

**U.S. Department of Agriculture
Tribal Advisory Committee (TAC)
By-Laws - ADOPTED**

I. Purpose and Structure

- A. The purpose of the U.S. Department of Agriculture (USDA) Tribal Advisory Committee is to implement provisions of the Agriculture Improvement Act of 2018 (the 2018 Farm Bill) authorizing the creation of this Committee as a permanent body.
- B. The 2018 Farm Bill requires that the Committee be comprised of eleven (11) members; three (3) of which must be appointed by the Secretary of Agriculture with the remaining balance to be appointed by the Chair and Ranking Member of the House Committee on Agriculture; the Senate Committee on Indian Affairs; and the Senate Committee on Agriculture, Nutrition, and Forestry.
- C. In addition to individuals representing a diversity of geography, Indian tribes, and the agricultural industry, the Committee will recognize participation of two non-voting representatives: one representative from the Office of Tribal Relations in USDA and the Assistant Secretary for Indian Affairs of the Department of the Interior or their delegate.

II. Authority

- A. Section 12304 of the Agriculture Improvement Act of 2018 (7 U.S.C. §6921(b)) requires the Secretary of Agriculture to establish and maintain a Tribal Advisory Committee (herein referred to as the “Committee”).
- B. Pursuant to Section 12304 of the Agriculture Improvement Act of 2018 (7.U.S.C 6921(b)) the Tribal Advisory Committee's mandate is “to provide advice and guidance to the Secretary of Agriculture on matters relating to Tribal and Indian affairs.” As the Chair and Ranking Member of the Senate Committee on Indian Affairs are statutory appointors of Tribal Advisory Committee members, the TAC defines "Indian affairs" similarly to the SCIA jurisdiction (as defined in Section 25 of S. Res. 71, 103rd Congress, 1st Session), which includes but is not limited to all matters pertaining to American Indian, Native Hawaiian, and Alaska Native peoples.
- C. The Secretary additionally establishes the Committee pursuant to the Federal Advisory Council Act (FACA), 5 U.S.C. App. 2, apart from Section 14 which is waived under the Committee’s authorizing legislation.
- D. No member of the Committee may be reappointed to more than three (3) consecutive terms.¹

¹ 7 U.S.C. 6921(b)(3)(E)

- E. As noted in the 2018 Farm Bill, authorization for managing the Committee will be conducted under the oversight of the USDA's Office of Tribal Relations (OTR).

III. Duties of the Committee

- A. The duties of the Committee are as follows as prescribed by the authorizing legislation:
- i. Identify evolving issues of relevance to Indian tribes relating to programs of the USDA.
 - ii. Communicate to the Secretary the issues identified under subparagraph (i).
 - iii. Submit to the Secretary recommendations for, and solutions to
 - a. Issues identified under subparagraph (i).
 - b. Issues raised at the Tribal, regional, or national level; and
 - c. Issues relating to any Tribal consultation carried out by the USDA.
 - iv. Discuss issues and proposals for changes to the regulations, policies, and procedures of the USDA that impact Indian tribes.
 - v. Identify priorities and provide advice on appropriate strategies for Tribal consultation on issues at the Tribal, regional, or national level regarding the USDA.
 - vi. Ensure that pertinent issues of the USDA are brought to the attention of an Indian tribe in a timely manner so that timely feedback from an Indian tribe can be obtained.
 - vii. Identify and propose solutions to any interdepartmental barrier between the USDA and other Federal agencies, or between agencies within USDA.

IV. Decision Making

A. Recommendations. In the spirit of collaborative problem-solving, the Committee will seek to produce consensus recommendations and advice to the Secretary of Agriculture. To do this, Committee Members will work to educate themselves and one another, build understanding regarding their values and interests, develop a baseline understanding of essential information, and work to build agreements.

- i. On occasion, the Chairperson may request a motion for a vote.²
- ii. Recommendations or other documents can be considered to have achieved consensus if there is no dissent by any member of the Committee present.
- iii. If consensus on specific substantive proposals is not possible, the Committee will make every effort in any recommendations or findings provided to the Secretary to articulate both the areas of agreement and disagreement, and the reasons why differences continue to exist. In striving to achieve consensus, Committee members should consider all relevant public and private sector perspectives and the interests and concerns of all Committee members.
- iv. All decisions made in committee sessions are considered final, unless significant new information surfaces requiring reconsideration.

² The Chairperson is discussed further in Section VIII.

- B. **Work Plan.** The Committee, in consultation with the Designated Federal Officer (DFO), will develop a Work Plan with deadlines for submittal of Committee recommendations.
- C. **Reporting.** The Committee will provide a report annually reflecting activities of the Committee during the previous year, including recommendations for legislative or administrative action for the following year.
 - i. Where it is required that the Committee report to the Secretary or relevant Congressional committees by a fixed date on recommendations or findings where it has not been possible to achieve full consensus, a report shall consist of those elements upon which there has been consensus plus an accurate description of non-consensus recommendations and the points of disagreement within those recommendations.
 - ii. This report shall be developed jointly by the Committee Chair and the Designated Federal Officer in consultation with the Committee Members and with opportunity provided for Committee members to confirm and/or improve the accuracy of the draft report.
 - iii. Any and all materials prepared by the Committee are subject to public inspection and copying; therefore, draft materials will be available publicly.
- D. **Quorum.** The Committee requires that a minimum of seven (7) members be present to constitute a quorum for the conduct of business.

V. Meeting Procedures

- A. **Frequency.** The full Committee will meet at least four (4) times per year, with two (2) of these meetings to take place in-person. At least one of these meetings will take place in the Washington, D.C. area, and the second will take place outside the D.C. area if the Designated Federal Officer determines there are funds available to do so. Committee Members are expected to attend all full Committee meetings, but the DFO may allow for virtual participation of in-person meetings when appropriate and feasible.
- B. **Transparency.** Meetings will be open to the public except when a determination is made in writing by the Secretary of Agriculture or his/her designee that any or all portions of a meeting should be closed in accordance with 5 U.S.C. 552b(c).
 - i. The Designated Federal Officer reserves the right to close an open meeting if personal, sensitive, or otherwise confidential information is discussed.
 - ii. All materials brought before or presented to the Committee during the conduct of an open meeting, including the minutes of the proceedings of an open meeting, shall be available to the public for review or copying at the time of the scheduled meeting.
 - iii. Members of the public may attend any open meeting or portion of an open meeting and may, at the determination of the Designated Federal Officer, offer oral comments at such meeting.
 - iv. If, during the course of an open meeting, matters inappropriate for public disclosure arise during discussions, the Designated Federal Officer will order such

discussion to cease and will schedule it for closed session if it is determined that such a session is warranted.

- C. **Agendas.** Meeting agendas will be drafted by the Designated Federal Officer and the Chair in consultation with the Committee.
- i. Items for the agenda may be provided by the Secretary of Agriculture or by the recommendation of the Office of Tribal Relations.
 - ii. The Designated Federal Officer will approve the agenda for all meetings. Amendments to the agenda may be proposed and approved at the beginning of each meeting; however, the Committee may not substantively change the agenda without approval of the Designated Federal Officer.
 - iii. A draft of the agenda will be distributed to the members at least two weeks in advance of each meeting for their preparation.
 - iv. USDA will endeavor to distribute all documents to be considered at a Committee meeting to Committee members at least two weeks in advance of that meeting, recognizing that some time-sensitive documents may need updating at the time of the meeting.
- D. **Minutes and Records.** The Designated Federal Officer will prepare minutes of each meeting and distribute copies to Committee members for approval review approximately one month after each meeting.
- i. Committee members present at the meeting being summarized will have two weeks to review the summary and make suggested changes.
 - ii. The Designated Federal Officer and Committee Chair will attempt to address any comments received and will subsequently develop a final summary for public distribution.
 - iii. All documents, reports, or other materials prepared by or for the Committee constitute official government records and must be maintained according to the National Archives and Records Administration (NARA) General Records Schedule 26.
 - iv. Under FACA, the records, reports, appendixes, transcripts, minutes, working papers, draft, studies, agenda, or other documents which were made available to or prepared for by the Committee will be made contemporaneously available to the public.
 - v. Comments provided by the public at a meeting of the Committee or submitted to USDA for consideration by the Committee will be considered part of the official record.
 - vi. Official Committee records will be maintained by the Designated Federal Officer in accordance with Federal record keeping requirements and will be made available for public viewing by appointment.
- E. **Attendance at Meetings.**
- i. The Chair and Designated Federal Officer will address Committee members that have missed three or more meetings to determine if the Committee member is willing and/or able to fulfill their duties as a member of the Committee.

- ii. If a Committee member is unable to fulfill their duties, the Chair and Designated Federal Officer will follow USDA procedures for the nomination of a replacement member.
- iii. A Committee member may be accompanied, at cost to the member, by such other individuals as that member believes are appropriate to assist them in representing their interest.
- iv. Only Committee members, Federal Government Representatives, and USDA designees will be permitted to sit at the speakers' table and speak during the meetings, except during designated public comment periods when members of the public will have an opportunity to comment.

F. Meeting Location and Announcements. The Designated Federal Officer will coordinate meeting location and dates in consultation with the Committee Members.

- i. The Designated Federal Officer will ensure a notice of upcoming meetings is placed in the Federal Register at least 15 calendar days prior to the meeting date and that notices are distributed at least a week prior to the meeting.

G. Public Comment. Each meeting will have a public comment period where members of the public may address the Committee at a time limit set by the Designated Federal Officer.

- i. These comments will be received by the Committee and may not be addressed unless the comments can be handled within the time limit.
- ii. Written statements from the public may also be submitted to the Committee through the Designated Federal Officer, at defined periods prior to each meeting as indicated by the corresponding Federal Register Notice.
- iii. Time will be reserved on the agenda at each meeting for Committee members to discuss comments received prior to that meeting from members of the public. If the individual submitting the comment is present at the meeting, the Committee may request questions for clarification while the comment is being reviewed.

VI. Subcommittees

A. The Committee in consultation with the DFO may create subcommittees. Subcommittee meetings are open to all Committee Members. Subcommittees will elect chairs by consensus if possible, or by majority vote where consensus is not possible.

B. Subcommittees must report back to the Committee and may not provide advice or work products directly to the Secretary or Congress.

- i. All Committee members will be notified of subcommittee meetings, including date and time of meetings and agenda items to be discussed.
- ii. Summaries of subcommittee meetings will be provided to Committee members.

C. Subcommittees will present a balanced range of viewpoints and will consist of Committee members and other individuals that USDA may deem relevant for such discussions.

VII. Electronic Communication

- A. Electronic communication mechanisms will be utilized to the greatest extent possible for sharing of information outside Committee meetings, including meeting agendas and summaries.

VIII. Role of Committee Officials

A. **Members.** Members should:

- i. Generate information necessary from interest groups.
- ii. Keep their constituency informed of progress.
- iii. Understand whether or not general public support exists for their recommendation(s).
- iv. Review USDA materials prior to meeting and come prepared to discuss issues and make recommendations.

B. **Chairperson.** A chairperson will be elected by consensus of the Committee, or if consensus is not possible by majority vote of Committee members.

- i. The Chair works with the Designated Federal Officer to help identify issues to be addressed and serves as the focal point for the Committee's membership.
- ii. The Chair is responsible for certifying the accuracy of minutes developed by the Designated Federal Officer to document official Committee meetings.
- iii. The Chair may serve as the spokesperson for the Committee.
- iv. The Chair and the DFO will prepare and include a letter with submittal of all recommendations to the Secretary and the report to Congressional Committees. This letter will include a statement of how decisions were made that lead to recommendations.

C. **Vice Chairperson.** A Vice-Chairperson will be elected by consensus of the Committee, or if consensus is not possible by majority vote of Committee members and will fulfill the duties of the Chair in the Chair's absence.

D. **Designated Federal Officer.** The Designated Federal Officer serves as the Government's agent for all matters related to the Committee's activities. DFO duties include:

- i. Serve as the Committee's liaison to the USDA and advocate for Committee recommendations.
- ii. Serve as a resource to Committee members by explaining USDA processes, sideboards and constraints.
- iii. Share information and arrange for presentations by subject matter experts.
- iv. Notify Committee members of the time and place for each meeting.
- v. Approve and call the meeting(s) of the Committee to order.
- vi. Approve agendas.
- vii. Attend all full Committee meetings.

- viii. Adjourn the meetings when such adjournment is in the public interest.
- ix. Chair meetings of the Committee until such time as the Chair or Vice-Chair have been elected.
- x. Receive and transmit the Committee's recommendations and coordinate USDA's response to the recommendations back to the Committee.
- xi. Maintain records of all meetings, including subcommittee activities as required by the National Archives and Records Administration (NARA) Schedule 26.
- xii. Maintain the roll of participating Committee members.
- xiii. Prepare minutes of all meetings of the Committee's deliberations, including subcommittees.
- xiv. Attend to official correspondence.
- xv. Act as the Committee's agent to collect, validate, and pay vouchers for preapproved expenditures and compensation for meeting attendance.
- xvi. Prepare and handle all reports required under the Federal Advisory Committee Act.

E. **Federal Government Representatives.** The Assistant Secretary, Indian Affairs of the Department of the Interior, or their delegate and a representative of the USDA Office of Tribal Relations must attend each official meeting of the Tribal Advisory Committee. These members may inform Committee deliberations on their respective Department's role, function, and activities; however, these Principals or their delegates are unable to make, amend, or vote on official Committee motions.

IX. Media and Tribal Engagements

- A. Committee members will notify the Chair and DFO prior to speaking before the public, media, or special interest groups in their official capacity as a Tribal Advisory Committee member.
- B. The Designated Federal Officer will clear the request through the appropriate USDA channels.
- C. The Designated Federal Officer will inform the Chair and the notifying Committee member on whether they can speak before the public engagement in their official capacity as a Tribal Advisory Committee member.
- D. Committee members will not characterize the positions of any other member in public statements outside of the Committee meetings or in discussion with the media. To the extent feasible, members will refer others to consensus recommendations or approved meeting minutes for information about the Committee's deliberations.

X. Safeguards for Committee Members

- A. **Good Faith.** All Committee members agree to act in good faith in all aspects of the Committee deliberations. In order to encourage consensus building as well as the free and open exchange of ideas, views, and information prior to decision making.
 - i. All members agree to be open and forthcoming in the sharing of relevant, readily available information to aid in the Committee's deliberations.

- ii. If a member believes they cannot or should release relevant information important to the Committee's deliberations because of the confidential or proprietary nature of that information, the member will endeavor to provide the substance of the information in some form (such as by aggregating data, by deleting nonrelevant confidential information, by providing summaries, or by furnishing it to a neutral consultant to use or abstract) or a general description of the information and the reason or not providing it directly.
 - iii. All members agree to provide the Designated Federal Officer with such information and paperwork as necessary for their membership, travel, and compensation.
- B. **Right to Withdraw.** Any member may withdraw from the Committee at any time without prejudice; however, it is requested that the member wishing to withdraw communicate the reasons to the Chair and Designated Federal Officer for withdrawal.
- C. **Public Record.** Information and data provided to the Committee in writing, minutes on Committee deliberations, and documents referenced in Committee deliberation may be considered public record and will be maintained according to USDA policies and procedures.
- D. **Handling of Confidential Materials.** Any information that qualifies as Confidential Business Information under Exemption b(4) of the Freedom of Information Act may not be discussed by the Committee without prior approval of its owner and may be discussed only in closed sessions of the Committee. All Committee members and Federal government representatives must agree in writing, prior to its distribution to Committee members, to protect such information.

XI. Compensation and Reimbursement

- A. **Compensation.** Members will be compensated at the daily rate of the Level IV Executive Schedule for each day in which the Member was engaged in an official Tribal Advisory Committee meeting and travel to and from such meetings.
- i. Members will furnish to the Designated Federal Officer such information as necessary to facilitate payment.
 - ii. Compensation will be accounted for by the daily roll taken during a Tribal Advisory Committee meeting and the submission of approved travel receipts associated with attendance to an in-person meeting.
 - iii. Members able to attend a meeting will make every effort to participate in the full agenda of each day.
- B. **Expenses.** Expenses beyond Member compensation related to the Committee will be borne by USDA under the direction of the Office of Tribal Relations.
- i. Expenditures of any kind must be approved in advance by the Designated Federal Officer.

- ii. Federal Government employees staffing the Committee are not eligible for any form of additional compensation.
- iii. The government will pay travel and per diem for Tribal Advisory Committee members at a rate equivalent to that allowable for Federal employees.

C. **Appropriations Shortfall.** If there is a shortfall of appropriated funds for the Committee for the payment of travel expenses or compensation, USDA will notify Committee members as soon as reasonably practicable.