

OFFICE OF THE GENERAL COUNSEL: USF REGULATIONS

NOTICE: PROPOSED AMENDED REGULATION

DATE: FEBRUARY 9, 2009

NUMBER & TITLE:	USF 12.003 10.012 -Inventions & Works
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Summary of Revisions:

The Florida Board of Governors Resolution (1/7/03) provides that each board of trustees may adopt regulations to implement the provisions of law conferring duties upon it. Such regulations must be adopted pursuant to the Board of Governors Regulation Development Procedure (7/21/05) and must be consistent with law and the resolutions and strategic plan of the Board of Governors. The BOG Procedure also calls for a university to monitor the effects of new regulations and periodically review existing regulations to ensure they are current and consistent.

Technical amendments to Regulation 12.003 ~~10.012~~ update USF system institutions, offices and employee designations.

The full text of the Regulation follows this summary or you may contact Dee Brown at USFLEGAL@ADMIN.USF.EDU.

End of Summary.

UNIVERSITY OF SOUTH FLORIDA SYSTEM REGULATION
Regulation Number: USF12.003 ~~10.012~~

Subject: Inventions and works

(1) Definitions. The following definitions shall apply for purposes of interpreting and implementing this regulation:

(a) A "work" includes any copyrightable material such as printed material, computer software or databases, audio and visual material, circuit diagrams, architectural and engineering drawings, lectures, musical or dramatic compositions, choreographic works, pictorial or graphic works, and sculptural works.

(b) An "invention" includes any discovery, invention, process, composition of matter, article of manufacture, know-how, design, model, technological development, strain, variety, culture of any organism, or portion, modification, translation, or extension of these items, and any mark used in connection with these

items.

(c) "Instructional technology material" includes video and audio recordings, motion pictures, film strips, photographic and other similar visual materials, live video and audio transmissions, computer programs, computer assisted instructional coursework, programmed instructional materials, three dimensional materials and exhibits, and combinations of the above materials; ~~which that~~ were prepared or produced in whole or in part by an employee; and ~~which that~~ are used to assist or enhance instruction.

(d) "~~University-USF-system~~ support" includes the use of ~~University-USF-system~~ funds, personnel, facilities, equipment, materials, or technological information; and includes such support provided by other public or private organizations when it is arranged, administered, and/or controlled by the ~~UniversityUSF system~~.

(e) "Employee" means all General Faculty, ~~Administration~~ Administrative and Professional, ~~Staff USPS~~, and Temporary employees of the ~~UniversityUSF system~~, in-unit or non-unit, regardless of classification or source of funding of the position, and volunteers and other persons who engage in ~~UniversityUSF-system~~-supported effort.

(2) Works.

(a) Independent Efforts. A work made in the course of independent efforts is the property of the employee, who has the right to determine the disposition of such work and the revenue derived from such work. As used in this section, the term independent efforts means that:

1. The ideas came from the employee;
2. The work was not made with the use of ~~University-USF-system~~ support; and
3. The ~~University-USF system~~ is not held responsible for any opinions expressed in the work.

(b) ~~UniversityUSF-system~~-Supported Efforts. If the work was not made in the course of independent efforts, the work is the property of the ~~University-USF system~~ and the employee shall share in the proceeds therefrom. However, in keeping with tradition, it is not the intent of the ~~University-USF system~~ to assert rights to books, articles, and similar works, the intended purpose of which is to disseminate the results of academic research or scholarly study nor to assert rights to instructional technology material ~~which that~~ is developed without the use of appreciable ~~UniversityUSF-system~~ support and is used solely for the purpose of assisting or enhancing the employee's instructional assignment.

(c) Disclosure.

1. Upon the creation of a work, and prior to any publication, the employee shall disclose to the President or Vice President for Research & Innovation any work made in the course of UniversityUSF system-supported efforts, together with an outline of the project and the conditions under which it was done.
2. The President or Vice President for Research & Innovation shall gather information to assess the relative equities of the employee and the UniversityUSF system in the work.
3. Within sixty (60) days after such disclosure, the President or Vice President for Research & Innovation will inform the employee whether the UniversityUSF system seeks an interest in the work, and a written contract shall thereafter be negotiated to reflect the interests of both parties, including provisions relating to the equities of the employee and allocating proceeds resulting from such work. All such agreements shall comport with and satisfy any preexisting commitments to outside sponsoring contractors.
4. The employee and the UniversityUSF system shall not commit any act ~~which~~that would tend to defeat the UniversityUSF system's or employee's interest in the work and shall take any necessary steps to protect such interests.

(3) Inventions.

(a) Disclosure/UniversityUSF system Review.

1. An employee shall fully and completely disclose to the President or Vice President for Research & Innovation all inventions ~~which~~that the employee may develop or discover while an employee of the State University System, together with an outline of the project and the conditions under which it was done. With respect to inventions made during the course of approved outside employment, the employee may delay such disclosure, when necessary to protect the outside employer's interest, until the decision has been made by the outside employer whether to seek a patent.
2. If the UniversityUSF system wishes to assert its interest in the invention, the President or Vice President for Research & Innovation shall inform the employee within one hundred twenty (120) days of the employee's disclosure to the President or Vice President for Research & Innovation.
3. The President or Vice President for Research & Innovation shall conduct an investigation ~~which~~that shall assess the respective equities of the employee and the UniversityUSF system in the invention, and determine its importance and the extent to which the UniversityUSF system should be involved in its protection, development, and promotion.
4. The President or Vice President for Research & Innovation shall inform the employee of the UniversityUSF system's decision regarding the protection to be sought for the invention within a reasonable time, not to exceed one hundred thirty-

five (135) days from the date of the disclosure to the President or Vice President for Research & Innovation.

5. The division, between the UniversityUSF system and the employee, of proceeds generated by the licensing or assignment of an invention, shall be negotiated and reflected in a written contract between the UniversityUSF system and the employee. All such agreements shall comport with and satisfy any preexisting commitments to outside sponsoring contractors.

6. The employee shall not commit any act ~~which~~that would tend to defeat the UniversityUSF system's interest in the matter, and the UniversityUSF system shall take any necessary steps to protect such interest.

(b) Independent Efforts. All inventions made outside the field or discipline in which the employee is employed by the UniversityUSF system and for which no UniversityUSF-system support has been used are the property of the employee, who has the right to determine the disposition of such work and revenue derived from such work. The employee and the President or Vice President for Research & Innovation may agree that the patent for such invention be pursued by the UniversityUSF system and the proceeds shared.

(c) UniversityUSF system-sSupported Efforts. An invention ~~which~~that is made in the field or discipline in which the employee is employed by the UniversityUSF system or by using UniversityUSF system support is the property of the UniversityUSF system and the employee shall share in the proceeds therefrom.

(d) Outside Employment.

1. While an employee may, in accordance with ~~regulations Rule 6C4-10.005~~USF10.107 and USF10.206, and the pertinent collective bargaining agreement, engage in outside employment pursuant to a consulting agreement, requirements that an employee waive the employee's or UniversityUSF system's rights to any inventions ~~which~~that arise during the course of such outside employment must be approved by the President or Vice President for Research & Innovation.

2. An employee who proposes to engage in such outside employment shall furnish a copy of this Regulation and, if applicable, the pertinent collective bargaining agreement, to the outside employer prior to or at the time a consulting or other agreement is signed, or, if there is no written agreement, before the employment begins.

(e) Release of Rights.

1. In the event a sponsored research contractor has been offered the option to apply for the patent to an invention or other rights in an invention, the UniversityUSF

system will use its good offices in an effort to obtain the contractor's decision regarding the exercise of such rights within one hundred twenty (120) days.

2. At any stage of making the patent applications, or in the commercial application of an invention if ~~a third party has not otherwise been assigned if it has not otherwise assigned to a third party~~ the right to pursue the third party's interests, the President or Vice President for Research & Innovation may elect to withdraw from further involvement in the protection or commercial application of the invention. At the request of the employee in such case, the UniversityUSF system shall transfer the invention rights to the employee, in which case the invention shall be the employee's property, and none of the costs incurred by the UniversityUSF system or on its behalf shall be assessed against the employee.

3. All assignments or releases of inventions, including patent rights, by the President or Vice President for Research & Innovation to the employee shall contain the provision that such invention, if patented by the employee, shall be available royalty-free for governmental purposes of the State of Florida, unless otherwise agreed in writing by the UniversityUSF system.

(4) Execution of Documents. The UniversityUSF system and the employee shall sign an agreement individually recognizing the terms of this Regulation.

(5) Responsibility. The authority and responsibility for administration and implementation of this Regulation is delegated to the Vice President for Research & Innovation.

Authority-: Art. IX, Sec. 7, Fla. Constitution and Resolutions issued by the FL Board of Governors. 120.53(1)(a), 240.227(1), 240.241(2) FS. Law Implemented 120.53(1)(a), 240.202, 240.227(1), 240.229, 240.241(2) FS. History-New 8-10-89, Amended 1-8-92, formerly 6C4-10.012, F.A.C., Amended February 19, 2009.

UNIVERSITY OFFICIAL INITIATING PROPOSED AMENDMENTS:
Karen A. Holbrook, Vice President for Research & Innovation.

WRITTEN COMMENTS CONCERNING THIS PROPOSED
REGULATION MAY BE SUBMITTED WITHIN 14 DAYS AFTER THE
POSTING DATE OF THIS NOTICE TO:

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