



June 15, 2011

MEMORANDUM FOR ALL BUREAU CHIEF COUNSELS AND GENERAL COUNSELS

FROM: Cameron F. Kerry 

SUBJECT: Implementation of Administration Policy on Scientific Integrity

On December 17, 2010, Dr. John Holdren, Director of the White House Office of Science and Technology Policy (OSTP), issued an Administration policy on scientific integrity (OSTP memo), implementing a Presidential Memorandum of March 9, 2009. The OSTP memo requires executive Departments and agencies (agencies) to develop scientific integrity policies that implement four broad principles: strengthen the foundations of scientific integrity; enhance openness and transparency in the communication of government science; guide the operation of federal advisory committees tasked with giving scientific advice, in line with a set of five specified criteria; and promote the professional development of government scientists and engineers.

This memorandum adopts these directives as the policy of the Department of Commerce (Department) so as to ensure the highest integrity of science and scientific products developed and utilized by the Department and its bureaus.

In general, to carry out these important policies, the Department will defer to each bureau with an interest in science to determine whether it is necessary to develop bureau-specific implementation consistent with the Administration's guidance as set forth in the OSTP memo. The National Oceanic and Atmospheric Administration (NOAA) and National Institute for Standards and Technology (NIST) are adopting such policies. This memorandum encourages other bureaus to continue to review their work in light of the policy adopted here, Department Administrative Order (DAO) 219-1, and Federal ethics laws

In reviewing Department orders and policies to ensure their conformance with the Administration's new guidance, we have specifically identified two areas of particular interest. The first is associated with the public communication of fundamental research; the second relates to the professional development of government scientists. These issues are more fully developed here to provide guidance that covers all Commerce bureaus.

i. Public Communications

Section 2 of the OSTP memo requires agencies to implement policies that allow federal scientists to speak with the media and the public (media) on scientific and technological matters with the "appropriate coordination" of their supervisors and their respective public affairs offices. Department of Commerce Administrative Order (DAO) 219-1 addresses Commerce policy for public communications of science (referred to as "fundamental research communications"). This

memorandum confirms that DAO 219-1 allows scientists to engage in oral fundamental research communications (based on their official work) with the media and the public without notification or prior approval to their supervisor or to the Office of Public Affairs. Electronic communications with the media related to fundamental research that are the equivalent of a dialogue are considered to be oral communications; thus, prior approval is not required for a scientist to engage in online discussions or email with the media about fundamental research, subject to restrictions on protected nonpublic information as set forth in 219-1.

ii. Professional Development

Section 4 of the OSTP memo requires agencies to establish policies that promote, as permitted by law, the professional development of Government scientists and engineers, “including removing barriers for serving as officers or on governing boards of [non-profit professional] societies.” The Department of Commerce supports such service. The Department’s current policy encourages participation in an official capacity in non-fiduciary leadership positions, such as government liaisons, or in service with standard-setting bodies as authorized by statute. Employees are also permitted to serve in fiduciary leadership positions in a personal capacity without prior approval, as long as they comply with restrictions in the Standards of Conduct. Service in an official capacity in fiduciary positions (except standard-setting bodies) is currently not permitted under 18 U.S.C. § 208, a federal criminal statute.

The Office of Government Ethics (OGE) has proposed a draft rule that would provide for an exemption to 18 U.S.C. § 208, allowing government employees to serve in an official capacity on the boards of directors, and as officers of non-profit organizations, including scientific organizations, professional societies, and similar bodies (*Federal Register* 76:85, 3 May 2011, p. 4816). If and when this rule becomes final, the Office of the Assistant General Counsel for Administration will work with each of you to develop implementing guidance. In the event that the OGE rule is not promulgated promptly, the Department will re-consider its current practice not to issue conflict of interest waivers under 18 U.S.C. § 208(b).