

INSPECTIONS TO REVIEW ALLEGATIONS

PROGRAM APPLICABILITY: 2800

40002-01 INSPECTION OBJECTIVES

To conduct an inspection, by Headquarters or regional staff, to review and resolve issues raised in an allegation. The inspection may be a special inspection dedicated to the allegation, or a routine inspection, part of which is devoted to allegation issues.

40002-02 INSPECTION REQUIREMENTS

02.01 Prior to conducting the inspection, the allegation must have been reviewed by an Allegation Review Board (ARB), and a decision made to review the issues raised in the allegation by inspection rather than by another option, such as referring the matter to the licensee for resolution. The decision to devote a special inspection to the allegation or to review the issues during a routine inspection will generally be made by the ARB.

02.02 Allegations received during a routine inspection or reactive inspection should be immediately reported by the inspector to the regional/office management. With management's approval, the inspection should continue in accordance with this Inspection Procedure.

02.03 On occasion, an allegation may primarily be reviewed by the Office of Investigations (OI) and the inspector provides technical support. As assigned by the ARB, the OI interviews should be reviewed to determine if the alleged identified any new concerns. The Office of Allegation Coordinator (OAC) should be notified in writing of the results of the review of the OI interviews.

02.04 Allegations that appear to involve complex issues or significant safety, security, or confidentiality issues should be assigned to a senior inspector, if possible. Other allegations may be assigned to senior or non-senior inspectors, as appropriate. The ARB may make recommendations regarding the appropriate nature of the allegation review.

02.05 Inspections to review and resolve allegations are to be conducted in a manner similar to that used for any routine inspection. The inspector must not inform the licensee

that the inspection is being conducted to review an allegation unless instructed to do so by the ARB. The inspection should not focus too narrowly on the issues raised in the allegation, but should include the general area of the licensee's program within which the alleged activities occurred or failed to occur.

02.06 Matters of confidentiality are preferably settled prior to the inspection, and the inspector should clearly understand the allegor's confidentiality status and whether the allegor has authorized the NRC to release the allegor's identity. The inspector should also be aware of procedures used to safeguard allegation documents, to communicate with the allegor and the licensee, and to address other matters discussed in Management Directive (MD) 8.8, "Management of Allegations. "However, when immediate response is warranted based on safety significance or other considerations, the ARB may decide to send an inspector before confidentiality issues are resolved.

40002-03 INSPECTION GUIDANCE

General Guidance

Definitions and other guidance involving specific aspects of allegation management used in this procedure are identical to those in NRC MD 8.8. The reader is referred to this document for additional guidance on the non-inspection-related aspects of allegations.

Allegors are granted confidentiality only in non-routine cases where it is deemed necessary for purposes of resolving the allegation. Nevertheless, the identity of the allegor should be protected to the extent possible, even when confidentiality is not granted. Any information connected with the allegation should be provided to other persons, within or outside the NRC, only on a need-to-know basis. Files should be secured when not in use, and any documents that are released for general use should be sanitized. Exceptions to the above are those cases in which it is clearly documented that the allegor has no objection to making his/her identity known, and releasing the allegor's identity would significantly facilitate review and resolution of the allegation.

To help protect an allegor's identity, the inspector shall not take any documents that contain information that may reveal the identity of the allegor. In addition, care should be taken to assure that documents about the allegation are protected from inadvertent disclosure. Information collected during the inspection may be in electronic form such as a laptop computer or PDAs. Electronic documentation should be protected from unauthorized review by using password protection for files and deleting appropriate documents at the closeout of the allegation. Documents related to an allegation in which confidentiality was formally granted must be kept in a secure file cabinet or safe and clearly marked with a "red cover page" as discussed in MD 8.8. Access to such documents is granted only on a need-to-know basis, as determined by the Office Allegation Coordinator (OAC). Such documents may not be reproduced without OAC approval, and any copies controlled in the same manner as the originals. To further ensure identity protection, allegations are tracked within the NRC by an allegation number and not by the allegor's name or any other personal identifier. The inspector should refer to MD 8.8 for a more detailed discussion of the issue of confidentiality.

Allegations are reviewed and resolved by different offices within the NRC depending on the types of concerns they address. Those that are technical in nature are reviewed by the technical offices, either in Headquarters or in the Regions. Those that involve wrongdoing by NRC licensees or vendors are investigated by the Office of Investigations (OI), either in Headquarters or in the Regions. Those that involve wrongdoing by NRC personnel are handled by the Office of the Inspector General (OIG). [Issues under review by OIG, by definition, are not considered allegations.] The inspector should be alert to information obtained during the inspection that may alter the initial classification of the allegation, and should take prompt steps to alert appropriate management for possible coordination of the allegation with, or transfer to, another office.

Inspections to review allegations include special inspections conducted outside the routine inspection cycle, as well as routine inspections, but may be conducted in greater depth and detail than may otherwise be done during routine inspections. An unusual focus on a particular area of a licensee's operation may alert the licensee that the inspection is being conducted as a result of information not known to the licensee, and an allegation may be suspected. Should the licensee ask whether the inspection is being conducted in response to an allegation, the inspector should inform the licensee that he or she cannot discuss if an inspection is allegation related. The inspector should also remember that "off-the-record" communications with licensee personnel are not acceptable to NRC. The inspector must clearly relay to the staff being interviewed that any information provided, including that which is considered by the informant to be "off-the-record," may be used by NRC for any official purpose.

Specific Guidance

03.01 Pre-inspection activities. The inspector should review all documents contained in the allegation case file, to ensure that all the information is clearly understood. Any parts that are not clear should be discussed with the OAC and the inspector's supervisor. The inspector should also review the NRC files pertaining to the licensee for any information that may be relevant to the allegation, and also review the license and applicable regulations and guidance for any conditions that may have a bearing on the case.

The inspector should ensure that the identity protection status provided to the alleged is clearly understood, as well as the limitations imposed by such identity protection during discussions with the licensee and with other NRC personnel not directly involved in the case. The inspector should discuss any doubtful or unclear points with the OAC.

Based on the inspector's review of the documentation, the matter should be discussed with the inspector's supervisor if wrongdoing appears likely and the case should be re-paneled by the ARB. It is the ARB's responsibility for bringing such issues to the attention of the OI. The ARB also normally makes the decision regarding the need for direct discussions with the alleged. The inspector may be assigned to provide technical support to OI for a wrongdoing investigation.

If the ARB determines that further discussion with the alleged is necessary, the inspector, in cooperation with the OAC, should decide if discussions with the alleged should be conducted by telephone or whether a face-to-face meeting is desirable. If the latter is chosen, the first choice would be to meet with the alleged during the inspection if such a

meeting would not be expected to disclose the alleged's identity. Otherwise, a special meeting should be arranged away from the site, at a location where the inspector is not likely to be recognized as an NRC representative (Note: The inspector should be accompanied by another NRC staff member. An NRC staff member should never be alone when they meet with an alleged). A private or rental car should be used during such meetings, rather than an official government car.

03.02 No Guidance

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03.05 Inspection Activities. Inspections to review and resolve allegations are to be conducted in a manner similar to that used for any routine inspection. The inspection should start as close to the specific area of the allegation as possible, but not too closely, to avoid the appearance that the inspector is looking for a specific problem in a specific area of the licensee's operation. When reviewing documents and records, the inspector should be alert to any signs that the records have been tampered with or do not reflect actual conditions. This is very difficult to do, and except in blatant cases, can only be detected through subtle indications. The most obvious item to look for is any sign of erasures on records. In general, erasures are not made on official records. Errors are usually corrected by drawing a line through the erroneous entry, without making the entry illegible, adding the correct entry, and initialing and dating. Signs of deviation from this procedure should be viewed with suspicion and at least considered a serious weakness in the licensee's program.

The inspector should interview as many personnel who may be connected with the area addressed in the allegation as possible. Interviews should be conducted with one licensee representative at a time, if possible. The alleged may be interviewed provided that he or she would be interviewed in the course of a routine inspection. Questions should be asked in a manner that prevents the licensee from knowing the inspection is allegation related. The inspector should look for consistency among the various descriptions of the program and licensee activities provided by the interviewed personnel. Any inconsistencies should be pursued. Any review should be conducted in such a manner to ensure that actions will not be taken to obscure the sources of such inconsistencies, or that the staff will not become wary and stop volunteering information. The inspector should also be alert to any indications of a chilled work environment or a reluctance of employees to report or discuss concerns regarding safety issues. Such a work environment may be indicated by unexplained changes in the number or nature of valid concerns raised by employees, indications of hesitancy on the part of employees to discuss certain issues that appear to be of concern to them, and the timeliness of the licensee's corrective actions in addressing employee concerns, or the lack of such action.

During inspections to evaluate an allegation, copies of licensee documents that support or disprove the allegation should be obtained by the inspector if possible. Such documents, along with other allegation-related materials, should be kept separate from the inspection records. If the inspection is reactive in response to the allegation, then all of the findings regarding the allegation that were obtained should be included in the allegation

file. However, if the inspection is a routine inspection and the allegation will be reviewed as part of the inspection, then only those facts which are part of the allegation followup should be included in the allegation file. The inspection report and records should not document that the inspection was prompted by an allegation or contain any reference to an allegation.

The inspector must always remember that, even under the best of circumstances, the fact that a Federal inspector is interviewing a licensee employee generally puts most employees under stress and on the defensive. They will often not volunteer useful information under such circumstances. It is essential to put the interviewee at ease prior to discussing sensitive issues, and such issues must be discussed cautiously. The objective of the interview should be to obtain as much factual information as the employee can provide. However, employees often volunteer unsolicited and unexpected information that may prove invaluable in gaining insights into the licensee's program and in resolving the allegation, and the inspector should encourage such free-flowing but relevant discussions. Such information could point to areas that may require further review .

It may not always be possible to resolve an allegation, and some may be closed by indication that insufficient information was available to reach a definitive conclusion. However, even in such cases, the inspector should inspect all areas of the licensee's program that are in any way connected with the allegation. Such an inspection should provide assurance that these areas of the licensee's program are well managed and staffed by qualified personnel, that all procedures are followed, accurate records maintained and reviewed by the appropriate level of supervision, and that there are no labor-management disputes that could affect the quality and safety of the program. The inspector should also be alert to issues that may have generic implications, either within the licensee's operation or for other licensees.

It is normally the licensee's responsibility to take whatever action is necessary to avert hazards to public health and safety. However, if the inspector , solely because of information gained from an investigation or an allexer, is in a position to prevent a radiation overexposure or other significant health and safety issue from occurring, the inspector should intervene. If, in the inspector's judgment, there is adequate time to consult with management on the appropriate course of action to take, then that is the preferred course of action. However, if this is not possible, then the inspector should intervene in the licensee's activities, alert the licensee to the danger, and request a halt to the activity in question. This should be done without revealing the allexer's identity. (Note: NRC management must be consulted before an allexer's identity is disclosed by the NRC). Should the allexer's identity be inadvertently revealed, the inspector must notify NRC management as soon as possible.

Information may be obtained during an allegation inspection that provides indications that wrongdoing may have been involved. Investigation of wrongdoing is not conducted by technical offices, but must be referred to OIG or OI, either in the Region or at Headquarters. Therefore, if wrongdoing is suspected at any time during the inspection, the inspector should contact regional office management to inform them of the situation for possible transfer of the case through the ARB. The inspector may continue to be involved in the inspection, but in the capacity of providing technical assistance to the investigators.

Depending on the nature of the inspection during which the allegation was reviewed, and the type of licensee, an inspection report may or may not be written. However, some method of documenting the activities performed to determine the validity of the allegation and the findings needs to be provided, consistent with office procedures and MD 8.8, with a copy of the documentation placed in the allegation file. No reference to follow-up of an allegation or employee concern should be entered in the field notes, inspection reports, or other documents that will be filed in the NRC inspection file for the licensee. If an inspection report is written, it should not contain any reference to the allegation or the alleged. The alleged's name may appear in the inspection record, under the section with names of contacted personnel, provided the alleged would be interviewed as part of a routine inspection. The issues raised in the allegation, as well as the inspection findings and resolution of any problems, should be discussed in the report without reference to an allegation. The findings and manner of resolution of the allegation should be documented as required and discussed with the OAC. If the concerns were addressed, the allegation will be closed consistent with MD 8.8 and Policy and Procedure Letter 1-27, "Management of Allegations."

Documentation specific to the allegation (except inspection records) should be destroyed by the inspector after the allegation is closed. If a request for information under the Freedom of Information Act (FOIA) is received during the allegation review, then all documents generated from that moment on must be retained. All documents released under a FOIA request must be redacted to protect the identity of the alleged and any safeguards or proprietary information.

03.06 No Guidance

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