SAN JOSÉ STATE UNIVERSITY
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S26-4, University Policy, Responding to Allegations of Research Misconduct

Legislative History:

On April 13, 2026, the Academic Senate approved University Policy,Responding to Allegations of Research Misconduct, presented by Senator Riley for the Professional Standards Committee.

Rescinds: F12-5

Action by University President:

Date: April 20, 2026

Signed and approved by: Cynthia Teniente-Matson

Cynthia Teniente-Matson, President,
San José State University

S26-4, University Policy, Responding to Allegations of Research Misconduct

Rationale: On September 17, 2024, the Final Rule for Public Health Service Policies on Research Misconduct of the Code of Federal Regulations (42 CFR Part 93) was published.[1] The Division of Research and Innovation is required to submit proof of a compliant policy to the federal government by April 30, 2026 to ensure our continued eligibility for federal funding.

The new federal regulations require that a university receiving federal funds have in place a rigorous system for investigating and responding to allegations of research misconduct. While the federal regulations only apply to federally funded research, SJSU applies this policy and the resultant process consistently to all allegations of research misconduct on campus, regardless of funding source, and whether the research in question was undertaken by faculty, staff, students, or administrators.

The federal template is highly legalistic and controls, step by step, the procedures to be used from the first allegation of misconduct, through a preliminary assessment, a formal

[1] Code of Federal Regulations (CFR), Title 42, Part 93. https://www.ecfr.gov/current/title-42/chapter-I/subchapter-H/part-93.

inquiry, a formal investigation, and a final decision.[2] Key figures in the process are the Responsibility Integrity Officer (RIO), who will be our Associate Vice President for Research (AVP Research), the Institutional Deciding Official (IDO), who will be the President, and an Investigation Committee, comprised of three appointed experts who assist in the investigation. This proposed policy modifies the Inquiry Process such that an Inquiry Committee can be convened at the request of either the Complainant or Respondent rather than being required for every case. It also clarifies what kinds of research misconduct fall under this policy and what may be referred at the discretion of the RIO to the Board of Professional Responsibility under F24-2 Board of Professional Responsibility and F24-7 Statement of Faculty Professional Responsibility. In sum, this policy assures confidentiality, lack of retaliation, due process for both the Complainant and the Respondent (accused), and compliance with The Office of Research Integrity (ORI) regulations.[3] Therefore, be it,

Resolved: That University Policy F12-5 be rescinded and replaced by the following policy, S26-4.

Date Approved:	April 6, 2026
Vote:	11-0-0
Present:	Agustin, Attar, Barrera, Buyco, Chen, French, McNiece, Raman, Riley, Sen, & Stemwedel
Absent:	none

Financial Impact: Adoption of this policy will likely have no net financial impact since cases of misconduct already require resolution. Failure to adopt this measure would put the University out of compliance with Federal Regulations and endanger federal funding to SJSU.

Workload Impact: Allegations of research misconduct arise rarely, perhaps only once every few years. There may be minimal workload impact initially as the process shifts from the existing system to a new model or some redistribution of workload.

Legislative History: Rescinds and Replaces F12-5, Responding to Allegations of Research Misconduct

[2] The following document served as a model for this policy: Office of Research Integrity (ORI), Sample Policy and Procedures for Responding to Allegations of Research Misconduct. https://ori.hhs.gov/sample-policy-procedures-responding-research-misconduct-allegations

[3] U.S. Department of Health and Human Services, The Office of Research Integrity, https://ori.hhs.gov/

S26-4, University Policy, Responding to Allegations of Research Misconduct

I. Introduction

A. General Policy

All members (faculty, staff, students, and administrators) of the San José State University (SJSU) community are expected to perform their scholarly and scientific activities with the highest ethical standards, honesty, and integrity. Instances of misconduct in research threaten the academic commitment to truth. San José State University will not tolerate misconduct in any aspect of research or scholarly endeavor and will vigorously investigate allegations of misconduct, taking all reasonable steps to protect the rights and interests of everyone involved.

B. Scope and Application

This policy applies to research conducted under an externally funded sponsored project that is awarded to the University or one of its auxiliary organizations, internally funded research, and unfunded research conducted by faculty, staff, or students. Any individual who may work on or contribute to such a project, whether for monetary compensation or not, is covered by this policy.

The scope of this policy includes any research proposed, performed, reviewed, or reported, or any research record generated from that research, regardless of whether an application or proposal for external funds resulted in an award. The scope of this policy does not apply to authorship or collaboration disputes.[4] It applies only to allegations of research misconduct that occurred within six years of the date the institution or the sponsor received the allegation, subject to the exceptions in the Code of Federal Regulations (CFR), Title 42, Part 93, Section 105(b).[5]

Allegations of misconduct directed at faculty research will be adjudicated under this policy. Allegations of misconduct directed at faculty research will require consultation with the Division of Academic Affairs.

Allegations of misconduct directed at student research will be adjudicated under this policy in consultation with Student Conduct and Ethical Development (SCED) in the Division of Student Affairs.

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[4] The Research Integrity Officer may refer allegations outside the scope of this policy, such as authorship, self-plagiarism, collaboration, or credit disputes, as defined in Section II.Z.ii below, directly to the Board of Professional Responsibility. Complainants whose allegations concern authorship, self-plagiarism, collaboration, or credit disputes, as defined in Section II.Z.ii below may also contact the Board directly.

[5] 42 CFR 93.105(b). https://www.ecfr.gov/current/title-42/section-93.105. Exceptions may include use, health, and safety of the public, as well as grandfathered exceptions.

Allegations of misconduct directed at staff or administrator research will be adjudicated under this policy in consultation with University Personnel.

II. Definitions

A. **Allegation** means a disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement.

B. **Assessment** means a consideration of whether an allegation of research misconduct appears to fall within the definition of research misconduct and is sufficiently credible and specific so that potential evidence of research misconduct may be identified. The assessment only involves the review of readily accessible information relevant to the allegation.

C. **Charge Letter** means the written notice, as well as any amendments to the notice, sent to the Respondent stating the findings of research misconduct and any proposed administrative actions.

D. **Complainant** means an individual who, in good faith, makes an allegation of research misconduct.

E. **Confidential**

i. Disclosure of the identity of Respondents, Complainants, and witnesses while conducting the research misconduct proceedings is limited, to the extent possible, to those who need to know, as determined by the institution, consistent with a thorough, competent, objective, and fair research misconduct proceeding, and as allowed by law. Those who need to know may include institutional review boards, journals, editors, publishers, co-authors, and collaborating institutions. This limitation on disclosure of the identity of Respondents, Complainants, and witnesses no longer applies once an institution has made a final determination of research misconduct findings. The institution, however, must disclose the identity of Respondents, Complainants, or other relevant persons to the Office of Research Integrity (ORI) pursuant to an ORI review of research misconduct proceedings under Part 93**.**

ii. 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 need to know to carry out a research misconduct proceeding.

F. **Day** means calendar day unless otherwise specified. If a deadline falls on a Saturday, Sunday, or University holiday, the deadline will be extended to the next business day.

G. **Deciding Official (DO)** see Institutional Deciding Official (IDO).

H. **Evidence** means any document, tangible item, or testimony offered or obtained during a research misconduct proceeding that tends to prove or disprove the existence of an alleged fact.

I. **Fabrication** means making up data or results and recording or reporting them.

J. **Falsification** means 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.

K. **Good Faith,** as applied to a Complainant or witness, means having a belief in the truth of one's allegation or testimony that a reasonable individual in the Complainant's or witness's position could have based on the information known to the Complainant or witness at the time. An allegation or cooperation with a research misconduct proceeding is not in good faith if it is made with reckless disregard for or willful ignorance of facts that would disprove the charges. Good faith, as applied to an institutional or committee member, means cooperating with the research misconduct proceeding by impartially carrying out the duties assigned for the purpose of helping an institution meet its responsibilities under Part 93. An institutional or committee member does not act in good faith if their acts or omissions during the research misconduct proceedings are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceeding.

L. **Inquiry** means preliminary information-gathering and preliminary fact-finding that meets the criteria and follows the procedures set forth in federal regulations, currently 42 CFR 93.307.[6]

M. **Inquiry Committee** refers to a Committee of at least three faculty experts who aid in the inquiry phase when requested by the Complainant or Respondent. The Committee and its Chair are appointed by the RIO per §s VI.B.i, ii, and iii, below.

N. **Institution** means any entity that applies for or receives Public Health Service (PHS) support for any activity or program that involves the conduct of biomedical or behavioral research, biomedical or behavioral research training, or activities related to that research or training, as well as any person that conducts such research or training activities irrespective of funding source. This includes, but is not limited to, colleges and universities, PHS intramural biomedical or behavioral research laboratories, research and development centers, national user facilities, industrial laboratories or other research institutes, research institutions, and independent researchers (according to 42 CFR 93.216).[7]

O. **Institutional Certifying Official (ICO)** means the institutional official responsible for assuring on behalf of an institution that the institution has written policies and procedures for addressing allegations of research misconduct, in compliance

[6] 42 CFR 93.307. https://www.ecfr.gov/current/title-42/section-93.307
[7] 42 CFR 93.216. https://www.ecfr.gov/current/title-42/section-93.216

with Part 93; and complies with its own policies and procedures and the requirements of Part 93. The Institutional Certifying Official is responsible for certifying the content of the institution's annual report, which contains information specified by ORI on the institution's compliance with Part 93, and ensuring the report is submitted to ORI, as required.

P. **Institutional Deciding Official (IDO)** means the institutional official who makes final determinations on allegations of research misconduct and any institutional actions. The California State University Sponsored Programs Administration policy[8] requires that the Institutional Deciding Official be the campus President**.** The same individual cannot serve as the Institutional Deciding Official and the Research Integrity Officer.

Q. **Institutional Member or Members** means an individual (or individuals) who is employed by, is an agent of, or is affiliated by contract or agreement with an institution. Institutional members may include, but are not limited to, officials, tenured and untenured faculty, teaching and support staff, researchers, research coordinators, technicians, postdoctoral and other fellows, students, volunteers, subject matter experts, consultants, or attorneys, or employees or agents of contractors, subcontractors, or sub-awardees.

R. **The Institutional Record** comprises:

i. The records that the institution compiled or generated during the research misconduct proceeding, except records the institution did not consider or rely on. These records include, but are not limited to:

a) Documentation of the assessment as required by 42 CFR 93.306(c).[9]

b) If an inquiry is conducted, the Inquiry Report and all records (other than drafts of the report) considered or relied on during the inquiry, including, but not limited to, research records and the transcripts of any transcribed interviews conducted during the inquiry, information the Respondent provided to the institution, and the documentation of any decision not to investigate as required by 42 CFR 93.309(c).[10]

c) If an investigation is conducted, the Investigation Report and all records (other than drafts of the report) considered or relied on during the investigation, including, but not limited to, research records, the transcripts of each interview conducted pursuant to 42 CFR 93.310(g),[11] and information the Respondent provided to the institution.

[8] PolicyStat ID 16577430, effective 9/21/2023, https://calstate.policystat.com/policy/16577430/latest
[9] 42 CFR 93.306(c). https://www.ecfr.gov/current/title-42/section-93.306
[10] 42 CFR 93.309(c). https://www.ecfr.gov/current/title-42/section-93.309
[11] 42 CFR 93.310(g). https://www.ecfr.gov/current/title-42/part-93/section-93.310

d) Decision(s) by the Institutional Deciding Official, such as the written decision from the Institutional Deciding Official under 42 CFR 93.314

e) The complete record of any institutional appeal consistent with 42 CFR 93.315.[12]

ii. A single index listing all the research records and evidence that the institution compiled during the research misconduct proceeding, except records the institution did not consider or rely on.

iii. A general description of the records that were sequestered but not considered or relied on.

S. **Intentionally** means to act with the aim of carrying out the act.

T. **Investigation** means the formal development of a factual record and the examination of that record.

U. **Investigation Committee** refers to a Committee of at least three faculty experts who aid in the investigation. The Committee and its Chair are appointed by the RIO per §s III.A.j and VII.D, below.

V. **Knowingly**. To act knowingly means to act with awareness of the act.

W. **Notice** means a written or electronic communication served by hand or sent by mail or its equivalent to the last known street address, facsimile number, or email address of the addressee.

X. **Office of Research Integrity (ORI)** means the office established by Public Health Service Act Section 493 (42 U.S.C. 289b)[13] and to which the Health and Human Services Secretary has delegated responsibility for addressing research integrity and misconduct issues related to Public Health Service-supported activities.

Y. **Person** means any individual, corporation, partnership, institution, association, unit of government, or other legal entity, however organized.

Z. **Plagiarism** means the appropriation of another person's ideas, processes, results, or words without giving appropriate credit.

i. Plagiarism includes the unattributed verbatim or nearly verbatim copying of sentences and paragraphs from another's work that materially misleads the reader regarding the contributions of the author. It does not include the limited use of identical or nearly identical phrases that describe a commonly used methodology.

[12] 42 CFR 93.315. https://www.ecfr.gov/current/title-42/section-93.315
[13] Public Health Service Act, Section 493, Title 42: The Public Health and Welfare, https://www.govinfo.gov/content/pkg/USCODE-2023-title42/pdf/USCODE-2023-title42-chap6A-subchapIII-partH-sec289b.pdf

ii. Plagiarism does not include self-plagiarism or authorship or credit disputes**,** including disputes among former collaborators who participated jointly in the development or conduct of a research project. Self-plagiarism and authorship disputes do not meet the definition of research misconduct.

AA. **Preponderance of Evidence** means proof by information that, compared with that opposing it, leads to the conclusion that the fact at issue is more probably true than not.

BB. **Recklessly.** To act recklessly means to propose, perform, or review research, or report research results, with indifference to a known risk of fabrication, falsification, or plagiarism.

CC. **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 a particular discipline or subject by establishing, discovering, developing, elucidating or confirming information about the discipline or subject of the research or underlying mechanisms related to biological causes, functions, or effects; diseases; treatments.

DD. **Research Integrity Officer (RIO)** means the institutional official responsible for: (1) assessing allegations of research misconduct to determine if they fall within the definition of research misconduct, are covered by Part 93, and warrant an inquiry on the basis that the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified; (2) overseeing inquiries and investigations; and (3) the other responsibilities described in this policy. For this policy, the RIO is the Associate Vice President for Research (AVP Research), unless otherwise designated by the President. If the RIO is unavailable to carry out these duties, the VPRI will serve as SJSU's RIO unless otherwise designated by the President.

EE. **Research Misconduct** is fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic community for proposing, conducting, or reporting research. Misconduct does not include honest error or honest differences in interpretations or judgments of data. This definition will be used to define research misconduct where "research" is as defined above, in Section II.CC.

FF. **Research Misconduct Proceeding** means any actions related to alleged research misconduct taken under Part 93, including allegation assessments, inquiries, investigations, ORI oversight reviews, and appeals under Subpart E of Part 93.

GG. **Research Record** means the record of data or results that embody the facts resulting from scientific inquiry, including but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, journal articles, and any documents

and materials provided to a university official by a Respondent in the course of the research misconduct proceeding.

HH. **Respondent** means the individual against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding.

II. **Retaliation** means an adverse action taken against a Complainant, witness, or committee member by the University or one of its members in response to a good faith allegation of research misconduct or good faith cooperation with a research misconduct proceeding.

III. Rights and Responsibilities

A. Research Integrity Officer (RIO)

i. The Associate Vice President for Research (AVP Research) or their designee will serve as the RIO. The RIO will have primary responsibility for implementation of this policy and its procedures. If the RIO is unavailable to carry out these duties, the VPRI will serve as SJSU's RIO. These responsibilities include the following duties related to research misconduct proceedings:

a) Consult confidentially with persons uncertain about whether to submit an allegation of research misconduct;

b) Receive allegations of research misconduct;

c) Assess each allegation of research misconduct in accordance with this policy to determine whether it falls within the definition of research misconduct and warrants an inquiry;

d) As necessary, take interim action to protect the health and welfare of the public, students, or research subjects, or to protect the integrity of the research record.

e) When required, notify the cognizant federal agency, as appropriate, of special circumstances, in accordance with this policy and current federal regulation;

f) Sequester research data and evidence pertinent to the allegation of research misconduct in accordance with this policy and maintain it securely in accordance with this policy and applicable law and regulation;

g) Provide confidentiality to those involved in the research misconduct proceeding as required by 42 CFR 93.106,[14] other applicable law, and University policy;

[14] 42 CFR 93.106. https://www.ecfr.gov/current/title-42/section-93.106

h) Notify the Respondent and provide opportunities for him/her to review/ comment/respond to allegations, evidence, and committee reports in accordance with this policy;

i) Inform Respondents, Complainants, and witnesses of the procedural steps in the research misconduct proceeding;

j) Appoint the chair and members of the Investigation Committee, if the inquiry determines that an investigation is warranted, ensure that the committee is properly staffed and that there is expertise appropriate to carry out a thorough and authoritative evaluation of the evidence;

k) Determine whether each individual involved in handling an allegation of research misconduct has an unresolved personal, professional, or financial conflict of interest and take appropriate action, including recusal, to ensure that no individual with such conflict is involved in the research misconduct proceeding;

l) In cooperation with other University officials, take all reasonable and practical steps to protect or restore the positions and reputations of good faith complainants, witnesses, and committee members and counter potential or actual retaliation against them by Respondents or other institutional members;

m) Keep the Institutional Deciding Official and others who need to know apprised of the progress of the review of the allegation of research misconduct;

n) Notify and make reports to ORI as required by Part 93 or any other relevant federal regulations and/or notify and make reports to the appropriate regulatory agency or sponsor as required by regulations and this policy;

o) Ensure that administrative actions taken by the University and the cognizant federal agency, when appropriate, are enforced and take appropriate action to notify other involved parties, such as sponsors, law enforcement agencies, professional societies, and licensing boards of those actions;

p) Make a good faith effort to correct the research record; and

q) Maintain records of the research misconduct proceeding and make them available to the cognizant federal agency, as required by law or regulation, in accordance with this policy and any relevant regulations.

B. Complainant

i. The Complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with the inquiry and investigation. As a matter of good practice, the Complainant will be interviewed at the inquiry stage and given the transcript(s) or recording(s) of the interview(s) for correction. The Complainant must make themselves available to be interviewed during an investigation and be given the transcript(s) or recording(s) of the interview(s) for correction.

C. Respondent

i. The Respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry and investigation. The Respondent is entitled to:

a) A good faith effort from the RIO to notify the Respondent in writing at the time of or before beginning an inquiry;

b) An opportunity to comment on the Inquiry Report and have his/her comments attached to the report;

c) Be notified of the outcome of the inquiry, and receive a copy of the Inquiry Report that includes a copy of, or refers to Part 93 (where appropriate and any subsequent or other relevant regulatory requirements) and the University's policies and procedures on research misconduct;

d) Be notified in writing of the allegations to be investigated within a reasonable time after the determination that an investigation is warranted, but before the investigation begins (within 30 days after the University decides to begin an investigation), and be notified in writing of any new allegations, not addressed in the inquiry or in the initial notice of investigation, within a reasonable time after the determination to pursue those allegations;

e) Be interviewed during the investigation, have the right to be accompanied by a representative of his/her choosing during the interview, have the opportunity to correct the recording or transcript, and have the corrected recording or transcript included in the record of the investigation;

f) Have interviewed during the investigation any witness who has been reasonably identified by the Respondent as having information on relevant aspects of the investigation, have the recording or transcript provided to the witness for correction, and have the corrected recording or transcript included in the record of investigation; and

g) Receive a copy of the draft Investigation Report and, concurrently, a copy of, or supervised access to the evidence on which the report is based and be notified that any comments must be submitted within 30 days of the date on which the copy was received and that the comments will be considered by the University.

h) The Respondent will be given the opportunity to admit that research misconduct occurred and that he/she committed the research misconduct. With the advice of the RIO (when appropriate) and/or other University officials, the Institutional Deciding Official may terminate the University's review of an allegation that has been admitted. The University's acceptance of the admission and any proposed settlement must be approved by the cognizant federal agency, when applicable.

D. Institutional Deciding Official (IDO)

i. The campus president, as the Institutional Deciding Official, shall receive the Inquiry Report and after consulting with the RIO, decide whether any investigation is warranted under the criteria in any applicable regulations, including federal regulations such as 42 CFR 93.310.[15]

ii. Any finding that an investigation is warranted shall be made in writing by the Institutional Deciding Official and shall be provided to the cognizant federal agency (where required by regulation), together with a copy of the Inquiry Report meeting the requirements of the appropriate federal or other regulations, within 30 days of the finding.

iii. If it is found that an investigation is not warranted, the Institutional Deciding Official and RIO or other involved regulatory agency or sponsor shall ensure that detailed documentation of the inquiry is retained for at least 7 years after termination of the inquiry, so that appropriate parties may assess the reasons why the University decided not to investigate.

iv. The Institutional Deciding Official shall receive the Investigation Report and, after consulting with the RIO, decide the extent to which the University accepts the findings of the investigation and, if research misconduct is found, decide what, if any, University administrative actions are appropriate.

IV. General Policies and Principles

A. Responsibility to Report Misconduct

i. All University members will report observed, suspected, or apparent research misconduct to the Research Integrity Officer (RIO). If an

[15] 42 CFR 93.310. https://www.ecfr.gov/current/title-42/section-93.310

individual is unsure whether a suspected incident falls within the definition of research misconduct, they may meet with or contact the RIO to discuss the suspected research misconduct informally, which may include discussing it anonymously and/or hypothetically. If the circumstances described by the individual do not meet the definition of research misconduct, the RIO will refer the individual or allegation to other offices or officials with responsibility for resolving the problem.

B. Cooperation with Research Misconduct Proceedings

    i. University members will cooperate with the RIO and other institutional officials in the review of allegations and the conduct of inquiries and investigations. University members, including Respondents, have an obligation to provide evidence relevant to research misconduct allegations to the RIO or other University officials.

C. Confidentiality

    i. The RIO shall:

        a) Limit disclosure of the identity of Respondents, Complainants and witnesses to those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding consistent with applicable laws and regulations; and

        b) Except as otherwise prescribed by law, limit the disclosure of any records or evidence from which research subjects might be identified to those who need to know in order to carry out a research misconduct proceeding. The RIO should use appropriate mechanisms to ensure that there is no disclosure of identifying information.

        c) This section does not prohibit institutions from managing published data or acknowledging that data may be unreliable.

D. Protecting Complainants, Witnesses, and Committee Members

    i. University members may not retaliate in any way against Complainants, witnesses, or committee members. University members should immediately report any alleged or apparent retaliation against Complainants, witnesses, or committee members to the RIO, who shall review the matter and, as necessary, make all reasonable and practical efforts to counter any potential or actual retaliation and protect and restore the position and reputation of the individual against whom the retaliation is directed.

E. Protecting the Respondent

i. As requested and as appropriate, the RIO and other institutional officials shall make all reasonable and practical efforts 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. During the research misconduct proceeding, the RIO is responsible for sending notices and opportunities provided for in federal regulations and the policies and procedures of the University.

F. Interim Administrative Actions and Notifying Cognizant Federal Agencies of Special Circumstances

i. Throughout the research misconduct proceeding, the RIO will review the situation to determine if there is any threat of harm to public health, federal or other sponsor funds and equipment, or the integrity of the research process. In the event of such a threat, the RIO will, in consultation with other University officials, the cognizant federal agency or sponsor, take appropriate interim action to protect against any such threat. Interim action might include additional monitoring of the research process and the handling of federal/sponsor funds and equipment, reassignment of personnel or of the responsibility for the handling of federal/sponsor funds and equipment, additional review of research data and results or delaying publication. The RIO shall, at any time during a research misconduct proceeding, notify the cognizant federal agency and/or other sponsor immediately if he/she has reason to believe that any of the following conditions exist:

a) Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;

b) U.S. Dept. of HHS or other sponsor resources or interests are threatened;

c) Research activities should be suspended;

d) There is a reasonable indication of possible violations of civil or criminal law;

e) Federal action is required to protect the interests of those involved in the research misconduct proceeding;

f) The research misconduct proceeding may be made public prematurely and action may be necessary to safeguard evidence and protect the rights of those involved; or the research community or public should be informed.

V. Conducting the Assessment

A. Assessment of Allegations

i. Upon receiving an allegation of research misconduct, the RIO shall immediately assess the allegation to determine:

a) Whether it is sufficiently credible and sufficiently specific so that potential evidence of research misconduct may be identified,

b) whether the allegation falls within the definition of research misconduct in this policy and any applicable federal regulations and,

c) whether it is within the jurisdictional criteria of federal agencies.

ii. The assessment period should be brief. In conducting the assessment, the RIO need not interview the Complainant, Respondent, or other witnesses, or gather data beyond any that may have been submitted with the allegation, except as necessary to determine whether the allegation is sufficiently credible and specific so that potential evidence of research misconduct may be identified.

B. Assessment results

i. If the RIO or designee determines that requirements for an inquiry are met, they must:

a) Document the assessment;

b) Promptly sequester all research records and other evidence, consistent with 42 CFR 93.305(a),[16] and promptly initiate the inquiry.

ii. If the RIO or another designated institutional official determines that requirements for an inquiry are not met, they must keep sufficiently detailed documentation of the assessment to permit a later review of the reasons why the institution did not conduct an inquiry. Such documentation must be retained in accordance with 42 CFR 93.318.[17]

C. Notice to Respondent; Sequestration of Research Records

i. At the time of or before beginning an inquiry, the RIO must notify the Respondent in writing. If the inquiry subsequently identifies additional Respondents, they must be notified in writing.

ii. On or before the date on which the Respondent is notified, or the inquiry begins, whichever is earlier, the RIO shall 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

[16] 42 CFR 93.305(a). https://www.ecfr.gov/current/title-42/section-93.305
[17] 42 CFR 93.318. https://www.ecfr.gov/current/title-42/section-93.318

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, consistent with 42 CFR 93.305(a).[18]

iii. The RIO may consult with the appropriate regulatory agency for advice and assistance in this regard.

VI. Conducting the Inquiry

A. The purpose of the inquiry is to conduct an initial review of the available evidence to determine whether to conduct an investigation. An inquiry does not require a full review of all the evidence related to the allegation. The inquiry will be conducted by the RIO or their designee unless an Inquiry Committee is requested by either the Complainant or Respondent.

B. Inquiry Committee

i. In cases where an Inquiry Committee is requested by either the Complainant or Respondent, the RIO shall convene an Inquiry Committee of at least three members including a committee Chair as soon after the request for an Inquiry Committee as is practical. The Inquiry Committee shall consist of individuals who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the inquiry and should include individuals with the appropriate scientific expertise to evaluate the evidence and issues related to the allegation, interview the principals and key witnesses, and conduct the inquiry.

ii. An Inquiry Committee will be Chaired by a tenured full Professor of San José State University who will be selected for professional objectivity regarding both the Complainant and Respondent to the case. It is desirable but not mandatory that the Chair have the appropriate scientific or professional expertise necessary to evaluate the evidence and issues related to the inquiry. The committee shall have two additional members who must have the appropriate scientific or professional expertise necessary to evaluate the evidence and issues related to the inquiry. One or both of these members may be drawn from other universities and each shall be a tenured full Professor.

iii. The Respondent shall be notified of the proposed committee membership and shall have 10 calendar days to object to a proposed member based upon a personal, professional, or financial conflict of interest. The Institutional Deciding Official (IDO) shall make the final determination of whether a conflict exists. If a conflict is found then a

[18] 42 CFR 93.305(a). https://www.ecfr.gov/current/title-42/section-93.305

new committee member shall be appointed and a new period for objection shall be granted.

iv. The RIO shall prepare a charge for the Inquiry Committee that:

a) Sets forth the time for completion of the inquiry;

b) Describes the allegations and any related issues identified during the allegation assessment;

c) States that the purpose of the inquiry is to conduct an initial review of the evidence, including the testimony of the respondent, complainant and key witnesses, to provide information to the RIO who will communicate to the IDO whether an investigation is warranted, not to determine whether research misconduct definitely occurred or who was responsible;

d) States that an investigation is warranted if the committee determines: (1) there is a reasonable basis for concluding that the allegation falls within the definition of research misconduct and is within the jurisdictional criteria of the appropriate federal code; and, (2) the allegation may have substance, based on the committee's review during the inquiry.

e) Informs the inquiry committee that they are responsible for preparing or directing the preparation of a written report of the inquiry that meets the requirements of this policy.

f) At the committee's first meeting, the RIO shall review the charge with the committee, discuss the allegations, any related issues, and the appropriate procedures for conducting the inquiry, assist the committee with organizing plans for the inquiry, and answer any questions raised by the committee. The RIO shall be present or available throughout the inquiry to advise the committee as needed.

C. Inquiry Process

i. The RIO (or designee) or when convened, the Inquiry Committee, shall normally interview the Complainant, the Respondent and key witnesses as well as examine relevant research records and materials.

a) Transcripts of any interviews will be prepared

ii. The RIO (or designee) or if requested, Inquiry Committee, shall evaluate the evidence, including the testimony obtained during the inquiry. The scope of the inquiry is not required to and does not normally include deciding whether misconduct definitely occurred, determining

definitively who committed the research misconduct, or conducting exhaustive interviews and analyses, however;

iii. If a legally sufficient admission of research misconduct is made by the Respondent, misconduct may be determined at the inquiry stage if all relevant issues are resolved.

iv. In that case, the University shall promptly consult with the appropriate federal regulatory agency, if any, to determine the next steps that should be taken.

v. If a non-federal sponsor is involved without federal funds, or the research is not supported, the RIO, or if used, Inquiry Committee, will consult with appropriate University officials to determine the next steps.

D. Time for Completion

i. The inquiry, including preparation of the final Inquiry Report by the RIO (or designee) or the Inquiry Committee, when used, and the decision of the Institutional Deciding Official on whether an investigation is warranted, shall be completed within 90 calendar days of initiation of the inquiry, unless the RIO determines that circumstances clearly warrant a longer period. If the RIO approves an extension, the inquiry record must include documentation of the reasons for exceeding the 90-day period.

E. The Inquiry Report

i. Elements of the Inquiry Report

a) A written Inquiry Report shall be prepared by the RIO (or designee) or if used, Inquiry Committee that includes the following information:

1. the names, professional aliases, and positions of the Respondent and Complainant;

2. a description of the allegations of research misconduct;

3. the funding support, if any, for example, grant numbers, grant applications, contracts and publications listing specific financial support;

4. the name and title of the RIO or their designee who conducted the inquiry, and any experts who contributed to the inquiry;

5. Inventory of sequestered research records and other evidence and description of how sequestration was conducted;

6. Transcripts of any transcribed interviews;
7. Timeline and procedural history;
8. Any scientific or forensic analyses conducted;
9. The basis for recommending that the allegations warrant an investigation;
10. The basis for not recommending that the allegations warrant an investigation;
11. Any comments on the draft report by the Respondent or Complainant
12. Any institutional actions implemented, including communications with journals or funding agencies.
13. Whether any actions should be taken if an investigation is not recommended.

b) The report may be reviewed by University counsel and/or other officials with compliance background for report for legal sufficiency. Modifications should be made as appropriate in consultation with the RIO (or designee) or when relevant, Inquiry Committee .

ii. Notification to the Respondent and Opportunity to Comment

a) The RIO shall notify the Respondent whether the inquiry found an investigation to be warranted, include a copy of the draft Inquiry Report for comment within 10 days, and include a copy of or refer to the applicable federal or other appropriate regulations and the University policy on research misconduct.

b) Any comments that are submitted shall be attached to the final Inquiry Report.

iii. Based on the comments, the RIO (or designee) or when used, Inquiry Committee may revise the draft report as appropriate and prepare it in final form. If used, the Inquiry Committee will deliver the final Inquiry Report to the RIO.

iv. University Decision and Notification to Respondent

a) Decision by Institutional Deciding Official

1. The RIO will transmit the final Inquiry Report and any comments to the Institutional Deciding Official (IDO), who

will determine in writing whether an investigation is warranted.

2. The inquiry is completed when the IDO makes this determination.

v. Notification to ORI

a) Within 30 days of the IDO's decision that an investigation is warranted, the RIO will provide ORI or other appropriate regulatory agency and/or sponsor with the IDO's written decision and a copy of the Inquiry Report. The RIO will also notify those institutional officials who need to know of the IDO's decision. The RIO must provide the following information to ORI upon request:

1. 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 to be considered in the investigation.

vi. Documentation of Decision Not to Investigate

a) If the IDO decides that an investigation is not warranted, the RIO shall secure and maintain for 7 years after the termination of the inquiry sufficiently detailed documentation of the inquiry to permit a later assessment by ORI of the reasons why an investigation was not conducted. These documents must be provided to ORI or other authorized personnel upon request.

VII. Conducting the Investigation

A. Initiation and Purpose

i. The investigation shall begin within 30 days after the determination by the Institutional Deciding Official that an investigation is warranted.

ii. The purpose of the investigation is to develop a factual record by exploring the allegations in detail and examining the evidence in depth, leading to recommended findings on whether research misconduct has been committed, by whom, and to what extent.

iii. In conducting the investigation, the RIO will diligently pursue all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of additional instances of possible research misconduct, and continue the investigation to completion.

iv. If in the course of the investigation, the RIO determines there are additional instances of research misconduct, they will notify the Respondent.

B. Notifying ORI and Respondent

i. On or before the date on which the investigation begins, the RIO shall:

ii. notify the ORI Director of the decision to begin the investigation and provide any appropriate regulatory agency or sponsor a copy of the Inquiry Report; and

iii. notify the Respondent in writing of the allegations to be investigated within a reasonable amount of time after determining that an investigation is warranted, but before the investigation begins.

iv. The RIO shall also give the Respondent written notice of any new allegations of research misconduct within a reasonable amount of time of deciding to pursue allegations not addressed during the inquiry or in the initial notification of investigation.

C. Sequestration of Research Records

i. The RIO will, prior to notifying the Respondent of the allegations, take all reasonable and practical steps to obtain custody of and sequester in a secure manner all research records and evidence needed to conduct the research misconduct proceedings that were not previously sequestered during the inquiry.

ii. 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. The need for additional sequestration of records for the investigation may occur for any number of reasons, including the institution's decision to investigate additional allegations not considered during the inquiry stage or the identification of records during the inquiry process that had not been previously secured.

iii. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry.

D. Appointment of the Investigation Committee

i. The RIO, in consultation with other University officials as appropriate, shall appoint an Investigation Committee and the committee chair within 10 days of the beginning of the investigation or as soon thereafter as practical. The Investigation Committee shall consist of at least three individuals who do not have unresolved personal, professional, or

financial conflicts of interest with those involved with the investigation nor is a Complainant.

ii. The Investigation Committee will be Chaired by a tenured full Professor of San José State University who will be selected for professional objectivity regarding both the Complainant and Respondent to the case. It is desirable but not mandatory that the Chair have the appropriate scientific or professional expertise necessary to evaluate the evidence and issues related to the allegation. The committee shall have two additional members who must have the appropriate scientific or professional expertise necessary to evaluate the evidence and issues related to the allegation. One or both members may be drawn from other universities and each shall be a tenured full Professor.

iii. The Respondent shall be notified of the proposed committee membership and shall have 10 days to object to a proposed member based upon a personal, professional, or financial conflict of interest. The Institutional Deciding Official shall make the final determination of whether a conflict exists. If a conflict is found, then a new committee member shall be appointed and a new period for objection shall be granted.

E. Charge to the Committee and First Meeting

i. Charge to the Committee

a) The RIO will define the subject matter of the investigation in a written charge to the committee that;

b) Describes the allegations and related issues identified during the inquiry;

c) Identifies the Respondent; Informs the committee that it must conduct the investigation as prescribed below in the Investigation Process section;

d) Defines research misconduct according to II, above;

e) Informs the committee that it must evaluate the evidence and testimony to determine whether, based on a preponderance of the evidence, research misconduct occurred and, if so, the type and extent of it and who was responsible

f) Informs the committee that in order to determine that the Respondent committed research misconduct it must find that a preponderance of the evidence establishes that:

1. research misconduct, as defined in Section II, occurred (Respondent has the burden of proving by a

preponderance of the evidence any affirmative defenses raised, including honest error or a difference of opinion);

2. the research misconduct is a significant departure from accepted practices of the relevant research community; and

3. the Respondent committed the research misconduct intentionally, knowingly, or recklessly.

g) Informs the committee that it must prepare or direct the preparation of a written Investigation Report that meets the requirements of this policy and any applicable federal regulations.

F. First Meeting

i. The RIO shall convene the first meeting of the Investigation Committee to review the charge, the Inquiry Report, and the prescribed procedures and standards for the conduct of the investigation, including the necessity for confidentiality and for developing a specific investigation plan. The Investigation Committee shall be provided with a copy of this policy and any applicable federal regulations. The RIO shall be present or available throughout the investigation to advise the committee as needed.

G. Investigation Process

i. The Investigation Committee and the RIO shall:

a) Use diligent efforts to ensure that the investigation is thorough and sufficiently documented and includes examination of all research records and evidence relevant to reaching a decision on the merits of each allegation;

b) Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;

c) Interview each Respondent, Complainant, and any other available individual who has been reasonably identified as having information regarding any relevant aspects of the investigation, including witnesses identified by the Respondent, and record or transcribe each interview, provide the recording or transcript to the interviewee for correction, and include the recording or transcript in the record of the investigation; and

d) Pursue diligently all significant issues and leads discovered that are determined relevant to the investigation, including any evidence of any additional instances of possible research misconduct, and continue the investigation to completion

H. Time for Completion

i. The investigation is to be completed within 180 days of beginning it, including conducting the investigation, preparing the report of findings, providing the draft report for comment and sending the final report to ORI or other appropriate regulatory agency or sponsor. However, if the RIO determines that the investigation will not be completed within this 180-day period, when appropriate, he/she will submit to ORI a written request for an extension, setting forth the reasons for the delay. The RIO will ensure that periodic progress reports are filed with ORI, if ORI grants the request for an extension and directs the filing of such reports.

VIII. The Investigation Report

A. Elements of the Investigation Report

i. Describes the nature of the allegation of research misconduct, including identification of the Respondent;

ii. Includes the Respondent's c.v. or resume;

iii. Describes and documents the PHS and/or other support, including, for example, the numbers of any grants that are involved, grant applications, contracts, publications listing sponsor support, and any other documentation found;

iv. Describes the specific allegations of research misconduct considered in the investigation;

v. Includes the University policies and procedures under which the investigation was conducted, unless those policies and procedures were provided to ORI previously;

vi. Composition of the Investigation Committee, including name(s), position(s), and subject matter expertise.

vii. Identifies and summarizes the research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and

viii. Includes transcripts of all interviews conducted

ix. Includes a statement of findings for each allegation of research misconduct identified during the investigation.

a) Each statement of findings shall:

1. Identify the individual who committed the research misconduct

2. identify whether the research misconduct was falsification, fabrication, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the academic community for proposing, conducting, or reporting research and whether it was committed intentionally, knowingly, or recklessly;

3. summarize the facts and the analysis that support the conclusion and consider the merits of any reasonable explanation by the Respondent, including any effort by the Respondent to establish by a preponderance of the evidence that they did not engage in research misconduct because of honest error or a difference of opinion;

4. identify the specific financial support;

5. identify whether any publications need correction or retraction;

6. list any current support or known applications or proposals for support that the Respondent has pending with any federal agencies or other sponsors.

b) If the Investigation Committee does not recommend a finding of research misconduct for an allegation, the Investigation Report must provide a detailed rationale.

B. Comments on the Draft Report and Access to Evidence

i. Respondent

a) The RIO shall give the Respondent a copy of the draft Investigation Report for comment and, concurrently, a copy of, or supervised access to the evidence on which the report is based. The Respondent shall be allowed 30 days from the date he/she received the draft report to submit comments to the RIO. The Respondent's comments shall be included and considered in the final report.

ii. Confidentiality

a) In distributing the draft Report, or portions thereof, to the Respondent, the RIO shall inform the recipient of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality.

b) The RIO may require that the recipient sign a confidentiality agreement.

C. Decision by the Institutional Deciding Official

i. The RIO shall assist the Investigation Committee in finalizing the draft Investigation Report, including ensuring that the Respondent's comments are included and considered, and transmit the final Investigation Report to the IDO, who shall determine in writing: (1) whether the University accepts the Investigation Report, its findings, and the recommended institutional actions; and (2) the appropriate University actions in response to the accepted findings of research misconduct. If this determination varies from the findings of the Investigation Committee, the IDO shall, as part of his/her written determination, explain in detail the basis for rendering a decision different from the findings of the Investigation Committee. Alternatively, the IDO may return the report to the Investigation Committee with a request for further fact-finding or analysis

ii. When a final decision on the case has been reached, the RIO shall normally notify both the Respondent and the Complainant in writing. After informing the appropriate federal regulatory agency and/or other sponsors, the IDO shall determine whether law enforcement agencies, professional societies, professional licensing boards, editors of journals in which falsified reports may have been published, collaborators of the Respondent in the work, or other relevant parties should be notified of the outcome of the case. The RIO shall be responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.

D. Notice to the Appropriate Federal Agency and/or Other Sponsor

i. Unless an extension has been granted, the RIO shall within the 180-day period for completing the investigation prepare the following:

a) a copy of the final Investigation Report with all attachments and any appeal;

b) a statement of whether the institution accepts the findings of the Investigation Report or the outcome of the appeal;

c) a statement of whether the institution found misconduct and, if so, who committed the misconduct; and

d) a description of any pending or completed administrative actions against the Respondent.

E. Maintaining Records for Review by ORI

i. The RIO must maintain and provide to ORI, or other appropriate regulatory agencies or sponsors, upon request “records of research

misconduct proceedings" as that term is defined by 42 CFR 93.317[19] or any subsequent regulations. Unless custody has been transferred to ORI or the Institution has advised in writing that the records no longer need to be retained, records of research misconduct proceedings must be maintained in a secure manner for seven years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation. The RIO is also responsible for providing any information, documentation, research records, evidence or clarification requested by ORI to carry out its review of an allegation of research misconduct or of the institution's handling of such an allegation.

F. Completion of Cases; Reporting Premature Closures to Appropriate Regulatory Agency

   i. Generally, all inquiries and investigations shall be carried through to completion, and all significant issues will be pursued diligently. The RIO shall notify the appropriate regulatory agency, specifically including ORI when required, in advance if there are plans to close a case at the inquiry, investigation, or appeal stage on the basis that Respondent has admitted guilt, a settlement with the Respondent has been reached, or for any other reason, except: (1) closing of a case at the inquiry stage on the basis that an investigation is not warranted; or (2) a finding of no misconduct at the investigation stage.

G. Institutional Administrative Actions

   i. If the Institutional Deciding Official determines that research misconduct is substantiated by the findings, they shall decide on the appropriate actions to be taken, after consultation with the RIO when required. The administrative actions may include:

      a) Withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found;

      b) Removal of the responsible individual from the particular project, letter of reprimand, special monitoring of future work, probation, suspension, salary reduction, or initiation of steps leading to possible rank reduction or termination of employment as guided by appropriate university officials and Collective Bargaining Agreements;

      c) Restitution of funds to the grantor agency as appropriate; and

      d) Other action appropriate to the misconduct.

IX. Other Considerations

[19] 42 CFR 93.317. https://www.ecfr.gov/current/title-42/section-93.317

A. Termination or Resignation Prior to Completing Inquiry or Investigation

   i. The termination of the Respondent's institutional employment, by resignation or otherwise, before or after an allegation of possible research misconduct has been reported, will not preclude or terminate the research misconduct proceeding or otherwise limit any of the institution's responsibilities under federal law.

   ii. If the Respondent, without admitting to the misconduct, elects to resign his or her position after the institution receives an allegation of research misconduct, the assessment of the allegation shall proceed, as well as the inquiry and investigation, as appropriate based on the outcome of the preceding steps.

   iii. If the Respondent refuses to participate in the process after resignation, the RIO and any inquiry or Investigation Committee shall use their best efforts to reach a conclusion concerning the allegations, noting in the report the Respondent's failure to cooperate and its effect on the evidence.

B. Restoration of the Respondent’s Reputation

   i. Following a final finding of no research misconduct and upon the request of the Respondent, the RIO shall undertake all reasonable and practical efforts to restore the Respondent's reputation. Depending on the particular circumstances and the views of the Respondent, the RIO shall, publicize the final outcome in any forum in which the allegation of research misconduct was previously publicized. Any institutional actions to restore the Respondent's reputation should first be approved by the Institutional Deciding Official.

C. Protection of Complainant, Witnesses and Committee Members

   i. During the research misconduct proceeding and upon its completion, regardless of whether it was determined that research misconduct occurred, the RIO shall undertake all reasonable and practical efforts to protect the position and reputation of, or to counter potential or actual retaliation against, any Complainant who made allegations of research misconduct in good faith and of any witnesses and committee members who cooperate in good faith with the research misconduct proceeding.

   ii. The IDO shall determine, after consulting with the RIO, and with the Complainant, witnesses, or committee members, respectively, what steps, if any, are needed to restore their respective positions or reputations or to counter potential or actual retaliation against them.

   iii. The RIO shall be responsible for implementing any steps the IDO approves.

D. Allegations Not Made in Good Faith

i. If relevant, the Institutional Deciding Official shall determine whether the Complainant's allegations of research misconduct were made in good faith, or whether a witness or committee member acted in good faith. If the Institutional Deciding Official determines that there was an absence of good faith he/she will determine whether any administrative action should be taken against the individual who failed to act in good faith.

E. Time limitations

i. Six-year limitation. Part 93 applies only to research misconduct occurring within six years of the date the institution receives an allegation of research misconduct.

a) Exceptions to the six-year limitation

1. Paragraph (i) of this section does not apply in the following instances:

(a) The Respondent continues or renews any incident of alleged research misconduct that occurred before the six-year limitation through the use of, republication of, or citation to the portion(s) of the research record (e.g., processed data, journal articles, funding proposals, data repositories) alleged to have been fabricated, falsified, or plagiarized, for the potential benefit of the Respondent. This is known as the Subsequent Use Exception.

(b) When the Respondent uses, republishes, or cites to the portion(s) of the research record that is alleged to have been fabricated, falsified, or plagiarized, in submitted or published manuscripts, submitted grant applications, progress reports, posters, presentations, or other research records within six years of when the allegations were received by the institution.

2. For research misconduct that appears subject to the subsequent use exception, institutions must document their determination that the subsequent use exception does not apply. Such documentation must be retained in accordance with 42 CFR 93.318.[20]

[20] 42 CFR 93.318. https://www.ecfr.gov/current/title-42/section-93.318

3. Exception for the health or safety of the public. If ORI or the institution, following consultation with ORI, determines that the alleged research misconduct, if it occurred, would possibly have a substantial adverse effect on the health or safety of the public, this exception applies.

F. Evidentiary standards

i. Standard of proof. An institutional finding of research misconduct must be proved by a preponderance of the evidence.

ii. Burden of proof

a) The institution has the burden of proof for making a finding of research misconduct.

1. A Respondent's destruction of research records documenting the questioned research is evidence of research misconduct where the institution establishes by a preponderance of the evidence that the Respondent intentionally or knowingly destroyed records after being informed of the research misconduct allegations.

2. A Respondent's failure to provide research records documenting the questioned research is evidence of research misconduct where the Respondent claims to possess the records but refuses to provide them upon request.

b) The Respondent has the burden of going forward with and proving, by a preponderance of the evidence, all affirmative defenses raised.

1. In determining whether the institution has carried the burden of proof imposed by Part 93, the finder of fact shall give due consideration to admissible, credible evidence of honest error or difference of opinion presented by the Respondent.

c) The Respondent has the burden of going forward with and proving, by a preponderance of the evidence, any mitigating factors relevant to a decision to impose administrative actions after a research misconduct proceeding.

X. References

Code of Federal Regulations, Title 42, Part 93, Subparts A, B, C, D, E – Public Health Service Policies on Research Misconduct.
https://www.ecfr.gov/current/title-42/chapter-I/subchapter-H/part-93

Office of Research Integrity (ORI), Sample Policy and Procedures for Responding to Allegations of Research Misconduct.
https://ori.hhs.gov/sample-policy-procedures-responding-research-misconduct-allegations

Public Health Service Act, Section 493, Title 42: The Public Health and Welfare,
https://www.govinfo.gov/content/pkg/USCODE-2023-title42/pdf/USCODE-2023-title42-chap6A-subchapIII-partH-sec289b.pdf

California State University, Sponsored Programs Administration Policy, PolicyStat ID 16577430, effective 9/21/2023, https://calstate.policystat.com/policy/16577430/latest