

# University of Oregon

## Interim Revised Policy Statement

### 2.000 Academic and Curricular Procedures

Title: Alleged Misconduct in Research

Purpose: To describe the University's expectations for the integrity of the research conducted at the University and the procedures to be followed in investigating allegations of misconduct in research.

Policy:

The University of Oregon is responsible for the integrity of the research conducted at the University. As a community of scholars, in which truthfulness and integrity are fundamental, the University must establish procedures for the investigation of allegations of misconduct of research with due care to protect the rights of those making the allegations, those accused, and the University. Furthermore, federal regulations require the University to have explicit procedures for addressing incidences in which there are allegations of misconduct in research.

This policy applies to all employees (Faculty, staff, and students) conducting basic or applied<sup>i</sup> research under the auspices of the University.

This policy applies to allegations of research misconduct and research misconduct involving: (i) Applications or proposals for support for extramural or intramural research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information; (ii) all extramural or intramural research; (iii) all extramural or intramural research training programs; (iv) all extramural or intramural activities that are related to research or research training, such as the operation of tissue and data banks or the dissemination of research information; and (v) plagiarism of research records produced in the course of research, research training or activities related to that research or research training. This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research.<sup>ii</sup>

The University accepts the following definition established by the U.S. Public Health Service: "Misconduct" means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Fabrication is making up data or results and recording or reporting them. Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record. Plagiarism is the appropriation of another person's ideas, processes, results, or words without

giving appropriate credit. Research misconduct does not include honest error or differences of opinion.”<sup>iii</sup>

In order for a finding of misconduct to be made, the following three criteria must be met:

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

The Vice President for Research or designee is responsible for the University's compliance with applicable Federal regulations, including but not limited to notifying sponsoring agencies at the appropriate time and keeping the University's Committees of Inquiry and Committees of Investigation well informed with respect to the compliance requirements placed upon them. In the event the Vice President for Research or designee has a potential conflict of interest with respect to a particular allegation of misconduct, the President or designee shall determine who shall be responsible for review of the particular allegation.

For purposes of this policy, the Assistant Vice President, Responsible Conduct of Research, is the designee of the Vice President for Research, unless the Vice President makes another designation.

### Confidentiality

Disclosure of the identity of respondents and complainants in research misconduct proceedings is limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective and fair research misconduct proceeding.

Except as may otherwise be prescribed by applicable law, confidentiality must be maintained for any records or evidence from which research subjects might be identified. Disclosure is limited to those who have a need to know to carry out a research misconduct proceeding.<sup>v</sup>

Procedure:

### **I. Initial Allegations**

A. Questions about, or suspicions of, misconduct in research should be brought to the attention of the Vice President for Research or designee for confidential counseling, mediation and possible informal resolution.

B. Any person<sup>vi</sup> may present allegations of research misconduct to the Vice President for Research or designee by any means of communication<sup>vii</sup>. The Vice President for

Research or designee will acknowledge receipt of allegations in writing to the complainant.

C. If the Vice President for Research or designee has reason to believe that misconduct has occurred but no complainant has made a formal allegation, the Vice President for Research or designee, may pursue the matter independently following the procedures described in this policy.

D. Either before or when the institution notifies the respondent of the allegation, all reasonable and practical steps shall be promptly taken to obtain custody of all research records and evidence needed to conduct the research misconduct proceeding, inventory those materials, and sequester them in a secure manner, except in those cases where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. Where appropriate, the respondent will be given copies of, or reasonable, supervised access to the research records.

All reasonable and practical efforts will be undertaken to take custody of additional research records and evidence discovered during the course of the research misconduct proceeding, including at the inquiry and investigation stages, or if new allegations arise, subject to the exception for scientific instruments mentioned above.<sup>viii</sup>

E. After a review of the allegation and independent consultation with the complainant and respondent, the Vice President for Research or designee shall decide within fifteen (15) calendar days whether the allegation should be referred to a Committee of Inquiry or dismissed. A referral to a Committee of Inquiry is warranted if the allegation: (1) falls within the definition of research misconduct; and (2) is sufficiently credible and specific so that potential evidence of research misconduct may be identified.<sup>ix</sup>

F. If it is decided that the allegation warrants further investigation, a Committee of Inquiry shall be established promptly. The complainant and respondent will be informed, in writing, of the beginning date of the inquiry process and invited to provide any materials they wish to have considered by this Committee.

## **II. Committee of Inquiry**

A. The Vice President for Research shall appoint a three-member Committee of Inquiry, which shall be staffed by the designee of the Vice President for Research. Committee members shall be members of the University faculty or staff who, in the judgment of the Vice President for Research, have the appropriate seniority and knowledge to assess the alleged misconduct and do not have unresolved personal, professional or financial conflicts of interest that would interfere with an objective review.

B. The Vice President for Research shall charge the Committee of Inquiry, in writing, to conduct a discreet inquiry based on communication with the respondent and the

complainant. The purpose of the inquiry is to determine if there is reason to believe that misconduct may have occurred. The inquiry should be limited to activities necessary to determine whether to recommend a formal investigation:

(1.) Members of the Committee of Inquiry shall comply with confidentiality requirements to keep the identities of the respondent and complainant confidential.

(2.) The Committee shall prepare a written report that states what evidence was reviewed, summarizes relevant interviews and reports the conclusions of the inquiry.

(3.) If a majority of the Committee of Inquiry recommends that a formal investigation be conducted, the Vice President for Research shall establish a Committee of Investigation. If only a minority of the Committee of Inquiry recommends a formal investigation, the Vice President for Research may either dismiss the allegation or establish a Committee of Investigation.

(4.) If the Committee of Inquiry determines that the allegations appear to be unfounded or appear to have been made in a capricious or malicious manner, they will report this to the Vice President for Research for appropriate action,

(5.) The Committee of Inquiry shall complete the inquiry within sixty (60) calendar days, unless circumstances clearly warrant a longer period, in which case the record must include documentation of the reasons for the extension.<sup>x</sup> . The Vice President for Research or designee must notify the respondent whether the inquiry found that an investigation is warranted. The notice must include a copy of the report and refer to the relevant federal regulations and this policy.<sup>xi</sup>

(6.) The Vice President for Research or designee, will notify Federal authorities as required by law at any stage of the inquiry if it becomes apparent that: there is immediate health hazard involved; an immediate need to protect Federal funds or equipment; immediate need to protect the interests of individuals affected by the inquiry; or likelihood that the alleged incident will be publicly reported.

(7.) If there is reasonable indication of possible criminal violations, authorities must be notified within twenty-four (24) hours. The Vice President for Research shall initiate interim administrative actions as appropriate to protect Federal funds and the public health and to ensure that the purposes of the Federal financial assistance are carried out.

(8.) A copy of the Committee of Inquiry's report shall be made available to the respondent(s) and opportunity provided for written response. Comments from the respondent(s) may become part of the inquiry record.

(9.) The University will undertake all reasonable and practical efforts, if requested and as appropriate, to protect or restore the reputation of persons alleged to have engaged in research misconduct but against whom no finding of research misconduct is made.

All reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these complainants, witnesses, and committee members<sup>xii</sup>

C. If a decision is made to establish a Committee of Investigation, the respondent shall then be informed of the identity of the complainant. If appropriate or mandated, the Vice President for Research or designee shall inform the appropriate sponsor and agencies of the decision to initiate an investigation on or before the date the investigation begins.

D. If a determination is made not to establish a Committee of Investigation, documentation of that determination in sufficient detail shall be maintained by the Assistant Vice President, Responsible Conduct of Research, to permit a later assessment by ORI of the reasons why the determination not to conduct an investigation was made. These records shall be kept in a secure manner for at least 7 years after the termination of the inquiry, and upon request, be provided to ORI or other authorized HHS personnel.<sup>xiii</sup>

### **III. Committee of Investigation**

A. The Committee of Investigation shall be staffed by the designee of the Vice President for Research, and shall consist of five members who do not have real or apparent conflicts of interest in the case, are unbiased, and have the necessary expertise to evaluate the evidence and issues related to the specific case. The Vice President for Research will appoint three members, one of whom shall have been a member of the Committee of Inquiry. The Chair of the Faculty Advisory Council shall appoint two members.

B. The Vice President for Research shall charge the Committee of Investigation, in writing, to conduct a thorough investigation of the allegation. The Committee shall have access to all persons and information needed to determine the extent to which misconduct has occurred. The investigation shall comply with confidentiality requirements detailed in this policy. The investigation shall be undertaken within thirty (30) calendar days of the determination that an investigation is warranted.

C. If the University plans to terminate the investigation for any reason without completing all relevant requirements, a report of such planned termination, including a description of the reasons for it, shall be made to the appropriate Federal sponsors.

D. The Vice President for Research or designee, will notify Federal authorities as required by law at any stage of the inquiry if it becomes apparent that: there is immediate health hazard involved; an immediate need to protect Federal funds or equipment; immediate need to protect the interests of individuals affected by the inquiry; or likelihood that the alleged incident will be publicly reported. If there is reasonable indication of possible criminal violations, authorities must be notified within twenty-four (24) hours. The Vice President for Research shall initiate interim administrative actions

as appropriate to protect Federal funds and the public health and to ensure that the purposes of the Federal financial assistance are carried out.

On or before the date on which the investigation begins, but not more than 30 days from the determination of the need for investigation, the Vice President for Research or designee, shall provide ORI with the written finding and a copy of the inquiry report. Upon a request from ORI, the Vice President for Research or designee shall promptly send them: (1) a copy of the institutional policies and procedures under which the inquiry was conducted; (2) the research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents; and (3) the charges for the investigation to consider. The Vice President for Research or designee shall promptly provide to ORI after the investigation: (1) A copy of the investigation report, all attachments, and any appeals; (2) A statement of whether the institution found research misconduct and, if so, who committed it; (3) A statement of whether the institution accepts the findings in the investigation report; and (4) A description of any pending or completed administrative actions against the respondent.<sup>xiv</sup>

E. The Committee shall use the following criteria in determining a finding of Misconduct: (1) there be a significant departure from accepted practices of the relevant research community; and (2) the misconduct be committed intentionally, knowingly, or recklessly; and (3) the allegation be proven by a preponderance of the evidence.<sup>xv</sup>

The institution or HHS has the burden of proof for making a finding of research misconduct. The destruction, absence of, or respondent's failure to provide research records adequately documenting the questioned research is evidence of research misconduct where the institution or HHS establishes by a preponderance of the evidence that the respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but did not do so, or maintained the records and failed to produce them in a timely manner and that the respondent's conduct constitutes a significant departure from accepted practices of the relevant research community.<sup>xvi</sup>

The respondent has the burden of going forward with and the burden of proving, by a preponderance of the evidence, any and all affirmative defenses raised. In determining whether HHS or the institution has carried the burden of proof imposed by this part, the finder of fact shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the respondent. The respondent has the burden of going forward with and proving by a preponderance of the evidence any mitigating factors that are relevant to a decision to impose administrative actions following a research misconduct proceeding.<sup>xvii</sup>

F. The Committee of Investigation shall prepare a written report documenting the extent to which, if at all, it has determined that misconduct has occurred. The report shall identify the policies and procedures under which the investigation was conducted, how

and from whom information relevant to the investigation was obtained, and the basis for the findings. This report shall be given to the Vice President for Research, the respondent, and the complainant. The Committee of Investigation may recommend to the Vice President for Research a course of action based on its findings, but is not required to do so. The Vice President for Research shall provide a copy of the results of this investigation to the University President and the Provost. Other administrators also shall be notified if the Vice President for Research deems such action important to a resolution of the alleged misconduct.

G. The Committee of Investigation shall complete the investigation within one-hundred twenty (120) calendar days unless it finds that the investigation cannot reasonably be completed within that time in which case, the Committee may request a thirty (30) calendar day extension from the Vice President for Research. The request should include an explanation for the delay, a progress report, an outline of remaining steps, and an estimated date of completion. The Vice President for Research or designee will forward the request to the Federal sponsoring agency.

#### **IV. Appeal**

The respondent has thirty (30) calendar days following the receipt of the report from the Committee of Investigation to file a written argument with the UO President challenging the Committee of Investigation's report. Any appeal process must be completed within one hundred and twenty (120) calendar days following the receipt of the report from the Committee of Investigation.<sup>xviii</sup> The President's decision is final and not subject to appeal. Personnel or similar actions that would not result in a reversal or modification of the findings of research misconduct may not be appealed but may be grieved under the applicable provision in Division 3, Chapter 571, Oregon Administrative Rules.

#### **V. Determination of Action**

A. Based on the report and the outcome of the written challenge, if any, the Vice President for Research in consultation with the President and Provost, shall determine and take appropriate administrative action. Should the report disclose misconduct, the appropriate University official may institute for cause proceedings or Student Conduct disciplinary proceedings (using the Committee of Investigation's report as a basis for the probable cause determination) against the respondent.

B. The University shall undertake all reasonable, practical, and appropriate efforts to protect and restore the reputation of any person alleged to have engaged in research misconduct, but against whom no finding of research misconduct was made, if that person or his/her legal counsel or other authorized representative requests that the University do so. The University shall undertake all reasonable and practical efforts to protect and restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against those complainants, witnesses and committee members.<sup>xix</sup>

C. The appropriate University official shall also disclose the report and a description of any sanctions taken at the institution to any sponsor of the research, and shall cause the retraction or correction of already published articles or papers affected by the misconduct. Documentation substantiating the investigation's findings shall be made available, upon request, to appropriate officials of the sponsoring agency.

## **VI. Records Retention**

All records of the research misconduct proceeding shall be maintained, for 7 years after completion of the proceeding, or any ORI or HHS proceeding under Subparts D and E of 42 CFR Part 93 (copies attached), whichever is later, unless custody of the records and evidence has been transferred to HHS, or ORI has advised that retention of records is no longer needed.<sup>xx</sup>

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<sup>i</sup> **42 CFR 93.222:** Research means a systematic experiment, study, evaluation, demonstration or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) relating broadly to public health by establishing, discovering, developing, elucidating or confirming information about, or the underlying mechanism relating to, biological causes, functions or effects, diseases, treatments, or related matters to be studied.

<sup>ii</sup> **42 CFR 93.102(b):** (b)(1) This part applies to allegations of research misconduct and research misconduct involving:

(i) Applications or proposals for PHS support for biomedical or behavioral extramural or intramural research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information;

(ii) PHS supported biomedical or behavioral extramural or intramural research;

(iii) PHS supported biomedical or behavioral extramural or intramural research training programs;

(iv) PHS supported extramural or intramural activities that are related to biomedical or behavioral research or research training, such as the operation of tissue and data banks or the dissemination of research information; and

(v) Plagiarism of research records produced in the course of PHS supported research, research training or activities related to that research or research training.

(2) This includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal for PHS funds resulted in a grant, contract, cooperative agreement, or other form of PHS support.

<sup>iii</sup> **42 CFR 93.103; 45 CFR 689.1(a,b):** Research misconduct means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.

(a) Fabrication is making up data or results and recording or reporting them.

(b) Falsification is manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

(c) Plagiarism is the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

(d) Research misconduct does not include honest error or differences of opinion.

<sup>iv</sup> **42 CFR 93.104; 45 CFR 689.2(c):** A finding of research misconduct made under this part requires that

(a) There be a significant departure from accepted practices of the relevant research community; and

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

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

<sup>v</sup> **42 CFR 93.108** (a) Disclosure of the identity of respondents and complainants in research misconduct proceedings is limited, to the extent possible, to those who need to know, consistent with a thorough, competent, objective and fair research misconduct proceeding, and as allowed by law. Provided, however, that:

(1) The institution must disclose the identity of respondents and complainants to ORI pursuant to an ORI review of research misconduct proceedings under Sec. 93.403.

(2) Under Sec. 93.517(g), HHS administrative hearings must be open to the public.

(b) Except as may otherwise be prescribed by applicable law, confidentiality must be maintained for any records or evidence from which research subjects might be identified. Disclosure is limited to those who have a need to know to carry out a research misconduct proceeding.

<sup>vi</sup> **42 CFR 93.203:** Complainant means a person who in good faith makes an allegation of research misconduct.

<sup>vii</sup> **42 CFR 93.201:** Allegation means a disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement or other communication to an institutional or HHS official.

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<sup>viii</sup> **42 CFR 93.305(a-c)**: An institution, as the responsible legal entity for the PHS supported research, has a continuing obligation under this part to ensure that it maintains adequate records for a research misconduct proceeding. The institution must--

(a) Either before or when the institution notifies the respondent of the allegation, inquiry or investigation, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments;

(b) Where appropriate, give the respondent copies of, or reasonable, supervised access to the research records;

(c) Undertake all reasonable and practical efforts to take custody of additional research records or evidence that is discovered during the course of a research misconduct proceeding, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

**42 CFR 93.307(b)** (b) Notice to respondent and custody of research records. At the time of or before beginning an inquiry, an institution must make a good faith effort to notify in writing the presumed respondent, if any. If the inquiry subsequently identifies additional respondents, the institution must notify them. To the extent it has not already done so at the allegation stage, the institution must, on or before the date on which the respondent is notified or the inquiry begins, whichever is earlier, promptly take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments.

**42 CFR 93.310(d)** (d) Custody of the records. To the extent they have not already done so at the allegation or inquiry stages, take all reasonable and practical steps to obtain custody of all the research records and evidence needed to conduct the research misconduct proceeding, inventory the records and evidence, and sequester them in a secure manner, except that where the research records or evidence encompass scientific instruments shared by a number of users, custody may be limited to copies of the data or evidence on such instruments, so long as those copies are substantially equivalent to the evidentiary value of the instruments. Whenever possible, the institution must take custody of the records--

- (1) Before or at the time the institution notifies the respondent; and
- (2) Whenever additional items become known or relevant to the investigation.

**42 CFR 93.300(f)**: (f) Take all reasonable and practical steps to ensure the cooperation of respondents and other institutional members with research misconduct proceedings, including, but not limited to, their providing information, research records, and evidence.

<sup>ix</sup> **42 CFR 93.307(a)(1-3)** (a) Criteria warranting an inquiry. An inquiry is warranted if the allegation--

- (1) Falls within the definition of research misconduct under this part;
- (2) Is within Sec. 93.102; and
- (3) Is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

<sup>x</sup> **42.CFR 93.307(g)**: Time for completion. The institution must complete the inquiry within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. If the inquiry takes longer than

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60 days to complete, the inquiry record must include documentation of the reasons for exceeding the 60-day period.

<sup>xi</sup> **42 CFR 93.308:** (a) Notice to respondent. The institution must notify the respondent whether the inquiry found that an investigation is warranted. The notice must include a copy of the inquiry report and include a copy of or refer to this part and the institution's policies and procedures adopted under its assurance.

(b) Notice to complainants. The institution may notify the complainant who made the allegation whether the inquiry found that an investigation is warranted. The institution may provide relevant portions of the report to the complainant for comment.

<sup>xii</sup> **42 CFR 93.304(k)(I)** (k) All reasonable and practical efforts, if requested and as appropriate, to protect or restore the reputation of persons alleged to have engaged in research misconduct but against whom no finding of research misconduct is made;

(l) All reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these complainants, witnesses, and committee members.

<sup>xiii</sup> **42 CFR 93.309(c)** Documentation of decision not to investigate. Institutions must keep sufficiently detailed documentation of inquiries to permit a later assessment by ORI of the reasons why the institution decided not to conduct an investigation. Consistent with Sec. 93.317, institutions must keep these records in a secure manner for at least 7 years after the termination of the inquiry, and upon request, provide them to ORI or other authorized HHS personnel.

**42 CFR 93.317(b):** Maintenance of record. Unless custody has been transferred to HHS under paragraph (c) of this section, or ORI has advised the institution in writing that it no longer needs to retain the records, an institution must maintain records of research misconduct proceedings in a secure manner for 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation under subparts D and E of this part, whichever is later.

<sup>xiv</sup> **42 CFR 93.309(a) (1-3)** Within 30 days of finding that an investigation is warranted, the institution must provide ORI with the written finding by the responsible institutional official and a copy of the inquiry report which includes the following information--

- (1) The name and position of the respondent;
- (2) A description of the allegations of research misconduct;
- (3) The PHS support, including, for example, grant numbers, grant applications, contracts, and publications listing PHS support.

**42 CFR 93.313:** The final institutional investigation report must be in writing and include:

- (a) Allegations. Describe the nature of the allegations of research misconduct.
- (b) PHS support. Describe and document the PHS support, including, for example, any grant numbers, grant applications, contracts, and publications listing PHS support.
- (c) Institutional charge. Describe the specific allegations of research misconduct for consideration in the investigation.
- (d) Policies and procedures. If not already provided to ORI with the inquiry report, include the institutional policies and procedures under which the investigation was conducted.
- (e) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
- (f) Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide a finding as to whether research misconduct did or did not occur, and if so--
  - (1) Identify whether the research misconduct was falsification, fabrication, or plagiarism, and if it was intentional, knowing, or in reckless disregard;
  - (2) Summarize the facts and the analysis which support the conclusion and consider the merits of any reasonable explanation by the respondent;
  - (3) Identify the specific PHS support;
  - (4) Identify whether any publications need correction or retraction;

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- (5) Identify the person(s) responsible for the misconduct; and
  - (6) List any current support or known applications or proposals for support that the respondent has pending with non-PHS Federal agencies.
  - (g) Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report.
  - (h) Maintain and provide records. Maintain and provide to ORI upon request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

**42 CFR 93.315;** The institution must give ORI the following:

- (a) Investigation Report. Include a copy of the report, all attachments, and any appeals.
- (b) Final institutional action. State whether the institution found research misconduct, and if so, who committed the misconduct.
- (c) Findings. State whether the institution accepts the investigation's findings.
- (d) Institutional administrative actions. Describe any pending or completed administrative actions against the respondent.

**45 CFR 689.4(b):** If an institution wishes NSF to defer independent inquiry or investigation, it should:

- (1) Complete any inquiry and decide whether an investigation is warranted within 90 days. If completion of an inquiry is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.
- (2) Inform OIG immediately if an initial inquiry supports a formal investigation.
- (3) Keep OIG informed during such an investigation.
- (4) Complete any investigation and reach a disposition within 180 days. If completion of an investigation is delayed, but the institution wishes NSF deferral to continue, NSF may require submission of periodic status reports.
- (5) Provide OIG with the final report from any investigation.

**45 CFR 689.6(d)(1-4)** An NSF investigation may include:

- (1) Review of award files, reports, and other documents already readily available at NSF or in the public domain;
- (2) Review of procedures or methods and inspection of laboratory materials, specimens, and records at awardee institutions;
- (3) Interviews with subjects or witnesses;
- (4) Review of any documents or other evidence provided by or properly obtainable from parties, witnesses, or other sources.

<sup>xv</sup> **42 CFR 93.104:** A finding of research misconduct made under this part requires that--

- (a) There be a significant departure from accepted practices of the relevant research community; and
- (b) The misconduct be committed intentionally, knowingly, or recklessly; and
- (c) The allegation be proven by a preponderance of the evidence.

**42 CFR 93.313:** The final institutional investigation report must be in writing and include:

- (a) Allegations. Describe the nature of the allegations of research misconduct.
- (b) PHS support. Describe and document the PHS support, including, for example, any grant numbers, grant applications, contracts, and publications listing PHS support.
- (c) Institutional charge. Describe the specific allegations of research misconduct for consideration in the investigation.
- (d) Policies and procedures. If not already provided to ORI with the inquiry report, include the institutional policies and procedures under which the investigation was conducted.
- (e) Research records and evidence. Identify and summarize the research records and evidence reviewed, and identify any evidence taken into custody but not reviewed.
- (f) Statement of findings. For each separate allegation of research misconduct identified during the investigation, provide a finding as to whether research misconduct did or did not occur, and if so--

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- (1) Identify whether the research misconduct was falsification, fabrication, or plagiarism, and if it was intentional, knowing, or in reckless disregard;
  - (2) Summarize the facts and the analysis which support the conclusion and consider the merits of any reasonable explanation by the respondent;
  - (3) Identify the specific PHS support;
  - (4) Identify whether any publications need correction or retraction;
  - (5) Identify the person(s) responsible for the misconduct; and
  - (6) List any current support or known applications or proposals for support that the respondent has pending with non-PHS Federal agencies.
- (g) Comments. Include and consider any comments made by the respondent and complainant on the draft investigation report.
- (h) Maintain and provide records. Maintain and provide to ORI upon request all relevant research records and records of the institution's research misconduct proceeding, including results of all interviews and the transcripts or recordings of such interviews.

<sup>xvi</sup> **42 CFR 93.106(a)(b)(1):** The following evidentiary standards apply to findings made under this part.

(a) Standard of proof. An institutional or HHS finding of research misconduct must be proved by a preponderance of the evidence.

(b) Burden of proof. (1) The institution or HHS has the burden of proof for making a finding of research misconduct. The destruction, absence of, or respondent's failure to provide research records adequately documenting the questioned research is evidence of research misconduct where the institution or HHS establishes by a preponderance of the evidence that the respondent intentionally, knowingly, or recklessly had research records and destroyed them, had the opportunity to maintain the records but did not do so, or maintained the records and failed to produce them in a timely manner and that the respondent's conduct constitutes a significant departure from accepted practices of the relevant research community.

<sup>xvii</sup> **42 CFR 93.106(b)(2,3)** (2) The respondent has the burden of going forward with and the burden of proving, by a preponderance of the evidence, any and all affirmative defenses raised. In determining whether HHS or the institution has carried the burden of proof imposed by this part, the finder of fact shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the respondent. (3) The respondent has the burden of going forward with and proving by a preponderance of the evidence any mitigating factors that are relevant to a decision to impose administrative actions following a research misconduct proceeding.

<sup>xviii</sup> **42 CFR 93.314:** (a) While not required by this part, if the institution's procedures provide for an appeal by the respondent that could result in a reversal or modification of the findings of research misconduct in the investigation report, the institution must complete any such appeal within 120 days of its filing. Appeals from personnel or similar actions that would not result in a reversal or modification of the findings of research misconduct are excluded from the 120-day limit.

(b) If unable to complete any appeals within 120 days, the institution must ask ORI for an extension in writing and provide an explanation for the request.

(c) ORI may grant requests for extension for good cause. If ORI grants an extension, it may direct the institution to file periodic progress reports;

**689.10:** (a) An affected individual or institution may appeal to the Director in writing within 30 days after receiving the Deputy Director's written decision. The Deputy Director's decision becomes a final administrative action if it is not appealed within the 30 day period.

(b) The Director may appoint an uninvolved NSF officer or employee to review an appeal and make recommendations.

(c) The Director will normally inform the appellant of a final decision within 60 days after receiving the appeal. That decision will be the final administrative action of the Foundation.

<sup>xix</sup> **42 CFR 93.305(k,l)** All reasonable and practical efforts, if requested and as appropriate, to protect or restore the reputation of persons alleged to have engaged in research misconduct but against whom no finding of research misconduct is made;

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(l) All reasonable and practical efforts to protect or restore the position and reputation of any complainant, witness, or committee member and to counter potential or actual retaliation against these complainants, witnesses, and committee members.

**45 CFR 689.4(a)(4):** (a) Awardee institutions bear primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of alleged research misconduct. In most instances, NSF will rely on awardee institutions to promptly: (4) Provide appropriate safeguards for subjects of allegations as well as informants.

<sup>xx</sup> **42 CFR 93.317(5)(a-c):** (5) The complete record of any institutional appeal covered by Sec. 93.314.

(b) Maintenance of record. Unless custody has been transferred to HHS under paragraph (c) of this section, or ORI has advised the institution in writing that it no longer needs to retain the records, an institution must maintain records of research misconduct proceedings in a secure manner for 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation under subparts D and E of this part, whichever is later. (c) Provision for HHS custody. On request, institutions must transfer custody of or provide copies to HHS, of any institutional record relevant to a research misconduct allegation covered by this part, including the research records and evidence, to perform forensic or other analyses or as otherwise needed to conduct an HHS inquiry or investigation or for ORI to conduct its review or to present evidence in any proceeding under subparts D and E of this part.

**45 CFR 93.309(c):** Documentation of decision not to investigate. Institutions must keep sufficiently detailed documentation of inquiries to permit a later assessment by ORI of the reasons why the institution decided not to conduct an investigation. Consistent with Sec. 93.317, institutions must keep these records in a secure manner for at least 7 years after the termination of the inquiry, and upon request, provide them to ORI or other authorized HHS personnel.