

Comment Resolution Document

Summary of Comments Received on SA-801, Agreement State Participation in Working Groups

I. Sent to the Agreement States, Non-Agreement States, and State Liaison Officers for Comment: STC-16-051, July 6, 2016

Comments Received:

- a. Organization of Agreement States Letter dated September 6, 2016
- b. State of New Jersey e-mail dated July 18, 2016
- c. State of Washington e-mail dated July 25, 2016

Organization of Agreement States (OAS):

Comment 1: Section V.D.8. indicates that travel and per diem expenses for NRC-invited Agreement State working group (WG) members may be paid by the NRC. If it is possible that the NRC will not pay for travel and per diem, then WG Agreement State membership will be limited to only those states that allow reimbursement for travel. While other arrangements can be made as indicated elsewhere in the procedure such as conference calls, it also states in section IV. F. 5. that a WG member will support and participate in management briefings and any public meetings. Participation on a WG should not be limited to only states that will allow reimbursement for travel. Perhaps the procedure could specify that participation in all aspects of the NRC/AS WG or Rulemaking WG can be done remotely if necessary.

Response: Comment Noted. The NRC will coordinate the Agreement State Working Group membership via the OAS Executive Board in accordance with Section IV C. 3. Although state travel policy is outside the purview of the NRC, we may be able to fund travel and per diem on a case by case basis. However, there may be instances where no travel is required whereby AS working group members will perform desk tasks and communicate via conference calls arranged by and paid for by the NRC. Funding of expenses and the level of travel required will be driven by the level of effort required to complete the tasks specified in the charter. The MSTR director and OAS Chairman would ensure that the charter or plan correlates the level of effort with the level of funding required.

State of New Jersey:

Comment 1: Section V.D.8. indicates that travel and per diem expenses for NRC-invited Agreement State working group (WG) members may be paid by the NRC. If it is possible that the NRC will not pay for travel and per diem then WG Agreement State membership will be limited to only those states that allow travel. While other arrangements can be made as indicated elsewhere in the procedure such as conference calls, it also states in section IV. F. 5. that a WG member will support and participate in management briefings and any public meetings. Participation on a WG should not be limited to only states that will allow travel. Perhaps the procedure could specify that participation in all aspects of the NRC/AS WG or Rulemaking WG can be done remotely if necessary. Thank you for the opportunity to comment.

Response: Comment Noted. This comment is similar to OAS comment #1. The NRC will coordinate the Agreement State Working Group membership via the OAS Executive Board in accordance with Section IV C. 3. Although state travel policy is outside the purview of the NRC, we may be able to fund travel and per diem on a case by case basis. However, there may be instances where no travel is required whereby AS working group members will perform desk tasks and communicate via conference calls arranged by and paid for by the NRC. Funding of expenses and the level of travel required will be driven by the level of effort required to complete the tasks specified in the charter. The MSTR director and OAS Chairman would ensure that the charter correlates the level of effort with the level of funding required.

State of Washington:

Comment 1: Page 9, 4.c.; Recommendation: Have a separate advisory committee paragraph that only addresses that. Give link or location of the FACA requirements. Is there a quorum of federal, state, local, or tribal governments for the committee?

Response: Comment Noted. As stated in 4 c., OAS participation does not have FACA implications. NRC intends to refer all issues associated with FACA to the Office of General Council for a legal review prior to proceeding.

Comment 2: Page 10.b. May want to add to whom the Working Group answers?

Response: Comment Noted. In accordance with Section IV D., the Working Group (WG) may respond to a WG chair, Co-chair, or Task Leader depending upon the type

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of working group established. If no working group is established, then members would report to a project lead or task leader.

Comment 3: Exhibit 3 Level of effort expected of members – please give some examples. Exhibit 1 & 2-Excellent checklists, very helpful.

Response: Comment Incorporated. A brief narrative of the expected level of effort has been added to the Charter exhibit. Section V 'Guidance', A. 3. c. (iii) also contains language regarding the level of effort expected of WG members which will also be contained in the project plan.

II. Sent to the U.S. Nuclear Regulatory Commission Offices for Comment by Memorandum dated July 6, 2016

Comments Received:

- a. U.S. Nuclear Regulatory Commission, HQ, NMSS, MSTR hardcopy dated May 9, 2016
- b. U.S. Nuclear Regulatory Commission, HQ, OGC e-mail dated April 28, 2016
- c. U.S. Nuclear Regulatory Commission, Region I, Division of Nuclear Materials Safety; email dated August 2, 2016
- d. U.S. Nuclear Regulatory Commission, Region III, Division of Nuclear Materials Safety; email dated July 14, 2016

U.S. Nuclear Regulatory Commission, HQ, NMSS, MSTR; hardcopy dated May 9, 2016

Comment 1: On page 9 of 17, Section V. step 5 a.; "Doesn't MD 5.3 specify that charter approval is at the office director level".

Response: Comment incorporated. Charter approval is at the MSTR Division level. MD 5.3 has been revised to reflect that SA-801 is now the implementing document for agreement state participation in working groups. In SA-801, Section II, B. has been revised to clarify that the MSTR Division Director approves charters with the OAS chair, as necessary. The reference to the 'Lead NRC Office' been deleted.

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Comment 2: On page 11 of 17, Section V. B. step 3; “How do we determine whether an Agreement State rep serves as a co-chair or just as a member? What are the differences in the roles/responsibilities of a co-chair versus a ‘normal’ member?”

Response: Comment noted. OAS may recommend a NRC/Agreement State working group be established and request co-chairing the group. NRC/Agreement State working groups are co-chaired by the NRC and Agreement State staff members (with the assistance of the OAS Chair) when management decides that we need to jointly leverage NRC and Agreement state expertise concerning draft policy, directives, guidance documents or special projects. An Agreement State Co-chair can also be helpful in maintaining communications with the OAS Executive Committee. Specific responsibilities for Co-Chairs versus ‘normal’ members are delineated in sections IV ‘Roles and Responsibilities’ item(s) D and F, respectively. See page 9, section V.A. step 4 “Identification of Working Group Members.”

U.S. Nuclear Regulatory Commission, HQ, NMSS, MSTR; hardcopy dated November 2, 2016

Comment 1: On page 2 of 16; Section III B, Background – General Operating Standards. Do we need to explicitly state that (a) agreement state participation is coordinated through OAS and (b) the agreement state representative is expected to represent the majority position of the agreement states and not their own particular state’s views?

Response: Comment Incorporated. (a) No, in section IV Roles and Responsibilities Section C. OAS Executive Board – which “recommends the establishment of groups, consults with NMSS on Agreement State involvement in groups, determines the representatives of groups, and approves the Charter for groups, and page 8 of 16 “Identification of Working Group Members” discusses membership coordination via both groups, and (b) Yes, section IV Roles and Responsibilities; Section F.8. and G.10. have been revised to state that Agreement State working group members will “obtain *and express* views from other Agreement States. The groups Charter determines the scope of work and will be explicit enough so that the group is aware of what its responsibilities are. The lead organization establishes the purpose of the group and tracks progress in coordination with OAS. See Section V. A. 2.

Comment 2: On page 6 of 16; Section H, item 10 Delete the words “if possible”.

Response: Comment incorporated. The same wording was used on page 5 of 16 section F.8. and was revised accordingly. Additionally the words “express” have been added in accordance with Comment 1 above.

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Comment 3: On page 9 of 16; Section V – Guidance; 4 (c) Where did the discussion of Tribal groups come from?

Response: Comment Noted. At the request of the State of Washington (see Comment 1 from the State) they requested a paragraph discussion on Federal Advisory Committee Act (FACA) and asked if there was a quorum for federal, state, local and Tribal membership. It is not the intent nor purpose of this procedure to discuss FACA. However, we have made it clear that OAS participation does not have FACA implications and NRC intends to refer all issues associated with FACA to the Office of General Counsel for a legal review prior to proceeding. For the sake of clarity, the words “local” and “Tribal” have been deleted and we refer only to “Federal and State government employees”.

Comment 4: On page 14 of 16; Section V. D. 4. Be specific as to what part of Section V.A. should be followed.

Response: Comment Incorporated. Section V. A. 3. Is to be followed. Section revised accordingly.

Comment 5: On page 6 of 16; Section V. G. 5.add the following words will (a) *obtain and express the views of other Agreement State members and* (b) keep the OAS Executive Board apprised ...

Response: Comment Incorporated.

U.S. Nuclear Regulatory Commission, HQ, Office of General Counsel; email dated April 28, 2016

Comment 1: Later in the document [Section V, 5. A.] you say that the lead office or division “approves” of the charter. Approves means to grant permission. In comparison, “concurs” means to agree to something, but does not imply you have authority to block the action. I recommend using “Approves” in this sentence instead of concurs if the lead office has this authority to grant permission for the use of the charter.

Response: Comment incorporated. MSTR Director and the OAS Chair, as applicable, approve all charters. (See Comment #1 from NMSS/MSTR.)

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Comment 2: Section IV. B. 'Lead Organization' - Suggested edit unless you anticipate that OAS may be the lead organization on some activities. If so, then the original language (Lead Organization) is accurate.

Response: Comment noted. OAS may be the lead organization so the original language is 'accurate'.

Comment 3: page 3 of 17, section B step 3; add 'rulemaking working groups' to the list of groups.

Response: Comment incorporated.

Comment 4: page 3 of 17, section B. 4. and section C step 4; Agrees, concurs or approves? See prior comment. Who has authority here to grant permission to approve the use of the charter? If it's the lead program office/division than agrees is ok in this sentence.

Response: Comment incorporated. The charter is approved by a manager (MSTR Division Director) and the OAS Chairman. The sentence has been revised to delete the word 'concurs' and add the word 'approves.'

Comment 5: page 5 of 17; Section F, step 7 and page 6 of 17 Section H; 8.; Again editorial comment, I don't think this language is necessary.

Response: Comment incorporated. The words 'relative to completing (or completion) of the tasks and products' have been deleted.

Comment 6: Page 5 of 17, section F step 8; add 'rulemaking working groups' to the list of groups.

Response: Comment incorporated.

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Comment 7: Page 6 of 17, Section H, step 9; Suggested edit, I think it is implied in the sentence.

Response: Comment incorporated. The words “relative to the tasks and products’ have been deleted.

Comment 8: General question. Why is there not a handbook here instead of just referencing SA-801? By having a separate SA instead of the handbook you have to repeat a lot of what is in MD 5.3 in SA-801.

Response: Comment noted. SA-801 has replaced the handbook and MD 5.3 revision has been issued referencing SA-801 as the guidance document. Deleting the handbooks from Management Directives is an Agency trend already performed in other MD’s. It may also decrease the time required for a MD revision to be approved and issued. SA-801 contains all the necessary text of the handbook.

Comment 9: Section IV, ‘Roles and Responsibilities’ D. 8 – Do you want to add ‘Commission’ here based upon recent SRM’s?

Response: Comment not incorporated. The Commission is not the appropriate level for the resolution of this type of issue, and any issues can be managed efficiently and effectively with the input of NMSS Office Management and MSTR Division Management without going to the Commission for resolution.

Comment 10: Section V, ‘A. 4. (c) Recommend deleting the words “or those representing non-governmental organizations”

Response: Comment incorporated.

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Comment 11: Section V, Guidance. General Question. Do rulemaking working groups need a Charter?

Response: Comment noted. Rulemaking working groups do need a charter.

Comment 12: Page 15 of 17, (b) Coordination with NRC Offices, Editorial comment add 'NRC' in front of office.

Response: Comment not incorporated. OAS could be the lead organization and the next sentence clarifies that NRC(MSTR) will coordinate with OGC in the event the OAS is lead organization which supports your comment/concern.

U.S. Nuclear Regulatory Commission, Region I, Division of Nuclear Materials Safety

Comment 1: In Section IV.D., please explain the difference between a rulemaking working group and an NMSS rulemaking working group.

Response: Comment incorporated. In this context, they are synonymous. However, the word 'NMSS' is confusing as it is not formally defined previously. The language after 'task leader' as been deleted.

Comment 2: In Section IV.F.8., please replace the word "Chairman" with "Chair".

Response: Comment incorporated.

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U.S. Nuclear Regulatory Commission, Region III, Division of Nuclear Materials Safety

Comment 1: Our only comment is that on page 14 Section V. D. 2. b. the title of MD 3.5 should be included and we should clarify that 67 FR 36920 is a Federal Register Notice

Response: Comment Incorporated. MD 3.5, *Attendance at NRC Staff-Sponsored Meetings*, and the Federal Register Notice reference have been added.