

the airplane is in flight is prohibited. Such positioning may lead to loss of airplane control or may result in an overspeed condition and consequent loss of engine power."

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, New York Aircraft Certification Office (ACO), FAA, Engine and Propeller Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, New York ACO.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the New York ACO.

(c) Special flight permits may be issued in accordance with sections 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) This amendment becomes effective on January 13, 1998.

Issued in Renton, Washington, on December 2, 1997.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 97-32112 Filed 12-8-97; 8:45 am]

BILLING CODE 4910-13-U

DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 295

[Docket No. 970822200-7272-02]

RIN 0693-AB44

Advanced Technology Program

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

ACTION: Final rule.

SUMMARY: The National Institute of Standards and Technology (NIST) is issuing a final rule which amends the implementing regulations for the Advanced Technology Program (ATP). Major changes include an increase in the cost-sharing requirement for large companies applying as single proposers in future competitions; modification of the ATP evaluation criteria for project selection to place greater emphasis on joint ventures and consortia with a broad range of participants; and a new rule for the valuation of transfers between separately-owned joint venture members which applies to transfers of goods, including computer software, and services provided by the transferor

related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

EFFECTIVE DATE: This rule is effective December 9, 1997.

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 issuing a final rule which amends regulations found at part 295 of title 15 of the Code of Federal Regulations, which implements the Advanced Technology Program (ATP). In a statement to Congress in March of 1997, Secretary of Commerce William M. Daley announced a Departmental study of several issues raised by Members of Congress and others concerning the policies and procedures of the ATP. The study was designed to make recommendations for possible changes to improve the effectiveness of the program. Following issuance of a 30-day notice of opportunity for public comment on ways to improve the operation of the ATP, recommendations for possible changes were made to improve the effectiveness of the program.

In order to implement the recommendations and the decisions of Secretary Daley, the National Institute of Standards and Technology is today issuing changes to the operating procedures of the Advanced 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, broad-based economic benefits for the nation. Such a unique government-industry research partnership fosters the acceleration not only of dramatic gains in existing industries, but also acceleration of the development of emerging or enabling technologies leading to revolutionary new products, industrial processes and services for the world's markets and work to spawn industries of the 21st century. Furthermore, the changes also ensure that the fundamental strengths of the ATP remain unchanged, especially the requirement that the ATP continue to be a wholly merit-driven program based on peer review.

Description of the Changes

Changes to part 295 include revisions on the following topics (please see the analysis of comments below for additional details):

- Revised section 295.32(b) increases the cost-sharing requirement for large companies applying as single proposers in future competitions. "Large businesses," as the term is defined in the revised Sec. 295.2(k), are required to cost-share at a minimum of 60 percent.

- The term "large business" is defined as including any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds. In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.

- The ATP evaluation criteria for project selection are modified to: (1) place greater emphasis on joint ventures and consortia with a broad range of participants; and (2) better define the multi-step selection process based on all of the criteria in Sec. 295.6.

- A new rule is established in Sec. 295.25 regarding the valuation of transfers between separately-owned joint venture members. The rule applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned venture members.

- Also, a number of administrative and clerical changes are proposed to be implemented to part 295 for consistency and clarity.

Summary of Comments

On September 17, 1997, NIST published a notice of proposed rulemaking in the **Federal Register** (62 FR 48802). In response to this notice three letters were received; one from a not-for-profit research organization, one from a U.S.-owned for-profit company, and one from an individual. An analysis of the comments follows.

Section 295.2 Definitions—(1 Comment)

One commenter stated that the definition of "matching funds" under Section 295.2(1) eliminates reference to in-kind contribution of personnel and requested clarification on whether NIST considers personnel costs to be a cash contribution that would not be subject to the 30 percent limitation on in-kind.

NIST Response: Under the ATP program, personnel contributions are

considered as "cash" contributions when made by funding recipients and, therefore, would not be subject to the 30 percent limitation.

Section 295.3 Eligibility of United States and Foreign-Owned Businesses—(1 Comment)

One commenter stated that Section 295.3, "Eligibility of United States and foreign-owned business", is unfair to U.S. citizens and makes the goal outlined in Section 295.1 "Purpose", nearly impossible to achieve. The commenter believes that we should use the best technology in the world to achieve the ATP goals of "high pay-off." The commenter suggests that the ownership rule be changed to that of individual representatives who must be U.S. citizens regardless of employer, and believes this would be fair to all U.S. citizens, who have a right to be employed in the U.S. by any legal entity. The commenter concludes that change would make it possible for participating coalitions to consider the best technology in the world to help the U.S. develop the best economic growth in a competitive, global economy.

NIST Response: The statutory authority for the ATP, Section 28 of the NIST Act (15 U.S.C. 278n), stipulates ATP eligibility requirements. Only Congress has the authority to amend this statute. We therefore cannot make any changes based on these comments.

Section 295.6 Criteria for Selection—(1 Comment)

One commenter requested clarification of what it meant by "cost-sharing" in section 295.6(d)(1), Level of commitment of proposer, which refers to contributions of personnel, equipment, facilities, and cost-sharing.

NIST Response: The "level of commitment" criterion reflects the extent to which a proposer has demonstrated a commitment to the project with, for example, cash, personnel, scientific equipment, and research facilities. Cost-sharing as used in this selection criteria includes cash and in-kind contributions and the level of the total contribution, i.e., low, average, or high.

Section 295.12 Special Reporting and Auditing Requirements—(2 Comments)

One commenter suggested that the ATP award stipulate the reporting requirements needed and stated that the audit requirements are a duplication of government surveillance and are not in the spirit of contractor self governance programs. Companies which have resident cognizant Federal auditors should be allowed to utilize such

auditors to conduct the audits rather than having to incur additional expenses to hire an outside Certified Public Account (CPA). The commenter recommends that the audit requirement apply on an as-needed basis for firms who do not have systems to support government contracting.

NIST Response: Each ATP award includes guidance on the financial, business, and technical reporting requirements. The audit requirement is not meant to be duplicative of existing government audit surveys. Resident cognizant Federal auditors may conduct the required audits in lieu of a private CPA firm.

A second commenter noted that 295.12 is noted as being revised and then removed.

NIST Response: This is a typographical error. Section 295.12 is being revised; however, section 295.14 is being removed.

Section 295.25 Special Rule for the Valuation of Transfers Between Separately-Owned Joint Venture Members—(1 Comment)

One commenter stated that section 295.25 will serve as a disincentive for small companies to become joint venture partners and they will likely only provide products and services as subcontractors. The commenter further stated that the proposed special rule is not mandated under the ATP statute and further appears to be at odds with the ATP objective and with all other government pricing principles. The commenter supports the use of GSA schedule price as a method of valuing products and services and asserts that the use of other pricing methods for the ATP program could jeopardize preexisting agreements. He also disagrees that transferred services should be included in the 30 percent restriction on in-kind contributions.

NIST Response: The ATP is a cost-shared, high-risk research and development program and, therefore, it is expected that participants share in risk taking. The issues related to an equitable valuation of transfers among joint venture participants appear to be unique to this program, therefore, guidelines from other Federal programs would not necessarily apply. In the ATP, reimbursement of the government's share of the costs is based on actual costs incurred during the period of cost sharing rather than on recovering sunk costs (previously incurred R&D costs). The Department of Commerce deems this approach to be a reasonable compromise between a very strict interpretation of the intent of the ATP legislation and the more traditional

policy of using GSA Schedule pricing as the basis for valuation. The strict interpretation would, for example, result in a transfer of previously-developed software from one joint venture participant to another being valued for matching funds purposes essentially at zero. We recognize that such an interpretation would cause hardship for many ATP proposers, hence the compromise. ATP recognizes that some small companies may not have the resources to contribute a significant portion of the cost-sharing, however, joint ventures often have a mix of other medium and/or large businesses that, in the aggregate, can provide the required cost-sharing.

Section 295.32 Limitations on Assistance—(1 Comment)

Section 295.32(b), which raises the cost sharing of a single company to 60 percent, and Section 295.6, regarding the evaluation criteria, will make it more difficult for single companies to participate. The commenter further states that no rationale is given for the changes.

NIST Response: ATP agrees that the change could make it more difficult for some large businesses to participate in ATP as single company proposers. There has been much heated debate in the Congress and elsewhere concerning cost sharing in ATP and the role of large firms applying as single company proposers. Many people have expressed the viewpoint that large businesses should be expected to support more than 50 percent of the total project cost. (Under the previous rule, large companies with very low indirect costs could recover more than 50 percent of total project costs.) DOC believes that the change will result in a broader consensus that the ATP's policies for large businesses are fair and appropriate.

Additional Information

Effective Date of the Final Rule

This final rule relating to grants, benefits, and contracts is exempt from the delayed effective date requirement, and accordingly, under section 553(a)(2) of the Administrative Procedure Act (5 U.S.C. 553), is therefore being made effective immediately without a 30 day delay in effective date.

Executive Order 12866

This rule has been determined not 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 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. The program is entirely voluntary for the participants that seek funding.

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 rule contains collection of information requirements subject to review and approval by the Office of Management and Budget under the Paperwork Reduction Act (PRA). The collection of information requirements have been approved under OMB Control Number 0693-0009. The public reporting burden per respondent is estimated to range between 20 and 30 hours per submission of the proposal 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 collections of information. Comments on the burden estimates, or any other aspect of the information requirements, should be addressed 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 12372 "Intergovernmental Review of Federal Programs" does not apply to this program.

List of Subjects in 15 CFR Part 295

Inventions and patents, Laboratories, Research, Science and technology, Scientists.

Dated: December 3, 1997.

Elaine Buntin-Mines,
Director, Program Office.

For reasons set forth in the preamble, Title 15, part 295 of the Code of Federal Regulations is 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 295.1 is revised to read as follows:

§ 295.1 Purpose.

(a) The purpose of the Advanced Technology Program (ATP) is to assist United States businesses to carry out research and development on high risk, high pay-off, emerging and enabling technologies. These technologies are:

- (1) High risk, because the technical challenges make success uncertain;
- (2) High pay-off, because when applied they offer significant benefits to the U.S. economy; and
- (3) Emerging and enabling, because they offer wide breadth of potential application and form an important technical basis for future commercial applications.

(b) The rules in this part prescribe policies and procedures for the award of cooperative agreements under the Advanced Technology Program in order to ensure the fair treatment of all proposals. While the Advanced Technology Program is authorized to enter into grants, cooperative agreements, and contracts to carry out its mission, the rules in this part address only the award of cooperative agreements. The Program employs cooperative agreements rather than grants because such agreements allow ATP to exercise appropriate management oversight of projects and also to link ATP-funded projects to ongoing R&D at the National Institute of Standards and Technology wherever such linkage would increase the likelihood of success of the project.

(c) In carrying out the rules in this part, the Program endeavors to put more emphasis on joint ventures and consortia with a broad range of participants, including large companies, and less emphasis on support of individual large companies.

3. Section 295.2(c) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(c) The term *direct costs* means costs that can be identified readily with activities carried out in support of a particular final objective. A cost may not be allocated to an award as a direct cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as an indirect cost. Because of the diverse characteristics and accounting practices of different organizations, it is not possible to specify the types of costs which may be classified as direct costs in all situations. However, typical direct costs could include salaries of personnel working on the ATP project and associated reasonable fringe benefits such as medical insurance. Direct costs might also include supplies and materials, special equipment required specifically for the ATP project, and travel associated with the ATP project. ATP shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

* * * * *

4. Section 295.2 is further amended by revising the reference "§ 295.2(r)" in paragraph (d) to read "§ 295.2(q)" and by removing paragraph (e), redesignating paragraphs (f) through (k) as paragraphs (e) and through (j), removing paragraph (n), redesignating paragraphs (o) through (r) as paragraphs (n) through (q), and adding new paragraph (k) to read as follows:

§ 295.2 Definitions.

* * * * *

(k) The term *large business* for a particular ATP competition means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by ATP in the relevant annual notice of availability of funds required by § 295.7(a). In establishing this amount, ATP may consider the dollar value of the total revenues of the 500th company in Fortune Magazine's Fortune 500 listing.

* * * * *

5. The newly designated § 295.2(g) is revised to read as follows:

§ 295.2 Definitions.

* * * * *

(g) The term *indirect costs* means those costs incurred for common or joint objectives that cannot be readily identified with activities carried out in support of a particular final objective. A cost may not be allocated to an award as an indirect cost if any other cost incurred for the same purpose in like circumstances has been assigned to an award as a direct cost. Because of diverse characteristics and accounting practices it is not possible to specify the types of costs which may be classified as indirect costs in all situations. However, typical examples of indirect costs include general administration expenses, such as the salaries and expenses of executive officers, personnel administration, maintenance, library expenses, and accounting. ATP shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

6. The newly designated § 295.2(h) is revised to read as follows:

§ 295.2 Definitions.

(h) The term *industry-led joint research and development venture* means a joint research and development venture that consists of two or more separately-owned, for-profit businesses that perform research and development in the project; control the venture's membership, research directions, and funding priorities; and share total project costs with the Federal government. The 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. An independent research organization may perform administrative tasks on behalf of an industry-led joint research and development venture, such as handling receipts and disbursements of funds and making antitrust filings.

7. Redesignated § 295.2(j)(1)(vi) is revised to read as follows:

§ 295.2 Definitions.

(j) * * *
(1) * * *

(vi) Any combination of the purposes specified in paragraphs (j)(1) (i), (ii), (iii), (iv) and (v) of this section, and may include the establishment and operation of facilities for the conducting of research, the conducting of such venture on a protected and proprietary basis, and the prosecuting of applications for

patents and the granting of licenses for the results of such venture, but does not include any activity specified in paragraph (j)(2) of this section.

8. Section 295.2(l) is revised to read as follows:

§ 295.2 Definitions.

(l) The term *matching funds or cost sharing* means that portion of project costs not borne by the Federal government. Sources of revenue to satisfy the required cost share include cash and in-kind contributions. Cash contributions can be from recipient, state, county, city, or other non-federal sources. In-kind contributions can be made by recipients or non-federal third parties (except subcontractors working on an ATP project) and include but are not limited to equipment, research tools, software, and supplies. Except as specified at § 295.25, the value of in-kind contributions shall be determined in accordance with OMB Circular A-110, Subpart C, Section 23. The value of in-kind contributions will be prorated according to the share of total use dedicated to the ATP program. ATP restricts the total value of in-kind contributions that can be used to satisfy the cost share by requiring that such contributions not exceed 30 percent of the non-federal share of the total project costs. ATP shall determine the allowability of matching share costs in accordance with applicable federal cost principles.

9. Section 295.3(c) is added as follows:

§ 295.3 Eligibility of United States and foreign-owned businesses.

(c) Companies owned by legal residents (green card holders) may apply to the Program, but before an award can be given, the owner(s) must either become a citizen or ownership must be transferred to a U.S. citizen(s).

10. 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. A source evaluation board (SEB) is established to ensure that all proposals receive careful consideration. In the first step, called "preliminary screening," proposals are eliminated that do not meet the requirements of this part or the 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, in the case of joint ventures, requests more than a minority share of funding. 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 or forward it to a later stage in the review process based upon the earlier review.

(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 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 Program prepares a final scoring and ranking of semifinalist proposals. During this step, the semifinalist proposers may be asked to make oral presentations on their proposals at 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 awardees," the Selecting Official selects funding recipients from among the finalists, based upon: (1) The rank order of the proposals on the basis of all selection criteria (§ 295.6);

(2) Assuring an appropriate distribution of funds among technologies and their applications; and

(3) The availability of funds. The Selecting Official is responsible for ensuring that only proposals that meet the Program selection criteria receive awards. The Program reserves the right to withhold 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) If a joint venture is ranked as a finalist, but the Program determines that the joint venture contains weaknesses in its structure or cohesiveness that may substantially lessen the probability of the proposed program being completed successfully, the Program may inform the proposer of the deficiencies and enter into negotiations with the proposer in an effort to remedy the deficiencies. If appropriate, funding up

to 10 percent of the amount originally requested by the proposer may be awarded by the Program to the proposer to assist in overcoming the organizational deficiencies. If the Program determines within six months of this award that the organizational deficiencies have been corrected, the Program may award the remaining funds requested by the proposer to that proposer.

(f) NIST reserves the right to negotiate with proposers selected to receive awards the cost and scope of the proposed work, e.g., to add or delete a task(s) to improve the probability of success or to make the proposal more consistent with ATP's mission.

11. Section 295.6 is revised to read as follows:

§ 295.6 Criteria for selection.

The evaluation criteria to be used in selecting any proposal for funding under this Program, and their respective weights, are listed in this section. No proposal will be funded unless the Program determines that it has high scientific and technical merit, no matter how meritorious the proposal might be with respect to the other selection criteria. Similarly, no proposal will be funded that does not require Federal support or that is product development rather than high risk R&D. Each of the subfactors within a selection criterion shall be weighted equally.

(a) *Scientific and technical merit* (30 percent).

(1) Quality, innovativeness, and cost-effectiveness of the proposed technical program, that is, uniqueness with respect to current industry practice. Proposers shall compare and contrast their approaches with those taken by other domestic and foreign companies working in the same field.

(2) Appropriateness of the technical risk and feasibility of the project, that is, is there a sufficient knowledge base to justify the level of technical risk involved, and is the risk commensurate with the potential payoff. Projects should press the state of the art while still having credibility with regard to technical approach.

(3) Coherency of the technical plan and clarity of vision of the technical objectives, and the degree to which the technical plan meets the project and, in the case of focused program competitions, program goals.

(4) Integrated, forward-looking, team approach to the project. This factor includes the extent to which the R&D team will take into account aspects such as research and raw material suppliers and considerations of manufacturability and requirements of customers,

regulatory concerns, safety issues, and environmental impacts. It also includes the extent to which all of the necessary technical disciplines will be brought into the R&D and how R&D, manufacturing, and marketing will work together in an integrated fashion.

(5) Potential broad impact on U.S. technology and knowledge base.

(b) Potential net broad-based economic benefits (20 percent). Potential to improve U.S. economic growth, taking into account the timeliness of the proposal; that is, the potential project results will not occur too late or too early to be competitively useful, and the degree to which ATP support is essential for the achievement of the broad-based benefits from the proposed R&D and appropriateness of proposed R&D for ATP support. This criterion takes into consideration the likelihood of the results being achieved in the same general time frame by the proposer or by other U.S. researchers without ATP support, and whether other Federal agencies or other sponsors are already funding very similar kinds of work. Projects will not be selected if the Program judges that Federal support is not needed. In assessing the potential for broad-based economic benefits, emphasis is placed on a strong potential for spillover benefits extending well beyond those accruing to the awardee(s). Benefits are compared against the costs of the proposal to determine cost-effectiveness of the proposal.

(c) Adequacy of plans for eventual commercialization (20 percent).

(1) Evidence that if the project is successful, the proposers will pursue further development of the technology toward commercial application, either through their own organization(s) or through others.

(2) Degree to which proposal identifies potential applications of the technology and provides evidence that the proposer has credible plans to assure prompt and widespread use of the technology if the R&D is successful and to ensure adequate protection of the intellectual property by the participant(s) and, as appropriate, by other U.S. businesses.

(d) Level of commitment and organization structure (20 percent).

(1) Level of commitment of proposer as demonstrated by contribution of personnel, equipment, facilities, and cost-sharing. Extent to which the proposer assigns the company's best people to the project. Priority given to this work in relation to other company activities.

(2) For joint ventures, the extent to which the joint venture has been

structured (vertical integration, horizontal integration, or both) so as to include sufficient participants possessing all of the skills required to complete successfully the proposed work.

(3) For joint ventures, the extent to which participation by small businesses is encouraged and is a key component of the proposal.

(4) Appropriateness of subcontractor/supplier/collaborator participation and relationships (where applicable). For large company single proposers, the extent to which subcontractor teaming arrangements are featured and are a key component of the proposal.

(5) Clarify and appropriateness of management plan. Extent to which the proposers have clarified who is responsible for each task, and the chain of command. Extent to which those responsible for the work have adequate authority and access to higher level management.

(e) Experience and qualifications (10 percent).

(1) Adequacy of proposer's facilities, equipment, and other technical, financial, and administrative resources to accomplish the proposed program objectives. This factor includes consideration of resources possessed by subcontractors to the proposer or other collaborators.

(2) Quality and appropriateness of the technical staff to carry out the proposed work program and to identify and overcome barriers to meeting project objectives.

(3) Past performance of the company or joint venture members in carrying out similar kinds of efforts successfully, including technology application. Consideration of this factor in the case of a start-up company or new joint venture, will take into account the past performance of the key people in carrying out similar kinds of efforts.

12. Section 295.12 is revised to read as follows:

§ 295.12 Special reporting and auditing requirements.

Each award by the Program shall contain procedures regarding technical, business, and financial reporting and auditing requirements to ensure that awards are being used in accordance with the Program's objectives and applicable Federal cost principles. The purpose of the technical reporting is to monitor "best effort" progress toward overall project goals. The purpose of the business reporting system is to monitor project performance against the Program's mission as required by the Government Performance and Results Act (GPRA) mandate for program

evaluation. The audit standards to be applied to ATP awards are the "Government Auditing Standards" (GAS) issued by the Comptroller General of the United States (also known as yellow book standards) and the ATP program-specified audit guidelines. The ATP program-specific audit guidelines include guidance on the number of audits required under an award. In the interest of efficiency, the recipients are encouraged to retain their own independent CPA firm to perform these audits. The Department of Commerce's Office of Inspector General (OIG) reserves the right to conduct audits as deemed necessary and appropriate.

13. Section 295.14 is removed.

14. Section 295.22 is revised to read as follows:

§ 295.22 Limitations on assistance.

(a) An award will be made under this subpart only if the award will facilitate the formation of a joint venture or the initiation of a new research and development project by an existing joint venture.

(b) The total value of any in-kind contributions used to satisfy the cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

15. Section 295.25 is added to subpart B as follows:

§ 295.25 Special rule for the valuation of transfers between separately-owned joint venture members.

(a) *Applicability.* This section applies to transfers of goods, including computer software, and services provided by the transferor related to the maintenance of those goods, when those goods or services are transferred from one joint venture member to other separately-owned joint venture members.

(b) *Rule.* The greater amount of the actual cost of the transferred goods and services as determined in accordance with applicable Federal cost principles, or 75 percent of the best customer price of the transferred goods and services, shall be deemed to be allowable costs; provided, however, that in no event shall the aggregate of these allowable costs exceed 30 percent of the non-Federal share of the total cost of the joint research and development program.

(c) *Definition.* The term "best customer price" shall mean the GSA schedule price, or if such price is unavailable, the lowest price at which a sale was made during the last twelve months prior to the transfer of the particular good or service.

16. Sections 295.31 and 295.32 are revised to read as follows:

§ 295.31 Qualification of proposers.

Awards under this subpart will be available to all businesses, subject to the limitations set out in §§ 295.3 and 295.32.

§ 295.32 Limitations on assistance.

(a) The Program will not directly provide funding under this subpart to any governmental entity, academic institution or independent research organization.

(b) For proposals submitted to ATP after December 31, 1997, awards to large businesses made under this subpart shall not exceed 40 percent of the total project costs of those awards in any year of the award.

(c) Awards under this subpart may not exceed \$2,000,000, or be for more than three years, unless the Secretary provides a written explanation to the authorizing committees of both Houses of Congress and then, only after thirty days during which both Houses of Congress are in session. No funding for indirect costs, profits, or management fees shall be available for awards made under this subpart.

(d) The total value of any in-kind contributions used to satisfy a cost sharing requirement may not exceed 30 percent of the non-federal share of the total project costs.

17. In part 295 remove the word "applicants" or "applicant" and add in its place the word "proposers" or "proposer" in the following places: § 295.7(a), (b) and (c); § 295.21 section heading; subpart C heading; and § 295.31 section heading.

[FR Doc. 97-32215 Filed 12-8-97; 8:45 am]

BILLING CODE 3510-13-M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 274

[Release Nos. 33-7478; IC-22920; File No. S7-19-97]

RIN 3235-AG73

Update of Registration Form to Reflect Fee Rate Change for Registration of Certain Investment Company Securities

AGENCY: Securities and Exchange Commission.

ACTION: Amendments to form.

SUMMARY: The Securities and Exchange Commission ("Commission") is updating the fee rate information in the

instructions to the form under the Investment Company Act of 1940 that prescribes the method by which certain investment companies calculate and pay registration fees on securities they issue (the form was last published at 62 FR 47941 (Sept. 12, 1997)). On November 28, 1997, legislation was enacted that sets a new fee rate of \$295 per \$1,000,000 offered or sold (prorated for amounts less than \$1,000,000). Registration fees under this new rate are calculated by multiplying the aggregate offering or sales amount by .000295. This amendment updates the reference to the current fee rate in the instructions to the form.

EFFECTIVE DATE: December 9, 1997.

FOR FURTHER INFORMATION CONTACT: Robin S. Gross, Staff Attorney, Office of Regulatory Policy at (202) 942-0690, or Carolyn A. Miller, Senior Financial Analyst, Office of Financial Analysis at (202) 942-0513, Division of Investment Management, Securities and Exchange Commission, 450 5th Street, N.W., Mail Stop 10-2, Washington, D.C. 20549.

SUPPLEMENTARY INFORMATION: The Commission today is amending Instruction C.9 to Form 24F-2 [17 CFR 274.24] under the Investment Company Act of 1940 [15 U.S.C. 80a] (the "Investment Company Act").

Form 24F-2 is the Form on which certain investment companies file an annual notice of securities sold pursuant to rule 24f-2 under the Investment Company Act [17 CFR 270.24f-2]. The Instruction to Item 5(vii) explains that the multiplier for calculation of the registration fee is determined by the Commission in accordance with section 6(b) of the Securities Act of 1933 [15 U.S.C. 77f(b)]. The Instruction informs filers of the multiplier that was in effect as of the date of the most recent printing of the Form, but indicates that this rate is subject to change from time to time, without notice, by act of Congress through appropriations for the Commission or other laws.

On November 28, 1997, legislation was enacted that sets the fee rate at \$295 per \$1,000,000 offered or sold (prorated for amounts less than \$1,000,000). Fees will be calculated by multiplying the aggregate offering or sales amount by .000295.

The Commission is amending the Instruction to Item 5(vii) of Form 24F-2 to reflect the change in the fee rate.

Statutory Authority

The Commission is amending Form 24F-2 pursuant to the authority set forth in sections 24 and 38(a) of the