

1 Amend 17 Cal. Code of Regs. section 100601 to read:

2 **§ 100601. Intellectual Property Regulations - Definitions.**

3 The following definitions apply to the regulations in this chapter:

4 (a) Authorized Organizational Official. The individual, named by the applicant
5 organization, who is authorized to act for the applicant organization and to assume the
6 obligations imposed by the laws, regulations, requirements, and conditions that apply to
7 applications and awards.

8 (b) Budget Period. The intervals of time (usually 12 months) into which a Project Period
9 is divided for budgetary funding and reporting purposes as specified in the relevant NGA.

10 (c) CIRM-Funded Invention. An Invention, whether patentable or not, which arises from
11 CIRM-Funded Research and is either:

12 (1) reduced to practice by a Grantee, Grantee Personnel and/or its Collaborator(s) during
13 a CIRM-Funded Project or Activity; or

14 (2) conceived during a CIRM-Funded Project or Activity and reduced to practice by a
15 Grantee, Grantee Personnel and/or its Collaborator(s) during a CIRM-Funded Project or Activity
16 or within 12 months of the close of the Grant.

17 (d) CIRM-Funded Project or Activity. Those activities specified or described in an
18 Application that are approved by the ICOC for funding and for which CIRM has issued an NGA,
19 regardless of whether CIRM funding constitutes all or only a portion of the financial support
20 necessary to carry them out.

21 (e) CIRM-Funded Research. All aspects of work conducted on a CIRM-Funded Project
22 or Activity that is paid for, in whole or in part, with CIRM funds.

1 (f) CIRM-Funded Technology. Data, materials, research results or know-how whether
2 patentable or not, that is ~~(h)~~ generated or conceived in the Project Period of a Grant, and is paid
3 for in whole or in part with CIRM-funds.

4 (g) Collaborator. Any person or entity other than a Grantee and Grantee Personnel who
5 (1) receives directly or indirectly CIRM funding for work performed under a Grant, and (2) who
6 obtains any ownership rights to a CIRM-Funded Invention or CIRM-Funded Technology during
7 the Project Period.

8 (h) Commercializing Entity. A For-Profit Grantee and its Collaborator or licensee that
9 sells, offers for sale or transfers a Drug product(s) or services resulting in whole or in part from
10 CIRM-Funded Research.

11 ~~(ih)~~ Data. Scientific, clinical or technical recorded information derived during the
12 Project Period of a Grant, regardless of form or the media on which it may be recorded, but not
13 any of the following: financial, administrative, management data, other information incidental to
14 contract administration, preliminary analyses, drafts of scientific papers, plans for future
15 research, peer reviews, or communications with colleagues. “Data” excludes physical objects
16 (e.g., laboratory samples).

17 ~~(ij)~~ Drug. (1) An article recognized in the official United States Pharmacopoeia,
18 Homoeopathic Pharmacopoeia of the United States, or National Formulary, or any supplement to
19 any of them; (2) an article intended for use in the diagnosis, cure, mitigation, treatment, or
20 prevention of disease in humans or animals; or, (3) an article intended for use as a component of
21 any article specified in subdivision (1) or (2). This term includes therapeutic products such as
22 blood, blood products and cells, but excludes medical procedures and services relating thereto.

23 ~~(kj)~~ Exclusive License. A License Agreement that conveys to ~~the licensee an individual~~

1 ~~or entity~~ the sole right to make, use, sell, offer for sale and/or ~~import in one or more fields of use~~
2 ~~or territories, as to~~ a CIRM-Funded Invention or CIRM-Funded Technology, ~~in any field of use~~
3 ~~or territory, or an agreement~~ that ~~is not available precludes conveyance of the right to make, use,~~
4 ~~sell, offer for sale and/or import, in any field of use or territory, a CIRM-Funded Invention or~~
5 ~~CIRM-Funded Technology~~ to ~~be licensed to other entities or persons another~~.

6 (l~~k~~) Exclusive Licensee. Any individual or entity receiving ~~by license all rights the sole~~
7 ~~right~~ to make, use, sell, offer for sale and/or import ~~in one or more fields of use or territories~~ a
8 CIRM-Funded Technology or a CIRM-Funded Invention ~~in any field of use or territory~~.

9 (m) First Commercial Sale. The date upon which revenue is derived from the sale or
10 transfer, but not the licensing or assignment, of a Drug, product or service in the United States or
11 member country of the European Union.

12 (n~~l~~) For-Profit Organization. A sole-proprietorship, partnership, limited liability
13 company, corporation, or other legal entity that is organized or operated for the profit or financial
14 benefit of its shareholders or other owners.

15 (o~~m~~) Grant. A funding mechanism, other than a loan, providing money and/or property
16 to an eligible entity to assist the recipient in carrying out all or any portion of a CIRM-Funded
17 Project or Activity.

18 (p~~n~~) Grantee. The Non-Profit Organization or For-Profit Organization awarded a Grant
19 by CIRM that is legally responsible and accountable for the use of the CIRM funds provided for
20 the performance of the grant-supported project or activity. The Grantee is the entire legal entity,
21 including Affiliates, even if only a particular division is designated in the Notice of Grant Award
22 (“NGA”). An entity is an Affiliate of a Grantee if both entities share substantial common
23 direction or control (either directly or indirectly), or if either entity owns (directly or through one

1 or more entities) at least a 25% capital or profits interest in the other. All University of
2 California Grantee campuses shall be considered as separate and individual Grantees.

3 (q~~o~~) Grantee Personnel. Grantee's Principal Investigator(s) and Grantee's employees,
4 students and contractors working under the direct or indirect supervision of the Principal
5 Investigator or a Co-Principal Investigator under the Grant.

6 (r~~p~~) Invention. A discovery that is conceived and/or reduced to practice, whether
7 patentable or not.

8 (s~~q~~) Inventor. A person who is an inventor under the patent law of the relevant governing
9 jurisdiction.

10 (t~~r~~) License Agreement. An agreement by which ~~an owner~~ the holder of ~~a rights in a~~
11 CIRM-Funded Invention or CIRM-Funded Technology conveys ~~to another individual or entity~~
12 the right to make, use, develop, sell, offer to sell, and/or import a CIRM-Funded Invention or
13 CIRM-Funded Technology ~~in exchange for consideration or precludes the holder of such rights~~
14 ~~from enforcing those rights against such other entity~~.

15 (u~~s~~) Licensing Activities. Efforts of an owner or Collaborator of a CIRM-Funded
16 Invention or CIRM-Funded Technology to negotiate, execute or enforce a License Agreement.

17 (v~~t~~) Licensing Revenue. The consideration ~~received from for the grant of rights~~
18 ~~(including license of rights) in or an agreement to not enforce rights to make, use, develop, sell,~~
19 ~~offer to sell, and/or import a CIRM-Funded Invention or CIRM-Funded Technology (provided~~
20 ~~however that with respect to a For-Profit Grantee or For-Profit Collaborator, Licensing Revenue~~
21 ~~does not include pre-commercial revenues such as development milestones and upfront~~
22 ~~payments). Licensing revenue excludes, excluding the following: (1) any additional grants,~~
23 ~~loans and other forms of research funding obtained to support the Project. (2) consideration~~

1 received prior to commercialization of the CIRM-Funded Invention or CIRM-Funded
2 Technology, such as development milestones and upfront payments, by For-Profit Grantees
3 and/or For-Profit Collaborators who have expended, or are expending, their own funds on
4 developing the CIRM-Funded Invention or CIRM-Funded Technology; and (3) consideration
5 derived from Net Commercial Revenue upon which CIRM has received payment from a
6 Commercializing Entity pursuant to Section 100608(b).

7 Calculation: Revenue is calculated by subtracting a proportion of expenses reasonably
8 incurred in prosecuting, defending and enforcing related patent rights equal to CIRM's
9 percentage of support for development of such CIRM-Funded Invention and/or CIRM-Funded
10 Technology from total consideration rendered, except to the extent that such expenses are
11 recoverable from a third party as provided in Section 100605, subdivision (c), or otherwise. In
12 the case of non-profit Grantees and non-profit Collaborators, Licensing Revenue is calculated by
13 subtracting amounts due to the Inventor pursuant to existing institutional policies from total
14 consideration rendered.

15 ~~rendered to an owner or Collaborator of a CIRM-Funded Invention or CIRM-Funded~~
16 ~~Technology pursuant to a License Agreement, but excludes subsequent research funding. In the~~
17 ~~case of Non-Profit Grantees only, Licensing Revenue is calculated by subtracting amounts due to~~
18 ~~the Inventor pursuant to existing institutional policies from total consideration rendered. For all~~
19 ~~owners of a CIRM-Funded Invention or CIRM-Funded Technology, Licensing Revenue is~~
20 ~~calculated by subtracting a proportion of expenses reasonably incurred in prosecuting, defending~~
21 ~~and enforcing related patent rights equal to CIRM's percentage of support for development of~~
22 ~~such Invention and Technology from total consideration rendered except to the extent that such~~
23 ~~expenses are recoverable from a third party as provided in Section 100605(c) or otherwise.~~

1 | (~~w#~~) Material Transfer Agreement (“MTA”). An agreement that governs the transfer of
2 | tangible research material between a Grantee and/or its Collaborator and an individual or entity
3 | (“Recipient”) and defines the rights of the Grantee and the rights and limitations of the Recipient
4 | with respect to the materials and any derivatives therefrom.

5 | (~~xv~~) Net Commercial Revenue.

6 | {**Option A:** [~~Income from~~Gross amounts invoiced for the sale in any country or transfer;
7 | (but not licensing or assignment); of a Drug, ~~or~~ product(s) or services resulting in whole or in
8 | part from CIRM-Funded Research.]

9 | **Option B:** [Gross amounts invoiced by an Exclusive Licensee or its affiliates (and their
10 | respective sublicenses) for the sale or transfer of a Drug, product(s) or services resulting, in
11 | whole or in part resulting, in whole or in part, from the CIRM-Funded Invention or CIRM-
12 | Funded Technology that is the subject of the Exclusive License to such Exclusive Licensee.]

13 | **Option C:** [Gross amounts invoiced by an Exclusive Licensee or its affiliates (and their
14 | respective sublicenses) for the sale or transfer of a Drug, product(s) or services, the creation or
15 | development of which resulted, in whole or in part, from the CIRM-Funded Invention or CIRM-
16 | Funded Technology that is the subject of the Exclusive License to such Exclusive Licensee.}]

17 | Net Commercial Revenue excludes the following (as they pertain to the making, using or
18 | selling of products resulting from CIRM-Funded Research):

19 | (1) import, export, excise and sales taxes, and customs duties;

20 | (2) costs of insurance, packing, and transportation from the place of manufacture to the
21 | customer's premises;

22 | (3) credit for returns, allowances or trades; and

1 (4) pre-commercial revenues received in connection with research and development
2 and/or clinical activities, such as upfront and milestone payments.

3 (~~yw~~) Non-Exclusive License. A License Agreement under which the rights transferred or
4 conveyed in a CIRM-Funded Technology or a CIRM-Funded Invention to the licensee remain
5 available to be licensed to one or more entities.

6 (~~zx~~) Non-Exclusive Licensee. Any individual or entity that obtains the right to make,
7 use, sell, offer for sale and/or import in a specific field of use or territory, CIRM-Funded
8 Technology or a CIRM-Funded Invention, through a Non-Exclusive License.

9 (~~ay~~) Non-Profit Organization. A university or other institution of higher education or
10 another organization of the type described in 501(c)(3) of the Internal Revenue Code of 1986, as
11 amended (26 U.S.C. 501 (c)(3)) and is exempt from taxation under 501 (a) of the Internal
12 Revenue Code (26 U.S.C. 501 (a)) and California Revenue and Taxation Code section 23701d.

13 (~~bbz~~) Notice of Grant Award (“NGA”). The document that notifies the Grantee and
14 others that an award has been made, contains or references all terms and conditions of the award
15 as well as the Grantee’s and Principal Investigator’s agreement to those terms and conditions,
16 and documents the commitment of CIRM funds.

17 (~~caa~~) Principal Investigator. The Principal Investigator (“PI”) is an individual
18 designated by the Grantee to direct CIRM-Funded Research. He or she is responsible and
19 accountable to the Grantee and CIRM for the proper conduct of the project or activity.

20 References herein to “Principal Investigator” include Co-Principal Investigators as well.

21 (~~ddb~~) Project Period. The amount of time over which CIRM funds a a specific Grant.

1 | (~~eeee~~) Public Funds. Funds belonging to the State of California or of any county, city,
2 | city and county, or other municipal corporation or subdivision thereof, or any public agency
3 | therein.

4 | (~~ffed~~) Publication-Related Biomedical Materials. Tangible research material of
5 | biomedical relevance first produced in the course of CIRM-Funded Research including but not
6 | limited to unique research resources (such as synthetic compounds, organisms, cell lines, viruses,
7 | cell products, cloned DNA, as well as DNA sequences, mapping information, crystallographic
8 | coordinates, and spectroscopic data), as described in a published scientific paper as provided by
9 | Title 17, California Code of Regulations, section 100603. Specific examples include specialized
10 | and/or genetically defined cells, including normal and diseased human cells, monoclonal
11 | antibodies, hybridoma cell lines, microbial cells and products, viruses and viral products,
12 | recombinant nucleic acid molecules, DNA probes, nucleic acid and protein sequences, certain
13 | types of animals including transgenic mice and other property such as computer programs. This
14 | term does not include tangible research material of biomedical relevance that is made
15 | commercially available by a Grantee, Grantee Personnel, Licensee or a Collaborator, as
16 | determined by CIRM pursuant to Title 17, California Code of Regulations section 100604,
17 | subdivision (e).

18 | Note: Authority cited: Article XXXV, California Constitution; Section 125290.40(j), Health and
19 | Safety Code. Reference: Section 125290.30, Health and Safety Code.