

alleged or apparent misconduct involving research or research training, applications for support of research or research training, or related research activities that are supported with funds made available under the PHS Act. This subpart does not supersede and is not intended to set up an alternative to established procedures for resolving fiscal improprieties, issues concerning the ethical treatment of human or animal subjects, or criminal matters.

#### § 50.102 Definitions.

As used in this subpart:

*Act* means the Public Health Service Act, as amended, (42 U.S.C. 201 *et seq.*).

*Inquiry* means information gathering and initial factfinding to determine whether an allegation or apparent instance of misconduct warrants an investigation.

*Institution* means the public or private entity or organization (including federal, state, and other agencies) that is applying for financial assistance from the PHS, e.g., grant or cooperative agreements, including continuation awards, whether competing or noncompeting. The organization assumes legal and financial accountability for the awarded funds and for the performance of the supported activities.

*Investigation* means the formal examination and evaluation of all relevant facts to determine if misconduct has occurred.

*Misconduct* or *Misconduct in Science* means fabrication, falsification, plagiarism, or other practices that seriously deviate from those that are commonly accepted within the scientific community for proposing, conducting, or reporting research. It does not include honest error or honest differences in interpretations or judgments of data.

*OSI* means the Office of Scientific Integrity, a component of the Office of the Director of the National Institutes for Health (NIH), which oversees the implementation of all PHS policies and procedures related to scientific misconduct; monitors the individual investigations into alleged or suspected scientific misconduct conducted by institutions that receive PHS funds for biomedical or behavioral research projects

or programs; and conducts investigations as necessary.

*OSIR* means the Office of Scientific Integrity Review, a component of the Office of the Assistant Secretary for Health, which is responsible for establishing overall PHS policies and procedures for dealing with misconduct in science, overseeing the activities of PHS research agencies to ensure that these policies and procedures are implemented, and reviewing all final reports of investigations to assure that any findings and recommendations are sufficiently documented. The OSIR also makes final recommendations to the Assistant Secretary for Health on whether any sanctions should be imposed and, if so, what they should be in any case where scientific misconduct has been established.

*PHS* means the Public Health Service, an operating division of the Department of Health and Human Services (HHS). References to PHS include organizational units within the PHS that have delegated authority to award financial assistance to support scientific activities, e.g., Bureaus, Institutes, Divisions, Centers or Offices.

*Secretary* means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved may be delegated.

#### § 50.103 Assurance—Responsibilities of PHS awardee and applicant institutions.

(a) *Assurances*. Each institution that applies for or receives assistance under the Act for any project or program which involves the conduct of biomedical or behavioral research must have an assurance satisfactory to the Secretary that the applicant:

(1) Has established an administrative process, that meets the requirements of this Subpart, for reviewing, investigating, and reporting allegations of misconduct in science in connection with PHS-sponsored biomedical and behavioral research conducted at the applicant institution or sponsored by the applicant; and

(2) Will comply with its own administrative process and the requirements of this Subpart.

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(b) *Annual Submission.* An applicant or recipient institution shall make an annual submission to the OSI as follows:

(1) The institution's assurance shall be submitted to the OSI, on a form prescribed by the Secretary, as soon as possible after November 8, 1989, but no later than January 1, 1990, and updated annually thereafter on a date specified by OSI. Copies of the form may be requested through the Director, OSI.

(2) An institution shall submit, along with its annual assurance, such aggregate information on allegations, inquiries, and investigations as the Secretary may prescribe.

(c) *General Criteria.* In general, an applicant institution will be considered to be in compliance with its assurance if it:

(1) Establishes, keeps current, and upon request provides the OSIR, the OSI, and other authorized Departmental officials the policies and procedures required by this subpart.

(2) Informs its scientific and administrative staff of the policies and procedures and the importance of compliance with those policies and procedures.

(3) Takes immediate and appropriate action as soon as misconduct on the part of employees or persons within the organization's control is suspected or alleged.

(4) Informs, in accordance with this subpart, and cooperates with the OSI with regard to each investigation of possible misconduct.

(d) *Inquiries, Investigations, and Reporting—Specific Requirements.* Each applicant's policies and procedures must provide for:

(1) Inquiring immediately into an allegation or other evidence of possible misconduct. An inquiry must be completed within 60 calendar days of its initiation unless circumstances clearly warrant a longer period. A written report shall be prepared that states what evidence was reviewed, summarizes relevant interviews, and includes the conclusions of the inquiry. The individual(s) against whom the allegation was made shall be given a copy of the report of inquiry. If they comment on that report, their comments may be made part of the record. If the inquiry

takes longer than 60 days to complete, the record of the inquiry shall include documentation of the reasons for exceeding the 60-day period.

(2) Protecting, to the maximum extent possible, the privacy of those who in good faith report apparent misconduct.

(3) Affording the affected individual(s) confidential treatment to the maximum extent possible, a prompt and thorough investigation, and an opportunity to comment on allegations and findings of the inquiry and/or the investigation.

(4) Notifying the Director, OSI, in accordance with §50.104(a) when, on the basis of the initial inquiry, the institution determines that an investigation is warranted, or prior to the decision to initiate an investigation if the conditions listed in §50.104(b) exist.

(5) Notifying the OSI within 24 hours of obtaining any reasonable indication of possible criminal violations, so that the OSI may then immediately notify the Department's Office of Inspector General.

(6) Maintaining sufficiently detailed documentation of inquiries to permit a later assessment of the reasons for determining that an investigation was not warranted, if necessary. Such records shall be maintained in a secure manner for a period of at least three years after the termination of the inquiry, and shall, upon request, be provided to authorized HHS personnel.

(7) Undertaking an investigation within 30 days of the completion of the inquiry, if findings from that inquiry provide sufficient basis for conducting an investigation. The investigation normally will include examination of all documentation, including but not necessarily limited to relevant research data and proposals, publications, correspondence, and memoranda of telephone calls. Whenever possible, interviews should be conducted of all individuals involved either in making the allegation or against whom the allegation is made, as well as other individuals who might have information regarding key aspects of the allegations; complete summaries of these interviews should be prepared, provided to the interviewed party for comment

or revision, and included as part of the investigatory file.

(8) Securing necessary and appropriate expertise to carry out a thorough and authoritative evaluation of the relevant evidence in any inquiry or investigation.

(9) Taking precautions against real or apparent conflicts of interest on the part of those involved in the inquiry or investigation.

(10) Preparing and maintaining the documentation to substantiate the investigation's findings. This documentation is to be made available to the Director, OSI, who will decide whether that Office will either proceed with its own investigation or will act on the institution's findings.

(11) Taking interim administrative actions, as appropriate, to protect Federal funds and insure that the purposes of the Federal financial assistance are carried out.

(12) Keeping the OSI apprised of any developments during the course of the investigation which disclose facts that may affect current or potential Department of Health and Human Services funding for the individual(s) under investigation or that the PHS needs to know to ensure appropriate use of Federal funds and otherwise protect the public interest.

(13) Undertaking diligent efforts, as appropriate, to restore the reputations of persons alleged to have engaged in misconduct when allegations are not confirmed, and also undertaking diligent efforts to protect the positions and reputations of those persons who, in good faith, make allegations.

(14) Imposing appropriate sanctions on individuals when the allegation of misconduct has been substantiated.

(15) Notifying the OSI of the final outcome of the investigation.

#### § 50.104 Reporting to the OSI.

(a)(1) An institution's decision to initiate an investigation must be reported in writing to the Director, OSI, on or before the date the investigation begins. At a minimum, the notification should include the name of the person(s) against whom the allegations have been made, the general nature of the allegation, and the PHS application or grant number(s) involved. Infor-

mation provided through the notification will be held in confidence to the extent permitted by law, will not be disclosed as part of the peer review and Advisory Committee review processes, but may be used by the Secretary in making decisions about the award or continuation of funding.

(2) An investigation should ordinarily be completed within 120 days of its initiation. This includes conducting the investigation, preparing the report of findings, making that report available for comment by the subjects of the investigation, and submitting the report to the OSI. If they can be identified, the person(s) who raised the allegation should be provided with those portions of the report that address their role and opinions in the investigation.

(3) Institutions are expected to carry their investigations through to completion, and to pursue diligently all significant issues. If an institution plans to terminate an inquiry or investigation for any reason without completing all relevant requirements under § 50.103(d), a report of such planned termination, including a description of the reasons for such termination, shall be made to OSI, which will then decide whether further investigation should be undertaken.

(4) The final report submitted to the OSI must describe the policies and procedures under which the investigation was conducted, how and from whom information was obtained relevant to the investigation, the findings, and the basis for the findings, and include the actual text or an accurate summary of the views of any individual(s) found to have engaged in misconduct, as well as a description of any sanctions taken by the institution.

(5) If the institution determines that it will not be able to complete the investigation in 120 days, it must submit to the OSI a written request for an extension and an explanation for the delay that includes an interim report on the progress to date and an estimate for the date of completion of the report and other necessary steps. Any consideration for an extension must balance the need for a thorough and rigorous