



Review of the Interim Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities

PRESENTED BY Jo Zimmerman, Chair

REVIEW DATES SEC – April 15, 2020 | SENATE – April 22, 2020

VOTING METHOD In a single vote

RELEVANT POLICY/DOCUMENT [Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities \(VIII-14.00\[A\]\)](#)

NECESSARY APPROVALS Senate, President

ISSUE

In March 2019, the President approved revisions to the University of Maryland Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities (VIII-14.00[A]) on an interim basis, pending University Senate review. In September 2019, the Senate Executive Committee (SEC) charged the Campus Affairs Committee with reviewing the interim policy, consulting with a range of stakeholders, reviewing similar policies at Big 10 and peer institutions, considering whether the interim policy accurately reflects current practice and ensures sufficient oversight of research taking place in University facilities, and recommending changes, as appropriate.

RECOMMENDATIONS

The Campus Affairs Committee recommends that the interim Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities (VIII-14.00[A]) be revised as indicated in the policy document immediately following this report.

COMMITTEE WORK

The committee reviewed the interim policy, and over the course of fall 2019 consulted with a wide range of stakeholders. The committee identified issues with the current policy including, a cumbersome and inefficient review and approval process and a lack of meaningful oversight and accountability. The committee also investigated practices at Big 10 and peer institutions, but did not find any comprehensive policies that address the types of agreements covered by the policy. Over the course of spring 2020, the committee revised the policy to address the concerns it identified, emphasize key principles, clarify the responsibilities of both external users and the University, and align the policy's structure and language with University policy conventions. The most substantive revisions address the overarching concerns involving process and questions of oversight and accountability. The revisions were informed by extensive stakeholder consultation, particularly with representatives of the Division of Research; the Senior Vice President & Provost; the Department of Environmental Safety, Sustainability & Risk; and the Office of General Counsel. The revised policy was shared with the University Research Council, which proposed minor revisions that the committee incorporated.

After due consideration, the committee voted to approve the revised Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities by an email vote concluding on April 12, 2020.

ALTERNATIVES

The Senate could reject the proposed revised policy and the interim policy would remain in place. However, the University would lose the opportunity to improve and clarify an unwieldy process and better protect the University.

RISKS

There are no associated risks to the University in adopting this recommendation.

FINANCIAL IMPLICATIONS

There are no known financial implications for the University in adopting this recommendation.



Review of the Interim Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities

2019-2020 Committee Members

Jo Zimmerman (Chair)
Yanne Chembo (Faculty)
Venkat Chintla (Graduate Student)
David Cronrath (Ex-Officio Provost's Rep)
Andy Fellows (Faculty)
Stacy Garza (Staff)
Melody Hashemi (Undergraduate Student)
Luke Jensen (Ex-Officio Chief Diversity Officer Rep)
Ireland Lesley (Ex-Officio SGA Rep)
Anne Martens (Ex-Officio VP Administration and Finance Rep)
Max McKittrick (Undergraduate Student)
Pamela McNally (Staff)
Annie Rappeport (Ex-Officio GSG Rep)

Joel Seligman (Ex-Officio VP University Relations Rep)
Anjali Sharma (Undergraduate Student)
Sue Sherburne (Ex-Officio Chair of Coaches Council Rep)
Elizabeth Warner (Faculty)
Elizabeth Wasden (Faculty)
Joshua Westgard (Faculty)
Carly Woods (Faculty)
John Zacker (Ex-Officio VP Student Affairs Rep)

Date of Submission

April 2020

BACKGROUND

In March 2019, the President approved revisions to the University of Maryland Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities (VIII-14.00[A]) on an interim basis, pending University Senate review. In September 2019, the Senate Executive Committee (SEC) charged the Campus Affairs Committee with reviewing the interim policy and related documentation; consulting with a range of stakeholders; reviewing similar policies at Big 10 and peer institutions; considering whether the interim policy accurately reflects current practice and ensures sufficient oversight of research taking place in University facilities; and recommending changes, as appropriate (Appendix 3).

CURRENT PRACTICE

The policy addresses the use of University facilities for research-related activities that are unrelated to the University's research mission, as well as other activities that support research that take place in a limited number of areas on or near campus. The policy encompasses research-related activities conducted by "non-University" or "external" users, but it does not address research activities undertaken by University faculty, staff, or students in connection with their own employment or studies. External users can be individuals, companies, or entities that have no affiliation with the institution, or, more commonly, faculty members who have created or are considering creating private companies. The research conducted by these faculty members must be kept separate from their University-related research and cannot involve University students.

The research-related activities covered by the policy primarily occur in two types of spaces. The first consists of incubators intended to encourage faculty to explore ways to commercialize their research. Incubators help faculty members identify potential markets for their innovations and support them through the process required to actually bring a product to market. The most significant of these

incubators is the Maryland Technology Enterprise Institute, or Mtech. Mtech is part of the Clark School of Engineering, and includes a range of spaces in the Rabin Building on campus as well as off-campus laboratory and office space. While incubator spaces are designed for purposes that align with this policy, the policy also enables the use of spaces within existing academic facilities that are typically used for University research. External users can use portions of laboratories or office spaces that are not currently in use, or can use them at particular hours when such use will not interfere with the normal activities of the University. The University has priority use of these spaces.

To use such spaces, external users must sign a Facilities Use License. The current process for creating a license is outlined in an application form accompanying the policy, referred to as Exhibit A (Appendix 2), which is used to gather necessary information and which indicates mandatory meetings with various administrators and University oversight bodies before a license can be approved. Steps required by the review process include signatures by:

- the relevant department chair (or equivalent) and the relevant dean;
- the Department of Environmental Safety, Sustainability & Risk (ESSR);
- the Conflict of Interest Committee;
- the Senior Vice President & Provost;
- the Director of Facilities Planning;
- the Facilities Council; and
- the Vice President for Administration & Finance (in consultation with the Office of General Counsel, as necessary).

At present, the review and approval process involves transferring physical copies of applications between offices.

Facilities Use Licenses are established for one-year terms, with the possibility for renewal at the University's sole discretion. The policy does not establish any initial or subsequent reviews or inspections to ensure compliance with the terms of the Facilities Use License. To date, there have been relatively few licenses established under the interim policy, though their number will likely increase in response to the University's focus on entrepreneurship and increasing interest in licensing the University's intellectual property.

In March 2019, the policy was revised on an interim basis, pending Senate review. The revisions reflected in the interim policy were necessary to clarify the policy's provisions and definitions, align the policy with current practice, and more clearly indicate that users are responsible for disposing of hazardous materials upon the expiration of a Facilities Use License. The interim policy also introduced Exhibit A, a more extensive form used to gather the information necessary to consider an application and inform the creation of the Facilities Use License.

COMMITTEE WORK

The committee reviewed the interim policy and Exhibit A, and over the course of fall 2019 consulted with a wide range of stakeholders, including representatives of the following:

- A. James Clark School of Engineering
- Conflict of Interest Committee
- Department of Environmental Safety, Sustainability & Risk (ESSR)
- Division of Administration and Finance
- Division of Research

- Facilities Council
- Maryland Technology Enterprise Institute (Mtech)
- Office of General Counsel (OGC)
- Office of Technology Commercialization
- Office of the Senior Vice President & Provost

The committee identified concerns and questions that stakeholders indicated should be resolved, which fall under two general categories: process, and oversight/accountability.

The committee also investigated similar policies and practices at Big 10 and peer institutions. While institutions have policies governing the use of space and how such use is prioritized, most entrepreneurial work by faculty takes place in dedicated incubators rather than academic spaces, and the committee did not find any comprehensive policies that address the types of agreements covered by the interim policy. If the use of non-incubator spaces is permitted, there are agreements to use specialized equipment or space that are handled on an individual basis, and involve conflict of interest reviews and licensing agreements similar to the University's Facilities Use License.

Over the course of spring 2020, the committee revised the interim policy to address the concerns it identified. The committee reorganized and reworded the policy to align with University policy conventions, emphasize principles, and clarify the responsibilities of both external users and the University. The most substantive revisions address the overarching concerns identified in the course of the committee's review, which involve process and questions of oversight and accountability. The revisions were informed by extensive stakeholder consultation, particularly with representatives of the Division of Research, the Senior Vice President & Provost, ESSR, and the Office of General Counsel. The revised policy was shared with the Research Council, which proposed minor revisions that the committee incorporated. After due consideration, the committee voted to approve the revised Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities by an email vote concluding on April 12, 2020.

Key concerns identified by the committee's review and policy revisions that address them are described below.

Process

The committee found widespread frustration with the current system for considering and approving applications, particularly its reliance on paper materials. Applications have been delayed for weeks or even months since the current process of reviewing and approving applications is sequential. Through discussion, the committee and the Vice President for Research (VPR) agreed that the Division of Research should manage and maintain the application in order to reduce this frustration. The Division of Research intends to adopt an electronic approach that will eliminate the need for paper copies, allow for electronic signatures and parallel reviews, permit easy tracking of an application from submission to final approval, and create a more robust archive accessible to all the administrators involved in the review process. This application will be maintained and updated separately from the policy, which eliminates the need to retain Exhibit A.

The structure of the interim policy has led to some uncertainty over what is involved in each stage of the review, and what precisely is being affirmed by each approval. For example, it is unclear to some stakeholders that the review conducted by the Department of Environmental Safety, Sustainability & Risk (ESSR) is limited to determining what materials or substances may be brought into a particular space. Through its consultations, the committee also learned that

the review and approval process may be too extensive. For instance, concerns that would be found in a review by the Director of Facilities Planning or the Facilities Council are typically also raised by others involved in the review process. The committee found that the current process is too rigid, and is not appropriate for some activities covered by the policy. For example, applications by external users who are interested in leasing a mailbox or standard office space go through the full review process, including review by ESSR, which is unnecessary. This is partly because the “research-related activities” covered by the policy are not defined.

The revised policy streamlines the review process by eliminating unnecessary stages and giving the VPR the ability to determine whether a review by ESSR is necessary for each application. The VPR is also given responsibility for overseeing the application review process, and for ensuring that all necessary approvals are obtained. The policy now identifies what each administrator is responsible for reviewing and verifying, and includes a definition of “research-related activity.”

Oversight/Accountability

The interim policy states that it is intended to “ensure compliance...with federal, state and local laws and regulations.” However, concerns were raised that the policy and its implementation do not adequately ensure such compliance due to a lack of oversight and accountability. This potentially endangers both members of the University community and external users, and could expose the institution to liability.

The committee found that the policy lacks an administrative owner, in that no office or officer is identified as responsible for administering the policy, overseeing the application review process, or verifying whether the terms of the Facilities Use License are being followed. While several stages involve the Division of Research, and while the Division of Research has typically assumed responsibility for shepherding applications through the review process, stakeholders indicated that there would be value in clarifying lines of authority and responsibility. The revised policy addresses these concerns by identifying the VPR as responsible for administering the policy. The VPR’s role will include.

- certifying that an application is complete and recommending whether it should be advanced to the licensing process;
- receiving and reviewing documentation of the external user’s compliance with any oversight requirements, both during the application process and during the term of the Facilities Use License;
- reviewing requests for renewal of a Facilities Use License; and
- overseeing the process of closing out expired or terminated licenses.

The committee also found that the policy does not clearly articulate the role and responsibilities of the “University Sponsor” who supports the proposed research-related activity. The role of the University Sponsor has now been more fully defined. Sponsors are responsible for ensuring oversight of the space being used for the research-related activity, and for participating in the closeout process.

The process for reviewing applications does not include extensive review of safety and regulatory compliance issues. Multiple stakeholders expressed concerns with the role of ESSR. ESSR’s responsiveness and its prompt review of applications was universally praised. However, its review does not involve the same assessments that it makes when considering the use of University facilities for University research activities. For external users, ESSR does not assess

whether an environmental health and safety program is necessary, and does not ensure that an external user has identified a qualified vendor to dispose of regulated waste. ESSR is also not involved in reviewing safety-related compliance prior to the renewal of a Facilities Use License. Without more extensive reviews and assurances that regulations are being followed, the University cannot ensure that risk and compliance issues are being adequately addressed. To address these concerns, the role of ESSR has been expanded. In the course of its review of an application, ESSR will now be responsible for recommending whether the external user should be required to employ or contract with a qualified environmental health and safety professional and/or develop a plan to dispose of any regulated waste. Any requirements identified by ESSR will be written into the terms of the Facilities Use License, and compliance with them verified prior to any license renewal.

The revised policy also addresses how Facilities Use Licenses are renewed and establishes parameters for how they are closed out upon expiration or termination. The policy gives the VPR responsibility for overseeing both processes. The renewal process involves a review by the VPR that parallels the initial application review but is tailored to the specific research-related activity. The policy now establishes elements of a closeout process involving the University Sponsor that ensures an external user has left the space in good and secure condition, disposed of any waste or hazardous materials, and generally fulfilled their obligations under the terms of the Facilities Use License.

RECOMMENDATIONS

The Campus Affairs Committee recommends that the interim Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities (VIII-14.00[A]) be revised as indicated in the policy document immediately following this report.

APPENDICES

- Appendix 1—Interim Policy on Use of University of Maryland Facilities by Non-University Users for Research-Related Activities (VIII-14.00[A])
- Appendix 2—Exhibit A
- Appendix 3—Charge from the Senate Executive Committee



VIII-14.00(A) UNIVERSITY OF MARYLAND POLICY ON THE USE OF UNIVERSITY FACILITIES BY EXTERNAL USERS FOR RESEARCH-RELATED ACTIVITIES

(Approved by the President April 21, 2011; Amended and approved on an interim basis by the President March 1, 2019)

I. INTRODUCTION

The University of Maryland (the University) is a state educational institution with a broad mission of teaching, research, and public service. University facilities are reserved primarily for carrying out the University's instructional and research missions. In order to support its public mission, the University allows external use of its facilities to serve the citizens of the state of Maryland by developing new commercial ventures, including those based on University-held patents and technologies, and by engaging private sector companies that may be licensing University intellectual property. This policy ensures that such use aligns with the University's mission and purpose and is conducted in accordance with relevant University policies.

II. DEFINITIONS

- A. "External User" means any individual acting outside the scope of their University responsibilities as an employee or a student, and/or any entity other than the University, including faculty start-ups and other privately owned companies.
- B. "Facilities Use License" means a legally binding agreement establishing terms and conditions for the use of a University Facility by an External User.
- C. "Facilities Use Application" means the application used to gather information necessary to consider and establish a Facilities Use License.
- D. "Hazardous Materials" include chemical, biological, and/or radioactive materials and hazard-generating equipment.
- E. "Regulated Waste" includes hazardous waste as defined in Title 40 of the Code of Federal Regulations (CFR) Part 261.3, and universal waste as defined in Title 40 CFR Part 273, which includes any of the following hazardous wastes that are subject to the universal waste requirements of part 273: (1) batteries as described in §273.2; (2) pesticides as described in §273.3; (3) mercury-containing equipment as described in §273.4; and (4) lamps as described in §273.5. The state of Maryland regulates additional materials as hazardous waste (e.g., PCBs) in COMAR 26.13 and 26.15).
- F. "Research-Related Activity" means a systematic investigation—including research and development, testing, and evaluation—designed to develop or contribute to generalizable knowledge, and activities that directly support that investigation.

- G. “University Facility” means any building owned or controlled by the University reserved primarily for educational and research use, including but not limited to classrooms, laboratories, incubator spaces, and other academic and related administrative space.
- H. “University Sponsor” means the unit head responsible for ensuring the oversight of the space used by the External User for the Research-Related Activity. The University Sponsor is also responsible for any necessary day-to-day communications with the External User.

III. POLICY

- A. The Vice President for Research is responsible for administering this policy.
- B. University Facilities are reserved primarily for University activities. When University Facilities are not required for University activities, they may be made available to External Users for Research-Related Activities.
- C. Use of University Facilities should be in compliance with any existing sponsored agreement, restrictive covenant, bond issuance, trust, indenture, regulations or any other existing agreement or document affecting the use of University Facilities, and all applicable policies, regulations, and laws, including the policies and procedures of the University.
- D. Use of University Facilities requires appropriate prior approvals and safeguards to limit risks to students, staff, faculty, visitors, and the environment.
- E. Priority for use of University Facilities should be given to University employees or students acting within the scope of their employment or studies.
- F. Prior written approval from the University is required for External Users to use University Facilities for Research-Related Activities. University Facilities may not be used without an approved and fully signed Facilities Use License.
- G. The External User that proposes to use University Facilities must demonstrate that such use aligns with the public, educational, and research missions of the University.

IV. RESPONSIBILITIES OF EXTERNAL USERS

- A. External Users must abide by the content of the completed Facilities Use Application, the terms of the Facilities Use License, and any documented guidance provided by University regulatory and oversight bodies, as applicable.
- B. External Users must comply with applicable University policies and procedures, as well as any operating policies and procedures of individual units, as specified in the Facilities Use License.
- C. External Users will be responsible for compliance with federal, state, and local laws and regulations.
- D. External Users are subject to the oversight of University regulatory bodies, as applicable.

V. FACILITIES USE APPLICATION

- A. External Users who are interested in using a University Facility and have the support of an appropriate University Sponsor may submit a Facilities Use Application to the Division of Research.
- B. The Facilities Use Application may include:
 - 1. the specific space requested for use and a description of the proposed Research-Related Activity;
 - 2. an indication of whether the proposed Research-Related Activity involves special equipment, Hazardous Materials, Regulated Waste, research subjects, or use of animals;
 - 3. an acknowledgement that the External User has reviewed the University's Conflict of Interest Policy and has obtained any necessary written approval from the University's Conflict of Interest Committee;
 - 4. any request for research affiliate status, as applicable; and
 - 5. a business plan for the proposed Research-Related Activity.
- C. Each submitted Facilities Use Application must be reviewed by the Vice President for Research, or designee.

VI. APPLICATION REVIEW PROCESS

- A. The Vice President for Research, or designee, will review the Facilities Use Application and ensure the Facility Use Application is complete and has been reviewed by the applicable administrators prior to the approval of a Facilities Use License.
- B. The following administrators are responsible for considering the elements of the Facilities Use Application that are relevant to their expertise, and for determining whether the proposed Research-Related Activity meets the requirements specified in this policy.
 - 1. The University Sponsor should indicate support for the Research-Related Activity. They should also indicate whether the space is available and sufficient to accommodate the Research-Related Activity being proposed.
 - 2. The Dean of the School or College in which the proposed space is located should verify that the space is available and that the Research-Related Activity will not disrupt normal University activities or conflict with existing agreements.
 - 3. The Vice President for Administration & Finance, or designee, should review the proposed space and verify that licensing the space would not compromise the University's financial obligations, including without limitation related bond issuances.
 - 4. If deemed necessary by the Vice President for Research, or designee, the Executive Director of the Department of Environmental Safety, Sustainability,

and Risk, or their designee, should:

- a) review the proposed Research-Related Activity and list of Hazardous Materials that the External User intends to use, and identify if any Hazardous Materials may not be used in the proposed space;
 - b) inform the Vice President for Research, or designee, on the scope of the Environmental Health & Safety Program required by the External User and indicate whether it is recommended that the External User be required to employ or contract with a qualified environmental health and safety professional; and
 - c) indicate whether the External User must develop a Regulated Waste disposal plan, obtain an EPA ID number, and identify a qualified Regulated Waste disposal company to dispose of any Regulated Waste.
5. As part of the application review process, the Vice President for Research, or designee, will:
- a) determine whether a conflict of interest mitigation plan has been approved by the Conflict of Interest Committee, if necessary;
 - b) determine whether regulatory oversight is required for the Research-Related Activity proposed by the External User; and
 - c) review any associated request(s) for research affiliate status and verify whether such a status is permitted by University policies and is consistent with relevant federal and state laws.
- C. The Vice President for Research will certify that the Facilities Use Application is complete and recommend whether the application should advance to the licensing process. If any of the above administrators decline to approve, the Vice President for Research will not submit the Facilities Use Application to the Senior Vice President and Provost.
- D. The Senior Vice President and Provost will verify that the Research-Related Activity supports the mission and purpose of the University, certify the use of the academic space for the proposed purpose, and approve the Facilities Use Application.
- E. The completed and approved Facilities Use Application should be forwarded to the Division of Administration & Finance to draft and complete the Facilities Use License.

VII. FACILITIES USE LICENSES

- A. The Vice President for Administration & Finance, or designee, is responsible for overseeing the completion and signing of the Facilities Use License and has final authority to approve and sign the license.
- B. The Division of Administration & Finance will work with the External User to finalize the Facilities Use License based on the standard University template. Facilities Use Licenses must be reviewed and approved by the Office of General Counsel.

- C. Facilities Use Licenses should incorporate all relevant terms and conditions for use of a University Facility by an External User.
- D. The initial term of the Facilities Use License shall be for one year. The term may be renewed for additional one-year terms at the sole discretion of the University, if the External User is in compliance with the Facilities Use License. The Senior Vice President & Provost and the Vice President for Administration & Finance will have final approval regarding renewals.

VIII. IMPLEMENTATION OF FACILITIES USE LICENSES

- A. Upon finalizing a Facilities Use License, and prior to occupancy of the space, the External User must provide the Vice President for Research and the Vice President for Administration & Finance with proof of compliance with the terms and conditions specified in this policy related to compliance and oversight.
- B. Any payments required to be made under a Facilities Use License should be deposited to a specified account established for each Facilities Use License by the Vice President for Administration & Finance.

IX. LICENSE RENEWAL PROCESS

- A. In accordance with the terms of the Facilities Use License, the External User must notify the University whether or not the user will seek a renewal of the Facilities Use License. The University has sole discretion on whether to renew a Facilities Use License.
- B. The Vice President for Research will oversee a review process to determine whether or not the renewal of the Facilities Use License is appropriate. The Division of Research may make renewal contingent upon the resubmission of a revised and/or updated Facilities Use Application.
- C. The Vice President for Research will recommend whether the renewal application should be submitted to the Senior Vice President and Provost and then proceed with the renewal process.
- D. The Senior Vice President and Provost will verify that the Research-Related Activity aligns with the mission and purpose of the University and approve the renewal of the Facilities Use Application.
- E. The completed and approved Facilities Use Application for renewal should be forwarded to the Division of Administration & Finance to draft and complete the Facilities Use License.
- F. The Vice President for Administration & Finance will have final approval authority for the renewal of an existing or revised Facilities Use License. The External User may not implement any changes until a renewal of the Facilities Use License is authorized.

X. EXPIRATION AND TERMINATION OF FACILITIES USE LICENSES

- A. The University will implement procedures to provide notice to the External User

- about the pending expiration of the Facilities Use License and ensure that any space occupied under a Facilities Use License is properly vacated at the end of the term in good and secure condition.
- B. The closeout and separation process to be completed by the External User, and supervised by the University Sponsor and the Division of Research, will involve, as necessary:
1. resolution of any financial obligations to the University;
 2. removal of all Regulated Waste or other Hazardous Materials;
 3. formal closeout of any University-regulated compliance protocols and/or clearances;
 4. inspection of University Facilities or equipment to identify any damage for which the External User is responsible; and
 5. any additional processes and procedures identified in the Facilities Use License.
- C. The University may elect to terminate a Facilities Use License for any violation of the terms and conditions of the Facilities Use License or for any reason it deems appropriate with adequate notice.