

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## OFFICE OF PERSONNEL MANAGEMENT

### 5 CFR Part 337

RIN 3206-AL51

#### Examining System

**AGENCY:** U.S. Office of Personnel Management.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Office of Personnel Management (OPM) is issuing a proposed regulation to amend its direct-hire authority regulations. The amendment is necessary to incorporate a statutory extension of direct-hire authority for certain acquisition positions.

**DATES:** Comments must be received on or before January 23, 2009.

**ADDRESSES:** Send, deliver or fax comments to Angela Bailey, Deputy Associate Director for Talent and Capacity Policy, U.S. Office of Personnel Management, Room 6551, 1900 E Street, NW., Washington, DC 20415-9700; e-mail at [employ@opm.gov](mailto:employ@opm.gov); or fax at (202) 606-2329. Comments may be sent through the Federal eRulemaking Portal at: <http://www.regulations.gov>. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

**FOR FURTHER INFORMATION CONTACT:** Darlene Phelps at (202) 606-0960, by fax at (202) 606-2329, TDD at (202) 418-3134, or by e-mail at [Darlene.Phelps@opm.gov](mailto:Darlene.Phelps@opm.gov).

**SUPPLEMENTARY INFORMATION:** On September 12, 2006, OPM published a final rule at 71 FR 53545 to implement the Service Acquisition Reform Act, section 1413 of Public Law 108-136. This Act allowed department and agency heads (other than the Secretary of Defense) to determine, under regulations prescribed by OPM, when certain Federal acquisition positions are shortage category positions for purposes

of direct-hire authority. The Federal acquisition positions covered by section 1413 are listed in section 433(g)(1)(A) of title 41, United States Code. The authority under section 1413 expired on September 30, 2007.

In the National Defense Authorization Act for Fiscal Year 2008 (NDAA 2008), Public Law 110-181, Congress extended the direct-hire authority for acquisition positions under section 1413 of Public Law 108-136 through September 30, 2012. NDAA 2008, however, did not extend section 1413's reporting requirements.

OPM is amending its regulations to:

a. Update the legal authority citation for section 337.204(c) with section 1413(a) of Public Law 108-136, as amended by section 853 of Public Law 110-181;

b. Update section 337.206(d) to provide that agencies may not make new appointments under this authority after September 30, 2012; and

c. Remove the reporting requirements for this authority currently contained in 5 CFR 337.206(e).

Agencies must comply with public notice requirements prescribed in 5 U.S.C. 3327 and 3330, and 5 CFR part 330, subpart G, with respect to these positions. To comply with public notice requirements, agencies must post a job announcement on OPM's USAJOBS Web site when filling jobs under direct-hire authority.

#### E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

#### Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because it applies only to Federal agencies and employees.

#### List of Subjects in 5 CFR Part 337

Government employees.

U.S. Office of Personnel Management.

**Michael W. Hager,**  
*Acting Director.*

Accordingly, the Office of Personnel Management proposes to amend 5 CFR part 337 as follows:

#### PART 337—EXAMINING SYSTEM

1. Revise the authority citation for part 337 to read as follows:

**Authority:** 5 U.S.C. 1104(a)(2), 1302, 2302, 3301, 3302, 3304, 3319, 5364; E.O. 10577, 3 CFR 1954-1958 Comp., p. 218; 33 FR 12423, Sept. 4, 1968; 45 FR 18365, Mar. 21, 1980; 116 Stat. 2290, sec. 1413 of Pub. L. 108-136 (117 Stat. 1665), as amended by sec. 853 of Pub. L. 110-181 (122 Stat. 250).

#### Subpart B—Direct Hire Authority

2. Revise paragraph (c) of § 337.204 to read as follows:

#### § 337.204 Severe shortage of candidates.

\* \* \* \* \*

(c) A department or agency head (other than the Secretary of Defense) may determine, pursuant to section 1413(a) of Public Law 108-136, as amended by section 853 of Public Law 110-181, that a shortage of highly qualified candidates exists for certain Federal acquisition positions (covered under section 433(g)(1)(A) of title 41, United States Code). To make such a determination, the deciding agency official must use the supporting evidence prescribed in 5 CFR 337.204(b)(1)-(8) and must maintain a file of the supporting evidence for documentation and reporting purposes.

3. Revise paragraph (d) of § 337.206 to read as follows:

#### § 337.206 Terminations, modification, extensions, and reporting.

\* \* \* \* \*

(d) No new appointments may be made under the provisions of section 1413 of Public Law 108-136 after September 30, 2012.

4. Remove paragraph (e) of § 337.206.

[FR Doc. E8-27834 Filed 11-21-08; 8:45 am]

BILLING CODE 6325-39-P

## DEPARTMENT OF AGRICULTURE

### Office of the Secretary

#### 7 CFR Part 3022

RIN 0524-AA34

#### United States Department of Agriculture Research Misconduct Regulations for Extramural Research

**AGENCY:** Office of the Secretary, United States Department of Agriculture.

**ACTION:** Proposed rule.

**SUMMARY:** The U.S. Department of Agriculture (USDA) proposes to establish regulations to implement the

Federal Policy on Research Misconduct applicable to extramural research. The proposed regulation defines research misconduct and establishes basic USDA requirements for the conduct of fair and timely investigations of alleged or suspected infractions. The proposed regulation also includes instructions on USDA administrative actions when research misconduct is found.

**DATES:** Those interested are encouraged to provide comments. Comments must be received on or before December 24, 2008.

**ADDRESSES:** Comments may be submitted by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>, select "Department of Agriculture—All" from the agency drop-down menu, and select "Proposed Rules" from the document type menu, then click "Submit." In the document title column, select the proposed rule with "7 CFR 3022, United States Department of Agriculture Research Misconduct Regulations for Extramural Research" in the title to submit or view public comments and to view supporting and related materials available electronically. Information on using Regulations.gov, including instructions for accessing documents, submitting comments, and viewing the docket after the close of the comment period, is available through the site's "User Tips" link.

- *E-mail:* [peter.laub@usda.gov](mailto:peter.laub@usda.gov) or Fax: (202) 690-1529. Include Regulatory Information Number (RIN) 0524-AA34 in the subject line of the message.

- *Postal Mail/Commercial Delivery:* Please send four copies of your comment (an original and three copies) to Peter Laub, OCFO/CTGPD Room 3451-S, Stop 9010, 1400 Independence Avenue, SW., Washington, DC 20250-9010.

Instructions: All submissions received must include the agency name and RIN for this rulemaking. All comments received will be posted without change to <http://www.regulations.gov>, including any personal information provided.

**FOR FURTHER INFORMATION CONTACT:** Sara Mazie, USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; Telephone: (202) 720-5923; e-mail: [researchintegrity@usda.gov](mailto:researchintegrity@usda.gov).

**SUPPLEMENTARY INFORMATION:**

### Background

On December 6, 2000, the National Science and Technology Council, Office of Science and Technology Policy of the Executive Office of the President (OSTP), published in the **Federal Register** (65 FR 76260) the Federal

Policy on Research Misconduct (OSTP Policy) as a final, government-wide policy addressing research misconduct. The purpose of the policy was to establish: (1) Uniformity among the Federal agencies' definitions of research misconduct, and (2) consistency in Federal agencies' processes for responding to allegations of research misconduct. The OSTP Policy covers both intramural research as well as extramural research.

This proposed rule would establish U.S. Department of Agriculture (USDA or the Department) regulations to permanently implement the provisions of the OSTP Policy applicable to extramural research. An interim USDA Research Misconduct Policy was issued as a Secretary's Memorandum on Research Misconduct Policies and Procedures in July 2006. The Secretary's Memorandum has since expired and been withdrawn. The Secretary's Memorandum was consistent with the OSTP Policy, and the substance of the proposed regulation is the same as the policies and procedures in the former Secretary's Memorandum that relate to extramural research. Accordingly, all USDA agencies that conduct or support extramural research are expected either to: (1) Establish procedures to foster integrity in research activities, respond to allegations of research misconduct, and remedy findings of research misconduct, consistent with applicable laws, regulations, the OSTP Policy, and this proposed regulation; or (2) initiate and sign a standing Memorandum of Understanding (MOU) between the agency and Research, Education and Economics mission area to have another USDA agency act on its behalf in lieu of developing its own research misconduct procedures.

The proposed regulation will be set forth in Title 7 of the Code of Federal Regulations, in a new part 3022 (7 CFR part 3022), referred to below as the regulation.

The proposed rule defines a number of terms that are used in new part 3022. Definitions of the following terms are set forth in § 3022.1: *Adjudication; Agency Research Integrity Officer (ARIO); allegation; applied research; Assistant Inspector General for Investigations; basic research; extramural research; fabrication; falsification; finding of research misconduct; inquiry; intramural research; investigation; OIG; OSTP; plagiarism; preponderance of the evidence; research; research institution; research misconduct; research record; USDA; and USDA Research Integrity Officer (RIO).*

### Impact Analysis

#### *Executive Order 12866*

This proposed rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant because it will not have an annual effect on the economy of \$100 million or more or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

#### *Executive Order 12372*

This program/activity is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### *Executive Order 12988*

This proposed rule has been reviewed under Executive Order 12988, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

#### *Executive Order 13132*

It has been determined that this proposed rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rulemaking will not have a substantial direct effect on States or their political subdivisions. They also will not impact the distribution of power and responsibilities among the various levels of government substantially.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires that an analysis be prepared for each rule with a significant economic impact on a substantial number of small entities. The analysis should describe the rule's impact on small entities and identify any significant alternatives to the rule that would minimize the economic impact on such entities. Section 605 of the Regulatory Flexibility Act allows

USDA to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have such an impact.

USDA certifies that this proposed rule would not have a significant economic impact on a substantial number of small entities. The final rule will have a positive impact on small businesses because of the assistance these entities receive from other agencies. It also will ease the administrative requirements for USDA to offer financial assistance.

#### *Unfunded Mandates Reform Act of 1995*

Title II of the Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531–1538) requires agencies to prepare several analyses before proposing any rule that may result in annual expenditures of at least \$100 million or more in any one year by State, local, and Indian tribal governments, or the private sector. USDA certifies that this proposed rule will not result in expenditures of this magnitude.

#### *Paperwork Reduction Act*

In accordance with section 3507(d) of the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been submitted for approval to the Office of Management and Budget (OMB). Please send written comments to the Office of Management and Budget, Office of Information and Regulatory Affairs, Attention: Desk Officer for USDA,

*oira\_submission@omb.eop.gov* or fax it to (202) 395–5806. Please state that your comments refer to RIN 0524–AA34. Please send a copy of your comments to: (1) RIN 0524–AA34, Regulatory Analysis and Development, PPD, APHIS, Station 3A–03.8, 4700 River Road Unit 118, Riverdale, MD 20737–1238, and (2) Clearance Officer, OCIO, USDA, room 404–W, 14th Street and Independence Avenue, SW., Washington, DC 20250. A comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication of this proposed rule.

The primary recordkeeping requirement is creating written policies and procedures for addressing research misconduct. The total annual average burden per response is approximately 16 hours. However, many Federal agencies already implemented the OSTP Policy and so approximately 99 percent of currently funded institutions already have policies and procedures in place and may spend approximately .5 hour updating them. Another recordkeeping requirement occurs when an institution learns of possible research misconduct

and begins an inquiry, investigation, or both. For fiscal years 2004 through 2006 the Cooperative State Research, Education, and Extension Service (CSREES) (the USDA agency with the majority of extramural awards and therefore, used for burden estimate purposes) had an average of 548 different institutions funded with only five research misconduct allegations. Of the five allegations, one investigation was conducted, three inquiries conducted, and one allegation is pending.

Comments are being solicited from the public (as well as affected agencies) concerning the proposed information collection and recordkeeping requirements. These comments will help USDA:

(1) Evaluate whether the proposed information collection is necessary for the proper performance of our agencies' functions, including whether the information will have practical utility;

(2) Evaluate the accuracy of our estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

(3) Enhance the quality, utility, and clarity of the information to be collected; and

(4) Minimize the burden of the information collection on those who are to respond (such as through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology; e.g., permitting electronic submission of responses).

*Estimate of burden:* Public reporting burden for this collection of information is estimated as follows.

Approximately 543 institutions already have these policies and procedures in place in any given year and spend minimal time (.5 hour) updating them.

*Number of Respondents*—543.  
*Number of Responses per Respondent*—1.

*Annual Average Burden per Response*—5 hour.

*Total Annual Burden*—271.5 hours. Approximately 5 institutions each year spend an average of two days creating these policies and procedures for the first time.

*Number of Respondents*—5.  
*Number of Responses per Respondent*—1.

*Annual Average Burden per Response*—16 hours.

*Total Annual Burden*—80 hours.

Approximately five institutions each year spend 19.5 hours conducting an institutional inquiry.

*Number of Respondents*—5.

*Number of Responses per Respondent*—1.

*Annual Average Burden per Response*—19.5 hours.

*Total Annual Burden*—97.5 hours.

Approximately 1 institution each year must perform an institutional investigation.

*Number of Respondents*—1.

*Number of Responses per Respondent*—1.

*Annual Average Burden per Response*—99.5 hours.

*Total Annual Burden*—99.5 hours.

Copies of this information collection can be obtained from Sara Mazie, USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; Telephone: (202) 720–5923; e-mail: *researchintegrity@usda.gov*.

#### *E-Government Act Compliance*

USDA is committed to compliance with the E-Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to Government information and services, and for other purposes.

#### **List of Subjects in 7 CFR Part 3022**

Intramural research, Research misconduct.

For the reasons set forth in the preamble, it is proposed to amend Title 7 of the Code of Federal Regulations by adding a new part 3022, to read as follows:

#### **PART 3022—RESEARCH INSTITUTIONS CONDUCTING USDA-FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT**

Sec.

- 3022.1 Definitions.
- 3022.2 Procedures.
- 3022.3 Inquiry, investigation, and adjudication.
- 3022.4 USDA panel to determine appropriateness of research misconduct policy.
- 3022.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.
- 3022.6 Notification of USDA of allegations of research misconduct.
- 3022.7 Notification of ARIO during an inquiry or investigation.
- 3022.8 Communication of research misconduct policies and procedures.
- 3022.9 Documents required.
- 3022.10 Reporting to USDA.
- 3022.11 Research records and evidence.
- 3022.12 Remedies for non-compliance.
- 3022.13 Appeals.
- 3022.14 Relationship to other requirements.

**Authority:** Office of Science and Technology Policy (65 FR 76260) and USDA OIG, 7 CFR 2610.1(c)(4)(ix).

**§ 3022.1 Definitions.**

*Adjudication.* The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined.

Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

*Agency Research Integrity Officer (ARIO).* The individual appointed by a USDA agency that conducts research and who is responsible for:

- (1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;
- (2) Informing OIG and the USDA RIO of allegations of research misconduct in the event it is reported to the USDA agency;
- (3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;
- (4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;
- (5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;
- (6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an organizational level that allows an independent, unbiased, and equitable process;
- (7) Immediately notifying OIG and the USDA RIO if:
  - (i) Public health or safety is at risk;
  - (ii) USDA's resources, reputation, or other interests need protecting;
  - (iii) Research activities should be suspended;
  - (iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;
  - (v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;
  - (vi) The scientific community or the public should be informed; or
  - (vii) Behavior that is or may be criminal in nature is discovered at any

point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings; and

(9) Other duties relating to research misconduct proceedings as assigned.

*Allegation.* A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

*Applied Research.* Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

*Assistant Inspector General for Investigations.* The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through a headquarters office and the six regional offices.

*Basic Research.* Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

*Extramural research.* Research conducted by any research institution other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

*Fabrication.* Making up data or results and recording or reporting them.

*Falsification.* 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.

*Finding of research misconduct.* The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

*Inquiry.* The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

*Intramural Research.* Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

*Investigation.* The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

*Office of Inspector General (OIG).* The Office of Inspector General of the United States Department of Agriculture.

*Office of Science and Technology Policy (OSTP).* The Office of Science and Technology Policy of the Executive Office of the President.

*Plagiarism.* The appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

*Preponderance of the evidence.* Proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

*Research.* All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

*Research Institution.* All organizations using Federal funds for research, including, for example, colleges and universities, federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes.

*Research Misconduct.* 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 Record.* The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

*United States Department of Agriculture.* USDA.

*USDA Research Integrity Officer (USDA RIO).* The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

- (1) Overseeing USDA agency responses to allegations of research misconduct;

(2) Ensuring that agency research misconduct procedures are consistent with this part;

(3) Receiving and assigning allegations of research misconduct reported by the public;

(4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;

(5) Monitoring the progress of all research misconduct cases; and

(6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

#### **§ 3022.2 Procedures.**

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

- (a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;
- (b) Objectivity;
- (c) Due process;
- (d) Whistleblower protection;
- (e) Confidentiality; and
- (f) Timely resolution.

#### **§ 3022.3 Inquiry, investigation, and adjudication.**

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

- (a) Initiate an inquiry into any suspected or alleged research misconduct;
- (b) Conduct a subsequent investigation, if warranted;
- (c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and
- (d) Take action to ensure the following:
  - (1) The integrity of research;

(2) The rights and interests of the subject of the investigation and the public are protected;

(3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and

(4) Appropriate safeguards for subjects of allegations, as well as informants.

#### **§ 3022.4 USDA panel to determine appropriateness of research misconduct policy.**

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIO its policy and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a Web site address where such policies and procedures can be accessed. The ARIO to whom the policy and procedures were made available shall convene a panel comprised of the USDA RIO and ARIOs from the Forest Service, the Agricultural Research Service, and the Cooperative State Research, Education, and Extension Service. The Panel will review the research institution's policy and procedures for compliance with the OSTP Policy and render a decision regarding the research institution's ability to adequately resolve research misconduct allegations. The ARIO will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient and that the research institution may proceed with the inquiry, investigation, and adjudication. If the Panel determines that the research institution does not have sufficient policy and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIO will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research

institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

#### **§ 3022.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.**

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIO believes, in his or her sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

- (1) Did not adhere to its own research misconduct procedures;
- (2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or
- (3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.

(b) Additionally, USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIO considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's conducting the extramural research at issue.

(c) In cases where the USDA RIO or ARIO believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIO shall reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIO will immediately notify the research

institution in question. The research institution must then immediately provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

**§ 3022.6 Notification of USDA of allegations of research misconduct.**

Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct involving USDA funds. Anyone who suspects that researchers or research institutions performing Federally-funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(a) OIG may be notified using any of the following methods:

Via the OIG Hotline:

Telephone: (202) 690-1622; (800) 424-9121; (202) 690-1202 (TDD).

E-mail: [usda\\_hotline@oig.usda.gov](mailto:usda_hotline@oig.usda.gov).

U.S. Mail: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026-3399.

(b) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250, Telephone: 202-720-5923, E-mail: [researchintegrity@usda.gov](mailto:researchintegrity@usda.gov).

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research project or research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and

resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

**§ 3022.7 Notification of ARIO during an inquiry or investigation.**

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIO should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

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

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

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

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

**§ 3022.8 Communication of research misconduct policies and procedures.**

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staffs policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

**§ 3022.9 Documents required.**

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any response to such a statement by the subject of original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least three years following the final adjudication of the alleged research misconduct.

**§ 3022.10 Reporting to USDA.**

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, and the written response of the individual who is the subject of the allegation to any recommendations.

**§ 3022.11 Research records and evidence.**

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution shall be inventoried and stored in a secure place and

manner. Research records involving raw data shall include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records when the data or records reside on the instruments or devices. Such copies or data or records shall be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or instruments, the instruments or devices need not be maintained as evidence.

#### § 3022.12 Remedies for non-compliance.

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) who engaged in the research misconduct, proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

#### § 3022.13 Appeals.

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures identify the appeal process when a finding of research misconduct is elevated to the agency.

#### § 3022.14 Relationship to other requirements.

Some of the research covered by this part also may be subject to regulations of other governmental agencies (e.g., a university that receives funding from a USDA agency and also under a grant from another Federal agency). Research covered under this part that is also subject to requirements of other agencies or funding sources must be conducted in compliance with all applicable requirements of this part. USDA agencies may include in their implementation procedures a process for deferring to or collaborating with

other agencies when a research institution receives funding or support from multiple sources and therefore would be subject to multiple research agencies' research misconduct procedures. For example, when a research institution or the OIG or a Federal agency other than the relevant USDA agency, has previously initiated its own inquiry and investigation, the relevant USDA agency may wish to defer its own inquiry or investigation until it receives the results of that external inquiry and investigation. If the relevant USDA agency does not receive the results of the external inquiry within what it believes to be a reasonable time, the relevant USDA agency should proceed with its own inquiry and, if warranted, its own investigation.

Dated: November 6, 2008.

Issued at Washington, DC.

Approved.

**Edward T. Schafer,**

*Secretary, U.S. Department of Agriculture.*

[FR Doc. E8-27607 Filed 11-21-08; 8:45 am]

**BILLING CODE 3410-34-P**

## FARM CREDIT ADMINISTRATION

### 12 CFR Parts 619, 620, and 621

#### RIN 3052-AC35

#### Definitions; Disclosure to Shareholders; Accounting and Reporting Requirements; Disclosure and Accounting Requirements

**AGENCY:** Farm Credit Administration.

**ACTION:** Proposed rule.

**SUMMARY:** The Farm Credit Administration (FCA, we, or our) is proposing to amend and/or make revisions and technical changes to our regulations. These amendments are proposed to clarify FCA's regulations related to disclosure and reporting practices of Farm Credit System (System) institutions. In addition, they will ensure that FCA regulations are consistent with System structural changes and are updated to include changes to accounting and reporting standards.

**DATES:** You may send comments on or before January 23, 2009.

**ADDRESSES:** We offer a variety of methods for you to submit your comments. For accuracy and efficiency reasons, commenters are encouraged to submit comments by e-mail or through the FCA's. As facsimiles (fax) are difficult for us to process and achieve compliance with section 508 of the Rehabilitation Act, we are no longer

accepting comments submitted by fax. Regardless of the method you use, please do not submit your comment multiple times via different methods. You may submit comments by any of the following methods:

- **E-mail:** Send us an e-mail at [reg-comm@fca.gov](mailto:reg-comm@fca.gov).

- **FCA Web site:** <http://www.fca.gov>. Select "Public Commenters," then "Public Comments," and follow the directions for "Submitting a Comment."

- **Federal eRulemaking Portal:** <http://www.regulations.gov>. Follow the instructions for submitting comments.

- **Mail:** Gary K. Van Meter, Deputy Director, Office of Regulatory Policy, Farm Credit Administration, 1501 Farm Credit Drive, McLean, VA 22102-5090.

You may review copies of comments we receive at our office in McLean, Virginia, or from our Web site at <http://www.fca.gov>. Once you are in the Web site, select "Public Commenters," then "Public Comments," and follow the directions for "Reading Submitted Public Comments." We will show your comments as submitted, but for technical reasons we may omit items such as logos and special characters. Identifying information that you provide, such as phone numbers and addresses, will be publicly available. However, we will attempt to remove e-mail addresses to help reduce Internet spam.

#### FOR FURTHER INFORMATION CONTACT:

Thomas R. Risdal, Senior Policy Analyst, Office of Regulatory Policy, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4498, TTY (703) 883-4434, or Robert Taylor, Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102-5090, (703) 883-4020, TTY (703) 883-4020.

#### SUPPLEMENTARY INFORMATION:

##### I. Objectives

The objectives of this proposed rule are to:

- Clarify the FCA regulations related to disclosure and reporting practices of System institutions; and

- Ensure that FCA regulations are consistent with System structural changes and updated to include changes to accounting and reporting standards.

##### II. Background

The Farm Credit Amendments Act of 1985 (1985 Amendments)<sup>1</sup> added provisions to the Farm Credit Act of 1971, as amended (Act),<sup>2</sup> requiring FCA to regulate the disclosure and reporting

<sup>1</sup> Pub. L. 99-205, 99 Stat. 1678, Dec. 23, 1985.

<sup>2</sup> Pub. L. 92-181, 85 Stat. 583, Dec. 10, 1971.