



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:
Review Date:

Josephine M. Piccone
Director, DILR

Date:

James Danna
Branch Chief, DILR

Date:

Vanessa Cox
Procedure Contact

Date:

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NOTE

Any changes to the procedure will be the responsibility of the FSME Procedure Contact. Copies of FSME procedures will be available through the NRC website.

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	Procedure Title: Providing NRC Predecisional Documents to Agreement States, OAS and CRCPD Groups Procedure Number: SA-800	Page: 1 of 6 Issue Date:
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I. INTRODUCTION

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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), and 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).~~

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II. OBJECTIVES

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- A. Establish procedures to be followed by NRC staff for providing ~~certain sensitive and non-sensitive predecisional~~ NRC ~~predecisional~~ documents to Agreement State management and staff ~~and; which includes~~ the OAS,¹ and non-sensitive predecisional documents to appropriate ~~CRCPD~~ working groups, ~~of the CRCPD,~~ and 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 ~~an intent intention~~ to release, and ~~subsequent~~ release ~~of an of an~~ NRC predecisional document by State staff or appropriate ~~CRCPD~~ 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 ~~benefit 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 ~~and Personally Identifiable~~ 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*. ~~Staff will provide a SUNSI document only after determining that the Agreement State can protect the document from public disclosure under state law (see Section V.G.).~~
- C. ~~The appropriate~~Certain CRCPD working groups, including the Suggested State Regulations (SSRs) Committees, are responsible for developing regulations and guidance, ~~which that~~ are compatible with those of the NRC or other Federal agencies, ~~which can and 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 will~~ provide the appropriate CRCPD working groups and non-Agreement State Radiation Control Program Directors and staff with ~~non-SUNSI~~ predecisional NRC rulemaking documents ~~that do not contain SUNSI (i.e., non-SUNSI)~~ at the same time the Agreement States receive ~~this information~~ the documents. Under CRCPD ~~Procedures~~ procedures, licensees and non-State advisors are ~~excluded prohibited~~ 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 ~~and staff~~.
- B. ~~The staff person, as a~~Assigned by the Directors, DMSSA and DILR staff ~~is are~~ responsible for assisting other 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 ~~and staff~~. Also, assigned staff is responsible for the ~~means for~~ distribution, ~~and the~~ preparation of the Radiation Control Program Director (RCPD) Letters in accordance with the Office of Federal and State Material and Environmental Management Program (FSME) Procedure AD-200, "Format for FSME and RCPD Letters." ~~All Agreement States letters.~~
- C. The Office of the General Counsel (OGC) is responsible for providing assistance to FSME by interpreting public disclosure statutes and providing legal counsel to determine whether certain predecisional documents can be released ~~the release~~ to Agreement States, appropriate CRCPD working groups, and non-Agreement State Radiation Control Program Directors ~~and staff~~. ~~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 drafts of~~ rulemaking plans, ~~drafts of~~ proposed rules, and 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 predecisional 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 below in paragraph~~ V. F of this section.
- B. ~~Distribution of non~~Non-SUNSI predecisional documents ~~may~~ will be accomplished distributed as attachments to RCPD letters, electronically via a list server. ~~through use of an All Agreement States letter~~ (See Appendix for a sample letter circulating ~~Draft a draft document~~ 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 secure RCPD internet Web site at <http://nrc-stp.ornl.gov/>. ~~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~~ must be labeled as follows:
- PREDECISIONAL DRAFT INFORMATION
FEDERALLY PROTECTED
NOT FOR PUBLIC DISCLOSURE ~~UNLESS THE NRC DETERMINES OTHERWISE~~
- E. Each ~~All Agreement State RCPD~~ letter distributing non-SUNSI predecisional information must be signed by the Director, DMSSA or DILR, ~~and must 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-Web page~~ site at <http://nrc-stp.ornl.gov/procedures/sa800d.pdf> for additional information about the distribution and use of predecisional information. If the draft is ~~inadvertently intended to be released,~~ ~~or~~ released, please inform me or the contact named below within 24 hours ~~of the request~~.
- F. ~~SUNSI p~~Predecisional documents containing SUNSI, such as proposed enforcement actions, draft orders or demands for information, draft confirmatory action letters or information dealing with investigations, will be shared ~~only~~ 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 ~~on~~ the SUNSI intranet ~~website-Web site~~ at

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<http://www.internal.nrc.gov/sunsi/>. ~~Because of evolving SUNSI policies, the~~ The above SUNSI ~~website-Web site~~ 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~~ must approve the release of predecisional documents containing SUNSI prior to their 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-paragraph F above~~), then, 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~~ NRC staff is notified that an Agreement State, CRCPD working group, non-Agreement State Radiation Control Program Director or staff member has ~~inadvertently~~ 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-Web site~~ listed in paragraph ~~V-F~~, above.

VI. APPENDIX

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

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. FSME Procedure AD-200, Format for FSME and RCPD letters, January 3, 2009
45. Sensitive Unclassified Non-Safeguards (SUNSI) ~~website-Web site~~:
<http://www.internal.nrc.gov/sunsi/>.

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VIII. ADAMS REFERENCE DOCUMENTS

For knowledge management purposes, all previous revisions of this procedure, as well as associated correspondence with stakeholders, that have been entered into ADAMS are listed below.

No.	Date	Document Title/Description	Accession Number
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	STP-01-004, Providing NRC Predecisional Documents to Agreement States and Appropriate Working Groups of the Conference of Radiation Control Program Directors, Inc., STP Procedure SA-800	ML010300204
4	3/26/1999	SP-99-019, Program Management Information: Predecisional Documents with Providing NRC Predecisional Document to Agreement States - SA-800	ML063540157
5	12/20/2007	FSME-07-112, Notice of Discontinuance of the Technical Conference Forum Web site	ML073540259

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

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

Appendix A

Sample RCPD Letter to Agreement States Transmitting Predecisional Information

Appendix (continued)

Distribution:

DIR RF [Task Number] _____ RSAOs _____ DCD [FSME Number]

Management Analyst _____ RSLOs _____

Inspection procedure staff _____ **SUNSI Review Complete**

All A/S File _____ Publicly Available Non-Publicly Available

CRCPD File _____ Non-Sensitive Sensitive

DOCUMENT NAME: G:\DMSSA\staff\FSME-XXX-

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

OFFICE	DMSSA:Staff	DILR:DD	DILR:D	DMASSA:DD	OGC	DMASSA:D
NAME						
DATE	/ /10	/ /10	/ /10	/ /10	/ /10	/ /10

ML _____

_____ FSME

Appendix A

Sample RCPD Letter to Agreement States Transmitting Predecisional Information

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION

Month Date, Year

ALL AGREEMENT STATE RADIATION CONTROL PROGRAM DIRECTORS, [LETTER OF INTENT STATES, (IF ANY)] [OTHER STATE STAKEHOLDERS AS APPROPRIATE]

OPPORTUNITY TO COMMENT ON THE NRC DOCUMENT [NAME OF THE DOCUMENT] (RCPD-YY-NNN)

Purpose: The purpose section should elaborate as needed on the subject of the letter. Generally, it should be kept short - one paragraph. Avoid including text which could be placed in another paragraph. The final sentence of the paragraph should advise the addressee if an action or response is requested or required. If no action or response on the part of the recipient is requested or required, a statement to that effect is optional.

Example: [To inform Agreement States about the opportunity to provide comments on the final draft of the U.S. Nuclear Regulatory Commission (NRC) Revised Document.*]

Background: The text in the background section should be limited to pertinent historical information leading up to the issue being addressed. Current activities and situations should be addressed in the discussion section.

Discussion: The discussion section should include descriptions of the current issue, situation, and activities. If any action is requested, required or expected from the addressees, it should be fully and clearly spelled out in the discussion section.

Example: [Comments about the final draft of the document should be submitted by Month Day, Year. Information about methods for submitting your comments is available in the *Federal Register* notice.]

*This information request has been approved by OMB 3150-0029, expiration ~~MM/DD/YYYY~~11/30/2013. The estimated burden per response to comply with this voluntary collection is approximately 8 hours. Send comments regarding the burden estimate to the Records and FOIA/Privacy Services Branch (T-5F52), U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, or by Internet e-mail to infocollects@nrc.gov, and to the Desk Officer, Office of Information and Regulatory Affairs, NEOB-10202 (3150-0029), Office of Management and Budget, Washington, DC 20503. If a means used to impose an information collection 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, the information collection.

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION

Appendix A

Sample RCPD Letter to Agreement States Transmitting Predecisional Information

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION

RCPD-YY-NNN

-2-

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 site at <http://nrc-stp.ornl.gov/procedures/sa800d.pdf> for additional information about the distribution and use of predecisional information. If the draft is inadvertently released, please inform me or the contact named below within 24hours. The draft is marked:

PREDECISIONAL DRAFT INFORMATION
FEDERALLY PROTECTED
NOT FOR PUBLIC DISCLOSURE

If you have any questions regarding this correspondence, please contact me at [signatory Director's phone number] or the individual named below.

POINT OF CONTACT: NAME: INTERNET: first name.last name@nrc.gov
TELEPHONE: (301) 415-xxxx FAX: (301) 415-xxxx
~~POINT OF CONTACT: Your Name INTERNET: your.name@nrc.gov~~
~~TELEPHONE: (301) 415-xxxx FAX: (301) 415-xxxx~~

/RA/

Director's Name,
Director Division Name
Office of Federal and State Materials
and Environmental Management
Programs

Enclosures:

1. Related document
2. The Draft Policy to be commented

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION

Appendix A

Sample RCPD Letter to Agreement States Transmitting Predecisional Information

OFFICIAL USE ONLY – SENSITIVE INTERNAL INFORMATION

RCPD-YY-NNN

-2-

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 site at <http://nrc-stp.ornl.gov/procedures/sa800d.pdf> for additional information about the distribution and use of predecisional information. If the draft is **inadvertently** released, please inform me or the contact named below within 24hours. The draft is marked:

PREDECISIONAL DRAFT INFORMATION
FEDERALLY PROTECTED
NOT FOR PUBLIC DISCLOSURE

If you have any questions on this correspondence, please contact me at [signatory Director's phone number] or the individual named below.

POINT OF CONTACT: NAME: INTERNET: first name.last name@nrc.gov
TELEPHONE: (301) 415-xxxx FAX: (301) 415-xxxx
~~POINT OF CONTACT: Your Name INTERNET: your.name@nrc.gov~~
~~TELEPHONE: (301) 415-xxxx FAX: (301) 415-xxxx~~

/RA/

Director's Name,
Director Division Name
Office of Federal and State Materials
and Environmental Management Programs

- Enclosures:
1. Related document
2. The Draft Policy to be commented

DISTRIBUTION:
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[Insert name], [Insert Appropriate Offices]
[Insert name], [Insert Appropriate Regions]

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NAME					
DATE	/ /YY				

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