

nonmanufacturer rule for this NAICS code.

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NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

14 CFR Part 1275

[Notice 03-083]

RIN 2700-AC50

Investigation of Research Misconduct

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The National Aeronautics and Space Administration (NASA) proposes this rule to implement the "Federal Policy on Research Misconduct" (the Federal Policy). This proposed rule sets out the definition of research misconduct, procedure for investigating allegations of research misconduct and recommending findings, and procedure for adjudicating and appealing such findings. Findings of research misconduct must be accompanied by recommendations for administrative action by NASA to discourage such behavior and ensure the integrity of research funded or supported by NASA.

DATES: Comments must be received on or before September 23, 2003.

ADDRESSES: Send comments to: NASA Policy on Research Misconduct (NPRM) Comments, Office of the Chief Scientist, Code AS, National Aeronautics and Space Administration, 300 E Street SW., Washington, DC 20546-0001. NASA will consider late comments to the extent practicable.

FOR FURTHER INFORMATION CONTACT: Mayra N. Montrose, (202) 358-1492 (voice), (202) 358-3931 (fax).

SUPPLEMENTARY INFORMATION: The objective of the Federal Policy is to create a uniform policy framework for Federal agencies for the handling of allegations of misconduct in Federally funded or supported research. Within this framework, each Federal agency funding or supporting research is expected to fashion its own regulations to accommodate the various types of research transactions in which it is engaged.

In keeping with these objectives, the proposed NASA rule incorporates key aspects of the Federal policy, including the definition of research misconduct as

fabrication, falsification or plagiarism, and the definitions of each of these sub-components; the requirements for a finding of research misconduct; and the four-stage process for determining research misconduct; *i.e.*, inquiry, investigation, adjudication, and appeal.

NASA's research mission involves the advancement of research in the fields of aeronautics, space science, earth science, biomedicine, biology, engineering, and physical sciences (physics and chemistry). NASA fulfills this objective through intramural research performed by NASA researchers and through extramural contracts, cooperative agreements, grants, and Space Act agreements with the private sector, and with other governmental entities. Because of this multiplicity of research arrangements, allegations of research misconduct could arise in any number of ways.

In addition, the core principle of the Federal Policy is that while research institutions have the primary responsibility for the inquiry, investigation, and adjudication of allegations of research misconduct, Federal agencies have ultimate oversight authority for the research it funds or supports. While there is some overlap in the actions that may be pursued by Federal agencies and research institutions, the proposed rule is designed to provide procedures and criteria for the interaction of NASA with its research partners in dealing with the various contingencies that could arise in the processing of research misconduct allegations.

For example, an allegation of research misconduct might first be submitted to NASA through the NASA Office of Inspector General (OIG). If the research in question is conducted by NASA researchers, NASA shall conduct the inquiry, investigation, adjudication, and appeal stages. If the research is conducted by a research institution, the OIG shall ordinarily forward the allegation to that institution for inquiry and investigation and decide whether NASA shall conduct a parallel inquiry or investigation or defer its procedures pending completion of the investigative proceedings of the institution. The criteria for these decisions are set forth in the proposed rule.

On the other hand, if the allegation is received by the institution, the institution must inform the OIG if its inquiry determines that an investigation is warranted at which time, the OIG determines whether the OIG should conduct a parallel investigation.

In all cases, the investigation report and supporting evidence must be forwarded to NASA for adjudication

and possible remedial administrative action. If the OIG deferred NASA's procedures pending review of the results of the research institution's investigative process, the OIG shall decide whether to recommend to the NASA Adjudication Official acceptance of the research institution's investigation report and final determination, in whole or in part. If the OIG makes such a recommendation, the OIG shall provide copies of the investigation report, evidentiary record, and final determination to the NASA Adjudication Official. If not, the OIG can initiate its own investigation or remand to the institution for further investigation.

With regard to any investigation conducted by the OIG, the OIG shall forward the copies of the investigation report and evidentiary record to the NASA Adjudication Official. All cases involving NASA-funded or -supported research that have gone through the investigation stage must receive an independent decision by the NASA Adjudication Official, which may be appealed.

The possible administrative actions that may be taken by NASA after research misconduct is determined to have occurred are set out in the proposed rule. The rule cannot prescribe the manner in which such action will be taken, however, as that will depend on whether the research is intramural or extramural, and if the latter, on the type of transaction being used to fund or support the research.

For example, Federal law prescribes different procedural frameworks for adverse contract actions, adverse grant actions, suspensions, or debarments from competing for Federal procurement or grant awards, and for adverse personnel actions against Federal civil service employees. In the latter instance, the OIG may proceed under its previously existing administrative investigation process when misconduct is alleged against Federal civil service employees. The proposed rule provides that the recommendations for administrative action, which must be included with a determination of research misconduct, shall be forwarded to the relevant NASA officials for their consideration. Nevertheless, a final determination of research misconduct can serve as the basis for correcting the research record and for notifying the relevant scientific review groups.

NASA shall amend 14 CFR part 1260 (Grants Handbook), 14 CFR 1274 (Commercial agreements with cost sharing), and 48 CFR Chapter 18 (NASA