

that contractor and the Federal laboratory only.

(c) In making the determination required under paragraph (a) of this section, the director of a Federal laboratory may consider factors including the following:

(1) Whether the conduct of specified research or development efforts under the CRADA would require the contractor to perform tasks identical to those required under the funding agreement;

(2) Whether existing intellectual property to be provided by the Federal laboratory or the contractor under the CRADA is the same as that provided under, or referenced in, the funding agreement;

(3) Whether the contractor's employees performing the specified research or development efforts under the CRADA are the same employees performing the tasks required under the funding agreement; and

(4) Whether services, property or other resources contemplated by the Federal laboratory to be provided to the contractor for the specified research or development efforts under the CRADA would materially benefit the contractor in the performance of tasks required under the funding agreement.

§ 17.4 Personnel exchanges from a Federal laboratory.

(a) For personnel exchanges in which a Federal laboratory maintains funding for Federal personnel provided to a collaborating party—

(1) in accordance with 15 U.S.C. 3710a(b)(3)(A), a Federal laboratory may exchange personnel with a collaborating party for the purposes of specified scientific or technical research towards a mutual goal consistent with the mission of the Agency, where no invention currently exists, or

(2) in accordance with 15 U.S.C. 3710a(b)(3)(C), a Federal laboratory may exchange personnel with a non-Federal collaborating party for the purposes of developing or commercializing an invention in which the Federal government has an ownership interest, including an invention made by an employee or former employee while in the employment or service of

the Federal government, and such personnel exchanged may include such employee who is an inventor.

(i) Funding may be provided under a CRADA by the non-Federal collaborating party to the Federal laboratory for the participation of the Federal employee in developing or commercializing an invention, including costs for salary and other expenses, such as benefits and travel.

(ii) Royalties from inventions received through a license agreement negotiated with the Federal laboratory and paid by the Federal laboratory to an inventor who is a Federal employee are considered Federal compensation.

(3) Where an employee leaves Federal service in order to receive salary or other compensation from a non-Federal organization, a Federal laboratory may use reinstatement authority in accordance with 5 CFR 315.401, or other applicable authorities, to rehire the former Federal employee at the conclusion of the exchange.

§ 17.5 Personnel exchanges to a Federal laboratory.

For exchanges in which a Federal laboratory provides funds for the non-federal personnel—

(a) Outside personnel with expertise in scientific commercialization may be brought in to a Federal laboratory through the Presidential Innovation Fellows program or related programs (see 5 CFR 213.3102(r)) for Entrepreneur-In-Residence programs or similar, related programs run by the General Services Administration (GSA) or other Federal Agencies.

(b) A laboratory may engage with the GSA or other relevant Agency to transfer funding for exchanged personnel, and may work with such agency to select and place Entrepreneurs-In-Residence at the laboratory for the purposes of evaluating the laboratory's technologies, and providing technical consulting to facilitate readying a technology for commercialization by an outside entity.

PART 18—ATTORNEY'S FEES AND OTHER EXPENSES

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AUTHORITY: 5 U.S.C. 504(c)(1).

SOURCE: 47 FR 13510, Mar. 31, 1982, unless otherwise noted.

GENERAL PROVISIONS

§ 18.1 Purpose of these rules.

The Equal Access to Justice Act, 5 U.S.C. 504 (called "the Act" in this part), provides for the award of attorney fees and other expenses to eligible individuals and entities who are parties to certain administrative proceedings (called "adversary adjudications") before the Department of Commerce (the word Department includes its component agencies). An eligible party may receive an award when it prevails over the Department, unless the Department's position in the proceeding was substantially justified or special circumstances make an award unjust. The rules in this part describe the parties that are eligible for awards and the Department's proceedings that are covered by the Act. They also explain how to apply for awards, and the procedures and standards that the Department will use to make them.

§ 18.2 Definitions.

As used in this part:

(a) *Adversary adjudication* means an adjudication under 5 U.S.C. 554 in which the position of the United States is represented by counsel or otherwise, but excludes an adjudication for the purpose of establishing or fixing a rate or for the purpose of granting or renewing a license.

(b) *Adjudicative officer* means the official, without regard to whether the official is designated as an administrative law judge, a hearing officer or examiner, or otherwise, who presided at the adversary adjudication.

§ 18.3 When the Act applies.

The Act applies to any adversary adjudication pending or commenced before the Department on or after August 5, 1985. It also applies to any adversary adjudication commenced on or after October 1, 1984, and finally disposed of before August 5, 1985, provided that an application for fees and expenses, as described in §§18.11 through 18.14 of this part, has been filed with the Department within 30 days after August 5, 1985, and to any adversary adjudication pending on or commenced on or after October 1, 1981, in which an application for fees and other expenses was timely filed and was dismissed for lack of jurisdiction.

[53 FR 6798, Mar. 3, 1988]

§ 18.4 Proceedings covered.

(a) The Act applies to adversary adjudications conducted by the Department and to appeals of decisions of contracting officers of the Department made pursuant to section 6 of the Contract Disputes Act of 1978 (41 U.S.C. 605) before agency boards of contract appeals as provided in section 8 of that Act (41 U.S.C. 607). Adversary adjudications conducted by the Department are adjudications under 5 U.S.C. 554 in which the position of this or any other agency of the United States, or any component of an agency, is presented by an attorney or other representative who enters an appearance and participates in the proceeding. Pursuant to section 8(c) of the Contract Disputes Act (41 U.S.C. 607(c)), the Department has arranged for appeals from decisions by contracting officers of the Department to be decided by the General