

U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

**MD 5.3                      AGREEMENT STATE PARTICIPATION IN                      DT-16-23**  
**WORKING GROUPS**

*Volume 5:*                      Governmental Relations and Public Affairs

*Approved By:*                      Scott Moore, Acting Director  
Office of Nuclear Material Safety and Safeguards

*Date Approved:*                      June 22, 2016

*Expiration Date:*                      June 22, 2021

*Issuing Office:*                      Office of Nuclear Material Safety and Safeguards  
Division of Material Safety, State, Tribal, and Rulemaking Programs

*Contact Name:*                      Joseph O’Hara  
301-415-6854

**EXECUTIVE SUMMARY**

Management Directive (MD) 5.3, “Agreement State Participation in Working Groups,” has been updated to reflect organizational changes and current practices in the establishment and implementation of Agreement State participation in working groups. References to the Conference of Radiation Control Program Directors (CRCPD) participation on working groups have been removed as a result of a conflict with the Federal Advisory Committee Act (FACA) requirements. State representatives from CRCPD may participate in working groups only if the provisions of FACA are met. Procedure SA-801, “Agreement State Participation in NRC Working Groups,” replaces Handbook 5.3. SA-801 references the agency’s processes for dissenting opinion in MD 10.159, “NRC Differing Professional Opinion Program.”

Note that the Office of Federal and State Materials and Environmental Management Programs (FSME) and the Office of Nuclear Material Safety and Safeguards (NMSS) merged on October 5, 2014. Not all State procedures have been updated to reflect the new office name of NMSS. In the interim, current procedures are still in effect and will be referenced as FSME State Procedures until such time as they are reviewed and revised to include the new official office name. All procedures may be found on the NMSS public Web site (<https://scp.nrc.gov/>), by selecting “Resources and Tools,” and then “NMSS Procedures.”

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### I. POLICY

- A.** It is the policy of the U.S. Nuclear Regulatory Commission to provide Agreement State programs the opportunity for early and substantive involvement in the development or formulation of any rule, policy, directive or guidance document, as well as participation in any special study or other NRC activity, as authorized and directed under Section 274g. of the Atomic Energy Act of 1954, as amended. Management Directive (MD) 5.3 describes the steps and process the NRC employees should follow to establish and implement NRC/Agreement State working groups as mechanisms for Agreement States to obtain this early and substantive involvement.
- B.** The NRC uses two types of working groups for its regulatory activities. The NRC/Agreement State working groups normally develop policy, directives, or guidance recommendations. Rulemaking working groups normally develop recommendations for NRC regulations and associated guidance. In addition, steering committees comprised of NRC and Agreement State managers are also participants in this process.

## II. OBJECTIVES

- Describe the steps to establish and implement NRC/Agreement State or rulemaking working groups.
- Develop a process through which every working group member—
  1. Contributes to the development and implementation of a working group charter.
  2. Aligns with the vision, purpose, and goals; as stated in the working group charter.
  3. Commits to the highest standards for quality and effective problem solving.
  4. Actively seeks improvements to processes and standards.

## III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

### A. Director, Office of Nuclear Material Safety and Safeguards

As delegated by the Executive Director for Operations, provides management oversight of the activities described in this MD, as needed.

### B. General Counsel

Ensures legal sufficiency and consistency with current laws, regulations, and agency policy, including but not limited to ensuring that there is no conflict with the Federal Advisory Committee Act (FACA).

### C. Lead NRC Office or Division

1. Recommends the establishment of working groups for issues that would directly affect an Agreement State.
2. Approves the establishment of all NRC/Agreement State working groups, rulemaking working groups, and steering committees to help ensure appropriate coordination with Agreement States.
3. Approves all charters of NRC/Agreement State working groups, rulemaking working groups and steering committees to help ensure efficient and effective purpose, function, and product.
4. Establishes a draft charter for the working group that preserves the essential elements of the request for participation, addresses the purpose, membership, objectives, operating rules, and schedule of the working group.

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5. Establishes clear expectations for the working group regarding the purpose (the work expected) and the goals (the desired outcome and framework for recommendations) associated with the project.
  6. Establishes ground rules, roles, and responsibilities for working group members, as well as what work will be done and by whom. Ensures clear alignment between the issues being addressed and the goal(s) to be achieved.
  7. Establishes measurable expectations with respect to timeliness, quality, and quantity.
  8. Establishes authority for decision making.
  9. Establishes expectations for communication strategies for (1) seeking input from stakeholders, when appropriate, and (2) providing status updates and results to the steering committee and the Organization of Agreement States (OAS) Executive Board.
  10. Ensures that the resources needed to accomplish the task are provided to the working group.
  11. In the absence of the Director, the Deputy Director has the authority to perform these functions.

#### **D. Organization of Agreement States (OAS) Executive Board**

The NRC and OAS collaborated in the development of MD 5.3. Although this directive is an internal NRC document, the OAS Executive Board has responsibilities involving NRC/Agreement State working groups as follows:

1. Recommends the establishment of NRC/Agreement State working groups and steering committees.
2. Consults with the Office of Nuclear Material Safety and Safeguards (NMSS) and/or any other lead NRC office on Agreement State involvement in rulemaking working groups.
3. Determines Agreement State representatives on working groups.
4. The OAS Executive Board chair concurs in all charters of NRC/Agreement State working groups and, as applicable, rulemaking working groups and steering committees.

#### **E. Working Group Chair, Co-Chair(s), or Task Leader**

Depending on the task of the working group there may be a chair (rulemaking working group), co-chair(s) (NRC/Agreement State working groups), or a task leader (NMSS rulemaking working group).

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1. Coordinates establishment of the working group.
  2. Leads working group meetings including but not limited to establishing meeting schedules and agenda.
  3. Ensures the preparation of meeting minutes and other support activities, as appropriate.
  4. For rulemaking working groups, the NRC chair, co-chair, or task leader ensures that appropriate documents are made available in ADAMS and the Public Document Room.
  5. Ensures that the working group follows the charter, rulemaking plan, and regulatory basis, including the completion of all tasks within the agreed-upon timeframe.
  6. Ensures that the lead organization and the steering committee (if applicable) are kept informed of working group activities.
  7. Ensures that issues and areas needing policy guidance or direction are brought to the lead organization or steering committee (if applicable) for discussion and resolution. If the working group has no steering committee and needs guidance, the chair, co-chair(s), or task leader will bring the issue(s) to the attention of the NRC office management, the OAS Executive Board, and the Office of the General Counsel, as applicable.
  8. Issues the final working group product or products.

**F. NRC/Agreement State Working Group Coordinator**

1. Ensures the working group members understand the process and objectives.
2. Informs division management of changes in the working group membership.
3. Facilitates the development of the working group charter.
4. Updates the status of all NRC/Agreement State and rulemaking working groups on a quarterly basis.

**G. NRC/Agreement State Working Group Member**

1. Works with the working group co-chair(s) or task leader to assess the tasks and milestones needed to—
  - (a) Complete draft working group products,
  - (b) Review and comment on drafts,
  - (c) Address comments,

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- (d) Prepare any briefing materials, and
  - (e) Complete final working group products on time.
2. Reviews contractor reports, as appropriate.
  3. Completes working group tasks and products, on time.
  4. Facilitates the concurrence process by assisting in resolving any significant issues or concerns.
  5. Supports and participates in management briefings and any public meetings.
  6. Informs chair, co-chair(s), or task leader of any conflicting priorities and problems relative to completing tasks and products.
  7. Ensures that their management's opinions and views are presented to the working group.
  8. The Agreement State member(s) of NRC/Agreement State working groups and rulemaking working groups will keep the OAS Executive Board apprised of the working group's activities and solicits comments and input on working group issues. Notifies the OAS Executive Board of potential issues or concerns. Obtains views from other Agreement States, if possible.

#### **H. Rulemaking Working Group Member(s) (All)**

These working groups may or may not include an Agreement State staff member. If the rulemaking working group will provide a compatibility recommendation, the working group must include an Agreement State representative.

1. Works with the task leader to assess the tasks and milestones needed to—
  - (a) Prepare the rule package,
  - (b) Prepare the rule documents,
  - (c) Review and comment on drafts,
  - (d) Address comments,
  - (e) Estimate information collection burden,
  - (f) Prepare briefing materials, and
  - (g) Complete the rulemaking package on time.
2. Reviews contractor reports, as appropriate.

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3. Prepares associated guidance (including licensing, inspection, and enforcement guidance), as appropriate, and helps develop milestones for its preparation so that final guidance will be available at the time the rule is implemented.
  4. Facilitates the rulemaking concurrence process by assisting with resolving any significant issues or concerns.
  5. Attends and participates in working group meetings, including being appropriately prepared.
  6. Supports and participates in management briefings and any public meetings.
  7. Informs chair, co-chair(s), or task leader of conflicting priorities or problems relative to completion of tasks and products.
  8. Ensures that their management's opinions and views are understood and presented to the working group.

**I. Steering Committee**

1. For the associated working group, reviews, and comments on the working group charter.
2. Provides guidance and direction to the working group.
3. Assists in resolving issues raised by working group members and facilitates the development of consensus documents.
4. Provides insight on the technical, regulatory, and policy issues being addressed by the working group.
5. Provides feedback on draft working group products.
6. Reviews the final working group products and provides feedback on whether they are ready for issuance, fully address the substance of the charter, and are of sufficient depth, quality, and content.
7. Keeps applicable office or division senior management informed of issues, schedules, and the working group's activities, as necessary.
8. The Agreement State members of the steering committee groups will keep the OAS Executive Board apprised of activities and notify the OAS Executive Board of potential issues or concerns.

**J. Agreement State Rulemaking Working Group Member(s)**

1. Keeps the OAS Executive Board apprised of the rulemaking working group's activities, and solicit comments and input on working group issues.

2. Notifies the OAS Executive Board of any potential issues or concerns.
3. Obtains views from other Agreement States, if possible.

#### IV. APPLICABILITY

The policy and guidance in MD 5.3 apply to all NRC employees who are responsible for establishing and participating in NRC/Agreement State and rulemaking working groups. The NRC and OAS collaborated in the development of MD 5.3, and therefore, Agreement State representatives are expected to abide by this directive.

#### V. DIRECTIVE HANDBOOK

Handbook 5.3 consists of NMSS Procedure SA-801, "Agreement State Participation in Working Groups." It provides guidance for the establishment and implementation of NRC/Agreement State and rulemaking working groups for NMSS. SA-801 is available at <https://scp.nrc.gov/>.

#### VI. REFERENCES

##### *Code of Federal Regulations*

- 10 CFR 2.802, "Petition for Rulemaking—Requirements for Filing."
- 10 CFR 2.803, "Petition for Rulemaking—NRC Action."

##### *Nuclear Regulatory Commission Documents*

Commission Paper, COMKC-91-007, "Improving Cooperation with Agreement States," memorandum from Samuel J. Chilk, Secretary, to James M. Taylor, Executive Director for Operations, and Harold R. Denton, Director, Office of Governmental and Public Affairs, April 11, 1991 ([ML010100091](#)).

##### Management Directives—

- 3.5, "Attendance at NRC Staff-Sponsored Meetings."
- 6.3, "The Rulemaking Process."
- 10.159, "The NRC Differing Professional Opinion Program."

NMSS Functional Description on the NRC Public Web Site:  
<http://www.nrc.gov/about-nrc/organization/nmssfuncdesc.html>.

NMSS Procedures on the NRC Public Web Site:  
<https://scp.nrc.gov/>.



NMSS Procedure SA-801, "Agreement State Participation in NRC Working Groups," available at <https://scp.nrc.gov/procedures.html>.

NMSS State Procedures (formerly known as FSME State Procedures) Web Site: <https://scp.nrc.gov>.

NMSS Policy and Procedures 6-10, "FSME Procedures for Preparation and Review of Rulemaking Packages," Revision 2.

NMSS Public Meeting Schedule Web Site: <http://meetings.nrc.gov/pmns/mtg>.

NRC, "Enhancing Public Participation in NRC Meetings; Policy Statement," 67 FR 36920, May 28, 2002.

NRC Public Affairs Web Site: <http://www.nrc.gov/about-nrc/public-affairs.html>.

NUREG-BR/0053, "United States Nuclear Regulatory Commission Regulations Handbook," available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0053/>.

***United States Code***

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Federal Advisory Committee Act, as amended (5 U.S.C. Appendix II).