



FSME Procedure Approval

***Providing NRC Predecisional Documents to
Agreement States, Organization of Agreement States, Inc.,
and Appropriate Working Groups of the Conference of
Radiation Control Program Directors, Inc.
SA-800***

Issue Date: April 25, 2007

Review Date: April 25, 2010

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NOTE

These procedures were formerly issued by the Office of State and Tribal Programs (STP). Any changes to the procedure will be the responsibility of the FSME Procedure Contact as of October 1, 2006. Copies of FSME procedures will be available through the NRC website.



Procedure Title:
Providing NRC Predecisional Documents to Agreement States, OAS and CRCPD Working Groups
Procedure Number: SA-800

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I. INTRODUCTION

This procedure describes the process for providing certain U.S. Nuclear Regulatory Commission (NRC) predecisional documents to Agreement State management and staff, which includes the Organization of Agreement States, Inc. (OAS), the appropriate working groups of the Conference of Radiation Control Program Directors, Inc. (CRCPD), non-Agreement State Radiation Control Program Directors and staff. On October 1, 2006, the functions of the Office of State and Tribal Programs were incorporated into the Office of Federal and State Materials and Environmental Management Programs (FSME).

II. OBJECTIVES

- A. Establish procedures to be followed by NRC staff for providing certain NRC predecisional documents to Agreement State management and staff, which includes the OAS,¹ and non-sensitive predecisional documents to appropriate working groups of the CRCPD, non-Agreement State Radiation Control Program Directors and staff.
- B. Establish guidance on the types of predecisional documents that may be routinely provided to Agreement States and appropriate working groups, the kinds of predecisional documents that should be limited to distribution on a “need-to-know” basis, and on the labeling of predecisional documents.
- C. Establish procedures to notify the Commission of intention to, and release of an NRC predecisional document by State staff or appropriate working groups of the CRCPD.

¹For the remainder of SA-800, whenever Agreement States are discussed, the OAS is understood to be included. The membership of OAS consists of state radiation control directors and staff from the Agreement States who are responsible for implementation of their respective Agreement State programs. The purpose of the OAS is to provide a mechanism for these Agreement States to work with each other and with NRC on regulatory issues associated with their respective agreements.

III. BACKGROUND

- A. Commission policy both recognizes the interest of, and need for, early and substantive involvement by Agreement States in the development of new or revised rules, guidance documents, or other materials program documents. As a part of this effort, NRC shares relevant NRC predecisional documents with Agreement State management and staff for review and comment. As predecisional documents, they may be exempt from public disclosure under Federal statutes and NRC rules (Exemption 5, Freedom of Information Act (5 U.S.C. § 552(b)(5)) and 10 C.F.R. §§ 2.390(a) and 9.17(a)(5)). When providing predecisional documents to Agreement States, NRC requests that Agreement States also protect the documents from public disclosure.
- B. Current practice is to provide predecisional programmatic documents, such as drafts of rulemaking plans, proposed and final rules, and licensing and inspection guides, to all Agreement States. However, some predecisional documents also contain Sensitive Unclassified Non-Safeguards Information (SUNSI). SUNSI is divided into the following groups: (1) Allegation Information; (2) Investigation Information; (3) Security-Related Information; (4) Proprietary Information; (5) Privacy Act Information; (6) Federal-, State-, Foreign Government-and International Agency-Controlled Information and (7) Sensitive Internal Information. Predecisional documents containing SUNSI are provided to Agreement States that can protect the information from public disclosure on a “need-to-know” basis only, and in accordance with NRC Management Directive (MD) 3.4, *Release of Information to the Public*.
- C. The appropriate CRCPD working groups, including the Suggested State Regulations (SSRs) Committees, are responsible for developing regulations and guidance, which are compatible with those of the NRC or other Federal agencies, that can be adopted and used by States in developing and implementing their regulatory programs. The SSRs serve as models for States in the development of regulations compatible to those of NRC. The CRCPD working groups help reduce the administrative and resource requirements for States to adopt compatible regulations. CRCPD working groups and NRC staff are taking actions to facilitate the development of SSRs and supporting documents in parallel with the NRC regulations. To help make the parallel rule process effective, NRC staff should provide the appropriate CRCPD working groups and non-Agreement State Radiation Control Program Directors with non-SUNSI predecisional NRC rulemaking documents at the same time the Agreement States receive this information. Under CRCPD Procedures, licensees and non-State advisors are excluded from receiving predecisional information.

IV. ROLES AND RESPONSIBILITIES

- A. The Directors, Division of Materials Safety and State Agreements (DMSSA) and Division of Intergovernmental Liaison and Rulemaking (DILR) are responsible for development of procedures providing NRC non-SUNSI predecisional documents to Agreement States, appropriate CRCPD working groups, and non-Agreement State Radiation Control Program Directors.
- B. The staff person, as assigned by the Directors, DMSSA and DILR, has responsibility for assisting NRC staff in determining the types of non-SUNSI predecisional documents to be distributed to Agreement States, appropriate CRCPD working groups, and non-Agreement State Radiation Control Program Directors, the means for distribution, and the preparation of All Agreement States letters.
- C. The Office of the General Counsel (OGC) is responsible for interpreting public disclosure statutes and providing legal counsel to determine the release to Agreement States, appropriate CRCPD working groups, and non-Agreement State Radiation Control Program Directors of draft proposed and final rules, policy statements, and other non-SUNSI predecisional documents.

V. GUIDANCE

- A. Non-SUNSI predecisional documents include programmatic documents, such as draft rulemaking plans, drafts of proposed rules, final rules, policies, draft internal procedures, generic letters and information notices. These may be routinely distributed to all Agreement States, appropriate CRCPD working groups, and non-Agreement State Radiation Control Program Directors and staff for their information, review and comment. Other documents not defined above, such as a Commission Paper on a final, new or revised rule, will be examined on a case-by-case basis and necessary approval obtained (e.g., Commission, in the case of a Commission Paper) before distribution. The definition and distribution of SUNSI predecisional documents are described in V. F.
- B. Distribution of non-SUNSI predecisional documents may be accomplished through use of an All Agreement States letter (see Appendix for a sample letter circulating Draft Inspection Procedure for review).
- C. Non-SUNSI predecisional information may also be made available to the Agreement States and appropriate CRCPD working groups through the Agreement States area of the Technical Conference Forum (<http://techconf.llnl.gov/cgi->

states/topics). Agreement States, CRCPD working groups, and non-Agreement State Radiation Control Program Directors must have a unique user name and password to access this separate area. NRC staff members are also required to have a password to access this separate area. The passwords are maintained by the administrator of the Technical Conference Forum website for the Agreement States and NRC staff. The Conference of Radiation Control Program Directors maintains the passwords for non-Agreement States Radiation Control Program Directors.

- D. Each non-SUNSI predecisional document should be labeled as follows:

**PREDECISIONAL DRAFT INFORMATION
FEDERALLY PROTECTED
NOT FOR PUBLIC DISCLOSURE UNLESS THE NRC
DETERMINES OTHERWISE**

- E. Each All Agreement State letter signed by the Director, DMSSA or DILR, should include the following ending paragraph:

Due to its predecisional nature, the draft has not been publicly disclosed. Therefore, we request that you limit distribution to your staff and not release the draft publicly. Please see the FSME web page at <http://nrc-stp.ornl.gov/procedures/sa800d.pdf> for additional information about the distribution and use of predecisional information. If the draft is intended to be released, or released, please inform me or the contact named below within 24 hours of the request.

- F. SUNSI predecisional documents, such as proposed enforcement actions, draft orders or demands for information, draft confirmatory action letters or information dealing with investigations, will be shared with only Agreement States on a “need-to-know” basis. Allegation information is not predecisional. “Need-to-know” generally means that the Agreement State receiving the predecisional information is directly involved with the issue or licensee. Documents should be labeled in accordance with SUNSI policies. For example, for Proprietary Information, mark the top and bottom of each page: “Official Use Only - Proprietary Information.” Because of the evolving nature of the SUNSI handling requirements, documents should be labeled in accordance with SUNSI policies as specified in the SUNSI intranet website at <http://www.internal.nrc.gov/sunsi/>. Because of evolving SUNSI policies, the above SUNSI website includes a frequently asked questions section. In accordance with MD 3.4, approval of the Executive Director for Operations, Inspector General, the Office of the General Counsel, Directors of the Office of Enforcement or Office of Investigations, as appropriate, or the Agency Allegation

Advisor should be obtained prior to release of the document.

- G. Prior to release of SUNSI predecisional documents, the Director, DMSSA or DILR, or delegated staff, should determine, after consulting with OGC, whether the Agreement State can protect the documents from public disclosure under State law. If staff determines that an Agreement State can protect NRC SUNSI predecisional documents from public disclosure and, if necessary, has a “need-to-know” (See Section V.F.), the information may be shared with that State.
- H. Guidance on the handling and sharing of allegations information with Agreement States is contained in FSME Procedure [SA-400](#).
- I. If DMSSA or DILR staff is notified that an Agreement State, CRCPD working group, non-Agreement State Radiation Control Program Director or staff member has released an NRC predecisional document, or received a request for disclosure of predecisional information, DMSSA or DILR should contact the technical assistant for the Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance, and the Office of the General Counsel to provide notification to the Commission. Also, the Office of the Inspector General must be advised promptly of the occurrence in writing. In the case of an inadvertent release of allegation information, the Agency Allegation Advisor should be contacted promptly. Additional guidance for SUNSI documents is posted on the NRC internal website in paragraph V.F.

VI. APPENDIX

Appendix - Sample Letter to All Agreement States Transmitting Predecisional Inspection Procedure

VII. REFERENCES

1. NRC Management Directive 3.4, *Release of Information to the Public*.
2. [NRC Management Directive 6.3](#), *The Rulemaking Process*.
3. FSME Procedure SA-400, Procedures for Management of Allegations, January 22, 2004.
4. Sensitive Unclassified Non-Safeguards (SUNSI) website:
<http://www.internal.nrc.gov/sunsi/>.

VIII. ADAMS REFERENCE DOCUMENTS

<u>Date</u>	<u>Document Title/Description</u>	<u>ADAMS</u>
1. 5/4/2001	Providing NRC Predecisional Documents to Agreement States and Appropriate Working Groups of the Conference of Radiation Control Program Directors, Inc. SA-800	ML011370784
2. 5/4/2001	Comments and Responses to Comments on revised Draft Procedures SA-800, Providing NRC Predecisional Documents to Agreement States and Appropriate Working Groups of the Conference of Radiations Control Program Directors, Inc.	ML011370785
3. 1/24/2001	Providing NRC Predecisional Documents to Agreement States and Appropriate Working Groups of the Conference of Radiation Control Program Directors, Inc., STP Procedure SA-800 (STP-01-004)	ML010300204
4. 3/26/1999	Program Management Information: Predecisional Documents (SP-99-019) with Providing NRC Predecisional Document to Agreement States - SA-800	ML063540157

Appendix
Sample Letter to All Agreement States Transmitting
Predecisional Inspection Procedure

Note: *Italicized text* is guidance for determining text to be entered.

ALL AGREEMENT STATES, NEW JERSEY, PENNSYLVANIA, VIRGINIA

TECHNICAL CONFERENCE FORUM: DRAFT INSPECTION PROCEDURE
(FSME-07-XXX)

Purpose: This letter provides advance notice of the Nuclear Regulatory Commission's (NRC) proposal to revise inspection procedure, "[*Title*]." The principal objective of the revision is to [*reason*].

Contents: The draft inspection procedure is available at Agreement State area of NRC's Technical Conference Forum: <http://techconf.llnl.gov/cgi-states/topics>. (Non-Agreement States may obtain passwords for the Technical Conference Forum from the Conference of Radiation Control Program Directors.) The draft is marked:

PREDECISIONAL DRAFT INFORMATION
FEDERALLY PROTECTED
NOT FOR PUBLIC DISCLOSURE UNLESS THE NRC
DETERMINES OTHERWISE

NRC requests comments within 45 days from the date of this letter. Please provide your comments on the draft inspection procedure by to [*NRC staff contact, address, telephone/fax number(s) and e-mail address*].

Due to its predecisional nature, the draft has not been publicly disclosed. Therefore, we request that you limit distribution to your staff and not release the draft publicly. Please see the FSME web page at <http://nrc-stp.ornl.gov/procedures/sa800d.pdf> for additional information about the distribution and use of predecisional information. If the draft is intended to be released, released, or if release of this document is requested, please inform me or the contact named below within 24 hours of the request.

[Current OMB approval paragraph for an information request.]

NRC Point of contact: If you have any questions regarding this correspondence, please contact me or the individual named below.

POINT OF CONTACT: [*NRC staff*]
TELEPHONE: [*phone number*]

INTERNET: [*ID*]@NRC.GOV
FAX: (301) 415-xxxx

Director
Division of Materials Safety and State Agreements
Office of Federal and State Materials and
Environmental Management Programs

Appendix (continued)

Distribution:

DIR RF [Task Number]
 Management Analyst
 Inspection procedure staff
 All A/S File
 CRCPD File

RSAOs
 RSLOs

DCD [FSME Number]

SUNSI Review Complete

Publicly Available Non-Publicly Available
 Non-Sensitive Sensitive

DOCUMENT NAME: **G:\DMSSA \staff ID\FSME-07-XXX. wpd**

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