The inventor has an obligation to offer the unit the opportunity to develop the invention for commercial use if the invention was made under unit auspices. The unit may:
   (a) Elect to acquire title to the invention by assignment and in this case will undertake (unless inappropriate) the timely filing of patent applications, patent prosecution development, and marketing of the invention and shall bear all related costs. If the unit desires to accept such an assignment after competent peer review, the inventor shall be obligated to make such an assignment. The inventor shall, in this instance, receive on an annual basis, 50 percent of all net income, defined as gross royalties or other payments, including any recovery of damages obtained by the unit, but less external costs incurred by the unit in obtaining and protecting the patent rights and less any direct costs of development; or
   (b) Cause the invention to be assigned to some patent management organization, such as research corporation or the unit's research foundation. The domestic patent rights, foreign patent rights, or both, may be assigned to the patent management organization. The inventor shall receive on an annual basis 50 percent of all net royalties and other income received by the MUS from said patent management organization; or
   (c) Decline to accept any rights to the invention by assignment or otherwise, in which case all rights

revert to the inventor. If a dispute arises concerning the origin of an invention or patentable discovery or any aspect of patent policy, the dispute shall be presented to the MUS invention committee for final disposition.

3. Invention developed under agreement with outside sponsor. If the invention was made or developed under an agreement with an outside sponsor, the rights with respect to the invention shall be governed by provisions of that agreement. If not provided otherwise by the sponsoring agreement, the inventor's share of royalty or other income received from an outside sponsor shall be limited to the share he would have received had the unit supported the research entirely. If the sponsor determines that invention rights are left with the unit, the unit may elect to pursue one of the three options listed in Section II E 2.

F. Distribution of unit-retained invention-related income. In order to provide invention incentive and capability to unit personnel, the unit's share of invention income will be distributed as follows. Of the unit-retained share of net royalty or other income for any given invention, defined as gross receipts, less external expenditures for that invention and less the inventor's personal share two-thirds of the first $30,000 per year, one-half of the next $30,000 per year and one-third of the remainder will be designated through the unit budget or financial office to support the work of the inventor while employed by the unit and/or to promote discoveries at the unit. The rest will be distributed to a designated fund and will be used to support and expand research at the unit. Such distribution to support the inventor's work, derived from any given invention, will terminate after eight years from the first sale of products embodying that invention, and any earned monies after this date will go to a designated fund.

G. Development of inventions. If the inventor becomes dissatisfied with the development of the invention as carried out by the unit, or with the unit's delay in reaching a decision, an appeal may be made to the MUS invention committee, in which the inventor may urge specific changes in the proposed course of action undertaken by the unit, or if the unit has been assigned rights to the invention, may ask that the invention rights be reassigned to a patent management organization such as research corporation or all rights be reserved to the inventor.

If after a period of three years from the acquisition of the issued patent by the MUS the invention has not been marketed, all rights revert to the inventor, unless an agreement with any outside sponsor precludes such reversion.

III. Definitions:

A. Employees
1. regularly employed faculty or staff members;
2. part-time or special faculty or staff members;
3. students employed by any of the MUS units; and
4. any other persons including students using any unit's facilities who are not covered by contract or agreement.

B. Invention. (Webster) - A device, contrivance, or process originated after study and experiment. To produce, as something useful, for the first time through the use of imagination or of ingenious thinking and experiment. The term "invention" includes improvements, discoveries, processes and anything else covered by the federal patent laws.

C. Inventor. A person who invents. Specifically in this policy, an employee of the MUS who invents.

D. Patent. (Webster) - A writing securing to an inventor for a term of years the exclusive right to make, use, or sell his or her invention.

E. Unit patent management officer or committee. The person or committee, regardless of name or title, designated by the unit president to carry out the duties created by this policy.

F. System invention committee. The ad hoc committee selected by the commissioner as needed to carry out the duties created by this policy.

History:

Item 179-000, Patent Policy, University of Montana, July 10, 1961 (Rescinded); (Item 18-007-R1077), Invention and Patent Policy, Montana University System, October 28, 1977; as revised November 18, 1999 (Item 104-103-R0999); adopted May 31, 2007 (Item 135-105-R0507).

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: RESEARCH AND PUBLIC SERVICE
Policy 401.3 – Copyrights
Effective: November 18, 1999; Issued: December 10, 1999

Board policy

A. Works which are produced by an employee in connection with an approved and sponsored research project are treated in accordance with the agreement negotiated with the sponsor. In the absence of such agreement or to the extent such an agreement does not fully address ownership of works produced, such works shall be treated in accordance with sections B or C of this policy.

B. When an employee is assigned work or responsibilities for the specific purpose of developing computer programs, visual aids, manuals, public relations material, or other copyrightable works, the works produced pursuant thereto and all royalties therefrom shall be the property of the campus. Assignment of the copyright shall be indicated either on the individual employment contract or in a separate document countersigned by the employee. Should the campus and the employee agree to a division of royalties such division must be included in the contract or in a separate document countersigned by the employee. If the campus does not wish to copyright the work, the employee may obtain a written release from the president or chancellor and may then copyright the work in his/her own name. Upon written request for release by the employee the campus will respond within thirty (30) days.

C. When an employee develops copyrightable works other than those defined in paragraphs A or B above, he/she shall have sole right of ownership and disposition of such works. When such works are produced, developed or authored through the use or with the aid of campus facilities, personnel or other resources, the campus must be reimbursed for the fair market value of the use of any such facilities, personnel or resources, except those considered part of the normal academic environment including library facilities. Manuscripts or works of art designed for publication in media where no remuneration is given the author(s) are exempt from this reimbursement requirement.

History:

Item 25-005-R1179, Copyrights; Montana University System, November 2, 1979; as revised November 18, 1999 (Item 104-103-R0999).

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: RESEARCH AND PUBLIC SERVICE
Policy 406 – Ownership of Electronic Course Material
Adopted: March 23, 2001; Revised: September 19, 2013

Board Policy:

A. General Policy and Coverage

1. Any electronic course materials created or developed by employees of the Montana university system (MUS), shall remain the property of the creator except in the following cases, which shall make the electronic course materials the property of the Montana University System:
   a. The production of such materials is part of a sponsored program; or
   b. Substantial institutional resources were used in creating such educational material. "Substantial institutional resources" includes but is not limited to provision of staff time, equipment funds, released time from assigned duties, or an allocation of resources not normally available to all faculty. Academic year salary, office, usual library resources, usual secretarial and administrative staff resources or usual computer equipment, among other things, are not regarded as constituting "substantial use of institutional resources".
2. This policy applies to electronic course material whether or not it was, is or may be eligible for copyright or patent. However, faculty who develop electronic course material that is considered property of the MUS shall assist the MUS to secure and protect a patent or copyright on the material if such protection is sought by the MUS.
3. The mere communication or preservation of traditional classroom or course material in an electronic medium does not bring that material within the ambit of this policy. Rather, this policy is intended to cover material created for or designed to be used in conjunction with a course, or a part thereof, delivered by means other than personal, face to face interaction between the instructor and the student.
4. Activities and materials covered by this policy are thereby excluded from the coverage of policy 401.2 (patent) and policy 401.3 (copyright).

B. Procedures Applicable to Electronic Course Material Considered Property of the MUS

1. Division of Income
   a. Generally, net income shall be divided, 50 percent to the employee and 50 percent to the campus at which the developer is employed. However, a campus shall retain 100% of the net income from electronic course material developed by an employee at the express direction of the employer or in return for specified payments or other consideration.
   b. Net income, for the purposes of this policy, means gross income minus costs of development and promotion, realized from the sale or licensing of the electronic course material.
2. Variance by Contract
   a. This policy may be varied by a written contract. Such contracts may be between the MUS and the employee or they may also involve an outside sponsor that desires to maintain certain rights in materials it is paying the MUS employee to develop.
   b. A campus chancellor or a president may approve a contract that either reduces the MUS ownership rights or reduces the MUS share of net income if, in the chancellor or president's judgment, the contract is in the best interests of the MUS. In each such instance where the MUS ownership rights are reduced or the MUS share of net income is reduced to below 50%, the chancellor or president shall inform the commissioner of the contract and shall indicate the reason for approving it.
3. Relinquishment of University Rights
   a. The MUS may for fair value and upon the approval of a chancellor or president relinquish rights to electronic course material to the developer or any other person or entity. Such a right may be relinquished for no consideration only if the president or chancellor concludes that there is not a likelihood of the campus benefiting from the retention of the right in question.

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b.. Any agreement relinquishing such rights shall retain for the MUS a perpetual, royalty free right to use, reproduce, and revise without restriction the material for the MUS own educational or research purposes, unless the president or chancellor concludes that such a clause is not in the campus's best interests and documents that conclusion in writing.

4. Limitation on Use Outside the MUS

   a. The employee who creates or develops the electronic course material subject to this policy may not use the material in conjunction with teaching conducted on behalf of any entity other than the MUS unless prior permission is granted in writing by the a campus chancellor, president or the commissioner of higher education, which permission shall not be unreasonably withheld.

   b. This limitation applies to the specific electronic format of the course and does not limit the employee's right to use facts, theories, opinions or other items of substantive course content in another setting.

History:

Board of Regents Policy and Procedures Manual: Ownership of Electronic Course Material (Proposed New Policy), approved by the Board on March 23, 2001 (Item 109-103-R1100). Revised September 19, 2013, Item 160-102-R0913.

MONTANA BOARD OF REGENTS OF HIGHER EDUCATION
Policy and Procedures Manual

SUBJECT: RESEARCH AND PUBLIC SERVICE
Policy 407 – University System Employee Equity Interest and/or Business Participation
Approved: September 23, 2005; Updated: December 19, 2013

I. Purpose

A. The board of regents recognizes that the objectives of the technology transfer and intellectual property development activities of the Montana university system (MUS) units are to facilitate the efficient transfer of knowledge and technology from the units to the private sector in service of the public interest; to support the discovery of new knowledge and technology and attract resources for the support of unit programs; to enhance student learning opportunities and to promote local, regional and national economic development. The board also recognizes that the efficient transfer of technology to private business entities will often be enhanced by the active and continuing involvement of the inventor of the intellectual property that is transferred to the company. The goal of this policy is to allow intellectual property created by university system employees to be disseminated and utilized in a fashion mutually advantageous to the state, the university system, the business entity and the employee.

B. This policy implements the provisions of 20-25-109 MCA which requires the board of regents to approve:

1. an MUS employee's ownership of an equity interest or participation in intellectual property conceived, created, discovered, invented or developed by the employee; or
2. an MUS employee serving as a member of the board of directors or other governing board of or as a director, officer or employee of a business entity that either: (a) has an agreement with the MUS or with any other Montana state agency or political subdivision that relates to the research, development, licensing, or exploitation of the intellectual property; or (b) shares an ownership interest in the intellectual property with the MUS.

II. Definition

A. "Business entity" as used in this policy means a business that (i) has or wishes to negotiate an agreement with a MUS unit or any other public entity relating to the research, development, licensing or commercial exploitation of intellectual property developed by an employee inventor; or (ii) shares an ownership interest in intellectual property with a unit of the MUS.

B. "Intellectual property" as used in this policy means: "inventions, discoveries, and creations that may be eligible for copyright or patent." The term also includes other economic development activity of a proprietary nature, including but not limited to business practices, ideas, processes, or arrangements that may not be eligible for either patent or copyright but for which the possibility of profitable commercialization exists."

C. "Employee inventor or creator" as used in this policy means an employee who, as part of the employee's authorized work for the MUS, conceives, creates, discovers, invents, or develops intellectual property.

III. Employee Activities Requiring Approval

A. MUS units must obtain approval for an employee inventor or creator to engage in any of the following activities with a business entity:

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1. employee inventor or creator ownership, or award of an equity interest or similar participation in the ownership, of a business entity;
2. employee inventor or creator participation as a director, officer, or as a member of the board of directors or other governing board of a business entity; or
3. employment of the employee inventor or creator by the business entity.

IV. Board Approval

A. A request for board approval should contain:

1. the name of the employee and the business entity involved;
2. the relationship or activity outlined under section III for which approval is being sought
3. a statement of how the approval of the relationship will further the goals and objectives of the technology transfer and intellectual property development activities of the unit and provides public benefit; and
4. for an employee inventor or creator seeking approval pursuant to policy 407 section III (A) (ii) or (iii), a statement indicating that the business entity either:
   (a) has an agreement with the MUS or with any other Montana state agency or political subdivision that relates to the research, development, licensing, or exploitation of the intellectual property; or
   (b) shares an ownership interest in the intellectual property with the MUS.

V. Other Policies

If an employee's equity interest or financial participation in the commercial development of intellectual property is established pursuant to regents' policies 401.2 (patents and inventions), 401.3 (copyright) or 406 (ownership of electronic course material), it shall be deemed approved by the board. Employee inventors receiving approval under this policy will comply with the employing units' policies governing conflict of interest and conflict of commitment as applicable to the activities approved under this policy.

VI. Reports

Each unit shall file a report no later than December 31 of each year with the commissioner identifying all employees who have an equity interest in or serve as employees, officers, or members of the board of directors of business entities that have agreements with the system relating to the research, development, licensing or exploitation of intellectual property in which the system has an ownership interest. The report shall identify the employee, the business entity and the activities approved under this policy. Once the relationship has been reported, the unit will only report changes to the previous year's report.

History:

ITEM 113-110-R1101 and Memo, Board of Regents Policy and Procedures Manual: Research and Public Service, University System/Employee Joint Ventures (New), approved by the Board of Regents on January 18, 2002; as revised September 23, 2005 (Approval of University System Employee Equity Interest and/or Business Participation, Item 128-115-R0905). Editorial change, December 19, 2013 (removed Specific Joint Ventures Approved).