

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

TN: DT-04-17

To: NRC Management Directives Custodians

Subject: Transmittal of Management Directive 5.7, "Technical Assistance to Agreement States"

Purpose: Management Directive 5.7 is being revised to update the name of the Office of State and Tribal Programs, to add a handbook to describe the process for submission and review of requests for NRC technical assistance, and to clarify when NRC technical assistance will be provided on a cost-reimbursable basis.

Office of Origin: Office of State and Tribal Programs

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Date Approved: October 15, 1997 (**Revised: November 19, 2004**)

Volume: 5 Governmental Relations and Public Affairs

Directive: 5.7 Technical Assistance to Agreement States

Availability: Rules and Directives Branch
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Technical Assistance To Agreement States

Directive
5.7

Contents

Policy	1
Objectives	1
Organizational Responsibilities and	
Delegations of Authority	2
Commission	2
Executive Director for Operations (EDO)	2
Director, Office of State and Tribal Programs (STP)	2
Office Directors and Regional Administrators	4
Applicability	4
Handbook	5
References	5



U. S. Nuclear Regulatory Commission

Volume: 5 Governmental Relations and Public
Affairs

STP

Technical Assistance to Agreement States Directive 5.7¹

Policy (5.7-01)

It is the policy of the U.S. Nuclear Regulatory Commission to provide technical assistance to Agreement States, as appropriate, as authorized under Section 274 of the Atomic Energy Act of 1954, as amended. Directive and Handbook 5.7 describe the types of NRC technical assistance available to the Agreement States, and the steps that NRC staff shall follow in determining the appropriate type of response to a request for technical assistance received from an Agreement State.

Objectives (5.7-02)

- To provide guidance to NRC and Agreement State management on the submission and review of requests for NRC technical assistance. (021)
- To establish guidance in determining when and if NRC should provide routine, special, or programmatic technical assistance to Agreement States. (022)

¹Management Directive (MD) 5.7 does not apply to technical assistance provided by NRC to both Agreement and non-Agreement States when responding to radiological emergencies under the Federal Radiological Emergency Plan (FRERP). MD 5.7 also does not apply to special circumstances in which NRC may voluntarily offer to provide technical assistance to Agreement States, for example, to help analyze and investigate a significant incident or event.

Volume 5, Governmental Relations and Public Affairs
Technical Assistance to Agreement States
Directive 5.7

Objectives

(5.7-02) (continued)

- To establish a process for determining the extent and conduct of this assistance. (023)

Organizational Responsibilities and
Delegations of Authority

(5.7-03)

Commission

(031)

Approves policy matters related to providing technical assistance to Agreement States.

Executive Director for Operations (EDO)

(032)

Provides oversight of the activities described herein.

Director, Office of State and
Tribal Programs (STP)

(033)

- Coordinates the review of technical assistance requests from Agreement States with regional administrators and directors of affected program offices. (a)
- Reviews technical assistance requests to ensure that they are consistent with Commission policy and that they contain— (b)
 - Sufficient information to enable NRC to provide adequate technical response to the issues addressed in the State's request, such as an evaluation of the issue and, if appropriate, a proposed resolution. (i)

Organizational Responsibilities and
Delegations of Authority
(5.7-03) (continued)

Director, Office of State and
Tribal Programs (STP)
(033) (continued)

- Evidence that the State had pursued alternative means of addressing the issue on its own, including attempting to obtain assistance from other agencies within the State, other Agreement States, or independent organizations such as the Conference of Radiation Control Program Directors (CRCPD), the Organization of Agreement States (OAS), or procuring consultants or contractors. (ii)
- Coordinates any recommendations on the requests and provides the agency response to the State, as appropriate. (c)
- Ensures that appropriate headquarters and regional offices have an opportunity to provide input into the development of the response to the request. (d)
- Assists office directors and regional administrators in determining the appropriate means for providing the assistance, including the level of staff involvement and the timing of the agency response. (e)
- Plans, schedules, and arranges meetings with the State to coordinate the assistance. (f)
- On assistance requests other than those received directly by a region or other offices, responds to the State, identifies an NRC contact, and provides a schedule for accomplishing the assistance. (g)

Organizational Responsibilities and
Delegations of Authority
(5.7-03) (continued)

Office Directors and
Regional Administrators
(034)

- Advise the Director of STP and other affected offices of initial inquiries from States about technical assistance. (a)
- Evaluate the ability of their respective offices and regions to respond to technical assistance requests from the Agreement States and provide this information to STP. (b)
- Participate in meetings with State officials as required to clarify the assistance request and to ensure a timely and appropriate response to the request. (c)
- Approve and provide the requested assistance in the timeframe agreed upon. (d)
- When additional clarification of the request is necessary, the lead office responding to the technical assistance request (most often the office reviewing the initial inquiry) obtains clarification either orally or in writing from the State and prepares correspondence confirming the agreed-upon technical assistance. (e)
- Ensure that neither NRC nor its contractors and/or consultants will act in a decisionmaking capacity when providing technical assistance or responding to a request for technical assistance from an Agreement State. (f)

Applicability
(5.7-04)

The policy and guidance in this directive and handbook apply to all NRC employees.

Handbook
(5.7-05)

Handbook 5.7 provides guidance to the staff of NRC and the Agreement States on the submission and review of requests for NRC technical assistance.

References
(5.7-06)

U.S. Nuclear Regulatory Commission

Commission Policy Statements

Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States through Agreement (46 FR 7540, January 22, 1981, as amended by policy statements at 46 FR 36969, July 16, 1981, and 48 FR 33376, July 21, 1983).

NRC "Statement of Principles and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs" (62 FR 46517, September 3, 1997).

NRC Management Directives

MD 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)."

MD 5.9, "Adequacy and Compatibility of Agreement State Programs."

United States Code

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

Technical Assistance To Agreement States

Handbook

5.7

Contents

Requests for Technical Assistance From Agreement States 1
 General (A) 1
 Requests for Routine Technical Assistance (B) 1
 Requests for Special Technical Expertise Assistance (C) 2
 Requests for Programmatic Technical Assistance (D) 3

Requests for Technical Assistance From Agreement States

General (A)

NRC provides three types of technical assistance to Agreement States: routine, special, and programmatic. Routine technical assistance is provided as part of NRC's daily interaction with States, special technical expertise assistance may require specific assignment of NRC staff or consultants for a specified period and for a specific job, and programmatic technical assistance is addressed as part of the Integrated Materials Performance Evaluation Program (IMPEP) process.

Requests for Routine Technical Assistance (B)

Under usual circumstances, routine technical assistance is provided to Agreement States as a regular part of NRC's day-to-day interaction with States. This assistance may include, but is not limited to, the discussion of technical issues regarding licensing and compliance. Routine technical assistance may be discussed as part of routine communication and exchange of information between NRC and the Agreement States, or a State may submit the request in an e-mail file or in a letter to the appropriate NRC regional office or the Director of STP.

- Examples of routine technical assistance include requests for and the sharing of information on licensing, inspection, and enforcement activities. The information could include provision or clarification of NRC policy and guidance such as 10 CFR regulations, NUREG-series reports, regulatory guides, sealed source and device (SS&D) technical specifications, or licensing and inspection guidance. (1)
- NRC staff may perform confirmatory reviews of portions of completed State technical assessments, on a case-by-case

Requests for Routine Technical Assistance (B) (continued)

basis, when resources are available. For example, a State may have completed an SS&D review that identified unusual specifications. The State may share the completed review with NRC and may ask if the NRC has any previous experience with the unusual specifications, or a State may ask NRC to perform a confirmatory review of the States' results regarding the unusual specification. (2)

- Another example could involve an inquiry from a State regarding its interpretation and implementation of a specific State regulation and whether NRC would interpret the equivalent NRC regulation in a similar manner. (3)

Requests for Special Technical Expertise Assistance (C)

Circumstances may arise that require a response above the routine level of interaction with States. A State may not have the special technical expertise that is required to address a particular need, or a State may experience a temporary constraint on resources. Consequently, a State may request direct special technical assistance from NRC that would involve NRC licensing and inspection staff conducting independent licensing and inspection activities for the State, for a specified period and for a specific job. Such assistance may also include the services of an NRC consultant. Direct technical assistance to an Agreement State in these circumstances will be conducted on a case-by-case basis when NRC believes that such assistance is necessary. The provision of such assistance will be based on the availability of staff resources and any assistance will be cost-reimbursable. The appropriate regional office or the Director of STP will designate projects as special technical expertise projects. (1)

To request NRC special technical expertise assistance, a State should submit a letter to the appropriate NRC regional office or the Director of STP requesting the specific assistance (specify period

Requests for Special Technical Expertise Assistance (C) (continued)

and specific job) certified by a State manager (radiation control program director, agency head, or other equivalent manager) that the necessary resources or technical expertise is not available within the State. The State should also include evidence that the State pursued alternative means of addressing the issue on its own, including attempting to obtain assistance from other agencies within the State, other Agreement States, or independent organizations, such as the Organization of Agreement States (OAS), the Conference of Radiation Control Program Directors (CRCPD), or procuring contractors or consultants. (2)

Requests for Programmatic Technical Assistance (D)

Programmatic issues may arise in an Agreement State that impact resources such as staffing, funding, and/or equipment, and, as a result, impact the Agreement State program's ability to maintain a program that is adequate and compatible with NRC's program. Under such circumstances, a State may request NRC technical assistance through the process described above for Section (C), "Requests for Special Technical Expertise Assistance." Direct technical assistance to an Agreement State in these circumstances will be conducted on a case-by-case basis when NRC believes that such assistance is necessary because of a lack of adequate State resources and to ensure adequate protection of the public health and safety. The provisions of such assistance will be based on the availability of staff resources and any assistance will be cost-reimbursable. In providing such technical assistance to Agreement States, NRC will concentrate its resources on those areas that an Agreement State may not be able to address through its own expertise or contractual support for its program. This assistance may involve support in the licensing and/or inspection aspects of the State's regulatory program. NOTE: Nothing in this section shall be construed as affecting the authority of any State. All regulatory decisions remain the responsibility of the Agreement State. (1)

Requests for Programmatic
Technical Assistance (D) (continued)

Programmatic issues are addressed as part of the IMPEP review process. IMPEP, under which NRC conducts a performance review of each NRC region and each Agreement State on a periodic basis, is described in Management Directive 5.6. (2)