

code of federal regulations

Commerce and
Foreign Trade

15

PARTS 0 TO 299
Revised as of January 1, 1990

DEPARTMENT OF COMMERCE

APR 17 1990

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§ 16.12

manufactured prior to the effective date of the amendment or revision.

§ 16.12 Consumer education.

The Secretary, in close cooperation and coordination with interested Government agencies, appropriate trade associations and industry members, consumer organizations, and other interested persons shall carry out a program to educate consumers relative to the significance of the labeling program. Some elements of this program shall also be directed toward informing retailers and other interested groups about the program.

§ 16.13 Coordination with State and local programs.

The Secretary will establish and maintain an active program of communication with appropriate State and local government offices and agencies and will furnish and make available information and assistance that will promote uniformity in State and local programs for the labeling of performance characteristics of consumer products.

§ 16.14 Annual report.

The Secretary will prepare an annual report of activities under the program, including an evaluation of the program and a list of participants, designated agents, and types of consumer products covered.

PART 17—LICENSING OF GOVERNMENT-OWNED INVENTIONS IN THE CUSTODY OF THE DEPARTMENT OF COMMERCE

Subpart A—Licensing of Rights in Domestic Patents and Patent Applications

Sec.

17.1 Licensing rules.

Subpart B—Licensing of Rights in Foreign Patents and Patent Applications—[Reserved]

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

17.21 Purpose.

17.22 Definitions.

17.23 Authority to grant licenses.

17.24 Persons who may appeal.

17.25 Procedures.

15 CFR Subtitle A (1-1-90 Edition)

Sec.

17.26 Adjudicatory.

AUTHORITY: Sec. 205(c), 63 Stat. 390 (40 U.S.C. 486(c)).

EDITORIAL NOTE: 41 CFR Part 101-4 referred to in this part was removed at 50 FR 28402, July 12, 1985.

Subpart A—Licensing of Rights in Domestic Patents and Patent Applications

§ 17.1 Licensing rules.

(a) The Government-wide rules for the licensing of rights in domestic patents and patent applications vested in the United States of America, found at 41 CFR 101-4.1, are applicable to all such licensing activities of the Department of Commerce, subject to the following minor clarifications:

(1) The term "Government agency" as defined at 41 CFR 101-4.102(c) means the United States Department of Commerce or a designated operating unit within the Department.

(2) The term "The head of the Government agency", as defined at 41 CFR 101-4.102(d), means the Secretary of Commerce or a designee.

[42 FR 54415, Oct. 6, 1977]

Subpart B—Licensing of Rights in Foreign Patents and Patent Applications—[Reserved]

Subpart C—Appeal Procedures for Licensing Department of Commerce Patents

SOURCE: 49 FR 7986, Mar. 5, 1984, unless otherwise noted.

§ 17.21 Purpose.

This subpart describes the terms, conditions and procedures under which a party may appeal from a decision of the Director of the National Technical Information Service concerning the grant, denial, interpretation, modification or termination of a license of any patent in the custody of the Department of Commerce.

§ 17.22 Definitions.

(a) 41 CFR Part 101-4 shall mean the General Services Administration

A (1-1-90 Edition)

Office of the Secretary, Commerce

§ 17.26

Final Rule concerning "Patents: Licensing of Federally Owned Inventions" which was originally published in the FEDERAL REGISTER, volume 47, number 152, Friday, August 6, 1982 at pages 34148 through 34151.

later than 30 days from the receipt of the Director's decision unless the Assistant Secretary grants for good cause an extension of time. The notice, in concise and brief terms, should state the grounds for appeal and include copies of all pertinent documents. Accompanying the notice should be concise arguments as to why the Director's decision should be rejected or modified.

(b) Director shall mean the Director of the National Technical Information Service, and operating agency within the U.S. Department of Commerce.

(b) The Assistant Secretary shall render a written opinion within 30 days of receiving all required documentation in a non-adversary appeal.

(c) Assistant Secretary means the Assistant Secretary for Productivity, Technology and Innovation who is an officer appointed by the President and confirmed by the Senate and is an official to whom the Director reports within the Department of Commerce.

(c) Judicial review is available as the law permits.

§ 17.23 Authority to grant licenses.

§ 17.26 Adjudicatory.

The Director has been duly delegated authority to make any decision or determination concerning the granting, denial, interpretation, modification or termination of any license of any patent in the custody and control of the U.S. Department of Commerce. The decision and determination of the Director is final and conclusive on behalf of this Department unless the procedures for appeal set forth below are initiated.

(a) Any appellant party who seeks review of the Director's decision based upon a modification or termination of a license by the Director under § 17.24(b), or who has filed a timely objection and can demonstrate damages as provided in § 17.24(c), shall be entitled to an adversary hearing in accord with the provisions of the Administrative Procedures Act (5 U.S.C. 554-557). A party may waive an adversary hearing by filing a written waiver with the Assistant Secretary.

§ 17.24 Persons who may appeal.

(b) When an adversary hearing is required under § 17.24 (b) or (c) the Assistant Secretary shall appoint as promptly as possible an Administrative Law Judge who shall hold hearings no later than 45 days from the date of the appointment. The hearings will be conducted in conformity with the objectives of the Administrative Procedure Act. The Administrative Law Judge shall submit a written recommendation to the Assistant Secretary no later than 30 days subsequent to the hearing and/or the filing of any required written arguments or documentation.

The following person(s) may appeal to the Assistant Secretary any decision or determination concerning the grant, denial, interpretation, modification or termination of a license:

(c) The Assistant Secretary shall render a final written decision on behalf of the Department based upon the appeal file which shall include the hearing record, exhibits, written submissions of the party(ies), and the recommendation of the Administrative Law Judge. The Assistant Secretary's decision shall include the reasons which form the basis of the determination.

(a) A person whose application for a license has been denied;

(b) A licensee whose license has been modified or terminated in whole or in part; or

(c) A person who has timely filed a written objection in response to the notice published in the FEDERAL REGISTER as required by 41 CFR 101-4.104-3(a)(1)(c)(i) or 101-4.104-3(b)(1)(i) and who can demonstrate to the satisfaction of the Assistant Secretary that such person may be damaged by the Director's determination.

§ 17.25 Procedures.

(a) Any appellant party(ies) who was denied a license by the Director under § 17.24(a) shall not be entitled to an adversary hearing. Such party(ies) shall file appropriate documents no

5(c), 63 Stat. 390 (40)

CFR Part 101-4 re- was removed at 50 FR

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Mar. 5, 1984, unless

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101-4 shall mean es Administration

nation. The final decision may uphold, overrule, or modify the Director's decision or take any action deemed appropriate.

(d) Judicial review is available as the law permits.

PART 18—ATTORNEY'S FEES AND OTHER EXPENSES

GENERAL PROVISIONS

- Sec.
- 18.1 Purpose of these rules.
- 18.2 Definitions.
- 18.3 When the Act applies.
- 18.4 Proceedings covered.
- 18.5 Eligibility of applicants.
- 18.6 Standards for awards.
- 18.7 Allowable fees and expenses.
- 18.8 Rulemaking on maximum rates for attorney fees.
- 18.9 Awards against other agencies.
- 18.10 Delegations of authority.

INFORMATION REQUIRED FROM APPLICANTS

- 18.11 Contents of application.
- 18.12 Net worth exhibit.
- 18.13 Documentation of fees and expenses.
- 18.14 When an application may be filed.

PROCEDURES FOR CONSIDERING APPLICATIONS

- 18.15 Filing and service of documents.
- 18.16 Answer to application.
- 18.17 Reply.
- 18.18 Comments by other parties.
- 18.19 Settlement.
- 18.20 Further proceedings.
- 18.21 Decision.
- 18.22 Agency review.
- 18.23 Judicial review.
- 18.24 Payment of award.

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 De-

partment'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(c)), the Department are added to this or any other agency, is presented by other representative appearance and participation. Pursuant to the Contract Disputes Act of 1978 (41 U.S.C. 607(c)), the Department for appeals from decisions of contracting officers of the Department decided by the General Administration Board of Appeals. This Board, in its own procedures, is able for making determinations pursuant to appeals to the Board of Contracting Officers of the Department. Such determination is subject to appeal in a proceeding in which the Board may prescribe a future rate is not of Proceedings to grant are also excluded, to modify, suspend, or covered if they are adversary adjudications." proceedings covered

(1) Department of Civil Rights hearing the Department 2000d-1 and 15 CFR

(ii) Handicap disabilities conducted by under 29 U.S.C. 79-8.12(d).

(2) National Oceanographic Administration

(i) Proceedings of decision, revocation, or permit or license issued

(ii) Proceedings to ties under any of the tered by NOAA.

(3) International Enforcement of the Anti-Boycott Export Administration U.S.C. app. 2407.

(4) Patent and Trademark Disbarment proceedings and agents under 35 U.S.C. 42

(b) The Department terminate a proceeding n