

# Center for Regulatory Effectiveness

1601 Connecticut Ave, NW – Suite 500

Washington, DC 20009

Tel: (202) 265-2383 Fax: (202) 939-6969

[www.TheCRE.com](http://www.TheCRE.com) [secretary1@mbsdc.com](mailto:secretary1@mbsdc.com)

September 20, 2010

via email: [DOI\\_Science\\_Integrity@ios.doi.gov](mailto:DOI_Science_Integrity@ios.doi.gov)

Laura Davis  
Associate Deputy Secretary  
U.S. Department of the Interior  
1849 C St., NW  
Washington, DC 20240

## Comments on Proposed Scientific Integrity Policy of the Department of the Interior (75 Fed. Reg. 53325, Aug. 31, 2010)

Dear Ms. Davis:

Thank you for the opportunity to comment on this important matter. Our comments follow:

### **I. The need to acknowledge and incorporate the Information Quality Act and its Guidelines**

#### **A. Clarifying the term "integrity"**

The Information Quality Act ("IQA")<sup>1</sup> and the original OMB government-wide Guidelines implementing the Act, as well as the DOI conforming guidelines have used the term "integrity" in an apparently narrower sense than the subject proposed policy. Because the basic objectives of both the IQA and its guidance and the proposed DOI policy are essentially the same, this could give rise to confusion over the meaning of the term "integrity."

The IQA requires agencies to ensure and maximize the "quality, objectivity, utility, and integrity" of information, including scientific information, disseminated to the public. The OMB and DOI IQA guidelines contain definitions of each of these terms. The term "quality" encompasses "objectivity" and "utility" and there is a separate definition for "integrity." The definition for "integrity" is that it "refers to the security of information -- protection of the information from unauthorized access or revision, to ensure that the information is not compromised through corruption or falsification."<sup>2</sup> The definition of "integrity" in the DOI IQA guidelines is essentially the same, omitting only the words preceding the dash,<sup>3</sup> and is separate from the definitions of "quality," "objectivity," and "utility."

---

<sup>1</sup> 44 U.S.C. § 3516, note.

<sup>2</sup> 67 Fed. Reg. 8452, 8460 (Feb. 22, 2002).

<sup>3</sup> <http://www.doi.gov/ocio/guidelines/515Guides.pdf>, sec. VII.4.

## Center for Regulatory Effectiveness

The proposed DOI scientific integrity policy does not define "integrity;" however, the total context of the proposal is to ensure the DOI personnel provide to their superiors and other DOI personnel only scientific information that is objective and unbiased and of the highest quality. See, *e.g.*, sections 3.2.B and 3.4.

The proposed DOI policy also contemplates that it will ensure the accuracy of scientific information that is disseminated to the public, not just that which is used internally. Section 3.3.B states that the Department "Will take appropriate action to protect the public from the effects of inaccurate information produced through scientific activities." The Presidential directive to promulgate the policy also contemplated that it would apply to information disseminated to the public. The Presidential Memorandum on "Scientific Integrity" stated that "If scientific and technological information is developed and used by the Federal Government, it should ordinarily be made available to the public."<sup>4</sup>

Additionally, it should be noted that the OMB IQA Guidelines address internal quality assurance by requiring pre-dissemination review in order to ensure compliance.<sup>5</sup>

In order to avoid confusion over what is meant by the term "integrity," since both the IQA and its guidelines along with the DOI policy address the quality of scientific information disseminated to the public, we recommend that the DOI policy explain that the term as used in the policy encompasses the terms "quality, objectivity, utility, and integrity" as used in the IQA and its guidance, and that the policy complements the IQA guidance.<sup>6</sup>

### **B. Ensuring consistency with the IQA peer review guidance**

In addition to the government-wide Guidelines on information quality that OMB promulgated, it promulgated government-wide guidelines for agency-sponsored peer reviews leading to the dissemination of scientific information. The proposed DOI policy also addresses participation by agency personnel in peer reviews. Section E of the Appendix to the proposed policy would require that "All employees subject to the Code must know, understand and adhere to Departmental and bureau specific guidelines related to peer review of scientific activities."

---

<sup>4</sup> [http://www.whitehouse.gov/the\\_press\\_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/](http://www.whitehouse.gov/the_press_office/Memorandum-for-the-Heads-of-Executive-Departments-and-Agencies-3-9-09/).

<sup>5</sup> 67 Fed. Reg. at 8459.

<sup>6</sup> Although the proposed policy states, in sec. 3.1.B, that it does not alter or supersede rules and laws pertaining to certain activities related to the policy, it does not mention the IQA. It should, and this section of the policy would be an appropriate place to note that the policy complements the IQA. The IQA guidelines are legally binding rules. 44 U.S.C. § 3506(a)(1)(B) and *Prime Time Int'l Co. v. Vilsack*, 599 F.3d 678, 686 (D.C. Cir. 2010) (holding that the OMB Guidelines were "binding," and citing the Supreme Court's decision in *United States v Mead*, which held that "administrative implementation of a particular statutory provision qualifies for *Chevron* deference when it appears that Congress delegated authority to the agency generally to make rules carrying the force of law ....") Although it is technically not necessary to state that the DOI policy does not alter or supersede the IQA guidance, because it cannot do so as a matter of law, it would be helpful to state this expressly.

## Center for Regulatory Effectiveness

The OMB peer review guidance is not covered by this language, and it should be broadened to require employees to know, understand, and adhere to the OMB IQA peer review guidance.

### **II. The need to seek input from the Department's Outer Continental Shelf Scientific Committee**

The Department's Outer Continental Shelf Scientific Committee<sup>7</sup> was instrumental in preparing an earlier version of the proposed policy on scientific integrity. At its September 14, 2010 meeting, which CRE attended, members of the Committee indicated that they had a continuing interest in development of the DOI integrity policy. In particular, they questioned whether the proposed policy is consistent with the OMB IQA peer review guidance.

Therefore, we recommend that the Department solicit the views of the Committee on the proposed policy, and that it not proceed with a final policy until it receives and considers the Committee's views. You will note that we have sent a copy of these comments to the OCS Scientific Committee.

### **Summary**

1. The DOI scientific integrity policy should explain that the term "integrity" as used in the policy encompasses the terms and definitions of "quality, objectivity, utility, and integrity" used in the Information Quality Act and its original and peer review guidelines.
2. The DOI policy should explain that the policy complements the IQA guidelines.
3. The peer review section of the policy should state that DOI employees must know, understand, and adhere to the OMB IQA peer review guidance.
4. The Department should seek the views of its OCS Scientific Committee on the policy.

Thank you for considering these comments. Please feel free to contact me if you would like any clarifications or wish to discuss any aspect of this matter. I can be reached at (202) 265-2383 or [tozzi@thecre.com](mailto:tozzi@thecre.com).

Respectfully,

/s/

Jim Tozzi

cc: Dr. Michael Fry, [mfry@abcbirds.org](mailto:mfry@abcbirds.org)  
Prof. Richard Hildreth, [rghildre@law.uoregon.edu](mailto:rghildre@law.uoregon.edu)  
Bernard J. Mazer, DOI Chief Information Officer, [Bernard\\_Mazer@ocio.doi.gov](mailto:Bernard_Mazer@ocio.doi.gov)

---

<sup>7</sup> <http://www.boemre.gov/mmab/ScientificCommittee/ocssc.htm>.