

Fauquier  
**WASHINGTON**  
**Kitsap**  
*Survey Area*

Washington:  
 Kitsap  
*Area of Application. Survey area plus:*

Washington:  
 Clallam  
 Jefferson

**Pierce**  
*Survey Area*

Washington:  
 Pierce  
*Area of Application. Survey area plus:*

Oregon:  
 Clatsop  
 Coos  
 Douglas  
 Multnomah  
 Tillamook

Washington:  
 Clark  
 Grays Harbor

**Snohomish**  
*Survey Area*

Washington:  
 Snohomish  
*Area of Application. Survey area plus:*

Washington:  
 Island  
 King  
 Yakima

**Spokane**  
*Survey Area*

Washington:  
 Spokane  
*Area of Application. Survey area plus:*

Washington:  
 Adams  
 Walla Walla

**WYOMING**  
**Laramie**  
*Survey Area*

Wyoming:  
 Laramie  
*Area of Application. Survey area.*

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BILLING CODE 6325-39-P

**DEPARTMENT OF AGRICULTURE****Office of the Chief Financial Officer****7 CFR Part 3022****RIN 0524-AA34****United States Department of  
Agriculture Research Misconduct  
Regulations for Extramural Research****AGENCY:** Office of the Chief Financial Officer, USDA.**ACTION:** Final rule.**SUMMARY:** The Office of the Chief Financial Officer (OCFO) is establishing U.S. Department of Agriculture (USDA)

regulations implementing the Federal Policy on Research Misconduct applicable to extramural research. The regulation defines research misconduct and establishes basic USDA requirements for the conduct of fair and timely investigations of alleged or suspected infractions. The regulation also includes instructions on USDA administrative actions when research misconduct is found.

**DATES:** This rule is effective on August 13, 2010.**FOR FURTHER INFORMATION CONTACT:** Sara Mazie, USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; Telephone: (202) 720-5923; E-mail: [researchintegrity@usda.gov](mailto:researchintegrity@usda.gov).

**SUPPLEMENTARY INFORMATION:** On December 6, 2000, the National Science and Technology Council, Office of Science and Technology Policy of the Executive Office of the President (OSTP), published in the **Federal Register** (65 FR 76260) the Federal Policy on Research Misconduct (OSTP Policy) as a final, government-wide policy addressing research misconduct. The purpose of the policy was to establish: (1) Uniformity among the Federal agencies' definitions of research misconduct, and (2) consistency in Federal agencies' processes for responding to allegations of research misconduct. The OSTP Policy covers both intramural research as well as extramural research.

This rule establishes U.S. Department of Agriculture (USDA or the Department) regulations to permanently implement the provisions of the OSTP Policy applicable to extramural research. An interim USDA Research Misconduct Policy was issued as a Secretary's Memorandum on Research Misconduct Policies and Procedures in July, 2006. The Secretary's Memorandum is consistent with the OSTP Policy. The substance of the regulation is the same as the policies and procedures in the Secretary's Memorandum that relate to extramural research. Accordingly, all USDA agencies that conduct or support extramural research are expected either to: (1) Establish procedures to foster integrity in research activities, respond to allegations of research misconduct, and remedy findings of research misconduct, consistent with applicable laws, regulations, the OSTP Policy, and this proposed regulation; or (2) initiate and sign a standing Memorandum of Understanding (MOU) between the agency and Research Education and Economics mission area to have another USDA agency act on its behalf in lieu of

developing its own research misconduct procedures.

The regulation sets forth in Title 7 of the Code of Federal Regulations, a new part 3022 (7 CFR part 3022), referred to below as the regulation. The rule defines a number of terms that are used in new part 3022. Definitions of the following terms are set forth in § 3022.1: Adjudication; Agency Research Integrity Officer (ARIO); allegation; applied research; Assistant Inspector General for Investigations; basic research; extramural research; fabrication; falsification; finding of research misconduct; inquiry; intramural research; investigation; OIG; OSTP; plagiarism; preponderance of the evidence; research; research institution; research misconduct; research record; USDA; and USDA Research Integrity Officer (RIO).

**Summary of Comments and Recommendations**

The proposed rule was published in the **Federal Register** on November 24, 2008 (73 FR 70915), requesting comments from the public. Comments were received on the proposed rule from three organizations including The Council on Government Relations (COGR), Arizona State University (ASU), and the Physicians Committee for Responsible Medicine (PCRM). ASU stated that it supported COGR's comments which are evidenced by the comments being duplicative in nature. The comments are summarized as follows:

(1) *Comment:* Concern that the proposed rule is intended only as core elements for the Department's agencies and that individual agencies within the Department can and may implement separate policies that are consistent with the proposed rule. The Department is urged to reevaluate whether this approach achieves the Federal goals of consistency and uniformity.

*Response:* The proposed rule implements the OSTP policy and serves as the core policy for the Department. The agencies may supplement the core with agency requirements. USDA's approach is similar in nature to other streamlining efforts whereas there is a standard that is supplemented with agency specifics. This approach is necessary to meet the unique mission and structure of each agency within the Department while maintaining consistency to the extent possible.

(2) *Comment:* A research institution must have the right to conduct an inquiry before reporting the allegation to the USDA. Such a provision is incorporated in the Federal Policy and common in the policies of other

Departments and agencies. The proposed rule should be changed to require notification “where an inquiry determines an investigation is necessary.”

*Response:* The Federal policy states that the institution is to notify the agency when (1) an allegation involves federally funded research, AND (2) institution inquiry into an allegation warrants them moving on to an investigation. USDA modified the proposed regulation to be consistent with the Federal policy.

(3) *Comment:* § 3022.10, Reporting to USDA, should include “the institution’s adjudicating official’s determination and any corrective action taken or planned.” A parallel change should be made to § 3022.12 addressing Remedies for Noncompliance. USDA must consider the institution’s corrective action.

*Response:* The institution should include documentation along with the report to USDA of the adjudicating official’s determination and any institutional corrective action taken or planned. Changes were made to § 3022.10, Reporting to USDA, to make this clear. The agency may utilize this information in determining the administrative action, if any, to take; however, USDA and the institution have different interests and the corrective action by each must take into consideration their own interests. The Federal policy identifies for agencies a number of considerations in determining an administrative action but the institution’s corrective action is not identified as one.

(4) *Comment:* The USDA policy fails to include a critical part of the Federal policy in regard to institutional and agency administrative action, e.g., assessing the degree to which the misconduct was knowing, intentional or reckless, whether the event was isolated or part of a pattern of behavior, and the level of impact on the research record.

*Response:* It is agreed that the USDA policy does not include considerations that each USDA agency should contemplate in determining an administrative action. Certain considerations should be common across USDA. § 3022.12 was modified to include language for the agency, in determining an administrative action, to consider, among other things, the seriousness of the misconduct.

(5) *Comment:* Section 3022.4 should be deleted from the policy in its entirety and replaced with a simple reminder that USDA can request a copy of an awardee’s policies for handling allegations of research misconduct.

*Response:* USDA’s review of an institution’s research misconduct policy has no bearing on the institution moving forward with its inquiry, etc. USDA’s review of the institution’s policy is only for USDA to determine if it will rely on the institution’s efforts but it by no means is to thwart the institution’s efforts.

(6) *Comment:* The commenter recognized USDA’s reservation of the right to conduct a separate inquiry, investigation and/or adjudication; however, it took the position that the reasons be limited to those identified in items 1. through 3. of § 3022.5(a) and should not be open to “any other reason” USDA considers appropriate. A recommendation is made to change the additional reservation to “any other good cause justifying the USDA RIO or ARIIO conducting research misconduct proceedings \* \* \*.”

*Response:* USDA reserves its right to proceed with an inquiry, investigation, and/or adjudication with any other good cause with justification. As noted in § 3022.5, when the USDA RIO or ARIIO believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication concurrence must be received by the USDA Panel followed by institutional notification. Language was added to the end of § 3022.5(b) to clearly convey that the “any other reason” noted includes affirmation by the USDA Panel in moving forward with an inquiry, investigation, and/or adjudication.

(7) *Comment:* It is inappropriate for the investigators to contact the USDA directly. The USDA policy should include a requirement for the appropriate institutional official to be notified so the official can notify USDA.

*Response:* USDA does not stipulate who at the institution should notify USDA. This is up to the institution to determine and it should be included in their policies and procedures accordingly. However, everyone should be able to report an allegation whether it involves the institution where he/she works or any other institution.

(8) *Comment:* If USDA determines it will conduct a separate inquiry, investigation and/or adjudication there is concern that USDA’s requirement for the “immediate” surrendering of documents related to the institutional procedures may conflict with institutional responsibilities under state law or collective bargaining agreements.

*Response:* The commenter’s concern and responsibilities are recognized, therefore, “immediately provide” was replaced with “promptly provide” as suggested by the commenter.

(9) *Comment:* The proposed rule indicates that the USDA agency defers its own inquiry and investigation until the other (OIG or other agency) is complete. The proposed rule indicates that all USDA requirements must be met in addition to other agencies. It adds a significant and unnecessary burden to conduct multiple inquiries and investigations and the USDA must work in cooperation with other Federal agencies to avoid such an outcome.

*Response:* Section 3022.14 was modified to clearly state that when more than one agency is involved that USDA will work with the other agency(ies) to designate a lead. The policies and procedures of the lead agency will be followed in determining whether there is a finding of research misconduct. The section was further modified to stipulate that USDA will seek to resolve allegations jointly with the other agency or agencies when appropriate.

(10) *Comment:* The proposed regulation does not include a statement or provision for USDA to refer allegations made directly to USDA to the appropriate research institution.

*Response:* The ARIIO responsibilities were modified to include notification of the research institution associated with the alleged research misconduct. In addition, a change was made to also have the ARIIO notify the applicable research institution if (1) public health or safety is at risk; (2) USDA’s resources, reputation, or other interests need protecting; (3) research activities should be suspended; (4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected; (5) a premature public disclosure of the inquiry into or investigation of the allegation may compromise the process; (6) the scientific community or the public should be informed; or (7) behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings.

(11) *Comment:* We urge USDA to recognize the need for safeguarding the rights of the subject of an allegation. Protecting the position and reputation of a subject of an allegation is as important as safeguarding informants particularly if an allegation is determined to be unfounded.

*Response:* Language was added to § 3022.3 to clearly recognize the safeguarding of the rights of the subject of an allegation.

(12) *Comment:* The USDA policy should include a clear statement of confidentiality as described in the Federal Policy. The concern for

confidentiality expressed for informants is not sufficient to ensure the protection of all individuals involved in the process. As the Federal Policy must extend to the subject of the allegation and, we would add, those involved in the inquiry and investigation processes—members of committees, witnesses, etc., as well as the records related to the process.

*Response:* Language was added to the definition of ARIIO and to § 3022.2 to make a clear statement of confidentiality. Other comments were received but were outside the scope of the proposed rule. For instance, one commenter requests that the definition of misconduct be expanded to include the abuse and treatment of human and animal research subjects. The OSTP policy (65 FR 76260) specifically states, “This policy addresses activity that occurs in the course of human subjects or animal research that involves research misconduct as defined by the policy. Thus, falsification, fabrication, or plagiarism that occurs during the course of human or animal research is addressed by this policy. However, other issues concerning the ethical treatment of human or animal subjects are covered under separate procedures and are not affected by this policy.” No changes were made in response to comments outside the scope of the OSTP policy.

### Impact Analysis

#### *Executive Order 12866*

This rule has been reviewed under Executive Order 12866. The rule has been determined to be not significant because it will not have an annual effect on the economy of \$100 million or more or adversely affect a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. This rule will not create any serious inconsistencies or otherwise interfere with any actions taken or planned by another agency. It will not materially alter the budgetary impact of entitlements, grants, user fees or loan programs and does not raise novel legal or policy issues arising out of legal mandates, the President’s priorities, or principles set forth in Executive Order 12866.

#### *Executive Order 12372*

This program/activity is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

#### *Executive Order 13132*

It has been determined that this rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment. The provisions contained in this rulemaking will not have a substantial direct effect on States or their political subdivisions. They also will not impact the distribution of power and responsibilities among the various levels of government substantially.

#### *Regulatory Flexibility Act*

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires that an analysis be prepared for each rule with a significant economic impact on a substantial number of small entities. The analysis should describe the rule’s impact on small entities and identify any significant alternatives to the rule that would minimize the economic impact on such entities. Section 605 of the Regulatory Flexibility Act allows USDA to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have such an impact.

USDA certifies that this rule will not have a significant economic impact on a substantial number of small entities. The final rule will have a positive impact on small businesses because of the assistance these entities receive from other agencies. It will also ease the administrative requirements for USDA to offer financial assistance.

#### *E–Government Act Compliance*

USDA is committed to compliance with the E–Government Act to promote the use of the Internet and other information technologies, to provide increased opportunities for citizen access to government information and services, and for other purposes.

#### **List of Subjects in 7 CFR Part 3022**

Intramural research, Research misconduct.

■ For the reasons set forth in the preamble, Title 7 of the Code of Federal Regulations is amended by adding a new part 3022 to read as follows:

#### **PART 3022—RESEARCH INSTITUTIONS CONDUCTING USDA-FUNDED EXTRAMURAL RESEARCH; RESEARCH MISCONDUCT**

Sec.

3022.1 Definitions.

3022.2 Procedures.

3022.3 Inquiry, investigation, and adjudication.

3022.4 USDA panel to determine appropriateness of research misconduct policy.

3022.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.

3022.6 Notification of USDA of allegations of research misconduct.

3022.7 Notification of ARIIO during an inquiry or investigation.

3022.8 Communication of research misconduct policies and procedures.

3022.9 Documents required.

3022.10 Reporting to USDA.

3022.11 Research records and evidence.

3022.12 Remedies for noncompliance.

3022.13 Appeals

3022.14 Relationship to other requirements.

**Authority:** Office of Science and Technology Policy (65 FR 76260); USDA Secretary’s Memorandum (SM) 2400–007; and USDA OIG, 7 CFR 2610.1(c)(4)(ix).

#### **§ 3022.1 Definitions.**

*Adjudication.* The stage in response to an allegation of research misconduct when the outcome of the investigation is reviewed, and appropriate corrective actions, if any, are determined. Corrective actions generally will be administrative in nature, such as termination of an award, debarment, award restrictions, recovery of funds, or correction of the research record. However, if there is an indication of violation of civil or criminal statutes, civil or criminal sanctions may be pursued.

*Agency Research Integrity Officer (ARIO).* The individual appointed by a USDA agency that conducts research and who is responsible for:

(1) Receiving and processing allegations of research misconduct as assigned by the USDA RIO;

(2) Informing OIG and the USDA RIO and the research institution associated with the alleged research misconduct, of allegations of research misconduct in the event it is reported to the USDA agency;

(3) Ensuring that any records, documents and other materials relating to a research misconduct allegation are provided to OIG when requested;

(4) Coordinating actions taken to address allegations of research misconduct with respect to extramural research with the research institution(s) at which time the research misconduct is alleged to have occurred, and with the USDA RIO;

(5) Overseeing proceedings to address allegations of extramurally funded research misconduct at intramural research institutions and research institutions where extramural research occurs;

(6) Ensuring that agency action to address allegations of research misconduct at USDA agencies performing extramurally funded research is performed at an

organizational level that allows an independent, unbiased, and equitable process;

(7) Immediately notifying OIG, the USDA RIO, and the applicable research institution if:

- (i) Public health or safety is at risk;
- (ii) USDA's resources, reputation, or other interests need protecting;
- (iii) Research activities should be suspended;
- (iv) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(v) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(vi) The scientific community or the public should be informed; or

(vii) Behavior that is or may be criminal in nature is discovered at any point during the inquiry, investigation, or adjudication phases of the research misconduct proceedings;

(8) Documenting the dismissal of the allegation, and ensuring that the name of the accused individual and/or institution is cleared if an allegation of research misconduct is dismissed at any point during the inquiry or investigation phase of the proceedings;

(9) Other duties relating to research misconduct proceedings as assigned.

**Allegation.** A disclosure of possible research misconduct through any means of communication. The disclosure may be by written or oral statement, or by other means of communication to an institutional or USDA official.

**Applied research.** Systematic study to gain knowledge or understanding necessary to determine the means by which a recognized and specific need may be met.

**Assistant Inspector General for Investigations.** The individual in OIG who is responsible for OIG's domestic and foreign investigative operations through a headquarters office and the six regional offices.

**Basic research.** Systematic study directed toward fuller knowledge or understanding of the fundamental aspects of phenomena and of observable facts without specific applications towards processes or products in mind.

**Extramural research.** Research conducted by any research institution other than the Federal agency to which the funds supporting the research were appropriated. Research institutions conducting extramural research may include Federal research facilities.

**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.

**Finding of research misconduct.** The conclusion, proven by a preponderance of the evidence, that research misconduct occurred, that such research misconduct represented a significant departure from accepted practices of the relevant research community, and that such research misconduct was committed intentionally, knowingly, or recklessly.

**Inquiry.** The stage in the response to an allegation of research misconduct when an assessment is made to determine whether the allegation has substance and whether an investigation is warranted.

**Intramural research.** Research conducted by a Federal Agency, to which funds were appropriated for the purpose of conducting research.

**Investigation.** The stage in the response to an allegation of research misconduct when the factual record is formally developed and examined to determine whether to dismiss the case, recommend a finding of research misconduct, and/or take other appropriate remedies.

**Office of Inspector General (OIG).** The Office of Inspector General of the United States Department of Agriculture.

**Office of Science and Technology Policy (OSTP).** The Office of Science and Technology Policy of the Executive Office of the President.

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

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

**Research.** All basic, applied, and demonstration research in all fields of science, engineering, and mathematics. This includes, but is not limited to, research in economics, education, linguistics, medicine, psychology, social sciences, statistics, and research involving human subjects or animals regardless of the funding mechanism used to support it.

**Research institution.** All organizations using Federal funds for research, including, for example, colleges and universities, Federally funded research and development centers, national user facilities, industrial laboratories, or other research institutes.

**Research misconduct.** Fabrication, falsification, or plagiarism in proposing, performing, or reviewing research, or in reporting research results. Research misconduct does not include honest error or differences of opinion.

**Research record.** The record of data or results that embody the facts resulting from scientific inquiry, and includes, but is not limited to, research proposals, research records (including data, notes, journals, laboratory records (both physical and electronic)), progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

**United States Department of Agriculture.** USDA.

**USDA Research Integrity Officer (USDA RIO).** The individual designated by the Office of the Under Secretary for Research, Education, and Economics (REE) who is responsible for:

(1) Overseeing USDA agency responses to allegations of research misconduct;

(2) Ensuring that agency research misconduct procedures are consistent with this part;

(3) Receiving and assigning allegations of research misconduct reported by the public;

(4) Developing Memoranda of Understanding with agencies that elect not to develop their own research misconduct procedures;

(5) Monitoring the progress of all research misconduct cases; and

(6) Serving as liaison with OIG to receive allegations of research misconduct when they are received via the OIG Hotline.

#### **§ 3022.2 Procedures.**

Research institutions that conduct extramural research funded by USDA must foster an atmosphere conducive to research integrity. They must develop or have procedures in place to respond to allegations of research misconduct that ensure:

(a) Appropriate separations of responsibility for inquiry, investigation, and adjudication;

(b) Objectivity;

(c) Due process;

(d) Whistleblower protection;

(e) Confidentiality. To the extent possible and consistent with a fair and thorough investigation and as allowed by law, knowledge about the identity of subjects and informants is limited to those who need to know; and

(f) Timely resolution.

#### **§ 3022.3 Inquiry, investigation, and adjudication.**

A research institution that conducts extramural research funded by USDA bears primary responsibility for prevention and detection of research misconduct and for the inquiry, investigation, and adjudication of research misconduct allegations reported directly to it. The research

institution must perform an inquiry in response to an allegation, and must follow the inquiry with an investigation if the inquiry determines that the allegation or apparent instance of research misconduct has substance. The responsibilities for adjudication must be separate from those for inquiry and investigation. In most instances, USDA will rely on a research institution conducting extramural research to promptly:

- (a) Initiate an inquiry into any suspected or alleged research misconduct;
- (b) Conduct a subsequent investigation, if warranted;
- (c) Acquire, prepare, and maintain appropriate records of allegations of extramural research misconduct and all related inquiries, investigations, and findings; and
- (d) Take action to ensure the following:
  - (1) The integrity of research;
  - (2) The rights and interests of the subject of the investigation and the public are protected;
  - (3) The observance of legal requirements or responsibilities including cooperation with criminal investigations; and
  - (4) Appropriate safeguards for subjects of allegations, as well as informants (see § 3022.6). These safeguards should include timely written notification of subjects regarding substantive allegations made against them; a description of all such allegations; reasonable access to the data and other evidence supporting the allegations; and the opportunity to respond to allegations, the supporting evidence and the proposed findings of research misconduct, if any.

**§ 3022.4 USDA Panel to determine appropriateness of research misconduct policy.**

Before USDA will rely on a research institution to conduct an inquiry, investigation, and adjudication of an allegation in accordance with this part, the research institution where the research misconduct is alleged must provide the ARIО its policies and procedures related to research misconduct at the institution. The research institution has the option of providing either a written copy of such policies and procedures or a Web site address where such policies and procedures can be accessed. The ARIО to whom the policies and procedures were made available shall convene a panel comprised of the USDA RIO and ARIОs from the Forest Service, the Agricultural Research Service, and the National Institute of Food and

Agriculture. The Panel will review the research institution's policies and procedures for compliance with the OSTP Policy and render a decision regarding the research institution's ability to adequately resolve research misconduct allegations. The ARIО will inform the research institution of the Panel's determination that its inquiry, investigation, and adjudication procedures are sufficient. If the Panel determines that the research institution does not have sufficient policies and procedures in place to conduct inquiry, investigation, and adjudication proceedings, or that the research institution is in any way unfit or unprepared to handle the inquiry, investigation, and adjudication in a prompt, unbiased, fair, and independent manner, the ARIО will inform the research institution in writing of the Panel's decision. An appropriate USDA agency, as determined by the Panel, will then conduct the inquiry, investigation, and adjudication of research misconduct in accordance with this part. If an allegation of research misconduct is made regarding extramural research conducted at a Federal research institution (whether USDA or not), it is presumed that the Federal research institution has research misconduct procedures consistent with the OSTP Policy. USDA reserves the right to convene the Panel to assess the sufficiency of a Federal agency's research misconduct procedures, should there be any question whether the agency's procedures will ensure a fair, unbiased, equitable, and independent inquiry, investigation, and adjudication process.

**§ 3022.5 Reservation of right to conduct subsequent inquiry, investigation, and adjudication.**

(a) USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation. This may be necessary if the USDA RIO or ARIО believes, in his or her sound discretion, that despite the Panel's finding that the research institution in question had appropriate and OSTP-compliant research misconduct procedures in place, the research institution conducting the extramural research at issue:

- (1) Did not adhere to its own research misconduct procedures;
- (2) Did not conduct research misconduct proceedings in a fair, unbiased, or independent manner; or

(3) Has not completed research misconduct inquiry, investigation, or adjudication in a timely manner.

(b) Additionally, USDA reserves the right to conduct its own inquiry, investigation, and adjudication into allegations of research misconduct at a research institution conducting extramural research subsequent to the proceedings of the research institution related to the same allegation for any other reason that the USDA RIO or ARIО considers it appropriate to conduct research misconduct proceedings in lieu of the research institution's conducting the extramural research at issue. This right is subject to paragraph (c) of this section.

(c) In cases where the USDA RIO or ARIО believes it is necessary for USDA to conduct its own inquiry, investigation, and adjudication subsequent to the proceedings of the research institution related to the same allegation, the USDA RIO or ARIО shall reconvene the Panel, which will determine whether it is appropriate for the relevant USDA agency to conduct the research misconduct proceedings related to the allegation(s) of research misconduct. If the Panel determines that it is appropriate for a USDA agency to conduct the proceedings, the ARIО will immediately notify the research institution in question. The research institution must then promptly provide the relevant USDA agency with documentation of the research misconduct proceedings the research institution has conducted to that point, and the USDA agency will conduct research misconduct proceedings in accordance with the Agency research misconduct procedures.

**§ 3022.6 Notification of USDA of allegations of research misconduct.**

(a) Research institutions that conduct USDA-funded extramural research must promptly notify OIG and the USDA RIO of all allegations of research misconduct involving USDA funds when the institution inquiry into the allegation warrants the institution moving on to an investigation.

(b) Individuals at research institutions who suspect research misconduct at the institution should report allegations in accordance with the institution's research misconduct policies and procedures. Anyone else who suspects that researchers or research institutions performing federally-funded research may have engaged in research misconduct is encouraged to make a formal allegation of research misconduct to OIG.

(1) OIG may be notified using any of the following methods:

(i) Via the OIG Hotline: Telephone: (202) 690-1622, (800) 424-9121, (202) 690-1202 (TDD).

(ii) E-mail:  
*usda\_hotline@oig.usda.gov*.

(iii) U.S. Mail: United States Department of Agriculture, Office of Inspector General, P.O. Box 23399, Washington, DC 20026-3399.

(2) The USDA RIO may be reached at: USDA Research Integrity Officer, 214W Whitten Building, Washington, DC 20250; telephone: 202-720-5923; E-mail: *researchintegrity@usda.gov*.

(c) To the extent known, the following details should be included in any formal allegation:

(1) The name of the research projects involved, the nature of the alleged misconduct, and the names of the individual or individuals alleged to be involved in the misconduct;

(2) The source or sources of funding for the research project or research projects involved in the alleged misconduct;

(3) Important dates;

(4) Any documentation that bears upon the allegation; and

(5) Any other potentially relevant information.

(d) Safeguards for informants give individuals the confidence that they can bring allegations of research misconduct made in good faith to the attention of appropriate authorities or serve as informants to an inquiry or an investigation without suffering retribution. Safeguards include protection against retaliation for informants who make good faith allegations, fair and objective procedures for the examination and resolution of allegations of research misconduct, and diligence in protecting the positions and reputations of those persons who make allegations of research misconduct in good faith. The identity of informants who wish to remain anonymous will be kept confidential to the extent permitted by law or regulation.

#### **§ 3022.7 Notification of ARIO during an inquiry or investigation.**

(a) Research institutions that conduct USDA-funded extramural research must promptly notify the ARIO should the institution become aware during an inquiry or investigation that:

(1) Public health or safety is at risk;

(2) The resources, reputation, or other interests of USDA are in need of protection;

(3) Research activities should be suspended;

(4) Federal action may be needed to protect the interest of a subject of the investigation or of others potentially affected;

(5) A premature public disclosure of the inquiry into or investigation of the allegation may compromise the process;

(6) The scientific community or the public should be informed; or

(7) There is reasonable indication of possible violations of civil or criminal law.

(b) If research misconduct proceedings reveal behavior that may be criminal in nature at any point during the proceedings, the institution must promptly notify the ARIO.

#### **§ 3022.8 Communication of research misconduct policies and procedures.**

Institutions that conduct USDA-funded extramural research are to maintain and effectively communicate to their staffs policies and procedures relating to research misconduct, including the guidelines in this part. The institution is to inform their researchers and staff members who conduct USDA-funded extramural research when and under what circumstances USDA is to be notified of allegations of research misconduct, and when and under what circumstances USDA is to be updated on research misconduct proceedings.

#### **§ 3022.9 Documents required.**

(a) A research institution that conducts USDA-funded extramural research must maintain the following documents related to an allegation of research misconduct at the research institution:

(1) A written statement describing the original allegation;

(2) A copy of the formal notification presented to the subject of the allegation;

(3) A written report describing the inquiry stage and its outcome including copies of all supporting documentation;

(4) A description of the methods and procedures used to gather and evaluate information pertinent to the alleged misconduct during inquiry and investigation stages;

(5) A written report of the investigation, including the evidentiary record and supporting documentation;

(6) A written statement of the findings; and

(7) If applicable, a statement of recommended corrective actions, and any response to such a statement by the subject of the original allegation, and/or other interested parties, including any corrective action plan.

(b) The research institution must retain the documents specified in paragraph (a) of this section for at least 3 years following the final adjudication of the alleged research misconduct.

#### **§ 3022.10 Reporting to USDA.**

Following completion of an investigation into allegations of research misconduct, the institution conducting extramural research must provide to the ARIO a copy of the evidentiary record, the report of the investigation, recommendations made to the institution's adjudicating official, the adjudicating official's determination, the institution's corrective action taken or planned, and the written response of the individual who is the subject of the allegation to any recommendations.

#### **§ 3022.11 Research records and evidence.**

(a) A research institution that conducts extramural research supported by USDA funds, as the responsible legal entity for the USDA-supported research, has a continuing obligation to create and maintain adequate records (including documents and other evidentiary matter) as may be required by any subsequent inquiry, investigation, finding, adjudication, or other proceeding.

(b) Whenever an investigation is initiated, the research institution must promptly take all reasonable and practical steps to obtain custody of all relevant research records and evidence as may be necessary to conduct the research misconduct proceedings. This must be accomplished before the research institution notifies the researcher/respondent of the allegation, or immediately thereafter.

(c) The original research records and evidence taken into custody by the research institution shall be inventoried and stored in a secure place and manner. Research records involving raw data shall include the devices or instruments on which they reside. However, if deemed appropriate by the research institution or investigator, research data or records that reside on or in instruments or devices may be copied and removed from those instruments or devices as long as the copies are complete, accurate, and have substantially equivalent evidentiary value as the data or records have when the data or records reside on the instruments or devices. Such copies of data or records shall be made by a disinterested, qualified technician and not by the subject of the original allegation or other interested parties. When the relevant data or records have been removed from the devices or instruments, the instruments or devices need not be maintained as evidence.

#### **§ 3022.12 Remedies for noncompliance.**

USDA agencies' implementation procedures identify the administrative actions available to remedy a finding of

research misconduct. Such actions may include the recovery of funds, correction of the research record, debarment of the researcher(s) that engaged in the research misconduct, proper attribution, or any other action deemed appropriate to remedy the instance(s) of research misconduct. The agency should consider the seriousness of the misconduct, including, but not limited to, the degree to which the misconduct was knowingly conducted, intentional, or reckless; was an isolated event or part of a pattern; or had significant impact on the research record, research subjects, other researchers, institutions, or the public welfare. In determining the appropriate administrative action, the appropriate agency must impose a remedy that is commensurate with the infraction as described in the finding of research misconduct.

#### **§ 3022.13 Appeals.**

(a) If USDA relied on an institution to conduct an inquiry, investigation, and adjudication, the alleged person(s) should first follow the institution's appeal policy and procedures.

(b) USDA agencies' implementation procedures identify the appeal process when a finding of research misconduct is elevated to the agency.

#### **§ 3022.14 Relationship to other requirements.**

Some of the research covered by this part also may be subject to regulations of other governmental agencies (e.g., a university that receives funding from a USDA agency and also under a grant from another Federal agency). If more than one agency of the Federal Government has jurisdiction, USDA will cooperate with the other Agency(ies) in designating a lead agency. When USDA is not the lead agency, it will rely on the lead agency following its policies and procedures in determining whether there is a finding of research misconduct. Further, USDA may, in consultation with the lead agency, take action to protect the health and safety of the public, to promote the integrity of the USDA-supported research and research process, or to conserve public funds. When appropriate, USDA will seek to resolve allegations jointly with the other agency or agencies.

Dated: August 5, 2010.

Issued at Washington, DC.

**Jon M. Holladay,**

*Acting Chief Financial Officer.*

**Thomas J. Vilsack,**

*Secretary, U.S. Department of Agriculture.*

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**BILLING CODE 3410-90-P**

## **FEDERAL DEPOSIT INSURANCE CORPORATION**

### **12 CFR Parts 328, 330, and 347**

**RIN 3064-AD61**

#### **Deposit Insurance Regulations; Permanent Increase in Standard Coverage Amount; Advertisement of Membership; International Banking; Foreign Banks**

August 10, 2010.

**AGENCY:** Federal Deposit Insurance Corporation (FDIC).

**ACTION:** Final rule.

**SUMMARY:** On July 21, 2010, the President signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank" Act). Section 335 of the Dodd-Frank Act made permanent the standard maximum deposit insurance ("SMDIA") amount of \$250,000. The FDIC is conforming its regulations to reflect this recent congressional action.

**DATES:** *Effective Date:* August 13, 2010.

*Mandatory Compliance Date for Revision to 12 CFR Part 328 (FDIC Official Sign):* January 3, 2011.

#### **FOR FURTHER INFORMATION CONTACT:**

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#### **SUPPLEMENTARY INFORMATION:**

##### **Overview**

In this final rule, the FDIC is making conforming changes to its insurance regulations (12 CFR part 330), international banking regulations (12 CFR part 347) and advertising regulations (12 CFR part 328) to reflect Congress's action making permanent the increase in the SMDIA (from \$100,000 to \$250,000).

##### **I. Background**

The Emergency Economic Stabilization Act of 2008 temporarily increased the SMDIA from \$100,000 to \$250,000, effective October 3, 2008, through December 31, 2009.<sup>1</sup> On October 17, 2008, the FDIC adopted an interim rule amending its deposit insurance regulations to reflect this temporary increase in the SMDIA.<sup>2</sup>

<sup>1</sup> Public Law 110-343 (Oct. 3, 2008).

<sup>2</sup> 73 FR 61658 (Oct. 17, 2008).

Subsequent to the issuance of this interim rule, on May 20, 2009, the President signed the Helping Families Save Their Homes Act of 2009 ("Helping Families Act"), which, among other provisions, extended the temporary increase in the SMDIA from December 31, 2009, to December 31, 2013.<sup>3</sup> On September 17, 2009, the FDIC adopted a final rule amending its deposit insurance regulations to reflect this extension and to provide further guidance by updating its examples of deposit insurance coverage to incorporate the increased SMDIA.<sup>4</sup> On July 21, 2010, the President signed the Dodd-Frank Act,<sup>5</sup> which, among other provisions, made permanent<sup>6</sup> the increase in the SMDIA from \$100,000 to \$250,000.<sup>7</sup>

As implemented by part 328 of the FDIC's regulations (12 CFR part 328), section 18(a) of the Federal Deposit Insurance Act (12 U.S.C. 1828(a)) requires that insured depository institutions display an official FDIC sign, which informs depositors of their minimum amount of deposit insurance coverage and states that this insurance is backed by the full faith and credit of the United States Government. As a result of the Helping Families Act's extension of the temporary increase in the SMDIA to \$250,000, on May 22, 2009, the FDIC issued a Financial Institution Letter, FIL-22-2009, encouraging institutions to post notices of the temporary increase in the deposit insurance limit through December 31, 2013. At that time, the FDIC provided an optional sign reflecting the temporary increase in deposit insurance coverage.

## **II. The Final Rule**

### **A. Section 330.1 Definitions**

The final rule revises the FDIC's deposit insurance rules (12 CFR Part 330) to define the SMDIA as \$250,000 and to remove provisions indicating that the SMDIA will return to \$100,000. This change is made in response to the Dodd-Frank Act, which, among other provisions, made permanent the increase in the SMDIA from \$100,000 to \$250,000. The Dodd-Frank Act also

<sup>3</sup> Public Law 111-22 (May 20, 2009).

<sup>4</sup> 74 FR 47711 (Sept. 17, 2009).

<sup>5</sup> Public Law 111-203 (July 21, 2010).

<sup>6</sup> The SMDIA is still subject to an inflation adjustment pursuant to subparagraph (F) of section 11(a)(1) of the Federal Deposit Insurance Act (12 U.S.C. 1821(a)(1)(F)). However, this inflation adjustment will not affect the level of the SMDIA in the foreseeable future because it will not take effect until the value of \$100,000, inflation adjusted since 2005, exceeds the current SMDIA.

<sup>7</sup> The effective date of the Dodd-Frank Act is July 22, 2010, one day after the enactment of the act.