

U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON SCIENCE AND TECHNOLOGY

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March 30, 2007

Secretary Carlos M. Gutierrez
U.S. Department of Commerce
Mailstop 61
14th and Constitution Avenue NW
Washington, DC 20230

Dear Secretary Gutierrez,

As you are aware, the House Committee on Science and Technology has been particularly concerned about efforts by media officials to censor or interfere with Federal scientists communicating with the press, the public and their peers.

On March 28, the Subcommittee on Investigations and Oversight held a hearing on how media policies have contributed to distortions of the public's understanding of climate science. At that hearing, we received testimony regarding a new report by the Government Accountability Project entitled, "Redacting the Science of Climate Change" (copy enclosed). That report draws extensively from interviews and documents from the Department and the National Oceanic and Atmospheric Administration. There is ample evidence of politically-motivated efforts to filter which scientists are made available to the press. In addition, there are numerous examples of climate scientists being either directed in what they should say or having to clear their statement on climate science with public affairs officers prior to speaking with the press.

We are pleased that you have undertaken to put in place a new media policy. It seems to be an honest effort at establishing guidelines for the Department that will provide protections for Federal scientists. The rhetorical commitment to openness contained in the "principles" section of this new policy is admirable. However, we have concerns about the current draft that we want to bring to your attention.

Fundamentally, we note that it appears to put in place a policy of routine, two week pre-approval of communications that are the personal views of employees. This appears to amount to a limitation on free speech and could have a chilling effect on employees in exercising their rights. The language regarding "Non-Official Public Communications" (Section 11) specifies that if an employee is going to engage in a "non-official public communication of interest" that employee must submit all written and audiovisual materials prepared in connection with the planned communication for prior managerial review; a review that must be completed within 14 days. The stated purpose of the review is to "protect and promote the efficient operation of the Department by identifying communications that will impact the Department's operations because they (i) contain classified or otherwise restricted materials; (ii) violate applicable ethics regulations and statutes; or (iii) improperly attribute the personal views of the employee to the Department or that could reasonably be perceived by the public as doing so."

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There are ample disciplinary steps in place, or should be, for violations of classified materials disclosures (an improper disclosure is improper whether on personal or Department business) and we assume that employees are made fully aware of their obligations in this arena. A similar situation would attach to ethical or statutory obligations of employees. As to the notion that the public might improperly interpret an employee's views as those of the Department (Section 11 (b) (iii)), that is rendered irrelevant by the requirement in Section 11 (c) that requires an explicit disclaimer that the views are the employee's personal views and not those of the Department.

We do not understand what useful ends can be achieved through the 14 day clearance process other than to inhibit employees in expressing their personal opinions. If it is necessary to remind employees that even in their private capacities they must respect rules regarding the treatment of classified or other restricted materials and not violate ethics regulations or statutes, then make that statement. But it would appear to us that it should be sufficient to simply make it clear to employees that they must always clearly indicate when they are expressing their personal views. No pre-clearance should be required.

Further, for Departmental review of "official communications" involving "the products of basic or applied research in science or engineering," the policy states that the role of public affairs is to "assist with presentation, style, and logistics... not to alter... substance in any way" (Section 6.03(b)). Our concern with this provision is that there does not appear to be any right of final review and approval by scientists on changes to their materials made by public affairs officers. A public affairs official may make a change that appears to a non-expert to be insubstantial, but to a scientist such a change may strike at a fundamental point. We encourage you to include language that makes clear the scientists voice is the final one on any official communication product.

Finally, we applaud the strong references to Whistleblower Protections in the policy. However, we believe the policy would be materially strengthened if you would: specifically cite the Lloyd Lafollette Act which guarantees the right of Federal employees to furnish information to either House of Congress, or to a committee or Member thereof; attach the relevant text of the Whistleblower Protection Act regarding protected disclosures of information; attach the text of the text of the Anti-Gag Statute.

These three statutes form the cornerstone of employee protections for communicating personal views to the public, to law enforcement and to Congress. We believe their wide distribution, through attachment to this policy, would be a welcome step.

We look forward to working with you to improve the environment for Federal scientists and employees working at the Department of Commerce and at other agencies in the government.

Sincerely,



BART GORDON
Chairman



BRAD MILLER
Chairman, Subcommittee on
Investigations and Oversight



NICK LAMPSON
Chairman, Subcommittee on
Energy and Environment