

January 31, 2024

To: Scientific Integrity Officials at:
Centers for Disease Control and Prevention
Department of Commerce
Department of Defense
Department of Education
Department of the Interior
Department of Labor
Department of State
Department of Transportation
National Institute of Standards and Technology
National Oceanic and Atmospheric Administration
National Science Foundation
Office of Management and Budget
U.S. Agency for International Development
U.S. Department of Agriculture
U.S. Fish and Wildlife Service
U.S. Geological Survey

CC: Scientific Integrity Officials at:
Consumer Product Safety Commission
Environmental Protection Agency
Department of Health and Human Services
National Institutes of Health
Office of Science and Technology Policy

RE: Simple Modification to Address Concerning Provision in Scientific Integrity Policies

Dear Scientific Integrity Officials,

As organizations whose work involves federal scientific integrity issues, we appreciate the extensive work agencies are undertaking to update their scientific integrity policies in response to President Biden’s “Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking.”¹ We are concerned that a provision in the model

¹ Biden JR. (2021). Memorandum on Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking. <https://www.whitehouse.gov/briefing-room/presidential-actions/2021/01/27/memorandum-on-restoring-trust-in-government-through-scientific-integrity-and-evidence-based-policymaking/>

policy,² which has appeared in three draft policies issued so far,^{3,4,5} could potentially undermine other steps agencies are taking to encourage federal scientists to share their findings with the public. The draft Environmental Protection Agency (EPA) scientific integrity policy⁶ contains a simple fix to the problem that we encourage your agencies to consider.

Section II.8 of the model policy reads (emphasis added):

“Allow [AGENCY] employees and other covered entities to report their scientific findings and communicate with the media or the public in their official capacities at [AGENCY]. **[AGENCY] scientists shall 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.** Such communications shall remain within the bounds of their scientific or technological findings, unless specifically otherwise authorized.”

Barring agency scientists from avoiding statements that could be “construed as” judgments of policy is too broad a prohibition. A bad-faith actor seeking to harass a scientist whose work they find distasteful could claim to have “construed” virtually any statement as a judgment of government policy. For instance, a scientist describing research findings that indicate harmful impacts from a lightly regulated substance could be accused of criticizing the agency for inadequately regulating that substance. Scientists might well decide that it is easier to avoid speaking or writing about their findings than to try to anticipate whether anyone will claim to have construed their statements as policy judgments.

In its draft policy, EPA made a small but important change to the problematic sentence by adding “When speaking or writing on behalf of EPA” to the beginning of it (emphasis added): **“When speaking or writing on behalf of EPA,** scientists will refrain from making or publishing statements that could be construed as being judgments of, or recommendations on, EPA or any other Federal Government policy, unless they have secured appropriate prior approval to do so.”

By making clear that the prohibition applies only to official speaking and writing, EPA has substantially narrowed its scope. Although the use of the “construed as” language still leaves

² Scientific Integrity Framework Interagency Working Group. (2023). A Framework for Federal Scientific Integrity Policy and Practice. <https://www.whitehouse.gov/wp-content/uploads/2023/01/01-2023-Framework-for-Federal-Scientific-Integrity-Policy-and-Practice.pdf>

³ U.S. Department of Health and Human Services. (2023). Draft for Public Comment: The Scientific Integrity Policy of the U.S. Department of Health and Human Services.

⁴ National Institutes of Health. (2023). Draft: Scientific Integrity Policy of the National Institutes of Health. https://osp.od.nih.gov/wp-content/uploads/2023/09/Draft_SI_Policy.pdf

⁵ Consumer Product Safety Commission. (2023). Draft: United States Consumer Product Safety Commission Scientific Integrity Policy. <https://www.regulations.gov/document/CPSC-2023-0042-0001>

⁶ Environmental Protection Agency. (2024). USEPA Scientific Integrity Policy: Draft Deliberative. <https://www.regulations.gov/document/EPA-HQ-ORD-2023-0240-0002>

open the possibility for abuse and chilling — and agencies will need to define “policy” in order to implement this requirement, as EPA has — scientists will likely feel more confident speaking and writing when they do so with disclaimers indicating that their statements do not reflect the official position of the agency.

The “construed as” language and need to define “policy” are still concerning, and the free flow of scientific information can best be accomplished if all agencies adopt the least restrictive language. If agencies do move forward with a II.8-type provision, though, we encourage them to make clear that the prohibition on making statements that could be construed as policy judgments applies only to communication on behalf of the agency. Beginning the sentence in question with “When speaking or writing on behalf of [AGENCY] ...” is a simple way to accomplish that.

Sincerely,

Center for Progressive Reform
Climate Science Legal Defense Fund
Defending Rights & Dissent
Government Accountability Project
Government Information Watch
Jacobs Institute of Women’s Health
National Center for Health Research
Open The Government
Public Employees for Environmental Responsibility (PEER)
Union of Concerned Scientists