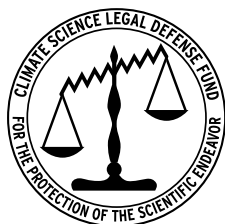


A QUICK GUIDE TO THE SCIENTIFIC INTEGRITY POLICY AT THE

Department of Energy (DOE)



Brought to you by
the Climate Science
Legal Defense Fund

Table of Contents

1	INTRODUCTION	1
2	SUMMARY	2
3	WHAT DOES THE POLICY GOVERN?	2
4	WHO DOES THE POLICY GOVERN?	7
5	WHAT IS THE PROCESS FOR FILING A COMPLAINT?	7
6	ADDITIONAL RELEVANT POLICIES AND RESOURCES	8
7	REPRESENTATIVE CASES AND OUTCOMES	8

A Quick Guide to the Department of Energy Scientific Integrity Policy

Scientific integrity principles are indispensable to the missions and the functions of scientific federal agencies in the United States. Conducting sound and unbiased scientific research is essential to maintaining public trust in these agencies. For scientists employed at these agencies, understanding these principles—both how to abide by them, and what to do if they are violated—is a core job function.

Many scientific agencies adopted scientific integrity policies following a 2009 memorandum issued by President Obama, and a subsequent memorandum issued in 2010 by the White House Office of Science and Technology Policy. These policies clarify how individual agencies interpret scientific integrity. In many cases, a policy also describes how a scientist should report a loss of scientific integrity, how the agency will investigate such claims, and the rights of both a complainant and a person alleged to have committed a violation.

This guide examines the Department of Energy (DOE) scientific integrity policy. The guide is designed to help DOE scientists understand how the policy applies to them, what rights they have under the policy, and how they can avail themselves of these.

The DOE policy could be significantly strengthened to provide clearer enforcement mechanisms, penalties, and rights of appeal. But it is still crucial for agency scientists to know their rights and responsibilities in respect to scientific integrity, as well as the strengths and weaknesses of the policy.

While this guide helps DOE scientists understand the agency's scientific integrity policy, it is not a substitute for legal advice regarding a particular situation. The Climate Science Legal Defense Fund offers **free, confidential consultations to scientists** with questions about scientific integrity.

Contact us at
(646) 801-0853

Or send an email to
lawyer@cslddf.org

2

SUMMARY

The DOE [scientific integrity policy](#) (referred to as the policy and SIP in this guide) is more comprehensive than others in that it covers political interference, threats and intimidation of scientists, and censorship. The policy uses strong language when referring to freedom of expression and professional development of its scientists, indicating that DOE prioritizes these as part of scientific integrity. However, it describes no formal processes for filing and investigating scientific integrity complaints, which is a significant shortcoming. And, to the best of our knowledge, at the time of this publication DOE had not designated a Scientific Integrity Official, despite the fact that the policy requires the Secretary of Energy to appoint one (SIP § 5).

When the DOE approved its current scientific integrity policy in 2017, it simultaneously approved a [departmental order](#) on scientific integrity (referred to as the departmental order and DO in this guide), designed to implement the policy. This approach is problematic because there are two policies and they're not centralized in one place. There are also inconsistencies between the two documents, even on some fundamental issues such as who is bound by them.

3

WHAT DOES THE POLICY GOVERN?

Research Misconduct

The policy and departmental order do not prohibit DOE employees from engaging in research misconduct—a significant deficiency. The policy only mentions research misconduct in relation to third parties who are funded by or doing research on behalf of the DOE. Even then, the policy does not set out any standards or requirements. It only points to the locations of procedures for handling allegations of misconduct related to research supported by DOE contracts and agreements, and research supported by DOE financial assistance agreements in the Code of Federal Regulations (SIP § 8(a)).

The departmental order only addresses research misconduct in the context of third parties; a contractor requirements document attached to it charges contractors with monitoring, prevention, detection, and remediation of research misconduct (DO contractor requirements document §§ 1(a)(3) and 2(f)).

Conflicts of Interest

The DOE policy mentions conflicts of interest once, stating that scientists are encouraged to accept honors and awards for their research accomplishments, “subject to compliance with all applicable conflict of interest statutes” (SIP § 7(c)). Aside from this, the policy does not discuss how conflicts of interest interface with scientific integrity, or when a conflict of interest might lead to a loss of scientific integrity.

The departmental order has little information on the subject, stating only that federal supervisors must “follow all applicable conflict of interest laws, regulations, and policies” (DO § 5(d)(3)). This implies that the DOE considers avoiding conflicts of interest to be part of scientific integrity. Yet the departmental order provides no guidance on what policies are applicable, or when and how a violation of scientific integrity could occur in the context of a conflict of interest. It also gives no indication about whether DOE employees who are not “federal supervisors” (a term not defined in the policy) can violate scientific integrity by failing to observe conflict of interest rules.

Political Interference

The DOE policy prohibits anyone, including public affairs officers, from asking or directing a researcher to “alter the record of scientific findings or conclusions” under any circumstances (SIP § 2(a)). The departmental order includes a similar statement prohibiting anyone covered by the policy, including public affairs officers, from asking or directing researchers to alter scientific findings (DO § 4(c)).

Threats and Intimidation

The departmental order prohibits federal supervisors from suppressing or altering “scientific or technological findings, and intimidating or coercing federal staff, contractors, recipients of financial assistance awards, or any others into suppressing or altering scientific or technological findings or conclusions (DO § 5(d)(4)).

In a surprising oversight, the departmental order does not impose similar requirements on DOE employees who are not “supervisors,” such as political appointees, department heads, or public affairs officials. However, the attachment regarding contractors contains a similar requirement for those in management at DOE contractors, but does not define what it means to be “in management” (DO contractor requirements document § 2(b)).

This is a place where having a scientific integrity policy and a departmental order to implement that policy creates confusion. The DOE scientific integrity policy contains a similar provision that prohibits all covered personnel from suppressing or altering scientific or technological findings, or from intimidating or coercing anyone to alter or censor scientific or technological findings or conclusions (SIP § 2(b)). As a result, it is not clear whether this requirement applies to all covered personnel or only to supervisors and managers at DOE contractors.

Use of Science in Agency Decision-Making

DOE’s policy does not address the use of science in agency decision-making.

Science Communication

According to the policy, freedom of expression is an integral part of scientific integrity. Those covered by the policy are “free and encouraged to discuss their scientific work and research openly, whether in a scientific or a public forum or with the media, and to publish their findings” (SIP § 1(a)). The policy goes on to state that “DOE supports the free flow of scientific information, within the scientific community and between scientists and the public.”

The policy also addresses the rights of third parties who receive DOE assistance agreements in this regard. “Except as indicated in individual assistance agreements, recipients, sub-recipients, and their respective institutions have no responsibility to coordinate with the DOE on public communication, but are welcome to voluntarily coordinate with the DOE, when appropriate, to publicize scientific publications and/or results” (SIP §2(e)).

Timeliness: The departmental order requires supervisors and other responsible personnel to make research findings available to the public in a timely manner and in accessible formats (DO § 5(d)(5). The order requires a broader category of employees designated “federal staff” to “facilitate the free flow of scientific and technological information,” but this requirement does not contain specific references to the timeliness of such information (DO § 5(f)(1)).

Press: Section 4 of the departmental order addresses media requests, stating that “all federal staff who receive requests from media outlets for interview or comment based on their scientific or technical expertise are free to comment.” Federal staff who choose to comment must notify their organization’s public affairs office. The policy is notably ambiguous as to whether that notification must come before or after commenting to the media.

When a scientist is publicly representing a government or DOE position or policy (presumably distinct from discussing scientific research), their representation must be cleared through program management, up to and including DOE headquarters, if appropriate.

Section 2(c) of the contractor requirements document attached to the departmental order contains provisions that pertain to how DOE contractors should communicate with the media. Research personnel at a DOE contractor must notify their institution’s management and public affairs offices about their interactions with the media. If a communication between a contractor and the media goes beyond research findings and conclusions and touches on policy or operational issues, the contractor’s public affairs office must coordinate with DOE headquarters prior to the response. Finally, contractors must clear any public representation of government or DOE positions or policies through DOE headquarters, and must obtain prior approval of news releases from DOE before their publication.

Social media: Section 4(e) of the departmental order contains robust provisions addressing social media use and scientific integrity. It requires that offices responsible for posting to official DOE accounts:

- Provide draft text to the appropriate agency scientists and engineers whose work is included to ensure the accuracy of the scientific information being communicated prior to posting.
- Issue correction statements if incorrect technical information is released on social media platforms.

When expressing personal scientific and technical views and related policy positions using digital media, covered personnel:

- Do not need to obtain permission or approval from their supervisors or management to use digital media in a personal capacity.

- Must include a disclaimer stating that opinions expressed are personal and not representative of the positions or policies of DOE or the U.S. government if they have a social media profile that references their official title, position, or DOE affiliation.
- Will not suppress or alter the social media posts of covered personnel that express scientific and technical opinions or related policy opinions.
- Must comply with the DOE policy regarding the use of government equipment for personal use and the Standards of Ethical Conduct for Employees of the Executive Branch regarding the use of official time to perform official duties.

Section 2(e) of the contractor requirements document attached to the departmental order contains policies for social media use by contractors; similar to other covered personnel, contractors do not need to seek approval from DOE headquarters to use digital media in a personal capacity. In addition, management personnel or public affairs officers at DOE contractors must not suppress or alter social media posts by contractors that express scientific and technical opinions or related policy opinions.

Testifying before Congress: While the policy does not state that agency scientists have a right to testify before Congress, this right is protected by federal law.

Right of scientists to review and/or correct agency communications: Both the policy and departmental order require that, when technical information is communicated to the public that significantly relies on the research of covered personnel, identifies them as authors or contributors, or proposes to represent their scientific opinions, they must have the opportunity to review the communication prior to its publication or release. They must also be allowed to correct any errors that occur (SIP § 2(c); DO §4(d)).

Section 2(g) of the contractor requirements document attached to the departmental order has a similar requirement for contractors, stating that management at a DOE contractor “must provide personnel an opportunity to review, prior to publication or release, any institutional public communication (e.g., laboratory report or press release) that substantially relies on their research or is released under their name.” However, this section does not address a right to correct errors made in public communications.

Publishing and lecturing: According to the policy, the professional development of DOE scientists is an important part of maintaining scientific integrity. The policy encourages activities such as attending or speaking at scientific and technical conferences; publishing in peer-reviewed, professional, or scholarly journals; or becoming an editor or editorial board member of a journal (SIP § 7).

The departmental order says little about the subject, but cautions that staff should provide a reasonably prominent disclaimer when using their title or position when publishing in a scientific or scholarly journal. An example of an appropriate disclaimer is: “The views expressed in the article do not necessarily represent the views of the U.S. Department of Energy or the U.S. government” (DO § 5(f)(3)).

Regarding contractors, the departmental order states that “[i]n general, any policies impacting the professional development activities of personnel are the purview of the contractor, with the exception that personnel and

management must follow applicable DOE guidance on conference attendance and management of scientific and technical information in accordance with the contract” (DO contractor requirements document § 2(h)).

Scientific societies: The policy encourages DOE scientists to participate in professional or scholarly societies, committees, or task forces (SIP § 7).

Opinion statements: Covered personnel can express their opinions on policy matters to the public and to the media, but they must clarify that they are expressing personal views and not those of the DOE, the U.S. government, or their respective institution (DO §4(a)).

Staff must also “[e]nsure that their federal titles or positions are not given more prominence than other significant biographical details when sharing personal opinions on scientific and technical topics or related policies in a public forum. This applies to opinions shared either when speaking publicly or in published writing” (DO § 5(f)(2)).

Hiring Practices

Supervisors are required to “select and retain candidates for scientific and engineering positions based primarily on their scientific and technological knowledge, credentials, experience, and integrity” (DO § 5(d)(1)).

Federal Advisory Committees

Section 6 of the policy addresses Federal Advisory Committees. While the inclusion of this section indicates that the DOE acknowledges that having advisory committees is an important aspect of scientific integrity, the policy does not say anything specific about how DOE will ensure the appropriate and transparent use of such committees other than it will comply with the pre-existing Federal Advisory Committee Act.

Whistleblower Protections

Section 4 of the policy addresses whistleblower protections. “As part of its commitment to ensuring the actual and perceived credibility of government research, the DOE is fully committed to the Whistleblower Protection Act of 1989, the expanded protections for federal employees signing non-disclosure agreements afforded by the Whistleblower Protection Enhancement Act of 2012 (WPEA), and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002.”

However, the policy does not provide whistleblower protections beyond these existing laws for anyone who files a scientific integrity complaint.

Classified Information

The DOE policy prohibits staff from using the fact that information has been classified as a means for suppressing scientific results. This is accompanied by an acknowledgment that information that may affect national security must remain classified (DO § 4(g)(3)).

The contractor requirements document attached to the departmental order addresses the use of classified documents by DOE contractors and requires them to review documents in a classified area in accordance with a separate DOE Order identifying classified information prior to public release (DO contractor requirements document § 2(c)(5)).

4

WHO DOES THE POLICY GOVERN?

Having separate, uncoordinated documents on scientific integrity leads to confusion in this area. Both the DOE scientific integrity policy and the departmental order use the term “covered personnel” to describe who they govern (SIP 9(a); DO § 7(a)). But the two documents do not define “covered personnel” in the same way.

The definitions are identical in many ways. Both state that DOE personnel covered by the scientific integrity policy include:

- All federal staff, including the heads of departmental elements and heads of field elements
- Political appointees
- Those working at DOE under the Intergovernmental Personnel Act
- Federal research scientists and engineers directly employed by the DOE

Both definitions include the catch-all phrase, “any other personnel that are involved with scientific information.” And both specify that the policy is intended to cover people working at the National Nuclear Security Administration, however the language is somewhat different. The policy says that “covered personnel” includes “federal staff working at the National Nuclear Security Administration.” The departmental order says “National Nuclear Security Administration personnel,” a term which could be significantly broader.

The departmental order’s definition of “covered personnel” broadly includes contractors, but it is not clear whether the definition in the policy does. That definition includes contractors to the extent that it covers personnel at the 17 DOE National Laboratories, which are operated by non-federal entities and whose personnel are employees of the contractors who manage and operate the labs.

There is an additional layer of confusion. In addition to a definition of “covered personnel,” the departmental order includes an “Applicability” section which has a different description of whom the order applies to (DO §3(a). This section says the order applies to “all DOE elements that conduct or support research and development,” a considerably broader phrase than is used in either of the definitions of “covered personnel.” This section then repeats some, but not all, portions of the definitions of “covered personnel” found elsewhere in the policy and the departmental order.

5 WHAT IS THE PROCESS FOR FILING A COMPLAINT?

Neither the policy nor the departmental order contain information about the filing, investigation, or resolution of a scientific integrity complaint. This is a significant shortcoming of the DOE policy.

6 ADDITIONAL RELEVANT POLICIES AND RESOURCES

- DOE [Order on Differing Professional Opinions](#)
- The DOE [Employee Concerns Program](#)
- DOE [website on social media best practices](#)

7 REPRESENTATIVE CASES AND OUTCOMES

Unlike some other scientific agencies, the DOE does not appear to make the outcomes of past cases public.

NOTES

The Climate Science Legal Defense Fund produced this guide to help scientists understand their rights under federal agency scientific integrity policies. This guide concerns only U.S. laws, and nothing in it should be construed as legal advice for your individual situation.

CSLDF provides free counsel to scientists with legal questions pertaining to their work. Contact us at **(646) 801-0853** or email lawyer@csldf.org to arrange a free and confidential consultation with an attorney.



The Climate Science Legal Defense Fund (CSLDF) works to protect the scientific endeavor by helping defend climate scientists against politically and ideologically motivated attacks. CSLDF is a non-profit organization under section 501(c)(3) of the Internal Revenue Code.

This guide was made possible by the generous support of the Common Sense Fund, the Energy Foundation, the David and Lucile Packard Foundation, and CSLDF donors.

Mailing Address

475 Riverside Drive
Suite 244
New York, NY 10115

Website

csldf.org

Twitter

[@ClimSciDefense](https://twitter.com/ClimSciDefense)

© February 2020

Climate Science Legal
Defense Fund

Find this guide online at:

csldf.org/resources/scientific-integrity