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United States Senate

COMMITTEE ON ENVIRONMENT AND PUBLIC WORKS

WASHINGTON, DC 20510-6175

RICHARD M. RUSSELL, MAJORITY STAFF DIRECTOR
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February 14, 2018

The Honorable Gene L. Dodaro
Comptroller General of the United States
U.S. Government Accountability Office
441 G Street NW
Washington, D.C. 20548

Dear Mr. Dodaro,

Thank you for accepting our request to review¹ the Environmental Protection Agency's (EPA) policies and procedures for nominating and selecting federal advisory committee members. We write to follow up on our November 9, 2017 letter asking you to consider several questions concerning Administrator Pruitt's October 31, 2017 Directive governing the selection of scientists to its 22 federal advisory committees.² We write to bring additional information to your attention that we believe is relevant to your inquiry.

As GAO has previously observed, the EPA Science Advisory Board staff office ensures "that the Board's panelists are independent and that panels as a whole are balanced in their viewpoints and expertise."³ That includes ensuring compliance with the Federal Advisory Committee Act and the Ethics in Government Act. Normally, when candidates are nominated to serve on advisory committees, EPA's career scientists and lawyers provide input to the Administrator regarding which nominees have the right scientific expertise and which have conflicts of interests. And normally, the Administrator follows the career staff's recommendations. Documents recently obtained by us, attached here, suggest that political appointees at EPA under Administrator Pruitt are disregarding normal procedures and advice from career staff. By doing so, they are avoiding the procedures put in place by the agency to ensure compliance with federal law and risk undermining the integrity and impartiality of these boards.

The first such document (an Executive Briefing Summary, dated September 14, 2017) reviewed four options to fill the one upcoming vacancy on the Clean Air Scientific Advisory Committee (CASAC), ranging from making no changes to replacing the entire board. The summary also documents the process the career staff office undertook to identify and vet, with public input, the 42 candidates that were nominated. EPA's career staff recommended 11 candidates as "most qualified."

¹ <https://www.whitehouse.senate.gov/news/release/senators-call-on-government-watchdog-to-examine-independence-of-epa-advisory-committees>

² <https://www.whitehouse.senate.gov/news/release/senators-to-gao-examine-pruitts-science-advisory-board-double-standard>

³ Government Accountability Office, *EPA's Science Advisory Board Panels: Improved Policies and Procedures Needed to Ensure Independence and Balance*, July 2001.

The second document (an Executive Briefing Summary, dated September 20, 2017) provided additional information after career staff briefed Dr. Richard Yamada, a political appointee and current Deputy Assistant Administrator for EPA's Office of Research and Development, on September 14. The document indicates that Dr. Yamada directed the staff office to further vet nine candidates, only one of whom was originally recommended as "most qualified." Staff concluded that one of these candidates, Dr. Tony Cox, a private consultant who had previously done work for ExxonMobil, the American Chemistry Council, and the American Petroleum Institute, had a possible financial conflict of interest, a possible appearance of a lack of impartiality, and lacked scientific experience. Another, Dr. Larry Wolk, was criticized for having "no direct experience in health effects of air pollution," among other things. Staff also warned that the appointment of both individuals would actually decrease geographic diversity on CASAC, undermining a stated goal of the October 31, 2017 Directive.⁴ Ultimately, EPA disregarded these concerns and appointed Drs. Wolk and Cox to CASAC, with Dr. Cox as its chair.⁵

In light of these documents, we urge you to additionally consider the following in your analysis:

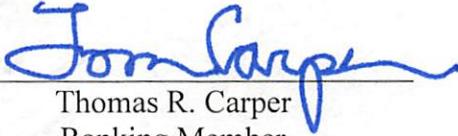
1. Has it been the practice of the Administrator and/or political staff to reject the advice of career staff on appointments to science advisory boards like and including CASAC? If not, has EPA articulated a credible process for changing that practice now?
2. Does the SAB staff office currently have in place adequate policies and procedures to vet nominees for compliance with the Federal Advisory Committee Act, the Ethics in Government Act, and other applicable rules?
3. When career staff advice is rejected, is there an increased risk that EPA will appoint representatives to its boards in violation of applicable laws and regulations?
4. Is the process and its outcomes (appointments) consistent with the Directive and the Federal Advisory Committee Act?

Thank you for your attention to this important matter. If you have any questions or concerns, please ask the appropriate members of your staff to contact Michal Freedhoff, a member of the Environment and Public Works Committee staff, at 202-224-8832, or Joe Gaeta in Senator Whitehouse's office at (202) 224-2921.

⁴ <https://www.epa.gov/newsreleases/administrator-pruitt-issues-directive-ensure-independence-geographic-diversity>

⁵ <https://www.epa.gov/newsreleases/epa-announces-intention-nominate-members-three-important-federal-advisory-committees>

Sincerely yours,

A handwritten signature in blue ink that reads "Tom Carper". The signature is written in a cursive style with a horizontal line underneath it.

Thomas R. Carper
Ranking Member

A handwritten signature in blue ink that reads "Sheldon Whitehouse". The signature is written in a cursive style with a horizontal line underneath it.

Sheldon Whitehouse
United States Senator

Executive Briefing Summary

Topic: Clean Air Scientific Advisory Committee (CASAC) Annual Membership
Date: September 14, 2017
Contacts: Aaron Yeow and Christopher Zarba

PURPOSE: Brief Dr. Richard Yamada on preliminary recommendations for CASAC membership and to ensure planned briefings for Agency leadership on CASAC membership are focused, responsive and effective.

ISSUE: The nomination period for the CASAC closed on July 27, 2017. The SAB Staff Office identified candidates that have confirmed interest to serve and have submitted biosketches and CVs. The List of Candidates was posted on the CASAC website (August 28, 2017) for a 21-day public comment period that ends on September 18, 2017.

On September 30, 2017, the second term is ending for the Chair of the CASAC, Dr. Ana Diez Roux, who also fulfills the statutory roles of physician and NAS member.

BACKGROUND:

- The CASAC is a statutory scientific and technical committee whose members are independent experts that do not represent the views of any organization or entity.
- The Clean Air Act specifies that CASAC consist of 7 members, including at least one member of the National Academy of Sciences (NAS), one physician, and one person representing State air pollution control agencies.
- 42 Candidates are on the List of Candidates (George Allen withdrew on 9/6/17).
 - 9 candidates are both physicians and members of the National Academies
 - 14 candidates are only physicians
 - 3 candidates are only members of the National Academies
 - 16 candidates that are neither physicians nor members of the National Academies and cannot fulfill the statutory requirements for CASAC membership.

NEXT STEPS:

- Review the detailed options and preliminary recommendations in the attached pages.
- After the public comment period closes, another briefing will be conducted to review the public comments and for the Administrator's decision on appointment(s).
- The SAB Staff Office will work with OGC and FACMD for the balance review and OES on invitation and thank you letters.
- After acceptance letters are received, the CASAC website will be updated with the new membership and the remaining candidates will be notified of the Administrator's decision.

OPTIONS: There are a number of options and sub options that can be considered. Three broad options are presented to help focus discussion and target preferred options. The three options are:

- 1) Extend current CASAC Chair
- 2) Appoint one new CASAC member
- 3) Appoint two new CASAC members

Option 1 - Extend Current CASAC Chair for One Year

- The 2-term, six-year CASAC membership limit is not codified and is at the discretion of the Administrator. In the past, SAB and CASAC members have been extended past the six-year limit.
- Pros:
 - Fulfillment of statutory membership roles are maintained
 - Does not require terminating a CASAC member's term early
 - Provides continuity of CASAC review work
 - Easy to defend decision
 - Allows greater flexibility to split the statutory roles next year, when more member terms expire
 - Dr. Diez Roux is an excellent CASAC Chair with direct experience and expertise in health effects of air criteria pollutants, epidemiology, environmental health, and public health
- Cons:
 - No new perspectives are added
 - One CASAC member would continue to fulfill two statutory roles. This can be mitigated next year, when more member terms expire.
 - May present an issue with staggering of terms - on September 30, 2018, 6 out of the 7 CASAC members would have first or second terms expiring. Can be somewhat mitigated by the use of 2-year and 3-year term appointments next year.

Option 2 – Appoint One New CASAC Member

Appointment of One New CASAC Member

- New member would need to fulfill the statutory roles of physician and member of National Academies
- Pros:
 - No deviation from past selection and appointment process
 - No early termination of existing CASAC member
 - Adds fresh perspectives to CASAC
- Cons:
 - A single member will continue to fulfill two statutory roles, but this can be mitigated by appointing an additional physician or member of the National Academies next year, when more member terms expire.
- Candidates were evaluated based on experience and expertise in health effects of air pollution, health effects of air criteria pollutants, epidemiology, environmental health, public health, national scientific peer review experience, and national scientific committee experience.

Recommendations

The most qualified candidates are:

Name	Organization	State	Expertise Required	Nominator	Academy
Boat, Thomas F.	Cincinnati Children's Hospital Medical Center	OH	Physician; Member of the National Academy of Sciences	DFO	NAM
Colditz, Graham A.	Washington University School of Medicine	MO	Physician; Member of the National Academy of Sciences	DFO	NAM
Lichtveld, Maureen	Tulane University	LA	Physician; Member of the National Academy of Sciences	DFO	NAM
Pollak, Martin R.	Harvard University Medical School	MA	Physician; Member of the National Academy of Sciences	DFO	NAS
Reingold, Arthur L.	University of California, Berkeley	CA	Physician; Member of the National Academy of Sciences	Dr. Jonathan Samet, University of Southern California	NAM

Appointment of CASAC Chair

- Option 1 – Appoint an existing CASAC member as CASAC Chair
 - Pros:
 - There would be little to no learning curve, allowing CASAC to operate with minimal disruption

- Experience with FACA rules, how CASAC operates, and portfolio of ongoing CASAC work
 - **Recommendation:** Dr. Elizabeth (Lianne) Sheppard, University of Washington
 - Dr. Sheppard is an excellent, productive member, with demonstrated leadership and facilitation skills in chairing CASAC panels.
 - **Alternate:** Dr. Ivan Fernandez, University of Maine
 - Dr. Fernandez has experience serving on SAB panels and chairing the CASAC Secondary NAAQS Review Panel for Oxides of Nitrogen and Sulfur.
 - Length of Chair appointment is typically 2 years, but is at the discretion of the Administrator.
 - Both Dr. Sheppard and Dr. Fernandez have their first 3-year terms ending on September 30, 2018.
- Option 2 – Appoint the new CASAC member (selected above) to serve as CASAC Chair
 - Cons: There may be a learning curve and it will take time to become familiar with FACA rules, how CASAC operates, and ongoing CASAC work.

Option 3 - Appoint Two New CASAC Members

Appointment of Two New CASAC Members

- Appoint one physician and appoint one member of the National Academies
- CASAC is limited to 7 members and only one member's term is expiring. Appointing 2 new members would require terminating an existing CASAC member's term early.
- Pros:
 - Would separate the statutorily-required roles of physician and member of the National Academies into two CASAC members
- Cons:
 - Negative reaction from the media and public could be severe. Ending a CASAC member's term early could be perceived as firing that member.
 - Deviates from usual process. This option is different from not renewing a member for a second three-year term.

- Candidates were evaluated based on experience and expertise in health effects of air pollution, health effects of air criteria pollutants, epidemiology, environmental health, public health, national scientific peer review experience, and national scientific committee experience.

Recommendations

The most qualified candidates are:

Physicians with direct experience in health effects of criteria pollutants				
Name	Organization	State	Expertise Required	Nominator
Balmes, John R.	University of California, San Francisco	CA	Physician	Gary Ewart, American Thoracic Society; Dr. Joel Kaufman, University of Washington
Bascom, Rebecca	Pennsylvania State University	PA	Physician	Gary Ewart, American Thoracic Society
Frampton, Mark	University of Rochester	NY	Physician	Dr. Richard Yamada, USEPA
Garshick, Eric	Veterans Administration Boston Health Care System	MA	Physician	Dr. Michael McGinnis, National Academy of Medicine
Kipen, Howard	Rutgers University School of Public Health	NJ	Physician	Gary Ewart, American Thoracic Society
McConnell, Rob	University of Southern California	CA	Physician	Dr. Joel Kaufman, University of Washington

Option 4 – Appoint All New Members to CASAC

- The Administrator has the option of appointing all new members to CASAC.
- This would require ending 6 CASAC members' terms early.
- There may be severe negative reaction from the media and public. Ending a CASAC member's term early could be perceived as firing that member.
- Appointing all new members would provide no continuity in service, lost productivity in training new members, getting new members familiar with FACA rules, how CASAC operates, and ongoing CASAC work. This would create significant delays in CASAC review work with the potential for the agency to miss court-ordered deadlines.
- This option would require a new solicitation for nominations in the Federal Register Notice because the FRN published on June 27, 2017, solicited only for physicians and members of the National Academy of Sciences.
 - The new FRN would need to solicit for all three required statutory roles – physician, member of the National Academy of Sciences, and a person representing state air pollution control agencies.
 - The new FRN would also need to solicit for all of the scientific disciplines needed for CASAC to create a sufficient pool of qualified experts to fully constitute CASAC.
- A new FRN would delay the appointment process by 4 months.
 - This would lead to a delay in finalizing the CASAC Sulfur Oxides review which in turn may delay the agency's Sulfur Oxides Primary NAAQS review, which is under a lawsuit and proposed consent decree.
- Not publishing a new FRN may generate media and public backlash for not conducting an open public solicitation for all statutory roles and scientific disciplines needed for CASAC.

Executive Briefing Summary

Topic: Clean Air Scientific Advisory Committee (CASAC) Annual Membership
Date: September 20, 2017
Contacts: Aaron Yeow and Christopher Zarba

PURPOSE: Brief Dr. Richard Yamada on further information pertaining to Options 3 and 4 from the September 14, 2017 revised briefing.

ISSUE: On September 30, 2017, the second term is ending for the Chair of the CASAC, Dr. Ana Diez Roux, who also fulfills the statutory roles of physician and NAS member. The nomination period for the CASAC closed on July 27, 2017. The List of Candidates was posted on the CASAC website (August 28, 2017) for a 21-day public comment period that ended on September 18, 2017.

BACKGROUND:

- The CASAC is a statutory scientific and technical committee whose members are independent experts that do not represent the views of any organization or entity.
- The Clean Air Act specifies that CASAC consist of 7 members, including at least one member of the National Academy of Sciences (NAS), one physician, and one person representing State air pollution control agencies.
- During and subsequent to the September 14, 2017 briefing, four options were identified: 1) Extend current CASAC Chair; 2) Appoint one new CASAC member (including SABSO recommendations of highly qualified candidates); 3) Appoint two new CASAC members (including SABSO recommendations of highly qualified candidates); and 4) Appoint all new CASAC members.
- On September 18, 2017, Dr. Yamada provided the following candidates for options 3 and 4 and requested further information:
 - Option 3 – Appoint 2 new CASAC members
 - Dr. Larry Wolk (physician) / Dr. Mark Frampton (physician)
 - Dr. Tony Cox (NAE)
 - Option 4 – Appoint all new CASAC members
 - Dr. James Boylan (Georgia Department of Natural Resources)
 - Dr. Tonx Cox (NAE)
 - Dr. Sabine Lange (Texas Commission of Environmental Quality)
 - Dr. Steven Packham (Utah Department of Environmental Quality)
 - Dr. Larry Wolk (physician and Colorado Department of Public Health and Environment)
 - Dr. Robert Phalen
 - Dr. Mark Frampton (physician) / Dr. Stanley Young / Dr. Jeffrey Lewis

Summary of Public Comments

- Public Comment period ended September 18, 2017
- Received 46 public comments
 - Majority were letter/emails supporting individual candidates
- Possible financial conflicts of interest:
 - Drs. Cox, Waldman, Young may have COI (2 University of Utah professors)
 - Dr. Lewis may have COI (Environmental Protection Network)
 - Drs. Balmes, Diez Roux, Frampton, McConnell, Ritz, Russell, Thurston, Zeger, Mr. Allen and Mr. Croes may have COI due to EPA grants (junkscience mass comments)
- Possible appearance of a lack of impartiality:
 - Drs. Cox, Hayworth, Henry, Lewis, Waldman, Young (Environmental Integrity Project)
- Lack of scientific expertise:
 - Drs. Cox, Waldman, Young lack key scientific credentials (2 University of Utah professor)
 - Drs. Waldman and Young do not have deep expertise for CASAC – do not have the breadth and depth of expertise compared to the other candidates (Environmental Protection Network)
- List of Candidates include candidates who are not physicians and NAS members, contrary to FRN solicitation:
 - Creates confusion for public, makes it hard to provide comments on qualifications not stated in the FRN [Northeast States for Coordinated Air Use Management (NESCAUM)]
 - If appointments of candidates not meeting qualifications in FRN are made, membership process will be arbitrary and deeply flawed. Process should be transparent and align with announced requirements. (NESCAUM)
 - FRN is clear on soliciting physicians and NAS members. If other candidates are desired, new FRN should be published. (Chris Frey, NCSU)
 - Not a public comment, but asked whether the qualifications in FRN were absolute requirements (American Chemistry Society)
 - Not a public comment, but the American Petroleum Institute (API) called to ask why there were candidates on the List of Candidates who were not physicians and NAS members.
- CASAC should have expertise to provide advice on any adverse economic or energy effects related to NAAQS implementation
 - NAAQS Implementation Coalition
 - State air agency experts have the expertise to provide this kind of advice [Association of Air Pollution Control Agencies (AAPCA)]
- More state representation and geographic diversity
 - Supports appointment of state air agency experts on List of Candidates (AAPCA)

Option 3 - Appoint Two New CASAC Members

Appointment of Two New CASAC Members

- Appointment of one physician and one member of the National Academies would fit within the scope of the FRN solicitation.
- Physician:
 - Dr. Mark Frampton / Dr. Larry Wolk
 - **Dr. Mark Frampton (University of Rochester)**
 - Expertise and experience in respiratory medicine, inhalation toxicology, health effects of air pollution and air criteria pollutants
 - Experience serving on national committees including HEI, NIH, EPA
 - Dr. Larry Wolk (Colorado Department of Public Health and Environment)
 - Experience in pediatrics, adolescent medicine
 - No direct experience in health effects of air pollution, epidemiology, toxicology
 - No direct experience serving on national scientific committees
- Member of the National Academies:
 - Dr. Tony Cox (National Academy of Engineering)
 - Expertise and experience in quantitative risk assessment, statistical analysis of epidemiological data
 - Experience serving on national scientific committees, including NAS, NRC, IOM, EPA SAB panels
 - Possible issue with conflict of issue or appearance of a lack of impartiality:
 - Consulting clients have included: American Chemistry Council, American Petroleum Institute, ExxonMobil, National Mining Association
 - Congressional testimony on health effects of air pollutants; health effects of ozone
 - Public comments made on ozone and PM NAAQS on behalf of Engine Manufacturer's Association
- Between the two physicians suggested above, Dr. Frampton has more direct experience addressing the issues that CASAC will provide advice on.
- Both Dr. Wolk and Dr. Cox are from the state of Colorado. Appointment of two members from the same state would decrease geographic diversity.

Appointment of CASAC Chair

- From the suggested candidates above, Dr. Mark Frampton would be better suited to serve as CASAC Chair based on breadth of air pollution expertise and experience and current membership on the CASAC PM panel.

Termination of Existing CASAC Member

- Selection of 2 new CASAC members would require termination of an existing CASAC member. CASAC members with 2nd terms ending September 30, 2018:
 - Dr. Jack Harkema, Michigan State University
 - Dr. Ronald Wyzga, Electric Power Research Institute

Option 4 – Appoint All New Members to CASAC

Appointment of all New CASAC Members from the List of Candidates

- Not publishing a new FRN may generate media and public backlash for not conducting an open public solicitation for all statutory roles and scientific disciplines needed for CASAC.
- Suggested candidates as proposed may not reflect a balance of scientific disciplines (several overlapping disciplines and lack of ecology/welfare expertise needed for secondary NAAQS)
- Both Dr. Wolk and Dr. Cox are from the state of Colorado. Appointment of two members from the same state would decrease geographic diversity.
 - Dr. James Boylan (Georgia Department of Natural Resources)
 - Expertise and experience in air quality modeling and monitoring, particularly criteria pollutants
 - Experience serving on national peer review committees including NACAA, EPA, and CASAC SOx panel.
 - Dr. Tony Cox (National Academy of Engineering)
 - Expertise and experience in quantitative risk assessment, statistical analysis of epidemiological data
 - Experience serving on national scientific committees, including NAS, NRC, IOM, EPA SAB panels
 - Possible issue with conflict of interest or appearance of a lack of impartiality:
 - Consulting clients have included: American Chemistry Council, American Petroleum Institute, ExxonMobil, National Mining Association
 - Congressional testimony on health effects of air pollutants; health effects of ozone
 - Public comments made on ozone and PM NAAQS on behalf of Engine Manufacturer's Association
 - Dr. Sabine Lange (Texas Commission on Environmental Quality)
 - Experience and expertise in toxicology
 - No direct experience serving on national scientific committees
 - Possible issue with an appearance of a lack of impartiality
 - Publications and presentations on NAAQS for criteria pollutants
 - TCEQ has well-established views and positions on various NAAQS and has presented public comments at CASAC meetings
 - Dr. Steven Packham (Utah Department of Environmental Quality)
 - Experience and expertise in toxicology
 - Experience on national scientific committees
 - Dr. Larry Wolk (physician and Colorado Department of Public Health and Environment)
 - Experience in pediatrics, adolescent medicine