

# THE UNIVERSITY OF CHICAGO

*Office of the Provost*

## Policy on Academic Fraud

*Academic fraud is a threat to the intellectual integrity on which the advancement of knowledge depends. Academic fraud can taint the reputation of the University and of its honest scholars and researchers. It can compromise the position of collaborators, subordinates, and supervisors. Fraudulent scholarship can lead other investigators down fruitless paths of inquiry, with potentially enormous sacrifices in knowledge, morale, careers, time, and money. Its occurrence places great strains on collegial interaction.*

“Report of the Provost’s Committee on Academic Fraud,” approved by the University Senate on March 17, 1998

### **PROCEDURES FOR INVESTIGATING ACADEMIC FRAUD**

#### **Section 1. Scope of the Procedures**

These are the University’s procedures for investigating allegations of academic fraud. Academic Fraud involves a deliberate effort to deceive and is distinguished from an honest mistake and honest differences in judgment or interpretation. Academic fraud is defined as plagiarism; fabrication or falsification of evidence, data, or results; the suppression of relevant evidence or data; the conscious misrepresentation of sources; the theft of ideas; or the intentional misappropriation of the research work or data of others.

Charges against students are subject to these procedures when the regulations of external sponsors (e.g., the federal government) are involved, as determined by the Provost's Office. In all other cases, charges against students are subject to these procedures only to the extent that they involve dissertations of students who have received their degrees, or work published or submitted for publication; other cases of alleged academic fraud by students shall be subject to the normal student disciplinary rules governing students.

When academic work at the University is funded by an external institution that has regulations for investigations of this kind, and those regulations contain a definition of the relevant misconduct that is more inclusive than the one stipulated above, then the definition of that institution shall be used to identify the scope of these procedures with respect to allegations involving such academic work. Currently applicable regulations of external funding institutions are appended to these procedures.

#### **Section 2. The Standing Committee on Academic Fraud.**

The Provost of the University shall appoint a Standing Committee on Academic Fraud to coordinate the University’s investigations of allegations of academic fraud. The Standing Committee shall consist of six members drawn from different areas within the University, one of whom shall be appointed by the Provost as the Chair. The members of the Standing Committee shall serve for terms of three years. The initial appointments shall be for staggered terms, with two of the members appointed for one year, two for two years, and two for three years.

### **Section 3. The Initial Inquiry**

#### **A. Procedures**

Any person who has reason to believe that any faculty member, staff member, or student has engaged in an act of academic fraud should make a report of that act to the first responsible administrative official with supervisory power over the person so charged. In the divisions, this official will normally be the department chair; in the schools, this official will normally be the Dean. When such charges are brought to any other person, they should be referred to the appropriate administrative official.

On receiving the charge, the administrative official shall give notice to her or his Dean or, if the administrative official is the Dean, to the Office of the Provost, that a charge has been made.

The administrative official shall also immediately determine whether the academic work in question involves funding from an external institution. If in doubt on this matter, the administrative official should consult with the University's Director of Research Administration. When such funding is involved and the funding institution has its own regulations for investigations of this kind, these procedures shall, if necessary, be supplemented in the manner that is required to make them consistent with those regulations. The administrative official and, if the case is forwarded to it, the Standing Committee shall consult with the Director of Research Administration regarding the requirements, including specific reporting requirements, of external funding institutions. Any reporting to external funding institution shall occur through the Director of Research Administration in conjunction with the Office of the Provost.

The initial administrative official shall assume no authority except to decide whether there is reason to believe that academic fraud may have been committed and, therefore, further investigation is warranted. For this purpose, she or he shall conduct a preliminary and informal inquiry. This official shall request and must be given access to written, printed, machine-readable, and other relevant materials or copies thereof that she or he deems relevant to an assessment of the charge, unless the relevant materials are bound by guarantees of confidentiality that are not waived. If otherwise confidential information is provided for the limited purposes of these procedures, then all parties to the proceedings shall endeavor to insure that this information is used only for the purposes for which it has been released.

The initial administrative official shall have the right to consult in confidence with any person whose advice she or he finds appropriate, including the Standing Committee about these procedures themselves. In any event, this official shall consult with the Dean or, if this official is the Dean, with the Office of the Provost regarding the results of the inquiry before making a final decision about the case.

If the initial administrative official determines that there is no reason to believe that academic fraud may have been committed, she or he shall dismiss the charges, provide a written report to the Dean and the Provost that includes a description of the procedures that have been followed, give a copy of the report to the party charged, and notify in writing the party making the charges. All records and evidence in the case shall be sent to the Provost.

If the administrative official has reason to believe that academic fraud may have been committed, she or he must give the party charged an informal opportunity to respond to the charge that has been made. Normally, this occasion will not include the presence of lawyers; but if the party charged insists on the company of a lawyer, then the administrative official must request that the University provide her or him the assistance of a lawyer, who shall also be present. If the administrative official remains satisfied that there is reason to believe academic fraud may have been committed, she or he must forward the case to the Standing Committee on Academic Fraud, providing a written report on the initial inquiry that includes a statement of the charge, the reasons why it may have merit, the procedures that have been followed, and all records and evidence in the case. When the administrative officer forwards the case (including the written report) to the Standing Committee on Academic Fraud, she or he shall give a written notice to (i) the person who initially brought the matter to the attention of the administrative official, and shall send a copy of the written report to (i) the person charged, (ii) the appropriate Dean, and (iii) the Office of the Provost.

Whenever possible, the decision whether or not to refer the matter to the Standing Committee shall be made within fifteen days after the matter has first been raised.

## **B. Conflict of Interest**

Where the initial administrative official charged with investigating a charge perceives that she or he has a conflict of interest, she or he should refer the matter to the next superior administrative official. If the initial official is a department chair, the next superior official will be the Dean; if the initial official is a Dean, the superior official will be in the Office of the Provost. In consultation, the two shall decide whether the responsible administrative official should remove herself or himself from handling the case. If removal is necessary, the superior official may refer the matter to another person in the department or division or school for investigation, in which case the superior official may still be the one engaged in the consultation required and may still receive the required report. Alternatively, the superior administrative official may act as the original investigating official, in which case her or his superior shall act as the official to be consulted and to receive the required report.

A conflict of interest arises whenever the administrative official has collaborated with the party charged on any research that is the subject matter of the charge or on any matter closely related to it. It also arises whenever the administrative official is bound by blood or marriage to the party charged or whenever any other reason prevents her or him from making an inquiry and disposing of the matter in a fair and impartial manner.

The same standards for conflict of interest apply to the superior administrative official who is required to consult with the initial investigating official prior to a final decision and to members of the Standing Committee, should it become involved in the case.

## **Section 4. Investigation into the Fact of Fraud**

### **A. Selection of the Panel**

Upon receipt of a charge of academic fraud, the Standing Committee shall constitute within fifteen days a special panel of not fewer than three members to investigate the charges. Members of the panel shall ordinarily be drawn from within the University; they shall not include persons closely associated with the individual charged but shall include persons who have knowledge of the field of research of the person charged. Where circumstances require it, the Standing Committee can appoint a person or persons outside the University to the panel. No member of the Standing Committee and no administrative official previously involved in the case may be a panel member.

### **B. The Operation of the Panel**

#### **1. Collection of Evidence**

The panel shall examine the evidence to determine whether or not academic fraud has been committed. Upon request of the panel, the party charged must turn over to this panel any information of the following types that has not previously been provided and that it considers relevant to the allegations of fraud raised by the case:

- i. research notes, papers and notebooks, logs, source documents, computer printouts, and machine-readable materials;
- ii. a list of all current and former collaborators and coworkers;
- iii. a list of published abstracts, papers, and books and copies of abstracts, papers, and books pending publication or review; and
- iv. a list of reports and grant applications submitted to outside foundations and funding agencies and copies of such reports and applications.

The panel may take written or oral evidence from any faculty or staff member and any student in the University and from any party outside the University. The panel shall give the party making the accusation, if she or he is available, the opportunity to provide evidence and to suggest witnesses. Judicial rules governing the admissibility of hearsay evidence, authentication of documents, and the like shall not govern the investigation of the panel except insofar as it chooses to adopt them. The proceedings shall be conducted in confidence to the extent possible.

Where confidential information is relevant to an examination of academic fraud, the party charged shall not be required to produce that information except in a form that preserves the confidential character of the information in question, unless a waiver can be obtained from the relevant parties protected by the promise of confidentiality. Summary data or intermediate tabulations shall be provided to the panel unless shown to violate the rights of privacy of other individuals.

## **2. Rights of the Person Charged**

Copies of any written material or other exhibits presented to the panel shall be provided to the party charged or, when that is not feasible, made available to the party charged for inspection. The party charged is entitled to present evidence; to have the panel consider evidence by a reasonable number of witnesses; to be present when the panel is taking oral testimony from witnesses; and to examine any witness who presents evidence, oral or written, to the panel. The panel shall determine the extent to which the examination of witnesses by the party charged will be oral or written. When that examination is oral, the panel may limit the nature and the extent of the questioning permitted. When the evidence from witnesses presented to the panel is in writing, a copy shall be presented to the party charged for review and comment.

The party charged shall have the right to be accompanied by a lawyer or any other person at any proceeding in which the party charged has a right to be present. If the party charged wishes to have a lawyer present when appearing before the panel, then the party charged shall give the panel written notice in advance of the session at which the lawyer intends to be present. In the event that the party charged chooses to be accompanied by a lawyer, the panel must ask the University to provide it with a lawyer to assist it whenever the lawyer for the party charged is present.

## **3. Preparation of the Panel Investigation and Report**

The panel may meet in executive session to prepare for the examination of witnesses and collection of evidence, to evaluate the evidence presented to it, and to prepare its findings and report. After reviewing all of the evidence, the panel shall base its conclusion on whether it is more likely than not that academic fraud has been committed. During the course of its work, the panel may consult with the Standing Committee on Academic Fraud regarding the proper interpretation of these procedures or, when relevant, the policies of external funding institutions or agencies.

The panel shall prepare a written report which summarizes in relevant detail the evidence presented and gives reasons for its findings on the question of whether academic fraud has been committed. When the party charged does not present to the panel evidence it requested, the report shall note whether the party charged claims that it was destroyed prior to the investigation or whether it was withheld under a claim of confidentiality or other privilege. The panel shall indicate whether it accepts the explanation offered by the party charged for the nonproduction of evidence, and the extent to which the unavailable evidence affected its ability to make a finding on whether academic fraud has been committed. The panel shall be expected to make its final report within sixty days after it is formed. A copy of the report shall be forwarded to the Standing Committee on Academic Fraud, and all records and evidence held by the panel shall accompany the report.

## **C. Review of Panel Report by the Standing Committee**

The Standing Committee shall provide to the party charged a copy of the panel report and an opportunity to comment on it in writing within fifteen days after she or he has received it. The Standing Committee shall then review the report of the panel and any comments presented by the party charged.

Where the panel has made a finding that the party charged has committed academic fraud, its decision shall be accepted by the Standing Committee unless it determines that (i) the decision rests on a clearly improper interpretation of academic fraud or (ii) the decision is against the manifest weight of the evidence. In either event, the Standing Committee may reverse the decision of the panel, remand it to the panel with instructions for further consideration, or transfer the case to a new panel.

Where the panel has made a finding that the party charged has not committed academic fraud, then its decision shall be binding on the Standing Committee unless it determines that (i) the decision rests on a clearly improper interpretation of academic fraud or (ii) there is clear and convincing evidence that the party charged, unbeknownst to the panel, has committed acts of perjury or improperly has suppressed relevant evidence. If (i), then the case may be remanded to the original panel, with the Committee's clarification of academic fraud and instructions to reconsider the facts in terms of it. If

(ii), then the case may be remanded to the original panel with instructions for further consideration, or assigned to a new panel.

If the case is remanded to the original panel or assigned to a new panel, the party charged and the original panel shall be notified in writing, and the party charged shall be given an opportunity to comment in writing on any subsequent panel report within fifteen days after she or he receives it from the Standing Committee.

The Standing Committee shall issue its report within fifteen days after receiving comments from the party charged on the panel's report. The Committee's report may be a simple acceptance of the panel's report, but where the panel recommendations are not accepted, the Committee's report shall contain a statement of reasons for the Committee's actions. If the party charged is found guilty of fraud and the Committee decides, in accord with Section 5 of these procedures, to appoint an extent of fraud panel, this decision and the reasons for it shall be noted in its report.

Copies of this report shall be given to the party charged and to the panel. The Committee shall forward copies of its report, the panel report (or reports), and the comments of the party charged to the appropriate Dean and to the Provost. If this is the Committee's final report on the case, then all records and evidence now held by the Committee shall accompany the report to the Provost.

#### **D. Notice to Outside Parties**

When the case has involved funding from an outside institution, the Provost shall insure that any report required by that institution is made to it by the University's Director of Research Administration. The Provost shall also provide written notification of the outcome to the party that initially made the accusation.

When a person charged has been found to have committed academic fraud under this section, then the appropriate Dean shall, as quickly as possible, insure written notice to all other appropriate outside persons, agencies, journals, and research institutions, including institutions with whom the party found to have committed academic fraud is now or has been professionally affiliated. The notice to outside parties need not include the entire report of the panel and statement of the accused, but it should summarize the conclusions reached by the panel and the comments made by the party charged, and should indicate the status of any pending investigations. The report may indicate the Standing Committee's belief that academic fraud may not have been confined to the single instance that has been reviewed and the reasons for its belief. Any notice sent may include statements that collaborators of the party found to have committed academic fraud are innocent of any fraud.

### **Section 5. Investigation into the Extent of Fraud**

#### **A. Appointment of Panel to Determine Extent of Fraud**

Upon a finding of fraud, the Standing Committee shall determine whether there is evidence that academic fraud may not be confined to the single instance that has been reviewed. If there is such evidence, the Committee shall appoint a second panel to investigate whether the party found to have committed fraud has committed academic fraud on other occasions. The extent of fraud panel shall include at least three persons knowledgeable in the relevant field of inquiry and may include a person or persons outside the University. Members of the fact of fraud panel constituted under Section 4 may serve on the extent of fraud panel.

#### **B. Scope of the Extent of Fraud Investigation**

The extent of fraud panel shall investigate (i) academic work, published or unpublished, that is closely connected to the work found fraudulent in the fact of fraud investigation, and (ii) other work that the fact of fraud panel believes has fallen under suspicion. Where the initial findings of the extent of fraud panel so indicate, the investigation may be expanded to cover additional research of the party charged.

#### **C. Conduct of the Investigation**

The powers of the extent of fraud panel, the rules of confidentiality, the rules of evidence, the right to examine witnesses and obtain relevant documents and records, the right to the assistance of a lawyer or other person, and all other procedural aspects of the extent of fraud investigation shall be the same as they are in the fact of fraud investigation. The extent of fraud panel shall have access to all evidence made available to the fact of fraud panel. Upon the conclusion of its investigation, the panel shall prepare a report which indicates which work should be withdrawn or retracted and which not. The report may also indicate the work of collaborators and coworkers that is not tainted by fraud. The

report shall be forwarded to the Standing Committee within thirty days after the conclusion of its investigation. All records and evidence held by the panel shall accompany the report.

#### **D. Review of the Panel Report by the Standing Committee**

The Standing Committee shall provide the party charged with a copy of the panel report and an opportunity to comment on it in writing within fifteen days after she or he has received it. Thereafter the Standing Committee shall review the report. The Standing Committee's responsibilities and powers with respect to this report are the same as they are with respect to the report from a fact of fraud panel, as specified in Section 4.C.

If the case is remanded to the original panel or assigned to a new panel, the party charged and the original panel shall be notified in writing, and the party charged shall be given an opportunity to comment in writing on any subsequent panel report within fifteen days after she or he receives it from the Standing Committee.

At the conclusion of its review, the Standing Committee shall prepare its final report of the case. The report may be a simple acceptance of the panel report, but, where the panel recommendations are not accepted, then the report shall contain a statement of reasons for the actions of the Standing Committee. Copies of this report shall be given to the party under investigation and to the panel. The Committee shall forward copies of its report, the panel report (or reports), and the written comments of the party investigated to the appropriate Dean and to the Provost. All records and evidence now held by the Standing Committee shall accompany the report to the Provost.

At the conclusion of the case, the Provost shall insure that any report required by any outside funding institution is made to it by the University's Director of Research Administration, and the Provost shall provide written notification of the outcome to the party that initially made the accusation. The Dean in question shall insure that written notification is provided to the other appropriate outside persons, agencies, journals, and research institutions, including institutions with whom the party found to have committed academic fraud is now or has been professionally affiliated.

#### **Section 6. Coordination of Investigation with Other Institutions**

When the Standing Committee learns that any person currently or formerly associated with the University is under investigation elsewhere, it shall, when appropriate, request a report as to the status of its inquiry from the investigating committee. Where any person currently or formerly associated with The University of Chicago has been found guilty of academic fraud for work done at another institution, the Standing Committee on Academic Fraud shall, when appropriate, form a panel to investigate whether any work done at The University of Chicago has been tainted by that fraud. The panel shall coordinate its investigations with those ongoing or completed at other institutions. Otherwise, the panel's investigation, its report, and subsequent actions of the Standing Committee and relevant University administrative officials shall be governed by the rules set out in Section 5 of these procedures.

#### **Section 7. Rule-making Powers of the Standing Committee**

Consistent with the rules set out above, the Standing Committee shall have at any time the power to supplement and clarify the applicable procedures and, when appropriate, shall include a statement of such supplementary rules in its report. (See section entitled Administrative Guidance)

## ADMINISTRATIVE GUIDANCE

According to the Report of the Provost's Committee on Academic Fraud (1998), Section III of the Introduction (Additional Rules), and Section 7 of the Procedures (Rule-making Powers of the Standing Committee) "...the Standing Committee is given the power to supplement and clarify the procedures in a manner that is consistent with the rules that are stipulated." The following statements of supplementation and clarification have been added in accord with these provisions from the Introduction and Procedures. The additions are organized into three types: (I) considerations that apply generally to execution of the procedures; (II) considerations applicable specifically to the Inquiry; (III) considerations applicable to the Investigation. A date at the end of each addition indicates when it was added. Additional statements will be added from time to time as the need arises.

**I. General Considerations:** The following statements of clarification and supplementation may refer to the Inquiry or the Investigation stages or to both, as may be appropriate to the particular case.

A.) The institutional officials conducting the Inquiry, and, if warranted, the Investigation, will take interim administrative actions as appropriate to protect federal and other funds and ensure that the purposes of any federal or other financial assistance are being carried out. (May, 1998)

B.) It is critically important to protect the reputation of the person against whom a complaint is brought. If the Inquiry and/or the Investigation results in a dismissal of the charges, the relevant administrative officers should, with the approval of the Dean and Provost and the consent of the party against whom the charge was made, take reasonable actions that may serve to restore the reputation of the party charged. Such actions might include notifying individuals aware of or involved in the Inquiry or Investigation of its outcome and/or publicizing the outcome in any forum in which the allegation was previously made known. (May, 1998)

C.) It is also critically important to protect the reputation of the person who brings an allegation in good faith (referred to as the "whistleblower" in some policy statements). Officers of the institution involved in a case will take reasonable actions to protect any such person and others who cooperate in good faith with inquiries or investigations, and to prevent any retaliation against them. See attached the University of Chicago personnel policy U606 on compliance with good faith reports of allegations of misconduct. This University of Chicago Policy is cited in the Policy on Academic Fraud. (May, 1998)

D.) Allegations not made in good faith put considerable strain on these already difficult and potentially career-threatening proceedings. If it can be substantiated that an allegation was not made in good faith, the administrative official involved in the Inquiry or the Chair of the Standing Committee should notify the Dean and/or the Provost who will determine if sanctions or any other administrative action should be taken against the person who initiated the bad faith allegation. (May, 1998)

E.) Documentation and record retention are important for the successful management of this policy. All Inquiry reports and reports from the Standing Committee and Special Panels, inclusive of records and evidence that accompany such reports, shall be kept for at least three years in the Office of the Provost. If an external agency that funds research at this institution requires that such documentation from a case where the research under investigation was funded by that external agency be given or made available to it, the documentation shall be provided to that agency in the manner that its regulations require. (May, 1998)

**II. Inquiry Phase** (to be conducted by the administrative official to whom the charge is brought, in consultation with the Dean or Provost; University of Chicago Policy, Section 3)

A) The University of Chicago policy states that the Inquiry Process should be completed in 30 days. This can be extended, with the approval of the Dean and Provost for up to 30 more days for good cause. Extension beyond 60 days must be entered into the records of the case and the respondent is to

be notified of the extension. Reasons for extension beyond 60 days must be extraordinary, typically involving unavoidable unavailability of evidence. (May, 1998)

B.) The person charged (sometimes referred to as the respondent) in the allegation is to be kept fully informed after all steps of the process. A copy of the written Inquiry Report will be shared with the respondent, in all cases. That is, whether the inquiry is dismissed or whether it is referred to the Standing Committee. (See Section 3.A of University of Chicago Policy on Academic Fraud, which describes procedures when evidence of fraud are found and notes that the person charged is to receive written notice. This statement expands the phrase “written notice” to mean the written report. (May, 1998)

C.) The Director of Research Administration should be notified of the outcome of the Inquiry in all cases where external funding is involved. (May, 1998)

**III. Investigation Phase** (to be conducted by the Special Panel convened by the Standing Committee, University of Chicago Policy on Academic Fraud, Section 4)

A.) Imposing appropriate sanctions is addressed in the Policy on Academic Fraud, but some elaboration is useful. The Provost or the President will receive the Report of the Standing Committee, including the Report of the Special Panel, and will take appropriate administrative actions against the individual or individuals when an allegation has been substantiated. (May, 1998)

## Appendices

PHS regulations for Misconduct in Science may be found at:  
[http://ori.dhhs.gov/html/misconduct/regulation\\_subpart\\_a.asp](http://ori.dhhs.gov/html/misconduct/regulation_subpart_a.asp)

Current NSF policy may be found at:  
<http://www.oig.nsf.gov/resmisreg.pdf>

University of Chicago Personnel Policy U606 may be found at:  
<http://uhrm.uchicago.edu/policy/p606.html>



# Office of Research Integrity

U.S. Department of Health & Human Services

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#### **42 C.F.R. Part 50--Policies of General Applicability**

Subpart A--Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science

Sec.

**[50.101 Applicability.](#)**

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#### **Subpart A--Responsibility of PHS Awardee and Applicant Institutions for Dealing With and Reporting Possible Misconduct in Science**

Authority: Sec. 493, Public Health Service Act, as amended, 99 Stat. 874-875 (42 U.S.C. 289b); Sec. 501(f), Public Health Service Act, as amended, 102 Stat. 4213 (42 U.S.C. 290aa(f)).

Source: 54 FR 32449, Aug. 8, 1989, unless otherwise noted.

##### **§ 50.101 Applicability.**

This subpart applies to each entity which applies for a research, research-training, or research-related grant or cooperative agreement under the Public Health Service (PHS) Act. It requires each such entity to establish uniform policies and procedures for investigating and reporting instances of alleged or apparent misconduct involving research or research training, applications for support of research or research training, or related research activities that are supported with funds made available under the PHS Act. This subpart does not supersede and is not intended to set up an alternative to established procedures for resolving fiscal improprieties, issues concerning the ethical treatment of human or animal subjects, or criminal matters.

##### **§ 50.102 Definitions.**

As used in this subpart:

*Act* means the Public Health Service Act, as amended, (42 U.S.C. 201, *et seq.*).

*Inquiry* means information gathering and initial factfinding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

*Institution* means the public or private entity or organization (including federal, state, and other agencies) that is applying for financial assistance from the PHS, e.g., grant or cooperative agreements, including continuation awards, whether competing or noncompeting. The organization assumes legal and financial accountability for the awarded funds and for the performance of the supported activities.

*Investigation* means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred.

*Misconduct* or *Misconduct in Science* means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

*OSI* means the Office of Scientific Integrity, a component of the Office of the Director of the National Institutes for Health (NIH), which oversees the implementation of all PHS policies and procedures related to scientific misconduct; monitors the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects or programs; and conducts investigations as necessary.

*OSIR* means the Office of Scientific Integrity Review, a component of the Office of the Assistant Secretary for Health, which is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of PHS research agencies to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to assure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established.

*PHS* means the Public Health Service, an operating division of the Department of Health and Human Services (HHS). References to PHS include organizational units within the PHS that have delegated authority to award financial assistance to support scientific activities, e.g., Bureaus, Institutes, Divisions, Centers or Offices.

*Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

### **§ 50.103 Assurance - Responsibilities of PHS awardee and applicant institutions.**

(a) *Assurances*. Each institution that applies for or receives assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary that the applicant:

(1) Has established an administrative process, that meets the requirements of this Subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and

(2) Will comply with its own administrative process and the requirements of this Subpart.

(b) *Annual Submission.* An applicant or recipient institution shall make an annual submission to the OSI as follows:

(1) The institution's assurance shall be submitted to the OSI, on a form prescribed by the Secretary, as soon as possible after November 8, 1989, but no later than January 1, 1990, and updated annually thereafter on a date specified by OSI. Copies of the form may be requested through the Director, OSI.

(2) An institution shall submit, along with its annual assurance, such aggregate information on allegations, inquiries, and investigations as the Secretary may prescribe.

(c) *General Criteria.* In general, an applicant institution will be considered to be in compliance with its assurance if it:

(1) Establishes, keeps current, and upon request provides the OSIR, the OSI, and other authorized Departmental officials the policies and procedures required by this subpart.

(2) Informs its scientific and administrative staff of the policies and procedures and the importance of compliance with those policies and procedures.

(3) Takes immediate and appropriate action as soon as misconduct on the part of employees or persons within the organization's control is suspected or alleged.

(4) Informs, in accordance with this subpart, and cooperates with the OSI with regard to each investigation of possible misconduct.

(d) *Inquiries, Investigations, and Reporting--Specific Requirements.* Each applicant's policies and procedures must provide for:

(1) Inquiring immediately into an allegation or other evidence of possible misconduct. An inquiry must be completed within 60 calendar days of its

initiation unless circumstances clearly warrant a longer period. A written report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the inquiry. The individual(s) against whom the allegation was made shall be given a copy of the report of inquiry. If they comment on that report, their comments may be made part of the record. If the inquiry takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period.

(2) Protecting, to the maximum extent possible, the privacy of those who in good faith report apparent misconduct.

(3) Affording the affected individual(s) confidential treatment to the maximum extent possible, a prompt and thorough investigation, and an opportunity to comment on allegations and findings of the inquiry and/or the investigation.

(4) Notifying the Director, OSI, in accordance with § 50.104(a) when, on the basis of the initial inquiry, the institution determines that an investigation is warranted, or prior to the decision to initiate an investigation if the conditions listed in § 50.104(b) exist.

(5) Notifying the OSI within 24 hours of obtaining any reasonable indication of possible criminal violations, so that the OSI may then immediately notify the Department's Office of Inspector General.

(6) Maintaining sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted, if necessary. Such records shall be maintained in a secure manner for a period of at least three years after the termination of the inquiry, and shall, upon request, be provided to authorized HHS personnel.

(7) Undertaking an investigation within 30 days of the completion of the inquiry, if findings from that inquiry provide sufficient basis for conducting an investigation. The investigation normally will include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the allegations; complete summaries of these interviews should be prepared, provided to the interviewed party for comment or revision, and included as part of the investigatory file.

(8) Securing necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence in any inquiry or investigation.

(9) Taking precautions against real or apparent conflicts of interest on the part of those involved in the inquiry or investigation.

(10) Preparing and maintaining the documentation to substantiate the investigation's findings. This documentation is to be made available to the Director, OSI, who will decide whether that Office will either proceed with its own investigation or will act on the institution's findings.

(11) Taking interim administrative actions, as appropriate, to protect Federal funds and insure that the purpose of the Federal financial assistance are carried out.

(12) Keeping the OSI apprised of any developments during the course of the investigation which disclose facts that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of Federal funds and otherwise protect the public interest.

(13) Undertaking diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed, and also undertaking diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

(14) Imposing appropriate sanctions on individuals when the allegation of misconduct has been substantiated.

(15) Notifying the OSI of the final outcome of the investigation.

#### **§ 50.104 Reporting to the OSI.**

##### **(a)**

(1) An institution's decision to initiate an investigation must be reported in writing to the Director, OSI, on or before the date the investigation begins. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved. Information provided through the notification will be held in confidence to the extent permitted by law, will not be disclosed as part of the peer review and Advisory Committee review processes, but may be used by the Secretary in making decisions

about the award or continuation of funding.

(2) An investigation should ordinarily be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of findings, making that report available for comment by the subjects of the investigation, and submitting the report to the OSI. If they can be identified, the person(s) who raised the allegation should be provided with those portions of the report that address their role and opinions in the investigation.

(3) Institutions are expected to carry their investigations through to completion, and to pursue diligently all significant issues. If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements under 50.103(d), a report of such planned termination, including a description of the reasons for such termination, shall be made to OSI, which will then decide whether further investigation should be undertaken.

(4) The final report submitted to the OSI must describe the policies and procedures under which the investigation was conducted, how and from whom information was obtained relevant to the investigation, the findings, and the basis for the findings, and include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct, as well as a description of any sanctions taken by the institution.

(5) If the institution determines that it will not be able to complete the investigation in 120 days, it must submit to the OSI a written request for an extension and an explanation for the delay that includes an interim report on the progress to date and an estimate for the date of completion of the report and other necessary steps. Any consideration for an extension must balance the need for a thorough and rigorous examination of the facts versus the interests of the subject(s) of the investigation and the PHS in a timely resolution of the matter. If the request is granted, the institution must file periodic progress reports as requested by the OSI. If satisfactory progress is not made in the institution's investigation, the OSI may undertake an investigation of its own.

(6) Upon receipt of the final report of investigation and supporting materials, the OSI will review the information in order to determine whether the investigation has been performed in a timely manner and with sufficient objectivity, thoroughness and competence. The OSI may then request clarification or additional information and, if necessary, perform its own investigation. While primary responsibility for the conduct of investigations

and inquiries lies with the institution, the Department reserves the right to perform its own investigation at any time prior to, during, or following an institution's investigation.

(7) In addition to sanctions that the institution may decide to impose, the Department also may impose sanctions of its own upon investigators or institutions based upon authorities it possesses or may possess, if such action seem appropriate.

(b) The institution is responsible for notifying the OSI if it ascertains at any stage of the inquiry or investigation, that any of the following conditions exist:

- (1) There is an immediate health hazard involved;
- (2) There is an immediate need to protect Federal funds or equipment;
- (3) There is an immediate need to protect the interests of the person(s) making the allegations or of the individual(s) who is the subject of the allegations as well as his/her co-investigators and associates, if any;
- (4) It is probable that the alleged incident is going to be reported publicly.
- (5) There is a reasonable indication of possible criminal violation. In that instance, the institution must inform OSI within 24 hours of obtaining that information. OSI will immediately notify the Office of the Inspector General.

**§50.105 Institutional compliance.**

Institutions shall foster a research environment that discourages misconduct in all research and that deals forthrightly with possible misconduct associated with research for which PHS funds have been provided or requested. An institution's failure to comply with its assurance and the requirements of this subpart may result in enforcement action against the institution, including loss of funding, and may lead to the OSI's conducting its own investigation.



Questions/suggestions about this web page? [Webmaster](#)

Updated November 20, 2001

2. Section 1005.7 is amended by revising paragraph (e)(1) to read as follows:

**§ 1005.7 Discovery.**

\* \* \* \* \*

(e)(1) When a request for production of documents has been received, within 30 days the party receiving that request will either fully respond to the request, or state that the request is being objected to and the reasons for that objection. If objection is made to part of an item or category, the part will be specified. Upon receiving any objections, the party seeking production may then, within 30 days or any other time frame set by the ALJ, file a motion for an order compelling discovery. (The party receiving a request for production may also file a motion for protective order any time prior to the date the production is due.)

\* \* \* \* \*

3. Section 1005.16 is amended by revising paragraph (b) to read as follows:

**§ 1005.16 Witnesses.**

\* \* \* \* \*

(b) At the discretion of the ALJ, testimony (other than expert testimony) may be admitted in the form of a written statement. The ALJ may, at his or her discretion, admit prior sworn testimony of experts which has been subject to adverse examination, such as a deposition or trial testimony. Any such written statement must be provided to all other parties along with the last known address of such witnesses, in a manner that allows sufficient time for other parties to subpoena such witness for cross-examination at the hearing. Prior written statements of witnesses proposed to testify at the hearing will be exchanged as provided in § 1005.8.

\* \* \* \* \*

**PART 1008—[AMENDED]**

1. The authority citation for part 1008 continues to read as follows:

**Authority:** 42 U.S.C. 1320a-7d(b).

2. Section 1008.37 is revised to read as follows:

**§ 1008.37 Disclosure of ownership and related information.**

Each individual or entity requesting an advisory opinion must supply full and complete information as to the identity of each entity owned or controlled by the individual or entity, and of each person with an ownership or control interest in the entity, as defined in section 1124(a)(1) of the Social Security Act (42 U.S.C. 1320a-3(a)(1)) and part 420 of this chapter.

(Approved by the Office of Management and Budget under control number 0990-0213)

Dated: October 19, 2001.

**Janet Rehnquist,**  
*Inspector General.*

Approved: November 23, 2001.

**Tommy G. Thompson,**  
*Secretary.*

[FR Doc. 02-6350 Filed 3-15-02; 8:45 am]  
**BILLING CODE 4152-01-P**

**NATIONAL SCIENCE FOUNDATION**

**45 CFR Part 689**

**RIN 3145-AA39**

**Research Misconduct**

**AGENCY:** National Science Foundation (NSF).

**ACTION:** Final rule.

**SUMMARY:** NSF is issuing a final rule that revises its existing misconduct in science and engineering regulations. These revisions implement the Federal Policy on Research Misconduct issued by the Executive Office of the President's Office of Science and Technology on December 6, 2000. They will enable NSF to continue to address allegations of research misconduct.

**DATES:** This rule is effective April 17, 2002.

**FOR FURTHER INFORMATION CONTACT:** Anita Eisenstadt, Office of the General Counsel, at 703-292-8060.

**SUPPLEMENTARY INFORMATION:** The Office of Science and Technology Policy issued a final Federal research misconduct policy on December 6, 2000 in 65 FR 76260-76264 ("the Federal policy"). The Federal policy consists of a definition of research misconduct and basic guidelines to help Federal agencies and Federally funded research institutions respond to allegations of research misconduct. The policy directs Federal agencies that support or conduct research to implement it within one year.

On January 25, 2002, NSF published a proposed rule to revise its existing misconduct regulations (45 CFR part 689) to make them fully consistent with the Federal policy. (67 FR 3666-3669). NSF invited public comment on the proposed rule. NSF received four comments that were supportive of the proposed rule.

Three of these commenters, however, expressed general concern for the protection of confidentiality of inquiries and investigations of alleged research misconduct. They suggested that NSF add language to the regulation that provides that to the extent permitted by

law, NSF will protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act. The commenters noted that this language is consistent with the Federal policy.

NSF stated in the preamble to the proposed rule that, consistent with the Federal policy, we would continue to protect research misconduct investigative and adjudicative files as exempt from mandatory disclosure under the Freedom of Information Act and the Privacy Act, to the extent permitted by law. (67 FR 3666). In response to these comments, we will include this language in § 689.2 of the final rule.

One of the commenters also expressed concern over the preponderance of evidence standard of proof for a finding of research misconduct. The commenter expressed concern that this standard will increase the risk of a false finding of research misconduct, and recommended a higher standard of proof such as "clear and convincing evidence" or "beyond a reasonable doubt."

The Federal policy adopted the preponderance of evidence standard. In the preamble to the Federal policy, OSTP noted that this is the uniform standard of proof for most civil fraud cases and most Federal administrative proceedings, including debarment. (65 FR 76262). Awardee institutions have the discretion to apply a higher standard of proof in their internal misconduct proceedings. However, if a higher standard is used, and the awardee institution wishes for NSF to defer to its investigation, the awardee institution should also evaluate whether the allegation is proven by a preponderance of evidence.

**Determinations**

The Office of Management and Budget has reviewed this final rule under Executive Order 12866. The rule is not an economically significant rule or a major rule under the Congressional Review Act. The Congressional Review Act provides that agencies shall submit a report, including a copy of all final rules, to each House of Congress and the Comptroller General of the United States. The Foundation will submit this report, identifying this rule as non-major, prior to the publication of this rule in the **Federal Register**.

The Unfunded Mandate Reform Act of 1995, in sections 202 and 205, requires that agencies prepare several analytic statements before proposing a rule that

may result in annual expenditures of \$100 million by State, local and Indian tribal governments, or by the private sector. As any final rule would not result in expenditures of this magnitude, such statements are not necessary. As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on a substantial number of small businesses.

The provisions of the Paperwork Reduction Act of 1995, Public Law 104-13, 44 U.S.C. 3501 *et seq.*, and its implementing regulations, 5 CFR Part 1320, do not apply to this rule because there are no new or revised recordkeeping or reporting requirements. Finally, NSF has reviewed this rule in light of Section 2 of Executive Order 12778 and certifies that this rule meets the applicable standards provided in sections 2(a) and 2(b) of that order.

#### List of Subjects in 45 CFR Part 689

Administrative practice and procedure, Fraud, Grant programs—science and technology, Investigations, Research, Science and technology.

Dated: March 7, 2002.

#### Lawrence Rudolph,

General Counsel, National Science Foundation.

For the reasons set forth in the preamble, the National Science Foundation is revising part 689 of Title 45, Chapter VI of the Code of Federal Regulations, to read as follows:

### PART 689—RESEARCH MISCONDUCT

Sec.

- 689.1 Definitions.
- 689.2 General policies and responsibilities.
- 689.3 Actions.
- 689.4 Role of awardee institutions.
- 689.5 Initial NSF handling of misconduct matters.
- 689.6 Investigations.
- 689.7 Pending proposals and awards.
- 689.8 Interim administrative actions.
- 689.9 Dispositions.
- 689.10 Appeals.

**Authority:** 42 U.S.C. 1870(a).

#### § 689.1 Definitions.

The following definitions apply to this part:

(a) *Research misconduct* means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.

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

(2) *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.

(3) *Plagiarism* means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.

(4) *Research*, for purposes of paragraph (a) of this section, includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals.

(b) *Research misconduct* does not include honest error or differences of opinion.

#### § 689.2 General policies and responsibilities.

(a) NSF will take appropriate action against individuals or institutions upon a finding that research misconduct has occurred. Possible actions are described in § 689.3. NSF may also take interim action during an investigation, as described in § 689.8.

(b) NSF will find research misconduct only after careful inquiry and investigation by an awardee institution, by another Federal agency, or by NSF. An "inquiry" consists of preliminary information-gathering and preliminary fact-finding to determine whether an allegation or apparent instance of research misconduct has substance and if an investigation is warranted. An investigation must be undertaken if the inquiry determines the allegation or apparent instance of research misconduct has substance. An "investigation" is a formal development, examination and evaluation of a factual record to determine whether research misconduct has taken place, to assess its extent and consequences, and to evaluate appropriate action.

(c) A finding of research misconduct requires that—

(1) There be a significant departure from accepted practices of the relevant research community; and

(2) The research misconduct be committed intentionally, or knowingly, or recklessly; and

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

(d) Before NSF makes any final finding of research misconduct or takes any final action on such a finding, NSF will normally afford the accused individual or institution notice, a chance to provide comments and rebuttal, and a chance to appeal. In structuring procedures in individual cases, NSF may take into account

procedures already followed by other entities investigating or adjudicating the same allegation of research misconduct.

(e) Debarment or suspension for research misconduct will be imposed only after further procedures described in applicable debarment and suspension regulations, as described in §§ 689.8 and 689.9, respectively. Severe research misconduct, as established under the regulations in this part, is an independent cause for debarment or suspension under the procedures established by the debarment and suspension regulations.

(f) The Office of Inspector General (OIG) oversees investigations of research misconduct and conducts any NSF inquiries and investigations into suspected or alleged research misconduct.

(g) The Deputy Director adjudicates research misconduct proceedings and the Director decides appeals.

(h) Investigative and adjudicative research misconduct records maintained by the agency are exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552) and the Privacy Act (5 U.S.C. 552a) to the extent permitted by law and regulation.

#### § 689.3 Actions.

(a) Possible final actions listed in this paragraph (a) for guidance range from minimal restrictions (Group I) to the most severe and restrictive (Group III). They are not exhaustive 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 an individual or institution obtain special prior approval of particular activities from NSF.

(iii) Require for a specified period that an institutional official other than those guilty of 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) Totally or partially suspend an active award, or restrict for a specified period designated activities or expenditures under an active award.

(ii) Require for a specified period special reviews of all requests for funding from an affected individual or institution to ensure that steps have been taken to prevent repetition of the misconduct.

(iii) Require a correction to the research record.

(3) *Group III actions.* (i) Terminate an active award.

(ii) Prohibit participation of an individual as an NSF reviewer, advisor, or consultant for a specified period.

(iii) Debar or suspend an individual or institution from participation in Federal programs for a specified period after further proceedings under applicable regulations.

(b) In deciding what final actions are appropriate when misconduct is found, NSF officials should consider:

(1) How serious the misconduct was;

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

(3) Whether it was an isolated event or part of a pattern;

(4) Whether it had a significant impact on the research record, research subjects, other researchers, institutions or the public welfare; and

(5) Other relevant circumstances.

(c) Interim actions may include, but are not limited to:

(1) Totally or partially suspending an existing award;

(2) Suspending eligibility for Federal awards in accordance with debarment-and-suspension regulations;

(3) Proscribing or restricting particular research activities, as, for example, to protect human or animal subjects;

(4) Requiring special certifications, assurances, or other, administrative arrangements to ensure compliance with applicable regulations or terms of the award;

(5) Requiring more prior approvals by NSF;

(6) Deferring funding action on continuing grant increments;

(7) Deferring a pending award;

(8) Restricting or suspending participation as an NSF reviewer, advisor, or consultant.

(d) For those cases governed by the debarment and suspension regulations, the standards of proof contained in the debarment and suspension regulations shall control. Otherwise, NSF will take no final action under this section without a finding of misconduct supported by a preponderance of the relevant evidence.

#### **§ 689.4 Role of awardee institutions.**

(a) Awardee institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. In most instances, NSF will rely on awardee institutions to promptly:

(1) Initiate an inquiry into any suspected or alleged research misconduct;

(2) Conduct a subsequent investigation, if warranted;

(3) Take action necessary to ensure the integrity of research, the rights and interests of research subjects and the public, and the observance of legal requirements or responsibilities; and

(4) Provide appropriate safeguards for subjects of allegations as well as informants.

(b) If an institution wishes NSF to defer independent inquiry or investigation, it should:

(1) Complete any inquiry and decide whether an investigation is warranted within 90 days. If completion of an inquiry is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(2) Inform OIG immediately if an initial inquiry supports a formal investigation.

(3) Keep OIG informed during such an investigation.

(4) Complete any investigation and reach a disposition within 180 days. If completion of an investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.

(5) Provide OIG with the final report from any investigation.

(c) NSF expects institutions to promptly notify OIG should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) NSF's resources, reputation, or other interests need protecting;

(3) There is reasonable indication of possible violations of civil or criminal law;

(4) Research activities should be suspended;

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

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

(d) Awardee institutions should maintain and effectively communicate to their staffs appropriate policies and procedures relating to research misconduct, which should indicate when NSF should be notified.

#### **§ 689.5 Initial NSF handling of misconduct matters.**

(a) NSF staff who learn of alleged misconduct will promptly and discreetly inform OIG or refer informants to OIG.

(b) The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

(c) If OIG determines that alleged research misconduct involves potential

civil or criminal violations, OIG may refer the matter to the Department of Justice.

(d) Otherwise OIG may:

(1) Inform the awardee institution of the alleged research misconduct and encourage it to undertake an inquiry;

(2) Defer to inquiries or investigations of the awardee institution or of another Federal agency; or

(3) At any time proceed with its own inquiry.

(e) If OIG proceeds with its own inquiry it will normally complete the inquiry no more than 90 days after initiating it.

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

#### **§ 689.6 Investigations.**

(a) When an awardee institution or another Federal agency has promptly initiated its own investigation, OIG may defer an NSF inquiry or investigation until it receives the results of that external investigation. If it does not receive the results within 180 days, OIG may proceed with its own investigation.

(b) If OIG decides to initiate an NSF investigation, it must give prompt written notice to the individual or institutions 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) If a criminal investigation by the Department of Justice, the Federal Bureau of Investigation, or another Federal agency is underway or under active consideration by these agencies or the NSF, OIG will determine what information, if any, may be disclosed to the subject of the investigation or to other NSF employees.

(d) An NSF investigation may include:

(1) Review of award files, reports, and other documents already readily available at NSF 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 subjects 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 subject of the investigation to be heard.

(e) OIG may invite outside consultants or experts to participate in an NSF investigation. They should be appointed in a manner that ensures the official nature of their involvement and provides them with legal protections available to federal employees.

(f) OIG will make every reasonable effort to complete an NSF investigation and to report its recommendations, if any, to the Deputy Director within 180 days after initiating it.

#### **§ 689.7 Pending proposals and awards.**

(a) Upon learning of alleged research misconduct OIG will identify potentially implicated awards or proposals and when appropriate, will ensure that program, grant, and contracting officers handling them are informed (subject to § 689.6(c)).

(b) Neither a suspicion or allegation of research misconduct nor a pending inquiry or investigation will normally delay review of proposals. To avoid influencing reviews, reviewers or panelists will not be informed of allegations or of ongoing inquiries or investigations. However, if allegations, inquiries, or investigations have been rumored or publicized, the responsible Program Director may consult with OIG and, after further consultation with the Office of General Counsel, either defer review, inform reviewers to disregard the matter, or inform reviewers of the status of the matter.

#### **§ 689.8 Interim administrative actions.**

(a) After an inquiry or during an external or NSF investigation the Deputy Director may order that interim actions (as described in § 689.3(c)) be taken to protect Federal resources or to guard against continuation of any suspected or alleged research misconduct. Such an order will normally be issued on recommendation from OIG and in consultation with the Division of Contracts, Policy, and Oversight or Division of Grants and Agreements, the Office of the General Counsel, the responsible Directorate, and other parts of the Foundation as appropriate.

(b) When suspension is determined to be appropriate, the case will be referred to the suspending official pursuant to 45 CFR part 620, and the suspension procedures of 45 CFR part 620 will be followed, but the suspending official will be either the Deputy Director or an official designated by the Deputy Director.

(c) Such interim actions may be taken whenever information developed during an investigation indicates a need to do

so. Any interim action will be reviewed periodically during an investigation by NSF and modified as warranted. An interested party may request a review or modification by the Deputy Director of any interim action.

(d) The Deputy Director will make and OIG will retain a record of interim actions taken and the reasons for taking them.

(e) Interim administrative actions are not final agency actions subject to appeal.

#### **§ 689.9 Dispositions.**

(a) After receiving a report from an external investigation by an awardee institution or another Federal agency, OIG will assess the accuracy and completeness of the report and whether the investigating entity followed reasonable procedures. It will either recommend adoption of the findings in whole or in part or, normally within 30 days, initiate a new investigation.

(b) When any satisfactory external investigation or an NSF investigation fails to confirm alleged misconduct—

(1) OIG will notify the subject of the investigation and, if appropriate, those who reported the suspected or alleged misconduct. This notification may include the investigation report.

(2) Any interim administrative restrictions that were imposed will be lifted.

(c) When any satisfactory investigation confirms misconduct—

(1) In cases in which debarment is considered by OIG to be an appropriate disposition, the case will be referred to the debarring official pursuant to 45 CFR part 620 and the procedures of 45 CFR part 620 will be followed, but:

(i) The debarring official will be either the Deputy Director, or an official designated by the Deputy Director.

(ii) Except in unusual circumstances, the investigation report and recommended disposition will be included among the materials provided to the subject of the investigation as part of the notice of proposed debarment.

(iii) The notice of the debarring official's decision will include instructions on how to pursue an appeal to the Director.

(2) In all other cases—

(i) Except in unusual circumstances, the investigation report will be provided by OIG to the subject of the investigation, who will be invited to submit comments or rebuttal. Comments or rebuttal submitted within the period allowed, normally 30 days, will receive full consideration and may lead to revision of the report or of a recommended disposition.

(ii) Normally within 45 days after completing an NSF investigation or

receiving the report from a satisfactory external investigation, OIG will submit to the Deputy Director the investigation report, any comments or rebuttal from the subject of the investigation, and a recommended disposition. The recommended disposition will propose any final actions to be taken by NSF. Section 689.3 lists possible final actions and considerations to be used in determining them.

(iii) The Deputy Director will review the investigation report and OIG's recommended disposition. Before issuing a disposition the Deputy Director may initiate further hearings or investigation. Normally within 120 days after receiving OIG's recommendations or after completion of any further proceedings, the Deputy Director will send the affected individual or institution a written disposition, specifying actions to be taken. The decision will include instructions on how to pursue an appeal to the Director.

#### **§ 689.10 Appeals.**

(a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will normally inform the appellant of a final decision within 60 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

[FR Doc. 02-6179 Filed 3-15-02; 8:45 am]

BILLING CODE 7555-01-P

## **DEPARTMENT OF TRANSPORTATION**

### **Maritime Administration**

#### **46 CFR Part 356**

[Docket No. MARAD-2001-10518]

RIN 2133-AB45

#### **Eligibility of U.S.-Flag Vessels of 100 Feet or Greater in Registered Length To Obtain a Fishery Endorsement to the Vessel's Documentation**

**AGENCY:** Maritime Administration, Department of Transportation.

**ACTION:** Final rule.

**SUMMARY:** In an interim final rule published on August 31, 2001, the Maritime Administration ("MARAD," "we," "our," or "us") amended our

## THE UNIVERSITY OF CHICAGO PERSONNEL POLICY GUIDELINES

Subject: **Compliance with University Policies and Procedures**

Section: **U606**

Date: May 26, 1998

Prior Version Date(s): February 2, 1998

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**Purpose:** To communicate to employees their responsibility to adhere to the University's policies and procedures; to encourage questions concerning compliance with University policies and procedures and good faith reports of allegations of misconduct; and to explain how employees can raise such questions and reports.

**Policy:** The University relies on its employees performing their duties and responsibilities in accord with the University's policies and procedures (including, but not limited to, all policies relating to research integrity and the accounting and expenditure of all funds, including all grant funds, federal and non-federal). An important element supporting the University's expectations is the provision of various mechanisms to assist and encourage employees in coming forward in good faith with reports or concerns about compliance with University policies or procedures. Such good faith reports or inquiries may be made without fear of reprisal or retaliation.

**Guidelines:**

1. Employees should follow all University policies and procedures in carrying out their duties and responsibilities for the University. This includes University policies relating to academic fraud and scientific misconduct, the submission of proposals, the receipt of awards and the accounting and expenditure of all funds, including all grant funds, federal and non-federal.
2. If an employee has a question about the propriety of any practice under University policies and procedures, it is incumbent upon the employee to seek guidance from his or her supervisor or the University official who has responsibility for overseeing compliance with the particular policy or procedure.

3. If an employee becomes aware of a potential or actual material violation of University policies or procedures, the employee is expected to report such potential or actual conduct, regardless of whether the employee is personally involved in the matter.
4. An employee is encouraged to make such a report to his or her immediate supervisor. If the employee feels unable to do so or if there is any reason why this may not be appropriate, the employee should raise the issue with his or her manager, department chair, dean, director or the University office or official who has responsibility for overseeing compliance with the particular policy or procedure in accordance with the guidelines below:
  - a. In the event of any claim of financial misconduct or inappropriate expenditure(s) of funds (including all grant funds, federal and non-federal), the employee should follow the guidelines in (4) above, but should also feel free to make such a report to the University Comptroller or the Director of the Office of Internal Audit.
  - b. Employees with reports or concerns about the University's labor relations policies and procedures (including such policies as [U601-Treatment of Confidential Information](#), [U604-Substance Abuse](#), [U703-Progressive Correction Action](#), [U704-Employee Complaint Resolution Procedure](#), and U705-Access to Personnel Records) are encouraged to consult with the [Office of Employee/Labor Relations - Human Resources Management](#).
  - c. Employees with reports or concerns about the University's non-discrimination policy (including [U201-Equal Employment Opportunity](#)) are encouraged to consult with the University's Affirmative Action Officer or the [Office of Employee/Labor Relations - Human Resources Management](#).
  - d. Employees with reports or concerns about sexual harassment (including [U605-Sexual Harassment](#)) are encouraged to consult with any of the Sexual Harassment Complaint Advisors, the Coordinator of the Complaint

Advisors, the University's Affirmative Action Officer or the [Office of Employee/Labor Relations - Human Resources Management](#).

- e. Employees with reports or concerns about conflict of interest (including the policy on Outside Professional and Commercial Interests of Faculty/Conflict of Interest for academic employees and U600-Conflict of Interest for staff employees), should consult with their manager, department chair or director, but, in the case of questions concerning such supervisory personnel, the employees should also feel free to consult with the dean, the Associate Provost or a University vice president who is responsible for the unit.
  - f. Employees with reports or concerns about workplace safety issues are encouraged to consult with the University's Safety Office.
  - g. Employees with reports or concerns about academic fraud or scientific research misconduct should consult with the appropriate department chair, dean or the Associate Provost.
  - h. Employees who are unsure to whom they should make a report or address their concerns should consult with the [Office of Employee/Labor Relations - Human Resources Management](#).
5. An employee may request that such a report be handled as confidentially as possible under the circumstances, and the University will endeavor to handle all such reports with discretion and with due regard for the privacy of the reporting employee.
6. Employees are free to make anonymous reports, with the understanding that any investigation may be hampered due to the inability to identify the employee in order to obtain a full and complete account of relevant and necessary facts from the employee or to ask additional questions or seek clarification as any investigation proceeds.
7. An employee who comes forward in good faith with reports or concerns about compliance with University policies or procedures shall not be subject to reprisal or retaliation for making such a

report. Any employee who believes that he or she is being retaliated against for making such a report should immediately bring it to the attention of his or her dean or the Provost's Office (for an academic employee) or to the [Office of Employee/Labor Relations – Human Resources Management](#) (for a staff employee) for immediate investigation.