

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

MD 5.9	ADEQUACY AND COMPATIBILITY OF <u>PROGRAM</u> <u>ELEMENTS FOR AGREEMENT STATE PROGRAMS</u>	DT-XX-XX
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Contact Name:	<u>Duncan White</u> <u>301-415-2598</u>	

EXECUTIVE SUMMARY

Directive and Handbook 5.9 are being revised to reflect the merger and revision of the Agreement State Policy Statement. The directive and handbook were also revised to reflect changes to Compatibility Category B, the changes to the NRC organization since the last version of this Management Directive, and update of the compatibility review process to include Standing Committee on Compatibility.

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to evaluate Agreement State programs established pursuant to Section 274 of the Atomic Energy Act of 1954, as amended, to ensure they are adequate to protect public health and safety and compatible with NRC's regulatory program.

II.[I.] OBJECTIVES

[A.] To establish the process the NRC staff will follow to determine when a -proposed or final NRC regulation or program element must be adopted as a legally binding requirement by an Agreement State, and whether adoption is required for the purpose of compatibility or health and safety as set out in the NRC's Agreement State Program Policy Statement-on Adequacy and Compatibility of Agreement State Programs.

A.[B.] To identify the NRC regulations and program elements that must be implemented as legally binding requirements by an Agreement State to maintain a program that is adequate to protect public health and safety and compatible with NRC's regulatory program.

B.[C.] To describe how the NRC staff should apply provisions of the policy statement to current and future Agreement State regulations and program elements.

III.[II.] ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration and Human Capital Programs (DEDM)

As delegated by the Executive Director for Operations, oversees the program to evaluate adequacy and compatibility of Agreement State programs.

B. Office of Nuclear Material Safety and Safeguards (NMSS)

Implements the program to evaluate adequacy and compatibility of Agreement State programs.

C. Division of Material, State, Tribal and Rulemaking Programs (OSP)MSTR), NMSS

1. Reviews the adequacy and compatibility of Agreement State programs through the Integrated Materials Performance Evaluation Program (Management Directive 5.6, "Integrated Materials Performance Evaluation Program [IMPEP])."
2. Reviews, evaluates, and determines, in coordination with other NRC offices, those NRC program elements that an Agreement State must adopt for compatibility or adequacy.
3. Assists in the review, evaluation, and determination of those NRC regulations that an Agreement State must adopt as legally binding requirements for the purpose of compatibility or health and safety.
4. Coordinates the review of Agreement State regulations and program elements with other NRC offices.

D.[C.] General Counsel

1. Assists in the review, evaluation, and determination of those NRC program elements and regulations that an Agreement State must adopt as legally binding requirements for the purpose of compatibility or health and safety.

[2.] Advises staff on findings regarding the adequacy and compatibility of Agreement State regulations and program elements.

~~[3.] Director, Reviews, evaluates, and determines, in coordination with other NRC offices, those NRC regulations that an Agreement State should adopt as legally binding requirements for the purpose of compatibility or health and safety.~~

~~[4.] Assists in the review, evaluation, and determination of those NRC program elements that an Agreement State should adopt for the purpose of compatibility or health and safety.~~

[D.] Regional Administrators

Assist in the review, evaluation, and determination of those NRC program elements and regulations that an Agreement State ~~should~~must adopt for the purpose of compatibility or health and safety.

E. Standing Committee on Compatibility

1. Established as a Management Directive 5.3 working group to enhance the existing compatibility determination process through the independent review of regulations and program elements required for compatibility.
2. Ensure consistency during the promulgation of regulations by documenting decisions on compatibility and their basis, take into account implementation issues and NRC staff's review of State regulations under IMPEP.
3. Evaluates and document compatibility designations pursuant to this Management Directive.

IV. APPLICABILITY

The policy and guidance in this directive and handbook apply to all NRC employees who are responsible for and participate in the review and evaluation of Agreement State regulatory programs or who are involved in development and promulgation of NRC regulations or program elements for byproduct, source, and special nuclear materials.

V.[III.] HANDBOOK

Handbook 5.9 describes the criteria and the process that will be used to determine the compatibility and health and safety components of NRC regulations and program elements that an Agreement State should adopt for an adequate and compatible program.

VI.[IV.] REFERENCES

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 (ML010100091).

NMSS State Procedures (formerly known as FSME State Procedures) Web Site: <https://scp.nrc.gov>.

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

[NMSS Policy and Procedures 6-10, "FSME Procedures for Preparation and Review of Rulemaking Packages," Revision 2.](#)

Code of Federal Regulations, Title 10.

[Management Directive 5.3, "Agreement State Participation in Working Groups](#)

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

Management Directive 6.3, "The Rulemaking Process," and its handbook, NUREG/ BR-0053, "NRC Regulations Handbook."

NRC "~~Statement of Principle and Policy for the Agreement State Program; Policy Statement on Adequacy and Compatibility of Agreement State Programs,~~" 62 FR 46517, September 3, 1997, currently in draft