

Financial Policy & Procedure Instructions Manual
FPI C-2 Educational Business Activities

- I. PURPOSE
 - II. AUTHORITY
 - III. RELATIONSHIP OF FPI C-2 "POLICY ON EDUCATIONAL BUSINESS" WITH FPI C-3 "UNRELATED BUSINESS INCOME TAX"
 - IV. POLICY
 - A. Sales to the Campus Community
 - B. Sales to the External Community
 - V. OVERSIGHT AND REVIEW
 - VI. COMPLAINTS UNDER COLORADO REVISED STATUTE 24-113-104(3)
 - A. Procedures for Responding to Complaints, Objections, or Other Protests
 - B. Appeals
 - C. Effect of the Determination, or Appeal on the University
 - D. Reporting
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I. PURPOSE

The purpose of this policy is to describe the legitimate purposes under which University sales of goods and services may be conducted and to provide certain guidelines under which the activity may be carried out while maintaining the vital tradition of an open campus. Since the mission of the University involves providing instruction, research and public service, this policy shall not apply to charges for instruction in the University's regular, extension, evening or continuing education programs; services provided in the practicum aspects of its instructional and research programs; services for fees in its extracurricular or residential life programs, including residence halls, food services, health and welfare services, athletic and recreational programs, and the performing arts programs; academic support services; nor shall it apply to Federal and State mandated public service responsibilities.

For the purposes of this policy the term "campus" shall include all locations from which the University, or any agency within the University system, provides goods and services.

II. AUTHORITY

Colorado Revised Statute Title 24, Article 113 regulates competition by State agencies, including institutions of higher education, with private enterprise. The Colorado Commission on Higher Education, the State Board of Agriculture and the University are, by law, required to develop and implement procedures for reviewing unfair competition complaints from privately-owned businesses.

Although the University has chosen to adopt this policy without confining its applicability to competitive bidding situations, the University does recognize that applicable law literally limits the requirements to be included herein only to such situations. Accordingly, notwithstanding the breadth of this policy adopted internally for the purpose of compliance, the University reserves the right in the event of formal action, whether in hearings, litigation, or otherwise, to assert as a proper defense the inapplicability of relevant statutes due to the absence of competitive bidding.

Nothing in this policy shall impose or limit requirements which may be otherwise imposed by law. To the extent the applicable statute either expands or limits policies, such statute shall be governing.

Financial Policy & Procedure Instructions Manual
FPI C-2 Educational Business Activities

III. RELATIONSHIP OF FPI C-2 "POLICY ON EDUCATIONAL BUSINESS ACTIVITIES" WITH FPI C-3 "UNRELATED BUSINESS INCOME TAX"

FPI C-2 was developed in response to federal law which imposes income tax on unrelated business activities of otherwise tax-exempt entities. FPI C-2 provides guidelines applicable to all university revenue-generating activities in order to comply with the statute on government competition with private enterprise. Revenue-generating activities consistent with FPI C-2 may be "unrelated business" for tax purposes, as defined in FPI C-2. FPI C-2 is complementary to FPI C-3 and the two should be construed in a consistent fashion. Accordingly, all such activities must comply with both FPI C-2 and C-3.

The body of federal unrelated business income tax statutes, regulations and court decisions provides an understanding of the terms "substantially related" and "unrelated" in the context of income tax. The University takes the position that the State legislature intends for the phrase "substantially and directly related" used in the unfair competition statute to have the same meaning found in the federal tax law.

IV. POLICY

A. Sales to the Campus Community

1. The University shall engage in the direct sale of goods and services to the campus community even though they may be available elsewhere, provided:
 - a. The provision of the goods and services is substantially related to the University's instruction, research or public service mission, or
 - b. The provision of the goods or services supports and is necessary or convenient for the campus community, including invited guests, or facilitates the extracurricular, public service, or residential life of the campus community.
2. If the activity meets either of the above criteria the following restrictive guidelines are imposed:
 - a. The price or fee for the goods or services must be established at a sufficient level to reflect the direct and indirect costs and overhead costs of providing such goods or services.
 - b. Advertising to the general public is prohibited.
 - c. Any promotion is to be directed only to the campus community, without mention of the general public, and shall not make comparisons with off-campus business establishments or prices.

B. Sales to the External Community

1. The University may provide goods and services to the external community, provided:
 - a. The goods or services represent a resource which is directly related to a specific element of the University's instruction, research or public service mission, or
 - b. There is an external demand for the goods or services which are not commonly available or otherwise easily accessible.
2. If the activity meets either of the above criteria, the following restrictive guidelines are imposed:
 - a. The price charged should reflect the direct and indirect costs and overhead costs of providing such goods or services, in addition to being reflective of the price in the private marketplace (where the price in the private marketplace can be reasonably determined by the University).

Financial Policy & Procedure Instructions Manual
FPI C-2 Educational Business Activities

- b. Any required advertising will include a clearly worded institutional disclosure which sets forth the rationale for offering the goods or services.

V. OVERSIGHT AND REVIEW

Deans, directors, and department heads are responsible for assuring that University fund managers apply the above criteria to all proposed and existing activities involving sales of goods and services for fees.

Before approving an "Application for General Fund Authorization" the General Fund Manager will review the details of the proposed activity to determine compliance with the University's stated policy.

All University business activities operating within the guidelines set forth in this policy shall be reviewed periodically, but not less than every three years, for continued compliance. As directed by the President, the Vice President for Administrative Services shall, based on the review, authorize continued operations or direct termination of the activity within twelve months.

VI. COMPLAINTS UNDER COLORADO REVISED STATUTE 24-113-104(3)- STATE GOVERNMENT COMPETITION WITH PRIVATE ENTERPRISE

Colorado State University has established a formal grievance procedure for reviewing and responding to unfair competition complaints lodged against the University. Due to the sensitive nature of perceived unfair competition complaints and State mandated reporting requirements the Vice President for Administrative Services has been designated by the President as being responsible for reviewing all written complaints, preparing a determination as to the University's position regarding the matter, and notifying the complainant as to the University's decision.

Additionally, the Vice President for Administrative Services has been designated by the President as being responsible for assuring University compliance with the Policy on Educational Business Activities and responding to any general information requests regarding the University's business activity policy.

A. Procedures for Responding to Complaints, Objections, or Other Protests Regarding University Business Activities

1. Receipt of Complaint

a. Verbal Complaints.

Verbal complaints received within a department should be directed to the University employee directly responsible for the activity. This individual, with the aid of the applicable dean, director or department head is encouraged to address the complainant's concerns and resolve the issue at the departmental level. If the complainant is satisfied with the department's response, the University will consider the matter to be closed. In the event the complaint can not be resolved with minimal effort, the University representative should explain the University's willingness to review the issue and suggest that, if the individual wishes to pursue the matter, a written complaint be filed with the Vice President for Administrative Services. A brief explanation of the University's grievance procedure for receiving and reviewing complaints should be provided to the individual at that time.

**Financial Policy & Procedure Instructions Manual
FPI C-2 Educational Business Activities**

Individuals making a verbal complaint to the Vice President for Administrative Services will be asked to put their concerns in writing so that a formal review of the matter can be made. At that time a brief explanation of the University's procedure for receiving and reviewing complaints shall be provided.

- b. **Written Complaints.**
Written complaints received by departments should be forwarded to the Vice President for Administrative Services. The department should not attempt to resolve the matter until direction is received from the Vice President for Administrative Services.

2. Department Reporting

Departments shall include the following information with each written complaint submitted to the Vice President for Administrative Services:

- the date the complaint was lodged,
- the individual or group making the complaint,
- the department and activity on which the complaint was lodged,
- a brief explanation as to nature of the complaint,
- the name and phone extension of the individual directly responsible for the project or activity,
- a brief explanation regarding the specific activity, and
- the University fund account number(s).

This information must be submitted to the Vice President for Administrative Services within ten business days of the receipt of the complaint.

3. Responsibilities of the Vice President for Administrative Services)

. Acknowledgement

Within five business days of receiving the written complaint, the Vice President for Administrative Services will send a written acknowledgement to the complainant. The acknowledgement will include the following:

- a brief summary of the complaint including the University department affected,
- a discussion of the University's internal review process,
- a request for clarifying information, if needed, and
- an indication that a formal written response will be provided within forty-five calendar days.

a. University Business Activities Review Board

The Vice President for Administrative Services shall establish a Business Activities Review Board consisting of not more than five members to review certain written complaints and to make a recommendation to the Vice President for Administrative Services as to the propriety of the University's activity.

b. Review of Complaint

**Financial Policy & Procedure Instructions Manual
FPI C-2 Educational Business Activities**

The Vice President for Administrative Services is responsible for performing a detailed review of the complaint. Depending on the facts and circumstances of an individual complaint, the Vice President for Administrative Services shall review the complaint, refer the complaint to the University Business Activities Review Board for review, or designate a staff member to review the matter.

Departments shall provide access to relevant department and University documents, as well as written statements or interviews as required, to the Vice President for Administrative Services, the Business Activities Review Board, or the Vice President for Administrative Services' designee.

The Business Activities Review Board or the Vice President for Administrative Services' designee shall prepare a written report for the Vice President for Administrative Services suggesting a position regarding the appropriateness of the activity and outlining any recommendations.

Upon review of the recommendations and other information deemed appropriate to the matter, the Vice President for Administrative Services shall make a determination as to the University's position and inform the complainant. Included in the response shall be a summary of specific remedies available to the complainant if the University's explanation is deemed unacceptable.

B. Appeals

1. Vice President for Administrative Services

If the complainant wishes to make a personal appeal of the Vice President for Administrative Services' decision, the Vice President for Administrative Services shall set a date within thirty days of the notice to appeal, at which time the Vice President for Administrative Services shall meet with the complainant and the University individual directly responsible for the activity to discuss the matter and any additional information the complainant wishes to provide.

2. The President

In the event the matter continues to be in dispute, an appeal may be directed to the President of Colorado State University.

Upon receipt of a complainant's intention to appeal to the President, the Vice President for Administrative Services shall forward all documentation and a copy of the decision to the President.

Unless the complainant specifically requests a meeting with the President, the President's review will be limited to a review of the Vice President for Administrative Services' decision and any associated documentation. The President shall issue a decision within fifteen business days. Included with the decision will be a discussion regarding specific remedies the individual may have outside the University system.

**Financial Policy & Procedure Instructions Manual
FPI C-2 Educational Business Activities**

3. The State Board of Agriculture (Board)

If the complainant is not satisfied with the results of the appeal to the President, the complainant is entitled to appeal the President's decision to the State Board of Agriculture, the governing board of Colorado State University.

Upon notification by the Board of an appeal, the Vice President for Administrative Services shall provide the Board access to relevant University documents as well as any assistance required to enable the Board to render a decision on the appeal.

C. Effect of the Determination, or Appeal on the University

Decisions made by the Vice President for Administrative Services, unless appealed to the President or the Board, are binding on the University.

D. Reporting

The Vice President for Administrative Services, or his designee, shall submit semiannual reports to the Board, by February 1, and August 1 of each year, regarding the complaints reviewed pursuant to the procedures established by the University.

**Financial Policy & Procedure Instructions Manual
FPI C-2 Educational Business Activities**