

## § 16.10

(e) If the Secretary finds that a designated agent has violated the terms of paragraph (c) of this section, she may, after consultations with such designated agent, notify such person that she proposes to revoke his status as a designated agent.

(f) Upon receipt of a notice from the Secretary of the proposed revocation, which notice shall set forth the reasons for such proposed revocation, the designated agent shall have thirty (30) days from the date of receipt of such notification to request a hearing under the provisions of U.S.C. 556. The Secretary's proposed revocation shall become final through the issuance of a written decision to the designated agent in the event such designated agent does not appeal the proposed revocation within that thirty (30) day period. If, however, the designated agent requires a hearing within that thirty (30) day period, the Secretary's proposed revocation shall be stayed pending the outcome of the hearing held pursuant to 5 U.S.C. 556.

## § 16.10 The Department of Commerce Mark.

The Department of Commerce shall develop a Mark which shall be registered in the U.S. Patent and Trademark Office under 15 U.S.C. 1054 for use on each Label described in a Specification.

## § 16.11 Amendment or revision of a performance information labeling specification.

The Secretary may by order amend or revise any Specification published under § 16.5. The procedure applicable to the establishment of a Specification under § 16.5 shall be followed in amending or revising such Specification. Such amendment or revision shall not apply to consumer products 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

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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

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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.

(b) [Reserved]

[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 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.

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

(c) Under Secretary means the Under Secretary for Technology 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.

[49 FR 7986, Mar. 5, 1984, as amended at 55 FR 38983, Sept. 24, 1990]

**§ 17.23 Authority to grant licenses.**

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.

**§ 17.24 Persons who may appeal.**

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

(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 Under Secretary that such person may be damaged by the Director’s determination.

[49 FR 7986, Mar. 5, 1984, as amended at 55 FR 38983, Sept. 24, 1990]

**§ 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 later

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than 30 days from the receipt of the Director's decision unless the Under 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) The Under Secretary shall render a written opinion within 30 days of receiving all required documentation in a non-adversary appeal.

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

[49 FR 7986, Mar. 5, 1984, as amended at 55 FR 38983, Sept. 24, 1990]

### § 17.26 Adjudicatory.

(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 Under Secretary.

(b) When an adversary hearing is required under § 17.24 (b) or (c) the Under 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 Under Secretary no later than 30 days subsequent to the hearing and/or the filing of any required written arguments or documentation.

(c) The Under 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 Under Secretary's decision shall include the reasons which form the basis of the determination. The final decision may uphold, overrule, or modify

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the Director's decision or take any action deemed appropriate.

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

[49 FR 7986, Mar. 5, 1984, as amended at 55 FR 38983, Sept. 24, 1990]

## 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