

June 1, 2000

**UNIVERSITY OF MINNESOTA
COLLEGE OF AGRICULTURAL, FOOD, AND ENVIRONMENTAL SCIENCES
MINNESOTA AGRICULTURAL EXPERIMENT STATION**

**Policy and Procedures Statement
Distribution and Release of Plant Germplasm and Related Plant Materials**

POLICY

Section I. Purpose.

This Statement of Policy and Procedures by the College of Agricultural, Food, and Environmental Sciences [COAFES] and the Minnesota Agricultural Experiment Station [MAES] conforms to the University of Minnesota Policy on Intellectual Property [adopted October 8, 1999, by the Board of Regents] and provides Procedures specific to the distribution and release of plant germplasm and related plant materials. Two general principles guide the management and distribution of all University developed technologies, including plant germplasm and related plant materials developed by MAES.

- to ensure that the results of University research will have the maximum possible beneficial effect for Minnesotans and the larger public
- to realize a fair financial return to the University so long as this does not interfere with the first principle

Section II. Application.

Subd. 1. Application. This policy applies to all faculty, staff, students, and any other persons employed by COAFES.

Subd. 2. Effective Date. This policy is effective July 1, 2000.

Section III. Definitions.

Subd. 1. Plant Biological Materials. Examples of various forms of Intellectual Property are listed in the University Policy Section III, Subd. 2, and include but are not limited to plant material such as cells, DNA sequences, plant lines and other biological materials.

Subd. 2. Plant Germplasm and Related Plant Materials. For this Statement, Plant Germplasm and Related Plant Materials shall mean: varieties, germplasm, lines, cultivars, strains, accessions and similar living plant materials capable of reproduction. Germplasm and Related Plant Materials may be reproduced and propagated sexually by seed [including apomixis] or asexually by vegetative means [cuttings, scions, tissue culture, bulbs, tubers, corms, etc.].

Subd. 3. Intellectual Property Protection. Plant Germplasm and Related Plant Materials may be protected as intellectual property through Plant Variety Protection (PVP), through PVP with TITLE V Protection, through a Plant Patent, or through a Utility Patent, or might remain as a trade secret.

Subd. 4. Distribution. Distribution means the process of transferring Plant Germplasm or Related Plant Materials to a party that does not hold intellectual property rights to that material. Distribution of Plant Germplasm or Related Plant Materials typically would occur under a Material Transfer Agreement for the purpose of further research, testing, or evaluation but would not permit commercial development in the absence of a licensing agreement with the University.

Subd. 5. Germplasm Release. Germplasm Release means the process by which the University through the Office of Patents and Technology Marketing [PTM] officially approves, names or identifies Plant Germplasm or Related Plant Material and determines the means by which the intellectual property is to be protected and commercialized. According to the terms and conditions specified, Germplasm Releases may be exclusive or non-exclusive and may or may not generate royalties, licensing fees or other forms of revenue.

Section IV. Administrative Procedures.

The Director of MAES and the Vice President for Research or designee, in consultation with the Crop Variety Review Committee and the Horticulture Variety Review Committee, shall adopt procedures to implement this policy.

Section V. University Ownership and Exceptions.

University ownership of intellectual property pertaining to Plant Germplasm and Related Plant Materials and specific exceptions to University ownership are specified in Sections V and VI of the Intellectual Property Policy.

Section VI. Rights to Publish.

Nothing in this Statement shall be construed as affecting the rights to publish, except as specified in Section VII of the Intellectual Property Policy.

Section VII. Distribution of Income.

Income the University receives from intellectual property pertaining to Plant Germplasm and Related Plant Materials shall be distributed as specified in Section VIII of the Intellectual Property Policy. Exceptions to the distribution plan may be agreed to in writing by the University and the person[s] creating the Plant Germplasm and Related Plant Materials, as specified in Section VIII of the Intellectual Property Policy.

Section VIII. Responsibilities of the University and Applicable Individuals and Compliance.

The responsibilities of the University and applicable individuals and compliance with the policy are specified in Sections IX, X, and XI of the Intellectual Property Policy.

PROCEDURES

Section I. Disclosure.

Subd. 1. Responsibility. University researchers are responsible for reporting to the Office of Patents and Technology Marketing [PTM] via an Invention Disclosure any new plant germplasm or related plant material that may be worthy of MAES/COAFES release, or as may be required by funding agreements with sponsors.

Subd. 2. Invention Disclosure. The researcher[s] shall complete an Invention Disclosure Form [available at <http://www.ospa.umn.edu/forms/forms.htm#ptm>] and submit it to PTM . The Disclosure Form may be sent directly to PTM, or it may be submitted to PTM through the Technology Transfer Liaison [TTL] person or other designated individual. Disclosure should occur at the earliest possible stage, which for most germplasm, would be at the initial seed or plant increase stage, or when commercial interest in the germplasm is known. Disclosure of germplasm or related plant material developed as a result of sponsored research should meet any obligations to the sponsor of such research. Disclosure to PTM should occur well in advance of any public disclosure, either written or oral, so as to not jeopardize any avenue of protection for the intellectual property.

Subd. 3. Confidentiality. All persons who receive the disclosure and participate in the review process agree to maintain the confidentiality of the disclosure, except that responsible persons may make disclosures to external persons as needed to satisfy external obligations or to protect or commercialize the material disclosed.

Subd. 4. Disclosure Information. Documentation in the Invention Disclosure Form should be as complete as possible and include, but is not limited to, the following:

- Background and nature of discovery
- Origin, pedigree, and description of characteristics
- Suggested name or appropriate identification
- Rationale for release
- Projected release date
- Proposed timetable and methods and procedures for commercialization
- Relevant data on the evaluation of the material to be released including comparisons to appropriate public and private materials already available commercially
- Other documentation to support the release such as: field and laboratory data, unique characteristics, or existing contracts or agreements, etc.
- Source[s] of funding

Subd. 5. Docket Number. All new plant germplasm or biological material reported to PTM is given a University Docket number and is on the permanent record of intellectual property developed as a result of research activities at the University.

Subd.6. Timing. For materials requiring timely action for planting or propagation, the Invention Disclosure Form[s] and supporting documents should be submitted well in advance of the date on which the increase will occur. This will allow ample time for committee review, notification of other state agricultural experiment stations that may be participating in the release, preparation and registration of licensing agreements, and distribution of germplasm prior to planting or propagation.

Section II. Review and Approval of Release.

Subd. 1. Role of PTM in Review Process. PTM initiates the review process by transmitting copies of the Invention Disclosure Form and all other relevant information to the COAFES Associate Dean and to the appropriate department head[s]. All such information shall be treated as CONFIDENTIAL by those receiving it.

Subd. 2. Role of COAFES Associate Dean in Review Process. The Associate Dean refers the Invention Disclosure Form and supporting documents to the Crop Variety Review Committee or to the Horticulture Variety Review Committee depending on the type of germplasm or related plant material disclosed. The Associate Dean may also appoint a special *ad hoc* review committee if needed for unusual situations that might include plant related biological materials not covered by existing contracts or research agreements.

Subd. 3. Role of Crop Variety Review Committee and Horticulture Variety Review Committee. These standing MAES committees appointed by the Director of MAES serve the important role of assuring the quality of all plant germplasm and related plant materials released by the MAES/COAFES. The TTL person would serve as a non-voting representative from PTM. The Principle Investigator[s] participates in committee deliberations as a resource person[s] but does not vote. After review and discussion of the proposed release, the Committee votes: i) whether to recommend approval of a release, and ii) whether to recommend that the germplasm be released exclusively, non-exclusively, or in a restricted manner. The Committee may defer providing a recommendation and request that PTM obtain additional information about the invention's commercial potential. The Committee recommendation is to be forwarded to the COAFES Associate Dean within two [2] weeks of having received the Invention Disclosure Form from the Associate Dean or after the next scheduled meeting. The proceedings of the committees regarding Invention Disclosures will remain confidential.

Subd. 4. Role of Special *ad hoc* Committee. The Associate Dean may appoint an *ad hoc* Review Committee. Membership may consist of faculty from appropriate COAFES departments, the TTL person, representatives from the seed industry or private sector, representatives from organizations involved in germplasm multiplication, and others that can constructively contribute to the review and recommendation process. The process of review and recommendation by the *ad hoc* Review Committee is the same as for the standing Variety Review Committees.

Subd. 5. Role of COAFES Associate Dean in Recommendation Process. The Associate Dean receives the Committee recommendation and forwards it plus all supporting materials to the Director of MAES and Dean of COAFES.

Subd. 6. Role of Director of MAES and Dean of COAFES in Recommendation Process. The MAES Director shall have responsibility for the final MAES recommendation regarding the release. If the release is recommended, the Director shall also recommend a commercialization method and whether a royalty-based [or other fee-based] release is appropriate. The decision will be transmitted within two [2] weeks through the TTL person to the Director of Mechanical, Chemical, Electrical, Biological Technologies [MCEB] in PTM.

Subd. 7. Role of MCEB Director in Recommendation Process. The MCEB Director of PTM shall have the final decision on the release of Plant Germplasm and Related Plant Materials from the University of Minnesota in accordance with the University of Minnesota Intellectual Property Policy. PTM normally honors the MAES recommendation unless it is contrary to the guiding principles stated in Section I of this Policy. This decision will be transmitted within two [2] weeks of receipt of the MAES recommendation back to the Director of MAES, COAFES Associate Dean, appropriate department heads, Principal Investigators, and others, as appropriate.

Section III. Incentives to Researchers.

Subd. 1. Commercialization Income. Where appropriate, PTM may charge a reasonable royalty or other fee on germplasm released for commercialization. The royalty or other fees for releases covered by these procedures and originating at the University of Minnesota shall be established by PTM in consultation with the principal investigator[s], MAES/COAFES, and other appropriate individuals or organizations. Income received by PTM from such releases will be distributed as outlined in the current University of Minnesota Intellectual Property Policy or relevant successor policies.

Subd. 2. Non-commercialization. In the event that germplasm recommended for commercial release is not commercially licensed after two years of promotion and marketing by PTM for annuals and five years for perennials, such germplasm may be made available to the public on a non-exclusive, royalty-free basis. A one-time handling fee may be collected by PTM from recipients to recover costs associated with the propagation, maintenance and shipment of the germplasm and returned to those who incurred the costs.

Section IV. Distribution of Germplasm and Related Plant Materials.

Subd. 1. Role of Office of Patents and Technology Marketing. PTM (or the TTL person as the representative of PTM) takes an active role in the marketing of plant germplasm and cooperates with MAES/COAFES and the Minnesota Crop Improvement Association, and/or other appropriate interested organizations and commercial entities and companies in the business of selling plant products. PTM authorizes the dissemination of the plant germplasm or related plant materials after the execution of the proper agreements.

Subd. 2. Non-exclusive Release. MAES/COAFES usually releases germplasm in a non-exclusive manner. Under such a mechanism, plant germplasm and related materials of agronomic crops will be released to the MCIA foundation seed department for increase, maintenance and distribution to certified seed producers. Plant germplasm and related materials of horticultural crops will be released to the appropriate organization. In addition, individual growers, or groups of growers, interested in receiving a non-exclusive license to grow/use and propagate the plant germplasm and related materials may be offered an opportunity to do so with payment of established royalty or fee, and agreement to comply with the release conditions stipulated by the MAES/COAFES.

Subd. 3. Exclusive or Restricted Release. Specialty germplasm that requires a high level of identity preservation, a sizable initial capital investment, and/or a specialized marketing effort, or is under contractual restrictions may be released in an exclusive or in a restricted manner. Such exclusive releases of germplasm and related plant materials will be first released to the MCIA foundation seed department in the case of agronomic crops for initial increase and maintenance of the germplasm. Initial releases of horticultural germplasm will be to the appropriate organization. Exceptions to a non-exclusive release will be made only upon approval by PTM after considering relevant information and factors in light of the guiding principles.