

Department of the Interior Departmental Manual

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Chapter 3: Integrity of Scientific and Scholarly Activities

Originating Office: Office of the Deputy Secretary

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3.1 Purpose.

A. This chapter establishes Departmental policy on the integrity of scientific and scholarly activities the Department conducts and science and scholarship it uses to inform management and public policy decisions. Scientific and scholarly information considered in Departmental decision making must be robust, of the highest quality, and the result of as rigorous scientific and scholarly processes as can be achieved. Most importantly, it must be trustworthy. It is essential that the Department establish and maintain integrity in its scientific and scholarly activities because information from such activities is a critical factor that informs decision making on public policies. Other factors that inform decision making may include economic, budget, institutional, social, cultural, legal and environmental considerations.

B. This chapter also establishes scientific and scholarly ethical standards, including codes of conduct, and a process for the initial handling of alleged violations. This chapter is not intended to, and does not create any right or benefit, substantive or procedural, enforceable by law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees or agents, or any other person.

3.2 **Background.** The Presidential Memorandum on Scientific Integrity dated March 9, 2009, and the Office of Science and Technology Policy (OSTP) 2010 guidance memorandum on scientific integrity call for ensuring the highest level of integrity in all aspects of the executive branch's involvement with scientific and technological processes. The 2002 Office of Management and Budget (OMB) Information Quality Guidelines, and the 2005 OMB Information Quality Bulletin for Peer Review provide additional guidance for ensuring information quality. The Secretary issued Order No. 3305, *Ensuring Scientific Integrity within the Department of the Interior*, on September 29, 2010, directing the establishment of a Departmental Manual Chapter that sets forth principles of scientific and scholarly integrity and clarifies the roles and responsibilities of all Department of the Interior (DOI) employees in upholding these principles.

3.3 **Scope.** This chapter establishes requirements for the professional conduct and management of scientific and scholarly activities, and the use of scientific and scholarly

information, by and on behalf of the Department. The requirements contained in this chapter are in addition to and do not supersede the Standards of Ethical Conduct for Employees of the Executive Branch, DOI Supplemental Standards, any of the Criminal Conflict of Interest Statutes (18 U.S.C. §§ 201-209), or law enforcement actions and/or investigations and inspections for regulatory compliance. As of the effective date, this policy applies to:

A. All DOI employees, including political appointees, (hereafter employees) when they engage in, supervise, manage, or influence scientific and scholarly activities, or communicate information about the Department's scientific and scholarly activities, or utilize scientific and scholarly information in making agency policy, management or regulatory decisions.

B. All contractors, cooperators, partners, permittees, leasees, and grantees who assist with developing or applying the results of scientific and scholarly activities.

C. All volunteers who assist with developing or applying the results of scientific and scholarly activities.

3.4 Policy. The Department supports a culture of scientific and scholarly integrity. Science and scholarship play a vital role in the Department's mission, providing one of several critical inputs to decision making on conservation and responsible development of natural resources, preservation of cultural resources, and responsibilities to tribal communities. The Department recognizes the importance of scientific and scholarly information and science and scholarship as methods for maintaining and enhancing our effectiveness and establishing credibility and value with all sectors of the public, both nationally and internationally. The Department is dedicated to preserving the integrity of the scientific and scholarly activities it conducts, and activities that are conducted on its behalf. It will not tolerate loss of integrity in the performance of scientific and scholarly activities or in the application of science and scholarship in decision making. The Department will:

A. Use clear and unambiguous codes of conduct for scientific and scholarly activities to define expectations for those covered by this policy.

B. Facilitate the free flow of scientific and scholarly information, consistent with privacy and classification standards, and in keeping with the Department's Open Government Plan.

C. Document the scientific and scholarly findings considered in decision making and ensure public access to that information and supporting data through established Departmental and Bureau procedures—except for information and data that are restricted from disclosure under procedures established in accordance with statute, regulation, Executive Order, or Presidential Memorandum.

D. Ensure that the selection and retention of employees in scientific and scholarly positions or in positions that rely on the results of scientific and scholarly activities are based on the candidate's integrity, knowledge, credentials, and experience relevant to the responsibility of the position.

E. Ensure that public communications policies provide procedures by which scientists and scholars may speak to the media and the public about scientific and scholarly matters based on their official work and areas of expertise. In no circumstance may public affairs officers ask or direct Federal scientists to alter scientific findings.

F. Provide information to employees on whistleblower protections.

G. Communicate this policy and all related responsibilities to contractors, cooperators, partners, permittees, leasees, grantees, and volunteers who assist with developing or applying the results of scientific and scholarly activities on behalf of the Department, as appropriate.

H. Encourage the enhancement of scientific and scholarly integrity through appropriate, cooperative engagement with the communities of practice represented by professional societies and organizations.

I. Examine, track, and resolve all reasonable allegations of scientific and scholarly misconduct while ensuring the rights and privacy of those covered by this policy and ensuring that unwarranted allegations do not result in slander, libel, or other damage to them.

J. Facilitate the sharing of best administrative and management practices that promote the integrity of the Department's scientific and scholarly activities.

3.5 Definitions.

A. Conflict of Interest. Any personal, professional, financial, or other interests that conflict with the actions or judgments of those covered by this policy when conducting scientific and scholarly activities or using scientific and scholarly data and information because those interests may:

- (1) Significantly impair objectivity; or
- (2) Create an unfair competitive advantage for any person or organization, or
- (3) Create the appearance of either (1) or (2).

B. Contractors, Cooperators, Partners, Permittees, Leasees, and Grantees. Groups, organizations, or individuals who provide goods or services to, or otherwise interact with the Department under terms specified in a written agreement (such as a cooperative agreement, grant, or memorandum of understanding), contract, lease, or permit.

C. Decision Makers. Departmental employees who may:

- (1) Develop policies or make determinations about policy or management;
- (2) Make determinations about expenditures of Departmental funds;

(3) Implement or manage activities that involve, or rely on, scientific and scholarly activities; or

(4) Supervise employees who engage in scientific and scholarly activities.

D. Employees Who Engage in Scientific and Scholarly Activities.

(1) Individuals who conduct or directly supervise scientific and/or scholarly activities, including but not limited to proposing, performing, or reviewing inventory, monitoring, research, and assessment, or in reporting results of these activities; and

(2) Individuals who directly supervise or personally perform work involving the compilation and translation of scientific and scholarly data or information into formats used by the Department's decision makers and other non-scientist or non-scholar personnel.

E. Fabrication. Making up data or results and recording or reporting them. (Federal Policy on Research Misconduct, 65 FR 76260-76264, December 6, 2000.) Fabrication does not include documented use of modeling or statistical techniques.

F. Falsification. 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. (Federal Policy on Research Misconduct, 65 FR 76260-76264, December 6, 2000.)

G. Plagiarism. The appropriation of another person's ideas, processes, results, or words without giving appropriate credit. (Federal Policy on Research Misconduct, 65 FR 76260-76264, December 6, 2000.)

H. Reporting. Dissemination of scientific and scholarly activities and results.

I. Scientific Method. A method of research in which a problem is identified, relevant data are gathered, a hypothesis is formulated from these data, and the hypothesis is empirically tested.

J. Scientific and Scholarly Activities. Activities involving inventorying, monitoring, experimentation, study, research, modeling, and scientific and scholarly assessments are scientific and scholarly activities. These activities are conducted in a manner specified by documented protocols and procedures and include any of the physical, biological, cultural, or social sciences as well as landscape architecture, engineering, mathematics, and statistics that employ the scientific method.

K. Scientific and Scholarly Assessment. Scientific and scholarly information constructed to evaluate a body of scientific and scholarly knowledge, typically by analyzing and synthesizing multiple factual inputs, data, models, assumptions, and/or by applying best professional judgment to bridge and/or characterize uncertainties in the available information.

L. Scientific and Scholarly Integrity. The condition resulting from adherence to professional values and practices, when conducting and applying the results of science and scholarship, that ensures objectivity, clarity, reproducibility, and utility and that provides insulation from bias, fabrication, falsification, plagiarism, outside interference, censorship, and inadequate procedural and information security.

M. Scientific and Scholarly Misconduct.

(1) Fabrication, falsification, or plagiarism in proposing, performing, or reviewing scientific and scholarly activities, or in the products or reporting of the results of these activities. (Federal Policy on Research Misconduct, 65 FR 76260-76264, December 6, 2000.)

Misconduct also includes: (a) intentionally circumventing policy that ensures the integrity of science and scholarship, and (b) actions that compromise scientific and scholarly integrity. Scientific and scholarly misconduct does not include honest error or differences of opinion.

(2) Fabrication, falsification, or plagiarism in the application of scientific and scholarly information to decision making, policy formulation, or preparation of materials for public information activities.

(3) A finding of scientific and scholarly misconduct requires that:

(a) There be a significant departure from accepted practices of the relevant scientific and scholarly community.

(b) The misconduct be committed intentionally, knowingly, or recklessly.

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

N. Scientific and Scholarly Product. The results of scientific and scholarly activities including the analysis, synthesis, compilation, or translation of scientific and scholarly information and data into formats used in the Department's decision-making processes or publications.

O. Professional Judgment. An authoritative evaluation that is characterized by or conforms to the technical and ethical standards of a discipline, and requires specialized knowledge or applicable academic preparation.

P. Volunteer. A person who provides, under the terms of a Volunteer Agreement, uncompensated hours of service to the Department for civic, charitable, or humanitarian reasons. A volunteer is not subject to the wage, hour, and compensation provisions of the Fair Labor Standards Act.

Q. Volunteer Agreement. The official Department document that must be reviewed and signed by the volunteer or volunteer group leader and the appropriate agency representative, before work can begin. The agreement statement of work will include the requirements of this

chapter and describes the activity(ies) and circumstances under which the volunteer work is performed.

R. Supervisors and Managers. Employees who manage the people, funds and resources of the Department.

3.6 Responsibilities.

A. Deputy Secretary is responsible for:

- (1) Providing leadership for the Department on scientific and scholarly integrity.
- (2) Ensuring Departmental compliance with this policy.
- (3) Designating the duties of Departmental Scientific Integrity Officer (DSIO) to a senior career staff person with scientific and/or scholarly credentials.
- (4) Serving as the “Office of Primary Responsibility” for revisions to the policy in this chapter.

B. Office of the Executive Secretariat and Regulatory Affairs:

- (1) Serving as the neutral point of contact for receiving allegations of misconduct against DOI employees.
- (2) Referring allegations to the DSIO or appropriate Bureau Scientific Integrity Officer (BSIO).

C. Departmental Scientific Integrity Officer is responsible for:

- (1) Providing Department-wide leadership for implementing this chapter.
- (2) Serving as Scientific Integrity Officer for the Office of the Secretary.
- (3) Implementing this chapter as it pertains to bureaus and offices of the Department.
- (4) Reviewing bureau implementation procedures for consistency with this policy.
- (5) Ensuring the integrity and consistency of the process across the Department.
- (6) Coordinating with the appropriate Human Resources Offices.

(7) Providing additional guidance for implementing and updating this chapter, as needed.

(8) Conducting a review of allegations and submitted materials received from the Office of the Executive Secretariat and Regulatory Affairs (OES) to determine whether an inquiry is warranted and appropriate next steps, following the procedures described in Section 3.8 below.

(9) Keeping the Deputy Secretary informed on the status of the implementation of this chapter.

D. Assistant Secretaries are responsible for:

(1) Providing leadership for their bureaus/offices on scientific and scholarly integrity.

(2) Ensuring their bureaus and offices comply with this policy.

(3) Reviewing bureau/office-specific guidance, as appropriate.

E. Heads of Bureaus are responsible for:

(1) Providing leadership for the bureau on scientific and scholarly integrity.

(2) Designating a BSIO who will report to the Bureau Head or appropriate senior executive and will coordinate bureau level allegations of scientific and scholarly misconduct with the DSIO.

(3) Ensuring bureau compliance with this policy.

(4) Developing bureau-specific guidance, as appropriate.

(5) Providing bureau employees with the policy and guidance.

(6) Ensuring employees and volunteers are aware of their responsibilities and comply with the policy and any bureau-specific guidance.

(7) Ensuring that contractors, cooperators, partners, permittees, leasees, and grantees covered under the scope of this chapter are aware of their responsibilities for complying with the principles of this policy and any bureau-specific guidance.

F. Bureau Scientific Integrity Officers are responsible for:

(1) Implementing this chapter as it pertains to the bureau.

(2) Keeping the bureau head or appropriate senior executive informed on the status of the implementation of this chapter.

(3) Coordinating with the appropriate servicing human resources officer.

(4) Conducting a review of allegations and submitted materials received from the Office of the Executive Secretariat and Regulatory Affairs to determine whether an inquiry is warranted and appropriate next steps, following the procedures described in Section 3.8 below.

(5) Coordinating with the DSIO on all submitted allegations and subsequent actions to ensure integrity and consistency of the process across the Department.

G. Managers and Supervisors are responsible for:

(1) Implementing this chapter as it pertains to their area of management or supervision.

(2) Taking appropriate administrative and disciplinary action.

(3) Consulting, as appropriate, with the DSIO, BSIO, Servicing Human Resources Officer (SHRO), Ethics Officer, Administrative Office or Contracting Office, Office of Inspector General (OIG), Office of the Solicitor (SOL) and Office of Collaborative Action and Dispute Resolution (CADR).

(4) Complying with this chapter, 370 DM 752 on Discipline and Adverse Actions, and established collective bargaining agreements.

(5) Ensuring that all contracts, written agreements, cooperative agreements, grants, permits, and leases, covered under the scope of this chapter and under their purview include the requirements of this policy in their performance work statement.

H. Employees and Volunteers are responsible for:

(1) Being aware of and upholding the principles contained in the Code of Scientific and Scholarly Conduct contained in this chapter, as well as principles of ethical conduct set forth in the Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR 2635).

(2) Complying with the policy and any additional bureau/office-specific guidance.

(3) Reporting to the appropriate officials, as described in Section 3.8 of this chapter, knowledge of scientific misconduct that is planned, is imminent, or has occurred.

(4) Ensuring that any contractors, cooperators, partners, permittees, leasees, and grantees covered under the scope of this chapter with whom they are executing contracts,

written agreements cooperative agreements, grants, leases or permits are aware of their responsibilities for complying with this policy and bureau/office-specific guidance.

(5) Upholding the employee responsibilities and conduct contained in Part 370 DM.

I. Contractors, Cooperators, Partners, Permittees, Leasees, and Grantees are responsible for abiding by the principles contained in this policy regarding the integrity of the Department's scientific and scholarly activities, as specified in written agreements or statements of work.

J. Scientific and Scholarly Misconduct Review Panel members are responsible for:

(1) Impartially examining allegations of scientific and scholarly misconduct, as requested.

(2) Preparing and submitting a report of findings to DSIO/ BSIO and responsible manager/supervisor.

(3) Complying with personnel requirements including established collective bargaining agreements and/or representational rights.

3.7 Code of Scientific and Scholarly Conduct.

A. All Departmental Employees, and all Volunteers, Contractors, Cooperators, Partners, Permittees, Leasees, and Grantees as described in section 3.3 (Scope) of this chapter, will abide by the following code of scientific and scholarly conduct to the best of their ability.

(1) I will act in the interest of the advancement of science and scholarship for sound decision making, by using the most appropriate, best available, high quality scientific and scholarly data and information to support the mission of the Department.

(2) I will communicate the results of scientific and scholarly activities clearly, honestly, objectively, thoroughly, accurately, and in a timely manner.

(3) I will be responsible for the resources entrusted to me, including equipment, funds, my time, and the employees I supervise.

(4) I will adhere to the laws and policies related to protection of natural and cultural resources and to research animals and human subjects while conducting science and scholarship activities.

(5) I will not engage in activities that put others or myself in an actual or apparent conflict of interest.

(6) I will not intentionally hinder the scientific and scholarly activities of others or engage in scientific and scholarly misconduct.

(7) I will clearly differentiate among facts, personal opinions, assumptions, hypotheses, and professional judgment in reporting the results of scientific and scholarly activities and characterizing associated uncertainties in using those results for decision making, and in representing those results to other scientists, decision makers, and the public.

(8) I will protect, to the fullest extent allowed by law, the confidential and proprietary information provided by individuals, communities, and entities whose interests and resources are studied or affected by scientific and scholarly activities.

(9) I will be responsible for the quality of the data I use or create and the integrity of the conclusions, interpretations, and applications I make. I will adhere to appropriate quality assurance and quality control standards, and not withhold information that might not support the conclusions, interpretations, and applications I make.

(10) I will be diligent in creating, using, preserving, documenting, and maintaining scientific and scholarly collections, records, methodologies, information, and data in accordance with federal and Departmental policy and procedures.

B. In addition, for Scientists and Scholars:

(1) I will place quality and objectivity of scientific and scholarly activities and reporting of results ahead of personal gain or allegiance to individuals or organizations.

(2) I will maintain scientific and scholarly integrity and will not engage in fabrication, falsification, or plagiarism in proposing, performing, reviewing, or reporting scientific and scholarly activities and their products.

(3) I will fully disclose methodologies used, all relevant data, and the procedures for identifying and excluding faulty data.

(4) I will adhere to appropriate professional standards for authoring and responsibly publishing the results of scientific and scholarly activities and will respect the intellectual property rights of others.

(5) I will welcome constructive criticism of my scientific and scholarly activities and will be responsive to their peer review.

(6) I will provide constructive, objective, and professionally valid peer review of the work of others, free of any personal or professional jealousy, competition, non-scientific disagreement, or conflict of interest. I will substantiate comments that I make with the same care with which I report my own work.

C. In Addition, for Decision Makers:

(1) I will do my best to support the scientific and scholarly activities of others and will not engage in dishonesty, fraud, misrepresentation, coercive manipulation, censorship, or other misconduct that alters the content, veracity, or meaning or that may affect the planning, conduct, reporting, or application of scientific and scholarly activities.

(2) I will offer respectful, constructive, and objective review of my employees' scientific and scholarly activities and will encourage their obtaining appropriate peer reviews of their work. I will respect the intellectual property rights of others and will substantiate comments that I make about their work with the same care with which I carry out and report the results of my own activities.

(3) I will adhere to appropriate standards for reporting, documenting and applying results of scientific and scholarly activities used in decision making and ensure public access to those results in accordance with Departmental policy and established laws.

3.8 Procedures for Reporting and Resolving Allegations Regarding Loss of Scientific and Scholarly Integrity.

The Department is dedicated to preserving the integrity of the scientific and scholarly activities it conducts, and are conducted on its behalf. It will not tolerate loss of integrity in the performance of scientific and scholarly activities or in the application of science and scholarship in decision making. This section outlines procedures for reporting and resolving allegations in a timely and fair manner (see Appendices A-1 and A-2).

A. Reporting an Allegation. Allegations of scientific and scholarly misconduct with respect to DOI employees, volunteers, contractors, cooperators, partners, permittees, leasees, and grantees must be submitted in writing. The Department will consider allegations submitted within 60 days of discovery of alleged misconduct. Allegations may be submitted by individuals or entities, internal or external to the Department. Misconduct includes intentional fabrication, falsification, or plagiarism and is not the result of honest error or difference of opinion, such as with a scientific and scholarly process or a management decision. Cases of fraud, waste, and abuse should be directly referred to the Office of Inspector General.

An initial notice of an allegation of scientific and scholarly misconduct should be submitted to the OES and contain the following information:

(1) The name, affiliation, and signature of the person(s) submitting the allegation and the name and organization of the person(s) alleged to have committed the misconduct.

(2) Upon receipt of the above information, OES will open a file to track the allegation. The following additional information is required within 10 days of submission of the information in paragraph (1).

(3) A description of the allegation that includes the date, circumstances, and location of the alleged misconduct.

(4) Any documents or other relevant items (such as data, scientific papers, memos, etc.) with annotation showing specifically how the item relates to the allegation.

(5) An explanation of how the allegation relates to scientific and scholarly misconduct and demonstrating the impact of the alleged misconduct.

(6) A statement explaining any conflict(s) of interest the person making the allegation has with the subject(s), entity(ies), or situation(s), named in the allegation.

Allegations may be returned if they do not contain the above information.

B. Inquiry into an allegation of scientific and scholarly misconduct. The OES will refer allegations to the DSIO or the appropriate BSIO. Allegations related to bureau heads or offices within the Office of the Secretary will be referred to the DSIO. Allegations related to the bureaus will be referred to the appropriate BSIO.

(1) Where a union holds an exclusive recognition, managers and supervisor are reminded to fulfill their labor-management obligations, as appropriate, prior to implementing this policy.

(2) Particular attention should be given to any applicable collective bargaining agreement containing language which conflicts with this policy.

(3) Such language prevails over this policy until the contract is renegotiated or unless otherwise agreed to by the parties. The bureau Human Resources Office should be contacted for assistance.

C. The DSIO or BSIO will conduct a review of the allegations and submitted materials to determine whether an inquiry is warranted. Allegations that have been previously resolved will not be reopened unless substantial new information is submitted. If the DSIO or BSIO determines that the allegation does not warrant investigation, or that the allegation was previously investigated, the DSIO or BSIO will dismiss the allegation and inform the submitter.

D. If the DSIO or BSIO determines that an inquiry is warranted:

(1) If Employees and/or Volunteers are the Subject of the Allegation:

(a) The DSIO or BSIO will contact the responsible manager(s) of the subject of the allegation (henceforth referred to as the "subject") to inform the manager (s) that an allegation of scientific and scholarly misconduct has been filed. For employees and volunteers, the responsible manager will normally be the supervisor, except when it is ascertained that the supervisor may have a conflict of interest, in which case an appropriate responsible manager will be assigned.

(b) The DSIO or BSIO working with the responsible manager and an assigned Servicing Human Resources Officer (SHRO), will conduct an inquiry to determine if the allegation is covered under the provisions of this chapter and will provide consistency, oversight, and guidance throughout the entire process.

(c) The subject will be notified in writing (Appendix B - Sample Notification of Allegation of Scientific Misconduct) that an allegation of scientific and scholarly misconduct has been filed against them. The notification shall be conducted privately and preferably in person. At the time of notification, the manager will ensure that all original records and materials relevant to the allegation are immediately secured.

(d) Throughout the inquiry and fact finding, confidentiality must be maintained and identities of the subject of the allegation and person submitting the allegation will be protected.

(2) If Contractors, Cooperators, Partners, Permittees, Leasees, or Grantees are the Subject of the Allegation:

(a) The DSIO or BSIO will contact the appropriate federal official responsible for the activities of the contractors, cooperators, partners, permittees, leasees, or grantees that are the subject of the inquiry to inform the official that an allegation of scientific and scholarly misconduct has been filed. The appropriate official could be the Contracting Officer or Financial Assistance official (CO/FA) or permit/lease manager. The DSIO or BSIO working with the appropriate official shall notify the subject's organization (or the subject in the case of a single independent contractor, cooperator, partner, permittee, leasee, or grantee) of the allegation to request investigation and remedy.

(b) Throughout the inquiry and fact finding, confidentiality must be maintained and identities of the subject of the allegation, their organization, and person submitting the allegation will be protected.

E. Potential outcomes of inquiry into an allegation of scientific and scholarly misconduct.

(1) Employees and Volunteers:

(a) If the DSIO or BSIO working with the manager establishes through the inquiry that no misconduct has occurred, the case will be dismissed and closed. The DSIO or BSIO working with the manager will issue a memorandum to the subject with a copy to the DSIO (if from the BSIO) explaining that the case is dismissed (Sample Closure Memorandum - Appendix C).

(b) If during the inquiry the DSIO or BSIO working with the manager determines that an incident occurred but (1) was not intentional or reckless and therefore not misconduct, or (2) that misconduct occurred, however there is no need for further fact finding;

the DSIO or BSIO will work with the manager and SHRO to determine appropriate corrective action, as necessary. The DSIO or BSIO and manager will meet with the subject to explain any actions that will be taken concerning this incident, close the case, and report resolution of the case to the DSIO (if from the BSIO).

(c) If the DSIO or BSIO working with the manager determines that there appears to be merit to the allegation, and that a formal review and further fact finding by a panel of experts is required to determine the validity of the allegation and the extent and nature of the alleged misconduct, then the DSIO or BSIO will notify the manager and the subject(s) and a panel will be established as follows.

(i) In the case of an allegation against a bureau employee, the bureau head will then establish a Scientific and Scholarly Integrity Review Panel (SIRP). The bureau head may not influence the panel process or results. The BSIO will have oversight over the panel and inform the DSIO of the resolution.

(ii) In the case of an allegation against a bureau head or an Office of the Secretary employee, the DSIO will inform the relevant Assistant Secretary or the Deputy Secretary, as appropriate. Either the Assistant Secretary or the Deputy Secretary, or designee, will establish a SIRP. The DSIO will have oversight over the panel.

(2) Contractors, Cooperators, Partners, Permittees, Leasees, and Grantees:

(a) If the DSIO or BSIO working with the appropriate CO/FA official establishes that no misconduct has occurred then no further action will be taken against the subject's organization. The appropriate CO/FA official will issue a memorandum to the subject's organization with a copy to the BSIO and DSIO explaining that no further action will be taken, and that the case will be closed.

(b) If the DSIO or BSIO working with the appropriate CO/FA official determines that there appears to be merit to the allegation, the subject's organization will be requested to investigate the matter and provide the results to the government, certifying that the results of the investigation are true and accurate to the best knowledge of the organization. Penalties for falsifying results of an investigation may include, but not be limited to, termination of the contract or agreement or suspension and/or debarment from future federal awards.

(c) If no misconduct is reported by the subject's organization and the DSIO or BSIO working with the appropriate CO/FA official accepts this report, no further action will be taken against the subject's organization. Working with the appropriate CO/FA official, a memorandum will be issued to the subject's organization with a copy to the BSIO and DSIO explaining that no further action will be taken concerning this allegation, and that the case will be closed. The DSIO or BSIO working with the appropriate CO/FA official has the authority to question the organization's report until all issues have been satisfactorily addressed, after which the DSIO or BSIO will close the case.

(d) If misconduct is reported by the subject's organization, the DSIO or BSIO, working with the appropriate CO/FA official will decide the course of action with regard to the organization to include, but not be limited to, acceptance of the organization's resolution of the misconduct, issuing a poor performance review, termination of the contract/agreement or initiation of debarment procedures. The BSIO will report resolution of the case to the DSIO.

F. Formal Review and Fact Finding by Scientific and Scholarly Integrity Review Panel (Employees and Volunteers Only).

(1) Guidance for establishment and operations of the Scientific and Scholarly Integrity Review Panel (SIRP) are provided in Appendix D.

(2) The SIRP Chair will notify the subject that a SIRP will be convened to conduct fact finding related to the allegation of scientific and scholarly misconduct; advise the subject on his/her rights and responsibilities during this process, and ask the subject to sign an Employee/Volunteer Information and Acknowledgement Form - Appendix E. The subject will be entitled to have a representative if desired; however legal fees are the responsibility of the subject.

(3) The SIRP will provide a report as outlined in Appendix D. The report produced by this panel falls under the Privacy Act, and will constitute pre-decisional, deliberative material containing analysis and recommendations related to Agency policy. These reports are intended to provide advice, recommendations, and opinions which are part of the deliberative, consultative, decision-making processes of the Department.

(4) Within 30 calendar days of the completion of the fact finding report, the Chair of the SIRP shall forward the report to the appropriate bureau head(s), BSIO(s), and the DSIO. The DSIO or BSIO, as appropriate, will work with the responsible manager and SHRO to determine corrective or disciplinary action. If the SIRP determines there is no misconduct, the manager will issue a memorandum to the subject with a copy to the DSIO or BSIO explaining that no further action will be taken concerning this allegation and that the case will be closed (Appendix C).

G. Corrective and Disciplinary Actions (Employees and Volunteers Only).

(1) If the incident that led to the allegation of misconduct is determined to have resulted in an impact to the integrity of the science or scholarship, the manager will take steps to correct the loss of integrity and to prevent future occurrences of the sequence of events that led to the impact to integrity.

(2) For employees, if the allegation is determined to have merit either as a result of the inquiry led by the DSIO or BSIO or as a result of further fact finding by an SIRP, the responsible manager and SHRO will work together to determine the appropriate action to be taken using the Departmental Manual chapter 370 DM 752 - Discipline and Adverse Actions, and any union contracts, as applicable.

(3) For volunteers, if the allegation is determined to have merit either as a result of the inquiry led by the DSIO or BSIO or as a result of further fact finding by an SIRP, the manager will determine appropriate action which may include loss of privileges or termination of their volunteer service agreement.

H. Appeal Rights (Employees and Volunteers Only). If disciplinary action is taken against an employee, they may have appeal rights under Departmental Manual chapter 370 DM 752 - Discipline and Adverse Actions, and any union contracts, as applicable. Employees should contact their SHRO for additional information.

I. Resources for Federal Employees and Volunteers.

(1) The Department's CONflict RESolution PLUS (CORE PLUS) system for managing conflict in the workplace, jointly managed by the Office of Collaborative Action and Dispute Resolution and its counterparts in the bureaus, provides managers and employees with tools and assistance to address science and scholarship integrity issues and concerns. CORE PLUS assistance may include, but is not limited to, facilitating consultation to help define issues or specific concerns, providing training on effective communication and conflict management, coaching parties in their attempts to resolve conflicts on their own, facilitating meetings, mediating (when it is appropriate and the parties are willing to participate), or securing the services of other alternative dispute resolution practitioners, such as ombudsman assistance, acceptable to all parties.

(2) The informal conflict management and alternative dispute resolution processes available through CORE PLUS do not take the place of any other avenue of redress available to managers and employees. See 370 DM 770.

3.9 Participation as an Officer or Member on the Board of Directors of Professional Societies or other non-Federal Organizations.

The Department encourages the enhancement of scientific and scholarly integrity through engagement with the communities of practice represented by professional societies. The Department encourages employees to participate in outside professional organizations in order to enhance their professional development, especially when that participation advances the Department's mission, programs, and operations. Department scientists, scholars, and other professionals should engage in scientific, scholarly, and other activities with these professional networks in accordance with the following guidelines.

A. An employee's service as an officer or as a member on the board of directors (or in any position that creates a fiduciary duty under State or other applicable law) of a non-Federal organization may create an actual or apparent conflict of interest or may affect the employee's ability to act impartially. Employees in these positions must avoid any activity that may create the potential for preferential treatment, improper official endorsement, inappropriate use of official time, actual or apparent loss of impartiality, disclosure of non-public information, or any situation that would adversely affect the public's confidence in the Department. Employees

wishing to serve in an official capacity in any position that creates a fiduciary duty to a non-Federal organization are required to complete, prior to serving in such a role, the waiver, memorandum of understanding (MOU), and recusal memorandum described below.

B. Employees serving in their official capacity on advisory committees, working groups, or other positions that do not create a fiduciary duty to a non-Federal organization must comply with all applicable ethics statutes and regulations during the period of their service. Employees should consult with an ethics counselor to ensure compliance with these statutes and regulations and should obtain supervisory approval to ensure bureau or Departmental interest in the employee's participation. They are not, however, required to complete the waiver, MOU, and recusal memorandum described below.

(1) Service in a Personal Capacity as an Officer or Member of a Board of Directors or in any Position that Creates a Fiduciary Duty. Employees serving in their personal capacity as an officer or member on the board of directors of a non-Federal organization or in any position that creates a fiduciary duty must adhere to all applicable ethics statutes and regulations and should consult with their Bureau's Deputy Ethics Counselor or the Departmental Ethics Office to ensure their compliance. Failure to comply could result in violation of the Federal criminal conflicts of interest statute (18 U.S.C. § 208) or violation of the Standards of Ethical Conduct for Executive Branch Employees (5 C.F.R. 2635).

(2) Service in an Official Capacity as an Officer or Member of a Board of Directors or in any Position that Creates a Fiduciary Duty. Departmental employees may participate in their official capacity as an officer or member on the board of directors of non-Federal organizations or in any position that creates a fiduciary duty when the Department or their Bureau has determined that such participation is in the best interest of the Federal Government. In order to avoid any actual or apparent conflicts of interest, employees could, in an alternative, serve as a designated non-voting liaison, representing the Department or their bureau. When serving in their official capacity as an officer or on the board of directors of a non-Federal organization or in any position that creates a fiduciary duty to that organization, Department employees must adhere to the following requirements:

(a) Prior to service as an officer or member of the board of directors of a non-Federal organization or in any position that creates a fiduciary duty, employees must receive a Conflicts of Interest Waiver (Appendix F). Waivers shall only be granted by the Designated Agency Ethics Official or a bureau head and will not be granted retroactively. To initiate the waiver process, Departmental employees should contact the Departmental Ethics Office or their Deputy Ethics Counselor.

(b) Employees must execute a written MOU (Appendix G), acknowledging that their primary duty of loyalty is to the U.S. Government should the interests of the Government conflict with the interests of the non-Federal organization. The MOU must be signed by the executive director or an officer of the non-Federal organization and by the Designated Agency Ethics Official or Bureau Head.

(c) Employees must execute a Recusal Memorandum (Appendix H) in which they acknowledge that they may not be involved in any official government matter that would affect the financial interest of the non-Federal organization, including the following: decisions or discussions pertaining to grants, contracts, cooperative research and development agreements (CRADAs), or other support; the preparation of requests from the non-Federal organization to obtain Federal funds or manpower to support its activities; approval of Federal travel authorizations to travel on behalf of the non-Federal organization; or fundraising and lobbying on behalf of the non-Federal organization.

3.10 **Authorities.**

A. Statutes and Regulations.

(1) 5 U.S.C. 301 allows the head of an executive department to prescribe regulations for the conduct of its employees.

(2) 43 CFR 20.501 requires employees of the Department to comply with all Federal statutes, Executive Orders, Office of Government Ethics and Office of Personnel Management regulations, and Departmental regulations.

(3) 43 CFR 20.502 states that employees are required to carry out the announced policies and programs of the Department.

(4) 56 FR 28012-28018 is the Federal Policy for the Protection of Human Subjects, which provides guidelines for all research involving human subjects conducted, supported or otherwise subject to regulation by any federal department or agency.

(5) 7 USC, 2131-2159 is the Animal Welfare Act as Amended, which requires that minimum standards of care and treatment be provided for certain animals bred for commercial sale, used in research, transported commercially, or exhibited to the public.

(6) 43 CFR 20.502(a) states that an employee is subject to appropriate disciplinary action if he or she fails to comply with any lawful regulations, orders, or policies.

(7) 18 U.S.C. 208 and 5 CFR 2635 Subparts D and E state that department scientists and scholars are subject to requirements pertaining to conflict of interest and appearance of a lack of impartiality.

B. Departmental Manual - 370 DM 752.

C. Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR 2635.

D. Federal Policy on Research Misconduct, 65 FR 76260-76264, December 6, 2000.

E. Whistleblower Protection Act, 5 USC, 2302(b)(8).

Appendix B

Sample Notifications of Allegation of Scientific Misconduct

TO: Subject

FROM: DSIO or BSIO

CC: DSIO and Manager

SUBJECT: Allegation of Scientific Misconduct

An allegation of scientific misconduct has been filed with the Department of the Interior regarding the following: *Insert as specific and detailed a description of the allegation as possible here, but do not disclose the name of the person who filed the allegation.*

This allegation has not yet been investigated or determined to have merit. However, pursuant to the Department of the Interior's scientific integrity policy, I will be conducting an inquiry to determine its merits. Under the Department's procedures, you must preserve and provide to my office all original research records and materials relevant to the above allegation.

An interview will be scheduled with you to discuss the allegation and will be part of the official record. You may also provide for the record a written response to the allegation.

Once an inquiry into this matter is concluded, I will inform you in writing that: (1) a review of this matter has dismissed the allegation and the matter is closed; (2) a review of this matter has verified that scientific misconduct has taken place and you will be contacted about possible additional action; or (3) the allegation has been referred to a Scientific Integrity Review Panel (SIRP) for further fact-finding. If the matter is referred to an SIRP, the Chairperson of the Panel will notify you of your rights concerning their review, your obligations during their investigation, and your opportunity to respond to the allegation.

For Volunteers:

If a Panel conducts fact-finding into this allegation, I will review their findings to determine the appropriate action necessary to resolve this matter. You will be advised of the action to be taken.

If conflict arises as this process proceeds or if the action was not deliberate and was more about a disagreement or difference of opinion, I may utilize the Department's CORE PLUS system for managing conflict in the workplace. The CORE PLUS system is jointly managed by the Office of Collaborative Action and Dispute Resolution and its counterparts in the bureaus, and provides managers and employees with tools and assistance to address science and scholarship integrity issues and concerns. CORE PLUS assistance may include, but is not limited to, consultation to help define issues or specific concerns, providing training on effective communication and conflict management, coaching parties in their attempts to resolve conflicts on their own,

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facilitating meetings, mediating (when it is appropriate and the parties are willing to participate), or securing the services of other alternative dispute resolution practitioners, such as ombuds assistance, acceptable to all parties.

I have attached a copy of the DOI Manual chapter xxxxx on Scientific Integrity. Please review it carefully and let me know if you have any questions about this process.

Appendix C

Sample Closure Memorandum

TO: Subject

FROM: DSIO or BSIO

CC: DSIO and Manager

SUBJECT: Resolution of Allegation of Scientific Misconduct

I am pleased to inform you that, after an inquiry into the allegation of scientific misconduct that was filed against you, I have found no merit in the charge. *(Insert as specific and detailed a description of the allegation as possible but do not disclose the name of the person who filed the allegation)*. As a result, the concerns of this allegation are considered closed. I appreciate your cooperation in this important process.

Appendix D

Scientific and Scholarly Misconduct Review Panel

PURPOSE

A Scientific Integrity Review Panel (SIRP) will be established by the Head(s) of a Bureau(s) for Bureau related allegations of misconduct or by the DSIO for allegations of misconduct against the Bureau Head or Office of the Secretary. The SIRP will conduct fact finding and review allegations of misconduct reported against DOI employees and volunteers. The panel shall address the materiality or significance of the alleged misconduct and explain why the conduct does or does not constitute a serious deviation from accepted practices under institutional or general scientific and scholarly standards. To fully understand the severity of alleged misconduct, an effort to determine deliberate intent should be included in the investigation. Scientific and scholarly misconduct is the result of a deliberate action by an employee or volunteer that compromises the scientific integrity of the conduct, production, or use of scientific and scholarly activities and assessments. Misconduct includes intentional fabrication, falsification, or plagiarism and is not the result of honest error or difference of opinion with a scientific and scholarly process or a management decision.

Three criteria are necessary to establish research misconduct (Federal Policy on Research Misconduct):

- (1) There is a significant departure from accepted practices of the relevant research community, and
- (2) The misconduct is committed intentionally or knowingly or recklessly, and
- (3) The allegation is proven by a majority of evidence.

COMPOSITION OF THE PANEL

The SIRP shall consist of a Chairperson and at least three subject matter experts that may come from any part of the Department as appropriate. The Bureau Head(s) or DSIO, or a designee in consultation with the BISO and appropriate senior management as needed shall appoint the panel members based on the specific discipline or a specific area of expertise that is required to understand the probable nature of the alleged misconduct. The Chairperson, with the concurrence of the Bureau Head (s) or DSIO, will select additional panel members as needed. The Bureau Head (s) or DSIO may replace any panel member at any time. Depending on the Bureau's needs, this may be a standing committee.

Panel members shall have appropriate expertise to evaluate the allegations of scientific misconduct. The integrity and fairness of the peer-evaluation process is paramount, every effort will be made to maintain a balance of subject matter expertise at, appropriate grade levels among panel members.

SERVICING HUMAN RESOURCES OFFICE, ETHICS OFFICE, OR ADMINISTRATIVE ASSISTANCE

The Chairperson of the Panel will set the specific dates, time, and place for the panel to meet. The servicing human resources officer will serve as an ad hoc member of the panel and along with the, BSIO or DSIO, and the Bureau or Department Ethics office, will provide support or advice to the panel as necessary.

PANEL OPERATIONS AND RESPONSIBILITIES

The Chairperson of the Panel will ensure that information concerning the case is distributed to panel members at least two weeks prior to the meeting date.

The Panel, at its discretion, will conduct fact-finding and may utilize one or both of the following methods: (1) Securing and reviewing documentary evidence including all original experimental records, protocols, and data; (2) Interviewing relevant persons, whether in person, or by telephone; and securing written statements from the interested parties, as necessary.

The Chairperson of the Panel shall advise panel members of the extreme importance of confidentiality of materials and discussions relating to the alleged scientific misconduct. There is to be no release of information by panel members pertaining to any allegation. All discussions by the panel shall be safeguarded and not shared outside of the Scientific Integrity Review Panel.

The Scientific Integrity Review Panel will arrive at a consensus decision, if possible, about whether or not misconduct has occurred. Consensus decision means that all panel members, including the Chairperson, agree in general with a decision; this is distinct from a majority-rule decision. In the consensus-based process, panel members work together to develop a finding with which all of the members of the panel can agree. The Chairperson will determine if consensus has been reached by asking all panel members if they agree with the finding. If consensus is reached, then the Panel shall write a report of their findings that contains: a summary of the findings, the basis for determining whether or not scientific misconduct occurred, and an assessment of the seriousness and extent of any misconduct found that is in violation of the DOI Policy on Integrity of Scientific and Scholarly Activities.

The Panel will take the time necessary to address all of the relevant issues associated with the allegation in order to reach a consensus finding. If after all efforts are exhausted, the Panel is still unable to reach consensus about whether or not misconduct has occurred, then a majority decision will be made. In this case, the panel report will include majority and minority findings.

The report produced by this panel will constitute pre-decisional, deliberative material containing analysis and recommendations related to Agency policy. These reports are intended to provide advice, recommendations, and opinions which are part of the deliberative, consultative, decision-making processes of the Department of the Interior. At a minimum the report will include: (1) Summary of the alleged misconduct, (2) Summary of the fact finding activities of the panel, (3) Discussion and conclusion as a result of the fact finding and (4) Appendices as needed

containing supporting documents and written statements. The report and supporting documents constitute the record of the panel activities and will be kept according to the appropriate records disposition schedule by the appropriate DSIO or BSIO.

Within 30 calendar days of the completion of the review and fact finding, the Chairperson of the Panel shall forward the completed report to the BISO, DSIO, and responsible manager.

Appendix E

Employee and Volunteer Information and Acknowledgement Forms

EMPLOYEE INFORMATION AND ACKNOWLEDGMENT FORM

The Chairperson of the Scientific Integrity Review Panel will ensure that the subject of the allegation initials each statement below and returns the original signed/dated form to the Chairperson. A copy of the completed form will be provided to the subject of the allegation. The employee acknowledges that:

I have been informed and I understand this is a formal review and fact-finding process involving matters relating to my official duties as a Federal employee.

I have been informed and I understand that, as a Federal employee, I am required to cooperate with this formal process and provide truthful answers.

I have been informed and I understand that if I refuse to cooperate and answer questions during this formal process, my refusal to cooperate can be a basis for disciplinary action, which may result in my removal from Federal service.

I have been informed and I understand that if I provide information during this formal process that I know to be false at the time I provided the information, my providing false information can be a basis for disciplinary action that may result in my removal from Federal service and also can be a basis for criminal prosecution.

I understand that I will have the opportunity to respond to the allegation and to present evidence to the Scientific Misconduct Review Panel orally and/or in writing and that I may have representation at my own expense.

I understand that I may have rights as an employee during this process, and that my servicing Human Resources Office can inform me of these rights.

Signature: _____ Date: _____
Name (please print): _____
Position Title, Series and Grade: _____
Duty Station: _____

PRIVACY ACT NOTICE. Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. § 552a, you are advised of the following:

1. Authority. Solicitation of this information is authorized by 5 U.S.C. 301 that allows the head of an executive department to prescribe regulations for the conduct of its employees and other authorities cited at 305 DM 3.10.

2. Principal Purpose. The principal purpose for soliciting the information is to implement the Policy on Integrity of Scientific and Scholarly Activities of the Department of the Interior at 305 DM 3.

3. Routine Uses. Routine uses of the solicited information are the same as those listed in the system notice OPM/GOVT-1.

4. Effect of Noncompliance. Failure to provide the solicited information may result in disciplinary action, including the removal from Federal service.

VOLUNTEER INFORMATION AND ACKNOWLEDGMENT FORM

The Chairperson of the Scientific Integrity Review Panel will ensure that the subject of the allegation initials each statement below and returns the original signed/dated form to the Chairperson. A copy of the completed form will be provided to the subject of the allegation.

The Volunteer acknowledges that:

I have been informed and I understand this is a formal review and fact-finding process involving matters relating to my official duties as a DOI volunteer.

I have been informed and I understand that if I refuse to cooperate and answer questions during this formal process, my refusal to cooperate may result in termination of my volunteer agreement.

I have been informed and I understand that if I provide information during this formal process that I know to be false at the time I provide the information; my providing false information can be a basis for termination of my volunteer agreement.

I understand that I will have the opportunity to respond to the allegation and to present evidence to the Scientific Integrity Review Panel orally and/or in writing and that I may have representation at my own expense.

Signature: _____ Date: _____

Name (please print): _____

Office: _____

PRIVACY ACT NOTICE. Pursuant to the Privacy Act of 1974, as amended, 5 U.S.C. § 552a, you are advised of the following:

1. Authority. Solicitation of this information is authorized by 5 U.S.C. 301 that allows the head of an executive department to prescribe regulations for the conduct of its employees and other authorities cited at 305 DM 3.10.

2. Principal Purpose. The principal purpose for soliciting the information is to implement the Policy on Integrity of Scientific and Scholarly Activities of the Department of the Interior at 305 DM 3.

3. Routine Uses. Routine uses of the solicited information are the same as those listed in the system notice INTERIOR/DOI-05.

4. Effect of Noncompliance. Failure to provide the solicited information may result in termination of your volunteer agreement.

Conflict of Interest Waiver Request Template

Memorandum

To: [Name of Bureau Ethics Counselor]

From: [Deputy Ethics Counselor]

Subject: Conflict of Interest Waiver for [Employee Name]

The purpose of this memorandum is to request that you grant [Employee Name] a waiver of the criminal conflict of interest provisions that may apply to [his or her] service in an official capacity as [an officer or a member of the board of directors, or other position] of the [name of outside non-profit organization] [abbreviation]. [Employee Name]'s official [Department or bureau] duty is to serve as the [title]. As such, [he or she] [explain the employee's duties, including information that shows how they relate to service in the outside organization (may require more than one sentence)].

The criminal conflict of interest statute, 18 U.S.C. § 208(a), requires that an employee refrain from participating personally and substantially in an official capacity in any particular matter that will have an effect on the financial interests of any organization in which the individual serves as an officer, director, trustee, or employee.

In the absence of: (1) specific statutory authority placing a federal employee in an officer or director position in an ex officio capacity; (2) a release of fiduciary obligations by the organization (if permitted by state law); or (3) a waiver of the requirements of 18 U.S.C. § 208(a), the statute effectively would preclude [Employee Name]'s service, as an official duty activity, as [officer, director or other position] with the [name of outside non-profit organization].

[Describe the position in the outside organization and the outside organization]. [Describe the relationship of the outside organization to [Department or bureau] programs and operations.]

A memorandum of understanding between the [Department or bureau] and the [name of outside non-profit organization] concerning the service of [Employee Name] is attached.

Inasmuch as [Employee Name]'s appointment with the [name of outside non-profit organization] is not pursuant to a statute or release of fiduciary obligations, [he or she] has requested that you, as the official to whom waiver authority is delegated, authorize [his or her] participation in certain particular matters that may affect the financial interests of the [name of outside non-profit organization]. Under 18 U.S.C. § 208(b)(1), a waiver may be granted if the official to whom waiver authority is delegated determines that the disclosed financial interest is "not so substantial as to be deemed likely to affect the integrity of the employee's services to the Government."

In the course of [his or her] assigned duties, the following types of particular matters potentially could come before [Employee Name] for [his or her] personal and substantial participation:

- (1) particular matters of general applicability, such as legislation, regulation, or policy that may affect the financial interests of the [name of outside non-profit organization] as a member of a class of similarly situated entities;
- (2) matters that affect the financial interests of the [name of outside non-profit organization] through investigation or regulation of the [name of outside non-profit organization];
- (3) particular matters involving specific parties, such as grants, contracts, or application approvals that specifically involve the [name of outside non-profit organization] or otherwise affect its financial interests; or
- (4) other miscellaneous matters involving the conduct of the [name of outside non-profit organization] and [Department or bureau] support.

While performing the usual and customary duties of the position of [officer, director or other position] with an outside organization as an official [Department or bureau] activity, any actions taken either in the Federal workplace or at the organization that affect the financial interests of the outside organization are deemed official matters to which 18 U.S.C. § 208(a) applies. For example, such actions may include:

- (a) requesting that official travel funds be spent or other government resources be utilized for the employee to conduct the affairs of the organization;
- (b) signing a training authorization to use [Department or bureau] funds to pay for an employee to attend a conference or other meeting of the organization;
- (c) speaking as an official duty activity at a conference or other meeting of the organization;
- (d) providing advice and consultation with respect to, or otherwise conducting, the business affairs of the organization including voting on matters that come before the [name of outside non-profit organization] officers and board members.

While the financial impact may be insignificant, under well-settled precedent, 18 U.S.C. § 208(a) has no de minimis aspect.

I believe that a waiver under 18 U.S.C. § 208(b)(1) to allow [Employee Name] to serve as an [officer or a member of the board of directors, or other position] for [name of outside non-profit organization] in [his or her] official capacity is justified for the following reasons:

First, because [Employee Name] will serve as [position with the outside non-profit organization] as an official duty activity, and [Employee Name]'s position in the outside organization is fully known to the [Department or bureau], the risk that the integrity of the services that the government expects from [Employee Name] would be affected by [his or her] service is greatly diminished. Moreover, the

[Department or bureau] has already determined that, to a significant degree, the interests of the [Department or bureau] and the interests of the [name of outside non-profit organization] are consonant. The [Department or bureau] expects that the interests of the [Department or bureau] and the interests of the [name of outside non-profit organization] can both be furthered through the performance of [Employee Name]'s official duties and service with the [name of outside non-profit organization].

Second, most, if not all, of the particular matters in which [Employee Name] would participate would not have a significant effect on the financial interest of the [name of outside non-profit organization] because of the limits in this request set forth below. [Employee Name] will have no involvement in any [Department or bureau] grants, contracts, cooperative agreements, or other Federal support (financial or otherwise) to the [name of outside non-profit organization] other than the use of travel or training funds solely for [Employee Name]'s service with the [name of outside non-profit organization]. [Employee Name] will not participate in investigations of the activities of the [name of outside non-profit organization], other than as a provider of information or testimony. [Employee Name] will not participate in developing regulations that would impact the [name of outside non-profit organization] or be involved in enforcing regulations pertaining to the [name of outside non-profit organization].

Contradictory with Limitations 1

Accordingly, if approved, the requested waiver will permit [Employee Name] to serve as an [officer or a member of the board of directors, or other position] in [name of outside non-profit organization] and permit participation in [his or her] capacity with the [name of outside non-profit organization] in particular matters that will affect the financial interests of the [name of outside non-profit organization], EXCEPT the particular matters listed below that might have a direct and predictable effect on the financial interests of the [name of outside non-profit organization] as to which [Employee Name] has committed to recuse [himself or herself].

LIMITATIONS:

[Employee Name] may not participate in any of the following particular matters because they may affect the financial interests of the [Department or bureau] and the [name of outside non-profit organization] or otherwise violate Federal laws or regulations:

1. Any involvement or participation in decisions pertaining to [Department or bureau] grants, contracts, cooperative agreements [list any other types of agreements that the [Department or bureau] might have with the outside non-profit organization], or other support to include personnel and equipment to the [name of outside non-profit organization], except the actions specifically permitted above, that is:

- “(a) requesting that official travel funds be spent or other government resources be utilized for the employee to conduct the affairs of the organization;

- (b) signing a training authorization to use [Department or Bureau] funds to pay for an employee to attend a conference or other meeting of the organization;

(c) speaking as an official duty activity at a conference or other meeting of the organization;

(d) providing advice and consultation with respect to, or otherwise conducting, the business affairs of the organization including voting on matters that come before the [name of outside non-profit organization] officers and board members.”

2. Any involvement or participation in any regulatory or investigatory matters on behalf of any Department or agency of the U.S. Government involving the [name of outside non-profit organization] other than as a provider of information or testimony.

3. Preparation or presentation of requests from the [name of outside non-profit organization] to obtain any Federal funds, manpower, or any other form of Federal support on its behalf to support [name of outside non-profit organization] activities, except as permitted in 1.(a) through (c) above.

4. Lobbying on behalf of the [name of outside non-profit organization] in any manner to a Member of Congress, a jurisdiction, or an official of any government as prohibited by 18 U.S.C. § 1913. This includes the use of money appropriated by any enactment of Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, at any time unless specifically authorized by Act of Congress. This does not prevent employees of the United States or of its departments or agencies from communicating to Members of Congress or other officials, at his request, or to Congress or such official, through the proper official channels regarding requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business.

5. Approval of Federal travel authorizations to travel on behalf of the [name of outside non-profit organization].

6. Participation in fundraising activities of the [name of outside non-profit organization].

A copy of the recusal memorandum is attached. In this manner, [Employee Name]’s service with the [name of outside non-profit organization] is severed from his service as the [Employee’s Department or bureau duty title] on particular matters where both the [name of outside non-profit organization] and the [Department or bureau] may have financial interests, thereby avoiding any potential that [he or she] could act contrary to interests of the [Department or bureau] for the benefit of the [name of outside non-profit organization].

[Employee Name] understands and agrees that, as an official duty activity, no separate compensation or reimbursements may be received from the [name of outside non-profit organization] in connection with his or her service. Travel, lodging, per diem or other incidental

expenses incurred by [Employee Name] on behalf of the [name of outside non-profit organization], if any, may be accepted by the [Department or bureau] under 31 U.S.C. § 1353 as appropriate. Acceptance of [Employee Name] travel expenses, if any, from the [name of outside non-profit organization] shall be accomplished via a Form DI-2000 which must be approved by the [Departmental or bureau] Ethics Office prior to the travel, or when circumstances do not permit prior approval, within seven days of conclusion of the travel.

3 Attachments:

1. MOU between the [Department or bureau] and the [name of outside non-profit organization], dated
2. [Employee Name] Recusal letter, dated
3. Form DI-2000, *Acceptance of Travel Expenses from a Non-Federal Source*

DECISION:

_____ Waiver granted, subject to the terms and conditions stated above, based on my determination, made in accordance with 18 U.S.C. § 208(b)(1), that the disclosed financial interests are not so substantial as to be deemed likely to affect the integrity of the service which the government may expect from the employee.

_____ Waiver denied.

Date:

[Name]
[Departmental or Bureau Ethics Counselor]
[Name of Department or bureau]

I have read and fully understand ALL of this 18 U.S.C. § 208(b)(1) waiver decision and its limitations. I agree to fully comply with its limitations and acknowledge my understanding and compliance by signing below:

[Employee Name]
[Title]
[Department or bureau]

Date:

Memorandum of Understanding Template

Memorandum of Understanding
between the
(U.S. Department of the Interior or bureau)
and the
(Organization name)

1. This Memorandum of Understanding sets forth the agreement between the (Department or bureau) [abbreviation] and the (organization name) [abbreviation] concerning the service of (employee name) as an [officer or member of a board of directors] of the (organization name) as a part of (his or her) official government duties through [month/year]. (Employee name) will be serving as _____ . It is estimated that the amount of official time (employee name) will spend on this activity will be approximately (number) hours per month.
2. Before (employee name) performs any duties as an [officer or member of a board of directors] of the (organization name) as part of (his or her) official duties (he or she) must be granted a waiver under the Federal conflict of interest statute, 18 U.S.C. § 208. Waivers that permit an employee to serve as an officer or a member of a board of directors are limited and enable (employee name) to serve as an [officer or board member] of the (organization name) in (his or her) official capacity as a [Department or bureau] employee without violating 18 U.S.C. § 208. However, even if an 18 U.S.C. § 208 waiver is granted, (employee name) may not make or participate in any official decisions on behalf of the (Department or bureau) regarding any request from the (organization name) for public funds or support. (Employee name) may not take any actions that violate Federal, state or local law. Requests for public funds or support include, but are not limited to grants, cooperative agreements, contracts or any other action where the (organization name) is requesting any form of support from the Department of the Interior or one its bureaus. To ensure that no conflicts of interest arise, the (organization name) agrees that it will notify the (Department or bureau) Ethics Office if it intends to seek public funds or support from the Department of the Interior or one of its bureaus. Notice will be provided to: [Department or bureau] Ethics Office [address]. The (organization name) also understands that if it elects to request public funds or support from the Department of the Interior or one of its bureaus, (employee name) may be directed to resign as an [officer or board member] in the (organization name) in (his or her) official capacity.
3. The primary beneficiary of (employee name)'s service as an [officer or board member] in the (organization name) is intended to be the (Department or bureau). It is expected that the benefits to the (Department or bureau) will include, but not be limited to the following:
 - a. acquisition of state-of-the-art technical information about (name subjects).
 - b. knowledge about organizational arrangements and relationships of organizations with which the (Department or bureau) interacts, in order to enhance the working relationships between the (Department or bureau) and such other organizations;

- c. improved understanding of current issues in the (name the field of endeavor) that concern (Department or bureau) missions and operations;
 - d. utilization of professional networks and channels to disseminate information relevant to the accomplishment of (Department or bureau) missions; and
 - e. utilization of other mechanisms to facilitate accomplishment of (Department or bureau) missions, functions and processes, such as meetings, conferences, symposia, and publications.
4. In order to avoid the possibility of an actual or potential use of public office for private gain, when [name of employee] uses official time to serve as an [officer or board member] in the (organization name), the following principles will apply:
- a. Federal employees may not represent anyone other than the United States before an agency or court in connection with any particular matter in which the United States is a party or has a direct and substantial interest. (18 U.S.C. § 205)
 - b. When serving as an officer or member of a board of directors of a non-Federal organization in an official capacity, Federal employees must refrain from any involvement or participation in or taking any official action on behalf of the Department of the Interior or its bureaus on any application or request for public funds or other support by the (organization name). (18 U.S.C. § 208)
 - c. If a Federal employee's participation in a project undertaken in conjunction with a private organization was done as a part of (his or her) official duties, the Federal employee is prohibited from receiving any supplementation of his/her Federal salary. (18 U.S.C. § 209)
 - d. Federal employees are prohibited from using appropriated funds, official time or Government equipment to instigate or generate lobbying activity on any issue pending before or of interest to the Congress or an official of any government. (18 U.S.C. § 1913)
 - e. Federal employees are prohibited from being involved in the fundraising activities of the (organization name).
 - f. Federal employees may not utilize official Government postage, stationery, envelopes, or labels for other than official Government business. (18 U.S.C. § 1719)

The relationship between the (organization name) and the (Department or bureau) addressed in this document is intended to enhance service to the American public through more efficient applications of (Department or bureau) programs. All actions should be directed toward attainment of that mutually beneficial goal.

5. Under Federal law, a Federal employee serving in (his or her) official capacity owes (his or her)

first duty of loyalty to the Government of the United States. By signing this memorandum of understanding, the (organization name) acknowledges and consents to the fact that since (employee name) is acting as an [officer or a member of a board of directors] in (organization name) in (his or her) official capacity as a (Department or bureau) employee, (employee name) will owe (his or her) first duty of loyalty to the United States Government and specifically the (Department or bureau) before that of the (organization name) if those interests ever conflict. Consequently, to the fullest extent permitted by state law, the (organization name) agrees to waive any fiduciary duty owed by (employee name) to the (organization name) as an [officer or a member of a board of directors] in the (organization name) when (employee name) acts in the interests of the United States Government. This waiver is limited to actions taken in the interests of the United States Government by (employee name) as an [officer or a member of a board of directors] in the (organization name) while acting in (his or her) official capacity. (Employee name) retains a fiduciary duty to act in the best interests of the (organization name) except when in conflict with the interests of the United States Government.

6. The (organization name) agrees to provide (employee name) liability insurance coverage for any acts performed as an [officer or board member] in the (organization name) equivalent to liability coverage provided to other [officers or board members] of the (organization name). The (organization name) agrees to hold the United States harmless for acts taken by (employee name) in (his or her) official [Department or bureau] capacity as an [officer or board member] in the (organization name).

The foregoing is not intended to impose on the (organization name) any obligations or restrictions other than those set forth above. The (organization name) has an obligation to respect the limitations described above on the activities and function of (employee name) and benefits which may be received by the (Department or bureau). This agreement does not constitute a representation or warranty by the (organization name) as to the benefits which the (Department or bureau) will receive in fact from (employee name)'s service as an officer or member of the board of directors in the (organization name). Nor does the (organization name) assume any obligation to inquire into or enforce (employee name)'s compliance with paragraph 4 above.

Date:

[Name]
[Official Department or Bureau Position]
[Departmental or Bureau]

Date:

[Name]
[Position]
[Organization name]

Recusal Memorandum Template

MEMORANDUM

TO: [Supervisor Name and Title]

Date

FROM: Name, Title and address [employee signs here]

SUBJECT: Notice of Recusal by [Employee name]

- 1) This is to notify you that I have an interest in the [name of outside non-profit organization] [abbreviation] because I have been elected as [officer or board of director position] with the [name of outside non-profit organization] through [end date month/year]. **I will not be serving as [officer or board of director position] in an official [Department or Bureau] capacity unless and until I am granted a waiver of the conflict of interest statute, 18 U.S.C. § 208(b)(1), by the Director of the [Department or bureau].**
- 2) Even though a waiver granted to me pursuant to 18 U.S.C. § 208(b)(1) by the Director of the [Department or bureau] will allow me to serve as [officer or board of director position] and act on [name of outside non-profit organization] matters utilizing limited Government time and resources, I will not involve myself with the following:
 - a. Any [Department or bureau] grants, contracts, cooperative agreements or other agreements with the [name of outside non-profit organization];
 - b. Providing support to the [name of outside non-profit organization], including personnel or equipment from or to the [name of outside non-profit organization];
 - c. Directing a subordinate to speak at any conference or other meeting of the [name of outside non-profit organization];
 - d. Participating in investigations of the activities of the [name of outside non-profit organization], other than as a provider of information or testimony;
 - e. Developing regulations that would impact the [name of outside non-profit organization] or enforcing regulations pertaining to the [name of outside non-profit organization];
 - f. Preparation or presentation of requests from the [name of outside non-profit organization] to obtain any Federal funds, manpower, or any other form of Federal support to support [name of outside non-profit organization] activities. A waiver will permit me to request official travel authorizations to attend and/or to be a speaker or presenter at meetings or conferences of the [name of outside non-profit organization] but approval of my travel authorization requests must be based on a determination by my travel approval authority that my attendance or presentation at the meeting or conference of the [name of outside non-profit organization] is in the best interests of the [Department or bureau];
 - g. Lobbying on behalf of the [name of outside non-profit organization] in any manner to a Member of Congress, a jurisdiction, or an official of any government as prohibited by 18 U.S.C. § 1913. This includes the use of money appropriated by any enactment

- of Congress to pay for any personal service, advertisement, telegram, telephone, letter, printed or written matter, or other device, intended or designed to influence in any manner a Member of Congress, a jurisdiction, or an official of any government, to favor, adopt, or oppose, by vote or otherwise, any legislation, law, ratification, policy, or appropriation, at any time unless specifically authorized by Act of Congress. This does not prevent employees of the United States or of its departments or agencies from communicating to Members of Congress or other officials, at his request, or to Congress or such official, through the proper official channels regarding requests for any legislation, law, ratification, policy, or appropriations which they deem necessary for the efficient conduct of the public business;
- h. Participation in fundraising activities of the [name of outside non-profit organization]; or
 - i. Approval of Federal travel authorizations of [Department or bureau] employees to attend meetings or conferences of the [name of outside non-profit organization].
3. I have retained a copy of this recusal memorandum for my records and distributed it as listed below.

Copy to: [Departmental or bureau] Ethics Office