

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
ICE Policy System (IPS)

OFFICE OF PRIMARY INTEREST: OFFICE OF PROFESSIONAL RESPONSIBILITY

DISTRIBUTION:	ICE
DIRECTIVE NO.:	1-18.0
ISSUE DATE:	05/05/2005
EFFECTIVE DATE:	05/05/2005
REVIEW DATE:	05/05/2008
SUPERSEDES:	See Section 3

DIRECTIVE TITLE: Administrative Inquiries Involving Employee Misconduct

1. **PURPOSE and SCOPE.** This directive establishes policy, standards, implementing procedures and responsibilities for conducting administrative inquiries into allegations referred to Office Directors by the Office of Professional Responsibility (OPR). This directive applies to all components of ICE.
2. **AUTHORITIES/REFERENCES.**
 - 2.1. Department of Homeland Security Delegation Order Number 7030.2, issued November 13, 2004.
 - 2.2. ICE Delegation Order Number ICE DO 04-008, dated June 18, 2004.
3. **SUPERSEDED/CANCELLED POLICY/SUMMARY OF CHANGES.** This directive supersedes all previously recognized policies governing administrative inquiries involving employee misconduct. All other previous issuances regarding administrative inquiries involving employee misconduct are hereby superseded.
4. **BACKGROUND.** ICE has determined that a process is necessary for examining allegations into alleged non-criminal employee misconduct. Critical to this process is the need for an effective, uniform policy and implementing procedures governing examination of allegations into alleged non-criminal employee misconduct.
5. **DEFINITIONS.**
 - 5.1 Office Director is the head of an operational or administrative component within ICE.
 - 5.2 Administrative Inquiry is an examination into alleged non-criminal employee misconduct that is authorized by the Director, OPR, or his/her designee, and delegated to an ICE component for inquiry. OPR screens all allegations for criminal implications. Administrative Inquiries are not criminal in nature.
 - 5.3 Fact Finder is a management official at the GS-13/14/15 level with a minimum of six years in an office now part of ICE. Fact finders are trained by OPR to conduct inquiries regarding alleged administrative misconduct that has the

ADMINISTRATIVE INQUIRIES INVOLVING EMPLOYEE MISCONDUCT

potential to adversely impact the agency and its mission. The fact finder must have no recent or pending disciplinary action, good oral and written communication skills, and a working knowledge of ICE rules, regulations and policies.

- 5.4 Management Referral** is information concerning employee misconduct or situations that may impact the operation of an office that can be addressed independent of OPR. This information is provided to an Office Director or their designee for information only, disciplinary or corrective action. An Office Director must respond to OPR within 30 days outlining any action taken, to include any proposed disciplinary action. The written response should be directed electronically to (b)(7)(E).
- 5.5 Administrative Inquiry Report (AIR)** is a written summary that documents the findings of the administrative inquiry.
- 6. POLICY.**
- 6.1** It is the policy of ICE to conduct an administrative inquiry into alleged non-criminal employee misconduct. When an incident or allegation of misconduct involving an ICE employee does not involve criminal behavior or serious misconduct, OPR forwards information regarding the incident or allegation directly to the Office Director for resolution.
- 7. RESPONSIBILITIES.**
- 7.1 The Director, Office of Professional Responsibility** is responsible for:
- 7.1.2** Implementing all aspects of this directive.
- 7.1.3** Providing overall management and assistance to Office Directors and field staff regarding implementation of this directive.
- 7.1.4** Utilizing the OPR (b)(7)(E) to monitor and track allegations referred to management in order to assure that all allegations are being addressed in a timely manner.
- 7.1.5** Coordinating with the Office of Training and Career Development to ensure funding and scheduling of fact finder training.
- 7.1.6** Ensuring that fact finders are provided an OPR point of contact (POC) to assist in the Administrative Inquiry process.
- 7.2 Office Directors** are responsible for:
- 7.2.1** Ensuring allegations or incidents referred by OPR are handled promptly and any corrective action, including discipline, is effected fairly and consistently.

ADMINISTRATIVE INQUIRIES INVOLVING EMPLOYEE MISCONDUCT

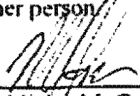
8. PROCEDURES.

- 8.1** All employees must immediately report allegations of misconduct to OPR or to the Office of Inspector General. Additional guidance on what allegations must be reported is contained within a memorandum signed by the ICE Assistant Secretary, dated July 2, 2004, entitled "Guidance on Reporting Employee Misconduct."
- 8.2** Employees cannot independently conduct an inquiry or gather information about an allegation unless assigned by OPR as either an administrative inquiry (fact finder), or as a management referral (for management pursuit).
- 8.3** OPR is responsible for receiving and documenting all reported incidents and allegations concerning employee misconduct. Those allegations that do not warrant further investigation by OPR will be referred to the appropriate Office Director.
- 8.4** Upon referral of an allegation or an incident by OPR, the appropriate Office Director will be directed by OPR to either:
- 8.4.1** Assign a fact finder to conduct an administrative inquiry; or
- 8.4.2** If the allegation is designated as a management referral, the Office Director may elect to resolve the issue independently. The Office Director may, upon prior notification to OPR, assign a fact finder to conduct an administrative inquiry. If the Office Director elects to resolve the management referral independently without assigning a fact finder, OPR will monitor the final action taken to address the allegation and any related discipline.
- 8.5** When the Office Director assigns a fact finder, the Office Director issues an order to the fact finder, within three business days of receipt of the allegation from OPR, authorizing the fact finder to conduct an administrative inquiry.
- 8.6** Office Directors must designate a number of fact finders proportionate to the size of the program.
- 8.7** All fact finders receive standardized training through a course developed and structured by OPR. Each Office Director maintains a roster of trained fact finders within the program, and draws from this pool of fact finders as needed. Office Directors project training needs in order to maintain a viable fact finder workforce. Only trained fact finders, as defined in this Directive, may conduct administrative inquiries.
- 8.8** Depending on the nature of the allegation and operational and geographic considerations, Office Directors may determine a fact finder should be assigned from an office outside the Office Director's chain of command. This action, however, must be coordinated with the Office Director from whom the fact finder is being requested.

ADMINISTRATIVE INQUIRIES INVOLVING EMPLOYEE MISCONDUCT

- 8.9 When a fact finder has been assigned to conduct an administrative inquiry, the inquiry must be conducted even if investigations are ongoing by the Office of Equal Employment Opportunity. Fact finders must comply with all appropriate direction provided by an OPR POC to:
- ensure that administrative inquiries are complete;
 - all leads have been pursued;
 - all relevant evidence has been obtained; and,
 - the Administrative Inquiry Report (AIR) has properly documented the appropriate information according to the policy and procedures set forth in the OPR Administrative Inquiry Guidebook.
- 8.10 Issues encountered during the administrative inquiry process that cannot be resolved between the OPR POC and the fact finder, will be resolved by the Director of OPR and the appropriate Office Director or designee.
- 8.11 Information received by a fact finder in the course of an administrative inquiry is for official use only. Fact Finders will sign non-disclosure agreements to ensure the privacy of all ICE employees. Details of the inquiry may be discussed and disseminated only among those with a "need to know." If it becomes necessary for a fact finder to advise appropriate management officials of the general nature of an allegation and the fact that an administrative inquiry is being conducted, it should be done only after consultation with the OPR POC.
- 8.12 Within 60 days after receiving an authorization order from the Office Director, excluding approved extensions, fact finders must complete and distribute through the (b)(7)(E) a draft AIR to the designated OPR POC for review and approval. If the fact finder does not have access to the (b)(7)(E) a hard copy will be submitted to the OPR POC. OPR reviews the completed AIR within five business days. Fact finders must follow all requirements concerning the writing and formatting of an AIR, as specified in the OPR Administrative Inquiry Guidebook. Upon OPR approval of the AIR, the fact finder must submit a hard copy and one photocopy to include all exhibits of the approved AIR to the appropriate Office Director.
- 8.13 Upon final disposition by the deciding official, the Office Director (or designee) will notify OPR of any discipline taken.
9. **NO PRIVATE RIGHT STATEMENT.** This directive is an internal policy statement of ICE. It is not intended to, and does not create any rights, privileges, or benefits, substantive or procedural, enforceable by a party against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

APPROVED


 Michael J. Garcia
 Assistant Secretary

MAY - 5 2005

 ADMINISTRATIVE INQUIRIES INVOLVING EMPLOYEE MISCONDUCT