# Office of Federal and State Materials and Environmental Management Programs (FSME) ~~STP~~ Procedure Approval

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

## SA-800

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### *NOTE*

***~~The STP Director's Secretary is responsible for the maintenance of this master copy document as part of the STP Procedure Manual.~~ 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 ~~STP~~FSME Procedure Contact as of October 1, 2006. Copies of ~~STP~~ FSME procedures will be ~~distributed for information.~~ available through the NRC website.***

## I. INTRODUCTION

This procedure describes the process for providing certain Nuclear Regulatory Commission (NRC) predecisional documents to Agreement State management and staff, 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, 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.

## 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 relevant NRC predecisional documents with Agreement State management and staff 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)~~ 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. ~~Recently,~~ CRCPD working groups and NRC staff ~~have taken~~ 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-~~sensitive~~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, ~~Office of State and Tribal Programs (STP),~~ Division of Materials Safety and State Agreements (DMSSA) and Division of Intergovernmental Liaison and Rulemaking (DILR) are ~~is~~ responsible for development of procedures providing NRC non-~~sensitive~~SUNSI predecisional documents to Agreement States, appropriate CRCPD working groups, and non-Agreement State Radiation Control Program Directors.

B. The ~~State Regulations Review Coordinator (Coordinator)~~ staff person, as assigned by the Directors, DMSSA and DILR, has ~~has the lead STP staff~~ responsibility for assisting NRC staff in determining the types of ~~NRC~~ non-~~sensitive~~ 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-~~sensitive~~SUNSI predecisional documents.

## V. GUIDANCE

A. Non-~~sensitive~~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 ~~sensitive~~SUNSI predecisional documents are described in V.~~E~~F.

B. Distribution of non-~~sensitive~~SUNSI ~~NRC~~ predecisional documents may be accomplished through use of an All Agreement States letter (see Appendix A for a sample letter circulating Draft Inspection Procedure for review).

~~C. Each non-sensitive predecisional document should be labeled as follows:~~

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

~~D~~C. ~~The~~Non-SUNSI predecisional information ~~defined in V.A. will~~ 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)~~ (http://techconf.llnl.gov/cgi-states/topics). ~~via the NRC Home Page (http://www.nrc.gov).~~ Agreement States, CRCPD working groups, and non-Agreement State Radiation Control Program Directors must have a unique user name and password to access ~~the~~ this separate area. ~~set aside for Agreement States, CRCPD working groups, and non-Agreement State Radiation Control Program Directors (see All Agreement States letter SP-99-027). There is a special search engine available only to Agreement States and appropriate CRCPD working groups.~~ 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 is exempt from public disclosure under NRC rules. Therefore, we request that you limit distribution to your staff and not release the draft publicly. Please see the FSME web page at http://www.hsrd.ornl.gov/nrc/procedure/sa800.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.

~~E~~F. ~~Certain sensitive~~SUNSI ~~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 only Agreement States on a "need-to-know" basis. "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 - Not for Public Disclosure." ~~as described in Item C above with **NEED-TO-KNOW** added. Additional labeling or marking to specifically identify the "sensitive" nature of the predecisional document, or to meet specific State labeling needs, may also be added.~~ Because of the evolving nature of the SUNSI handling requirements, the NRC internal website should be consulted, i.e., http://www.internal.nrc.gov/sunsi/faq.html. 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.

~~F~~G. Prior to release of ~~sensitive~~ SUNSI ~~NRC~~ 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 ~~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~~ 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.

~~G~~H. Guidance on the handling and sharing of allegations information with Agreement States is contained in ~~STP~~ FSME Procedure SA-400.

~~H~~I. If ~~STP~~ 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, ~~STP~~ DMSSA or DILR should contact the technical assistant for the Deputy Executive Director for Materials, Waste, Research, State, Tribal and Compliance, ~~Research and State Programs~~ 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.E.

## VI. APPENDI~~CES~~X

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

~~Appendix B - Sample Protective Agreement~~

## VII. REFERENCES

1. NRC Management Directive 3.4, *Release of Information to the Public*.
2. NRC Management Directive 6.3, *The Rulemaking Process*.
3. ~~State and Tribal Programs~~ FSME Procedure SA-400, *Procedures for Management of Allegations, ~~Revision 2~~*, ~~July 30, 1999.~~ January 22, 2004.
4. ~~All Agreement States Letter SP-99-027.~~
4. Sensitive Unclassified Non-Safeguards (SUNSI) website: http://www.internal.nrc.gov/sunsi/.

## VIII. ADAMS REFERENCE DOCUMENTS

| | Date | Document Title/Description | ADAMS |
|---|---|---|---|
| 1. | 5/4/01 | Providing NRC Predecisional Documents to Agreement States and Appropriate Working Groups of the Conference of Radiation Control Program Directors, Inc. SA-800 | ML011370784 |

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| 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
~~MINNESOTA, PENNSYLVANIA, WISCONSIN~~
**~~PROGRAM MANAGEMENT INFORMATION:~~ TECHNICAL CONFERENCE FORUM: DRAFT INSPECTION PROCEDURE (STP-XX-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: ~~has been uploaded to the Technical Conferencing Forum (TCF) and 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 ~~via the TCF. Alternatively, you may~~ e-mail, mail, or fax ~~your comments on the draft inspection procedure~~ to [*NRC staff contact, address, telephone/fax number(s) and e-mail address*].

Due to its predecisional nature, the draft is exempt from public disclosure under NRC rules. Therefore, we request that you limit distribution to your staff and not release the draft publicly. Please see the FSME web page at http://www.hsrd.ornl.gov/nrc/procedure/sa800.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.

~~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**.~~

[Current OMB approval paragraph for an information request.]

## Appendix (continued)

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

Director
~~Office of State and Tribal Programs~~Division of Materials Safety and State Agreements

Distribution:

| | | |
|---|---|---|
| DIR RF [Task Number] | RSAOs | DCD [STP Number] |
| Management Analyst | RSLOs | ~~PDR (NO)~~ |
| Inspection procedure staff | | **SUNSI Review Complete** |
| All A/S File | ☐ Publicly Available | ☒ Non-Publicly Available |
| CRCPD File | ☒ Non-Sensitive | ☐ Sensitive |

DOCUMENT NAME: **G:\STP staff ID\STP-XX-XXX. wpd**
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| NAME | Staff | | ~~Coordinator~~ | | | | | | | | | |
| DATE | 11 / /0~~1~~7 | | ~~/ /01~~ | | 11/ /0~~1~~7 | | / /0~~1~~ | | 11/ /0~~1~~7 | | 11/ /0~~1~~7 | |

**ML** FSME~~**STP FILE CODE: STP-A-4 / STP-C**~~**-7**

## ~~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 inspection, allegation 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, for predecisional NRC information containing proprietary data, [*State Agency*] will not release proprietary data until a release is approved by the person(s) having proprietary rights therein and NRC has been contacted. 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 and Tribal Programs Director*].~~

_____

~~[State Program Director]~~
~~[Name of State Program]~~
~~[Agreement State Agency]~~
~~[Address]~~

_____

~~[*NRC Management Official*]~~

_____

~~[Date]~~
~~[City, State]~~