



UNITED STATES
NUCLEAR REGULATORY COMMISSION
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(FSME-13-035, April, Program, MD 5.3)

April 11, 2013

ALL AGREEMENT STATES

OPPORTUNITY TO COMMENT ON DRAFT REVISION TO MANAGEMENT DIRECTIVE AND HANDBOOK 5.3, "AGREEMENT STATE PARTICIPATION IN WORKING GROUPS" (FSME-13-035)

Purpose: To provide the Agreement States with the opportunity to comment on the proposed revisions to the Management Directive and Handbook 5.3, "Agreement State Participation in Working Groups."

Background: Proposed revision of Management Directive and Handbook 5.3, "Agreement State Participation in Working Groups."

Discussion: Enclosed for your review and comment are the draft revisions to Management Directive and Handbook 5.3, "Agreement State Participation in Working Groups." The revisions reflect the 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. In addition, a section on dissenting opinion has been added. We would appreciate receiving your **comments* within 30 days from the date of this letter.**

*This information request has been approved by OMB 3150-0029 expiration 11/30/2013. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, the information collection.

FSME-13-035 -2-

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

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Enclosure:
Management Directive and Handbook 5.3,
"Agreement State Participation in Working
Groups" with tracked changes

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

MD 5.3	AGREEMENT STATE PARTICIPATION IN WORKING GROUPS	DT-XX-XX
<i>Volume 5</i>	Governmental Relations and Public Affairs	
<i>Approved By:</i>	[Name and Title of Approving Official]	
<i>Date Approved:</i>	Month X, 200X [Date of Final Approval]	
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<i>Issuing Office:</i>	Office of Federal and State Materials and Environmental Management Programs Division of Materials Safety and State Agreements	
<i>Contact Name:</i>	Maria Arribas-Colon 301-415-6026	
<p>EXECUTIVE SUMMARY</p> <p>Directive and Handbook 5.3 have been updated to reflect 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. In addition, a section on dissenting opinion has been added.</p>		

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I. POLICY

- A.** 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 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 274(g) of the Atomic Energy Act of 1954, as amended. Management Directive (MD) 5.3 describes the steps and process NRC employees should follow in the establishment and implementation of NRC/Agreement State working groups as mechanisms whereby Agreement States are provided this early and substantive involvement. There are two types of NRC/Agreement State working groups that are used in this process. The NRC/Agreement State working groups that are normally established to develop policy, directives or guidance documents are referred to as Federal and State Materials and Environmental Management Programs (FSME) working groups. The NRC/Agreement State working groups that are normally established to develop NRC regulations and associated guidance are referred to as Rulemaking working groups. In addition, steering committees comprised of NRC and Agreement State managers are also participants in this process.

II. OBJECTIVES

- A. Describe the steps to follow to establish and implement an NRC/Agreement State working group.**
- B. Develop a process wherein every working group participant—**
1. Contributes to form a working group charter.
 2. Aligns to the vision, purpose, and goals, as stated in the working group charter.
 3. Applies initiative and creativity to each project.
 4. Commits to the highest standards for quality and effective problem solving.
 5. Actively seeks improvements to processes and standards.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT)

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

B. General Counsel

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

C. Director of the Lead Organization

1. Makes recommendations and approves the establishment and use of working groups and steering committees, as appropriate.
2. Concurs in all charters of working groups and steering committees, as applicable.

D. Director or Deputy Director, Division of Materials Safety and State Agreements (MSSA), Office of Federal and State Materials and Environmental Management Programs (FSME)

1. Makes recommendations regarding the establishment of working groups.
2. Concurs in the establishment of all FSME working groups and steering committees to help ensure appropriate coordination with Agreement States.
3. Facilitates Agreement State participation in Rulemaking working groups.
4. Concurs on all charters of FSME working groups and steering committees to help ensure efficient and effective purpose, function, and product.

E. Organization of Agreement States (OAS) Executive Board

NRC and the Organization of Agreement States (OAS) collaborated in the development of MD 5.3. Although this directive is an internal NRC document, the OAS Executive Board has responsibilities involving FSME working groups that are listed below for completeness:

1. Makes recommendations for the establishment of FSME working groups and steering committees.
2. Consults with the lead organization and FSME on Agreement State involvement in Rulemaking working groups.
3. Determines State representatives on working groups.
4. The OAS Chair concurs in all charters of FSMEs and, as applicable, Rulemaking working groups and steering committees.

F. Working Group Chair, Co-Chairs or Task Leader

Depending on the task of working group there may be a Chair, Co-Chairs or a Task Leader.

1. Helps coordinate activities as the working group is established.
2. Schedules, establishes agendas for, and leads working group meetings.
3. Prepares meeting minutes and other support activities, as appropriate.
4. The NRC co-chair ensures that appropriate documents are made available in the NRC's Agencywide Documents Access and Management System and the Public Document Room.
5. Ensures that the working group follows the charter or rulemaking plan, including 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 progress.
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 co-chairs bring the issue(s) to the attention of FSME management, the OAS Executive Board, or Office of the General Counsel, as applicable.
8. Issues the final working group product or products.

G. FSME Working Group

1. Works with the working group Co-Chairs to assess the tasks needed to complete draft working group products, address comments, assist in preparing any necessary briefing materials, and complete final working group products.
2. Prepares draft working group products, as appropriate, and develops milestones for preparation so that final products will be completed on time.
3. Facilitates the concurrence process by assisting in developing appropriate resolutions of any significant issues of concern.
4. Supports and/or participates in management briefings and any public meetings.
5. For Agreement State working group members, keeps the OAS Executive Board apprised of the working group progress and solicits comments and input on working group issues. Notifies the OAS Executive Board of potential problems or policy issues. Obtains views from other Agreement States, if possible.
6. Reviews contractor reports.

H. Lead Organization

1. Establishes a draft charter for the working group that preserves the essential elements of the request for participation, addressing the purpose, membership, objectives, operating rules, and schedule of the working group.
2. 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.
3. Establishes ground rules, roles, and responsibilities for team members, as well as what work will be done and by whom. The relationship of these issues to the goals must be clear.
4. Establishes measurable expectations with respect to timeliness, quality, and quantity.
5. Establishes authority for decisionmaking.
6. 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 OAS Executive Board.
7. Ensures that the resources needed to accomplish the task are provided to the working group.

I. Steering Committee

1. For NRC/Agreement State working groups, reviews and comments (as needed) and agrees to the working group charter.
2. Serves as a sounding board for the working group by resolving issues raised by the working group members and facilitates the development of consensus documents.
3. Sets expectations and ensures that all involved parties are in agreement with the scope, product, and expected outcomes of the working group throughout the process.
4. Provides insight on the technical, regulatory, and policy issues being addressed by the working group.
5. Reviews progress and provides management direction, guidance, and oversight of working group activities.
6. Helps resolve difficult critical issues, especially when members of the working group disagree or are at an impasse.
7. Provides feedback on draft working group products.
8. Reviews the final working group product and provides advice as to whether it is ready for issuance, fully addresses the substance of the charter, and is of sufficient depth, quality, and content.

9. Keeps senior management and the OAS Executive Board informed of policy issues, schedules, and working group progress, as necessary.

J. Rulemaking Working Group

1. Works with the task leader to assess the tasks needed to prepare the rule package, address comments, estimate information collection burden, assist in preparing briefing materials, and complete the rule package.
2. Reviews contractor reports.
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 in developing appropriate resolutions of any significant issues of concern.
5. Supports and/or participates in management briefings and any public meetings.
6. For Agreement State working group members, keeps the OAS Executive Board apprised of the rulemaking action and obtains comments and input on working group issues. Notifies the OAS Executive Board of potential problems or policy issues. 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 working groups. 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 provides guidance for the establishment and implementation of NRC/Agreement State working groups.

VI. REFERENCES

Federal Register Notice

“Enhancing Public Participation in NRC Meetings; Policy Statement” (May 28, 2002, 67 FR 36920).

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.

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

Management Directive—

3.5, "Attendance at NRC Staff Sponsored Meetings."

6.3, "The Rulemaking Process."

NUREG-BR/0053, "NRC Regulations Handbook."

United States Code

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

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

U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)

DH 5.3	AGREEMENT STATE PARTICIPATION IN WORKING GROUPS	DT-XX-XX
<i>Volume 5</i>	Governmental Relations and Public Affairs	
<i>Approved By:</i>	[Name and Title of Approving Official]	
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I. BASIC GUIDELINES

A. General

1. A U.S. Nuclear Regulatory Commission (NRC) office (headquarters or regional) or the Organization of Agreement States (OAS) Executive Board may recommend the establishment of an NRC/Agreement State working group to address a wide range of issues and to develop a variety of different products. Working groups provide a means for NRC and State staff to work cooperatively in the development of a rule, policy, directive, or guidance document, or to participate in a special study. These working groups enhance the partnership between NRC and the States, facilitate the utilization of the centers of expertise that exist in the NRC regions and the States, and support the ongoing development of the national materials program. Other Federal agency representatives may also participate as necessary, depending on the purpose and scope of the working group.
2. All requests for State participation on Federal and State Materials and Environmental Management Programs (FSME) or Rulemaking working groups will be coordinated by FSME.

B. Types of Working Groups

1. There are two types of NRC/Agreement State working groups—
 - (a) FSME working group

FSME working groups are chartered and co-chaired by NRC and Agreement State staff members, creating centers of expertise, jointly leveraging NRC and Agreement State resources, and following the guidance set out in Section II of

this handbook. FSME working groups develop policy, directives or guidance documents and may also perform special studies.

(b) Rulemaking working group

- (i) Rulemaking working groups are established by an NRC office to address a rulemaking.
 - (ii) These working groups may or may not include an Agreement State or non-Agreement State staff member.
 - (iii) Rulemaking working groups are used specifically to develop or revise NRC regulations and associated guidance as discussed in Section III of this handbook.
 - (iv) The general process it follows is usually different than the process an FSME working group follows.
2. In some circumstances, it is possible that a NRC/Agreement State working group can be formed that will not follow the guidance in Sections II or III of this directive. Regardless of the type of working group, all working group participants and their management should agree upon the process to use for establishing and conducting the working group.

C. General Operating Standards

All working group members should be given the opportunity to actively contribute to work goals and products or outcomes. Working group members should be active in recommending improvements and should understand how their contributions are used in the process and products. Expected duties include—

- 1. Attending working group meetings;
- 2. Coming to meetings prepared to discuss issues;
- 3. Providing input on time;
- 4. Staying focused on the task;
- 5. Clearly stating the positions and concerns of the member's organization;
- 6. Providing feedback to member's organization/management to facilitate completion of final products; and
- 7. Working as a team and not allowing direction from persons outside the working group process to redirect or unduly influence the team. However, it is expected that the working group members will keep their organization and/or management informed of the major issues.

II. FSME WORKING GROUPS

A. General

1. Most working groups of NRC and Agreement State staff fall under the category of FSME working groups. As noted in Section I, these groups are used to develop or revise policies, procedures, and guidance documents, as well as to perform special studies.
2. A checklist is provided in Exhibit 1 to facilitate staff adherence to Management Directive (MD) 5.3.

B. Lead Organization

The lead organization (NRC office or OAS) recommending establishment of an FSME working group will usually assume lead responsibility for the working group. This lead responsibility includes establishing the purpose of the working group, requesting participation, drafting a charter, identifying members, and tracking progress.

C. Request for Participation

1. The lead organization should submit a request for participation to other NRC offices (e.g., FSME, the Office of Nuclear Material Safety and Safeguards (NMSS), the Office of the General Counsel (OGC), the regions). When the lead organization is the Organization of Agreement States (OAS), requests for NRC office participation should be made through FSME.
2. If Agreement State representation is desired, the lead organization will contact FSME to discuss Agreement State involvement. The lead organization should provide the purpose, scope of activities, expected product or outcome of the working group, and the estimated level of effort expected of participants to FSME for its use in seeking Agreement State participation. Exhibit 2 is a sample request for participation. Each area is discussed further below.
3. The request should identify the working group as a FSME working group as defined in this section and include—
 - (a) Purpose
Describe the specific purpose for creating the working group, including any supporting background information. Any restrictions or limitations to be placed on the working group should also be detailed.

(b) Suggested Membership

Describe the suggested membership of the working group, including the number of members desired from each organization and the desired expertise and skills of potential participants. Membership on working groups should be kept to the minimum necessary to obtain the desired expertise and participation. Note that there may be more than one Agreement State representative depending on the complexity of the issues involved.

(c) Level of Effort Expected of Participants

Describe the level of commitment expected of working group members. Detail the likely number of working group meetings to be held and the amount of time outside of official working group meetings that participants will be expected to spend on working group issues. Detail the estimated number of trips. Detail the estimated completion date.

(d) Scope of Activities and Expected Product

Describe the scope of the activities, the proposed schedule with completion date, and the expected product of the working group.

(e) Steering Committee

Identify whether a steering committee will be established to support the working group (see Section IV of this handbook).

4. After submitting a request for participation, the lead organization should place any new working group(s) on the agenda for discussion during the next monthly NRC/OAS/Conference of Radiation Control Program Directors (CRCPD) teleconference to ensure a common understanding of the purpose, scope, and proposed membership of the new working group. The lead organization should contact the NRC/Agreement State Working Group Coordinator or the Chief of the Agreement State Programs Branch in FSME to discuss any questions on establishing or implementing a working group. Also, the Director of FSME should inform the Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT) of the formation of any NRC/Agreement State working groups.

D. Identification of Working Group Participants

1. Each organization should respond to the lead organization's request within 30 days and identify working group members. The lead organization may suggest specific members for participation in the working group; however, working group membership is ultimately the decision of respective program management. Participating members should be selected to meet the skill needs identified in the lead organization's

request for participation. This practice will help ensure that the working group has the correct mix of skills necessary to be effective. A minimum of 30 days should be given to the OAS Executive Board to identify State members.

2. NRC will select the NRC working group co-chair, and the OAS Executive Board will select the OAS co-chair. Responsibilities for chairs are listed in Section III.F of this directive.
3. In some cases, additional participants from outside the Federal or State government may be requested to be part of a working group. However, if all working group members are not permanent government employees, the group may be considered to be an advisory committee subject to the procedural requirements of the Federal Advisory Committee Act (FACA). OAS participation on an NRC working group does not have FACA implications, but participation by other persons who are not permanent government employees could result in application of FACA to the group's activities. If all working group members are not permanent government employees, the Office of the Assistant General Counsel for Legal Counsel, Legislation, and Special Projects of OGC 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.

E. The Working Group Charter

1. Drafting and Approval
 - (a) Before the working group convenes, the lead organization should draft a charter for the working group and provide working group members and steering committee members an opportunity to review and comment on the draft charter. The charter should preserve the essential elements of the request for participation. All NRC/Agreement State working groups must have a charter.
 - (b) The charter should be finalized within 30 days of the first working group meeting. The Director or Deputy Director of the Division of Materials Safety and State Agreements (MSSA), FSME, the director of the lead NRC office, and the OAS Chair approve the final charter.

2. Charter Contents

The charter should contain the information below. Exhibit 3 to this handbook is a general sample working group charter. Recent working group charters can be found on the FSME external Web site at <http://www.nrc.gov/about-nrc/organization/fsmefuncdesc.html>.

(a) Purpose

Describe the specific purpose for creating the working group, including any supporting background information. Any restrictions or limitations to be placed on the working group should also be detailed.

(b) Membership

List each working group member, including the organization each member represents. Steering committee membership and representation should also be included if a steering committee has been assigned to the working group.

(c) Objectives

Fully detail the tasks to be performed by the working group and clearly define the working group products and outcomes.

(d) Schedule

Describe the timeframe in which the working group is expected to complete its objectives and issue its final product. Information on expected progress reports, draft products, and meetings with steering committees should be documented as well.

(e) Operating Rules of the Working Group

All charters clearly identify if the working group operates as a FSME or Rulemaking working group as described in Sections II and III of this handbook, respectively.

3. Changes to the Working Group Charter

Any changes to the charter will go through the approval process stated in Section II.E.1 above. The original charter will be followed unless a revision is agreed upon by all concurring organizations.

F. Management Advisor

If an FSME working group may benefit from routine management interaction and feedback, the working group, the lead organization, or the steering committee may request the identification and involvement of a management advisor. A management advisor can provide perspective on issues and working group tasks and can serve as a sounding board for a working group. The advisor should attend working group meetings and provide assistance on working group products, as necessary. The lead organization will work in conjunction with MSSA/FSME and OAS to choose a suitable representative. A management advisor may be from either NRC or an Agreement State.

III. RULEMAKING WORKING GROUPS

A. General

1. A Rulemaking working group may or may not include an Agreement State or non-Agreement State staff member. As noted in Section I of this handbook, Rulemaking working groups are established by an NRC office to address a development or modification of a rule and associated guidance.
2. FSME is responsible for conducting rulemaking activities involving the regulation of radioactive materials. Rulemaking activities include resolving petitions for rulemaking and developing or participating in the development of rulemaking plans, advance notices of proposed rulemaking, proposed rules, final rules, Paperwork Reduction Act submissions, and regulatory histories, as appropriate. Within FSME, the Rulemaking and Project Management Branch, Division of Intergovernmental Liaison and Rulemaking (DILR), has the primary responsibility for rulemaking activities. A working group is typically established early in the rulemaking process.
3. General organizational responsibilities in the rulemaking process for the various NRC offices are described in MD 6.3, "The Rulemaking Process." Detailed procedures for initiating, conducting, and managing FSME rulemakings can be found in FSME Policy and Procedures 6-10, "FSME Procedures for Preparation and Review of Rulemaking Packages."
4. A checklist is provided in Exhibit 4 to facilitate staff adherence to MD 5.3 when managing Rulemaking working groups with Agreement State members.

B. Task Leader

An NRC task leader will be chosen to lead a Rulemaking working group. Responsibilities for task leaders are listed in Section III.F of this directive.

C. Agreement State Participation

1. Depending upon the subject matter the working group will be addressing, DILR may decide that Agreement State representation in the group may be necessary or advisable. Agreement State participation should be strongly considered if the subject matter addressed by the working group affects Agreement States.
2. DILR should provide the purpose, scope of activities, expected product or outcome of the working group, and the estimated level of effort expected of participants to MSSA for its use in seeking Agreement State participation. Exhibit 5 is a sample request for participation. Each area for the Agreement State participation request is discussed further below.

(a) Purpose

Describe the specific purpose of the Rulemaking working group, including any supporting background information.

(b) Scope of Activities and Expected Product

Describe the scope of the activities, the proposed schedule, and the expected product of the working group. Include information such as what step in the rulemaking process an Agreement State member will be joining the group (i.e., to decide whether rulemaking is necessary to prepare a draft rulemaking plan).

(c) Level of Effort Expected of Participants

Describe the level of commitment expected of working group members. Detail the likely number of working group meetings to be held and the amount of time outside of official working group meetings that participants will be expected to spend on working group issues. Detail the estimated number of trips. Detail the milestones and estimated completion date. If Agreement State participation could begin at different points in the rulemaking process, detail options.

D. Identification of Working Group Participants

1. Each organization should respond to the request as quickly as possible and identify working group members. DILR may suggest specific members for participation in the working group; however, working group membership is ultimately the decision of respective program management. Participating members should be selected to meet the skill needs identified in the request for participation. This practice will help ensure that the working group has the correct mix of skills necessary to be effective.
2. The lead organization should select a task leader. Responsibilities for task leaders are listed in Section III.F of this directive. FACA considerations are discussed in Section II.D.3 of this handbook.

E. Rulemaking Plan

Once a request for a rule is received, DILR may develop a plan for the rulemaking. A rulemaking plan may not be necessary if—

1. The Commission specifically directs the initiation of a rulemaking action;
2. The rule is purely administrative;
3. There is sufficient urgency to proceed to preparation of a rule package; or
4. The issue is addressed through issuance of a direct final rule. Components of a rulemaking plan can be found in Handbook 6.3.

F. The Rulemaking Process

1. Generally, the rulemaking process consists of development of a rulemaking plan followed by issuance of a proposed rule for public comment, and following the public comment period, issuance of a final rule. In certain situations, NRC may issue what is referred to as a “direct final rule.” A description of those situations, including the procedures for issuing a direct final rule, is contained in Part 9 of the “NRC Regulations Handbook,” NUREG-BR/0053. Specific steps for preparing a proposed rule package, a final rule package, and a direct final rule package are described in FSME Policy and Procedures 6-10, Appendices B, C, and D, respectively.
2. Another tool NRC employees can use is the Advance Notice of Proposed Rulemaking (ANPR) or an issues paper. An ANPR or an issues paper is typically used when NRC employees do not have adequate information to make a decision to go forward with a rulemaking. In an ANPR or an issues paper, NRC employees seek information from the public that is then used as input to make the decision on whether to go forward with a rulemaking and/or the content of the rulemaking. The ANPR process is more formal than use of an issues paper. Part 11 of NUREG-BR/0053 contains additional information on the ANPR process. The office review and concurrence process is the same as for a proposed rule.

IV. STEERING COMMITTEES FOR WORKING GROUPS

A. General

1. For NRC/Agreement State working groups, in some cases, the lead organization may establish a steering committee to aid a working group in accomplishing its objectives (for example, if a working group is addressing a particularly complex policy issue). A steering committee should assist a working group in achieving its goals by providing feedback, insight, and advice on the technical, regulatory, and policy issues being addressed by the working group. A steering committee functions until a working group ceases its activities.
2. If a steering committee is not established, the managers and OAS Board members who concurred on the working group charter or their designees will be responsible for providing guidance and support on NRC/Agreement State working group activities.

B. Identification of Steering Committee Members

1. The persons who concurred on the working group charter or rulemaking plan should agree upon the number of steering committee members needed and which organizations should be represented. The lead organization will request each appropriate organization to recommend an official to serve on the steering

committee. MSSA acts as the liaison with OAS for the requests regarding FSME working group steering committee members and DILR for requests regarding Rulemaking working group steering committee members. A copy of the working group charter or rulemaking plan should be given to each potential steering committee member, along with an estimate of the level of commitment proposed for steering committee members. Steering committee members should be aware that additional meetings may be necessary if unexpected difficulties arise in the working group's progress.

2. Each organization should respond to the lead organization within 30 days to identify steering committee members. The lead organization may suggest specific members for participation in the steering committee; however, membership is ultimately the decision of respective program management. If an Agreement State member is requested or required, a minimum of 30 days should be given to OAS to identify State members.
3. The lead organization, in conjunction with the organizations that concurred on the working group charter, should identify a chair or co-chairs for the steering committee. The responsibilities of steering committee chairs are similar to those listed for working group chairs in Section III.F of this directive. The organizations concurring on the working group charter should also concur on the steering committee charter, its membership, and its chair(s).

C. Steering Committee Charter

The lead organization should prepare a draft charter to describe the purpose of the steering committee and its membership. An estimate of the number of steering committee meetings expected to be held and the amount of time that members will be expected to spend on working group issues outside of official steering committee meetings should also be identified in the charter. The director of the lead NRC division and the OAS Chair for NRC/Agreement State working groups concur in the final charter.

D. Steering Committee and Working Group Relationships

1. The working group will keep the steering committee informed of its activities by routinely 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 making information uniformly available to each steering committee member (e.g., periodic formal reports, information e-mail summaries). The steering committee should meet at appropriate times (e.g., to review issues when draft products are proposed and as requested or needed by the working group to address specific issues). A steering committee

should also meet with a working group to review progress, discuss key technical, regulatory, or policy issues, or to provide and receive feedback.

2. Steering committee guidance and direction will be provided by the steering committee as a whole through the steering committee chair, not by individual members of the steering committee. The working group, however, has the flexibility to interact with individual members of the steering committee to help, for example, understand issues, clarify points of discussion, or to seek information. If this step is taken, it should be reported by the working group to the entire steering committee so that it does not unduly influence the outcome of the working group. The working group should consider collective steering committee comments or guidance as recommendations. The working group should consider these recommendations and either reflect them in its work product or provide feedback to the steering committee (e.g., at a steering committee meeting) as to how they were considered and resolved. It is not expected that the working group must specifically address individual steering committee member comments or points of discussion.
3. If any area of disagreement exists between the steering committee and the working group, the area of disagreement should be discussed and resolved at the next steering committee meeting. If a resolution is not possible, the final product contains opposing views if so desired by the dissenter(s).

E. Dissenting Opinion

If there is any professional judgment that differs from the prevailing staff view on a specific area in a product produced by the working group, a written dissenting opinion can be submitted with the working group product. The dissenting opinion contains a detailed description of the working group member's views and how it differs from any issues from staff, working group, or management views. A dissenting opinion may be submitted by a working group member, the working group, a steering committee member, or by the steering committee.

V. IMPLEMENTATION AND ADMINISTRATION

A. Announcing and Holding Meetings

1. For FSME working groups, the working group chair should announce each meeting as appropriate, including teleconferences. If the meeting is open to members of the public, the chair should place an announcement on the NRC Public Meeting Notice System at least 2 weeks in advance of the meeting, and on other announcement media as appropriate (e.g., the NRC Public Document Room (PDR) and the Office of Public Affairs Web site at <http://www.nrc.gov/about-nrc/public-affairs.html>). If appropriate, 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 MD 3.5, “Attendance at NRC Staff-Sponsored Meetings.” Rulemaking working group meetings will not be generally open to the public (see predecisional discussion, below).

2. Sufficient notice of each meeting should be given to all working group participants to ensure that workloads can be managed and proper arrangements for travel or communications (conference call, video, etc.) can be made.

B. Predecisional Information

1. All rulemaking information should be considered predecisional unless otherwise specified. Some working groups may be provided with predecisional information that is exempt from public disclosure. Any working group meetings involving discussion or consideration of predecisional information (information that NRC would not normally discuss in public meetings) would not be open to the public, nor would draft products containing predecisional information be made available to the public through the NRC’s Agencywide Documents Access and Management System (ADAMS) or another distribution mechanism. The lead organization, along with the working group chair(s), should decide when meetings and products will be made available to the public.
2. If OAS is the lead organization, DILR may be asked to aid the working groups in making these decisions. For further guidance, see MD 3.5 and “Enhancing Public Participation in the NRC Meetings; Policy Statement,” 67 FR 36920.

C. Meeting Minutes

1. The FSME working group and steering committee chairs should ensure that minutes are kept of all meetings. The minutes and accompanying background documents, with predecisional material deleted, will be placed in ADAMS and the PDR, as appropriate. The title of the document 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, and memoranda relating to setting up meetings or arranging working group business or similar administrative activities are not required to be placed in the PDR. Refer to ADAMS Template No. NRC-001, “Meeting-Related Documents for NRC Staff-Level Offices.” Minutes need not be kept for Rulemaking working group meetings, and any minutes kept should not be shared with the public.

D. Changes in Membership

1. If a working group member must be replaced on a working group either temporarily or permanently, the member's management and the lead organization should agree upon an appropriate replacement. If additional members are required for a working group, the lead organization should coordinate with the office or organization where the additional member is desired. The charter or rulemaking plan for the working group should be shared, and approval from the new member's management should be obtained. A new (replacement) member will be briefed on the status and issues of the working group prior to attending his or her first meeting.

E. Progress Reports and Draft Working Group Products

1. The lead organization, the steering committee, and the working group should agree upon the format and frequency for progress reports, the format for draft products, and who should receive copies. The lead organization and the working group chair(s) may report progress during the monthly NRC/OAS/CRCPD teleconference, as appropriate.
2. Throughout all stages of a rulemaking, the lead office enters all publicly available documents related to the rulemaking in ADAMS.

F. Final Working Group Products

1. The working group's final product should be concurred upon by all members of the working group. If a working group member holds different views, the views should be included in the product in a "differing views" section if desired by the person(s) with the differing view. If a steering committee has been established, the working group provides the steering committee an opportunity to review the final product before issuance.
2. Final working group products will be placed in ADAMS, as appropriate, and distributed to the OAS Chair, the DEDMRT, the Directors of DILR and MSSA, and the directors of the appropriate NRC offices. Completed rulemaking working group products should be properly managed and archived in ADAMS.

G. Coordination With NRC Offices

The lead organization should coordinate with OGC to ensure that there is no conflict with current statutes or procedures. When the lead organization is OAS, DILR will perform these functions.

H. Sunset Review and Sunsetting

1. Each year during the OAS Board meeting, the OAS Board, in conjunction with MSSA, reviews the need for continuing each existing FSME working group. DILR and the OAS Board also review the scope, progress, and membership of the working groups and suggest adjustments as necessary.
2. A working group should be dissolved upon the issuance of the final working group product. Normally, additional work, if necessary, would be handled by OAS, NRC, individual Agreement State programs, or through the formation of another working group. When additional work is expected from the working group after the final product has been issued, the lead organization should discuss this need with NRC management and the OAS Executive Board, and the working group charter should be reviewed and revised as appropriate.

I. Master List of Working Groups

A master list of all working groups should be maintained by the working group coordinator. The list should be updated as new working groups are established, as well as when current working groups complete their objectives. At least quarterly, 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 FSME external Web site.

J. Travel Considerations for Working Group Participants

1. Travel and per diem expenses for NRC-invited State working group participants should normally be paid by NRC, unless other arrangements are made with the lead organization. The lead organization should coordinate with the Director of MSSA on the current procedure for invitational travel for State officials and to determine how NRC will cover invitational travel expenses.
2. Travel and per diem expenses for NRC participants will be paid by their respective offices.

K. Timekeeping

1. To ensure that time spent on a working group is identified, a technical assignment control (TAC) number should be assigned for each working group for use by NRC working group members.
2. If a State working group participant needs documentation of the amount of time spent on working group tasks, the participant should discuss his or her needs with the working group chair(s), as well as with the working group coordinator.

L. NRC/Agreement State Working Group Coordinator

1. An MSSA staff member will be designated by the Chief of the Agreement State Programs Branch to serve as a coordinator for NRC/Agreement State working groups. The coordinator will be responsible for aiding working groups and steering committees in reaching their objectives by ensuring that working group members fully understand the working group's process and objectives, and by facilitating the development of the working group charter. Depending on the topic, scope, and/or complexity of a working group, the chair of the working group can request that the coordinator attend additional working group meetings as well.
2. The working group coordinator ensures that working group charters are analyzed, updated, signed by NRC management and OAS, and placed on the FSME external Web site.

EXHIBITS

EXHIBIT 1 Checklist for Establishing and Operating FSME Working Groups

TASK	RESPONSIBILITY	TIMEFRAME	MD 5.3 REFERENCE
Identify task, purpose, tentative schedule, etc.	Lead Organization	Pre-kickoff meeting	Section III of the directive
Obtain TAC #	Lead Organization	Pre-kickoff meeting	
Prepare request for working group members	Lead Organization	Pre-kickoff meeting	Section II
Send request to MSSA for distribution to OAS for working group members and, if applicable, steering committee members	Lead Organization	Pre-kickoff meeting	Section II/ Exhibit 2
Send request to NRC contacts for working group members and, if applicable, steering committee members	Lead Organization	Pre-kickoff meeting	Section II/ Exhibit 2
OAS solicits a volunteer and notifies MSSA of individual appointee	OAS Chair	Pre-kickoff meeting	
Inform the Deputy EDO for FSME (DEDMRT) about the working group formation	MSSA	Pre-kickoff meeting	Section II
Coordinate 5.3 process	MSSA	Ongoing	

Prepare draft working group charter and, if applicable, steering committee charters	Lead Organization	Pre-kickoff meeting	Sections II and IV.C, Exhibit 3
Identify relevant documents	Lead Organization	Pre-kickoff meeting	
Identify co-chairs and coordinate	Lead Organization	Pre-kickoff meeting	
Prepare meeting notices, if applicable	Lead Organization	Pre-kickoff meeting	Section V.A
Distribute relevant information to the working group members	Lead Organization/Co-chairs	Pre-kickoff meeting and prior to each meeting	
Review relevant information	WG/SC	Pre-kickoff meeting and prior to each meeting	

TASK	RESPONSIBILITY	TIMEFRAME	MD 5.3 REFERENCE
Post meeting notices	Lead Organization	Pre-kickoff meeting and prior to each meeting	Section V.A
Hold kickoff meeting	Co-chairs	First meeting	
Finalize charter	Co-chairs	First meeting	
Define ground rules, assign tasks, schedules	Co-chairs	First meeting	
Charter approval	Working group members/LO/MSSA/ OAS	30 days after first meeting	Section II.B
Prepare meeting minutes	Co-chairs	30 days after each meeting	Section V.C
Inform management of relevant orgs of working group activities	Co-chairs and working group members	Ongoing	
Hold working group meetings	Co-chairs	As needed	
Hold steering committee meetings, as applicable	SC and WG Chairs	As needed	Section IV.D
Prepare progress reports to lead organization, steering committees	Co-chairs	Periodically, as defined by WG	
Participate in monthly OAS/CRCPD conference calls	Co-chairs	As needed	

Coordinate with OGC	Co-chairs	As needed	
Place relevant documents in ADAMS	NRC Co-chair	30 days after each meeting	Section V.E
Prepare preliminary draft working group report	Co-chairs, working group	120 days before final due	Section V.F
Prepare final draft working group report	Co-chairs, working group	90 days before final due	Section V.F
Incorporate differing opinions, if applicable	Co-chairs	90 days before final due	Section V.F
Submit final report to steering committee for approval, if applicable	Co-chairs	75 days before final due	
Track to final	NRC Co-chair	Until final	
Decision to sunset	Lead Organization/ MSSA	At task completion	Section V.H

Legend:

ADAMS - Agencywide Documents Access and Management System

CRCPD - Conference of Radiation Control Program Directors

FSME - Office of Federal and State and Environmental Management Programs

LO - lead organization

MSSA - Division of Materials Safety and State Agreements

OAS - Organization of Agreement States

OGC – Office of the General Counsel

SC - steering committee

TAC – technical assignment control

WG – working group

**EXHIBIT 2 General Sample Request for Agreement State Participation in FSME
Working Groups**

WORKING GROUP TITLE: [Proposed working group title]

PURPOSE: [Purpose of the working group]

BACKGROUND: [Background on why the working group needs to be created]

SUGGESTED MEMBERSHIP: The working group should consist of approximately [number] members, as follows:

- NRC Co-chair
- Agreement State Co-chair representing OAS
- Representative from FSME
- Agreement State program representative representing OAS

[Information on the working group member experience needed]

LEVEL OF EFFORT EXPECTED OF PARTICIPANTS: [Expected level of effort]

SCOPE OF ACTIVITIES AND EXPECTED PRODUCTS: [Working group scope]

STEERING COMMITTEE: [State if a steering committee will be established or not]

EXHIBIT 3 General Sample Working Group Charter

WORKING GROUP TITLE: [Proposed working group title]

PROPOSED CHARTER

PURPOSE: [Purpose of the working group]

MEMBERSHIP: The following personnel will serve on the working group: [List name and organization of the NRC and State Personnel]

OBJECTIVES: [Working group objectives]

SCHEDULE: [Expected schedule]

LEVEL OF EFFORT EXPECTED OF PARTICIPANTS: [Level of effort expected for the working group and steering committee]

STEERING COMMITTEE: The following personnel will participate on the steering committee: [List name and organization of the NRC and State Personnel]

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 Notice 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 (unless predecisional information not normally publicly disclosed will be discussed) 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, with the exception of exempt information.

EXHIBIT 4 Checklist for Establishing and Operating Rulemaking Working Groups

TASK	RESPONSIBILITY	TIMEFRAME	MD 5.3 REFERENCE
Identify task, task leader, purpose, tentative schedule, etc.	Lead Organization	Pre-kickoff meeting	Section II of the directive
Obtain TAC #	Task Leader	Pre-kickoff meeting	
Prepare request for working group members	Lead Organization	Pre-kickoff meeting	Section II
Send request to MSSA for distribution to OAS for working group members and, if applicable, steering committee members	Lead Organization	Pre-kickoff meeting	Section II Exhibit 1
Send request to NRC contacts for working group members and, if applicable, steering committee members	Lead Organization	Pre-kickoff meeting	Section II Exhibit 1
OAS solicits a volunteer, notifies MSSA of individual appointer	OAS Chair	Pre-kickoff meeting	
OAS coordinates with CRCPD, as applicable	OAS Chair	Pre-kickoff meeting	
Inform Deputy EDO for FSME of working group formation	FSME	Pre-kickoff meeting	Section II
ID relevant documents	Lead Organization	Pre-kickoff meeting	

DH 5.3 AGREEMENT STATE PARTICIPATION IN
WORKING GROUPS

Date Approved: XX/XX/XXXX

Distribute relevant information to working group members	Lead Organization /Co-chairs	Prior to each meeting	
Review relevant information	Working Group/ Steering Committee	Prior to each meeting	
Hold kickoff meeting	Co-chairs	First meeting	
Finalize charter	Co-chairs	First meeting	
Define ground rules, assign tasks, schedules	Co-chairs	First meeting	

TASK	RESPONSIBILITY	TIMEFRAME	MD 5.3 REFERENCE
Prepare meeting minutes	Task Leader	30 days after meeting	Section V.2
Inform management of relevant organizations	Task Leader/Working Group members	Ongoing	
Hold Working Group meetings	Task Leader	As needed	
Hold Steering Committee meetings, as applicable	Steering Committee and Working Group Chairs	As needed	
Prepare progress reports to Lead Organization, Steering Committee, as applicable	Task Leader/Working Group	Periodically, as defined by the working group	
Place relevant documents in ADAMS	Task Leader	As needed	
Prepare preliminary draft rule package/working group report	Task Leader, working group	180 days before final due	
Prepare final draft rule/working group report	Task Leader, working group	110 days before final due	
Submit final report to Steering Committee for approval	Task Leader	95 days before final due	
Send to MSSA and ADM for Agreement State comment	Task Leader	90 days before final due	

Track to final	Task Leader	Until final	
Decision to sunset	Lead Organization	At task completion	Section V

Legend:

ADAMS - Agencywide Documents Access and Management System

ADM - Office of Administration

CRCPD - Conference of Radiation Control Program Directors

MSSA - Division of Materials Safety and State Agreements

EDO - Executive Director for Operations

FSME - Office of Federal and State Materials and Environmental Management Programs

OAS - Organization of Agreement States

TAC - technical assignment control

EXHIBIT 5 General Sample Request for Agreement State Participation in Rulemaking Working Groups

PURPOSE: The Rulemaking and Project Management Branch is soliciting an Agreement State representatives to participate in an Rulemaking NRC Working Group to [explanation].

BACKGROUND: [Background on why the working group needs to be created]

SUGGESTED MEMBERSHIP: The working group should consist of approximately [number] members, as follows:

- NRC Task Leader
- Representative from the Agreement States appointed by OAS
- Representative from FSME (NRC)
- Representative from NSIR (NRC)

[Information on the working group member experience needed]

LEVEL OF EFFORT EXPECTED OF PARTICIPANTS: [Expected level of effort]

The contact for this petition review is [Contact Name]. Please notify [Contact name] of your designee at [email address] or [phone number].