

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

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| MD 5.7 | TECHNICAL ASSISTANCE TO AGREEMENT STATES | DT-13-07 |
| <i>Volume 5:</i> | Governmental Relations and Public Affairs | |
| <i>Approved By:</i> | Mark A. Satorius, Director Office of Federal and State Materials and Environmental Management Programs | |
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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 | |
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EXECUTIVE SUMMARY

Directive and Handbook 5.7 are being revised to update the process for the submission and review of a request for NRC technical assistance, to clarify when NRC technical assistance will be provided on a cost-reimbursable basis, and to reflect organizational changes.

TABLE OF CONTENTS

| | |
|---|----------|
| I. POLICY | 2 |
| II. OBJECTIVES | 2 |
| III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY | 2 |
| A. Commission..... | 2 |
| B. Executive Director for Operations (EDO) | 2 |
| C. Director, Office of Federal and State Materials and Environmental Management Programs (FSME) | 2 |
| D. Office Directors and Regional Administrators | 3 |
| IV. APPLICABILITY | 4 |
| V. DIRECTIVE HANDBOOK | 4 |
| VI. REFERENCES | 4 |

I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission to provide technical assistance to Agreement States as authorized under Section 274 of the Atomic Energy Act of 1954, as amended. Management Directive (MD) 5.7 describes the types of NRC technical assistance available to 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.

II. OBJECTIVES

- Provide guidance to NRC and Agreement State management on the submission and review of requests for NRC technical assistance.
- Establish guidance in determining when and if NRC should provide routine, special, or programmatic technical assistance to Agreement States.
- Establish a process for determining the extent and conduct of this assistance.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Commission

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

B. Executive Director for Operations (EDO)

Provides oversight of the activities described herein.

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

1. Coordinates the review of technical assistance requests from Agreement States with regional administrators and directors of affected program offices.
2. Reviews technical assistance requests to ensure that they are consistent with Commission policy and that they contain—
 - (a) Sufficient information to enable NRC to provide adequate technical response to the issues addressed in the Agreement State's request, such as an evaluation of the issue and, if appropriate, a proposed resolution.
 - (b) Evidence that the Agreement State had pursued alternative means of addressing the issue on its own, including attempting to obtain assistance from other agencies within the State or Commonwealth, other Agreement States, or independent organizations such as the Conference of Radiation Control

Program Directors, the Organization of Agreement States, or procuring consultants or contractors.

3. Coordinates any recommendations on the requests and provides the agency response to the Agreement State, as appropriate.
4. Ensures that appropriate headquarters and regional offices have an opportunity to provide input into the development of the response to the request.
5. 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.
6. Plans, schedules, and arranges meetings with the Agreement State to coordinate the assistance.
7. On assistance requests, other than those received directly by a region or other offices, responds to the Agreement State, identifies an NRC contact, and provides a schedule for accomplishing the assistance.

D. Office Directors and Regional Administrators

1. Advise the Director of FSME and other affected offices of initial inquiries from Agreement States about technical assistance.
2. Evaluate the ability of their respective offices and regions to respond to technical assistance requests from Agreement States and provide this information to FSME.
3. Participate in meetings with Agreement State officials as required to clarify the assistance request and to ensure a timely and appropriate response to the request.
4. Approve and provide the requested assistance in the timeframe agreed upon by the NRC office providing the assistance and the Agreement State.
5. 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 Agreement State and prepares correspondence confirming the agreed-upon technical assistance.
6. 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.

IV. APPLICABILITY

- A. The policy and guidance in this directive and handbook apply to all NRC employees.
- B. MD 5.7 does not apply to technical assistance provided by NRC to Agreement States when responding to radiological emergencies under the National Response Framework, Nuclear and Radiological Annex. 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).

V. DIRECTIVE HANDBOOK

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

VI. REFERENCES

Nuclear Regulatory Commission Documents

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 23, 1981, as amended by policy statements at 46 FR 36969, July 16, 1981, and 48 FR 33376, July 21, 1983).

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).

Management Directive 5.6, “Integrated Materials Performance Evaluation Program (IMPEP).”

United States Code

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

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TABLE OF CONTENTS

| | | |
|-----------|--|----------|
| I. | REQUESTS FOR TECHNICAL ASSISTANCE FROM AGREEMENT STATES | 1 |
| | A. General | 1 |
| | B. Requests for Routine Technical Assistance..... | 2 |
| | C. Requests for Special Technical Assistance | 2 |
| | D. Requests for Programmatic Technical Assistance | 3 |

I. REQUESTS FOR TECHNICAL ASSISTANCE FROM AGREEMENT STATES

A. General

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 Agreement States, special technical 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.

B. Requests for Routine Technical Assistance

1. Under usual circumstances, routine technical assistance is provided to Agreement States as a regular part of NRC's day-to-day interaction with Agreement States. This assistance may include, but is not limited to, the discussion of technical issues regarding licensing, compliance, and security. Routine technical assistance may be discussed as part of routine communication and exchange of information between NRC and the Agreement States, or an Agreement State may submit the request in an e-mail file or in a letter to the appropriate NRC regional office or the Director of the Office of Federal and State Materials and Environmental Management Programs (FSME).
2. Examples of routine technical assistance include requests for and the sharing of information on licensing, inspection, security, and enforcement activities. The information could include provision or clarification of NRC policy and guidance such as regulations, NUREG-series reports, regulatory guides, sealed source and device (SS&D) technical specifications, or licensing and inspection guidance.
3. NRC staff may perform confirmatory reviews of portions of completed Agreement State technical assessments, on a case-by-case basis, when resources are available. For example, an Agreement State may have completed an SS&D review that identified unusual specifications. The Agreement State may share the completed review with NRC and may ask if the NRC has any previous experience with the unusual specifications, or an Agreement State may ask NRC to perform a confirmatory review of the Agreement State's results regarding the unusual specification.
4. An Agreement State also may make an inquiry regarding its interpretation and implementation of a specific regulation and whether NRC would interpret the equivalent NRC regulation in a similar manner.

C. Requests for Special Technical Assistance

1. Circumstances may arise that require a response above the routine level of interaction with Agreement States. An Agreement State may not have the special technical expertise that is required to address a particular need, or an Agreement State may experience a temporary constraint on resources. Consequently, an Agreement 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 Agreement State, for a specified period and for a specific job. Such assistance may also include the services of an NRC consultant.

2. 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 FSME will designate projects as special technical projects.
3. To request NRC special technical expertise assistance, an Agreement State should submit a letter to the appropriate NRC regional office or the Director of FSME requesting the specific assistance (specify period and specific job) certified by an Agreement State manager (radiation control program director, agency head, or other equivalent manager) that the necessary resources or technical expertise is not available within the Agreement State. The Agreement State should also include evidence that the Agreement State pursued alternative means of addressing the issue on its own, including attempting to obtain assistance from other agencies within the State or Commonwealth, other Agreement States, or independent organizations, such as the Organization of Agreement States, the Conference of Radiation Control Program Directors, or procuring contractors or consultants.

D. Requests for Programmatic Technical Assistance

1. Programmatic issues may arise in an Agreement State that impact resources such as staffing, funding, and equipment, and, as a result, impact the Agreement State's ability to maintain a program that is adequate and compatible with NRC's materials program. Under such circumstances, an Agreement State may request NRC technical assistance through the process described above in Section I.C of this handbook, "Requests for Special Technical Assistance."
2. Direct technical assistance to an Agreement State in these circumstances will be conducted on a case-by-case basis when NRC believes that assistance is necessary because of a lack of adequate resources and to ensure adequate protection of the public health and safety. The provisions of assistance will be based on the availability of staff resources and any assistance will be cost-reimbursable.
3. In providing 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 or inspection aspects of the Agreement State's regulatory program.
4. 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, "Integrated Materials Performance Evaluation Program (IMPEP)." See also the Commission's Policy Statements on the Criteria for Guidance of States and NRC in Discontinuance of NRC Regulatory Authority and Assumption Thereof by States through Agreement and the Adequacy and Compatibility of Agreement State Programs.

5. Nothing in this section shall be construed as affecting the authority of any Agreement State. All regulatory decisions remain the responsibility of the Agreement State.