

Scientific integrity rules extended to include contractors

Kelsey Bruggger, E&E News reporter Published: Monday, October 19, 2020

EPA headquarters. Francis Chung
EPA has finalized its "scientific integrity" rule, at a time when scientists inside the agency have questioned its commitment to scientific research.

The final rule, which was required by a 2009 presidential memo, mandates that government contractors read and comply with the agency's policy requiring that scientific information be insulated from bias or censorship.

The **rule**, published in today's *Federal Register*, says contractors, including universities and consultants, will "ensure all scientific work developed and used by the Government is accomplished with scientific integrity."

"This is a very big issue," said Jim Tozzi, who helped create the White House Office of Information and Regulatory Affairs. "The government is run by contractors more and more."

When the rule was first proposed in 2018, it received just 14 public comments. EPA responded to many of those comments and, in some cases, made changes in the final rule. For example, the agency deleted language about "requiring scientific information to be available online," which the American Statistical Association noted could compromise confidentiality. That issue has surfaced in a separate controversial rulemaking, the Strengthening Transparency in Regulatory Science proposal, currently underway at EPA, that would restrict the agency from using research for which the underlying data is not publicly available ([Greenwire](#), Sept. 15). It's expected to be finalized by the end of the year.

The final scientific integrity rule faced little pushback from science groups usually critical of the Trump administration. But they stressed that enacting the policies is only the first step.

"It's a good thing that scientific integrity is extended to contractors," said Andrew Rosenberg, a director at the Union of Concerned Scientists. He added, "How are they going to implement it — how are they going to enforce it?"

In general, the issue of employing scientific integrity at the agency has gained considerable scrutiny in the Trump era. An inspector general report issued in May found the agency fell far short of applying the policy. A 2019 study found 368 employees who said their work had been suppressed or altered for reasons other than political merit. Another 705 respondents expressed fear of retaliation for expressing scientific opinion ([E&E News PM](#), May 20).

Kyla Bennett, a director with Public Employees for Environmental Responsibility, noted EPA's latest scientific integrity report shows the number of people seeking advice on scientific integrity queries spiked in 2018. And the agency has yet to publish a 2019 report.

An EPA spokesperson said the agency will publish the 2019 report by the end of this year and has already taken steps to address "a number of the IG's recommendations."

On Oct. 8, the agency issued a **document** on approaches to resolving differences in scientific opinion. It outlines ways managers can address deliberations among employees and outside experts or by conducting peer review.

Bennett laid out several concerns with the document, including that political appointees might be given too much say in resolving diverging viewpoints. She also expressed dismay about a section stating a hypothetical example: A team of employees believe a chemical poses greater health

hazards than previously believed. The document concludes differing opinions apply to scientific data — "not with their policy decisions."

"To me, this is the crux of it," she wrote via email. "Science should drive the policy. That's the whole point of the science. It is illogical to think that if the data (or interpretation of the data are wrong), then the policy decision based on those incorrect data/wrong interpretation is correct. How can that be?"

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5 rollbacks that etched a mark in agency history

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President Trump and Vice President Mike Pence on the White House lawn in July at the Rolling Back Regulations to Help All Americans event. *Delano Scott/The White House/Flickr*

Part of a series.

President Trump's environmental and public health rollbacks eclipse those of his predecessors in size and scope, several experts said.

Unlike past presidents, whose environmental blows have been more targeted, Trump has taken a sustained, wholesale approach, heeding free-market ideologues, at times even in spite of corporate agendas.

But environmental rollbacks are not new.

E&E News' look back at the agency's golden anniversary. [Click here](#) to read the series.

Nearly 20 years before Trump formally pulled the United States out of the Paris Agreement, President George W. Bush announced he would not carry out the Kyoto Protocol, an international agreement that required the participating countries to reduce greenhouse gas emissions.

Before that, the Reagan administration proposed cutting EPA budgets and staff while weakening enforcement. And in his second term, President Reagan removed solar panels on the White House that had been installed by the Carter administration.

Reagan also attempted to repeal a rule banning lead in gasoline, as a favor to the refining industry, said professor Robert Percival, director of the University of Maryland Carey School of Law's Environmental Law Program. But the move incited intense backlash, even from prominent conservatives who warned about the dangers for children. EPA later abandoned the effort.

"It was such a spectacular failure," Percival said, adding, "There was such a firestorm."

But environmental protection often defies partisanship.

George H.W. Bush campaigned for the White House — and won California — with a promise he would be America's environmental president, vowing to tackle acid rain.

Bush also signed the Global Change Research Act of 1990, setting up climate change research programs across 13 federal agencies and departments and the Oil Pollution Act of 1990, which set

liability protections for oil spills after the Exxon Valdez oil spill disaster. He campaigned on a no net loss of wetlands platform, which his son George W. Bush also committed to as president a decade later. And he signed the 1992 U.N. Framework Convention on Climate Change.

Once in office, Bush led a "fierce battle with his bipartisan allies in Congress to enact the Clean Air Act amendments of 1990," Joseph Goffman, a former EPA senior counsel, wrote in a 2018 blog post for Harvard Law School's Environmental & Energy Law Program, of which he is now the executive director. Those protections led to considerable ongoing air quality and public health benefits.

Now, Republicans taking up the Reagan mantle of deregulation have embraced the Trump agenda.

The administration is aiming to foundationally alter the framework for which new rules are established by proposing new cost-benefit calculations, excluding benefits to argue that protections are worth the cost to industry.

"In previous administrations, the Republican president took issue with particular laws and regulations that they thought harmed economic growth, but it was specific instances," said Kyla Bennett, director at Public Employees for Environmental Protection's New England Field Office. "With Trump, it's a wholesale war on science and the environment. Every law — but not just the laws, but also the things like the [EPA Environmental Appeals Board], the transparency rule and what models we should be using."

For his part, EPA Administrator Andrew Wheeler has framed the regulatory rollbacks as an environmental boon. He's recently given several talks at conservative organizations, flaunting the agency's rules surrounding cars, power plants and methane emissions.

Still, several experts with deep institutional knowledge of EPA and its regulatory history identified these five environmental rollbacks as the most impactful. Many occurred in the Trump era.

Arsenic standards

President Clinton's arsenic standards for drinking water were stalled for five years. Antonio Calero/Flickr
At the tail end of his White House tenure, former President Clinton advanced a flurry of environmental regulations, including ones on greenhouse gas emissions and arsenic levels in drinking water. But early into the next term, the George W. Bush administration wasted little time chipping away at them.

The arsenic standards were one of the first Clinton regulations the Bush administration went after. The Clinton plan would have lowered the legal limit to 10 parts per billion from 50 ppb due to health risks like cancer. But in March 2001, Bush EPA chief Christine Todd Whitman announced the agency would not implement Clinton's "midnight regulation."

Instead, she said, EPA scientists would study the problem and quickly issue an updated standard. The delay prompted critics to charge that the Bush administration gave too much credence to industry economic considerations, rather than public health.

"They put it on hold and got so much blowback," Percival said. "Some environmental groups even ran an ad saying, 'Mommy, can I have more arsenic in my drinking water?'"

But a new regulation did not come for five years. In 2006, the Bush administration adopted the 10-ppb rule.

Though the more rigorous Clinton standard was eventually implemented, the Bush administration's delay meant that water with higher levels of arsenic was available for years longer.

Mercury emissions

Controversy ensued after the Clinton administration determined it was "appropriate and necessary" to curb releases of mercury, arsenic and other hazardous air pollutants from coal power plants. Mrs. Gemstone/Flickr

The George W. Bush EPA also reversed another eleventh-hour Clinton finding that it was "appropriate and necessary" to regulate mercury emissions from coal-fired power plants under the Clean Air Act's air toxics requirements and instead resorted to a weaker cap-and-trade approach.

"What the Bush administration did was not exactly deregulate; it just deflected a more stringent regulation," Goffman said.

Ultimately, the Bush approach failed when a court struck down the decision, ensuring that the statute was read in a strict way, he explained.

But at the same time, environmental enforcement plummeted, according to the 2018 [article](#) "History of US Presidential Assaults on Modern Environmental Health Protection," published in the *American Journal of Public Health*.

The authors argued that while Bush's style was not as forceful as Reagan's, his administration alienated scientists and jettisoned the term "climate change" from government websites and, most importantly, led an assault on climate science. It was so egregious, they wrote, that Whitman, previously the governor of New Jersey, quit in frustration.

"The political economics of coal really drove the Bush administration in addition to lobbying," Goffman said, noting that in the mid-2000s, coal power plants were still the dominant energy source because the natural gas boom had not taken off yet.

That had changed by 2012, and the Obama administration issued the Mercury and Air Toxics Standards, formally known as MATS. The Trump administration reversed the finding, arguing that the Obama EPA hadn't shown that it was "appropriate and necessary" for the agency to regulate releases of mercury emissions and other air pollutants from power plants under the air toxics regime.

Green groups have sued.

WOTUS

EPA Administrator Andrew Wheeler announced the WOTUS repeal rule at the National Association of Manufacturers in Washington on Sept. 12, 2019. Francis Chung/E&E News

Another significant rollback, argued Betsy Southerland, former director of EPA's water office, is the Trump administration's repeal of the Obama-era Clean Water Rule, also known as the "Waters of the U.S.," or WOTUS, rule.

The Trump administration rolled back the 2015 Clean Water Rule and implemented a new definition for wetlands, removing protections and affecting drinking water, wildlife and flood control. For example, the new rule would not protect ephemeral streams, which only flow after rainfall.

Trump has argued that the Obama rule amounted to "disastrous" overreach and imposed regulatory burdens on farmers and builders.

But his critics pointed out that wetlands act as a sponge and soak up rainfall and pollutants that travel downstream. As with several Trump rollbacks, many considered the WOTUS change an attempt to simply unravel what President Obama did.

"What I thought was so unbelievable about this administration was that they went after all these rules that had already been completed," she explained. "It is really hard to roll back a final rule unless you spend an equal amount of time showing that you have new information that would invalidate a final rule."

In other words, Southerland said, the bar is high.

"Each [regulation] took about six years to develop... yet in 3 ½ years, they've been able to roll back 80," she said. "Was there that much science to invalidate the previous rules?"

Instead, with WOTUS, for instance, Southerland said, "They refused to estimate the percent of streams that would be protected. They just waved their hand and said, 'No, we don't agree with any of this.'"

Bennett with PEER called the WOTUS rewrite Trump's most significant rollback.

She continued, "The reason I say that is because it impacts so many other things. Drinking water ... it's going to screw up both our quality and quantity of drinking water. For wildlife, it's absolutely devastating, and it's going to allow so much more oil and gas projects. So the repercussions that flow from the new WOTUS rule will be collectively the most damaging thing he's done in 3 ½ years."

Clean car rules

A car screen indicates its fuel economy average. Henry Burrows/Flickr

In March 2020, the Trump EPA repealed clean car regulations that would have required automakers to increase the average real-world fuel economy for new cars to roughly 36 mpg by 2025, up from 28 mpg.

The new rule sets the standard at 31 mpg. According to the Environmental Protection Network, a group of disheartened former EPA staff members, the rule is expected to increase air pollution.

In the second part of the clean car rule, EPA, working with the Transportation Department, weakened the fuel economy standards finalized by Obama. While Obama's rule required a 5% increase in fuel economy of cars, Trump's rule cut it to 1.5%.

The Trump administration argued that the changes would lead to cheaper and safer cars, though their own analysis showed that the rule would lead to an additional 444 to 1,000 premature deaths from increased smog ([Climatewire](#), April 2).

Jeff Alson, a former EPA engineer now with the Environmental Protection Network, charged that the rollback would "lead to much higher GHG emissions and oil consumption, a hotter and more dangerous planet, and will force American drivers to pay more money for gasoline to oil companies."

Clean Power Plan

(Left to right) Then-Deputy Energy Secretary Dan Brouillette, then-acting White House Chief of Staff Mick Mulvaney and White House Council on Environmental Quality Chair Mary Neumayr watched as EPA Administrator Andrew Wheeler signed the Affordable Clean Energy rule at EPA headquarters last year. Francis Chung/E&E News

Obama's environmental initiatives peaked with the Clean Power Plan, issued in 2015. It aimed to regulate carbon emissions from coal-fired power plants at the state level. According to the agency,

the plan would have cut 32% of emissions by 2030 from 2005 levels — akin to taking 70 million cars off the road, according to the Natural Resources Defense Council.

But Trump gutted it and replaced it with the weaker Affordable Clean Energy rule, which proponents said was a less onerous way to regulate fossil fuel emissions. Conservatives stress that absolute emissions in the United States have dropped more than in any other country in the world because of the free market; regulations, they say, merely make energy costs more expensive for Americans. Trump often mentioned it on the trail.

Critics, however, described the rule as vague and useless. It's unclear how many coal plants the new rule will save, as market forces have shuttered plants nationwide amid the natural gas boom.

Environmentalists stress that more than 100,000 people die from exposure to pollution annually and say the replacement will cause more harm to Black and brown Americans in frontline communities. Critics claim that's a theme in the Trump era.

It remains to be seen how many of Trump's rollbacks will stand up in court.

Assessing the impact of this administration's attack on environmental regulations, Bennett said, "Trump has done more singlehandedly than any other president."

EPA spokesperson James Hewitt objected and argued that "many so-called experts" favored Obama's Clean Power Plan and WOTUS rule "when in fact they exceeded the bounds of the law." The Trump EPA has issued "modernized rules" to replace the "unlawful" and "outdated" ones "that better prepare our agency for the issues of today," he said.

Bennett, however, expressed some nostalgia. She argued that in fact, President Nixon had the best environmental record because he signed several major environmental statutes and established EPA. At the same time, he created the Office of Management and Budget, noted Jim Tozzi, who oversaw regulatory review at the White House in the early 1980s.

"Before [OMB], some executive branch agencies had complete discretion. They could just put rules in the *Federal Register*," he said. "That was bigger than any change in any regulation."
Reporter Sean Reilly contributed.