

National Science Foundation

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(b) Other adjudicatory proceedings that the Foundation, in its discretion, determines are appropriate for handling under these rules, including proceedings governed by the Administrative Procedure Act requirements for “hearings on the record.” 5 U.S.C. 554 (1982).

(c) Questions arising at any stage of the proceeding which are not addressed in these rules shall be resolved at the discretion of the Director or Presiding Officer.

§ 672.2 Definitions.

(a) Throughout these rules, words in the singular also include the plural, and words in the masculine gender also include the feminine, and vice versa.

(b) *Act* means the particular statute authorizing the initiation of the proceeding.

(c) *Administrative Law Judge* means an Administrative Law Judge appointed under 5 U.S.C. 3105 (see also Pub. L. 95-251, 92 Stat. 183).

(d) *Complainant* means any person authorized to issue a complaint on behalf of the Agency to persons alleged to be in violation of the Act. The complainant shall not be the Presiding Officer or any other person who will participate or advise in the decision.

(e) *Complaint* means a written communication, alleging one or more violations of specific provisions of the Act, Treaties, NSF regulations or a permit promulgated thereunder, issued by the complainant to a person under this subpart.

(f) *Consent Agreement* means any written document, signed by the parties, containing stipulations or conclusions of fact or law, and a proposed penalty, revocation or suspension of a permit, or other sanction.

(g) *Director* means the Director of the National Science Foundation (NSF) or his delegatee.

(h) *Final Order* means (1) an order issued by the Director after an appeal of an initial decision, accelerated decision, a decision to dismiss, or default order, or (2) an initial decision which becomes a final order.

(i) *Foundation*, *Agency*, or *NSF* means the National Science Foundation.

(j) *Hearing* means a hearing on the record open to the public and conducted under these rules.

(k) *Hearing Clerk* is the person with whom all pleadings, motions, and other documents required under this subpart are filed.

(l) *Initial Decision* means the decision issued by the Presiding Officer based upon the official record of the proceedings.

(m) *Party* means any person that participates in a hearing as complainant, respondent, or intervenor.

(n) *Permit* means a permit issued under section 5 of the Antarctic Conservation Act of 1978, 16 U.S.C. section 2404.

(o) *Person* includes any individual, partnership, association, corporation, and any trustee, assignee, receiver or legal successor thereof; any organized group of persons whether incorporated or not; and any officer, employee, agent, department, agency or instrumentality of the Federal Government, of any State or local unit of government, or of any foreign government.

(p) *Presiding Officer* means the attorney designated by the Director to conduct hearings or other proceedings under this subpart.

(q) *Respondent* means any person proceeded against in the complaint.

(r) Terms defined in the Act and not defined in these rules of practice are used consistent with the meanings given in the Act.

§ 672.3 Powers and duties of the Director; Presiding Official; Office of Polar Programs.

(a) *Director*. The Director of NSF shall exercise all powers and duties as prescribed or delegated under the Act and these rules.

(b) The Director may delegate all or part of his authority. Partial delegation does not prevent the Presiding Officer from referring any motion or case to the Director.

(c) *Presiding Officer*. The Director may designate one or more Presiding Officers to perform the functions described below. The Presiding Officers shall be attorneys who are permanent or temporary employees of the Foundation or some other Federal Agency and may perform other duties compatible

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with their authority as hearing officers. Administrative Law Judges may perform the functions of Presiding Officers. The Presiding Officer shall have performed no prosecutorial or investigatory functions in connection with any matter related to the hearing.

(d) The Presiding Officer shall conduct a fair and impartial proceeding, assure that the facts are fully elicited, adjudicate all issues, and avoid delay. The Presiding Officer shall have authority to:

- (1) Conduct administrative hearings under these rules of practice;
- (2) Rule upon motions, requests, and offers of proof, dispose of procedural requests, and issue all necessary orders;
- (3) Administer oaths and affirmations and take affidavits;
- (4) Examine witnesses and receive documentary or other evidence;
- (5) For good cause, upon motion or sua sponte, order a party, or an officer or agent thereof, to produce testimony, documents, or other nonprivileged evidence, and failing the production thereof without good cause being shown, draw adverse inferences against that party;
- (6) Admit or exclude evidence;
- (7) Hear and decide questions of facts, law or discretion;
- (8) Require parties to attend conferences for the settlement or simplification of the issues, or the expedition of facts, law or discretion;
- (9) Issue subpoenas authorized by the Act; and
- (10) Take all actions necessary for the maintenance of order and for the efficient, fair and impartial adjudication of issues arising in proceedings governed by these rules.

(e) *Disqualification; Withdrawal.* (1) The Presiding Officer may not participate in any matter in which he (i) has a financial interest or (ii) has any relationship with a party or with the subject matter which would make it inappropriate for him to act. Any party may at any time by motion made to the Director, or his delegatee, request that the Presiding Officer be disqualified from the proceeding.

(2) If the Presiding Officer is disqualified or withdraws from the proceeding, the Director shall assign a qualified replacement who has none of the infir-

mities listed in paragraph (e)(1) of this section. The Director, should he withdraw or disqualify himself, shall assign the Deputy Director to be his replacement.

(f) *Office of Polar Programs.* The Office of Polar Programs (OPP) manages and operates the national program in Antarctica, including administration of the Antarctic Conservation Act (ACA) permit system. OPP is responsible for investigating alleged violations of the “prohibited acts” section of the ACA and alleged noncompliance with ACA permits. OPP will act as the official complainant in all proceedings under the ACA governed by these rules. OPP may delegate all or part of its investigatory duties to other appropriate NSF employees, other qualified federal employees, or consultants. OPP will prepare complaints with the assistance of designated prosecuting attorneys within NSF’s Office of the General Counsel, other qualified federal attorneys, or other appropriate legal representative selected jointly by OPP and OGC. The designated prosecuting attorney will represent OPP in all proceedings governed by these rules.

(g) The Office of Polar Programs, acting on behalf of the Director, may designate qualified individuals as enforcement officers empowered to execute all of the law enforcement functions set forth in section 10 of the ACA, 16 U.S.C. 2409, as well as any other appropriate actions ancillary to those statutory duties. OPP will provide each enforcement officer with official enforcement credentials for identification purposes and use during execution of official duties.

OPP may also designate knowledgeable individuals to provide educational and other information regarding the Antarctic to tour operators, their clients and employees, and other visitors to the Antarctic.

(h) The Office of the General Counsel, with the concurrence of the Office of Polar Programs, may refer appropriate cases to the Department of Justice for

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possible prosecution of criminal violations of the Antarctic Conservation Act.

[54 FR 7132, Feb. 16, 1989. Redesignated at 58 FR 34718, June 29, 1993, and amended at 59 FR 37438, July 22, 1994; 61 FR 51022, Sept. 30, 1996; 66 FR 42451, Aug. 13, 2001]

§ 672.4 Filing, service, and form of pleadings and documents.

(a) *Filing of pleadings and documents.*

(1) Except as otherwise provided, the original and one copy of the complaint, and the original of the answer and of all other documents served in the proceeding, shall be filed with the Hearing Clerk.

(2) A certificate of service shall accompany each document filed or served. Except as otherwise provided, a party filing documents with the Hearing Clerk, after the filing of the answer, shall serve copies thereof upon all other parties and the Presiding Officer. The Presiding Officer shall maintain a duplicate file during the course of the proceeding.

(3) When the Presiding Officer corresponds directly with the parties, he shall file the original of the correspondence with the Hearing Clerk, maintain a copy in the duplicate file, and send a copy to all parties. Parties who correspond directly with the Presiding Officer shall in addition to serving all other parties send a copy of all such correspondence to the Hearing Clerk. A certificate of service shall accompany each document served under this subsection.

(b) *Service of pleadings and documents*—(1) *Service of complaint.* (i) Service of a copy of the signed original of the complaint, together with a copy of these rules, may be made personally or by certified mail, return receipt requested, on the respondent or his representative.

(ii) Service upon a domestic or foreign corporation or upon a partnership or other unincorporated association which is subject to suit under a common name shall be made by personal service or certified mail, as prescribed by paragraph (b)(1)(i) of this section, directed to an officer, partner, a managing or general agent, or to any other person authorized by appointment or

by Federal or State law to receive service of process.

(iii) Service upon an officer or agency of the United States shall be made by delivering a copy of the complaint to the officer or agency, or in any manner prescribed for service by applicable regulations. If the agency is a corporation, the complaint shall be served as prescribed in paragraph (b)(1)(ii) of this section.

(iv) Service upon a State or local unit of government, or a State or local officer, agency, department, corporation or other instrumentality shall be made by serving a copy of the complaint in the manner prescribed by the law of the State for the service of process on any such persons, or

(A) If upon a State or local unit of government, or a State or local department, agency, corporation or other instrumentality, by delivering a copy of the complaint to the chief executive officer thereof; or

(B) If upon a State or local officer by delivering a copy to such officer.

(v) Proof of service of the complaint shall be made by affidavit of the person making personal service, or by properly executed return receipt. Such proof of service shall be filed with the complaint immediately upon completion of service.

(2) The first page of every pleading, letter, or other document shall contain a caption identifying the respondent and the docket number which is exhibited on the complaint.

(3) The original of any pleading, letter, or other document (other than exhibits) shall be signed by the party filing it or by his representative. The signature constitutes a representation by the signer that he has read the pleading, letter or other document, that to the best of his knowledge, information and belief, the statements made therein are true, and that it is not interposed for delay.

(4) The initial document filed by any person shall contain his name, address and telephone number. Any changes in this information shall be communicated promptly to the Hearing Clerk, Presiding Officer, and all parties to the proceeding. A party who fails to furnish such information and any changes thereto shall be deemed to have waived