

- b. In paragraph (i)(3), by removing the words “/VS Form 18–9” after the words “APHIS Form 7009”.
- c. By revising paragraph (k)(2) to read as set forth below.

**§ 2.38 Miscellaneous.**

\* \* \* \* \*

(k) \* \* \*

(2) No person shall obtain live dogs or cats by use of false pretenses, misrepresentation, or deception.

\* \* \* \* \*

**§ 2.75 [Amended]**

■ 16. Section 2.75 is amended as follows:

■ a. In paragraphs (a)(2) and (a)(2)(i), by removing the words “/VS Form 18–5” after “APHIS Form 7005” each time they appear and by removing the words “/VS Form 18–6” after “APHIS Form 7006” each time they appear.

■ b. In paragraph (a)(3), by removing the words “/VS Form 18–1” after “APHIS Form 7001”.

■ c. In paragraph (b)(2) by removing the words “/VS Form 18–19” after “APHIS Form 7019” and by removing the words “/VS Form 18–20” after “APHIS Form 7020”.

■ d. In paragraphs (a)(1)(iii) and (b)(1)(iii) by removing the word “state” each time it appears and adding the word “State” in its place, and by adding the phrase “(or photographic identification card for nondrivers issued by a State)” immediately following the words “driver’s license number”.

**§ 2.76 [Amended]**

■ 17. In § 2.76, paragraph (a)(4) is amended by removing the word “state” each time it appears and adding the word “State” in its place, and by adding the phrase “(or photographic identification card for nondrivers issued by a State)” immediately following the words “driver’s license number”.

**§ 2.78 [Amended]**

■ 18. In § 2.78, paragraph (d) is amended by removing the words “/VS Form 18–1” after “APHIS Form 7001”.

**§ 2.102 [Amended]**

- 19. In § 2.102, paragraph (a)(3) is amended by removing the words “/VS Form 18–9” after “APHIS Form 7009”.
- 20. In § 2.126, paragraph (b) is revised to read as follows:

**§ 2.126 Access and inspection of records and property.**

\* \* \* \* \*

(b) The use of a room, table, or other facilities necessary for the proper examination of the records and inspection of the property or animals must be extended to APHIS officials by

the dealer, exhibitor, intermediate handler or carrier, and a responsible adult shall be made available to accompany APHIS officials during the inspection process.

■ 21. In § 2.131, paragraphs (a), (b), (c), and (d) are redesignated as paragraphs (b), (c), (d), and (e), respectively, and a new paragraph (a) is added to read as follows:

**§ 2.131 Handling of animals.**

(a) All licensees who maintain wild or exotic animals must demonstrate adequate experience and knowledge of the species they maintain.

\* \* \* \* \*

■ 22. Section 2.132 is amended as follows:

■ a. By revising the section heading.

■ b. By removing paragraphs (b) and (c), redesignating paragraphs (d) and (e) as paragraphs (b) and (c), respectively, and by revising newly redesignated paragraph (b) to read as set forth below.

■ c. In newly designated paragraph (c)(3), by removing the words “random source”.

■ d. By adding a new paragraph (d) to read as set forth below.

■ e. By adding, at the end of the section, the following: “(Approved by the Office of Management and Budget under control number 0579–0254)”.

**§ 2.132 Procurement of dogs, cats, and other animals; dealers.**

\* \* \* \* \*

(b) No person shall obtain live dogs, cats, or other animals by use of false pretenses, misrepresentation, or deception.

\* \* \* \* \*

(d) No dealer or exhibitor shall knowingly obtain any dog, cat, or other animal from any person who is required to be licensed but who does not hold a current, valid, and unsuspended license. No dealer or exhibitor shall knowingly obtain any dog or cat from any person who is not licensed, other than a pound or shelter, without obtaining a certification that the animals were born and raised on that person’s premises and, if the animals are for research purposes, that the person has sold fewer than 25 dogs and/or cats that year, or, if the animals are for use as pets, that the person does not maintain more than three breeding female dogs and/or cats.

\* \* \* \* \*

Done in Washington, DC, this 7th day of July, 2004.

**Bill Hawks,**

*Under Secretary for Marketing and Regulatory Programs.*

[FR Doc. 04–15878 Filed 7–13–04; 8:45 am]

BILLING CODE 3410–34–P

**NATIONAL AERONAUTICS AND SPACE ADMINISTRATION**

**14 CFR Part 1275**

[Notice: 04–081]

RIN 2700–AC50

**Investigation of Research Misconduct**

**AGENCY:** National Aeronautics and Space Administration (NASA).

**ACTION:** Final rule.

**SUMMARY:** The National Aeronautics and Space Administration (NASA) is issuing a final rule to implement the “Federal Policy on Research Misconduct” (the Federal Policy) issued by the Executive Office of the President’s Office of Science and Technology Policy on December 6, 2000. This rule will assist NASA in addressing allegations of research misconduct.

**DATES:** This rule is effective July 14, 2004.

**FOR FURTHER INFORMATION CONTACT:** Mayra N. Montrose, Office of the NASA Chief Scientist, at (202) 358–1492 (voice), (202) 358–3931 (fax).

**SUPPLEMENTARY INFORMATION:**

**Background**

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

In keeping with these objectives, on July 25, 2003, we published in the **Federal Register** Vol. 18, No. 143, pg. 43982, a proposed rule creating a new research misconduct policy and a request for public comment regarding the proposed action. The NASA rule incorporates key aspects of the Federal policy, including the definition of research misconduct as fabrication, falsification or plagiarism, and the definitions of each of these sub-components; the requirements for a finding of research misconduct; and the four-stage process for determining and

resolving allegations of research misconduct; *i.e.*, inquiry, investigation, adjudication, and appeal.

NASA's research mission involves the advancement of research in the fields of aeronautics, space science, Earth science, biomedicine, biology, engineering, and physical sciences (physics and chemistry). NASA fulfills this objective through intramural research performed by NASA researchers and through extramural contracts, cooperative agreements, grants, and Space Act agreements with the private sector, and with other governmental entities. Because of this multiplicity of research arrangements, allegations of research misconduct could arise in any number of ways. In addition, the core principle of the Federal Policy is that while research institutions have the primary responsibility for the inquiry, investigation, and adjudication of allegations of research misconduct, Federal agencies have ultimate oversight authority for the research they fund or support. While there is some overlap in the actions that may be pursued by Federal agencies and research institutions, the rule is designed to provide procedures and criteria for the interaction of NASA with its research partners in dealing with the various contingencies that could arise in the processing of research misconduct allegations.

NASA shall amend 14 CFR part 1260 (Grants Handbook), 14 CFR part 1274 (Commercial agreements with cost sharing), and 48 CFR chapter 18 (NASA FAR Supplement), to reflect the implementation of this policy.

#### Discussion of Comments

During the public comment period on the proposed rule (14 CFR part 1275) that ended on September 23, 2003, NASA received four comments on the proposed rule from interested parties. All four comments expressed concern regarding notification to NASA of the receipt of allegations by an institution. NASA agrees with this concern and is therefore requiring notification only when an allegation leads to an investigation (§1275.103(b)). Three of the comments concerned the lack of clarity in cases where multiple institutions are involved. NASA reworded the policy to clarify that in cases of multiple institutions, a designated lead organization will be primarily responsible for the investigation. Two of the comments requested clarification on NASA's review of a completed investigation prior to undertaking its own investigation (when deemed necessary).

NASA accepts the comments and has added language to §1275.102(d) for clarity.

Two of the comments requested a description of the criteria used by NASA to initiate an investigation and accept or reject an institution's report. NASA modified §1275.103(b) to clarify when NASA needs to be notified of an investigation. NASA did not include the criteria that will be used to accept or reject an institution's report because such a list may limit the Agency's option to initiate such an investigation.

One comment suggested additional language in §1275.102(f) regarding the selection and funding of institutions under investigation. NASA accepted the language. Two comments requested that institutions be informed when NASA is conducting an investigation that affects them. NASA agreed and modified §§1275.102(e) and 1275.107(c). Three of the comments concerned the lack of distinction between policies and procedures governing extramural versus intramural researchers. NASA reviewed the rule and decided that the distinction is stated in §1275.102(a) and detailed in §§1275.104 and 105. Finally, one comment requested that the degree of confidentiality specified in the document is extreme. NASA thinks the language is appropriate and in accord with existing law. Other minor edits were also accepted.

#### Regulatory Evaluation

This rule is a "significant regulatory action" under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of that Order.

#### Small Entities

As required by the Regulatory Flexibility Act (5 U.S.C. 601-612), NASA has considered whether this rule would have a significant economic impact on a substantial number of small entities. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. NASA certifies under 5 U.S.C. 605(b) that this rule will not have a significant economic impact on small business entities.

#### Collection of Information

This rule does not contain any information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

#### Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. NASA has analyzed this rule under that Order and has determined that it does not have implications for federalism.

#### Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it does not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes.

#### Taking of Private Property

This rule would not effect a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Action and Interference with Constitutionally Protected Property Rights.

#### Civil Justice Reform

This rule meets applicable standards in section 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden.

#### Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure in any 1 year of \$100 million or more by a State, local, and tribal government in the aggregate, or by the private sector.

NASA certifies that this regulation will not compel the expenditure in any 1 year of \$100 million or more by State, local, and tribal governments in the aggregate, or by the private sector. Therefore, the detailed statement under section 202 of the Unfunded Mandates Reform Act is not required.

#### List of Subjects in 14 CFR Part 1275

Administrative practice and procedure, Grant programs, Investigations, Research, Science and technology, Scientists.

■ For the reasons discussed in the preamble, the National Aeronautics and Space Administration is amending 14 CFR chapter V by adding part 1275 to read as follows:

## PART 1275—RESEARCH MISCONDUCT

Sec.

- 1275.100 Purpose and scope.
  - 1275.101 Definitions.
  - 1275.102 OIG handling of research misconduct matters.
  - 1275.103 Role of awardee institutions.
  - 1275.104 Conduct of Inquiry by the OIG.
  - 1275.105 Conduct of the OIG investigation of research misconduct.
  - 1275.106 Administrative actions.
  - 1275.107 Adjudication.
  - 1275.108 Appeals.
- Appendix: NASA Research disciplines and respective associated Enterprises

**Authority:** Pub. L. 85–568, 72 Stat. 426, 42 U.S.C. 2473.

### § 1275.100 Purpose and scope.

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

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

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

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

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

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

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

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

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

### § 1275.101 Definitions.

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

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

(c) *Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(d) *Plagiarism* means the appropriation of another person's ideas,

processes, results, or words without giving appropriate credit.

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

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

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

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

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

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

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

(l) *Adjudication* means the formal procedure for reviewing and evaluating the investigation report and the accompanying evidentiary record and for determining whether to accept the recommended findings and any recommendations for administrative actions resulting from the investigation.

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

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

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

**§ 1275.102** **OIG handling of research misconduct matters.**

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

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

(2) Commence its own inquiry or investigation.

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

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

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

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

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

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

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

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

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

(f) Upon learning of alleged research misconduct, the OIG shall identify potentially implicated awards or proposals and, when appropriate, shall ensure that program, grant, or contracting officers handling them are

informed. Neither a suspicion nor allegation of research misconduct, nor a pending inquiry or investigation, shall normally delay review of proposals. Subject to paragraph (g) of this section, reviewers or panelists shall not be informed of allegations or of ongoing inquiries or investigations in order to avoid influencing reviews. In the event that an application receives a fundable rating or ranking by a review panel, funding can be deferred by the program until the completion of the inquiry or investigation.

(g) If, during the course of an OIG conducted inquiry or investigation, it appears that immediate administrative action, as described in § 1275.106, is necessary to protect public health or safety, Federal resources or interests, or the interests of those involved in the inquiry or investigation, the OIG shall inform the NASA sponsor for the research and the NASA Office of the Chief Scientist.

**§ 1275.103** **Role of awardee institutions.**

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

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

(1) Notify the OIG if an inquiry supports a formal investigation as soon as this is determined.

(2) Keep the OIG informed during such an investigation.

(3) Notify the OIG immediately—

(i) If public health or safety is at risk;

(ii) If Federal resources, reputation, or other interests need protecting;

(iii) If research activities should be suspended;

(iv) If there is reasonable indication of possible violations of civil or criminal law;

(v) If Federal action is needed to protect the interests of those involved in the investigation; or

(vi) If the research community or the public should be informed.

(4) Provide the OIG with a copy of the investigation report, including the recommendations made to the awardee

institution's adjudication official and the Respondent's written comments (if any), along with a copy of the evidentiary record.

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

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

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

#### **§ 1275.104 Conduct of Inquiry by the OIG.**

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

(b) When the OIG decides to initiate a NASA investigation, the OIG must give prompt written notice to the individual or institution to be investigated, unless notice would prejudice the investigation or unless a criminal investigation is underway or under active consideration. If notice is delayed, it must be given as soon as it will no longer prejudice the investigation or contravene requirements of law or Federal law-enforcement policies.

(c) When alleged misconduct may involve a crime, the OIG shall determine whether any criminal investigation is already pending or projected. If not, the OIG shall determine whether the matter should be referred to the Department of Justice.

(d) When a criminal investigation by the Department of Justice or another Federal agency is underway or under active consideration, the OIG shall determine what information, if any, may be disclosed to the Respondent or to NASA employees.

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

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

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

#### **§ 1275.105 Conduct of the OIG investigation of research misconduct.**

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

(b) A NASA investigation may include:

(1) Review of award files, reports, and other documents readily available at NASA or in the public domain;

(2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;

(3) Interviews with parties or witnesses;

(4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources;

(5) Cooperation with other Federal agencies; and

(6) Opportunity for the Respondent to be heard.

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

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

(e) At the end of the investigation proceedings, an investigation report

must be prepared that shall include recommended findings as to whether research misconduct has occurred. A recommended finding of research misconduct requires that:

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

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

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

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

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

#### **§ 1275.106 Administrative actions.**

(a) Listed in paragraphs (a)(1) through (a)(3) of this section are possible administrative actions that may be recommended by the investigation report and adopted by the adjudication process. They are not exhaustive, and are in addition to any administrative actions necessary to correct the research record. The administrative actions range from minimal restrictions (Group I Actions) to severe restrictions (Group III Actions), and do not include possible criminal sanctions.

(1) Group I Actions.

(i) Send a letter of reprimand to the individual or institution.

(ii) Require as a condition of an award that for a specified period of time an individual, department, or institution obtain special prior approval of particular activities from NASA.

(iii) Require for a specified period of time that an institutional official other than those guilty of research misconduct certify the accuracy of reports generated under an award or provide assurance of compliance with particular policies, regulations, guidelines, or special terms and conditions.

(2) Group II Actions.

(i) Restrict for a specified period of time designated activities or expenditures under an active award.

(ii) Require for a specified period of time special reviews of all requests for funding from an affected individual,

department, or institution to ensure that steps have been taken to prevent repetition of the research misconduct.

(3) Group III Actions.

(i) Immediately suspend or terminate an active award.

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

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

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

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

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

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

**§ 1275.107 Adjudication.**

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

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

(c) The decision shall be sent to the Respondent, to the Respondent's institution, and, if appropriate, to the Complainant. If the decision confirms the alleged research misconduct, it must include instructions on how to pursue

an appeal to the NASA Appeals Official. The decision shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

**§ 1275.108 Appeals.**

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

(b) The NASA Appeals Official shall inform the Respondent of a final determination within 30 days after receiving the appeal. The NASA Appeals Official may extend this period of time for good cause. The final determination may affirm, overturn, or modify the decision of the NASA Adjudication Official and shall constitute the final Agency action insofar as the findings are concerned. The final determination shall also be transmitted to the NASA Office of the Chief Scientist and the OIG.

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

**Appendix to Part 1275**

**NASA Research Disciplines and Respective Associated Enterprises**

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

Dated: June 8, 2004.

**Sean O'Keefe,**  
*Administrator.*

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**BILLING CODE 7510-01-P**

**FEDERAL TRADE COMMISSION**

**16 CFR Part 305**

**Rule Concerning Disclosures Regarding Energy Consumption and Water Use of Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act ("Appliance Labeling Rule")**

**AGENCY:** Federal Trade Commission.

**ACTION:** Final rule.

**SUMMARY:** The Federal Trade Commission (Commission) announces new ranges of comparability for storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters. The Commission also announces that the current ranges of comparability required by the Appliance Labeling Rule (Rule) for room air conditioners, furnaces, boilers, and pool heaters will remain in effect until further notice.

**DATES:** *Effective Date:* October 12, 2004.

**FOR FURTHER INFORMATION CONTACT:** Hampton Newsome, Attorney, Division of Enforcement, Federal Trade Commission, Washington, DC 20580 (202-326-2889).

**SUPPLEMENTARY INFORMATION:** The Rule was issued by the Commission in 1979, 44 FR 66466 (Nov. 19, 1979), in response to a directive in the Energy Policy and Conservation Act of 1975.<sup>1</sup> The Rule covers several categories of major household appliances and other consumer products including water heaters (this category includes storage-type water heaters, gas-fired instantaneous water heaters, and heat pump water heaters), room air conditioners, furnaces (this category includes boilers), and central air conditioners (this category includes heat pumps).

The Rule requires manufacturers of all covered appliances to disclose specific energy consumption or efficiency information (derived from the DOE test procedures) at the point of sale in the form of an "EnergyGuide" label and in catalogs. It also requires manufacturers of furnaces, central air conditioners, and heat pumps either to provide fact sheets showing additional cost information, or to be listed in an industry directory showing the cost information for their products. The Rule requires manufacturers to include, on labels and fact sheets, an energy consumption or

<sup>1</sup> 42 U.S.C. 6294. The statute also requires the Department of Energy (DOE) to develop test procedures that measure how much energy the appliances use, and to determine the representative average cost a consumer pays for the different types of energy available.