

June 13, 2012

ALL AGREEMENT STATES, ALL NON-AGREEMENT STATES

**FEDERAL ADVISORY COMMITTEE ACT AND THE CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS (FSME-12-052)**

**Purpose:** To inform all Agreement States and non-Agreement States of the applicability of the Federal Advisory Committee Act (FACA) to the U.S. Nuclear Regulatory Commission (NRC) working groups when representatives of the Conference of Radiation Control Program Directors (CRCPD) participate as members of certain NRC working groups related to State activities.

**Background:** Representatives from the CRCPD have been participating in NRC working groups for the last several years providing valuable insight and experience as State radiation professionals. The NRC has previously sought CRCPD representation in NRC working groups in accordance with Management Directive (MD) 5.3 *Agreement State Participation in Working Groups*. MD 5.3 specifically states that CRCPD participation on an NRC working group does not have FACA implications because of NRC's interpretation of certain statutory exceptions from FACA.

**Discussion:** The NRC recently re-evaluated whether FACA applies to NRC working groups when CRCPD representatives participate as members. After a detailed evaluation, the NRC determined that the current practice of having CRCPD representation in NRC working groups without adhering to FACA procedures does not comply with FACA. FACA applies to organized groups established by Federal statute, the President, or one or more Federal agencies, or groups over which the President or Federal agencies exercise actual management or control, that are established, managed, or controlled in the interest of providing group advice or recommendations to the Federal government.

According to 2 U.S.C. §1534(b), FACA does not apply where "(1) meetings are held exclusively between Federal officials and elected officers of State, local, and tribal governments (or their designated employees with authority to act on their behalf) acting in their official capacities; and (2) such meetings are solely for the purposes of exchanging views, information, or advice relating to the management or implementation of Federal programs established pursuant to public law that explicitly or inherently share intergovernmental responsibilities or administration."

CRCPD is a non-profit, non-governmental professional organization dedicated to radiation protection. While CRCPD's primary membership is made up of radiation professionals in State and local governments, anyone with an interest in radiation protection is eligible to join the organization. Having CRCPD representation in NRC working groups does not meet the exception in 2 U.S.C. §1534(b) since these CRCPD representatives have not been acting in their official state capacities, but have been representing CRCPD.

Due to the recent interpretation regarding the applicability of FACA, NRC will no longer continue its practice of having CRCPD representation in NRC working groups. NRC appreciates the contributions made by CRCPD representatives to NRC working groups in the development of policies and rulemaking in the past years and will continue to provide every opportunity to CRCPD to obtain their input and perspective as part of our regulatory development process.

In order to ensure that current NRC working groups with CRCPD representatives continue to benefit from States' diverse perspectives and insights, the Organization of Agreement States has indicated that they will provide another State representative to serve on these working groups.

If you have any questions regarding this correspondence, please contact me at 301-415-3340 or the individual named below.

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In order to ensure that NRC working groups with CRCPD representative continue to benefit from States' diverse perspective and insights, the Organization of Agreement States has agreed to provide a State representative to serve at these working groups.

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