



February 20, 2024

U.S. Environmental Protection Agency
EPA Docket Center
Office of Research and Development Docket
Mail Code 28221T,
1200 Pennsylvania Avenue
NW Washington, DC 20460.

RE: Comments on EPA Draft Scientific Integrity Policy/ Docket ID No. EPA–HQ–ORD–2023–0240

To Whom It May Concern:

These comments on the U.S. Environmental Protection Agency (EPA) draft Scientific Integrity Policy are submitted on behalf of Public Employees for Environmental Responsibility (PEER). PEER has provided legal representation to federal scientists struggling with scientific integrity issues for more than 30 years.

PEER’s work helped lay the foundation for the 2009 Obama Directive on Scientific Integrity.¹ During the Obama presidency, PEER has filed more complaints on behalf of scientists for violations of agency scientific integrity policies than any other organization.

Based upon this experience, we would like to express our profound disappointment with EPA’s draft policy. In almost every respect it falls short of meeting President Biden’s goal of restoring public trust in federal government science.

These comments are divided into three main sections:

- I. What Is Good About the Draft Policy
- II. What Is Bad About the Draft Policy
- III. What Is Missing from the Draft Policy

In each section, we provide recommendations on how to improve draft provisions or address identified shortcomings.

I What Is Good About the Draft Policy

In PEER’s view, the best part of this draft policy are those provisions designed to facilitate the free flow of scientific and technological information. In particular, the provisions relating to the following issues are commendable:

¹ [Memorandum for the Heads of Executive Departments and Agencies 3-9-09 | whitehouse.gov \(archives.gov\)](https://www.whitehouse.gov/the-press-office/2009/03/09/2009-03-09-obama-directive-on-scientific-integrity)

- “Support, but not require, Agency employees to participate in communications with the media regarding their scientific activities and areas of scientific expertise in their official capacities at EPA.”
- “Allow EPA employees to review, correct, and approve the scientific content of any proposed Agency document intended for public dissemination that significantly relies on their research or analysis, or identifies them as an author.”
- “Allow employees a Personal Views Exception, which means they are allowed to communicate with the media or the public in their personal capacities subject to the applicable federal ethics rules including misuse of position.”
- “Make every effort to provide knowledgeable scientists as spokespersons in response to media requests about the scientific or technological aspects of EPA’s work.”
- “When communicating on social media in their personal capacities, EPA scientists may express their personal views and opinions provided they do so pursuant to the applicable Federal ethics rule.”

One provision deserves special attention. The White House Model Scientific Integrity Policy and the draft policies of the Department of Health and Human Services, National Institutes of Health, and the Consumer Product Safety Commission all contain the following constraint on scientist speech and writing:

Scientists will refrain from making or publishing statements that could be construed as being judgments of, or recommendations on [Agency] or any other Federal Government policy, unless they have secured appropriate prior approval to do so.²

The EPA draft, however, significantly limits this constraint by stating that it applies only “When speaking or writing on behalf of EPA...” Presumably, official spokespersons should stick to the approved talking points.

The draft policy goes on to state “When acting in their official capacity, such communications should remain within the bounds of their scientific or technological findings, unless specifically otherwise authorized.” Unfortunately, this sentence adds a level of needless ambiguity to what scientists can say:

[Recommendations:

1. Remove sentence cited above about staying “within the bounds of scientific or technical findings” as it appears to prohibit discussion of possible implications of scientific findings.
2. Rewrite the language about “could be construed as being judgments of, or recommendations on” a federal policy to remove ambiguity. Official spokespersons should have the leeway to answer questions by the media and others in a factual fashion. A reference to a particular fact or set of facts “could be construed” as a

² See <https://peer.org/new-integrity-rules-differ-on-allowable-scientist-speech/>

judgment, even though it is accurate. Instead, the policy should simply direct persons speaking on behalf of the agency to be accurate and strive to correct any statements that are deceptive or prove to be inaccurate.

3. Repeated references in the draft on the need for compliance with federal ethics rules without a specific citation to which rule, or which aspect of a rule is being referenced, creates confusion leading to a needless chilling effect. A scientific integrity policy should be precise and not promote ambiguity. To do so, the proposed policy, either in its text or a footnote, should cite the specific ethics rule in enough detail to provide clear guidance to the scientist.]

II. What Is Bad About the Draft Policy

A. *Lack of Independence*

As with many agency policies, the key implementing official is the designated Scientific Integrity Officer. EPA's draft policy stipulates that the SIO is "full-time equivalent, career employee who holds a permanent tenured appointment."

The job of the SIO to prevent or call out political interference with science inevitably involves potential clashes with that official's chain-of-command. Asking the SIO to investigate the senior officials to which he or she reports – either directly or indirectly – is simply untenable.

The nature of the work also entails potentially embarrassing the agency by confirming high-level wrongdoing. This potential carries with it the inherent risk of reprisal against an SIO for performing this job well. This concern is not theoretical. In one case, for example, PEER provided legal representation for an SIO at the Bureau of Reclamation who was fired after he filed a scientific integrity complaint against the Secretary of Interior's press office for the slanted way it summarized the science on a complex and controversial issue.³

[Recommendations:

1. The SIO should not be placed within any sub-office of EPA but should report directly to the Administrator.
2. Subject to Administrator veto, the SIO should be able to call upon and direct agency resources to investigate and adjudicate allegations of misconduct.
3. SIOs should be selected from retired annuitants or academics and given fixed terms to help secure some modicum of independence from the chain of command they are being asked to scrutinize and, in some circumstances, investigate. To obviate pressures on this term appointee, there should be a requirement that the term is not renewable, thus freeing the SIO to work without concern about his or her continued tenure,
4. There must be an appeal mechanism to review decisions by the SIO not to investigate allegations of misconduct. A principal purpose of these scientific integrity policies, in the words of President Biden's memorandum, is "Restoring Trust" by the public in the

³ See <https://peer.org/purged-science-advisor-tests-interiors-integrity-policies/>

quality of government science. Yet, the draft policy confers on EPA the prerogative to simply decline to investigate allegations of misconduct without any outside review of that decision. This lapse enables EPA to continue covering up scientific fraud under the guise of their scientific integrity policies.

The threshold for determining whether a Complaint should be investigated should be resemble a probable cause standard, and that standard should be consistently followed. There should be an opportunity to appeal to an outside body any decision to not even investigate Complaints. In addition, any such review should be publicly posted so that the public can be assured the decision not to investigate was based on the merits (or the lack thereof) of the allegation.]

B. Lack of Transparency

EPA's draft policy suggests that investigations and adjudications regarding allegations of misconduct will be kept secret. There is no provision that this report of the investigation be made publicly available. To the contrary, the draft policy states –

“To the extent possible, and as allowed by law, keep confidential the identities of submitters, subjects, witnesses, and experts interviewed by the Scientific Integrity Program as part of an initial assessment, fact-finding, or investigation.”

Nor is it clear from the draft policy whether the public will ever learn the outcome of investigations. The draft policy indicates that any such information will be conveyed in an annual report but the draft suggests that this report will be bereft of specific information:

“The report... will also include the number of scientific integrity administrative investigations overseen by the SIO or Deputy SIO, requests for assistance, inquiries and appeals involving alleged or actual deviations from the scientific integrity policy and the number of investigations and pending appeals that were completed that year and any that are ongoing. Annual reporting will also include anonymized individual closed scientific integrity allegation summaries. These summaries may be posted in a timely manner after completion of inquiries and/or incorporated into the annual report. The identities of complainants, respondents, witnesses, and others involved in the investigations will be protected subject to applicable federal law.” (Emphasis added)

Despite these pledges of confidentiality, it is not clear on what basis such a report could be withheld from release under the Freedom of Information Act. In the past, PEER has successfully used to FOIA to force release of such reports over agency objections.⁴

Further, protecting the identity of political appointees or senior officials found responsible for policy violations seems contrary to the whole purpose of having a scientific integrity policy. Significantly, President Biden's directive that started this process featured the words “Restoring Trust in Government Through Scientific Integrity” in its title. It is hard to argue that releasing only after-the-fact summaries that have been “anonymized” will restore public trust in the integrity of EPA science. Public credibility in the integrity of federal science requires a degree of transparency that this draft policy sorely lacks.

⁴ See <https://peer.org/senior-officials-skewed-science-to-benefit-xl-pipeline/>

[Recommendations:

1. Complaints alleging scientific misconduct should be public unless the complainant explicitly request confidentiality.
2. Initial findings and final adjudications should be made public and posted as soon as completed on the EPA website. The identities of witnesses should be redacted only upon their request.
3. Violators whose culpability has been adjudicated and subjected to appropriate disciplinary action (see more discussion on this below).]

III. What Is Missing from the Draft Policy

EPA’s draft Scientific Integrity Policy is almost completely devoid of concrete enforceable rules that would lend some teeth to this policy.

A. 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.”

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.

[Recommendation:

This draft policy should be withdrawn and resubmitted when all of the required procedures have been promulgated as part of the draft policy.]

B. 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:

- 1.. 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.

2.. 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.⁵

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.” 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 language suggests that the scientific integrity violation investigation process at EPA will be starting from ground zero.

[Recommendations:

1. EPA should adopt a clear procedure and timeline for an initial determination that a full investigation is warranted. As indicated above, there should be a mechanism for an appeal of a decision not to investigate a complaint.
2. That investigation should be conducted by a review panel of disinterested experts, including those chosen from outside the agency. The scientific integrity policy for the national Oceanic & Atmospheric Administration (NOAA) is a good model that EPA should consider adopting.^{6]}

⁵ See <https://peer.org/epa-scientific-integrity-program-lacks-integrity/>

⁶ See NOAA’s Scientific Integrity Procedural Handbook [Scientific Integrity ProceduralHB NAO 202-735D-2.pdf](https://www.noaa.gov/sites/default/files/2017-07/Scientific_Integrity_ProceduralHB_NAO_202-735D-2.pdf) ([noaa.gov](https://www.noaa.gov))

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. As noted above, the draft policy stipulates that reports of closed investigations will be “anonymized.”

In addition, the draft policy 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, the draft policy declares an intention to –

“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.

[Recommendations:

1. EPA should assign a specific range of penalties applied to scientific misconduct in the agency’s Table of Penalties.⁷ Moreover, EPA’s policy should require that a disciplinary review will be undertaken in any case where misconduct has found to have occurred.
2. When a Scientific Integrity Officer or review panel determines that a political appointee has engaged in scientific misconduct or caused the loss of scientific integrity, the identity of that official should be reported both to the White House and to the relevant Cabinet Officer. That report should be publicly displayed on the agency website.]

F. 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)).”

⁷ For example, the U.S. Fish & Wildlife Service Table of Penalties <https://training.fws.gov/courses/references/job-aids/supervisors/documents/TableofPenalties-FullDocument.pdf> provides:

“30. Violating the Department’s Code of Scientific Conduct (or other professional code of conduct that applies to employees required to maintain a professional license or membership). First Offense: Written Reprimand to 30-day suspension Second Offense: 30-day suspension to removal Third Offense: Removal Refer to 305 DM 3. 31”

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.

In the absence of a new statute, there is an administrative path to address enforcement of scientific integrity policies. Apart from protecting whistleblowers, the U.S. Office of Special Counsel (OSC), the entity charged with enforcing the Whistleblower protection Act, also has very broad but little used jurisdiction under 5 USC § 1216:

“(a) In addition to the authority otherwise provided in this chapter, the Special Counsel shall, except as provided in subsection (b), conduct an investigation of any allegation concerning . . . (4) activities prohibited by any civil service law, rule, or regulation, including any activity relating to political intrusion in personnel decisionmaking.”
(Emphasis added.)

For example, OSC uses this authority to remedy and prevent discrimination on the basis of sexual orientation in the federal workplace by enforcing an executive order to that effect.⁸ Similarly, OSC could extend protection to scientists if they were covered by an executive directive to that effect, or a directive from Cabinet Secretaries or agency heads.

Through this mechanism, OSC could start enforcing against punishing scientists for assembling politically sensitive data, making controversial findings, or expressing differing professional opinions – all actions that are by themselves beyond the scope of the Whistleblower Protection Act.

In addition, OSC could make this jurisdiction even clearer by sending a letter to agencies urging them to include information about reports of scientific integrity lapses when informing their employees about their whistleblower rights. Further, OSC could integrate scientific integrity policy information into its required certification of agencies’ WPA training programs.⁹

[Recommendation:

The EPA Administrator should formally request that the U.S. Office of Special Counsel enforce protections against reprisal for activities protected under EPA’s scientific integrity policy in the same manner as it now enforces workplace discrimination, whistleblower, or other civil service rules.]

G No Clearance Process for Publication of Scientific Information

⁸ [Memorandum of Understanding Between U.S. Office of Special Counsel And Equal Employment Opportunity Commission | U.S. Equal Employment Opportunity Commission \(eeoc.gov\)](#)

⁹ 5 U.S.C. § 2302(c)

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.¹⁰

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.” In the intervening years, EPA has made no outwardly discernible progress toward creating an agency-wide clearance process.

[Recommendations:

1. EPA should adopt an agency-wide publication clearance process as part of its scientific integrity policy. This process should define precisely what is meant by “unreasonable delay” of scientific products.

¹⁰ Note the wide variations in agency clearance practices https://peer.org/wp-content/uploads/attachments/12_10_18_PEER_analysis.pdf

2. EPA's policy should also specify what recourse is available to a scientist who is the victim of such undue delay. EPA should consider adopting the long-established procedures governing the approval of scientific information for publications, including timelines and avenues for appeal.¹¹
3. EPA' policy should also lay out the specific procedures for employees to gain official permission to respond to "scientific criticisms".]

H 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.

¹¹ See National Oceanic and Atmospheric Administration. NOAA Research Council. Scientific Integrity Commons. (n.d.) NOAA Policy, Communication Research

[Recommendation:

EPA should first determine what it seeks to accomplish through a scientific integrity policy and how it would measure those outcomes before submitting a draft policy for public review.]

Conclusion

For the reasons articulated above, PEER recommends that EPA withdraw this draft policy and fill in proposed procedures need to implement any such policy before resubmitting it for public comment. Further, as part of this rewrite process, EPA should publicly summarize the concerns raised by its employees during its internal review process that ended on January 31, 2024. The agency should strive to publicly explain how its next iteration of a draft policy responds to or integrates the concerns expressed by its own employees.

Cordially,



Jeff Ruch
Pacific PEER Director