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DEPARTMENT OF COMMERCE

National Institutes of Standards and Technology

15 CFR Part 17

[Docket No.: 160311228-6228-01]

RIN 0693-AB62

Technology Innovation – Personnel Exchanges

AGENCY: National Institute of Standards and Technology (NIST), United States Department of Commerce.

ACTION: Notice of proposed rulemaking.

SUMMARY: NIST is seeking comments on proposed regulations intended to foster the exchange of scientific and technical personnel among academia, industry, including particularly small businesses, and Federal laboratories. Such exchanges are an effective means for accelerating the transfer of Federal laboratory technology to benefit the United States economy. An objective of this rulemaking is to clarify the appropriate use of Cooperative Research and Development Agreement authority by a Federal laboratory for personnel exchanges where the Federal laboratory has an existing relationship with the potential partner through another legal mechanism, as well as in the context of joint research projects or the development of existing laboratory technology, and through use of the General Services Administration's Presidential Innovation Fellows program for Federal laboratory Entrepreneur-in-Residence programs. Another objective of this rulemaking is to remove outdated regulations addressing the licensing of inventions

owned by the Department of Commerce. When the comment period is concluded, NIST will analyze the comments received, incorporate comments as appropriate, and publish a final regulation.

DATES: Comments must be received no later than [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Submit your comments, identified by docket identification (ID) number: 160311228-6228-01, through the *Federal e-Rulemaking Portal:* http://www.regulations.gov (search using the docket number). Follow the online instructions for submitting comments. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

FOR FURTHER INFORMATION CONTACT: Courtney Silverthorn, via e-mail: courtney.silverthorn@nist.gov, or by telephone: 301-975-4189.

SUPPLEMENTARY INFORMATION:

I. General Information

Does this action apply to me?

This proposed rule may be of interest to you if you are an educational institution, a company (including a small business firm), or a nonprofit institution, that collaborates or would like to collaborate with Federal Government employees on technology research and development of mutual interest.

II. BACKGROUND

The Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96-480, as amended (codified at title 15 of the United States Code (U.S.C.), Section 3701 *et seq*.) (the Stevenson-Wydler Act), sets forth a national policy to promote cooperation among academia, Federal laboratories, labor, and industry in order to facilitate the transfer of innovative federal technologies to United States and world markets. In furtherance of that policy, the Administration's *Lab to Market* initiative seeks to "significantly accelerate and improve technology transfer by streamlining administrative processes, facilitating partnerships with industry, evaluating impact, and opening federal research and development (R&D) assets as a platform for innovation and economic growth." (*Lab to Market: Cross Agency Priority Goal Quarterly Progress Update, Fiscal Year 2015 Quarter 4).* One proven method to ensure that federal innovations are made available to industry and the public is to encourage frequent interactions among Federal laboratories, academic institutions, and industry, including small businesses.

A. Notice of Proposed Rulemaking

Pursuant to authority delegated to it by the Secretary of Commerce, NIST is providing notice to the public of proposed rulemaking to remove outdated provisions in part 17 of title 15 of the Code of Federal Regulations (CFR) regarding the licensing of inventions owned by the Department, and to revise part 17 to address the use of personnel exchange authorities and programs as authorized under 15 U.S.C. 3712, which authorizes the

establishment of a program to foster the exchange of scientific and technical personnel among academia, industry, and Federal laboratories.

Under the Stevenson-Wydler Act, several mechanisms have been developed which are being used by various Federal agencies for exchanging personnel with the public and private sectors. The proposed rules will facilitate agencies' use of existing mechanisms, as well as provide for more integrated programs intended to expand the exchange of personnel as authorized under section 3712, in order to accelerate the transfer of innovative technologies from Federal laboratories for the benefit of the United States and its economy. Some current authorities relevant to personnel exchange between Federal laboratories and non-federal partners are described below.

B. Current Personnel Exchange Mechanisms

1. **Cooperative Research and Development Agreement** - The Cooperative Research and Development Agreement (CRADA) is one of the principal mechanisms used by Federal laboratories to engage in collaborative efforts with non-federal partners to achieve the goals of technology transfer. It affords discretion to Government Owned Government Operated (GOGO) and Government Owned Contractor Operated (GOCO) laboratories to enter into collaborative agreements with many types of organizations. CRADAs allow one or more Federal laboratories and one or more non-federal parties (i.e., state or local government units; industrial organizations; public and private foundations; universities and other non-profit organizations; and other individuals who are licensees of Government-owned inventions) to collaborate to

conduct specified research and development-related activities that are consistent with the laboratory's mission. Technical assistance can also be provided to small businesses. The legal authority for this personnel exchange mechanism via mutual collaboration on research and development projects is 15 U.S.C. 3710a. DOE has recently used the CRADA authority to enable a pilot program for public-private entrepreneurial partnerships between Federal laboratories and the private sector for the placement of personnel. The DOE's Lawrence Berkeley National Laboratory provides a virtual home for entrepreneurial clean-energy researchers through "Cyclotron Road," a new public-private partnership to advance energy technologies until they can succeed beyond the laboratory. This new, competitive opportunity provides clean energy researchers with business mentorship and access to resources and potential business partners to advance innovation.

2. **Entrepreneur Leave Program (ELP) –** Some Department of Energy (DOE) GOCO laboratories have a personnel pathway that permits a limited number of contractor employees to take entrepreneurial leave, also known as Entrepreneurial Separation to Transfer Technology, for a designated period of time. Some laboratories offer the employee assurance of appropriate resources upon return to restart a research program, while others offer continued benefits while the employee is on leave. These programs are designed to facilitate commercialization of technologies developed in a DOE laboratory. Because these laboratories are GOCO facilities, the programs are subject to the policies and procedures of the contractor organization.

3. **Entrepreneur-in-Residence (EIR)** – EIRs are entrepreneurs from outside of Government who want to use their skills to benefit the public good. They are

typically mid- to senior-level professionals and may be academics, technology entrepreneurs, software designers, policymakers, business experts, or non-profit leaders who have demonstrated a significant record of innovative achievement in their field. Funding models differ from agency to agency, and some flexibility in authorities can be applied in creating these programs. Generally, these programs run through state or non-profit organizations that recommend or otherwise place the personnel within the technology transfer office. NIST operates its EIR program under the Partnership Intermediary Agreement (PIA) authority, 15 U.S.C. 3715. The program is conducted through a PIA with the Maryland Technology Development Corporation, which selects and funds each EIR. The National Institutes of Health (NIH) program is currently conducted through a contracting mechanism to place EIRs at several of NIH institutes and centers. Both programs rely on the expertise of existing State-based programs with a shared vision of commercializing federal technologies and providing expert support to potentially interested parties working at these Federal laboratories. Similarly, the Department of Homeland Security (DHS) operates a Loaned Executive Program that is open to all interested executive-level talent; DHS makes unpaid temporary appointments under 5 U.S.C. 3109 to place private sector consultants at various DHS laboratories.

4. **Strategic Partnership Projects (SPP)** – This DOE authorization enables a DOE GOCO laboratory to advise United States companies or other agencies and institutions on problems as to which the laboratory has special expertise or equipment. Work is performed under a formal agreement on a full cost recovery basis if the assistance requires more than an incidental amount of time. Authorization: 48

CFR 970.5217-1 - Work for Others Program. In addition, the Oak Ridge Institute for Science and Education (ORISE), a DOE institution operated under contract on behalf of DOE, implements a range of education, training, and workforce development programs on behalf of DOE and a number of other Federal sponsors. Programs provide opportunities for participants at a broad range of locations including Federal research laboratories (including GOCO), agency headquarters offices, or universities. For example, an SPP agreement between the United States Department of Agriculture (USDA) and ORISE authorizes ORISE to provide qualified candidates for research positions and to manage the appointment process. ORISE-identified candidates may be selected from a variety of sources and placed into a variety of research-related positions. Appointed candidates placed by ORISE have "program participant" status and are not Federal employees.

5. **Use of Facilities** – Outside entities such as universities, technology incubators, private companies, and individual inventors may be able to use scientific equipment, specialized rooms, testing centers, or other unique experimental property or facilities of the Federal laboratories, such as DOE's designated scientific user facilities located across the DOE laboratories. Such facility use is often at the discretion of the Federal laboratory. While this provides the opportunity for outside entities to place personnel at Government facilities, it does not typically provide a mechanism for those personnel to collaborate with Government personnel (Federal employees). DOE's scientific user facilities are open access, through a proposal solicitation process, and do enable collaboration with scientists and engineers that are employees of the laboratory contractor.

6. **Visiting Scientist Programs** – These are arrangements allowing industry personnel to work for limited periods of time, usually 6–12 months, in a GOCO laboratory. Depending on the program, costs can be borne by the GOCO laboratory or by the organization sending the personnel, and intellectual property arrangements can be addressed in exchange agreements. Because these laboratories are GOCO facilities, they are subject to the policies and procedures of the contractor organization. DOE's national laboratories operated as GOCOs and NIH (e.g., Frederick National Laboratory for Cancer Research) currently offer visiting scientist opportunities.

7. **Educational Partnership Agreements (EPAs)** – These agreements are entered into between the Department of Defense (Defense) and educational institutions, including colleges, universities, and local education agencies, to encourage and enhance the study of scientific disciplines. Under an EPA, a Defense laboratory director may make laboratory personnel available to teach science courses or to assist in the development of science courses and materials for the institution; provide for sabbatical opportunities for faculty and internship opportunities for students of the institution; involve faculty and students of the institution in Defense laboratory projects, cooperate with the institution in developing a program under which students may be given academic credit for work on Defense laboratory projects; provide academic and career advice to students of the institution; loan Defense laboratory equipment to the institution for any purpose and duration in support of such agreement; and transfer commonly used surplus computer or other scientific equipment to the institution. EPAs are authorized by 10 U.S.C. 2194.

8. **Co-Locations** – The USDA has a number of laboratories that are co-located on University campuses, which fosters a high level of scientific exchange between the USDA scientists and their university collaborators.

C. Proposed Regulation Implementing 15 U.S.C. 3712 Personnel Exchanges

The regulation proposed by NIST to implement 15 U.S.C. 3712, in consultation jointly with the Department of Energy and the National Science Foundation, is intended to accomplish two main objectives. The first objective is to clarify the appropriate use of CRADA authority under 15 U.S.C. 3710a for personnel exchanges where a Federal laboratory has an existing relationship with the potential partner through another legal mechanism, such as a grant or cooperative agreement. The second objective is to increase the use of existing authorities to implement personnel exchange programs at Federal Laboratories: 1) by utilizing the existing CRADA authority to transfer personnel to and from a Federal laboratory for joint research projects or the development of existing laboratory technology; and 2) by utilizing the General Services Administration (GSA)'s Presidential Innovation Fellows program to offer Federal laboratories additional options for implementing Entrepreneur-in-Residence programs.

Under the proposed rule, all existing provisions in part 17 of title 15 of the Code of Federal Regulations (CFR), "Licensing of Government-Owned Inventions in the Custody of the Department of Commerce," which are outdated, would be deleted. Outdated subpart A implemented for the Department of Commerce licensing rules found at 41 CFR

part 101-4, which were themselves removed at 50 FR 28402, July 12, 1985. Outdated subpart B was reserved. Outdated subpart C set forth appeal procedures addressed to the outdated licensing rules of subpart A. All subparts are obsolete, and the rules governing the licensing of government-owned inventions are today found in 37 CFR part 404. The heading of part 17 would be revised to read "Personnel Exchanges Between Federal Laboratories and Non-Federal Entities," and five new sections would be added.

Section 17.1, Scope, sets forth the scope of revised part 17, which is to implement 15 U.S.C. 3712 and to clarify the appropriate use of personnel exchanges in relation to Federal laboratory CRADAs under the authority of 15 U.S.C. 3710a(a)(1), including CRADAs involving as parties recipients of Federal funding under grants and contracts, which could include National Network for Manufacturing Innovation awardees.

Section 17.2, Definitions, provides definitions for certain terms used in this part.

Section 17.3, Exchange of Federal Laboratory Personnel with Recipients of Federal Funding, provides in paragraph (a) that the existence of a funding agreement (as defined in 35 USC 201(b)) between a Federal laboratory and a contractor shall not preclude a CRADA with that contractor, where the Federal laboratory director makes a determination that the technical subject matter of the funding agreement is sufficiently distinct from that of the CRADA. Paragraph (a) also provides that a contractor which is a collaborating party shall in no event reimburse a Federal agency under a CRADA using funds awarded to the contractor by that agency.

Paragraph (b) of section 17.3 provides that a Federal laboratory may exchange personnel with a contractor under a CRADA where the determination required under paragraph (a) cannot be made, provided that the CRADA includes at least one collaborating party in addition to the Federal laboratory and that contractor. In that circumstance, the Federal laboratory shall not provide services, property, or other resources to that contractor under the CRADA, and if any individual terms of that contractor's funding agreement conflict with the terms of the multi-party CRADA, then the funding agreement terms will control as applied to that contractor and the Federal laboratory only.

Paragraph (c) of section 17.3 sets forth a number of factors which may be taken into account in making the "sufficiently distinct" determination required under paragraph (a), including 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; 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; 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 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.

Section 17.4, Personnel Exchanges from a Federal Agency, provides in paragraph (a)(1) that a Federal laboratory may exchange its personnel with a collaborating party under a CRADA where no invention currently exists. Under paragraph (a)(2), 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 or former employee who is an inventor. Paragraph (a)(2) also provides that funding may be provided 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. Consistent with guidance in the Office of Legal Counsel's Memorandum for Gary Davis, Acting Director, Office of Government Ethics, September 7, 2000, "Application of 18 U.S.C. 209 to Employee-Inventors Who Receive Outside Royalty Payments," paragraph (a)(2) also sets forth that royalties from inventions received through a license agreement negotiated with the Federal laboratory and paid by the laboratory to an inventor who is a Federal employee are considered Federal compensation. Paragraph (a)(3) provides that 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.

In exchanging personnel with a collaborating party under a CRADA, as in any other exercise of the CRADA authority, a Federal Agency should take into account the provisions of 15 USC 3710a(c)(3) regarding standards of conduct for its employees for resolving potential conflicts of interest.

Section 17.5, Personnel Exchanges to a Federal Agency, provides that a Federal Agency may provide funds for non-federal personnel exchanged in order to bring into a Federal laboratory outside personnel with expertise in scientific commercialization through the Presidential Innovation Fellows program, and that an Agency will engage with the General Services Administration (GSA) to transfer funding for exchanged personnel and 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.

III. Request for Comments

NIST requests comments on this proposed rule to encourage the exchange of personnel among Federal laboratories, State, local, and tribal governments, academia and industry, including small businesses. NIST is requesting ideas and comments about ways in which an integrated program might be developed. We have included some questions that you might consider as you develop your comments.

1. Personnel exchanges commonly occur in the course of CRADAs involving Federal laboratories and collaborating parties. Are there ways to further promote personnel exchanges involving CRADAs? Are there ways to use the CRADA authority to develop a more integrated personnel exchange program? Are there other mechanisms that you find effective and/or easier to use that should be included in this regulation?

2. Do the proposed regulations facilitate the exchange of personnel between Federal laboratories and academia and industry? Are there additional mechanisms that should be incorporated in this regulation?

When submitting comments, remember to:

i. Identify the document by docket ID number and other identifying information (subject heading, **Federal Register** date and page number).

ii. Please organize your comments by referencing the specific question you are responding to or the relevant section number in the proposed regulatory text.

iii. Explain why you agree or disagree; suggest alternatives and substitute language for your requested changes.

iv. Describe any assumptions and provide any technical information and/or data that you used.

v. Provide specific examples to illustrate your concerns and suggest alternatives.

vi. Explain your views as clearly as possible.

vii. Comments that contain profanity, vulgarity, threats, or other inappropriate language will not be considered.

viii. Make sure to submit your comments by the comment period deadline identified.

IV. References

1. Federal Laboratory Consortium for Technology Transfer. (n.d.) *Technology Transfer Mechanisms*. Retrieved from http://www.federallabs.org/education/t2-mechanisms/

2. Federal Laboratory Consortium for Technology Transfer. (2011). *Technology Transfer Desk Reference*. Retrieved from: http://globals.federallabs.org/pdf/T2_Desk_Reference.pdf

3. Kalil, T. and Wong, J. (2015). *Lab to Market: Cross Agency Priority Goal Quarterly Progress Update, Fiscal Year 2015 Quarter 4.* Retrieved from: https://www.performance.gov/node/3395/view?view=public#progress-update

4. Howieson, S.V. et al (2013). *Federal Personnel Exchange Mechanisms*. Retrieved from https://www.ida.org/~/media/Corporate/Files/Publications/STPIPubs/D-4906.ashx

V. Statutory and Executive Order Reviews

Executive Order 12866

This rulemaking is a significant regulatory action under Sections 3(f)(3) and 3(f)(4) of Executive Order 12866, as it raises novel policy issues. This rulemaking, however, is not an ‘‘economically significant’’ regulatory action under Section 3(f)(1) of the Executive Order, as it does not have an effect on the economy of $100 million or more in any one year, and it does not have a material adverse effect on the economy, a sector of the

economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities.

Executive Order 13132

This proposed rule does not contain policies with Federalism implications as defined in Executive Order 13132.

Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires the preparation and availability for public comment of "an initial regulatory flexibility analysis" which will "describe the impact of the proposed rule on small entities." (5 U.S.C. 603(a)). Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities.

The Chief Counsel for Regulation of the Department of Commerce certified to the Chief Counsel for Advocacy of the Small Business Administration (SBA) that this rule, if adopted, would not have a significant economic impact on a substantial number of small entities. The factual basis for this determination is as follows:

A description of this proposed rule, why it is being considered, and the objectives of this proposed rule are contained in the preamble and in the **SUMMARY** section of the preamble. The statutory basis for this proposed rule is provided by 15 U.S.C. 3712.

This proposed rule, if implemented, is not expected to directly affect any small entities. Federal agencies that would be directly affected by this rulemaking are not small governmental jurisdictions, small organizations, or small businesses, as defined by the RFA. 5 U.S.C. 601. Any requirements imposed by the proposed rule would be obligatory

only upon Federal agencies. NIST does not expect the issuance of the proposed rule to result in any direct impacts to small entities pursuant to the RFA. Small entities could potentially benefit from exchanging personnel with Federal agencies.

The information provided above supports a determination that this rule would not have a significant economic impact on a substantial number of small entities. Because this rulemaking, if adopted, would directly affect Federal agencies and not small entities, NIST concludes the action would not result in a significant economic impact on a substantial number of small entities. Therefore, an initial regulatory flexibility analysis is not required and none has been prepared.

Paperwork Reduction Act

This proposed rule contains no new collection of information subject to the Paperwork Reduction Act, 44 U.S.C. 3501 et seq.

National Environmental Policy Act

This proposed rule will not significantly affect the quality of the human environment. Therefore, an environmental assessment or Environmental Impact Statement is not required to be prepared under the National Environmental Policy Act of 1969.

List of Subjects in 15 CFR Part 17

Federal employees, Inventions and patents, Laboratories, Research and development, Science and technology, Technology transfer.

For the reasons stated in the preamble, the National Institute of Standards and Technology proposes to revise 15 CFR part 17 as follows:

PART 17 – PERSONNEL EXCHANGES BETWEEN FEDERAL LABORATORIES AND NON-FEDERAL ENTITIES

Sec.

Authority: 15 U.S.C. 3712.

§ 17.1 Scope.

(a) The Stevenson-Wydler Technology Innovation Act of 1980, Public Law 96-480, as amended (codified at title 15 of the United States Code (U.S.C.), section 3701 *et seq.*)(the Stevenson-Wydler Act), sets forth a national policy to renew, expand, and strengthen cooperation among academia, Federal laboratories, labor, and industry, in forms including personnel exchanges (15 U.S.C. 3701(3)). One proven method to ensure that federal innovations are passed to industry and the public is to encourage frequent interactions among Federal laboratories, academic institutions, and industry, including both large and small businesses. In accordance with applicable ethics regulations and Agency policies, exchanges of personnel between Federal laboratories and outside collaborators should be

encouraged (15 U.S.C. 3702(5)). Models that include federal funding, as well as those that are executed without federal funding, are encouraged.

(b) This part implements 15 U.S.C. 3712 and provides clarification regarding the appropriate use of personnel exchanges in relation to Federal laboratory Cooperative Research and Development Agreements (CRADAs) under the authority of 15 U.S.C. 3710a.

(c) This part is applicable to exchanges of personnel between Federal laboratories and parties to a CRADA under 15 U.S.C. 3710a(a)(1).

§ 17.2 Definitions.

(a) The term *funding agreement* shall have the meaning according to it under 35 U.S.C. 201(b).

(b) The term *contractor* shall have the meaning according to it under 35 U.S.C. 201(c).

(c) The term *Federal laboratory* shall have the meaning according to it under 15 U.S.C. 3703(4).

§ 17.3 Exchange of Federal laboratory personnel with recipients of Federal funding.

(a) In accordance with 15 U.S.C. 3710a(b)(3)(A) and 3710a(d)(1), a Federal laboratory may provide personnel, services, property, and other resources to a collaborating party, with or without reimbursement (but not funds to non-Federal parties) for the conduct of specified research or development efforts under a CRADA which are consistent with the missions of the Federal laboratory. The existence of a funding agreement between a Federal laboratory and a contractor

shall not preclude the Federal laboratory from using its authority under 15 U.S.C. 3710a to enter into a CRADA with the contractor as a collaborating party for the conduct of specified research or development efforts, where the director of the Federal laboratory determines that the technical subject matter of the funding agreement is sufficiently distinct from that of the CRADA. In no event shall a contractor which is a collaborating party reimburse a Federal agency under a CRADA using funds awarded to the contractor by that agency.

(b) (1) A Federal laboratory may enter into a CRADA with a contractor as a collaborating party for the purpose of exchange of personnel for the conduct of specified research or development efforts where the determination required under paragraph (a) of this section could not be made, provided that:

(i) The CRADA includes at least one collaborating party in addition to the Federal laboratory and that contractor; and

(ii) The Federal laboratory shall not provide services, property or other resources to that contractor under the CRADA.

(2) Where a Federal laboratory enters into a CRADA with a contractor under this paragraph (b), the terms of that contractor's funding agreement shall normally supersede the terms of the CRADA, to the extent that any individual terms conflict, as applied to 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 or former employee who is an inventor.

(i) Funding may be provided 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 agency.

For exchanges in which a Federal Agency 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 (see 5 CFR 213.3102(r)) for Entrepreneur-In-Residence programs or similar, related programs.

(b) An Agency will engage with the General Services Administration (GSA) to transfer funding for exchanged personnel, and will work with GSA 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.

Kent Rochford

Associate Director for Laboratory Programs

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