

NRC/Agreement State Working Groups

***Directive
5.3***

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U. S. Nuclear Regulatory Commission

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NRC/Agreement State Working Groups Directive 5.3

Policy (5.3-01)

It is the policy of the U.S. Nuclear Regulatory Commission to provide Agreement State programs opportunity for early and substantive involvement in the development or formulation of rule, policy, directive, or guidance document, as well as participation in special study or other NRC activity, as authorized under Section 274 of the Atomic Energy Act of 1954, as amended. This management directive describes the steps and process the staff should follow in the establishment and implementation of NRC/Agreement State working groups as one mechanism whereby Agreement States are provided this early and substantive involvement.

Objective (5.3-02)

To describe the steps to be followed to establish an NRC/Agreement State working group.

Organizational Responsibilities and Delegations of Authority (5.3-03)

The Commission (031)

Approves policy matters related to NRC/Agreement State working groups.

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**Deputy Executive Director for Materials,
Research, and State Programs (DEDMRS)**
(032)

As delegated by the Executive Director for Operations, provides management oversight of the activities described herein.

General Counsel
(033)

Ensures that there is no conflict with the Federal Advisory Committee Act or other statutes or procedures.

**Director, Office of State and
Tribal Programs (STP)**
(034)

- Makes recommendations regarding the establishment of an NRC/Agreement State working group in the development or formulation of rule, policy, directive, or guidance document, as well as participation in special study or other national radioactive materials regulatory program activity. (a)
- Concur in the establishment of all NRC/Agreement State working groups to help ensure appropriate coordination with Agreement States. (b)
- Concur in all charters of NRC/Agreement State working groups to help ensure efficient and effective purpose, function, and product. (c)

**Office Directors and
Regional Administrators**
(035)

- Make recommendations and approve the establishment and use of an NRC/Agreement State working group within their office or region after consulting with the Director of STP. (a)
- Concur in all charters of NRC/Agreement State working groups for which the NRC office serves as lead. (b)

Applicability
(5.3-04)

The policy and guidance in this directive and handbook apply to all NRC employees who are responsible for establishing and participating with NRC/Agreement State working groups.

Handbook

(5.3-05)

Handbook 5.3 provides guidance for the establishment and processes of NRC/Agreement State working groups.

References

(5.3-06)

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

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.

NRC Management Directive 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff."

NRC/Agreement State Working Groups

Handbook 5.3

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Part I

Establishment of an NRC/Agreement State Working Group

General (A)

Any NRC office (headquarters or regional) or Organization of Agreement States (OAS) Executive Board may recommend the establishment of an NRC/Agreement State working group. Working groups of NRC, State, and other Federal agency staff are established to request the views and involvement of Agreement State officials in the development or formulation of any rule, policy, directive, or guidance document, or participation in any special study or any other NRC activity. Representatives of the Conference of Radiation Control Program Directors (CRCPD) may be requested to participate if the issue involves topics affecting non-Agreement States or all States. Other Federal agency representatives may also be requested as necessary, depending on the purpose and scope of the working group. (1)

Working groups may be established to address a wide range of issues and to develop a variety of different products. Generally, working groups fall into one of the following broad categories: (2)

- Rulemaking (a)
- Materials program policy, procedure, or guidance (b)
- Agreement State program policy, procedure, or guidance (c)

The organization [NRC office (headquarters or regional) or OAS] recommending the establishment of an NRC/Agreement State working group will usually assume lead responsibility for oversight of the working group (e.g., establishing the working group, drafting a charter, identifying members, and tracking progress). (3)

General (A) (continued)

The purpose of the new working group will be placed on the agenda for discussion during the next OAS/NRC/CRCPD teleconference. If all affected parties agree, each organization should notify the requestor of its working group representatives within 30 days. The requestor will have the responsibility of setting up the kickoff meeting to discuss the draft charter. (4)

The Working Group Charter (B)

Draft Charter (1)

Before any official meetings of the working group are held, the requesting organization, or designee, should draft a charter detailing the information discussed in this section of the handbook. The members of the working group should be given the opportunity to review and comment on the draft charter. If a steering committee has been assigned to the working group, the steering committee should be given the opportunity to review and comment on the proposed charter as well. The Directors of the Office of State and Tribal Programs (STP) and the Office of Nuclear Material Safety and Safeguards (NMSS) and the Chair of the OAS Executive Board should concur in the final charter. The charter should be finalized within 30 days of the first working group meeting. A sample working group charter is attached as an exhibit to this handbook.

Purpose of the Working Group (2)

The specific purpose for creating the working group should be established and fully detailed in the charter, including any restrictions the working group must work within. Details such as the materials that should be examined by the working group (i.e., a number of written reports, a set of regulations, etc.) should also be included.

Background (3)

A background statement may be included in the charter to better convey why the working group is necessary.

Working Group Objectives (4)

A list of specific working group objectives should be included in the charter. The list should be detailed enough to fully describe the tasks to be performed by the working group.

The Working Group Charter (B) (continued)

Composition of the Proposed Working Group (5)

At a minimum, the number of NRC and Agreement State representatives should be established in the charter. Other information such as the expertise, experience, or area in which assistance is needed, as well as specific groups that should be represented, should also be included.

Timeframe of the Working Group (6)

The timeframe in which the working group is expected to complete each of its objectives and issue a final report should be estimated and included in the charter. (a)

Before drafting a charter, the requesting organization should determine the level of independence the working group will have. In some cases, the requesting organization is in need of new concepts or ideas and will thus provide the working group with a high degree of freedom. If the requesting organization has a certain goal in mind or restrictions that must be followed however, a greater degree of oversight may be necessary. It is important that these details be included in the purpose of the working group charter. (b)

Identification of Working Group Participants (C)

The requesting organization should submit a request for participation to other organizations (the Director of STP, the Director of NMSS, or the Chair of the OAS). The request should identify the need and purpose of the working group; suggested membership, including expertise or skills desired; the scope of activities and expected products; the approximate level of effort expected for participants; and, if possible, should include a draft charter. (1)

It is important to estimate the level of commitment required so that potential working group participants can gain an understanding of the effort to be dedicated to the working group. (2)

The requesting organization should specify the issues and the level of commitment required. The proposed number of working group meetings to be held, the amount of time in addition to official working group meetings that participants will be expected to spend on working group issues, and the expected extent of working group interactions in

Identification of Working Group Participants (C) (continued)

general should all be estimated to aid working group participants and their managers in resource planning. (3)

The requesting organization will identify, in consultation with the Director of STP, a specific NRC representative or representatives from the appropriate office(s) to serve on a particular NRC/Agreement State working group. The requesting organization, in coordination with STP, will request OAS, through the OAS Executive Board, to recommend an Agreement State representative or representatives, as appropriate, to serve on a particular NRC/Agreement State working group. A minimum of 30 days should be allowed for OAS to find the appropriate State official or officials to serve on the working group. (4)

If appropriate, the requesting organization, in coordination with STP, will request CRCPD, through the Chair of the CRCPD, to recommend a State representative or representatives, as appropriate, to serve on a particular NRC/Agreement State working group. A minimum of 30 days should be allowed for CRCPD to find the appropriate State official or officials to serve on the working group. (5)

If a State representative cannot be found to participate in a working group, or if OAS decides that State participation in a working group is unnecessary, NRC should proceed with the working group. Arrangements should be made by the working group to keep the States aware of working group progress and findings. (6)

The requesting organization may suggest specific members for participation in the working group; however, working group membership is ultimately the decision of the managers of the working group participants. (7)

Depending on the subject matter, scope, and level of complexity of the working group topic, additional participants from outside the NRC may be requested to be part of a working group. However, if all working group members are not regular Government employees, the group may be considered to be an advisory committee subject to the procedural requirements of the Federal Advisory Committee Act (FACA). In most instances, participation by State employees in an NRC working group does not have FACA implications, but participation by other persons who are not regular Government employees could result in application of the act to the group's activities. If all working group members are

Identification of Working Group Participants (C) (continued)

not regular Government employees, the Office of the Assistant General Counsel for Legal Counsel, Legislation, and Special Projects of the Office of the General Counsel should be contacted before any meeting of the working group takes place to inquire about the applicability of FACA and what actions need to be taken to meet FACA requirements. (8)

Representation by the Working Group Participants (D)

The requesting organization should determine who and what the working group participants represent. For example, working group members may be recruited specifically because of their skills or expertise in certain areas. In this case, working group participants should be considered to be providing only their opinions and perspectives. Working group members could also be recruited to serve as a representative of a particular group (NRC office, OAS, etc.). In this case, working group participants should be considered to be providing the opinions and perspectives of a group. It is the responsibility of individual working group members to properly express the opinions of the groups or organizations they represent.

Working Group Chairs and Co-Chairs (E)

Depending on the size and complexity of a working group, a chair or co-chairs should be decided upon by the working group in conjunction with the requesting organization. The duty of the chair or co-chairs is to lead the working group from conception of an idea to the final product. (1)

Chairs or co-chairs are responsible for the following: (2)

- Coordinating activities as the working group is established (a)
- Scheduling and leading working group meetings (b)
- Preparing meeting minutes and other support activities (c)
- Ensuring that documents are made available in ADAMS [the Agencywide Documents Access and Management System] and the public document room (d)
- Ensuring that the working group follows the charter, including completion of all tasks within the agreed-upon timeframe (e)

Working Group Chairs and Co-Chairs (E) (continued)

- Issuing the final working group product (f)
- Ensuring that the requesting organization is kept informed of progress (g)
- Ensuring that steering committees are kept informed of progress, if applicable (h)
- Ensuring that issues and areas needing policy guidance or direction are brought to the steering committee for discussion and resolution, if applicable (i)

Part II

Steering Committees for NRC/Agreement State Working Groups

General (A)

Depending on the subject matter, scope, and/or level of complexity of the working group topic, formation of a steering committee may be appropriate to aid the working group in accomplishing its objectives. For example, if a working group is addressing a particularly complex policy issue, a steering committee should be considered. To establish a steering committee, the requesting organization, the Director of the Office of State and Tribal Programs (STP), and the Organization of Agreement States (OAS) Executive Board must agree that a steering committee is necessary for a particular working group. (1)

A steering committee provides overall direction and guidance on working group activities. A steering committee will also help a working group achieve its goals by providing insight into and advice on the working group's process and products. (2)

Steering Committee Charter (B)

Draft Charter (1)

Before any official meetings of a steering committee are held, a charter should be drafted detailing the information as discussed in this section of the handbook. The Director of STP, the Director of the Office of Nuclear Material Safety and Safeguards, and the OAS Executive Board should concur in the final charter.

Purpose of the Steering Committee (2)

A steering committee's role is to aid a working group in achieving the group's objectives. A steering committee will accomplish the following:

Steering Committee Charter (B) (continued)

Purpose of the Steering Committee (2) (continued)

- Comment and concur on the working group charter (a)
- Serve as a sounding board for the working group (b)
- Provide feedback on draft working products (c)
- Review progress and provide management direction, guidance, and oversight of working group activities (d)
- Help resolve tough critical issues, especially when the working group disagrees or is at an impasse (e)
- Review the final working group report and agree that it is ready for issuance, fully addresses the substance of the charter, and is of sufficient depth, quality, and content (f)
- Keep senior management informed of working group progress, as necessary. (g)

Steering Committee Composition (3)

At a minimum, the number of NRC and Agreement State representatives should be established in the charter. Other information, such as the expertise, experience, or area in which assistance is needed, may also be included.

Working Group and Steering Committee Relationships (4)

A working group should keep the steering committee informed of its activities by providing steering committee members copies of meeting agendas, meeting minutes, and draft products as they are prepared. The steering committee and the working group should establish a preferred method of reporting information, whether in the form of periodic formal reports or informal e-mails. Regardless of the method of information exchange, each member of the steering committee should receive the same information. A working group should also schedule meetings with the steering committee at times appropriate to the steering committee's purpose or at the steering committee's request. (a)

Steering Committee Charter (B) (continued)

Working Group and Steering Committee Relationships (4) (continued)

In general, the working group should interact with the whole steering committee (i.e., steering committee guidance and direction should only be provided by the steering committee as a whole, and not by individual members of the steering committee). The working group still has the flexibility to interact with individual members of the steering committee but only for clarification and additional information outside of the guidance and direction provided by the steering committee as a whole. (b)

When provided to the working group as a collective steering committee comment or guidance, the working group should regard steering committee comments as recommendations. The working group should consider these recommendations and reflect them in its work product. It is not expected that individual steering committee member comments and points of discussion will be accepted and acted upon by the working group. If there is disagreement between the steering committee and the working group, the area of disagreement should be discussed and resolved. If a resolution is not possible, the final product may contain minority opinions or viewpoints. (c)

Term of the Steering Committee (5)

The steering committee should function until the working group ceases activity.

Identification of Steering Committee Members (C)

Number of Steering Committee Participants (1)

The requesting organization, the OAS Executive Board, and the Director of STP should agree upon the number of steering committee members necessary.

NRC Steering Committee Participants (2)

The requesting organization will identify, in consultation with the Director of STP, a specific NRC representative from the appropriate office to coordinate activities in the establishment of a steering committee and to serve as chair or co-chair, as appropriate. (a)

Identification of Steering Committee Members (C) (continued)

NRC Steering Committee Participants (2) (continued)

Additional NRC steering committee participants should be identified by the appropriate NRC office(s) or region(s) in consultation with the Director of STP. (b)

Agreement State Steering Committee Participants (3)

The requesting organization, in coordination with STP, will request OAS, through the OAS Executive Board, to recommend an Agreement State official or officials, as appropriate, to serve on a particular NRC/Agreement State steering committee. A minimum of 30 days should be allowed for OAS to find an appropriate State official or appropriate State officials to serve on the steering committee.

Level of Commitment Necessary for Steering Committee Members (4)

An estimate of the number of steering committee meetings expected to be held should be made when the steering committee is formed. The steering committee should meet at appropriate points in time (i.e., to review issues, when draft products are proposed, if needed by the working group to address issues, etc.). Steering committee members should be aware that additional meetings may be necessary if unexpected difficulties occur in the working group's progress. The amount of time that members will be expected to spend on working group issues in addition to the time spent at official steering committee meetings and the extent of steering committee interactions in general should also be included in the charter.

Part III

Implementation of NRC/Agreement State Working Groups

General (A)

The process and products of a working group should ultimately be determined by working group members and the requesting organization in accordance with the guidance in this management directive. The amount of influence by any of the contributing organizations or other factors outside the working group should be agreed upon and followed.

Kickoff Meeting (B)

Before the first official working group meeting, the members of the working group should participate in an initial kickoff meeting. At this meeting, the requesting organization and working group participants should review the purpose of the working group and the working group charter, as well as the contents of this management directive.

Announcing and Holding Meetings (C)

The NRC chair should announce each meeting, including teleconferences, by placing them on the NRC public meeting announcement schedule at least 2 weeks in advance of the meeting and on other announcement media, as appropriate (e.g., the NRC Bulletin Board, the NRC Public Document Room [PDR], and the Office of Public Affairs). A notice announcing the first meeting should be published in the *Federal Register*. Public observers should be able to comment on the issues at the end of the meeting, or at designated times throughout the meeting. For additional guidance, see NRC Management Directive 3.5, "Public Attendance at Certain Meetings Involving the NRC Staff." (1)

Announcing and Holding Meetings (C) (continued)

Sufficient notice of each meeting should be given to all working group participants to ensure that workloads can be managed and proper travel arrangements can be made. Although working group members should attempt to attend meetings in person, participation by teleconference may be an option. (2)

Documentation of Meeting Results and Commitments (D)

The NRC chair will ensure that minutes are kept of all meetings. The minutes and accompanying background documents will be placed in a unique file in ADAMS [Agencywide Documents Access and Management System] and the PDR. The file name should be unique to the specific meeting and should include the name of the NRC/Agreement State Working Group and the subject of the meeting. E-mails, telephone calls, memoranda relating to setting up meetings or arranging committee business, or similar administrative activities, are not required to be placed in the PDR. (1)

If a steering committee is involved with the working group, meeting minutes and accompanying background documents should be distributed to the steering committee members as established in the steering committee charter. (2)

Changes to the Working Group Charter (E)

In certain circumstances, the working group charter may require revision after it has been finalized. If a working group charter must be revised, the requesting organization is responsible for obtaining concurrence from the other affected bodies (the Director of the NRC office(s), the Director of the Office of State and Tribal Programs [STP], and the Organization of Agreement States Executive Board). Extreme revisions of a working group charter should not be made. The original charter should be followed as finalized unless the revision is agreed upon by all of the cognizant bodies. (1)

If additional members are required for a working group, the requesting organization should revise the charter and obtain concurrence as appropriate. New members should be recruited in the same manner as the original members. (2)

Progress Reports and Draft Working Group Products (F)

The requesting organization and the working group should decide what policy should be followed for progress reports and draft products, including how often progress reports should be made and who should receive copies of draft products.

Final Working Group Reports (G)

The product of a working group can be used by the requesting organization however it deems appropriate. The working group's final report should be concurred upon by all members of the working group. If there is a dissenting opinion by a working group member, the opinion should be included in the report. (1)

In addition to the working group members, the requesting organization should decide whether additional organizations should concur on the final report. If appropriate, a steering committee should review the final report and agree that it is ready for issuance. (2)

Final NRC/Agreement State working group reports will be placed in the PDR and distributed to all Agreement States, the Director of STP, and the directors of the appropriate NRC offices. (3)

Coordination With NRC Offices (H)

The requesting organization, or designee, should keep the Deputy Executive Directive for Materials, Research, and State Programs informed of any NRC/Agreement State working groups. The requesting organization, or designee, should also coordinate with the Office of the General Counsel to ensure that there is no conflict with the Federal Advisory Committee Act or other statutes or procedures.

Part IV Administration

Master List of NRC/Agreement State Working Groups (A)

A master list of all NRC/Agreement State working groups should be maintained by the Office of State and Tribal Programs (STP). The list should be updated as new working groups are established, as well as when current working groups complete their objectives. At least annually, the list should be distributed to the appropriate offices and contacts to ensure that it is current. The list should also be posted on the Web.

Travel Considerations for Working Group Participants (B)

Travel and per diem expenses for Agreement State participants on NRC/Agreement State working groups will be paid by NRC, unless other arrangements are made with the requesting organization. The requesting organization should coordinate with the Director of STP on the current procedure for invitational travel for State officials and to determine how NRC will cover invitational travel expenses. (1)

Travel and per diem expenses for NRC participants on NRC/Agreement State working groups will be paid by their respective offices. (2)

Timekeeping (C)

To ensure that time spent on a working group is identified, a TAC [technical assignment control] number should be established for each working group for use by NRC working group members.

Implementation and Facilitation Aid for NRC/Agreement State Working Groups (D)

STP will provide a working group implementation and facilitation resource representative to facilitate the kickoff meeting and ensure that all issues are properly addressed. Depending on the topic, scope, and/or complexity of a working group, the chair of the working group can request additional aid from the Director of STP. The resource representative will be responsible for aiding the working group in reaching its objectives but need not have the expertise necessary to be a member of the working group. The resource representative is to aid the working group by ensuring that working group members fully understand the working group's process and objectives, and by facilitating working group meetings. The resource representative will not be an official member of the working group and should not be expected to carry out administrative tasks such as taking minutes or drafting documents. STP will provide a resource representative if possible.

**Exhibit
Sample Working Group Charter**

**Joint NRC/Agreement State Working Group To
Evaluate the Integrated Materials
Performance Evaluation Program (IMPEP)**

PROPOSED CHARTER

Purpose

On completion of the first cycle of Integrated Materials Performance Evaluation Program (IMPEP) reviews for the Agreement States, a working group consisting of representatives from the Nuclear Regulatory Commission (NRC) and the Agreement States will evaluate IMPEP experiences for additional enhancements and lessons learned to strengthen the IMPEP process. Experiences from all past IMPEP reviews (both Agreement State and regional) may be used in this evaluation.

Background

In Fiscal Year (FY) 1996, NRC began implementation of the IMPEP in the evaluation of Agreement State and regional materials programs to ensure that public health and safety are adequately protected from the hazards associated with the use of radioactive materials and that Agreement State programs are compatible with NRC's programs. The IMPEP process employs a team of NRC and Agreement State staff to assess both the Agreement State and the NRC regional office radioactive materials licensing and inspection program. All reviews use common criteria in the assessment and place primary emphasis on performance. Additional areas have been identified as non-common performance indicators and are also addressed in the assessment. The final determination of adequacy and compatibility of each Agreement State program, based on the review team's report, is made by a Management Review Board (MRB) composed of NRC managers and an Agreement State program manager who serves as the Agreement State liaison to the MRB.

At the end of FY 1999, NRC completed its first round of IMPEP reviews for all Agreement States. Regional reviews have occurred every 2 years and Agreement State reviews at frequencies of 2 to 4 years. From its inception, the IMPEP has been an iterative process. As the program progressed from the pilot, through interim implementation to final implementation, the NRC staff has factored in experience, comments, and suggestions to enhance the IMPEP. At the completion of this first cycle of reviews, NRC management believes that an independent

Exhibit (continued)

examination by a working group of the IMPEP experiences to date could further enhance this program.

Scope of Work

The NRC/Agreement State Working Group will examine the IMPEP process as conducted from FY 1996 through the present and identify issues or enhancements to improve the process.

Objectives

In examining the IMPEP process, the working group should address the following tasks. Each substantive working group recommendation should be evaluated and prioritized in the context of the following five NRC performance goals.

1. Evaluate the program's performance for additional enhancements, including whether the set of IMPEP elements is complete and sufficiently focused, whether changes are needed in the indicator criteria, and whether there are any patterns or issues identified from MRB review, discussions during MRB meetings, or changes to draft IMPEP reports that should be addressed (e.g., whether the reviews and reports can be enhanced to better address the technical quality of inspections; whether additional inspection accompaniments may be desirable when significant areas of improvement are identified in a region or State inspection program).
2. Examine how to best utilize the performance data in the nuclear material events database (NMED) and reported as outcome measures in preparing for and focusing reviews, and the extent to which the goals, measures, and metrics of the strategic plan can be used as key issues or questions to focus the review of each common and non-common performance indicator. Additionally, evaluate whether IMPEP review criteria should be added or expanded to assess the outcome of program initiatives to bring licensees into compliance with rules and license conditions and to prevent recurrence of problems.
3. Examine the effectiveness of between-IMPEP interactions, such as the value of periodic meetings, the need for any modifications to the periodic meeting process, and the effectiveness or use of structured program self-audits between IMPEP reviews.
4. Identify areas that should be considered for specific examination during IMPEP reviews, based on the review experience to date, such as the handling of complex or controversial licensing actions.
5. Reevaluate making the Organization of Agreement States (OAS) Liaison to the MRB a voting member of the MRB.

Exhibit (continued)

The working group collectively will be responsible for developing a final charter, establishing a work plan, monitoring progress, and preparing drafts of minutes and other products.

Working Group Organization and Operations

Initially, the following personnel will be in the working group:

NRC Personnel:

James Lynch, Region III, Co-Chair
Charles Cox, NMSS
Lance Rakovan, STP

Agreement State Personnel:

William Silva, TX, Co-Chair
Terry Frazee, WA

Resource Representatives:

Kathleen Schneider, STP
George Deegan, NMSS

Logistical and travel support for working group meetings, including travel and per diem expenses for Agreement State members, will be provided by NRC.

Interactions with the Steering Committee should take place as necessary.

Report Timeframe

Complete and submit report to the Director of STP within approximately 1 year.

Working group meetings are not subject to the requirements of the Federal Advisory Committee Act (FACA), but they will be announced in advance through the NRC Public Meeting Announcement System. Maximum use will be made of other appropriate media for facilitating interaction with the working group, for example, conference calls, facsimiles, and electronic mail. Working group meetings will be open to the public and will be held in the Washington, D.C., area or other locations as agreed upon by the working group members. Other persons attending working group meetings will be welcome to provide comments to the working group for its consideration in either written form or orally at times specified by the working group chair. Meeting minutes and draft and final documents produced by the working group will be publicly available from the NRC Public Electronic Reading Room.
