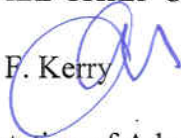




December 16, 2011

MEMORANDUM FOR ALL 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.

On June 15, 2011, I issued a memorandum adopting 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. This updated memorandum supersedes the June 15 memorandum.

Toward the fulfillment of the directives in the OSTP memo, the Department is committed to:

- Ensuring a culture of scientific integrity.
- Protecting scientific and technical findings from suppression or alteration by political officials.
- Selecting candidates for scientific positions primarily on the basis of their scientific and technical knowledge, credentials, experience, and integrity.
- Ensuring that data and research used to support policy decisions undergoes independent peer review by qualified experts, where appropriate, feasible, and consistent with the law.
- Holding to all relevant standards governing conflicts of interest.
- Adopting and abiding by appropriate whistleblower protections.
- Facilitating the free flow of scientific and technological information, consistent with

- privacy and classification standards.
- Expanding and promoting access to scientific and technological information by making the information available online in open formats, and where appropriate, including data and models underlying regulatory proposals and policy decision.

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 three 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; and the third relates to Federal Advisory Committees. 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 DAO 219-1. In accordance with DAO 219-1 and consistent with the OSTP memo, in no circumstance may a public affairs officer ask or direct a Department employee to alter scientific findings.

#### 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 Department of Commerce supports individual participation and leadership in scientific and professional organizations to the extent consistent with applicable laws and regulations and Department policy. The Department also allows Government scientists and engineers to receive honors and awards for their research and discoveries with the goal of minimizing, to the extent practicable, disparities in the potential for private-sector and public-sector scientists and engineers to accrue the professional benefits of such honors or awards.

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).

### iii. Federal Advisory Committees

The establishment and use of Federal Advisory Committees (FACs) tasked with giving scientific advice will follow the procedures established by the Federal Advisory Committee Act, consistent with the Administration's guidance on lobbyists serving on FACs, and will be in accordance with the guidelines established in the OSTP memo. Accordingly, the Department will:

- Ensure that the recruitment process for new FAC members is transparent.
- Announce FAC member vacancies widely through announcements in the *Federal Register* and on agency websites, with an invitation for the public to recommend individuals for consideration.
- Make widely available to the public the pertinent professional biographical information (including current and past professional affiliations and a clear illustration of their qualifications for serving on the committee) for appointed committee members, subject to the Privacy Act and other statutory/regulatory considerations regarding the dissemination of information about individuals. Such information should clearly illustrate the individuals' qualifications for serving on the committee.
- Select members to serve on a scientific or technical FAC based on expertise, knowledge,

and contribution to the relevant subject area, and may consider members' availability and ability to serve, diversity among members of the FAC, and members' ability to work effectively on advisory committee. The Committee membership should be fairly balanced in terms of points of view represented with respect to the functions to be performed by the FAC.

- Make all conflict-of-interest waivers granted to committee members publicly available, except where prohibited by law.
- Except where explicitly stated in a prior agreement, treat all reports, recommendations, and products produced by the FAC as solely the findings of such committees rather than of the Government, and thus not subject to intra- or inter-agency revision.