CHANGE PAGES

Directive

Page 7 - Deputy Executive Director title updated to Deputy Executive Director for Reactor Programs.

Page 9 - Under NRR - 3rd bullet changed from ASLB to ASLBP. Also changed under NMSS, and changed whenever cited in entire document . State Programs changed to Office of State and Tribal Programs (STP) and changed whenever cited.

Handbook

Page 1-2 - Footnote dealing with treating Internet allegations as anonymous is eliminated.

1-5 - Under (A) (2) (d) - Revised to reflect that Acknowledgment of Allegations can be made via e-mail when no address is provided by the alleger.

1-5-6 - Section (A)(e) & (f) are added from AGM 00-01 - explains how to acknowledge additional concerns from an alleger that amplifies an earlier allegation or came from NRC review of allegations transcript; (A) (g) & (h) are re-lettered from existing version, but language is the same.

1-9 - Section (A) (3)(b)(vi) Language added to clarify use of electronic transmittals.

1-11 - Section (A)(4)(viii) - Language moved from current MD 8.8 - #54 Section (J) and amended by AGM-00-01 - provides guidance on what to do if an alleger does not want their identity released and the staff believes such a release is necessary.

1-19 - Section (B)(1)(C) - Amended to allow the forwarding of allegations to the OAC via internal e-mail. Section (B)(2)(b) clarification of resolution of allegations with higher safety significance.

1-29 - Section (C)(3)(a)(i) changed to more specifically address safety and risk significance of issues.

1-30 - Section (C)(3)(b)(i) and (C)(3)(c)(i) - changed to more specifically address safety and risk significance of issues.

I-33 - 34 - Section (C)(4)(d)(i) - Language changed from "Request that OI defer" to "consider deferring the OI investigation."

I-37 - 38 - Section (C) (5) Added on Chilling Effect Issues. Heading numbers following "5" have been changed but no change to language.

1-43 - Section (C)(9)(c) Information added about stamping copies of allegations provided to the staff.

I-48 - Section (D)(3) - footnote 6 added giving the OAC authority to refer allegations clearly outside of NRC's jurisdiction to the appropriate entity without going to an ARB.

I-49 - 51 - Section (D)(3)(b)(i)(a) - Language added where there is agreement between regions or offices on a referral, then no ARB is necessary in the receiving office. Also, new paragraph (b) added on the processing of Acknowledgment letters. Old paragraph (b) now becomes (c) but language is the same, except for a reference to ADAMS being added.

1-60-68 - Section (D)(8) significant changes to this language on the Handling of Agreement State Allegations and Concerns provided by the Office of STP.

1-73 - Footnote 7 added to Sect. (E)(1) Addressing lack of need to send a status letter if the OAC is confident that closure letters will be issued within 2 weeks. This comes from AGM-00-01.

1-75-76 - Sect. (F)(3)(a)(b)&(c) in each of (a)(b)&(c) - modified to use word "document" instead of "report." Also in (b) - new last sentence added addressing when allegation follow-up activities are to be documented in the inspection report.

1-77-78 - Sect. (4)(a) - 2 new sentences added "If the alleger has... memorandum would not be necessary." Also, same Section, reference to ADAMS added to last sentence. Also footnote 8 (which was footnote 6 in current MD 8.8) changed in 2nd sentence from "may not be appropriate" to "is not necessary." New last sentence added to footnote addressing action necessary when OI speaks to licensee employees other than the alleger.

1-81-82 - New section (G) added on "Closeout of Issues in OI Assists".

1-85 - Sect (I)(1)(d) - word "identity" added to last sentence for clarity.

1-92-96 - Section (K) - FOIA Section is new, replacing entire old FOIA Section.

G-3 - "Chilling Effect" definition changed.

G-4 - "Discrimination" added as a new definition.

G-5 - "Prima facie case of discrimination" added as a new definition.

E-6 - Paragraph before "Referrals to Licensees" in Exhibit 4, "start our review" changed to "continue our review"

E-11 - Exhibit 4 - Top paragraph - New language added after **"Please read that Section"** about identity protection.

E-12 - Exhibit 4 - Under "All letters" language added addressing how to contact NRC using mail or e-mail.

E-21-22 - New Exhibit 7 added on "E-mail Response".

E-23-26 - New Exhibit 8 added on "Ability of Agreement States to Protect Alleger's Identity from Public Disclosure."

TN: DT-01-XX

To: NRC Management Directives Custodians

Subject: Transmittal of Management Directive 8.8, "Management of Allegations"

Purpose: Directive and Handbook

Office and Division of Origin: Office of Nuclear Reactor Regulation

Contact: Carl Mohrwinkel, 415-1293

Date Approved: May 1, 1996 **(Revised: __/__/01)**

Volume: 8 Licensee Oversight Programs

Directive: 8.8 Management of Allegations

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Management of Allegations

Directive 8.8

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Management of Allegations
Directive 8.8

Policy
(8.8-01)

It is the policy of the U.S. Nuclear Regulatory Commission to manage allegations concerning NRC-regulated activities in such a way as to—

- Encourage individuals to come forward and identify safety concerns to their employers or to NRC. (011)

- Protect the identities of individuals, where appropriate and possible, to preclude potential harassment and intimidation, reprisal or retaliation by employers against individuals raising concerns to NRC or stigmatization by coworkers or members of the public. (012)

- Monitor, via various means such as allegations statistical trending, reviews of licensee employee concerns programs, and personal observation by NRC residents and inspectors, whether licensees promote an environment conducive to employees raising safety concerns. (013)

- Expeditiously determine the validity and safety significance of allegations concerning NRC-regulated activities and, where appropriate, require corrective action. (014)

Policy

(8.8-01) (continued)

- Acknowledge the receipt of allegations and inform individuals who make allegations of the resolution of their concerns. (015)
- Investigate selected allegations of potential wrongdoing. (016)
- Refer selected allegations to licensees or other affected organizations for followup to the extent practicable. (017)
- Refer allegations concerning matters that are not within the jurisdiction of the NRC to the appropriate entity. (018)

Objectives

(8.8-02)

To ensure that—

- NRC employees adhere to the policy and procedures for handling allegations set forth in this directive and handbook as well as to any internal office or regional implementing procedures. In case of conflict between this directive and regional or office procedures, this directive takes precedence. (021)
- Individuals making allegations receive an appropriate professional response and are encouraged to provide the information. (022)
- The identity of an alleger or confidential source is not disclosed outside the agency unless (a) the alleger has clearly indicated no objection to being identified; (b) disclosure is necessary because of an overriding safety issue (see "overriding safety issue" in the Glossary of Handbook 8.8); (c) disclosure is necessary pursuant to an order of a court or NRC adjudicatory

Objectives

(8.8-02) (continued)

authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust; (d) disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of discrimination allegations; (e) disclosure is necessary to support a hearing on enforcement matter; or (f) the alleger, or confidential source, has taken actions that are inconsistent with and override the purpose of protecting his or her identity. (023)

- Allegers are informed that personal remedies may be available to them through the Department of Labor (DOL) for any discriminatory practices by their employers that may relate to employee protection under Section 211 of the Energy Reorganization Act of 1974 (ERA). (024)

- Procedures for notifying the Office of Investigations (OI) of matters that involve potential wrongdoing and for the initiation, prioritization, and termination of resulting investigations are established and followed. (025)

- Allegations are properly documented and that allegations not resolved by other formal means (e.g., pursuant to 10 CFR 2.206) are assigned, assessed for safety significance, and resolved in accordance with this directive and handbook. (026)

- Allegations concerning Agreement State licensees are referred to the appropriate region for forwarding to the regional State agreements officer (RSAO) and the State. (027)

- Allegations regarding occupational health and safety are referred to the cognizant licensee and to DOL's Occupational Safety and Health Administration (OSHA), as appropriate, in accordance with the NRC Inspection Manual, Chapter 1007. (028)

Objectives

(8.8-02) (continued)

- With the exception of concerns stated in petitions filed in accordance with 10 CFR 2.206, or referred to the Office of the Inspector General (OIG), OSHA, or other organizations outside the NRC, allegations are entered in the Allegation Management System (AMS) database. (029)

- Each action office maintains timely and accurate information on assigned allegations through the AMS and the information is exchanged between offices and regions only on a need-to-know basis. (0210)

Organizational Responsibilities and Delegations of Authority

(8.8-03)

The Commission

(031)

- Approves, in appropriate cases, the revocation of confidentiality agreements (see Part II(C) of Handbook 8.8). (a)

- Approves, in appropriate cases, the release of the identity of a confidential source. For the circumstances under which the identity of a confidential source may be revealed, refer to Part II(E)(2) of Handbook 8.8. (b)

- Provides guidance regarding the initiation of investigations into the character or suitability of entities under NRC's statutory authority, or the employees of these entities, in those instances in which the character or suitability aspects of the matter being considered for investigation are unrelated to a violation of NRC regulatory requirements. (c)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Executive Director for Operations (EDO)

(032)

- Establishes policy and procedures for receiving, controlling, processing, and resolving allegations. (a)
- Implements the policy for initiating, assigning priority, and terminating OI investigations. (b)
- Resolves differences on the need for and the prioritization of OI investigations that cannot be resolved at a lower level. (c)
- Develops the policy for protecting the confidentiality of those who provide information to the NRC pursuant to a confidentiality agreement. (d)
- Approves, in appropriate cases, the revocation of confidentiality. (e)
- Approves allegations guidance memoranda (AGMs), providing interim guidance, as necessary, between revisions of this directive and handbook. (f)
- Approves staff orders to licensees to conduct surveys or hire independent third parties to oversee the licensee's work environment. (g)

Chief Information Officer (CIO)

(033)

- Provides automatic data processing (ADP) support to maintain the AMS. (a)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Chief Information Officer (CIO)

(033) (continued)

- Provides ADP assistance to the Agency Allegation Advisor (AAA), including continuing development, enhancement, and modification of the AMS to meet changing needs. (b)

Office of the General Counsel (OGC) and Regional Counsels

(034)

- Provide legal counsel, as requested, regarding interactions with allegers and confidential sources and the processing of allegations. (a)

- Provide assistance, as requested, to the action office in preparing notifications to the Atomic Safety and Licensing Board Panel (ASLBP). (b)

- Provide legal counsel, as requested, on confidentiality agreements, Freedom of Information Act (FOIA) requests, the Privacy Act, AGMs, and other matters. (c)

- Review the regulatory basis, as requested, for investigations to be conducted by OI. (d)

- Designate a point of contact for providing advice to the AAA on NRC witnesses and positions relevant to DOL litigation. (e)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Deputy Executive Director for Reactor Programs (DEDR)

(035)

Resolves any difference over the need, priority, and schedules that cannot be resolved at the office level with the Director of the Office of Investigations (OI) and the director of the responsible program office. (a)

Oversees the process of advising OI of matters of wrongdoing and submitting pertinent information to OI regarding the priority of investigations. (b)

Director, Office of Investigations (OI)

(036)

- Investigates allegations of wrongdoing by other than NRC employees and NRC contractors as requested by the Commission, on OI's initiative, or as referred by the staff. (a)
- Implements the policy for initiating, assigning priority, and terminating investigations. (b)
- Implements, in conjunction with the EDO, the policy for protecting the confidentiality of individuals who provide information to the NRC pursuant to a confidentiality agreement. (c)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Director, Office of Investigations (OI)

(036) (continued)

- Ensures that every effort is made to protect the identity of an alleger unless revealing that identity is necessary to conduct an OI wrongdoing investigation as delineated in paragraph (023) of this directive. (d)

- Coordinates investigations with Federal, State, and local law enforcement agencies, as necessary. (e)

- Seeks the Commission's guidance before initiating a full investigation relating to the character or integrity of an individual in instances in which the character or suitability aspects of the matter being considered for investigation are unrelated to a violation of NRC regulatory requirements. (f)

Director, Office of Enforcement (OE)

(037)

- Monitors DOL's activities as they relate to Section 211 of the ERA, as amended. (a)

- Administers enforcement actions as they relate to allegations. (b)

- Coordinates civil enforcement actions on the basis of investigations referred to the Department of Justice (DOJ). (c)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Director, Office of Nuclear Reactor Regulation (NRR)

(038)

- Selects the Agency Allegation Advisor. (a)
- Proposes agencywide policy and procedures regarding the processing of allegations to the EDO for approval. (b)
- Reviews allegations concerning NRC reactor licensees or other affected organizations with the action office for possible notification of the ASLBP, and makes the notification when required. (c)

Director, Office of Nuclear Material Safety and Safeguards (NMSS)

(039)

Reviews allegations concerning NMSS licensees or other affected organizations in coordination with the action office for possible notification of the ASLBP, and makes the notification when required.

Director, Office of State and Tribal Programs (STP)

(0310)

- Reviews each Agreement State program to ensure that it includes provisions for handling allegations. (a)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Director, Office of State and Tribal Programs (STP)

(0310) (continued)

- Monitors activities conducted by Agreement States regarding allegations involving Agreement State licensees. (b)

- Audits on a periodic basis Agreement State performance on allegations that have been referred to the Agreement States for resolution. (c)

Office Directors and Regional Administrators

(0311)

- Ensure, through initial and periodic refresher training, that staff are aware of and follow the NRC's policy and procedures for receiving, controlling, processing, and resolving allegations. Ensure that individuals responsible for the receipt, handling, and/or resolution of allegations receive refresher training at least annually. (a)

- Implement the Commission's policy statement on confidentiality, approve confidentiality agreements (this authority may be delegated), and ensure that all staff protect the identity of allegers and confidential sources in accordance with Commission policy. (b)

- Appoint an Office Allegation Coordinator (OAC) and establish an Allegation Review Board (ARB). Each region and NRR, STP, and NMSS shall appoint an OAC and establish an ARB

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Office Directors and Regional Administrators

(0311) (continued)

for each allegation (see "OAC" and "ARB" in the Glossary of Handbook 8.8). Other offices should appoint an OAC and establish an ARB if they believe their mission and the possibility of serving as an action office so require. Offices not appointing OACs shall refer all allegers and allegations received to the responsible action office OAC, who shall then be responsible for the actions of the receiving office. (c)

- As the action office, determine the safety significance and generic implications of the allegation, if any, and resolve the allegation as promptly as resources allow and before any applicable licensing decision date. Refer allegations that possess generic implications to NRR or NMSS, as appropriate. (d)

- Ensure that safety-significant allegations are promptly reviewed and take any actions necessary to address overriding safety issues. (e)

- As the action office, review allegations for possible notification of the ASLBP, and recommend notification of NRR or NMSS if appropriate. (f)

- Before taking a licensing or escalated enforcement action, review the status and resolution of any allegations that are related to the proposed action for that project or licensee to determine their effect. (g)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Office Directors and Regional Administrators

(0311) (continued)

- Ensure that technical concerns with generic safety implications are reviewed by the cognizant technical staff and are appropriately disseminated to other affected offices and regions for information and action. (h)

- Ensure that OI is promptly informed if wrongdoing is suspected, except when NRC employees or NRC contractors are involved. Provide technical assistance, as requested, to OI for investigating allegations. (i)

- As action office, monitor OI investigations of allegations to ensure that the investigative priority and schedule meet regulatory needs. (j)

- Ensure that allegations of misconduct by NRC employees and NRC contractors are brought to the attention of OIG. (k)

- Assign an RSAO responsible for monitoring and auditing Agreement State responses to allegations that have been referred to the Agreement States. (l)

Agency Allegation Advisor (AAA)

(0312)

- Oversees implementation of the agency Allegation Management Program as set forth in this directive. Develops and implements policy and procedures related to allegations. (a)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Agency Allegation Advisor (AAA)

(0312) (continued)

- Provides necessary guidance to the offices and regions on the allegation program and maintains this management directive. (b)

- Issues interim guidance in the form of an allegation guidance memorandum, as appropriate. (c)

- Provides liaison with outside agencies and other NRC offices, including NMSS, the regions, OI, OE, STP, OGC, and OIG on allegation-related matters. (d)

- Ensures that the NRC AMS database accommodates NRC staff needs to track allegations. Works with OCIO to provide AMS enhancements to satisfy new demands and with program offices and regions on emerging uses of AMS data. (e)

- Responds and/or coordinates responses to assigned principal correspondence, including responses to the Commission or other NRC offices, congressional inquiries, public inquiries, or other external correspondence. (f)

- Conducts a review of the implications reported from OI and DOL investigations of discrimination allegations. Assists in developing a strategy to deal with licensees having significant discrimination allegation histories. (g)

- Coordinates, between regions and program offices, periodic training on allegation handling and sensitivity. (h)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Agency Allegation Advisor (AAA)

(0312) (continued)

- Annually audits allegation activities conducted by the regions and program offices. Reviews the handling, documenting, tracking, and resolution of allegations received in each office, including (i) regional allegation instructions and procedures, (ii) allegation file maintenance, (iii) quality of ARB decisions and staff resolution of allegations, (iv) tracking of allegations in the AMS, (v) handling of discrimination allegations, (vi) improvements in the allegation program, (vii) FOIA releases involving allegation records, and (viii) staff training for allegation-related activities. (i)

- Provides an annual report to the EDO that assesses the conduct of the allegation program in each office and region and provides an analysis of any allegation trends. (j)

- Conducts OAC counterpart meetings at least annually. (k)

- Serves as a central agency point of contact to assist persons requesting NRC information, positions, or witnesses relevant to DOL litigation. Refers requests for assistance to the appropriate contacts within the NRC for review in accordance with applicable regulations and Commission policy. (l)

Office Allegation Coordinator (OAC)

(0313)

- Serves as the administrative point of contact for processing and controlling allegations assigned to the offices or regions. (a)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Office Allegation Coordinator (OAC)

(0313) (continued)

- When his or her office has primary action, performs activities required to carry out and administer the office's allegation program as set forth in this directive and handbook and in any internal office implementing procedures. These activities include maintaining files, preparing reports, scheduling and participating in ARB meetings, preparing and distributing ARB meeting minutes, and coordinating allegation-related activities with appropriate management and cognizant staff, OI, and OACs of the other action offices. Ensures that copies of drawings, blueprints, charts, and so forth, provided by the alleger, along with other documents used in making decisions regarding the allegation, are placed in the allegation file. (b)

- Enters and tracks allegation activities in the AMS from initial receipt to final resolution. (c)

- Participates in OAC counterpart meetings. (d)

- Responds to FOIA requests (see the Freedom of Information Act of 1974, as amended). (e)

- Ensures that management and cognizant staff are informed of allegations under their purview. (f)

- Responds to requests from project managers concerning allegations that are on topics that are also the subject of 10 CFR 2.206 petitions. (g)

Organizational Responsibilities and Delegations of Authority

(8.8-03) (continued)

Office Allegation Coordinator (OAC)

(0313) (continued)

- Ensures that correspondence pertinent to allegations (with the exception of OI correspondence) is consistent with the requirements of this directive and handbook. (h)

- Ensures that actions initiated to resolve allegations and the final resolution of allegations are properly documented and appropriately address the concerns provided. (i)

- Provides information on the resolution of the allegation to the alleger or confidential source, as appropriate, unless notification to the alleger would interfere with ongoing OI, OE, or DOJ activities. (j)

- In coordination with regional management and OGC, takes reasonable steps to facilitate DOL's investigation by assisting DOL in obtaining access to licensed facilities and any necessary security clearances. (k)

NRC Contacts for Department of Labor (DOL) Information

(8.8-04)

The NRC may contribute to the record in DOL adjudications. The contacts for each are as follows:

- **Requests for Information by Individuals or by DOL.** These requests may involve technical issues associated with protected activities, the organizational structure of nuclear

NRC Contacts for Department of Labor (DOL) Information

(8.8-04) (continued)

industry employers, or NRC requirements. NRC is available to assist DOL investigators and individuals with access to NRC information, understanding technical issues, or determining whether an individual is engaged in any protected activities. The initial contact for information requests from individuals outside the agency is the AAA. However, either the OAC or the regional enforcement coordinator is the NRC contact if DOL is requesting information on a specific allegation. DOL investigators may contact NRC staff directly concerning a DOL complaint. If this contact occurs, staff members should respond promptly because DOL investigators have a very tight statutory timeframe to complete their investigation. The contact for legal advice is the Deputy Assistant General Counsel for Enforcement, who will review the request and, if appropriate, refer it to the proper NRC office for response. (041)

- **Requests for Reports From the OI.** Requests for reports or evidence developed by the OI relevant to a complaint under ERA Section 211 should be referred to the Director of OI, who will consult with the Director of OE. For cases that have been referred to the DOJ for potential criminal prosecution, the Director of OI also will consult with DOJ. (042)

- **Production or Disclosure in Response to Subpoenas or Demands of Courts**. NRC may be asked to provide documents or information, including witnesses, in a DOL proceeding pursuant to 10 CFR Part 9, Subpart D, "Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities." The OGC contact for such requests is the Solicitor, OGC. (043)

NRC Contacts for Department of Labor (DOL) Information

(8.8-04) (continued)

- **Freedom of Information Act**. Information also can be formally requested through the FOIA. The contact for those requests is the Freedom of Information Act and Privacy Officer, OCIO. (044)

- ***Amicus Curiae* Briefs**. NRC will consider filing *amicus curiae* briefs when it is determined that the outcome of an issue may affect NRC's enforcement of its regulations. The determination of whether to file a brief will depend on consideration of the facts and circumstances of the case and the importance of the issue to NRC. All requests for *amicus curiae* briefs should be referred to the Deputy Assistant General Counsel for Enforcement. (045)

- **Correspondence**. NRC also may correspond directly with the Secretary of Labor to express any opinions or concerns on issues raised in DOL proceedings. Requests for communications between NRC and the Secretary of Labor should be referred to the Deputy Assistant General Counsel for Enforcement. (046)

Applicability

(8.8-05)

The policy and guidance in this directive and handbook apply to all NRC employees except employees of OIG. OIG has internal procedures in place to ensure that technical allegations OIG employees receive are referred to the appropriate action office for processing in accordance with this directive and handbook.

Handbook

(8.8-06)

Handbook 8.8 contains detailed guidelines and procedures for the management and processing of allegations.

References

(8.8-07)

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Code of Federal Regulations

10 CFR 2.206, "Requests for Action Under This Subpart."

10 CFR 2.790, "Public Inspections, Exemptions, Requests for Withholding."

10 CFR Part 9, Subpart D, "Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities."

10 CFR 9.17, "Agency Records Exempt From Public Disclosure."

10 CFR 19.16(a), "Requests by Workers for Inspections."

10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, and 72.10, "Employee Protection."

Energy Reorganization Act of 1974, as amended, Section 211, "Employee Protection" (42 U.S.C. 5801 et seq.).

Freedom of Information Act (5 U.S.C. 552).

References

(8.8-07) (continued)

NRC Announcement No. 18, "Reporting Suspected Wrongdoing – Office of the Inspector General (OIG)," March 3, 1994.

NRC Enforcement Manual, NUREG/BR-0195.

NRC Enforcement Policy, NUREG-1600, Rev. 1, May 1998.

NRC Inspection Manual, Chapter 1007, "Interfacing Activities Between Regional Offices of NRC and OSHA."

NRC Inspection Procedure 71152, "Identification and Resolution of Problems."

NRC Management Directives—

3.1, "Freedom of Information Act."

7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."

8.11, "Review Process for 10 CFR 2.206 Petitions."

9.19, "Organization and Functions, Office of Enforcement."

10.160, "Open Door Policy."

12.1, "NRC Facility Security Program."

12.4, "NRC Telecommunications Systems Security Program."

12.5, "NRC Automated Information Systems Security Program."

References

(8.8-07) (continued)

NRC Policy Statement, "Investigations, Inspections, and Adjudicatory Proceedings," 49 FR 36032, September 13, 1984.

—, "Statement of Policy on Confidentiality," April 1996.

Office of Investigations, Investigative Procedures Manual, Revised August 1999.

Privacy Act of 1974, as amended (5 U.S.C. 552a).

Management of Allegations

Handbook 8.8

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Part I
General Information on the NRC Allegation Management Program

This part provides general information on the NRC allegation program, from receipt of an allegation until closure, including protecting the identity of allegers and confidential sources, handling harassment and intimidation allegations, describing the functions of allegation review boards, and the training of NRC staff. **Note**: there is no threshold for the acceptance of allegations. The type and amount of effort required to bring an allegation to closure is a decision to be made by the Allegation Review Board (ARB) on a case-by-case basis. However, even vague, general, or hearsay allegations require a reasonable effort on the part of the staff to support a determination to close an allegation. Individual staff members are responsible for controlling documents that could reveal an alleger's identity. When such documents are not under the direct control of the staff member assigned to work on the allegation, they must have the appropriate warning cover sheet placed on them (see Section (B)(3) of this part). This handbook also includes Exhibits 1 through 8 that detail supplementary information.

Initial Contact (A)

Receipt of an Allegation (1)

An "alleger" is any individual or organization that makes an allegation to NRC. Any NRC employee may receive an allegation, either by

Initial Contact (A) (continued)

Receipt of an Allegation (1) (continued)

telephone; in person; via the Internet; during an inspection, investigation, or enforcement conference; or in the mail. Treat the alleger courteously in all contacts and be responsive to the alleger, irrespective of the reason the alleger came to the NRC. The safety significance of an allegation should not affect the treatment of the alleger, although it may affect the timing of NRC followup actions. The way the NRC staff treats an alleger is an important indicator of how the alleger, the NRC staff, and the public view the allegation process. (a)

During the initial contact with the alleger, provide the alleger with the name, address, and telephone number, including the 800 number, of the office or regional Office Allegation Coordinator (OAC) who will be responsible for maintaining contact with the alleger and keeping the alleger informed of the status of his or her case. (b)

The OAC or other assigned staff in each region and major program office shall establish detailed procedures for receiving, providing feedback, controlling, and documenting allegations. (c)

For allegations received by the Office of Investigations (OI), the Director of OI, or the OI field office director, shall promptly forward all relevant information to the appropriate OAC. (d)

Initial Contact (A) (continued)

Questions To Be Asked During Contact With the Alleger (2)

First, obtain as much information as possible from the alleger, including—(a)

- The alleger's full name, position or relationship to the facility or activity involved, home mailing address (not business), telephone number (i)
- The alleger's employer, the facility, and activity involved (ii)
- Nature and details of the allegation (iii)
- Potential safety impact (iv)
- How the alleger found out about the concern(s) (v)
- Other individuals NRC should contact for additional information (vi)
- Records NRC should review (vii)
- Whether the alleger raised the concerns with his or her management—(viii)
  - If not, why not (*a*)
  - If yes, what action has been taken (*b*)

Initial Contact (A) (continued)

Questions To Be Asked During Contact With the Alleger (2) (continued)

- Whether the alleger has any objection to referring issues to the licensee or State (ix)
- Whether the alleger objects to having his or her identity released (x)
- The alleger's preference for method and time of contact (xi)
- The reason the alleger contacted NRC (e.g., licensee's corrective action program is unresponsive, individual fears retaliation) (xii)
- Whether the alleger has contacted the Department of Labor (DOL) regarding this discrimination allegation (xiii)

If the information appears to be classified or safeguards information, inform the alleger that NRC will contact him or her to arrange a personal interview with a staff member knowledgeable in the safeguards or classified information area of the alleger's concerns. (b)

If the alleger attempts to provide off-the-record information, advise him or her that NRC does not recognize off-the-record information and that all information received will be accepted officially and appropriately acted upon. (c)

Initial Contact (A) (continued)

Questions To Be Asked During Contact With the Alleger (2) (continued)

If the alleger does not object to being contacted again, inform the alleger that he or she will be contacted again, either by telephone, a personal visit, or a letter, within 30 days of the allegation. Inform the alleger that NRC will acknowledge receipt at a designated address. This process will permit the alleger to review the information with NRC to confirm that the information has been correctly interpreted and understood. Also inform the alleger that he or she will be contacted when the allegation is resolved. All contacts should be documented in the appropriate allegation file. When an allegation is received via e-mail and the e-mail does not include a postal address, it is acceptable to correspond with an alleger via e-mail, provided the alleger has called the OAC, confirmed he or she authored the e-mail, and requests that NRC correspond with him or her via e-mail. This standard response is included as Exhibit 7 to this management directive. (d)

If an office or a region receives additional concerns from the same alleger before an inspection is conducted, and the new concerns can be included in the planned inspection, the office or the region should (not must) include the new concerns in the existing allegation. If new concerns are received that cannot be accommodated in the planned inspection or if the concerns are received after the inspection has been conducted, a new allegation should be opened. However, if an office or a region receives additional concerns, even if it is possible to include these new concerns in an existing allegation, receipt of the new concerns must be acknowledged in a letter to the alleger. This

Initial Contact (A) (continued)

Questions To Be Asked During Contact With the Alleger (2) (continued)

action will ensure that the staff's understanding of the concerns is correct and that the alleger is aware the agency has received the new concerns. (e)

The requirement to acknowledge new concerns in a letter to the alleger also applies in instances in which the staff identifies new concerns through the review of a transcript of an interview with the alleger. This letter should be sent to the alleger when a summary of the concerns is received from the technical staff following their review of the transcript. The concerns can then be reviewed by the ARB for appropriate action. (f)

If the NRC contact does not have the capability to evaluate the information, determine followup action, or establish NRC jurisdiction, the contact should inform the alleger that it may be necessary for someone else to contact him or her for additional information. (g)

If during contact with an alleger the alleger becomes hostile and/or abusive, the NRC employee is not required to continue the discussion and withstand the abuse. In this type of situation, the NRC employee should politely end the conversation and either offer to recontact the alleger or provide the alleger the opportunity to recontact NRC after he or she has had an opportunity to collect himself or herself. (h)

Initial Contact (A) (continued)

Protecting an Alleger's Identity (3)

Before the end of the initial discussion in which the alleger has presented his or her concerns, inform the alleger of the degree to which his or her identity can be protected. If the allegation was presented via mail and telephone contact has not been possible, the OAC or other designated individual will notify the alleger by mail of the degree to which his or her identity can be protected. This action is necessary because an alleger may incorrectly assume that NRC can or will protect his or her identity under all circumstances. Inform the alleger that his or her identity, or information that would reveal his or her identity, will be withheld from NRC staff except on a need-to-know basis and will be stored in a secure place under the control of the OAC. If wrongdoing is involved or suspected, OI also will be aware of the alleger's identity. Inform any individual to whom the NRC has not granted confidentiality in accordance with the Commission's "Statement of Policy on Confidentiality" of the degree to which the NRC will take all reasonable efforts not to disclose his or her identity, as outlined under paragraph (b) below. (a)

It is NRC's practice to neither confirm nor deny to the licensee or the public that an individual is an alleger or confidential source, except when necessary in the furtherance of an OI investigation. Whether confidentiality has been granted or not, the following points apply: (b)

- Do not tell a licensee (even if the licensee asks), without the approval of the appropriate regional administrator or office director, that an inspection is based on an allegation, except when

Initial Contact (A) (continued)

Protecting an Alleger's Identity (3) (continued)

deemed necessary during the conduct of an inspection requested by a worker (10 CFR 19.16(a)) or an OI wrongdoing investigation. Inspection-related documents should address relevant issues without acknowledging that the issue was raised in the context of an allegation. (i)

- Do not include information that could lead to the identification of the alleger or confidential source in NRC-generated documents related to an allegation, with the exception of OI reports, except in cases in which the alleger has indicated that he or she has no objection to the release of his or her name to the licensee and this lack of objection has been documented in writing. This type of information includes inspection reports or referrals and correspondence to licensees, Agreement States, Federal agencies, the Occupational Safety and Health Administration (OSHA), the military, or other organizations or individuals. Before information generated by OI is released to the public, OI will review and redact information that could identify an alleger. OI's synopsis, which is normally released to the public, should not include names or other information that could identify an alleger or confidential source. (ii)

- Do not refer to the identity of an alleger or confidential source during internal NRC staff discussions. Redact the alleger's name and other identifying information from allegation documents before they are distributed to assigned staff. (iii)

Initial Contact (A) (continued)

Protecting an Alleger's Identity (3) (continued)

- If necessary to protect the identity of an alleger or confidential source, reword and retype an alleger's written allegation before it is made available to a licensee. (Sections (D)(6) and (7) of this part more fully explain precautions for protecting the identity of an alleger or confidential source when referring allegations to licensees.) (iv)

- Do not reproduce allegation files and documents that could reveal the identity of an alleger or confidential source without the authorization of the OAC, the Director of OI, or other appropriate office director or regional administrator. Drafts of all staff-generated information or documents related to allegations should be destroyed when the document is finalized and placed in the allegation case file. (v)

- Correspondence may be issued by any designated staff as long as the OAC and/or the Director of OI, as appropriate, reviews and concurs in the letter. The OAC and/or the Director of OI, as appropriate, should ensure that correspondence pertinent to allegations meets the requirements of this section. Internal correspondence containing information that could reveal the identity of an alleger or confidential source must be transmitted in a sealed envelope marked "To Be Opened By Addressee Only." For electronic transmittals over NRC's Intranet, the staff need not redact the identity and other personal identifiers of the alleger or confidential source from the correspondence. Additionally, the only time the staff is to send correspondence over the Internet is when the alleger requests it. (vi)

Initial Contact (A) (continued)

Disclosing an Alleger's Identity (4)

Inform an alleger of the limitations on the protection of his or her identity. Tell the alleger that his or her identity will not be disclosed outside NRC, except as follows: (a)

- The alleger has clearly indicated no objection to being identified. (i)
- Disclosure is necessary because of an overriding health or safety issue (ii)
- Disclosure is necessary pursuant to an order of a court or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust. (iii)
- Disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of a discrimination allegation. (iv)
- Disclosure is necessary to support a hearing on an enforcement matter. (v)
- The alleger has taken actions that are inconsistent with and override the purpose of protecting the alleger's identity. (vi)
- Disclosure is mandated by the Freedom of Information Act (FOIA) (See Section (K) of this part for FOIA requests.) (vii)

Initial Contact (A) (continued)

Disclosing an Alleger's Identity (4) (continued)

- In cases in which the alleger has not agreed to have his or her identity released and it is necessary to release the identity of such an alleger for any of the reasons outlined above, the staff will consult with the appropriate regional administrator or office director. An exception to this requirement is disclosures made by OI during the course of wrongdoing investigations, in which case OI or the OAC should make a reasonable effort to contact the alleger and explain why the disclosure was made. (viii)

For allegations involving discrimination, NRC will disclose an alleger's identity to the licensee and/or the employer during an NRC investigation if the alleger claims he or she is the victim of the discrimination. (b)

For allegations involving wrongdoing (e.g., allegations involving record falsification, willful violations, or other deliberate conduct in violation of NRC regulatory requirements), an alleger's identity may be disclosed at the NRC's discretion in order to pursue the investigation. (c)

Notify an alleger if his or her name or other personal identifier is to be, or has been, released. Also inform the alleger by letter if it is necessary to release his or her identity to any organization, individual, or to the public, or if it is known that his or her identity may be compromised (see Section (A)(3) of this part for guidance on the protection of the identity of an alleger and Part II(E) of this handbook for the protection of the identity of a confidential source). (d)

Initial Contact (A) (continued)

Disclosing an Alleger's Identity (4) (continued)

For allegations concerning radiological working conditions for which an alleger specifically requests an inspection pursuant to 10 CFR 19.16(a), it is required that a worker's request for inspection be in writing, setting forth the specific grounds for the request, and that it be signed. The request for inspection shall be made available to the licensee by the office of the appropriate regional administrator or by the inspector, and if requested by the worker giving this notice, the names of the requestor and other individuals shall not appear in the request or any record published except for good cause. If an alleger simply provides a radiological safety issue and does not specifically request an inspection under 10 CFR 19.16(a), treat the issue like any other allegation. (e)

Advising an Alleger About Confidentiality (5)

If the alleger declines to provide sufficient information, attempt to establish the reason(s) for the reluctance, using the following guidance: (a)

- Explain that confidentiality can be provided under certain circumstances but not for concerns involving discrimination. (i)

- If the alleger continues to be reluctant to provide sufficient information to evaluate his or her concern or expressly requests confidentiality, offer a confidentiality agreement (see Exhibit 1), which provides further information regarding protection of confidentiality, in accordance with the guidelines specified in Part II(B) of this handbook. (ii)

Initial Contact (A) (continued)

Advising an Alleger About Confidentiality (5) (continued)

- If an alleger persists in declining to cooperate, such as refusing to enter into a confidentiality agreement and/or to provide relevant information, NRC may consider issuance of a subpoena or other means to obtain the needed information. (iii)

If the alleger requests a confidentiality agreement before providing information, follow the guidance in Part II(B) of this handbook. An individual granted confidentiality is referred to as a "confidential source" (see the Glossary of this handbook). (b)

If the alleger persists in not offering identification, document the allegation in as much detail as possible and advise the alleger that he or she may contact the OAC or the designated staff member in 30 working days or any other agreed-upon time for information on the status of any actions being taken on the information supplied. (c)

OI may recruit confidential sources to use in pursuing wrongdoing investigations beyond the scope of a particular allegation. (d)

- Routinely, if OI grants confidentiality to an alleger reporting specific technical and wrongdoing concerns, OI will forward all information and the name of the confidential source to the OAC who will be the primary point of contact thereafter. The appropriate OAC will coordinate with OI regarding communications with the alleger or confidential source to ensure sensitive information is not compromised. (i)

Initial Contact (A) (continued)

Advising an Alleger About Confidentiality (5) (continued)

- However, if OI grants confidentiality to an alleger reporting wrongdoing concerns and recruits and maintains the alleger as a confidential source for investigative purposes, OI will forward information to the appropriate OAC without disclosing the name of the confidential source. OI will be the point of contact for a confidential source recruited by OI and will be responsible for all communication with the source, including sending acknowledgment, status, and closure letters. Additional contacts with the OI confidential source will be at OI's discretion and in accordance with the OI Investigation Procedures Manual. (ii)

Department of Labor (DOL) Information (6)

If the allegation involves discrimination under the Energy Reorganization Act of 1974 (ERA), Section 211, inform the alleger that—(a)

- Section 211 affords remedies such as reinstatement and compensation for lost wages to an alleger when an employer is found to have discriminated against an employee for engaging in any protected activity, including contacting the NRC. (i)

- He or she may obtain personal remedies through the DOL for any retaliatory or discriminatory practices by his or her employer, if filed timely, and the employer does not have another legitimate reason for the adverse action. (ii)

Initial Contact (A) (continued)

Department of Labor (DOL) Information (6) (continued)

- He or she must file a written complaint with DOL within 180 days of the occurrence of the discriminatory act to ensure that his or her personal employee rights are protected. In situations in which the employee receives written notice of a proposed layoff or other adverse action, the 180-day period begins on the day the employee is notified of the action, not the day the action is effective. (iii)

- Complaints should be filed with the Office of the Administrator, Occupational Safety and Health Administration, U.S. Department of Labor, Room S3502, 200 Consitution Avenue, NW, Washington, DC 20210, or with the regional DOL office having jurisdiction over the matter. (iv)

When a Section 211 allegation is made directly to NRC and not DOL, inform the alleger of the information in item (6)(a) above and that—(b)

- DOL and not NRC provides the process for obtaining a personal remedy. (i)

- NRC does not investigate all allegations of discrimination and will determine whether or not an investigation is warranted. (ii)

- If NRC does investigate, the alleger's identity will be disclosed because it is impossible to investigate the specifics of this type of

Initial Contact (A) (continued)

Department of Labor (DOL) Information (6) (continued)

complaint without identifying the alleger. (If the alleger indicates no objection to being identified, the alleger's approval should be documented in the allegation file.) (iii)

- NRC may investigate the allegation before resolution by DOL and may take action independent of DOL. (iv)

- NRC also may decide not to do an investigation and instead await the results of the DOL investigation, which the NRC will monitor. (v)

If the allegation file does not indicate that a complaint has been filed with DOL, the OAC or other designated staff should contact the appropriate OSHA office 180 days after the occurrence of the incident that allegedly gives rise to the DOL complaint to determine if the alleger has filed a complaint with the DOL. Keep the allegation case file open for a period of time to determine if a case has been filed with DOL, even if OI has not accepted the case. (c)

If a licensee appeals a DOL administrative law judge's decision that discrimination occurred as a result of raising safety concerns, the NRC will consider taking enforcement action on the basis of the DOL administrative law judge's decision rather than waiting for the DOL's Administrative Review Board's decision in the case. (d)

Initial Contact (A) (continued)

Department of Labor (DOL) Information (6) (continued)

Technical issues are evaluated through the allegation process and should be acted upon without regard to the action that may be taken by DOL. In this regard, when NRC is notified by DOL that it is investigating a complaint of discrimination under ERA Section 211, the action office shall obtain a copy of the complaint from DOL, contact the alleger, and provide the opportunity for the alleger to make his of her safety concerns known to NRC. Send a letter to the alleger identifying the safety concerns and enter these concerns into the Allegation Management System (AMS) and seek resolution. (e)

Processing Allegations Received in Letters to the Chairman or the EDO (7)

Staff in the Office of the Secretary of the Commission (SECY) and the Office of the Executive Director for Operations (OEDO), who may frequently receive, open, or process allegations addressed to the Commission, the EDO, or a deputy executive director, will add the blue cover sheet (see Section (B)(3) of this part) to the allegation documents to alert recipients that the package involves allegations. Staff should alert the cognizant OAC of receipt of an allegation by the senior NRC official. (a)

If the regional or program office recognizes that a distributed ticketed package contains an allegation that was not identified before the package was sent to the region or program office, the recipient office must notify SECY or EDO staff so that the documents can have the

Initial Contact (A) (continued)

Processing Allegations Received in Letters to the Chairman or the EDO (7) (continued)

blue cover sheet added to all distributed packages. Staff responsible for tracking and ticketing correspondence must take care to appropriately identify allegations. (b)

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B)

Recipient of the Allegation (1)

An NRC employee receiving an allegation will inform his or her supervisor, without using the name of the alleger, and provide the information to the appropriate OAC. Perform an immediate assessment to determine if there is an overriding safety issue. If the allegation is received at a nuclear facility, for example, during inspection activities, document the allegation and provide the documentation to an NRC resident inspector at that facility. The resident inspector will inform his or her supervisor and transmit the allegation to the OAC. (a)

Forward to the OAC the letters and envelopes of any correspondence that appears to contain or be related to an allegation. Keep copies of this material until assured that the OAC has received it. Destroy these copies once the OAC has received the material. (b)

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

Recipient of the Allegation (1) (continued)

Any employee who receives an allegation is required to forward the allegation to the responsible OAC within 5 days of receipt. For allegations received in writing, this action can be accomplished by placing a blue cover sheet marked "Sensitive Allegation Material" on the front of the document and forwarding the original document, with the envelope in which it was received, to the OAC. If the allegation was made orally, it can be sent to the OAC via internal e-mail, with the words "Sensitive Allegation Material" in the e-mail subject line. Once the employee has verified that the OAC has received the allegation, he or she will destroy the copy of the allegation documentation in his or her possession. (c)

OAC Actions (2)

The receiving OAC will document the allegation in the AMS. (a)

Ensure that the action office resolves the allegation as expeditiously as possible, considering the circumstances and the complexity of the issue raised. Within 30 calendar days of receipt, convene an ARB to review and screen the allegation for safety significance and determine the appropriate method of followup. An OI representative should participate in the ARB meeting for any suspected wrongdoing. Resolution of an allegation having relatively high safety significance should be given priority over an allegation with lower safety significance. (b)

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

OAC Actions (2) (continued)

Inform the cognizant technical staff supervisor of the status of the allegation at periodic intervals until the matter has been satisfactorily resolved. (c)

If the information is determined to be insufficient to determine the safety and regulatory significance to permit followup, assist the technical staff in obtaining additional information through further contact with the alleger. (d)

Assist the cognizant technical staff to identify and separate the issues involved in an allegation into one of the following categories: (e)

- Allegations that involve technical matters, such as inadequacies in the design, construction, or operation or components supplied to a licensed facility; inadequacies in procedures, qualifications, or training; inadequacies in implementation of procedures; inadequacies in corrective actions; or occurrences of overexposure to radiation. (i)

- Allegations that provide a reasonable basis for belief of suspected wrongdoing (such as allegations involving discrimination under ERA Section 211), record falsification, willful violations, counterfeit components, or other conduct in violation of NRC regulatory requirements. (ii)

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

OAC Actions (2) (continued)

- Allegations that involve matters outside the jurisdiction of the NRC, including OSHA and Agreement States. (iii)

Notify appropriate agencies of allegations outside the jurisdiction of NRC (e.g., law enforcement, OSHA, and other Government agencies), as determined by the ARB. (Notification of Federal, State, or local enforcement agencies is the responsibility of the appropriate OI office.) These allegations should not be entered into the AMS. (Notification of Agreement States is the responsibility of the appropriate regional State agreement officer (RSAO).) (f)

If an allegation has generic implications, notify the Office of Nuclear Reactor Regulation (NRR) and the Office of Nuclear Material Safety and Safeguards (NMSS) and other offices and regions with responsibilities that may be affected, including the Office of Nuclear Regulatory Research for concerns affecting research activities. (g)

Generally, no action will be taken to verify the validity of the allegations nor will these matters be discussed with licensees or other affected organizations until after the initial meeting of the ARB and/or the OAC or designated staff has briefed appropriate NRC management. (h)

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

General Documentation of an Allegation (3)

The OAC establishes an allegation file for related documentation concerning an allegation (except documentation related to an ongoing OI investigation). The file will include all correspondence (including drawings, maps, and so on, provided by the alleger), memoranda to the file, interviews, and summaries of telephone conversations, discussions, and meetings. (A separate listing of allegers and allegation numbers may not be kept as that would turn the system into a Privacy Act System of Records without following the legal requirements and could lead to criminal or civil penalties for those employees who do keep such a list.) The allegation file must be maintained in the official files of the action OAC in an officially designated location. All documentation must be clearly marked with the allegation number so that the records are filed, stored, and retrieved by this allegation number and not by any personal identifier of the alleger or confidential source. No employee shall maintain an official or unofficial index cross-referencing an allegation number to the alleger's name or other personal identifier without express permission from the Agency Allegation Advisor (AAA). (a)

The control mechanisms for the allegation files are outlined under Section (B)(4) of this part. However, it is important to note that each allegation file, except allegations involving confidential sources, needs to have a blue cover sheet, "Sensitive Allegation Material," attached to the front of the file if the file is removed from its designated storage location. Every allegation file that involves a confidential source must

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

General Documentation of an Allegation (3) (continued)

have a red cover sheet, "Confidential Allegation Material," attached to the front of it. These cover sheets must stay attached to the case file as it is being worked on by staff assigned responsibilities with regard to the allegation. Correspondence that contains the identity of an alleger or confidential source that is separated from the file also must have the appropriate cover sheet attached that indicates that correspondence contains the identity of an alleger or confidential source. Special handling of these files is required as noted on each of the cover sheets. (b)

The blue or red cover sheets also must be attached to allegation documents that are provided in response to a FOIA request. The cover sheets must be attached to the allegation documents that are forwarded to the FOIA coordinator, and the cover sheets must stay on the package throughout the FOIA process. (c)

Allegation files should maintain the documentation that tracks the progress of OI's investigations of wrongdoing complaints and DOL's investigation of discrimination complaints. (d)

Wrongdoing allegations will be documented independently in the OI case files in accordance with the OI Investigative Procedures Manual. (e)

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

General Documentation of an Allegation (3) (continued)

Occasionally, an allegation may be too general for followup and further information cannot be obtained from an alleger. Nonetheless, the allegation should be documented so that it could be pursued if additional information is obtained from other sources that clarifies the allegation. (f)

Allegations normally should not be addressed in preliminary notifications (PNs) or daily reports (DRs). However, if it is determined that PN or DR entries are appropriate, the approval of an office director or a regional administrator should be obtained before issuance of the PN or the DR. (g)

OAC Storage of Official Agency Allegation Files and Documents (4)

Keycard access to NRC buildings provides adequate secure storage space for allegation files and documents containing the identity of an alleger. Store allegation files and documents containing the identity of a confidential source in a locked drawer reserved for allegations from confidential sources and do not store them with allegation files that do not involve a confidential source. (a)

In cases in which confidentiality agreements have been signed, the agreement should be kept in the file, subject to the security requirements imposed for these documents. (b)

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

OAC Storage of Official Agency Allegation Files and Documents (4) (continued)

The OAC performs the following: (c)

- Restricts the access of NRC personnel to allegation files to a need-to-know basis (i)
- Ensures that the original allegation file does not leave the regional or headquarters office unless being transferred to another responsible office or unless necessary for certification that records are true copies by SECY (ii)
- Maintains a system for locating a particular file when it is taken from its normal storage location (iii)
- Ensures that no unauthorized reproduction (photocopy or other) of information related to the allegation is made. (Multiple copies or simultaneous review copies must be returned to the file or destroyed unless the information has been sanitized with regard to the identity of the alleger or confidential source and other information that could reveal his or her identity.) (iv)
- Briefs the requestor that information concerning allegations is to be kept in a secure location while it is outside the agency allegation file and that it is to be returned expeditiously. (Information or documents containing the identity of a confidential

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

OAC Storage of Official Agency Allegation Files and Documents (4) (continued)

source must be returned to the OAC for storage in the agency file before the end of the workday and may not be stored in another location overnight. Duplicate allegation working files that are covered with a blue cover sheet, "Sensitive Allegation Material," may be stored overnight in the office of staff assigned to that allegation. However, these working files must have the name and address of the alleger redacted. Allegation files should not be taken out of the headquarters or regional office under any circumstances. Once work on the allegation file has been completed and the working file is no longer needed, it should promptly be returned to the OAC for destruction or returned to the official file for possible future use by another staff member.) (v)

- Provides training on the requirements to protect the identity of allegers and confidential sources by using the appropriate document control techniques and security storage containers outlined above (vi)

OI will keep its own independent records regarding criminal or civil investigations and OI confidential sources. If, during its investigations, OI identifies any records regarding safety issues, it will immediately provide the information to the appropriate OAC. (d)

Action by the Receiving NRC Employee and the Office Allegation Coordinator (OAC) (B) (continued)

OAC Storage of Official Agency Allegation Files and Documents (4) (continued)

Records pertinent to referrals of the Office of the Inspector General (OIG) should not be kept in the allegation file but forwarded to the appropriate office director or regional administrator. (e)

Closed allegation files should be held for 2 years, then retired to the NRC Archives. Files may be destroyed 10 years after cases are closed. The OAC should contact the Records Management Branch, Office of the Chief Information Officer, for transfer of files to the archives facility. (f)

Storage of Allegation Information Outside the Official Agency File (5)

For tracking purposes, it is necessary for staff in both OEDO and SECY to maintain copies of incoming allegations that were sent directly to the Chairman, the Commissioners, or the EDO. It is also necessary for the Freedom of Information Act/Privacy Act (FOIA/PA) Team, as well as OI, to maintain allegation information in the course of performing its official duties. In these cases, the allegation records maintained by these organizations will be treated on a strictly need-to-know basis and stored in locked file cabinets in these offices. Distribution of the response to ticketed correspondence also should be limited (e.g., SECY, EDO, and others with a need-to-know). Consult the OAC regarding the appropriate individuals or offices to be placed on distribution.

Allegation Review Boards (ARBs) (C)

An ARB in the appropriate action office or region screens each allegation and determines appropriate NRC followup.

Participants and Functions (1)

An ARB consists of a chairman, an OAC, and one or more other individuals within the appropriate office or region. For matters of suspected wrongdoing, an OI representative should be in attendance for consultation and to provide any information developed during the OI preliminary investigation. Technical staff and staff from the Office of Enforcement (OE) should participate as the ARB chairman deems necessary; however, it is required that an Office of the General Counsel (OGC) representative or regional counsel either be present at the ARB or review the decisions made at the ARB when allegations of wrongdoing are discussed. (a)

The ARB should be chaired by the director of the action office, or division, or an individual named by the director of the action office. For regional ARBs, the chairman for reactor allegations preferably should be from Reactor Projects, unless the regional administrator determines otherwise, and the chairman for allegations concerning materials licensees and issues preferably should be from the Division of Nuclear Materials Safety. (b)

The action office must hold an ARB meeting within 30 calendar days of receipt of an allegation. For cases in which it appears that there are issues of potential immediate public health and safety concerns, an emergency ARB should be held as soon as possible. (c)

Allegation Review Boards (ARBs) (C) (continued)

Preparation for ARB Meetings (2)

The cognizant manager responsible for the resolution of a particular allegation shall review the allegation before the ARB convenes, making sure that all concerns therein have been properly identified. The manager shall be prepared to recommend to the ARB an appropriate course of action for resolution (e.g., referral or inspection) so that the ARB can promptly decide on the proper course of action.

ARB Proceedings (3)

The ARB ensures that—(a)

- The response time for significant issues is consistent with the safety or risk significance of the issues. Less significant issues are handled within the agency's timeliness goal. (i)
- The allegation is assigned to the appropriate action office. (ii)
- Appropriate guidance and direction are given to the assigned action office staff. (iii)
- Timely and accurate information on allegations, including Agreement State allegations, is maintained and is made available (by the OAC and the State liaison officer) to cognizant staff. (iv)
- Alleged wrongdoing is discussed with OI. (v)

Allegation Review Boards (ARBs) (C) (continued)

ARB Proceedings (3) (continued)

- Discrimination complaints at various stages of the DOL process are screened to determine if a basis for continued investigation exists. (vi)

Staff responsible for resolving an allegation should come to the ARB meeting prepared to discuss—(b)

- The immediacy of response required, based on the safety or risk significance of the issue, for example, immediate, less than 90 days, more than 90 days (i)
- The priority for an OI investigation (see Part III of this handbook, if applicable) (ii)
- The potential violation that underlies the wrongdoing (iii)
- A proposed course of action for resolving the allegation (iv)

The ARB should consider the following areas and assign responsibilities and action dates, as appropriate: (c)

- Safety significance of the allegation, including a determination on the safety or risk significance of the issue, for example, immediate, less than 90 days, more than 90 days (i)
- Feedback to alleger or confidential source (ii)

Allegation Review Boards (ARBs) (C) (continued)

ARB Proceedings (3) (continued)

- Review of technical issues (iii)
- Wrongdoing concerns and the prioritization of investigations (iv)
- Potential for chilling effects (v)
- Referrals to licensees or other organizations (vi)
- Potential generic implications (vii)
- Positions from OGC (viii)
- Appropriate action to close an allegation (ix)
- Basis for another ARB meeting (x)

If an allegation contains concerns about NRC staff performance and has been referred to the OIG, there is no discussion of these NRC staff performance issues at the ARB. (d)

By the second ARB meeting, OI should have developed sufficient information regarding any suspected wrongdoing to notify the ARB whether OI will pursue a full investigation (see "investigation" in the Glossary of this handbook). (e)

Allegation Review Boards (ARBs) (C) (continued)

ARB Proceedings (3) (continued)

The ARB should be reconvened if new information is revealed that changes the safety significance of the allegation. The ARB also should be reconvened at 6 months and every 4 months thereafter to review an allegation older than 6 months, except if it is an OI or DOL case that has no open technical issue. An allegation older than 6 months that has an ongoing OI investigation but no open technical issues may be discussed during routine OI status meetings. (f)

ARB Guidance for Initiating and Completing Investigations of Discrimination Allegations (4)

When an allegation of discrimination is received, the ARB should assign a priority for OI investigation. This priority should be assigned without regard to whether or not DOL is separately investigating the allegation. The ARB minutes must document the decision and the rationale for the priority assigned. (a)

For both high and normal priority discrimination cases, OI will continue to conduct an initial interview of the alleger and any other preliminary investigation deemed appropriate to understand the nature of the allegation and the basic circumstances of the case. (b)

After OI has performed the initial interview of the alleger and the transcript or summary of interview has been reviewed by the staff, the

Allegation Review Boards (ARBs) (C) (continued)

ARB Guidance for Initiating and Completing Investigations of Discrimination Allegations (4) (continued)

ARB will reconvene. During the second meeting, the ARB will review the circumstances of the case in a broader context, considering the history of discrimination cases at the facility (or for the licensee); trends, if any, that exist at the facility (or for the licensee) related to technical or discrimination allegations, to settlements of discrimination cases, to findings of discrimination by DOL, or related to NRC enforcement actions,[1] if this case has generic or unique legal implications; if DOL is investigating (or adjudicating) this case; and/or if there are any generic or programmatic weaknesses identified by OI in the course of investigation(s).[2] (c)

On the basis of consideration of these questions, the ARB should determine the further disposition of the case, as outlined below: (d)

- For high or normal priority discrimination cases in which the DOL is pursuing an investigation, the ARB will consider deferring the OI

[1]As part of the input to this evaluative process, the ARB should review the statistical information available concerning allegations, investigations, and enforcement relevant to the case.

[2]During the second ARB meeting, also determine if any new technical or regulatory issues were raised by the alleger during the interview and, if so, disposition them appropriately.

Allegation Review Boards (ARBs) (C) (continued)

ARB Guidance for Initiating and Completing Investigations of Discrimination Allegations (4) (continued)

investigation[3] and await the results of the DOL investigation unless—(i)

- There has been a finding by NRC or DOL in the previous 24 months that the licensee discriminated against an employee. (*a*)

- The alleged discriminatory act is particularly egregious. (*b*)

- The existence of related licensee performance issues indicating a deteriorating safety-conscious work environment (e.g., the findings of other ongoing discrimination investigations, or relevant licensee problems in identifying and resolving safety concerns) lends credibility and/or potential significance to the discrimination allegations under investigation. (*c*)

- For discrimination investigations that do not meet the criteria to be deferred, the ARB will request that OI perform a full investigation. (ii)

[3]If an investigation is deferred, the alleger will be informed of the deferred status in writing. Also inform the alleger that the NRC will continue to monitor the DOL proceedings.

Allegation Review Boards (ARBs) (C) (continued)

ARB Guidance for Initiating and Completing Investigations of Discrimination Allegations (4) (continued)

- For instances in which there are multiple open discrimination allegations involving a licensee with a history of adverse OI or DOL discrimination findings or other relevant performance characteristics that would indicate an environment not conductive to raising safety concerns,[4] the ARB should consider additional actions to supplement investigations. These actions may include a meeting with licensee management; a review of the licensee's employee concerns program (Inspection Procedure 40501); a request or order that the licensee obtain an independent evaluation of its environment for raising concerns; an order to establish independent third-party oversight of the environment for raising concerns; or other actions as appropriate. These actions should be coordinated with appropriate levels of NRC management.[5] (iii)

[4]Other relevant performance characteristics that may indicate an environment not conductive to raising safety concerns include (1) a lack of effective evaluation, followup, or corrective action for findings made by the licensee's quality assurance or oversight organization or concerns raised to the employee concerns program (ECP), licensee ineffectiveness in identifying safety issues, (2) delays in or absence of feedback for concerns raised in the ECP, or (3) breaches of confidentiality for concerns raised in the ECP.

[5]The Commission has stated that it is to be consulted before NRC staff order a licensee to conduct a survey or to hire an independent third party to oversee the work environment.

Allegation Review Boards (ARBs) (C) (continued)

ARB Guidance for Initiating and Completing Investigations of Discrimination Allegations (4) (continued)

The following table outlines the major steps discussed in Section (C)(4)(a) through (d) of this part. (e)

Initial ARB Meeting: Initial priority assigned to or recommended for the case	OI Performs Initial Alleger Interview Staff reviews OI transcript of interview and other information gathered by OI	Second ARB Meeting: Evaluation of allegation in relation to licensee history, trends, and other information identified by OI or elsewhere	•Case deferred pending results of DOL process •OI proceeds with independent full investigation •Supplementary action proposed considering overall licensee performance
Step 1	Step 2	Step 3	Step 4

For investigations deferred, the decision to defer the investigation will be reviewed as each stage of the DOL process is completed. Following NRC review of the DOL area director's decision and the DOL investigator's report or administrative law judge's decision, an ARB will review the decision to defer the investigation. The ARB will reconsider the criteria in Section (C)(4)(c) of this part in light of any new information resulting from the DOL process. The ARB also should consider whether or not an OI investigation is necessary to

Allegation Review Boards (ARBs) (C) (continued)

ARB Guidance for Initiating and Completing Investigations of Discrimination Allegations (4) (continued)

provide information beyond that provided by the DOL process in order to reach a decision on whether or not to proceed with an enforcement action. (f)

Chilling Effect Issues (5)

Allegations pertaining to a licensee, vendor, or contractor creating a chilling environment are dealt with in three different ways, depending upon the circumstances of the allegation.

- The allegation provides the NRC with enough information to conduct an inspection of the actions that the alleger believes caused the chilling effect, but the alleger does not want the specifics of his or her case referred to the licensee because he or she is fearful that such referral would identify him or her to the licensee. In these cases, the staff will evaluate the actions of the licensee by inspecting the issue, particularly if the alleged action involves a discrete act. Examples of these types of acts include delaying handling of nonconformance reports or telling employees not to submit nonconformance reports. If the allegation is substantiated and constitutes a regulatory violation, the staff will request that the licensee address the potential for a chilling effect on the raising of nuclear safety concerns as part of the corrective actions for the violation. (a)

Allegation Review Boards (ARBs) (C) (continued)

Chilling Effect Issues (5) (continued)

- The allegation provides the NRC with enough information to conduct an inspection of the actions that the alleger believes caused the chilling effect, and the alleger is willing to have the concerns referred to the licensee. In this circumstance, the staff will refer the concerns to the licensee and request that the licensee evaluate the actions that the alleger believes caused the chilling effect and the potential for a chilling effect. The staff will review the licensee's response and determine if a violation occurred and whether the licensee has adequately addressed the issue and taken appropriate corrective actions. (b)

- In those cases in which the alleger does not provide sufficiently specific information to enable the NRC to conduct an inspection or investigation and does not want the concern referred to the licensee, the alleger will be informed that the staff will take no further action. This approach is consistent with how the staff treats nonspecific allegations concerning other issues. (c)

ARB Minutes (6)

The ARB minutes for each meeting should identify the following for each allegation—(a)

- Allegation number (i)

- Date of meeting (ii)

Allegation Review Boards (ARBs) (C) (continued)

ARB Minutes (6) (continued)

- Participants (iii)
- Purpose of the ARB (iv)
- Plants affected, including generic application (v)
- Applicable action items and schedule for the action office and OI (vi)
- ARB assessment of the safety significance of each concern (vii)
- Priority level for OI investigation and the rationale for the priority assigned, or the rationale for not conducting an OI investigation (viii)
- Proposed inspections and investigations (ix)
- Rationale for referrals to licensees (x)
- Basis for the ARB decision on a referral if one or more of the referral criteria are not met or one of the prohibition factors on referrals applies (xi)
- Basis for the ARB decision and the rationale for deferring an OI investigation pending completion of a DOL investigation, if appropriate (xii)

Allegation Review Boards (ARBs) (C) (continued)

ARB Minutes (6) (continued)

The ARB minutes should identify potentially generic allegations and document the facilities listed in the allegation. (b)

The ARB minutes should be approved by the chairman of the specific ARB. (c)

The OAC sends copies of the ARB minutes to participants of the meeting. Whether or not OI or OGC participate in an ARB meeting, copies of information distributed to ARB members should be sent to the appropriate OI and OGC officials. (d)

Review of ARB Decisions on Discrimination Investigations (7)

To ensure that the agency consistently implements decisions to defer OI investigations pending completion of a DOL investigation, the EDO has requested that all decisions to defer an investigation pending completion of a DOL investigation be reviewed by the AAA and headquarters representatives of OE and OI. The AAA must be notified of all investigations deferred under these criteria and provided a copy of the ARB minutes describing how the criteria were applied and the rationale for deferring the investigation pending completion of DOL action. (a)

The AAA will coordinate the review with representatives from OI and OE. If the reviewers conclude that the OI investigation should not await completion of the DOL process, the AAA will arrange with the

Allegation Review Boards (ARBs) (C) (continued)

Review of ARB Decisions on Discrimination Investigations (7) (continued)

appropriate office or regional OAC to discuss the differences during the next scheduled ARB. The AAA will inform the office or regional OAC of the decision within 7 working days of receiving the ARB minutes. If differences of opinion are not resolved through discussion during the ARB, the differences will be discussed with the Deputy Executive Director for Reactor Programs, who will resolve the issue. (b)

Role of the OAC (8)

The OAC in attendance will—(a)

- Document the decisions of the ARB in the ARB minutes. (i)
- Advise the ARB on policy matters and ensure that the actions approved by the ARB comply with this directive and handbook. (ii)
- Use the minutes of the ARB to update the AMS and place the minutes in the allegation case file. (iii)
- Ensure that attendees will be informed of the specific actions assigned to them or their organizations. (iv)

If the ARB determines that an allegation will be referred to a licensee, the OAC normally notifies the alleger of the referral, via the acknowledgment letter, when the identity of the alleger is known. This

Allegation Review Boards (ARBs) (C) (continued)

Role of the OAC (8) (continued)

notification, however, is not required in cases in which the alleger has not objected to a referral in the original, documented contact, as long as it has been made clear to the alleger that, under the circumstances, a referral is likely. (b)

Acknowledgment Letter (9)

For an allegation in which the identity of an alleger is known, the OAC shall issue an acknowledgment letter to the alleger within 30 calendar days of receipt of an allegation. The standardized acknowledgment letter (Exhibit 4 of this handbook) may be used as guidance. State the specific concerns entered in the AMS in the letter to the alleger to ensure that the information is consistent. The acknowledgment letter may be prepared and signed by any appropriate official with concurrence of the OAC. Send the acknowledgment letter to the alleger by certified mail, return receipt requested. Use a Post Office box for the return address listed on the envelope and not the standard NRC address. (a)

Customize the acknowledgment letter to contain, as appropriate, information on—(b)

- NRC's limitations on protection of the alleger's identity (i)
- Discrimination under ERA Section 211 (ii)

Allegation Review Boards (ARBs) (C) (continued)

Acknowledgment Letter (9) (continued)

- The referral of allegations to the licensee, State, or other Government agency (iii)
- A description of each of the concerns that are being reviewed or investigated (iv)
- The use of the toll-free telephone numbers to contact the action OAC or other designated staff if the alleger or confidential source has any questions (v)

To help prevent the inadvertent release to third parties of correspondence to an alleger, clearly type the allegation number on the front page of the acknowledgment letter and on the upper right corner of each subsequent page. This identification will reduce the possibility of staff not recognizing that the letter concerns an allegation and may identify an alleger. In addition, on any copies of documents provided to the staff, clearly stamp on each copied page of any letter from an alleger or confidential source that "This document identifies an alleger (or confidential source)," as appropriate. Original documents maintained under the control of the allegation coordinator do not need to be stamped. (c)

Allegation Followup and Resolution (D)

Personal Interview by NRC Technical Staff With an Alleger (1)

In some cases, a personal interview by NRC staff with the alleger may be warranted. Depending on the nature of the allegation and the time sensitivity of the issue, assistance from OI or other resources may be requested. (a)

Any meeting between NRC and an alleger on site may compromise the alleger's identity. However, if such a meeting is unavoidable, arrange it, if possible, at a location in which the alleger will feel comfortable and that will provide privacy and the most protection possible to the alleger's identity. Meeting an alleger off site may be more appropriate but, if discovered, may equally compromise the alleger's identity. Consideration should be given to having another NRC employee accompany the interviewer to increase the likelihood of accuracy in the recording of the information and to prevent a compromising situation. The NRC employee should inform his or her management of the request for an arranged meeting in advance and should meet with the alleger only after management concurrence. Travel costs for the alleger can be offered with management approval, if necessary, and will be borne by the office or region extending the offer. (b)

Evaluation by Technical Staff (2)

The technical staff within the office or region, in coordination with an ARB, review the documentation to determine whether the allegation involves a safety concern that requires immediate regulatory action. The technical staff—(a)

Allegation Followup and Resolution (D) (continued)

Evaluation by Technical Staff (2) (continued)

- Initiate, develop, and implement actions pertinent to the resolution of an allegation (i)

- Notify the OAC or the designated staff of the action taken so that the status of each concern can be tracked to closeout (ii)

- Document final resolution of an allegation in a final report or other appropriate correspondence and place the documentation in the allegation file, along with all supporting documentation (iii)

Followup of allegations should consider not only the particular allegation but the overall area of concern, including the potential for generic implications and wrongdoing. For example, an allegation directed toward an item or activity that is not safety related may, nonetheless, affect a safety-related item or activity as a result of generic implications. When a number of allegations point to indications of a broader problem, prompt action should be taken to broaden the scope of the inquiry to determine the extent of the problem. (b)

An allegation should be screened using the following questions: (c)

- Is there an immediate safety concern that must be quickly addressed? (i)

- Is the allegation a specific safety or quality issue or a generalized concern? (ii)

Allegation Followup and Resolution (D) (continued)

Evaluation by Technical Staff (2) (continued)

- Has the staff previously addressed the issue? (iii)
- Have a substantial number of allegations on similar concerns been entered in the AMS? (iv)
- What is the time sensitivity of the allegation, and what immediate actions are necessary? (v)
- What is the potential for wrongdoing and will investigative assistance be needed? (vi)
- Does the allegation package contain sufficient information for a thorough evaluation? If not, identify the additional information needed. (vii)
- Is the identity of an alleger necessary for a thorough evaluation? (viii)
- Can the issues be adequately addressed by a technical inspection? If not, determine the best way to address the issues. (ix)
- Identify any peripheral issues that could develop. (x)
- Are any licensing actions, enforcement actions, ARB actions, or other allegations pending that could be affected by the allegation? When an allegation involves a case pending before a licensing

Allegation Followup and Resolution (D) (continued)

Evaluation by Technical Staff (2) (continued)

board or the Commission, information concerning it should be provided to NRR or NMSS as soon as possible to assist in determining whether notification should be made to the Atomic Safety and Licensing Board Panel (ASLBP). NRR or NMSS must make this decision promptly in accordance with office procedures. (xi)

- Can inspection resources be effectively utilized pursuing the issue or is the allegation too vague or frivolous? (xii)

- Is further consideration of the allegation required? If not, inform the alleger or confidential source in a courteous and diplomatic manner of the rationale for not considering it further. (xiii)

- Can licensee resources reasonably be used in resolving the allegation to conserve staff resources? Consider potential problems associated with involving the licensee in the resolution process (see Section (D)(3)(c) of this part). (xiv)

- Does the allegation have the potential to require escalated enforcement action? (xv)

- Determine if other NRC offices should be notified. (xvi)

- Establish a schedule for the resolution of each allegation that is consistent with the licensing schedule, if applicable. (xvii)

Allegation Followup and Resolution (D) (continued)

Referrals (3)

The ARB must consider the question of the appropriateness of referring an allegation during the initial ARB. The ARB must approve of a referral before the allegation can be forwarded to another entity.[6]
Note: If the information in an allegation involves an immediate health and safety matter for NRC personnel or facilities (as opposed to licensees), review Management Directives (MDs) 12.1,"NRC Facility Security Program," 12.4, "NRC Telecommunications Systems Security Program," and 12.5, "NRC Automated Information Systems Security Program," for additional information and guidance.

Informing an Alleger of a Referral (a)

Any time there is a referral to another organization, whether it is internal to NRC or external, the alleger must be notified. However, for an allegation not within the jurisdiction of NRC, tell the alleger that the allegation will be forwarded to the appropriate organization(s) and that the alleger, subsequently, should directly contact the organization(s). In cases in which NRC forwards an allegation not within its jurisdiction to another organization, NRC should not act as a middle-man between the alleger and the other organization. The alleger should be told to contact the new organization directly, and NRC will terminate its involvement in the case.

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[6]If, in the judgment of the allegation coordinator, an allegation is clearly outside NRC's jurisdiction, the allegation coordinator can refer the allegation to the appropriate entity, for example, OSHA, the Food and Drug Administration, the Department of Energy, the Federal Emergency Management Agency (FEMA), without submitting the issue to an ARB.

Allegation Followup and Resolution (D) (continued)

Referrals (3) (continued)

Internal Referrals (b)

Other Offices or Regions (i)

When an NRC office or region receives an allegation and determines that the allegation should more properly be handled by another office or region, contact must be made between the receiving region or office OAC and the intended recipient region or office OAC before the transfer. The recipient organization should be in agreement that it is the proper party to resolve the allegation. If there is such agreement, it is not necessary to conduct an ARB in the receiving office or region. If the original receiving organization and the proposed recipient organization cannot reach agreement on the assignment of responsibility for resolving the allegation, the assignment should be negotiated between the respective ARB chairmen. If resolution cannot be reached, the AAA will attempt to facilitate the discussion and, if necessary, propose a solution. If resolution cannot be facilitated by the AAA, the issue of responsibility shall be escalated to higher levels of respective management. (*a*)

If the receiving office can get the allegation to the agreed-upon recipient office in a timely manner to meet the 30- or 45-day deadline for acknowledgment letters, the recipient office should issue the normal acknowledgment letter, including listing the concerns as NRC understands them. If there is a delay in providing the allegation to the recipient office such that the timeliness goals may not be met, the

Allegation Followup and Resolution (D) (continued)

Referrals (3) (continued)

Internal Referrals (b) (continued)

Other Offices or Regions (i) (continued)

receiving office should issue a short acknowledgment letter stating that the allegation is being referred to another office or region and the alleger will be hearing from the recipient office shortly. The acknowledgment letter from the recipient office should then be the standard acknowledgment letter listing all the concerns as the NRC understands them. (*b*)

When a regional office determines that technical assistance is needed from a program office in reviewing an allegation, the region and the program office must enter into a task interface agreement (TIA) for NRR assistance, or a technical assistance request (TAR) for NMSS assistance. In either of these agreement documents, the fact that the request for technical assistance is related to an allegation must clearly be documented. Reference the allegation number in the agreement but redact any identifying alleger names, addresses, or titles from attached documents. Since even the redacted documents might contain information that could fingerprint the alleger, cover the allegation documents attached to either the TAR or the TIA with the blue cover sheet to ensure appropriate handling by staff to protect the identity of the alleger. By highlighting the fact that the TIA or the TAR is for an allegation case, the program office will be made aware of the importance of timeliness in providing the requested technical assistance. Do not docket or place these requests for technical

Allegation Followup and Resolution (D) (continued)

Referrals (3) (continued)

Internal Referrals (b) (continued)

Other Offices or Regions (i) (continued)

assistance in the Public Document Room (PDR) or the ADAMS [Agencywide Documents Access and Management System] public library. (*c*)

Initiation of an OI Investigation (ii)

If wrongdoing is suspected, the allegation should be coordinated with OI before conducting the inspection or providing any information to the licensee. (*a*)

If an allegation identified an overriding safety issue as well as wrongdoing, it may be necessary to release the information to the licensee before the publication of the investigation report. Under this circumstance, the Director of OI, after being informed by the director of the action office, will advise the action office of the anticipated effect of the release of information on the course of the investigation. The action office will follow the procedure outlined in paragraph (c) below. (*b*)

If the release of information to the licensee is considered necessary, other than under the circumstances described in paragraph (b) above, the action office will determine if the safety or security concerns are significant enough to justify the risk of compromising the effectiveness

Allegation Followup and Resolution (D) (continued)

Referrals (3) (continued)

Internal Referrals (b) (continued)

Initiation of an OI Investigation (ii) (continued)

of the pending investigation, potential escalated enforcement, or prosecution. Any such releases of information should be recorded in the OI case file. If the action office decides, after consultation with OI, to delay informing a licensee of an issue, this decision and the basis on which the delay is founded, consistent with public health, safety, or security, should be documented by the action office and the decision reexamined every 3 months to ensure its continuing validity. (*c*)

In a case in which a *prima facie* case of discrimination has been made in an allegation, in which an alleger's evidence would allow a reasonable conclusion that the alleger has been wronged, OI will open an investigation and conduct an interview with the alleger. The determination as to whether or not a *prima facie* case has been made by the alleger will be made at the ARB meeting in consultation with the regional counsel or OGC. (*d*)

Referrals of Allegations to Licensees (c)

Licensee Referral Policy (i)

Action offices should refer as many allegations as possible to the licensee for action and response.

Allegation Followup and Resolution (D) (continued)

Referrals (3) (continued)

Referrals of Allegations to Licensees (c) (continued)

Prohibitions on Referrals (ii)

If any of the following apply, an allegation shall not be referred to the licensee:

- Information cannot be released in sufficient detail to the licensee without compromising the identity of the alleger or the confidential source (unless the alleger has no objection to his or her name being released). (*a*)

- The licensee could compromise an investigation or inspection because of knowledge gained from the referral. (*b*)

- The allegation is made against the licensee's management or those parties who would normally receive and address the allegation. (*c*)

- The basis of the allegation is information received from a Federal or State agency that does not approve of the information being released in a referral. (*d*)

Overriding Safety Issue (iii)

If an allegation raises an overriding safety issue, NRC staff will refer the substance of the allegation to the licensee regardless of any factor

Allegation Followup and Resolution (D) (continued)

Referrals (3) (continued)

Referrals of Allegations to Licensees (c) (continued)

Overriding Safety Issue (iii) (continued)

under item (ii) above. (See Section (A)(4) of this part for protection of the identity of a confidential source). In this instance, the 14-day waiting period, discussed in Section (D)(5) of this part, is waived if the alleger or the confidential source cannot be reached in a timely manner.

Referral Criteria (4)

In determining whether to refer allegations to a licensee, provided Section (D)(3)(c)(iii) of this part does not apply, consideration should be given to the following:

- Could the release of information bring harm to the alleger or confidential source? (a)
- Has the alleger or the confidential source voiced objections to the release of the allegation to the licensee? (b)
- What is the licensee's past performance in dealing with allegations, including the likelihood that the licensee will effectively investigate, document, and resolve the allegation? (c)

Allegation Followup and Resolution (D) (continued)

Referral Criteria (4) (continued)

- Has the alleger or the confidential source already taken this concern to the licensee with unsatisfactory results? If the answer is "yes," if the concern is within NRC's jurisdiction, and if the alleger objects to the referral, the concern should normally not be referred to the licensee. (d)

- Are resources to investigate available within the region or program office? (e)

Informing the Alleger (5)

Before referring an allegation to a licensee, all reasonable efforts should be made to notify an alleger or a confidential source of the planned referral. (This requirement does not apply to an alleger who has indicated no objection to the referral in his or her original, documented contact with NRC, provided it was made clear to the alleger that a referral was likely.) This notification may be given orally and subsequently documented in an acknowledgment letter to the alleger. Inform the alleger or the confidential source that NRC will review and evaluate the licensee's activities and response and that the alleger or the confidential source will be informed of the final disposition. If the alleger or the confidential source cannot be reached by telephone, a letter can be used to inform him or her of the intent to refer his or her concerns to the licensee. If the alleger or the confidential source objects to the referral, or does not respond within 14 calendar days, and the NRC has considered the factors described in Sections (D)(3)(c)(iii) and (D)(4) of this part for allegers and

Allegation Followup and Resolution (D) (continued)

Informing the Alleger (5) (continued)

Part II(E) of this handbook for confidential sources, a referral can be made despite the alleger's or the confidential source's objection or lack of response.

Referral Letter (6)

NRC's referral letter should inform the licensee of the concern(s) but not of the identity of the alleger or the confidential source, should request the licensee to review the matter, and should request a written report of the results of that review. Convey the staff's expectations that the licensee's evaluation of the concerns be thorough, objective, and of sufficient scope and depth to resolve the concern(s). Ask the licensee to include in its letter whether its review identified any deficiencies related to the allegation and, if so, what corrective action it took or plans, and the associated tracking number. Also request the licensee to limit distribution of the letter, and whatever information may be enclosed with it, to individuals with a need to know. (a)

If the allegation is received in writing, the incoming correspondence should not be sent to the licensee. Summarize the concerns in the referral letter without providing information that could result in the licensee's identifying the alleger, unless the alleger has agreed to be identified. (b)

Allegation Followup and Resolution (D) (continued)

Referral Letter (6) (continued)

If the referral letter includes a copy of information supplied by the alleger or the confidential source rather than an NRC summary of the information, obtain written permission from the alleger or the confidential source before providing the information to the licensee. (c)

Inform the licensee that the concern(s) were received as an allegation and reference an allegation number. (d)

Licensee Response (7)

In cases in which an allegation has been referred to the licensee but the alleger wishes to remain unidentified to the licensee, and the licensee asks if Mr/Ms. XX is the alleger because the licensee would like to ask them some specific questions about the allegation, the standard response will be "We can/will neither confirm not deny that a specific person is the alleger." If the licensee has a specific question(s) that it believes needs to be answered by the alleger, the OAC will inform the licensee that the OAC will ask the question of the alleger and get the answer back to the licensee. (a)

If the licensee asks to talk to Mr./Ms. XX and ask general questions as part of an ongoing investigation of a referred allegation, and if it is acceptable to talk to the suspected alleger during the course of its investigation, the standard response will be that the licensee can talk to anyone the licensee wishes or needs to investigate and resolve

Allegation Followup and Resolution (D) (continued)

Licensee Response (7) (continued)

the referred allegation, but we cannot comment on whether a named individual is the alleger. (b)

NRC should ensure that a licensee's response is adequate. If a through review by the licensee is not conducted, it may be necessary for NRC to inspect or investigate the licensee's conclusions and assertions. The scope and depth of NRC's verification should be predicated on many factors, such as, but not limited to, the licensee's past performance, the safety significance of the matter, and the level of the licensee management possibly involved in the matter. The following questions are examples of how to judge the adequacy of the licensee's response: (c)

- Was the evaluation conducted by an individual or organizational entity independent of the organization in which the alleged event took place? (i)

- Was the evaluator competent in the specific functional area in which the alleged event occurred? (ii)

- Was the evaluation of adequate depth to establish the scope of the problem? (iii)

- Was the scope of the evaluation sufficient to establish that the alleged event or problem was not a systematic defect? (iv)

Allegation Followup and Resolution (D) (continued)

Licensee Response (7) (continued)

- If the allegation was substantiated, did the evaluation consider the root cause and generic implications of the allegation? (v)

- Was the licensee's corrective action sufficient to prevent, alleviate, or correct deficiencies in both the specific and generic instances, and in the short and long term? (vi)

  – If the staff identifies potential violations in a reactor licensee response, the potential violations are to be categorized using the significance determination process (SDP). (*a*)

  – When the staff identifies minor violations in reactor licensee responses, the closure letter to the alleger will inform the alleger that a minor violation was identified. Because the violation is minor, it will not be documented in an inspection report. The closure letter will also state that the licensee was orally informed that a minor violation was identified. (*b*)

  – When the staff identifies violations in reactor licensee responses that are more than minor but not more than "Green" in the SDP, and the licensee stated in its response that deficiencies associated with the violation were entered in its corrective action program, the violation will be categorized as a noncited violation (NCV). The alleger will be told in the closure letter that an NCV was identified and will be included in the next routine inspection report. The alleger will also be informed that the licensee has placed the issue in the

Allegation Followup and Resolution (D) (continued)

Licensee Response (7) (continued)

corrective action program. Before the closure letter is placed in the mail, the licensee will be orally informed that an NCV was identified and it will be documented in the next inspection report. If the NCV fits within a cornerstone, it will be discussed in the section of the report for that cornerstone. If it does not fit within a cornerstone, it will be discussed in the section of the report titled "OTHER." (*c*)

- If NRC agrees with the licensee's response, the response can be incorporated into NRC's closeout letter to the alleger or the confidential source. If NRC does not agree with the response, the allegation remains open. When the staff identifies violations in reactor licensee responses that are greater than "Green" in the SDP, the closure letter will inform the alleger that the allegation was substantiated and the issue is being evaluated within the SDP. Upon completion of the evaluation, the licensee will be informed of the outcome. (*d*)

Handling of Agreement State Allegations and Concerns (8)

Categories (a)

Allegations and concerns involving Agreement States are categorized into three categories. These categories are performance of an Agreement State licensee (licensee allegations), performance of an Agreement State program or employee (performance concerns), or wrongdoing by an Agreement State employee (wrongdoing concerns). (i)

Allegation Followup and Resolution (D) (continued)

Handling of Agreement State Allegations and Concerns (8) (continued)

Categories (a) (continued)

An Agreement State licensee allegation is defined as a declaration, statement, or assertion of inadequacy or impropriety concerning a licensee involved in an Agreement State program-regulated activity, the validity of which has not been established. Examples of Agreement State licensee allegations include, but are not limited to, alleged violation of regulatory requirements, alleged discrimination for raising safety concerns (Section 211 of the ERA) or alleged intentional violation or disregard of regulatory requirements (licensee wrongdoing). (ii)

An Agreement State performance concern is defined as a declaration, statement, or assertion of inadequacy associated with an Agreement State program, including the activities of Agreement State employees acting in their official capacity, the validity of which has not been established. Examples of performance concerns include, but are not limited to, an alleged inappropriate regulatory action, an alleged inappropriate resolution of an alleger's concern, and an alleged concern with an inspector's performance or independence of Agreement State personnel. (iii)

An Agreement State wrongdoing concern is defined as a declaration, statement, or assertion of impropriety concerning an Agreement State employee that constitutes willful disregard of State regulatory requirements, ethical violations, fraud, or abuse of position. Examples of wrongdoing concerns include, but are not limited to, the alleged

Allegation Followup and Resolution (D) (continued)

Handling of Agreement State Allegations and Concerns (8) (continued)

Categories (a) (continued)

taking of bribes by Agreement State personnel from Agreement State licensees, the alleged providing of false statements, and the alleged purposeful failing to adhere to State administrative requirements affecting Agreement State materials. (iv)

Referral of Technical Allegations to Agreement States (b)

When receiving allegations against an Agreement State licensee, which is solely under the State's jurisdiction, the staff should initially encourage the alleger to contact the State directly regarding his or her concern(s). The staff should inform the alleger that the Agreement States prefer to be contacted directly since it allows the State to obtain all the necessary information directly and facilitates its response. In addition, the staff should inform the alleger that direct contact with the Agreement State provides the advantage of a more timely response in most cases. In addition, staff should determine the ability of the State to protect the identity of the alleger by referring to Exhibit 8, "Ability of Agreement States To Protect Alleger's Identity From Public Disclosure," and inform the alleger of the ability of the State to protect his or her identity. If the alleger indicates that he or she would like to contact the State directly, the staff should provide the alleger with the contact person's name and telephone number in the Agreement State. The staff can obtain the contact person's information by consulting the Regional State Agreement Officer

Allegation Followup and Resolution (D) (continued)

Handling of Agreement State Allegations and Concerns (8) (continued)

Referral of Technical Allegations to Agreement States (b) (continued)

(RSAO), the Regional State Liaison Officer (RSLO), the Office of State and Tribal Programs (STP) Allegation Coordinator, or other members of the STP staff. The opening of an allegation file by the receiving office would not be necessary in this case. (i)

When the staff receives Agreement State licensee allegations that also raise Agreement State performance or wrongdoing concerns, the staff should enter the licensee allegation into the AMS system. The performance or wrongdoing concerns should not be entered. After consultation and coordination with STP, the allegations and concerns should be referred to STP for action. The receiving office will determine whether an ARB is held regarding these types of allegations before referral to STP. STP will refer the licensee allegations to the Agreement State, will review the Agreement State performance or wrongdoing concern(s), and will take the appropriate action(s) regarding the concerns consistent with STP Procedure SA-400, "Management of Allegations." The receiving office should close its allegation file after the referral to STP is complete. (ii)

If the alleger chooses not to go to the Agreement State directly, allegations against an Agreement State licensee will be referred to the OAC in the appropriate regional office for forwarding to the State in

Allegation Followup and Resolution (D) (continued)

Handling of Agreement State Allegations and Concerns (8) (continued)

Referral of Technical Allegations to Agreement States (b) (continued)

accordance with regional procedures. A copy of the allegation will be provided to the Director of OI if wrongdoing is suspected. (iii)

Before referring an allegation to an Agreement State, all reasonable efforts should be made to inform the alleger or confidential source of the referral. This notification may be given orally and subsequently documented in an acknowledgment letter. If the alleger or confidential source cannot be reached by telephone, use a letter to inform the alleger or the confidential source of NRC's referral of his or her concerns to the Agreement State. Either by letter or phone, the alleger should be informed of the ability of the State to protect his or her identity (see Exhibit 8). If the alleger or the confidential source agrees to disclosing his or her identity to the Agreement State, close the allegation after sending a combined acknowledgment and closure letter to the alleger or the confidential source and the referral letter to the Agreement State. The letter to the alleger or the confidential source must include the name of an individual to contact in the responsible Agreement State organization. (iv)

If the alleger or the confidential source does not want his or her identity disclosed to the Agreement State or cannot be reached, refer the allegation without the name of the alleger. Make the referral in a manner that protects the identity of the alleger or the confidential

Allegation Followup and Resolution (D) (continued)

Handling of Agreement State Allegations and Concerns (8) (continued)

Referral of Technical Allegations to Agreement States (b) (continued)

source, including rewriting the allegation, and request that the Agreement State provide a response to the regional contact (e.g., the OAC or the RSAO). The regional contact will coordinate and review correspondence with the Agreement State. (v)

If the identity of the alleger or the confidential source has not been disclosed to the Agreement State, provide him or her with a copy of the Agreement State's response. Inform the alleger or the confidential source that the NRC's STP will evaluate the response during the next Agreement State program periodic review or Integrated Materials Performance Evaluation Program (IMPEP) review, whichever occurs first. (vi)

If the alleger or the confidential source objects to the referral and the NRC had considered the factors described in Section (D)(3)(c)(iii) of this part, the referral will be made, despite the objection, because of program commitments between NRC and the Agreement State. However, request that the Agreement State not refer the allegation to the Agreement State licensee unless an overriding safety issue is identified. (vii)

Allegation Followup and Resolution (D) (continued)

Handling of Agreement State Allegations and Concerns (8) (continued)

Purview of Other Federal Agencies (c)

Allegations against an Agreement State licensee that fall within the purview of other Federal agencies, such as the Food and Drug Administration, the Environmental Protection Agency (EPA), OSHA, or the military, will be forwarded to the appropriate Federal agency in coordination with and concurrent with transmittal of the allegation to the Agreement State within whose jurisdiction the licensee resides. Make the referrals in a manner that protects the identity of the alleger or the confidential source, including rewriting the allegation. Provide the alleger or the confidential source with the referral and inform the alleger that he or she may directly contact any Federal agency that has been sent a transmittal of the allegation. The notification letter must provide the name of an individual in the responsible Agreement State organization.

Identification of Alleger (d)

If an allegation is referred without the identity of the alleger or the confidential source and the Agreement State requests identification, follow the guidance of Section (A)(3) of this part for allegers and Part II(E) of this handbook for confidential sources. If the allegation to be referred to an Agreement State was received from an anonymous source, there is no need to request a response from the Agreement State. Close the allegation file upon completion of the anonymous referral.

Allegation Followup and Resolution (D) (continued)

Handling of Agreement State Allegations and Concerns (8) (continued)

Jurisdiction (e)

Allegations involving an Agreement State licensee fall within the jurisdiction of the applicable Agreement State. (Note, however, that the referral to an Agreement State of an allegation of discrimination by an employer against an alleger for having raised a safety concern can be filed with DOL, as long as the filing takes place within the 180-day time period from the date of notification of the discriminatory act.) The RSAO will be responsible for coordination, review, and followup of the State response.

Referral of Technical Allegations: Unclear Jurisdictional Lines (f)

Technical allegations may be received in which a licensee possesses both a State license (e.g., an Agreement State materials license and/or naturally occurring or accelerator-produced radioactive material [NARM] license) and an NRC license. Before the allegation is referred to the licensee, all reasonable efforts should be made to determine the jurisdiction under which the alleged activities occurred. If the jurisdictional lines are unclear, the State should be promptly notified of the allegation in an attempt to clarify jurisdiction. The State may have information that may assist in determining the jurisdiction of the allegation. If, after consultation with the State, the jurisdictional lines are not resolved, the State and the NRC should agree upon who takes the lead in addressing the allegation. If either agency determines in the course of reviewing the allegation(s) that some

Allegation Followup and Resolution (D) (continued)

Handling of Agreement State Allegations and Concerns (8) (continued)

Referral of Technical Allegations: Unclear Jurisdictional Lines (f) (continued)

aspects of the alleged activities occurred under the other's jurisdiction, that agency would be informed. Any referral letter to the State should request that the NRC be notified of the identification by the State of improper or questionable activities under NRC's jurisdiction. Before any referral to the State is completed, the staff should follow the guidance in this management directive on informing the alleger of referrals.

Referrals of Allegations Concerning Performance of Agreement State Programs or Employee or Wrongdoing Issues by Agreement State Employees (9)

Allegations concerning the performance of Agreement State programs or employees or wrongdoing issues by Agreement State employees should be referred to the Director of STP for appropriate handling. Upon confirming that STP has received the referred allegation, the region or program office can close its allegation file.

Referrals of Industrial Safety Allegations to the Occupational Safety and Health Administration (OSHA) (10)

Concerns submitted to NRC within the purview of OSHA are to be handled in accordance with NRC Inspection Manual, Chapter 1007,

Allegation Followup and Resolution (D) (continued)

Referrals of Industrial Safety Allegations to the Occupational Safety and Health Administration (OSHA) (10) (continued)

"Interfacing Activities Between Regional Offices of NRC and OSHA," and office or regional procedures. Refer these concerns to the licensee and/or OSHA in a manner that protects the identity of the alleger or confidential source, including rewriting the concerns. Inform the alleger or the confidential source of the limitations on the protection of his or her identity (see Sections (A)(3) and (4) of this part). For OSHA concerns that are outside NRC's jurisdiction, refer the concerns to OSHA. Inform the alleger or the confidential source that the issues are not within NRC's jurisdiction and any followup he or she wishes to make will have to be with OSHA. The NRC will provide the alleger with the name of the OSHA contact for his or her future use. NRC will not act as a middle man in these types of cases. If OSHA requests the name of the alleger or the confidential source, the name can be provided to OSHA because OSHA protects the names of allegers and confidential sources.

Referrals of Allegations to the Department of Justice (DOJ) (11)

Referrals to DOJ are made by OI if wrongdoing is substantiated. Generally, the fact that a particular matter has been or will be referred to DOJ will not be disclosed to the licensee or the public. However, if a regional administrator or an office director believes that he or she must disclose that a referral has been or will be made to DOJ, he or she must first obtain the concurrence of the Director of OI before disclosing this information.

Allegation Followup and Resolution (D) (continued)

Referrals of Allegations to Government Agencies and Military Organizations (12)

Allegations under the jurisdiction of Government agencies and the military or other organizations outside NRC's jurisdiction will be forwarded to internal affairs of the appropriate organization(s), and the alleger or the confidential source should be informed that he or she may directly contact any of these organizations. When applicable, the action office should notify appropriate agencies dealing with allegations outside NRC's jurisdiction. NRC will not act as a middle man in these types of cases. Notification of Federal, State, and local law enforcement agencies, and the amount of information provided to them, is the responsibility of the appropriate OI field office, and the Director of OI. Referrals by the staff should be made in a manner that protects the identity of the alleger or the confidential source, including rewriting the allegation. Inform the alleger or the confidential source of the limitations on the protection of his or her identity. The alleger's identity can be provided to these organizations if the alleger agrees and such agreement is documented. If a Government agency or other organization requests the name of the alleger or the confidential source, follow the guidance of Section (A)(3) of this part for allegers and Part II(E) of this handbook for confidential sources.

Referrals to the Federal Emergency Management Agency (FEMA) (13)

All allegations involving offsite emergency preparedness are to be referred to the NRR OAC for further referral to FEMA. FEMA will

Allegation Followup and Resolution (D) (continued)

Referrals to the Federal Emergency Management Agency (FEMA) (13) (continued)

provide a response to the allegation to NRR, and NRR will have the responsibility of closing the allegation in an appropriate manner.

Referrals to the Office of the Inspector General (OIG) (14)

Allegations regarding suspected improper conduct by NRC employees or NRC contractors will be brought to the attention of appropriate management for referral to OIG. These allegations are not entered in the AMS. Records pertinent to OIG referrals should not be kept in the allegation file but forwarded to the appropriate office director or regional administrator. When responding to alleger or confidential source inquiries about concerns referred to the OIG, the action OAC may inform the alleger or the confidential source that "the allegation has been given to the Office of the Inspector General" and that "the Office of the Inspector General should be contacted for further details."

Referrals of Allegations Concerning the OIG (15)

If an alleger wants to file an allegation against NRC's OIG or any other OIG concerning how the IG handled his or her concern(s), refer the alleger to—

Allegation Followup and Resolution (D) (continued)

Referrals of Allegations Concerning the OIG (15) (continued)

Chairman, Integrity Committee
President's Council on Integrity and Efficiency
U.S. Department of Justice
Federal Bureau of Investigation
J. Edgar Hoover Building
935 Pennsylvania Avenue, NW
Washington, DC 20535-0001

Referrals of Allegations Concerning DOL Cases (16)

If an OAC receives an allegation that licensees provided false information during hearings before a DOL Administrative Law Judge, he or she is to refer the allegation to—(a)

U.S. Department of Labor
Office of Investigations
Complaint Analysis Office
Room S 5514
200 Constitution Avenue, NW
Washington, DC 20210

Also provide a copy of a DOL allegation to OI and OE in case either of these offices consider the information relevant to the investigation or the enforcement action. (b)

Periodic Status Letters to Allegers (E)

The OAC, or other designated staff, should ensure that periodic status letters regarding the resolution of technical concerns, as appropriate, are provided to an alleger or a confidential source. In instances of unusual delay in resolving the allegation, advise an alleger or confidential source every 180 days or sooner of the status of his or her allegation so that he or she knows that the allegation is being pursued. For wrongdoing issues, the alleger should be informed that the review is ongoing.[7] (1)

The OAC, or other designated staff, should advise the alleger or the confidential source by letter of the results of followup action within 30 working days of completion. If a technical inspection has been performed, send a copy of pertinent portions of the report to the alleger or the confidential source. State in the closeout letter that the NRC welcomes additional relevant information. Document all communication in the allegation files (2)

The OAC is responsible for ensuring that communications are maintained with the alleger or the confidential source, other than OI-recruited confidential sources. The OAC should normally be the single point of contact for the alleger or the confidential source when he or she communicates with NRC, except those allegers involved in OI investigations. A single point of contact with an alleger or a confidential source provides better control of communications, develops rapport, establishes continuity in the flow of information between the regions and other NRC offices, and helps to protect

[7] If the status letter is due and the OAC is confident the closure letter will be issued within 2 weeks of the due date for the status letter, it is not necessary to send the status letter.

Periodic Status Letters to Allegers (E) (continued)

the identity of the alleger or the confidential source. If the responsibility for handling an allegation needs to be transferred within the action office, or from one action office to another, the alleger or the confidential source should be notified of the name and telephone number of the new contact by the former contact to ensure continuity. (3)

To help prevent the inadvertent release to a third party of correspondence to an alleger, clearly type the allegation number on the front page of the status letter and on the upper right corner of each subsequent page. This identification will reduce the possibility of the staff's not recognizing that the letter concerns an allegation and may identify an alleger. In addition, where appropriate, clearly stamp on each page of any letter from an alleger or confidential source that "This document identifies an alleger (or confidential source)," as appropriate. Also use the appropriate blue (for allegers) or red (for confidential sources) cover sheets at any time these documents leave the official allegation file. (4)

Closure of Allegations (F)

Staff Action (1)

The responsible technical branch chief shall review and concur in the basis for closing an allegation. Concurrence may be documented in an e-mail or a memorandum from the branch chief to the OAC that provides the basis for closure (for each concern within the allegation), through concurrence in the closure letter, or, in those cases in which

Closure of Allegations (F) (continued)

Staff Action (1) (continued)

the branch chief issues the closure letter, by his or her signature. Include this documentation in the allegation file.

OAC Action (2)

The OAC is responsible for tracking an allegation and all the concerns therein from the time an allegation is received until it is closed. An allegation may not be closed until a determination is made as to which concerns have been substantiated or not substantiated. (A case also can be closed if the ARB and the OAC determine that the allegation contains insufficient information to ascertain whether or not the allegation is substantiated [e.g., not enough specific information, dates and places insufficient to inspect or investigate, or description of event in question is not specific enough].) An allegation cannot be closed until all the concerns within the allegation are closed and a closure letter has been issued. Enter the closure information in the AMS.

Documentation of Resolution of the Allegation (3)

A final document will be prepared to set forth the facts about the allegation and its resolution. This document can be a memorandum (including a closeout letter) for a relatively minor matter, a report of an investigation, an inspection report, material inspector field notes, or a technical paper for a complex or major generic issue. The document

Closure of Allegations (F) (continued)

Documentation of Resolution of the Allegation (3) (continued)

can be a supplement to a safety evaluation report for multiple allegations occurring close to the issuance of an operating license. Except in the case of OI reports of investigations and closeout letters, the document should not contain the name of the alleger or the confidential source or material that could be used to identify the alleger or the confidential source. (a)

The final closure document should include a summary of the concern, a description of the evaluation performed, and the conclusions drawn. It also should inform the alleger which concerns were substantiated and which were not. However, if the closure document is an inspection report, it will address the relevant issue without acknowledging that the issue was raised in the context of an allegation. Additionally, the guidance in Manual Chapter 0610 should be followed to determine when inspection issues resulting from allegation followup activities are to be documented in the inspection report. (b)

The closure document officially closes the allegation and must be placed in the allegation file. (c)

The OAC shall prepare or coordinate the preparation of a closure letter to the alleger for signature by the OAC or the appropriate manager. Advise the alleger what actions were taken on each of the

Closure of Allegations (F) (continued)

Documentation of Resolution of the Allegation (3) (continued)

concerns and inform the alleger which concerns were substantiated and which were not. Provide the alleger with the documentation used to close out the allegation. To help prevent the inadvertent release to a third party of correspondence to an alleger, clearly type the allegation number on the front page of the letter and on the upper right corner of each subsequent page. This identification will reduce the possibility of the staff's not recognizing that the letter concerns an allegation and may identify an alleger. (d)

Notification of Results of Investigations (4)

Notification When No Enforcement Action Is Intended (a)

Following the issuance of an OI report, the staff determines whether enforcement is warranted. If enforcement is not warranted, the responsible office or region issues a memorandum stating that it does not appear that enforcement is warranted and provides 3 weeks for addressees to review the report and provide dissenting views. If the alleger has not talked with OI during the course of the investigation, the investigation would be closed administratively. With an administrative closure, a "3-week" memorandum would not be necessary. When the responsible office or region issues the "3-week" memorandum stating that it does not appear that enforcement is warranted, the region or the office responsible for the allegation will prepare letters informing the alleger and the licensee that the

Closure of Allegations (F) (continued)

Notification of Results of Investigations (4) (continued)

Notification When No Enforcement Action Is Intended (a) (continued)

investigation has been closed and provide the results of the investigation.[8] The OI synopsis will be provided as an attachment to the letters.[9] At the end of the 3-week period, the letters can be sent, provided the official approving the OI report concurs in the letter to the licensee, and the Director of OE, or his or her designee, agrees that the letter can be transmitted. OE concurrence indicates no dissenting views were received or the dissenting views were resolved, DOJ declined the case or completed its action, and NRC does not intend to take enforcement action on the wrongdoing issues. Place copies of both letters in the allegation file and place a copy of the letter to the licensee in the PDR and the ADAMS Public Library.

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[8]If the only licensee employee interviewed by OI was the alleger, the licensee may not be aware that an investigation was opened. In this case, it is not necessary to send a copy of the synopsis to the licensee. If OI speaks with any licensee employees other than the alleger, then the letter is required, including the OI synopsis.

[9]OI synopsis normally should not contain information that could reveal the identity of an alleger. However, if the region or office believes the release of the OI synopsis may reveal the identity of the alleger, it is acceptable to paraphrase the OI synopsis in the letter to the licensee or contractor rather than attach the synopsis.

Closure of Allegations (F) (continued)

Notification of Results of Investigations (4) (continued)

Notification When an Enforcement Action Is Pending (b)

When an enforcement action is pending, the alleger cannot normally be informed of the results of the investigation until the licensee is informed. The licensee is informed of the results through the issuance of a letter indicating that NRC is considering an issue for escalated enforcement and inviting the licensee to an enforcement conference or offering the licensee the choice of responding in writing. A copy of the letter to the licensee and the synopsis of the OI report shall be sent to the alleger at the time they are sent to the licensee. The concurrences on the letter to the licensee are those required by the enforcement process and they also serve as the approval to provide the synopsis to the alleger.[10] Place copies of both letters in the allegation file and place a copy of the letter to the licensee in the PDR and the ADAMS Public Library.

Release of OI Synopses Concerning Investigations of Discrimination to Parties to the DOL Proceeding (c)

In those instances in which OI completed its investigation of a discrimination concern with a finding on the merits and issues the report to the staff before completion of DOL proceedings on the same discrimination concern, the staff will inform the parties to the DOL

[10]If the enforcement action is against an individual, without accompanying action against a licensee or contractor, OE should be contacted before providing the synopsis to the alleger.

Closure of Allegations (F) (continued)

Notification of Results of Investigations (4) (continued)

Release of OI Synopses Concerning Investigations of Discrimination to Parties to the DOL Proceeding (c) (continued)

proceeding of OI's conclusion after coordinating with OE. In instances in which NRC does not have a declination, after coordinating with DOJ, OE will determine when the parties to the DOL proceeding will be informed of the OI's conclusion. OE will inform the responsible region or office of its decision during the weekly conference call or in the 3-week memorandum. Once OE has approved releasing OI's findings to the parties to the hearing, the responsible region or office will prepare the transmittal letters. The letters will inform both parties of OI's conclusion and note that the conclusion is being reviewed by the staff and is not the final agency position. The synopsis will be included as an attachment.[11] The letters also will inform both parties that the complete report may be requested under the FOIA. (i)

The official approving the OI report will concur in the letter to the licensee or contractor if the Director of OE, or his or her designee, agrees that the letter can be transmitted. The responsible region or office will place copies of the letter in the allegation and enforcement files. (ii)

[11] If a predecisional enforcement conference is to be held for a discrimination concern, the Director of OE will decide whether the licensee will be provided a redacted copy of the OI report rather than the synopsis. If the redacted report is provided to the licensee, the redacted report will be placed in the PDR and the ADAMS Public Library and the alleger also will be provided a copy of the redacted report.

Closure of Allegations (F) (continued)

Notification of Results of Investigations (4) (continued)

Staff-Identified Potential Wrongdoing (d)

Allegations that involve failure to meet requirements have the potential for being willful violations (wrongdoing) and OI should be notified of them. The staff should remain alert to any implicit allegations and indicators of wrongdoing that may emerge. (i)

It is very possible that information considered to be an allegation might be received at enforcement conferences or from staff reviews of OI transcripts. In these cases, this information will be treated as staff-identified allegations because the person making the statement may not consider that he or she made an allegation and is not likely to be expecting a response. In cases of this type, the staff will evaluate or inspect the issue but NRC will not issue an acknowledgment or closure letter to the person who made the statement. (ii)

Closure of Issues in OI Assists (G)

On occasion, OI involvement will initially consist of an assist to the technical staff in an effort to determine whether an issue involves potential wrongdoing. In those instances in which evidence of wrongdoing is identified, OI will open a full investigation into the wrongdoing matter. In those instances in which this OI review finds no specific evidence of wrongdoing to warrant further review, the matter is closed by OI, normally by way of a closure memorandum. (1)

Closure of Issues in OI Assists (G) (continued)

In certain instances in which an OI closure memorandum is not developed, the responsible OI Field Office Director (FOD) should be asked to provide an e-mail message indicating why the OI review is completed. The responsible technical staff shall then review the OI closure memorandum (or OI FOD e-mail) to determine appropriate action (allegation closure or holding another ARB meeting). A "3-week" memorandum need not be developed in these instances, since no decision has been made with regard to a wrongdoing matter. (2)

However, if OI has interviewed other members of the licensee's staff, in addition to the alleger, a letter should be sent to the licensee indicating the reason for the OI review and the fact that no indication of wrongdoing was identified. (3)

NRC Response to Fears of Retaliation (H)

NRC may take action to prevent retaliation before it occurs at a licensee's facility. This NRC action is independent of the DOL process. (1)

If NRC receives a credible report from an individual expressing reasonable fears of retaliation for being engaged in a protected activity, and the individual is willing to be identified to the licensee, the appropriate NRC regional administrator or office director should initiate actions to alert the licensee that NRC has received information from an individual concerned that retaliation may occur for engaging in protected activities. (2)

NRC Response to Fears of Retaliation (H) (continued)

The need to notify the licensee should first be discussed at an ARB meeting with representatives from OGC or regional counsel and from OI. If the ARB considers it appropriate to notify the licensee, the ARB should make a recommendation to the appropriate regional administrator or office director that senior licensee management be notified by either holding a documented meeting, a documented management telephone call, or issuing a letter. Letters of this nature should not be docketed or placed in the PDR or the ADAMS Public Library. A meeting may be appropriate if the licensee's past performance includes a pattern of allegations of retaliation. The meeting should be closed to the public and not expose the alleger to undue publicity. Notify senior licensee management of the following issues: (3)

- NRC has received information that an individual working for the licensee has fears that retaliation may occur against him or her for engaging in protected activities (identify the alleger and complaint). (a)

- Retaliatory actions taken against the employee may have chilling effects on other personnel (see "chilling effect" in the Glossary of this handbook). (b)

- NRC will monitor any actions taken against this individual. (c)

- NRC may consider enforcement action if discrimination is proven (see the appropriate employee protection provisions set forth in 10 CFR 30.7, 40.7, 50.7, 60.9, 61.9, 70.7, or 72.10. (d)

NRC Response to Fears of Retaliation (H) (continued)

Ask the licensee to respond to NRC concerns in writing. (4)

In cases in which a number of individuals from the same licensee or contractor express concerns about the potential for retaliation, other actions may be warranted, especially if a history of discrimination findings or settlements exists. These actions might include team inspections, investigations, surveys, or other techniques for assessing the climate for raising concerns. (5)

Allegation Management System (AMS) (I)

AMS is not a Privacy Act system of records. To avoid possible violations of the act, information in the AMS must not be filed, maintained, or retrieved by means of an individual identifier. Questions about compliance should be referred to a Privacy Act attorney within OGC.

General (1)

Allegations received by NRC are entered in the AMS database. AMS is used to track allegations concerning activities and facilities within the jurisdiction of NRC. AMS tracks the allegations from receipt to resolution, tracks involvement of regions and program offices, provides basic descriptive and status information, and provides reference to the closeout documentation. Occasionally, allegations will evidently have no substance and/or represent a distortion of the facts. However, even in these cases, the allegation will be entered into the AMS. (a)

Allegation Management System (AMS) (I) (continued)

General (1) (continued)

Within 30 calendar days of receipt of the allegation by the action office, the OAC will assign a unique allegation number and enter the pertinent information in the AMS. If related concerns are identified that can be tied to other allegations already in the AMS, include a cross-reference for that concern under the "Related Allegations" action type, identifying the concern and allegation number under which the related concern can be found. Also annotate the concern for that allegation number under a "Related Allegations" action type, showing the new allegation number and concern. Specific actions to be entered include "Initial ARB" (planned date must be within 30 days from the date of receipt) and "Closure Date." This information will establish an audit trail so that NRC actions can be properly monitored and completed. (b)

AMS tracks the progress of discrimination allegations being investigated by OI or DOL. (c)

Allegations that later are found to be against an Agreement State licensee will be entered in the AMS noting that the allegation was referred to the State for disposition. If the alleger or the confidential source agreed to release his or her identity, the AMS entry for the Agreement State allegation may be closed the day the referral letter is sent. If identity disclosure was not agreed to, the AMS entry will remain open until NRC sends a closure letter. (d)

Allegation Management System (AMS) (I) (continued)

General (1) (continued)

Sensitive information, such as the names of non-NRC persons or personal identifiers, must not be entered in the AMS. All information entered must be unclassified and must not contain any safeguards information or any proprietary or commercial information (10 CFR 2.790) and must not violate the Privacy Act of 1974. (e)

AMS information should not reveal information related to criminal or civil wrongdoing on the part of individuals and/or NRC licensees that could compromise NRC inspections and/or investigations concerning alleged events. (f)

The following concerns should not be entered in the AMS: concerns pertaining to 10 CFR 2.206 petitions; referrals to the OIG, OSHA, and other Federal agencies; or data related to referrals to DOJ, law enforcement, and military agencies and organizations, unless the referral is to the organization in its capacity as a licensee. (The Army, Navy, Air Force, DOJ, DOL, Department of Agriculture, and Department of Interior all hold NRC materials licenses for possession and use of various devices containing radioactive material.) With the exception of OIG referrals, records of concerns not entered in the AMS should be maintained in accordance with office or regional procedures. (g)

When an allegation is received, every concern contained in the allegation must be entered in the AMS. For example, if an allegation is received that consists of 15 separate concerns of wrongdoing

Allegation Management System (AMS) (I) (continued)

General (1) (continued)

and/or technical deficiencies, enter the allegation as one allegation. However, include the total number of concerns and their subject areas in the description of the allegation. Because this listing of concerns is included in the AMS (and in the acknowledgment and closure letter(s)), a separate list of concerns is no longer required to be included in the allegation file. The description of concerns and the basis for closure contained in the AMS should match the information contained in the acknowledgment and closure letter(s) to the alleger. (h)

Some allegations may require action by two or more offices. The involved OACs should agree on the lead action office for followup of the allegation and make only one entry of the allegation in the AMS. If another office is involved in responding to an allegation, the lead action OAC should initiate this information in the AMS. (i)

Allegations should not be screened for possible deletion before they are entered in the AMS, except for duplication of entries. (The safety significance or nonsafety significance of an allegation will be judged during the action office's review, the ARB meeting, and followup activities). (j)

Access to the AMS database is normally limited to the AAA, OACs, their support staff, and representatives of the OIG because of the sensitive nature of the allegation information in the AMS. AMS reports are provided only on a need-to-know basis for specific data. (k)

Allegation Management System (AMS) (I) (continued)

General (1) (continued)

Appropriate entries should be made in the AMS to close out the allegation. (I)

AMS Oversight by the Agency Allegation Advisor (AAA) (2)

The AAA has oversight responsibility for the AMS and ensures that the AMS database accommodates NRC staff needs to track allegations. In addition, both the AAA and OACs are authorized to create special reports from the AMS database either to meet the needs of the NRC staff and management or to be responsive to FOIA requests. Reports prepared for the purpose of responding to FOIA requests must be suitably redacted to protect the identity of the alleger before being released.

AMS Input by the Office of Investigations (OI) (3)

If OI receives an allegation directly from an alleger, the allegation, even an allegation under the purview of OI, will be forwarded to the appropriate office or regional OAC because the OACs are responsible for entering all allegations into the AMS, using their region or office AMS number. (a)

The following activities will be performed for wrongdoing allegations assigned to the region or the program office: (b)

Allegation Management System (AMS) (I) (continued)

AMS Input by the Office of Investigations (OI) (3) (continued)

- The regional or office OAC will assign a region or office AMS number. The OI case number should be entered in the AMS as a cross-reference. (i)

- The appropriate branch chief will be listed in the AMS as the action office contact responsible for ensuring appropriate followup once the OI report is issued. (ii)

- The appropriate OI field office director will keep the regional or office OAC advised of the status of the investigation to update the AMS. (iii)

- The allegation may be listed as closed in the AMS when the closure letter to the alleger has been issued, no technical issues remain, and an action office supervisor determines that appropriate action has been taken, except when the case is still being reviewed by the DOL. DOL cases may not be closed in the AMS until DOL action is completed. This includes cases in which either OI has finished its investigation or NRC is waiting 180 days from the date of the alleged discriminatory action to determine if the alleger has filed a DOL complaint. If the allegation remains open, reference is made in the AMS to the technical report or the OI investigation report and a schedule for resolution of the allegation is placed in the AMS. (iv)

Handling Allegations That May Impact Licensing Decisions or Allegations That Are Late (J)

Ideally, all allegations concerning a particular facility will be resolved before any license is authorized. If allegations having a potential impact on the safety of a facility affect pending licensing decisions, these allegations are termed "late" and must be resolved before any licensing action can be taken. (1)

An allegation must be resolved before authorizing the operation of the plant if the staff determines that an allegation raises a significant safety concern, such as the ability of plant structures, systems, or components to perform their functions; questions about management's competence, integrity, or conduct; or the adequacy of programs. Less significant allegations will be resolved in the normal course of business, independent of issuance of the license. (2)

If allegations are material to a licensing decision, the action office will promptly consult the appropriate licensing office for assistance in determining appropriate action. The action office is responsible for recommending ASLBP notification to the licensing office, if warranted. The licensing office will consult with OGC on preparation of the ASLBP notification. (3)

The action office will determine whether the allegation involves a matter previously considered during the course of its licensing review or during its investigation of prior allegations. If found to contain new information and material, the action office will further evaluate the allegation. Documentation for staff conclusions should focus only on whether the allegations provide new information that is material to the

Handling Allegations That May Impact Licensing Decisions or Allegations That Are Late (J) (continued)

licensing decision. The bases of the staff's determination and conclusions on the late allegations must be documented at the time that the staff reaches these conclusions. (4)

For each pending operating license (OL), each action office will forward to the appropriate licensing organization in NRR or NMSS 30 working days before the license issuance date, using the applicant's estimate, an evaluation of the safety significance of all allegations not scheduled to be resolved before the license issuance date, with a recommendation as to whether any or all of these constitute grounds for delaying issuance of (or otherwise restricting) an OL. A similar report will be prepared and forwarded to NRR 30 working days before a Commission decision on authorizing reactor full-power operation. (5)

If it appears that the number of allegations may prevent their full consideration because of the timeframe of the licensing schedule, the action office will screen the allegations for safety significance and will assign priorities to the allegations that must be resolved before licensing action can be taken. Consider the following screening criteria: (6)

- The likelihood that the allegation is correct, taking into consideration the knowledge, expertise, and reliability of the alleger or confidential source and the extent of credible contrary information (a)

Handling Allegations That May Impact Licensing Decisions or Allegations That Are Late (J) (continued)

- The significance and materiality of the allegation, if current (b)
- The need for prompt consideration of the allegation because of critical safety concerns and public interest in avoiding undue delay (c)

Freedom of Information Act Requests (K)

Withholding Information From Public Disclosure

Information that may identify an alleger or a confidential source shall not normally be released in response to FOIA requests. There are two exemptions under the FOIA that may justify withholding information that would identify an alleger or a confidential source (see 5 U.S.C. 552(b)(6) and (b)(7)(C) and (D) and 10 CFR 9.17(a)(6) and (7)(iv)). This is a case-by-case decision that has to be made by the OAC, the Director of OI (for OI confidential sources), the designated attorney in OGC, or other designated individuals. Information that may lead to "fingerprinting" an alleger also should normally be redacted when responding to a FOIA request. The type of information that may lead to an alleger's being fingerprinted includes, but is not limited to, job titles, organizational names, work report numbers, licensee ECP file numbers, and a combination of dates, times, and equipment that could be combined by the requestor or another individual to identify an alleger. Redact these types of information to protect the identity of an alleger. If there is any question in this area, discuss it with the appropriate allegation or FOIA coordinator; review MD 3.1, "Freedom of Information Act"; or contact the AAA, the regional counsel, the

Freedom of Information Act Requests (K) (continued)

designated OGC attorney, or the FIOA/PA Section, Office of the Chief Information Officer. In any case in which the NRC determines that it is necessary to release the identity of an alleger, the agency will make reasonable efforts to inform the alleger before the release. (1)

Disclosures may be necessary to further the NRC mission or to address safety concerns; however, it is NRC policy to provide the maximum protection allowed by the FOIA to protect against the disclosure of the identity of allegers who have signed a "confidentiality agreement" and who thus have confidential-source status. FOIA Exemption 7(D) authorizes the protection of allegers and others who are defined as confidential sources. As such, the staff may withhold any information that has the potential for causing the identity of the confidential source to be revealed. This level of identity protection for confidential sources differs from that afforded to allegers who have not been given confidentiality. These nonconfidential sources are protected under FOIA Exemptions 6 and 7(C), which protect from disclosure any information that could reasonably be expected to reveal their identity or constitute an unwarranted invasion of personal privacy. (2)

In cases in which the NRC has disclosed the name of an alleger to the licensee in furtherance of an investigation or because of an overriding safety issue, the NRC will continue to withhold the alleger's name from release pursuant to a FOIA request, unless the alleger's name is already widely associated publicly with the allegation. Some ways in which an alleger's name can be widely associated publicly with the allegation include the alleger's notifying the media, holding a press conference about the subject, or identifying himself or herself

Freedom of Information Act Requests (K) (continued)

as the alleger at a public meeting. The purpose of this approach is to protect the alleger from public scrutiny, criticism, or ridicule that might arise if the alleger's identity were publicly revealed. (3)

During review of an allegation, all documentation may be exempt from release under FOIA, in accordance with FOIA Exemption 7(A) and 10 CFR 9.17(a)(7), when release of information could reasonably be expected to interfere with law enforcement proceedings. However, a FOIA request received while a case is open will "freeze" those documents in the file (they cannot be destroyed) because they have been captured under a FOIA request. When the case is closed, allegation documentation may be subject to release under the FOIA, with appropriate precautions to protect the identity of the alleger and/or the confidential source and to avoid the release of privacy information, safeguards information, or proprietary information. In the absence of a FOIA request, management may freely review case files and when an allegation is closed, retain only those documents necessary to account for official action. (4)

When an alleger files a FOIA request seeking the documents from files on closed allegations he or she submitted, much of the alleger's case file is releasable to him or her, unless the documents would affect the personal privacy of another individual, the documents were covered by attorney/client privilege, the document contains predecisional information, or the release of a particular document met the harm criteria in that it would harm the NRC's investigation of the allegation. If a FOIA request captures an open allegation file, the contents of the open file may be withheld in whole or in part under Exemption 7(A) or 7(C), unless the alleger is the requestor. When an

Freedom of Information Act Requests (K) (continued)

alleger files a FOIA request seeking the documents from his or her own open allegation file, the entire file may be withheld if disclosure would interfere with an ongoing investigation or proceeding. However,anytime Exemption 7(A) is asserted, each record or category of records must be considered for disclosure on a case-by-case basis. When the alleger is the FOIA requester, normally his or her own statements and/or documents provided to NRC cannot be withheld unless release could interfere with the investigation or proceeding. If the alleger provides documents that were not his or hers, such as documents taken from the licensee, those may be more reasonable to withhold than his or her own documents. If a personal representative of an alleger submits a request under the FOIA, a written authorization is needed from the alleger. (5)

When a licensee files a FOIA request seeking documents from a closed file involving an allegation of discrimination filed against that licensee, much of the alleger's case file, including the name of the alleger, is releasable because the identify of the alleger has been previously disclosed, unless (1) the documents would affect the personal privacy of another individual, (2) the documents are covered by attorney/client privilege, (3) the documents are predecisional, or (4) the release of a particular document meets the harm criteria in that it would harm the NRC's investigation of the allegation or the subsequent enforcement proceeding. (6)

The licensee will receive any documents it submitted to the agency and any NRC staff evaluations of the technical aspects of the allegation that were the basis for the alleger's claim of protected

Freedom of Information Act Requests (K) (continued)

activity. When a licensee files a FOIA request seeking documents from an open allegation file, the entire file may be withheld if disclosure would interfere with an ongoing investigation or enforcement proceeding. However, each record or category of records must be considered for disclosure on a case-by-case basis to determine whether Exemption 7(A) applies. (7)

When a FOIA request is filed by a third party, the agency will not release the name of the alleger unless the alleger's name has already been widely associated publicly with the allegation by actions taken by the alleger, such as notifying the media, holding a press conference about the subject, or identifying himself or herself as the alleger at a public meeting. (8)

The third party will receive redacted versions of the documents protecting the name of the alleger and any other information that might allow the requestor to identify the alleger. The staff will also redact information concerning other persons mentioned who have privacy concerns. The third party will receive licensee and agency technical evaluations and the OI synopsis. When a third party files a FOIA request seeking documents from an open allegation file, the entire file may be withheld if disclosure would interfere with an ongoing investigation or proceeding. However, each record or category of records must be considered for disclosure on a case-by-case basis to determine whether Exemption 7(A) applies. (9)

Training of the NRC Staff (L)

Participants (1)

Appropriate staff should be trained periodically to perform allegation management functions. Individuals having substantial involvement in the receipt or resolution of allegations, particularly OACs, resident inspectors, project managers and technical staff, headquarters and regional inspectors, and regional supervisors, should receive training annually.

Training Skills (2)

In general, staff assigned to follow up on allegations should be trained in listening and communication skills; providing timely feedback to an alleger or a confidential source; inspecting the issue rather than inspecting the alleger or the confidential source; avoiding prejudgment; explaining to an alleger or a confidential source NRC's limitations on protecting his or her identity and providing confidentiality; inspection techniques to mask the fact that the issue was raised by an alleger or a confidential source; verification of licensee assertions; the role of allegations in the regulatory process and the FOIA process; and the processes for handling allegations.

Allegation Guidance Memorandum (AGM) (M)

An AGM will be issued, as necessary, in the period of time between revisions to MD 8.8 to address changes or revisions to the allegation management process. The AAA will draft an AGM, as necessary, and circulate the draft document to the regions, OGC, and appropriate office(s) for concurrence. Upon receiving all necessary concurrences,

Allegation Guidance Memorandum (AGM) (M) (continued)

the AAA will send the finalized AGM to the EDO for signature and distribution. All AGMs created between formal revisions to MD 8.8, which will be updated and reissued, as necessary and appropriate, will be incorporated into the revised MD 8.8.

Part II
Procedures for Granting and Revoking Confidentiality

This part provides procedures for granting and revoking confidentiality and for determining when the identity of a confidential source may be released outside NRC.

General (A)

On April 5, 1996, the Commission approved a revision to the policy on confidentiality, which sets forth agencywide policy on protecting the identity of allegers and confidential sources. The Commission's inspection and investigatory programs rely, in part, on individuals voluntarily coming forward with information about safety concerns or perceived wrongdoing. Safeguarding the identities of confidential sources is a significant factor in ensuring the voluntary flow of this information. This policy statement on confidentiality applies to all Commission offices and directs those offices to make their best efforts to protect the identity of any source. The procedures in this part implement the Commission's policy statement. (1)

Although it recognizes the importance of confidentiality, the Commission does not believe that confidentiality should be granted to all individuals who provide information to NRC or that confidentiality should be routinely granted, particularly in light of the protection afforded all allegers. Rather the Commission believes that confidentiality should be granted only when necessary to acquire information related to the Commission's responsibilities or when

General (A) (continued)

warranted by special circumstances. Confidentiality ordinarily should not be granted, for instance, when the individual is willing to provide information without being given confidentiality. (2)

Granting Confidentiality (B)

Confidentiality may be offered to an alleger if the alleger is reluctant to provide information (see Part II(B)(3) of this handbook for more details). An alleger may be granted confidential-source status orally or by a written agreement between the NRC and the alleger (see Exhibit 1 of this handbook). If an alleger makes a request for confidentiality, obtain the following information from the alleger to determine whether or not the alleger qualifies for a grant of confidentiality: (1)

- Has the alleger provided the information to anyone else? For example, is the information already widely known, with the alleger as its source? (a)

- Does NRC already know of the information, obviating the need for a particular confidential source? (b)

- Does the alleger have a past record that would weigh either in favor of or against granting confidentiality in this instance? For example, has the alleger abused grants of confidentiality in the past? (c)

Granting Confidentiality (B) (continued)

- Is the information that the alleger is offering within the jurisdiction of NRC? For example, should the alleger be referred to another agency? (d)

- Why does the alleger desire confidential-source status? What would be the consequences to the alleger if his or her identity were revealed? (e)

- Does it appear that the alleger caused the condition or committed the violation and could likely be subject to civil or criminal prosecution? (f)

Depending on the information gathered from an alleger who has not requested confidential status, a determination should be made as to whether or not granting confidential-source status would be in the best interest of the agency. An authorized NRC employee may raise the issue of confidentiality if—(2)

- The alleger is not providing information because of fear that his or her identity will be disclosed. (a)

- The alleger wishes his or her identity to remain confidential. For example, is the interview being conducted in a secretive manner or is the alleger refusing to identify himself or herself? (b)

Note: Each alleger either not requesting or not granted confidentiality will be informed that he or she is not considered a confidential source. (3)

Granting Confidentiality (B) (continued)

Once the issue of confidentiality is raised with the alleger and he or she indicates a desire for confidential-source status, a determination as to whether or not the alleger is qualified for a grant of confidentiality must still be made. When granting confidentiality, discuss the following points with the alleger: (4)

- Explore the sensitivity of the information being provided by the alleger with a view to determining whether the information itself could reveal the source's identity. (a)

- Inform the alleger that because of the tight controls imposed on the release of his or her identity within NRC, he or she should not expect others within NRC to be aware of his or her confidential-source status. Therefore, the alleger would be responsible for bringing his or her confidential-source status to the attention of other NRC personnel if the alleger desires similar confidential-source treatment by these personnel when information is provided to them. (b)

- Inform the alleger that if inquiries are made regarding his or her status as a confidential source, NRC will neither confirm nor deny his or her status. (c)

- Review the "Confidentiality Agreement" (see Exhibit 1) with the alleger if it temporarily is not possible to provide him or her with a copy of the agreement. (d)

An NRC employee wishing to grant confidentiality must either be delegated the authority to do so or must seek authorization from the

Granting Confidentiality (B) (continued)

appropriate office or regional official. Authorization can be prearranged as circumstances warrant. Authorization might involve a planned meeting with the alleger. The Executive Director for Operations (EDO) and the Director of the Office of Investigations (OI) may designate those persons within their organizations who may grant confidential-source status or may further delegate the authority to do so. (5)

Authority to grant confidential-source status is to be documented in writing either through a standing delegation or an ad hoc authorization. In special circumstances, an oral authorization is permissible if it is confirmed in writing. The authority to grant confidentiality must be documented in a memorandum to the office allegation coordinator (OAC) or, in the case of OI, in accordance with the OI Investigative Procedures Manual. (6)

Confidentiality may be temporarily given orally in circumstances in which it is impossible or inappropriate to sign a confidentiality agreement, such as when the information is obtained over the telephone, in a location not conducive to passing papers, or (for OI only) when it is believed that to press for an agreement document would cause the source to refuse to provide information. Under most of these circumstances, the confidentiality agreement usually will be signed within approximately 2 weeks. If documentation is not or cannot be completed in that timeframe, or may never be completed because of the source's reluctance, the EDO or the cognizant OI field office director will determine whether confidentiality should continue (see Section (C) of this part). If confidentiality is granted orally, this permission must be immediately documented by the person granting

Granting Confidentiality (B) (continued)

it and noted in the memorandum to the OAC or, in the case of OI, in accordance with the OI Investigative Procedures Manual. (7)

Office directors, regional administrators, and in the case of OI, field office directors, shall be informed of each grant of confidentiality issued by their office under a delegation of authority. These senior officials also shall approve any variance from the standard confidentiality agreement and each denial of confidentiality. (8)

OACs will maintain an accurate record of the status of grants of confidentiality made by their office or region and will maintain copies of signed confidentiality agreements. OI will maintain its records in accordance with its OI Investigative Procedures Manual. (9)

In communications and contacts with individuals who have been granted confidentiality, the NRC staff shall make their best effort to ensure that communications and contacts do not result in the disclosure of the individual as a confidential source. These efforts may include the use of non-Government return addresses, plain envelopes, and rental cars as opposed to Government-owned vehicles. (10)

If at any time and for any reason confidentiality is breached or jeopardized, the appropriate regional administrator or office director should be informed and the confidential source should be advised. The director of the action office shall be responsible for reviewing the circumstances associated with the release of the identity of the confidential source and will ensure that necessary actions are taken

Granting Confidentiality (B) (continued)

to preclude repetition of the breach. This review and the actions taken must be documented in the allegation file or the OI confidential-source file. (11)

Revocation of Confidentiality (C)

A decision to revoke confidentiality can only be made by the Commission, the EDO, or the Director of OI. The Commission may revoke a grant made by any office reporting to the EDO or to the Commission. The EDO may revoke grants of confidentiality made by offices reporting to the EDO. The Director of OI may only revoke grants of confidentiality originally made by OI. (1)

Confidentiality will be revoked only in the most extreme cases. Cases for consideration include those in which a confidentiality agreement is not signed within a reasonable time following an oral grant of confidentiality or in which a confidential source personally takes some action so inconsistent with the grant of confidentiality that the action overrides the purpose of the confidentiality. Examples of the second case would be publicly disclosing information that has revealed the alleger's status as a confidential source or intentionally providing false information to the NRC. (2)

Before revoking confidentiality, the NRC will attempt to notify the confidential source and provide him or her with an opportunity to explain why confidentiality should not be revoked. All written communications with a confidential source who requires or requests a reply are to be sent "Certified Mail, Return Receipt Requested." (3)

Withdrawal of Confidentiality (D)

The NRC official granting confidentiality may withdraw confidentiality without further approval, provided that the confidential source has made such a request in writing and the NRC official has confirmed that the requesting individual is the same person who was granted confidentiality.

Official Disclosures (E)

Disclosure to the Licensee or Other Affected Organization (1)

If it is necessary because of an overriding safety issue to release the identity of a confidential source outside the NRC and the source agrees to this disclosure, consultation with the EDO will be made before disclosure. If the source cannot be reached to obtain his or her approval, or does not agree to disclosure, the staff will contact the Commission for resolution.

Other Disclosures (2)

Court Order (a)

A licensee or other entity could obtain a court order requiring the NRC to divulge the identity of a confidential source. If this happens, the NRC will seek to minimize the disclosure through protective orders or otherwise.

Official Disclosures (E) (continued)

Other Disclosures (2) (continued)

NRC Adjudicatory Bodies (b)

The Commission, as the ultimate adjudicatory authority within the NRC, can require the NRC staff to reveal a confidential source. In a separate policy statement on "Investigations, Inspections, and Adjudicatory Proceedings" (49 FR 36032; September 13, 1984), the Commission has provided that any decision by the Atomic Safety and Licensing Board Panel to order disclosure of the identity of a confidential source must be automatically submitted to the Commission for review. (i)

In making such a decision, the Commission will consider whether the information provided by the confidential source is reasonably available through alternative means, whether the information relates directly to the substantive allegations at issue in the proceedings, what the present employment position of the confidential source is, whether a party's right to present rebuttal evidence or to conduct the cross-examination will be violated if he or she is not provided the names, and whether disclosure is necessary to complete the record. (ii)

The Commission notes that the NRC may not have the option of dismissing a case to avoid disclosing a confidential source, for example, when the identity of the source is material and relevant to a substantial safety issue or a licensing proceeding. (iii)

Official Disclosures (E) (continued)

Other Disclosures (2) (continued)

Congress (c)

Disclosure to Congress may be required in response to a written congressional request. The Commission will make its best effort to have any such disclosure limited to the extent possible. This effort might include ensuring the request is made by Congress in its official oversight capacity, hand-delivering requested information directly to the affected member of Congress, and attempting to satisfy the request by not revealing the identity of the confidential source. Congress should be informed that the information provided involves a confidential source and should be protected from any disclosure that might serve to identify the confidential source (see Exhibit 2).

Federal and State Agencies (d)

If another agency demonstrates that it requires the identity of a confidential source or information that would reveal such a source's identity in furtherance of its statutory responsibilities and that the agency agrees to provide the same protection to the source's identity that the NRC promised when it granted confidentiality, the action office OAC or OI will make a best effort to contact the source to determine if he or she objects to the release. If the source is reached and does not object, the EDO or his or her designee, or the Director of OI or his or her designee, is authorized to provide the information or the identity to the other agency. However, if the source cannot be reached or objects to the release of his or her identity, the source's

Official Disclosures (E) (continued)

Other Disclosures (2) (continued)

Federal and State Agencies (d) (continued)

identity may not be released without the Commission's approval except as noted in item (d)(ii) below. The affected agency may then request that the Commission release the source's identity. Ordinarily, the source's identity will not be provided to another agency over the source's objection. In extraordinary circumstances in which furtherance of the public interest requires a release of the source's identity, the Commission may release the identity of a confidential source to another agency over the objections of the source. In these cases, however, the other agency must agree to provide the same protection to the source's identity that was promised by the NRC. (i)

As an exception to item (d)(i), when OI and the Department of Justice (DOJ) are pursuing the same matter or when OI is working with another law enforcement agency, the EDO or the Director of OI may reveal the identity of a confidential source to DOJ or the other law enforcement agency, as needed, without notifying the individual or consulting with the Commission. (ii)

Part III
Guidance for Initiating, Prioritizing, and Terminating Investigations by the Office of Investigations (OI)

This part provides guidance to staff on advising OI of matters of wrongdoing, submitting pertinent information to OI regarding the priority of investigations, and resolving differences between program and regional offices regarding investigations, initiation or termination of investigations and resolution of matters not investigated.

Staff Requirement To Advise OI of Matters of Potential Wrongdoing (A)

All matters that involve wrongdoing must be reviewed with OI. The staff will assist OI in wrongdoing allegations at an early stage to simplify the overall investigative process. Wrongdoing consists of either an intentional violation of regulatory requirements or a violation resulting from careless disregard of or reckless indifference to regulatory requirements, or both. (1)

Offices and regions are required to promptly notify OI when the staff is aware of an allegation that could involve wrongdoing on the part of licensees or other affected organizations or their contractors. In addition, an OI representative must be invited to any Allegation Review Board (ARB) meeting that is scheduled to discuss allegations potentially involving wrongdoing. All NRC employees should be alert

Staff Requirement To Advise OI of Matters of Potential Wrongdoing (A) (continued)

for these allegations. Oral notifications to OI are acceptable. Generally, these allegations should be addressed through the management chain; however, NRC's open door policy provides that NRC employees may contact OI directly when circumstances so dictate (see Management Directive 10.160, "Open Door Policy"). (2)

OI should be notified of suspected wrongdoing matters when they arise. This notification may be as elementary as a telephone call to the OI field office or a brief transmittal memorandum to OI with copies of telephone conversation records or allegation receipt documentation attached. (3)

While OI is initially investigating the wrongdoing allegation(s), the allegation review and tracking process will continue in parallel with OI's activities to ensure that any technical safety-related issues are addressed promptly. (4)

OI investigators will be interviewing the alleger and/or cognizant NRC staff to determine answers to questions regarding the details of the wrongdoing allegation. OI and staff will discuss the allegation at the ARB meeting, usually within 30 calendar days of receipt of the allegation. At the first or second ARB meeting, OI should have developed sufficient information regarding the suspected wrongdoing to notify the staff at the ARB meeting whether or not OI will pursue an investigation. (5)

Submittal of Information to OI (B)

ARBs normally should be used to coordinate matters with OI on wrongdoing issues. An OI representative should be in attendance at appropriate ARB meetings. (1)

For allegations of discrimination under Section 211 of the Energy Reorganization Act, when the alleger has established a *prima facie* case, OI will be conducting a preliminary investigation to determine the circumstances of the case and to better enable NRC to judge the need for continued involvement, independent of the Department of Labor (DOL). Additional meetings with OI may be required within 30 calendar days of the staff's determination that the alleger did or did not file a complaint with the DOL, and within 30 calendar days of the staff's notification of the completion of a decision by DOL or the DOL process. (2)

Notwithstanding the above information, the Directors of the Offices of Nuclear Reactor Regulation (NRR), Nuclear Material Safety and Safeguards (NMSS), and Enforcement (OE) and the regional administrators retain the ability to request OI to conduct a full investigation. A priority of high, normal, or low will be assigned to the investigation, using the guidance set forth below. OI investigations arising from an allegation should be coordinated with the Office Allegation Coordinator (OAC). The Office of the General Counsel (OGC) or the regional counsel, as appropriate, also should be consulted to review the regulatory basis (NRC regulatory requirement) for an investigation to be conducted by OI. (3)

Individuals responsible for resolving allegations should come to ARB meetings prepared to discuss the investigative priority of the

Submittal of Information to OI (B) (continued)

allegation and the rationale for the priority of the issue, assuming that the allegation is true. (4)

Examples are provided to assist in applying the priority guidance. Judgment must still be exercised in each case to ensure that the appropriate priority is established. The prioritization of a concern may be adjusted as appropriate by the regional administrator or office director at periodic prioritization meetings held with OI. The Director of OE should be consulted, as appropriate, in applying the priority guidance with respect to questions on potential severity levels and enforcement actions. (5)

High Priority (a)

The high-priority matter, if it is proven, is of very significant regulatory concern. The potential consequences for safety, given the position of the person(s) involved, any apparent lack of integrity of that person, and the safety significance of the underlying matter, if the violation should be found willful, are high and likely would result in prompt regulatory action by NRC. The person(s) involved in the willful violation very likely would be removed from licensed activities for a substantial period. Normally, it would be expected that the violation, without considering the issue of intent, would not likely be categorized at less than a Severity Level III or, if it would be categorized at less than a Level III, would involve management at mid-level or above (this means if willfulness is proven, it likely will be at least a Severity Level II violation). (i)

Submittal of Information to OI (B) (continued)

High Priority (a) (continued)

Examples of a high-priority investigation include the following: (ii)

- A licensee or contractor manager (second-line supervisor or above), reactor operator, or radiation safety officer directing, performing, or condoning (meaning the individual is aware of the apparent willfulness of the violation and does not act to report or stop it) any deliberate violation, including providing false information to the NRC or creating false licensee records, that may raise an integrity issue calling into question NRC's reasonable assurance. (*a*)

- Any individual directing, performing, or condoning a deliberate violation in which, without consideration of intent, the underlying violation is at least of significant regulatory concern and would be categorized at a Severity Level I, II, or III. (*b*)

- Any individual knowingly providing incomplete and inaccurate information to NRC or a licensee with the purpose of influencing a significant regulatory decision, such as a favorable restart decision, operability decision, issuance of a license amendment, not proceeding with an escalated enforcement action, or issuance of a notice of enforcement discretion. (*c*)

- Any individual deliberately covering up a matter so that a required report was not made to NRC in which it would have been likely for NRC to have promptly (within several days) sent inspectors or

Submittal of Information to OI (B) (continued)

High Priority (a) (continued)

issued a bulletin to follow up on the matter if NRC had known of the information, or in which the coverup was to prevent identification of a significant matter during an NRC inspection. (*d*)

- Any individual willfully providing inaccurate or incomplete information to NRC, to a licensee, or creating false records that in fact cause a wrong decision to be made by either NRC or a licensee (i.e., if accurate or complete information had been provided, a substantively different decision would have been made with regulatory or safety significance; the inaccurate information in fact had an influence). (*e*)

- Any individual tampering with vital equipment at a power reactor that indicates a potential act of sabotage. (*f*)

- Any individual suspected of a deliberate violation, which would otherwise be categorized as a normal priority were it not for the need for an immediate investigation because there are indications that evidence may be lost or tampered with. (*g*)

- Other matters to which, because of the potential regulatory significance, a regional administrator or an office director with the concurrence of a Deputy Executive Director for Operations (EDO) assigns a high priority. (*h*)

- A discrimination issue similar to one of the following: (*i*)

Submittal of Information to OI (B) (continued)

High Priority (a) (continued)

- Allegations of discrimination as a result of providing information regarding nuclear safety or regulatory issues directly to the NRC (*i*)

- Allegations of discrimination caused by a licensee or a contractor, or a mid-level manager or above (consistent with the current enforcement policy classification of Severity Level I or II violations) (*ii*)

- Allegations of discrimination resulting from raising concerns of degraded or nonconforming conditions that if true would impact the operability of a safety-related structure, system, or component, or safeguards equipment (*iii*)

- Allegations of discrimination that appear particularly blatant or egregious (*iv*)

Normal Priority (b)

The normal-priority matter, if it is proven, is of significant regulatory concern; the person causing the willful violation may be removed from licensed activities; and the potential consequence for safety is of concern. Normally it would be expected that the violation, without considering the issue of intent, would not likely result in a Severity Level I, II, or III violation except a Severity Level III violation excluded

Submittal of Information to OI (B) (continued)

Normal Priority (b) (continued)

in item (a)(ii)(*b*) above or a matter covered under item (b)(ii) below (this means if willfulness is proven, it will likely be at least a Severity Level III violation). (i)

Examples of a normal-priority investigation are those that do not meet the standards for a high-priority investigation, such as—(ii)

- Any individual directing, performing, or condoning (meaning the individual is aware of the apparent willfulness of the violation and does not act to report or stop it) a deliberate violation in which without consideration of intent, the underlying violation would be categorized at a Severity Level IV. (*a*)

- Cases involving discrimination not amounting to a high priority. (*b*)

- Any individual providing information, knowing it is incomplete and inaccurate, directly or indirectly to NRC or in records (if it is a relatively isolated matter or not a significant record, see Section (B)(5)(c)(ii)(*b*) of this part) maintained by a licensee or deliberately covering up a matter not required to be reported to prevent identification during an NRC inspection. (*c*)

- Licensee officials directing, performing, or condoning violations in careless disregard of regulatory requirements in which the underlying violation, without consideration of intent, would be categorized at a Severity Level I, II, or III. (*d*)

Submittal of Information to OI (B) (continued)

Normal Priority (b) (continued)

- Willful failure to submit a required report to NRC in a matter not considered a high priority (see Section (B)(5)(a)(ii)(*e*) of this part). (*e*)

- Relatively isolated deliberate failure to file a Form 241, "Report of Proposed Activities in Non-Agreement States," notwithstanding the examples given under Section (B)(5)(a) of this part. (*f*)

Low Priority (c)

The low-priority matter, if it is proven, is of concern but does not rise to the significance of a high or normal priority. The person causing the willful violation would not likely be removed from licensed activities. (i)

Examples of a low-priority investigation include the following: (ii)

- The situation in which, without consideration, the underlying violation would be characterized as a minor violation. (*a*)

- Relatively isolated falsification of a record or falsification of records that are not significant. (*b*)

- Violations caused by careless disregard not covered in higher priorities. (*c*)

Submittal of Information to OI (B) (continued)

Low Priority (c) (continued)

- Licensee- or contractor-identified willful violations of limited safety significance committed by individuals holding relatively low-level positions. (*d*)

If the requestor of the investigation determines that the need for, or priority of, an investigation has changed after a matter has been accepted by OI for investigation, that information will be provided to the cognizant OI field office or to the Director of OI. (6)

Resolution of Differences (C)

Following OI's notification to the cognizant office or region of its decision regarding investigation, the regional administrator or the office director shall promptly notify the director of the appropriate program office and OE about any concerns involving the schedule assigned to the matter or about OI's decision not to investigate the matter further. (1)

NRR, NMSS, and OE are responsible to the EDO for ensuring that necessary investigations are conducted within their areas of responsibility. If the particular program office believes that a priority for a matter should be different than that requested by the region, the office should contact the region immediately to resolve the matter. (2)

If an issue concerning the appropriate priority for an investigation is unresolved, (a) the Director of NRR or NMSS will review the priority issue if a licensing-related matter is under investigation and (b) the

Resolution of Differences (C) (continued)

Director of OE will review the priority issue if an enforcement-related matter is under investigation. If priority issues remain unresolved after office director reviews, the appropriate Deputy EDO will be consulted for resolution. (3)

If a difference cannot be resolved at that level, the matter will be brought promptly to the attention of the Deputy Executive Director for Reactor Programs (DEDR). The DEDR shall attempt to resolve any remaining differences over the need, priority, and schedules for investigations with the Director of OI and the director of the responsible program office. If unsuccessful in resolving the differences, the DEDR shall refer the matter to the EDO for resolution. (4)

The DEDR oversees this entire process and provides an annual report to the EDO on its effectiveness. (5)

Initiation of an Investigation by OI (D)

An investigation is an activity conducted by OI to develop testimonial, documentary, and physical evidence to assist technical staff, OE, or the Department of Justice in resolving wrongdoing allegations. When an OI investigation is opened, it commences with certain preliminary investigative steps by OI to evaluate the nature and substance of a wrongdoing allegation. If the preliminary investigation indicates that the allegation, if true, was more likely to have been a result of wrongdoing than not and the priority assigned to it by staff warrants it, OI will proceed with further investigation to follow appropriate investigative leads to their conclusion. Investigative efforts will be

Initiation of an Investigation by OI (D) (continued)

documented in an OI report of investigation with copies provided to the program office, OGC, OE, and appropriate regional offices. (1)

When initially notified of suspected wrongdoing, OI will generally contact the alleger and consult with the cognizant NRC offices, as necessary. OI may proceed with further investigation if the following determinations are made: (2)

- A regional administrator or office director believes that the alleged wrongdoing has had or could have an impact on public health, safety, and security, provided that these matters are within NRC's jurisdiction. (a)

- The Director of OI determines that a reasonable basis exists to believe that the matter involves wrongdoing and a full investigation is necessary to determine possible regulatory action. (b)

- The Director of OI determines that sufficient information is available to support the allegation and to warrant initiation of a full investigation. (c)

Alternatively, a case may be closed by a report of investigation without further investigation. Circumstances warranting early closure would include the following: (3)

- Preliminary investigative findings and coordination with the staff indicate that, if the circumstances surrounding the allegation were true, there would be no violation of a regulatory requirement. (a)

Initiation of an Investigation by OI (D) (continued)

- Although preliminary investigative findings indicate sufficient evidence of wrongdoing to warrant further investigation, the priority of this matter is low or normal and higher priority cases take precedence. (b)

OI will seek the Commission's guidance before initiating a full investigation relating to the character or integrity of an individual when the character or suitability aspects of the matter being considered for investigation are unrelated to a violation of NRC regulatory requirements. (4)

Following preliminary investigative efforts, OI will notify the cognizant office or region of its decision of whether or not to proceed with further investigation within 90 calendar days to include the estimated schedule for completion. If a matter is to be closed without further investigation, OI will so notify the office or region, indicate the basis for its decision, and follow up with a report of investigation. (5)

Termination of Investigations (E)

The decision by OI to terminate an investigation will be made after a case-by-case assessment by the cognizant OI field office director. (1)

As indicated earlier, if the cognizant office determines that the need for or the priority of an investigation has changed, the office will notify the Director of OI. (2)

Termination of Investigations (E) (continued)

For low- and normal-priority cases, OI may close a case if its projection of resource allocations indicates that the investigation could not be initiated within a reasonable time, generally 6 months. (3)

Resolution of Matters Returned by OI Without Investigation (F)

Those matters that OI returns to the staff without having completed a full investigation for the reasons stated earlier in Sections (D)(3) or (E)(3) of this part will be handled by the staff as part of its usual process to resolve inspection findings. This process may include additional inspections; written requests for information from the licensee; meetings between the staff and the licensee; proceeding with enforcement action, on the basis of the original or supplemented inspection findings; or other actions, as appropriate. If the matter warrants a higher priority after supplemental information is developed or the original findings are reassessed, the matter may be discussed with OI again under the procedures specified in this handbook. (1)

Items returned without a full investigation by OI may be closed by the staff when the appropriate regional administrator or the office director determines that the technical issues involved do not warrant the expenditure of additional agency resources, assuming enforcement is not warranted. These determinations should be documented by a memorandum to the file. This memorandum to the file should become part of the permanent record on this issue. If the issue was being handled as an allegation, this memorandum should be made part of the allegation file. (2)

Glossary

Action office. The NRC program office or region that is responsible for reviewing and taking action, as appropriate, to resolve an allegation. For the purposes of this directive, the Office of Investigations and the Office of the Inspector General are not considered action offices.

Agency Allegation Advisor (AAA). A designated staff member in NRC headquarters who develops and oversees the agencywide implementation of the NRC Allegation Management Program, manages the allegation management system, and conducts periodic program reviews of each action office's allegation program, as set forth in Management Directive 8.8 and related documents.

Allegation. A declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. This term includes all concerns identified by sources such as individuals or organizations, and technical audit efforts from Federal, State, or local government offices regarding activities at a licensee's site. Excluded from this definition are inadequacies provided to NRC staff by licensee employees acting in their official capacity,[1] matters being handled by more formal

[1]This exclusion is intended to clarify that inadequacies discussed during official routine conversations between licensee employees and NRC staff members are not intended to be treated as allegations. However, if the information provided by the licensee employee concerns a wrongdoing issue or the employee expresses dissatisfaction with the licensee's handling of the issue, another licensee, or a vendor, the information should be treated as an allegation.

Glossary (continued)

processes such as 10 CFR 2.206 petitions, misconduct by NRC employees or NRC contractors; nonradiological occupational health and safety issues; matters reported to the NRC by Agreement States resulting from Agreement State inspections or licensing activities that are forwarded to NRC as a matter of conducting official business, and matters involving law enforcement and other Government agencies.

Allegation file. An allegation file is established for documentation concerning the allegation, including correspondence, memoranda to the file, interviews, and summaries of telephone conversations, discussions, and meetings, inspection reports, and synopsis of investigations by the Office of Investigations (OI) (all other OI investigative documentation will be retained in the OI case files). This file must be maintained by the Office Allegation Coordinator in the official files of the action office in an officially designated location. All documentation must be maintained in this file and clearly marked with the allegation number. Only the allegation number may be placed on the outside of the file; neither the alleger's name nor any other personal identifier may be placed on the outside of the file. Records pertinent to referrals to the Office of the Inspector General should not be kept in the allegation file but should be forwarded to the applicable office director or regional administrator.

Allegation Management System (AMS). A computerized information system that contains a summary of significant data pertinent to each allegation.

Glossary (continued)

Allegation Review Board (ARB). A board established by office directors and regional administrators and consisting of a chairman, an Office Allegation Coordinator, and one or more other individuals within the office or region to determine the safety significance and appropriate NRC followup for each allegation. The ARB permits expeditious resolution of allegations. Staff from the Office of Investigations, the Office of Enforcement, or regional enforcement personnel, and the Office of the General Counsel or regional counsel participate, as necessary.

Alleger. An individual or organization who makes an allegation. The individual or organization may be a concerned private citizen, a public interest group, the news media, a licensee, a current or former employee of a licensee, a vendor, or a contractor, or a representative of a local, State, or Federal agency.

Chilling effect. Activities that discourage employees from raising concerns to the NRC or their employer.

Confidentiality. A term that refers to the protection of data that directly or otherwise could identify an individual by name and/or the fact that a confidential source provided such information to the NRC.

Confidential source. An individual who requests and is granted confidentiality in accordance with this handbook and who usually signs a "Confidentiality Agreement" (see Exhibit 1).

Discrimination. Occurs when a licensee, a vendor, an applicant for a license, a certificate holder, or a contractor or a subcontractor of a

Glossary (continued)

licensee or certificate holder takes an adverse action, including a decision not to take a favorable action, against an employee for engaging in protected activities.

Inspection. For purposes of this directive, a special activity usually conducted by the staff of program offices and regions and used to evaluate and resolve an allegation.

Investigation. An activity conducted by the Office of Investigations to gather and evaluate testimonial, documentary, and physical evidence to assist the staff, the Office of Enforcement, or the Department of Justice in resolving wrongdoing allegations.

Office Allegation Coordinator (OAC). A designated staff member in an office or a region who serves as the point of contact for that office or region regarding the processing of allegations.

Overriding safety issue. Immediate threat to public health, safety, or security, warranting immediate action by the licensee to evaluate and address the issue.

***Prima facie* case of discrimination**. A situation in which circumstances as reported are such that at least a reasonable inference may be drawn that an employer took an adverse action against an employee for having engaged in protected activity. Such an inference may be drawn, for example, when the adverse action occurs in close proximity to the protected activity. In such circumstances, further investigation and/or development of evidence

Glossary (continued)

will be needed in order to establish that discrimination actually did, indeed, occur.

Protected activities. Activities protected within the meaning of Section 211of the Energy Reorganization Act and the Commission's regulations, for example, 10 CFR 50.7. Employees of licensees and contractors are engaged in protected activities when they are raising potential safety concerns to their management, as well as when they raise these concerns to the NRC.

Receiving office. The office or region that initially receives an allegation. In some cases, the action office and the receiving office will be the same if the allegation falls within the functional responsibility of the receiving office.

Redact. The process of ensuring that any NRC document developed as a result of an allegation does not reveal the identity of the alleger or contain classified, safeguards, or proprietary information.

Regional State Agreement Officer (RSAO). A designated staff member in a region who serves as the point of contact for the region and the Office of State and Tribal Programs regarding Agreement State radiation control programs and who conducts technical reviews of Agreement State radiation control programs.

Secure files. Files that are locked when not in use and for which access is controlled on a need-to-know basis.

Glossary (continued)

Staff. NRC technical, investigative, and other administrative members.

Widely known alleger. An alleger who has notified the media, held a press conference, or identified himself or herself at a public meeting as the individual who raised specific issues. If the alleger has been identified in a news article as the individual who raised specific issues or if his or her name appears on the Department of Labor Web page as a complainant, he or she would be considered to be a widely known alleger with regard to the issues discussed.

Wrongdoing. Wrongdoing consists of either (a) an intentional violation of regulatory requirements or (b) a violation resulting from careless disregard of or reckless indifference to regulatory requirements, or both (see Part III of this handbook).

Exhibit 1
Confidentiality Agreement

I have information that I wish to provide in confidence to the U.S. Nuclear Regulatory Commission. I request an express pledge of confidentiality as a condition for providing this information to NRC.

It is my understanding that consistent with its legal obligations, NRC, by agreeing to this confidentiality, will adhere to the conditions stated herein.

During the course of an inquiry or investigation, NRC will make its best effort to avoid actions that would clearly be expected to result in disclosure of my identity.

My identity will be divulged outside NRC only in the following narrow situations:

(1) When disclosure is necessary because of an overriding safety issue and I agree to this disclosure. If I cannot be reached to obtain my approval or do not agree to disclosure, NRC staff will contact the Commission for resolution.

(2) When a court orders such disclosure.

(3) When required in NRC adjudicatory proceedings by order of the Commission itself.

(4) In response to a written congressional request. While such a request will be handled on a case-by-case basis, the request must be in writing and the NRC will make its best efforts to limit the disclosure to the extent possible.

Exhibit 1 (continued)

(5) When requested by a Federal or State agency in furtherance of its statutory responsibilities and the agency agrees to abide by the terms of this confidentiality agreement, and I agree to the release. If I do not agree to the release, my identity may be provided to another agency only in an extraordinary case where the Commission itself finds that furtherance of the public interest requires such release.

(6) When the Office of Investigations (OI) and the Department of Justice (DOJ) are pursuing an investigation or when OI is working with another law enforcement agency, my identity may be disclosed to DOJ or the other law enforcement agency without my knowledge or consent.

(7) When a hearing is being held to discuss an NRC enforcement matter.

My identity will be withheld from NRC staff, except on a need-to-know basis. Consequently, I acknowledge that if I have further contacts with NRC personnel, I cannot expect that those people will be cognizant of this confidentiality agreement, and it will be my responsibility to bring that point to their attention if I desire similar treatment for the information provided to them.

I also understand that the NRC will revoke my grant of confidentiality if I take,. or have taken, any action so inconsistent with the grant of confidentiality that the action overrides the purpose behind the confidentiality, such as (1) disclosing publicly information that reveals my status as a confidential source or (2) intentionally providing false information to NRC. NRC will attempt to notify me of its intent to revoke confidentiality and provide me an opportunity to explain why this action should not be taken.

Exhibit 1 (continued)

Other Conditions: (if any)

I have read and fully understand the contents of this agreement. I agree with its provisions.

_____	_____
Date	_____
	_____
	Name and Address

Agreed to on behalf of the U.S. Nuclear Regulatory Commission.

_____	_____
Date	Signature
	_____
	Name and Title

Exhibit 2
Congressional Responses

The NRC frequently is asked to provide information and responses to congressional offices regarding allegations that may involve a constituent of a Member of Congress. The NRC is always responsive to this type of request, but it is also important that the Member of Congress be made aware of the fact that the information being provided is sensitive material related to an allegation and needs to be protected.

The following language should be used as a closing paragraph in all responses to Members of Congress when the subject of their request concerns information related to an allegation: "Please also note that this information comes from our Allegation Management System and identifies an alleger. The NRC policy requires us to maintain the alleger's identity in confidence. We request your help in preserving the confidentiality of this information."

Exhibit 3
Questions for Allegers Who Allege Discrimination

The following questions are intended to provide sufficient information for the Allegation Review Board (ARB) and the Office of Investigations to determine if an investigation is warranted. If the answers to these questions are not included in the original documentation of a discrimination allegation, an allegation coordinator will attempt to call the alleger before an ARB review to obtain the information.

1. What action was taken against you? (For example, fired, laid off, demoted, or transferred)

    - When was the action taken?

2. Our regulations protect people from discrimination for raising nuclear safety issues.

    - What issues did your raise?

    - When?

    - If you informed the NRC, was your management aware that you informed the NRC?

3. Did you inform anyone from your management or the NRC of your concern?

4. Why do you believe the action taken against you was as a result of your raising these safety issues?

Exhibit 4
Acknowledgment Letter

Alleger's Name
and Address

SUBJECT: ALLEGATION NO. XXXX-200X-A-XXXX

Dear Mr./Mrs./Ms. ____:

This letter refers to your (letter, telephone conversation, meeting, interview, etc.) with _____ on/dated _____ in which you expressed concerns related to (name of facility). You were concerned about (brief general description such as security, maintenance, operator qualifications, etc.).

Enclosure 1 to this letter documents your concern(s) as we understand (it/them). We have initiated actions to examine the facts and circumstances on the basis of our understanding your concern(s). If the description of your concern(s) in the enclosure is not accurate, please contact me so that I can ensure that we correctly understand your concern(s) before we continue our review.

For Referrals to Licensees

In addition, per your conversation with (NRC employee's name), we understand that you do not object to having your concern(s) referred to the licensee. Your concern(s) is/are being referred to the licensee, however your identity and position are not being provided. We will review and evaluate the licensee's activities and response and inform you of the final disposition of this/these matters.

Exhibit 4 (continued)

Alternate Language

In addition, we intend to refer your concern(s) to the licensee with your identity and position withheld. We will review and evaluate the licensee's activities and response, and inform you of the final disposition. If you have any objection to this approach, you must contact our office within 30 days of receipt of this letter so that we can discuss this matter further.

Certified Mail

Return Receipt Requested (Note: This statement should appear on the first page and the official record copy.)

Referrals to Agreement States

We are referring your concern(s) to the State of _____ because NRC does not have jurisdiction in the State over the activity(ies) that are discussed in your concern(s). We will request that the State respond to NRC because you have requested that your name and address not be provided to the State. Upon receipt of the State's response, we will send you a copy.

Referrals to Agreement States (Alternate Language)

We are referring your concern(s) to the State of _____ because NRC does not have jurisdiction in the State over the activity(ies) that are discussed in your concern(s). Regarding the knowledge of your willingness to contact the State directly, we will provide you with a name of a contact person for the State organization assigned your concern(s) in a subsequent letter. Please note that the State may not be able to protect your identity to the same extent NRC can.

Exhibit 4 (continued)

Referrals to Agreement States (Alternate Language)

We are referring your concern(s) of the State of _____ because NRC does not have jurisdiction in the State over the activity(ies) that are discussed in your concern(s). We would also like to provide your name and address to the State so that the State can contact you directly. However, please note that the State may not be able to protect your identity to the same extent NRC can. If you have any objection to our providing your name and address to the State, you must contact our office within 14 days of receipt of this letter so that we can discuss this matter further.

Referrals to Other Agencies

We have determined that the matter of your concern does not fall under NRC jurisdiction. The agency with jurisdiction is _____, and we have referred your concern to that agency. For any further information on this matter, you should contact that agency at (address). (If appropriate – – Once we complete our review, we will inform you of the results.)

For Letters With Technical Concerns Within NRC Jurisdiction

An evaluation of your technical concern(s) will normally be conducted within 6 months, although complex issues may take longer. You will be informed of the results of our review. In resolving your concern(s), NRC intends to take all reasonable efforts not to disclose your identity (as discussed in the enclosed brochure, if appropriate).

For Letters Involving Discrimination

One of your concerns involves employment discrimination for raising safety concerns. Please be aware that the NRC does not investigate all allegations of discrimination and

Exhibit 4 (continued)

will determine whether an investigation is warranted in your case. An evaluation without identifying you would be extremely difficult. Therefore, if the NRC does investigate, please be aware that in evaluating your claim of discrimination, your name will be disclosed. Furthermore, NRC's evaluation of your claim of employment discrimination may take up to 18 months to complete.

For Letters to Allegers Without Confidentiality

Finally, you are not considered a confidential source unless an explicit request of confidentiality has been formally granted in writing.

Use This Paragraph in Place of the Previous Underlined Sentence If the NRC Does Have a Signed Confidentiality Agreement With the Alleger:

I assure you we will honor the Confidentiality Agreement you signed. However, I would like to point out that licensees can and sometimes do surmise the identity of individuals who provide information to us because of the nature of the information or other factors beyond our control. In such cases, our policy is to neither confirm nor deny the licensee's assumption.

For Allegations Regarding Improper Actions by the Staff

With respect to your concern(s) regarding alleged improper actions by the NRC staff, these matters have been referred to the NRC's Office of the Inspector General (OIG). If you have any questions or other comments on these matters, please contact the OIG directly, toll-free, at 1-800-233-3497.

Exhibit 4 (continued)

Use If Additional Information Is Needed From the Alleger

In reviewing your concern(s), we have determined that we need additional information from you before we can proceed with our inquiry regarding the concerns. (If accurate, use – – We have attempted to contact you by telephone without success and) I would appreciate your calling me toll-free at _____ as soon as possible so that we can discuss this matter further.

Use If Additional Information Was Promised But Not Received

We understood per your telephone conversation with (NRC employee) on (date) that you would provide additional information, if necessary. I would appreciate your contacting me toll-free at (telephone number) at your earliest convenience so that we may proceed with our inquiry regarding this matter. If I am not available at the time of your call, please ask for (NRC employee) or leave a message so that I can return your call.

For Generic Concerns

The staff has determined that the concern(s) you raised may affect a number of facilities and is considered generic. Because the resolution of your concern(s) will require a review of multiple facilities and may require a review of, or changes to, NRC policy, the time necessary to resolve your concern(s) may be extended. However, please be assured that the NRC will take appropriate and necessary action to maintain public health and safety.

Exhibit 4 (continued)

All Letters to First-Time Allegers

The NRC brochure "Reporting Safety Concerns to the NRC" contains information that you may find helpful in understanding our process for review of safety concerns. It includes an important discussion (on pages 5-7) of our identity protection procedures and limitations. **Please read that section**. Please also note that in light of the changes in the NRC inspection program for reactors, the licensee may conclude that our inspection followup of your concern is related to an allegation. If you have raised this issue internally, there is also the possibility that the licensee may be able to determine who raised the issue. The NRC will take all reasonable efforts not to disclose your identity during an inspection followup of your concern. Please be aware that if you have been identified as having brought the concern to the NRC under any of the six circumstances described on page 6 of the Identity Protection Limitations section of the enclosed NRC brochure, we will not be able to protect your identity.

The brochure also includes a discussion of the right of an individual to file a complaint with the U.S. Department of Labor (DOL) if the individual believes she or he has been discriminated against for raising safety concerns and the individual desires a personal remedy.

(This paragraph to be used only for allegers who claim discrimination.)
The NRC is responsible for enforcement actions against utilities, vendors, or individuals who discriminate against individuals who raise safety concerns. The DOL review is a public process. DOL is responsible for providing personal remedies, such as reinstatement, back pay, and so forth. **The NRC cannot provide you with personal remedies. This type of remedy can only come from DOL**. For DOL to accept a complaint, it must be in writing and it must be submitted to DOL within 180 days of the

Exhibit 4 (continued)

date of the discriminatory act **or** the date you received any written notice of an adverse personnel action (e.g., layoff or suspension), **whichever occurs first**. (Please see pages 8-10 of the brochure.) Should you decide to file, the office for processing your DOL complaint is as follows:

(Each region or headquarters office will insert the appropriate address.)

If you file a complaint with DOL, please send a copy to us also.

Alternate Language for Repeat Allegers

In my earlier letter to you dated xxx, pertaining to your allegation(s) regarding (subject), I provided you an NRC brochure entitled, "Reporting Safety Concerns to the NRC." It includes information on the allegation process, identity protection, and the processing of claims for discrimination against workers handled by the DOL. Should you need another copy, please contact me.

All Letters

Thank you for notifying us of your concern(s). We will advise you when we have completed our review of this matter. Should you have any questions or comments during the interim regarding this matter, please call me toll-free at (regional number) during the office hours from (regional hours) or leave me a message on voice mail when calling the 1-800 number. Should you want to respond in writing, our mailing address is (regional address). (This last section is optional — to be used as necessary by the Office Allegation Coordinator.) You can also communicate with me by e-mail. However, when doing so, please call me in advance or provide your phone number in the e-mail message so that I can confirm that you are the source of the matter. Also, please be advised that we cannot protect the information during transmission on the

Exhibit 4 (continued)

Internet and there is the possibility that someone could read your response while it is in transit. My e-mail address is aji@nrc.gov.

Sincerely,

Enclosure(s): As stated

Exhibit 4 (continued)

Format for the Attachment Page

Allegation Number

Concern 1.

Describe the alleger's concern.

Concern 2.

Describe the alleger's concern.

Exhibit 5
Closeout Letter to the Alleger

Alleger's Name
and Address

SUBJECT: ALLEGATION NO. XXXX-200X-A-XXXX

Dear (Alleger's Name):

General Letter

This letter is in reference to my letter of (date), which indicated that we would initiate action to review your concern(s) related to (issue(s)). The NRC has completed its followup in response to the concern(s) you brought to our attention on _____. The attachment to this letter lists your concern(s) and describes how the NRC resolved the concern(s) you raised.

Substitute the Following Paragraph for Cases in Which the Alleger Has Failed To Provide Additional Information, as Needed or Requested

This letter refers to our letter to you dated _____, in which we requested that you contact us to provide additional information regarding your concern(s) related to _____ at (site/facility). (If additional telephone or personal contact was conducted, refer to it here.)

Since you have not contacted us to provide the additional information we requested, the NRC plans no further action regarding this matter. (Optional sentence — We have,

Exhibit 5 (continued)

however, alerted our inspectors to your general concerns so that they can pay particular attention to those areas during their routine inspections.)

For use with minor violations that are not being documented in inspection reports. The safety significance of the violation of [briefly discuss identified violation] was evaluated by the NRC and found to be minor. The licensee has been informed of this matter and has [discuss corrective actions: e.g., corrective action plan items initiated, corrective actions already taken, etc.]. Minor violations represent items of low safety significance and are not subject to formal enforcement action or documentation by the NRC. Therefore, this minor violation will not be documented in an inspection report, and no further regulatory action is planned.

Use If NRC Action Is Complete and Involved 10 CFR 2.790 Information, in Whole or in Part, and Include on Attachment Page

(However,) Y/your (other) concern(s) dealt with (physical security matters, proprietary information, personal privacy matters about another individual, medical records, etc.) and the details are exempt from disclosure to either you or the public, so we are unable to provide you with a copy of our report. (Make a statement as to whether or not the concern was substantiated, unsubstantiated, or partially substantiated without providing specific details of the findings.)

Certified Mail

Return Receipt Requested (**Note**: This statement should appear on the first page and the official record copy.)

Use for All OI Cases in Which OI Returns a Potential Wrongdoing Issue to the Staff for Lack of Resources or Low Priority, Including Employee Discrimination

Exhibit 5 (continued)

On the basis of our review of your concern(s) of (describe wrongdoing concern(s)) and other cases needing investigation by the NRC, the NRC will not be expending further investigatory efforts on the wrongdoing aspects of your concern(s). This is not a finding that your wrongdoing concern(s) (does/do) not have merit, rather it is a recognition that the NRC must focus its limited investigatory resources on cases of higher priority. (Explain what was done with the technical aspect of the wrongdoing concern (e.g., "The staff reviewed the impact on safety of the falsified record and determined..., etc.). (For discrimination cases only). Accordingly, absent a finding of discrimination by DOL, or any additional substantial information and/or evidence from you that would support your discrimination concern(s), the staff plans no further followup on the concerns you have provided to the NRC.

Ending for All Letters

Thank you for informing us of your concerns. We believe that our actions in this matter have been responsive to those concerns. We take our safety responsibilities to the public very seriously and will continue to do so within the bounds of our lawful authority. (Use this sentence in cases in which we have not supported the alleger's concerns.) Unless the NRC receives additional information that suggests that our conclusions should be altered, we plan no further action on this matter. Should you have any additional questions, or if I can be of further assistance in this matter, please call me on the NRC Safety Hotline at xxxxxxxxxxx.

Sincerely.

Enclosure(s): As stated

Exhibit 5 (continued)

Format for the Attachment Page

Allegation Number

Concern 1.

Describe the alleger's concern as provided in the acknowledgment letter or as modified by the alleger.

(Provide a brief/direct answer to each of the alleger's concerns, stating what was done and what was found. Make certain that we provide a clear statement as to whether the concern was substantiated, unsubstantiated, or partially substantiated.) (If appropriate add: We have documented our findings in (inspection report number, or other document citation) dated _____. A copy of the relevant section(s) of the report is/are enclosed.)

Concern 2.

Exhibit 6
Status Letter

Alleger's Name
and Address

SUBJECT: ALLEGATION NO. XXXX-200X-A-XXXX

Dear _____:

All Letters

This letter pertains to the concern(s) you brought to the NRC in your (letter, conversation with (NRC employee XXX), interview, meeting with the resident inspector, etc.) on __(date)__, regarding _____. (Use these sentences if the alleger has provided information in addition to that provided in the initial correspondence or contact.) In addition to the information you provided us on (first date), you also wrote to us on (additional date(s)) and/or met with XXX on (date). In this/these letter(s)/ conversation(s), you provided additional information regarding _____.

Use If All Concerns Are Still Open

Your concern(s) is/are being reviewed by NRC, or has been referred to the licensee for followup, etc. When we have completed our review of these issues, we will notify you of our findings, actions, and the final resolution of your concern(s).

Exhibit 6 (continued)

Use If Some Concerns Closed While Others Are Still Open

We have completed our review of XX number of your concerns, as noted on the attached page(s). (List on a separate attached page each concern and describe the resolution or action taken for every issue for which NRC efforts have been completed since the last correspondence with the alleger.) NRC staff is/are reviewing your other concern(s), or has referred (it/them) with your agreement to the licensee for followup, etc. When we have completed our review of these issues, we will notify you of our findings, actions, and the final resolution of your concern(s). If I can be of further assistance, please call me toll-free at the NRC Safety Hotline at 1-800-XXX-XXXX, or the (regional/office) toll-free number 1-800-XXX-XXXX.

Sincerely,

Enclosure: As stated

Certified Mail
Return Receipt Requested (Note: Use this statement only on the first page)

Exhibit 7
E-Mail Response

When an allegation is received via e-mail and the e-mail does not include a postal address, the following language should be used as standard language in the e-mail response:

"The NRC is in receipt of your e-mail dated _____. We are reviewing the information that you provided to determine what NRC followup activities shall be conducted. If you would like the NRC to provide you the results of our review, please contact (the appropriate Office Allegation Coordinator) at 1-800-xxx-xxxx. If you prefer a response via e-mail, we also request that you confirm that desire by contacting us by telephone. Please be advised that we cannot protect the information during transmission on the Internet and there is the possibility that someone else could read our response while it is in transmission to you. If you do not confirm your desire to communicate via the Internet by contacting us by telephone, we will not transmit any additional information via the Internet."

All Letters to First-time Allegers:

The NRC brochure "Reporting Safety Concerns to the NRC" contains information that you may find helpful in understanding our process for review of safety concerns. It includes an important discussion (on pages 5-7) of our identity protection procedures and limitations. **Please read that section**. Please also note that in light of the changes in the NRC inspection program for reactors, the licensee may conclude that our inspection followup of your concern is related to an allegation. If you have raised this issue internally, there is also the possibility that the licensee may be able to determine who raised the issue. The NRC will take all reasonable efforts not to disclose your identity during an inspection followup of your concern. Please be aware that if you

Exhibit 7 (continued)

have been identified as having brought the concern to the NRC under any of the six circumstances described on page 6 of the Identity Protection Limitations section of the enclosed NRC brochure, we will not be able to protect your identity.

The brochure also includes a discussion of the right of an individual to file a complaint with the U.S. Department of Labor (DOL) if the individual believes she or he has been discriminated against for raising safety concerns and the individual desires a personal remedy.

(This paragraph to be used only for allegers who claim discrimination.)
The NRC is responsible for enforcement actions against utilities, vendors, or individuals who discriminate against individuals who raise safety concerns. The DOL review is a public process. DOL is responsible for providing personal remedies, such as reinstatement, back pay, and so forth. **The NRC cannot provide you with personal remedies. This type of remedy can only come from DOL**. For DOL to accept a complaint, it must be in writing and it must be submitted to DOL within 180 days of the date of the discriminatory act **or** the date you received any written notice of an adverse personnel action (e.g., layoff or suspension), **whichever occurs first**. (Please see pages 8-10 of the brochure.) Should you decide to file, the office for processing your DOL complaint is as follows:

(Each region or headquarters office will insert the appropriate address.)

If you file a complaint with DOL, please send a copy to us also.

Exhibit 8
Ability of Agreement States To Protect Alleger's Identity from Public Disclosure

STATE	IS THE STATE ABLE TO PROTECT ALLEGER'S IDENTITY?	COMMENTS
Alabama	YES	
Arizona	NO	
Arkansas	NO	
California	YES	
Colorado	NO	
Florida	NO	
Georgia	NO	
Iowa	YES	
Illinois	YES	
Kansas	YES	
Kentucky	NO	No response received from State. Without a clear indication from the State that it can protect the alleger's identity, this information should not be released to the State.
Louisiana	NO	

Exhibit 8 (continued)

STATE	IS THE STATE ABLE TO PROTECT ALLEGER'S IDENTITY?	COMMENTS
Maine	NO	No response received from State. Without a clear indication from the State that it can protect the alleger's identity, this information should not be released to the State.
Maryland	NO	No response received from State. Without a clear indication from the State that it can protect the alleger's identity, this information should not be released to the State.
Massachusetts	YES	
Mississippi	NO	
Nebraska	YES	
Nevada	YES	
New Hampshire	NO	The information must be labeled confidential.
New Mexico	NO	
New York	NO	
North Carolina	YES	
North Dakota	YES	

Exhibit 8 (continued)

STATE	IS THE STATE ABLE TO PROTECT ALLEGER'S IDENTITY?	COMMENTS
Ohio	YES	
Oklahoma	YES	
Oregon	YES	
Rhode Island	NO	
South Carolina	YES	
Tennessee	NO	
Texas	NO	No response received from State. Without a clear indication from the State that it can protect the alleger's identity, this information should not be released to the State. Conflicts may exist between two laws.
Utah	NO	The information must be labeled confidential.
Washington	YES	

When an allegation has been referred to the licensee but the alleger wishes to remain unidentified to the licensee and the licensee asks if Mr./Ms. XX is the alleger because the licensee would like to ask him or her some specific questions about the allegation, the standard response will be "We can/will neither confirm nor deny that a specific person is the alleger." If the licensee has a specific question(s) that it believes needs

Exhibit 8 (continued)

to be answered by the alleger, the Office Allegation Coordinator (OAC) will inform the licensee that the OAC will ask the question of the alleger and supply the answer to the licensee.

If the licensee asks if it can talk to Mr./Ms. XX and ask general questions as part of an ongoing investigation of a referred allegation, and it asks if it is acceptable to talk to the suspected alleger during the course of its investigation, the standard response will be that the licensee can talk to anyone it wishes or needs to in order to investigate and resolve the referred allegation, but we will neither confirm nor deny that a named individual is the alleger.