Research Misconduct

**Brief**

<table>
<thead>
<tr>
<th>Title:</th>
<th>Research Misconduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Publication date:</td>
<td>7/25/2014</td>
</tr>
<tr>
<td>Effective date:</td>
<td>2/28/2008</td>
</tr>
</tbody>
</table>

**BRIEF**

**Policy Summary**

As an institution engaged in research, Berkeley Lab has a responsibility to investigate allegations of research misconduct fairly, effectively, and expeditiously. This policy sets forth the principles and methods for assessing allegations of research misconduct, conducting inquiries and investigations related to possible research misconduct, and reporting the results to responsible federal and nonfederal funding agencies. Research misconduct is defined as fabrication (making up data or results and recording or reporting them), falsification (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), or plagiarism (appropriation of another person's ideas, processes, results, or words without giving appropriate credit) in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include authorship disputes or honest differences of opinion.

**Who Should Read This Policy**

This policy applies to all employees.

**To Read the Full Policy, Go To:**

The POLICY tab on this wiki page

**Contact Information**

Research and Institutional Integrity Office
RIIO@lbl.gov

**Policy**

<table>
<thead>
<tr>
<th>Title:</th>
<th>Research Misconduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Publication date:</td>
<td>7/25/2014</td>
</tr>
<tr>
<td>Effective date:</td>
<td>2/28/2008</td>
</tr>
</tbody>
</table>

**POLICY**

D. Policy Statement
D.1 Introduction
D.2 Scope
D.3 General Policies and Principles
D.4 Conducting the Assessment and Inquiry
D.5 The Inquiry Report
D.6 Laboratory Decision and Notification
D.7 Conducting the Investigation
D.8 The Investigation Report
D.9 Laboratory Decision and Notification
D.10 Completion of Cases: Reporting Premature Closure to the Funding Agency
D.11 Laboratory Actions, Including Employee Corrective (Disciplinary) Actions
D.12 Other Considerations

A. Purpose

As an institution engaged in research, the Laboratory has a responsibility for investigating allegations of research misconduct fairly, effectively, and expeditiously. This policy sets forth the principles and methods for assessing allegations of research misconduct, conducting inquiries and investigations related to possible research misconduct, and reporting the results to responsible federal and non-federal funding agencies.

B. Persons Affected

This policy applies to all employees.

C. Exceptions

This policy 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 Laboratory received the allegation, subject to the following exceptions:

1. **Subsequent use.** The respondent continues or renews any incident of alleged research misconduct that occurred before the six-year limitation through the citation, republication or other use for the potential benefit of the respondent of the research record that is alleged to have been fabricated, falsified, or plagiarized (See Section D.1.1, *Introduction*).
2. **Health or safety of the public exception.** If the funding agency or Laboratory, following consultation with the funding agency, determines that the alleged misconduct, if it occurred, would possibly have a substantial adverse effect of the health or safety of the public.
3. **“Grandfather” exception.** If the funding agency or the Laboratory received the allegation or research misconduct before May 17, 2005.

D. Policy Statement

D.1 Introduction

1. All persons engaged in research at the Laboratory are responsible for adhering to the highest standards of research integrity. Activities that fall short of the basic ethical principles inherent in the research process undermine the scientific enterprise. As an institution engaged in research, the Laboratory has a responsibility for investigating allegations of research misconduct fairly, effectively, and expeditiously. This policy sets forth the principles and methods for assessing allegations of research misconduct, conducting inquiries and investigations related to possible research misconduct, and reporting the results to responsible federal and non-federal funding agencies.
2. “Research misconduct” means:
   a. Fabrication (making up data or results and recording or reporting them)
   b. Falsification (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) or
   c. Plagiarism (appropriation of another person’s ideas, processes, results, or words without giving appropriate credit) in proposing, performing, or reviewing research, or in reporting research results.
3. Honest error or differences of opinion do not constitute research misconduct.
4. Under this policy, a finding of research misconduct requires that:
   a. There has been a significant departure from accepted practices of the relevant research community, involving fabrication, falsification, or plagiarism
   b. The misconduct was committed intentionally, knowingly, or recklessly and
   c. The allegation has been proven by a preponderance of the evidence
5. The Laboratory Director has delegated authority and responsibility for decisions made under this policy to the Deputy Director (Deciding Official or DO). The head of the Research and Institutional Integrity Office serves as the Research Integrity Officer (RIO) and is responsible for implementing the procedures described in this policy.

D.2 Scope

1. While this policy is intended to carry out the Laboratory's responsibilities under the rules of several federal agencies, it applies to all research conducted at the Laboratory regardless of funding source.

2. This policy applies to allegations of research misconduct (fabrication, falsification, or plagiarism in proposing, performing, or reviewing research or in reporting research results) (See Section D.1.1, Introduction) involving:
   a. 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 the Laboratory; i.e., employees, affiliates, collaborators, students, consultants, and subcontractors (collectively referred to as Laboratory members for purposes of this policy)
   b. Any research proposed, performed, reviewed, or reported, or any research record generated from the research, regardless of whether an application or proposal for funds resulted in a grant, contract, cooperative agreement, or other form of support
   c. With regard to Public Health Service (PHS)–funded research, this policy specifically includes:
      i. Applications or proposals for support for biomedical or behavioral extramural or intramural research, research training or activities related to that research or research training, such as the operation of tissue and data banks and the dissemination of research information
      ii. PHS-supported biomedical or behavioral extramural or intramural research
      iii. PHS-supported biomedical or behavioral extramural or intramural research training programs
      iv. PHS-supported extramural or intramural biomedical or behavioral activities that are related to biomedical or behavioral research or research training, such as the operation of tissue and data banks and the dissemination of research information
      v. Plagiarism of research records produced in the course of research, research training, or activities related to that research or research training

D.3 General Policies and Principles

1. Responsibility to Report Misconduct. Laboratory members should report observed, suspected, or apparent research misconduct (See Section D.1.1, Introduction) to the RIO or other appropriate Laboratory official.
   a. If the Laboratory member makes his/her report to a Laboratory official other than the RIO, the report must be forwarded to the RIO.
   b. If an individual is unsure whether a suspected incident falls within the definition of research misconduct, he/she may meet with or contact the RIO at RIIO@lbl.gov 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.
   c. At any time, a Laboratory member may have confidential discussions and consultations about concerns of possible misconduct with the RIO and will be counseled about appropriate procedures for reporting allegations. The RIO will not be able to agree to a confidential discussion if the subject of the misconduct involves any of the conditions or special circumstances set forth in Section D.3.6, Interim Actions and Notifying the Funding Agency of Special Circumstances.

2. Cooperation with Research Misconduct Proceedings. Laboratory members are required to cooperate with the RIO and other Laboratory officials in the review of allegations and the conduct of inquiries and investigations. Laboratory members, including respondents, have an obligation to provide evidence relevant to research misconduct allegations to the RIO or other Laboratory officials.

3. Confidentiality. The RIO will:
   a. Limit disclosure of the identity of respondents and complainants to those who need to know in order to carry out a thorough, competent, objective, and fair research misconduct proceeding
   b. Except as otherwise prescribed by applicable 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

4. Protecting Complainants, Witnesses, and Committee Members. Laboratory members may not retaliate in any way against complainants, witnesses, or committee members. Laboratory members should immediately report any alleged or apparent retaliation against complainants, witnesses, or committee members to the RIO, who will 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
   a. As requested and as appropriate, the RIO and other Laboratory officials shall make all reasonable and practical efforts to
Throughout the research misconduct proceeding, the RIO is responsible for ensuring that respondents receive all notices and opportunities provided for in this policy. Respondents may consult with personal legal counsel or a non-lawyer personal adviser (who is not a principal or witness in the case) to seek advice and may bring the legal counsel or personal adviser to interviews or meetings on the case. The role of legal counsel in such meetings or interviews is limited to providing advice, not representation, to the respondent.

6. Interim Actions and Notifying the Funding Agency 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 or state funds, and equipment, or the integrity of the funding agency’s supported research process. In the event of such a threat, the RIO will, in consultation with other Laboratory officials and the funding agency, take appropriate interim action to protect against any such threat. Such action might include additional monitoring of the research process and the handling of research funds and equipment, reassignment of personnel or of the responsibility for the handling of research funds and equipment, additional review of research data and results, or delaying publication. The RIO will, at any time during a research misconduct proceeding, notify the funding agency 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. Funding agency 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. Funding agency 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 funding agency action may be necessary to safeguard evidence and protect the rights of those involved; or
   g. The research community or public should be informed.

D.4 Conducting the Assessment and Inquiry

1. Assessment of Allegations
   a. 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 Section D.2.1 of this policy, and whether the allegation falls within the definition of research misconduct in Section D.1.1, Introduction. An inquiry must be conducted if these criteria are met.
   b. 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 will, 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 Section D.4.3, Notice to Respondent: Sequestration of Research Records.

2. Initiation and Purpose of the Inquiry. If the RIO determines that the criteria for an inquiry are met, he/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.

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 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, 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. The RIO may consult with the funding agency for advice and assistance in this regard.

4. Appointment of an Individual (Appointee) or Committee to Conduct an Inquiry. The RIO, in consultation with other Laboratory officials as appropriate, will appoint an individual or committee (and committee chair) to conduct an inquiry as soon after the initiation of the inquiry as is practical. The appointee or committee members must 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.

5. Charge to the Appointee or Committee and First Meeting
   a. The RIO will prepare a charge for the appointee or committee that:
      i. Sets forth the time for completion of the inquiry
      ii. Describes the allegations and any related issues identified during the allegation assessment
      iii. States that the purpose of the inquiry is to conduct an initial review of the evidence, including the testimony of the
The inquiry process will normally include interviews of the complainant, the respondent and key witnesses, to determine whether an investigation is warranted, not to determine whether research misconduct definitely occurred or who was responsible (See Section D.6.1)

iv. States that an investigation is warranted if it is determined that:
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 Section D.2.2 of this policy; and
2. The allegation may have substance, based on the committee's review during the inquiry.

v. Informs the appointee or inquiry committee that they are responsible for preparing or directing the preparation of a written report of the inquiry that meets the requirements of Section D.5.1, Elements of the Investigation Report

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

6. Inquiry Process. The inquiry process will normally include interviews of the complainant, the respondent and key witnesses as well as examining relevant research records and materials. The evidence, including the testimony obtained during the inquiry will be evaluated. After consultation with the RIO, the appointee or committee members will decide whether an investigation is warranted based on the criteria in Section D.4.5.iv of this policy. 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 RIO will promptly consult with the funding agency to determine the next steps that should be taken. See Section D.10, Completion of Cases: Reporting Premature Closure to the Funding Agency.

7. Time for Completion. The inquiry, including preparation of the final inquiry report and the decision of the DO (See Section D.6.1) 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 records must include documentation of the reasons for exceeding the 60-calendar-day period. The respondent will be notified, in writing, of the extension.

D.5 The Inquiry Report

1. Elements of the Inquiry Report
   a. A written inquiry report must be prepared that includes the following information:
      i. The name and position of the respondent
      ii. Names and titles of the appointee or committee members who conducted the inquiry
      iii. A summary of the inquiry process used
      iv. A list of the research records reviewed
      v. Summaries of any interviews
      vi. A description of the allegations of research misconduct
      vii. The funding agency support, including, for example, grant numbers, grant applications, contracts and publications listing that support
      viii. Any comments on the draft report by the respondent
      ix. The basis for recommending or not recommending that the allegations warrant an investigation and
      x. Whether any actions should be taken if an investigation is not recommended
   b. Laboratory Counsel should review the inquiry report for legal sufficiency. Modifications should be made, as appropriate, in consultation with the RIO and the appointee or committee.

2. Notification to the Respondent and Opportunity to Comment
   a. The RIO will notify the respondent as to whether the inquiry found an investigation to be warranted and will include a copy of the draft inquiry report for comment within 10 calendar days of such notification. The notification must include a copy of the Laboratory’s policies and procedures on research misconduct. If the alleged misconduct involves research supported by PHS, the notification must include a copy of, or refer, to 42 CFR Part 93.
   b. Based on any comments that are timely submitted, the appointee or inquiry committee may revise the draft report as appropriate and prepare it in final form. The appointee or committee will transmit the final report, including any timely submitted comments by the respondent, to the RIO.

D.6 Laboratory Decision and Notification

1. Decision by Deciding Official (DO). The RIO will transmit the final inquiry report to the DO, who will determine in writing whether an investigation is warranted. The inquiry is completed when the DO makes this determination. An investigation is warranted if:
   a. There is a reasonable basis for concluding that the allegation falls within the definition of research misconduct under Section D.1.1, Introduction, and within the scope of this policy under Section D.2, Scope and
   b. Preliminary information-gathering and preliminary fact-finding from the inquiry indicates that the allegation may have
2. **Notification to the Complainant of the Results of the Inquiry.** The RIO shall notify the complainant whether the inquiry found an investigation to be warranted.

3. **Notification to the DOE Contracting Officer.** If the Contractor determines that there is sufficient evidence to proceed to an investigation, it must notify the Contracting Officer.

4. **Notification to the Funding Agency.** Within 30 calendar days of the DO's decision that an investigation is warranted, the RIO will provide the funding agency with the DO's written decision and a copy of the inquiry report. The RIO will also notify Laboratory or other officials who need to know of the DO's decision. The RIO must provide the following information to the funding agency upon request:
   - The Laboratory policies and procedures under which the inquiry was conducted
   - The research records and evidence reviewed, transcripts or recordings of any interviews, and copies of all relevant documents and
   - The charges to be considered in the investigation

5. **Documentation of Decision Not to Investigate.** If the DO decides that an investigation is not warranted, the RIO will secure and maintain for seven years after termination of the inquiry sufficiently detailed documentation of the inquiry to permit a later assessment by the funding agency of the reasons why an investigation was not conducted. These documents must be provided to the funding agency upon request.

### D.7 Conducting the Investigation

1. **Initiation and Purpose.** The investigation must begin within 30 calendar days after the DO has determined that an investigation is warranted. 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. 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 research 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. The findings of the investigation must be set forth in an investigation report (See Section D.8. The Investigation Report).

2. **Notifying the Funding Agency and Respondent: Sequestration of Research Records**
   - a. On or before the date on which the investigation begins, the RIO must:
     - i. Inform the Contracting Officer if an initial inquiry supports a formal investigation and, if requested by the Contracting Officer thereafter, keep the Contracting Officer informed of the results of the investigation and any subsequent adjudication and
     - ii. Notify the funding agency of the decision to begin the investigation and provide a copy of the inquiry report and
     - iii. 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.
   - b. 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 proceeding and that were not previously sequestered during the inquiry. The need for additional sequestration of records for the investigation may occur for any number of reasons, including the Laboratory'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 (See Section D.4.3, Notice to Respondent: Sequestration of Research Records).

3. **Appointment of the Investigation Committee.** The RIO, in consultation with other Laboratory officials as appropriate, will appoint an investigation committee and the committee chair as soon after the beginning of the investigation as is practical. The investigation committee must consist of individuals who do not have unresolved personal, professional, or financial conflicts of interest with those involved with the investigation and should include individuals with the appropriate scientific expertise to evaluate the evidence and issues related to the allegation, interview the respondent and complainant, and conduct the investigation. Individuals who are not Laboratory members but who have specialized expertise germane to the research involved may be appointed to the committee. Individuals appointed to the investigation committee may also have served on the inquiry committee.

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:
     - i. Describes the allegations and related issues identified during the inquiry
     - ii. Identifies the respondent
     - iii. Informs the committee that it must conduct the investigation as prescribed in Section D.7.5, Investigation Process
     - iv. Defines research misconduct
v. 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.

vi. 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 (See Section D.1.1, Introduction; 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;

3. The respondent committed the research misconduct intentionally, knowingly, or recklessly;

4. Informs the committee that it must prepare or direct the preparation of a written investigation report that meets the requirements of this policy (See Section D.5.1, Elements of the Investigation Report).

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 policy. If the research is supported by the PHS, the committee will be provided with a copy of 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:

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 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; 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.

6. Time for Completion. The investigation is to be completed within 120 calendar days of its beginning, including conducting the investigation, preparing the report of findings, providing the draft report for comment and sending the final report to the funding agency. However, if the RIO determines that the investigation will not be completed within this 120-day period, he/she will submit to the funding agency a written request for an extension, setting forth the reasons for the delay. The RIO will ensure that periodic progress reports are filed with the funding agency if the funding agency grants the request for an extension and directs the filing of such reports.

D.8 The Investigation Report

1. Elements of the Investigation Report

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

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

ii. Describes and documents the funding agency support, including, for example, the numbers of any grants that are involved, grant applications, contracts, and publications listing funding agency support;

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

iv. Includes the Laboratory policy under which the investigation was conducted;

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

vi. Includes a statement of findings for each allegation of research misconduct identified during the investigation. 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 (See Section D.1.1, Introduction);

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 the respondent to establish by preponderance of the evidence that he/she did not engage in research misconduct because of honest error or a difference of opinion;

3. Identify the specific funding agency 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 any other funding agencies
b. Laboratory Counsel should review the investigation report for legal sufficiency. Modifications should be made, as appropriate, in consultation with the RIO and investigative committee.

2. Comments on the Draft Report and Access to Evidence

a. **Respondent.** The RIO must give the respondent a copy of the draft investigation report for comment and, concurrently, if requested, a copy of, or supervised access to the evidence on which the report is based. The respondent will be allowed 30 calendar days from the date he/she received the draft report to submit comments to the RIO. The respondent’s comments must be included and considered in the final report.

b. **Complainant.** At the discretion of the committee, in consultation with the RIO, the complainant may be provided with a copy of the draft investigative report, or relevant portions of it, for comment. Any comments must be submitted within 30 days of the date of receipt of the draft report and any comments received must be included and considered in the final investigation report.

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

D.9 Laboratory Decision and Notification

1. **Decision by Deciding Official**

a. The RIO will assist the investigation committee in finalizing the draft investigation report, including ensuring that the respondent's comments or complainants comments, if any, are included and considered, and transmit the final investigation report to the DO, who will determine in writing:
   i. Whether he/she accepts the investigation report, its findings, and
   ii. The appropriate Laboratory actions in response to the accepted findings of research misconduct

b. If this determination varies from the findings of the investigation committee, the DO will, 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 DO may return the report to the investigation committee with a request for further fact-finding or analysis.

c. When the DO reaches a decision on the case, generally within 60 days of receipt of the record of investigation, the RIO will normally notify both the respondent and the complainant in writing. The DO’s decision represents the final decision of the Laboratory with respect to the issue of research misconduct. There is no right, under Laboratory policy, to appeal this decision. Any disciplinary action which may be imposed as a result of a finding of research misconduct will be handled in accordance with the Corrective Action and Dismissal policy (RPM Section 2.05[C]) or the applicable collective bargaining agreement. After informing the funding agency of the final decision, 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 agencies.

2. **Notification to the DOE Contracting Officer.** When an investigation is complete, the Contractor will forward to the Contracting Officer a copy of the evidentiary record, the investigative report, any recommendations made to the Contractor's adjudicating official, the adjudicating official's decision and notification of any corrective action taken or planned, and the subject's written response (if any).

3. **Notification to Funding Agency of Laboratory Findings and Actions.** Unless an extension has been granted, the RIO must, within the 120-calendar-day period for completing the investigation, submit the following to the funding agency:
   a. A copy of the final investigation report with all attachments
   b. A statement of whether the Laboratory accepts the findings of the investigation report
   c. A statement of whether the Laboratory found misconduct and
   d. A description of any pending or completed actions against the respondent

4. **Maintaining Records for Review by the Funding Agency**

   a. The RIO must maintain and provide to the funding agency upon request the records of research misconduct proceedings defined as:
      i. Records the RIO secures for the proceeding pursuant to this policy, except to the extent the Laboratory subsequently determines and documents that those records are not relevant to the proceeding or that the records duplicate other records being retained
      ii. Documentation of the determination of irrelevant or duplicate records
      iii. The inquiry report and final documents (not drafts) produced in the course of preparing that report, including the documentation of any decision not to investiagu as required by Section D.6.4, Documentation of Decision Not to Investigate
      iv. The investigation report and all records (other than drafts of the report) in support of that report, including any

---

Lawrence Berkeley National Laboratory. The official or current version is located in the online LBNL Requirements and Policies Manual. Printed or exported versions are not official. Users are responsible for working with the latest approved revision.
required recordings or transcriptions of interviews
b. Unless custody has been transferred to the funding agency or the funding agency 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 funding agency proceeding involving the research misconduct allegation, whichever is later. The RIO is also responsible for providing any information, documentation, research records, evidence, or clarification requested by the funding agency to carry out its review of an allegation of research misconduct or of the Laboratory’s handling of such an allegation.

D.10 Completion of Cases: Reporting Premature Closure to the Funding Agency

Generally, all inquiries and investigations will be carried through to completion and all significant issues will be pursued diligently. The RIO must notify the funding agency in advance if there are plans to close a case at the inquiry, investigation, or appeal stage on the basis that the 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 than an investigation is not warranted or
2. A finding of no misconduct at the investigation stage, which must be reported to the funding agency as prescribed in Section D.9.4, Maintaining Records for Review by the Funding Agency

D.11 Laboratory Actions, Including Employee Corrective (Disciplinary) Actions

If the DO determines that research misconduct is substantiated by the findings, he/she will decide on the appropriate actions to be taken, after consultation with the RIO.

1. 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. Special monitoring of future work
   c. Restitution of funds to the funding agency as appropriate
   d. In the case of Laboratory members who are not employees, notification of the member’s home institution of the results of the investigation and
   e. Other action appropriate to the research misconduct

2. Employee Corrective (Disciplinary) Actions. The matter will be referred to the respective division director/department head and Human Resources for consideration of possible corrective (disciplinary) action under applicable Laboratory RPM policies and/or collective bargaining agreements.

D.12 Other Considerations

1. Termination or Resignation Prior to Completing Inquiry or Investigation
   a. The termination of the respondent's Laboratory employment or a non-employee member's Laboratory association, 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 Laboratory's responsibilities under this policy.
   b. If the respondent, without admitting to the misconduct, elects to resign his or her position after the Laboratory 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 outcome 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 the report the respondent's failure to cooperate and its effect on the evidence.

2. Restoration of the Respondent's Reputation. Following a final decision of no research misconduct, including funding agency concurrence where required by federal regulations or funding agency contracts or grants, the RIO must, at the request of the respondent, 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 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 Laboratory actions to restore 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 Laboratory or the funding agency 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. 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 approved by the DO.

4. If relevant, the DO, in consultation with the RIO, will determine whether the complainant's allegations of research misconduct were made in good faith, or whether a witness, appointee, or committee member failed to act in good faith. If the DO determines that there was an absence of good faith, he/she will determine whether any action should be taken against the person who failed to act in good faith and forward any such recommendation for consideration by Human Resources and the appropriate Laboratory official.

**E. Roles and Responsibilities**

<table>
<thead>
<tr>
<th>Role</th>
<th>Responsibility</th>
</tr>
</thead>
</table>
| Laboratory                 | 1. The Laboratory will respond to each allegation of research misconduct in a thorough, competent, objective, and fair manner, including taking precautions to ensure that individuals responsible for carrying out any part of the research misconduct proceeding do not have unresolved personal, professional, or financial conflicts of interest with the complainant, respondent, or witnesses.  
2. The Laboratory will take all reasonable and practical steps to ensure the cooperation of complainants, respondents, and other Laboratory members with research misconduct proceedings, including, but not limited to, their providing information, research records, and evidence.  
3. The Laboratory will report to the DOE Contracting Officer, and to the appropriate office/official(s) of the funding agency sponsoring the research involved as required in this policy. Reports will be made to the DOE Contracting Officer and:  
   a. The appropriate contracting officer for Department of Energy (DOE) supported activities  
   b. The Office of Research Integrity (ORI) of the Department of Health and Human Services (HHS) for PHS-supported activities  
   c. The appropriate contracting officer or contracting officer's technical representative for Environmental Protection Agency supported activities  
   d. The Office of the Inspector General (OIG) for National Aeronautics and Space Administration (NASA)–supported activities and  
   e. The authority identified in the specific grant or contract for agencies not listed above  
4. In cases where the research is supported by multiple agencies, the Laboratory will report to each agency.                                                                                                                                 |
| Research Integrity Officer | The Research Integrity Officer (RIO) has primary responsibility for implementing the Laboratory's policies and procedures on research misconduct. When performing any of the duties required in this policy, the RIO will consult with the responsible Laboratory division director and other Laboratory scientific and/or institutional officials, as appropriate, or when specific expertise or assistance is needed. The responsibilities of the RIO include the following duties related to research misconduct proceedings:  
1. Be available to consult with persons uncertain about whether to submit an allegation of research misconduct.  
2. Receive allegations of research misconduct.  
3. Assessing each allegation of research misconduct in accordance with Section D.4.1, Assessment of Allegations, to determine whether it falls within the definition of research misconduct and warrants an inquiry (See Laboratory under Section E, Roles and Responsibilities, of this policy) of special circumstances, in accordance with Section D.3.6, Interim Actions and Notifying the Funding Agency of Special Circumstances.  
4. Sequester research data and evidence pertinent to the allegation of research misconduct in accordance with Section D.4.3, Notice to Respondent: Sequestration of Research Records, of this policy and maintain it securely in accordance with this policy and applicable law and regulation.  
5. Provide confidentiality to those involved in the research misconduct proceedings as required by Section D.3.3, Confidentiality, of this policy.  
6. Notify the respondent and provide opportunities for him/her to review/comment/respond to allegations, evidence, and committee reports in accordance with this policy.  
7. As appropriate or required by this policy, inform respondents, complainants, and witnesses of the procedural steps in the research misconduct proceeding.  
8. 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.  
9. Determine whether each person involved in handling an allegation of research misconduct has an unresolved personal, professional, or financial conflict of interest; and take appropriate actions, including recusal, to ensure that no person with such conflict is involved in the research misconduct proceeding.  
10. In cooperation with other Laboratory 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 Laboratory members.  
11. Keep the Deciding Official and others who need to know apprised of the progress of the review of the allegation of research misconduct.  
12. Notify, and make reports to, the DOE Contracting Officer as required by this policy (See Laboratory under Section E, Roles and Responsibilities).  
13. Notify, and make reports, to the funding agency as required by this policy (See Laboratory under Section E, Roles and Responsibilities).  
14. Ensure that actions taken by the Laboratory and the funding agency are enforced; and take appropriate action to notify other involved parties, such as sponsors, law enforcement agencies, and professional societies, and licensing boards of those actions.  
15. Maintain records of the research misconduct proceeding, and provide those records to the DOE Contracting Officer in accordance with Section D.9.2, Notification to the DOE Contracting Officer, and Section D.9.4, Maintaining Records for Review by the Funding Agency, of this policy.  
16. Maintain records of the research misconduct proceeding, and make those records available to the funding agency in accordance with Section D.9.2, Notification to the DOE Contracting Officer, and Section D.9.4, Maintaining Records for Review by the Funding Agency, of this policy.  
17. Complainant | The complainant is responsible for making allegations in good faith, maintaining confidentiality, and cooperating with the inquiry and investigation. If the matter proceeds to an investigation, the complainant must be interviewed, and be given the transcript or recording of the interview for review and correction. Individuals whose allegations of research misconduct are not made in good faith may be subject to Laboratory corrective (disciplinary) action up to and including dismissal from employment. |
The respondent is responsible for maintaining confidentiality and cooperating with the conduct of an inquiry and investigation. The respondent is entitled to:

1. A good-faith effort from the RIO to notify the respondent in writing at the time of or before beginning the inquiry.
2. An opportunity to comment on the draft inquiry report and have his/her comments attached to the inquiry report.
3. Be notified of the outcome of the inquiry, and receive a copy of the inquiry report that includes a copy of, or refers to, the Laboratory’s policies and procedures on research misconduct. In the case of an allegation of misconduct in research supported by PHS, the inquiry report must also include a copy of, or refer to, 42 CFR Part 93.
4. 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; 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.
5. Be interviewed during the investigation; have the opportunity to review and correct the recording or transcript of the interview; and have the corrected recording or transcript included in the record of the investigation.
6. 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 of the interview provided to the witness for review and correction; and have the corrected recording or transcript included in the record of investigation.
7. Receive a copy of the draft investigation report and, concurrently if requested, 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 calendar 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.

The respondent must be given the opportunity to admit that research misconduct occurred and that he/she committed the research misconduct. With the advice of the RIO and/or other Laboratory officials, the Deciding Official may terminate the Laboratory's review of an allegation that has been admitted if the Laboratory’s acceptance of the admission and any proposed settlement is approved by the funding agency.

The DO will receive the inquiry report and, after consulting with the RIO and/or other Laboratory officials, decide whether an investigation is warranted under the criteria set forth in this policy (see Section D.6.1, Decision by Deciding Official). Any finding that an investigation is warranted must be made in writing by the DO and must be provided to the funding agency, together with a copy of the inquiry report, within 30 calendar 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 seven years after termination of the inquiry, so that the funding agency may assess the reasons why the Laboratory decided not to conduct an investigation.

The DO will receive the investigation report and, after consulting with the RIO and/or other Laboratory officials, decide the extent to which the Laboratory accepts the findings of the investigation and, if research misconduct is found, decide what, if any, Laboratory actions are appropriate. The DO will ensure that the final investigation report, the findings of the DO, and a description of any pending or completed actions are provided to the funding agency, as required by Section D.9.2, Notification to Funding Agency of Laboratory Findings and Actions.

F. Definitions/Acronyms

<table>
<thead>
<tr>
<th>Terms</th>
<th>Definition</th>
</tr>
</thead>
<tbody>
<tr>
<td>Allegation</td>
<td>A disclosure of possible research misconduct through any means of communication. This disclosure may be by written or oral statement or other communication to the Laboratory or a funding official.</td>
</tr>
<tr>
<td>Complainant</td>
<td>A person who in good faith makes an allegation of research misconduct</td>
</tr>
<tr>
<td>Conflict of interest</td>
<td>The real or apparent potential bias that may occur due to prior or existing personal, financial, or professional relationships</td>
</tr>
<tr>
<td>Deciding Official (DO)</td>
<td>The Laboratory official who makes final determinations on allegations of scientific misconduct and any responsive Laboratory actions. The Laboratory’s Deputy Director is the Deciding Official.</td>
</tr>
<tr>
<td>Evidence</td>
<td>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</td>
</tr>
<tr>
<td>Funding agency / sponsoring agency</td>
<td>The source(s) of the funds under which the research was conducted</td>
</tr>
<tr>
<td><strong>Good faith</strong></td>
<td>Having a belief in the truth of one’s allegation or testimony that a reasonable person 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 made with knowing or reckless disregard for information that would negate the allegation or testimony. Good faith as applied to a committee member means impartially and honestly carrying out the duties assigned under this policy. A committee member does not act in good faith if his/her acts or omissions on the committee are dishonest or influenced by personal, professional, or financial conflicts of interest with those involved in the research misconduct proceedings.</td>
</tr>
<tr>
<td>---</td>
<td>---</td>
</tr>
<tr>
<td><strong>Inquiry</strong></td>
<td>Gathering information and initial fact-finding to determine whether an allegation or apparent instance of scientific misconduct warrants an investigation</td>
</tr>
<tr>
<td><strong>Investigation</strong></td>
<td>The formal development of a factual record and the examination of that record leading to a decision not to make a finding of research misconduct or to a recommendation for a finding of research misconduct</td>
</tr>
<tr>
<td><strong>Preponderance of the evidence</strong></td>
<td>Proof by information that, compared with information opposing it, leads to the conclusion that the fact at issue is more probably true than not</td>
</tr>
<tr>
<td><strong>Research Integrity Officer (RIO)</strong></td>
<td>The Laboratory official responsible for implementing the procedures described in this policy. The Laboratory’s RIO is the Research and Institutional Integrity Manager.</td>
</tr>
<tr>
<td><strong>Research</strong></td>
<td>A systematic experiment, study, evaluation, demonstration, or survey designed to develop or contribute to general knowledge (basic research) or specific knowledge (applied research) in all fields of science, medicine, engineering, and mathematics, including but not limited to research in economics, education, linguistics, medicine (relating broadly to public health by establishing, discovering, developing, elucidating, or confirming information about; or the underlying mechanism relating to, biological causes, functions or effects, diseases, treatments, or related matters to be studied), psychology, social science statistics, and research involving human subjects or animals</td>
</tr>
<tr>
<td><strong>Research record</strong></td>
<td>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 the funding agency or Laboratory official by a respondent in the course of the research misconduct proceeding</td>
</tr>
<tr>
<td><strong>Respondent</strong></td>
<td>The person against whom an allegation of research misconduct is directed or who is the subject of a research misconduct proceeding</td>
</tr>
</tbody>
</table>
| **Retaliation** | An adverse action taken against a complainant, witness, or inquiry appointee or committee member, or investigation committee member by the Laboratory or one of its members in response to:  
  - A good-faith allegation of research misconduct or  
  - Good-faith cooperation with or participation in a research misconduct proceeding |

**G. Recordkeeping Requirements**

See above
H. Implementing Documents
None

I. Contact Information
Research and Institutional Integrity Office
RIIO@lbl.gov

J. Revision History

<table>
<thead>
<tr>
<th>Date</th>
<th>Revision</th>
<th>By whom</th>
<th>Revision Description</th>
<th>Section(s) affected</th>
<th>Change Type</th>
</tr>
</thead>
<tbody>
<tr>
<td>1/2/2012</td>
<td>0</td>
<td>Stoufer</td>
<td>Rewrite for the wiki (brief)</td>
<td>All</td>
<td>Minor</td>
</tr>
<tr>
<td>2/27/2013</td>
<td>1</td>
<td>Stoufer</td>
<td>Rewrite for wiki (policy)</td>
<td>All</td>
<td>Minor</td>
</tr>
<tr>
<td>7/25/2014</td>
<td>1.1</td>
<td>Stoufer</td>
<td>Minor clarifications (periodic review)</td>
<td>D.6, D.7, D.9, E. Roles and Responsibilities</td>
<td>Minor</td>
</tr>
</tbody>
</table>

Document Information

DOCUMENT INFORMATION

<table>
<thead>
<tr>
<th>Title:</th>
<th>Research Misconduct</th>
</tr>
</thead>
<tbody>
<tr>
<td>Document number</td>
<td>03.01.001.000</td>
</tr>
<tr>
<td>Revision number</td>
<td>1.1</td>
</tr>
<tr>
<td>Publication date:</td>
<td>7/25/2014</td>
</tr>
<tr>
<td>Effective date:</td>
<td>2/28/2008</td>
</tr>
<tr>
<td>Next review date:</td>
<td>8/1/2017</td>
</tr>
<tr>
<td>Policy Area:</td>
<td>Research Integrity</td>
</tr>
<tr>
<td>RPM Section (home)</td>
<td>Conduct of Research and Development</td>
</tr>
<tr>
<td>RPM Section (cross-reference)</td>
<td>Section 2.05(I)</td>
</tr>
<tr>
<td>Functional Division</td>
<td>Directorate</td>
</tr>
<tr>
<td>Prior reference information (optional)</td>
<td>Section 2.05(I)</td>
</tr>
</tbody>
</table>

Source Requirements Documents
- Contract 31 Clause I.125 – DEAR 952.235-71, Research Misconduct
- 10 CFR 733, Allegations of Research Misconduct

Other Driving Requirements
- 42 CFR 93, Public Health Service Policies on Research Misconduct

Implementing Documents