



PUBLIC EMPLOYEES FOR ENVIRONMENTAL RESPONSIBILITY

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Office of the Secretary
Consumer Product Safety Commission
4330 East-West Highway
Bethesda, MD 20814

Submitted electronically at cpsc-os@cpsc.gov and at [https:// www.regulations.gov](https://www.regulations.gov)

RE: PEER Comments on draft Scientific Integrity Policy of the Consumer Product Safety Commission

Public Employees for Environmental Responsibility (PEER) wishes to express its profound disappointment with the provisions of the draft Scientific Integrity Policy of the CPSC now available for public comment.

PEER has provided legal representation to federal scientists struggling with scientific integrity issues for over 30 years. Our work helped lay the foundation for the 2009 Obama Directive on Scientific Integrity.¹ During the Obama presidency, PEER filed more complaints on behalf of scientists for violations of agency scientific integrity policies than any other organization.

Based upon this experience, PEER has provided the White House Office of Science & Technology Policy (OSTP) extensive feedback in the development of its Model Policy Framework. However, both the OSTP Model Policy and CPSC draft policy continue to exhibit the same fundamental weaknesses that led President Biden to issue his January 2021 Memorandum on Restoring Trust in Government through Scientific Integrity and Evidence-Based Policymaking.² in the first place.

President Biden pledged in his government-wide memorandum to public trust in the integrity of federal science. Unfortunately, based on our analysis, as detailed below, the proposed CPSC policy will do almost nothing to accomplish this. Notably, the policy lacks fundamental safeguards against the suppression or political manipulation of science. It leaves key functions blank, such as how investigations of alleged scientific misconduct will be conducted, to be filled in later. Further, it lacks any protections for scientists who express dissenting scientific opinions or face reprisal due to the controversial implications of their research.

Notably, the CPSC draft policy uses the word “integrity” 79 times in its ten pages of text but contains almost no concrete provisions that would secure scientific integrity.

¹ [Memorandum for the Heads of Executive Departments and Agencies 3-9-09 | whitehouse.gov \(archives.gov\)](#)

² [Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking | The White House](#)

PEER's comments address five major concerns about CPSC's draft policy:

- I. Inappropriate, Inconsistent and Illegal Restrictions on Scientist Communications
- II. No Process for Independent Investigation of Misconduct Allegations
- III. Opaque Transparency Provisions Do Not Prevent Suppression of Research
- IV. No Meaningful Protections for Scientists Against Retaliation
- V. Complete Lack of Accountability for Violators

Turning to each of these concerns in order:

I. Inappropriate, Inconsistent and Illegal Restrictions on Scientist Communications

A. Contradictory Language

The CPSC draft declares that “CPSC scientists and technical staff must be able to communicate their scientific activities comprehensively and objectively” but then states that “CPSC staff must not make or publish statements that might be construed as being judgments of, or recommendations on, CPSC or any other Federal Government policy, unless they have secured appropriate prior approval to do so.” (Emphasis added)

The draft policy makes no attempt to reconcile these two seemingly conflicting statements. Nor does CPSC identify what public policy is served by this poorly written sweeping restriction on the speech of staff scientists and technical staff.

Ironically, CPSC inserts this sweeping restriction in the section of the draft policy entitled "Safeguarding the Free Flow of Scientific Information," – where it is repeated three times so that there is no mistaking that it applies to both internal discussions with colleagues as well as outside communications with members of the media, Congress, and the public.

Contrary to this placement, as detailed below, this functional gag order does not support the free flow of scientific information; instead, it strangles that free flow.

By this restriction, CPSC apparently fails to recognize that scientific research that carries policy implications is at the greatest risk of suppression or political manipulation – for precisely that reason – and, therefore, is in greater need of protection.

CPSC should resolve this apparent contradiction. Optimally, CPSC should completely discard this misguided prohibition against statements that “could be construed” as comments or recommendations on federal policies. In PEER's view, this language (underlined above) has no place in any agency's scientific policy.

B. Conflicted Role

The CPSC draft declares that the role of agency scientific work is to implement “the mission of the CPSC to protect the public against unreasonable risks of injury associated with the use of consumer products.” To do so, CPSC must ensure “that relevant technical, environmental, economic, and social impacts of projects are comprehensively and objectively presented to the Commission for decision.”

It would be difficult to make a comprehensive presentation of all “relevant technical, environmental, economic, and social impacts” if a specialist cannot make any statement that comments upon the efficacy of current safety regulations. This would be especially so if the specialist is barred from making any comments that “could be construed as” a judgment or recommendation about those regulations.

The CPSC draft cites 2010 OSTP guidance that scientific integrity is supposed to foster “honest scientific investigation, open discussion, refined understanding, and a firm commitment to evidence.” Open discussion means allowing participants to comment on the effectiveness, or lack thereof, of current regulations, something this draft policy impedes if not completely prohibits.

The draft policy further notes that CPSC scientific work “may be used in support of regulatory and/or policymaking documents that may not align with the science-based recommendation because other factors are taken into consideration when developing those documents.” Again, it is difficult to envision how this function is fulfilled without a frank discussion of the impacts and limitations of current regulations.

A key provision of the draft policy states:

“CPSC staff’s scientific activities, findings and products help to inform the Commission and must not be suppressed, unreasonably delayed, or altered for political purposes and must not be subjected to inappropriate influence.”

Yet, vetting all scientific findings work to purge any statements that “could be construed” as a judgment or recommendation on any federal policy will work to delay, alter, influence, and suppress scientific findings – accomplishing just the opposite of the policy’s overall purpose.

Further, the draft policy requires CPSC to “also provide... a clear explanation of underlying assumptions, inferential procedures, and where appropriate, probabilities associated with a range of projections or scenarios.” Making assumptions, discussing inferences, and establishing probabilities are all activities fraught with the risk of expressing “judgments” or conclusions “that could be construed” as judgments.

Finally, the draft policy indicates that scientists may “directly participate in policy and management briefings where their science is being used in order to ensure that the science is accurately represented and interpreted.” It is unclear how CPSC scientists can play a role in policy development without being able to make statements that “could be construed” as judgments on or recommendations about how policies should evolve.

C. Makes Media Interviews Problematic

This restriction also restricts the ability of staff to answer questions from the media. The proposed policy provision relating to media interactions states –

“CPSC will permit and encourage CPSC scientists and technical staff to participate in communications with the media consistent with agency policies and procedures regarding their scientific activities and areas of scientific expertise.”

In this context, the draft policy reiterates the prohibition:

“CPSC employees are allowed to report their scientific findings and communicate with the media or the public in their official CPSC capacities, as governed by federal law and agency policies. CPSC staff must not make or publish statements that might be construed as being judgments of, or recommendations on, CPSC or any other Federal Government policy, unless they have secured appropriate prior approval to do so. Such communications should remain within the bounds of their scientific findings, unless specifically otherwise authorized.”

This language indicates that CPSC specialists should decline to answer media questions regarding the context or implications of scientific findings for fear of violating the prohibition against making statements that could be construed as judgments relating to any federal policies. Yet, reporters often seek to provide their readers with context and implications that this draft policy forbids agency experts from providing.

More broadly, the draft policy declares –

“Open communication among scientists and technical staff within and outside the Commission is encouraged; however, CPSC staff must adhere to Commission statutes, regulations and policies.”

Unfortunately, by its terms, the CPSC draft policy precludes the very “open communication” it purports to promote.

D. Similar Provision Abused by U.S. Department of Agriculture

This provision is apparently based upon a similar provision in the U.S. Department of Agriculture’s scientific integrity policy.³ On July 14, 2021, PEER wrote to OSTP specifically warning about this provision in the USDA policy.⁴ Unfortunately, our warning to OSTP was not heeded as it included this language in its “Model Scientific Integrity Policy” released this past January.⁵ Further, OSTP did not respond to a letter sent in April 2023 by PEER and more than a dozen public interest groups urging the removal of this language from the OSTP Model.⁶

Among the reasons for these warnings was that USDA had used this provision as the basis for ordering a staff entomologist represented by PEER to remove his name from a peer-reviewed journal article on how monoculture farming reduces diversity in insect populations, limiting beneficial pollinators. This same provision of the USDA policy was also cited as the basis for barring this scientist from speaking at a conference about the effects on pollinators from genetically modified crops and the insecticides used to treat them. He later resigned in frustration, convinced he could no longer conduct meaningful research while employed at USDA.

³ See USDA DR/1074-001, Sec.6(e)1)c1

⁴ https://peer.org/wp-content/uploads/2021/07/7_14_21-SI-Should-Not-Vary-from-Agency-to-Agency.pdf

⁵ <https://peer.org/ostp-slips-gag-rule-into-model-scientific-integrity-policy/>

⁶ https://peer.org/wp-content/uploads/2023/04/Organization_Letter_Scientific_Integrity_Framework.pdf

In addition to our entomologist client, PEER received reports from other USDA scientists that managers had initiated –

- Directives not to publish data on certain topics of particular sensitivity to industrial agricultural interests, such as pesticide manufacturers;
- Orders to rewrite scientific articles already accepted for publication in a peer-reviewed journal to remove sections that could provoke industry objections; and
- Inordinate, sometimes indefinite, delays in approving submission for publication of scientific papers that may be controversial with agricultural interests.

In short, this provision that CPSC proposes to adopt was used, and is still being used, to pressure USDA scientists working on topics with direct relevance to industry interests not to do anything to upset important “stakeholders.”

As has been seen at USDA, this language will give industry a new avenue to object to the presentation of scientific findings it does not like. Given that the CPSC deals with manufactured products, the ability of regulated industries to use the agency’s own Scientific Integrity Policy as a tool to quash scientific research with findings adverse to industry interests should be a major concern.

Finally, CPSC should be aware that its adoption of such a far-reaching restriction is bound to create a chilling effect among scientists, just as it did at USDA.

E. Broad Chilling Effect – Dickey Amendment Amplified

In the 1997 federal omnibus spending bill, Congress inserted a rider called The Dickey Amendment (named after its author Rep. Jay Dickey [R-AR] that provided “none of the funds made available for injury prevention and control at the Centers for Disease Control and Prevention & Prevention (CDC) may be used to advocate or promote gun control.”⁷

Although the Dickey Amendment did not explicitly prohibit research on gun violence, for nearly two decades, the CDC avoided all research on gun violence for fear it would be financially penalized. Such research finally resumed after Congress narrowed the language and earmarked funding for gun violence research in the federal omnibus spending bill for FY2020.⁸

The Dickey Amendment language was not nearly as broad as the language CPSC proposes to insert in its Scientific Integrity Policy. The former language banned activity “to advocate or promote...” By contrast, the CPSC draft language outlaws any statement “that may be construed as a judgment of, or recommendation on” any policy by any federal agency – a far more nebulous and potentially wide-ranging prohibition.

⁷ <https://www.govinfo.gov/content/pkg/PLAW-104publ208/pdf/PLAW-104publ208.pdf>

⁸ <https://www.nature.com/articles/d41586-019-03882-w>

If the Dickey bar against blatant advocacy and promotion worked effectively to stifle research, our concern is that this more far-reaching CPSC language could have a far more extensive chilling effect on research across an array of controversial subjects studied by CPSC scientists. Under the broad draft language, it is not difficult to imagine many scenarios in which this provision could be used to threaten public scientists or stifle controversial research across a wide range of topics. For example, CPSC research on –

- Carbon monoxide poisoning from automobile and space heater exhaust could be construed as judgment about the lack of requirements for CO monitors on these machines;
- Dangerous emissions from gas ovens could be construed as a recommendation supporting all-electric oven policies; or
- Injuries on artificial turf surfaces could be construed as a recommendation on the need for policies to prevent young athletes from playing on these surfaces.

Further, it is also quite possible the CPSC language could spur self-imposed restrictions on research into accidental shootings to avoid statements that *could be construed* as judgments on weak federal gun control policies and the lack of mandatory trigger lock requirements.

F. Restriction Subject to Abuse – Especially with Change of Administration

While current CPSC leadership may have no intention of applying this language in the ways suggested above, they have no control over how a succeeding administration may use this prohibition. In other words, CPSC should have had second thoughts about adopting language that a differently constituted administration could use to stifle research – all while claiming with a straight face that they are simply enforcing a Biden scientific integrity protection.

Consider the case of Dr. George Luber, an epidemiologist who served as Chief of the Climate and Health Program at CDC. He had been the very public face of climate science at the CDC, frequently appearing on TV news and speaking at professional conferences. He is the lead author of the Fourth National Climate Assessment’s Chapter on Human Health, released in 2018, and was the lead author for a report the U.S. Supreme Court cited in its seminal 2007 ruling that greenhouse gases should be regulated under the Clean Air Act.

In February 2017, shortly after the Trump inauguration, CDC cancelled, over his objections, a symposium Dr. Luber was slated to host featuring Al Gore. He was then directed to stop using the phrase “climate change” and forbidden from responding to any further media or congressional inquiries.

In a letter dated October 22, 2018, CDC Environmental Health Center Director Patrick Breysse (the same official who ordered Dr. Luber to stop using the term “climate change”) proposed his removal based upon an alleged failure to obtain permission to author a 2015 book, give lectures at Emory University, and more than 30 other charges. Had the CPSC policy been in place at CDC, Dr. Luber could also have been charged with lectures and writing that could easily be construed as judgments on the effects of several federal policies, including those related to the release of greenhouse gases.

This proposed action was withdrawn after a reporter for the *New York Times* called to inquire about it. PEER later successfully negotiated a settlement for Dr. Lubner so that he could continue his research free from the constraints CDC wished to impose.

The point of this episode is to underline how quickly political strictures can be placed upon scientists, even those within agencies such as CPSC, after a change in administration. The concern is that a new administration with an anti-regulatory agenda could use this restriction as a tool for stifling research on topics that are sensitive to industry stakeholders or to stifle such research altogether.

The many other attempts to stifle science during the Trump tenure need not be recounted here,⁹ except to note that they were the basis for President Biden declaring that the Obama-era scientific integrity policies obviously did not work to prevent these abuses and must be strengthened. Above all, CPSC must act to strengthen its Scientific Integrity Policy, not weaken it. Unfortunately, the CPSC draft policy would facilitate the political manipulation of science rather than prevent it.

G. Unconstitutional As Applied to Scientists' Personal Statements

The draft policy states that “CPSC employees may express their personal views and opinions...subject to ethical requirements...” The draft does not make it clear that the proposed prohibitions on judgments or recommendations does not apply to purely personal utterances.

If applied to CPSC scientists' personal writings or speech, it would violate that government scientist's First Amendment right to speak freely in their capacity as citizens on matters of public concern.¹⁰ In addition, this provision can be used to prevent agency scientists, as well as private scientists collaborating with or contracting with a federal agency, from even discussing the policy implications of vital research.

Significantly, one of the stated aims of the CPSC draft policy is to promote a free and open exchange of scientific information. Yet, this poorly worded, overly broad provision clearly does the opposite. CPSC should make it clear that its policy prohibitions are not intended to limit constitutionally guaranteed free expression.

The First Amendment is not absolute, however, and courts apply a balancing test that weighs the public importance of the speech versus any potential disruption of efficient government operations.¹¹ Such a calculus should weigh heavily in favor of the public interest value of research conducted by a federal government scientist against potential embarrassment to a government agency.

II. No Process for Independent Investigation of Misconduct Allegations

⁹ <https://www.scientificamerican.com/article/what-you-know-about-trumps-assault-on-science-was-just-the-tip-of-the-iceberg/>

¹⁰ See <https://peer.org/usda-sued-to-end-scientific-censorship/>

¹¹ See *Pickering v. Board of Education*, 391 U.S. 563 (1968)

The CPSC draft policy does not lay out procedures that would encourage public confidence in the integrity of its science. Instead, the draft is crafted to cement agency insiders' control, without the prospect of any independent review or appeal, under rules that have yet to be promulgated.

A. No Independence

Under the CPSC draft policy, a key official reviewing allegations of scientific misconduct or lack of integrity will be an official known as the Scientific Integrity Officer or SIO. Among the key responsibilities of this position are to "Lead the review and adjudication of allegations of loss of CPSC scientific integrity (particularly related to political interference) in cases where such allegations fall outside of existing processes..."

The SIO is also responsible for developing processes and procedures to be implemented and maintained across the agency that encourage personal and organizational responsibility in upholding scientific integrity at CPSC.

The draft policy makes no provision to ensure the independence of the SIO. Instead, it stipulates that the SIO is a direct report to the agency's Executive Director.

There is nothing in the draft policy to ensure that the SIOs will act to do anything possible to avoid situations that could trigger official reprisal rather than to protect scientific integrity. In PEER's experience, we have seen several examples of SIOs dismissing valid complaints, declining to investigate complaints, restricting the scope of investigations when they occur, or shielding political appointees.¹²

In short, senior civil servants occupying positions such as SIO are often unwilling to take actions that will hinder their later career ascension or success. Acting to confirm a scandal within agency ranks or leadership, especially by political appointees, is usually not a path for career advancement.

An example of the type of political interference that can hinder an SIO's work can be found in PEER's representation of an SIO who was removed after pursuing a complaint against the staff of the Secretary of Interior.¹³

The only check on the SIO contained in the draft policy is the creation of the Scientific Integrity Committee (SIC), a body the draft policy states "is comprised of career staff who act as liaisons for their respective groups/directorates..." This SIC is not designed to provide independent review but is designed to protect institutional interests within CPSC.

It is simply not credible for a system designed to ensure integrity to depend almost entirely on an official designated by the agency's top official. It is certainly not an arrangement that would restore public trust in the credibility of CPSC science. Rather than relying on senior officials to make all these decisions, CPSC should consider using panels of outside experts to make or confirm sensitive judgments about the loss of scientific integrity.

¹² <https://peer.org/can-biden-science-task-force-break-old-bad-habits/>

¹³ <https://peer.org/scientific-whistleblower-complaint-resolved/>

Thus, the CPSC draft is premised on senior officials self-policing as the only protection for scientific integrity. Such a blatantly self-serving arrangement does not restore public faith, as President Biden promised, but instead threatens to undermine that faith further.

B. No Procedures for Investigation and Adjudication

The draft policy is largely bereft of any specific rules or procedures. In the place of specifics, the draft contains pledges to develop them. For example, the draft states that –

“The Scientific Integrity Official in conjunction with the SIC shall draft and submit for approval a draft Directive and supporting procedures for operationalizing this policy including:

- Addressing scientific integrity concerns
- Handling differing scientific opinions
- Clearance of scientific products
- Scientific communications
- Authorship and attribution other topics as needed.

These policies shall be completed within one year of the release of this policy.”

In the same vein, the draft policy indicates that the specific governing scientific policy implementation have yet to be written:

“Supporting standard operating procedures (SOPs) to operationalize this policy will be proposed by the SIC, which also may propose periodic updates and these SOPs will be developed through agency directives process.

These SOPs will describe processes and procedures specific to the CPSC that support the policy requirements outlined below. The SIC will review existing CPSC policies and procedures and, as needed, develop new SOPs to ensure the following scientific integrity principles are incorporated into CPSC management controls.”

This utterly opaque process means that the quality or effectiveness of this policy cannot be assessed for some indeterminate period.

As written, this draft policy is more of a promise to develop a policy than a policy. Moreover, the framing of these tasks suggests they will be done internally, without any opportunity for public or staff review.

PEER suggests that CPSC withdraw this draft and resubmit it for public comment when all these significant gaps have been filled in.

C. Murky “Grievance” Process

The draft policy does contain a less than one-page description of how a “Scientific Grievance” will be addressed. This cursory language suggests that this process is limited to complaints from staff and not the public or any outside parties. The draft policy contains this cryptic passage:

“If the SIC believes the complaint does not merit further action, they will provide a written response to the staff explaining their decision. If the case appears to have merit, a

review and written summary, including recommendations for any remedial action, will be forwarded from the SIC lead to the appropriate office(s).”

It is somewhat surprising that this draft policy does specify how allegations of misconduct in its intramural program are to be investigated and adjudicated. Further, CPSC is not proposing any specific process for how these policies will be developed. This language suggests that the SIO and SIC are free to make up rules in an *ad hoc* fashion.

D. No Pathway to Appeal

The draft policy makes no specific provision indicating whether determinations by the SIC may be appealed and how that might be done. The only mention of appeals in the draft states that “the numbers of investigations and appeals involving alleged deviations from the policy are posted at least annually on a public-facing website of the agency.”

Not only does the draft policy fail to specify to whom an aggrieved party may appeal, it also gives no hint as to what procedures govern this appeal. Nor is there a firm timetable for the promulgation of these procedures. Further, it appears that these procedures will be developed without any further input or review from the public, staff, or anyone else.

Under current scientific integrity policies, when an SIO arbitrarily dismisses or derails a complaint, there is little recourse provided. Similarly, it is not clear whether CPSC SIO findings that no investigation is warranted will be appealable.

Despite claiming that these eventual procedures will ensure the redress of deviations from scientific integrity, the framing of this draft policy does not bode well for the timeliness or thoroughness of the promised final rules.

E. No Transparency

The draft CPSC policy does not indicate whether the outcomes of investigations into alleged deviations will be publicly available. The above-cited passage from the draft indicates that only “the numbers of investigations and appeals involving alleged deviations from the policy are posted at least annually” (Emphasis added), not the specifics of those allegations, investigations, and appeals. Further, there is no provision that any SIC findings about allegations will be made publicly available.

It is not clear on what basis CPSC could withhold such information from release under the Freedom of Information Act. Notably, PEER has had to use the FOIA legal process to force the release of such information over agency objections.¹⁴

More significantly, President Biden’s directive that commissioned this policy development process had the words “Restoring Trust in Government Through Scientific Integrity” in its title. It is hard to argue that releasing only after-the-fact summaries devoid of any detail will restore public trust in the integrity of federal science. Public credibility in the integrity of federal science requires a degree of transparency that this draft policy sorely lacks.

¹⁴ See <https://peer.org/senior-officials-skewed-science-to-benefit-xl-pipeline/>

III. Opaque Transparency Provisions Allow Suppression of Research

Despite rhetoric about preventing the suppression of research, the draft policy contains no specific provision to achieve that outcome. The policy declares, "Scientific products (e.g., manuscripts for scientific journals, presentations for workshops, conferences, and symposia) shall adhere to agency review procedures." However, it does not indicate what those procedures are. And, as noted above, those clearance procedures have yet to even be promulgated by the SIO and/or SIC.

Nor does the draft policy –

- Define what is meant by timely clearance or what constitutes impermissible delay;
- Specify what is a legitimate basis for technical review; or
- Indicate if there is any avenue of appeal to speed up an untimely clearance process.

Without these specifics, the CPSC draft policy contains no safeguards against research being buried or indefinitely delayed from publication.

The significance of this gap in the draft policy is compounded by the above-cited restriction on statements that may be construed as a judgment or recommendation on federal policy. This provision suggests that all research will be reviewed to weed out any such offending statement. Given the vague terms of this restriction, these reviews may be lengthy and contentious. Thus, as constructed, the draft policy may do more to stifle the flow of scientific research than promote its free flow.

IV. No Meaningful Protections for Scientists Against Retaliation

The draft policy provides that "CPSC leadership and management ensure that employees and contractors engaged in scientific activities are able to conduct their work free from reprisal or concern for reprisal." However, there is no specific provision within this policy that would accomplish this stated goal.

For example, the draft policy contains a provision encouraging staff and contractors to file "differing scientific conclusions." This passage reads –

"The SIO shall, with input from the other scientific officials, develop a transparent mechanism for CPSC staff and contractors to express differing scientific conclusions. When a CPSC employee who is substantively engaged in the science informing an agency policy decision disagrees with the portrayal of the scientific data or the interpretations or conclusions that are to be relied upon for that decision, the employee is encouraged to express differing scientific conclusions complete with rationale and in writing. If differing scientific conclusions are not resolved during internal deliberations, they can be part of the questions addressed by a peer review committee with the results publicly available. When there is no peer review, the differing conclusions will be

represented in the agency deliberative documents for the decision maker's consideration.”

The draft policy, however, contains no provision about protecting those who file differing scientific conclusions from reprisal,

The only remotely relevant provision in this regard is a restatement of the applicability of the Whistleblower Protection Act (WPA) – a statute that CPSC has no power to modify. As such, the draft offers no additional safeguards beyond what CPSC is statutorily required to do anyway.

Notably, the 2009 Obama Scientific Integrity Directive, which the CPSC draft cites as a supporting authority, called for "additional" expanded whistleblower protections or procedures to prevent retaliation against or suppression of scientific work due to its policy, economic, or political implications. This part of Obama's directive was largely ignored or given lip service by both the OSTP and federal agencies during the intervening years¹⁵ -- and is not addressed at all in the CPSC draft.

The WPA does not protect scientists who are not whistleblowers yet who are suffering retaliation or obstruction for pursuing research on controversial matters or publishing research that does not support an agency position.

Nor does the WPA shield scientists who face blowback after expressing a differing professional conclusion. Moreover, the fact that these differing conclusions may end up as part of the administrative record for a decision adds to the prospect that it may be the cause for official consternation and, perhaps, retaliation.

In short, President Obama's promise of “additional” protections for scientists who face reprisals due to the substance or content of their research findings will remain unfulfilled by the proposed CPSC policy.

PEER urges that CPSC policy be amended to fill this scientist protection vacuum so that its scientists have some legal protection from official reprisal due to the content of their research or the unwelcome implications flowing from it. Safeguarding these emerging inconvenient truths should be central to any scientific integrity policy.

V. Complete Lack of Accountability for Violators

The only provision within the draft policy addressing consequences for violations of the policy reads as follows:

“The Executive Director also makes sure those who do not comply are held accountable.”

Under current policies, PEER has seen several cases where a presidential appointee has failed to take any action despite review panels who have found a favored manager guilty of serious and deliberate misconduct.¹⁶ The absence of any specified penalty provides little assurance that

¹⁵ See <https://www.peer.org/whistleblower-protections-for-scientists-sidelined/>

¹⁶ See <https://peer.org/fish-and-wildlife-service-sued-over-scientific-fraud-documents/>

agency self-protection will not trump scientific integrity, which is the whole point of these policies.

Nor does the draft specify what penalty applies to what type of violation or a repeat violation. Thus, there is no guardrail to ensure the consistent application of sanctions.

A major anomaly in these policies supposedly aimed at curbing political manipulation of government science is the lack of clear application to political appointees. It is political appointees, after all, who presumably are a major source for politically motivated misconduct.¹⁷

Political appointees, however, are beyond the reach of the civil service disciplinary process. They are only answerable to the political official who appointed them. To the extent that the official is acting to further the agency's political agenda, it is unlikely that person will face any punishment and, in fact, may even be promoted.

In 2021, when a member of the White House staff was reported to have engaged in threatening behavior, President Biden immediately had that official removed.¹⁸ The White House also issued a statement indicating zero tolerance for acts of incivility by its staff. The CPSC draft purports to cover political appointees but lacks a similar zero-tolerance policy that any political appointee found guilty of scientific misconduct (or the loss of scientific integrity) should be removed from federal service.

Further, when an SIO or review panel determines that a political appointee has engaged in scientific misconduct or caused the loss of scientific integrity, the policy should provide the identity of that official should be reported by the Secretary to the White House and that report should be publicly displayed on the agency website.

Conclusion

For the reasons articulated above, PEER believes that the draft CPSC scientific integrity policy fails to meet the standards that President Biden laid out in his Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking of January 27, 2021. We urge that CPSC withdraw this draft and rework it to include --

- A guarantee that scientists may freely discuss and write about the possible implications of their research. That would include, at a minimum, the removal of the language prohibiting federal scientists from making statements that could be construed as judgments on or recommendations about any federal policy;
- Transparent procedures for independent investigation of allegations, as well as public review of investigatory results and corrective action decisions;

¹⁷ See, e.g., <https://www.peer.org/scientific-fraud-infests-fish-and-wildlife-service-top-ranks/>

¹⁸ <https://thehill.com/homenews/administration/538788-white-house-press-aide-resigns-after-threatening-politico-reporter>

- Clear written policies delineating any clearance procedures for scientists to publish, lecture, or communicate with the media and public about their areas of expertise, including practical and timely enforcement of those guarantees;
- Protections for scientists from retaliation for the content or implications of their research and for scientists who express scientific dissent; and
- A rule providing for consistent penalties for those who violate scientific integrity prohibitions, including provisions for holding political appointees accountable.

We believe that these elements should be the bedrock of any federal scientific integrity policy, but unfortunately, they are largely absent from this CPSC draft.

Sincerely,



Jeff Ruch
Pacific Director
Public Employees for Environmental Responsibility (PEER)