

2. Section 1005.7 is amended by revising paragraph (e)(1) to read as follows:

§ 1005.7 Discovery.

* * * * *

(e)(1) When a request for production of documents has been received, within 30 days the party receiving that request will either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part will be specified. Upon receiving any objections, the party seeking production may then, within 30 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. (The party receiving a request for production may also file a motion for protective order any time prior to the date the production is due.)

* * * * *

3. Section 1005.16 is amended by revising paragraph (b) to read as follows:

§ 1005.16 Witnesses.

* * * * *

(b) At the discretion of the ALJ, testimony (other than expert testimony) may be admitted in the form of a written statement. The ALJ may, at his or her discretion, admit prior sworn testimony of experts which has been subject to adverse examination, such as a deposition or trial testimony. Any such written statement must be provided to all other parties along with the last known address of such witnesses, in a manner that allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing will be exchanged as provided in § 1005.8.

* * * * *

PART 1008—[AMENDED]

1. The authority citation for part 1008 continues to read as follows:

Authority: 42 U.S.C. 1320a-7d(b).

2. Section 1008.37 is revised to read as follows:

§ 1008.37 Disclosure of ownership and related information.

Each individual or entity requesting an advisory opinion must supply full and complete information as to the identity of each entity owned or controlled by the individual or entity, and of each person with an ownership or control interest in the entity, as defined in section 1124(a)(1) of the Social Security Act (42 U.S.C. 1320a-3(a)(1)) and part 420 of this chapter.

(Approved by the Office of Management and Budget under control number 0990-0213)

Dated: October 19, 2001.

Janet Rehnquist,
Inspector General.

Approved: November 23, 2001.

Tommy G. Thompson,
Secretary.

[FR Doc. 02-6350 Filed 3-15-02; 8:45 am]

BILLING CODE 4152-01-P

NATIONAL SCIENCE FOUNDATION

45 CFR Part 689

RIN 3145-AA39

Research Misconduct

AGENCY: National Science Foundation (NSF).

ACTION: Final rule.

SUMMARY: NSF is issuing a final rule that revises its existing misconduct in science and engineering regulations. These revisions implement the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology on December 6, 2000. They will enable NSF to continue to address allegations of research misconduct.

DATES: This rule is effective April 17, 2002.

FOR FURTHER INFORMATION CONTACT: Anita Eisenstadt, Office of the General Counsel, at 703-292-8060.

SUPPLEMENTARY INFORMATION: The Office of Science and Technology Policy issued a final Federal research misconduct policy on December 6, 2000 in 65 FR 76260-76264 ("the Federal policy"). The Federal policy consists of a definition of research misconduct and basic guidelines to help Federal agencies and Federally funded research institutions respond to allegations of research misconduct. The policy directs Federal agencies that support or conduct research to implement it within one year.

On January 25, 2002, NSF published a proposed rule to revise its existing misconduct regulations (45 CFR part 689) to make them fully consistent with the Federal policy. (67 FR 3666-3669). NSF invited public comment on the proposed rule. NSF received four comments that were supportive of the proposed rule.

Three of these commenters, however, expressed general concern for the protection of confidentiality of inquiries and investigations of alleged research misconduct. They suggested that NSF add language to the regulation that provides that to the extent permitted by

law, NSF will protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act. The commenters noted that this language is consistent with the Federal policy.

NSF stated in the preamble to the proposed rule that, consistent with the Federal policy, we would continue to protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act, to the extent permitted by law. (67 FR 3666). In response to these comments, we will include this language in § 689.2 of the final rule.

One of the commenters also expressed concern over the preponderance of evidence standard of proof for a finding of research misconduct. The commenter expressed concern that this standard will increase the risk of a false finding of research misconduct, and recommended a higher standard of proof such as "clear and convincing evidence" or "beyond a reasonable doubt."

The Federal policy adopted the preponderance of evidence standard. In the preamble to the Federal policy, OSTP noted that this is the uniform standard of proof for most civil fraud cases and most Federal administrative proceedings, including debarment. (65 FR 76262). Awardee institutions have the discretion to apply a higher standard of proof in their internal misconduct proceedings. However, if a higher standard is used, and the awardee institution wishes for NSF to defer to its investigation, the awardee institution should also evaluate whether the allegation is proven by a preponderance of evidence.

Determinations

The Office of Management and Budget has reviewed this final rule under Executive Order 12866. The rule is not an economically significant rule or a major rule under the Congressional Review Act. The Congressional Review Act provides that agencies shall submit a report, including a copy of all final rules, to each House of Congress and the Comptroller General of the United States. The Foundation will submit this report, identifying this rule as non-major, prior to the publication of this rule in the **Federal Register**.

The Unfunded Mandate Reform Act of 1995, in sections 202 and 205, requires that agencies prepare several analytic statements before proposing a rule that

may result in annual expenditures of \$100 million by State, local and Indian tribal governments, or by the private sector. As any final rule would not result in expenditures of this magnitude, such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements. Finally, NSF has reviewed this rule in light of Section 2 of Executive Order 12778 and certifies that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

List of Subjects in 45 CFR Part 689

Administrative practice and procedure, Fraud, Grant programs—science and technology, Investigations, Research, Science and technology.

Dated: March 7, 2002.

Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation is revising part 689 of Title 45, Chapter VI of the Code of Federal Regulations, to read as follows:

PART 689—RESEARCH MISCONDUCT

Sec.

- 689.1 Definitions.
- 689.2 General policies and responsibilities.
- 689.3 Actions.
- 689.4 Role of awardee institutions.
- 689.5 Initial NSF handling of misconduct matters.
- 689.6 Investigations.
- 689.7 Pending proposals and awards.
- 689.8 Interim administrative actions.
- 689.9 Dispositions.
- 689.10 Appeals.

Authority: 42 U.S.C. 1870(a).

§ 689.1 Definitions.

The following definitions apply to this part:

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.

(1) *Fabrication* means making up data or results and recording or reporting them.

(2) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(3) *Plagiarism* means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

(4) *Research*, for purposes of paragraph (a) of this section, includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals.

(b) *Research misconduct* does not include honest error or differences of opinion.

§ 689.2 General policies and responsibilities.

(a) NSF will take appropriate action against individuals or institutions upon a finding that research misconduct has occurred. Possible actions are described in § 689.3. NSF may also take interim action during an investigation, as described in § 689.8.

(b) NSF will find research misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An "inquiry" consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An "investigation" is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

(c) A finding of research misconduct requires that—

(1) There be a significant departure from accepted practices of the relevant research community; and

(2) The research misconduct be committed intentionally, or knowingly, or recklessly; and

(3) The allegation be proven by a preponderance of evidence.

(d) Before NSF makes any final finding of research misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account

procedures already followed by other entities investigating or adjudicating the same allegation of research misconduct.

(e) Debarment or suspension for research misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations, as described in §§ 689.8 and 689.9, respectively. Severe research misconduct, as established under the regulations in this part, is an independent cause for debarment or suspension under the procedures established by the debarment and suspension regulations.

(f) The Office of Inspector General (OIG) oversees investigations of research misconduct and conducts any NSF inquiries and investigations into suspected or alleged research misconduct.

(g) The Deputy Director adjudicates research misconduct proceedings and the Director decides appeals.

(h) Investigative and adjudicative research misconduct records maintained by the agency are exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a) to the extent permitted by law and regulation.

§ 689.3 Actions.

(a) Possible final actions listed in this paragraph (a) for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive and do not include possible criminal sanctions.

(1) *Group I actions.* (i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period an individual or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) *Group II actions.* (i) Totally or partially suspend an active award, or restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(iii) Require a correction to the research record.

(3) *Group III actions.* (i) Terminate an active award.

(ii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(iii) Debar or suspend an individual or institution from participation in Federal programs for a specified period after further proceedings under applicable regulations.

(b) In deciding what final actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

(2) The degree to which the misconduct was knowing, intentional, or reckless;

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it had a significant impact on the research record, research subjects, other researchers, institutions or the public welfare; and

(5) Other relevant circumstances.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Suspending eligibility for Federal awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other, administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending participation as an NSF reviewer, advisor, or consultant.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in the debarment and suspension regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

§ 689.4 Role of awardee institutions.

(a) Awardee institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged research misconduct;

(2) Conduct a subsequent investigation, if warranted;

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities; and

(4) Provide appropriate safeguards for subjects of allegations as well as informants.

(b) If an institution wishes NSF to defer independent inquiry or investigation, it should:

(1) Complete any inquiry and decide whether an investigation is warranted within 90 days. If completion of an inquiry is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(2) Inform OIG immediately if an initial inquiry supports a formal investigation.

(3) Keep OIG informed during such an investigation.

(4) Complete any investigation and reach a disposition within 180 days. If completion of an investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(5) Provide OIG with the final report from any investigation.

(c) NSF expects institutions to promptly notify OIG should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) NSF's resources, reputation, or other interests need protecting;

(3) There is reasonable indication of possible violations of civil or criminal law;

(4) Research activities should be suspended;

(5) Federal action may be needed to protect the interests of a subject of the investigation or of others potentially affected; or

(6) The scientific community or the public should be informed.

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to research misconduct, which should indicate when NSF should be notified.

§ 689.5 Initial NSF handling of misconduct matters.

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

(c) If OIG determines that alleged research misconduct involves potential

civil or criminal violations, OIG may refer the matter to the Department of Justice.

(d) Otherwise OIG may:

(1) Inform the awardee institution of the alleged research misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency; or

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 90 days after initiating it.

(f) On the basis of what it learns from an inquiry and in consultation as appropriate with other NSF offices, OIG will decide whether a formal NSF investigation is warranted.

§ 689.6 Investigations.

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG may proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with subjects or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the subject of the investigation to be heard.

(e) OIG may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report its recommendations, if any, to the Deputy Director within 180 days after initiating it.

§ 689.7 Pending proposals and awards.

(a) Upon learning of alleged research misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program, grant, and contracting officers handling them are informed (subject to § 689.6(c)).

(b) Neither a suspicion or allegation of research misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will not be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Program Director may consult with OIG and, after further consultation with the Office of General Counsel, either defer review, inform reviewers to disregard the matter, or inform reviewers of the status of the matter.

§ 689.8 Interim administrative actions.

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.3(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged research misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR part 620, and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do

so. Any interim action will be reviewed periodically during an investigation by NSF and modified as warranted. An interested party may request a review or modification by the Deputy Director of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

§ 689.9 Dispositions.

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct—

(1) OIG will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct—

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarring official pursuant to 45 CFR part 620 and the procedures of 45 CFR part 620 will be followed, but:

(i) The debarring official will be either the Deputy Director, or an official designated by the Deputy Director.

(ii) Except in unusual circumstances, the investigation report and recommended disposition will be included among the materials provided to the subject of the investigation as part of the notice of proposed debarment.

(iii) The notice of the debarring official's decision will include instructions on how to pursue an appeal to the Director.

(2) In all other cases—

(i) Except in unusual circumstances, the investigation report will be provided by OIG to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally 30 days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 45 days after completing an NSF investigation or

receiving the report from a satisfactory external investigation, OIG will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.3 lists possible final actions and considerations to be used in determining them.

(iii) The Deputy Director will review the investigation report and OIG's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within 120 days after receiving OIG's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal to the Director.

§ 689.10 Appeals.

(a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will normally inform the appellant of a final decision within 60 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

[FR Doc. 02-6179 Filed 3-15-02; 8:45 am]

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DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 356

[Docket No. MARAD-2001-10518]

RIN 2133-AB45

Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length To Obtain a Fishery Endorsement to the Vessel's Documentation

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: In an interim final rule published on August 31, 2001, the Maritime Administration ("MARAD," "we," "our," or "us") amended our