



MEMORANDUM

TO: Members of the ICOC

FROM: C. Scott Tocher, Counsel to the Chair

RE: **Agenda Item 17:** Consideration of Adoption of Amendments to Section 100601, Intellectual Property Regulations Definitions

DATE: December 5, 2013

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Executive Summary

Last year the ICOC initiated a rulemaking process to amend CIRM’s Intellectual Property (“IP”) regulations (sections 100600 – 100602, and 100608). The amendments were recommended to the ICOC by the Intellectual Property and Industry Subcommittee, and primarily address the process of licensing reporting by Grantees and a recalibration of the formulae for revenue sharing. Based on feedback obtained from the public during the amendment process, CIRM refined the amendments further, consistent with the intent of the ICOC. It the recent August meeting, the ICOC adopted the final versions of these regulations.

In its routine review of the regulations, the Office of Administrative Law (“OAL”) identified further opportunities for clarification to one subdivision of section 100601. Per the OAL’s request, CIRM recirculated for public comment the changes requested by OAL to the definition of “License Revenue.” The changes requested by the OAL are consistent with existing CIRM requirements and do not reflect a substantive change to the language adopted by the ICOC in August. Therefore, staff recommends the ICOC adopt the proposed changes to section 100601 (Attached as Exhibit A).

I. Regulatory Amendments

**Section 100601(v) – Intellectual Property Regulations – Definitions,
“Licensing Revenue”**

One of the primary areas of focus for the recent amendments to CIRM’s IP regulations was the methodology of calculating how and when an entity must share with the state licensing revenue the entity receives when licensing CIRM-funded inventions or

technologies (see 100601, subdivision (v), attached). CIRM policy has always exempted from the formula those licensing revenue amounts a non-profit Grantee receives that are in turn due to the Inventor (typically called the “inventor’s share”). Such inventor’s share(s) are customary in the field of academic research. While the amendments to this definition of “licensing revenue” do not change this provision, the OAL suggested clarifying language to this exception, to make explicit that the inventor’s share policy is one belonging to a non-profit Grantee or non-profit Collaborator (see italicized language on page 5, lines 10-12).

Per OAL’s instructions, CIRM recirculated for public comment the additional amendments to subdivision (v) of section 100601 and received no additional comment. To finalize the language, the ICOC must adopt the proposed changes, which will then be returned to the OAL for final approval.

II. Recommendation

Staff recommends the ICOC approve the proposed language of section 100601(v) to finalize the amendment process.