

PUBLIC COMMUNICATIONS

Number: DAO 219-1

Effective Date: 2007-05-14

SECTION 1. PURPOSE.

.01 Purpose. This Order establishes the policy for Department of Commerce (the Department) employees engaging in public communications (e.g., publications, speeches, media coverage).

.02 This revision: updates the policy on public communications and incorporates the policy formerly contained in Department Administrative Orders (DAOs) 219-2, "Release of News, Clearance of Speeches and Publications, and Media Coverage," and 219-5, "Clearance of Speeches." It also changes the title of the Order.

SECTION 2. SCOPE.

.01 This Order does not address the requirements of the Information Quality Act that may be applicable to any communication by the Department. It does not apply to testimony before Congress or information or written materials provided to Congress, which are addressed by DAOs 218-1, "Legislative Activities," 218-2, "Congressional Correspondence and Inquiries," and 218-3, "Reports to Congress Required by Law," nor does it apply to rulemakings, adjudications, or publication in the Federal Register. This Order does not apply and shall not be interpreted to conflict with the rights of an employee under the law, including an employee under the Whistleblower Protection Act or a union representative under the Federal Service Labor-Management Relations Act when communicating as a union representative. Additionally, DAO 219-4, "Publications and Audiovisuals Control System," sets forth the requirements for authorizing the production and printing of Department publications and for the management and distribution of audiovisual productions.

.02 Nothing in this DAO shall abrogate or override any collective bargaining agreement in effect on the date this DAO is issued. In offices or operating units where employees are represented by a labor organization accorded exclusive recognition, management is obligated to notify the labor organization of its intent to implement this DAO and negotiate in good faith on any procedures or appropriate arrangements for bargaining unit employees adversely affected.

SECTION 3. GUIDANCE.

Operating units (as defined in Department Organizational Order 1-1, "Mission and Organization of the Department of Commerce") and Secretarial offices may use existing, or issue new, guidance regarding the implementation and interpretation of this Order (using existing procedures for the approval of certain communications, designating employees' immediate supervisors to approve routine communications, etc.).

SECTION 4. PRINCIPLES.

.01 The objective of this Order is to support the public policy goals of the Department and promote broad public understanding of the work of the Department, its operating units, and employees. The following principles underlie the specific provisions of this Order in subsequent sections:

- a. Release of public information about the Department's activities will be made promptly, accurately, and completely.
- b. In an emergency, and especially where there is an imminent risk to life or property, an official communication related to the emergency may be made, so long as the procedures of the relevant operating unit (if any) are followed and applicable law is complied with.
- c. Scientific progress relies on the broad and open dissemination of research results. An open exchange of scientific ideas, information, and research achieves the Department's vision for an informed society that uses objective and factual information to make the best decisions.
- d. In support of a culture of openness, and consistent with this Order and their official duties, Department employees may speak to the media and the public about their official work and freely and openly discuss scientific and technical ideas, approaches, findings, and conclusions based on their official work.

.02 In recognition of the fact that, in some circumstances, the disclosure of certain information would be inappropriate and/or illegal (e.g., inconsistent with applicable ethics regulations and statutes), this Order does not authorize disclosure of information that is exempt from disclosure under the Freedom of Information Act or otherwise restricted by statute, regulation, Executive Order, or other Executive Branch, Department, or operating unit policy. Additionally, this Order does not authorize activities inconsistent with the requirements of Statistical Policy Directive No. 3, Compilation, Release, and Evaluation of Principal Federal Economic Indicators (September 24, 1985).

SECTION 5. RESPONSIBILITIES OF THE OFFICE OF PUBLIC AFFAIRS.

.01 The Office of Public Affairs, which is a part of the Office of the Secretary, shares with relevant operating units and Secretarial offices the responsibility for carrying out the principles and provisions of this Order authorizing public disclosure of information, including the coordination of Department communications.

.02 Decisions to release Official Communications nationwide by the Department or any operating unit will be made by the Office of Public Affairs or its designee.

.03 All public affairs employees shall adhere to the following best practices:

- a. Be honest and accurate in all communications;
- b. Act promptly to correct mistakes or erroneous information, both internally and externally;
- c. Promote the free flow of scientific and technical information;
- d. Assist with presentation, style, and logistics of scientific and engineering information, but not alter its substance in any way;
- e. Honor publication embargoes;
- f. Respond promptly to media requests and respect media deadlines;
- g. Protect information when disclosure would be inappropriate and/or illegal (e.g., inconsistent with applicable ethics regulations and statutes); and

h. Internally promote policies and actions that support the Department's mission and provide prompt, accurate, and complete information to the public.

SECTION 6. DEPARTMENTAL PUBLIC COMMUNICATIONS.

.01 Public Communication. This means any communication that is intended for, or should reasonably be expected to have, broad distribution outside the U.S. Government, including without limitation:

- a. Public speeches, news releases and advisories, news conferences, broadcast appearances, and interviews or discussions with journalists;
- b. Public writings, such as articles or papers in publications or other writings distributed through mass-mailing, e-mail, or posting on a website;
- c. Public educational instruction and/or lectures, conferences, seminars, etc.; and
- d. Public distribution of audiovisual works, including without limitation slide sets, PowerPoint presentations, multimedia (i.e., any combination of two or more media productions), and exhibits.

.02 Fundamental Research Communication. Reflecting the Department's commitment to broad and open dissemination of research results, Fundamental Research Communications are not, and will be treated differently from, Official Communications (i.e., Sections 8 and 9 will not apply). Based on National Security Decision Directive No. 189, National Policy on the Transfer of Scientific, Technical, and Engineering Information (September 21, 1985), "Fundamental Research Communication" means a Public Communication that relates to the Department's programs, policies, or operations and takes place or is prepared officially (i.e., under Section 6.03a.1-4) and that deals with the products of basic or applied research in science or engineering, the results of which ordinarily are published and shared broadly within the scientific community, so long as the communication does not contain information that is proprietary, classified, or restricted by federal statute. If a communication also includes matters of policy, budget, or management, then it is not a Fundamental Research Communication.

.03 Official Communication.

a. Definition. This means any Public Communication by an employee that relates to the Department's programs, policies, or operations and takes place or is prepared:

1. At the direction of a superior of the employee;
2. Substantially during the official working hours of the employee;
3. With the substantial use of U.S. Government resource(s); or
4. With substantial assistance of U.S. Government employee(s) on official duty.

All news releases and similar documents are Official Communications.

b. Protection of Science. Although, by definition, an Official Communication is not a Fundamental Research Communication, for an Official Communication that deals with the products of basic or applied research in science or engineering, the role of the public affairs office is to assist with presentation, style, and logistics of the science or engineering information, not to alter its substance in any way.

SECTION 7. FUNDAMENTAL RESEARCH COMMUNICATION.

.01 Approval of Materials. Based on the operating unit's internal procedures, all written and audiovisual materials that are, or are prepared in connection with, a Fundamental Research Communication must be submitted by the researcher, before the communication occurs, to the head of the operating unit, or his or her designee(s), for approval in a timely manner. These procedures may not permit approval or non-approval to be based on the policy, budget, or management implications of the research. The head of the operating unit, or his or her designee(s), is responsible for ensuring that, if appropriate, advance notice is provided to that unit's public affairs office.

.02 Media. Subject to Section 7.01, researchers are free to participate in Fundamental Research Communications with the media regarding their research, but they are not required to do so. If the media contacts an operating unit's public affairs office to request a Fundamental Research Communication interview with a particular researcher, then that office will facilitate the communication (assuming the researcher agrees to the interview). Researchers are encouraged (but not required) to take advantage of the media expertise of their operating unit's public affairs office and/or to provide that office with advance notice. The role of the public affairs office is to assist with presentation, style, and logistics of the communication, not to alter its substance. Fundamental Research Communications with the media must be on-the-record (i.e., attributable to the person making the remarks or providing information or materials) unless the operating unit's public affairs office decides otherwise.

.03 Scientific Conclusions. Given the nature of the scientific process, the role of the scientific community is to draw scientific conclusions based on available data. Department researchers may draw scientific conclusions based on research related to their jobs, and may, subject to Section 7.01, communicate those conclusions to the public and the media in a Fundamental Research Communication. However, if such a conclusion could reasonably be construed as representing the view of the Department or an operating unit when it does not, then the researcher must make clear that he or she is presenting his or her individual conclusion and not the views of the Department or an operating unit.

SECTION 8. OFFICIAL COMMUNICATION WITH THE MEDIA.

.01 Approval. For any Official Communication intended for the media (e.g., news releases, interviews/news conferences), all written and audiovisual materials that are, or are prepared or received in connection with, the Official Communication must be submitted in a timely manner before the communication occurs to the head of the operating unit or Secretarial office, or their designee(s), and to the Appropriate Public Affairs Office (as defined in Section 8.05) for approval in a timely manner. Unless otherwise authorized by the Appropriate Public Affairs Office, all Official Communications with the media will be on-the-record (i.e., attributable to the person making the remarks or providing information or materials).

.02 Media Interview/News Conference. For any media interview/news conference that is an Official Communication, an Appropriate Public Affairs Office employee shall be present to support the event unless that office determines otherwise. If an Appropriate Public Affairs Office employee is not present, the employee engaged in the interview/news conference shall provide to that office a summary of the event promptly after it has occurred.

.03 Policy, Budget, and Management. Only spokespeople designated by the Appropriate Public Affairs Office are authorized to speak for the Department or its operating units in

an official capacity regarding matters of policy, budget, or management.

.04 Authorized Communications. In accord with Section 3, the formal approval process described in Section 8.01 does not apply to National Weather Service employees authorized as part of their routine responsibilities to communicate information about the weather to the public.

.05 Appropriate Public Affairs Office. "Appropriate Public Affairs Office" means:

- a. The Office of Public Affairs for an Official Communication by the Department or any of its operating units; and
- b. The appropriate operating unit's or Secretarial office's public affairs office, or its designee(s), for any other Official Communication.

SECTION 9. NON-MEDIA OFFICIAL COMMUNICATION.

.01 Approval. For any Official Communication not intended for the media (e.g., most speeches to industry groups), all written and audiovisual materials that are, or are prepared in connection with, the Official Communication must be submitted in a timely manner before the communication occurs to the head of the operating unit or Secretarial office, or their designee(s), for approval in a timely manner. If the communication relates to a controversial issue or is likely to garner heightened media interest, then the materials should also be submitted to the Appropriate Public Affairs Office for approval.

.02 New Subject Matter. If, in the course of the Official Communication, an unexpected topic arises that is not the intended subject matter, the employee shall promptly notify the head of the operating unit or Secretarial office, or their designee(s).

.03 Authorized Communications. In accord with Section 3, the formal approval process described in Section 9.01 does not apply to National Weather Service employees authorized as part of their routine responsibilities to communicate information about the weather to the public.

SECTION 10. EMERGENCY OFFICIAL COMMUNICATIONS.

In an emergency, and especially where there is an imminent risk to life or property, an Official Communication related to the emergency may be made without first obtaining approval, so long as the procedures of the relevant operating unit (if any) are followed and applicable law is complied with.

SECTION 11. NON-OFFICIAL PUBLIC COMMUNICATIONS.

.01 Non-Official Communication of Interest.

a. Definition. "Non-Official Communication of Interest" means any Public Communication that takes place and is prepared non-officially (i.e., it does not meet any of the criteria of Section 6.03a.1-4) and is a matter of official interest to the Department because it relates to Department programs, policies, or operations.

b. Advance Notice and Review of Materials. An employee shall provide to the head of the operating unit or Secretarial office, or their designee(s), timely advance notice of the occurrence and subject matter of a Non-Official Communication of Interest. With regard to an oral communication, such notice is not required if the communication is not

initiated by the employee and if there is no time to give advance notice, although in such cases notice shall be given as soon as possible after the communication. All written and audiovisual materials that are, or are prepared in connection with, a Non-Official Communication of Interest must be submitted before the communication occurs to the head of the operating unit or Secretarial office, or their designee(s), for a review to be concluded as soon as is reasonably practicable (but, under no circumstances whatsoever, shall the period of review exceed fourteen days). The purpose of this review is to protect and promote the efficient operation of the Department by identifying communications that will impact the Department's operations because they:

1. Contain classified or otherwise restricted material;
2. Violate applicable ethics regulations and statutes; or
3. Improperly attribute the personal views of the employee to the Department or that could reasonably be perceived by the public as doing so.

Material submitted for review must be marked "Non-Official Communication of Interest."

c. Disclaimer. If a Non-Official Communication of Interest could reasonably be construed as representing the view of the Department or an operating unit when it does not, then the communication must contain an explicit disclaimer indicating that the views expressed are the employee's personal views.

.02 Other Non-Official Communication. No review is required for a Public Communication that takes place and is prepared non-officially (i.e., it does not meet any of the criteria of Section 6.03a.1-4) and does not relate to Department programs, policies, or operations.

.03 No Government Support. Public Communications that are not Official Communications or Fundamental Research Communications may not take place or be prepared during official working hours; using any U.S. Government resources; or involving any other U.S. Government employee on official duty.

SECTION 12. NATURE OF COMMUNICATION; EMPLOYEES' APPEAL RIGHTS.

.01 Determination of Nature of Communication. The employee's immediate supervisor shall determine the nature of a communication in a timely manner, consulting with the head of the operating unit or Secretarial office, or their designee(s), if the nature is not obvious.

.02 Scientific Appeals. An employee has the right to appeal the non-approval of that employee's Fundamental Research Communication, and has the right to appeal changes that affect the scientific accuracy of that employee's Official Communication (e.g., noncompliance with Section 6.03(b)). These appeal(s) may be made to the senior career employee in the employee's operating unit or Secretarial office, or their designee(s).

.03 Appeals Involving Non-Scientific Matters.

a. Nature of Communication. An employee has the right to appeal the determination of the nature of that employee's communication, as well as the denial(s) of appeal(s) of that determination.

b. Non-Approval of Official Communication. An employee has the right to appeal the non-approval of that employee's Official Communication, as well as the denial(s) of appeal(s) of that non-approval.

.04 Decisions on Appeals. Appeals may be made as follows:

- a. For decisions of an immediate supervisor under Section 12.01, the appeal is to the head of the operating unit or Secretarial office, or their designee(s).
- b. For decisions of a designee, the appeal is to the designating official or to a different designee who is not subordinate to the original designee.
- c. For decisions of an operating unit's public affairs office, the appeal is to the Office of Public Affairs.
- d. For decisions of the head of the operating unit or Secretarial office or of the Office of Public Affairs, the appeal is to the Deputy Secretary or his or her designee(s).

.05 Appeal Procedures. Any appeal under Section 12.02 or 12.03 must be in writing and shall:

- a. Be submitted within 45 days of the decision or inaccuracy being appealed;
- b. Indicate the specific decision or scientific inaccuracy that is being appealed;
- c. Identify the person who made the decision or caused the inaccuracy; and
- d. Explain the reason that the decision or inaccuracy is incorrect.

The ruling on the appeal should be made in writing within two business days of receipt of the materials required by this Section 12.05. The Office of the Assistant General Counsel for Administration may be consulted by an employee, an employee's immediate supervisor, and/or a person deciding an appeal for advice about procedural issues regarding appeals. Any appeal may occur and be pursued during official working hours.

SECTION 13. POLICY ON RECEIPT OF COMPENSATION.

Employees may not accept compensation for any Official Communication or Fundamental Research Communication. Employees may accept compensation for other Public Communication in the nature of speaking, writing, or teaching, and may accept awards for meritorious public service (awards of cash or having a market value greater than \$200 may only be accepted with written approval from an agency ethics official), if permitted under applicable statutes and regulations, including 5 C.F.R. 2635.204 and 2635.807, and any agency-specific regulations. Employees may seek advice from the Office of the Assistant General Counsel for Administration on these issues.

SECTION 14. EFFECT ON OTHER ORDERS.

This Order supersedes DAO 219-1, "Outside Writing and Speaking; Departmental Approval," dated April 1, 1982, and incorporates the policy in DAO 219-2, "Release of News, Clearance of Speeches and Publications, and Media Coverage," dated November 3, 1980, and DAO-219-5, "Clearance of Speeches," dated September 20, 1983.

(signed) Secretary of Commerce

(signed) Director, Office of Public Affairs, Office of Primary Interest, Office of Public

Affairs