

(i) The practice of law, unless it is uncompensated and in the nature of community service, or unless it is on behalf of himself, his parents, spouse, or minor children;

(ii) Any criminal or habeas corpus matter, be it Federal, State, or local; or

(iii) Litigation, investigations, grants or other matters in which the Department of Justice is or represents a party, witness, litigant, investigator or grant-maker.

(2) Where application of the restrictions of paragraph (b)(1) of this section will cause undue personal or family hardship; unduly prohibit an employee from completing a professional obligation entered into prior to Government service; or unduly restrict the Department from securing necessary and uniquely specialized services, the restrictions may be waived in writing based upon a determination that the activities covered by the waiver are not expected to involve conduct prohibited by statute or Federal regulation. Employees should refer to DOJ Order 1735.1 on obtaining waivers. The Order is available from the agency designee which, for purposes of this rule, shall be the Deputy Designated Agency Ethics Official for the component.

(c) *Prior approval for outside employment.* (1) An employee must obtain written approval before engaging in outside employment, not otherwise prohibited by paragraph (b) of this section that involves:

(i) The practice of law; or

(ii) A subject matter, policy, or program that is in his component's area of responsibility.

(2) Employees should refer to DOJ Order 1735.1 for procedures on obtaining prior approval. A waiver granted pursuant to paragraph (b)(2) of this section will be sufficient to satisfy this prior approval requirement.

(3) Approval shall be granted only upon a determination that the outside employment is not expected to involve conduct that is prohibited by statute or Federal regulation.

TITLE 28—[AMENDED]

CHAPTER I—DEPARTMENT OF JUSTICE

PART 45—[AMENDED]

2. The authority citation for part 45 is revised to read as follows:

Authority: 5 U.S.C. 301, 901, 7301; 18 U.S.C. 207, 208; 28 U.S.C. 503, 528; DOJ Order 1735.1.

§§ 45.735-1—45.735-3, 45.735-6—45.735-5 [Amended]

3. Part 45 is amended by revising the part heading to read "Employee Responsibilities" and removing the following sections:

§§ 45.735-1 through 45.735-3

§ 45.735-5(a)

§§ 45.735-6 through 45.735-7

§§ 45.735-8 through 45.735-27

Appendix

§ 45.735-4 [Redesignated as § 45.2 and amended]

4. Section 45.735-4 is redesignated as § 45.2

§ 45.735-5(b) [Redesignated as § 45.3 and amended]

5. Section 45.735-5(b) is redesignated as § 45.3 and the section heading is revised to read "Financial interest exemptions."

§ 45.735-7a [Redesignated as § 45.4]

6. Section 45.735-7a is redesignated as § 45.4.

7. A new § 45.1 is added to read as follows:

§ 45.1 Cross-reference to ethical standards and financial disclosure regulations.

Employees of the Department of Justice are subject to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the Department of Justice regulations at 5 CFR part 3801 which supplement the executive branch-wide standards, the executive branch-wide financial disclosure regulations at 5 CFR part 2634 and the executive branch-wide employee responsibilities and conduct regulations at 5 CFR part 735.

[FR Doc. 96-29932 Filed 11-22-96; 8:45 am]

BILLING CODE 4410-AR-M

NATIONAL SCIENCE FOUNDATION

5 CFR Ch. XLIII

RINs 3209-AA15, 3145-AA20

Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation

AGENCY: National Science Foundation (NSF or Foundation).

ACTION: Interim rule, with request for comments.

SUMMARY: The National Science Foundation, with the concurrence of the Office of Government Ethics (OGE), is issuing regulations for officers and employees of the NSF that supplement the Standards of Ethical Conduct for

Employees of the Executive Branch (Standards) issued by OGE. The rule is a necessary supplement to the Standards, and addresses ethical issues unique to NSF. It restricts employee participation in certain proposals and awards; provides for clearance for participation in NSF-supported conferences and in certain other outside activities, and prescribes certain ethics restriction on Members of the National Science Board.

DATES: Interim rule effective November 25, 1996. Comments are invited and must be received on or before January 24, 1997. Comments will then be evaluated in order to determine what changes, if any, may be needed.

ADDRESSES: Send comments to the Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, Virginia 22230.

FOR FURTHER INFORMATION CONTACT: Charles S. Brown, Designated Agency Ethics Official, Office of the General Counsel, National Science Foundation, telephone 703-306-1060, FAX 703-306-0149.

SUPPLEMENTARY INFORMATION:

I. Background

On August 7, 1992, the Office of Government Ethics published Standards of Ethical Conduct for Employees of the Executive Branch (Standards) that are now codified at 5 CFR part 2635. See 57 FR 35006-35067, as corrected at 57 48557, 57 FR 52583, and 60 FR 51667, and amended at 61 FR 42965-42970 (as corrected at 61 FR 48733) and 61 FR 50689-50691, with additional grade period extensions at 59 FR 4779-4780, 60 FR 6390-6391, 60 FR 66857-66858, and 61 FR 40950-40952. The Standards took effect on February 3, 1993, and set uniform standards of ethical conduct for all executive branch personnel.

With the concurrence of OGE, 5 CFR 2635.105 authorizes executive branch agencies to publish agency-specific supplemental regulations that are necessary to properly implement agency ethics programs. The Foundation, with OGE's concurrence, has determined that the following supplemental rule, being codified in new chapter XLIII of 5 CFR, consisting of part 5301, is necessary to successfully implement NSF's ethics program in light of NSF's unique programs, structure, and operations. Today NSF also published in the Federal Register regulations that repeal portions of its conflict of interest and standards of conduct regulations that are superseded by 5 CFR part 2635 and by these supplemental regulations.

II. Analysis of the Regulations

Section 5301.101 General

Section 5301.101(a) explains that the regulations contained in the interim rule apply to all NSF employees, including members of the National Science Board (NSB), and that they supplement the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635.

Section 5301.101(b) sets forth definitions that apply to the interim rule. While the rule contains provisions applicable to special Government employees, including Members of the NSB, particular substantive provisions apply to special Government employees and NSB Members only when the substantive language specifically makes that provision applicable. Thus, for purposes of the NSF supplemental regulations only, the definitional language in paragraph (b)(2) defines the term "employee" to exclude special Government employees, including Members of the NSB. Exclusion of NSB Members from this definitional language facilitates the adoption of slightly different supplemental standards for NSB Members than those applicable to other NSF employees. The definition at § 5301.101(b)(2) has no effect on the manner in which 5 CFR part 2635 applies to NSB Members or other special Government employees. They continue to be covered by the definition of an employee at 5 CFR 2635.102(h) and to be subject to the standards in part 2635 applicable to all employees of the executive branch, including special Government employees.

The definition of "award" in paragraph (b)(1) is intended to make it clear that, for purposes of interpreting the standards set forth in §§ 5301.102 through 5301.105 of this interim rule, the term is to be broadly construed to cover financial arrangements made by the Government including, but not limited to, those that are in the nature of a grant, contract, cooperative agreement, or loan. The definition of a "proposal" in paragraph (b)(4) is included to make it clear that, for similar purposes, the term covers any application for such a financial arrangement, even though it is not technically denominated a "bid" or "proposal."

A definition of "institution" is provided in paragraph (b)(3). Since NSF awards are ordinarily made to "institutions," paragraph (b)(3) makes it clear that this term is to be interpreted broadly. In accordance with OGE formal advisory opinion 82 OGE 1, regarding the breadth of the term "organization," as used in 18 U.S.C. 208 and applied to

State colleges, universities, and higher education systems, the definition applies to all parts of multi-institution State or city university systems. (See pp. 851–857 of the bound volume available from the Government Printing Office entitled *The Informal Advisory Letters and Memoranda and Formal Opinions of the United States Office of Government Ethics (1979–1988)*.)

However, the definition treats consortia as separate "institutions" from the colleges and universities that belong to them.

Section 5301.102 Participation in Proposals and Awards

Section 5301.102(a) supplements subpart E (Impartiality in Performing Official Duties) of 5 CFR part 2635 with additional standards to be used in determining whether NSF employees should or should not participate as part of their official duties in proposals and awards. Where disqualification is not mandated by 18 U.S.C. 208, subpart E creates a mechanism for determining whether employees should be disqualified on grounds of lack of impartiality from participation in proposals, awards, and other particular matters involving specific parties. With the exception of party matters that affect the financial interests of a member of the employee's household, the mechanism in subpart E is specifically triggered only when a person with whom the employee has a covered relationship is a party or represents a party to the matter. The definition of a "covered relationship" in 5 CFR 2635.502(b)(1), however, does not cover all the affiliations and relationships that NSF believes should be considered in determining whether an NSF employee's participation in a proposal or award is appropriate.

Paragraph (a)(3) of § 5301.102 lists the additional relationships that are likely to raise questions about an NSF employee's ability to participate with complete impartiality in proposals and awards involving the persons with whom the employee has the affiliation or relationship. As provided in paragraph (a)(1) of § 5301.102, one effect of paragraph (a)(3) is to create additional categories of covered relationships for NSF employees that are to be addressed under all or part of the mechanism set forth in subpart E. For certain relationships, paragraph (a)(2) eliminates the discretion an employee is otherwise given by 5 CFR 2635.502(a) to make the initial judgment call as to whether his or her participation would cause a reasonable person to question the employee's impartiality in the matter. Paragraph (a)(2) provides that

where an affiliation listed in paragraph (a)(3) is denoted as "automatically disqualifying," the employee is disqualified from participating in a proposal or award to which the institution or person is a party unless the employee's participation is authorized by the agency designee with the concurrence of the Office of the General Counsel.

The Foundation has long recognized that prospective, current, and recent NSF employees are likely to be perceived as having an unfair advantage in obtaining NSF awards. Section 5301.102(b) continues NSF's current practice of making sure that employees disclose the involvement or likely involvement of prospective, current, or recent NSF employees in a proposal or award to an appropriate official who, in turn, will ensure that the proposal is fairly evaluated or the award is fairly administered.

Section 5301.102(b) also requires employees to disclose the involvement or likely involvement of current Members of the NSB. These Members are special Government employees, but because they constitute NSF's governing body, they too may be perceived as benefiting from an unfair advantage in obtaining NSF awards. Nonetheless, Members of the NSB are appointed by the President and are not "recruited" by NSF in the same manner as are prospective NSF employees. For this reason, NSF has decided not to require the reporting of the involvement or likely involvement of "prospective" NSB Members. Section 5301.102(b) also does not impose a reporting requirement with respect to "recent" NSB Members. Members work at NSF for so few days a year that recent NSB Members are unlikely to have developed close ties with NSF employees who might handle a proposal or award to which the recent NSB Member is a party.

Section 5301.103 Outside Employment and Activities

Pursuant to 5 CFR 2635.802(a), § 5301.103(a) of this interim rule imposes restrictions on NSF employees engaging in certain outside employment and activities. It prohibits them from receiving any form of compensation or reimbursement from an NSF award, serving as principal investigator or project director under an NSF award, and receiving compensation or expenses for participating in conferences and other events supported by NSF funds. The prohibitions are imposed on the basis of NSF's determination that employees' participation in such activities would be likely to raise questions as to whether they were

improperly using their official positions for private gain.

Under 5 CFR 2635.803, an agency may, by supplemental regulation, require employees to obtain prior approval before engaging in outside employment or activities where it determines that such a requirement is necessary or desirable for the purpose of administering its ethics program. The Foundation has made that determination with respect to the requirements for prior approval of outside employment and activities set forth in § 5301.103(b).

Section 5301.103(b)(1) requires NSF employees to obtain prior approval from an agency designee to engage in compensated outside employment with any institution or person doing or expected to do business with NSF, or to serve, with or without compensation, on such an institution's visiting committee. This is a new requirement intended to help protect employees from inadvertent violation of substantive ethics laws and regulations.

Section 5301.103(b)(2)(i) is similar to a previous NSF rule requiring permission from an ethics counselor in the Office of the General Counsel to hold a policymaking office in a research institution, scientific society, or professional association. It is intended to ensure that NSF employees wishing to hold such positions receive appropriate assistance from an ethics official in dealing with the complex issues that arise from affiliations of this character.

Section 5301.103(b)(2)(ii) imposes an approval requirement for NSF employees who wish to participate, in their personal capacities, in NSF-funded events where the participation takes the form of presenting a paper, or serving as organizer, director, proceedings editor, or session chairperson. The Foundation is concerned that some may perceive NSF employees to be in a better position than others to enhance their personal professional credentials by such participation in NSF-supported events. This approval requirement is therefore intended to ensure that employees actually do not misuse their official positions in participating in NSF-supported events in their personal capacities.

Section 5301.103(b)(3) sets forth the standard to be used by officials who review and approve requests to engage in the outside activities specified in paragraph (b). This standard is intended to ensure that these determinations are not made arbitrarily, but on the basis of applicable statutes part 2635, and this supplemental regulation.

Section 5301.104 Participation in NSF-Supported Conferences

For employees who wish to participate in their personal capacities in NSF-supported events, § 5301.104(a) provides cross-references to the relevant prohibitions and approval requirements contained in § 5301.103.

Section 5301.104(b) addresses the concern that some may perceive NSF employees to be in a better position than others to enhance their professional standing by participating in NSF-sponsored events. Very often, those presenting papers, chairing sessions, editing proceedings, or serving as directors or organizers at conferences or other scientific events will take credit for that participation on their resumes with the expectation that they will be accorded some recognition for these professional activities. The fact that the employee's participation takes place in an official rather than a personal capacity is unlikely to have a bearing on the degree to which that participation enhances his or her credentials and professional standing.

Paragraph (b)(1) thus serves as a corollary to the prohibitions and prior approval requirements in § 5301.103(a)(3) and (b)(2)(iii) that apply to personal participation in NSF-supported events. With an exception for events that primarily serve NSF purposes, it requires prior approval for certain forms of participation in NSF-funded events when undertaken by NSF employees as part of their official duties. The approval standard set forth in § 5301.104(b)(2) requires a balancing of the importance of the employee's official participation against the likelihood that his or her participation may be viewed as use of official position to enhance the employee's professional credentials.

Section 5301.105 Restrictions Applicable to Members of the National Science Board

Much like § 5301.102(a), § 5301.105(a) supplements subpart E of 5 CFR part 2635 with additional standards to be used in determining whether National Science Board (NSF) Members should or should not participate as part of their official duties in proposals and awards. As with § 5301.102(a), the definition of a "covered relationship" in 5 CFR 2635.502(b)(1) does not cover all the affiliations and relationships that NSF has determined need to be considered in deciding whether an NSF Member's participation in a proposal or award is appropriate.

Paragraph (a)(3) lists the additional relationships that are likely to raise

questions about the Member's ability to participate with complete impartiality in proposals and awards involving the persons with whom the Member has the affiliation or relationship. Paragraphs (a)(3)(i)(A) and (a)(3)(ii) denote relationships as "automatically disqualifying." Here the Member is disqualified from participating unless the NSB Chairman or the Designated Agency Ethics Official authorizes the Member to participate in accordance with paragraph (a)(2). Affiliations not identified as "automatically disqualifying" in paragraph (a)(3)(i) will be addressed in the same manner as covered relationships described in subpart E of 5 CFR part 2635.

Section 5301.105(b)(1) maintains the NSF's previous rule barring Members from representing themselves or others in dealings with NSF staff. National Science Board Members are special Government employees who ordinarily work at NSF for so few days per year that they are not covered by the sixty-one-day threshold on the agency-wide representation restriction contained in 18 U.S.C. 205. Yet unlike most special Government employees, NSB Members have significant decisionmaking responsibility for management of the agency. The Foundation has found that a prohibition on NSB Members negotiating with NSF staff prevents even the appearance that they are in a position to misuse their official positions to improperly influence normal decisionmaking processes.

Section 5301.105(b)(2) maintains the NSF's previous restrictions on Members' receipt of compensation from NSF awards made during their terms of service and, in so doing, strikes a balance between their role as NSB Members and their continuing outside careers in science, engineering, and education.

III. Matters of Regulatory Procedure *Administrative Procedure Act*

The National Science Foundation has found that good cause exists under 5 U.S.C. 553 (b) and (d) for waiving, as unnecessary and contrary to the public interest, the general notice of proposed rulemaking and the 30-day delay in effectiveness as to this final rule. Similar regulations have been applicable to NSF employees under the now suspended NSF regulations contained in 45 CFR parts 680, 681, 682, 683, and 684. An immediate effective date is necessary to effect a smooth regulatory transition and minimize any lapse in applicable procedural and substantive rules relating to prior approval of outside activities due to the

expiration of "grandfathering" provisions contained in the OGE Standards.

Moreover, the rulemaking requirements of the Administrative Procedure Act are not applicable to this final rule because it deals with agency organization, procedure, or practice, 5 U.S.C. 553(b), and relates to matters of agency management and personnel, 5 U.S.C. 553(a)(2). The final rule also contains substantive provisions that grant or recognize an exemption or relieve a restriction such that an immediate effective date is permitted under 5 U.S.C. 553(d)(1).

Executive Order 12866

In promulgating this interim rule, the National Science Foundation has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This regulation has not been reviewed by the Office of Management and Budget under that Executive order, as it deals with agency organization, management, and personnel matters and is not, in any event, deemed a significant rule thereunder.

Regulatory Flexibility Act

The National Science Foundation has determined under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this regulation will not have significant economic impact on a substantial number of small entities, because it primarily affects NSF employees, as well as prospective and former NSF employees.

Paperwork Reduction Act

The National Science Foundation has determined that the Paperwork Reduction Act (44 U.S.C. chapter 35) does not apply, because this regulation does not contain any information collection requirements that require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 5301

Conduct standards, Conflict of interests, Ethical standards, Executive Branch Standards of Conduct, Government employees, National Science Foundation.

Dated: November 14, 1996.
Lawrence Rudolph,
General Counsel, National Science Foundation.

Approved: November 18, 1996.
Stephen D. Potts,
Director, Office of Government Ethics.

For the reasons set forth in the preamble, the National Science Foundation, with the concurrence of the Office of Government Ethics, is amending title 5 of the Code of Federal Regulations by adding a new chapter XLIII, consisting of part 5301, to read as follows:

CHAPTER XLIII—NATIONAL SCIENCE FOUNDATION

PART 5301—SUPPLEMENTAL STANDARDS OF ETHICAL CONDUCT FOR EMPLOYEES OF THE NATIONAL SCIENCE FOUNDATION

Sec.

5301.101 General.

5301.102 Participation in proposals and awards.

5301.103 Outside employment and activities.

5301.104 Participation in NSF-supported conferences.

5301.105 Restrictions applicable to Members of the National Science Board.

Authority: 5 U.S.C. 7301; 5 U.S.C. App. (Ethics in Government Act of 1978); 42 U.S.C. 1870(a); E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR 1990 Comp., p. 306; 5 CFR 2635.105, 2635.502, 2635.802(a), 2635.803.

§ 5301.101 General.

(a) *Purpose.* In accordance with 5 CFR 2635.105, the regulations in this part apply to employees of the National Science Foundation (NSF), including Members of the National Science Board. They supplement the Standards of Ethical Conduct for Employees of the Executive Branch contained in 5 CFR part 2635.

(b) *Definitions.* For purposes of this part, unless a provision plainly indicates otherwise:

(1) *Award* means any grant, contract, cooperative agreement, loan, or other arrangement made by the Government.

(2) *Employee* has the meaning set forth in 5 CFR 2635.102(h), except that, for purposes of this part, it shall not include a special Government employee.

(3) *Institution* means any university, college, business firm, research institute, professional society, or other organization. It includes all parts of a university or college, including all institutions in a multi-institution State or city system. It includes any university consortium or joint

corporation, but not the individual universities that belong to such a consortium. Those universities shall be considered separate institutions for purposes of this part.

(4) *Proposal* means an application for an award and includes a bid.

§ 5301.102 Participation in proposals and awards.

(a) *Participation in proposals and awards.* (1) For the purpose of determining whether an employee or a special Government employee, other than a Member of the National Science Board, should participate as part of his official duties in a proposal or award, the affiliations and relationships listed in paragraph (a)(3) of this section shall be considered additional "covered relationships" for purposes of applying 5 CFR 2635.502. Except as provided in paragraph (a)(2) of this section, they shall be treated as disqualifying to the same extent as the covered relationships listed in 5 CFR 2635.502(b)(1).

(2) Where an affiliation or relationship is listed in paragraph (a)(3) of this section as "automatically disqualifying," an employee shall not participate in a proposal or award in which the institution or other person with whom the employee has a covered relationship is or represents a party unless participation is authorized in accordance with 5 CFR 2635.502(d) by the agency designee, with the concurrence of an ethics counselor in the Office of the General Counsel.

(3) An employee has a covered relationship, within the meaning of 5 CFR 2635.502(b)(1), with:

(i) An institution with which the employee is affiliated through:

(A) Membership on a visiting committee or similar body at the institution. The relationship is automatically disqualifying where the particular department, school, or faculty that the visiting committee or similar body advises originated the proposal or where a proposal from the department, school, or faculty formed the basis for the award;

(B) Current enrollment of the employee or a member of the employee's household as a student;

(C) Receipt and retention of an honorarium or other form of compensation, award, or off-duty travel payment from the institution within the last twelve months. The relationship is automatically disqualifying, unless the payment or award was received before beginning Government service; and

(ii) A person who is an investigator or project director on or who otherwise is identified in a proposal as a party to the

proposal or award and with whom the employee has:

(A) A family relationship as sibling, parent, spouse, or child. Any such relationship is automatically disqualifying;

(B) Associated, in the past or currently, as thesis advisor or thesis student;

(C) Collaborated on a project, book, article, report, or paper within the last 48 months; or

(D) Co-edited a journal, compendium, or conference proceedings within the last 24 months.

(b) *Reporting involvement of prospective, current, or recent employees.*

(1) When an employee who is participating in a proposal or award becomes aware that a prospective, current, or recent NSF employee or current National Science Board member is or is likely to become a member of the research group or project staff under that proposal or award, the employee shall bring that circumstance to the attention of an agency designee. For purposes of this paragraph:

(i) A "recent NSF employee" is any former NSF employee who left the NSF within the year before submission of the proposal at issue or on which the award was based.

(ii) A "prospective NSF employee" is any person being recruited by an NSF official for a specific opening and from whom the official has received an indication of mutual interest. Such a person is a "prospective NSF employee" even though those recruiting have not extended an offer and even though the person might not accept an offer if it were extended.

(2) The agency designee shall review the circumstances to determine what action, if any, should be taken to assure that the proposal or award is administered impartially and otherwise in compliance with applicable laws and regulations, including this part, 5 CFR part 2635, 18 U.S.C. 207 and 208, and 45 CFR part 680.

§ 5301.103 Outside employment and activities.

(a) *Prohibited outside employment and activities.* (1) An NSF employee may not receive, directly or indirectly, any salary, consulting fee, honorarium, or other form of compensation for services, or reimbursement of expenses, from an NSF award.

(2) An NSF employee may not serve as principal investigator or project director under an NSF award.

(3) An NSF employee may not receive, directly or indirectly, any honorarium or any other form of compensation, or reimbursement of

expenses from anyone, other than the United States, for participating in an event supported by NSF funds.

(b) *Prior approval of outside employment and activities.* (1) An employee shall obtain written approval from an agency designee before:

(i) Engaging in compensated outside employment with any person or institution (including any for-profit, non-profit, or governmental organization) which does business or may reasonably be expected to do business with the NSF. For these purposes, "employment" means any form of non-Federal employment or business relationship involving the provision of personal services by the employee. It includes, but is not limited to, personal services as an officer, director, employee, agent, attorney, consultant, contractor, general partner, trustee, teacher, or speaker. It includes writing when done under an arrangement for publication of the written product; or

(ii) Serving, with or without compensation, on a visiting committee with any institution that does business or may reasonably be expected to do business with NSF.

(2) In addition to any prior approval required in paragraph (b)(1) of this section, an employee shall obtain prior written approval:

(i) From an ethics counselor in the Office of the General Counsel before participating, with or without compensation, as a policymaking officer of any research or educational institution or any scientific society or professional association; and

(ii) From his Assistant Director or Office head before serving in a personal capacity as an organizer, director, proceedings editor, or session chairperson for a conference, workshop, or similar event supported by NSF funds, or before presenting a paper at such an event.

(3) The approvals required by paragraphs (b)(1) and (b)(2) of this section shall be granted only upon a determination by the appropriate NSF official that the outside employment or activity is not expected to involve conduct prohibited by statute or Federal regulations, including 5 CFR part 2635 and this part.

§ 5301.104 Participation in NSF-supported conferences.

An NSF employee may participate in conferences, workshops, and similar events supported by NSF funds provided that:

(a) Where the employee's participation is undertaken in a personal capacity, his participation does

not violate the restrictions on outside employment and activities of § 5301.103(a), and the approval requirements of § 5301.103(b) have been met.

(b) Where the employee's participation is undertaken as part of his official duties as an NSF employee:

(1) The employee shall obtain prior written approval from his Assistant Director or Office head before serving as an organizer, director, proceedings editor, or session chairperson for a conference, workshop, or similar event sponsored by NSF funds, or before presenting a paper at such an event. However, prior approval is not required where the primary purpose of the event is to plan, assess, or publicize NSF programs or needs, or where the subject of the paper or session to be presented focuses on NSF programs or needs.

(2) The approval required by paragraph (b)(1) of this section shall be granted only upon a determination that the importance of the employee's participation outweighs any appearance of use of official position to enhance his personal credentials.

§ 5301.105 Restrictions applicable to Members of the National Science Board.

(a) *Participation in proposals and awards.* (1) For the purpose of determining whether a Member of the National Science Board (Board) should participate as part of his official duties in a proposal or award coming before the Board or any of its committees, the affiliations and relationships listed in paragraph (a)(3) of this section shall be considered "covered relationships" for purposes of applying 5 CFR 2635.502. Except as provided in paragraph (a)(2) of this section, they shall be treated as disqualifying to the same extent as the covered relationships listed in 5 CFR 2635.502(b)(1).

(2) Where an affiliation or relationship is listed in paragraph (a)(3) of this section as "automatically disqualifying," a Member of the National Science Board shall not participate in a proposal or award in which the institution or other person with whom the Member has a covered relationship is or represents a party, unless participation is authorized in accordance with 5 CFR 2635.502(d) by the Chairman of the National Science Board or by the Designated Agency Ethics Official.

(3) A Member of the National Science Board has a covered relationship, within the meaning of 5 CFR 2635.502(b)(1), with:

(i) An institution or other person with which the Member is affiliated through:

(A) Membership on a visiting committee or similar body at the institution. The relationship is automatically disqualifying where the particular department, school, or faculty that the visiting committee or similar body advises originated the proposal or where a proposal from the department, school, or faculty formed the basis for the award; or

(B) Current enrollment of the Member or a member of his household as a student; and

(ii) A person who is an investigator or project director or who is otherwise identified in a proposal as a party to the proposal or award and with whom the Member has a family relationship as sibling, parent, spouse, or child. Any such relationship is automatically disqualifying.

(b) *Outside employment and activities.* (1) A Member of the National Science Board shall not represent himself, herself, or any other person in negotiations or other dealings with an NSF official on any proposal, award, or other particular matter, as defined in 5 CFR 2635.402(b)(3).

(2) A Member of the National Science Board may not receive compensation from any award made while serving on the Board. However, unless prohibited by law, an award may be charged, and a Member may be reimbursed, for actual expenses incurred by the Member in doing work supported by the award. If a Member was an investigator or consultant under an award before appointment to the Board, the award may be charged and the Member may continue to receive compensation to the extent established before the Member's nomination.

[FR Doc. 96-29991 Filed 11-22-96; 8:45 am]

BILLING CODE 7555-01-M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 906

[Docket No. FV96-906-3 FIR]

Oranges and Grapefruit Grown in the Lower Rio Grande Valley in Texas; Revision of Pack and Size Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, with minor modification, the provisions of an interim final rule

revising pack requirements for grapefruit and certain types of oranges under the marketing order covering oranges and grapefruit grown in the Lower Rio Grande Valley in Texas to allow larger sizes of fruit to be marketed in fresh channels. This rule also reduces current minimum size requirements for Texas grapefruit. These actions were recommended by the Texas Valley Citrus Committee (TVCC), the agency responsible for local administration of the marketing order. These changes will enable the industry to market a wider range of sizes of citrus fruit in fresh market channels, thereby meeting consumer demand, increasing sales, and improving returns to growers.

EFFECTIVE DATE: December 26, 1996.

FOR FURTHER INFORMATION CONTACT:

Charles L. Rush, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2522-S, Washington, DC 20090-6456, telephone (202) 690-3670, Fax #(202) 720-5698; or Belinda G. Garza, McAllen Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1313 E. Hackberry, McAllen, Texas 78501; telephone (210) 682-2833, Fax # (210) 682-5942. Small businesses may request information on compliance with this regulation by contacting: Jay Guerber, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2525-S, Washington, DC 20090-6456; telephone (202) 720-2491, Fax # (202) 720-5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 906 (7 CFR part 906), as amended, regulating the handling of oranges and grapefruit grown in the Lower Rio Grande Valley in Texas, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601-674), hereinafter referred to as the "Act."

The Department of Agriculture (Department) is issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12988, Civil Justice Reform. This final rule is not intended to have retroactive effect. This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file

with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided an action is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 20 handlers of oranges and grapefruit subject to regulation under the order and approximately 2,000 orange and grapefruit producers in the production area. Small agricultural service firms are defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than \$5,000,000, and small agricultural producers have been defined as those having annual receipts of less than \$500,000. The majority of Texas orange and grapefruit handlers and producers may be classified as small entities.

This final rule revises pack requirements for grapefruit and certain varieties of oranges to allow larger sizes to be marketed in fresh channels. Pack requirements are stated in terms of certain size designations. Size designations are defined in terms of minimum and maximum diameter. Improved irrigation methods, technological advances, and improved cultural practices have resulted in the Texas citrus industry growing larger, good quality fruit. Pack regulations preclude this fruit from being marketed in fresh market channels (with the exception of small amounts allowed to exceed the maximum specific diameters), and it is generally directed to the processing market. The