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05/14/2004 04:38:32 PM

Record Type: Record

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Subject: Amendment to Soc. Environmental Journalists Comments on Peer Review -- adding signature of Nat. Assn. of Science Writers



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**Amended Comments of the Society of Environmental Journalists
and the National Association of Science Writers, Inc.
on the OMB "Revised Information Quality Bulletin on Peer Review"
submitted May 14, 2004**

Introduction

The Society of Environmental Journalists (www.sej.org), the largest and oldest organization of working journalists covering environmental issues, hereby submits comments for the formal record on the Office of Management and Budget's "Revised Information Quality Bulletin on Peer Review," published April 15, 2004. We appreciate the opportunity to comment.

SEJ is a non-partisan educational organization of individual working journalists dedicated to improving the quality, accuracy and visibility of environmental reporting. Founded in 1990 and based in Jenkintown, Penn., SEJ consists of more than 1,350 journalists, educators and students. SEJ's programs include annual and regional conferences; a daily environmental news service; a quarterly magazine; a biweekly story tip sheet; an annual journalism contest; a comprehensive Web site; eight e-mail listserves; a diversity program and a mentoring program.

The National Association of Science Writers, Inc. (NASW - www.nasw.org), was founded in 1934 and formally incorporated in 1955 as a membership corporation under the laws of New York, to improve the craft and promote good science writing. Its goal is to "foster the dissemination of accurate information regarding science through all media normally devoted to informing the public." Over the years, its officers have included both freelancers and employees of most of the major newspapers, wire services, magazines, and broadcast outlets in the country. It also welcomes members who are the public information officers on science from government labs, universities and other institutions. Above all, NASW fights for the free flow of science news.

At a time when U.S. citizens face a growing array of potential threats to their health and their environment, our government must provide the citizenry with the best tools available to sort through the difficult decisions we face. For journalists seeking to help citizens understand the increasingly complex issues confronting our nation, all taxpayer-funded information and scientific analysis should be freely available.

We certainly applaud the moderation, in the revised bulletin, of many of the positions taken by OMB in the bulletin as originally proposed. OMB is certainly to be commended for thinking twice about what was originally an ill-conceived proposal.

Nonetheless, we urge the OMB to withdraw the Peer Review Bulletin entirely. In any form, however attenuated, it would place unnecessary and unwarranted restrictions on

dissemination to the public of information which could vitally affect not only the environment, but also public health and welfare.

In general, we think the interests of good science, good government, and good journalism are best served by the maximum feasible degree of transparency, openness, and information-sharing. We trust that the fastest and most powerful way to bring about correction of bad science is to publish it -- and then to publish also whatever corrections it inspires.

No convincing demonstration has been made that current agency peer review procedures are faulty or inadequate. Peer review is already widely and intensively practiced by government agencies.

Although the bulletin's stated intent is to improve "both the quality of scientific information and the public's confidence in it," we believe it would have the exact opposite effect. Putting the scientific dialogue under the supervision of OMB, an agency without scientific expertise, would elevate considerations other than scientific accuracy to a controlling influence over the science itself. In any administration, putting control or influence over scientific findings in the hands of the White House would only encourage political manipulation of science. Moreover, it would encourage the public perception that science could not be done independently of White House political influence.

The bulletin continues an unwarranted expansion of the tenuous and dubious legal mandate contained in P.L.106-554, Section 515(a). The legislated language itself says nothing about scientific peer review. While the obvious intent of the original legislative language was to maximize the factual accuracy of pure data, OMB has left that purpose behind, and used the scant legislation as a justification for intruding into scientific conclusions and judgments.

As journalists, we encounter scientific controversy daily, on most of the environ-related subjects we cover. Open scientific debate, we believe, is the best way to arrive at durable truths. It is not the job of government to resolve all, or even most, scientific issues. We fear that putting science under centralized White House control could become a way of presenting to the press and public only that science in which debates had been resolved in ways preferred by the White House. Neither press nor public want or need to be protected from scientific dissent, debate, or controversy. On the contrary, we need to be informed about these disagreements and exposed to them.

Specific Comments

If OMB decides not to withdraw the bulletin entirely, we would offer the following specific comments describing changes we think should be made to it before it is finalized:

1. (Item I.3., definition of "dissemination") . It would be helpful if the definition of "dissemination" was amended to make clear that it refers only (restrictively) to publication of information or assessments whose validity is in some way officially

endorsed (not "initiated or sponsored," a much broader definition) by the originating agency.

2. Public disclosure of scientific information, studies, and assessments prior to peer review. It is important that there be guarantees of public disclosure of the scientific material undergoing peer review. Only thus can the integrity of the review itself be judged by parties not directly involved in it. It is important to realize that one of the most crucial "publics" is scientists who may not have been chosen or designated as reviewers. The bulletin's exclusion of responses to FOIA requests from the definition of "dissemination" may be adequate to accomplish this needed disclosure. It will only do so in tandem with timely publication of a complete Peer Review Agenda, as described in Section V. of the bulletin.
3. We are especially concerned with public disclosure issues left unresolved in Section II.4. and III.b. ("Conflicts"). The bulletin should go beyond a statement that the agency should "examine" such conflicts. We believe that when a reviewer has conflicts of interest and is nonetheless allowed to participate in a review, it is imperative that all the potential, apparent, or actual conflicts be fully disclosed to the public. In this area, we believe that the public's interest in integrity of science must override any privacy rights or concerns of the reviewer -- even though we understand that such disclosure may discourage participation by some reviewers. The bulletin should explicitly require procedures for such disclosure. Disclosure of conflicts should apply equally to those arising from ties to the agency itself, those arising from ties to regulated industries, and those arising from other conflicts.
4. The definition of "influential scientific information" (Section I.4.) is vague, and it is not clear who will make the judgment of what is included in it. We think this should be more explicitly left to the agencies. The words "clear and substantial impact on important public policies or private sector decisions" can only be applied through subjective interpretation. This implies that there may be a large tier of non-influential science to which the bulletin does not apply -- perhaps basic or routine science or data-gathering without immediate practical impact. It would be better if this were made explicit. Finally, we urge OMB to re-examine the syntax of the sentence, particularly the words "information the dissemination of which the agency reasonably can determine that dissemination of which will have or does have ..." to be sure that it has the meaning intended. It seems to contain an erroneous repetition.
5. The definition of "highly influential" scientific information (Section III.1.) remains problematic. At the very least it should be made clear and explicit that the "potential effect of more than \$500 million in any year" apply to public benefits (whether welfare, environmental, health, or other) as well as costs to industry or government. The methods used to calculate such benefits should be of equal rigor or latitude as the methods used to calculate costs.

6. The "interagency group, chaired by OSTP and OIRA" (Section IX.) should have all meetings open to the public, and should have complete records of its proceedings available to the public. All records of communications between the Executive Office of the President (OMB, OSTP, CEQ, etc.) and the agencies on the subject of scientific peer review should be subject to FOIA rather than exempt from it.
7. "Information Access" (Section III.3.). All the scientific background information referred to in this section as being made available to designated reviewers should also be explicitly required to be made available to any member of the public on request. The only possibly valid exceptions to this we can think of would involve privacy of research subjects, legitimate and documented proprietary information, or national security information.
8. "Transparency" (Section II.5.) We think that the names of all reviewers and the full comments of all reviewers should be publicly disclosed. We understand that in order to get candid opinions from reviewers, it may be the choice of the agency not to associate particular comments with the identity of a particular reviewer, and do not object to such blinding.
9. We are especially concerned over what official or binding effect the "Introduction" to the bulletin may have. It seems to be more than the usual regulatory preamble or explanation of how comments were addressed. The 30-page introduction to a 6-page bulletin could be construed to have force similar to the bulletin itself -- and we do not think it should unless it also is subjected to similar review-and-comment, and the requirement that it be consistent with the bulletin.
10. When reviewers meet in panels, we think the work of such panels should be subject to the Federal Advisory Committees Act. The bulletin should state explicitly that when such review work (or for that matter, reviewer selection) is done through contractors, FACA requirements will still apply. (See particularly Section III.6.)
11. "Public participation" (Section III.4.). If it is not obvious from our comments above, we want to emphasize that we believe *all* draft information and assessments should be publicly available (if only through FOIA) at the time they are submitted for peer review. More extensive public participation proceedings, of course, may be justified in cases of greater public interest.

Conclusion

OMB's peer review bulletin, as originally proposed, embodied an inherent self-contradiction -- a kind of circular "Catch-22." It stated, in essence, that information could not be disseminated unless it had already been peer-reviewed; yet in the strictest sense peer review could not take place at all unless the information was disseminated in some

fashion (if only to reviewers). The revised bulletin is only partly successful in resolving this problem.

We think the answer to it lies in making some important distinctions. The key distinctions that need to be made are between the science itself, on the one hand, and the policy decisions that may be partly based on it, on the other hand. The government may have some legitimate justification for trying to limit dissemination of documents or conclusions that represent "official views" of the agency or government, or are in some policy sense "endorsed by" the agency or government. But in matters involving purely science, facts, data, and information -- we believe that the more disclosure and dissemination there is, the higher the quality and validity of the end product will be.

The disclaimer method arrived at in the revised bulletin may yet prove to be a workable way of achieving the needed openness. But our experience in this field leaves us skeptical. Because of the perennially contentious nature of many environmental regulations, most of which are based at least partly on some scientific findings, we expect the interested and contending parties will inevitably try to manipulate (and corrupt) the scientific findings themselves. It seems dangerously probable to us that the OMB bulletin will become an instrument for parties to use in their efforts to manipulate scientific findings. The best course of action, we believe, would be not to promulgate the bulletin. This would maximize the openness needed for the best science.

Signed,

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