

September 19, 2007

MEMORANDUM TO: Luis A. Reyes
Executive Director for Operations

FROM: Lisamarie L. Jarriel/RA/
Agency Allegation Advisor

SUBJECT: ALLEGATION PROGRAM - CALENDAR YEAR 2006 ANNUAL
PERFORMANCE REPORT

In SECY-94-089, "Response to the Report of the Review Team for Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," the staff committed to have the Agency Allegation Advisor provide an independent annual report to the Executive Director for Operations that provides an analysis of program performance in each action office and region. That commitment is documented in Management Directive 8.8, "Management of Allegations." A copy of the annual performance report for calendar year (CY) 2006 is enclosed for your information.

The report contains an analysis of allegation program performance against established process goals for timeliness, identity protection, and quality of responses from an agency perspective, as well as from an individual regional and program office perspective. Overall, the allegation program has demonstrated a sustained high level of performance in most areas. The findings from assessments completed in the last four years indicate consistent high performance in reviewing, documenting, tracking, and completing evaluations of allegations. The timeliness goals were met in all cases, but one which involved an allegation that was received by a regional staff member in 2003 but mistakenly not submitted for allegation processing until 2006. While OE assessment of CY 2006 performance found that one regional office did not appropriately capture and respond to concerns in 90% of the allegation files reviewed, from an agency perspective, the quality rating goal has been achieved in each of the last four years. There were no instances in CY 2006 involving the inappropriate release of allexer identifying or fingerprinting information, providing indication that effective corrective actions were taken after the occurrence of two such identifying information releases in CY 2005 and one in CY 2004.

Enclosure: Allegation Program - CY 2006 Annual Performance Report

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ALLEGATION PROGRAM PERFORMANCE

The Commission established the allegation program to provide a vehicle for individuals working in Nuclear Regulatory Commission (NRC) regulated activities and members of the public to provide safety and regulatory concerns directly to the NRC. The program retains a database that allows the staff to track concerns submitted to the NRC to ensure that the concerns are evaluated in a timely manner, consistent with their associated safety or risk significance, and that the results of NRC's evaluation are effectively communicated to the individual who submitted the concerns, when possible and appropriate.

Program performance is measured against goals for protecting the identity of allegeders and conducting an appropriate review of all allegeder concerns in a timely manner. It is the goal of the agency that no allegeder's identity is inappropriately released. Timeliness goals have been established for substantive points in the process, including the convening of an initial Allegation Review Board to specify actions to evaluate the concerns, and submitting correspondence to the allegeder to initially acknowledge and ultimately close the concerns. The quality of the staff's review of concerns raised and its correspondence with allegeders regarding those concerns are assessed during the program assessments.

Allegation Program Implementation Assessments

The Agency Allegation Advisor (AAA) in the Office of Enforcement (OE) conducts on-location allegation program assessments of each regional and program office on a biennial basis. In those years, and for those regional and program offices for which an on-location allegation program assessment is not completed by OE, a self-assessment of the region's or program office's implementation of the allegation program is conducted and submitted to the AAA for evaluation.

The on-location assessments conducted by OE review a 10% sample of allegation files closed during the previous calendar year and include an assessment of regional or program office performance against allegation program goals, the quality of allegation evaluation and response, allegation review board quality, allegeder identity protection, feedback to allegeders who respond after allegation closure, and general program oversight. Guidance provided to the regional and program offices for conducting an allegation program self-assessment recommends a review of similar program attributes, and suggests that the self-assessment include complete file reviews (similar to those performed during the OE on-location program assessments) of a small sample of allegation files closed in the previous calendar year (at least 5% (minimum of 2 files)) to assess the implementation of program guidance. It is recognized that the ongoing implementation of regional and program office allegation programs includes inherent continuing self-assessment activities, such as the monitoring of regional or program office performance against program metrics, periodic assessment of the status of open allegation files, quality reviews of closed allegation files, lessons-learned documentation related to identified problems, and selected self-assessments of certain program functions. The regional and program offices are encouraged to take credit for these continuing self-assessment activities as part of the self-assessment report provided to the AAA.

In addition, special assessments will continue to be conducted as requested by the Office of the Inspector General (OIG), senior management, or as deemed necessary by OE. If, at any time, the results of an allegation program assessment (or self-assessment) indicate a notable decline in performance, OE reserves the right to increase the frequency of on-location assessments for

any or all of the regional and program offices. It is also noted that the regional and program offices may request an on-location assessment by OE in lieu of conducting a self-assessment, if so desired.

This year, OE conducted on-location allegation program assessments in Region I, Region II, and the Office of Nuclear Materials Safety and Safeguards (NMSS) (which included the assessment of closed allegation files related to the newly formed Office of Federal and State Materials and Environmental Management Programs (FSME)) for allegations closed in CY 2006. FSME currently provides the administrative oversight function for the processing of both FSME-related and NMSS-related allegations. Self-assessments of allegation program implementation in CY 2006 were conducted this year by Region III, Region IV, and the Office of Nuclear Reactor Regulation (NRR) and submitted to the AAA. The NRR self-assessment included the assessment of closed allegation files that were the responsibility of the Office of Nuclear Safety and Incident Response (NSIR), as NRR provides administrative oversight for the processing of NSIR-related allegations. In CY 2008, OE will conduct on-location allegation program assessments at Region III, Region IV, NRR and NSIR. If any allegations are received and closed in CY 2007 related to new reactor licensing under the purview of the newly formed Office of New Reactors (NRO), that office will be considered for assessment as well. Allegation program self-assessments will be conducted in CY 2008 by Region I, Region II, FSME and NMSS.

Results of Allegation Program Assessments and Self-Assessments for CY 2006

Allegor Identity Protection

One element of the allegation program that is essential to its viability is protecting the identity of allegors to the extent possible. The agency's goal is to have no substantiated instances of the inappropriate release of an allegor's identity as determined by either the OIG or the staff. There were no instances that challenged allegor identity protection in 2006. This provides indication that corrective actions taken after previous occurrences involving the release of allegor identifying information (one in CY 2004 and two in CY 2005) have been effective.

The allegor identifying information releases in CY 2004 and CY 2005 were determined to be more related to matters involving attention to detail than programmatic deficiency. These matters were addressed by reviewing and, as appropriate, inserting administrative steps in related regional or program office instructions to provide more assurance that such errors will not be made in the future. In addition to AAA documentation of these occurrences in a memorandum dated December 14, 2005, and discussion of the occurrences during several counterpart calls with agency allegation coordination personnel, the regional and program offices were asked to re-emphasize to their staff the need for heightened awareness to attention to detail issues related to allegation material, especially with regard to the protection of allegor identity.

Management Directive 3.1, "Freedom of Information Act," directs the AAA to review and concur in all responses to Freedom of Information Act (FOIA) requests involving allegation records. Through concurrence, the AAA certifies that the information to be disclosed from the record, or portion thereof, would not cause harm to an open allegation, or disclose the identity of an allegor whose identity still warrants protection. For CY 2006, over 33,000 pages representing the results of document searches in response to 42 FOIA requests were reviewed for the purpose of ensuring allegor protection. Of particular note in CY 2006, the agency completed its response to

an unusually large and highly visible allegation-related FOIA request that comprised 27,000 pages for placement in ADAMS. These supplemental reviews by OE provide for an independent look and quality check of the documents identified and reviewed by the regional and program offices in response to the FOIA requests, and have in several instances, resulted in the additional redaction of identifying information, including names, personal information and job titles. This has been a positive contribution to the agency's goal of limiting challenges to alleged identity protection.

Allegation Review Board (ARB) Quality

ARB quality is assessed to provide for periodic observation of the overall efficiency and effectiveness of ARBs conducted at the region or program office. ARB quality may be assessed by ARB observation, ARB documentation review (which is done as part of the allegation file review), interviews with ARB attendees, or a combination of these actions. Items assessed include ARB attendance (by appropriate staff), evidence of knowledge of the allegation and preparation for the ARB meeting by responsible staff, appropriate consideration of safety significance, appropriate discussion of the rationale for taking (or not taking) certain actions, proper consideration of allegation process guidance and other agency guidance that relates to items that may be discussed at the ARB, the assignment of proper follow up actions and schedules for the completion of those actions, and the quality of ARB documentation.

In general, the regional and program offices have established effective means of identifying allegation-related matters to be discussed at ARB meetings, and scheduling the ARB meetings in a timely manner. Routinely, ARB meetings are chaired by appropriate levels of management, and attended by cognizant staff, including technical staff, allegation coordination personnel and staff from OI and OGC (or Regional Counsel). For the most part, the on-location assessments completed this year found that the technical staff was appropriately represented at and sufficiently prepared for the ARB meetings observed, and that the decisions made by the ARB were appropriate and commensurate with the safety significance of the issues discussed. The ARB chairmen, allegation coordination personnel, and representatives from OI and OGC (or Regional counsel) were active participants in the ARBs observed. Overall, the ARB discussions observed during the on-location assessments were found to be reflective of a sense of ownership by the affected technical branches, and demonstrated understanding of the concerns discussed. ARB documentation reviewed during the on-location assessments and self-assessments accurately reflected the discussion at the ARB meeting and the decisions made by the ARB in terms of safety significance and follow up action assigned.

A continuing challenge for ARBs held across the agency has been keeping an appropriate (low) threshold for determining whether a submitted concern should be processed as an allegation. On many occasions, submitted concerns are vague and lack detail and/or are unclear as to their relationship to matters of NRC regulatory interest. For the ARBs observed during this year's allegation program on-location assessments, no instances were identified in which a submitted concern was not appropriately characterized as an allegation. Some instances were identified during the review of closed allegation files reviewed as part of one of the on-location program assessments in which ARB documentation did not accurately reflect all of the concerns raised or did not provide sufficient justification for a decision that a particular concern did not have a nexus to NRC-regulatory activity. The affected regional office will continue to focus on this area through periodic training and by providing emphasis in this area during future ARB meeting discussions.

Timeliness Goals

The initial Allegation Review Board (ARB) is conducted for the purpose of reviewing an allegation and assigning appropriate staff actions for follow up. The program requires an initial ARB to be held within 30 days of receiving an allegation in 100% of the cases. All but one of the 428 initial ARBs held agency-wide in 2006 met this goal. The allegation file that did not meet the goal involved an allegation that was received by a regional staff member in 2003 but not submitted for allegation processing until 2006. The affected region is reviewing the circumstances of the delay in submitting this allegation to determine if current process controls would preclude its recurrence, or if corrective actions are needed.

Initial correspondence with alлегers acknowledges receipt of the allegation and documents the specific concerns as understood by the NRC staff to ensure agreement prior to further staff action. The goals for the issuance of letters acknowledging the receipt of allegations are that 90 percent will be issued within 30 days and 100 percent will be issued within 45 days. The 45-day goal was established to account for more complex allegations which prompt additional staff contact(s) with the allegor to solicit more detailed and/or more specific information and ensure complete understanding of the allegor's concerns prior to sending the acknowledgment letter. Ninety-eight percent of the allegations received were acknowledged within 30 days, and 99% were acknowledged within 45 days (one letter was sent in greater than 45 days). As such, the agency goal of issuing 100 percent of the acknowledgment letters within 45 days was not met. The discrepancy involved the same file discussed in the previous paragraph that was not submitted for allegation processing until 3 years after it was received.

Regarding timeliness goals for closing allegations with technical concerns and that do not involve potential wrongdoing or review by an agency over which NRC does not have schedule control (e.g., DOL, FEMA), the agency's goals are to close 70 percent of the allegations in 150 days or less, 90 percent of the allegations in 180 days or less, and 100 percent of the allegations in 360 days or less. As shown in the table below, the timeliness goals for closing files in less than 150 days and less than 180 days were met. However, the timeliness goal for closing files in less than 360 days was not met in that one of the 492 allegations closed in CY 2006 was closed in greater than 360 days. The allegation that was closed in 2006 in greater than 360 days is the same file discussed in the previous paragraphs that was not submitted for allegation processing until 3 years after it was received.

Time to Close								
Metric (Days)	Total	NMSS	NRR	NSIR	RI	RII	RIII	RIV
	492	13	31	2	147	138	69	92
70% ≤ 150	94% (462)	85% (11)	97% (30)	100% (2)	93% (136)	91% (126)	100% (69)	96% (88)
90% ≥ 151 ≤ 180	98% (481)	100% (13)	100% (31)	100% (2)	97% (143)	96% (133)	100% (69)	97% (90)
100% ≥ 180 ≤ 360	99% (491)	100% (13)	100% (31)	100% (2)	100% (147)	100% (138)	100% (69)	99% (91)

Quality Goal

The staff instituted a quality goal for the allegation program in CY 1999. Although subjective in nature, as part of routine program assessments and self-assessments, reviewers evaluate, in detail, a sample of closed allegation files to assess their quality. For the on-location OE allegation program assessments conducted at Region I, Region II, and NMSS/FSME, a ten percent “smart” sample of the allegations closed in CY 2006 was reviewed to determine if staff follow up of allegations appropriately captured and responded to each issue raised in 90 percent of the allegations reviewed. In all, 43 files were reviewed during the on-location program assessments. With three exceptions, all of the concerns raised within the allegation files reviewed were adequately captured with adequate responses provided. These three instances were identified as findings of significance during the on-location assessments. Two of the three findings occurred in one region, causing that region to miss the 90 percent quality goal. The affected region is reviewing the circumstances of these two findings to determine appropriate corrective actions. The third finding has been assessed by regional staff and lessons learned have been incorporated into annual allegation refresher training.

During the allegation program self-assessments conducted at Region III, Region IV, and NRR/NSIR, a total of 38 allegation files were reviewed. All of the concerns raised within these allegations files were determined to have been adequately captured with adequate responses provided. Based on the above, the quality goal with regard to the capture of and response to allegation concerns was met from an agency perspective for CY 2006.

Staff Response to Allegor Communication After Closure

On September 5, 2002, the Executive Director for Operations issued a Commission Paper that recommended the staff discontinue the allegation program survey of allegers. The Commission approved the staff's recommendation as noted in SRM-SECY-02-0163 on October 4, 2002. The Commission stated that the staff should continue to monitor feedback received from allegers, and reconsider the need for a survey if the feedback indicates problems. As a result, the allegation program assessments and self-assessments now include a review of feedback from allegers and responses thereto. During CY 2006, there were 29 instances in which an allegor provided comments after allegation closure about the quality or accuracy of NRC's response. Twenty (20) of these were reviewed during the OE on-location program assessments, and the regional and program self-assessments conducted in CY 2007. Although observations were made as to the overall quality of the response in a few instances, appropriate evaluations were performed and adequate responses were provided for all of the issues reviewed.

Summary

Overall, the allegation program has demonstrated a sustained high level of performance or an improving level of performance in most areas related to program implementation. The findings from assessments completed in the last four years indicate consistent high performance in reviewing, documenting, tracking, and completing evaluations of allegations. The timeliness goals were met in all, but one case. Although findings of significance were identified at two of the regional offices with regard to the quality of the agency's responses (one of these regional offices did not appropriately capture and respond to concerns in 90% of the allegation files reviewed during the on-location assessment), from an agency perspective, the 90% allegation response quality goal has been achieved in each of the last four years. There were no instances in CY 2006 involving the inappropriate release of allegor identifying or fingerprinting information,

providing indication that effective corrective actions were taken after the occurrence of two such identifying information releases in CY 2005 and one in CY 2004.