U.S. FEDERAL POLICY BASICS

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Public policy in the United States is made at several levels of government. Each operates in a different fashion.

The United States Congress makes public policy through legislation (statutes), which can affect policy in two ways: a substantive law will address specific subject matter, while funding bills and appropriations bills will determine how much or little of a certain activity can occur. Congress can also influence the policy made by a federal agency, by including "language" in the appropriations bills "suggesting" to the agency the course of action Congress would like to see the agency take. There is also a law that gives Congress oversight of all new and amended regulations. Congress has 60 days to review a new regulation. If Congress passes a joint resolution of disapproval during that time, the regulation cannot go into effect. Congress has not blocked any regulation since this law was enacted in 1996.

The President makes policy through Executive Orders, and by electing to sign or veto legislation. Executive Orders are essentially directives to the Executive Branch agencies, directing them as to how to implement existing laws. Executive Orders cannot be used to make new law, and to the extent that an Executive Order goes beyond existing statutes, it is unenforceable. Presidential vetoes of legislation can be overridden by a 2/3 majority vote in each chamber of Congress. The President can and does suggest legislation to Congress; the legislation that the President suggests is intended to effectuate the President's political philosophy. The President's effectiveness in promoting legislation is greatly enhanced if the President's political party holds a majority of seats in both the House and the Senate, or either or them, or if the legislation is written in such away that it appeals to both political parties.

The federal courts interpret statutes and determine the enforceability of Executive Orders and the validity of other acts of the President. Though Courts can order actions to remedy violations of law, or to prevent activities that are not consistent with the law, the Courts cannot make new law. If a statute is unclear or fails to address a specific issue, and cannot be interpreted by the Courts in a manner consistent with the accepted "rules" of judicial interpretation, the Courts will state that the matter will have to be resolved by the Congress. If Congress does not like a judicial ruling about a statute, it can enact new legislation, or change existing legislation, to change the law.

Regulatory agencies - are created either by the President or by legislation enacted by Congress. For instance, the Environmental Protection Agency was created by Richard Nixon, who reorganized a number of existing functions carried out by various offices in the Departments of the Interior (such as the Federal Water Quality Administration), Health, Education, and Welfare (e.g., the Food and Drug Administration), and Agriculture (pesticide registration and regulation). The National Park Service was created by Congress in 1916. Some federal agencies exist as part of Cabinet agencies (the U.S. Fish and Wildlife Service is part of the Department of the Interior) while others

are independent (the EPA).

Regulatory agencies create policy by implementing the statutes passed by Congress. When an agency makes a new regulation or amends an existing regulation, it is required by the Administrative Procedure Act to publish a notice of the proposed change in *The Federal Register*. The agency must accept comments from the public. When it publishes the final rule, it must explain how it is responding to the comments received. Agencies also have internal policy manuals that provide even greater detail on implementation of a law or program.

And then there are the states - the fifty states have systems that are analogous to the federal system. The tenth amendment to the Constitution says that all powers not delegated to the United States by the Constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people. Of course, the sharing of power between the federal government and the states has been an issue since the first Constitutional Congress, and is still the subject of much debate and litigation. As a result, we often find that the same subject is the subject of legislation and regulation at both the federal and state level.

WHERE DO SCIENTIFIC ORGANIZATIONS FIT IN?

A few words about lobbying

Most scientific organizations have nonprofit status under the Internal Revenue Code and Regulations. Nonprofit status carries two significant limitations on the activities of nonprofit organizations. First, nonprofit organizations can not engage in electoral politics. The Internal Revenue Service allows certain, nonpartisan activities, such as descriptions of candidates' records (so long as all candidates are reviewed). Endorsements are strictly prohibited, as are campaign contributions. Nonprofits can participate in referenda. Second, nonprofits are permitted to lobby, but only to a limited extent (the limit is “an insubstantial portion of total activities” but the term “insubstantial” is undefined).

Lobbying has a specific definition under the Internal Revenue Code. It means, “any attempt to influence legislation through an effort to affect the opinions of the general public or through communication with any member or employee of a legislative body or with any government official or employee who may participate in the formulation of legislation.” Expressly exempted are the following activities:

1. Making available the results of nonpartisan analysis, study, or research,
2. Examining and discussing broad social, economic, and similar problems,
3. Providing technical advice or assistance (where the advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to a written request by that body or subdivision,
4. Appearing before or communicating with any legislative body about a possible decision of that body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to the organization, or
5. Communicating with a government official or employee, other than--
    a. A communication with a member or employee of a legislative body (when the communication would otherwise constitute the influencing of

legislation), or

b. A communication with the principal purpose of influencing legislation.

Effective participation in the public policy process

Scientific organizations can play a role at all levels. At the legislative level, the issues that are most central to science are appropriations bills for the scientific research functions of the federal government. These include grant-making organizations such as the National Science Foundation and intramural research agencies such as the U.S. Geological Survey. From time to time, there are other legislative proposals for funding for scientific research. For instance, the “Doubling Bill” that passed the Senate (S.296) in July and has just been introduced in the House (H.R.3161) would authorize a base level of Federal funding for basic scientific, biomedical, and pre-competitive engineering research, with this base level defined as doubling of Federal basic research funding over the 11 year period following the date of enactment of the Act.

Occasionally, there is legislation about basic research policy. A provision in the 1999 Omnibus Appropriations Bill (PL 105-277) required the Office of Management and Budget (OMB) to require that all data produced under federal research grants made to institutions of higher education and non-profit organizations be made available to the public under the Freedom of Information Act (FOIA).

Many scientific organizations pay little attention to the regulatory agencies, yet these agencies have a substantial impact upon the conduct of scientific research, especially where research involving laboratory animals and wildlife is concerned. In the last six months of 1999, major revisions to permitting regulations were proposed by the National Park Service, National Wildlife Refuge System, and the U.S. Fish and Wildlife Service. There are also significant changes pending to the Animal Welfare Act regulations.

Litigation is something most of us hope to avoid, but there are times when scientific organizations will want to voice their concerns to the courts. In cases affecting research policy, scientific organizations can file “friend of the court” briefs or can help support the litigant who is arguing for the preferred result. For instance, in a recent case, the U.S. District Court was asked to compel the U.S. Department of Agriculture to amend the Animal Welfare Act regulations to include rats, mice, and birds in the definition of the term “animal.” This change would affect researchers who study these species.

Methods

Scientific societies use various methods to influence public policy, including presenting oral or written testimony to Congressional committees, communicating with Congresssional staffers, and media strategies such as guest columns, letters to editors, and advertising. At the regulatory level, the most common venue is commenting on proposed regulations, but the Administrative Procedure Act also provides for negotiated rulemaking and petitions for rulemaking. Key to these efforts is the effective coalition. An organization with 4,500 members doesn't have the voice of an organization representing 150,000 individuals. Coalitions of coalitions exist, overlap, and interlock to address issues of mutual concern.

Enhancing the use of science in the decision-making process

Some scientists and scientific organizations choose to engage in another aspect of

public policy. They attempt to assure that decision-makers have access to and understand the scientific information relevant to public policy issues. Some scientific organizations have been engaged in this process for decades. Government policymakers sought out scientists after Sputnik made headlines. Eisenhower was known for surrounding himself with the nation's best scientific minds and even hosted a White House dinner specifically to single out the scientific and engineering communities as guests of honor. For many organismal and integrative biological societies, the policy arena is a universe yet to be explored.

Scientists disagree about whether, and how, their societies should engage in this type of public policy advocacy. Some feel that it is appropriate, if not mandatory, to provide scientific information pertinent to a given issue, in order to aid policy makers in understanding the underlying science. However, in many, if not matters, the scientific data are sufficiently uncertain, or even contradictory, and members of the society will reach different conclusions about the science and the implications of the science. Imagine, for instance, that a scientific society provides a non-technical summary of the state of knowledge about the role of biodiversity in the maintenance of ecosystem health. A leading scientific society did just that a few years ago – and sparked a heated public battle among its members about the validity and sufficiency of the data cited in the pamphlet that went to members of Congress. Beyond the scientific questions was the basic problem when scientific data are strong enough to form the basis of policy decisions.

Even if the members of the society can reach consensus on a scientific issues, it is not an easy task to craft a statement that is accessible to nonscientists. The simplifications and imprecise, non-technical terms that are needed make many scientists uncomfortable. Reducing or eliminating expressions of uncertainty or missing knowledge can inadvertently result in what seems to scientists like a misleading statement. Yet, a full and candid explanation of uncertainty may very well cause a policy maker to disregard the statement.

It is even more difficult to address specific policy proposals, because policy blends political reality with social and economic issues, practical concerns, and any number of other considerations. The scientific aspect of an issue is but one part of the calculus of a policy decision, and may be the smallest part. Like everyone else, the scientists within a society have differing political and philosophical viewpoints, and may not be able to agree to support a specific proposal, whether or not it is consistent with scientific understanding. Biologists in particular may feel compelled to address the many policy proposals that impact the flora and fauna and ecosystems that they study. It may be more effective, for purely practical reasons, to work with the many conservation advocacy organizations that address these issues than to speak out as a scientific society.

On a more practical level, it is difficult for scientist societies to cope with the flow and pace of policy proposals emanating from the federal and state governments. Even with a professional policy staffer, tracking, analyzing, and responding to even those issues of the greatest concern to members of the society can be challenging.

Can it be done? Yes, it can – but scientific societies need to be cognizant of these challenges, limit themselves to a few issues of greatest concern to their members, establish internal methods for developing society positions, and (ideally), engage a

policy professional to develop and implement strategies to promote those positions.