

**DEPARTMENT OF COMMERCE****National Institute of Standards and Technology****15 CFR Part 295**

[Docket No. 980717184-8184-01]

RIN 0693-AB48

**Advance Technology Program**

**AGENCY:** National Institute of Standards and Technology, Technology Administration, Commerce.

**ACTION:** Notice of proposed rulemaking; Request for comments.

**SUMMARY:** The National Institute of Standards and Technology requests comments on proposed revisions to the regulations which implement the Advanced Technology Program (ATP). Changes proposed today include modification of the ATP evaluation criteria and weights for project selection and clarify other sections of the rule. These changes strengthen the fundamental mission of the ATP: For Government to work in partnership with industry to foster the development and board dissemination of challenging, high-risk technologies that offer the potential for significant, broad-based economic benefits for the nation.

**DATES:** Comments on the proposed program must be received no later than October 26, 1998.

**ADDRESSES:** Comments on the proposed rulemaking must be submitted in writing to: Advanced Technology Program Rule Comments, National Institute of Standards and Technology, Room A333, Administration Building, Gaithersburg, MD 20899-0001.

**FOR FURTHER INFORMATION CONTACT:** To receive additional program information, contact Barbara Lambis at 301-975-4447.

**SUPPLEMENTARY INFORMATION:** The National Institute of Standards and Technology is today proposing changes to the operating procedures of the Advance Technology Program found at part 295 of Title 15 of the Code of Federal Regulations. These changes strengthen the fundamental mission of the ATP: For Government to work in partnership with industry to foster the development and broad dissemination of challenging, high-risk technologies that offer the potential for significant, board-based economic benefits for the nation. Such a unique government-

industry research partnership fosters dramatic gains in existing industries, accelerates the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets, and helps spawn new industries of the 21st century. The proposed changes protect the fundamental strengths of the ATP, especially the requirement that the ATP continue to be a wholly merit-driven program based on peer review. These changes are reflected in proposed amendments to the regulation contained in this Notice:

- Section 295.2, Definitions, is proposed to be modified to add a definition of "company" for clarity; to revise the definition of "industry-led joint research and development venture" for clarity; and to remove the definition of "joint research and development venture" or "joint venture" which is already included in the ATP status.

- Section 295.4, The selection process, is proposed to be modified to eliminate funding to assist proposers in overcoming any organizational deficiencies because the adequacy of the organizational structure is one of the ATP selection criteria.

- Section 295.6 Criteria for selection, is proposed to be modified to place equal emphasis on the technical and economic merits of a proposal in accordance with the purpose of the Program.

- Redesignated § 295.11, NIST technical and educational services for ATP recipients, is proposed to be modified to add educational services to be provided to APT recipients.

- Section 295.21, qualifications of proposers, is proposed to be modified to state that for joint ventures, costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

- Also, a number of administrative and clerical changes are proposed to be implemented to part 295 Sections 5, 7, 8, and 24 for consistency and clarity and removal of Sections 10 and 11 which are operational procedures unnecessary for inclusion in a regulation.

**Request for Comments**

The National Institute of Standards and Technology requests comments on the draft revisions to regulations found at 15 CFR part 295, implementing the Advanced Technology Program, which

are included in this notice. Persons interest in commenting on the proposed program should submit their comments in writing to the above address. All comments received in response to this notice will become part of the public record and will be available for inspection and copying in the Commerce Department's Central Reference and Records Inspection Facility, Herbert Hoover Building, Room 6020, 14th Street between E Street and Constitution Avenue, NW, Washington, DC 20230.

**Additional Information***Executive Order 12866*

This rule has been determined to be significant under section 3(f) of Executive Order 12866.

*Executive Order 12612*

this rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

*Regulatory Flexibility Act*

The Assistant General Counsel for Legislation and Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy, Small Business Administration, that this rule, if promulgated, will not have a significant economic effect on a substantial number of small entities. (5 U.S.C. 605(b)). This is because there are only a small number of awardees and thus only a small number of awards will be given to small businesses. Specifically, based on past experience and currently foreseen budgets, the ATP would expect to receive only a few hundred proposals annually from small businesses, and from these, to make under 100 awards. Seeking ATP funding is entirely voluntary.

*Paperwork Reduction Act*

Notwithstanding any other provisions of the law, no person is required to respond to, nor shall any person be subject to a penalty for failure to comply with a collection-of-information, subject to the requirements of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*, unless that collection of information displays a currently valid Office of Management and Budget (OMB) control number.

This proposed rule contains collection of information requirements

subject to review and approval by the OMB under the Paperwork Reduction Act (PRA). The collection of information requirement applies to persons seeking financial assistance under the Advanced Technology Program as well as reporting requirements if financial assistance is granted. The collection of information requirements have been approved under OMB control Number 0693-0009 and 0651-0032. However, due to the proposed revisions to the criteria for selection of ATP proposals, the collection of information requirement contained in the proposed rule is being submitted to the Office of Management and Budget for review under section 3507 of the Paperwork Reduction Act. The public reporting burden per respondent for the collection of information contained in this rule is estimated to range between 20 and 30 hours per submission and 3 hours annually for recipients of financial assistance to provide monitoring reports. This estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Comments are requested concerning: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility; (b) accuracy of NIST's burden estimate; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on the respondents, including the use of automated collection techniques or other forms of information technology. Comments must be received no later than October 26, 1998 and addressed to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, D.C. 20503 (Attn: Desk Officer for NIST); and to Barbara Lambis, Room A333, Administration Building, National Institute of Standards and Technology, Gaithersburg, MD 20899.

*National Environmental Policy Act*

This rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

*Executive Order 12372*

Executive Order 12371  
 "Intergovernmental Review of Federal

Programs" does not apply to this program.

**List of Subjects in 15 CFR Part 295**

Inventions and Patents, Laboratories, Research and Development, Science and Technology.

Dated: September 18, 1998.

**Robert E. Hebner,**

*Acting Deputy Directory, National Institute of Standards and Technology.*

For reasons set forth in the preamble, it is proposed that title 15, part 295 of the Code of Federal Regulations be amended as follows:

**PART 295—ADVANCED TECHNOLOGY PROGRAM**

1. The authority citation for part 295 continues to read as follows:

**Authority:** 15 U.S.C. 278n.

2. Section 295.2 is amended by removing paragraph (j), redesignating paragraphs (b) through (i) as paragraphs (c) through (j), and adding new paragraph (b) to read as follows:

\* \* \* \* \*

(b) The term "company" means a for-profit organization, including sole proprietors, partnerships, or corporations.

\* \* \* \* \*

3. The newly redesignated paragraph (i) is revised as follows:

\* \* \* \* \*

(i) The term *industry-led joint research and development venture* or *joint venture* means a business arrangement that consists of two or more separately-owned, for-profit companies that perform research and development in the project; control the joint venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The joint venture may include additional companies, independent research organizations, universities, and/or governmental laboratories (other than NIST) which may or may not contribute funds (other than Federal funds) to the project and perform research and development. A for-profit company or an independent research organization may serve as an Administrator and perform administrative tasks on behalf of a joint venture, such as handling receipts and disbursements of funds and making antitrust filings. The following activities are not permissible for ATP funded joint ventures:

(1) Exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or

service that is not reasonable required to conduct the research and development that is the purpose of such venture;

(2) Entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the production or marketing by any person who is a party to such joint venture of any product, process, or service, other than the production or marketing of proprietary information developed through such venture, such as patents and trade secrets; and

(3) Entering into any agreement or engaging in any other conduct:

(i) To restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture, or

(ii) To restrict or require participation by such party in other research and development activities, that is not reasonably required to prevent misappropriation of proprietary information contributed by any person who is a party to such venture or of the results of such venture.

\* \* \* \* \*

4. Section 295.4 is revised to read as follows:

**§ 295.4 The selection process.**

(a) The selection process for awards is a multi-step process based on the criteria listed in § 295.6. Source evaluation boards (SEB) are established to ensure that all proposals receive careful consideration. In the first step, called "preliminary screening," proposals may be eliminated by the SEB that do not meet the requirements of this rule or the annual Federal Register Program announcement. Typical but not exclusive of the reasons for eliminating a proposal at this stage is that the proposal is deemed to have serious deficiencies in either the technical or business plan; involves product development rather than high risk R&D; is not industry-led; is significantly overpriced or underpriced given the scope of the work; does not meet the requirements set out in the notice of availability of funds issued pursuant to § 295.7; or does not meet the cost sharing requirement. NIST will also examine proposals that have been submitted to a previous competition to determine whether substantive revisions have been made to the earlier proposal, and, if not, may reject the proposal.

(b) In the second step, referred to as the "technical and business review," proposals are evaluated under the criteria found in § 295.6. Proposals judged by the SEB after considering the technical and business evaluations to have the highest merit based on the selection criteria receive further

consideration and are referred to as "semifinalists."

(c) In the third step, referred to as "selection of finalists," the SEB prepares a final ranking of semifinalist proposals by a majority vote, based on the evaluation criteria in § 295.6. During this step, the semifinalist proposers will be invited to an oral review of their proposals with NIST, and in some cases site visits may be required. Subject to the provisions of § 295.6, a list of ranked finalists is submitted to the Selecting Official.

(d) In the final step, referred to as "selection of recipients," the Selecting Official selects funding recipients from among the finalists, based upon the SEB rank order of the proposals on the basis of all selection criteria (§ 295.6); assuring an appropriate distribution of funds among technologies and their applications; the availability of funds; and adherence to the Program selection criteria. The Program reserves the right to deny awards in any case where a search of Federal records discloses information that raises a reasonable doubt as to the responsibility of the proposer. The decision of the Selecting Official is final.

(e) NIST reserves the right to negotiate the cost and scope of the proposed work with the proposers that have been selected to receive awards. For example, NIST may request that the proposer delete from the scope of work a particular task that is deemed by NIST to be product development or otherwise inappropriate for ATP support.

5. Section 295.5 is revised to read as follows:

**§ 295.5 Use of pre-proposals in the selection process.**

To reduce proposal preparation costs incurred by proposers and to make the selection process more efficient, NIST may use mandatory or optional preliminary qualification processes based on pre-proposals. In such cases, announcements requesting pre-proposals will be published as indicated in § 295.7, and will seek abbreviated proposals (pre-proposals) that address both of the selection criteria, but in considerably less detail than full proposals. The Program will review the pre-proposals in accordance with the selection criteria and provide written feedback to the proposers. When the full proposals are received, the review and selection process will continue as described in § 295.4.

6. Section 295.6 is revised to read as follows:

**§ 295.6 Criteria for selection.**

The evaluation criteria to be used in selecting any proposals for funding under this program, and their respective weights, are listed below. No proposal will be funded unless the Program determines that it has scientific and technological merit and that the proposed technology has strong potential for broad-based economic benefits to the nation. Additionally, no proposal will be funded that does not require Federal support, is product development rather than high risk R&D, does not display an appropriate level of commitment on the part of the proposer, or does not have an adequate technical and commercialization plan.

(a) *Scientific and Technological Merit (50%)*. The proposed technology must be highly innovative. The research must be challenging, with high technical risk. It must be aimed at overcoming an important problem(s) or exploiting a promising opportunity. The enabling nature of the technology must be explained. The research must have a strong potential for advancing the state of the art and contributing significantly to the U.S. scientific and technical knowledge base. The technical plan must be clear and concise, and must clearly identify the core innovation, the technical approach, major technical hurdles, the attendant risks, and clearly establish feasibility through adequately detailed plans linked to major technical barriers. The plan must address the questions of "what, how, where, when, why, and by whom" in substantial detail, and be credibly linked to the pathway for achieving potential broad-based economic benefits. The Program will assess the proposing team's relevant experience for pursuing the technical plan. The team carrying out the work must demonstrate a high level of scientific/technical expertise to conduct the R&D and have access to the necessary research facilities.

(b) *Potential broad-based economic benefits (50%)*. The proposed technology must have a strong potential to generate substantial benefits to the nation that extend significantly beyond the direct returns to the proposing organization(s). It must be explained why ATP support is needed and what difference ATP funding is expected to make in terms of what will be accomplished with the ATP funding versus without it. The pathways to economic benefit must be described, including the proposer's plan for getting the technology into commercial use, as well as additional routes that might be taken to achieve broader diffusion of the technology. The proposal should

identify the expected returns that the proposer expects to gain, as well as returns that are expected to accrue to others, i.e., spillover effects. The Program will assess the proposer's relevant experience and level of commitment to the project and project's organizational structure and management plan, including the extent to which participation by small businesses is encouraged and is a key component in a joint venture proposal, and for large company single proposers, the extent to which subcontractor/subrecipient teaming arrangements are featured and are a key component of the proposal.

7. Section 295.7 is revised to read as follows:

**§ 295.7 Notice of availability of funds.**

The Program shall publish at least annually a **Federal Register** notice inviting interested parties to submit proposals, and may more frequently published invitations for proposals in the *Commerce Business Daily*, based upon the annual notice. Proposals must be submitted in accordance with the guidelines in the ATP Proposal Kit as identified in the published notice. Proposals will only be considered for funding when submitted in response to an invitation published in the **Federal Register**, or a related announcement in the *Commerce Business Daily*.

8. Section 295.8(a) is revised to read as follows:

**§ 295.8 Intellectual property rights; Publication of research results.**

(a)(1) *Patent Rights*: Title to inventions arising from assistance provided by the Program must vest in a company or companies incorporated in the United States. Joint ventures shall provide to NIST a copy of their written agreement which defines the disposition of ownership rights among the members of the joint venture, and their contractors and subcontractors as appropriate, that complies with the first sentence of this paragraph. The United States will reserve a non-exclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States any such intellectual property, but shall not, in the exercise of such license, publicly disclose proprietary information related to the license. Title to any such intellectual property shall not be transferred or passed, except to a company incorporated in the United States, until the expiration of the first patent obtained in connection with such intellectual property. Nothing in this paragraph shall be construed to prohibit the licensing to any company of

intellectual property rights arising from assistance provided under this section.

(2) *Patent Procedures:* Each award by the Program shall include provisions assuring the retention of a governmental use license in each disclosed invention, and the government's retention of march-in rights. In addition, each award by the Program will contain procedures regarding reporting of subject inventions by finding Recipient to the Program, including the subject inventions of members of the joint venture (if applicable) in which the funding Recipient is a participant, contractors and subcontractors of the funding Recipient. The funding Recipient shall disclose such subject inventions to the Program within two months after the inventor discloses it in writing to the Recipient's designated representative responsible for patent matters. This disclosure shall consist of a detailed, written report which provides the Program with the following: the title of the present invention; the names of all inventors; the name and address of the assignee (if any); an acknowledgment that the United States has rights in the subject invention; the filing date of the present invention, or, in the alternative, a statement identifying that the Recipient determined that filing was not feasible; an abstract of the disclosure; a description or summary of the present invention; the background of the present invention or the prior art; a description of the preferred embodiments; and what matter is claimed. Upon issuance of the patent, the funding Recipient or Recipients must notify the Program accordingly, providing it with the Serial Number of the patent as issued, the date of issuance, a copy of the disclosure as issued, and if appropriate, the name, address, and telephone number(s) of an assignee.

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**§§ 295.10 and 295.11 [Removed]**

**§§ 295.12 and 295.13 [Redesignated as §§ 295.10 and 295.11]**

9. Sections 295.10 and 295.11 are removed and §§ 295.12 and 295.13 are redesignated as §§ 295.10 and 295.11.

10. The newly redesignated § 295.11 is amended by revising the heading and by adding a new paragraph (c) to read as follows:

**§ 295.11 Technical and Educational Services for ATP Recipients.**

\* \* \* \* \*

(c) From time to time, ATP may conduct public workshops and undertake other educational activities to foster the collaboration of funding recipients with other funding resources

for purposes of further development and commercialization of ATP-related technologies. In no event will ATP provide recommendations, endorsements, or approvals of any ATP funding recipients to any outside party.

11. Section 295.21 revised to read as follows:

**§ 295.21 Qualifications of proposers.**

Subject to the limitations set out in § 295.3, assistance under this Subpart is available only to industry-led joint research and development ventures. These joint ventures may include universities, independent research organizations, and governmental entities. Proposals for funding under this Subpart may be submitted on behalf of a joint venture by a for-profit company or an independent research organization that is a member of the joint venture. Proposals should include letters of commitment or excerpts of such letters from all proposed members of the joint venture, verifying the availability of cost-sharing funds, and authorizing the part submitting the proposal to act on behalf of the venture with the Program on all matters pertaining to the proposal. No costs shall be incurred under an ATP project by the joint venture members until such time as a joint venture agreement has been executed by all of the joint venture members and approved by NIST. NIST will withhold approval until it determines that a sufficient number of members have signed the joint venture agreement. Costs will only be allowed after the execution of the joint venture agreement and approval by NIST.

12. Section 295.24 is revised to read as follows:

**§ 295.24 Registration.**

Joint ventures selected for funding under the Program must notify the Department of Justice and the Federal Trade Commission under the National Cooperative Research Act of 1984. No funds will be released prior to receipt by the Program of copies of such notification.

[FR Doc. 98-25564 Filed 9-24-98; 8:45 am]

BILLING CODE 3510-13-M

**DEPARTMENT OF ENERGY**

**Federal Energy Regulatory Commission**

**18 CFR Part 292**

[Docket No. RM88-6-000]

**Administrative Determination of Full Avoided Costs, Sales of Power To Qualifying Facilities, and Interconnection Facilities; Order Terminating Proceeding**

Issued September 21, 1998.

**AGENCY:** Federal Energy Regulatory Commission.

**ACTION:** Order Terminating Proceeding.

**SUMMARY:** The Federal Energy Regulatory Commission (Commission) is terminating this proceeding because the matters at issue in this proceeding have since been overtaken by events.

**DATES:** This order is withdrawn September 25, 1998.

**FOR FURTHER INFORMATION CONTACT:** Kimberly D. Bose, Federal Energy Regulatory Commission, Office of the General Counsel, 888 First Street, N.E., Washington, D.C. 20426, (202) 208-2284.

**SUPPLEMENTARY INFORMATION:** In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in the Public Reference Room at 888 First Street, N.E., Room 2A, Washington, D.C. 20426.

The Commission Issuance Posting System (CIPS) provides access to the texts of formal documents issued by the Commission. CIPS can be accessed via Internet through FERC's Homepage (<http://www.ferc.fed.us>) using the CIPS Link or the Energy Information Online icon. The full text of this document will be available on CIPS in ASCII and WordPerfect 6.1 format. CIPS is also available through the Commission's electronic bulletin board service at no charge to the user and may be accessed using a personal computer with a modem by dialing 202-208-1397, if dialing locally, or 1-800-856-3920, if dialing long distance. To access CIPS, set your communications software to 19200, 14400, 12000, 9600, 7200, 4800, 2400, or 1200 bps, full duplex, no parity, 8 data bits and 1 stop bit. User assistance is available at 202-208-2474 or by E-mail to [CipsMaster@FERC.fed.us](mailto:CipsMaster@FERC.fed.us).

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