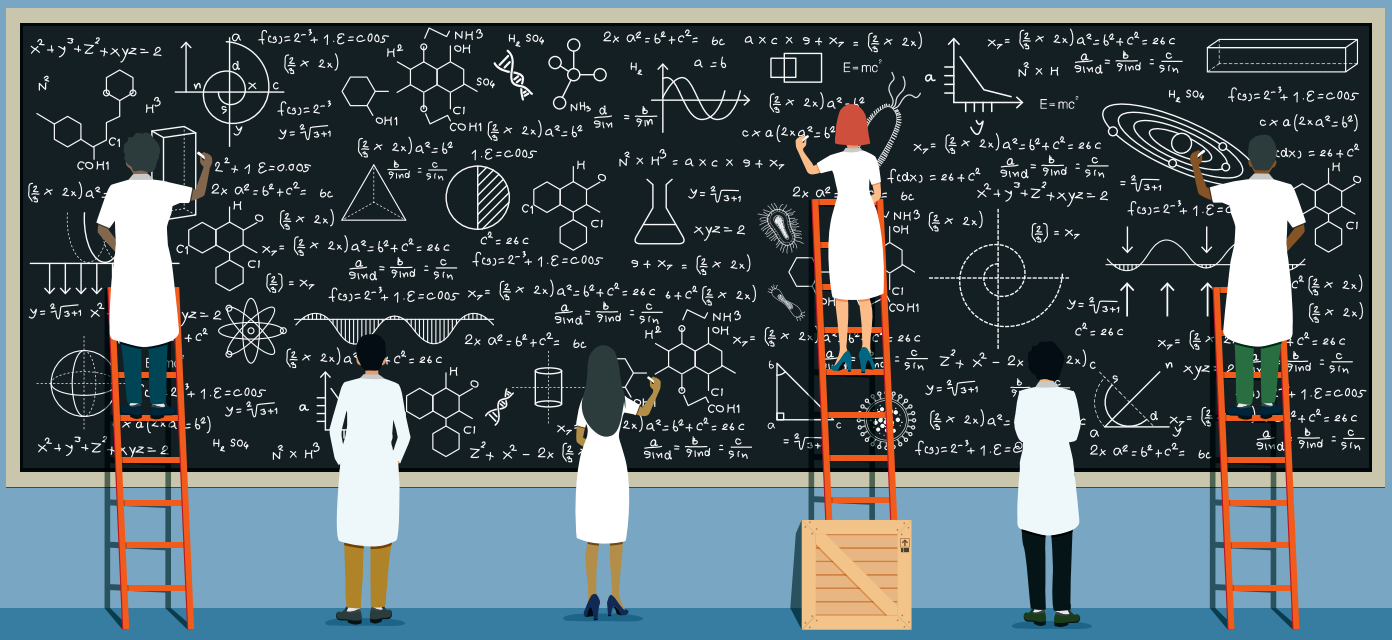

A QUICK GUIDE TO THE SCIENTIFIC INTEGRITY POLICY AT THE

Department of Defense (DOD)

Brought to you by
the Climate Science
Legal Defense Fund

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1 INTRODUCTION

A Quick Guide to the Department of Defense Scientific Integrity Policy

Scientific integrity principles are indispensable to the missions and the functions of scientific federal agencies in the United States. Conducting sound and unbiased scientific research is essential to maintaining public trust in these agencies. For scientists employed at these agencies, understanding these principles—both how to abide by them, and what to do if they are violated—is a core job function.

Many scientific agencies adopted scientific integrity policies following a 2009 memorandum issued by President Obama, and a subsequent memorandum issued in 2010 by the White House Office of Science and Technology Policy. These policies clarify how individual agencies interpret scientific integrity. In many cases, a policy also describes how a scientist should report a loss of scientific integrity, how the agency will investigate such claims, and the rights of both a complainant and a person alleged to have committed a violation.

This guide examines the Department of Defense (DOD) scientific integrity policy. The guide is designed to help scientists working for or funded by the DOD understand how the policy applies to them, what rights they have under the policy, and how they can avail themselves of these.

The DOD policy could be significantly strengthened by providing more information and guidance on scientific integrity for scientists working at the agency. But it is still crucial for agency scientists to know their rights and responsibilities in respect to scientific integrity, as well as the strengths and weaknesses of the DOD policy.

While this guide helps DOD scientists understand the agency's scientific integrity policy, it is not a substitute for legal advice regarding a particular situation. The Climate Science Legal Defense Fund offers free, confidential consultations to scientists with questions about scientific integrity.

Contact us at
(646) 801-0853

Or send an email to
lawyer@csldf.org

2 SUMMARY

The Department of Defense (DOD) scientific integrity policy (referred to as the policy and SIP in this guide) briefly describes many of the key components of a scientific integrity policy. But it fails to expand on most of them, leaving many questions about what the policy's provisions mean. Several concepts are missing from the policy and it does not provide links to relevant resources, although there is a list of non-linked resources at the end. Token language—and the omission of several concepts—mean the policy is of little use to a scientist with concerns about violations of scientific integrity.

The DOD policy fails to address the most basic aspect of scientific integrity: research misconduct. There is information about misconduct in a separate document, DOD Instruction 3210.7 (referred to in this guide as DODI). But the policy doesn't refer to the DODI, which could lead to confusion.

The DOD doesn't have one standard policy to address research misconduct. Instead, individual DOD Components are able to develop their own procedures (the term DOD Components is used across various different DOD policies and is defined in DODI 3210.7 2.1. as "[t]he Office of the Secretary of Defense, the Combatant Commands, the Defense Agencies, the DOD Field Activities and all other organization entities in the Department of Defense"). It would be helpful to have this mentioned in the SIP to demonstrate that the DOD takes research misconduct seriously and has procedures to ensure its Components can address allegations of misconduct.

3 WHAT DOES THE POLICY GOVERN?

Research Misconduct

The policy does not address research misconduct. However, DOD Instruction 3210.7, which is not mentioned in the policy, defines research misconduct as "fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion" (DODI 3210.7 E2.1.10.).

Conflicts of Interest

According to the policy, the DOD will maintain clear standards concerning conflicts of interest (SIP 4(d)(3)), but it does not expand on what is meant by this. Instead, the policy refers to Joint Ethics Regulation: DOD 5500.07-R, which is included in the references section of the policy (but there's no link to this reference).

Political Interference

According to the policy, DOD personnel can never ask or direct scientists to alter or suppress their professional findings, although they may suggest factual errors be corrected. The policy does not expand further on this topic (SIP 4(b)(3)(c)).

Threats and Intimidation

The policy does not address threats, intimidation, or other interference with research as being violations of scientific integrity.

Use of Science in Agency Decision-Making

It is DOD policy to ensure that relevant scientific and engineering information and recommendations, including underlying assumptions and uncertainties, are available to the senior DOD policy and acquisition leaders who make decisions that may be impacted by that information (SIP 4a). The policy also says the DOD will make sure that the data and research used to support DOD policy and acquisition decisions are reviewed by qualified, independent experts when feasible and consistent with law (SIP 4(d)(2)).

Science Communication

The DOD policy recognizes the importance of making the scientific and engineering information developed or used by the DOD available to the public. The DOD permits publication of fundamental research results in accordance with national security requirements and makes scientific and engineering information available online (SIP 4(b)(1) and (2)).

Due to the nature of the DOD's work, the references also incorporate DOD Directive 5230.09: Clearance of DOD Information for Public Release (referred to in this guide as DODD). It states that official DOD information that pertains to military matters, national security issues, or subjects of significant concern to the DOD shall be reviewed for clearance prior to public release.

Timeliness: The policy does not address the timeliness of science communications. However, DOD Directive 5230.09 says the DOD should ensure that accurate and timely information is made available to the public and Congress to facilitate analysis and understanding of defense strategy, defense policy, and national security issues (DODD 5230.99 4.a.).

Press: The policy states that federal scientists and engineers may speak to the media and the public about scientific and technical matters based on their official work as long as they coordinate their activities with the DOD (SIP 4(b)(3)(a)). Approval to speak to the media shall not be unreasonably withheld or delayed (SIP 4(b)(3)(b)), and the DOD will make articulate and knowledgeable spokespersons available to the media upon request (SIP 4(b)(3)).

Social media: The policy does not address social media.

Testifying before Congress: The policy does not address whether scientists have the right to testify before Congress. However, this right is protected elsewhere by federal law.

Right of scientists to review and/or correct agency communications: The policy does not address whether scientists have the right to review agency communications that rely on their work or attribute them as authors, or to correct inaccuracies in agency communications.

Publishing and lecturing: DOD supports the professional development of its scientists by encouraging presentations and publication in peer-reviewed journals, as well as serving as editors or members on the editorial boards of such journals (but not as DOD representatives). It also encourages acceptance of professional honors and awards (SIP 4(e)).

Due to the potentially classified nature of research conducted by the DOD, Directive 5230.09 also addresses publishing and lecturing. It specifies that to ensure academic freedom and encourage intellectual expression, students and faculty members of an academy, college, university, or DOD school are not required to submit papers or materials prepared in response to academic requirements for review by the DOD if the materials are not intended for release outside the academic institution.

Information intended for public release or made available in libraries to which the public has access must be submitted for review. Clearance should be granted if classified information is not disclosed, DOD interests are not jeopardized, and the author accurately portrays official policy—even if the author takes issue with that policy (DODD 5230.09 4.e.).

Scientific Societies: The DOD encourages agency scientists to participate in professional societies, including as officers or members of governing boards (SIP 4(e)(2)).

Opinion statements: The policy does not address whether scientists have the right to make public statements of personal opinion. A provision in DOD Directive 5230.09 says that DOD personnel, while acting in a private capacity and not in connection with their official duties, have the right to prepare information for public release through non-DOD fora or media. This information must be reviewed for clearance if it meets certain criteria; it must comply with certain ethical standards; and it may not have an adverse effect on duty, performance, or the authorized functions of the DOD (DODD 5230.09 4.g.).

Hiring Practices

Selection of scientists and engineers as DOD employees should be based on their scientific and engineering credentials (SIP 4(d)(1)), according to the policy.

Federal Advisory Committees

DOD policy is to assure that the Federal Advisory Committees (FACs) providing advice to the DOD on scientific, engineering, and other technical matters are well-qualified and selected in a transparent manner. An FAC's recommendations shall be treated solely as the findings of the FAC and not of the DOD. With the exception of security reviews, these findings are not subject to DOD or interagency revision (SIP 4(c)).

Whistleblower Protections

The policy states that DOD will provide whistleblower protections as required by law; it does not appear to provide additional protections for whistleblowers.

4 WHO DOES THE POLICY GOVERN?

The policy introduction states that it applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DOD Field Activities, and all other organizational entities within the DOD.

5 WHAT IS THE PROCESS FOR FILING A COMPLAINT?

This guide is not a substitute for legal advice about any specific situation. If you are considering filing a scientific integrity complaint, or are the subject of a complaint, please contact the Climate Science Legal Defense Fund or another attorney for advice about your particular circumstances. Nonetheless, we will provide below general information about what the process may entail.

The DOD policy does not contain information about the process of filing a scientific integrity complaint—a significant omission. In fact, the policy does not refer to violations of scientific integrity, research misconduct, or what constitutes a research misconduct violation—and there is nothing in the reference section that addresses these concepts.

DOD Instruction Number 3210.7: Research Integrity and Misconduct discusses allegations of research misconduct, but it does not describe the process of filing and investigating a complaint. Each DOD Component (see definition on page 2) must adopt its own procedures to ensure that research is conducted under the highest ethical standards and that there are measures in place for reviewing allegations of research misconduct. Enclosure 3 to the Instruction sets out the requirements for such research misconduct procedures. It also describes the three stages of addressing an allegation of research misconduct: inquiry, investigation, and adjudication (DODI 3210.7 E3.1.9.1.).

Who can make a claim under the policy?

Neither the policy nor DODI 3210.7 address who can make a claim.

Where and how can a scientist make a claim?

Neither the policy nor DODI 3210.7 address where and how a scientist can make a claim.

What should a complaint contain?

Neither the policy nor DODI 3210.7 address what a complaint should contain.

Is there a deadline for filing a complaint?

Neither the policy nor DODI 3210.7 address a deadline for filing a complaint.

6 WHAT HAPPENS AFTER THE COMPLAINT IS FILED?

DDODI 3210.7 provides limited guidance. It states that DOD Components should designate the individuals responsible for reviewing and responding to allegations of research misconduct (DODI 3210.7 E3.1.3.). DOD Components may use any available resource to respond to allegations, including their Office of Inspector General, legal counsel, and expert consultants (DODI 3210.7 E3.1.7.). DODI 3210.7 E.9.1. also says that DOD Components must designate the responsibilities for handling each phase of the response.

Is the confidentiality of the parties protected?

DODI 3210.7 requires that steps must be taken to ensure confidentiality during the investigation process, and that knowledge of informants and subjects should be shared only on a "need to know" basis (DODI 3210.7 E3.9.12.).

How long will the investigation take?

DODI 3210.7 9 states that DOD Components' procedures for addressing allegations of research misconduct should specify the timeframe for completing each phase of the response.

Do the parties have a right to a hearing?

DODI 3210.7 doesn't reference the right to a hearing when detailing the minimum requirements for procedures when addressing an allegation of research misconduct.

Do the parties have a right to respond to the findings of the investigation?

DODI 3210.7 states that the subject of the allegation has the right to respond to the findings (DODI 3210.7 E3.1.9.11.).

7 WHAT HAPPENS AFTER THE INVESTIGATION ENDS?

If a loss of scientific integrity is found, who decides what the resolution/remedy should be?

DODI 3210.7 doesn't contain information on this topic. It only states that the DOD Components should designate the handling of each phase of the response to the appropriate official. The responsibility for adjudication can be assigned to an individual higher in the chain of command or to a part of the research institution other than the one that conducted the inquiry and investigation.

Do the parties have the right to appeal if initial decision is not in their favor?

DODI 3210.7 states that procedures for addressing claims of misconduct should contain the right to appeal a finding of research misconduct. The authority to which an appeal should be made must not be an office or individual directly involved in the inquiry, investigation, or adjudication of the allegation of research misconduct. The organizational level able to hear the appeal may be defined by the DOD Component as long as there is an adequate separation of responsibilities and there is no appearance of bias, inequity, or conflict of interest (DODI 3210.7 E3.1.9.15.).

What are the penalties for misconduct?

DODI 3210.7 has limited guidance on the penalties if research misconduct is found. It states that corrective actions should generally be administrative in action, such as termination of award(s), debarment, or special approvals of the research record. Civil or criminal sanctions may be pursued (DODI 3210.7 (E2.1.1)) if there is an indication that civil or criminal statutes were violated.

8 ADDITIONAL RELEVANT POLICIES AND RESOURCES

- DOD Instruction 3210.7: Research Integrity and Misconduct
- DOD Directive 5230.09: Clearance of DOD Information for Public Release
- DOD Instruction Number 5230.27: Presentation of DOD-Related Scientific and Technical Papers at Meetings
- DOD Directive 3216.02: Protection of Human Subjects and Adherence to Ethical Standards in DOD-Supported Research
- DOD 5500.07R: Joint Ethics Regulation

9 REPRESENTATIVE CASES AND OUTCOMES

Unlike some other scientific agencies, the DOD does not appear to make the outcomes of past cases public.

NOTES

The Climate Science Legal Defense Fund produced this guide to help scientists understand their rights under federal agency scientific integrity policies. This guide concerns only U.S. laws, and nothing in it should be construed as legal advice for your individual situation.

CSLDF provides free counsel to scientists with legal questions pertaining to their work. Contact us at **(646) 801-0853** or email **lawyer@csldf.org** to arrange a free and confidential consultation with an attorney.

The Climate Science Legal Defense Fund (CSLDF) works to protect the scientific endeavor by helping defend climate scientists against politically and ideologically motivated attacks. CSLDF is a non-profit organization under section 501(c)(3) of the Internal Revenue Code.

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