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**TO:** Assistant Administrators  
Regional Administrators  
Office of General Counsel

**FROM:** E. Scott Pruitt  
Administrator

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**SUBJECT:** Strengthening and Improving Membership on EPA Federal Advisory Committees

Federal Advisory Committees (FACs) serve important and influential roles for federal agencies – particularly the U.S. Environmental Protection Agency (EPA).<sup>1</sup> EPA's FACs presently provide advice on a broad array of subjects, including pesticides,<sup>2</sup> drinking water quality,<sup>3</sup> air quality,<sup>4</sup> rural community welfare,<sup>5</sup> and children's health.<sup>6</sup> FACs can be established by statutory requirement, at the discretion of federal agencies, or through presidential directive.<sup>7</sup> Currently, EPA manages 22 FACs that provide valuable expertise, insight and recommendations that guide the Agency's decision-making in fulfilling its core mission of protecting human health and the environment.<sup>8</sup>

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<sup>1</sup> "Advisory committees have played an important role in shaping programs and policies of the federal government from the earliest days of the Republic. Since President George Washington sought the advice of such a committee during the Whiskey Rebellion of 1794, the contributions made by these groups have been impressive and diverse." FACA 101, <https://www.gsa.gov/policy-regulations/policy/federal-advisory-committee-management/finding-information-on-faca-committees/faca-101>.

<sup>2</sup> Pesticide Program Dialogue Committee (PPDC), <https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc>.

<sup>3</sup> National Drinking Water Advisory Council (NDWAC), <https://www.epa.gov/ndwac>.

<sup>4</sup> Clean Air Scientific Advisory Committee (CASAC), <https://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC>.

<sup>5</sup> Farm, Ranch, and Rural Communities Advisory Committee (FRRCC), <https://www.epa.gov/faca/frrcc>.

<sup>6</sup> Children's Health Protection Advisory Committee (CHPAC), <https://www.epa.gov/children>.

<sup>7</sup> The Clean Air Scientific Advisory Committee (CASAC) was established under the Clean Air Act. The Board of Scientific Counselors (BOSC) was established by EPA. The Good Neighbor Environmental Board (GNEB) was established by presidential authority.

<sup>8</sup> All Federal Advisory Committees at EPA, <https://www.epa.gov/faca/all-federal-advisory-committees-epa>.





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The Federal Advisory Committee Act (FACA)<sup>9</sup> generally requires that FACs operate in an independent, orderly, balanced, and transparent manner.<sup>10</sup> Critical to the integrity of FACs is the selection of qualified and knowledgeable candidates. Since each FAC serves a unique purpose, FACs differ in specific composition requirements,<sup>11</sup> but all FACs must be “fairly balanced in terms of the points of view represented and functions to be performed by the committee.”<sup>12</sup> The EPA Administrator should choose qualified candidates to serve on the EPA’s FACs.<sup>13</sup> In addition to knowledge and expertise, other qualifications should also factor strongly into selecting FAC members. Candidates should be independent from the Agency, must avoid any conflicts of interest within the scope of their review, and should be fully committed to objectively serving the Agency and public.

In the spirit of cooperative federalism and recognition of the unique experience of state, tribal and local government officials, committee balance should reflect prominent participation from state, tribal and local governments. Such participation should be appropriate for the committee’s purpose and function. Furthermore, FAC membership should be balanced with persons from different parts of the country to create geographic diversity. Finally, in order to ensure broader participation in FACs, and to ensure that advancements in scientific and technological thinking continually factor into committee reviews, regular rotation of members to assure fresh perspectives should also guide the Agency’s choice of FAC members.

This memorandum accompanies, and explains the principles underlying, a set of directives intended to strengthen and improve the composition of EPA’s FACs in ways that advance the Agency’s mission to protect public health and welfare, that are consistent with the principles of cooperative federalism, and that follow the rule of law and agency directives and guidance.

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<sup>9</sup> 5 U.S.C. app., <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf>.

<sup>10</sup> FACA Essentials at EPA for Federal Advisory Committee Members, [https://www.epa.gov/sites/production/files/2017-02/documents/faca\\_essentials\\_for\\_2016\\_pending.pdf](https://www.epa.gov/sites/production/files/2017-02/documents/faca_essentials_for_2016_pending.pdf).

<sup>11</sup> For example, the Clean Air Scientific Advisory Committee (CASAC) is comprised of seven members, including one physician, one state air pollution control agency representative, and one member of the National Academy of Sciences. *See* 42 U.S.C. § 7409(d)(2). However, not all FACs have statutory membership requirements.

<sup>12</sup> 5 U.S.C. app. § 5(b)(2).

<sup>13</sup> 41 CFR 102-3.60(b)(3) (“Fairly balanced membership. A description of the agency’s plan to attain fairly balanced membership. The plan will ensure that, in the selection of members for the advisory committee, the agency will consider a cross-section of those directly affected, interested, and **qualified**, as appropriate to the nature and functions of the advisory committee.”) (emphasis added).







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***A. Strengthen Member Independence***

A vital part of ensuring integrity and confidence in EPA's FACs comes from guaranteeing that FAC members remain independent of the Agency during their service. EPA FAC members should avoid financial entanglements with EPA to the greatest extent possible.

Non-governmental and non-tribal members in direct receipt of EPA grants while serving on an EPA FAC can create the appearance or reality of potential interference with their ability to independently and objectively serve as a FAC member. FAC members should be motivated by service and committed to providing informed and independent expertise and judgment.

Ensuring FAC member independence strengthens the integrity, objectivity and reliability of EPA FACs. Accordingly, in addition to EPA's existing policies and legal requirements preventing conflicts of interest among the membership of the Agency's FACs, it shall be the policy of the Agency that no member of an EPA federal advisory committee currently receive EPA grants, either as principal investigator or co-investigator, or in a position that otherwise would reap substantial direct benefit from an EPA grant. This principle should not apply to state, tribal or local government agency recipients of EPA grants.

***B. Increase State, Tribal and Local Government Participation***

EPA alone cannot fully meet the environmental challenges this country faces. Under the principle of cooperative federalism, environmental protection is a duty shared between state, tribal, local and federal governments. EPA relies on states, tribes and local communities to assist in, and in some cases assume primary responsibility for, planning and overseeing environmental protection.<sup>14</sup> Rather than solely rely on the opinions of federal officials in Washington, D.C., the Agency should seek the expertise and unique perspectives of public servants at all levels of government across the country. Cooperative federalism underlies many of the environmental statutes passed by Congress since states, tribes and local governments have a better understanding of, and are well-positioned to address, their environmental challenges.

Therefore, state, tribal and local government officials should figure prominently in FAC membership. Increasing state, tribal and local government participation on FACs strengthens EPA decision-making through enhanced public inclusion in EPA policy and programs choices, and joint accountability at all levels of government.

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<sup>14</sup> The Clean Air Act, Clean Water Act, and Safe Drinking Water Act contain provisions giving states and tribes primary responsibility for environmental protection.



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***C. Enhance Geographic Diversity***

EPA's FACs should be balanced to ensure the inclusion and consideration of different viewpoints, consistent with a fundamental goal of FACA.<sup>15</sup> Participation of members from a broad range of geographic regions – especially areas that have historically been unrepresented or underrepresented – should prominently factor into creating balanced membership on FACs.<sup>16</sup> The distinctive experiences, climates and environmental issues facing citizens spread across the United States naturally necessitates strong geographic diversity so that extensive regional perspectives are represented on FACs.<sup>17</sup>

Accordingly, with the exception of FACs established to specifically address regional/area specific issues, EPA shall seek to ensure that FAC membership is geographically diverse. Emphasis should be given to candidates from states or EPA regions that are unrepresented or underrepresented on EPA FACs.

***D. Promote Fresh Perspectives***

Experts serving on FACs should regularly rotate on and off committees to allow for new opinions and fresh ideas. Members who serve on FACs for an extended and continuous period of time risk minimizing viewpoints, lessening diversity, and preventing other qualified candidates from serving. EPA acknowledges the importance of fresh perspectives in its peer review handbook to “keep balance” and “avoid repeated use” of persons that could diminish original feedback.<sup>18</sup>

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<sup>15</sup> “(a) The Congress finds that there are numerous committees, boards, commissions, councils, and similar groups which have been established to advise officers and agencies in the executive branch of the Federal Government and that they are frequently a useful and beneficial means of furnishing expert advice, ideas, and **diverse opinions** to the Federal Government.” 5 U.S.C. app. § 2(a), <https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf> (emphasis added).

<sup>16</sup> “The composition of an advisory committee’s membership will depend upon several factors, including: (i) The advisory committee’s mission; (ii) The **geographic**, ethnic, social, economic, or scientific impact of the advisory committee’s recommendations. . .” 41 C.F.R. Part 102-3, App. A to Subpart B (emphasis added); [https://www.gsa.gov/cdnstatic/FACAFinalRule\\_R2E-cNZ\\_0Z5RDZ-i34K-pR.pdf](https://www.gsa.gov/cdnstatic/FACAFinalRule_R2E-cNZ_0Z5RDZ-i34K-pR.pdf).

<sup>17</sup> See CASAC Membership Balance Plan stating that “Geographic location may be considered” as an “important” factor in achieving a balanced FAC, <https://www.facadatabase.gov/committee/charters.aspx?cid=634&aid=51>; Board of Scientific Counselors stating that “Balances in disciplines, work sector (i.e., academia, government – federal/state/local, industry, environmental associations), diversity, and geographic distribution area are also considered.” <https://www.facadatabase.gov/committee/charters.aspx?cid=1577&aid=51>.

<sup>18</sup> *Peer Review Handbook*, Science and Technology Policy Council, U.S. Env’tl. Prot. Agency, [https://www.epa.gov/sites/production/files/2016-03/documents/epa\\_peer\\_review\\_handbook\\_4th\\_edition.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf).







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New members also help to ensure that FACs remain current with innovative and new scientific and technological expertise. Membership should therefore be dynamic and open to a broad, diverse array of experts who can potentially provide unique and informative new perspectives.<sup>19</sup>

**Conclusion**

EPA's FAC members provide essential and invaluable advice and support to the Agency. Strengthening FAC membership independence from EPA, increasing state, tribal and local government participation, and emphasizing geographic diversity and fresh perspectives, to the greatest extent practicable, serve to enhance the diversity of viewpoints and thereby provide robust and appropriately balanced advice to EPA. These changes also further help EPA meet its core mission of providing the American people with clean air, land, and water.

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<sup>19</sup> EPA's Peer-Review Handbook considers adding fresh perspectives through new peer reviewers an "important qualification" to add balance of views and avoid the repeated use of the same persons. See [https://www.epa.gov/sites/production/files/2016-03/documents/epa\\_peer\\_review\\_handbook\\_4th\\_edition.pdf](https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf).

