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## National Tribal Air Association

### FACT SHEET

## Consultation and Coordination Plan: Proposed Reorganization of the National Tribal Caucus (NTC) Under the Federal Advisory Committee Act (FACA)

### AIEO's Purpose of the Proposal to Change the NTOC to a FAC:

The Environmental Protection Agency (EPA) is proposing to reorganize the National Tribal Caucus (NTC) as a Federal Advisory Committee (FAC) under the Federal Advisory Committee Act (FACA) with the stated goal of:

- Increasing the proportion of elected or traditionally appointed Tribal Leaders that serve on the group.
- Reviewing the characteristics of the NTC to strengthen the operations of the group and increase collaboration with the other EPA Tribal Partnership Groups (TPGs).
- Clarify the process by which the EPA receives Tribal leadership recommendations on technical programs and budget planning.
- Elevate the NTC as the preeminent group of Tribal representatives that provides advice directly to EPA leadership on items of national significance under the EPA's purview.
- Strengthen the EPA's ongoing commitment to collaboration and partnership with Tribes and the government-to-government relationship.
- Reflect the commitment of the EPA to engage directly with Tribal Leaders and ensure that Tribal Leaders engage at the highest levels of the Agency on environmental issues that impact Indigenous communities.

AIEO states reorganizing the NTC as a FAC would formalize the group's advisory role with the EPA and distinguish the NTC from the almost twenty other TPGs with whom the EPA engages.

**Compliance with a FACA is necessary and the law applies whenever a federal agency seeks collective advice from an external group.** As the NTC provides advice on an ongoing basis to the EPA Administrator and other senior leadership regarding budget recommendations and the



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implementation of environmental programs in Indian Country, reorganizing the group as a FAC would formalize an advisory structure that ensures transparency, public access, and public participation, and compliance with a FACA.<sup>1</sup>

EPA and OPM guidance on FACA requires that committees provide advice that is independent, relevant, and developed using a process that is open to the public, and FACs serve an invaluable function in informing the operations of the EPA. The transition to a FAC would allow for greater awareness of the work of the group while following a formal, defined process for elected Tribal Leaders to transmit recommendations to EPA leadership. Several federal agencies have previously formed either FACs or similar advisory groups comprised of Tribal Leaders and representatives. Since January 2021, the U.S. Department of Veterans Affairs<sup>2</sup> and the U.S. Department of Agriculture<sup>3</sup> have created new Tribal FACs under the FACA.

### **What is a FAC?**

Congress passed the Federal Advisory Committee Act (5 U.S.C. 10) in 1972, to create an orderly procedure by which federal agencies may seek collective advice from diverse customers, partners, and stakeholders.

- A FACA establishes procedures for the management of federal advisory committees, ensures transparency of advisory committee decision-making, and ensures balanced representation.
- A FACA ensures that federal advisory committees convene to give group advice and are accountable to the public by maximizing public access to advisory committee deliberations and minimizing the influence of special interests through balanced committee membership.
- A FACA seeks to reduce wasteful expenditures and improve the overall administration of federal advisory committees<sup>4</sup>.

FACs can be created by the president, Congress, or federal departments or agencies and must meet these basic requirements:

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<sup>1</sup> Consultation and Coordination Plan Proposed Reorganization of the National Tribal Caucus (NTC) Under the Federal Advisory Committee Act (FACA)

<sup>2</sup> [U.S. Department of Veterans Affairs Advisory Committee on Tribal and Indian Affairs.](#)

<sup>3</sup> [U.S. Department of Agriculture Tribal Advisory Committee.](#)

<sup>4</sup> [U.S. General Services Administration FACA overview.](#)



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- Meetings must be open to the public and the public must be permitted to present their views.
  - All meeting minutes and reports must be available for public access.
  - The public must be notified of meetings by advertisement in the Federal Register.
  - Committee membership must be balanced by points of view.

A FACA calls upon federal agencies to carefully consider the necessity of a new committee before being established. Under a FACA, discretionary and non-discretionary committees are terminated after two years unless the agency renews the committee's charter prior to the two-year expiration date. Further, a FACA requires agencies to terminate a committee once it has completed its function.<sup>5</sup>

### **What does this mean for Tribes?**

The NTAA has the following concerns with the proposed Reorganization:

- The current Charter for the NTC establishes that the NTC is exempt from FACA. The NTAA knows of no law or fact that has changed to modify that exemption.
- By establishing a FAC, the NTC would be driven by the EPA. The EPA would appoint members to the FAC, whereas currently Tribes (via the RTOCs) determine the composition of the NTC organization.
- Under FACA the EPA would provide the “charge” to the FAC so that the EPA determines the issues they want recommendations on, whereas now the Tribes identify issues for discussion with the EPA. This not only reduces the opportunity for on-going dialogue on issues that are important to Tribes but also undermines the government-to-government relationship with the EPA as equal partners in the dialogue.
- Because the FAC must represent balanced viewpoints, the EPA can determine the representation of the FAC to include other entities. Currently, the EPA is focused on Tribal leadership and partnership groups. However, FACs could allow for Tribal leadership to include Tribal Consortia or Alaska Native Corporations, established by the Alaska Claims Settlement Act. These Corporations and Consortia may have different mandates than those that represent the needs of the Tribal leadership and citizens.

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<sup>5</sup> [U.S. General Services Administration FACA brochure.](#)



- Additionally, given the current Agency emphasis on Environmental Justice, the FAC could include state recognized Tribes and Tribal advocacy organizations, further diminishing the American Indian Nations as Sovereign.
- Historically, the NTC was composed of Tribal leadership. However, given the overwhelming workload and demands on Tribal leadership's time, many of these positions were eventually delegated to their environmental directors. Even still, currently approximately half of the members of the NTC are Tribal leaders. Establishing a FAC does not resolve the issue of competing demands on leadership's time. In addition, Tribal leaders have such an array of responsibilities, that having a mix of Tribal leadership and environmental program representatives helps provide support in the understanding of the technical environmental issues that are being discussed.
- Currently, the NTC has TPG Liaisons who meet regularly with each TPG. Meetings are coordinated to offer communication between the NTC and the TPGs. If the NTC was a FAC and only Tribal leadership was on the NTC, it is unreasonable to expect Tribal leaders to liaise with the TPGs. As such, a valued mechanism for communication between the NTC and TPGs would be lost.
- EPA has other examples of ongoing dialogue with other government organizations outside of the FACA process, such as the Environmental Council of States (ECOS). Creating a FAC of the NTC further erodes the government-to-government status of Tribes as co-regulators if the NTC is treated inconsistently with that of the state organizations.
- FAC meetings are open to the public and the public has time to express its views, meaning that States, Industry, and others will be able to sit in the meetings and make public statements during the public comment. This could have a chilling effect on open dialogue between Tribes and the EPA on sensitive issues and allow the introduction of topics that could be detrimental to Tribes.
- The FAC can be dissolved after the two-year Charter expires leaving the Tribes with further limited access to EPA management.

### **Other Issues and Concerns**

- The AIEO failed to follow the EPA's Consultation process and the EPA's Indian Policy which require involving the Tribes "early and often" in the development of policy, rules



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and programs that impact Tribes. The AIEO gave no warning that this drastic change in the structure of Tribal input was even being considered until it launched its reorganization plan changing the NTC to a FAC. There was no early discussion to determine the impacts on Tribes, Tribal leadership, and the ongoing relationship with Tribes.

- As stated above the Reorganization of the NTC as a FAC would formalize the group's advisory role with the EPA and distinguish the NTC from the almost twenty other TPGs with whom the EPA engages. However, this goal could be accomplished without making NTC a FAC. Additionally, in its plan, the AIEO says that the Tribal Program Groups will be part of the FAC, which would have the opposite effect of "distinguishing the NTC from almost twenty other TPGs."
- In addition, this would add work to the TPGs that is not currently covered in workplans and would demand already limited resources of the groups to address the work for which they are currently responsible.
- Many FACs include other interested entities, such as industry and states with issues or interest in Indian Country. The EPA has not described how it plans to protect Tribal interest in developing the FAC.
- In discussions with some EPA staff which support the partnership groups, it has been implied that the partnership groups may also be reorganized as FACs. This is very concerning and will dilute the access and support for Tribes in both working with the EPA as well as providing technical and policy support to Tribal Environmental Programs. As a result, the policy groups that provide policy support to Tribes may not be able to identify priorities independently if they are "restructured to a FAC." They would only be allowed to develop policy review in areas of the EPA's charge.

This is particularly inappropriate for NTAA which was created by resolution of the National Congress of American Indians in 2000 and the Bylaws which were approved by NCAI in 2002. In addition, NTAA is a membership organization with 156 member Tribes representing Tribal Environmental Programs from across the country. Priorities and policy direction are determined by the Executive Committee and informed by Tribes.

#### **How to comment:**

NTAA Template letter is available at the [NTAA website](#). Work with your Tribal leadership to set up a consultation with the EPA or submit a comment letter, contact [Regan.Michael@epa.gov](mailto:Regan.Michael@epa.gov) or

[www.NTAATribalAir.org](http://www.NTAATribalAir.org)

928.523.0526 office

928.523.1266 fax



**National Tribal Air Association**

P.O. Box 15004

Flagstaff, AZ 86011-5004

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Daniel at [Vaught.Daniel@epa.gov](mailto:Vaught.Daniel@epa.gov) or (202) 564-6038. The consultation/comment period has been extended to August 9, 2024.