Date: April 4, 2008

To: MSU Research faculty in NIH-related Areas

From: Dr. Kim A. Wilcox, Provost
Dr. J. Ian Gray, Vice President for Research & Graduate Studies

Re: MSU Compliance with NIH Policy on Public Access to Archived Publications

As enacted by Congress and signed by President Bush in December, the Consolidated Appropriations Act of 2008 provides in Section 218 that:

"The Director of the National Institutes of Health shall require that all investigators funded by the NIH submit or have submitted for them to the National Library of Medicine’s PubMed Central an electronic version of their final, peer-reviewed manuscripts upon acceptance for publication, to be made publicly available no later than 12 months after the official date of publication: Provided, That the NIH shall implement the public access policy in a manner consistent with copyright law."

To implement that mandate, the NIH "Revised Policy on Enhancing Public Access to Archived Publications Resulting from NIH-Funded Research" takes effect on April 7, 2008. The balance of this memorandum discusses various aspects of the new requirement. MSU researchers will need to consider the following points when proposing and reporting NIH-supported research, and also when collaborating with colleagues who are NIH-supported, even when they are not NIH-supported themselves.

The new policy may be found at the following web site: http://grants.nih.gov/grants/guide/notice-files/NOT-OD-08-033.html. It provides that:

- The NIH Public Access Policy applies to all peer-reviewed articles that arise, in whole or in part, from direct costs funded by NIH, or from NIH staff, that are accepted for publication on or after April 7, 2008. The NIH policy defines "direct costs" to mean "costs that can be specifically
identified with a particular project or activity”. Compliance with the new policy is a term and condition of award for all grants and cooperative agreements active in or after federal fiscal year 2008 (October 1, 2007 through September 30, 2008), and for all contracts awarded by NIH on or after April 7, 2008.

- Institutions and investigators are responsible for ensuring that any publishing or copyright agreements concerning submitted articles fully comply with this Policy.

- PubMed Central (PMC) is the NIH digital archive of full-text, peer-reviewed journal articles. Its content is publicly accessible and integrated with other databases (see: http://www.pubmedcentral.nih.gov/).

- The final, peer-reviewed manuscript includes all graphics and supplemental materials that are associated with the article.

**It is essential to notice that the new policy also imposes a requirement on NIH proposal writers.** Beginning May 25, 2008, anyone submitting an application, proposal or progress report to the NIH must include the PMC or NIH Manuscript Submission System reference number when citing applicable articles that arise from his/her NIH funded research. An NIH “Frequently Asked Questions” (FAQ) document is available at http://publicaccess.nih.gov/FAQ.htm#inv. It includes the following sample citation:


**This citation policy includes applications submitted to the NIH for the May 25, 2008 due date and subsequent due dates.**

The following supplemental suggestions may assist MSU investigators in complying with the new NIH requirements.

A. Please see [http://publicaccess.nih.gov/submit_process_journals.htm](http://publicaccess.nih.gov/submit_process_journals.htm) for an NIH listing of publishers who timely submit articles directly to PubMed Central on behalf of their authors. The NIH listing site states, “If you publish in one of these journals, no further action is needed to comply with the submission requirement of NIH Public Access Policy.” Please note that (i) the submission requirement and the citation requirement are different -- the latter burden must still be met; and (ii) authors

*The NIH Manuscript Submission System (NIHMS) takes in manuscripts covered by the NIH Public Access Policy and formats them for inclusion in PMC. For more information about NIHMS and how to submit an article to PMC, please go to [http://www.nihms.nih.gov](http://www.nihms.nih.gov).*
served by such publishers will still be requested to provide associated award-related information in response to follow-up e-mails from the NIH Manuscript Submission System.

B. **Please do not rely solely on a publisher’s site for an explanation or interpretation of the new requirement, particularly if the publisher is overseas.** As of this writing, some publisher sites still describe deposit of NIH-supported articles as “encouraged” or “optional”, based on an earlier policy.

C. A delegation of authority to MSU faculty to transfer University copyrights under specified conditions is set forth in Section VI of the MSU policy entitled “Development of Copyrighted Materials.” The policy is available at [http://www.hr.msu.edu/HRSite/Documents/Faculty/Handbooks/Faculty/ResearchCreativeEndeavor/vi-copyrightedmaterial.htm](http://www.hr.msu.edu/HRSite/Documents/Faculty/Handbooks/Faculty/ResearchCreativeEndeavor/vi-copyrightedmaterial.htm). The delegation applies to copyright transfers of scholarly articles reporting research funded by NIH. **In exercising their delegated authority, faculty will need to be mindful of the constraints imposed by the new NIH policy.** In particular, please note the following passages from items #C-1, C-2, and C-3 in the NIH FAQ cited above, in which NIH drives home this point:

> “Before you sign a publication agreement or similar copyright transfer agreement, make sure that the agreement allows the article to be submitted to NIH in accordance with the Public Access Policy.”

> “Consistent with individual arrangements with authors' employing institutions, authors often transfer some or all of these rights to the publisher when the journal agrees to publish their article. Some publishers may ask authors to transfer copyrights for a manuscript when it is first submitted to a journal for review. Authors should work with the publisher before any rights are transferred to ensure that all conditions of the NIH Public Access Policy can be met. Authors should avoid signing any agreements with publishers that do not allow the author to comply with the NIH Public Access Policy.”

> “…in order to comply with the NIH Public Access Policy, you must make sure that the agreement allows the accepted peer-reviewed manuscript to be deposited with the NIH upon acceptance of publication and made available for public posting on PubMed Central no later than 12 months after journal publication.”

In item #C-3 of the FAQ, NIH suggests the following “boilerplate” language for use in copyright transfer agreements.

> "Journal acknowledges that Author retains the right to provide a copy of the final manuscript to the NIH upon acceptance for Journal publication,"
Please note that the choice of publishing venue will affect the relative difficulty encountered in meeting the new NIH requirement. Choice of a "direct depositor" publisher from the NIH list described in point “A” (above) should largely eliminate the complications.

D. Please note that the NIH FAQ indicates in item #B-2 that the new policy does not apply to book chapters, editorials, or other non-peer-reviewed materials.

E. Please note that the NIH FAQ indicates in item #B-3 that the new policy “...applies to all peer-reviewed journal articles that arise from the NIH intramural program or any amount of direct costs funded by NIH, regardless of the source or amount of other funding.” This means the policy applies to collaborative publications by NIH-funded and non-NIH-funded researchers, if any NIH funds are used to support the research reported.

F. Please note that the NIH FAQ indicates in item #B-7 that Principal Investigators and their institutions should ensure that authors of articles covered by the policy are aware of this policy and that the articles are published in compliance with it, even if the Principal Investigator is not a co-author of the articles.

G. If you have questions regarding compliance with the NIH “Revised Policy on Enhancing Public Access to Archived Publications Resulting from NIH-Funded Research”, please contact any of the following offices:

- Contract & Grant Administration (355-5040)
- Research Facilitation & Dissemination (432-4499)
- MSU Technologies (355-2186)
- Office of the General Counsel (353-3530)

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