

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

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EXECUTIVE SUMMARY

Directive 5.1 replaces Manual Chapter and Appendix 0401 and was revised to make changes to the Objectives and Organizational Responsibilities and Delegations of Authority sections as a result of a reorganization and Commission direction. The directive was also revised to include Native American Tribes, references to Executive Order 13175, and NRC staff guidance on developing and maintaining government-to-government relationships with Native American Tribes. Additionally, the handbook was deleted, and the exhibits were incorporated into the references.

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission to ensure appropriate consultation¹ at the earliest possible stage between NRC and States, local governments, other Federal agencies, and Native American Tribes² and their national and regional associations regarding major interagency agreements, major organizational changes, major rules and regulations, statements of policy, guides and standards, and major studies that may have a significant State or local impact. Except where indicated, all objectives apply to Agreement States as well as non-Agreement States.

II. OBJECTIVES

- Ensure that major interagency agreements, major organizational changes, major rules and regulations, statements of policy, guides and standards, and major studies developed by NRC that significantly impact the States and Federal agencies are prepared with appropriate and meaningful consultation with these entities and their national and regional associations at the earliest possible stage.
- Achieve a better understanding within NRC of the interests, and the regional variations of the interests, of the States and of the interests of relevant Federal agencies.
- Achieve a better understanding on the part of States and Federal agencies and their national and regional associations of NRC's policies and procedures.
- Ensure early and substantial involvement of the Agreement States in rulemakings and other NRC regulatory efforts (COMKC-91-007).
- Identify and develop Commission policy to implement this directive more effectively.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. The Commission

Approves policy matters related to NRC's program of cooperation with States.

B. Executive Director for Operations (EDO)

Notifies State and local government associations and the Office of Management and Budget (OMB) of the designation of the Director, Office of Federal and State Materials and Environmental Management Programs (FSME), as the NRC official responsible for State coordination.

¹ Consultation with State officials and Federal agencies on individual licensing and enforcement decisions is not included or covered by this directive.

² Reference throughout to "State" or "States" includes State and local governments and Native American Tribes, and national and regional organizations of States, local governments, and Native American Tribes.

C. Director, Office of Federal and State Materials and Environmental Management Programs (FSME)

1. Maintains a close working relationship with elected and appointed officials so that the NRC can better understand State and local interests and concerns and States can be informed of NRC's activities and policies.
2. Coordinates any recommendations for proposed policies with States at the Commission level, through the EDO, so that the Commission may approve such policies.
3. Assists office directors in determining the appropriate means, level, and timing of actions involving the States and their associations. See Section III.D.2 of this directive.
4. Assists NRC offices with consultation and program development and conducts liaison with the States and their national and regional associations. See Section III.D.7 of this directive.
5. Distributes draft items according to the plan contained in Section III.D.6 of this directive or arranges for final distribution. See Section III.D.8 of this directive.
6. Plans, schedules, and sponsors workshops with State, local, and Tribal officials on behalf of NRC, or assists other offices in planning these activities.
7. Arranges meetings to resolve major differences when requested by State officials or NRC program offices.
8. Coordinates liaison with other Federal agencies through the Federal Liaison Program.

D. Office Directors and Regional Administrators

1. Identify those activities within individual offices that may be of significant interest to or that may impact any State.
2. Review with the Director, FSME, the appropriate means, level, and timing of involvement of the States and their associations. Samples of activities that require consultation with a State or a Native American Tribe, and therefore coordination by FSME, are—
 - (a) proposed rulemakings or policy issues in which States play even a small role,
 - (b) issues that require input from a State agency or the Governor, and
 - (c) issues that impact several States or Native American Tribes, including but not limited to low-level waste, high-level waste, transportation, emergency preparedness, and generic reactor issues such as plant life extension, license renewal, storage of spent fuel, and decommissioning.
3. A number of alternative arrangements for consultation include, but are not limited to, the following:
 - (a) letters to Governors or State agencies and Native American Tribes inviting comments and expressions of interest,

- (b) invitations to States or their national or regional organizations to establish committees to work with NRC on a specific program, and
 - (c) workshops of State and Native American Tribal officials under NRC sponsorship.
4. Inform FSME Federal Liaison of consultation and coordination activities with other Federal agencies on significant policy issues, for example, when issues are elevated to senior levels at other agencies, when NRC objectives cut across organizational structures at other agencies, or when there is a delay or impasse.
 5. Inform FSME Federal Liaison, who serves as the NRC's National Environmental Policy Act (NEPA) liaison with the Council on Environmental Quality (CEQ), of NEPA interactions with the CEQ.
 6. Consult with FSME on the nature and significance of the items and on the timing and scope of proposed distribution when this review results in a plan to circulate items for comment to State and local governments or their associations. In general, an opportunity for early input is provided to all States to respond to significant programs, plans for rulemaking, or specific regulations.
 7. Coordinate with FSME issues or documents by providing copies of correspondence, concurrence, or verbal notice including—
 - (a) information on State legislation or State legislative hearings,
 - (b) any correspondence from State officials or members of State agencies, and
 - (c) meetings with State officials or State and Native American Tribal organizations.
 8. With regard to proposed regulations or supporting actions, review with FSME a specific plan for consultation and solicitation of comments from the States. This includes review by the States of proposed programs, plans for rulemaking, proposed regulations, and draft regulatory impact analyses before publication of proposed rules in the *Federal Register*. If the office declines to accept major changes in proposed regulations suggested by the States, FSME will be notified in writing. Promulgation of the proposed regulation may be delayed briefly to allow for further discussion and, if necessary, meetings between interested parties. This action must be discretionary in cases involving individual States.
 9. When an item has been provided in draft for comment, consult with FSME regarding distribution arrangements for the document in its final form.
 10. As soon as feasible, notify FSME of issues that require consultation with a State or Native American Tribe coordination by FSME.

IV. APPLICABILITY

This directive applies to and must be followed by all NRC headquarters and regional employees who are responsible for and participate in intergovernmental consultation.

V. REFERENCES

Executive Order

Executive Order 13175, "Consultation and Coordination with Indian Tribal Governments," dated November 6, 2000 (65 FR 67249).

Nuclear Regulatory Commission

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.

"Tribal Protocol Manual: Guidance for NRC Employees," March 2010, Internal Agency Guidance Only (ML09290559).

United States Code

Atomic Energy Act of 1954, Section 274, as amended, (Pub. L. 83-703).
(42 U.S.C. 2011 et seq.).

Nuclear Waste Policy Act of 1982, Section 117(a), as amended, (Pub. L. 97-425)
(42 U.S.C. 10101 et seq.).