

3. Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333)—Where applicable, all contracts awarded by recipients in excess of \$2,000 for construction contracts and in excess of \$50,000 for other contracts, other than contracts for commercial items, that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Subsection 102 of the Act, each recipient shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

4. Rights to Inventions Made Under a Contract or Agreement—

Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the Recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

5. Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water

Pollution Control Act (33 U.S.C. 1251 *et seq.*), as amended—Contracts, other than contracts for commercial items, of amounts in excess of \$100,000 shall contain a provision that requires the Recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 *et seq.*) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 *et seq.*). Violations shall be reported to NASA and the Regional Office of the Environmental Protection Agency (EPA).

6. Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors who apply or bid for an award of \$100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee

of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the Recipient.

7. Debarment and Suspension (E.O.s 12549 and 12689)—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the simplified acquisition threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

EXHIBIT B TO PART 1274—REPORTS

1. Property Reporting.

As provided in paragraph (f) of § 1274.923, an annual NASA Form (NF) 1018, NASA Property in the Custody of Contractors, will be submitted by October 31 of each year. Negative annual reports are required. A final report is required within 30 days after expiration of the agreement (also see paragraph (g) of 1274.923 for electronic submission guidance).

2. Disclosure of Lobbying Activities (SFLLL)

(a) Agreement Officers shall provide one copy of each SF LLL furnished under 14 CFR 1271.110 to the Procurement Officer for transmittal to the Director, Analysis Division (Code HC).

(b) Suspected violations of the statutory prohibitions implemented by 14 CFR part 1271 shall be reported to the Director, Contract Management Division (Code HK).

[67 FR 45790, July 10, 2002, as amended at 72 FR 40066, July 23, 2007]

PART 1275—RESEARCH MISCONDUCT

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APPENDIX: NASA RESEARCH DISCIPLINES AND RESPECTIVE ASSOCIATED ENTERPRISES

AUTHORITY: Pub. L. 85-568, 72 Stat. 426, 42 U.S.C. 2473.

SOURCE: 69 FR 42103, July 14, 2004, unless otherwise noted.

§ 1275.100 Purpose and scope.

(a) The purpose of this part is to establish procedures to be used by the National Aeronautics and Space Administration (NASA) for the handling of allegations of research misconduct. Specifically, the procedures contained in this part are designed to result in:

(1) Findings as to whether research misconduct by a person or institution has occurred in proposing, performing, reviewing, or reporting results from research activities funded or supported by NASA; and

(2) Recommendations on appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred.

(b) This part applies to all research wholly or partially funded or supported by NASA. This includes any research conducted by a NASA installation and any research conducted by a public or private entity receiving NASA funds or using NASA facilities, equipment or personnel, under a contract, grant, cooperative agreement, Space Act agreement, or other transaction with NASA.

(c) NASA shall make a determination of research misconduct only after careful inquiry and investigation by an awardee institution, another Federal agency, or NASA, and an adjudication conducted by NASA. NASA shall afford the accused individual or institution a chance to comment on the investigation report and a chance to appeal the decision resulting from the adjudication. In structuring procedures in individual cases, NASA may take into account procedures already followed by other entities investigating the same allegation of research misconduct. Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part.

(d) A determination that research misconduct has occurred must be ac-

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companied by recommendations on appropriate administrative actions. However, the administrative actions themselves may be imposed only after further procedures described in applicable NASA regulations concerning contracts, cooperative agreements, grants, Space Act agreements, or other transactions, depending on the type of agreement used to fund or support the research in question. Administrative actions involving NASA civil service employees may be imposed only in compliance with all relevant Federal laws and policies.

(e) Allegations of research misconduct concerning NASA research may be transmitted to NASA in one of the following ways: by mail addressed to Office of Inspector General (OIG), Code W, National Aeronautics and Space Administration, 300 E Street, SW., Washington, DC 20546-0001; via the NASA OIG Hotline at 1-800-424-9183, or the NASA OIG cyber hotline at www.hq.nasa.gov/office/oig/hq/hotline.html.

(f) To the extent permitted by law, the identity of the Complainant, witnesses, or other sources of information who wish to remain anonymous shall be kept confidential. To the extent permitted by law, NASA shall protect the research misconduct inquiry, investigation, adjudication, and appeal records maintained by NASA as exempt from mandatory disclosure under 5 U.S.C. 552, the Freedom of Information Act, as amended, and 5 U.S.C. 552a, the Privacy Act, as amended.

§ 1275.101 Definitions.

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion. Research as used in this part includes all basic, applied, and demonstration research in all fields of science, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals.

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

(c) *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.

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

(e) *Awardee institution* means any public or private entity or organization (including a Federal, State, or local agency) that is a party to a NASA contract, grant, cooperative agreement, Space Act agreement, or to any other transaction with NASA, whose purpose includes the conduct of research.

(f) *NASA research* means research wholly or partially funded or supported by NASA involving an awardee institution or a NASA installation. This definition includes research wholly or partially funded by NASA appropriated funds, or research involving the use of NASA facilities, equipment, or personnel.

(g) *NASA research discipline* means one of the following areas of research that together comprise NASA's research mission for aeronautics, space science, Earth science, biomedicine, biology, engineering and physical sciences (physics and chemistry).

(h) *Inquiry* means the assessment of whether an allegation of research misconduct has substance and warrants an investigation.

(i) *Investigation* means the formal development of a factual record and the examination of that record leading to recommended findings on whether research misconduct has occurred, and if the recommended findings are that such conduct has occurred, to include recommendations on appropriate administrative actions.

(j) *Complainant* is the individual bringing an allegation of research misconduct related to NASA research.

(k) *Respondent* is the individual or institution who is the subject of an allegation of research misconduct related to NASA research.

(l) *Adjudication* means the formal procedure for reviewing and evaluating

the investigation report and the accompanying evidentiary record and for determining whether to accept the recommended findings and any recommendations for administrative actions resulting from the investigation.

(m) *NASA Adjudication Official* is the NASA Associate Administrator for the Enterprise with the greatest expertise in the NASA research discipline involved in the research misconduct allegation. The appendix to this part contains the list of NASA research disciplines and their associated Enterprises.

(n) *Appeal* means the formal procedure initiated at the request of the Respondent for review of a determination resulting from the adjudication and for affirming, overturning, or modifying it.

(o) *NASA Appeals Official* is the NASA Deputy Administrator or other official designated by the NASA Administrator.

§ 1275.102 OIG handling of research misconduct matters.

(a) When an allegation is made to the OIG, rather than to the awardee institution, the OIG shall determine whether the allegation concerns NASA research and whether the allegation, if true, falls within the definition of research misconduct in § 1275.101(a). Investigation of allegations which, if true, would constitute criminal offenses, are not covered by this part. If these criteria are met and the research in question is being conducted by NASA researchers, the OIG shall proceed in accordance with § 1275.104. If the research in question is being conducted at an awardee institution, another Federal agency, or is a collaboration between NASA researchers and co-investigators at either academia or industry, the OIG must refer the allegation that meets the definition of research misconduct to the entities involved and determine whether to—

(1) Defer its inquiry or investigation pending review of the results of an inquiry or investigation conducted at the awardee institution or at the Federal agency (referred to for purposes of this part as *external investigations*) determined to be the lead investigative organization for the case; or

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(2) Commence its own inquiry or investigation.

(b) The OIG must inform the NASA Office of the Chief Scientist of all allegations that meet the definition of research misconduct received by the OIG and of the determinations of the OIG required by § 1275.101. The NASA Office of the Chief Scientist shall notify the NASA Office of the Chief Engineer or the NASA Office of the Chief Technologist when the research is either engineering or technology research.

(c) The OIG should defer its inquiry or investigation pending review of the results of an external investigation whenever possible. Nevertheless, the OIG retains the right to proceed at any time with a NASA inquiry or investigation. Circumstances in which the OIG may elect not to defer its inquiry or investigation include, but are not limited to, the following:

(1) When the OIG determines that the awardee institution is not prepared to handle the allegation in a manner consistent with this part;

(2) When the OIG determines that NASA involvement is needed to protect the public interest, including public health and safety;

(3) When the OIG determines that the allegation involves an awardee institution of sufficiently small size that it cannot reasonably conduct the investigation itself;

(4) When the OIG determines that a NASA program or project could be jeopardized by the occurrence of research misconduct; or

(5) When the OIG determines that any of the notifications or information required to be given to the OIG by the awardee institution pursuant to § 1275.103(b) requires NASA to cease its deferral to the awardee institution's procedures and to conduct its own inquiry or investigation.

(d) A copy of the investigation report, evidentiary record, and final determination resulting from an external investigation must be transmitted to the OIG for review. The OIG shall determine whether to recommend to the NASA Adjudication Official, or to the lead investigative organization in cases that involve multiple institutions, acceptance of the investigation report and final determination in whole or in

part. The OIG's decision must be made within 45 days of receipt of the investigation report and evidentiary record. This period of time may be extended by the OIG for good cause. The OIG shall make this decision based on the OIG's assessment of the completeness of the investigation report, and the OIG's assessment of whether the investigating entity followed reasonable procedures, including whether the Respondent had an adequate opportunity to comment on the investigation report and whether these comments were given due consideration. If the OIG decides to recommend acceptance of the results of the external investigation, in whole or in part, the OIG shall transmit a copy of the final determination, the investigation report, and the evidentiary record to the NASA Adjudication Official, and to the NASA Office of the Chief Scientist. When the OIG decides not to recommend acceptance, the OIG must initiate its own investigation.

(e) In the case of an investigation conducted by the OIG, the OIG shall transmit copies of the investigation report, including the Respondent's written comments (if any), the evidentiary record and its recommendations, to the institution, to the NASA Adjudication Official and to the NASA Office of the Chief Scientist.

(f) Upon learning of alleged research misconduct, the OIG shall identify potentially implicated awards or proposals and, when appropriate, shall ensure that program, grant, or contracting officers handling them are informed. Neither a suspicion nor allegation of research misconduct, nor a pending inquiry or investigation, shall normally delay review of proposals. Subject to paragraph (g) of this section, reviewers or panelists shall not be informed of allegations or of ongoing inquiries or investigations in order to avoid influencing reviews. In the event that an application receives a fundable rating or ranking by a review panel, funding can be deferred by the program until the completion of the inquiry or investigation.

(g) If, during the course of an OIG conducted inquiry or investigation, it appears that immediate administrative

action, as described in § 1275.106, is necessary to protect public health or safety, Federal resources or interests, or the interests of those involved in the inquiry or investigation, the OIG shall inform the NASA sponsor for the research and the NASA Office of the Chief Scientist.

§ 1275.103 Role of awardee institutions.

(a) The awardee institutions have the primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct alleged to have occurred in association with their own institutions, although NASA has ultimate oversight authority for NASA research.

(b) When an allegation of research misconduct related to NASA research is made directly to the OIG and the OIG defers to the awardee institution's inquiry or investigation, or when an allegation of research misconduct related to NASA research is made directly to the awardee institution which commences an inquiry or investigation, the awardee institution is required to:

- (1) Notify the OIG if an inquiry supports a formal investigation as soon as this is determined.
- (2) Keep the OIG informed during such an investigation.
- (3) Notify the OIG immediately—
 - (i) If public health or safety is at risk;
 - (ii) If Federal resources, reputation, or other interests need protecting;
 - (iii) If research activities should be suspended;
 - (iv) If there is reasonable indication of possible violations of civil or criminal law;
 - (v) If Federal action is needed to protect the interests of those involved in the investigation; or
 - (vi) If the research community or the public should be informed.
- (4) Provide the OIG with a copy of the investigation report, including the recommendations made to the awardee institution's adjudication official and the Respondent's written comments (if any), along with a copy of the evidentiary record.

(5) Provide the OIG with the awardee institution's final determination, including any corrective actions taken or planned.

(c) If an awardee institution wishes the OIG to defer its own inquiry or investigation, the awardee institution shall complete any inquiry and decide whether an investigation is warranted within 60 days. It should similarly complete any investigation, adjudication, or other procedure necessary to produce a final determination, within an additional 180 days. If completion of the process is delayed, but the awardee institution wishes NASA's deferral of its own procedures to continue, NASA may require submission of periodic status reports.

(d) Each awardee institution must maintain and effectively communicate to its staff, appropriate policies and procedures relating to research misconduct, including the requirements on when and how to notify NASA.

§ 1275.104 Conduct of Inquiry by the OIG.

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

(b) When the OIG decides to initiate a NASA investigation, the OIG must give prompt written notice to the individual or institution 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) When alleged misconduct may involve a crime, the OIG shall determine whether any criminal investigation is already pending or projected. If not, the OIG shall determine whether the matter should be referred to the Department of Justice.

(d) When a criminal investigation by the Department of Justice or another

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Federal agency is underway or under active consideration, the OIG shall determine what information, if any, may be disclosed to the Respondent or to NASA employees.

(e) To the extent possible, the identity of sources who wish to remain anonymous shall be kept confidential. To the extent allowed by law, documents and files maintained by the OIG during the course of an inquiry or investigation of misconduct shall be treated as investigative files exempt from mandatory public disclosure upon request under the Freedom of Information Act.

(f) When the OIG proceeds with its own inquiry, it is responsible for ensuring that the inquiry is completed within 60 days after it is commenced. The OIG may extend this period of time for good cause.

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

§ 1275.105 Conduct of the OIG investigation of research misconduct.

(a) The OIG shall make every reasonable effort to complete a NASA research misconduct investigation and issue a report within 120 days after initiating the investigation. The OIG may extend this period of time for good cause.

(b) A NASA investigation may include:

(1) Review of award files, reports, and other documents readily available at NASA 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 parties 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 Respondent to be heard.

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(c) The OIG may invite outside consultants or experts to participate in a NASA investigation.

(d) During the course of the investigation, the OIG shall provide a draft of the investigation report to the Respondent, who shall be invited to submit comments. The Respondent must submit any comments within 20 days of receipt of the draft investigation report. This period of time may be extended by the OIG for good cause. Any comments submitted by the Respondent shall receive full consideration before the investigation report is made final.

(e) At the end of the investigation proceedings, an investigation report must be prepared that shall include recommended findings as to whether research misconduct has occurred. A recommended finding of research misconduct requires that:

(1) There be a significant departure from accepted practices of the relevant research community for maintaining the integrity of the research record;

(2) The research misconduct be committed intentionally, knowingly, or in reckless disregard of accepted practices; and

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

(f) The investigation report must also be transmitted with the recommendations for administrative action, when recommended findings of research misconduct are made. Section 1275.106 lists possible recommended administrative actions and considerations for use in determining appropriate recommendations.

(g) NASA OIG may elect to proceed with its administrative investigation processes in lieu of a research misconduct investigation under this part when the allegation is against a civil service employee (an intramural researcher).

§ 1275.106 Administrative actions.

(a) Listed in paragraphs (a)(1) through (a)(3) of this section are possible administrative actions that may be recommended by the investigation report and adopted by the adjudication process. They are not exhaustive, and are in addition to any administrative

actions necessary to correct the research record. The administrative actions range from minimal restrictions (Group I Actions) to severe restrictions (Group III Actions), 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 of time an individual, department, or institution obtain special prior approval of particular activities from NASA.

(iii) Require for a specified period of time that an institutional official other than those guilty of research 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) Restrict for a specified period of time designated activities or expenditures under an active award.

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

(3) Group III Actions.

(i) Immediately suspend or terminate an active award.

(ii) Debar or suspend an individual, department, or institution from participation in NASA programs for a specified period of time.

(iii) Prohibit participation of an individual as a NASA reviewer, advisor, or consultant for a specified period of time.

(b) In deciding what actions are appropriate when research misconduct is found, NASA officials should consider the seriousness of the misconduct, including, but not limited to:

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

(ii) Whether the misconduct was an isolated event or part of a pattern;

(iii) Whether the misconduct had a significant impact on the research record, research subjects, or other researchers, institutions, or the public welfare.

§ 1275.107 Adjudication.

(a) The NASA Adjudication Official must review and evaluate the investigation report and the evidentiary record required to be transmitted pursuant to § 1275.102(d) and (e). The NASA Adjudication Official may initiate further investigations, which may include affording the Respondent another opportunity for comment, before issuing a decision regarding the case. The NASA Adjudication Official may also return the investigation report to the OIG with a request for further fact-finding or analysis.

(b) Based on a preponderance of the evidence, the NASA Adjudication Official shall issue a decision setting forth the Agency's findings as to whether research misconduct has occurred and recommending appropriate administrative actions that may be undertaken by NASA in response to research misconduct determined to have occurred. The NASA Adjudication Official shall render a decision within 30 days after receiving the investigation report and evidentiary record, or after completion of any further proceedings. The NASA Adjudication Official may extend this period of time for good cause.

(c) The decision shall be sent to the Respondent, to the Respondent's institution, and, if appropriate, to the Complainant. If the decision confirms the alleged research misconduct, it must include instructions on how to pursue an appeal to the NASA Appeals Official. The decision shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

§ 1275.108 Appeals.

(a) The Respondent may appeal the decision of the NASA Adjudication Official by notifying the NASA Appeals Official in writing of the grounds for appeal within 30 days after Respondent's receipt of the decision. If the decision is not appealed within the 30-day period, the decision becomes the final Agency action insofar as the findings are concerned.

(b) The NASA Appeals Official shall inform the Respondent of a final determination within 30 days after receiving the appeal. The NASA Appeals Official may extend this period of time for good

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cause. The final determination may affirm, overturn, or modify the decision of the NASA Adjudication Official and shall constitute the final Agency action insofar as the findings are concerned. The final determination shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

(c) Once final Agency action has been taken pursuant to paragraphs (a) or (b) of this section, the recommendations for administrative action shall be sent to the relevant NASA components for further proceedings in accordance with applicable laws and regulations.

APPENDIX TO PART 1275—RESEARCH MISCONDUCT

NASA RESEARCH DISCIPLINES AND RESPECTIVE ASSOCIATED ENTERPRISES

1. Aeronautics Research—Aeronautics Enterprise

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2. Space Science Research—Space Science Enterprise
3. Earth Science Research and Applications—Earth Science Enterprise
4. Biomedical Research—Biological and Physical Research Enterprise
5. Fundamental Biology—Biological and Physical Research Enterprise
6. Fundamental Physics—Biological and Physical Research Enterprise
7. Research for Exploration Systems not covered by the disciplines above—Exploration Systems Enterprise
8. Other engineering research not covered by disciplines above—NASA Chief Engineer
9. Other technology research not covered by disciplines above—NASA Chief Technologist

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