

(e) Whenever possible, the ALJ must memorialize in writing any oral rulings within 10 days after the prehearing conference.

(f) By 15 days before the scheduled hearing date, the ALJ must hold a final prehearing conference to resolve to the maximum extent possible all outstanding issues about evidence, witnesses, stipulations, motions and all other matters that may encourage the fair, just, and prompt disposition of the proceedings.

§ 93.512 Discovery.

(a) *Request to provide documents.* A party may only request another party to produce documents or other tangible items for inspection and copying that are relevant and material to the issues identified in the charge letter and in the respondent's request for hearing.

(b) *Meaning of documents.* For purposes of this subpart, the term documents includes information, reports, answers, records, accounts, papers, tangible items, and other data and documentary evidence. This subpart does not require the creation of any document. However, requested data stored in an electronic data storage system must be produced in a form reasonably accessible to the requesting party.

(c) *Nondisclosable items.* This section does not authorize the disclosure of—

(1) Interview reports or statements obtained by any party, or on behalf of any party, of persons whom the party will not call as witness in its case-in-chief;

(2) Analyses and summaries prepared in conjunction with the inquiry, investigation, ORI oversight review, or litigation of the case; or

(3) Any privileged documents, including but not limited to those protected by the attorney-client privilege, attorney-work product doctrine, or Federal law or regulation.

(d) *Responses to a discovery request.* Within 30 days of receiving a request for the production of documents, a party must either fully respond to the request, submit a written objection to the discovery request, or seek a protective order from the ALJ. If a party objects to a request for the production of documents, the party must identify each document or item subject to the

scope of the request and state the basis of the objection for each document, or any part that the party does not produce.

(1) Within 30 days of receiving any objections, the party seeking production may file a motion to compel the production of the requested documents.

(2) The ALJ may order a party to produce the requested documents for *in camera* inspection to evaluate the merits of a motion to compel or for a protective order.

(3) The ALJ must compel the production of a requested document and deny a motion for a protective order, unless the requested document is—

(i) Not relevant or material to the issues identified in the charge letter or the respondent's request for hearing;

(ii) Unduly costly or burdensome to produce;

(iii) Likely to unduly delay the proceeding or substantially prejudice a party;

(iv) Privileged, including but not limited to documents protected by the attorney-client privilege, attorney-work product doctrine, or Federal law or regulation; or

(v) Collateral to issues to be decided at the hearing.

(4) If any part of a document is protected from disclosure under paragraph (d)(3) of this section, the ALJ must redact the protected portion of a document before giving it to the requesting party.

(5) The party seeking discovery has the burden of showing that the ALJ should allow it.

(e) *Refusal to produce items.* If a party refuses to provide requested documents when ordered by the ALJ, the ALJ may take corrective action, including but not limited to, ordering the noncompliant party to submit written answers under oath to written interrogatories posed by the other party or taking any of the actions at § 93.515.

§ 93.513 Submission of witness lists, witness statements, and exhibits.

(a) By 60 days before the scheduled hearing date, each party must give the ALJ a list of witnesses to be offered during the hearing and a statement describing the substance of their proposed testimony, copies of any prior

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written statements or transcribed testimony of proposed witnesses, a written report of each expert witness to be called to testify that meets the requirements of Federal Rule of Civil Procedure 26(a)(2)(B), and copies of proposed hearing exhibits, including copies of any written statements that a party intends to offer instead of live direct testimony. If there are no prior written statements or transcribed testimony of a proffered witness, the party must submit a detailed factual affidavit of the proposed testimony.

(b) A party may supplement its submission under paragraph (a) of this section until 30 days before the scheduled hearing date if the ALJ determines:

(1) There are extraordinary circumstances; and

(2) There is no substantial prejudice to the objecting party.

(c) The parties must have an opportunity to object to the admission of evidence submitted under paragraph (a) of this section under a schedule set by the ALJ. However, the parties must file all objections before the final prehearing conference.

(d) If a party tries to introduce evidence after the deadlines in paragraph (a) of this section, the ALJ must exclude the offered evidence from the party's case-in-chief unless the conditions of paragraph (b) of this section are met. If the ALJ admits evidence under paragraph (b) of this section, the objecting party may file a motion to postpone all or part of the hearing to allow sufficient time to prepare and respond to the evidence. The ALJ may not unreasonably deny that motion.

(e) If a party fails to object within the time set by the ALJ and before the final prehearing conference, evidence exchanged under paragraph (a) of this section is considered authentic, relevant and material for the purpose of admissibility at the hearing.

§93.514 Amendment to the charge letter.

(a) The ORI may amend the findings of research misconduct up to 30 days before the scheduled hearing.

(b) The ALJ may not unreasonably deny a respondent's motion to postpone all or part of the hearing to allow

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sufficient time to prepare and respond to the amended findings.

§93.515 Actions for violating an order or for disruptive conduct.

(a) The ALJ may take action against any party in the proceeding for violating an order or procedure or for other conduct that interferes with the prompt, orderly, or fair conduct of the hearing. Any action imposed upon a party must reasonably relate to the severity and nature of the violation or disruptive conduct.

(b) The actions may include—

(1) Prohibiting a party from introducing certain evidence or otherwise supporting a particular claim or defense;

(2) Striking pleadings, in whole or in part;

(3) Staying the proceedings;

(4) Entering a decision by default;

(5) Refusing to consider any motion or other action not timely filed; or

(6) Drawing the inference that spoliated evidence was unfavorable to the party responsible for its spoliation.

§93.516 Standard and burden of proof.

(a) *Standard of proof.* The standard of proof is the preponderance of the evidence.

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

(2) The respondent has the burden of going forward with and the burden of proving, by a preponderance of the evidence, any and all affirmative defenses raised. In determining whether ORI has carried the burden of proof imposed by