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RECENT DEVELOPMENTS IN ADMINISTRATIVE LAW

PUBLIC CONTROVERSY OVER PEER REVIEW

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INTRODUCTION

Increased public participation in agency policymaking can help agencies better understand the range of opinions held by affected persons and organizations. Recently, the Office of Management and Budget's (OMB) Office of Information and Regulatory Affairs (OIRA) learned how opinionated the public can be over a proposed agency policy change. In August 2003, OIRA indicated its intention to make significant additions to existing procedures under the Information Quality Act by requiring peer

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review of regulatory information that agencies intend to publicize.¹ This proposed policy will affect any government agency disseminating influential scientific information to the public.² The OMB originally intended to publish a final bulletin of the policy in February 2004, but instead issued a revised version of the bulletin for further comment in April 2004³ and a final bulletin in December 2004.⁴

Peer review occurs when specialists uninvolved in the drafting process review a draft product.⁵ This practice ensures that an agency releases the most accurate information to the public.⁶ Under current practice, OMB does not require agencies to conduct peer review to validate proposed new regulations.⁷ Since 2001, however, OIRA has suggested that agencies employ a peer review system for economically significant and important rulemaking.⁸ Current practice shows a large variety in the types of peer

1. See Proposed Bulletin on Peer Review and Information Quality, 68 Fed. Reg. 54,023 (Sept. 15, 2003) [hereinafter Proposed Bulletin] (proposing “to issue new guidance to realize the benefits of meaningful peer review of the most important science disseminated by the Federal Government regarding regulatory topics”); see also Office of Management and Budget, Release 2003-34, *OMB Proposes Draft Peer Review Standards for Regulatory Science*, at <http://www.whitehouse.gov/omb/pubpress/2003-34.pdf> (Aug. 29, 2003) [hereinafter OMB Press Release] (highlighting that no minimum government-wide standards for peer review exist).

2. OMB Press Release, *supra* note 1.

3. See Revised Information Quality Bulletin on Peer Review, 69 Fed. Reg. 23,230, 23,231 (Apr. 28, 2004) [hereinafter Revised Bulletin] (giving a 30-day period for public comment). This revised version of OMB’s peer review policy incorporates many of the comments and concerns of the public. *Id.* at 23,230.

4. See Final Information Quality Bulletin on Peer Review, 70 Fed. Reg. 2664 (Jan. 14, 2005) [hereinafter Final Bulletin] (producing the final policy incorporating two rounds of public comment).

5. See Revised Bulletin, *supra* note 3, at 23,231 (explaining the importance of peer review). Often agencies promulgating regulations in technical fields use a peer review system to ensure that the proposed measures will be appropriate and effective. OMB’s Revised Information Quality Bulletin on Peer Review establishes minimum standards for when agencies must use peer review and how intensive the process should be for different information products. *Id.* at 22,232.

6. See Office of Management and Budget, Release 2004-08, *OMB Releases Revised Bulletin on Peer Review; Seeks Additional Public Comment*, at <http://www.whitehouse.gov/omb/pubpress/fy2004/2004-08.pdf> (Apr. 15, 2004) [hereinafter Revised Bulletin Press Release] (asserting that the scientific community highly regards peer review because it promotes independent review by highly qualified experts).

7. See Exec. Order No. 12,866, 3 C.F.R. § 638 (1994) (instructing agencies to base decisions on the “best reasonably obtainable scientific, technical, economic, and other information concerning the need for, and consequences of, the intended regulation”). *But see* Final Bulletin, *supra* note 4, at 2664 (commencing government-wide peer review standards to be in effect starting June 16, 2005).

8. See John D. Graham, Office of Information and Regulatory Affairs, *Memorandum for the President’s Management Council*, at http://www.whitehouse.gov/omb/inforeg/oira_review-process.html (Sept. 20, 2001) (recommending the use of peer review and giving deference to agency analysis that has been developed through the use of peer review). The OMB defines peer review as “a scientifically rigorous review and critique of a study’s methods, results, and findings by others in the field with requisite training and expertise.” Proposed Bulletin, *supra* note 1, at 54,024.

review systems agencies have chosen to employ.⁹ Conversely, the new policy presents a more structured and arguably more restrictive form of peer review than previously suggested to agencies.¹⁰

The OMB peer review policy stems from an insertion into a 2001 appropriations bill known as the Information Quality Act.¹¹ Even though the proposed bulletin is not a proposed rule, but rather an administrative policy, OIRA opted to employ a note and comment period for public feedback on the proposed change.¹² The OMB could have simply issued notice of the new policy without the additional burden of going through the note and comment period because the Administrative Procedure Act states that formal note and comment period does not apply to general agency policies.¹³ OIRA, however, has a general practice of requesting public comment for its proposed policy changes.¹⁴ OIRA has also previously asked the public to nominate rules it felt should be modified or rescinded.¹⁵ With such consistent efforts at accessibility and transparency, the OMB can better relate its policies and ideology to the public.

The OMB hoped to obtain comments from interested parties dealing primarily with the scope of the bulletin.¹⁶ During the first public comment period, OIRA received over 180 comments from businesses, agencies, and

9. See generally U.S. General Accounting Office, GAO/RCED-99-99, *Federal Research: Peer Review Practices at Federal Agencies Vary*, at <http://www.gao.gov/archive/1999/rc99099.pdf> (Mar. 1999) (documenting the variability in both the definition and implementation of peer review across agencies).

10. Compare Graham, *supra* note 8 (stressing technical experience as the most important qualification of a peer reviewer), with Proposed Bulletin, *supra* note 1, at 54,024-25 (citing non-independence of peer reviewers from agencies as the biggest criticism of current agency peer review practices).

11. Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515(a), 114 Stat. 2763, 2763A-153-54 (specifying that OMB should "issue guidelines . . . that provide policy and procedural guidance to Federal agencies for ensuring and maximizing the quality, objectivity, utility, and integrity of information . . . disseminated by Federal agencies").

12. See Administrative Procedure Act, 5 U.S.C. § 553 (2000) (limiting note and comment procedures to rulemaking).

13. *Id.*

14. See, e.g., Office of Management and Budget, *Circular A-4*, at http://whitehouse.gov/omb/inforeg/circular_a4.pdf (Sept. 17, 2003) (stating that the agency requested public comment before the final publication of this circular); Office of Management and Budget, *Proposed Revision to Circular A-76*, at http://www.whitehouse.gov/omb/fedreg/a76/proposed_revision_111902.html (last visited Jan. 8, 2005) (requesting public comment); Guidelines for Ensuring and Maximizing the Quality, Objectivity, Utility, and Integrity of Information Disseminated by Federal Agencies; Republication, 67 Fed. Reg. 8452, 8460 (Feb. 22, 2002) [hereinafter Information Quality Guidelines] (noting public comments had been sought in issuing the guidelines). This practice of requesting public comment on policy changes has arguably given OMB a good sense of how the public feels about its practices.

15. See U.S. General Accounting Office, GAO-03-292, *RULEMAKING, OMB's Role in Reviews of Agencies' Draft Rules and the Transparency of Those Reviews*, 2, at <http://www.gao.gov/new.items/d03929.pdf> (Sept. 2003) (reporting that OIRA determined that 23 out of 71 suggested rules in 2001 merited high priority review).

16. Proposed Bulletin, *supra* note 1, at 54,026-27.

organizations voicing a range of opinions regarding the proposed policy.¹⁷ After the revised bulletin was released, OIRA received an additional 50 comments.¹⁸ The volume and sophistication of the comments received by OIRA seem to suggest that such a policy change will arguably affect many agencies, organizations, and citizens.¹⁹

I. THE PROPOSED BULLETIN

The proposed bulletin generated a great deal of conversation and controversy. OMB requested comments on the scope of the proposed bulletin and whether the bulletin would burden or benefit agencies.²⁰ The public responded positively to OMB's decision to request comments.²¹ Most comments, however, expressed negative views on the proposed system of peer review.²²

A. Criticism of Implementing Peer Review

Critics claimed that the proposed peer review policy would give politics an unethical influence over science.²³ Others questioned the ultimate effect

17. See Office of Management and Budget, *2003 Public Comments on Peer Review*, at http://www.whitehouse.gov/omb/inforeg/2003iq/iq_list.html (last visited Feb. 3, 2005) (listing 187 public comments received regarding the Proposed Bulletin).

18. See Office of Management and Budget, *OMB's Response to Comments on the Revised Peer-Review Bulletin* (Dec. 15, 2004) at http://www.whitehouse.gov/omb/inforeg/peer2004/peer_response.pdf (last visited Feb. 2, 2005) (claiming 56 public comments were received regarding the Revised Bulletin).

19. See Rick Weiss, *Peer Review Plan Draws Criticism*, WASH. POST, Jan. 15, 2004, at A19 (describing the controversy that the proposed bulletin has aroused). Agencies will have to employ additional administrative procedures; organizations feel the additional bureaucratic measures will hurt their interests; and citizens have expressed concern at the perceived interference of politics into science. *Id.*

20. See Proposed Bulletin, *supra* note 1, at 54,026-27 (inquiring whether provisions of the policy "should be strengthened, modified, or removed," and whether agencies should be allowed to choose their own peer reviewers).

21. See Jeffrey S. Lubbers, *OMB to Require Peer Review for Regulatory Science Documents*, 29 ADMIN. & REGULATORY LAW NEWS 3, 9 (2003) (commending OMB for the use of a note and comment period).

22. See Weiss, *supra* note 19 (reporting that a number of science organizations, citizen advocacy groups, and a coalition of former government regulators see the proposed bulletin as an effort to infuse White House policies into science and to use the uncertainty that surrounds science as an excuse to delay new rules, which would cost regulated industries millions of dollars); see also Letter from Jon Brodziak, Ph.D., to Joshua B. Bolten, Director, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/166.pdf> (Dec. 15, 2003) (accusing the OMB of creating a "'solution' to a non-existent problem," since the agency "cannot identify significant and substantial regulatory problems caused by a lack of appropriate peer review"); Letter from Former Regulators: Revised, to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/162.pdf> (Jan. 9, 2004) (claiming that "implementation of this proposal would lead to increased costs and delays in disseminating information to the public and in promulgating health, safety, environmental and other regulations, while potentially damaging the existing system of peer review").

23. See OMB Watch, *OMB Bulletin on Peer Review: Making Science Vulnerable to Political Manipulation*, at <http://www.ombwatch.org/article/articleprint/1771/-/1/1> (Aug. 29,

of the proposal.²⁴ OIRA also received public comments claiming that people fail to see the benefit of a structured peer review system.²⁵ Concerned critics argued that the proposed peer review policy would unnecessarily slow down the government.²⁶ Additionally, scholars contended that the proposed selection process of peer reviewers presents a skewed approach to potentially biased issues.²⁷

As previously mentioned, the proposed bulletin originates from a single line of text inserted into the Information Quality Act of 2001.²⁸ OMB bases its proposal for peer review from this text, and a document it issued in February 2002 instructing agencies on implementing the legislation.²⁹ Pessimists suggest that OMB could use the uncertainty that unavoidably surrounds science as a rationale to delay important new health and safety regulations.³⁰ Concerned organizations have requested that barriers remain between federal science and politics.³¹

2003) (noting that the clause requiring agencies to receive approval from OIRA and Office of Science and Technology Policy (OSTP) gives these White House agencies too much influence “over the peer review policies and subsequent processes”).

24. See Letter from Joan Claybrook, President, Public Citizen, to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/150.pdf> (Dec. 15, 2003) (accusing the proposed bulletin of being an attempt at “paralysis by analysis”). Like other concerned critics, Public Citizen expresses the view that additional layers of bureaucratic measures will adversely impact the Government’s ability to act. *Id.*

25. See Letter from Jordan J. Cohen, President, Association of American Medical Colleges, and Robert D. Wells, President, Federation of American Societies for Experimental Biology, to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/23.pdf> (Dec. 3, 2003) (suggesting that an additional layer of OMB interposition would have delayed important Public Health Service (PHS) decisions in the last year, such as when an agency of the PHS stopped clinical trials for specific treatment of individuals with a history of heart attacks because it found the drugs were dangerous to these individuals). *But see* Proposed Bulletin, *supra* note 1, at 54,028 (announcing that “[t]he [OIRA] Administrator may waive some or all of the peer review requirements” for an “emergency, imminent health hazard, homeland security threat, or some other compelling rationale”).

26. See Sidney A. Shapiro, *OMB’s Dubious Peer Review Procedures*, 34 ENVTL. L. REP. 10,064 (arguing that “the benefits of imposing additional procedures” should be weighed against the consequences of delayed government action).

27. See *id.* at 10,071 (claiming that government does not have a vested interest in a particular outcome when it funds science, as opposed to private motivations that can influence the private sector).

28. Treasury and General Government Appropriations Act for Fiscal Year 2001, Pub. L. No. 106-554, § 515(a), 114 Stat. 2763, 2763A-153-54 (specifying when OMB should issue guidelines providing policy and procedural guidance to federal agencies).

29. Information Quality Guidelines, *supra* note 14.

30. See Weiss, *supra* note 19 (reporting OMB’s motivation for peer review as an effort to “inject White House politics into the world of science”). Critics fear that politicians will be able to influence whether the agency can properly promulgate regulations based on political reasons. *Id.*

31. See Letter from William H. Schlesinger, President, Ecological Society of America, to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/123.pdf> (Dec. 15, 2003) (claiming that the proposed bulletin weakens the divide between politics and science by allowing the executive branch to regulate the review of scientific information at the agency level). “Federal

The majority of negative comments argue that peer review adds expense and delay to the use or distribution of information. Commentators fear that the structural constraints of the proposed bulletin will hinder necessary swift agency action. For example, in the public health arena, agencies often feel a responsibility to announce potential health and safety issues to the public immediately. In the past, the Food and Drug Administration has swiftly alerted the public to potentially harmful medicines.³² Critics have pointed out the insufficiency of the waiver contained in the proposed bulletin for such emergency situations.³³ The proposed bulletin arguably gives the Office of Science and Technology (OSTP) the power to slow down or block agencies' emergency activities if the peer review process has not been completed to OSTP's satisfaction.

Some public comments criticized the proposed bulletin's selection process for peer reviewers. The proposed bulletin, however, gives the agency sponsoring the review the power to choose a peer reviewer, based on the candidate's scientific expertise.³⁴ The proposed policy asks the agency to weigh a number of factors when looking at candidates, including independence from the agency, lack of bias, and lack of conflicting interests.³⁵ Critics suggest that OMB should have chosen the Federal Advisory Committee Act (FACA) to govern this process.³⁶ If an agency chooses to select an outside panel of peer reviewers, it must assess them under FACA, but does not have to use FACA procedures to regulate the process.³⁷ Congress originally passed FACA to promote openness and accountability, qualities that would arguably promote a fair and just peer review system.³⁸

science" in this sense can be taken to mean research conducted with the support or assistance of the federal government.

32. See Weiss, *supra* note 19 (comparing the duty to warn of the Food and Drug Administration to that of the Agriculture Department). Both agencies safeguard the public health by warning citizens about contaminated or dangerous food or drugs.

33. See OMB Watch, *OMB Bulletin on Peer Review: Making Science Vulnerable to Political Manipulation*, at <http://www.ombwatch.org/article/articleprint/1771/-/1/1> (Aug. 29, 2003) (noting that the agency administrator must consult with the Office of Science and Technology Policy before granting the waiver, which adds an additional layer of administrative review; this additional layer makes the waiver less of a swift process than desired by some critics).

34. See Proposed Bulletin, *supra* note 1, at 54,027 ("When multiple disciplines are required, the selected reviewers should include as broad a range of expertise as necessary.").

35. *Id.*

36. See Shapiro, *supra* note 26, at 10,068-69 (disputing the reliance on *Byrd v. EPA* and suggesting that the peer review process be "legitimized" by using FACA).

37. See Proposed Bulletin, *supra* note 1, at 54,028 (advising an agency using an outside panel to retain a firm to oversee the peer review process); see also *Byrd v. EPA*, 174 F.3d 239 (D.C. Cir. 1999) (holding that such review panels are not governed by the Federal Advisory Committee Act, 5 U.S.C. app. 2 §§ 1-15).

38. See Stephen P. Croley, *Practical Guidance on the Applicability of the Federal Advisory Committee Act*, 10 ADMIN. L.J. AM. U. 111, 117 (1996) (calling openness and accountability good government values).

B. Support for Adding Peer Review

Some of the received comments favored the new proposed policy.³⁹ The majority of these public comments stress the need for neutrality in review. Indeed, organizations like the California Avocado Commission,⁴⁰ the Washington Forest Protection Association,⁴¹ and the Center for Regulatory Science⁴² support OIRA's efforts to develop an independent, regulated peer review system. Supporters of the proposed bulletin favor increased uniformity in regulations and independence in reviewers.

OIRA Administrator Dr. John Graham stated that peer review can "increase the technical quality and credibility of regulatory science."⁴³ Some commentators have agreed that peer review forms the foundation of the acceptability of scientific information.⁴⁴ Others urge OIRA to unify peer review by making a uniform peer review process mandatory for all scientific and technical information used by agencies in influential rulemaking.⁴⁵

II. THE REVISED BULLETIN

After thoroughly reviewing public comment on the proposed bulletin, OMB published a revised bulletin in April 2004.⁴⁶ Although critics claim the revised bulletin fails to address every issue,⁴⁷ OMB incorporated major

39. See Letter from Joel Nelson, President, California Citrus Mutual to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/1.pdf> (Oct. 7, 2003) (hailing the proposed peer review policy as fostering a more streamlined and less controversial system of review).

40. Letter from Tom Bellamore, Senior Vice President and Corporate Counsel, California Avocado Commission, to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/13.pdf> (Oct. 27, 2003).

41. See Letter from Peter Heide, Director of Forest Management, Washington Forest Protection Association, to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/12.pdf> (Oct. 27, 2003) (emphasizing the importance of the uniform peer review system to help ensure "integrity across the nation").

42. Letter from Sidney A. Shapiro, Board Member and Treasurer, Center for Progressive Regulation, to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.whitehouse.gov/omb/inforeg/2003iq/24.pdf> (Dec. 7, 2003).

43. See Weiss, *supra* note 19 (claiming peer review would protect science from political criticism).

44. See Letter from Reginald I. Vachnon, President, American Society of Mechanical Engineers, to Margo Schwab, Ph.D., Office of Information and Regulatory Affairs, OMB, at <http://www.asme.org/gric/ps/2004/04-01.html> (Jan. 23, 2004) (urging OMB to use independent peer review techniques delineated in their report).

45. See Letter from Jennifer J. Wilson, President and CEO, National Stone, Sand and Gravel Association, to Dr. Margo Schwab, Office of Information and Regulatory Affairs, OMB, at <http://whitehouse.gov/omb/inforeg/2003iq/178.pdf> (Dec. 17, 2003) (hailing objective peer review, as proposed in the bulletin, as crucial to ensuring the reliability of scientific policies).

46. See Revised Bulletin Press Release, *supra* note 6 (stressing the importance of peer review and ensuring that all voices are heard).

47. See Letter from Sean Moulton, Senior Policy Analyst, OMB Watch, to Dr. Margo

public concerns into the revised policy.⁴⁸ Ensuring government transparency, OMB published on its website a document specifically addressing public comments and agency response to the proposed bulletin.⁴⁹ OMB stated plans to finalize its peer review policy by late 2004.⁵⁰

A. Positive Changes

As a result of public input, the revised bulletin provides a more extensive discussion of why government-wide peer review guidance is needed.⁵¹ The bulletin gives more discretion to federal agencies to determine what type of peer review mechanism will best work for specific information products.⁵² It provides exemptions for time-sensitive medical, public health and safety information, and other compelling circumstances.⁵³ The bulletin also indicates that the policy does not create any new rights for litigation against federal agencies,⁵⁴ defines a more transparent process for public participation in peer review planning,⁵⁵ and requires the most rigorous form of peer review only for highly influential scientific assessments.⁵⁶

Dr. Graham stressed the importance of peer review to “sound science” when OMB released the revised bulletin, and the agency continued to acknowledge the importance of public input to the process.⁵⁷

Schwab, Office of Information and Regulatory Affairs, OMB, at <http://www.ombwatch.org/info/dataquality/CommentsRevisedPR-OMBW.pdf> (May 28, 2004) (accusing OMB of failing to provide “a clear need for government-wide peer review requirements” and neglecting to establish OMB’s legal authority for the proposed policy).

48. See Revised Bulletin Press Release, *supra* note 6 (explaining that public comments, a workshop convened by the National Academy of Sciences, and an interagency review of the draft Bulletin caused the changes); see also Rick Weiss, *OMB Modifies Peer-Review Proposal*, WASH. POST, Apr. 16, 2004, at A19 (reporting that people who had reservations about the earlier version were grateful to OMB’s responsiveness).

49. Office of Management and Budget, *Summary of Public and Agency Comments on Proposed Bulletin on Information Quality and Peer Review, Including Responses by OMB*, at http://www.whitehouse.gov/omb/inforeg/peer_review_comment.pdf (Apr. 15, 2004).

50. See Revised Press Release, *supra* note 6.

51. See Revised Bulletin, *supra* note 3, at 23,231 (explaining how peer review is an important procedure used “to ensure that the quality of published information meets the standards of the scientific community”).

52. See *id.* at 23,240 (allowing agencies to determine which peer review mechanism to employ based on the complexity and novelty of the science involved and on a cost-benefit analysis).

53. *Id.* at 23,238, 23,241.

54. See *id.* at 23,242 (clarifying that the new peer review policy does not create any new legal rights or benefits against the United States).

55. See *id.* at 23,240 (requiring agencies to publicize peer reviewers’ comments).

56. See Revised Information Quality Bulletin on Peer Review, 69 Fed. Reg. 23,230, 23,240-41 (Apr. 28, 2004) (delineating specific requirements for the peer review processing of highly influential scientific information).

57. See Revised Bulletin Press Release, *supra* note 6 (showing that OMB received 187 comments for the proposed bulletin and it expected additional comments during the note and comment period for the revised bulletin).

B. Continued Criticisms

Although the revised bulletin addressed many public concerns, some critics still remain hesitant to accept OMB's peer review policy. Public Citizen, a nonprofit consumer advocacy organization, claims that the revised bulletin gives too much power to the OIRA Administrator.⁵⁸ OMB Watch, another advocacy organization, asserts that OMB mandates unmerited strict requirements over highly influential scientific information.⁵⁹ Other former critics of the proposed bulletin, however, approve of the changes that OMB made to the policy with the revised bulletin.⁶⁰

III. THE FINAL BULLETIN

With the publication of the final bulletin in December 2004, OMB has produced a strong policy that addresses public concern. The final bulletin clarifies the mandate to peer reviewers,⁶¹ encourages public participation, and gives a substantial degree of discretion to agencies.⁶² OIRA received public comment on all of these aspects of the revised bulletin, and adequately responded to them in the bulletin's final version.⁶³ The final bulletin also added several new aspects to the peer review policy. Enhancing government public responsibility, it now implements an annual reporting provision⁶⁴ and provides defined disclosure requirements that will further government transparency.⁶⁵

58. See Public Citizen, *OMB's Second Draft of Peer Review Bulletin Creates New Problems*, at <http://www.citizen.org/pressroom/release.cfm?ID=1693> (Apr. 20, 2004) (claiming that the revised bulletin allows an agency to use an alternative form of peer review if it is specifically approved by OIRA, thus allowing an unexplained bypass of the peer review process).

59. See OMB Watch, *supra* note 48 (deeming this issue one of the peer review policy's fundamental flaws).

60. See Weiss, *supra* note 48 (citing David Korn of the Association of American Medical Colleges as a former critic who speaks highly of the revised bulletin).

61. See Final Bulletin, *supra* note 4, at 2675 (reinstating instructions that peer reviewers should provide commentary on science and technical questions while reserving policy implications for policy makers).

62. See *id.* at 2675 (providing agencies with the ability to select their own reviewers and choice of peer review mechanism).

63. See Office of Management and Budget, *OMB's Response to Comments on the Revised Peer-Review Bulletin* (Dec. 15, 2004), at http://www.whitehouse.gov/omb/inforeg/peer2004/peer_response.pdf (encouraging public participation whenever "feasible and appropriate" by making information available for public comment and holding public meetings).

64. See Final Bulletin, *supra* note 4 at 2677 (explaining that an annual reporting requirement will facilitate OMB's ability to track how agencies use the peer review policy). This requirement directly responds to public concern over OMB's ability to enforce the bulletin. *Id.*

65. See *id.* at 2675 (directing agencies to disseminate final peer review reports on the agency's website all with all materials related to the peer review, including the names of the reviewers and their organizational affiliations with the report).

The requirements of the final bulletin apply to information disseminated after June 2005.⁶⁶

CONCLUSION

The OMB's proposed peer review policy continues to generate discussion over its effectiveness. OMB and OIRA decided wisely to invite public comment on this new policy. With the delayed release of the final bulletin, OIRA has demonstrated the respect and importance public comment merits. More agencies should follow the OMB's example by inviting public participation when they intend to enact a new policy that will have broad-reaching effects.

66. See Final Bulletin, *supra* note 4, at 2664 (specifying the bulletin to apply to "highly influential scientific" information disseminated after June 16, 2005, and "influential scientific information" disseminated after December 16, 2005). Influential scientific information is information an agency determines will have a clear and substantial impact on important public policies or private sector decisions. *Id.* Highly influential scientific information is information that could either have a potential impact of more than \$500 million in any year or is novel, controversial, or precedent-setting, or has significant interagency interest. *Id.* at 2675.