

Minnesota State University, Mankato  
University Policy

<b>Policy Name:</b> Responding to Issues of Research Misconduct	<b>Effective Date of Last Revision</b> August 1, 2015
<b>Custodian of Policy:</b> Provost and Senior Vice President for Academic Affairs	<b>Date of Last Review</b> September 2014
Date of Adoption May 2004	<b>Date of Next Review</b> September 2021

**Commented [MLT1]:** From Dan Houlihan: I have reviewed #42 CFR Part 93, checked for revisions and updates, cross-compared our policy with two well-regarded universities with recently updated policies (Harvard and Washington St) and have run it past an internal reviewer. I have attached two versions of the revision for your review.

## Policy

[The research mission of the University is to advance the public knowledge base through competent and ethical and equitable investigation.](#) Misconduct in research and scholarship activity undermines the mission of the University and erodes the public trust in the University community to conduct research and communicate results using the highest standards and ethical and equitable practices. The University is responsible for promoting academic practices that prevent research misconduct and for developing policies and procedures for dealing with allegations of misconduct. All members of the University's community—students, staff, faculty, and administrators—share responsibility for developing and maintaining standards to ensure ethical conduct of research and the detection and appropriate handling of abuse of these standards. [This policy is a guide to add clarity to procedure should challenges or inquiry occur.](#) This responsibility must be assumed while sustaining the openness and creativity vital to a spirit of inquiry.

### Scope

The policies and procedures outlined below apply to [all University members engaged in research.](#) This includes allegations of research misconduct (fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results) involving any person who at the time of the alleged research misconduct was paid by, under the control of, or affiliated with Minnesota State University, Mankato, such as scientists, trainees, technicians and other staff members, students, fellows, guest researchers, or collaborators [at the University.](#)

These policies and the associated procedures apply to all individuals at Minnesota State University, Mankato engaged in research, regardless of whether or not that research is supported by federal funds.

Certain provisions in these policies and procedures carry out the University's responsibilities under the [Public Health Service \(PHS\) Policies on Research Misconduct \(42 CFR Part 93\)](#) when allegations of research misconduct involve:

- A person who, at the time of the alleged research misconduct, was employed by, was an agent of, or was affiliated by contract or agreement with this institution<sup>ii</sup>; and
- PHS supported biomedical or behavioral 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, (2) applications or proposals for PHS support for biomedical or behavioral research, research training or activities related to that research or research training, or (3) plagiarism of research records produced in the course of PHS supported 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, 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>

These policies and associated procedures will normally be followed when an allegation of possible misconduct in science is received by ~~an institutional official~~ the institution's Research Integrity Officer (RIO). The role of RIO at Minnesota State University, Mankato is assumed by the Associate Vice President for Research. Particular circumstances in an individual case may dictate variation from the normal procedure deemed in the best interests of Minnesota State University, Mankato (and PHS, if PHS support or applications for support are involved). Any change from normal procedures also must ensure fair and equitable treatment of the subject of the ~~inquiry or~~ investigation. Any significant variation should be approved in advance by the President of Minnesota State University, Mankato.

This statement of policy and procedures does not apply to authorship or collaboration disputes and applies only to allegations of research misconduct that occurred within six years of the date the institution or the **U.S. Department of Health and Human Services** received the allegation, subject to the subsequent use, health or safety of the public, and grandfather exceptions in 42 CFR § 93.105(b).

These policies are not intended to address all academic issues of an ethical nature, such as student conduct in examinations or discrimination and affirmative action issues, which are covered by other University policies. Disciplinary actions, if any, also may involve other existing policies and procedures.

Nothing in these procedures should be construed to limit faculty and/or staff rights as outlined in their collective bargaining agreements.

#### **A. Definitions**

Terms used have the same meaning as given them in the **Public Health Service Policies on Research Misconduct, 42 CFR Part 93.**

The following terms which may not appear in **42 CFR Part 93** are used in this Policy for Responding to Issues of Research Misconduct:

1. Allegation is a written or verbal statement suggesting possible research misconduct.
2. Conflict of interest means the real or apparent interference of one person's interests with the interests of another person, where potential bias may occur due to prior or existing personal or professional relationships.
3. Deciding Official (DO) means the institutional official who makes a final determinations on allegations of research misconduct and any responsive institutional actions.
  - The President of Minnesota State University, Mankato will serve as the Deciding Official.
4. Employee means, for the purpose of these instructions only, any person paid by, under the control of, or affiliated with the institution, including but not limited to scientists, physicians, trainees, students, fellows, technicians, nurses, support staff, and guest researchers.
5. Good faith means an allegation is made with the authentic belief that a form of misconduct occurred.
6. Complainant is an individual who in good faith produces an allegation of misconduct in research.
7. Respondent is the alleged purveyor of inequity or misconduct while conducting research.
8. PHS regulation means the Public Health Service Policies on Research Misconduct (42 CFR Part 93) Final Rule which establishes standards for institutional inquiries and investigations into allegations of research misconduct.
9. 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 this policy and/or 42 CFR 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 inquires and investigations; and (3) the other responsibilities described in this policy.
10. Retaliation is an oppositional action taken against a complainant who is alleging misconduct in good faith. This extends to witnesses or members of the committee as well.

116. *Research Misconduct* means fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results.<sup>iv</sup>

## B. Rights and Responsibilities

### 1. Research Integrity Officer

The ~~Associate Vice President for Research and Graduate Dean~~ Associate Vice President for Research will serve as the RIO who will have primary responsibility for implementation of the institution's policies and procedures on research misconduct. The RIO will assist inquiry and investigation committees and all institutional personnel in complying with these procedures and with applicable standards imposed by government or external funding sources. A detailed listing of the responsibilities of the RIO is set forth in this Section, B-J. These responsibilities include the following duties related to research misconduct proceedings:

- Consult confidentially with persons uncertain about whether to submit an allegation of research misconduct;
- Receive allegations of research misconduct;
- Assess each allegation of research misconduct in accordance with Section D1 . of this policy to determine whether it falls within the definition of research misconduct and warrants an inquiry;
- As necessary, take interim action and notify the Office of Research Integrity (ORI) at the U.S. Department of Health and Human Services of special circumstances, in accordance with Section C6 of this policy;
- Sequester research data and evidence pertinent to the allegation of research misconduct in accordance with Section D3 of this policy and maintain it securely in accordance with this policy and applicable law and regulation;
- Provide confidentiality to those involved in the research misconduct proceeding **as required by 42 CFR § 93.108**, other applicable law, and institutional policy;
- Notify the respondent and provide opportunities for him/her to review, comment on, and respond to allegations, evidence, and committee reports in accordance with Section E2. of this policy;
- Inform respondents, complainants, and witnesses of the procedural steps in the research misconduct proceeding;
- Appoint the chair and members of the inquiry and investigation committees, ensure that those committees are properly staffed and that there is expertise appropriate to carry out a thorough and authoritative evaluation of the evidence;
- **Determine whether or not each person 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 person with such a conflict is involved in the research misconduct proceeding;**
- In cooperation with other institutional 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;
- Keep the Deciding Official and others who need to know apprised of the progress of the review of the allegation of research misconduct;
- Notify and make reports to ORI as required by 42 CFR Part 93;

Formatted: Not Highlight

- Ensure that administrative actions taken by the institution and ORI 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; and
- Maintain records of the research misconduct proceeding and make them available to ORI in accordance with Section G5 of this policy.

## 2. Complainant

The RIO should determine if the complainant can provide relevant information regarding the inquiry. If so, 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 should be interviewed at the inquiry stage and given the transcript or recording of the interview for correction.

The institution will provide to the complainant for comment:

- Relevant portions of the inquiry report (within a timeframe that permits the inquiry to be completed within 60 days of its initiation); and
- The draft investigation report or relevant portions of it. Comments on the draft investigation report will be submitted within 30 days of the date on which the complainant received the draft report.

The institution must consider any comments made by the complainant on the draft investigation report and include those comments in the final investigation report.

## 3. Respondent

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

- A good faith effort from the RIO to notify the respondent in writing at the time of or before beginning an inquiry;<sup>vi</sup>
- Receive advice of a collective bargaining unit representative;
- An opportunity to comment on the inquiry report and have his/her comments attached to the report;<sup>vii</sup>
- Be notified of the outcome of the inquiry, and receive a copy of the inquiry report that includes a copy of, or refers to 42 CFR Part 93 and the institution's policies and procedures on research misconduct;<sup>viii</sup>
- 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 institution 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;<sup>ix</sup>
- Be interviewed during the investigation, have the opportunity to correct the recording or transcript, and have the corrected recording or transcript included in the record of the investigation;<sup>x</sup>
- 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;<sup>xi</sup> and
- 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 institution and addressed in the final report.<sup>xii</sup>

The respondent should be given the opportunity to admit to research misconduct and that they participated in the research misconduct. With the advice of the RIO and/or other institutional officials, the

Deciding Official may terminate the institution's review of an allegation that has been admitted to, if the institution's acceptance of the admission and any proposed settlement is approved by ORI.<sup>xiii</sup>

If a respondent is the respondent is not found not guilty of research misconduct, they have the he or she has the right to ask for and receive institutional assistance in restoring his or her a damaged reputation.

#### 4. Deciding Official

The DO will receive the inquiry report and after consulting with the RIO and/or other institutional officials, decide whether an investigation is warranted under the criteria in 42 CFR § 93.307(d). Any finding that an investigation is warranted must be made in writing by the DO and must be provided to ORI, together with a copy of the inquiry report meeting the requirements of 42 CFR § 93.309, within 30 days of the finding. If it is found that an investigation is not warranted, the DO and the RIO will ensure that detailed documentation of the inquiry is retained for at least 7 years after termination of the inquiry, so that ORI may assess the reasons why the institution decided not to conduct an investigation.<sup>xiv</sup>

The DO will receive the investigation report and, after consulting with the RIO and/or other institutional officials, decide the extent to which this institution accepts the findings of the investigation and, if research misconduct is found, decide what, if any, institutional administrative and/or disciplinary actions in accordance with the collective bargaining agreement are appropriate. The DO shall ensure that the final investigation report, the findings of the DO and a description of any pending or completed administrative actions are provided to ORI, as required by 42 CFR § 93.315.

Formatted: Not Highlight

## C. Policies and Procedures

### 1. Responsibility to Report Misconduct

All employees or individuals associated with Minnesota State University, Mankato will report observed, suspected, or apparent research misconduct to the RIO or their immediate supervisor. If an individual is uncertain whether a suspected incident falls within the definition of research misconduct, he or she 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 addressing or resolving the problem.

At any time, an employee may have confidential discussions and consultations about concerns of possible misconduct with the RIO, immediate supervisor, and/or the appropriate bargaining unit and will be counseled about appropriate procedures for reporting allegations.

### 2. Cooperation with Research Misconduct Proceedings

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

### 3. Confidentiality

The RIO shall, as required by 42 CFR § 93.108: (1) limit disclosure of the identity of respondents and complainants, and witnesses (when the circumstances indicate that the witnesses may be harassed or otherwise need protection), to those who need to know in order to carry out a thorough, competent, objective and fair research misconduct proceeding; and (2) 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 written confidentiality agreements or other mechanisms to ensure that the recipient does not make any further disclosure of identifying information.

### 4. Protecting the Complainants, Witnesses, and Committee Members

The Rio should maintain contact with and scrutinize the treatment of complainants making allegations of misconduct. Institutional members may not retaliate in any way (including in the terms and conditions of employment or other status at the institution) against complainants, witnesses, or committee members.

Institutional 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 person against whom the retaliation is directed.

#### **5. Protecting the Respondent**

Inquiries and investigations will be conducted in a manner that will ensure fair treatment to the respondent(s) in the inquiry or investigation and confidentiality to the extent possible without compromising public health and safety or thoroughness in carrying out the inquiry or investigation. 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.<sup>xv</sup>

During the research misconduct proceeding, the RIO is responsible for ensuring that respondents receive all the notices and opportunities provided for in 42 CFR Part 93 and the policies and procedures of the institution. Respondents may consult with legal counsel, a collective bargaining unit representative, or other non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the counsel, or personal adviser, or collective bargaining unit representative to interviews or meetings on the case.

#### **6. Interim Administrative Actions and Notifying ORI of Special Circumstances**

Throughout the research misconduct proceeding, the RIO will review the situation to determine if there is any threat of harm to public health, federal funds and equipment, or the integrity of the PHS supported research process. In the event of such a threat, the RIO will, in consultation with other institutional officials and ORI, take appropriate interim action to protect against any such threat.<sup>xvi</sup> Interim action might include additional monitoring of the research process and the handling of federal funds and equipment, reassignment of personnel or of the responsibility for the handling of federal 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 ORI immediately if he/she has reason to believe that any of the following conditions exist:

- Health or safety of the public is at risk, including an immediate need to protect human or animal subjects;
- HHS resources or interests are threatened;
- Research activities should be suspended;
- There is a reasonable indication of possible violations of civil or criminal law;
- Federal action is required to protect the interests of those involved in the research misconduct proceeding;
- The research misconduct proceeding may be made public prematurely and HHS action may be necessary to safeguard evidence and protect the rights of those involved; or
- The research community or public should be informed.<sup>xvii</sup>

### D. Conducting the Assessment and Inquiry

#### **1. Assessment of Allegations**

Upon receiving an allegation of research misconduct, the RIO will immediately assess the allegation to determine whether it is sufficiently credible and specific so that potential evidence of research misconduct may be identified, whether it is within the jurisdictional criteria of 42 CFR § 93.102(b), and whether the allegation falls within the definition of research misconduct in 42 CFR § 93.103.<sup>xviii</sup> An inquiry must be conducted if these criteria are met.

The assessment period should be brief, preferably concluded within a week. 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. The RIO shall, on or before the date, on which the respondent is notified of the allegation, obtain custody of, inventory, and sequester all research records and evidence needed to conduct the research misconduct proceeding, as provided in this Section, D3.

## **2. Initiation and Purpose of the Inquiry**

~~The inquiry into misconduct will be initiated if the RIO. If the RIO~~ determines that the criteria for an inquiry are met, ~~he or she will immediately initiate the inquiry process.~~ 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.<sup>xix</sup>

## **3. Notice to Respondent; Sequestration of Research Records**

At the time of or before beginning an inquiry, the RIO must make a good faith effort to notify the respondent in writing, if the respondent is known. If the inquiry subsequently identifies additional respondents, they [also](#) must be notified in writing.

On or before the date on which the respondent is notified, or the inquiry begins, whichever is earlier, the RIO must 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. ~~W~~[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.<sup>xx</sup> The RIO may consult with ORI for advice and assistance in this regard.

## **4. Appointment of the Inquiry Committee**

The RIO, in consultation with other institutional officials as appropriate and appropriate bargaining units, will appoint an inquiry committee and committee chair as soon after the initiation of the inquiry as is practical. The inquiry committee must 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<sup>xxi</sup>; they may be from inside or outside the institution.

The RIO will notify the respondent of the proposed committee membership in 10 days. If the respondent submits a written objection to any appointed member of the inquiry committee or expert based on bias or conflict of interest within 5 days, the RIO will determine whether to replace the challenged member or expert with a qualified substitute.

## **5. Charge to the Committee and First Meeting**

The RIO will prepare a charge for the inquiry committee that:

- Sets forth the time for completion of the inquiry;
- Describes the allegations and any related issues identified during the allegation assessment;
- 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 determine whether an investigation is warranted, not to determine whether research misconduct definitely occurred or who was responsible;
- 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 42 CFR § 93.102(b); and, (2) the allegation may have substance, based on the committee's review during the inquiry.
- 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 and 42 CFR § 93.309(a).

At the committee's first meeting, the RIO will 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 will be present or available throughout the inquiry to advise the committee as needed.

## **6. Inquiry Process**

The inquiry committee will normally interview the complainant, the respondent, and key witnesses as well as examine relevant research records and materials. Then the inquiry committee will evaluate the evidence acquired along with, including the testimony obtained during the inquiry. After consultation with the RIO, the committee members will decide whether an investigation is warranted based on the criteria in this policy and 42 CFR § 93.307(d). The scope of the inquiry is not required to and does not normally include deciding whether misconduct definitely occurred, determining definitely who committed the research misconduct or conducting exhaustive interviews and analyses. However, 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. In that case, the institution shall promptly consult with ORI to determine the next steps that should be taken. See Section I.

## **7. Time for Completion**

The inquiry, including preparation of the final inquiry report and the decision of the DO on whether an investigation is warranted, must be completed within 60 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 60-day period.<sup>xxii</sup>

## E. The Inquiry Report

### **1. Elements of the Inquiry Report**

A written inquiry report must be prepared that 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; (4) a summary of the inquiry process used; (5) the names and titles of the committee members and experts who conducted the inquiry; (6) a list of the research records reviewed; (7) summaries of any interviews; (8) any comments on the draft report by the respondent or complainant; (9) the basis for recommending or not recommending that the allegations warrant an investigation; (10) and whether any other actions should be taken if an investigation is not recommended.<sup>xxiii</sup>

### **2. Notification to the Respondent and Opportunity to Comment**

The RIO shall notify the respondent and the complainant whether the inquiry found an investigation to be warranted. The respondent will be provided with a copy of the draft inquiry report for comment within 14 days; a copy of or reference to 42 CFR Part 93 and the institution's policies and procedures on research misconduct will be attached to the report.<sup>xxiv</sup> On the condition of confidentiality agreement, relevant portions of the inquiry report will also be provided to the complainant for comment within 14 days.

Any comments that are submitted by the respondent or complainant will be attached to the final inquiry report. Based on the comments, the inquiry committee may revise the draft report as appropriate and prepare it in final form. The committee will deliver the final report to the RIO.

### **3. Inquiry Decision and Notification**

#### **A. Decision by Deciding Official**

The RIO will transmit the final inquiry report and any comments to the DO, who will determine in writing whether an investigation is warranted. The inquiry is completed when the DO makes this determination, which will be made within 60 days of the first meeting of the inquiry committee. Any extension of this period will be based on good cause and recorded in the inquiry file.

#### **B. Notification to ORI**

Within 30 calendar days of the DO's decision that an investigation is warranted, the RIO will provide ORI with the DO's written decision and a copy of the inquiry report. The RIO will also



notify those institutional officials who need to know of the DO'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.<sup>xxv</sup>

C. Documentation of Decision Not to Investigate

If the DO 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 Department of Health and Human Services personnel upon request.

F. Conducting the Investigation

**1. Initiation and Purpose**

The investigation must begin within 30 calendar days after the determination by the DO that an investigation is warranted.<sup>xxvi</sup> The purpose of the investigation is to develop a factual record by exploring the allegations in detail and to examining the evidence in depth, leading to recommended findings on whether research misconduct has been committed, by whom, and to what extent. The investigation will also determine whether there are additional instances of possible research misconduct that would justify broadening the scope beyond the initial allegations. This is particularly important where the alleged misconduct involves clinical trials or potential harm to human subjects or the general public or if it affects research that forms the basis for public policy, clinical practice, or public health practice. Under 42 CFR § 93.313 the findings of the investigation must be set forth in an investigation report.

**2. Notifying ORI and Respondent; Sequestration of the Research Records**

On or before the date on which the investigation begins, the RIO must: (1) notify the ORI Director of the decision to begin the investigation and provide ORI a copy of the inquiry report; and (2) notify the respondent in writing of the allegations to be investigated. The RIO must 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 notice of the investigation.<sup>xxvii</sup>

The RIO will, prior to notifying 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. The need for additional sequestration of records 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. The procedures to be followed for sequestration during the investigation are the same procedures that apply during the inquiry.<sup>xxviii</sup>

**3. Appointment of the Investigation Committee**

The RIO, in consultation with other institutional officials as appropriate and appropriate bargaining units, will 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 should consist of at least three individuals who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the investigation should include individuals with the appropriate scientific expertise to evaluate the evidence and issues related to the allegations, interview the respondent and complainant, and conduct the investigation. These individuals may be scientists, administrators, subject matter experts, lawyers, or other qualified persons, and they may be from inside or outside the institution. Individuals appointed to the investigation committee may also have served on the inquiry committee.

The RIO will notify the respondent of the proposed committee membership within 5 days. If the respondent submits a written objection to any appointed member of the investigation committee or expert, the RIO will determine whether to replace the challenged member or expert with a qualified substitute.

#### 4. Charge to the Committee and the First Meeting

##### A. Charge to the Committee:

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

- Describes the allegations and related issues identified during the inquiry;
- Identifies the respondent;
- Informs the committee that it must conduct the investigation as prescribed in point 5 of Section F4;
- Defines research misconduct;
- 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;
- 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 this policy, 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; and
- Informs the committee that it must prepare or direct the preparation of a written investigation report that meets the requirements of this policy and 42 CFR § 93.313.

During the investigation, if additional information becomes available that substantially changes the subject matter of the investigation or would suggest additional respondents, the committee will notify the RIO, who will determine whether it is necessary to notify the respondent of the new subject matter or to provide notice to additional respondents.

##### B. First Meeting

The RIO will 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 will be provided with a copy of this statement of policy and procedures and 42 CFR Part 93. The RIO will be present or available throughout the investigation to advise the committee as needed.

#### 5. Investigation Process

The investigation committee and the RIO must:

- 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;<sup>xxix</sup>
- Take reasonable steps to ensure an impartial and unbiased investigation to the maximum extent practical;<sup>xxx</sup>
- Interview each respondent, complainant, and any other available person 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;<sup>xxxi</sup> and

- 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.<sup>xxxii</sup>

## 6. Time for Completion

The investigation is to be completed within 120 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. However, if the RIO determines that the investigation will not be completed within this 120-day period, 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.<sup>xxxiii</sup>

## G. The Investigation Report

### 1. Elements of the Investigation Report

The investigation committee and the RIO are responsible for preparing a written draft report of the investigation that:

- Describes the nature of the allegation of research misconduct, including identification of the respondent;
- Describes and documents the PHS support, including, for example, the numbers of any grants that are involved, grant applications, contracts, and publications listing PHS support;
- Describes the specific allegations of research misconduct considered in the investigation;
- Includes the institutional policies and procedures under which the investigation was conducted, unless those policies and procedures were provided to ORI previously;
- Identifies and summarizes the research records and evidence reviewed and identifies any evidence taken into custody but not reviewed; and
- Includes a statement of findings for each allegation of research misconduct identified during the investigation.<sup>xxxiv</sup> Each statement of findings must: (1) identify whether the research misconduct was falsification, fabrication, or plagiarism, and whether it was committed intentionally, knowingly, or recklessly; (2) 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 respondent to establish by a preponderance of the evidence that he or she did not engage in research misconduct because of honest error or a difference of opinion; (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.<sup>xxxv</sup>

### 2. Comments on the Draft Report

#### A. Respondent

The RIO must 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. ~~After receiving the draft report, the respondent will be allowed 30 days from the date he/she received the draft report to~~ from that date to submit comments to the RIO. The respondent's comments must be included and considered in the final report.<sup>xxxvi</sup>

#### B. Complainant

~~If able to be identified, the RIO will provide the complainant, if he or she is identifiable,~~ a copy of the draft investigation report, or relevant portions of it, for comment. The complainant's comments must be submitted within 30 days of the date ~~on which he/she received~~ is received the draft report and the comments must be included and considered in the final report.<sup>xxxvii</sup>

#### C. Confidentiality

In distributing the draft report, or portions thereof, to the respondent and complainant, the RIO will inform the recipient of the confidentiality under which the draft report is made available and may establish reasonable conditions to ensure such confidentiality. For example, the RIO may require the recipient to sign a confidentiality agreement.

### **3. Decision by Deciding Official**

The RIO will assist the investigation committee in finalizing the draft investigation report, including ensuring that the respondent's and complainant's comments are included and considered, and transmit the final investigation report to the DO, who will determine in writing: (1) whether the institution accepts the investigation report, its findings, and the recommended institutional actions; and (2) the appropriate institutional actions in response to the accepted findings of research misconduct. If this determination varies from the findings of the investigation committee, the DO will, as part of [his/hers](#) written determination, explain in detail the basis for rendering a decision different from the findings of the investigation committee. Alternatively, the DO may return the report to the investigation committee with a request for further fact-finding or analysis.

When a final decision on a case has been reached, the RIO will normally notify both the respondent and the complainant in writing. After informing the ORI, the DO will 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 is responsible for ensuring compliance with all notification requirements of funding or sponsoring agencies.

### **4. Report Transmittal to ORI**

[After any necessary changes or updates to the draft report, the Investigation Committee should send the final draft with attachments – including respondent and complainant comments -- to the RIO who in turn directs it to the Deciding Official \(DO\).](#)

Formatted: Font: Not Bold

### **5. Notice to ORI of Institutional Findings and Actions**

Unless an extension has been granted, the RIO must, within the 120-day period for completing the investigation, submit the following to ORI: (1) a copy of the final investigation report with all attachments; (2) a statement of whether the institution accepts the findings of the investigation report; (3) a statement of whether the institution found misconduct and, if so, who committed the misconduct; and (4) a description of any pending or completed administrative actions against the respondent.<sup>xxxviii</sup>

### **5g. Maintaining Records for Review by ORI**

The RIO must maintain and provide to ORI upon request "records of research misconduct proceedings" as that term is defined by 42 CFR § 93.317. Unless custody has been transferred to HHS or ORI 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 7 years after completion of the proceeding or the completion of any PHS proceeding involving the research misconduct allegation.<sup>xxxix</sup> 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.<sup>xl</sup>

### **H. Completion of Cases: Reporting Premature Closures to ORI**

Generally, all inquiries and investigations will be carried through to completion and all significant issues will be pursued diligently. The RIO must notify ORI in advance if there are plans to close a case at the inquiry or investigation 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, which must be reported to ORI, as prescribed in this policy and 42 CFR § 93.315.<sup>xli</sup>

### **I. Institutional Administrative Actions**

[Over the course of the proceedings, it is incumbent upon the RIO to continually monitor the situation for any threat of harm to public health and those directly and indirectly involved in inquiry or investigation.](#)

along with the safeguarding of federal funds or related equipment. If a situation emerges where a threat is determined, the RIO along with other institutional officials and ORI shall take appropriate action to alleviate or protect against the threat. The RIO will notify the ORI if:

- There is an immediate need to protect human or animal subjects;
- Identifiable research activities need to be reconsidered or suspended;
- There is a reasonable indication of legal violations, both civil or criminal;
- Federal or local action is required to protect the interests or rights of those involved; or
- It is determined that the research community or public should be informed.

Minnesota State University, Mankato will take appropriate administrative actions against individuals when an allegation of misconduct against them is determined to be substantiated.

If the DO determines that research misconduct is substantiated by the findings, after consultation with the RIO, he or she will decide a decision is made on the appropriate actions to be taken, ~~after consultation with the RIO,~~ in accordance with the applicable provisions of the appropriate collective bargaining agreement. The administrative actions may include (but are not limited to):

- Withdrawal or correction of all pending or published abstracts and papers emanating from the research where research misconduct was found;
- Removal of the responsible person 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;
- Restitution of funds to the grantor agency as appropriate; and
- Other action appropriate to the research misconduct.

### **1. Termination or Resignation Prior to Completing Inquiry or Investigation**

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 misconduct proceeding or otherwise limit any of the institution's responsibilities under 42 CFR Part 93.

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 will proceed, as well as the inquiry and investigation, as appropriate based on the outcomes of the preceding steps. If the respondent refuses to participate in the process after resignation, the RIO and any inquiry or investigation committee will use their best efforts to reach a conclusion concerning the allegations, noting in its report the respondent's failure to cooperate and its effect on the review of all the evidence.

### **2. Restoration of the Respondent's Reputation**

Following a final finding of no research misconduct, including ORI concurrence where required by 42 CFR Part 93, the RIO must, at the request of the respondent, undertake all reasonable and practical efforts to restore the respondent's reputation.<sup>xiii</sup> Depending on the particular circumstances and the views of the respondent, the RIO should consider notifying those individuals aware of or involved in the investigation of the final outcome, publicizing the final outcome in any forum in which the allegation of research misconduct was previously publicized, and expunging all reference to the research misconduct allegation from the respondent's personnel file. Any institutional actions to restore the respondent's reputation should first be approved by the DO.

### **3. Protection of the Complainant, Witnesses and Committee Members**

During the research misconduct proceeding and upon its completion, regardless of whether the institution or ORI determines that research misconduct occurred, the RIO must 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.<sup>xliii</sup> The DO will 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. The RIO is responsible for implementing any steps the DO approves.

#### **4. Allegations Not Made in Good Faith**

If relevant, the DO will 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 DO determines that there was an absence of good faith, ~~a he/she will~~ determination should be made as to whether any administrative action should be taken against the person who failed to act in good faith.

#### K. Final Record Retention

After the final determination of outcome and decisions made in the case, the RIO will prepare a completed file – including all records and materials related to inquiry or investigation and furnished documentation – and will maintain that file for at least 7 years to permit for any necessary later assessment of the case. The Policy Custodian (i.e., Provost and Senior Vice President for Academic Affairs) has the ultimate responsibility for maintenance of policy files and records.

## **Rationale**

In December 2000, the Federal Office of Science and Technology issued a new definition of research misconduct, with which all federal agencies were to comply. The cognizant agency is the Office of Research Integrity at the U.S. Department of Health and Human Services (formerly at NIH as the Office of Protection from Research Risk).

On April 17, 2002, the National Science Foundation implemented a policy found within the Code of Federal Regulations, Title 45, Chapter IV, Part 689 (45 CFR 689.1) that incorporated the new definition:

1. Research misconduct means fabrication, falsification, or plagiarism in proposing or performing research funded by NSF, reviewing research proposals submitted to NSF, or in reporting research results funded by NSF.
  - a. Fabrication means making up data or results and recording or reporting them.
  - b. 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.
  - c. Plagiarism means the appropriation of another person's ideas, processes, results or words without giving appropriate credit.
  - d. Research, as defined by NSF, includes proposals submitted to NSF in all fields of science, engineering, mathematics, and education and results from such proposals.
2. Research misconduct does not include honest error or differences of opinion.

In June 2005, the Department of Health and Human Services has revised its policy to reflect this definition change, provide additional detail, and clarify various provisions. The Final Rule of the Public Health Service Policies on Research Misconduct is found in 42 CFR Part 93 (which replaced 42 CFR Part 50, Subpart A with a new, more comprehensive part 93).

This Policy for Responding to Issues of Research Misconduct uses the Federal Office of Science and Technology definition of research misconduct and complies with the revised Final Rule of the Public Health Service Policies on Research Misconduct (42 CFR Part 93).

In addition to complying with federal rules, this Policy for Responding to Issues of Research Misconduct is based on the assumption that, although the major responsibility for maintaining standards of intellectual integrity rests with individual scholars and with the departments in which they work, the larger institution has a major role to play in three respects:

1. Providing an environment for open inquiry in which research can be conducted appropriately;
2. Declaring the standards which must not be abrogated;
3. Enforcing the standards on those occasions where violations may have occurred.

The purpose of this document is to set forth the policies and procedures by which Minnesota State University, Mankato seeks to maintain and enforce such standards through impartial fact-finding and fair adjudication of allegations of research misconduct.

## Endnotes

<sup>i</sup> Sections based on 42 CFR Part 93 have endnotes indicating the applicable section.

<sup>ii</sup> 42 CFR § 93.214

<sup>iii</sup> 42 CFR § 93.102

<sup>iv</sup> 42 CFR § 93.103

<sup>v</sup> 42 CFR § 93.310(g)

<sup>vi</sup> 42 CFR §§ 93.304(c), 93.307(b)

<sup>vii</sup> 42 CFR §§ 93.304(e), 93.307(f)

<sup>viii</sup> 42 CFR § 308(a)

<sup>ix</sup> 42 CFR § 310(c)

<sup>x</sup> 42 CFR § 310(g)

<sup>xi</sup> 42 CFR § 310(g)

<sup>xii</sup> 42 CFR §§ 93.304(f), 93.312(a)

<sup>xiii</sup> 42 CFR § 93.316

<sup>xiv</sup> 42 CFR § 93.309(c)

<sup>xv</sup> 42 CFR § 93.304(k)

<sup>xvi</sup> 42 CFR § 93.304(h)

<sup>xvii</sup> 42 CFR § 93.318

<sup>xviii</sup> 42 CFR § 93.307(a)

<sup>xix</sup> 42 CFR § 93.307(c)

<sup>xx</sup> 42 CFR §§ 93.305, 93.307(b)

<sup>xxi</sup> 42 CFR § 93.304(b)

<sup>xxii</sup> 42 CFR § 93.307(g)

<sup>xxiii</sup> 42 CFR § 93.309(a)

<sup>xxiv</sup> 42 CFR § 93.308(a)

<sup>xxv</sup> 42 CFR § 93.309(a) and (b)

<sup>xxvi</sup> 42 CFR § 93.310(a)

<sup>xxvii</sup> 42 CFR § 93.310(b) and (c)

<sup>xxviii</sup> 42 CFR § 93.310(d)

<sup>xxix</sup> 42 CFR § 93.310(e)

<sup>xxx</sup> 42 CFR § 93.310(f)

<sup>xxxi</sup> 42 CFR § 93.310(g)

<sup>xxxii</sup> 42 CFR § 93.310(h)

<sup>xxxiii</sup> 42 CFR § 93.311

<sup>xxxiv</sup> 42 CFR § 93.313

<sup>xxxv</sup> 42 CFR § 93.313(f)

<sup>xxxvi</sup> 42 CFR §§ 93.312(a), 93.313(g)

<sup>xxxvii</sup> 42 CFR §§ 93.312(b) and 93.313(g)

<sup>xxxviii</sup> 42 CFR § 93.315

<sup>xxxix</sup> 42 CFR § 93.317(b)

<sup>xl</sup> 42 CFR §§ 93.300(g), 93.403(b) and (d)

---

xli 42 CFR § 93.316(a)  
 xlii 42 CFR § 93.304(k)  
 xliii 42 CFR § 93.304(l)

---

*History of Revisions*  
 8/1/2015 – Standard Policy Review  
 7/1/2008 – Standard Policy Review  
 5/1/2004 – Policy Adopted

<b>Policy: Responding to Issues of Research Misconduct</b>		
<b>Formal Review Process</b>	<b>Date Submitted</b>	<b>Date Reviewed</b>
Classified Meet and Confer	February 19, 2015	March 19, 2015
Faculty Association Meet and Confer	February 19, 2015	March 19, 2015
MSUAASF Meet and Confer	February 19, 2015	March 19, 2015
MSSA Meet and Confer	February 19, 2015	March 19, 2015
<b>✓ Vice President's Recommendation</b>		<b>Date</b>
<b>✓ President's Approval</b>		<b>Date</b>