

Policy Act of 1969 [42 U.S.C. 4332(C)]. BLM has concluded that the final rule will not have a significant impact on the quality of the human environment, and therefore, preparation of an Environmental Impact Statement is not necessary. The characteristics and magnitude of predicted impacts of the amended regulations are unchanged from those identified in the Final Rangeland Reform '94 EIS, except that attaining some management objectives could be delayed slightly in the long term because of the postponement provided by the final rule. Resources would continue to be managed under current practices during that period, including the requirements of 43 CFR 4180.1, Fundamentals of Rangeland Health. This section requires the BLM to take appropriate action upon determining that existing grazing management needs to be modified to ensure conformance with the fundamentals. While the fundamentals are more general than either the fallback or State and regional standards and guidelines, they do require management action and will afford some measure of resource protection and result in improvement in rangeland conditions.

At the same time, implementing the final rule would provide for more public involvement in developing State or regional standards and guidelines. Additionally, where locally developed standards and guidelines are nearly complete, implementation of the more general fallback standards and guidelines on a short term interim basis would be likely to create confusion and increased administrative costs.

#### *Unfunded Mandates Reform Act*

Amendment of 43 CFR part 4180.2(f) will not result in any unfunded mandate to State, local, or tribal governments in the aggregate, or to private sector, of \$100 million or more in any one year.

#### *Executive Order 12630*

BLM has analyzed the takings implications and concluded that this final rule does not present a risk of a taking of constitutionally protected private property rights.

#### *Executive Order 12866*

BLM has determined that this final rule is not a significant regulatory action under section 3(f) of Executive Order 12866 and does not require an assessment of potential costs and benefits under section 6(a)(3) of that order. It has been exempted from review by the Office of Management and Budget under that order.

#### *Regulatory Flexibility Analysis*

The final rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act [5 U.S.C. 601 et seq.].

#### *Paperwork Reduction Act*

This final rule does not contain information collection requirements that require approval by the Office of Management and Budget under 44 U.S.C. 3501 et seq.

#### *Executive Order 12988*

The Department has determined that this rule meets the applicable standards provided in sections 3(a) and 3(b)(2) of Executive Order 12988.

#### *Author*

The principal author of this final rule is Tim Salt, Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240.

#### *List of Subjects for 43 CFR Part 4100*

Administrative practice and procedure, Grazing lands, Livestock, Penalties, Range management, Reporting and recordkeeping requirements.

For the reasons stated in the preamble and under the authority of 43 U.S.C. 1740, subpart 4180, part 4100, Group 4100, Subchapter D, of subtitle B of Chapter II of Title 43 of the Code of Federal Regulations is amended as set forth below:

Dated: November 18, 1996.  
Sylvia V. Baca,  
*Acting Assistant Secretary of the Interior.*

#### **PART 4100—GRAZING ADMINISTRATION—EXCLUSIVE OF ALASKA**

1. The authority citation for part 4100 continues to read as follows:

Authority: 43 U.S.C. 315, 315a-315r, 1181d, 1740.

#### **Subpart 4180—Fundamentals of Rangeland Health and Standards and Guidelines for Grazing Administration**

2. Section 4180.2(f) introductory text is revised to read as follows:

\* \* \* \* \*

(f) In the event that State or regional standards and guidelines are not completed and in effect by February 12, 1997, and until such time as State or regional standards and guidelines are developed and in effect, the following standards provided in paragraph (f)(1) of this section and guidelines provided in (f)(2) of this section shall apply and will be implemented in accordance with paragraph (c) of this section. However,

the Secretary may grant, upon referral by the BLM of a formal recommendation by a resource advisory council, a postponement of the February 12, 1997, fallback standards and guidelines implementation date, not to exceed the 6-month period ending August 12, 1997. In determining whether to grant a postponement, the Secretary will consider, among other factors, long-term rangeland health and administrative efficiencies.

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#### **NATIONAL SCIENCE FOUNDATION**

#### **45 CFR Parts 680, 681, 682, 683 and 684**

RIN 3145-AA29

#### **Repeal of Standards of Ethical Conduct for Employees of the National Science Foundation and Rules of Practice for the Foundation**

**AGENCY:** National Science Foundation.

**ACTION:** Interim rule, with request for comments.

**SUMMARY:** The National Science Foundation is repealing most of its conflict-of-interest rules and standards of conduct regulations. This action is necessary, because they were largely superseded by the Standards of Ethical Conduct for Employees of the Executive Branch (Standards) issued by the Office of Government Ethics (OGE) and by the NSF's Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation (Supplemental Standards), issued by NSF, with OGE's concurrence. The NSF is also promulgating rules of practice, under authority independent of 5 CFR part 2635, which generally maintain and, in some instances, replace current NSF practices. In addition the NSF is temporarily retaining its regulatory waivers issued under 18 U.S.C. 208(b)(2).

**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 to determine what changes, if any, are needed.

**ADDRESSES:** Send comments to the Office of the General Counsel, National Science Foundation, 4201 Wilson Boulevard, Room 1265, Arlington, VA 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 that are now codified at 5 CFR part 2635. Today, with OGE's concurrence, the NSF has published in the Federal Register Supplemental Standards of Ethical Conduct for Employees of the National Science Foundation. These Supplemental Standards are being codified in new chapter XLIII of 5 CFR, consisting of part 5301.

The Government-wide Standards and NSF's Supplemental Standards are intended to replace most of the NSF's conflict-of-interest rules and standards of conduct. Therefore, this interim rule repeals most of NSF's previous conflict-of-interest and standards of conduct regulations. This interim rule also prescribes additional rules of practice necessary to maintain public confidence in the integrity of NSF's procedures, as permitted in 5 CFR 2635.105(c)(93). The rules of practice are based on authority independent of 5 CFR part 2635.

Finally, as permitted in 5 CFR 2635.402(d)(1), this interim rule retains NSF's regulatory waivers issued under old 18 U.S.C. 208(b)(2) (1988 edition).

##### II. Analysis of the Regulations

The National Science Foundation is repealing the old subpart A of 45 CFR part 680, superseded by the Standards and Supplemental Standards, and replacing it with rules of agency practice for NSF (new 45 CFR 680.10-680.13, as discussed below).

#### *45 CFR 680.10 Definitions; Cross-References to Employee Ethical Conduct Standards and Financial Disclosure Regulations*

Section (a) sets forth definitions that apply to the interim rule. For purposes of this final rule, paragraph (a)(2) defines "employee" to include anyone working at NSF under the Intergovernmental Personnel Act. But the definition excludes special Government employees, recognizing that § 680.11 of the final rule does not apply to special Government employees (as that term is defined in 18 U.S.C. 202(a)), and that § 680.12 applies differently to former special Government employees who worked for NSF on no more than sixty days in the previous year.

The definition of "award" in paragraph (a)(1) of § 680.10 is intended

to make it clear that, for purposes of interpreting the restrictions contained in §§ 680.11 and 680.12 of the 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 "proposal" in paragraph (a)(4) of § 680.10 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 § 680.10(a)(3), since NSF awards are ordinarily made to "institutions." Paragraph (a)(3) makes it clear that the term is to be interpreted broadly, but the definition treats consortia as separate "institutions" from the individual universities that belong to them.

Paragraph (b) of § 680.10 is a cross referencing provision. It reminds employees of the need to refer to the OGE Standards (5 CFR part 2635), NSF's supplemental Standards (5 CFR part 5301), and the OGE financial disclosure regulations (5 CFR part 2634).

#### *45 CFR 680.11 Staff Involvement With NSF Proposals and Awards*

Section 680.11(a)(1) recognizes that many scientists, engineers, and educators interrupt active research and teaching careers to spend a year or two at NSF. They then return to research and teaching, usually at the same institution from which they came. Many of them, and a few NSF permanent employees, retain some interest or association with the NSF-supported work—for example, an employee may continue supervising the work of a graduate student who is completing a thesis or may retain intellectual connection with a laboratory or project to which he or she will be returning. Section 680.11 codifies current NSF rules of practice designed to prevent conflicts of interest in such situations. Section 680.11(a)(2) requires that a "substitute principal investigator" be appointed to take responsibility for the work and equipment and for representing the institution in dealings with NSF. Section 680.11(a)(3) provides that a substitute principal investigator need not be appointed when work on an award is to be suspended while an individual is employed at NSF.

Section 680.11(b) also codifies current restrictions on employee involvement in certain NSF proposals. It avoids asking active investigators to sacrifice established support for their work in

research or education as a price of public service. However, it also avoids any actuality or appearance that such service is undertaken in the expectation that it will result in new or increased support or favored treatment from NSF. Section 680.11(b)(1) requires that NSF not entertain any proposal in which a current NSF employee would be a senior investigator or the like, unless the proposal is for continuation or extension of work on which the employee was involved before coming to NSF. Section 681(b)(2) requires that any such proposal for continuation or extension of previous work be submitted by someone other than an NSF employee.

Sections 680.11(a) and (b) are published as part of 45 CFR part 680 rather than as part of the NSF's supplemental agency regulations at 5 CFR part 5301 because the limitations and obligations imposed apply mainly to grantees. They complement restrictions on employee conduct imposed by 5 CFR part 5301. Section 680.11(c) cross-references a provision in 5 CFR part 5301 barring employee receipt of compensation or reimbursements from NSF awards. The cross-referenced provision is contained in NSF's Supplemental Standards.

#### *45 CFR 680.12 One-Year NSF Post-Employment Restrictions*

Section 680.12(a) reaffirms NSF's longstanding one-year post-employment restriction on dealings with NSF officials on proposals, projects, and other particular matters. This prohibition also applies to former special Government employees who worked for NSF on more than 60 days in the previous twelve months.

Section 680.12(b) makes it clear that NSF's post-employment restriction is in addition to any statutory post-employment restrictions. This restriction is imposed on the basis of NSF's authority to regulate practice before it with respect to grants and other matter. This section permits the NSF General Counsel to grant limited exceptions to the rule, when such post-employment representation would not be barred by statute.

Section 680.12(c) makes it clear that the NSF post-employment restriction applies to all "particular matters," not just to those involving specific parties.

Section 680.12(d) explains that certain types of contacts by former NSF employees do not violate NSF's post-employment restriction—expression of personal views on policy issues, communications of a personal nature, litigation appearances on the former employee's own behalf, and

presentations of scientific or technical information.

Section 680.12(e) provides for appointment of a substitute negotiator to perform representational functions when a former employee is disqualified from doing so.

#### **45 CFR 680.13 Purposes for "Substitute" Requirements**

Section 680.13 explains the purposes underlying the requirements for appointment of substitute principal investigators and substitute negotiators. The requirements flag the proposals or awards affected by the applicable restrictions, and identify individuals with whom the NSF staff can appropriately deal. Designation of a substitute principal investigator to replace a current NSF employee also identifies an individual responsible for the work and equipment, and reminds all concerned that the NSF employee so replaced will be devoting his or her primary energy to the performance of his or her NSF duties.

#### **Other Regulatory Actions**

The National Science Foundation is also repealing one interpretive section in Subpart B of 45 CFR (old § 680.20), but leaving in effect, as newly redesignated § 680.20, NSF's current regulatory waivers issued under 18 U.S.C. 208(b)(2), as permitted in 5 CFR 2635.402(d)(1).

The National Science Foundation is also repealing the remaining former NSF conflict-of-interests rules and standards of conduct in parts 681, 682, 683, and 684. The Foundation expects to revise procedural and interpretive provisions and incorporate them as appropriate into internal NSF explanatory issuances as permitted in 5 CFR 2635.105(c).

### **III. Matters of Regulatory Procedure**

#### **Administrative Procedure Act**

Pursuant to section 553 (b) and (d) of title 5 of the United States Code, the National Science Foundation has found that good cause exists for waiving the general requirements of notice of proposed rulemaking and delayed effective date. These requirements are being waived because the interim regulations are rules of agency organization, procedure, and practice and because it is in the public interest that these new rules, which continue existing NSF restrictions and practices in many respects, become effective as soon as possible.

#### **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 45 CFR Parts 680, 681, 682, 683, and 684

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

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

For the reasons set forth in the preamble, the National Science Foundation is amending chapter VI of title 45 of the Code of Federal Regulations as follows:

1. The authority citation for part 680 is revised to read as follows:

Authority: 5 U.S.C. 7301; 18 U.S.C. 208 (1988); 42 U.S.C. 1870(a); 5 CFR 2635.105(c)(3), 2635.402(d)(1).

2. The heading of part 680 is revised to read as follows:

#### **PART 680—NATIONAL SCIENCE FOUNDATION RULES OF PRACTICE AND STATUTORY CONFLICT-OF-INTEREST EXEMPTIONS**

3. Subpart A of part 680 is revised to read as follows:

#### **Subpart A—Rules of Practice for the National Science Foundation**

Sec.

680.10 Definitions; cross-references to employee ethical conduct standards and financial disclosure regulations.

680.11 Staff involvement with NSF proposals and awards.

680.12 One-year NSF post-employment restrictions.

680.13 Purposes for "substitute" requirements.

#### **§ 680.10 Definitions; Cross-references to employee ethical conduct standards and financial disclosure regulations.**

(a) *Definitions.* Under this subpart, unless a provision plainly indicates otherwise:

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

(2) *Employee* includes, in addition to any individual defined in 5 CFR 2635.102(h), any individual working at NSF under the Intergovernmental Personnel Act. It includes any part-time or intermittent employee, temporary consultant; but not a special Government employee, as defined in 18 U.S.C. 202(a).

(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 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.

(b) *Cross-references to employee ethical conduct standards and financial disclosure regulations.* Members of the National Science Board and other employees of the National Science Foundation (NSF), including special Government employees, should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635, the National Science Foundation's regulations at 5 CFR part 5301 which supplement the executive branch Standards, and the executive branch financial disclosure regulations at 5 CFR part 2634.

#### **§ 680.11 Staff involvement with NSF proposals and awards.**

(a)(1) Many scientists, engineers, and educators interrupt active research and teaching careers to spend a year or two at NSF and then return to research and teaching, usually at the same institution from which they came. Many such visiting scientists, engineers, and

educators (and a few permanent employees) who have been principal investigators under NSF awards before coming to NSF, retain some interest or association with the work. If an individual is a principal investigator under an NSF award, the individual is not precluded from retaining ties to the work after becoming an NSF employee. The employee may stay in contact with those who are continuing the work in the employee's laboratory or on his or her project. The employee may continue to supervise graduate students. And the employee may visit and work in the laboratory on his or her own time for these and related purposes.

(2) Before a prospective employee comes to NSF, the prospective employee and the grantee institution must designate, subject to NSF approval, a "substitute principal investigator"—i.e., another scientist who will be responsible for the work and equipment and will represent the institution in any dealings with NSF officials while the prospective employee is at NSF.

(3) Appointment of a substitute principal investigator is unnecessary if all work under an award is to be completely suspended while the employee is at NSF. If the work is to be suspended, the employee and the grantee institution must inform the NSF in writing before the employee's employment begins. Work under the award may be resumed when the employee completes his or her NSF employment, and its term may be extended to account for the time lost during the employee's NSF employment.

(b)(1) NSF will entertain no proposal on which a current NSF employee would be a senior investigator or equivalent, unless it is a proposal for continuation or extension of support for work on which the employee served in that capacity before coming to NSF. Any proposal for continuation of NSF support at essentially the same level (with reasonable allowance for inflation) will normally be considered a proposal for continuation or extension if it would support the work of the same investigator and his or her laboratory or group (if any) in the same general field of science, engineering, or education, notwithstanding that the focus of the work may change in response to research opportunities or educational needs.

(2) Someone other than the current NSF employee must submit any such proposal for continuation or extension of work NSF previously supported and handle all negotiations with NSF, but the capacity in which the current NSF

employee will serve should be clearly spelled out in the proposal.

(c) In accordance with 5 CFR 5301.103(a)(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.

#### **§ 680.12 One-year NSF post-employment restrictions.**

(a) For one year after leaving NSF employment, a former NSF employee, including a special Government employee who has performed work for NSF on more than 60 days in the previous twelve months, shall not represent himself, herself, or any other person in dealings with any NSF official on any proposal, project, or other particular matter.

(b) The one-year restriction contained in paragraph (a) of this section is in addition to any post-employment restriction imposed by statute, including 18 U.S.C. 207 and 41 U.S.C. 423. To the extent that any disqualification required by paragraph (a) of this section is not also required by statute, written exceptions may be granted by the NSF's General Counsel, whose decisions shall be final. Exceptions will be rare and will be granted only where strict application of the rules would result in undue hardship for former short-term employees or for other former employees, and when granting an exception would not result in an unfair advantage to the former employee.

(c)(1) Paragraph (a) of this section applies to particular matters involving specific parties, such as grants, contracts, or other agreements; applications for permits, licenses, or the like; requests for rulings or similar official determinations; claims; investigations or audits; charges or accusations against individuals or firms; adjudicatory hearings; and court cases.

(2) For former employees, other than special Government employees, paragraph (a) of this section also applies to particular matters that do not involve specific parties, such as:

(i) Determinations to establish or disestablish a particular program or set its budget level for a particular fiscal year;

(ii) Decisions to undertake or terminate a particular project;

(iii) Decisions to open or not open a contract to competitive bidding;

(iv) General policy or rulemaking—including, for example, decisions on particular NSF rules or formal policy, such as adoption or amendment of a resolution by the National Science Board, promulgation or amendment of an NSF regulation or circular,

amendment of standard grant or contract terms, or changes to NSF manuals or policy documents; and (v) Agency positions on particular legislative or regulatory proposals.

(d) Paragraph (a) of this section does not apply to:

(1) Any expression of a former employee's views on policy issues where the circumstances make it obvious that the former employee is only speaking as an informed and interested citizen, not representing any financial or other interests of his or her own or of any other person or institution with which he or she is associated;

(2) Any appearance or communication concerning matters of a personal or individual nature, such as the former employee's taxes, salary, benefits, possible Federal employment, rights as a former employee, or the application of conflict-of-interest rules to something the former employee proposes to do;

(3) Any appearance on the former employee's own behalf in any litigation or administrative proceeding; or

(4) Any presentation of scientific or technical information (at a site visit, for example) or any other communication of scientific or technical information on work being proposed or conducted.

(e) As soon as his or her NSF employment ceases, a former NSF employee (including any former special Government employee described in paragraph (a) of this section) may again be listed as principal investigator on an NSF award, may be listed as principal investigator in any proposal or award, and may sign a proposal as principal investigator. However, the former employee and the grantee institution shall formally designate, subject to NSF approval, a "substitute negotiator" who, though not principally responsible for the work, will represent the former employee and the institution in dealings with NSF officials on any proposal or project for as long as the former employee would be barred from representational contacts with NSF by paragraph (a) of this section or by statute.

#### **§ 680.13 Purposes for "substitute" requirements.**

Appointment of a "substitute principal investigator" or "substitute negotiator" ensures against unthinking violation of the restrictions on dealings with NSF officials. It serves this purpose by flagging proposals or awards affected by the restrictions and by identifying someone else with whom NSF officials can properly discuss them or negotiate over them. Designation of a substitute principal investigator while an

employee is at NSF has two additional functions: it identifies another person to be responsible for the work and equipment, and it reminds all concerned that during an employee's NSF service his or her attentions should focus on NSF duties.

4. Subpart B of part 680 is amended by removing § 680.20 and redesignating § 680.21 as § 680.20.

5. Under the authority of 42 U.S.C. 1870(a), parts 681, 682, 683, and 684 are removed.

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