



U.S. Department of Transportation
Research and Technology Coordinating Council

**Implementation Guidance
for
Executive Office of the President
Office of Science and Technology Policy
*“Federal Policy on Research Misconduct”***

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U.S. DEPARTMENT OF TRANSPORTATION

Implementation Guidance for Executive Office of the President, Office of Science and Technology Policy *Federal Policy on Research Misconduct*

I. Background and Introduction

On October 14, 1999, the Executive Office of the President's Office of Science and Technology Policy (OSTP) published a request for comments on a proposed government-wide "Federal Policy on Research Misconduct" to be adopted and implemented by all agencies which conduct or support research.¹ After consideration of all public comments, the policy was revised and a final policy was printed in the Federal Register on December 6, 2000.² The final OSTP policy directs the U.S. Department of Transportation (DOT) and other Federal agencies to implement the policy not later than December 2001.

The OSTP policy consists of a definition of research misconduct and establishes basic guidelines for responding to allegations of research misconduct, including procedural safeguards. This policy is intended to: establish a uniform definition of research misconduct across the Federal agencies; install a consistent policy for responding to allegations of research misconduct; and permit allegations of research misconduct to be processed promptly, confidentially and fairly. Prompt, confidential responses to allegations help to minimize any harm to the public that could result if research misconduct is found and allows those who are incorrectly accused to clear their names without going through a long process.

This document provides to all DOT organizations that conduct or fund research guidance for resolving allegations of research misconduct. The guidance gives a framework for DOT organizations to work with the Department's contracting officers or grant managers, as appropriate, to make determinations on research misconduct allegations and to assess appropriate administrative actions for findings of research misconduct. The guidance also provides a mechanism for DOT handling of appeals to findings of research misconduct.

Although reported instances of research misconduct appear to represent only a small fraction of the total number of research awards funded by the Federal Government, and by DOT in particular, DOT recognizes that any instance of research misconduct is unacceptable and threatens public confidence in the integrity of its programs. DOT, by implementing the OSTP policy and adhering to applicable Federal regulations, will work to assure exemplary standards of intellectual honesty in the formulation, conduct, and reporting of research.

II. Responsibilities

The OSTP “Federal Policy on Research Misconduct” applies to all DOT-funded or -conducted research, including intramural research, research conducted by contractors and research performed at research institutions, including universities and industry. The DOT organizations that fund research must establish procedures for implementing the OSTP policy. They have primary responsibility for prevention and detection of research misconduct, and for the inquiry, investigation and adjudication of research misconduct allegations associated with DOT- funded research.

The DOT Research and Technology Coordinating Council (RTCC), established by DOT Order 1120.39 dated April 18, 1994, is the lead DOT entity for coordination of all actions related to allegations of research misconduct, including providing this guidance in research misconduct policy implementation. The Department’s Office of the Senior Procurement Executive has the primary responsibility for developing and implementing departmental policy for acquisitions and grants. The RTCC will closely coordinate with this Office to ensure that Federal Acquisition Regulation (FAR) policy and procedures and Federal grant policy are not superseded by the OSTP Federal Policy on Research Misconduct. All questions or comments on this matter should be referred to the RTCC at 202-366-4434, or via the Internet at timothy.klein@rspa.dot.gov.

III. Definitions

1. **Adjudication:** Review recommendations from the investigation phase and determine appropriate corrective actions.
2. **Complainant:** The person who makes an allegation of research misconduct or the person who cooperates with an inquiry or investigation.
3. **Evidence:** Includes, but is not limited to, research records, transcripts, or recordings of interviews, committee correspondence, administrative records, grant applications and awards, manuscripts, publications, expert analyses, and electronic data.
4. **Inquiry:** Preliminary information gathering and fact finding to determine if an allegation, or apparent instance of research misconduct, warrants an investigation.
5. **Investigation:** Formal collection and evaluation of information and facts to determine if research misconduct can be established, to assess its extent and consequences, and to recommend appropriate action.
6. **Oversight Organization:** The DOT operating administration or secretarial office sponsoring or managing Federally-funded research.
7. **Research Institution:** All organizations using Federal funds for research, including, for example, colleges and universities, intramural federal research laboratories, Federally-funded research and development centers, national user facilities, industrial laboratories, or other research institutes. Research conducted by contractors under DOT-funded contractual instruments, agreements and similar instruments are covered by this policy.
8. **Research Misconduct:** Fabrication, falsification, or plagiarism, in proposing, performing, or reviewing research,³ or in reporting research results.

9. **Respondent:** The person against whom an allegation of research misconduct has been made, or the person whose actions are the focus of the inquiry or investigation.

IV. Finding of Research Misconduct

The OSTP policy has identified three elements that must be present to establish a finding of research misconduct. The following elements describe the type of behavior, level of intent and burden of proof required to support such a finding:

1. There must be a significant departure from the accepted practices of the relevant research community;
2. The misconduct must have been committed intentionally, or knowingly, or recklessly and;
3. The allegation must be proven by a preponderance of the evidence.

V. Guidelines

During all phases of the response to an allegation of research misconduct, DOT organizations, including research institutions, will observe the following guidelines:

- Ensure confidentiality during the inquiry, investigation and decision-making processes, including confidentiality of all records and the identities of respondents and complainants.
- Provide safeguards for complainants, including protection against retaliation and protection of positions and reputations.
- Afford the respondents timely written notifications of allegations, reasonable access to data or evidence, and opportunities to comment on relevant allegations, findings, and supporting evidence; ensuring fundamental fairness and due process.
- Protect the interests of the Federal government and the public.
- Ensure separation of phases as directed by the OSTP policy.

V.1. Research Institutions

Research institutions that receive DOT funds are required to establish procedures for responding to allegations of research misconduct. The following should be included:

- Inquire promptly into the research misconduct allegation and complete an inquiry within 60 calendar days after receipt of the allegation.
- Notify the DOT oversight organization immediately, in writing, when an inquiry results in a determination that an investigation is warranted, and promptly begin an investigation.
- Ensure the objectivity and expertise of the individuals selected to review allegations and conduct investigations.
- Conduct the investigation according to established procedures and complete it within 120 calendar days of completing the initial inquiry.
- Document the investigation. Include documentation that: (1) describes the allegation(s);

(2) lists the investigators; (3) describes the methods and procedures used to gather information and evaluate the allegation(s); (4) summarizes the records and data compiled, states the findings, and explains the supporting reasons and evidence; (5) states the potential impact of any research misconduct; (6) describes and explains any institutional sanctions or corrective actions recommended, or imposed as appropriate within its jurisdiction and as consistent with other relevant laws.

- Provide the respondent with a reasonable opportunity (e.g., 30 calendar days) to review and respond to the investigation report. The respondent's written comments or rebuttal will be made part of the investigative record.
- Forward investigative reports, documentation, and respondent's response to the DOT oversight organization within 30 calendar days after completion of an investigation.

Research institutions should request time extensions, as needed, from their DOT oversight organizations. The DOT oversight organizations, in consultation with the appropriate contracting officers or grant managers, will review the investigative reports and take appropriate administrative actions, as described in section VI, for findings of research misconduct.

V.2. DOT Oversight Organization

The DOT oversight organization normally defers to its research institution in an allegation of research misconduct; however, the DOT oversight organization in consultation with its contracting officer or grant manager, as appropriate, will conduct an inquiry and investigation of its own when its institution is unable to conduct a prompt, thorough, and objective inquiry or investigation, when the institution has not adequately resolved the issue, or when an allegation is made directly to the DOT oversight organization. If the DOT oversight organization initiates an investigation, the affected research institution should be promptly notified, unless notice would prejudice the investigation or a simultaneous criminal investigation is underway or being considered.

The DOT oversight organization will conduct inquiries and investigations in accordance with the guidelines in section IV and, as applicable, the steps provided above in section V.1. Upon conclusion of the investigation, the respondent must be given the opportunity to provide written comments or rebut the investigative report.

VI. DOT Administrative Actions

Prior to the completion of an investigation, the DOT oversight organization may, on the basis of facts established in the investigation, take, or cause to be taken, interim administrative actions. Interim actions will be taken when deemed appropriate to protect the welfare of human and animal subjects of research, prevent inappropriate use of Federal funds, or otherwise protect the public interest and safety. Interim actions may include special certifications, assurances or other administrative actions. If there are reasonable indications that criminal violations may have occurred, the DOT oversight organization shall consult with the Office of Inspector General to determine an appropriate course of action, including disbarment or suspension. The

DOT oversight organization will notify the respondent in writing of its action, sanctions to be imposed if applicable, and the DOT appeal procedures.

VI.1. Activity Sanctions and Corrective Actions

Possible final actions, excepting criminal sanctions, should consider any corrective actions or sanctions already imposed by the research institution. DOT will rely on the cooperation of the research institution where the respondent is currently employed to assist in implementing its administrative actions.

The DOT oversight organizations in consultation with the appropriate DOT contracting officers or grant managers will review the investigative reports to make determinations on research misconduct allegations and to assess appropriate administrative actions for findings of research misconduct.

When the DOT oversight organization has made its final determination, it will notify the respondent and inform the research institution regarding its disposition of the allegation, including appropriate administrative actions to be taken in accordance with applicable Federal laws, regulations and policies. The DOT oversight organization's finding of research misconduct and associated administrative actions may be appealed pursuant to DOT applicable procedures. In deciding what actions to take, DOT oversight organizations should consider: the severity of the misconduct; the degree to which the misconduct was knowing, intentional or reckless; and whether it was an isolated event or part of a pattern. Sanctions or corrective actions may range as follows:

- Minimal restrictions - such as a letter of reprimand, additional conditions on awards, requiring third-party certification of accuracy or compliance with particular policies, regulations, guidelines, or special terms and conditions;
- Moderate restrictions - such as limitations on certain activities or expenditures under an active grant, or special reviews of requests for funding;
- More severe restrictions - such as termination of an active award, or government-wide suspension or debarment.

When the DOT oversight organization concludes an investigation with a determination of research misconduct, the DOT Office of the Senior Procurement Executive may notify any other sources of research that provide support to the respondent that a finding of research misconduct has been made. If it is believed that criminal or civil fraud violations may have occurred, the DOT oversight organization should promptly refer the matter to the DOT Inspector General, the Department of Justice or other appropriate investigative body.

VII. Appeals

Applicable Federal regulations prevail for suspension or debarment. In all other cases, the respondent in a research misconduct finding may appeal through the RTCC to the Deputy Secretary of Transportation, in writing within 30 calendar days after receiving written notification of DOT's research misconduct finding and associated administrative actions. If there is no request for appeal within 30 calendar days, the administrative actions of the DOT oversight organization shall be final. If a request for appeal is received by the RTCC within the 30-day limit, the Deputy Secretary may have the RTCC review the appeal and make recommendations. The RTCC on behalf of the Deputy Secretary will normally inform the appellant of the final decision on an appeal within 60 calendar days of receipt. This decision will then be the final DOT administrative action.

VIII. Records

All pertinent research misconduct investigation and adjudication records will be maintained by the DOT oversight organization. Upon request, the DOT oversight organization will provide statistics to the RTCC for reporting to the Deputy Secretary. These statistics must include, at a minimum, the number of each of the following: allegations, inquiries, investigations, findings of misconduct, and findings of no misconduct.

Attachment

65 Fed. Reg. 76260 (2000) (http://www.ostp.gov/html/001207_3.html)

¹ See Proposed Federal Policy on Research Misconduct to Protect the Integrity of the Research Record, 64 Fed. Reg. 55,722 (1999).

² See Federal Policy on Research Misconduct, 65 Fed. Reg. 76,260 (2000).

³ Definition of terms from the OSTP policy, at 65 Fed. Reg. 76,262 (2000). Fabrication is making up data or results and recording or reporting them. Falsification is 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. (The research record is the record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit. Research misconduct does not include honest error or differences of opinion.