Missing EPA Scientific Integrity Rules

EPA's draft Scientific Integrity Policy now available for employee review through January 31, 2024, is almost completely devoid of concrete enforceable rules that would lend some teeth to this policy.

I. In General

Section X ("Procedures") of the draft indicates that rules governing most aspects will be drafted at some unspecified future date:

> "The SIO [Scientific Integrity Officer], in conjunction with the Scientific Integrity Committee, will expeditiously draft and prominently post on EPA's website **necessary procedures including those on addressing scientific integrity concerns, addressing DSOs [Differing Scientific Opinions], and others such as clearance of scientific products, scientific communications, authorship and attribution, and other topics as needed.**" (Emphasis added)

This provision underlines the lack of implementing rules within the policy itself. Further, the phrase that rules would be drafted on "other topics as needed" suggests that rule promulgation will proceed on an unscheduled *ad hoc* basis.

Moreover, the specific process for rule promulgation is not stated. For example, it is not clear that employees and/or the public will have an opportunity to review and comment on these rules before they are finalized. Nor is the process for review and possible amendment of any such rules laid out in any detail.

II. How Will Scientific Integrity Violations Be Investigated

Under Section VIII ("Policy Provisions") under Subsection 5 ("Ensuring Accountability"), the draft states that rules governing this process remain to be written:

A. Overall

The draft declares that "It is the policy of EPA to: a. Ensure the establishment of clear administrative actions for violations of this policy that designate responsibility for each aspect of accountability."

The nature of those "clear administrative actions" is not specified.

B. Investigations

The draft concedes that issues such as who conducts investigations and under what standards is yet unknown. Paragraph (c) of this subsection provides for a --

> "Mandate that the SIO, together with the Scientific Integrity Committee, draft procedures such that when responding to allegations of compromised scientific integrity, the response is done in a timely, objective, and thorough manner."

Notably, this provision appears to concede that EPA lacks (and has lacked for the past dozen years) any procedures governing how investigations are conducted. Based upon our examination of records about EPA's Scientific Integrity Program obtained under the Freedom of Information Act, no such investigation has ever been conducted.[1]

This paragraph goes on to list the elements these procedures should include:

> "These procedures should include the following steps:
> an initial assessment and review, a fact-finding process, an Agency adjudication or determination including description of remedies and preventative measures to safeguard the science, an appeals process, follow-up to track implementation of remedies, and reporting. These procedures should document the necessary aspects for each step of the process including burden of proof, any necessary determination of intentionality, and reporting, as well as the roles of the SIO, DSIOs [Deputy Scientific Integrity Officers] and Agency managers and staff."

This very general description sheds very little light on the independence or transparency of the prescribed "adjudication or determination." By contrast, other agencies, such as the National Oceanic & Atmospheric Administration (NOAA) has had these procedures in place since 2011.[2]

Further in this regard, the EPA draft (in paragraph i) calls for the creation of "clear guidance on how to formally report concerns and allegations of Scientific Integrity Policy violations" This languagek suggests that the scientific integrity violation investigation process at EPA will be starting from ground zero.

C. No Punishment for Violations

The draft policy is completely silent on whether violators of the policy will face any discipline, let alone a schedule of penalties for intentional, egregious, or repeated violations. Nor does the draft policy indicate whether violators, such as political appointees, will even be identified.

For example, Section XII ("Monitoring") suggests that violators will not be named:

> "Annual reporting will also include **anonymized individual closed scientific integrity allegation summaries**…The identities of complainants, respondents, witnesses, and others involved in the investigations will be protected subject to applicable federal law." (Emphasis added)

The above-cited language does not identify the "applicable federal law" it references. Under the Freedom of Information Act, however, PEER has been able to force an agency to divulge the

[1] https://peer.org/epa-scientific-integrity-program-lacks-integrity/
[2] See Scientific_Integrity_ProceduralHB_NAO_202-735D-2.pdf (noaa.gov)

name of managers identified as responsible for scientific misconduct by a scientific review panel.[3]
On an issue as to whether violators, especially when they are senior official or political appointees, a scientific integrity policy should be clear rather than mysterious.

In addition, the language quoted above references the need to develop procedures to "follow-up to track implementation of remedies" but does not explain what that means. For example, the one of the few remedies for misconduct the draft mentions is to ensure "correction of the scientific record when inaccuracies or deficiencies are identified or an allegation of a loss of scientific integrity is substantiated." It is unclear what other remedies are available to cure past violations or to prevent future deviations.

In connection with this issue, paragraph b) of this subsection declares that the policy will –

> "Mandate that both career and appointed supervisors, managers, and senior leaders exemplify firm commitment to scientific integrity and hold staff accountable for upholding this policy."

The phrase "hold staff accountable" is somewhat opaque and is not otherwise explained. Further, this language says that only "staff" will be held to account, a phrasing that suggests managers and political appointees will not be similarly held "accountable", *i.e.*, disciplined.

III. No Clear Protections for Scientists

Paragraph (c) of Subsection 6 ("Protections for Employees") declares an agency policy to –

> "Protect individuals who… raise a differing scientific opinion … from retribution, retaliation, and reprisal and other prohibited personnel practices (as defined in 5 U.S.C. § 2302(b))."

Unfortunately, the draft policy does not specify the nature of that protection or how it is invoked. Notably, scientists who submit differing scientific opinions or whose research is controversial are generally beyond the scope of the Whistleblower Protection Act.

The definition of "prohibited personnel practices" is any adverse action, such as termination, demotion, suspension without pay, taken in connection with whistleblowing. This draft policy appears to state that scientists may have a separate affirmative defense to adverse actions taken in connection with a dissenting opinion but, distressingly, does not spell out the legal basis for this defense.

IV. No Clearance Process for Publication of Scientific Information

[3] See Senior Officials Skewed Science to Benefit Xl Pipeline - PEER.org

The draft policy has a subsection (3. "Ensuring the Free Flow of Scientific Information") which contains several sweeping provisions dedicated to promoting the open sharing of scientific information. Paragraph (s) of this subsection is a good example as it declares a policy to –

> "Require open and honest communication at all levels, including opportunities for staff to contact senior leaders regarding scientific issues without fear of retaliation, retribution or reprisal…"

In addition, the succeeding paragraph states that the policy will –

> "t. Allow EPA scientists to respond to internal or external scientific criticisms of EPA scientific products, findings, or conclusions that they were significantly involved in developing."

The approval process of any such response to "scientific criticisms" is not laid out. In the very next paragraph, however, the policy concedes that an enforceable clearance process to enable the public release of information does not exist and that it remains to be created:

> "u. Require that technical review and clearance processes include provisions for timely clearance and expressly forbid unreasonable delay and suppression of scientific products without scientific justification… Clearance should generally not result in missing media and other publication deadlines or the removal of EPA scientists from joint publications with external co-authors."

The above language does not specify who is charged with drafting these "technical review and clearance processes". Nor is it stated who will ensure that these clearance processes do not result in "expressly forbid unreasonable delay and suppression of scientific products". Further, the draft policy does not 1) define "unreasonable delay" or 2) specify what recourse is available to a scientist who is the victim of such undue delay.

Moreover, the use of the plural ("clearance processes") suggests that there will be multiple processes, perhaps a separate one for each branch of EPA.

Without a formal enforceable clearance process, the policy's lofty pronouncements that it allows the free flow of scientific information remain mere suggestions.

For more than a decade EPA leadership has pledged that it "will work on creating an Agency framework for clearance procedures."[4] In the intervening years, EPA has made no outwardly discernible progress toward creating an agency-wide clearance process.

By contrast, other agencies, such as NOAA, has long had detailed procedures governing the approval of scientific information for publications, including timelines and avenues for appeal.[5]

[4] See https://peer.org/wp-content/uploads/attachments/8_12_15_PEER_ltr_EPA_Admin.pdf
[5] See https://library.oarcloud.noaa.gov/noaa_documents.lib/NOAA_Science_Council/FRC_Guidance_Nov_8_2016.pdf

V. No Measure of Success

One paradox arising from the draft policy's multiple prescriptions for desired conduct is the absence of any measure of the effectiveness of the policy. In this regard, Section XII "Monitoring and Evaluating Scientific Integrity Activities and Outcomes") of the draft policy states that –

> "EPA will develop and implement an evaluation plan to regularly measure, monitor, and evaluate ongoing scientific integrity activities and outcomes. The plan will include a roadmap of activities and expected outcomes, the steps needed to assess them, the methods and metrics used in that assessment, and how the data will be analyzed on a regular basis and used for ongoing improvement of scientific integrity processes, procedures, and policies."

The above language suggests that EPA has never engaged in such an analytic evaluation process before. Further, without knowing what "metrics will be used in …assessment", the drafting of the policy is akin to shooting in the dark not knowing if it will hit the desired target.

The above-cited section goes on to state –

> "The plan will include a timeline for implementation and frequency of data collection, analysis, review, recommendations, and implementing these recommendations. Monitoring and evaluation results, recommendations, and policy/procedure changes based on results will be reported to Agency leadership and will be made available to Agency staff and the public in a timely manner."

This measurement process is not part of the draft's section delineating the "Annual Report." Thus, other than the phrase "timely manner", there is no indication that this information will be gathered and analyzed on an annual basis. Nor is it specified when this information will be made public.

In describing the duties of various officials, the draft states that this meta-evaluation will be carried out by the SIO and the Scientific Committee, *i.e.*, the parties charged with implementing the policy.

Arguably, both the agency and the public would benefit from having any ongoing evaluation of the scientific integrity program's effectiveness conducted on a regular basis by an independent party. In other words, any evaluation of EPA's scientific integrity program should itself be conducted in a fashion to promote the scientific integrity of that exercise.

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