

The Proposed Amendment

Accordingly, under the authority delegated to me by the Administrator, the FAA proposes to amend 14 CFR part 39 as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40113, 44701.

§ 39.13 [Amended]

2. The FAA amends § 39.13 by adding the following new AD:

Bell Helicopter Textron Canada: Docket No. FAA-2008-0258; Directorate Identifier 2007-SW-22-AD.

Comments Due Date

(a) We must receive comments by April 7, 2008.

Other Affected ADs

(b) None.

Applicability

(c) This AD applies to Models 206L, 206L-1, 206L-3, and 206L-4 with horizontal stabilizer, part number (P/N) 206-023-119-167, and Model 407 with horizontal stabilizer, P/N 407-023-801-109, installed, certificated in any category.

Reason

(d) The mandatory continuing airworthiness information (MCAI) states:

Horizontal stabilizers part numbers 206-023-119-167 and 407-023-801-109 may have manufacturing flaws on the inside surface of the upper and/or lower skin at the tailboom attachment inserts. These flaws may result in cracking of the skin and failure of the horizontal stabilizer.

The manufacturer's service information states that in addition to cracks, the horizontal stabilizer may have deformation or debonding around and between the inserts. The proposed AD would require actions that are intended to address all these unsafe conditions.

Actions and Compliance

(e) Within the next 100 hours time-in-service (TIS) or 30 days, whichever occurs first, unless done previously.

(1) Determine whether you have an affected serial numbered horizontal stabilizer installed by removing the elevators from the horizontal stabilizer. Access the horizontal stabilizer identification tag containing the horizontal stabilizer serial number as shown in Figure 1 and remove the elevators by following the Accomplishment Instructions, Part I, of Bell Helicopter Textron Canada (BHTC) Alert Service Bulletin (ASB) No. 206L-06-141, dated September 12, 2006, applicable to the Model 206L series helicopter (206L ASB) or BHTC ASB No. 407-06-72, dated September 12, 2006, applicable to the Model 407 helicopters (407 ASB).

(2) If the serial number on the identification tag is a serial number listed in

Table 1 of the 206L ASB or 407 ASB, inspect the horizontal stabilizer as follows:

(i) Using a 10x or higher magnifying glass, inspect the horizontal stabilizer for a crack or deformation around the areas of the inserts. Also, using a tap test method, inspect for debonding between the inserts by following the Accomplishment Instructions, Part II, of either the 206L ASB or 407 ASB, as applicable.

(ii) If you find a crack, deformation, or debonding, replace the horizontal stabilizer with an airworthy horizontal stabilizer that does not have a serial number listed in Table 1 of the 206L ASB or 407 ASB. Replace the horizontal stabilizer by following the Accomplishment Instructions, Part III, of either the 206L ASB or the 407 ASB, as applicable.

(iii) If you do not find a crack, deformation, or debonding, thereafter, at intervals not to exceed 600 hours TIS or during each annual inspection, whichever occurs first, repeat the inspection required by paragraph (e)(2)(i) of this AD.

(f) Replacing any horizontal stabilizer containing a serial number listed in Table 1 of 206L ASB or 407 ASB with a horizontal stabilizer that does not contain such a serial number by following the Accomplishment Instructions, Part III, of either the 206L ASB or 407 ASB, as applicable, constitutes terminating actions for the requirements of this AD.

Differences Between the FAA AD and the MCAI

(g) The MCAI requires compliance "within the next 100 hours air time but no later than 9 May 2007." This AD requires compliance within the next 100 hours TIS or 30 days, whichever occurs first, unless done previously. Also, the MCAI requires replacing the horizontal stabilizer by September 30, 2008, and we have not mandated a compliance time for replacing the horizontal stabilizer.

Subject

(h) Air Transport Association of America (ATA) Code: 5510 Horizontal Stabilizer Structure.

Other Information

(i) The following provisions also apply to this AD:

(1) *Alternative Methods of Compliance (AMOCs):* The Manager, Safety Management Group, FAA, has the authority to approve AMOCs for this AD, if requested using the procedures found in 14 CFR 39.19. Send information to ATTN Sharon Miles, Aviation Safety Engineer, FAA, Rotorcraft Directorate, Regulations and Guidance Group, Fort Worth, Texas 76193-0111, telephone (817) 222-5122, fax (817) 222-5961.

(2) *Airworthy Product:* Use only FAA-approved corrective actions. Corrective actions are considered FAA-approved if they are approved by the State of Design Authority (or their delegated agent) if the State of Design has an appropriate bilateral agreement with the United States. You are required to assure the product is airworthy before it is returned to service.

(3) *Reporting Requirements:* For any reporting requirement in this AD, under the

provisions of the Paperwork Reduction Act, the Office of Management and Budget (OMB) has approved the information collection requirements and has assigned OMB Control Number 2120-0056.

Related Information

(j) MCAI Transport Canada Airworthiness Directive No. CF-2007-03, dated March 27, 2007, contain related information.

Issued in Fort Worth, Texas, on February 28, 2008.

Mark R. Schilling,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. E8-4495 Filed 3-6-08; 8:45 am]

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DEPARTMENT OF COMMERCE

National Institute of Standards and Technology

15 CFR Part 296

[Docket No: 071106659-7661-01]

RIN 0693-AB59

Technology Innovation Program

AGENCY: National Institute of Standards and Technology, United States Department of Commerce.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Director of the National Institute of Standards and Technology (NIST), United States Department of Commerce, requests comments on proposed regulations which implement the Technology Innovation Program (TIP). The proposed rule prescribes policies and procedures for the award of financial assistance (grants and/or cooperative agreements) under TIP. In addition, NIST is revising the heading of Subchapter K of its regulations to accurately reflect the current contents of that subchapter.

DATES: Comments must be received no later than April 21, 2008.

ADDRESSES: Comments on the proposed regulations must be submitted in writing to: National Institute of Standards and Technology, Technology Innovation Program NPRM, 100 Bureau Drive, Mail Stop 4700, Gaithersburg, MD 20899-4700, or via the *Federal e-Rulemaking Portal*:

www.regulations.gov. Follow the instructions for submitting comments.

FOR FURTHER INFORMATION CONTACT:

Barbara Lambis via e-mail at barbara.lambis@nist.gov or telephone (301) 975-4447.

SUPPLEMENTARY INFORMATION: The America Creating Opportunities to

Meaningfully Promote Excellence in Technology, Education, and Sciences (COMPETES) Act, Public Law 110-69, was enacted on August 9, 2007, to invest in innovation through research and development and to improve the competitiveness of the United States. Section 3012 of the COMPETES Act established TIP for the purpose of assisting United States businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutions, to support, promote, and accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need. High-risk, high-reward research is research that has the potential for yielding transformational results with far-ranging or wide-ranging implications; addresses areas of critical national need that support, promote, and accelerate innovation in the United States and is within NIST's areas of technical competence; and is too novel or spans too diverse a range of disciplines to fare well in the traditional peer review process. Section 3012(f) of the America COMPETES Act requires the NIST Director to promulgate regulations implementing the TIP.

This notice solicits comments on proposed regulations for the TIP. When the comment period is concluded, NIST will analyze the comments received, incorporate comments as appropriate, and publish the final regulation.

Examples of NIST's technical competencies are summarized on the NIST Web site at http://www.nist.gov/public_affairs/labs2.htm. However, this summary is not exhaustive and may not include all competencies required for NIST to respond to the diverse industry needs for measurement methods, tools, data, technology and standard reference materials. NIST competencies evolve as the recognition for the needs of measurement science in that area evolves. NIST competencies are more expansive than just the physical and engineering sciences. NIST translates its physical and engineering science competencies to meet the needs of emerging areas where scientific boundaries are advancing.

For each TIP competition, the Program will solicit proposals through an announcement in the **Federal Register**. The notices will include a description of the areas of critical national need that will be addressed in that competition. Critical national need areas are those for which government attention is demanded because the magnitude of the problem is large and the societal challenges that need to be overcome are not being addressed. In

determining which areas of critical national need will be addressed in a competition, TIP may solicit input from within NIST, from the TIP Advisory Board, and from the public. Information about the TIP Advisory Board may be found on the TIP Web site at <http://www.nist.gov/tip>. TIP may engage experts in scientific and technology policy to ensure that the areas of critical national need that will be considered are those that entail significant societal challenges that are not already being addressed by others and could be addressed through high-risk, high-reward research. Specific societal challenges within selected areas of critical national need will be the focus of TIP funding.

In addition to information provided in the **Federal Register** announcement, TIP will post a Federal Funding Opportunity at the Grants.gov Web site at www.Grants.gov. TIP may also communicate information about the Program and the competition through means such as the publication of the Proposal Preparation Kit, public meetings, and posting information on the Program's Web site at <http://www.nist.gov/tip>. NIST notes the proposed rule, in section 296.22, requires that proposals must demonstrate that reasonable and thorough efforts have been made to secure funding from alternative funding sources and no other alternative funding sources are reasonably available. NIST seeks comment on how it should determine if such efforts have been made, what criteria NIST should examine in determining the reasonableness and thoroughness of such efforts, and what demonstrations applicants must make to satisfy such criteria.

In addition, NIST is revising the heading of Subchapter K of its regulations to accurately reflect the current contents of that subchapter. The current heading of Subchapter K is "Advanced Technology Program," but the subchapter contains regulations pertaining to that Program, the Hollings Manufacturing Extension Partnership Program, and now the TIP. The new heading of Subchapter K will be "NIST Extramural Programs."

Request for Public Comment: Persons interested in commenting on the proposed regulations 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 at the Department of Commerce Central Reference and Records Inspection

Facility, Room 6228, Herbert C. Hoover Building, Washington, DC 20230.

Additional Information

Executive Order 12866

This rulemaking is a significant regulatory action under Sections 3(f)(3) and 3(f)(4) of Executive Order 12866, as it materially alters the budgetary impact of a grant program and raises novel policy issues. This rulemaking, however, is not an "economically significant" regulatory action under Section 3(f)(1) of the Executive Order, as it does not have an effect on the economy of \$100 million or more in any one year, and it does not have a material adverse effect on the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Executive Order 13132

This rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act

Because notice and comment are not required under 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) are inapplicable. As such, a regulatory flexibility analysis is not required, and none has been prepared.

Paperwork Reduction Act

Notwithstanding any other provision of the law, no person is required to, nor shall any person be subject to penalty for failure to comply with, a collection of information, subject to the requirements of the Paperwork Reduction Act, unless that collection of information displays a currently valid Office of Management and Budget (OMB) Control Number.

This proposed rule does not contain collection of information requirements subject to review and approval by OMB under the Paperwork Reduction Act (PRA). The TIP Proposal Preparation Kit, which contains all necessary forms and information requirements, will be submitted to OMB for approval. The OMB Control Number for the information collection requirements will be published in all **Federal Register** notices soliciting proposals under the Program.

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.

List of Subjects in 15 CFR Part 296

Business and industry; grant programs—science and technology; Inventions and patents; Reporting and recordkeeping requirements; Research; Science and technology.

Dated: March 3, 2008.

Richard F. Kayser,

Acting Deputy Director.

For reasons set forth in the preamble, under the authority of 15 U.S.C. 278n (Pub. L. 110–69 section 3012), it is proposed that title 15 of the Code of Federal Regulations be amended as follows:

1. The heading of chapter II, subchapter K is revised to read as follows:

Subchapter K—NIST Extramural Programs

2. In 15 CFR chapter II, subchapter K, add a new part 296 as follows:

PART 296—TECHNOLOGY INNOVATION PROGRAM

Subpart A—General

Sec.

- 296.1 Purpose.
- 296.2 Definitions.
- 296.3 Types of assistance available.
- 296.4 Limitations on assistance.
- 296.5 Eligibility requirements for companies and joint ventures.
- 296.6 Valuation of transfers.
- 296.7 Joint venture registration.
- 296.8 Joint venture agreement.
- 296.9 Activities not permitted for joint ventures.
- 296.10 Third party in-kind contribution of research services.
- 296.11 Intellectual property rights.
- 296.12 Reporting and auditing requirements.

Subpart B—The Competition Process

- 296.20 The Selection process.
- 296.21 Evaluation criteria.
- 296.22 Award criteria.

Subpart C—Monitoring, Evaluation and Dissemination of Program Results

- 296.30 Monitoring and evaluation.
- 296.31 Dissemination of results.
- 296.32 Technical and educational services.
- 296.33 Annual report.

Authority: 15 U.S.C. 278n (Pub. L. 110–69 section 3012).

Subpart A—General

296.1 Purpose.

(a) The purpose of the Technology Innovation Program (TIP) is to assist United States businesses and institutions of higher education or other organizations, such as national laboratories and nonprofit research institutes, to support, promote, and

accelerate innovation in the United States through high-risk, high-reward research in areas of critical national need within NIST's areas of technical competence.

(b) The rules in this part prescribe policies and procedures for the award and administration of financial assistance (grants and/or cooperative agreements) under the TIP. While the TIP is authorized to enter into grants, cooperative agreements, and contracts to carry out the TIP mission, the rules in this part address only the award of grants and/or cooperative agreements.

296.2 Definitions.

(a) The term *award* means Federal financial assistance made under a grant or cooperative agreement.

(b) The term *business* or *company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations.

(c) The term *contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(d) The term *contractor* means the legal entity to which a contract is made and which is accountable to the recipient, subrecipient, or contractor making the contract for the use of the funds provided.

(e) The term *cooperative agreement* refers to a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal government and the recipient is to transfer something of value, such as money, property, or services to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal government; and substantial involvement is anticipated between the Federal government and the recipient during performance of the contemplated activity.

(f) The term *critical national need* means an area that demands government attention because the magnitude of the problem is large and the societal challenges that need to be overcome are not being addressed, but could be addressed through high-risk, high-reward research.

(g) 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 TIP project, travel, equipment, materials and supplies, subcontracts, and other costs not categorized in the preceding examples. NIST shall determine the allowability of direct costs in accordance with applicable Federal cost principles.

(h) The term *Director* means the Director of the National Institute of Standards and Technology (NIST).

(i) The term *eligible company* means a small-sized or medium-sized business or company that satisfies the ownership and other requirements stated in this part.

(j) The term *grant* means a Federal assistance instrument used whenever the principal purpose of the relationship between the Federal government and the recipient is to transfer something of value, such as money, property, or services to the recipient to accomplish a public purpose of support or stimulation authorized by Federal statute instead of acquiring (by purchase, lease, or barter) property or services for the direct benefit or use of the Federal government; and no substantial involvement is anticipated between the Federal government and the recipient during performance of the contemplated activity.

(k) The term *high-risk, high-reward research* means research that:

(1) has the potential for yielding transformational results with far-ranging or wide-ranging implications;

(2) addresses areas of critical national need that support, promote, and accelerate innovation in the United States and is within NIST's areas of technical competence; and

(3) is too novel or spans too diverse a range of disciplines to fare well in the traditional peer-review process.

(l) 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. NIST shall determine the allowability of indirect costs in accordance with applicable Federal cost principles.

(m) The term *institution of higher education* means an educational institution in any State that—

(1) admits as regular students only persons having a certificate of graduation from a school providing secondary education, or the recognized equivalent of such a certificate;

(2) is legally authorized within such State to provide a program of education beyond secondary education;

(3) provides an educational program for which the institution awards a bachelor's degree or provides not less than a 2-year program that is acceptable for full credit toward such a degree;

(4) is a public or other nonprofit institution; and

(5) is accredited by a nationally recognized accrediting agency or association, or if not so accredited, is an institution that has been granted preaccreditation status by such an agency or association that has been recognized by the Secretary of Education for the granting of preaccreditation status, and the Secretary of Education has determined that there is satisfactory assurance that the institution will meet the accreditation standards of such an agency or association within a reasonable time (20 U.S.C. 1001). For the purpose of this paragraph (l) only, the term State includes, in addition to the several States of the United States, the Commonwealth of Puerto Rico, the District of Columbia, Guam, American Samoa, the United States Virgin Islands, the Commonwealth of the Northern Mariana Islands, and the Freely Associated States. The term *Freely Associated States* means the Republic of the Marshall Islands, the Federated States of Micronesia, and the Republic of Palau.

(n) The term *intellectual property* means an invention patentable under title 35, United States Code, or any patent on such an invention, or any work for which copyright protection is available under title 17, United States Code.

(o) The term *joint venture* means a business arrangement that:

(1) includes either:

(i) at least two separately owned companies that are both substantially involved in the project and both of which are contributing to the cost-

sharing required under the TIP statute, with the lead company of the joint venture being an eligible company; or

(ii) at least one eligible company and one institution of higher education or other organization, such as a national laboratory, governmental laboratory (not including NIST), or nonprofit research institute, that are both substantially involved in the project and both of which are contributing to the cost-sharing required under the TIP statute, with the lead entity of the joint venture being either the eligible company or the institution of higher education; and

(2) may include additional for-profit companies, institutions of higher education, and other organizations, such as national laboratories and nonprofit research institutes, that may or may not contribute non-Federal funds to the project.

(p) The term *large-sized business* means any business, including any parent company plus related subsidiaries, having annual revenues in excess of the amount published by the Program in the relevant **Federal Register** notice of availability of funds in accordance with § 296.20. In establishing this amount, the Program may consider the dollar value of the total revenues of the 1000th company in Fortune magazine's Fortune 1000 listing.

(q) 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 third party in-kind contributions. Cash may be contributed by any non-Federal source, including but not limited to recipients, state and local governments, companies, and nonprofits (except contractors working on a TIP project). Third party in-kind contributions include but are not limited to equipment, research tools, software, supplies, and/or services. The value of in-kind contributions shall be determined in accordance with § 14.23 of this title and will be prorated according to the share of total use dedicated to the TIP project. NIST shall determine the allowability of matching share costs in accordance with applicable Federal cost principles.

(r) The term *medium-sized business* means any business that does not qualify as a *small-sized business* or a *large-sized business* under the definitions in this section.

(s) The term *member* means any entity that is identified as a joint venture member in the award and is a signatory on the joint venture agreement required by § 296.8.

(t) The term *nonprofit research institute* means a nonprofit research and development entity or association organized under the laws of any state for the purpose of carrying out research and development.

(u) The term *participant* means any entity that is identified as a recipient, subrecipient, or contractor on an award to a joint venture under the Program.

(v) The term *person* will be deemed to include corporations and associations existing under or authorized by the laws of the United States, the laws of any of the Territories, the laws of any State, or the laws of any foreign country.

(w) The term *Program* or *TIP* means the Technology Innovation Program.

(x) The term *recipient* means an organization receiving an award directly from NIST under the Program.

(y) The term *small-sized business* means a business that is independently owned and operated, is organized for profit, has fewer than 500 employees, and meets the other requirements found in 13 CFR part 121.

(z) The term *societal challenge* means a problem or issue confronted by society that when not addressed could negatively affect the overall function and quality of life of the nation, and as such demands government attention.

(aa) Except for the use of the term *State* for the limited purpose described in paragraph (l) of this section, the term *State* means any of the several States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. The term does not include any public and Indian housing agency under the United States Housing Act of 1937.

(bb) The term *subaward* means an award of financial assistance made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the legal agreement is called a contract, but does not include procurement of goods and services.

(cc) The term *subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided.

(dd) The term *transformational results* means potential project outcomes that enable disruptive changes over and above current methods and strategies. Transformational results have the potential to radically improve our understanding of systems and technologies, challenging the status quo

of research approaches and applications.

(ee) The term *United States owned company* means a for-profit organization, including sole proprietors, partnerships, limited liability companies (LLCs), and corporations, that has a majority ownership by individuals who are citizens of the United States.

§ 296.3 Types of assistance available.

Subject to the limitations of this section and § 296.4, assistance under this part is available to eligible companies or joint ventures that request either of the following:

(a) Single Company Awards: No award given to a single company shall exceed a total of \$3,000,000 over a total of 3 years.

(b) Joint Venture Awards: No award given to a joint venture shall exceed a total of \$9,000,000 over a total of 5 years.

§ 296.4 Limitations on assistance.

(a) The Federal share of a project funded under the Program shall not be more than 50 percent of total project costs.

(b) Federal funds awarded under this Program may be used only for direct costs and not for indirect costs, profits, or management fees.

(c) No large-sized business may receive funding as a recipient or subrecipient of an award under the Program. When procured in accordance with procedures established under the Procurement Standards required by part 14 of chapter I of this title, recipients may procure supplies and other expendable property, equipment, real property and other services from any party, including large-sized businesses.

(d) If a project ends before the completion of the period for which an award has been made, after all allowable costs have been paid and appropriate audits conducted, the unspent balance of the Federal funds shall be returned by the recipient to the Program.

§ 296.5 Eligibility requirements for companies and joint ventures.

Companies and joint ventures must be eligible in order to receive funding under the Program and must remain eligible throughout the life of their awards.

(a) A company shall be eligible to receive an award from the Program only if:

(1) The company is a small-sized or medium-sized business that is incorporated in the United States and does a majority of its business in the United States; and

(2) Either

(i) The company is a United States owned company; or

(ii) The company is owned by a parent company incorporated in another country and the Program finds that:

(A) the company's participation in TIP would be in the economic interest of the United States, as evidenced by investments in the United States in research, development, and manufacturing (including, for example, the manufacture of major components or subassemblies in the United States); significant contributions to employment in the United States; and agreement with respect to any technology arising from assistance provided by the Program to promote the manufacture within the United States of products resulting from that technology, and to procure parts and materials from competitive United States suppliers; and

(B) that the parent company is incorporated in a country which affords to United States-owned companies opportunities, comparable to those afforded to any other company, to participate in any joint venture similar to those authorized to receive funding under the Program; affords to United States-owned companies local investment opportunities comparable to those afforded to any other company; and affords adequate and effective protection for the intellectual property rights of United States-owned companies.

(b) NIST may suspend a company or joint venture from continued assistance if it determines that the company, the country of incorporation of the company or a parent company, or any member of the joint venture has failed to satisfy any of the criteria contained in paragraph (a) of this section, and that it is in the national interest of the United States to do so.

(c) Members of joint ventures that are companies must be incorporated in the United States and do a majority of their business in the United States and must comply with the requirements of paragraph (a)(2) of this section. For a joint venture to be eligible for assistance, it must be comprised as defined in § 296.2(o).

§ 296.6 Valuation of transfers.

(a) 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 another separately-owned joint venture member.

(b) 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. Best customer price means 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.

§ 296.7 Joint venture registration.

Joint ventures selected for assistance under the Program must notify the Department of Justice and the Federal Trade Commission under section 6 of the National Cooperative Research Act of 1984, as amended (15 U.S.C. 4305). No funds will be released prior to receipt by the Program of copies of such notification.

§ 296.8 Joint venture agreement.

NIST shall not issue a TIP award to a joint venture and no costs shall be incurred under a TIP 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.

§ 296.9 Activities not permitted for joint ventures.

The following activities are not permissible for TIP-funded joint ventures:

(a) exchanging information among competitors relating to costs, sales, profitability, prices, marketing, or distribution of any product, process, or service that is not reasonably required to conduct the research and development that is the purpose of such venture;

(b) entering into any agreement or engaging in any other conduct restricting, requiring, or otherwise involving the marketing, distribution, or provision by any person who is a party to such joint venture of any product, process, or service, other than the distribution among the parties to such venture, in accordance with such venture, of a product, process, or service produced by such venture, the marketing of proprietary information, such as patents and trade secrets, developed through such venture, or the licensing, conveying, or transferring of intellectual property, such as patents and trade secrets, developed through such venture; and

(c) entering into any agreement or engaging in any other conduct:

(1) to restrict or require the sale, licensing, or sharing of inventions or developments not developed through such venture; or

(2) 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.

§ 296.10 Third party in-kind contribution of research services.

NIST shall not issue a TIP award to a single recipient or joint venture whose proposed budget includes the use of third party in-kind contribution of research as cost share, and no costs shall be incurred under such a TIP project, until such time as an agreement between the recipient and the third party contributor of in-kind research has been executed by both parties and approved by NIST.

§ 296.11 Intellectual property rights and procedures.

(a) *Rights in Data.* Except as otherwise specifically provided for in an award, authors may copyright any work that is subject to copyright and was developed under an award. When claim is made to copyright, the applicable copyright notice of 17 U.S.C. 401 or 402 and acknowledgment of Federal government sponsorship shall be affixed to the work when and if the work is delivered to the Federal government, is published, or is deposited for registration as a published work in the U.S. Copyright Office. The copyright owner shall grant to the Federal government, and others acting on its behalf, a paid up, nonexclusive, irrevocable, worldwide license for all such works to reproduce, publish, or otherwise use the work for Federal purposes.

(b) *Invention Rights.* (1) Ownership of inventions developed from assistance provided by the Program under § 296.3(a) shall be governed by the requirements of chapter 18 of title 35 of the United States Code.

(2) Ownership of inventions developed from assistance provided by the Program under § 296.3(b) may vest in any participant in the joint venture, as agreed by the members of the joint venture, notwithstanding § 202 (a) and (b) of Title 35, United States Code. Title to any such invention shall not be transferred or passed, except to a participant in the joint venture, until the expiration of the first patent obtained in connection with such invention. In accordance with § 296.8, joint ventures will provide to NIST a copy of their written agreement that defines the disposition of ownership rights among the participants of the joint venture, including the principles governing the

disposition of intellectual property developed by contractors and subcontractors, as appropriate, and that complies with these regulations.

(3) The United States reserves a nonexclusive, nontransferable, irrevocable paid-up license, to practice or have practiced for or on behalf of the United States any inventions developed using assistance under this section, but shall not in the exercise of such license publicly disclose proprietary information related to the license. Nothing in this subsection shall be construed to prohibit the licensing to any company of intellectual property rights arising from assistance provided under this section.

(4) Should the participants in a joint venture cease to exist prior to the expiration of the first patent obtained in connection with any invention developed from assistance provided under the Program, in the course of the bankruptcy or other dissolution process for the last participant of the joint venture, title to such patent may be transferred or passed to a United States entity that can commercialize the technology in a timely fashion.

(c) *Patent Procedures.* Each award by the Program will 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 the recipient through the Interagency Edison extramural invention reporting system (iEdison), including the subject inventions of recipients, including members of the joint venture (if applicable), subrecipients, and contractors of the recipient or joint venture members.

§ 296.12 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 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 purpose of the financial reporting is to monitor the status of project funds. The audit standards to be applied to TIP awards are the "Government Auditing Standards" (GAS) issued by the

Comptroller General of the United States and any Program-specific audit guidelines or requirements prescribed in the award terms and conditions. To implement paragraph (f) of § 14.25, Revision of budget and program plans, of this title, audit standards and award terms may stipulate that "total Federal and non-Federal funds authorized by the Grants Officer" means the total Federal and non-Federal funds authorized by the Grants Officer annually.

Subpart B—The Competition Process

§ 296.20 The selection process.

(a) To begin a competition, the Program will solicit proposals through an announcement in the **Federal Register**, which will contain information regarding that competition, including the areas of critical national need that proposals must address. An Evaluation Panel(s) will be established to evaluate proposals and ensure that all proposals receive careful consideration.

(b) A preliminary review will be conducted to determine whether the proposal:

(1) Is in accordance with § 296.3, Types of Assistance Available;

(2) Complies with either paragraph (a) or paragraph (c) of § 296.5, Eligibility Requirements for Companies and Joint Ventures;

(3) Addresses the award criteria of paragraphs (a) through (c) of § 296.22, Award Criteria;

(4) Was submitted to a previous TIP competition and if so, has been substantially revised; and

(5) Is complete.

Complete proposals that meet the preliminary review requirements described above will be considered further. Proposals that are incomplete or do not meet any one of these preliminary review requirements will normally be eliminated.

(c) The Evaluation Panel(s) will then conduct a multi-disciplinary peer review of the remaining proposals based on the evaluation criteria listed in § 296.21 and the award criteria listed in § 296.22. In some cases NIST may conduct oral reviews and/or site visits. The Evaluation Panel(s) will present funding recommendations to the Selecting Official in rank order for further consideration. The Evaluation Panel(s) will not recommend for further consideration any proposal determined not to meet all of the eligibility and award requirements of this part and the **Federal Register** notice announcing the availability of funds.

(d) In making final selections, the Selecting Official will select funding

recipients based upon the Evaluation Panel's rank order of the proposals and the following selection factors: assuring an appropriate distribution of funds among technologies and their applications, availability of funds, and/or Program priorities. The selection of proposals by 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. This may include requesting that the proposer delete from the scope of work a particular task that is deemed by NIST to be inappropriate for support against the evaluation criteria. NIST also reserves the right to reject a proposal where information is uncovered that raises a reasonable doubt as to the responsibility of the proposer. The final approval of selected proposals and award of assistance will be made by the NIST Grants Officer as described in the **Federal Register** notice announcing the competition. The award decision of the NIST Grants Officer is final.

§ 296.21 Evaluation criteria.

A proposal must be determined to be competitive against the Evaluation Criteria set forth in this section to receive funding under the Program. Additionally, no proposal will be funded unless the Program determines that it has scientific and technical merit and that the proposed research has strong potential for meeting identified areas of critical national need.

(a) The proposer(s) adequately addresses the scientific and technical merit and how the research may result in intellectual property vesting in a United States entity including evidence that:

- (1) The proposed research is novel;
- (2) The proposed research is high-risk, high-reward;
- (3) The proposer(s) demonstrates a high level of relevant scientific/technical expertise for key personnel, including contractors and/or informal collaborators, and have access to the necessary resources, for example research facilities, equipment, materials, and data, to conduct the research as proposed;
- (4) The research result(s) has the potential to address the technical needs associated with a major societal challenge not currently being addressed; and
- (5) The proposed research plan is scientifically sound with tasks, milestones, timeline, decision points and alternate strategies.

Total weight of (a)(1) through (5) is 50%.

(b) The proposer(s) adequately establishes that the proposed research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology base and to address areas of critical national need through transforming the Nation's capacity to deal with a major societal challenge(s) that is not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer including an explanation in the proposal:

- (1) Of the potential magnitude of transformational results upon the Nation's capabilities in an area;
- (2) Of how and when the ensuing transformational results will be useful to the Nation; and
- (3) Of the capacity and commitment of each award participant to enable or advance the transformation to the proposed research results (technology).

Total weight of (b)(1) through (3) is 50%.

§ 296.22 Award criteria.

NIST must determine that a proposal successfully meets all of the Award Criteria set forth in this section for the proposal to receive funding under the Program. The Award Criteria are:

- (a) The proposal explains why TIP support is necessary, including evidence that the research will not be conducted within a reasonable time period in the absence of financial assistance from TIP;
- (b) The proposal demonstrates that reasonable and thorough efforts have been made to secure funding from alternative funding sources and no other alternative funding sources are reasonably available to support the proposal;
- (c) The proposal explains the novelty of the research (technology) and demonstrates that other entities have not already developed, commercialized, marketed, distributed, or sold similar research results (technologies);
- (d) The proposal establishes that the research has strong potential for advancing the state-of-the-art and contributing significantly to the United States science and technology knowledge base;
- (e) The proposal has scientific and technical merit and may result in intellectual property vesting in a United States entity that can commercialize the technology in a timely manner; and
- (f) The proposal establishes that the proposed transformational research (technology) has strong potential to address areas of critical national need through transforming the Nation's

capacity to deal with major societal challenges that are not currently being addressed, and generate substantial benefits to the Nation that extend significantly beyond the direct return to the proposer.

Subpart C—Dissemination of Program Results

§ 296.30 Monitoring and evaluation.

The Program will provide monitoring and evaluation of areas of critical national need and its investments through periodic analyses. It will develop methods and metrics for assessing impact at all stages. These analyses will contribute to the establishment and adoption of best practices.

§ 296.31 Dissemination of results.

Results stemming from the analyses required by § 296.30 will be disseminated in periodic working papers, fact sheets, and meetings, which will address the progress that the Program has made from both a project and a portfolio perspective. Such disseminated results will serve to educate both external constituencies as well as internal audiences on research results, best practices, and recommended changes to existing operations based on solid analysis.

§ 296.32 Technical and educational services.

(a) Under the Federal Technology Transfer Act of 1986, NIST has the authority to enter into cooperative research and development agreements with non-Federal parties to provide personnel, services, facilities, equipment, or other resources except funds toward the conduct of specified research or development efforts which are consistent with the missions of the laboratory. In turn, NIST has the authority to accept funds, personnel, services, facilities, equipment and other resources from the non-Federal party or parties for the joint research effort. Cooperative research and development agreements do not include procurement contracts or cooperative agreements as those terms are used in sections 6303, 6304, and 6305 of Title 31, United States Code.

(b) In no event will NIST enter into a cooperative research and development agreement with a recipient of an award under the Program which provides for the payment of Program funds from the award recipient to NIST.

(c) From time to time, TIP 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 diffusion of TIP-related technologies. In no event will TIP provide recommendations, endorsements, or approvals of any TIP funding Recipients to any outside party.

§ 296.33 Annual report.

The Director shall submit annually to the Committee on Commerce, Science, and Transportation of the Senate and the Committee on Science and Technology of the House of Representatives a report describing the Technology Innovation Program's activities, including a description of the metrics upon which award funding decisions were made in the previous fiscal year, any proposed changes to those metrics, metrics for evaluating the success of ongoing and completed awards, and an evaluation of ongoing and completed awards. The first annual report shall include best practices for management of programs to stimulate high-risk, high-reward research.

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-137573-07]

RIN 1545-BH20

Guidance Under Section 1502; Amendment of Matching Rule for Certain Gains on Member Stock

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations concerning the treatment of certain intercompany gains with respect to member stock within a consolidated group. The text of those regulations also serves as the text of these proposed regulations. These regulations affect corporations filing consolidated returns.

DATES: Written or electronic comments and requests for a public hearing must be received by June 5, 2008.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-137573-07), room 5203, Internal Revenue Service, PO Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday

between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-137573-07), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, DC 20224, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-137573-07).

FOR FURTHER INFORMATION CONTACT:

Concerning the proposed regulations, John F. Tarrant or Ross E. Poulsen, (202) 622-7790; concerning submission of comments and/or requests for a public hearing, Kelly Banks, (202) 622-0932 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Background and Explanation of Provisions

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend the Income Tax Regulations (26 CFR part 1) under section 1502 relating to the filing of consolidated returns. The temporary regulations revise § 1.1502-13(c)(6)(ii)(C) to provide for the redetermination of an intercompany gain as excluded from gross income in certain member stock transactions. The text of those regulations also serves as the text of these proposed regulations. The preamble to the temporary regulations explains the amendments.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations primarily affect affiliated groups of corporations, which tend to be larger businesses. Moreover, the number of taxpayers affected is minimal and the regulations provide relief in certain narrow circumstances. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written (a signed original and 8 copies) or electronic comments that are submitted timely to the IRS. The IRS and Treasury Department request comments on the clarity of the proposed rules and how they can be made easier to understand. In particular, the IRS and Treasury Department do not foresee situations in which it should be necessary to invoke § 1.1502-13(c)(6)(ii)(C) (the "Commissioner's Discretionary Rule") with respect to intercompany gain on property other than stock. Nevertheless, the IRS and Treasury Department request comments on whether any such situations are not appropriately addressed by other provisions of § 1.1502-13. The Commissioner's Discretionary Rule will be retained while the IRS and Treasury Department consider such comments. However, absent compelling comments, the IRS and Treasury Department anticipate ultimately eliminating the Commissioner's Discretionary Rule. All comments will be available for public inspection and copying. A public hearing will be scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the public hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is John F. Tarrant, Office of Associate Chief Counsel (Corporate). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1—INCOME TAXES

Paragraph 1. The authority citation for part 1 is amended by adding an entry in numerical order to read in part as follows:

Authority: 26 U.S.C. 7805 * * *
Section 1.1502-13 also issued under 26 U.S.C. 1502. * * *

Par. 2. Section 1.1502-13 is amended by revising paragraphs (c)(6)(ii)(C),