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United States General Accounting Office
Washington, DC 20548

Office of the General Counsel

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July 21, 1999

The Honorable Frank H. Murkowski
Chairman, Committee on Energy and Natural Resources
United States Senate

Subject: June 4, 1999 United States Department of Agriculture Guidance
Regarding Anti-Lobbying Laws

Dear Mr. Chairman:

In your letter of June 18, 1999, you asked us to review the June 4, 1999 United States Department of Agriculture (USDA) Guidance Regarding Anti-Lobbying Laws to assess whether the guidance will assure compliance with section 303 of the 1998 Interior Department Appropriations Act.¹ This letter responds to your request.

In general, we believe that the guidance will be helpful to covered employees who are attempting to comply with section 303. Of particular value, in our view, are the descriptions on page one of the guidance concerning what constitutes a violation and what factors may be taken into account when determining whether an activity violates section 303.² The guidance also appropriately outlines several kinds of fact patterns that would constitute violations of section 303 and, as it should, encourages employees to contact USDA's Office of General Counsel for further assistance on whether a specific proposed activity is consistent with anti-lobbying statutes.

¹ Department of Interior and Related Agencies Appropriations Act, 1998, Pub.L. No. 105-83, § 303, 111 Stat. 1543, 1589 (1997). Section 303 provides: "No part of any appropriation contained in this Act shall be available for any activity or the publication or distribution of literature that in any way tends to promote public support or opposition to any legislative proposal on which congressional action is not complete."

² In the guidance, the USDA groups section 303 together with two other anti-lobbying laws. In some cases, the guidance states that certain activities would violate "the anti-lobbying laws," when in fact such activities may only violate section 303 and not the other anti-lobbying laws described.

While we believe that the guidance as written is generally helpful, we do have some concerns about certain provisions. Several provisions make the point that covered federal employees may explain the administration's position on proposed legislation* in speeches, in information requested by individuals or groups, in letters to the editor or in "op-ed" articles. In connection with this point, the guidance usually states that the information on the proposed legislation may not directly or indirectly encourage the public to contact Members of Congress. In our view, this statement does not go far enough in delineating what is and is not permissible under section 303.

As other parts of the guidance point out, under section 303 it is not just activities that encourage the public to contact Members of Congress that are proscribed, but also activities that in any way tend to promote public support or opposition to pending legislation. While we have held that agency officials may legally meet with groups sharing the agency's interest in legislation to exchange information and viewpoints,³ explanations or other information addressing the administration's position on legislation could easily cross the line into advocacy and become violations of section 303. Indeed, the congressional committee that authored what is now section 303 was motivated by agency brochures describing legislative proposals that "extol[led] the benefits of such proposals and as a result, tend[ed] to promote certain legislative goals of these agencies."⁴ Thus we have found that agency campaigns involving mass mailings of information concerning legislation violated section 303, in part because the information was highly supportive of the legislation. We have also held that an employee's speech alleging negative consequences that would result from enactment of certain legislation tended to promote public opposition to the legislation, thereby violating section 303 in the circumstances presented there.⁵

Because an agency's explanation of its position on legislation could include its views concerning the positive or negative consequences of the legislation, we believe it would be better for the guidance to say that covered employees, whenever they are

³ B-239856, April 29, 1991.

⁴ S. Rep. No. 95-276, at 4-5 (1977).

⁵ B-262234, December 21, 1995.

disseminating the administration's position in proposed legislation, may not elaborate on the agency's position in a way that would tend to promote public support or opposition to the legislation.

We hope our comments have been of assistance.

Sincerely yours,

A handwritten signature in black ink, appearing to read "Robert P. Murphy". The signature is written in a cursive style with a large, sweeping initial "R".

Robert P. Murphy
General Counsel