

January 24, 2001

ALL AGREEMENT STATES
MINNESOTA, PENNSYLVANIA, WISCONSIN

PROGRAM MANAGEMENT INFORMATION: 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)

We are issuing for your review and comment a revised Office of State and Tribal Programs (STP) Procedure SA-800, *Providing NRC Predecisional Documents to Agreement States and Appropriate Working Groups of the Conference of Radiation Control Program Directors, Inc.*, that expands the scope of persons receiving Nuclear Regulatory Commission (NRC) predecisional documents to include appropriate working groups of the Conference of Radiation Control Program Directors, Inc. (CRCPD) and all State Radiation Control Program Directors and staff. This new procedure supersedes SA-800 accompanying All Agreement States Letter SP-99-019 (March 26, 1999). As in the case of Agreement States, early sharing of predecisional information is an important part of helping the CRCPD working groups develop Suggested State Regulations (SSRs) and supporting guidance documents. The electronic subsystem that was established for sole use by the Agreement States to comment on draft rulemakings and draft guidance documents is now available to the appropriate CRCPD working groups following CRCPD procedures.

This information request has been approved by OMB 3150-0029, expiration 4/30/01. The estimated burden per response to comply with this voluntary collection request is 6 hours. Forward any comments regarding the burden estimate to the Information and Records Management Branch (T-6 F33), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, and to the Paperwork Reduction Project (3150-0029), Office of Management and Budget, Washington, DC 20503. If a document does not display a currently valid OMB control number, the NRC may not conduct or sponsor, and a person is not required to respond to, a collection of information.

Please forward your comments within 45 days to me or the individual named below.

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

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

/RA/

Paul H. Lohaus, Director
Office of State and Tribal Programs

Enclosure:
As stated

STP-01-004

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STP-A-4



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

Issue Date:
Expiration Date:

Paul H. Lohaus
Director, STP

Date:

Frederick C. Combs
Deputy Director, STP

Date:

Stephen N. Salomon
Procedure Contact, STP

Date:

NOTE

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

Procedure Title:
*Providing NRC
Documents to Agreement
Working Groups*
Procedure Number: SA-800



*Predecisional
States and CRCPD*

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Issue Date:

I. INTRODUCTION

This procedure describes the process for providing 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), State Radiation Control Program Directors and staff.

II. OBJECTIVES

- A. Establish procedures to be followed by NRC staff for providing NRC predecisional documents to Agreement State management and staff, and non-sensitive predecisional documents to appropriate working groups of the CRCPD, 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 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) 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. 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 NRC Management Directive (MD) 3.4, *Release of Information to the Public*.
- C. The appropriate CRCPD working groups, the 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 Suggested State Regulations (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 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 State Radiation Control Program Directors with non-sensitive predecisional NRC rulemaking documents at the same time the Agreement States receive this information.

IV. ROLES AND RESPONSIBILITIES

- A. The Director, Office of State and Tribal Programs (STP), is responsible for development of procedures providing NRC non-sensitive predecisional documents to Agreement States, appropriate CRCPD working groups, and State Radiation Control Program Directors.
- B. The State Regulations Review Coordinator (Coordinator) has the lead STP staff responsibility for assisting NRC staff in determining the types of NRC non-sensitive predecisional documents to be distributed to Agreement States, appropriate CRCPD working groups, and 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 State Radiation Control Program Directors of draft proposed and final rules, policy statements, and other non-sensitive predecisional documents.

V. GUIDANCE

- A. Non-sensitive 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 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 predecisional documents are described in V.E.
- B. Distribution of non-sensitive 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. The predecisional information defined in V.A. will be made available to the Agreement States and appropriate CRCPD working groups through the Technical Conference Forum (<http://techconf.llnl.gov>) via the NRC Home Page (<http://www.nrc.gov>). Agreement States, CRCPD working groups, and State Radiation Control Program Directors must have a unique user name and password to access the separate area set aside for Agreement States, CRCPD working groups, and 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.
- E. Certain 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 only 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 “sensitive” nature of the predecisional document, or to meet specific

State labeling needs, may also be added. 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, should be obtained prior to release of the document.

- F. Prior to release of 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 STP Procedure SA-400.
- H. If STP staff is notified that an Agreement State, CRCPD working group, State Radiation Control Program Director or staff member has released an NRC predecisional document, STP should contact the technical assistant for the Deputy Executive Director for Materials, Research and State and Tribal Programs to provide notification to the Commission.

VI. APPENDICES

Appendix A - 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 Procedure SA-400, *Procedures for Management of Allegations, Revision 2*, July 30, 1999.
4. All Agreement States Letter SP-99-027.

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Appendix A

Sample Letter to All Agreement States Transmitting Predecisional Inspection Procedure

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

ALL AGREEMENT STATES
MINNESOTA, PENNSYLVANIA, WISCONSIN

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

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*]. The draft inspection procedure has been uploaded to the Technical Conferencing Forum (TCF) 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 mail or fax your comments on the draft inspection procedure to [*NRC staff contact, address, telephone/fax number(s) and e-mail address*]. Alternatively, you may provide your comments via the TCF.

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

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Office of State and Tribal Programs

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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]