

ATTACHMENT 0609.02

PROCESS FOR APPEALING NRC CHARACTERIZATION OF INSPECTION FINDINGS (SDP APPEAL PROCESS)

1. Purpose

To define the process by which a licensee may appeal the staff's final significance determination of an inspection finding documented in an NRC inspection report or final significance determination letter.

2. Prerequisites

It is assumed that the staff has completed its final significance determination, "colored" the finding, and documented this in an inspection report, including the SDP basis for significance. The basis should allow a knowledgeable reader to reconstruct the logic that resulted in the staff's significance determination. The SDP process provides an opportunity for a licensee to meet with regional management at a Regulatory Conference to discuss their alternative perspectives prior to the staff's final determination of significance. In cases where licensee presented alternative perspectives, the staff should have documented its justification for not accepting the licensee perspectives. Further, each issue for which the staff's significance determination is "White, Yellow, or Red" will have been reviewed by the NRC Significance and Enforcement Review Panel (SERP) process in accordance with Attachment 1 of this Inspection Manual Chapter.

3. Limitations

Licensee appeals to reduce the significance of an inspection finding will be considered as having sufficient merit for review by this appeal process only if the licensee's contention falls into one of the following categories:

- a. Actual (verifiable) plant hardware, procedures, or equipment configurations were not considered by the staff.
- b. The staff's significance determination process was inconsistent with the applicable SDP guidance or lacked justification.

Issues involving the staff's choice of probabilistic risk modeling assumptions used by the SDP will not be considered appealable under this process, provided the staff documented its justification. The review of any licensee appeal will be limited to the issues discussed in the docketed inspection report or other docketed correspondence, such as the licensee's response to a choice letter.

New information provided in a licensee's request that was not previously docketed will not be considered by this appeal process. Once the NRC issues a final significance letter, the decision is final unless an appeal is otherwise granted.

4. Inspection Report Cover Letter

The following statement will be added to each inspection report cover letter or other official correspondence that transmits an inspection finding of White, Yellow, or Red significance:

“You have calendar 30 days from the date of this letter to appeal the staff’s determination of significance for the identified [white/yellow/red] finding[s]. Such appeals will be considered to have merit only if they meet the criteria given in NRC Inspection Manual Chapter 0609, Attachment 2.”

5. Appeal Process

- a. The licensee should submit its points of contention in writing to the Regional Administrator (RA) within calendar 30 days of the date of the transmittal letter.
- b. The RA should determine whether the appeal meets the above merit guidelines. If it does not, the RA should respond in writing indicating that the appeal request does not meet the merit guidelines and why. Otherwise the RA will proceed as below.
- c. If the appeal is to be reviewed further, the RA will appoint a panel consisting of, at a minimum, two specialists in the cornerstone being discussed and an enforcement specialist. The RA may also request representation by the Office of General Counsel. The cornerstone specialists for initiating events, mitigation systems, and barriers will be two persons with risk analysis experience (one from the RA’s regional office and one from headquarters). Other persons with related technical expertise may also be appointed from any regional or headquarters office. At least one panel member will not have had prior involvement with the significance determination under appeal. The principal purpose of the panel is to arrive at a consensus regarding the validity of the licensee’s appeal.
- d. The panel will review the inspection finding, its significance characterization and basis, and the licensee’s points of contention. The panel will conduct its review based only on docketed information either provided by the licensee, issued by the staff, or otherwise publicly available. The panel may recommend one of the following:
 1. No further action and the significance determination is unchanged, or
 2. more detailed justification of the basis for the significance determination, or
 3. change the significance determination (either increase or decrease).

The panel may also recommend changes to the SDP, regardless of whether such changes would affect the outcome of the appeal under review.

- e. The panel will report its recommendations and justification to the RA, and will obtain the concurrences by the Deputy Division Director, Division of Inspection and Regional Support, responsible for the reactor oversight process, NRR, and the affected technical spokesperson including: 1) Deputy Division Director, Division of

Risk Assessment, (for fire protection, reactor safety, containment, shutdown risk, steam generator, maintenance), or 2) Deputy Director, Office of Nuclear Security and Incident Response (for physical security and emergency planning), or 4) Deputy Division Director, Division of Inspection and Regional Support, (for ALARA, occupational radiation).

The Director of NRR will resolve any disagreements, if necessary. The RA will notify the licensee in writing of the final agency position within 15 business days from the date of receipt of the written licensee submittal.

- f. There are no further appeal avenues, other than directly to the NRC Executive Director for Operations using procedures established by that Office.

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