SUGGESTED STATE REGULATION (SSR)
ABBREVIATED SUGGESTED REGULATION PROCESS

THE CONFERENCE OF RADIATION CONTROL PROGRAM DIRECTORS, INC.

Approved by Board of Directors

April, 2005

SSR COMMITTEE CHAIR PROCESSES

This document contains an outline of an abbreviated process that an SSR Committee Chair can follow when it would be more efficient to except an SSR from all steps in the full SSR Process Development when it is found for good cause that the full process is impracticable, unnecessary or contrary to the interests of providing timely updates to the SSRs. This document should only be used in conjunction with the CRCPD SSR Process Development and the Operations Handbook for working groups.

Abbreviated Suggested Regulations Procedure (ASRP)

In all cases, exceptions to the full SSR development process should narrowly conform, in general, to being "impracticable," meaning measures necessary to promptly correct an identified safety problem would be impeded; "unnecessary," where there is no compelling interest or need to engage in the full SSR process, such as correcting formatting, typographical and other errors of little or no substantive consequence found in a SR following it's publication; and, "contrary to states' interests" when it is determined by the Board that the full process would defeat the purpose of providing timely updates to the SSRs to include SR changes which have already undergone the participatory rulemaking process of a federal agency.

In all cases, case-specific findings are needed to establish that there is good cause for the abbreviated SR procedure to be used. Primarily, this abbreviated procedure would only be applied in two different cases: emergency changes where there is demonstrated the existence of a safety or health problem which must be addressed immediately, and for changes in which there is no compelling interest by the states to object to the changes made. Useful criteria for determining a significant adverse comment may be found in a later section of this procedure

In essence, the ASRP requires a reduced concurrence and approval process, relative to the full SSR Process Development. Even so, an SSR Part and its Rationale published under the ASRP are still subjected to most of the SSR administrative processing requirements to which every other SSR is subjected.

Direct Suggested Regulation (DSR)

Publishing a DSR and its Rationale under the ASRP is a technique for expediting the issuance of noncontroversial SSR changes. The process may be used where CRCPD,

through it's Board or SR Working Group Chairperson, can articulate a reason for believing that the change is noncontroversial and significant adverse comments are not expected to be received. The SSR and Rationale are published with the proviso that if a significant adverse comment is received, the SSR will undergo the full SSR process. Although a DSR is not explicitly sanctioned in any legal or specific requirement, there are two legal theories that may be used to support the proposition that the DSR process is an acceptable mechanism. The first legal theory relies on the fact that a DSR process implicitly relies on the "unnecessary" good cause exception, even though an explicit finding of good cause is not necessarily made. The second legal theory relies on the fact that the DSR would substantially comply with the basic notice-and-comment requirements of a public government agency having appropriate administrative rules requirements, because notice is given of the terms of the rule (albeit, in most cases for an NRC rule rather than a proposed SSR) as well as an opportunity for comment, and a statement of basis and purpose is included at the outset of the proposed SSR changes rather than, as contemplated by the full SSR Process, after the SR Working Group has assessed any comments.

Interim Status of the SSRs

By default, the SSRs are interim and subject to comment opportunity at any given time. Invoking an ASRP or DSR process for a good cause exception is unlikely to cause detriment to the states or to CRCPD, because comments are continually invited by the CRCPD on the SSRs and SSR process. In cases where the full SSR process would be "impracticable" or "contrary to the public interest," an abbreviated process can be used for making an SSR available for use by the states in a timely and effective manner. The ASRP may be an appropriate process to use when an emergency dictates that a change be published as quickly as possible with the understanding that CRCPD wants to preserve the opportunity to refine the SR in the light of any additional information and comments received.

Under an ASRP, CRCPD could ensure that a 30-day post-publishing comment period is provided for any SSR adopted under the good cause exception where the basis is that the full SSR process is impracticable or contrary to the interest of the states. For any post-publication comments received, CRCPD already retains a mechanism for evaluation of the significant comments and any revision of the SSR made as a result of the comments and their evaluation.

Criteria for Significant Adverse Comment

In general, adverse and significant comments explain why the SR amendments would be inappropriate and include challenges to the underlying premise or approach in the

regulations, or provide a basis for why the SR would be ineffective or unacceptable without a change.

- A comment is not adverse if it:
  - Supports the change, or
  - Is beyond the scope of the amendment (i.e., it raises questions or issues outside the scope of changes being made).

- A comment is not significant if it:
  - Opposes the change but provides no reason
  - Is frivolous or non-substantive, or
  - Proposes change but includes no indication of objection of change going forward

- A comment is adverse and significant if it:
  - Opposes the change and provides sufficient reason to require a substantive response
  - Causes re-evaluation or re-consideration of CRCPD's position
  - Raises issues not previously addressed or considered
  - Is apparent that a proposed change or addition is needed

STEPS IN THE ASRP DSR PROCESS

Step 1 - Identify Need

Provide case-specific findings and rationale for the rule changes (e.g., Federal Register Notice, Organization of Agreement States letter, Notice of Federal Equivalence, etc.) to establish that there is good cause for the abbreviated procedure to be used. Justification of the basis and purpose for the DSR should discuss the following:

- Amendments to existing SRs are:
  - Minor in nature
  - Formalize an existing practice
  - Reflect an update to include a new, accepted technology
  - Adopt or update a generally accepted standard, or
  - Do not consitute a relaxation of current requirements
- Amendments are not expected to engender:
  - Stakeholder opposition

$ Significant economic impact on any stakeholder, or

$ Significant regulatory burden on any stakeholder

Step 2 - Draft the Suggested Regulation and Rationale

The decision on how the drafts are developed lies with the SSR chairperson. The draft SR and Rationale can be developed either by the chair based on material submitted by the federal liaison, or it can be a collaborative effort coordinated by the chair that involves additional committee members.

Step 3 - OED Technical Review and Formatting

The drafts are forwarded to OED for Technical Review. OED technical staff will provide written feedback to the SSR chair within 30 days if there are issues that need further consideration prior to releasing the documents for Board review**.**

Step 4 - Board Approval Process

An SSR approval package is submitted to the Board by the OED on behalf of the SSR committee chair. The Board must approve the proposed part before it can be submitted for federal concurrence. For clarification, the Board has final say over all changes or Part developments.

Step 5 - Federal Concurrence Process

Once a Part has been approved by the Board, federal review and concurrence are sought.

Step 6 - Publication

The Executive Director/Administrative Officer, on behalf of the CRCPD Board of Directors, will provide written notification to the OED staff person that the Part and its Rationale have been approved for publication for 30 days, or another date specified. The OED is responsible for preparing the documents for publication and for distributing the draft Part and its Rationale to all program directors. The draft Part and Rationale

are also placed on the CRCPD Website for 30 days, or for the date specified. At the end of the specified time period, and in the absence of adverse significant comments, “draft” is removed from the Part on the CRCPD Website by OED and it is included in all printed copies of the SSRCRs.

Additional Information

When the SR Working Group Has Finished Its Task(s)

In keeping with the Board approved working group initiative, the SSR working group’s membership will be terminated when its tasks are complete.

Need for a Guidance Document in Support of the SR?

A guidance document is typically not necessary for a DSR under the ASRP since a statement of basis and purpose is included in the Rationale at the outset of the proposed SSR changes rather than, as contemplated by the full SSR Process, after the SR Working Group has assessed any comments.