E. SCOTT PRUITT
ADMINISTRATOR

TO: Assistant Administrators
Regional Administrators
Office of General Counsel

FROM: E. Scott Pruitt
Administrator

DATE: October 31, 2017

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).[1] EPA's FACs presently provide advice on a broad array of subjects, including pesticides,[2] drinking water quality,[3] air quality,[4] rural community welfare,[5] and children's health.[6] FACs can be established by statutory requirement, at the discretion of federal agencies, or through presidential directive.[7] 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.[8]

[1] "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.
[2] Pesticide Program Dialogue Committee (PPDC), https://www.epa.gov/pesticide-advisory-committees-and-regulatory-partners/pesticide-program-dialogue-committee-ppdc.
[3] National Drinking Water Advisory Council (NDWAC), https://www.epa.gov/ndwac.
[4] Clean Air Scientific Advisory Committee (CASAC), https://yosemite.epa.gov/sab/sabpeople.nsf/WebCommittees/CASAC.
[5] Farm, Ranch, and Rural Communities Advisory Committee (FRRCC), https://www.epa.gov/faca/frrcc.
[6] Children's Health Protection Advisory Committee (CHPAC), https://www.epa.gov/children.
[7] 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.
[8] All Federal Advisory Committees at EPA, https://www.epa.gov/faca/all-federal-advisory-committees-epa.

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Administrator

The Federal Advisory Committee Act (FACA)[9] generally requires that FACs operate in an independent, orderly, balanced, and transparent manner.[10] 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,[11] but all FACs must be "fairly balanced in terms of the points of view represented and functions to be performed by the committee."[12] The EPA Administrator should choose qualified candidates to serve on the EPA's FACs.[13] 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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[9] 5 U.S.C. app., https://www.gsa.gov/cdnstatic/FACA-Statute-2013.pdf.
[10] 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.
[11] 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.
[12] 5 U.S.C. app. § 5(b)(2).
[13] 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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ADMINISTRATOR

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.[14] 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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[14] 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.[15] 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.[16] 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.[17]

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.[18]

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[15] "(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).

[16] "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.

[17] *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.

[18] *Peer Review Handbook*, Science and Technology Policy Council, U.S. Envtl. Prot. Agency, https://www.epa.gov/sites/production/files/2016-03/documents/epa_peer_review_handbook_4th_edition.pdf.

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E. Scott Pruitt
Administrator

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.[19]

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.

[19] 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.

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LAMAR S. SMITH, Texas
CHAIRMAN

EDDIE BERNICE JOHNSON, Texas
RANKING MEMBER

Congress of the United States
House of Representatives

COMMITTEE ON SCIENCE, SPACE, AND TECHNOLOGY

2321 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515–6301

(202) 225–6371
www.science.house.gov

March 19, 2014

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

The Committee on Science, Space, and Technology has longstanding concerns with the Environmental Protection Agency's (EPA) scientific advisory processes. In particular, there has been a troubling lack of independence and transparency within EPA's Clean Air Scientific Advisory Committee (CASAC) Ozone Review Panel. In establishing CASAC, Congress gave clear direction that this committee is intended "to have complete independence."[1] The CASAC Ozone Review Panel appears to violate agency policies designed to ensure balance, independence, and impartiality. Additional transparency is necessary to assure Congress and the American people that EPA is basing its costly regulatory decisions on the best available science and not a predetermined regulatory agenda.

In a hearing before the Committee last November, you stated that CASAC "provides independent advice to the EPA Administrator on the science that supports the EPA's National Ambient Air Quality Standards."[2] However, recent testimony and the current makeup of the panel reveal a number of problems, including: panelists reviewing their own work; a lack of turnover among CASAC Ozone Review Panel members; and, existing financial relationships between panelists and the Agency. Dr. Robert Phalen, Professor of Medicine and Co-Director of the Air Pollution Health Effects Laboratory at University of California, Irvine, and a former member of the CASAC panel on fine particulate matter, stated in testimony that the "current [CASAC] process… is seriously flawed, it is narrowly focused, and it is even ethically questionable."[3] Due to the substantial economic cost associated with finalizing a more stringent ozone standard, EPA should make every effort to ensure the transparency of the regulatory process.

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[1] H.R. Rep. No. 95-294 at 182-83 (1977).
[2] Committee on Science, Space, and Technology, "Strengthening Transparent and Accountability within the Environmental Protection Agency," Testimony of EPA Administrator Gina McCarthy, 113th Cong., 1st sess., 14 November, 2013, https://science.house.gov/sites/republicans.science.house.gov/files/documents/HHRG-113-SY-WState-GMccarthy-20131114.pdf.
[3] Committee on Science, Space, and Technology, "Quality Science for Quality Air," 112th Cong., 1st sess., 4 October 2011, http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70587/html/CHRG-112hhrg70587.htm.

Lowering the ozone National Ambient Air Quality Standards (NAAQS) to the range being discussed by CASAC could represent the most expensive regulation in history, with EPA's own cost estimates approaching nearly $100 billion per year. An ozone NAAQS below the existing standards may place large swaths of the United States in non-attainment with the Clean Air Act and result in severe economic sanctions. Moreover, testimony before this Committee indicates that standards in the range EPA is considering are below naturally-occurring background levels in many parts of the country.[4] Setting standards at these levels could therefore limit growth and impose penalties on communities whose means of compliance is beyond their control.

This Committee is not alone in its concerns about the independence and transparency of the CASAC process, and this Ozone Review panel in particular. As noted below, independent scientists who have been involved with CASAC have testified to our Committee with serious concerns.

Recusals and Reviewing One's Own Work

EPA's *Peer Review Handbook* states that "An independent peer reviewer is an expert who was not associated with the generation of the specific work product either directly… or indirectly…."[5]

Within the NAAQS process, EPA's CASAC Ozone Review panelists are asked to review three documents generated by EPA: the Integrated Science Assessment;[6] the Health and Welfare Risk and Exposure Assessments;[7] and the Policy Assessment.[8] Among the current CASAC Ozone Review panel, **16 of the 20 panel members** are cited by EPA in the current versions of these key documents. Indeed, the Agency cites the work of these panel members **more than 700 times** in these regulatory science documents they are being asked to critically assess.

This does not appear to be an isolated incident, as Dr. Roger McClellan, a former Chair of CASAC, testified, "The [CASAC] membership has been excessively dominated by scientists that to a large extent have developed the scientific information contained in the documents."[9] In addition, a 2013 review of CASAC's processes by the EPA Inspector General (IG) found multiple instances where recusals for concerns related to independence were not documented.

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[4] Committee on Science, Space, and Technology, "Background Check: Achievability of New Ozone Standards," 113th Cong., 1st sess., 12 June 2013, https://science.house.gov/hearing/subcommittee-environment-background-check-achievability-new-ozone-standards.

[5] U. S. Environmental Protection Agency, *Peer Review Handbook*, 3rd Edition, Peer Review Advisory Group, Science Policy Council, http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2006.pdf.

[6] U. S. Environmental Protection Agency, Office of Research and Development, National Center for Environmental Assessment, *Integrated Science Assessment for Ozone and Related Photochemical Oxidants*, 2013. EPA 600/R-10/076F, http://oaspub.epa.gov/eims/eimscomm.getfile?p_download_id=511347.

[7] U. S. Environmental Protection Agency, National Ambient Air Quality Standards, Ozone Standards, Documents from Current Review, Risk and Exposure Assessments, http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_2008_rea.html.

[8] U. S. Environmental Protection Agency, National Ambient Air Quality Standards, Ozone Standards, Documents from Current Review, Policy Assessments, http://www.epa.gov/ttn/naaqs/standards/ozone/s_o3_2008_pa.html.

[9] Committee on Science, Space, and Technology, "Quality Science for Quality Air," 112th Cong., 1st sess., 4 October 2011, http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70587/html/CHRG-112hhrg70587.htm.

The IG also found those recusals often came after the fact, lacked detail or their resolution was not adequately documented.[10] Independent reviewers should not be reviewing their work and the Agency needs to guarantee panelists recuse themselves for Agency documents that rely upon or cite their work.[11]

Lack of Turnover and Financial Relationships with EPA

EPA's *Peer Review Handbook* states "that the agency [should] rotate membership among qualified scientists in order to obtain fresh perspectives and reinforce the reality and perception of independence from the agency."[12] Despite this requirement, half of the current CASAC Ozone Review Panel members (10 out of 20) also served on the Agency's panel for the reconsideration of the 2008 Ozone NAAQS and five of these members served on both the reconsideration panel and the CASAC Ozone Review Panel for the 2008 NAAQS. Moreover, these panels were highly critical of the Administrator's decision concerning the 2008 ozone standard, suggesting bias in the current panel makeup.

EPA's *Peer Review Handbook* also states that Federal grants or contracts may constitute a direct financial stake, and thus a conflict or lack of impartiality in a specific review for potential peer reviewers. And in 2013, EPA's Inspector General found that "[a] prospective or active member's research or grant is a potential area of concern if the [Federal Advisory Committee], panel, or subcommittee plans to address work performed under the research grant."[13] Yet, since 2000, **70 percent or 14 of the 20 members** of the CASAC Ozone Review Panel have been principal or co-investigators for EPA grants totaling more than $120 million.[14] Many of these grants focus on ozone- and air pollution-related issues at the heart of these advisory activities.

The lack of turnover in a panel whose composition includes members with a direct financial relationship with the Agency related to the very issues under review suggests a critical lack of impartiality. As Dr. Michael Honeycutt, Director of Toxicology at the Texas Commission on Environmental Quality, stated before the Committee, "Having study authors, grant recipients, and panelists who have taken public stands on relevant topics who are handpicked by the Administrator gives the perception that the CASAC may not be truly independent."[15]

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[10] U. S. Environmental Protection Agency, Office of Inspector General, 2013. *EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees*, Report no. 13-P-0387, http://www.epa.gov/oig/reports/2013/20130911-13-P-0387.pdf.

[11] Dr. Honeycutt testified that: "It is not appropriate for scientists to peer review their own work; it presents a clear conflict of interest. When a panel reviews a document in which a member's work is cited, that member should recuse himself from review of the document." Available from: http://www.gpo.gov/fdsys/pkg/CHRG-112hhrg70587/html/CHRG-112hhrg70587.htm.

[12] U. S. Environmental Protection Agency, *Peer Review Handbook*, 3rd Edition, Peer Review Advisory Group, Science Policy Council, http://www.epa.gov/peerreview/pdfs/peer_review_handbook_2006.pdf.

[13] U. S. Environmental Protection Agency, Office of Inspector General, 2013. *EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees*, Report no. 13-P-0387, http://www.epa.gov/oig/reports/2013/20130911-13-P-0387.pdf.

[14] These totals only include grants from the National Center for Environmental Research. Grant information available at: http://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome.

[15] Committee on Science, Space, and Technology, "Improving EPA's Scientific Advisory Process," 113th Cong., 1st sess., 20 March 2013, http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg80553/pdf/CHRG-113hhrg80553.pdf.

Need for Transparency

In testimony before the Committee last year, Dr. Roger McClellan stated that "[v]ery little of the CASAC panel work is done in public view. Most of the discussion takes place off-line and is only manifest in the written draft comments of the CASAC Panel Members in response to EPA staff written questions."[16] In light of these serious concerns, it is unacceptable for EPA to move forward with new rules without first addressing potential conflicts of interest and a lack of transparency within a panel intended to provide the Agency with independent scientific assessments.

Please provide all communications between EPA staff, CASAC staff, and the CASAC Ozone Review Panel related to potential revisions to the ozone NAAQS. This should include all e-mail correspondence and meeting records since the start of the panel formation process in 2008. Please provide these communications to the Committee by March 25, 2014.

Your staff has indicated that the upcoming CASAC Ozone Review Panel meeting to be held March 25-27, 2014 will be webcast live on the Agency's website. Please ensure that an archived version of this webcast will be available online to the public following the meeting.

Sincerely,

Lamar Smith

Lamar Smith
Chairman
Committee on Science, Space, and Technology

[16] Committee on Science, Space, and Technology, "Improving EPA's Scientific Advisory Process," 113th Cong., 1st sess., 20 March 2013, http://www.gpo.gov/fdsys/pkg/CHRG-113hhrg80553/pdf/CHRG-113hhrg80553.pdf.

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115TH CONGRESS
1ST SESSION

H. R. 1431

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

IN THE HOUSE OF REPRESENTATIVES

MARCH 8, 2017

Mr. LUCAS (for himself, Mr. PETERSON, Mr. SMITH of Texas, Mr. BIGGS, Mr. BANKS of Indiana, Mr. ROHRABACHER, Mr. POSEY, Mr. BROOKS of Alabama, Mr. WEBER of Texas, Mr. BABIN, Mr. HIGGINS of Louisiana, Mr. HULTGREN, Mr. BRIDENSTINE, Mr. ABRAHAM, Mr. LAHOOD, Mr. WEBSTER of Florida, Mr. MARSHALL, Mr. DUNN, Mr. SESSIONS, Mr. CHAFFETZ, Mr. SCHWEIKERT, Mr. PALAZZO, Mr. YOUNG of Alaska, Mr. BARTON, Mr. PEARCE, Mr. FARENTHOLD, Mr. GOSAR, Mr. TIPTON, and Mr. GOODLATTE) introduced the following bill; which was referred to the Committee on Science, Space, and Technology

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A BILL

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "EPA Science Advisory Board Reform Act of 2017".

ED_002389_00011925-00010

SEC. 2. SCIENCE ADVISORY BOARD.

(a) INDEPENDENT ADVICE.—Section 8(a) of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4365(a)) is amended by inserting "independently" after "Advisory Board which shall".

(b) MEMBERSHIP.—Section 8(b) of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4365(b)) is amended to read as follows:

"(b)(1) The Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman.

"(2) Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section. The Administrator shall ensure that—

"(A) the scientific and technical points of view represented on and the functions to be performed by the Board are fairly balanced among the members of the Board;

"(B) at least ten percent of the membership of the Board are from State, local, or tribal governments;

"(C) persons with substantial and relevant expertise are not excluded from the Board due to affiliation with or representation of entities that may have a potential interest in the Board's advisory activities, so long as that interest is fully disclosed to the Administrator and the public and appointment to the Board complies with section 208 of title 18, United States Code;

"(D) in the case of a Board advisory activity on a particular matter involving, or for which the Board has evidence that it may involve, a specific party, no Board member having an interest in the specific party shall participate in that activity;

"(E) Board members may not participate in advisory activities that directly or indirectly involve review or evaluation of their own work, unless fully disclosed to the public and the work has been externally peer-reviewed;

"(F) Board members shall be designated as special Government employees;

"(G) no registered lobbyist is appointed to the Board; and

"(H) a Board member shall have no current grants or contracts from the Environmental Protection Agency and shall not apply for a grant or con-

tract for 3 years following the end of that member's service on the Board.

"(3) The Administrator shall—

"(A) solicit public nominations for the Board by publishing a notification in the Federal Register;

"(B) solicit nominations from relevant Federal agencies, including the Departments of Agriculture, Defense, Energy, the Interior, and Health and Human Services;

"(C) solicit nominations from—

"(i) institutions of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))); and

"(ii) scientific and research institutions based in work relevant to that of the Board;

"(D) make public the list of nominees, including the identity of the entities that nominated each, and shall accept public comment on the nominees;

"(E) require that, upon their provisional nomination, nominees shall file a written report disclosing financial relationships and interests, including Environmental Protection Agency grants, contracts, cooperative agreements, or other financial assistance, that are relevant to the Board's advisory activities for the three-year period prior to the date of their

1 nomination, and relevant professional activities and
2 public statements for the five-year period prior to
3 the date of their nomination; and
4 "(F) make such reports public, with the excep-
5 tion of specific dollar amounts, for each member of
6 the Board upon such member's selection.
7 "(4) Disclosure of relevant professional activities
8 under paragraph (3)(E) shall include all representational
9 work, expert testimony, and contract work as well as iden-
10 tifying the party for which the work was done.
11 "(5) Except when specifically prohibited by law, the
12 Agency shall make all conflict of interest waivers granted
13 to members of the Board, member committees, or inves-
14 tigative panels publicly available.
15 "(6) Any recusal agreement made by a member of
16 the Board, a member committee, or an investigative panel,
17 or any recusal known to the Agency that occurs during
18 the course of a meeting or other work of the Board, mem-
19 ber committee, or investigative panel shall promptly be
20 made public by the Administrator.
21 "(7) The terms of the members of the Board shall
22 be three years and shall be staggered so that the terms
23 of no more than one-third of the total membership of the
24 Board shall expire within a single fiscal year. No member
25 shall serve more than two terms over a ten-year period.".

(c) RECORD.—Section 8(c) of such Act (42 U.S.C. 4365(c)) is amended—

(1) in paragraph (1)—

(A) by inserting "or draft risk or hazard assessment," after "at the time any proposed";

(B) by striking "formal"; and

(C) by inserting "or draft risk or hazard assessment," after "to the Board such proposed"; and

(2) in paragraph (2)—

(A) by inserting "or draft risk or hazard assessment," after "the scientific and technical basis of the proposed"; and

(B) by adding at the end the following: "The Board's advice and comments, including dissenting views of Board members, and the response of the Administrator shall be included in the record with respect to any proposed risk or hazard assessment, criteria document, standard, limitation, or regulation and published in the Federal Register.".

(d) MEMBER COMMITTEES AND INVESTIGATIVE PANELS.—Section 8(e)(1)(A) of such Act (42 U.S.C. 4365(e)(1)(A)) is amended by adding at the end the fol-

1 lowing: "These member committees and investigative pan-
2 els—
3 "(i) shall be constituted and operate
4 in accordance with the provisions set forth
5 in paragraphs (2) and (3) of subsection
6 (b), in subsection (h), and in subsection
7 (i);
8 "(ii) do not have authority to make
9 decisions on behalf of the Board; and
10 "(iii) may not report directly to the
11 Environmental Protection Agency.".
12 (e) PUBLIC PARTICIPATION.—Section 8 of such Act
13 (42 U.S.C. 4365) is amended by amending subsection (h)
14 to read as follows:
15 "(h)(1) To facilitate public participation in the advi-
16 sory activities of the Board, the Administrator and the
17 Board shall make public all reports and relevant scientific
18 information and shall provide materials to the public at
19 the same time as received by members of the Board.
20 "(2) Prior to conducting major advisory activities, the
21 Board shall hold a public information-gathering session to
22 discuss the state of the science related to the advisory ac-
23 tivity.
24 "(3) Prior to convening a member committee or in-
25 vestigative panel under subsection (e) or requesting sci-

1 entific advice from the Board, the Administrator shall ac-
2 cept, consider, and address public comments on questions
3 to be asked of the Board. The Board, member committees,
4 and investigative panels shall accept, consider, and ad-
5 dress public comments on such questions and shall not ac-
6 cept a question that unduly narrows the scope of an advi-
7 sory activity.

8 "(4) The Administrator and the Board shall encour-
9 age public comments, including oral comments and discus-
10 sion during the proceedings, that shall not be limited by
11 an insufficient or arbitrary time restriction. Public com-
12 ments shall be provided to the Board when received, and
13 shall be published in the Federal Register grouped by com-
14 mon themes. If multiple repetitious comments are re-
15 ceived, only one such comment shall be published along
16 with the number of such repetitious comments received.
17 Any report made public by the Board shall include written
18 responses to significant comments, including those that
19 present an alternative hypothesis-based scientific point of
20 view, offered by members of the public to the Board.

21 "(5) Following Board meetings, the public shall be
22 given 15 calendar days to provide additional comments for
23 consideration by the Board.".

1 (f) OPERATIONS.—Section 8 of such Act (42 U.S.C.
2 4365) is further amended by amending subsection (i) to
3 read as follows:

4 "(i)(1) In carrying out its advisory activities, the
5 Board shall strive to avoid making policy determinations
6 or recommendations, and, in the event the Board feels
7 compelled to offer policy advice, shall explicitly distinguish
8 between scientific determinations and policy advice.

9 "(2) The Board shall clearly communicate uncertain-
10 ties associated with the scientific advice provided to the
11 Administrator or Congress.

12 "(3) The Board shall ensure that advice and com-
13 ments reflect the views of the members and shall encour-
14 age dissenting members to make their views known to the
15 public, the Administrator, and Congress.

16 "(4) The Board shall conduct periodic reviews to en-
17 sure that its advisory activities are addressing the most
18 important scientific issues affecting the Environmental
19 Protection Agency.

20 "(5) The Board shall be fully and timely responsive
21 to Congress.".

1 **SEC. 3. RELATION TO THE FEDERAL ADVISORY COM-**
2 **MITTEE ACT.**

3 Nothing in this Act or the amendments made by this
4 Act shall be construed as supplanting the requirements of
5 the Federal Advisory Committee Act (5 U.S.C. App.).

6 **SEC. 4. RELATION TO THE ETHICS IN GOVERNMENT ACT OF**
7 **1978.**

8 Nothing in this Act or the amendments made by this
9 Act shall be construed as supplanting the requirements of
10 the Ethics in Government Act of 1978 (5 U.S.C. App.).

○

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Lamar Smith, Chairman

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Members Introduce Legislation to Reform EPA's Scientific Advisory Process

Apr 9, 2013 | Press Release

Subcommittee on Environment Chairman Chris Stewart (R-Utah) today introduced legislation to reform the Environmental Protection Agency's (EPA's) scientific advisory processes. The bill, H.R.1422 (/sites/republicans.science.house.gov/files/documents/HR%201422_0.pdf), the *EPA Science Advisory Board Reform Act of 2013*, makes changes to the EPA's Science Advisory Board (SAB) to enhance public participation, improve the process for selecting expert advisors, expand transparency requirements and limit non-scientific policy advice. Original cosponsors of the bill include: Chairman Lamar Smith (R-Texas), Vice Chairman Dana Rohrabacher (R-Calif.), Chairman Emeritus Ralph Hall (R-Texas), Rep. Andy Harris (R-Md.) and Rep. Dan Benishek (R-Mich.).

Environment Subcommittee Chairman Stewart: "Through the EPA, the Obama Administration is aggressively pursuing costly regulations that impact nearly every sector of the American economy. Most of these rules are based on controversial scientific assertions and conclusions, so it is critical they be reviewed by a balanced panel of experts in an open and transparent manner. This bill directs EPA to undertake reforms to do just that."

Chairman Smith: "Time and again, we see instances where American businesses are unnecessarily harmed by the EPA's regulatory and political agenda. The changes in this bill will help to ensure that multi-billion dollar rulemakings are based on good science and hard fact, rather than fiction. The bill also makes sure that EPA regulations are reviewed in a balanced and transparent manner."

The Members' SAB reform effort builds on similar legislation introduced in the 112th Congress. The Committee plans to mark up (/markup/full-committee-markup-hr-875-hr) the measure on Thursday, April 11 at 10:00 a.m.

At a March hearing on the legislation, Rep. Stewart emphasized (/sites/republicans.science.house.gov/files/documents/HHRG-113-%20SY18-WState-S001192-20130320.pdf) that these reforms will help instill confidence in EPA regulatory science, saying that the EPA's credibility suffers when the Agency's scientific process is viewed as being biased or one-sided.

Established by Congress in 1978, the SAB plays an important role in reviewing the scientific foundation of EPA regulatory decisions and advising the Agency broadly on science and technology-related matters.

Criticisms of the current advisory process include:

- According (/crs-memo-re-epa-grants-members-selected-epa-advisory-committees) to the Congressional Research Service, almost 60 percent of the members of EPA's standing scientific advisory panels directly received National Center for Environmental Research grants from the Agency since 2000. These advisors served as investigators for grants representing hundreds of millions of taxpayer dollars. And the research they are being asked to independently review is often directly related to the grants they received.
- Private sector industry expertise on panels is typically minimal, and in some cases is entirely excluded, despite existing statutory requirements

that membership "be fairly balanced in terms of the points of view represented."

- Many panel members state strong policy preferences in areas they are being asked to provide impartial scientific reviews, and in certain cases advisors review EPA products based on their own work.
- Public participation is limited during most SAB meetings, and virtually no ability exists for interested parties to comment on the scope of SAB reviews.

To address these shortcomings, H.R. 1422 (/sites/republicans.science.house.gov/files/documents/HR%201422_0.pdf):

- Strengthens public participation and public comment opportunities.
- Improves the make-up of SAB and its sub-panels by reinforcing peer review requirements regarding balance and independence. The bill also reduces potential conflicts of interest by requiring enhanced disclosure of members' financial relationships relevant to board activities.
- Requires opportunities for dissenting panelists to make their views known.
- Requires communication of uncertainties in scientific findings and conclusions.
- Limits non-scientific policy advice and recommendations, while requiring explicit disclosure of such advice when SAB feels compelled to provide it.

These provisions draw upon recent recommendations from the Keystone Center's Research Integrity Roundtable (https://www.keystone.org/images/keystone-center/spp-documents/Health/Research%20Integrity%20Rountable%20Report.pdf), the Bipartisan Policy Center (https://bipartisanpolicy.org/library/report/science-policy-project-final-report), and other stakeholders (https://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/June%201%202011%20Public%20involvement%20session?OpenDocument), as well as relevant testimony (/sab-bill-press-release-quotes) received by the Committee on Science, Space, and Technology during the 112th and 113th Congresses.

113th Congress

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SCIENCE, SPACE, & TECHNOLOGY (/)
Lamar Smith, Chairman

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Lucas, Peterson Introduce Bipartisan Bill to Strengthen EPA Independent Scientific Advice

Feb 24, 2015 | Press Release

Washington D.C. – House Science, Space, and Technology Committee Vice-Chairman Frank Lucas (R-Okla.) and Rep. Collin Peterson (D-Minn.) today introduced the bipartisan *EPA Science Advisory Board Reform Act* to bring fairness, transparency, and independence to the EPA's expert panel. Similar legislation passed the House in the 113th Congress with bipartisan support. Companion legislation was also introduced today in the Senate by Sens. John Boozman (R-Ark.) and Joe Manchin (D-W.Va.).

Vice-Chairman Lucas: "The Science Advisory Board (SAB) informs the EPA on regulations that impact the lives of millions of Americans. Some members on this board have received grant money from the EPA, and several of the members have openly expressed policy preferences in the same areas they are asked to independently study. The heavy costs of EPA's regulations

warrant some degree of public oversight to ensure SAB's findings are free from bias or conflicts of interest and not simply provided by a set of handpicked advisors. The *EPA Science Advisory Board Reform Act* addresses these issues by ensuring the science guiding EPA's regulatory policy is open to review by the public and requiring members who serve on this board to disclose their professional backgrounds."

Rep. Peterson: "The Science Advisory Board's work is important to making sure the EPA considers all scientific information when writing regulations that will impact American farmers, families and small businesses. This legislation builds on the work done in the 2014 Farm Bill and is necessary to ensure the EPA takes into account the best information possible, with input from the public and independent stakeholders. A balanced and independent Science Advisory Board will help alleviate some of the unintended consequences surrounding EPA regulations."

The SAB was created to provide independent expert advice to the EPA and Congress on scientific and technical information that may be used to justify federal regulations. Over the past decades, shortcomings with the current process have arisen, including limited public participation, EPA interference with expert advice, and potential conflicts of interest. As a result, the law should be updated to restore scientific integrity to the process and independence to the Board. The *EPA Science Advisory Board Reform Act* addresses these shortcomings guaranteeing a well-balanced expert panel, increasing transparency, and encouraging public participation to empower the SAB to provide meaningful and unbiased scientific advice.

114th Congress

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

July 20, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

I write to comment on the list of candidates nominated to serve on the U.S. Environmental Protection Agency's (EPA or Agency) chartered Clean Air Scientific Advisory Committee (CASAC). The CASAC is a seven-member member Federal Advisory Committee (FAC) tasked with providing the EPA independent scientific advice related to the national ambient air quality standards (NAAQS). As you know, I have long expressed concerns over the composition of previously appointed CASAC panels, but I am hopeful you will use this opportunity to appoint an expert that will bring much needed balance and integrity to CASAC.

Pursuant to Section 109(d)(2) of the Clean Air Act, the chartered CASAC must be composed of at least "one person representing State air pollution control agencies."[1] On April 6, 2016, EPA published a notice in the Federal Register requesting nominations for candidates to fill this statutorily required state-affiliated position.[2] Nominations were due by May 6, 2016. On June 20, 2016, EPA posted a list of seven candidates who were nominated on its website and announced the Agency would accept public comments on those candidates until July 20, 2016.[3] Among the seven candidates, the EPA Science Advisory Board (SAB) staff office will make a recommendation to you, as the EPA Administrator, who will then appoint a member to the chartered CASAC for a three-year term beginning in October 2016.[4]

This is a critical position on CASAC that warrants robust review of the candidates' qualifications both individually and within the context of the other six members of CASAC to ensure balance of the panel. EPA should consider the historical composition of the chartered CASAC as well as those serving in this specific state-affiliated position on CASAC, and how one of the nominees may fill a void on the panel. With these factors in mind, I want to highlight several issues related to the lack of geographic diversity and fresh perspectives on the chartered CASAC that EPA

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[1] 42 U.S.C. § 7409(d)(2).

[2] U.S. Envtl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and the EPA Science Advisory Board (SAB), 81 Fed. Reg. 19967, Apr. 6, 2016, *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf.

[3] https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentCASAC/3CDA169D2187C6C885257F85006D3AF1/$File/List%20of%20Candidates-CASAC.pdf

[4] "Appointments are anticipated to be filled by the start of Fiscal Year 2017 (October 2016). . . Members are appointed by the EPA Administrator for a three-year term and serve as Special Government Employees who provide independent expert advice to the agency." 81 Fed. Reg. 19967.

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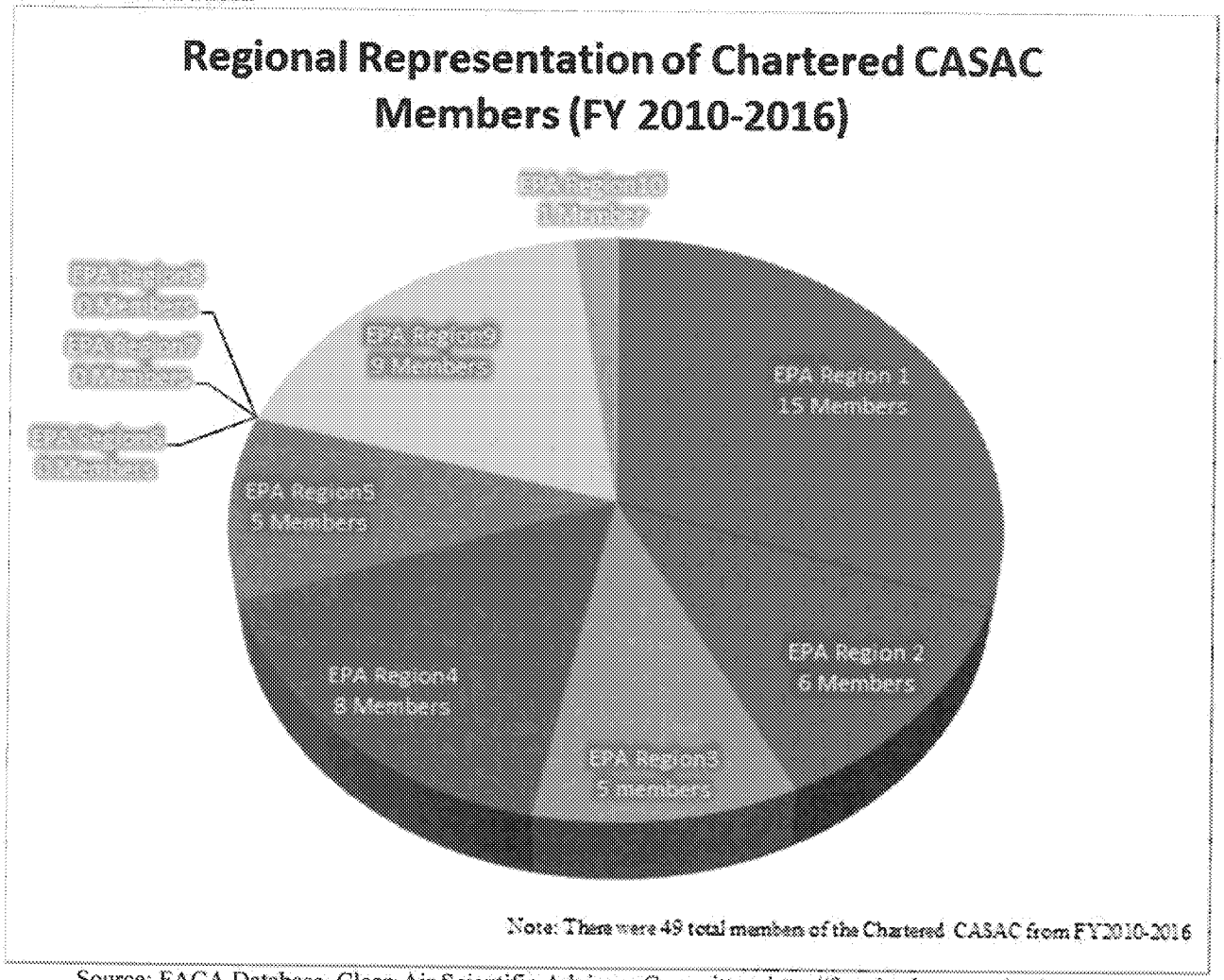
SAB staff office should take into account when evaluating the nominees. While not providing an endorsement of any of the candidates, I note in this letter my concerns with two of the nominees under consideration for the chartered CASAC.

In the first instance, EPA's record for ensuring geographic diversity on its advisory panels has been lacking under the Obama Administration. As for the current seven-member chartered CASAC; there are no members from EPA Regions 2, 4, 6, 7, or 8. In fact, over the course of this Administration, EPA has not appointed a single person from EPA Regions 6, 7, or 8 to serve on the chartered CASAC. These regions include 15 states, which represent 30 percent of the country; yet represent zero percent of the chartered CASAC during the last six years. As I have stated before, these regions cover vast parts of the country that are among the most impacted by the NAAQS, so qualified experts from these areas would have particularly unique experience with air quality issues that CASAC has not benefited from in recent years. Meanwhile, the coastal EPA Regions 1 and 9 have been overrepresented on the panel. The following chart illustrates the geographic representation of the members appointed to the chartered CASAC by this Administration:



Source: FACA Database, Clean Air Scientific Advisory Committee: http://facadatabase.gov/rpt/_message.asp

This seeming geographic bias on the chartered CASAC cannot be ignored. It is also important to note that with respect to this specific state-based position on CASAC, there has been no meaningful geographic diversity at all. In last 20 years, there have been only four individuals filling this position on the chartered CASAC, two of which were from EPA Region 1 and the others were from Regions 2 and 5. Indeed, the last time this position was vacant there were six candidates nominated, with many from the west coast and northeast.[5] This was disappointing in light of the overrepresentation of those areas on the panel. This time there is a more diverse group of nominees from EPA Regions 4, 5, 6, and 8. As such, there is no reason for EPA to overlook well-qualified candidates from these areas that would clearly balance the panel with respect to geographic diversity.

As you are aware, the chartered CASAC is a federal advisory committee (FAC), subject to the Federal Advisory Committee Act (FACA) of 1972, which provides uniform procedures for the establishment, operation, administration, and duration of FACs.[6] FACA regulations require membership on FACs be balanced and provide several factors for agencies to consider in reaching balance, including the geographic impact of the FAC's recommendations.[7] EPA's FAC Management Handbook also states that the Designated Federal Office (DFO), who is charged with ensuring compliance with FACA and its implementing regulations, should compose FACs with a balance of views, which includes geographic considerations.[8] EPA's CASAC Membership Balance Plan, updated in April 2015, specifically added "geographic location may be considered" as the only other factor to consider the balance of the chartered CASAC.[9]

These requirements must be considered when evaluating the nomination of Bart Croes of the California Air Resources Board (CARB), who would not provide geographic diversity to the panel. In fact, there has been one member from California on the chartered CASAC since the beginning of the Administration. For one of 50 states to constantly have a member on a seven-member panel does not suggest EPA has meaningfully considered geographic representation on CASAC. Even more, the current chartered CASAC already includes a member from California, Ron Wyzga, who was just reappointed in October 2015 to serve a term ending in 2018. Therefore, if EPA appointed Mr. Croes to CASAC, for the next two years, 30 percent of the

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[5] U.S. Envlt. Prot. Agency, Invitation for Public Comment on the List of Candidates for the Environmental Protection Agency's Clean Air Scientific Advisory Committee, May 21, 2013, *available at* https://yosemite.epa.gov/sab/sabproduct.nsf/WebAll/CASACFY13AMD/$File/CASAC_Nominee_Biosketches_05-22-13_corrected.pdf.

[6] 5 U.S.C. App. 2 § 2.

[7] GSA Final Rule on Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3.

[8] ENVTL. PROT. AGENCY, EPA'S NEW FEDERAL ADVISORY COMM. MGMT HANDBOOK, Oct. 9, 2013, *available at* http://nepis.epa.gov/Exe/ZyNET.exe/901W0000.TXT?ZyActionD=ZyDocument&Client=EPA&Index=2000+Thru+2005&Docs=&Query=&Time=&EndTime=&SearchMethod=1&TocRestrict=n&Toc=&TocEntry=&QField=&QFieldYear=&QFieldMonth=&QFieldDay=&IntQFieldOp=0&ExtQFieldOp=0&XmlQuery=&File=D%3A%5Czyfiles%5CIndex%20Data%5C00thru05%5CTxt%5C00000012%5C901W0000.txt&User=ANONYMOUS&Password=anonymous&SortMethod=h%7C-&MaximumDocuments=1&FuzzyDegree=0&ImageQuality=r75g8/r75g8/x150y150g16/i425&Display=p%7Cf&DefSeekPage=x&SearchBack=ZyActionL&Back=ZyActionS&BackDesc=Results%20page&MaximumPages=1&ZyEntry=1&SeekPage=x&ZyPURL# (hereinafter EPA FAC Handbook).

[9] CASAC Membership Balance Plan, April 15, 2015, *available at* http://facadatabase.gov/committee/charters.aspx?cid=634&aid=51.

panel would be from one state, which is wholly unacceptable. Such an appointment would be counter to EPA policy and would suggest the Agency does not take geographic diversity seriously given the high caliber of other candidates from regions not currently represented, as well as regions that have not been represented on the chartered CASAC for many years.

In addition, EPA must take into account concerns over the lack of fresh perspectives on the chartered CASAC when assessing the balance of the panel. For instance, the current chartered CASAC includes four of seven members that previously served on the chartered CASAC. As you are aware, EPA's Peer Review Handbook advises the Agency to select new members "to obtain fresh perspectives and reinforce the reality and perception of independence from the Agency."[10] EPA's FAC Handbook dictates that members of the chartered CASAC can serve only six years "in order to provide fresh perspectives to the committee."[11]

I applaud EPA's commitment to this term limit on the chartered CASAC since 2010.[12] However, as a practical matter, the six-year tenure policy does not necessarily ensure a balanced panel with respect to fresh perspectives per FACA. Indeed, since the Clean Air Act requires CASAC to review the NAAQS every five years, there could be instances where CASAC members review and vote on the standard for the same criteria pollutant that they had previously reviewed, especially when members do not serve in consecutive three-year terms. EPA now has an opportunity to fill this opening in a manner that addresses this past concern and is consistent with EPA's Peer Review and FAC Handbooks.

Specifically, EPA must consider these factors when evaluating Dr. Donna Kenski of the Lake Michigan Air Directors Consortium, who was nominated to serve on CASAC. Dr. Kenski has already served on the chartered CASAC for a three-year term from 2008 to 2010. During this time, Dr. Kenski reviewed and provided advice on each of the six criteria pollutants. Critically, as a member of the chartered CASAC, she was a voting member authorized to make recommendations to the Administrator on the NAAQS, which is distinct from members of CASAC subcommittees who do not directly advise the Administrator. Accordingly, if she were appointed again to serve another three-year term, she would review and make recommendations on a number of the same criteria pollutants. This scenario is exactly what I cautioned against in 2011, when I requested a review of CASAC membership by the EPA Office of Inspector General (OIG).[13] In addition to not providing a fresh perspective, when an individual is tasked with reviewing the same standard, it also calls into question the impartiality of the member as they would essentially be reviewing their past work in advising on the last standard. In the interest of

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[10] ENVTL. PROT. AGENCY, SCIENCE & TECH. POLICY COUNCIL, PEER REVIEW HANDBOOK, 4th Ed. (Oct. 2015), http://www2.epa.gov/sites/production/files/2015-09/documents/final_epa_peer_review_handbook-_4th_ed_091415_dummy_link.pdf.

[11] EPA FAC Handbook, *supra* note 8.

[12] OFFICE OF INSPECTOR GEN., U.S. ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 EPA CAN BETTER DOCUMENT RESOLUTION OF ETHICS AND PARTIALITY CONCERNS IN MANAGING CLEAN AIR FEDERAL ADVISORY COMMITTEES (Sept. 11, 2013), at 21-22, *available at* http://www2.epa.gov/sites/production/files/2015-09/documents/20130911-13-p-0387.pdf.

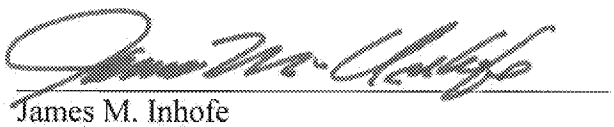
[13] Letter from Hon. James M. Inhofe, Ranking Member, S. Comm. on Env't & Public Works, to Hon. Arthur A. Elkins, Jr., Inspector Gen., U.S. Envlt. Prot. Agency (Aug. 4, 2011), *available at* http://www.epw.senate.gov/public/_cache/files/d55fa42f-7c41-456e-893f-2963eb26e07e/lettertoelkins080411.pdf.

showing a good faith effort to ensure fresh perspectives and balance on the panel, I urge you to choose among the other expert candidates whom have not served on the chartered CASAC.

Moreover, during Dr. Kenski's previous term on the chartered CASAC, there was significant controversy generated by members of the committee, who did not act impartially and overstepped the statutory authority delegated to CASAC. Specifically, Dr. Kenski joined members of the chartered CASAC in a letter to then-EPA Administrator Stephen Johnson that challenged the ozone NAAQS in 2008, which did not conform to the range advised by CASAC.[14] In the correspondence Dr. Kenski signed, CASAC members ridiculed then-Administrator Johnson and muddled the lines of science and policy decision-making that were clearly outside the bounds of CASAC's statutory charge. As you are aware, the Clean Air Act does not require the EPA Administrator to follow CASAC's recommendation. This interaction between CASAC and EPA was then subject to numerous Congressional investigations and oversight, which casts a shadow over Dr. Kenski's previous experience on CASAC. Given that there are other highly qualified individuals nominated to serve on the chartered CASAC that have not previously served and have not been subject to such controversy, I see no reason to appoint someone who has raised this significant concern.

Thank you for your attention to this matter. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works

cc: Aaron Yeow, Designated Federal Officer, Clean Air Scientific Advisory Committee

[14] Letter from Dr. Rogene Henderson, Chair, Clean Air Scientific Advisory Comm. et al., to Hon. Stephen Johnson, Adm'r, U.S. Envtl. Prot. Agency, Apr. 7, 2008, *available at* https://yosemite.epa.gov/sab/sabproduct.nsf/4AF8764324331288852574250069E494/$File/EPA-CASAC-08-009-unsigned.pdf.

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

April 29, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

On April 6, 2016, a notice requesting nominations to seven U.S. Environmental Protection Agency (EPA) scientific advisory panels was published in the Federal Register, with nominations due by May 6, 2016.[1] As you are aware, the Senate Committee on Environment and Public Works (EPW) has long conducted oversight of EPA advisory panels. These panels, including the Clean Air Scientific Advisory Committee (CASAC) and the Science Advisory Board (SAB), play a critical role in influencing the Agency's regulatory actions and have significant implications for the next administration. However, circumstances surrounding the recent nomination request and correspondence between EPA and the EPW Committee raise new concerns the Agency is not committed to a transparent or meaningful public input process for selecting CASAC and SAB members.

At the outset, the current 30-day request for nominations is not an adequate period of time to ensure an eligible collection of candidates has an opportunity to consider nomination to these vacant positions. Indeed, the notice requested nominations to CASAC, the chartered SAB, and five SAB standing committees, all of which require differing expertise and perspectives, as well as a significant time commitment. As prescribed by the Clean Air Act Amendments of 1977, CASAC makes recommendations to the EPA Administrator related to the National Ambient Air Quality Standards (NAAQS).[2] The statute also specifies that CASAC be "composed of seven members including . . . one person representing state air pollution control agencies."[3] The April 6, 2016, notice requests nominations to fill this specific state-based role on CASAC.[4] The Environmental, Research, Development and Demonstration Authorization Act of 1978 established the SAB to provide independent advice and recommendations regarding the science underlying EPA actions.[5] The April 6, 2016, notice requests nominations to fill several SAB

[1] U.S. Envtl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and the EPA Science Advisory Board (SAB), 81 Fed. Reg. 19967, Apr. 6, 2016, *available at* https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf.
[2] 42 U.S.C. § 7409(d)(2).
[3] *Id.*
[4] 81 Fed. Reg. 19967.
[5] 42 U.S.C. § 4363.

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positions with experts ranging in disciplines such as chemistry, to climate change, to social, behavioral and decision sciences, to name a few.[6] Importantly, candidates appointed to any of these panels will serve for a three-year term.[7]

Moreover, in a February 2, 2016, letter[8] I requested information about the Agency's last round of CASAC nominations,[9] and I was troubled to learn in EPA's February 25, 2016, response that each of the five members selected to serve on CASAC beginning in fiscal year 2016 were nominated by an EPA employee or a Designated Federal Officer (DFO).[10] DFOs oversee and manage the operations of federal advisory committees such as CASAC and SAB.[11] In other words, none of the potential members who were nominated by an individual or organization outside the EPA or those who self-nominated were selected. Notably, EPA's response did not provide the names or titles of those EPA employees and DFOs nominating such candidates. These findings only lend further credence to my concerns that these panels may not be fully independent of the Agency.

I am equally concerned by EPA's lack of transparency throughout the selection process. Based on EPA's February 25, 2016, letter, the Agency appointed five candidates to CASAC on August 3, 2015, yet the names of those selected were not posted on EPA website until October 5, 2015, and the Agency did not contact candidates who were not selected until October 6, 2015.[12] It is wholly inappropriate that more than two months had passed from the time EPA appointed CASAC members, to the time the public and those who were not selected were notified of the Agency's decision. The fact that the Agency, for seemingly no reason, kept those nominated but not selected in the dark is deeply inconsiderate to those candidates who may have otherwise been making personal and career plans in the event they were appointed. I have said time and again, greater transparency within the selection process would benefit all.

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[6] 81 Fed. Reg. 19967.

[7] "Appointments are anticipated to be filled by the start of Fiscal Year 2017 (October 2016). . . Members are appointed by the EPA Administrator for a three-year term and serve as Special Government Employees who provide independent expert advice to the agency." 81 Fed. Reg. 19967.

[8] Letter from Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works, to Hon. Gina McCarthy, Adm'r, U.S. Envtl. Prot. Agency (Feb. 2, 2016), *available at* http://www.epw.senate.gov/public/index.cfm/2016/2/inhofe-questions-epa-process-for-selecting-air-advisors.

[9] *See* Envtl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC), 80 Fed. Reg. 17743 (Apr. 2, 2015), http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07634.pdf; *see also* Members of the Clean Air Scientific Advisory Committee, Envtl. Prot. Agency, http://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=CASAC&seconddname=Clean%20Air%20Scientific%20Advisory%20Committee.

[10] Letter from Christopher S. Zarbar, Dir., EPA Science Advisory Board Staff Office, U.S. Envtl. Prot. Agency, to Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works (Feb. 25, 2016) (on file with Committee).

[11] 5 U.S.C. §10 (e)-(f). "(e)There shall be designated an officer or employee of the Federal Government to chair or attend each meeting of each advisory committee. The officer or employee so designated is authorized, whenever he determines it to be in the public interest, to adjourn any such meeting. No advisory committee shall conduct any meeting in the absence of that officer or employee.
(f) Advisory committees shall not hold any meetings except at the call of, or with the advance approval of, a designated officer or employee of the Federal Government, and in the case of advisory committees (other than Presidential advisory committees), with an agenda approved by such officer or employee."

[12] Letter from Christopher S. Zarbar, Dir., EPA Science Advisory Board Staff Office, U.S. Envtl. Prot. Agency, to Hon. James M. Inhofe, Chairman, S. Comm. on Env't & Public Works (Feb. 25, 2016) (on file with Committee).

As you are aware, I am not the only one to raise concerns over EPA's lack of meaningful public input and transparency in the process for selecting members of the Agency's independent advisory panels.[13] Yet, it appears EPA has taken no serious actions to ameliorate these concerns. Accordingly, I respectfully request the Agency commit to the following steps towards improving the integrity and transparency of EPA's scientific advisory nomination and selection process:

1. Please extend the deadline for submitting nominations by thirty days.
2. When providing a List of Candidates on EPA's website, please list who referred that candidate, including relevant title and organization/agency affiliation.
3. When soliciting public comments on the List of Candidates, please make all comments publicly available on the EPA webpage that provides the List of Candidates.
4. When the appointments have been made, all candidates, including those who were not selected, must be notified on the same day.
5. Within seven business days of notifying candidates of appointments, EPA must make the list of newly appointed candidates available on its website, including the date on which appointments were made.

Thank you for your prompt attention to this matter. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,

James M. Inhofe
Chairman
Committee on Environment and Public Works

[13] *See* OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 *EPA CAN BETTER DOCUMENT RESOLUTION OF ETHICS AND PARTIALITY CONCERNS IN MANAGING CLEAN AIR FEDERAL ADVISORY COMMITTEES* (Sept. 11, 2013), http://www2.epa.gov/sites/production/files/2015-09/documents/20130911-13-p-0387.pdf; *see also* Letter from Hon. Jason Chaffetz, Chairman, H. Comm. on Oversight & Gov't Reform & Hon. Cynthia M. Lummis, Chairman, Subcomm. on the Interior, H. Comm. on Oversight & Gov't Reform, to Hon. Gina McCarthy, Adm'r, U.S. Envtl. Prot. Agency (Apr. 11, 2016), *available at* https://oversight.house.gov/wp-content/uploads/2016/04/2016-04-11-JEC-Lummis-to-McCarthy-EPA-SAB-CASAC-due-4-25.pdf; *see also* Letter from Hon. Lamar Smith, Chairman, H. Sci., Space & Tech. Comm. to Hon. Gina McCarthy, Adm'r, U.S. Envtl. Prot. Agency (Mar. 19, 2014), *available at* http://science.house.gov/sites/republicans.science.house.gov/files/documents/03-19-2014%20Smith%20to%20Administrator%20McCarthy.pdf.

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

February 19, 2014

The Honorable Arthur A. Elkins, Jr.
Inspector General
U.S. Environmental Protection Agency
Office of Inspector General
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Dear Mr. Elkins:

We have serious concerns over the manner in which you have conducted investigations and disseminated information in recent Environmental Protection Agency (EPA) Office of Inspector General (OIG) reports. These issues should be familiar to the OIG, as they have been the subject of several conversations and briefings between OIG and Senate Committee on Environment and Public Works (EPW) staff, including a meeting that you attended.[1] Recent OIG audits and investigations have called into question your office's commitment to upholding the mission of the OIG to conduct independent investigations. Our offices are dedicated to exposing waste, fraud, and abuse within the Federal Government, and in that light we are sharing our concerns over the OIG's report, "EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees."[2]

This report was issued in response to requests by Senator Inhofe in 2011, while he was EPW Ranking Member.[3] He asked the OIG to evaluate EPA's management of the Clean Air Scientific Advisory Committee (CASAC), the Advisory Council on Clean Air Compliance Analysis (Council), and the Agency's peer review process.[4] Despite the OIG's taking nearly two years to complete the report, a thorough review of the OIG's methodology, findings, and recommendations reveals a complacent OIG that ignored key sources of information and questions from Congress in an apparent attempt to validate the Agency's practices.

At the outset, the OIG's report methodology reveals weaknesses in the narrow sample of CASAC and Council members chosen for review. The OIG reviewed case files on 47 of 126 members appointed to CASAC and Council from 1998-2012, and conducted an "in depth" review of only 27 members. In addition, the OIG interviewed only six of the most recent

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[1] Meeting between Office of Inspector Gen., Envtl. Prot. Agency, & Republican Staff, S. Comm. on Envt. & Pub. Works (Oct. 24, 2013, 10:00 AM EST).
[2] OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 *EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees* (Sept. 11, 2013).
[3] Press Release, Minority Office, S. Comm. On Env't & Pub. Works, *Inhofe Welcomes EPA Inspector General's Office Investigation into EPA's Scientific Process* (Mar. 26, 2012), *available at* http://www.epw.senate.gov/public/index.cfm?FuseAction=Minority.PressReleases&ContentRecord_id=503cd8ab-802a-23ad-45e8-1d8528fa6847.
[4] *Id.*

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CASAC members. However, the OIG has refused to disclose who was reviewed, making it impossible to assess whether the sample was adequate. Moreover, the OIG simply relied on member's financial disclosure forms to perform its audit instead of collecting information on members. OIG staff did not even attempt to utilize any search engines (Lexis, Google, etc.) to research potential impartiality concerns and "did not conduct searches to independently verify the information reported on the financial disclosure forms."[5]

Separate from the limited scope of review, the OIG's slight treatment of certain information reveals potentially flawed findings. The original inquiry requested OIG review members' receipt of EPA research grants, yet the report summarily stated that research grants did not present a conflict of interest. Accordingly, the OIG did not conduct further inquiry into members' receipt of research grants and instead treated it as an inconsequential factor in assessing impartiality concerns with members. This omission is concerning because 75% of CASAC and Council members combined from 2006 to the present have received EPA and related multi-agency research grants.[6]

In addition, the OIG narrowly interpreted the requirement that CASAC and Council have balanced membership instead of the comprehensive review that was requested. Such review would have considered individual members' independence or impartiality concerns, viewpoints, receipt of research grants, or membership tenure, in assessing membership balance. However, the OIG only examined membership balance in the context of meeting the statutorily mandated requirements under the Clean Air Act.[7] This narrow review risks that, while the panel may have the prescribed expertise, it may nonetheless be imbalanced.

We are equally concerned by the OIG's improper finding regarding the 2007 ozone reanalysis. While the report identified EPA's failure to subject its 2007 ozone reanalysis to required peer review prior to dissemination, the report improperly concluded that subsequent peer review of the reanalysis was adequate. In this case, the OIG drew a conclusion based on a narrow review of the subsequent peer reviewers and failed to consider the original author's comments which directly contradict the results of the 2007 ozone reanalysis.

Aside from the potentially flawed findings, we identified several instances where the OIG revealed flaws, but inexplicably declined to recommend reforms at EPA. For example, rather than recommending specific actions for EPA to mitigate independence and impartiality concerns, the OIG merely recommended that EPA better document membership decisions, indicating that EPA's current documentation is inadequate. As such, the OIG essentially opined that so long as there is documentation, it is acceptable to select members with potential impartiality and independence concerns. While the report identified nine out of 27 members where impartiality concerns were not well-documented and additional steps were needed, the OIG failed to address

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[5] OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, *Response to Senate EPW Minority Staff Questions (01/23/14) EPA OIG Report: "EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees"* (on file with Committee).
[6] *See* ENVTL. PROT. AGENCY, *Research Project Search*, http://cfpub.epa.gov/ncer_abstracts/index.cfm/fuseaction/search.welcome (last accessed Feb. 7, 2014).
[7] *See* 42 U.S.C. §§ 7409(d)(2), 7612.

the fact these members represent 33% of members selected for "in depth" review. As such, a more thorough analysis, including more than just 27 anonymous members, as well as a review of the literature through available search engines, is likely to reveal that the rate of members with impartiality concerns is much higher than 33%. It appears EPA's current process is neither fully transparent nor provides assurance of neutrality.

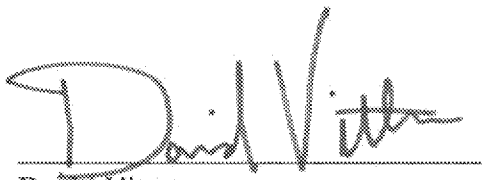
The OIG also missed an opportunity to make a recommendation on remedial action to ensure employees follow the procedures for financial disclosures and failed to recommend EPA alter the policy on updating financial disclosure forms. While the report identified an instance where procedures were blatantly violated, the OIG merely recommended EPA educate employees of the procedures – something employees should have already known – rather than provide specifics on the case from which further information could have been derived. The OIG did not conduct more than a cursory review of financial disclosures and there is no requirement or specific time frame members must update their forms, suggesting the accuracy of these forms is questionable.

The report indicated that EPA did not apply membership tenure policy to review panels and subcommittees, which led the OIG to conclude that "EPA may not be achieving the policy's intent of providing fresh perspectives." The lack of adherence to the membership tenure policy is significant: between 1998 and 2012, 36% of all CASAC members and consultants violated the six-year policy. Membership tenure has implications for membership balance; however, the OIG did not use tenure as a criterion for reviewing membership balance and failed to make any meaningful recommendation to ensure fresh perspectives.

Overall, the report buries a few significant findings that call into question the selection of CASAC and Council members. The report illustrates work product by the OIG that appears to be less than thorough, as evidenced by the limited number of members reviewed. The OIG refrained from making recommendations to address concerns found and instead took a narrow approach and permitted EPA policies to maintain the status quo.

These concerns require your immediate attention. It is our hope that this analysis will improve the OIG's work moving forward, reinforce your responsibility as an "independent" watchdog of EPA, and ensure the Federal Government operates in the most effective and responsible manner in serving the American people.

Sincerely,



David Vitter
Ranking Member
Committee on Environment and Public Works

James M. Inhofe
Ranking Member
Subcommittee on Oversight
Committee on Environment and
Public Works

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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

February 2, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, D.C. 20460

Dear Administrator McCarthy:

I write regarding the Environmental Protection Agency's (EPA) incessant lack of transparency and impartiality in its process for selecting members of the Clean Air Scientific Advisory Committee (CASAC). I have observed EPA, under the Obama Administration, cherry-picking the same allies to serve on this advisory committee and its subcommittees at the expense of having an open and robust process for selecting external advisors. In 2011, I requested the EPA's Office of Inspector General (OIG) review EPA's management of CASAC.[1] While the subsequent OIG report[2] affirmed concerns I had with respect to EPA's failure to recruit new members, address independence concerns, and comply with conflict of interest policies, the recommendations did not bring the much needed reforms to EPA's selection process.[3] As evidenced by EPA's newly appointed CASAC members,[4] this misguided and opaque process calls for renewed Congressional oversight.

As you are aware, the 1977 Clean Air Act Amendments established CASAC in order to provide independent expert advice to the EPA Administrator on the National Ambient Air Quality Standards (NAAQS).[5] Section 109 of the Clean Air Act also delineates that CASAC shall be "composed of seven members including at least one member of the National Academy

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[1] Letter from Hon. James Inhofe, Ranking Member, S. Comm. on Env't & Pub. Works, to Hon. Arthur Elkins, Inspector Gen., U.S. Envtl. Prot. Agency (Aug. 4, 2011). *See also* http://www.epw.senate.gov/public/index.cfm/press-releases-all?ID=503cd8ab-802a-23ad-45e8-1d8528fa6847.

[2] OFFICE OF INSPECTOR GEN., ENVTL. PROT. AGENCY, REPORT NO. 13-P-0387 EPA CAN BETTER DOCUMENT RESOLUTION OF ETHICS AND PARTIALITY CONCERNS IN MANAGING CLEAN AIR FEDERAL ADVISORY COMMITTEES (Sept. 11, 2013), http://www2.epa.gov/sites/production/files/2015-09/documents/20130911-13-p-0387.pdf.

[3] Letter from Hon. James Inhofe & Hon. David Vitter, S. Comm. on Env't & Pub. Works, to Hon. Arthur Elkins, Inspector Gen., U.S. Envtl. Prot. Agency (Feb. 19, 2014), http://www.epw.senate.gov/public/index.cfm/press-releases-republican?ID=F340F63C-9449-09CD-AB55-9DC53A56C689.

[4] *See* Members of the Clean Air Scientific Advisory Committee, Envtl. Prot. Agency, http://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=CASAC&seconddname=Clean%20Air%20Scientific%20Advisory%20Committee (last accessed Dec. 9, 2015). It is not clear when EPA made the appointments; however, the online list of members was updated in early October 2015.

[5] 42 U.S.C. § 7409(d)(2).

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of Sciences (NAS), one physician, and one person representing state air pollution control agencies."[6] CASAC's composition is further governed by EPA policies on financial conflicts of interest and peer review as well as the Federal Advisory Committee Act of 1972[7] and corresponding guidance.[8] Aside from these mandates, given CASAC's role in shaping the NAAQS, it is critical EPA use a clear and unbiased process for selecting CASAC members to keep the public fully informed and involved in the NAAQS program. Moreover, since members are appointed to serve a three-year term on CASAC, the new appointments are particularly important as they will be responsible for advising the next administration, including the highly anticipated review of NAAQS for fine particulate matter (PM 2.5) by 2017.

While EPA issued a public notice in the Federal Register on April 2, 2015, soliciting nominations of candidates to CASAC by May 4, 2015,[9] the steps EPA has taken since then have essentially occurred in a black box. Instead of posting the list of nominees to the Federal Register and accepting public comments through the well-established form on regulations.gov, EPA buried the list of 27 nominees and biosketches on its website.[10] On a document dated May 20, 2015, EPA invited public comments on the nominees by June 10, 2015, but that too was limited to a hidden post on its website and conducted via email rather than the open regulations.gov format.[11] EPA made no public announcement of its new CASAC member appointments. Indeed, there is no way for the public to know the extent to which EPA received comments on the nominees or how EPA fully reached its decision to select certain nominees over others.

In addition to EPA's opaque process for making CASAC appointments, the composition of the panel outright violates the Clean Air Act requirements for CASAC. Per Section 109 of the Clean Air Act, the Administrator must select at least one member from the NAS.[12] However, for no apparent reason, the EPA has violated this very prescriptive requirement with the new panel—none of the seven members are listed in NAS's online directory or mention the NAS in their biosketches. Alarmingly, there has not been a member of the NAS on CASAC since 2009.

The new CASAC panel further illustrates EPA's disregard for policies requiring EPA shift membership on CASAC. Specifically, EPA's Peer Review Handbook advises membership rotation on standing committees, such as CASAC, "to obtain fresh perspectives and reinforce the

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[6] Section 109(d)(2); 42 U.S.C. 7409(d)(2).
[7] Pub. L. 92-463.
[8] GSA Final Rule on Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3; EPA Federal Advisory Committee Handbook, March 2012.
[9] Envtl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC), 80 Fed. Reg. 17743 (Apr. 2, 2015), http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07634.pdf
[10] Envtl. Prot. Agency, Nominate Candidates for the CASAC, the Chartered SAB, and SAB Standing Committees, http://yosemite.epa.gov/sab/sabproduct.nsf/WebAll/nominationcommittee?OpenDocument (last accessed Dec. 9, 2015).
[11] Envtl. Prot. Agency, Invitation for Public Comment on the List of Candidates For the Environmental Protection Agency's Clean Air Scientific Advisory Committee (May 20, 2015), http://yosemite.epa.gov/sab/sabproduct.nsf/WebProjectsRequestsforCommentsCASAC/7E3873008970553085257E1A004FE862/$File/List%20of%20Candidates-CASAC-052015.pdf.
[12] Section 109(d)(2); 42 U.S.C. 7409(d)(2).

reality and perception of independence from the Agency."[13] However, the chartered CASAC includes four of seven members that have already served on CASAC.[14] Among the three who have not served on the chartered CASAC, two have served on CASAC subcommittees[15] while the other one has served on EPA's Advisory Council on Clean Air Compliance Analysis (Council)[16] which is also designed to advise the Administrator on the impacts of the Clean Air Act on the public health, economy, and environment of the U.S.[17] Given the number of well-qualified nominees and thousands of scientific experts across the country, it is deeply concerning EPA continues to select the same people. This practice runs counter to EPA policy and unnecessarily blocks other experts from serving as advisors.

The majority of CASAC members have also received considerable financial support from EPA, which calls into question their independence and therefore the integrity of the overall panel. While EPA has taken the position that receipt of grants do not constitute a financial conflict of interest, the NAS and EPA's own Peer-Review Handbook state that grants can constitute a conflict or lack of impartiality.[18] For the newly appointed panel this conflict is on full display—six of the seven members have received a total of $119,217,008 in EPA research grants.[19] Much to my dismay, three of the seven members have received in excess of $25 million each.[20] This is not limited to the chartered CASAC as 22 of the 26 newly appointed members to the CASAC subcommittee on particulate matter[21] have received more than $330 million in EPA grants.[22] These vast sums of money certainly constitute a conflict of interest and at a minimum give the appearance of a lack of impartiality.

Moreover, the newly appointed CASAC does not conform to EPA's commitment to select members with geographic diversity. In EPA's Federal Register notice request for nominations of candidates to CASAC, the Agency specifically states one of the selection criteria for CASAC includes "background and experiences that would help members contribute to the

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[13] ENVTL. PROT. AGENCY, SCIENCE & TECH. POLICY COUNCIL, PEER REVIEW HANDBOOK, 4th Ed. (Oct. 2015), http://www2.epa.gov/sites/production/files/2015-09/documents/final_epa_peer_review_handbook-_4th_ed_091415_dummy_link.pdf.
[14] *See* Appendix I.
[15] Judith Chow has served on the Air Monitoring and Methods Subcommittee (AMMS) of CASAC since 2004, *see* http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/ChowJudith?OpenDocument. Elizabeth Sheppard has served on "several CASAC special panels," *see* http://yosemite.epa.gov/sab/sabpeople.nsf/WebPeople/SheppardElizabeth%20A.%20(Lianne)?OpenDocument.
[16] Ivan Fernandez has served on the Council from 2010-2013, *see* http://umaine.edu/pse/files/2010/08/Web-VitaIJFAug2010.pdf,
[17] 42 U.S.C. §7612.
[18] *See* National Academy of Sciences, "Policy and Procedures on Committee Composition and Balance and Conflicts of Interest for Committees Used in the Development of Reports" (May 2003), http://www.nationalacademies.org/coi/index.html; *See also* http://www2.epa.gov/sites/production/files/2015-09/documents/peer_review_handbook_2006_3rd_edition.pdf.
[19] *See* Appendix I.
[20] *See* Appendix I.
[21] Envtl. Prot. Agency, CASAC Particulate Matter Review Panel (2015-2018), http://yosemite.epa.gov/sab/sabpeople.nsf/WebCommitteesSubcommittees/CASAC%20Particulate%20Matter%20Review%20Panel%20(2015-2018). Note that member appointments were posted online on November 20, 2015.
[22] *See* Appendix II.

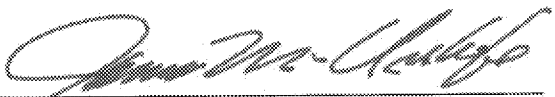
diversity of perspectives on the committee, e.g., geographic[.]"[23] Yet, among the seven members, three are from the northeast and two are from the west coast—not a single member is from a state within EPA's region four, six, seven or eight, which represent vast parts of the country impacted by the NAAQS.[24]

In light of these findings, Congressional oversight of EPA's process for appointing members to CASAC is absolutely necessary. Accordingly, I request you thoroughly respond to the following requests by no later than February 23, 2016:

1. Please provide a copy of all public comments submitted in response to EPA's Federal Register notice soliciting nominations for candidates to CASAC.
2. Please provide a copy of all public comments submitted to EPA in response to the Agency's call for comments on the list of candidates nominated and biosketches.
3. Please explain EPA's process for soliciting nominations and comments on candidates, including its decision to call for comments on candidates via website post and email rather than the Federal Register. Why did the Federal Register notice for solicitation of nominations fail to state the specific number of member appointments available?
4. Why has the Agency violated Section 109 of the Clean Air Act's requirement to appoint at least one member of the NAS to CASAC? How does the Agency weigh the geographic diversity of candidates? What steps does the Agency take to ensure CASAC has fresh and diverse perspectives?
5. When did the Agency make its determination of which candidates to appoint? When did the Agency post the new panel on its website? Why didn't the Agency make a formal announcement of the new panel via press release or Federal Register notice?
6. How and when did the Agency notify candidates that were not selected to serve on the panel? How and when did the Agency notify candidates that were selected?
7. Did the Agency conduct any additional external outreach or consultation (e.g. those submitting public comments or non-governmental organizations) on the candidates prior to making its decision? If so, please explain this process and who was consulted.

Thank you for your prompt attention to this matter. If you have any questions with this request, please contact the Committee on Environment and Public Works at (202) 224-6176.

Sincerely,



James M. Inhofe
Chairman
Committee on Environment and Public Works

[23] Envtl. Prot. Agency, Notice, Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC), 80 Fed. Reg. 17743 (Apr. 2, 2015), http://www.gpo.gov/fdsys/pkg/FR-2015-04-02/pdf/2015-07634.pdf.
[24] *See* Appendix I.

APPENDIX I.

Member	Section 109	Years on Chartered CASAC	Grant 1	Grant 2	Grant 3	Grant 4	Grant 5	Grant 6	Total	State	EPA Region
Ana V. Diez Roux	Physician	2011-Present	$ 576,091.00	$ 32,999,090.00	$ 768,990.00	$ 556,144.00			$ 34,900,315.00	PA	3
George A. Allen	State Regulator	2011-Present	$ 3,000,000.00	$ 380,111.00	$ 527,000.00				$ 3,907,111.00	MA	1
Judith Chow		2015-Present	$ 449,456.00						$ 449,456.00	NV	9
Ivan J. Fernandez		2015-Present	$ 894,361.00	$ 623,395.00					$ 1,517,756.00	ME	1
Jack Harkema		2013-Present	$ 600,000.00	$ 7,999,875.00	$ 7,999,994.00	$ 747,960.00	$ 854,702.00	$ 8,715,583.00	$ 26,918,114.00	MI	5
Elizabeth A. Sheppard		2015-Present	$ 8,000,000.00	$ 1,199,217.00	$ 32,999,090.00	$ 1,036,972.00	$ 8,288,977.00		$ 51,524,256.00	WA	10
Ronald Wyzga		2013-Present							$ -	CA	9
								Casac Total	$ 119,217,008.00		

APPENDIX II.

Member	Grant 1	Grant 2	Grant 3	Grant 4	Grant 5	Grant 6	Grant 7	Grant 8	Grant 9	Grant 10	Grant 11	Grant 12	Grant 13	Total
Diez Roux, Ana V.	$ 576,091.00	$ 32,999,090.00	$ 768,990.00	$ 556,144.00										$ 34,900,315.00
Adams, Peter	$ 900,000.00	$ 483,827.00	$ 600,000.00	$ 896,596.00	$ 450,000.00	$ 449,994.00	$ 900,000.00							$ 4,680,417.00
Adgate, John	$ 999,899.00	$ 510,012.00	$ 633,044.00	$ 899,264.00										$ 3,042,219.00
Allen, George A.	$ 3,000,000.00	$ 380,111.00	$ 527,000.00											$ 3,907,111.00
Balmes, John R.	$ 1,091,783.00	$ 4,765,843.00												$ 5,857,626.00
Boyle, Kevin	$ 194,374.00	$ 126,804.00												$ 321,178.00
Chow, Judith	$ 449,456.00													$ 449,456.00
Dockery, Douglas	$ 300,000.00	$ 7,999,609.00	$ 7,747,040.00											$ 16,046,649.00
Felton, Henry (Dirk)	$ -													$ -
Frampton, Mark	$ 8,000,000.00	$ 408,859.00	$ 8,302,447.00	$ 736,260.00										$ 17,447,566.00
Frey, H. Christopher	$ 500,000.00	$ 899,439.00	$ 680,000.00	$ 553,298.00	$ 329,425.00	$ 180,000.00								$ 3,136,162.00
Gordon, Terry	$ 1,199,927.00	$ 399,827.00	$ 375,000.00	$ 749,175.00	$ 8,076,438.00	$ 600,799.00								$ 11,401,166.00
Harkema, Jack	$ 600,000.00	$ 7,999,875.00	$ 7,999,994.00	$ 747,960.00	$ 854,702.00	$ 8,715,583.00								$ 26,918,114.00
Kaufman, Joel	$ 900,000.00	$ 1,199,217.00	$ 32,999,090.00	$ 1,036,972.00	$ 8,288,977.00									$ 44,424,256.00
Kinney, Patrick	$ 32,999,090.00	$ 4,435,198.00	$ 744,866.00	$ 1,496,418.00	$ 378,458.00									$ 40,054,030.00
Kleinman, Michael T.	$ 7,999,994.00													$ 7,999,994.00
McConnell, Rob	$ 3,802,622.00	$ 8,715,583.00	$ 4,148,875.00											$ 16,665,080.00
Peden, David	$ -													$ -
Poirot, Richard L.														$ -
Polasky, Stephen	$ 809,993.00	$ 131,089.00	$ 1,228,521.00	$ 271,463.00										$ 2,441,066.00
Samet, Jeremy	$ 1,000,000.00	$ 7,999,779.00	$ 899,956.00	$ 499,512.00	$ 1,238,940.00	$ 7,747,040.00	$ 1,883,248.00							$ 21,268,475.00
Schauer, James Jay	$ 1,489,361.00	$ 899,600.00	$ 499,777.00	$ 399,406.00	$ 1,120,641.00	$ 699,543.00	$ 900,000.00	$ 899,731.00	$ 492,354.00	$ 7,999,994.00	$ 450,000.00	$ 449,687.00	$ 898,388.00	$ 17,198,482.00
Sheppard, Elizabeth A. (Lianne)	$ 8,000,000.00	$ 1,199,217.00	$ 32,999,090.00	$ 1,036,972.00	$ 8,288,977.00									$ 51,524,256.00
Turpin, Barbara	$ 399,928.00	$ 598,544.00	$ 446,061.00											$ 1,444,533.00
Vedal, Sverre	$ 800,000.00													$ 800,000.00
Wyzga, Ronald	$ -													$ -
														$ 331,928,151.00

ED_002389_00011925-00041

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
MAJORITY (202) 225-5074
MINORITY (202) 225-5051
http://oversight.house.gov

April 11, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator McCarthy:

The Environmental Protection Agency's Science Advisory Board (SAB) is comprised of non-EPA experts who broadly advise the agency on scientific and technical matters and conduct peer review of EPA science and regulations.[1] The Clean Air Scientific Advisory Committee (CASAC) consists of non-EPA experts who provide technical advice and consultation regarding EPA's national ambient air quality standards program.[2] Under the law, all members who serve on the SAB and CASAC must be strictly and independently objective.[3] For vetting purposes, all prospective members must disclose to EPA all activities that "would present a conflict of interest or might raise an appearance of a lack of impartiality."[4]

To help the Committee understand the reliability of EPA's conflicts assessment for SAB and CASAC appointees, please provide all forms entitled "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)" submitted to EPA from current SAB and CASAC members. EPA's "Confidential Financial Disclosure Form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)" expressly provides that this information may be provided to the Committee.[5]

Please provide this information as soon as possible, but no later than 5:00 p.m. on April 25, 2016. When producing documents to the Committee, please deliver production sets to the

---

[1] EPA website, "EPA Science Advisory Board Staff," *available at* https://yosemite.epa.gov/sab/sabproduct.nsf/WebSABSO/index (last visited Mar. 29, 2016).
[2] *Id.*
[3] 18 U.S.C. §208.
[4] EPA website, "Serving on the EPA Science Advisory Board," *available at* https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Serving%20on%20the%20EPA%20Science%20Advisory%20Board:%20A%20Handbook%20for%20Members%20and%20Consultants/$File/Serving%20on%20the%20EPA%20Science%20Advisory%20Board%20SABSO-12-001.pdf (last visited Mar. 29, 2016).
[5] EPA website, "Confidential Financial Disclosure form for Environmental Protection Agency Special Government Employees (EPA Form 3110-48)," *available at* https://yosemite.epa.gov/sab/sabproduct.nsf/Web/Form3110-48exp2018/$File/EPA3110-48exp2018.pdf (last visited Mar. 29, 2016).

Majority staff in Room 2157 of the Rayburn House Office Building. An attachment to this letter provides additional information about responding to the Committee's request.

The Committee on Oversight and Government Reform is the principal investigative committee in the U.S. House of Representatives. Pursuant to House Rule X, the Committee has authority to investigate "any matter" at "any time."

Thank you for your cooperation in this matter. If you have any questions regarding this request, please contact Bill McGrath of the Committee staff at (202) 225-5074.

Sincerely,

Jason Chaffetz
Chairman

Cynthia M. Lummis
Chairman
Subcommittee on the Interior

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Member

The Honorable Brenda L. Lawrence, Ranking Member
Subcommittee on the Interior

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.

2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.

3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.

4. Documents produced in electronic format should also be organized, identified, and indexed electronically.

5. Electronic document productions should be prepared according to the following standards:

   (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.

   (b) Document numbers in the load file should match document Bates numbers and TIF file names.

   (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.

   (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

   BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH, PAGECOUNT,CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE, SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM, CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.

7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.

8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.

9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.

10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.

11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.

12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.

13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.

14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.

15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.

16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.

18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.

19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

2. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.

4. The terms "person" or "persons" mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.

5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.

6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.

7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.

Congress of the United States
Washington, DC 20515

July 15, 2016

The Honorable Gina McCarthy
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue NW
Washington, D.C. 20460

Dear Administrator McCarthy:

On April 6, 2016, EPA published a notice in the Federal Register seeking nominations to fill an open seat on the seven-member Clean Air Scientific Advisory Committee (CASAC).[1] CASAC is a Federal Advisory Committee made up of non-EPA experts who advise the Administrator on various aspects regarding national ambient air quality standards (NAAQS).[2] EPA's notice specifically seeks a representative of a state air pollution control agency with knowledge of "air quality relating to criteria pollutants."[3]

On June 20, 2016, EPA announced the nominations of seven candidates to fill this key position.[4] These experts come from multiple EPA Regions, including areas in the Southeast and Western United States that remain unrepresented on the Committee.[5]

When considering nominees, it is vitally important that different EPA Regions are represented to ensure a fair balance of experts and experience. EPA specifically acknowledges in the notice that geographic diversity is an important selection criteria.[6] Currently, no CASAC members come from Region 8 (MT, WY, ND, SD, UT, CO), Region 6 (NM, TX, OK, AR, LA), Region 7 (NE, KS, IA, MO), or Region 4 (KY, TN, MS, AL, FL, GA, SC, NC).[7] Additionally, not a single CASAC member has come from Regions 6, 7 or 8 since 2010.[8] Accordingly, in order for balance, fairness and geographic diversity on CASAC, we request that EPA fill the open position with someone from an area not represented on the Committee.

Sincerely,

Bruce Westerman
Member of Congress

Jason Chaffetz
Member of Congress

---

[1] https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf
[2] Id.
[3] Id.
[4] https://yosemite.epa.gov/sab/sabproduct.nsf/LookupWebProjectsCurrentCASAC/3CDA169D2187C6C885257F85006D3AF1/$File/List%20of%20Candidates-CASAC.pdf
[5] Id.
[6] https://www.gpo.gov/fdsys/pkg/FR-2016-04-06/pdf/2016-07918.pdf
[7] https://yosemite.epa.gov/sab/sabpeople.nsf/WebExternalCommitteeRosters?OpenView&committee=CASAC&secondname=Clean%20Air%20Scientific%20Advisory%20Committee%20
[8] CSG Letter to Rounds and Markey 5-19-2015

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Steve Pearce
Member of Congress

Chris Stewart
Member of Congress

Kevin Cramer
Member of Congress

Paul Gosar, DDS
Member of Congress

Cynthia Lummis
Member of Congress

Blake Farenthold
Member of Congress

ANDY HARRIS, M.D.
FIRST DISTRICT, MARYLAND

COMMITTEE ON TRANSPORTATION AND INFRASTRUCTURE
SUBCOMMITTEES
COAST GUARD AND MARITIME TRANSPORTATION
HIGHWAYS AND TRANSIT
WATER RESOURCES AND ENVIRONMENT

Congress of the United States
House of Representatives
Washington, DC 20515

COMMITTEE ON SCIENCE, SPACE AND TECHNOLOGY
SUBCOMMITTEES
ENERGY AND ENVIRONMENT, CHAIRMAN
RESEARCH AND SCIENCE EDUCATION

COMMITTEE ON NATURAL RESOURCES
SUBCOMMITTEE
FISHERIES, WILDLIFE, OCEANS AND INSULAR AFFAIRS

April 12, 2012

The Honorable Lisa P. Jackson
Administrator, U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Dear Administrator Jackson:

On March 16, 2012, Elizabeth Grossman, the Environmental Protection Agency's (EPA) Acting Assistant Inspector General for Program Evaluation, notified EPA staff that the Agency's Office of Inspector General (OIG) plans to begin an evaluation of EPA's management of the Clean Air Scientific Advisory Committee (CASAC) and the Advisory Council on Clean Air Compliance Analysis (ACCACA). The investigation will focus on whether EPA has managed these committees in accordance with applicable laws, regulations, and guidance pertaining to "appearances of impartiality, balance of committee viewpoints and perspectives, rotation of members, potential conflicts of interest, and peer review."

The OIG's announcement is a significant development. It reflects the gravity of the mounting evidence and the seriousness of the issues raised by Senator Inhofe and this Committee that suggest that EPA has not managed its scientific advisory committees in accordance with applicable laws, regulations and guidance to assure that they provide the necessary impartial critique of EPA science. These are grave concerns and we applaud the OIG's decision to undertake this warranted investigation.

The OIG's announcement also caps a growing list of concerns regarding EPA's general handling of scientific issues that were addressed most notably in the National Academy of Sciences' (NAS) recent report, *Review of the Environmental Protection Agency's Draft IRIS Assessment of Formaldehyde*. This report identified significant errors in EPA's review of the scientific evidence with regard to formaldehyde and proposed programmatic changes to the way EPA assesses risk from individual pollutants. Many of the concerns raised by the NAS have direct parallels with the way EPA conducts its scientific review of the National Ambient Air Quality Standards (NAAQS).

WASHINGTON, D.C.
506 CANNON HOUSE OFFICE BUILDING
WASHINGTON, D.C. 20515
PHONE 202.225.5311
FAX 202.225.0254

KENT ISLAND DISTRICT OFFICE
100 OLDE POINT VILLAGE, SUITE 101
CHESTER, MARYLAND 21619
PHONE 410.643.5425
FAX 410.643.5429

BEL AIR DISTRICT OFFICE
15 CHURCHVILLE ROAD, SUITE 102B
BEL AIR, MARYLAND 21014
PHONE 410.588.5670
FAX 410.588.5673

SALISBURY DISTRICT OFFICE
THE GALLERY BUILDING
212 WEST MAIN STREET, SUITE 204B
SALISBURY, MARYLAND 21801
PHONE 443.944.8624
FAX 443.944.8625

www.harris.house.gov

Given the OIG's announcement and the resulting cloud of controversy surrounding the CASAC review of the $PM_{2.5}$ NAAQS and its ongoing review of the ozone NAAQS we request that EPA wait until the OIG has released its findings before proposing or promulgating revisions to the $PM_{2.5}$ or ozone standard. Proceeding with either of these standards without waiting for the OIG to complete its investigation could invite unnecessary litigation, create regulatory uncertainty for states and industry, and undermine public support for this critically important program.

Thank you for your attention to this important issue. I look forward to your timely response.

Sincerely,

Andy Harris, M.D.
Member of Congress

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 20 2012

OFFICE OF
AIR AND RADIATION

The Honorable Andy Harris
U.S. House of Representatives
Washington, D.C. 20515

Dear Congressman Harris:

Thank you for your letter of April 12, 2012, to U. S. Environmental Protection Agency (EPA) Administrator Lisa Jackson, regarding plans by the agency's Office of Inspector General (OIG) to begin an evaluation of the EPA's management of scientific advisory committees, specifically the Clean Air Scientific Advisory Committee (CASAC) and the Advisory Council on Clean Air Compliance Analysis (ACCACA). This review is in response to a request from Senator Inhofe on August 4, 2011. The Administrator asked me to respond to your letter on her behalf.

It is important to note that the OIG is an independent office within EPA. A decision by the OIG to conduct an investigation does not indicate in any way its view of the expected outcome of the investigation. The existence of an investigation should not be interpreted as making any statement regarding any problem with the EPA's scientific advisory committee process. Rather, the investigation will evaluate whether or not any problems exist.

We believe the agency has complied with all peer-review requirements in working with CASAC and ACCACA. Our meetings with these scientific advisory committees are always open to the public, providing transparency for the rigorous external review of the science and technical analyses that inform the agency's decisions.

Additionally, the IRIS process referenced in your letter and the NAAQS standard-setting process are quite different, but both are fundamentally sound and science-based. Moreover, the National Academy of Sciences' (NAS) formaldehyde review report praised the NAAQS review process as an example for a revised IRIS process.

Given these circumstances, the EPA believes it would be inappropriate to delay action on the health-based $PM_{2.5}$ and ozone national ambient air quality standards (NAAQS) pending an OIG evaluation. Accordingly, the agency plans to move forward with its ongoing review of these standards.

Internet Address (URL) • http://www.epa.gov
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Again, thank you for your letter. If you have further questions, please contact me or your staff may call Cheryl Mackay in the EPA's Office of Congressional and Intergovernmental Relations at (202) 564-2023.

Sincerely,

Gina McCarthy
Assistant Administrator

JOHN BARRASSO, WYOMING, CHAIRMAN

JAMES M. INHOFE, OKLAHOMA
SHELLEY MOORE CAPITO, WEST VIRGINIA
JOHN BOOZMAN, ARKANSAS
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KAMALA HARRIS, CALIFORNIA

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
GABRIELLE BATKIN, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS
WASHINGTON, DC 20510-6175

July 27, 2017

The Honorable Scott Pruitt
Administrator
Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington D.C. 20460

Dear Administrator Pruitt:

You have begun a proceeding to solicit nominations for the Clean Air Scientific Advisory Committee (CASAC).[1] As you review nominations, we request that you also revisit past CASAC practices to make them compliant with the statute.

Established by Section 109(d)(2) of the Clean Air Act, CASAC is to provide independent scientific advice to the Administrator regarding the development of National Ambient Air Quality Standards (NAAQS). The independent, seven-member body is to include diverse perspectives, notably one member of the National Academy of Sciences, one physician, and a representative of State air pollution control agencies. CASAC is statutorily required to provide information to the Administrator regarding:

(i) Areas in which additional knowledge is required to appraise the adequacy and basis of existing, new, or revised NAAQS;
(ii) Research efforts necessary to provide the required information;
(iii) The relative contribution to air pollution concentrations of natural as well as anthropogenic activity; and
(iv) Any adverse public health, welfare, social, economic, or energy effects which may result from various strategies for attainment and maintenance of NAAQS.

In the past, CASAC has failed to address these required statutory obligations. With regard to item (iv) above, a 2015 Government Accountability Office report[2] concluded that "CASAC has never provided advice on adverse social, economic, or energy effects related to NAAQS because EPA has never asked CASAC to do so." Additionally, in comments on the 2015 ozone NAAQS proposal,[3] the States of Alabama, Indiana, Mississippi, North Dakota, West Virginia, and

[1] Environmental Protection Agency (EPA), Request for Nominations of Candidates to the EPA's Clean Air Scientific Advisory Committee (CASAC) and the EPA Science Advisory Board (SAB); 82 Fed. Reg. 29077 (June 27, 2017), available at: https://www.gpo.gov/fdsys/pkg/FR-2017-06-27/pdf/2017-13332.pdf.

[2] Government Accountability Office, "EPA's Science Advisory Board: Improved Procedures Needed to Process Congressional Requests for Scientific Advice" (June 2015), available at: http://www.gao.gov/assets/680/670647.pdf.

[3] States of Alabama, Indiana, Mississippi, North Dakota, West Virginia and Wyoming on 79 Fed. Reg. 75234 (December 17, 2015), Docket ID No. EPA-HQ-OAR-2008-0699 (March 17, 2015), available at https://www.regulations.gov/document?D=EPA-HQ-OAR-2008-0699-2570.

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Wyoming identified failures of CASAC to address both item (iv) and issues concerning background ozone, required by item (iii). The comments highlighted unique background ozone issues faced by Western states.

As you review 2017 nominations for CASAC members, we request that you put measures in place to ensure that moving forward, CASAC complies with these statutory obligations. CASAC must be constituted of experts who can provide independent counsel to you in all of the above areas.

Please direct further communication on these issues to Elizabeth Horner of the Committee's staff at 202-224-6176.

Sincerely,

John Barrasso, M.D.
Chairman

Shelley Moore Capito
Chairman
Subcommittee on Clean Air & Nuclear Safety

M. Michael Rounds
Chairman
Subcommittee on Superfund, Waste Management and Regulatory Oversight

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114TH CONGRESS
1ST SESSION

S. 543

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

IN THE SENATE OF THE UNITED STATES

FEBRUARY 24, 2015

Mr. BOOZMAN (for himself, Mr. MANCHIN, and Mr. INHOFE) introduced the following bill; which was read twice and referred to the Committee on Environment and Public Works

---

A BILL

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.

This Act may be cited as the "EPA Science Advisory Board Reform Act of 2015".

SEC. 2. SCIENCE ADVISORY BOARD.

(a) INDEPENDENT ADVICE.—Section 8(a) of the Environmental Research, Development, and Demonstration

ED_002389_00011925-00057

1 Authorization Act of 1978 (42 U.S.C. 4365(a)) is amend-
2 ed by inserting "independently" after "Advisory Board
3 which shall".

4 (b) MEMBERSHIP.—Section 8(b) of the Environ-
5 mental Research, Development, and Demonstration Au-
6 thorization Act of 1978 (42 U.S.C. 4365(b)) is amended
7 to read as follows:

8 "(b)(1) The Board shall be composed of at least nine
9 members, one of whom shall be designated Chairman, and
10 shall meet at such times and places as may be designated
11 by the Chairman.

12 "(2) Each member of the Board shall be qualified by
13 education, training, and experience to evaluate scientific
14 and technical information on matters referred to the
15 Board under this section. The Administrator shall ensure
16 that—

17 "(A) the scientific and technical points of view
18 represented on and the functions to be performed by
19 the Board are fairly balanced among the members of
20 the Board;

21 "(B) at least ten percent of the membership of
22 the Board are from State, local, or tribal govern-
23 ments;

24 "(C) persons with substantial and relevant ex-
25 pertise are not excluded from the Board due to af-

1 filiation with or representation of entities that may
2 have a potential interest in the Board's advisory ac-
3 tivities, so long as that interest is fully disclosed to
4 the Administrator and the public and appointment
5 to the Board complies with section 208 of title 18,
6 United States Code;
7 "(D) in the case of a Board advisory activity on
8 a particular matter involving a specific party, no
9 Board member having an interest in the specific
10 party shall participate in that activity;
11 "(E) Board members may not participate in ad-
12 visory activities that directly or indirectly involve re-
13 view or evaluation of their own work, unless fully
14 disclosed to the public and the work has been exter-
15 nally peer-reviewed;
16 "(F) Board members shall be designated as
17 special Government employees; and
18 "(G) no federally registered lobbyist is ap-
19 pointed to the Board.
20 "(3) The Administrator shall—
21 "(A) solicit public nominations for the Board by
22 publishing a notification in the Federal Register;
23 "(B) solicit nominations from relevant Federal
24 agencies, including the Departments of Agriculture,

1 Defense, Energy, the Interior, and Health and
2 Human Services;
3 "(C) make public the list of nominees, including
4 the identity of the entities that nominated each, and
5 shall accept public comment on the nominees;
6 "(D) require that, upon their provisional nomi-
7 nation, nominees shall file a written report disclosing
8 financial relationships and interests, including Envi-
9 ronmental Protection Agency grants, contracts, co-
10 operative agreements, or other financial assistance,
11 that are relevant to the Board's advisory activities
12 for the three-year period prior to the date of their
13 nomination, and relevant professional activities and
14 public statements for the five-year period prior to
15 the date of their nomination; and
16 "(E) make such reports public, with the excep-
17 tion of specific dollar amounts, for each member of
18 the Board upon such member's selection.
19 "(4) Disclosure of relevant professional activities
20 under paragraph (3)(D) shall include all representational
21 work, expert testimony, and contract work as well as iden-
22 tifying the party for which the work was done.
23 "(5) Except when specifically prohibited by law, the
24 Agency shall make all conflict of interest waivers granted

1 to members of the Board, member committees, or inves-
2 tigative panels publicly available.

3 "(6) Any recusal agreement made by a member of
4 the Board, a member committee, or an investigative panel,
5 or any recusal known to the Agency that occurs during
6 the course of a meeting or other work of the Board, mem-
7 ber committee, or investigative panel shall promptly be
8 made public by the Administrator.

9 "(7) The terms of the members of the Board shall
10 be three years and shall be staggered so that the terms
11 of no more than one-third of the total membership of the
12 Board shall expire within a single fiscal year. No member
13 shall serve more than two terms over a ten-year period.".

14 (c) RECORD.—Section 8(c) of such Act (42 U.S.C.
15 4365(c)) is amended—

16 (1) in paragraph (1)—

17 (A) by inserting "or draft risk or hazard
18 assessment," after "at the time any proposed";

19 (B) by striking "formal"; and

20 (C) by inserting "or draft risk or hazard
21 assessment," after "to the Board such pro-
22 posed"; and

23 (2) in paragraph (2)—

(A) by inserting "or draft risk or hazard assessment," after "the scientific and technical basis of the proposed"; and

(B) by adding at the end the following: "The Board's advice and comments, including dissenting views of Board members, and the response of the Administrator shall be included in the record with respect to any proposed risk or hazard assessment, criteria document, standard, limitation, or regulation and published in the Federal Register.".

(d) MEMBER COMMITTEES AND INVESTIGATIVE PANELS.—Section 8(e)(1)(A) of such Act (42 U.S.C. 4365(e)(1)(A)) is amended by adding at the end the following: "These member committees and investigative panels—

"(i) shall be constituted and operate in accordance with the provisions set forth in paragraphs (2) and (3) of subsection (b), in subsection (h), and in subsection (i);

"(ii) do not have authority to make decisions on behalf of the Board; and

"(iii) may not report directly to the Environmental Protection Agency.".

1 (e) PUBLIC PARTICIPATION.—Section 8 of such Act
2 (42 U.S.C. 4365) is amended by amending subsection (h)
3 to read as follows:
4 "(h)(1) To facilitate public participation in the advi-
5 sory activities of the Board, the Administrator and the
6 Board shall make public all reports and relevant scientific
7 information and shall provide materials to the public at
8 the same time as received by members of the Board.
9 "(2) Prior to conducting major advisory activities, the
10 Board shall hold a public information-gathering session to
11 discuss the state of the science related to the advisory ac-
12 tivity.
13 "(3) Prior to convening a member committee or in-
14 vestigative panel under subsection (e) or requesting sci-
15 entific advice from the Board, the Administrator shall ac-
16 cept, consider, and address public comments on questions
17 to be asked of the Board. The Board, member committees,
18 and investigative panels shall accept, consider, and ad-
19 dress public comments on such questions and shall not ac-
20 cept a question that unduly narrows the scope of an advi-
21 sory activity.
22 "(4) The Administrator and the Board shall encour-
23 age public comments, including oral comments and discus-
24 sion during the proceedings, that shall not be limited by
25 an insufficient or arbitrary time restriction. Public com-

1 ments shall be provided to the Board when received. The
2 Board's reports shall include written responses to signifi-
3 cant comments offered by members of the public to the
4 Board.

5 "(5) Following Board meetings, the public shall be
6 given 15 calendar days to provide additional comments for
7 consideration by the Board.".

8 (f) OPERATIONS.—Section 8 of such Act (42 U.S.C.
9 4365) is further amended by amending subsection (i) to
10 read as follows:

11 "(i)(1) In carrying out its advisory activities, the
12 Board shall strive to avoid making policy determinations
13 or recommendations, and, in the event the Board feels
14 compelled to offer policy advice, shall explicitly distinguish
15 between scientific determinations and policy advice.

16 "(2) The Board shall clearly communicate uncertain-
17 ties associated with the scientific advice provided to the
18 Administrator or Congress.

19 "(3) The Board shall ensure that advice and com-
20 ments reflect the views of the members and shall encour-
21 age dissenting members to make their views known to the
22 public, the Administrator, and Congress.

23 "(4) The Board shall conduct periodic reviews to en-
24 sure that its advisory activities are addressing the most

1 important scientific issues affecting the Environmental
2 Protection Agency.
3 "(5) The Board shall be fully and timely responsive
4 to Congress.".

5 **SEC. 3. RELATION TO THE FEDERAL ADVISORY COM-**
6 **MITTEE ACT.**

7 Nothing in this Act or the amendments made by this
8 Act shall be construed as supplanting the requirements of
9 the Federal Advisory Committee Act (5 U.S.C. App.).

10 **SEC. 4. RELATION TO THE ETHICS IN GOVERNMENT ACT OF**
11 **1978.**

12 Nothing in this Act or the amendments made by this
13 Act shall be construed as supplanting the requirements of
14 the Ethics in Government Act of 1978 (5 U.S.C. App.).

○

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

114TH CONGRESS
1ST SESSION

H. R. 1029

IN THE SENATE OF THE UNITED STATES

MARCH 18, 2015
Received; read twice and referred to the Committee on Environment and Public Works

AN ACT

To amend the Environmental Research, Development, and Demonstration Authorization Act of 1978 to provide for Scientific Advisory Board member qualifications, public participation, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

ED_002389_00011925-00066

SECTION 1. SHORT TITLE.

This Act may be cited as the "EPA Science Advisory Board Reform Act of 2015".

SEC. 2. SCIENCE ADVISORY BOARD.

(a) INDEPENDENT ADVICE.—Section 8(a) of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4365(a)) is amended by inserting "independently" after "Advisory Board which shall".

(b) MEMBERSHIP.—Section 8(b) of the Environmental Research, Development, and Demonstration Authorization Act of 1978 (42 U.S.C. 4365(b)) is amended to read as follows:

"(b)(1) The Board shall be composed of at least nine members, one of whom shall be designated Chairman, and shall meet at such times and places as may be designated by the Chairman.

"(2) Each member of the Board shall be qualified by education, training, and experience to evaluate scientific and technical information on matters referred to the Board under this section. The Administrator shall ensure that—

"(A) the scientific and technical points of view represented on and the functions to be performed by the Board are fairly balanced among the members of the Board;

"(B) at least ten percent of the membership of the Board are from State, local, or tribal governments;

"(C) persons with substantial and relevant expertise are not excluded from the Board due to affiliation with or representation of entities that may have a potential interest in the Board's advisory activities, so long as that interest is fully disclosed to the Administrator and the public and appointment to the Board complies with section 208 of title 18, United States Code;

"(D) in the case of a Board advisory activity on a particular matter involving, or for which the Board has evidence that it may involve, a specific party, no Board member having an interest in the specific party shall participate in that activity;

"(E) Board members may not participate in advisory activities that directly or indirectly involve review or evaluation of their own work, unless fully disclosed to the public and the work has been externally peer-reviewed;

"(F) Board members shall be designated as special Government employees;

"(G) no registered lobbyist is appointed to the Board; and

"(H) a Board member shall have no current grants or contracts from the Environmental Protection Agency and shall not apply for a grant or contract for 3 years following the end of that member's service on the Board.

"(3) The Administrator shall—

"(A) solicit public nominations for the Board by publishing a notification in the Federal Register;

"(B) solicit nominations from relevant Federal agencies, including the Departments of Agriculture, Defense, Energy, the Interior, and Health and Human Services;

"(C) solicit nominations from—

"(i) institutions of higher education (as defined in section 101(a) of the Higher Education Act of 1965 (20 U.S.C. 1001(a))); and

"(ii) scientific and research institutions based in work relevant to that of the Board;

"(D) make public the list of nominees, including the identity of the entities that nominated each, and shall accept public comment on the nominees;

"(E) require that, upon their provisional nomination, nominees shall file a written report disclosing financial relationships and interests, including Environmental Protection Agency grants, contracts, co-

1 operative agreements, or other financial assistance,
2 that are relevant to the Board's advisory activities
3 for the three-year period prior to the date of their
4 nomination, and relevant professional activities and
5 public statements for the five-year period prior to
6 the date of their nomination; and
7 "(F) make such reports public, with the excep-
8 tion of specific dollar amounts, for each member of
9 the Board upon such member's selection.
10 "(4) Disclosure of relevant professional activities
11 under paragraph (3)(E) shall include all representational
12 work, expert testimony, and contract work as well as iden-
13 tifying the party for which the work was done.
14 "(5) Except when specifically prohibited by law, the
15 Agency shall make all conflict of interest waivers granted
16 to members of the Board, member committees, or inves-
17 tigative panels publicly available.
18 "(6) Any recusal agreement made by a member of
19 the Board, a member committee, or an investigative panel,
20 or any recusal known to the Agency that occurs during
21 the course of a meeting or other work of the Board, mem-
22 ber committee, or investigative panel shall promptly be
23 made public by the Administrator.
24 "(7) The terms of the members of the Board shall
25 be three years and shall be staggered so that the terms

of no more than one-third of the total membership of the Board shall expire within a single fiscal year. No member shall serve more than two terms over a ten-year period.".

(c) RECORD.—Section 8(c) of such Act (42 U.S.C. 4365(c)) is amended—

(1) in paragraph (1)—

(A) by inserting "or draft risk or hazard assessment," after "at the time any proposed";

(B) by striking "formal"; and

(C) by inserting "or draft risk or hazard assessment," after "to the Board such proposed"; and

(2) in paragraph (2)—

(A) by inserting "or draft risk or hazard assessment," after "the scientific and technical basis of the proposed"; and

(B) by adding at the end the following: "The Board's advice and comments, including dissenting views of Board members, and the response of the Administrator shall be included in the record with respect to any proposed risk or hazard assessment, criteria document, standard, limitation, or regulation and published in the Federal Register.".

(d) MEMBER COMMITTEES AND INVESTIGATIVE PANELS.—Section 8(e)(1)(A) of such Act (42 U.S.C. 4365(e)(1)(A)) is amended by adding at the end the following: "These member committees and investigative panels—

"(i) shall be constituted and operate in accordance with the provisions set forth in paragraphs (2) and (3) of subsection (b), in subsection (h), and in subsection (i);

"(ii) do not have authority to make decisions on behalf of the Board; and

"(iii) may not report directly to the Environmental Protection Agency.".

(e) PUBLIC PARTICIPATION.—Section 8 of such Act (42 U.S.C. 4365) is amended by amending subsection (h) to read as follows:

"(h)(1) To facilitate public participation in the advisory activities of the Board, the Administrator and the Board shall make public all reports and relevant scientific information and shall provide materials to the public at the same time as received by members of the Board.

"(2) Prior to conducting major advisory activities, the Board shall hold a public information-gathering session to

1 discuss the state of the science related to the advisory ac-
2 tivity.

3 "(3) Prior to convening a member committee or in-
4 vestigative panel under subsection (e) or requesting sci-
5 entific advice from the Board, the Administrator shall ac-
6 cept, consider, and address public comments on questions
7 to be asked of the Board. The Board, member committees,
8 and investigative panels shall accept, consider, and ad-
9 dress public comments on such questions and shall not ac-
10 cept a question that unduly narrows the scope of an advi-
11 sory activity.

12 "(4) The Administrator and the Board shall encour-
13 age public comments, including oral comments and discus-
14 sion during the proceedings, that shall not be limited by
15 an insufficient or arbitrary time restriction. Public com-
16 ments shall be provided to the Board when received. The
17 Board's reports shall include written responses to signifi-
18 cant comments offered by members of the public to the
19 Board.

20 "(5) Following Board meetings, the public shall be
21 given 15 calendar days to provide additional comments for
22 consideration by the Board.".

23 (f) OPERATIONS.—Section 8 of such Act (42 U.S.C.
24 4365) is further amended by amending subsection (i) to
25 read as follows:

"(i)(1) In carrying out its advisory activities, the Board shall strive to avoid making policy determinations or recommendations, and, in the event the Board feels compelled to offer policy advice, shall explicitly distinguish between scientific determinations and policy advice.

"(2) The Board shall clearly communicate uncertainties associated with the scientific advice provided to the Administrator or Congress.

"(3) The Board shall ensure that advice and comments reflect the views of the members and shall encourage dissenting members to make their views known to the public, the Administrator, and Congress.

"(4) The Board shall conduct periodic reviews to ensure that its advisory activities are addressing the most important scientific issues affecting the Environmental Protection Agency.

"(5) The Board shall be fully and timely responsive to Congress.".

SEC. 3. RELATION TO THE FEDERAL ADVISORY COMMITTEE ACT.

Nothing in this Act or the amendments made by this Act shall be construed as supplanting the requirements of the Federal Advisory Committee Act (5 U.S.C. App.).

1 **SEC. 4. RELATION TO THE ETHICS IN GOVERNMENT ACT OF**
2 **1978.**

3 Nothing in this Act or the amendments made by this
4 Act shall be construed as supplanting the requirements of
5 the Ethics in Government Act of 1978 (5 U.S.C. App.).

Passed the House of Representatives March 17, 2015.

Attest: KAREN L. HAAS,
Clerk.

United States of America

Congressional Record

PROCEEDINGS AND DEBATES OF THE 114th CONGRESS, FIRST SESSION

Vol. 161 WASHINGTON, THURSDAY, DECEMBER 17, 2015 No. 184—Book III

House of Representatives

EXPLANATORY STATEMENT SUBMITTED BY MR. ROGERS OF KENTUCKY, CHAIRMAN OF THE HOUSE COMMITTEE ON APPROPRIATIONS REGARDING HOUSE AMENDMENT NO. 1 TO THE SENATE AMENDMENT ON H.R. 2029—Continued

CONSOLIDATED APPROPRIATIONS ACT, 2016

DIVISION F—DEPARTMENT OF HOMELAND SECURITY APPROPRIATIONS ACT, 2016

Funding provided in this Act not only sustains existing programs that protect the nation from all manner of threats, it ensures the ability of the Department of Homeland Security (DHS) to address evolving challenges like those witnessed in recent events around the world. To that end, additional resources have been identified to improve preparedness at the state and local levels, to prevent and respond to terrorist attacks, and to hire, train, and equip DHS frontline forces protecting the homeland.

The following is an explanation of the effects of Division F, which makes appropriations for DHS for fiscal year 2016. Unless otherwise noted, references to the House and Senate reports are to House Report 114–215 and Senate Report 114–68, respectively. The language and allocations contained in the House and Senate reports warrant full compliance and carry the same weight as language included in this explanatory statement, unless specifically addressed to the contrary in the bill or this explanatory statement. While repeating some language from the House or Senate report for emphasis, this explanatory statement does not intend to negate the language referred to above unless expressly provided herein. When this explanatory statement refers to the Committees or the Committees on Appropriations, this reference is to the House Appropriations Subcommittee on Homeland Security and the Senate Appropriations Subcommittee on the Department of Homeland Security. It is assumed that any cost of living adjustment for federal employees directed by the President for fiscal year 2016 will be funded from within the amounts provided in this Act.

NOTICE

If the 114th Congress, 1st Session, adjourns sine die on or before December 24, 2015, a final issue of the *Congressional Record* for the 114th Congress, 1st Session, will be published on Thursday, December 31, 2015, to permit Members to insert statements.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT–59 or S–123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Wednesday, December 30. The final issue will be dated Thursday, December 31, 2015, and will be delivered on Monday, January 4, 2016.

None of the material printed in the final issue of the *Congressional Record* may contain subject matter, or relate to any event, that occurred after the sine die date.

Senators' statements should also be formatted according to the instructions at http://webster.senate.gov/secretary/Departments/Reporters_Debates/resources/cong_record.pdf, and submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at https://housenet.house.gov/legislative/research-and-reference/transcripts-and-records/electronic-congressional-record-inserts. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT–59.

Members of Congress desiring to purchase reprints of material submitted for inclusion in the *Congressional Record* may do so by contacting the Office of Congressional Publishing Services, at the Government Publishing Office, on 512–0224, between the hours of 8:00 a.m. and 4:00 p.m. daily.

By order of the Joint Committee on Printing.

GREGG HARPER, *Chairman.*

☐ This symbol represents the time of day during the House proceedings, e.g., ☐ 1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.

H10161

Printed on recycled paper.

DIVISION G—DEPARTMENT OF THE INTERIOR, ENVIRONMENT, AND RELATED AGENCIES APPROPRIATIONS ACT, 2016

The following statement is an explanation of the effects of Division G, which makes appropriations for the Department of the Interior, the Environmental Protection Agency (EPA), the Forest Service, the Indian Health Service, and related agencies for fiscal year 2016. Report language contained in House Report 114–170 and Senate Report 114–70 providing specific guidance to agencies regarding the administration of appropriated funds and any corresponding reporting requirements carries the same emphasis as the language included in this explanatory statement and should be complied with unless specifically addressed to the contrary herein. This explanatory statement, while repeating some language for emphasis, is not intended to negate the language referred to above unless expressly provided herein.

In cases where the House report, Senate report, or this explanatory statement directs the submission of a report, such report is to be submitted to both the House and Senate Committees on Appropriations. Where this explanatory statement refers to the Committees or the Committees on Appropriations, unless otherwise noted, this reference is to the House Subcommittee on Interior, Environment, and Related Agencies and the Senate Subcommittee on Interior, Environment, and Related Agencies.

The Committees direct each department and agency funded in this Act to follow the directions set forth in this Act and the accompanying statement, and not reallocate resources or reorganize activities except as provided herein or otherwise approved by the Committees through the reprogramming process as described in this explanatory statement. This explanatory statement addresses only those agencies and accounts for which there is a need for greater explanation than provided in the Act itself. Funding levels for appropriations by account, program, and activity, with comparisons to the fiscal year 2015 enacted level and the fiscal year 2016 budget request, can be found in the table at the end of this division.

Unless expressly stated otherwise, any reference to "this Act" or "at the end of this statement" shall be treated as referring only to the provisions of this division.

Drought, Forests and Wildfires.—Severe and prolonged drought can increase the rate at which trees die and devastating wildfires occur. In light of the number of dead and downed trees on public lands in the West, the Forest Service, National Park Service and Bureau of Land Management are directed to work with State and local governments in drought-stricken regions to facilitate the prompt removal of dead and downed trees on these lands and to prioritize funding to reduce the threat of devastating wildfire threats to communities, drinking water supplies, utilities, and groves of ancient trees.

Making Litigation Costs Transparent.—The Department of the Interior, EPA, and the Forest Service are directed to provide to the House and Senate Committees on Appropriations, and to make publicly available no later than 60 days after enactment of this Act, detailed Equal Access to Justice Act (EAJA) fee information as specified in the Consolidated and Further Continuing Appropriations Act, 2015.

State Wildlife Data.—The Department of the Interior and the Forest Service are expected to prioritize continued coordination with other Federal agencies and State fish and wildlife agencies to recognize and fully utilize State fish and wildlife data and analyses as a primary source to inform land use, planning, and related natural resource decisions. Federal agencies should not unnecessarily duplicate raw data, and when appropriate, should evaluate existing analysis of data prepared by the States, and reciprocally share data with State wildlife managers, to ensure that the most complete data set is available for decision support systems.

Land Grants, Acequias and Community Ditches.—The Secretaries of the Interior and Agriculture are urged to recognize the traditional use of State-recognized community land grants, acequias, and community ditches in the American Southwest during the land use planning process.

Multi-Agency Transparency.—In order to increase transparency, the Department of the Interior, Forest Service, and Environmental Protection Agency are encouraged to disclose costs associated with analyses required by the National Environmental Policy Act.

Greater Sage-Grouse.—The agreement provides a total of $63,250,000 for sage-grouse conservation, including $60,000,000 for the Bureau of Land Management and $3,250,000 for the Fish and Wildlife Service. The agencies are directed to focus this funding toward on-the-ground conservation measures to improve and preserve sage-grouse habitat and the sagebrush ecosystem. The Bureau is reminded of the concerns outlined in the House and Senate reports as Congress continues to hear complaints about the effect of the sage-grouse land use plan amendments, which are not limited to activities within Bureau controlled sage-grouse habitat. In order for the sage-grouse, communities, and States to thrive, all partners must work in good faith. As such, the Bureau and the Forest Service are directed to closely work with each of the 11 States and the affected communities to address the issues unique to each State and seek to collaboratively resolve all issues. The Bureau is directed to provide guidance to its State offices and partners on how it will update sage-grouse habitat maps, adopt new scientific information, as appropriate, and engage State, local, nongovernmental, and private partners.

Land and Water Conservation Fund.—The agreement includes $450,000,000 derived from the Land and Water Conservation Fund for programs consistent with chapter 2003 of title 54 of the United States Code, as identified in the table below. This one-time increase of $143,859,000 above the fiscal year 2015 enacted level is intended for worthy projects at the local, State, and Federal levels. The Department of the Interior and the Forest Service are directed to include a table in future budget requests, separating State and local programs from Federal land acquisition, as displayed below.

	FY 2015 Enacted	Budget Request (Discretionary)	This Bill
Land and Water Conservation Fund	$306,141,000	$400,000,000	$450,000,000
State and Local Programs	87,503,000	112,147,000	160,800,000
National Park Service State Assistance	48,117,000	53,161,000	110,000,000
Coop. Endangered Species Conservation Fund	27,400,000	50,000,000	30,800,000
American Battlefield Protection Act	8,986,000	8,986,000	10,000,000
Highlands Conservation Act	3,000,000	0	10,000,000
Forest Legacy Program	53,000,000	61,000,000	62,347,000
Federal Land Acquisition	165,638,000	226,853,000	226,853,000
Forest Service	47,500,000	63,000,000	63,435,000
Fish and Wildlife Service	44,535,000	58,500,000	58,500,000
National Park Service	41,857,000	55,353,000	53,670,000
Bureau of Land Management	19,746,000	38,000,000	38,630,000
Department of the Interior Valuation Services	12,000,000	12,000,000	12,618,000

Federal projects are funded in priority order by agency according to the budget request, with amounts adjusted downward as necessary due to updated project information and support. Many of the requested projects lacked sufficient information for the Committees to determine with a high degree of confidence that funds appropriated could be obligated in this fiscal year. Ideally, requested projects should have: identified properties, willing sellers, updated appraisals or market information, and the support of Federal, State, and local officials. Agencies should include the feasibility of phasing projects as well as a description of which parcels are being considered for conservation easements or fee simple acquisition in any supplemental information sent to the Committees. The agencies are also urged to increase the transparency of the project selection and prioritization processes in annual budget requests, particularly in regard to collaborative landscape projects.

The Department of the Interior did not consult the Committees on a decision to reprogram $995,000 from one project to acquire a property in another project identified in the fiscal year 2016 budget request. Therefore, the agreement includes a new reprogramming limitation of not to exceed $1,000,000 or 10 percent from any project, whichever amount is less, as detailed under the Reprogramming Guidelines heading later in this statement.

The Committees believe increasing access to public lands for hunting, fishing, and other recreational activities is important. This agreement includes new funding for these activities for the National Park Service and Fish and Wildlife Service while increasing funds for the Bureau of Land Management and Forest Service. The Committees expect the agencies to report within 30 days of enactment of this Act on how this funding will be spent, and the agencies should include a description and explanation of the use of funds in future budget requests. The agencies are also directed to include in future budget requests a description and explanation on the use of funds within their inholdings line items.

Paper Reduction Efforts.—The Committees urge each agency funded by this Act to work with the Office of Management and Budget (OMB) to reduce printing and reproduction costs and direct each agency to report to the Committees within 60 days of enactment of this Act on what steps have been taken to achieve this goal. The report should specifically identify how much money each agency expects to save by implementing these measures.

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OFFICE OF THE SOLICITOR

SALARIES AND EXPENSES

The agreement provides $65,800,000 for the Office of the Solicitor. The detailed allocation of funding is included in the table at the end of this explanatory statement.

OFFICE OF INSPECTOR GENERAL

SALARIES AND EXPENSES

The agreement provides $50,047,000 for the Office of Inspector General. The detailed allocation of funding is included in the table at the end of this explanatory statement.

OFFICE OF THE SPECIAL TRUSTEE FOR AMERICAN INDIANS

FEDERAL TRUST PROGRAMS

(INCLUDING TRANSFER OF FUNDS)

The agreement provides $139,029,000 for the Office of the Special Trustee for American Indians. The detailed allocation of funding by activity is included in the table at the end of this explanatory statement.

DEPARTMENT-WIDE PROGRAMS

WILDLAND FIRE MANAGEMENT

(INCLUDING TRANSFERS OF FUNDS)

The agreement provides $816,745,000 for Department of the Interior Wildland Fire Management, which is $11,966,000 above the fiscal year 2015 enacted level. Of the funds provided, $291,673,000 is for suppression operations, which combined with $177,000,000 in the FLAME Wildfire Suppression Reserve Fund, provides a total of $468,673,000 for Department of the Interior fire suppression activities. This amount exceeds the ten-year average for suppression by $85,000,000 to provide additional resources, as requested, based upon up-to-date forecasting models. The detailed allocation of funding for these accounts is included in the table at the end of this explanatory statement.

Hazardous Fuels Management.—The agreement provides $170,000,000 for hazardous fuels management activities, which is $6,000,000 above the fiscal year 2015 enacted level.

FLAME WILDFIRE SUPPRESSION RESERVE FUND

(INCLUDING TRANSFER OF FUNDS)

The agreement provides $177,000,000 for the FLAME Wildfire Suppression Reserve Fund.

CENTRAL HAZARDOUS MATERIALS FUND

The agreement provides $10,010,000 for the Central Hazardous Materials Fund.

NATURAL RESOURCE DAMAGE ASSESSMENT AND RESTORATION

NATURAL RESOURCE DAMAGE ASSESSMENT FUND

The agreement provides $7,767,000 for the Natural Resource Damage Assessment Fund. The detailed allocation of funding by activity is included in the table at the end of this explanatory statement.

WORKING CAPITAL FUND

The agreement provides $67,100,000 for the Department of the Interior, Working Capital Fund. The increase above the fiscal year 2015 enacted level is to improve cybersecurity throughout the Department and its bureaus.

GENERAL PROVISIONS, DEPARTMENT OF THE INTERIOR

(INCLUDING TRANSFERS OF FUNDS)

The agreement includes various legislative provisions affecting the Department in Title I of the bill, "General Provisions, Department of the Interior." The provisions are:

Section 101 provides Secretarial authority for the intra-bureau transfer of program funds for expenditures in cases of emergencies when all other emergency funds are exhausted.

Section 102 provides for the Department-wide expenditure or transfer of funds by the Secretary in the event of actual or potential emergencies including forest fires, range fires, earthquakes, floods, volcanic eruptions, storms, oil spills, grasshopper and Mormon cricket outbreaks, and surface mine reclamation emergencies.

Section 103 provides for the use of appropriated funds by the Secretary for contracts, rental cars and aircraft, telephone expenses, and other certain services.

Section 104 provides for the transfer of funds from the Bureau of Indian Affairs and Bureau of Indian Education, and Office of the Special Trustee for American Indians.

Section 105 permits the redistribution of tribal priority allocation and tribal base funds to alleviate funding inequities.

Section 106 authorizes the acquisition of lands for the purpose of operating and maintaining facilities that support visitors to Ellis, Governors, and Liberty Islands.

Section 107 continues Outer Continental Shelf inspection fees to be collected by the Secretary of the Interior.

Section 108 authorizes the Secretary of the Interior to continue the reorganization of the Bureau of Ocean Energy Management, Regulation, and Enforcement in conformance with Committee reprogramming guidelines.

Section 109 provides the Secretary of the Interior with authority to enter into multi-year cooperative agreements with non-profit organizations for long-term care of wild horses and burros.

Section 110 addresses the U.S. Fish and Wildlife Service's responsibilities for mass marking of salmonid stocks.

Section 111 modifies a provision addressing Bureau of Land Management actions regarding grazing on public lands.

Section 112 continues a provision prohibiting funds to implement, administer, or enforce Secretarial Order 3310 issued by the Secretary of the Interior on December 22, 2010.

Section 113 extends a provision allowing the Bureau of Indian Education authority to rent or lease land and facilities and retain the receipts.

Section 114 addresses the National Park Service's ability to implement the Volunteers in Parks program in anticipation of increased volunteer activity related to the Service's Centennial in 2016.

Section 115 allows the Bureau of Indian Affairs and Bureau of Indian Education to more efficiently and effectively perform reimbursable work.

Section 116 addresses National Heritage Areas.

Section 117 addresses the issuance of rules for sage-grouse.

Section 118 continues a provision providing the Secretary of the Interior certain onshore pay authority.

Section 119 extends authorization for certain payments to the Republic of Palau for fiscal year 2016.

Section 120 allows certain funds to be used for waterfowl conservation.

Section 121 continues a provision which directs the Secretary of the Interior to make certain certifications with respect to existing rights of way. The section also retains a provision limiting funding for a proposal to approve specified rights-of-way on the Mojave National Preserve or lands managed by the Needles Field Office of the Bureau of Land Management.

TITLE II—ENVIRONMENTAL PROTECTION AGENCY

The bill provides $8,139,887,000 for the Environmental Protection Agency (EPA).

Congressional Budget Justification.—The Agency is directed to continue to include the information requested in House Report 112–331 and any proposals to change State allocation formulas that affect the distribution of appropriated funds in future budget justifications.

Reprogramming.—The Agency is held to the reprogramming limitation of $1,000,000 and should continue to follow the reprogramming directives as provided in the front of this explanatory statement. Further, the Agency may not use any amount of deobligated funds to initiate a new program, office, or initiative, without the prior approval of the Committees.

Within 30 days of enactment of this Act, the Agency is directed to submit to the House and Senate Committees on Appropriations its annual operating plan for fiscal year 2016, which shall detail how the Agency plans to allocate funds at the program project level.

SCIENCE AND TECHNOLOGY

The bill provides $734,648,000 for Science and Technology programs and transfers $18,850,000 from the Hazardous Substance Superfund account to this account. The bill provides the following specific funding levels and direction:

Homeland Security.—The agreement includes $37,122,000 and the Agency shall allocate funds to programs under this heading consistent with fiscal year 2015 levels.

Indoor Air and Radiation.—The agreement includes $5,997,000 and the proposed elimination of radon activities has been rejected.

Research: National Priorities.—The bill provides $4,100,000 which shall be used for extramural research grants, independent of the Science to Achieve Results (STAR) grant program, to fund high-priority water quality and availability research by not-for-profit organizations who often partner with the Agency. Because these grants are independent of the STAR grant program, the Agency should strive to award grants in as large an amount as is possible to achieve the most scientifically significant research. Funds shall be awarded competitively with priority given to partners proposing research of national scope and who provide a 25 percent match. The Agency is directed to allocate funds to grantees within 180 days of enactment of this Act. Further, the bill provides $3,000,000 as directed in House Report 114–170. In addition, the bill provides $7,000,000 for certification and compliance activities related to vehicle and engine emissions, of which the Agency is directed to provide at least $5,000,000 in extramural resources.

Research: Safe and Sustainable Water Resources.—The agreement includes $107,434,000 and the Agency shall follow the direction under this heading in Senate Report 114–70.

Additional Guidance.—The agreement includes the following additional guidance:

Validation of Scientifically Significant Studies.—The Agency shall follow the direction under this heading in Senate Report 114–70.

ENVIRONMENTAL PROGRAMS AND MANAGEMENT

The bill provides $2,613,679,000 for Environmental Programs and Management and includes the following specific funding levels and direction:

Clean Air and Climate.—The Agency shall allocate funds consistent with fiscal year 2015.

Environmental Protection: National Priorities.—The bill provides $12,700,000 for a competitive grant program to provide technical assistance for improved water quality or safe drinking water to rural and urban communities or individual private well owners. The Agency is directed to provide $11,000,000 for grants to qualified not-for-profit organizations, on a national or multi-State regional basis, for the sole purpose of providing on-site training and technical assistance for water systems in rural or urban communities. The Agency is also directed to provide

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$1,700,000 for grants to qualified not-for-profit organizations for technical assistance for individual private well owners, with priority given to organizations that currently provide technical and educational assistance to individual private well owners. The Agency shall require each grantee to provide a minimum 10 percent match, including in-kind contributions. The Agency is directed to allocate funds to grantees within 180 days of enactment of this Act.

Geographic Programs.—The bill provides $427,737,000, as distributed in the table at the end of this division, and includes the following direction:

Great Lakes Restoration Initiative (GLRI).—The bill provides $300,000,000 and the Agency shall continue to follow the direction as provided in House Report 112–589.

Chesapeake Bay.—The bill provides $73,000,000 and the Agency shall allocate funds consistent with the direction under this heading in Senate Report 114–70.

Indoor Air and Radiation.—The agreement includes $27,637,000. The Agency shall follow the rulemaking direction under this heading in Senate Report 114–70. The proposed elimination of the radon program has been rejected and the Agency shall allocate funds consistent with fiscal year 2015.

Toxics Risk Review and Prevention.—The agreement includes $92,521,000 and the Agency shall maintain funding for the Office of Pollution Prevention and Toxics and for the endocrine disruptor program at not less than the fiscal year 2015 level.

Water: Ecosystems.—The agreement includes $47,788,000 and the Agency shall allocate funds consistent with fiscal year 2015. In addition, the Committees direct EPA to use the funds provided to accelerate the processing of mining permits with the Corps of Engineers. Further, the Committees direct EPA, in consultation with the Corps of Engineers, to continue to report monthly on the number of Section 404 permits under EPA's review, consistent with the direction under this heading in House Report 114–170. Additionally, the Agency is directed to provide $600,000 to each National Estuary Program (NEP) funded under Section 320 of the Clean Water Act.

Water: Human Health Protection.—The agreement includes $98,507,000. The proposed elimination of the beach program has been rejected and funding is maintained at the fiscal year 2015 level.

Water Quality Protection.—The agreement includes $210,417,000 and the Agency shall allocate funds consistent with fiscal year 2015.

Additional Guidance.—The agreement includes the following additional guidance:

Combined Sewer Overflows.—The agreement includes bill language related to sewage discharges into the Great Lakes and no further directives. The Committees urge the Agency to expeditiously complete the study required by P.L. 113–235.

Conflicts of Interest.—The Agency has not yet resolved long-standing questions regarding conflicts of interest that have spanned multiple Administrations. For fiscal year 2016, the Administrator shall develop a policy statement on science quality and integrity that shall be adhered to by the Science Advisory Board (SAB) and all Board members. Such policy statement shall be consistent with the Federal Advisory Committee Act, the Ethics in Government Act, and all other applicable Federal laws and regulations. EPA's policy statement should include goals on increasing membership from States and tribes who are often underrepresented, as noted in the May 2014 National Academy of Sciences review of EPA's IRIS program. Should the Administrator decide that financial-related metrics are appropriate to identify conflicts-of-interest or bias, then EPA's policy shall also include an evaluation of potential bias based on a variety of factors including receipt of former and current Federal grants or public statements or positions as well as other appropriate safeguards to ensure balance amongst SAB and other advisory board experts. In addition, the policy statement shall include direction on the treatment of public comments and responses to such comments.

When complete, the Committees direct EPA to submit the draft policy statement to the U.S. Government Accountability Office (GAO) for review of the updated conflict of interest policy, policy for committee composition and balance, and eligibility requirements for service on the SAB that will ensure fairness and objectivity. GAO shall determine if the updated policies meet the intent of the directives above and, if so, shall certify to the Committees on Appropriations that EPA's conflict of interest policies offer a balanced framework. The Agency is directed to submit these required documents to GAO for review no later than 90 days from the date of enactment of this Act.

Gold King Mine.—The Committees are concerned about the impacts following the Gold King Mine Spill on August 5, 2015 and believe long-term monitoring efforts are an important need following this event. Further, the Committees are concerned that EPA's monitoring plan does not have the full support from impacted States and tribes. Therefore, EPA is directed to coordinate with impacted States and tribes on development of a robust, long-term plan for independent monitoring. With existing funds, the Agency is directed to continue to seek ways to provide States and tribes with support for their contribution to monitoring efforts.

HAZARDOUS WASTE ELECTRONIC MANIFEST SYSTEM FUND

The bill provides $3,674,000 for the Hazardous Waste Electronic Manifest System Fund. The Committees continue to support the expeditious development of a system that would allow for the electronic tracking of hazardous waste shipments pursuant to P.L. 112–195. As anticipated costs continue to exceed authorized levels, the Committees direct EPA to work with appropriate Committees to extend the authorization for appropriations beyond fiscal year 2015 and provide estimates of costs to operate the system once built.

OFFICE OF INSPECTOR GENERAL

The bill provides $41,489,000 for the Office of Inspector General.

BUILDINGS AND FACILITIES

The bill provides $42,317,000 for Buildings and Facilities.

HAZARDOUS SUBSTANCE SUPERFUND

(INCLUDING TRANSFERS OF FUNDS)

The bill provides $1,088,769,000 for the Hazardous Substance Superfund account and includes bill language to transfer $9,939,000 to the Office of Inspector General account and $18,850,000 to the Science and Technology account. The bill provides the following additional direction:

Superfund Cleanup.—The Committees understand the funding is insufficient to eliminate the backlog of unfunded new starts but the Committees expect the Agency will use funds provided to initiate remediation at highly contaminated, orphan sites and support remedial pipeline activities that are critical prior to construction.

Financial Assurance.—Prior to proposing any rule pursuant to section 108(b) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. 9608(b)), the Administrator is directed to collect and analyze information from the commercial insurance and financial industries regarding the use and availability of necessary instruments (including surety bonds, letters of credit and insurance) for meeting any new financial responsibility requirements and to make that analysis available to the House and Senate Committees on Appropriations and to the general public on the Agency website 90 days prior to a proposed rulemaking. In addition, the analysis shall include the Agency's plan to avoid requiring financial assurances that are duplicative of those already required by other Federal agencies.

Lead at Superfund Sites.—The agreement includes the directive in the House and Senate Reports that the Agency contract with the National Academy of Sciences to conduct a study of lead at Superfund sites. The agreement narrows the scope of the study to Superfund sites within, adjacent or proximal to the nation's largest lead mining districts. The Agency's authority shall not be impacted during the pendency of the study.

LEAKING UNDERGROUND STORAGE TANK TRUST FUND PROGRAM

The bill provides $91,941,000 for the Leaking Underground Storage Tank Trust Fund Program.

INLAND OIL SPILL PROGRAMS

The bill provides $18,209,000 for Inland Oil Spill Programs.

STATE AND TRIBAL ASSISTANCE GRANTS

The bill provides $3,518,161,000 for the State and Tribal Assistance Grants (STAG) program and includes the following specific funding levels and direction:

Diesel Emissions Reductions Grants (DERA).—The bill provides $50,000,000 for DERA grants. The Agency shall continue to make at least 70 percent of DERA grants available to improve air quality in non-attainment areas. The Committees encourage EPA to provide a third report to Congress prior to January 1, 2016, that includes the analysis requested in Public Law 111–364.

Targeted Airshed Grants.—The bill provides $20,000,000 for targeted airshed grants to reduce air pollution in non-attainment areas. These grants shall be distributed on a competitive basis to non-attainment areas that EPA determines are ranked as the top five most polluted areas relative to annual ozone or particulate matter 2.5 standards as well as the top five areas based on the 24-hour particulate matter 2.5 standard where the design values exceed the 35 μg/m3 standard. To determine these areas, the Agency shall use the most recent design values calculated from validated air quality data. The Committees note that these funds are available for emission reduction activities deemed necessary for compliance with national ambient air quality standards and included in a State Implementation Plan submitted to EPA. Not later than the end of fiscal year 2016, EPA should provide a report to the Committees on Appropriations that includes a table showing how fiscal year 2015 and 2016 funds were allocated. The table should also include grant recipients and metrics for anticipated or actual results.

Categorical Grants.—The bill provides $1,081,041,000 for Categorical Grants and funding levels are specified in the table at the end of this division. The Agency shall allocate radon grants in fiscal year 2016 following the direction in House Report 114–170. The amount also includes $228,219,000 for the State and Local Air Quality Management grant program, and the Agency is directed to allocate funds following the direction for this program in Senate Report 114–70.

Multipurpose Grants to States and Tribes.—The bill provides $21,000,000 for grants to States and tribes to assist with the implementation of environmental programs.

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U.S. ENVIRONMENTAL PROTECTION AGENCY

OFFICE OF INSPECTOR GENERAL

EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees

Report No. 13-P-0387 September 11, 2013

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Report Contributors:

Rick Beusse
James Hatfield
Rich Jones
Alicia Mariscal
Michael Young

Abbreviations

CAA	Clean Air Act
CASAC	Clean Air Scientific Advisory Committee
CFR	Code of Federal Regulations
Council	Advisory Council on Clean Air Compliance Analysis
DAEO	Designated Agency Ethics Official
DEO	Deputy Ethics Official
DFO	Designated Federal Officer
EPA	U.S. Environmental Protection Agency
FAC	Federal Advisory Committee
FACA	Federal Advisory Committee Act
FY	Fiscal Year
GAO	U.S. Government Accountability Office
GSA	U.S. General Services Administration
ISA	Integrated Science Assessment
ISI	Influential Scientific Information
NAAQS	National Ambient Air Quality Standards
NCEA	National Center for Environmental Assessment
NO_2	Nitrogen Dioxide
OAQPS	Office of Air Quality Planning and Standards
OFACMO	Office of Federal Advisory Committee Management and Outreach
OIG	Office of Inspector General
OMB	Office of Management and Budget
ORD	Office of Research and Development
PM	Particulate Matter
PPM	Parts Per Million
SAB	Science Advisory Board
SGE	Special Government Employee
SO_2	Sulfur Dioxide

Hotline

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write: EPA Inspector General Hotline
1200 Pennsylvania Avenue, NW
Mailcode 2431T
Washington, DC 20460

U.S. Environmental Protection Agency
Office of Inspector General

13-P-0387
September 11, 2013

At a Glance

Why We Did This Review

The U.S. Environmental Protection Agency Office of Inspector General conducted this review in response to a congressional request about the EPA's management of the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis. We sought to determine whether the EPA has managed the CASAC and Council in accordance with applicable laws, regulations and guidance pertaining to (1) potential conflicts of interest, (2) appearances of a lack of impartiality, (3) rotation of members (i.e., term limits), (4) balance of committee viewpoints and perspectives and (5) peer review. The EPA's Science Advisory Board Staff Office manages the CASAC and Council, which provide advice to the EPA on setting air quality standards and in developing cost-benefit analyses of the Clean Air Act.

This report addresses the following EPA Goals or Cross-Cutting Strategies:

- *Taking action on climate and improving air quality.*
- *Advancing science, research, and technological innovation.*

For further information, contact our Office of Congressional and Public Affairs at (202) 566-2391.

The full report is at:
www.epa.gov/oig/reports/2013/20130911-13-P-0387.pdf

EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees

What We Found

In general, the EPA managed the CASAC and Council in accordance with applicable statutes and regulations. These regulations allow agencies discretion in choosing federal advisory committee members and achieving balance.

We reviewed 47 CASAC and Council member appointments, including all ozone panel appointments for the last two ozone standard reviews. We found that the EPA has adequate procedures for identifying potential ethics concerns, including financial conflicts of interest, independence issues and appearances of a lack of impartiality. However, the EPA can better document its decisions on selecting members with independence and partiality concerns. This would allow for better transparency, thus giving assurance that CASAC and the Council provide independent and objective advice to the Administrator on such important decisions as setting ambient air standards. We also identified one instance where agency procedures involving a potential conflict of interest were not followed.

We also reviewed the peer review process for three EPA-developed analyses included in scientific assessments peer reviewed by the CASAC. Peer review is one method for enhancing the quality and credibility of the government's scientific information. One of these analyses was not peer reviewed in accordance with Office of Management and Budget and agency guidance. The EPA's National Center for Environmental Assessment did not have a formal process for determining whether such analyses were subject to OMB requirements and the EPA's peer review guidance before public dissemination.

Recommendations and Planned Corrective Actions

We recommend that the EPA instruct staff on the proper process for addressing potential conflicts of interest, develop procedures to document decisions and mitigating actions regarding independence and partiality concerns, and implement a process to determine whether its scientific work products are influential scientific information that require peer review in accordance with OMB and the EPA's guidance. The agency completed corrective action for one recommendation and that recommendation is closed. The agency agreed with three other recommendations and provided corrective action plans that we accepted. The agency disagreed with one recommendation but proposed an alternative action that we accepted. Thus, four recommendations are resolved but open pending completion of the corrective actions.

Noteworthy Achievements

Although not required, the EPA applies many Federal Advisory Committee Act guidelines and procedures to managing subcommittees and panels.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

THE INSPECTOR GENERAL

September 11, 2013

MEMORANDUM

SUBJECT: EPA Can Better Document Resolution of Ethics and Partiality Concerns in Managing Clean Air Federal Advisory Committees
Report No. 13-P-0387

FROM: Arthur A. Elkins Jr

TO: Lek Kadeli, Principal Deputy Assistant Administrator
Office of Research and Development

Avi Garbow, General Counsel
Office of General Counsel

Christopher Zarba, Director
Science Advisory Board Staff Office

This is our final report on the management of Clean Air Act federal advisory committees conducted by the Office of Inspector General of the U.S. Environmental Protection Agency. This report contains findings that describe the problems the OIG has identified and corrective actions the OIG recommends. This report presents the opinion of the OIG and does not necessarily represent the final EPA position. Final determinations on matters in this report will be made by EPA managers in accordance with established audit resolution procedures.

Action Required

The agency agreed with recommendation 1 and provided evidence of corrective action taken. This recommendation is closed and no further action is required. The agency agreed with recommendations 2, 3 and 5 and provided planned corrective actions and completion dates that meet the intent of these recommendations. The agency disagreed with recommendation 4 but provided an alternative action that we accepted. Therefore, the agency is not required to provide a written response for these four recommendations, which remain open with corrective actions ongoing. For these recommendations, please update the EPA's Management Audit Tracking System as you complete the planned corrective actions. Please notify my staff if there is a significant change in the agreed-to corrective actions. We will post this report to our website at http://www.epa.gov/oig.

If you or your staff have any questions regarding this report, please contact Assistant Inspector General for Program Evaluation Carolyn Copper at (202) 566-0829 or copper.carolyn@epa.gov, or Director for Air Evaluations Rick Beusse at (919) 541-5747 or beusse.rick@epa.gov.

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Chapter 1
Introduction

Purpose

In response to a congressional request, our objective was to determine whether the U.S. Environmental Protection Agency has managed the Clean Air Scientific Advisory Committee and the Advisory Council on Clean Air Compliance Analysis in accordance with applicable laws, regulations and guidance pertaining to:

- Potential conflicts of interest.
- The appearances of a lack of impartiality.
- The rotation (i.e., term limits) of members.
- A balance of committee viewpoints and perspectives.
- Peer review.

Background

Advisory committees have provided advice to the federal government since its inception. Congress enacted the Federal Advisory Committee Act in 1972 to address the use of federal advisory committees that had developed over the years. Congress had two major concerns with FACs before 1972. First was a public perception that many commissions were duplicative, inefficient, and lacked adequate controls or oversight. Second was a widespread belief that FACs did not adequately represent the public interest and that meetings were often closed to the public.

FACA addressed these concerns by creating a process for establishing, operating, overseeing and terminating FACs. FACA requires that no FAC can meet or take any action until a charter has been filed with the head of the agency to whom the FAC reports and with the appropriate standing committees of the Senate and House of Representatives. FAC members appointed as Special Government Employees are subject to federal financial conflict of interest laws with some exceptions. FACA requires each agency sponsoring a FAC to appoint a committee management officer to oversee the administration of FACA's requirements. Further, a designated federal officer must be assigned to each FAC to ensure compliance with FACA.

FACA also required the administrator of the U.S. General Services Administration to prescribe administrative guidelines and management controls for FACs. Each federal agency head must establish administrative guidelines and management controls for FACs formed by its agency, consistent with the directives issued by GSA.

Federal Advisory Committee Rule

GSA's rule[1] on FAC management provides administrative and interpretative guidelines and management controls for federal agencies to implement FACA. The rule provides requirements for many aspects of managing a FAC. For example, the rule establishes requirements for FAC charters, recordkeeping and public notification. However, the rule allows for agency discretion in managing certain aspects of a FAC. For example, unless otherwise provided by statute or presidential directive, the length of FAC memberships is at the sole discretion of the appointing authority.

The rule restates the FACA requirement that FACs be fairly balanced with respect to the points of view represented and function to be performed. However, the rule does not prescribe specific procedures for achieving balance. Instead, the rule provides factors for an agency to consider in developing a fairly balanced FAC.

GSA's rule does not prescribe procedures for addressing appearances of a lack of impartiality or peer review. However, the EPA has established procedures governing these and for balancing FAC member viewpoints, potential conflicts of interest, and rotation of members.

The EPA's FACA Management Process

The EPA's Office of Federal Advisory Committee Management and Outreach is the national program manager for the EPA's committee management program. OFACMO provides policy, coordination, oversight, consultation, advice and technical assistance to FAC managers and the EPA's senior officials. OFACMO has issued a handbook[2] which provides the EPA's administrative guidelines and management controls for FACs.

The EPA's key personnel for establishing and managing an FAC include the Administrator, the Deputy Administrator, the relevant program office's assistant administrator, the committee management officer, and the designated federal officer. Table 1 shows FAC responsibilities of key agency officials.

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[1] GSA Final Rule on Federal Advisory Committee Management, 41 CFR Parts 101-6 and 102-3.
[2] EPA Federal Advisory Committee Handbook, March 2012. The previous EPA Handbook was issued in October 2003.

Table 1: FAC Responsibilities of key EPA officials

EPA official	Summary of FAC responsibilities
Administrator	Responsible for the establishment, management and termination of the EPA's FACs. The Administrator has delegated most of these responsibilities to other agency personnel but remains fully accountable for ensuring compliance with the statutory and regulatory requirements of the FACs. The Administrator also appoints FAC members and FAC subcommittee members.
Deputy Administrator	Approves membership packages for FACs (authority delegated to the Deputy Administrator by the Administrator). Approves establishment and renewal charters for FACs.
Assistant Administrator	Responsible for the request and justification of the establishment of proposed FACs. The assistant administrator ensures that the FAC is balanced by points of view for the function to be performed, appoints a DFO for each FAC, and ensures that the FAC's advice and recommendations are the result of the FAC's independent judgment.
Committee Management Officer	Provides oversight for the establishment and operation of the EPA's FACs. The committee management officer also serves as a resource for DFOs and ensures proper recordkeeping for FACs (appointed by the director of OFACMO).
Designated Federal Officer	Responsible for the day-to-day operations and management of the FAC. The DFO works closely with the committee management officer to ensure full compliance with FACA requirements.

Source: Office of Inspector General-developed based on information in the EPA's Federal Advisory Committee Handbook (2012).

Clean Air Scientific Advisory Committee Created to Provide Advice on Ambient Air Quality Standards

The Clean Air Act required the EPA to establish an independent scientific review committee to provide advice to the Administrator in developing criteria and standards for national ambient air quality. Thus, the EPA established the CASAC. The CASAC has seven members who provide advice on criteria and standards for six air pollutants. These pollutants are carbon monoxide, lead, nitrogen dioxide, ozone, particulate matter and sulfur dioxide.

The CAA requires the EPA, with the assistance of CASAC, to review the criteria for the National Ambient Air Quality Standards every 5 years. The EPA augments CASAC with panels of expert consultants to help review the six pollutants. The review panels we examined generally included 16 consultants plus the seven CASAC members.

Each panel reviews and comments on the supporting documentation for its specific pollutant. Prior to 2007, the two primary documents the panels reviewed were the criteria document and the staff white paper. The EPA's Office of Research and Development prepared the criteria document. This document was a comprehensive and integrative assessment of relevant scientific studies related to the pollutant. The EPA's Office of Air Quality Planning and Standards prepared the staff white paper. The staff used the information in ORD's criteria document and the results of the EPA's OAQPS risk and exposure assessments to develop

and support their conclusions and recommendations for an air quality standard. The OAQPS staff paper also included various ranges of standards for the Administrator to consider.

The EPA revised its process for developing NAAQS in December 2006. The EPA replaced the criteria document and the staff white paper with an integrated science assessment, a risk/exposure assessment, and a policy assessment. The EPA also decided it would publish the policy assessment in the Federal Register as an Advanced Notice of Proposed Rulemaking. The revised process also called for CASAC to be more involved in the initial planning for conducting the NAAQS review. In May 2009, the EPA ended the requirement to publish the policy assessment in an Advanced Notice of Proposed Rulemaking. Instead, the EPA releases a draft of the policy assessment to CASAC and for public comment. This policy assessment includes the air quality staff's conclusions and recommendations for a range of standards for senior agency management to consider.

Advisory Council on Clean Air Compliance Analysis Created to Provide Advice on Cost-Benefit Analyses

The Advisory Council on Clean Air Compliance Analysis was established in 1991, pursuant to the CAA Amendments of 1990. The Council's purpose is to review the data, methodology and findings of a statutorily mandated agency report[3] that assesses the costs and benefits of the CAA. The Council must include at least nine members. The Council is to include experts in the fields of the health and environmental effects of air pollution, economic analysis, and environmental sciences. Members can also be appointed from other fields that the Administrator determines to be appropriate.

As of July 2012, the Council included 15 members. The Council is supplemented with subcommittees and consultants as needed. The Council has commented on three CAA cost-benefit studies.[4] In 2002, the agency requested the Council's assistance in planning a third study assessing the benefits and costs of the CAA for the period 1990 through 2020. From 2004 through 2011, the Council issued several reports providing advice to the agency with respect to the third study. This included advice on planning the study and selecting data, methods and models, and commenting on draft findings and conclusions. To review the study, the EPA augmented the Council with the Special Council Panel, the Air Quality Modeling Subcommittee, the Health Effects Subcommittee and the Ecological Effects Subcommittee.

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[3] This report was mandated by Section 812 of the CAA Amendments of 1990 but the requirement for the report to Congress was repealed by the Federal Reports Elimination and Sunset Act of 1995 (P.L. 104-66).

[4] The Benefits and Costs of the Clean Air Act, 1970 to 1990, October 1997; The Benefits and Costs of the Clean Air Act, 1990 to 2010, November 1999, EPA-410-R99-001; and The Benefits and Costs of the Clean Air Act from 1990 to 2020, March 2011.

Science Advisory Board Staff Office Manages the CASAC and Council

The EPA's Science Advisory Board Staff Office manages the CASAC and the Council. The SAB Staff Office develops the required FAC documentation, including charters and membership packages. The SAB Staff Office also collects and reviews financial disclosure forms submitted by prospective SGEs. The SAB Staff Office director recommends members for the committees to the Administrator for approval. The SAB Staff Office director also has the authority to select expert consultants to assist the chartered FACs. These consultant appointments are not submitted to the Administrator for approval.

All CASAC and Council committee, subcommittee and panel members are appointed to serve as SGEs, or in rare cases as regular government employees. As government employees, they are covered by federal ethics and conflicts of interest statutes and regulations. The SAB Staff Office director is also the agency deputy ethics official for the office. The DEO is responsible for reviewing and resolving ethics and conflicts of interest concerns with respect to members of the CASAC, the Council, and their respective subcommittees and panels.

Prior Audit Reports

The OIG has not conducted any prior audits or evaluations of CASAC or Council activity, or of the EPA's management of FACs. We reported on the EPA's external peer review process in April 2009.[5] Our 2009 report focused on contractor-developed peer review panels. In response to the report, the EPA developed an addendum to the Peer Review Handbook that provided additional guidance for identifying appearances of a lack of impartiality in any of the peer reviewers.

The U.S. Government Accountability Office reported on FAC independence and balance in 2004.[6] GAO's report was based on a review of policies and practices at nine federal departments and agencies, including the EPA. According to the GAO report, GSA's guidance on FAC management did not address what types of information could be helpful to agencies in assessing the points of view of potential FAC members. Additionally, agency procedures did not identify the type of information that should be collected about potential members to make decisions about FAC balance. Thus, eight of the nine departments and agencies that GAO reviewed did not identify and systematically collect and evaluate information pertinent to determining the points of view of potential FAC members. Such information would include previous public positions or statements on matters being reviewed. The EPA was the only agency to routinely collect and evaluate this information.

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[5] EPA Can Improve Its Process for Establishing Peer Review Panels, EPA OIG Report No. 09-P-0147, April 29, 2009.

[6] GAO-04-328, FEDERAL ADVISORY COMMITTEES: Additional Guidance Could Help Agencies Better Ensure Independence and Balance, April 2004.

Noteworthy Achievements

FACA regulations do not apply to subcommittees or working groups that provide advice to the parent FAC. Still, the EPA applies many of its FACA guidelines and procedures when assembling these subcommittees and panels. That includes:

- Requiring subcommittee and panel members designated as SGEs to complete financial disclosure forms.
- Reviewing and vetting these forms for financial conflicts of interest and appearances of a lack of impartiality.
- Preparing membership grids showing each proposed member's qualifications and background.

The EPA's revised Federal Advisory Committee Management Handbook incorporates new procedures and factors to consider in selecting FAC members. The Handbook now requires the EPA's DFOs to prepare an outreach plan. This plan describes how the DFO plans to publicize the proposed FAC and solicit members from various groups to achieve FAC diversity.

Scope and Methodology

Our evaluation assessed the EPA's management of the CASAC and Council during the period 2006 through 2011, although we did review older records as necessary. In particular, we focused on management of CASAC's ozone and PM panels, and the Council's Health Effects Subcommittee. We evaluated the procedures the EPA used to ensure compliance with FACA and applicable federal and agency guidance. We did not evaluate the quality of scientific advice the CASAC or Council provided to the EPA.

We performed our work at the EPA's OFACMO, SAB Staff Office, and Office of General Counsel in Washington, D.C. We also conducted work at the ORD's National Center for Environmental Assessment in Research Triangle Park, North Carolina. We interviewed the EPA staff and managers tasked with overseeing the EPA's compliance with FACA, and obtained data and documents as appropriate. We also interviewed staff and managers responsible for managing the CASAC and Council.

To assess the EPA's management of the CASAC and Council we selected a sample of FAC, subcommittee and panel member appointments for review. Our selection criteria were all members of the last two NAAQS ozone panels, any expert who served on both the 2006 and 2011 PM review panels, and any expert specifically cited in the requester's letters to the OIG. This represented 47 of 126 members appointed during the period of fiscal years 1998 through 2012. We reviewed the SAB Staff Office case files for these 47 members for evidence of independence, impartiality, or financial conflicts of interest concerns. Based on potential concerns we identified during our initial file review, we reviewed 27 of

these cases in depth. We also interviewed six CASAC members to obtain their views on membership balance.

We conducted our evaluation from April 2012 through May 2013. We conducted this evaluation in accordance with generally accepted government auditing standards. Those standards require that we obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our objectives. We believe the evidence obtained provides a reasonable basis for our findings and conclusions based on our objectives.

Chapter 2
Financial Conflicts of Interest

The EPA has implemented a process to manage the CASAC and Council in accordance with applicable laws, regulations and guidance regarding financial conflicts of interest. The EPA requires prospective and active SGEs to complete financial disclosure forms. The SAB Staff Office reviews these forms for financial conflicts of interest. We identified one instance where agency procedures involving a potential conflict of interest were not followed.

SGEs Are Generally Subject to Federal Statutes and Regulations Governing Financial Interests

Rules governing conflicts of interest for federal employees can be found in the Code of Federal Regulations. Specifically, 5 CFR Part 2635 Subpart D provides in part that:

> An employee is prohibited by criminal statue, 18 U.S.C. 208(a), from participating personally and substantially in an official capacity in any particular matter in which, to his knowledge, he or any person whose interests are imputed to him under this statute has a financial interest, if the particular matter will have a direct and predictable effect on that interest.

SGEs are generally subject to financial conflict of interest provisions with some exceptions. In certain circumstances, SGEs who serve on FACs, within the meaning of the FACA, are uniquely eligible for a particular waiver of the prohibition of Section 208(a). Under 18 U.S.C. 208(b)(3), an SGE serving on a FAC may be eligible for a waiver where the official responsible for his or her appointment certifies in writing that the need for the SGE's services outweighs the potential for a conflict of interest posed by the otherwise disqualifying financial interest involved. EPA Order 1000.28A states that only the designated agency ethics official or the alternate agency ethics official may issue such waivers. According to the EPA's OGC, this should occur only upon consultation with the U.S. Office of Government Ethics.

SGEs serving on FACs are also covered by certain exemptions from Section 208 that have been promulgated by the U.S. Office of Government Ethics, pursuant to 18 U.S.C. 208(b). The most significant of these is 5 CFR 2640.203(g), which pertains to certain financial interests arising from the SGE's outside employment. This exemption permits SGEs serving on FACs to participate in matters of general applicability where the disqualifying interest arises from the SGE's non-federal employment or prospective employment. This exemption is subject to the following limitations:

- The matter cannot have a special or distinct effect on either the SGE or the SGE's non-federal employer, other than as part of a class.
- The exemption does not cover interests arising from the ownership of stock in the employer or prospective employer.

Further, according to the EPA's OGC the non-federal employment must involve an actual employee/employer relationship, as opposed to an independent contractor relationship.

The EPA's Process for Identifying Conflicts of Interest

The EPA requires prospective charter FAC, panel and subcommittee members to complete the EPA's Form 3110-48.[7] Active members must also update their forms annually as well as before any particular matter is considered by a given member. The form includes sections for listing employment and consulting work, paid expert testimony, research or project funding for the past 2 years, and assets. The form also includes a section for describing prior activities or statements that could affect, or appear to affect, an expert's ability to provide impartial advice.

The SAB Staff Office's ethics officer (assistant to the SAB Staff Office DEO) and the SAB Staff Office DEO review each active or prospective member's financial disclosure form for potential ethical issues, including financial and other conflicts, and possible lack of impartiality. Both reviewers sign and date the first page of the form to document their review. The forms may include the reviewer's handwritten notes if issues are noted.

If the review identifies potential issues, the SAB Staff Office informs the prospective or active member and asks for an explanation. The SAB Staff Office may also discuss any concerns with the member and require that the member take action to mitigate the concern. The SAB Staff Office director's personal practice was to not grant financial conflict of interest waivers. We did not identify any waivers for financial conflicts of interest for the 47 CASAC and Council charter, subcommittee and panel members we reviewed from FYs 2002 through 2012.

Receipt of Federal Grant Is Not a Financial Conflict of Interest

The EPA does not consider a prospective or current member's receipt of an agency or other federal research grant to create the basis for a financial conflict of interest. This is consistent with other federal guidance in this area. For example, OMB's Final Bulletin on Peer Review states that:

> When an agency awards grants through a competitive process that includes peer review, the agency's potential to influence the scientist's research is limited. As such, when a scientist is awarded

[7] *Confidential Financial Disclosure Form for Special Government Employees Serving on Federal Advisory Committees at the U.S. Environmental Protection Agency* (EPA Form 3110-48).

> a government research grant through an investigator-initiated, peer-reviewed competition, there generally should be no question as to that scientist's ability to offer independent scientific advice to the agency on other projects.

The above guidance does not mean that a prospective or active member's work on a specific grant or research project could not potentially present an independence concern. A prospective or active member's research or grant is a potential area of concern if the FAC, panel, or subcommittee plans to address work performed under the research grant. Prospective and active EPA SGE members must report any research grants received during the past 2 years in Section 4 of the EPA's Form 3110-48. Our review of impartiality and independence is discussed in chapter 3.

Review of Financial Conflict of Interest Procedures

We reviewed 47 financial disclosure forms completed by prospective CASAC and Council committee, panel and subcommittee members from 2002 through 2012. We identified one instance where agency procedures regarding a potential conflict of interest were not followed.

Conclusions

The EPA has adequate procedures for identifying financial conflicts of interest. Nonetheless, we identified one instance where the agency's procedures for handling a potential conflict of interest were not followed. As such, we believe the agency should remind DEOs of the proper procedures for addressing potential conflicts of interest to prevent any future occurrences.

While receipt of grant funds from the EPA may not constitute a financial conflict of interest on the part of a FACA member, receipt of such funding could raise concerns of independence depending upon the nature of the research conducted under the grant and the issues addressed by the FAC.

Recommendation

We recommend that the EPA designated agency ethics official:

1. Instruct DEOs and assistant DEOs on the proper process for handling potential conflicts of interests for SGEs, including the process for implementing any applicable steps to remedy the conflicts of interest.

Agency Comments and OIG Evaluation

The agency agreed with our recommendation and responded that the DAEO will review already available reference material and guidance to determine whether

any additional guidance is warranted for SGEs. Further, the agency provided us with documentation that the DAEO has instructed DEOs on the proper process to follow in addressing conflicts of interest. Thus, this recommendation is closed and no further response is required from the agency.

Chapter 3
Independence and Impartiality

In general, the EPA has implemented an adequate process to identify independence and impartiality concerns. However, the EPA can improve its controls over this process by better documenting how it addressed concerns identified during the financial disclosure review process. We reviewed financial disclosure forms and associated SAB Staff Office files for 47 members from FYs 2002 through 2012. In nine instances, final determination on and steps taken to mitigate independence or partiality matters were either not adequately documented or, in our view, needed additional steps to sufficiently address potential independence or partiality concerns. Better documentation of ethics decisions will help ensure that the FAC process is transparent and that advice to the Administrator on important issues such as setting ambient air standards to protect public health and the environment is impartial and objective.

The EPA's Guidance Recommends Avoiding Experts Who Appear to Lack Impartiality

FACA requires that FACs provide independent advice free of inappropriate influence from the appointing authority or special interests. FACA does not establish requirements for reviewing the independence or impartiality of FAC members. However, SGEs are subject to federal ethics regulations and should avoid appearances of a lack of impartiality in performing their work. Title 5 CFR Part 2635.502(a) in large part addresses impartiality with respect to particular matters involving specific parties. Since the CASAC and Council address matters of general applicability this provision would not normally apply to CASAC and Council members. However, 5 CFR Part 2635.502(a)(2) addresses impartiality concerns that may arise under other circumstances. It states that:

> An employee who is concerned that circumstances other than those specifically described in this section would raise a question regarding his impartiality should use the process described in this section to determine whether he should or should not participate in a particular matter.

Based on 5 CFR 2635.502 (c) and (d), EPA Order 1000.28A authorizes DEOs to make determinations as to whether a reasonable person would be likely to question the employee's impartiality in a particular matter under 5 CFR Part 2635, Subpart E. In instances where impartiality is likely to be questioned, but would not violate 18 USC 208(a), the Order further authorizes DEOs to determine whether the employee should be allowed to participate in the matter, and if so, authorize participation in writing.

The EPA's *Peer Review Handbook* provides guidance for how the EPA should address impartiality and independence concerns on peer review panels. The Handbook states that the EPA should make every effort to use reviewers who are independent and do not have an appearance of a lack of impartiality. The Handbook states, as a general rule, experts who have made public pronouncements on an issue or who have clearly "taken sides" may lack impartiality and should be avoided. The Handbook recognizes that these reviewers with appearances of a lack of impartiality may still serve on a panel to fill the need for experience or technical balance and representation. For example, if an SGE has an appearance of a lack of impartiality, it may still be possible to make a written determination that the SGE may serve on the FAC or to ensure that the SGE is recused from certain areas of a review. With respect to impartiality, the Handbook states:

> . . . it is also important that any decision that is made concerning advisory committee members or peer reviewers be appropriately documented. . . .

The *Peer Review Handbook* defines an independent reviewer as an expert who was not associated with developing the work product, either directly by substantial contribution to its development or indirectly by significant consultation during its development.

The EPA's Financial Disclosure Forms Include Questions to Identify Independence Concerns and Appearances of a Lack of Impartiality

As discussed in chapter 2, the EPA requires FAC committee, subcommittee and panel candidates who are designated as SGEs to complete EPA Form 3110-48. Once selected, members must also periodically update their form. The form includes a supplemental set of questions specifically designed to help the EPA identify any potential appearance of a lack of impartiality (table 2).

Table 2: Supplemental questions to identify concerns with independence and impartiality

No.	Questions asked
1	Do you know of any reason that you might be unable to provide impartial advice on the matter to come before the panel/committee/subcommittee or any reason that your impartiality in the matter might be questioned?
2	Have you had any previous involvement with the review document(s) under consideration including authorship, collaboration with the authors, or previous peer review functions? If so, please identify and describe that involvement.
3	Have you served on previous advisory panels, committees or subcommittees that have addressed the topic under consideration? If so, please identify those activities.
4	Have you made any public statements (written or oral) on the issue that would indicate to an observer that you have taken a position on the issue under consideration? If so, please identify those statements.

Source: OIG-developed table based on section 6 of EPA Form 3110-48.

The EPA Can Better Document Identification and Resolution of Independence and Impartiality Concerns

We reviewed the SAB Staff Office's files for 47 of the 126 SGE appointments to CASAC and the Council, including subcommittees and review panels, over the period of FYs 1998 through 2012. We reviewed 27 appointments in greater detail based on information in the case files that in our opinion indicated the SGE's appointment might raise ethical concerns with respect to the FAC's or panel's work. We also reviewed the meeting minutes for 14 Council meetings held between 2003 and 2010. We found:

- Four instances where recusals for independence concerns were not documented or came after the expert had participated in activities related to the concern.
- Three instances where, in our view, potential independence concerns were not identified or their resolution was not adequately documented.
- Two instances where, in our view, potential appearances of a lack of impartiality were not identified or adequately resolved.

The following sections discuss in more detail the results of our review.

Some Recusals Were Not Documented or Came After SGE Participation in Activities That Created an Independence Concern

The SAB Staff Office determined that four members of the chartered Council should recuse themselves from certain meetings where the charge questions were related to work these members had produced. SAB Staff Office procedures state that the DFO should start each meeting by stating for the record that all participating panel members are in compliance with ethics and conflict of interest rules. If not, the DFO should note any instances where a member will recuse him/herself from discussion on a particular aspect of the meeting. The EPA's FAC Handbook also recommends that meeting minutes document all recusals.

- In two instances, the EPA appointed experts as members to the chartered Council who had co-authored studies that the EPA used to support conclusions in the EPA's CAA Section 812 cost benefit analysis. These studies pertained to the monetized benefit of reducing ozone and PM mortality. The DFO told us they orally instructed members to recuse themselves from any meeting where charge questions related to the application of their work in the Section 812 study were discussed. However, the meeting minutes did not state whether these two members recused themselves from meetings where the charge questions related to their work.

- In one instance, a potential independence concern about a Council member was raised and discussed at a Council meeting. The concern was that the member was one of five experts selected to serve on a pilot expert elicitation study panel on PM mortality. The Council was asked to review the design of the pilot study. Because of the information discussed at this meeting, the DFO sent a written notice to the member instructing him to recuse himself from meetings where his prior work on the pilot elicitation study was to be discussed. Meeting minutes we reviewed indicate that this member recused himself from applicable meetings after receiving SAB's notice for a period of several years. The member later served as one of 12 participants in the full-scale expert elicitation study. According to the SAB Staff Office, when the Council met in 2008 to advise the agency on the potential use and presentation of expert elicitation study results, the member did not participate in the meeting. However, 6 years after the initial independence issue arose, this member attended a meeting as a member of the Council's Health Effects Subcommittee where the interpretation and presentation of the results of the elicitation study were discussed. Meeting minutes did not indicate whether this member recused himself from discussing the EPA's application of the results of the study he had worked on.

- In one instance, a Council member had contributed significantly to a product peer reviewed by the Council. Both the member and the SAB Staff Office identified this member's participation as an independence concern. The SAB Staff Office director noted that the member would be required to recuse himself from any discussion of that portion of the document. The meeting minutes for two Council subcommittee meetings did not indicate whether this member recused himself from any portion of the deliberations. A draft peer review report was prepared after these two meetings. Prior to a third meeting where this topic was discussed, the DFO sent the member a written recusal reminder notice. Meeting minutes we reviewed indicated the member recused himself from meetings after receiving the written recusal notice.

Some Potential Independence Concerns Were Not Identified

We identified three instances where the SAB Staff Office appointed experts to panels that reviewed work products that the experts had helped develop or incorporated extensive information from work products the experts had developed. In all three instances, the experts reported their involvement in these precursor work products on EPA Form 3110-48.

- In two instances, experts appointed to a CASAC review panel had participated substantially in preparing chapters included in ORD's ozone and PM criteria documents for the prior review period. These members were allowed to serve as reviewers for the next 5-year review's criteria

document. The SAB Staff Office director told us that these members were allowed to serve because they had not worked on producing the document under review by the CASAC. However, our review of the integrated science assessments (formerly known as criteria documents) found that these work products included conclusions and information from the chapters that had been written by the experts for the prior criteria documents. Further, the charge questions for the ISA reviews included commenting on the usefulness and completeness of the scientific information in chapters that included information from these experts' prior work. Thus, even though these experts did not develop the ISA documents, in our view, their service on the panels created a risk that they could potentially review their own work. Further, the agency should document in writing its determination that the expert's service will not create an independence concern and any steps needed to reduce the risk that this could occur.

- In one instance, an expert selected to serve on the Council's Health Effects Subcommittee was a member of the project team that developed the methodology for both the pilot and later full-scale expert elicitations. This member also interviewed experts for the elicitation study. This member's participation in the expert elicitation studies was noted at a Council meeting. Later, this member attended at least two meetings where the Health Effects Subcommittee charge included interpretation and presentation of the results of the pilot expert elicitation study for the section 812 cost-benefit analysis. The meeting minutes did not record any recusals from the member. We found no indication in the SAB case file that the SAB Staff Office identified this as a potential independence issue. In our view, this member indirectly participated in the work product being reviewed based on his significant consultation during its development. We concluded that such participation does not meet the definition of an independent reviewer as described in the EPA's *Peer Review Handbook*.

Appearances of a Lack of Impartiality Not Identified or Adequately Resolved

The *Peer Review Handbook* states that, as a general rule, ". . . experts who have made public pronouncements or have had a predominant influence on the position for a given organization on an issue, those who have clearly "taken sides," may have an appearance of a lack of impartiality." We reviewed two instances where experts had expressed public viewpoints on NAAQS standards but were appointed to serve on the CASAC or one of its panels.

- The requester questioned the appointment of a CASAC member who had co-authored an article[8] in 2006 opposing the EPA's PM standard and was later appointed chair of the PM review panel. This member's case file

[8] William N. Rom and Jonathan M. Samet, "Small Particles with Big Effects," 173 Am. J. Resp. & Crit. Care Med. 365, 366 (2006).

included a bibliography of publications that included the article in question. However, the member did not list this article in section 6 of the disclosure forms we reviewed, and the EPA's notes to the file did not include any discussion regarding this article. The article made the following conclusion about the PM standard:

> In the face of the extensive evidence on PM and health and the strong mandate of the Clean Air Act for public health protection, the PM NAAQS proposed by Administrator Johnson appear lax. Based on the same evidence, the American Thoracic Society and other health organizations have recommended 12 and 25 $\mu g/m^3$ for the average annual and 24-h $PM_{2.5}$ standards, respectively. The proposed, less stringent standard does not protect the nation's health, as required by the Clean Air Act.

In our view, the above statement presents an appearance of a lack of impartiality based on guidance in the *Peer Review Handbook*. This guidance states that, generally, experts who have made a public pronouncement on an issue should be avoided. This expert served as a consultant on the PM review panel that advised the Administrator on the 2006 proposed and final PM standard. This expert was later appointed to the CASAC and the next 5-year PM review panel in 2007. While public statements expressing an opinion would not automatically disqualify a member, we believe that the SAB Staff Office, if aware of this article, should have prepared a written determination justifying the selection.

We noted that the case file did include documentation of the SAB Staff Office's resolution of potential concerns with respect to an article the expert had co-authored in 2004. According to notes in the case file, the SAB Staff Office intended to remind the expert to list such articles in section 6 of his disclosure form.

- In the remaining instance, a nitrogen oxide/sulfur oxide review panel member reported on his disclosure form that he had made statements at scientific meetings and in classrooms that the body of epidemiological evidence warranted consideration of a lower nitrogen oxide standard. The SAB Staff Office initially flagged this as a potential appearance of a lack of impartiality. However, the Staff Office later noted in the case file that there was not an appearance of a lack of impartiality since the member stated that he had not made these statements while serving on the panel during the past year. Guidance in the EPA's *Peer Review Handbook* does not limit statements that could create the appearance of a lack of impartiality to those only made while serving on a panel. In our view, refraining from making public statements on a topic while on the panel does not mitigate any appearances created by making public statements prior to an expert's appointment to the panel.

SAB Staff Office Does Not Treat Viewpoints Expressed as Part of Committee Functions as Appearance of a Lack of Impartiality

The requester raised concerns about two letters from CASAC members to the EPA Administrator. These letters encouraged the EPA Administrator to set the NAAQS at the levels CASAC had recommended following its review of the supporting technical documents and proposed standards. Many of the members who signed these letters were later re-appointed to the CASAC review panels that convened for the next 5-year NAAQS review cycle. The requestor expressed concerns that these members had an appearance of a lack of impartiality based on their publicly expressed viewpoints.

The SAB Staff Office director told us that her office distinguishes between viewpoints expressed outside of the FAC's activities and those expressed as part of the FAC's chartered function to provide advice to the Administrator. She considered these letters to be a normal part of the FAC's advice function and did not consider the viewpoints expressed to be appearances of a lack of impartiality that would affect the member's future service. However, she noted that if a panel member were to express a personal viewpoint outside of the FAC process, this could potentially present the appearance of a lack of impartiality. For opinions voiced outside of the member's FAC duties, the director told us that an expert must advocate a specific NAAQS level for the SAB Staff Office to consider it a viewpoint that would present the appearance of a lack of impartiality. According to the agency's alternate agency ethics official, she would instruct the CASAC after they have made their final communications to the Administrator to make any further communications through the DFO.

Procedures for Addressing and Documenting Resolution of Concerns Raised During Disclosure Form Reviews Could be Strengthened

The SAB Staff Office procedures include documenting any relevant correspondence between the file reviewer and the active or potential member regarding ethics questions. Further, these procedures state that the DFO should start each meeting by stating for the record that all participating panel members are in compliance with ethics and conflict of interest rules. If not, the DFO should note any instances where a member will recuse him/herself from discussion on a particular aspect of the meeting.

SAB Staff Office procedures do not address making written determinations when members with ethical concerns are allowed to serve. The EPA's *Peer Review Handbook* states that written determination should be made when SGEs with the appearance of a lack of impartiality are allowed to serve on FACs. Further, EPA Order 1000.28.A, *Duties of EPA Ethics Officials*, states that DEOs are authorized to:

> When informed by an employee of an impartiality issue under 5 CFR Part 2635, Subpart E, or when requested by the employee's supervisor or other person responsible for the employee's assignment, make determinations as to whether a reasonable person would be likely to question the employee's impartiality in a particular matter. If impartiality is likely to be questioned, determine whether the employee should be allowed to participate in the matter, and if so, authorize participation in writing [5 CFR § 2635.502(c) and (d)].

In general, the files we reviewed contained handwritten notes, typed notes to the file, emails, or other documentation pertaining to concerns that arose during the review. However, in some cases the files did not contain the SAB Staff Office's final determination explaining how potential issues they identified were resolved. We needed additional oral explanation from SAB staff to ascertain how the Staff Office resolved these cases and the reasoning behind those determinations. Further, the meeting minutes we reviewed did not contain a record of the DFO's statements on recusals when the SAB Staff Office had recommended recusals.

Conclusions

The SAB Staff Office has adequate procedures for identifying independence and impartiality concerns. However, SAB's final determinations and evidence that mitigating measures were implemented were not always documented in the files we reviewed. Such documentation will better ensure that the FAC process is transparent and the advice from FACs is impartial. When experts with independence or impartiality concerns are allowed to serve on FACs without sufficient written justification it can potentially undermine the credibility of: (1) the FAC's advice, (2) the agency's scientific and technical documents, and (3) the corresponding regulations issued by the agency.

Recommendations

We recommend that the director, Science Advisory Board Staff Office:

2. Develop procedures to adequately document the resolution of ethical concerns. This should include:

    a. Preparing written determinations as to why members with independence concerns or the appearance of a lack of impartiality are allowed to serve on FACs, subcommittees and panels, including any steps recommended for mitigating these concerns or appearances.

    b. Documenting that all recommended steps for mitigating independence concerns, such as recusals from certain meetings, are implemented.

We recommend that the EPA designated agency ethics official:

3. Periodically review the SAB Staff Office's resolution of independence concerns and appearances of a lack of impartiality, including the sufficiency of recordkeeping documentation, and recommend corrective actions to the SAB Staff Office as appropriate.

We recommend that the director, Science Advisory Board Staff Office:

4. Develop a framework to guide decisions regarding public pronouncements made by current or prospective FAC members related to topics under consideration by the FAC.

Agency Comments and OIG Evaluation

The agency agreed with recommendations 2 and 3, and provided a corrective action plan and milestones that meet the intent of these recommendations. The agency did not agree with recommendation 4 and offered an alternative corrective action. The agency responded that public pronouncements did not fall under the purview of federal ethics regulations since they were not "covered relationships" and that the SAB typically deals with matters of general applicability, not "specific party" matters. We interpreted 5 CFR Part 2635.502(a)(2), which addresses impartiality concerns that may arise under other circumstances not described in that section, as potentially applying to particular matters of general applicability. However, we believe the SAB Staff Office's proposal to develop a framework to guide decisions regarding public pronouncements by current or prospective FAC members will be an appropriate management control. As such, the agency's proposed alternative action meets the intent of the draft report's recommendation. Thus, we revised our recommendation to reflect the agency's proposed alternative corrective action. All three recommendations are resolved and open pending the agency's completion of the agreed-to corrective actions.

Chapter 4
Membership Tenure

The EPA's policy on tenure generally limits FAC members to 6 years of service, with any service over 6 years based on written justification from the program office and approval by the Administrator or Deputy Administrator. The EPA generally followed this policy in its management of the CASAC and Council. In three instances prior to 2010, EPA approved FAC chairs to serve more than 6 years based on written justification submitted to the Administrator. Beginning in FY 2010 under former Administrator Jackson's term (2009-2013), the EPA has more strictly limited the granting of extensions for service more than 6 years.

The EPA's policy on tenure does not apply to review panel or subcommittee memberships. From FYs 1998 through 2012, 36 percent of all CASAC members/consultants served more than 6 years as a charter CASAC member or review panel consultant. During the same period, 12 percent of all Council members/consultants served more than 6 years as a Council charter member, or review panel or subcommittee consultant. By not applying its membership policy to review panels and subcommittees, the EPA may be not be achieving the policy's intent of providing fresh perspectives to its FACs.

The EPA's Policy Limits Committee Terms to 6 Years

Title 41 CFR Section 102-3.130(a), regarding policies that apply to the appointment and compensation or reimbursement of advisory committee members, staff, experts and consultants, states that:

> Unless otherwise provided by statue, Presidential directive, or other establishment authority, advisory committee members serve at the pleasure of the appointing or inviting authority. Membership terms are at the sole discretion of the appointing or inviting authority.

As noted in the EPA's 2003 Federal Advisory Committee Handbook membership terms should be no longer than 6 years to provide fresh perspectives on the FAC. The Handbook notes the deputy administrator may grant appointments beyond the 6-year limit if the program office provides adequate justification as to why the office cannot find an appropriate replacement. In the case of the CASAC and Council, appointments are made by the Administrator, who may grant (and has granted) appointments beyond the 6-year limit if the SAB Staff Office provides adequate justification for the extension.

According to the former SAB Staff Office director and staff in the EPA's OFACMO, since 2010 former Administrator Jackson more strictly limited FAC

service to no longer than 6 years. OFACMO noted that Administrator Jackson granted some extensions but only in exceptional circumstances based on a detailed written justification. The EPA's 2012 revised Handbook reiterated the 6-year limit and clarified that members should be appointed for no longer than a total of 6 years (typically in 2- or 3-year terms), with an extension limited to 1-year upon approval of a detailed written justification.

The EPA applies its term policy only to FAC charter members and not to SGEs who serve on panels or subcommittees that supplement the charter FAC. The SAB Staff Office director noted that the consultants on the CASAC review panel are not voting members. Further, these panels often meet over a period of several years. Thus, the time spent in service on one NAAQS review panel could last approximately 6 years. The director also noted that the Staff Office's practice is to replace about two-thirds of the members on subsequent panels. In their view, subsequent panels benefit from the experience and working knowledge provided by having some of the previous panel members serve on the next panel.

The EPA Followed Its Policy on Tenure

The EPA generally applied its policy of limiting terms of service. We reviewed the length of service for all CASAC and Council members who served from FYs 1998 through 2012. Only three members served more than 6 years (one CASAC and two Council committee members). In all three instances written justifications were provided for the members' extended service. These three FAC members' length of service ranged from 7 to 10 years. Figure 1 (see next page) shows the percentage of CASAC and Council charter members who served more than 6 years from FYs 1998 through 2012.

Many Members Served More than 6 Years If Service on Review Panels Were Considered

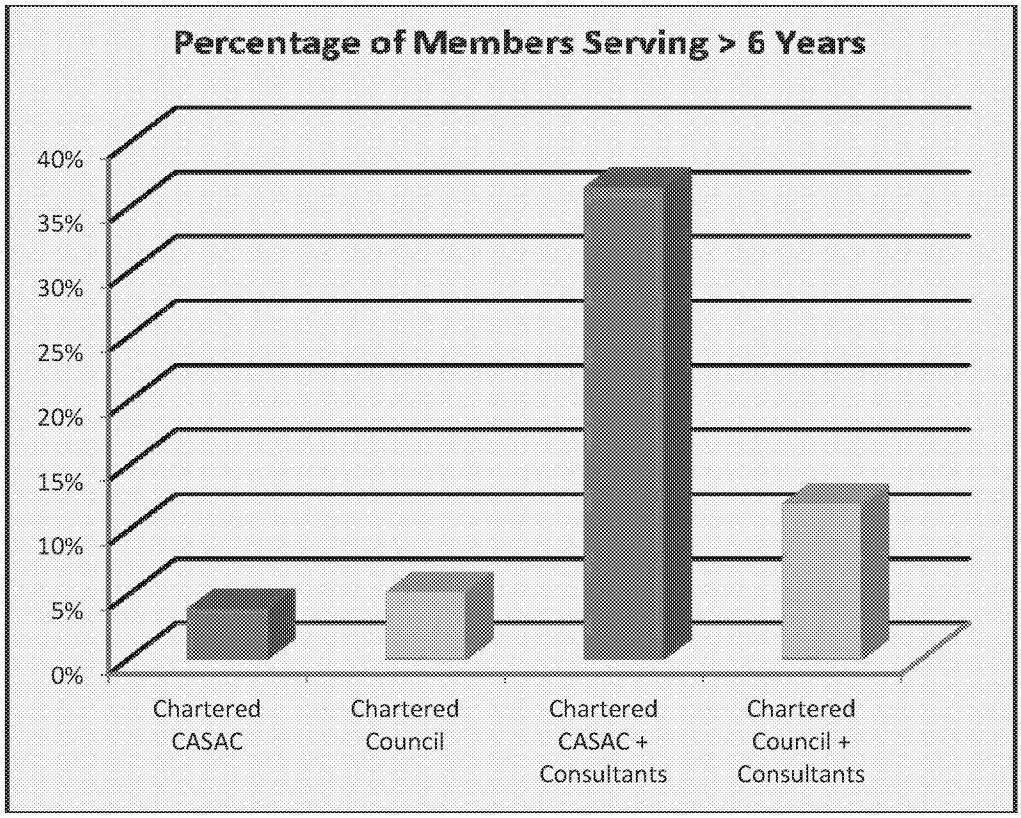
The EPA augmented both the CASAC and Council with review panels and subcommittees comprised of consultants that provided technical advice on important matters under consideration by the FAC. While not voting members of the FAC, these consultants could influence the FAC's advice with their input. Therefore, we applied the 6-year term limit to all types of FAC and consultant services starting in 1998, including service on chartered FACs, subcommittees and review panels. If time served as a charter FAC member and review panel consultant or subcommittee member were combined, the percentage of experts exceeding 6-year terms is greater than the percentage for charter members only.

During FYs 1998 through 2012, the CASAC had 74 members either serve as one of the seven chartered FAC members or as an expert consultant on a NAAQS review panel. When this combined service is considered, 27 of 74 members (or 36 percent of CASAC members) served more than 6 years. Of the 27 CASAC members/consultants who served more than 6 years, the years of service as a

member and/or consultant ranged from 7 years (12 members/consultants) to 15 years (one member/consultant).

During FYs 1998 through 2012, the Council had 67 members serving either directly on the FAC, on a related subcommittee, or as a consultant. When this combined service is considered, eight members (or 12 percent of Council members) served more than the 6 years. Of the eight members who served more than 6 years, the years of service ranged from 7 years (six members) to 10 years (one member). Figure 1 shows the percentage of all CASAC- and Council-related members with length of service of more than 6 years.

Figure 1: Percentage of CASAC and Council members serving more than 6 years, FY 1998-FY 2012.



Source: OIG analysis of CASAC and Council membership lists.

Conclusions

Neither the FACA nor its implementing regulations prescribe membership term limits for FAC members. However, the EPA has established a policy on membership terms to help provide fresh perspectives on FACs. The EPA's policy applies only to charter FAC members and not expert consultants who serve on review panels or members selected to serve on subcommittees. In particular, the CASAC review panelists provide significant input regarding the EPA's criteria

and standards for ambient air quality. Our analysis indicated the SAB Staff Office was achieving its goal of about two-thirds turnover on its NAAQS review panels. This turnover ratio is intended to balance the need for fresh perspectives versus maintaining continuity and experience.

Chapter 5
Committee Balance

In general, we found that the CASAC and Council were balanced with respect to the primary functions of the FACs and the required scientific "points of view." The FACA and its implementing regulations require FACs to be fairly balanced but allow agencies discretion in how they achieve balance. The EPA's guidance instructs DFOs to describe the agency's plan to attain fairly balanced membership for their FACs and to prepare membership grids showing proposed members' qualifications and background. The SAB Staff Office prepared membership grids for the CASAC and Council. The Staff Office also described the factors that it considered for selecting members in Federal Register notices announcing opportunities for the public to nominate members. SAB Staff Office management and staff told us that their primary concern in achieving balance for the CASAC and Council was ensuring that the members have the necessary range of technical expertise. With the EPA's release of its updated FAC Handbook in March 2012, the EPA added steps to its FAC membership selection process to help achieve FAC balance. In our view, this new process will provide additional assurance that balance is achieved on these FACs.

FACs Should Be Fairly Balanced in Terms of Viewpoints Represented and Functions Performed

FACA requires that the membership of FACs be "fairly balanced in terms of the points of view represented and the functions to be performed by the advisory committee." In the preamble to the 2001 FACA Final Rule, the GSA stated it believed FACA's provisions were broad enough to allow agency discretion in achieving membership balance. However, the rule included a list of possible considerations for agencies in developing a plan for achieving balance. These include the:

- Committee's mission.
- Geographic, ethnic, social, economic or scientific impact of the committee's recommendations.
- Specific perspectives required, such as those of consumers, technical experts, the public at-large, academia, business or other sectors.
- Need to obtain divergent points of view on the issues before the committee.
- Relevance of state, local and tribal governments to the development of the advisory committee's recommendations.

Title 41 CFR Part 102-3.60 requires agencies to describe their plans for achieving balance on discretionary FACs. These plans are not required for non-discretionary

FACs such as the CASAC and Council. However, GSA guidance[9] issued in 2011 "strongly recommended" these plans for non-discretionary FACs as well.

The EPA's FAC Handbook (prior and current versions) incorporates FACA requirements on balance and describes the EPA's procedures for ensuring this requirement is met. The EPA's Handbook requires that the justification statements that accompany a request to charter or renew a charter for both discretionary and non-discretionary FACs describe plans for achieving balance. The Handbook lists general guidelines to consider in achieving balance. The 2012 updated FAC Handbook incorporated an additional consideration for members with experience with issues of concern to low-income, rural, urban, medically underserved, sensitive/vulnerable, or disproportionately impacted community populations, and whether that experience would be useful.

The membership grid is a key tool prepared by the EPA as part of the annual membership process. The EPA uses the membership grid to review and ensure balance. For each FAC, the DFO must create a membership grid that provides a snapshot of the FAC makeup, including both current members and proposed candidates for membership. The membership grid is part of the overall membership package, which is submitted to the Administrator for approval.

Both the CASAC and Council are statutorily mandated FACs with specific membership requirements mandated by the CAA. The CASAC's seven members must include at least one physician, one member of the National Academy of Sciences, and one person representing state air pollution control agencies. The Council must have at least nine members and include recognized experts in the fields of health and the environmental effects of air pollution, economic analysis, environmental sciences and such other fields the Administrator deems appropriate.

Preparation of Balance Plans Could Provide More Transparency to Efforts to Achieve Balanced CASAC and Council Committees

In general, we found the CASAC and Council were balanced with respect to the primary functions of the FACs and the required scientific "points of view." We noted that prior to 2011, the justification packages for these FACs did not describe the plan for attaining balanced membership. However, in Federal Register notices announcing opportunities for the public to nominate members for service on the Council and CASAC, the SAB Staff Office described factors it considers when selecting FAC members. These factors included relevant scientific perspectives, which, among other factors can be influenced by work history and affiliation.[10] As part of the annual membership process, the SAB Staff

[9] FAC Membership Balance Plan, GSA Committee Management Secretariat, Office of Committee and Regulatory Management, January 2011.
[10] See e.g., 69 Fed. Reg. 33,900-01 (June 17, 2004).

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Office prepared membership grids for the CASAC and Council which summarized the proposed FAC membership in terms of members' expertise, affiliation category (e.g., academic, state, private sector, nongovernmental organization), and geographic location (state). The SAB Staff Office used a similar process in forming panels that work under the auspices of the chartered FACs.

SAB Staff Office DFOs told us they address balance from the standpoint of scientific and technical expertise. If a potential or current member were to express a public opinion on matters before the FAC, this might create an appearance of a lack of impartiality. One DFO told us the SAB Staff Office would address such a concern specifically with that individual, not by balancing the panel with an opposing point of view.

New Agency Procedures Designed to Improve Diversity and Balance

In March 2012, the EPA updated its FAC Management Handbook and incorporated new procedures for achieving diversity and balance on the EPA's FACs. The updated Handbook:

- Added a consideration for whether members with experience with issues of concern to low-income, rural, urban, medically underserved, sensitive/vulnerable populations, or communities experiencing disproportionate environmental or public health burdens, could be useful on the FAC.

- Requires an outreach plan for obtaining a diverse pool of nominees. The plan must be submitted to the EPA's OFACMO for review and concurrence. The outreach plan should describe in detail how the DFO intends to solicit a diverse set of nominees, including women and minorities. For example, it should explain the specific forms of public solicitation the DFO plans to use and the organizations and academic institutions the DFO plans to contact.

The SAB Staff Office developed an outreach plan for the April 2012 CASAC charter renewal. Further, the SAB Staff Office developed a draft outreach plan for the April 2013 Council charter renewal. The balance plan for CASAC and the Council, prepared to support charter renewal, describes the plan for ensuring that the committees are balanced in terms of scientific points of view (including statutory requirements for membership). The Outreach Plan, developed to support the annual membership process, is designed to ensure that membership recommendations draw upon a "diverse set of nominees, including women and minorities." While there is overlap between the goals of diversity and balance, they are not synonymous.

Conclusions

Agencies have discretion in determining how balance is achieved on their FACs. In requiring descriptions of plans to achieve balance for non-discretionary FACs, the EPA has established procedures for balance that go beyond the minimum requirements established by the regulations. Preparing membership balance plans and implementing outreach plans as described in the EPA's updated FAC Handbook should make the selection process more transparent and help ensure that balance is achieved on the CASAC and Council.

Chapter 6
Peer Review

In addition to assessing the EPA's management of CASAC and the Council, we reviewed the EPA's conformity with OMB and the EPA's peer review policies and guidance with respect to three National Center for Environmental Assessment analyses supporting NAAQS revisions. All three analyses were conducted in conjunction with and included in larger assessment documents that synthesized numerous studies and analyses. These assessment documents underwent formal peer review by the CASAC. The requester questioned whether CASAC review of assessment documents sufficed for the rigor and specificity of a separate peer review of each individual analysis.

We determined that two of the three analyses were sufficiently peer reviewed before the EPA publicly disseminated them by placing them in the rulemaking docket. However, one of the NCEA analyses containing influential scientific information—a re-analysis of data from an ozone health effects study—was not peer-reviewed in accordance with OMB and the EPA's guidance. OMB and the EPA's guidance call for all ISI to be peer reviewed before public dissemination. However, NCEA did not have a formal process for determining whether individual analyses and work products met the definition of ISI. Thus, NCEA did not subject its ozone data re-analysis to peer review before disseminating it in support of the ozone NAAQS. The analysis was later peer reviewed and published in a journal article. This peer review did not alter the conclusions of the analysis as presented in the EPA documents. Thus, the lack of peer review prior to public dissemination did not appear to affect the ozone NAAQS rulemaking. Nonetheless, proper peer review of the EPA's internal analyses before dissemination to the public is an important tool for ensuring the quality and integrity of the agency's scientific information.

Federal and Agency Guidance Require Peer Review of Influential Scientific Information Before Public Dissemination

Peer review involves the review of a draft product for quality by specialists in the field who were not involved in producing the draft. OMB's *Final Information Quality Bulletin for Peer Review* establishes government-wide guidance for peer review of government science documents. The OMB bulletin requires each agency to subject ISI to peer review prior to dissemination. It defines ISI as "scientific information the agency reasonably can determine will have or does have a clear and substantial impact on important public policies or private sector decisions." The OMB bulletin provides agencies broad discretion in determining the type of peer review and the procedures used to select reviewers.

The EPA's *Peer Review Handbook* (3rd Edition) incorporates the provisions of the OMB bulletin and outlines the agency's policy, procedures and processes for peer review. Consistent with OMB guidelines, the EPA's *Peer Review Handbook* states that "[t]he principle underlying the Peer Review Policy is that all influential scientific and technical work products used in decision making will be peer reviewed" (underlining in original). However, it cites exceptions to this principle. One of these exceptions states that peer review is not necessary for ISI if an application of an adequately peer reviewed work product does not depart significantly from its scientific or technical approach.

The EPA's *Peer Review Handbook* states that, generally, determinations as to whether a work product is "influential" will occur on a case-by-case basis. The agency decision maker should determine whether a work product is ISI. The applicable assistant administrator or regional administrator is the ultimate agency decision maker and is accountable for the decisions regarding the identification of ISI, and the mechanisms of peer review used for these work products. The assistant administrator or regional administrator may designate office directors or division directors as the front-line decision maker.

NCEA's Review of One Analysis Did Not Adhere to OMB Requirements and EPA Peer Review Guidance for Influential Scientific Information

We reviewed NCEA's compliance with OMB and the EPA's peer review guidance for three work products NCEA produced in support of ambient air quality standards for ozone, sulfur dioxide and nitrogen dioxide. EPA included parts of these three analyses in larger assessment documents that the CASAC peer reviewed. These three NCEA work products were:

1. A reanalysis of data from a previously published clinical study on the effects of human exposure to ozone (ozone reanalysis).
2. An analysis of the results of earlier human clinical studies on the effects of human exposure to SO_2 (SO_2 analysis).
3. An update to a previously published meta-analysis on the effects of human exposure to NO_2 (updated NO_2 meta-analysis).

In our view, all three analyses fit the description of ISI. However, NCEA did not have its ozone reanalysis peer reviewed before it was disseminated to the public. As such, the EPA did not adhere to OMB and EPA peer review guidance for this particular analysis. The SO_2 analysis was sufficiently peer reviewed. The updated NO_2 meta-analysis primarily updated and re-presented previously peer reviewed information, and thus was not required to be peer reviewed again per the EPA's guidance. Details concerning the development, dissemination and peer review of each of the three analyses follow.

2007 Ozone Reanalysis

In response to a CASAC comment on the second draft of the 2006 ozone air quality criteria document, NCEA decided to include the results of a recent human exposure study (Adams study)[11] in the final air quality criteria document. According to NCEA staff, in reviewing the Adams study they observed certain traits in the study's data which caused them to question whether the data would show statistically significant effects of ozone exposure at less than 0.08 parts per million. In reviewing the final air quality criteria document, one CASAC member also questioned whether additional statistical analysis of the data would show statistically significant effects at ozone levels below 0.08 ppm. These observations led NCEA to re-analyze the Adams study data using a different statistical approach. NCEA concluded that there was a statistically significant effect of ozone at 0.06 ppm as compared to filtered clean air (0.00 ppm). NCEA placed the results of its reanalysis[12] in the ozone rulemaking docket in June 2007 without having it peer reviewed.

NCEA's 2007 ozone reanalysis met the definition of ISI. The Adams study was the first such study to present human exposure data at ozone levels below 0.08 ppm. At that time, the level of the ozone standard was 0.08 ppm averaged over 8 hours. NCEA's reanalysis concluded that ozone effects occurred at levels below 0.08 ppm. Thus, NCEA reasonably could determine that its reanalysis would have an impact on the 2008 NAAQS ozone rulemaking process.

At a technical conference in December 2006, NCEA made a presentation on the health effects of exposure to air pollutants. This presentation included NCEA's initial ozone analysis illustrating the distribution of effects for individuals and group mean estimates at levels below 0.08 ppm. In January 2007, NCEA staff discussed the ozone reanalysis with the EPA's OAQPS. OAQPS asked NCEA if it could include the ozone reanalysis in the OAQPS staff paper for the 2008 NAAQS ozone rulemaking. However, NCEA did not want to do so at that time because staff believed it might constitute new analysis that had not been peer reviewed. Thus, OAQPS only presented NCEA's general observations about the Adams study in the staff paper and not the detailed statistical analysis. NCEA had the reanalysis internally reviewed by EPA scientists and addressed public comments received at a March 2007 CASAC meeting. In NCEA's view, it was appropriate to include the reanalysis after these internal reviews. Thus, they entered the reanalysis into the rulemaking docket in June 2007.

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[11] Dr. William Adams, *Comparison of Chamber 6.6-h Exposures to 0.04–0.08 PPM Ozone via Square-wave and Triangular Profiles on Pulmonary Responses*, Inhalation Toxicology, February 2006.
[12] Dr. James Brown, *The effects of ozone on lung function at 0.06 ppm in healthy adults*, EPA memorandum, June 14, 2007.

NCEA's 2007 ozone reanalysis was published in an August 2008 peer reviewed journal article.[13] However, this peer review was after NCEA disseminated its reanalysis in the June 2007 memorandum.

2008 SO_2 Analysis

In 2007, in support of the SO_2 NAAQS review, NCEA began working on a draft analysis of SO_2 human exposure data from studies conducted in the 1980s and 1990s. This draft analysis was circulated to CASAC in December 2007, and CASAC encouraged NCEA to proceed with the analysis. NCEA's SO_2 analysis was included in the EPA's second draft integrated science assessment[14] for sulfur oxides in 2008. NCEA concluded that human responses to SO_2 concentrations increased as exposures to SO_2 increased and that more pronounced effects were observed at lower concentrations among SO_2-sensitive asthmatics. As part of the normal NAAQS review process, CASAC peer reviewed the draft integrated science assessments. Prior to submitting the second draft ISA to CASAC for peer review, the EPA formally requested the CASAC to review its analyses of data from human clinical studies. We reviewed the CASAC comments on the SO_2 analysis and, in our view, this review fulfilled OMB and EPA peer review requirements.

After the SO_2 NAAQS final rule was issued, NCEA's SO_2 analysis was again peer reviewed and published in a December 2010 journal article.[15]

2008 NO_2 Meta-Analysis

During a May 1, 2008, CASAC meeting (one of several held for the 5-year review of the nitrogen dioxide NAAQS), NCEA and CASAC discussed a 1992 NO_2 meta-analysis[16] of 19 studies of individuals with asthma included in the 1993 criteria document. CASAC recommended that NCEA present this data in the current NO_2 ISA. Before including the 1992 meta-analysis in the ISA, NCEA removed one study from the analysis[17] and added a recent study that it considered to be of a similar nature to the other studies. NCEA also added a concentration range (i.e., 0.1 ppm) to its presentation that was not included in the original 1992 meta-analysis. NCEA's conclusions on the effects of NO_2 exposure were essentially the same in its 2008 update as those from the 1992 meta-analysis.

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[13] Dr. James Brown et al., *Effects of Exposure to 0.06 ppm Ozone on FEV in Humans: A Secondary Analysis of Existing Data,"* Environmental Health Perspectives, August 2008.

[14] *Integrated Science Assessment for Sulfur Oxides – Health Criteria (Second External Review Draft)*, Table 3-1 and related text, May 2008.

[15] Dr. Douglas Johns et al., *Analysis of the concentration-respiratory response among asthmatics following controlled short-term exposures to sulfur dioxide,* Inhalation Toxicology, December 2010.

[16] Dr. Lawrence J. Folinsbee, *Does Nitrogen Dioxide Exposure Increase Airways Responsiveness?,* Toxicology and Industrial Health, Vol. 8, No. 5, 1992.

[17] According to NCEA, one study in the 1992 meta-analysis was based on a specific exposure while all the others were based on non-specific exposures. Thus, in NCEA's view, this one study should not be included in the 2008 analysis.

An NCEA branch chief told us that the updated NO_2 meta-analysis was not submitted for publication because the revisions made to the original NO_2 meta-analyses were not a new analysis that would merit publication in a journal. Further, she said all of the information about the revisions to the original meta-analysis was included in the ISA so a separate memorandum was not necessary. Both the original 1992 meta-analysis and NCEA's 2008 update of that meta-analysis were ISI. However, the 2008 updated meta-analysis did not require peer review. The EPA's *Peer Review Handbook* notes that peer review is not necessary for ISI if it is an application of an adequately peer reviewed work product that does not depart significantly from its scientific or technical approach. In our view, NCEA's 2008 update did not depart significantly from the original 1992 meta-analysis. Further, it was an acceptable application of an adequately peer reviewed work product. NCEA essentially re-presented the results of the original meta-analysis. Moreover, the conclusions about the health effects of NO_2 exposure did not change. On July 17, 2012, the U.S. Court of Appeals for the District of Columbia upheld the EPA's final NO_2 rule and reached a similar conclusion regarding the 2008 meta-analysis. The court noted that the EPA's meta-analysis "merely updated" the original Folinsbee meta-analysis.[18]

NCEA Did Not Have a Process for Determining Whether Internal Analyses Were Influential Scientific Information

According to an NCEA branch chief, NCEA does not have a process for determining whether internal NCEA analyses are "influential" and does not make "influential calls" on such documents. She said NCEA focuses on determining which internal analyses are most relevant to the larger assessment documents that are peer reviewed by CASAC. She said that it would be impossible to have every internal analysis peer reviewed due to time constraints. She also said that NCEA does not ask CASAC to peer review each individual analysis.

We reviewed NCEA emails and found no evidence of an NCEA process for determining whether a work product is influential. However, a January 2007 email showed that some NCEA staff were concerned about sending the ozone reanalysis to the docket without having the individual analysis peer reviewed. In the email, NCEA staff did not discuss whether the work product was ISI or whether peer review was required to meet OMB and EPA guidance. In our view, the lack of a process to assess whether internal analyses are ISI is a weakness in NCEA's management controls. This lack of control allowed the 2007 ozone reanalysis to be included without peer review and without clear accountability for the decision to proceed even though internally staff had some concerns.

[18] *American Petroleum Inst. v. EPA*, 684 F.3d 1342, 1349 (D.C. Cir. 2012), *rehearing en banc denied* (D.C. Cir. Sept. 24, 2012), *cert. denied*, 133 S. Ct. 1724 (April 2013).

Subsequent Peer Review Did Not Alter Overall Conclusions of NCEA's Ozone Reanalysis

The ozone reanalysis was published in a peer reviewed journal article after the EPA publicly disseminated it. However, the peer review did not result in significant changes to the journal manuscript. Many of the peer review comments for the ozone reanalysis were editorial and required only small revisions to the text. One peer reviewer commented that the authors (including two NCEA staff members) could have more clearly described their analysis and suggested that the authors include a more rigorous defense of their analytical strategy. The authors cited text that described and defended the analysis, and did not significantly change the manuscript. The external peer reviewers' comments did not materially alter NCEA's original results or conclusions as they were presented in the EPA's documents supporting the revised NAAQS for ozone.

Conclusions

NCEA did not have a process to determine whether internal analyses were ISI and to document its decision regarding the need for peer review. Such a process would provide accountability for decisions about the need for peer review and help assure that NCEA complies with OMB and EPA peer review guidance. In the absence of a formal process to determine whether a work product is influential, NCEA is at risk of including ISI in broader assessment documents for public dissemination without the requisite peer review.

Recommendation

We recommend that the assistant administrator for the Office of Research and Development:

5. Direct NCEA to implement a process to review NCEA scientific analyses that support the EPA's rulemakings and determine the appropriate type of peer review for these work products. This process should:

    a. Determine and document whether such analyses are influential scientific information.

    b. Document the rationale for the type of peer review chosen for ISI, including any decision not to have such analyses externally peer reviewed before they are publicly disseminated.

Agency Comments and OIG Evaluation

The agency agreed with our recommendation and provided a corrective action plan that meets the intent of the recommendation. The recommendation is resolved and open pending the agency's completion of the agreed-to corrective action.

Status of Recommendations and Potential Monetary Benefits

RECOMMENDATIONS						POTENTIAL MONETARY BENEFITS (in $000s)	
Rec. No.	Page No.	Subject	Status[1]	Action Official	Planned Completion Date	Claimed Amount	Agreed-To Amount
1	10	Instruct DEOs and assistant DEOs on the proper process for handling potential conflicts of interests for SGEs, including the process for implementing any applicable steps to remedy the conflicts of interest.	C	Designated Agency Ethics Official	8/14/13		
2	19	Develop procedures to adequately document the resolution of ethical concerns. This should include: a. Preparing written determinations as to why members with independence concerns or the appearance of a lack of impartiality are allowed to serve on FACs, subcommittees and panels, including any steps recommended for mitigating these concerns or appearances. b. Documenting that all recommended steps for mitigating independence concerns, such as recusals from certain meetings, are implemented.	O	Director, Science Advisory Board Staff Office	9/30/13		
3	20	Periodically review the SAB Staff Office's resolution of independence concerns and appearances of a lack of impartiality, including the sufficiency of recordkeeping documentation, and recommend corrective actions to the SAB Staff Office as appropriate.	O	Designated Agency Ethics Official	9/30/13		
4	20	Develop a framework to guide decisions regarding public pronouncements made by current or prospective FAC members related to topics under consideration by the FAC.	O	Director, Science Advisory Board Staff Office	12/31/14		
5	34	Direct NCEA to implement a process to review NCEA scientific analyses that support the EPA's rulemakings and determine the appropriate type of peer review for these work products. This process should: a. Determine and document whether such analyses are influential scientific information. b. Document the rationale for the type of peer review chosen for ISI, including any decision not to have such analyses externally peer reviewed before they are publicly disseminated.	O	Assistant Administrator, Office of Research and Development	9/30/13		

[1] O = recommendation is open with agreed-to corrective actions pending
C = recommendation is closed with all agreed-to actions completed
U = recommendation is unresolved with resolution efforts in progress

EPA Response to Draft Report

July 22, 2013

MEMORANDUM

SUBJECT: Response to Office of Inspector General Draft Report No. OPE-FY12-0001 *Response to Congressional Request on the EPA's Management of Clean Air Federal Advisory Committees*, dated June 17, 2013

FROM: Lek G. Kadeli, Principal Deputy Assistant Administrator
Office of Research and Development (ORD)

Brenda Mallory, Acting General Counsel
Office of General Counsel (OGC)

Christopher Zarba, Acting Director
Science Advisory Board (SAB) Staff Office

TO: Arthur A. Elkins, Jr., Inspector General
Office of Inspector General (OIG)

Thank you for the opportunity to respond to the OIG draft report titled, *Response to Congressional Request on the EPA's Management of Clean Air Federal Advisory Committees*. We have provided a summary of the agency's overall position and our response to the OIG's recommendations. For the one recommendation with which the agency does not agree, we have provided the legal basis and a proposed alternative to the given recommendation. For your consideration, we have included our technical comments as attachments to supplement this response.

AGENCY'S OVERALL POSITION

The EPA appreciates the opportunity to comment on this report and in general agrees with the OIG's recommendations. For findings and recommendations related to the Office of General Counsel, we have provided clarifying information about the identity and parameters of the position that oversees the agency's ethics program.

AGENCY'S RESPONSE TO REPORT RECOMMENDATIONS

Agreements

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by- Quarter and FY
1	Designated Agency Ethics Official (DAEO)[i] to instruct deputy ethics officials and assistant deputy ethics officials on the proper process for handling potential conflicts of interest for SGEs, including the process for implementing any applicable steps to mitigate the conflicts of interest.	DAEO will review reference material already available from OGC/Ethics and the Office of Government Ethics to ascertain whether any additional SGE-specific guidance is necessary or warranted. OGC notes, however, that conflicts issues are necessarily fact-specific, so it may not be possible or prudent to issue blanket guidance.[19]	4th Quarter FY 2013
2	Develop procedures to sufficiently document the resolution of ethical concerns. This should include: a) Preparing written determinations as to why members with independence concerns or the appearance of a lack of impartiality are allowed to serve on FACs, subcommittees and panels, including any steps recommended for mitigating concerns or appearances. b) Documenting that all recommended steps for mitigating independence concerns, such as recusals from certain meetings, are implemented.	a) To enhance documentation of decisions on potential conflict of interest (COI) of experts serving on FACs, subcommittees and panels, the SAB Staff Office will document the nature of the issue and any remedies (e.g., divestiture, partial recusal) applied. If there is an issue of appearance of loss of impartiality but no statutory COI under 18 USC 208, the SAB Staff Office will document any decision to authorize participation. b) The SAB Staff Office will develop a standard opening statement for Designated Federal Officers to use at the beginning of all public meetings. The statement would note that all participating committee members/panelists are in compliance with ethics	4th Quarter FY 2013 4th Quarter FY 2013

[19] Subsequent to this action plan, the Senior Counsel for Ethics and Alternate Agency Ethics Official clarified the response to Recommendation 1 to note that she had already advised the SAB Director and selected staff about the proper process for handling conflicts of interest, and would instruct ethics officials across the Agency in her monthly meetings on August 13 and 14, 2013.

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by- Quarter and FY
		requirements and note any recusals for the record. The SAB Staff Office will ensure that meeting minutes accurately reflect these opening statements.	
3	Designated Agency Ethics Official (see endnote) to periodically review the SAB Staff Office's resolution of independence concerns and appearances of a lack of impartiality, including the sufficiency of recordkeeping documentation, and recommend corrective actions to the SAB Staff Office as appropriate.	Pursuant to 5 CFR § 2638.203, the DAEO is responsible for managing EPA's ethics program, including ensuring that financial disclosure reports are consistently reviewed and that records are kept, when appropriate, on advice rendered. OGC/Ethics has been working in closer coordination with the new SAB Acting Director and staff on an as-needed basis to ensure proper resolution of concerns, including additional consultation and instruction. The DAEO will ascertain whether any additional review beyond what is already occurring is warranted.	4th Quarter FY 2013
5	Direct NCEA to implement a process for reviewing NCEA scientific analyses that support the EPA's rulemakings to determine the appropriate type of peer review for these work products. This process should: a) Determine and document whether such analyses are influential scientific information. b) Document the rationale for the type of peer review chosen for ISI, including any decision not to have such analyses externally peer reviewed before they are publicly disseminated.	The Agency is in the process of revising the Peer Review Handbook. The new edition of the Handbook will emphasize the planning process and include procedures for creating a record-of-decision for the classification of a work product and the type of peer review planned for a work product. The National Center for Environmental Assessment (NCEA), within the Office of Research and Development, is in the process of addressing this recommendation by establishing a policy that includes the following steps. a) NCEA work products will be evaluated to determine whether they are ISI, in accordance with EPA's Peer Review Handbook, and the Division Director will document his or her	4th Quarter FY 2013

No.	Recommendation	High-Level Intended Corrective Action(s)	Estimated Completion by- Quarter and FY
		determination. b) NCEA will conduct a peer review for any work product that is determined to be ISI, in accordance with EPA's Peer Review Handbook, and NCEA will document the rationale for the type of peer review conducted.	

Disagreement

OIG Recommendation No. 4:

Designated Agency Ethics Official (see Endnote 1) to provide clarification or instruction to Deputy Ethics Officials for assessing whether public statements create an appearance of a lack of impartiality with respect to when the statements were made and the expert's role at the time of the statement.

Agency's Response:

Pursuant to 5 CFR § 2638.203, the DAEO is responsible for managing the Agency's ethics program, including ensuring that EPA employees adhere to the conflict of interest statutes set forth in Title 18 of the United States Code and to the Standards of Ethical Conduct for Employees of the Executive Branch, 5 CFR Part 2635. The Standards of Ethical Conduct include, at 5 CFR Part 2635, Subpart E, specific provisions for "Impartiality in Performing Official Duties."

The OIG recommendation falls outside the purview of federal ethics. These regulations set forth the standard that an employee is responsible, in the first instance, for identifying whether any of his "covered relationships" will cause a reasonable person with knowledge of the relevant facts to question his ability to carry out his official duties with respect to a specific party matter impartially. Typically, the SAB does not deal with "specific party" matters but rather with matters of general applicability. Further, a public statement does not fall within the "covered relationships" set forth at 5 CFR 2635.502, and therefore OGC ethics is not the responsible party overseeing these decisions.

From a policy perspective, however, when an individual has made public statements about a matter that will be considered by the advisory panel that may raise a concern about whether the individual has an open mind. The agency's current Peer Review Handbook recommends that staff avoid selecting people for a peer review if they have publicly expressed an opinion on the matter to be considered by the peer review The Handbook also acknowledges the challenge of selecting advisory committee members who have the requisite experience or technical expertise and who have not made public statements. For this reason, the Handbook allows EPA the discretion to decide to include members who have made public statements.

Alternative to Given Recommendation:

The SAB Staff Office will develop a framework to guide decisions regarding public statements.

Estimated Completion by Quarter and FY:

1st Quarter FY 2014

CONTACT INFORMATION

If you have any questions for OGC, please contact Justina Fugh, Senior Counsel for Ethics and Alternate Designated Agency Ethics Official at (202) 564-1786, or Daniel Fort, Ethics Officer, at (202) 202-564-2200. For questions regarding the SAB Staff Office component of this response, please contact Christopher Zarba, Acting Director at (202) 564-0760 or Angela Nugent, Special Assistant, Science Advisory Board Staff Office at (202) 564-2218. Finally, for questions to the EPA's Office of Research and Development, please contact Deborah Heckman at (202) 564-7274 or John Vandenberg at (919) 541-4527.

Attachments

A. Technical Comments from the Office of Federal Advisory Committee Management and Outreach
B. Technical Comments from the SAB Staff Office
C. Technical Comments from the ORD

ENDNOTE

[1] Please note that the General Counsel, a Presidentially appointed/Senate confirmed position, has neither a statutory nor regulatory role in EPA's ethics program. OGC/Ethics therefore assumes that the OIG intended to identify the Designated Agency Ethics Official as the correct action official. Brenda Mallory was designated by the Administrator pursuant to 5 CFR 2638.202(b) and (c) when she became the Principal Deputy General Counsel. Although Ms. Mallory is also currently acting as the General Counsel, the acting position does not imbue her with her authority to oversee EPA's ethics program. Rather, that authority derives from her appointment as the Designated Agency Ethics Official (DAEO).

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