

ATTACHMENT 2

To: EARIP Participants

From: Myron Hess, on behalf of the EARIP POR Work Group

Date: March 5, 2009

Re: Proposed rule changes

The POR Work Group met on March 2nd to discuss the comments made at the Feb. 12th EARIP meeting regarding the proposed package of rules changes. All members of the Work Group (Myron Hess, Colette Barron, Steve Kosub, Mary Q. Kelly, and Con Mims) attended along with Robert Gulley, Darcy Frownfelter, Jim Bower, and Steve Bereyso. Will Amy and Todd Votteler participated by phone.

Based on the comments received at the February EARIP meeting, we considered possible revisions to proposed Subsections 8.12 and 8.13.

Subsection 8.12 Discussion (Subsection 8.12 addresses Alternate Members for Subcommittees)

Regarding Subsection 8.12, at the February EARIP meeting, we received some comments suggesting that it might be appropriate to allow for the designation of Alternate Members to the Expert Science Subcommittee. The proposed draft did not authorize Alternates for the Expert Science Subcommittee. At our Work Group meeting, we had a lengthy discussion of the advantages and disadvantages of allowing the designation of Alternate Members. In the end, however, we decided to retain our original recommendation that the rules should not authorize the designation of Alternate Members for the Expert Science Subcommittee. A quick summary of our discussions is providing in the following paragraph. Accordingly, we have proposed that the draft of Subsection 8.12 remain basically the same, but with the addition of an explicit statement indicating that the designation of Alternate Members is not authorized for the Expert Science Committee. In the course of those discussions, we also realized that the current definition of "Alternate Member" should be expanded to reference the potential for the designation of Alternate Members pursuant to Subsection 8.12. Accordingly, that proposed change to the definition of "Alternate Member," which is needed in order to be consistent with the new Subsection 8.12, is included in the attached draft.

There continue to be strong concerns among Work Group Members about the potential for the use of Alternate Members to undermine the careful consideration given to the selection of the Members of the Expert Science Subcommittee. We discussed the potential for allowing for the inclusion of Alternate Members on the Expert Science Subcommittee solely for the purpose of participating in discussion. There was concern, however, that allowing the use of Alternate Members might result in a reduced level of participation in discussions by the actual Members, which could undermine the good working relationship of the Subcommittee. We also discussed the current procedures of

the Expert Science Subcommittee, which allow persons other than Subcommittee Members to attend and participate in discussions. Those procedures would seem to allow an informal mechanism for a Member who is unable to attend a particular meeting to get feedback about the discussions and even to have a means of providing some input to the deliberations through an attendee who is not a formal Alternate Member.

We also discussed allowing Alternate Members to be designated but with the requirement that the designation be approved by the Steering Committee. However, we concluded that such a requirement would not be sufficient to prevent the potential for the loss of participation by the actual Subcommittee Members. We also acknowledged that the process of approving a slate of Alternate Members could be time-consuming and contentious. In the end, we concluded that the Expert Science Subcommittee process has worked well without a formal process for designating Alternate Members and concluded that the rules should not provide for such designations.

Subsection 8.13 Discussion (Subsection 8.13 addresses Informal Consultations and Informal Delegations)

This was the most contentious issue discussed at the February 12th EARIP meeting. We discussed the potential for developing statements of policy or guidance regarding these issues rather than an actual rule. We also discussed the question of whether we needed to address the issues in any fashion. Ultimately, we determined that these issues merit further discussion. Accordingly, we are recommending that the rules package be considered at the March, 2009 EARIP meeting without proposed Subsection 8.13. The Work Group proposes to continue working on the question of how best to address the issue of informal consultations and the issue of informal delegations. Based on the outcome of those future discussions, we anticipate coming back to the EARIP with a recommendation in the near future. That recommendation could involve a change in the rules, the adoption of a policy statement, or some other mechanism.