

# PART 935 - RESEARCH AND DEVELOPMENT CONTRACTING

Authority: 42 U.S.C. 7101 and 50 U.S.C. 2401

Source: 49 FR 12016, Mar. 28, 1984, unless otherwise noted.

## 935.010 Scientific and technical reports.

(a) ~~(a)~~ For purposes of section 982 of the Energy Policy Act of 2005 (42 U.S.C. 16322), the research results, referred to as scientific and technical information (STI), are derived from management and operation (M&O), research and development (R&D), facility management, and non-major site/facility management type contracts. STI must be documented, managed, and electronically submitted to the Department of Energy (DOE), Office of Scientific and Technical Information (OSTI), using the DOE Energy Link System. DOE Order 241.~~1B~~1C, Scientific and Technical Information Management, or its successor, version; sets forth requirements for STI management and the types of STI products to be announced and submitted to DOE OSTI. STI products identified in DOE Order 241.1B are reportable to OSTI whether publicly releasable, controlled unclassified information or classified.

(b) ~~(b)~~ The Contracting Officer ~~shall~~will ensure that the requirements for STI management, as prescribed in DOE Order 241.~~1B~~1C (or successor order), or its successor version, are included in accordance with the attendant Contractor Requirements Document or in the statement of work.

## 935.070 Research misconduct.

The policy on research misconduct, set forth at 10 CFR part 733, applies to individuals who propose, perform or review research of any kind for the Department of Energy pursuant to a contract. The regulations in 10 CFR part 733 apply regardless of where the research or other activity is conducted or by whom.

## 935.071 Contract clause.

The contracting officer ~~must~~is required to insert the clause at 952.235-71, Research Misconduct, (Deviation June 2026), in contracts, including management and operating contracts, that involve research.

# PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

## 952.235-71 Research misconduct.

As prescribed in 935.071, insert the following clause:

### Research Misconduct (~~JUL 2005~~DEVIATION JUNE 2026)

(a) ~~(a)~~ The Contractor is responsible for maintaining the integrity of research performed pursuant to this contract award including the prevention, detection, and remediation of research misconduct as defined by this clause, and the conduct of inquiries, investigations, and adjudication of allegations of research misconduct in accordance with the requirements of this clause.

(b) ~~(b)~~ Unless otherwise instructed by the Contracting Officer, the Contractor must will conduct an initial inquiry into any allegation of research misconduct. If the Contractor determines that there is sufficient evidence to proceed to an investigation, it must will notify the Contracting Officer and, unless otherwise instructed, the Contractor must:

(1) ~~(1)~~ Conduct an investigation to develop a complete factual record and an examination of such record leading to either a finding of research misconduct and an identification of appropriate remedies or a determination that no further action is warranted.

(2) ~~(2)~~ If the investigation leads to a finding of research misconduct, conduct an adjudication by a responsible official who was not involved in the inquiry or investigation and is separated organizationally from the element which conducted the investigation. The adjudication must will include a review of the investigative record and, as warranted, a determination of appropriate corrective actions and sanctions.

(3) ~~(3)~~ 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. 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).

(c) ~~(e)~~ The Department of Energy (DOE) may elect to act in lieu of the Contractor in conducting an inquiry or investigation into an allegation of research misconduct if the Contracting Officer finds that     

(1) ~~(1)~~ The research organization is not prepared to handle the allegation in a manner consistent with this clause;

(2) ~~(2)~~ The allegation involves an entity of sufficiently small size that it cannot reasonably conduct the inquiry;

(3) ~~(3)~~ DOE involvement is necessary to ensure the public health, safety, and security, or to prevent harm to the public interest; or

(4) ~~(4)~~ The allegation involves possible criminal misconduct.

(d) ~~(d)~~ In conducting the activities under paragraphs (b) and (c) of this clause, the Contractor and the Department, if it elects to conduct the inquiry or investigation, shall will adhere to the following guidelines:

(1) ~~(1)~~ *Safeguards for information and subjects of allegations.* The Contractor shall will provide safeguards to ensure that individuals may bring allegations of research misconduct made in good faith to the attention of the Contractor without suffering retribution. Safeguards include: protection against retaliation; fair and objective procedures for examining and resolving allegations; and diligence in protecting positions and reputations. The Contractor shall will also provide the subjects of allegations confidence that their rights are protected and that the mere filing of an allegation of research misconduct will not result in an adverse action. Safeguards include timely written notice regarding substantive allegations against them, a description of the allegation and reasonable access to any evidence submitted to support the allegation or developed in response to an allegation and notice of any findings of research misconduct.

(2) ~~(2)~~ *Objectivity and expertise.* The Contractor shall will select individual(s) to inquire, investigate, and adjudicate allegations of research misconduct who have appropriate expertise and have no unresolved conflict of interest. The individual(s) who conducts an adjudication must will not be the same individual(s) who conducted the inquiry or investigation, and must will be separate organizationally from the element that conducted the inquiry or investigation.

(3) ~~(3)~~ *Timeliness.* The Contractor ~~shall~~will coordinate, inquire, investigate and adjudicate allegations of research misconduct promptly, but thoroughly. Generally, an investigation should be completed within 120 days of initiation, and adjudication should be ~~complete~~completed within 60 days of receipt of the record of investigation.

(4) ~~(4)~~ *Confidentiality.* To the extent possible, consistent with fair and thorough processing of allegations of research misconduct and applicable law and regulation, knowledge about the identity of the subjects of allegations and informants should be limited to those with a need to know.

(5) ~~(5)~~ *Remediation and sanction.* If the Contractor finds that research misconduct has occurred, it ~~shall~~will assess the seriousness of the misconduct and its impact on the research completed or in process. The Contractor ~~must~~will take all necessary corrective actions. Such ~~action~~actions may include but are not limited to, correcting the research record and as appropriate imposing restrictions, controls, or other parameters on research in process or to be conducted in the future. The Contractor ~~must~~will coordinate remedial actions with the Contracting Officer. The Contractor ~~must~~will also consider whether personnel sanctions are appropriate. Any such sanction ~~must~~will be considered and effected consistent with any applicable personnel laws, policies, and procedures, and ~~shall~~will take into account the seriousness of the misconduct and its impact, whether it was done knowingly or intentionally, and whether it was an isolated event or pattern of conduct.

(e) ~~(e)~~ DOE reserves the right to pursue such remedies and other actions as it deems appropriate, consistent with the terms and conditions of the award instrument and applicable laws and regulations. However, the Contractor's good faith administration of this clause and the effectiveness of its remedial actions and sanctions ~~shall be positive considerations and shall be taken into account~~will be considered as mitigating factors in assessing the need for such actions. If DOE pursues any such action, it will inform the subject of the action of the outcome and any applicable appeal procedures.

(f) ~~(f)~~ *Definitions.*

*Adjudication* means a formal review of a record of investigation of alleged research misconduct to determine whether and what corrective actions and sanctions should be taken.

*Fabrication* means making up data or results and recording or reporting them.

*Falsification* means manipulating research materials, equipment, or processes, or changing or omitting data or results such that the research is not accurately represented in the research record.

*Finding of Research Misconduct* means a determination, based on a preponderance of the evidence, that research misconduct has occurred. Such a finding requires a conclusion that there has been a significant departure from accepted practices of the relevant research community and that it be knowingly, intentionally, or recklessly committed.

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

*Investigation* means the formal examination and evaluation of the relevant facts.

*Plagiarism* means the appropriation of another person's or non-persons ideas, processes, results, or words without giving appropriate credit.

*Research* means all basic, applied, and demonstration research in all fields of science, medicine, engineering, and mathematics, including, but not limited to, research in economics, education, linguistics, medicine, psychology, social sciences statistics, and research involving human subjects or animals.

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

*Research record* means the record of all data or results that embody the facts resulting from scientists' inquiries, including, but not limited to, research proposals, laboratory records, both physical and electronic, progress reports, abstracts, theses, oral presentations, internal reports, and journal articles.

(g) ~~(g)~~ By executing this contract, the Contractor provides its assurance that it has established an administrative process for performing an inquiry, mediating if possible, or investigating, and reporting allegations of research misconduct; and that it will comply with its own administrative process and the requirements of 10 CFR part 733 for performing an inquiry, possible mediation, investigation and reporting of research misconduct.

(h) ~~(h)~~ The Contractor must will insert or have inserted the substance of this clause, including paragraph (g), in subcontracts at all tiers that involve research.

(End of clause)