

(SP-99-019, March 1999, Program, Predecisional Documents)

DATED: MARCH 26, 1999

SIGNED BY: PAUL H. LOHAUS

ALL AGREEMENT STATES

MINNESOTA, OHIO, OKLAHOMA, PENNSYLVANIA, WISCONSIN

**PROGRAM MANAGEMENT INFORMATION: PREDECISIONAL DOCUMENTS (SP-99-019)**

Through All Agreement States letter SP-97-065 (September 12, 1997), we communicated with you to determine your program's ability to withhold NRC predecisional documents from public disclosure. Early sharing of predecisional information is an important part of helping ensure your early opportunity for input, review and comment in development of new NRC rules and supporting implementing guidance.

Based on Commission review of your response, the Commission has approved continuation of the current practice of providing predecisional programmatic documents, such as drafts of rulemaking plans, proposed and final rules, and licensing and inspection guides to all Agreement States. The approval, however, does not extend to other, more sensitive, predecisional documents that pertain to matters such as escalated enforcement actions, allegations and investigations. These more sensitive types of documents will only be provided to Agreement States on a "need-to-know" basis and only to Agreement States that we determine can protect the information from public disclosure.

We have developed the enclosed procedure for NRC staff use in the distribution of predecisional documents to Agreement States. We will use as a primary means of distribution, the electronic subsystem that has been established for sole use by the Agreement States to comment on draft rulemakings and draft guidance documents. This subsystem is under the Technical Conference Forum of the NRC Home Page. The subsystem can only be accessed by the Agreement States having a user name and password unique to each Agreement State (SP-97-084, December 9, 1997). Notification of any new documents added to the subsystem will be provided through an All Agreement States letter or specific announcement that will be posted to the "OSP Announcements" list server. In some cases distribution of the predecisional document will be accomplished through an All Agreement States letter.

The Commission also asked that it be informed immediately if a predecisional document is released by an Agreement State. We ask that each Agreement State take necessary steps to ensure that you will notify me, or the contact identified in the transmittal letter, within 24 hours of discovery in the event a predecisional document is released by your program. We will, in turn, notify the Commission.

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

POINT OF CONTACT: Stephen N. Salomon  
TELEPHONE: (301) 415-2368

INTERNET: SNS@NRC.GOV  
FAX: (301) 415-3502

Paul H. Lohaus, Director  
Office of State Programs

Enclosure:  
As stated



## OSP Procedure Approval

### *Providing NRC Predecisional Documents to Agreement States - SA-800*

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Issue Date: March 26, 1999

Expiration Date: March 26, 2000

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Paul H. Lohaus  
*Director, OSP*

Original signed by:  
*Paul H. Lohaus*

*Date: 3/26/99*

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*Deputy Director, OSP*

*Date:*

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Stephen N. Salomon  
*Procedure Contact, OSP*

Original signed by:  
*Stephen N. Salomon*

*Date: 3/25/99*

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#### ***NOTE***

*The OSP Director's Secretary is responsible for the maintenance of this master copy document as part of the OSP Procedure Manual. Any changes to the procedure will be the responsibility of the OSP Procedure Contact. Copies of OSP procedures will be distributed for information.*



**Procedure Title:**  
***Providing NRC Predecisional Documents to Agreement States***  
**Procedure Number: SA-800**

**Page: 1 of 3**

**Issue Date:**  
**3/26/99**

## **I. INTRODUCTION**

This procedure describes the process for providing NRC predecisional documents to Agreement States.

## **II. OBJECTIVES**

- A. Establish procedures to be followed by NRC staff for providing NRC predecisional documents to Agreement States.
- B. Establish guidance on the types of predecisional documents that may be routinely provided to Agreement States, 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 release of an NRC predecisional document by an Agreement State.

## **III. BACKGROUND**

- A. Commission policy recognizes both 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 NRC predecisional documents with Agreement States for review and comment. As predecisional documents, they are 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. §§ 2.790(a)(5) 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. Other, more sensitive, predecisional documents that pertain to matters such as escalated enforcement actions, allegations and investigations, are provided to Agreement States only on a “need-to-know” basis in accordance with Management Directive 3.4, “Release of Information to the Public.”

#### **IV. ROLES AND RESPONSIBILITIES**

- A. The Director, OSP, is responsible for development of procedures on providing NRC predecisional documents to Agreement States.
- B. The State Regulations Review Coordinator (Coordinator) has the lead OSP staff responsibility for assisting NRC staff in determining the types of NRC predecisional documents to be distributed to Agreement States, 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 of draft proposed and final rules, policy statements, and other predecisional documents.

#### **V. GUIDANCE**

- A. Programmatic predecisional documents, including draft rulemaking plans, drafts of proposed rules, final rules, policies, draft internal procedures, generic letters, and information notices, may be routinely distributed to all Agreement States for their information, review and comment.
- B. Distribution of all NRC programmatic predecisional documents may be accomplished through use of an All Agreement States letter (see Appendix A).
- C. Each predecisional document should be labeled as follows:

**PREDECISIONAL DRAFT INFORMATION  
FEDERALLY PROTECTED  
NOT FOR PUBLIC DISCLOSURE**

- D. Rulemaking, licensing, and inspection guidance documents will be available to the Agreement States through the Technical Conference Forum (<http://techconf.llnl.gov>) via the NRC Home Page (<http://www.nrc.gov>). Agreement States must have a unique user name and password to access the separate area set aside for Agreement State use (see All Agreement States letter SP-97-084). There is a special search engine only Agreement States may use. NRC staff members are also required to have a password to access this separate area.

- E. Other more sensitive NRC predecisional documents, such as proposed enforcement actions, draft orders or demands for information, draft confirmatory action letters or information dealing with investigations and allegations will be shared with Agreement States on a “need-to-know” basis. “Need-to-know” means that the Agreement State receiving the predecisional information is directly involved with the issue or licensee. Documents should be labeled as described in Item C above with **NEED-TO-KNOW** added. Additional labeling or marking to specifically identify the “more sensitive” nature of the predecisional document, or to meet specific State labeling needs may also be added. In accordance with Management Directive 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, should be obtained.
- F. Prior to release of other more sensitive NRC predecisional documents, staff should determine whether the Agreement State can protect the documents from public disclosure under State law or through a written protective agreement between the State and NRC (see Appendix B). If staff determines that an Agreement State can protect sensitive NRC predecisional documents from public disclosure, the information may be shared with that State.
- G. Guidance on the handling and sharing of allegations information with Agreement States is contained in OSP Internal Procedure D.20.
- H. If OSP staff is notified that an Agreement State has released an NRC predecisional document, OSP should contact the technical assistant for the Deputy Executive Director for Regulatory Programs to provide notification to the Commission.

## **VI. APPENDICES**

- Appendix A - Sample Letter to All Agreement States Transmitting Programmatic Predecisional Documents
- Appendix B - Sample Protective Agreement

## **VII. REFERENCES**

1. Management Directive 3.4, “Release of Information to the Public.”
2. Management Directive 6.3, “The Rulemaking Process.”
3. Office of State Programs Internal Procedure D.20, *Procedures for Management of Allegations, Revision 1*, March 25, 1997.
4. All Agreement States Letter SP-97-084.

# Appendix A

## Sample Letter to All Agreement States Transmitting Programmatic Predecisional Documents

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

ALL AGREEMENT STATES  
MINNESOTA, OHIO, OKLAHOMA, PENNSYLVANIA, WISCONSIN

### PROGRAM MANAGEMENT INFORMATION: DRAFT INSPECTION PROCEDURE (SP-XX-XXX)

This letter provides advance notice of NRC's proposal to revise inspection procedure, "[*Title*]." The principal objective of the revision is to [*reason*]. The draft inspection procedure is enclosed and **marked**:

#### PREDECISIONAL DRAFT INFORMATION FEDERALLY PROTECTED NOT FOR PUBLIC DISCLOSURE

Due to its predecisional nature, this document is exempt from public disclosure under NRC rules. We request that you limit distribution to your staff and not release the document publicly. If this document is released, please inform **me or the individual named below within 24 hours**.

NRC requests comments within 45 days from the date of this letter. Please send or fax your comments on the draft inspection procedure to [*NRC staff contact, address, phone and e-mail address*]. Alternatively, you may provide your comments via the Technical Conference Forum.

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

**POINT OF CONTACT:** [*OSP staff*]                      **INTERNET:** [*ID*]@NRC.GOV  
**TELEPHONE:**                      (301) 415-[*xxxx*]      **FAX:**                      (301) 415-3502

Director  
Office of State Programs

Enclosure:

As stated

Distribution:

DIR RF [Task Number]

RSAOs

DCD [SP Number]

Management Analyst

RSLOs

PDR (NO)

Inspection procedure staff

All A/S File

**\*\*DO NOT SEND TO OSP-ANNOUNCEMENTS\*\***

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To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

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NAME	OSP Staff	Coordinator			
DATE	/ /99	/ /99	/ /99	/ /99	/ /99

OSP FILE CODE: SP-AG-

## Appendix B

### Sample Protective Agreement

#### NON-DISCLOSURE AGREEMENT

The Office of [NRC Office], United States Nuclear Regulatory Commission (NRC) and the [Agreement State Agency], [State or Commonwealth] each have regulatory jurisdiction over aspects of the activities of [State licensee]. Therefore, it may be in the interest of both the NRC and [Agreement State Agency] to share information from time to time in carrying out their respective regulatory responsibilities. Accordingly, the Office of [NRC Office] may at its discretion provide sensitive information to [State Agency] provided that [State Agency] will conform to NRC practices regarding information disclosure.

The [State Agency] agrees not to release to the public sensitive NRC information including predecisional NRC information (e.g., draft documents) concerning enforcement, licensing, and investigative actions. To preclude the premature public release of such sensitive information, [State Agency] will protect the information to the extent permitted by the Freedom of Information Act, 5 U.S.C. § 552(b)(5), 10 C.F.R. §§ 2.790(a)(5) and 9.17(a)(5) and other applicable authority. [State Agency] will consult with Office of [NRC Office] before releasing sensitive information to ensure that its release is not premature or would not affect an ongoing investigation or other NRC action. Office of [NRC Office] will inform [State Agency] of the release of sensitive information as appropriate. Additionally, [State Agency] will not release proprietary data until a release is approved by the person(s) having proprietary rights therein or until release is approved by appropriate NRC management. In the event that predecisional information is released, [State Agency] agrees to notify the NRC within 24 hours after the release.

The Office of [NRC Office] contact for this agreement is [NRC Management Official]. The contact for the [State Agency] is [State Program Director].

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[State Program Director]  
[Name of State Program]  
[Address]

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[NRC Management Official]

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[Date]  
[City, State]