FSME Procedure Approval

MANAGEMENT OF AGREEMENT STATE PERFORMANCE CONCERNS AND ALLEGATIONS
SA-400

Issue Date:

Review Date:

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NOTE

Any changes to the procedure will be the responsibility of the FSME Procedure Contact. Copies of the FSME procedures are available through the NRC website.

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I. INTRODUCTION

This procedure describes the process to be followed by the Office of Federal and State Materials and Environmental Management Programs (FSME) in managing: (1) allegations involving Agreement State licensees; (2) concerns regarding the performance of State regulatory bodies or their personnel; and (3) concerns regarding potential wrongdoing committed by State regulatory bodies or their personnel.
~~This procedure describes the process to be followed by the Office of State and Tribal Programs (STP) in handling: (1) allegations involving Agreement State licensees; (2) concerns involving alleged performance or alleged wrongdoing by an Agreement State employee other than the Radiation Control Program (RCP) Director; (3) concerns involving alleged Agreement State program performance or alleged performance or alleged wrongdoing by the RCP Director. and (4) allegations under the Nuclear Regulatory Commission's (NRC) jurisdiction (e.g., those involving NRC licensees).~~

II. OBJECTIVES

To ensure that ~~assure~~ allegations involving Agreement State licensees ~~and areas of NRC's jurisdiction~~, and alleged concerns involving Agreement State programs and employees are properly and expeditiously handled.

III. BACKGROUND

~~Management Directive (MD) 8.8, *Management of Allegations*, establishes the Agency procedures for handling allegations. MD 8.8 provides guidance on handling allegations involving Agreement State licensees and directs staff to refer allegations concerning performance or wrongdoing issues involving Agreement State employees to STP for appropriate handling. This internal procedure provides further guidance to STP staff in handling such allegations and concerns in accordance with Commission direction provided in Staff Requirements Memorandum (SRM) - SECY-98-192 - *Resolution of Allegations Concerning the Performance of Agreement State Programs*, dated December 8, 1998.~~ Management Directive (MD) 8.8, *Management of Allegations*, establishes the Nuclear Regulatory Commission's (NRC) policies and procedures for handling allegations concerning NRC-regulated activities. MD 8.8 directs NRC staff to refer concerns regarding the performance of State regulatory bodies or their personnel and concerns regarding potential wrongdoing committed by State regulatory bodies or their personnel to FSME. Further guidance to staff in handling allegations and concerns about Agreement States is provided in the Staff Requirements Memorandum (SRM) – SECY-98-192 – Resolution of Allegations Concerning the Performance of Agreement State Programs, dated December 8, 1998.

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~~This SRM provided the following: Continue entry into the allegation management system of allegations concerning Agreement State licensees and closure of that allegation after review by Regional Allegation Review Boards (ARBs) and transfer to the appropriate RCP Director. Allegations concerning Agreement State performance or wrongdoing would be treated as concerns, and transferred through correspondence from STP, rather than treated as an allegation. Absent a credible health and safety concern, Agreement State program performance concerns, or performance or wrongdoing concerns involving the RCP Director, would be referred to either the Agreement State Inspector General (IG), Attorney General (AG), or senior line management above the RCP Director level, as appropriate, based on a decision by STP using criteria to be developed, without convening an ARB. Allegations concerning employee performance or wrongdoing, except that of the RCP Director, should be initially referred to the RCP Director. Should NRC subsequently find the matter to not have been appropriately followed up, the matter can be re-referred by the NRC to the line management over the RCP Director or to the IG or AG. The alleger would be informed of the referral. NRC action to conduct a special evaluation of the adequacy and compatibility of an Agreement State program should be initiated when significant, valid safety concerns are identified.~~

IV. ROLES AND RESPONSIBILITIES

A. The Director, ~~STP:~~Division of Intergovernmental Liaison and Rulem~~M~~aking (DILR):

1. Oversees the management of the allegation and Agreement State program performance concerns (ASPC) ~~-~~program in FSME in accordance with MD 8.8~~Implements the applicable responsibilities outlined in MD 8.8, Section 8.8-03, *Organizational Responsibilities and Delegations of Authority*~~.

2. Serves as Chair (or designates an acting chair) of the Allegation Review Board (ARB) for all ASPCs~~Approves STP's policies and procedures concerning the management of alleged concerns regarding Agreement State employees or programs and Agreement State licensees~~.

3. ~~Ensures that policies and procedures in MD 8.8 and in this procedure are implemented by STP staff.~~As ARB Chair, ensures that safety significance, resolution plan, review priority, and wrongdoing matters are considered for each ASPC.

4. Assigns a staff member to serve as the ~~STP~~ FSME Office Allegation Coordinator (~~FSMESTP~~ OAC).

5. ~~Determines appropriate action for each allegation or concern assigned to STP in accordance with Section V. *Guidance*, of this procedure.~~Places calls to appropriate Agreement States when follow up calls are necessary to determine the status of concerns forwarded to the States for review and appropriate action.

6. Approves and signs all correspondence transferring ASPC to the States with concurrence by the cognizant Branch Chief and OAC.

7. Approves and signs closure material for ASPC with concurrence by the cognizant Branch Chief and OAC.

B. The Directors, Division of Materials Safety and State Agreements (MSSA) and Division of Waste Management and Environmental Protection (DWMEP):

1. Ensures that the policies and procedures outlined in MD 8.8 and in this guidance are implemented by division staff.

2. Participate, as required, as members of the ARB for ASPC.

3. Ensures that cognizant technical and management staff attend meetings of the ARB when ASPCs within their purview are discussed. Attending staff must have the authority to agree to actions and schedules approved by the ARB.

C. The Branch Chiefs, FSME:

1. Ensure that staff members are familiar with the policies and procedures outlined in MD 8.8 and in this guidance.

2. Participate in the ARB process within their purview for allegations and ASPC.

3. Assign technical staff members as Lead Staff Reviewer for allegations and ASPC under their purview.

4. Ensure that the Lead Staff Reviewer is available to brief the ARB on the concerns during the meeting.

5. For allegations and ASPC assigned to their branches, proposes resolution plans for consideration by the ARB and ensures that the resolution plan approved by the ARB is followed and the schedule for resolution is met. Promptly notifiesfy the OAC of changes to the above.

6. Approve and concur in on all closure letters to allegers for ASPCs.

7. Ensure that the OAC is notified on a timely basis about all suspected or potential wrongdoing issues that surface outside the allegation process (e.g., through inspection findings).

8. Ensures branch staff completes annual allegation training.

DB. The STP FSME OAC:

1. Administers the allegation and ASPC review program in FSME, in accordance with MD 8.8 and this guidance.

2. Serves as a member of the ARB and assists the Chair of the ARB as necessary.

3. Maintains the official agency files on allegations and ASPC assigned to FSME, including establishing a file record, and assigning a control number.

4. Provides advice, guidance, and assistance to FSME management, ARB members, and FSME staff in implementing the policies and procedures outlined in MD 8.8 and in this guidance. As ARB advisor, ensures that safety significance, resolution plan, review priority, and wrongdoing matters are considered for each allegation or ASPC during the ARB.

5. Serves as the central control point for allegations and ASPC assigned to FSME.

6. Reviews and concurs in all FSME correspondence involving allegations or ASPC that leaves the office, including letters to allegers, other federal agencies, Agreement States, licensees, and industry groups. Ensures the letters do not compromise the identity of the alleger.

7. Prepares monthly reports to FSME senior management on the status of allegations and ASPC.

8. Provides information to allegers regarding allegation or ASPC follow-up and resolution in accordance with MD 8.8.

9. Promptly informs the appropriate Regional OAC or Regional State Agreements Officer (RSAO) of the receipt and transfer of an allegation or ASPC.

10. Ensures the proper transfer to the appropriate Regional OAC and RSAO of allegations regarding Agreement State licensees received by FSME.

~~3. Assures the proper referral to the appropriate Regional OAC of allegations regarding Agreement State licensees received by STP.~~

~~4. Provides advice, guidance, and assistance to STP management and staff in the implementation of the policies and procedures in MD 8.8 and in this procedure.~~

~~5. Reviews and/or prepares STP correspondence involving concerns or allegations.~~

~~6. Maintains the official agency files on Agreement State program performance and wrongdoing concerns assigned to STP, including establishing a file record, and assigning a control number.~~

11~~7~~. Provides input to the Integrated Materials Performance Evaluation Program (IMPEP) team members when reviewing the common performance indicator, ~~*Response to Incidents and Allegations in Agreement States.*~~ *Technical Quality of Incident and Allegation Activities.*

~~8. Consults and coordinates with the Agency Allegation Advisor (AAA), Assistant AAA, OI staff and other OACs on allegations or concerns involving Agreement States, as appropriate.~~

~~9. Reviews Freedom of Information Act requests for any potential allegation or alleged concerns material.~~

12~~10~~. Consults and coordinates with the Agency Allegation Advisor (AAA), Assistant AAA, OI staff and other OACs on allegations or ASPCs, as appropriate.

~~11. Develops and updates, as needed, the STP allegation management procedure.~~

E. Lead Technical Staff:

1. Considering the requirement to hold the ARB within 30 days of receipt of the allegation or ASPC, coordinates with the OAC the best date for holding the ARB.

2. Prepares the Branch Evaluation, Plan and Recommendation Form, (BEPR) which will include the concerns list and provides it to the OAC no later than 2 days prior to the scheduled ARB.

3. Briefs the ARB from the BEPR on the concerns, the potential safety significance, the proposed resolution plan and schedule, and provides a recommendation on the need for Office of Investigation (OI) involvement or request for information from the licensee, vendor, or another agency.

F~~C~~. All ~~STP~~ FSME ~~Staff~~Employees:

1. Maintain a working knowledge of the ~~general~~ policies and procedures in MD 8.8 and this ~~procedure~~guidance.

2. Record the receipt of any allegation and ~~in~~ASPC in as much detail as possible~~,~~. Provide all information about the concerns directly to the OAC within 5 days of receipt of the allegation or ASPC. Record and provide to the OAC all contacts with allegers during and following resolution of the allegation or ASPC. ~~see Appendix A, *Allegation Report*.~~

3. Provide information regarding suspected wrongdoing to the OAC promptly following receipt.

4. Protect the identity of allegers in accordance with policies and procedures outlined in MD ~~.~~8.8 and this guidance. The identity of the alleger should only be provided to the OAC~~STP~~.

5. Ensure that allegations or ASPC-related correspondence receives appropriate limited distribution (i.e., is not placed in ADAMS, branch files, or docket files). In accordance with MD 8.8, all allegation documents, including hard copies and electronic media, should be given to the OAC for review. Copies of allegation or ASPC documents should not be kept by anyone outside the OAC after an allegation or ASPC is completed and the file is closed. All electronic files should then be deleted from both computers and e-mail "in" boxes and trash. Hard copies should be disposed of in a sensitive unclassified waste receptacle or returned to the OAC for inclusion in the official file.

~~5~~6. Consult the ~~STP FSME~~ OAC to determine whether a matter involving Agreement States should be considered as a potential allegation(s) or ~~concern(s).~~ASPC.

7. Document any release of information that may compromise an investigation including the preparation of notices to the Executive Director for Operations (EDO) and the OI Director, for the signature of the FSME Director.

~~6~~8. Completes annual allegation training.

~~EG~~D. Regional State Agreements Officers (RSAOs) and Regional OACs:

1. Handle allegations involving Agreement State licensees in accordance with MD 8.8 and Regional procedures.

2. Upon request by FSME, ~~participate ,~~participate in ARB meetings to address various Agreement State concerns. ~~complex Agreement State concerns as identified in Section V.G.~~

~~**E. OI Staff:**~~

~~1. Assists STP in making referrals to Agreement State IG or AG offices.~~

~~2. Assists STP in making follow-up and closeout actions on referrals made to Agreement State IG or AG offices.~~

~~3. Upon request, participate in meetings to address complex Agreement State concerns as identified in Section V.G.~~

V. GUIDANCE

A. Processing Allegations Under NRC's Jurisdiction

~~1.~~ Allegations involving areas of NRC's jurisdiction received by ~~STP~~ FSME staff are outside the scope of this procedure ~~and~~ and should be forwarded to the ~~STP FSME~~ OAC within five days of receipt following MD 8.8, Handbook, Part I, *General Information on the NRC Allegation Management Program*.

~~2. The STP OAC should inform the appropriate OAC by telephone or e-mail of the receipt and referral of the allegation within 14 days of receipt. The alleger will be informed of the referral and of the NRC contact regarding the handling of the concerns.~~

~~3. The STP OAC prepares a memorandum referring the allegation to the appropriate OAC. The memorandum should include a header "Not for Public Disclosure." The identity of the alleger should not be included in the memorandum see Appendix B.~~

~~4. The distribution should follow MD 8.8 direction "only to those with a need to know." STP distribution includes a copy with attachments to the Allegations File, and a copy of the cover memorandum w\o attachments to all others identified on the distribution list. (Sample referral memorandum attached as Appendix B.)~~

B. Processing Allegations Involving Agreement State Licensees

Allegations which involve an Agreement State licensee received by FSME staff should be forwarded to the ~~FSME~~ OAC within five days of receipt following MD 8.8, Handbook, Part I, *General Information on the NRC Allegation Management Program*.

~~B~~C. Alleger's Identity Protection When Making Referrals To Agreement States

Before making any referrals to an Agreement State, all reasonable efforts should be made to inform the alleger(s) of the referral in accordance with ~~Handbook~~ MD 8.8. In addition, staff should determine the ability of the State to protect the identity of the alleger by referring to Appendix ~~A~~C, *Ability of Agreement States to Protect Alleger~~'~~s Identity from Public Disclosure.* When contacting the alleger, staff should inform the alleger of the NRC~~'~~s plans to ~~refer~~ transfer the allegation or concern to the State, inform the alleger of the State~~'~~s ability to protect his/her identity from public release, and inquire whether the alleger wishes for his/her identity to be released to the State. The staff should also encourage the alleger to contact the State directly regarding their 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 their 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. If the alleger indicates that he/she would like to contact the State directly, the staff should provide the alleger with the contact person~~'~~s name and telephone number, if available. If the alleger indicates that he/she would not like to contact the State directly, staff should follow the guidance in ~~Handbook~~ MD 8.8, concerning referrals to Agreement States and the protection of the alleger~~'~~s identity.

D. Processing Concerns Involving Agreement State Performance Concerns or Wrongdoing

1. Allegations which involve an Agreement State Performance concern~~s~~ or wrongdoing and received by FSME staff should be forwarded to the ~~FSME~~ OAC within five days of receipt following MD 8.8, Handbook, Part I, *General Information on the NRC Allegation Management Program*.

2. Referral Criteria

(a) Referrals to Radiation Control Program ~~RCP~~ Director (RCPD).

(i) Alleged performance or wrongdoing concerns involving Agreement State employees below the RCP ~~Director~~ should be referred to the RCPD ~~Director~~.

(ii) Alleged performance concerns involving the Agreement State program, should be initially referred to the RCPD ~~Director~~.

(b) Referrals to Senior Line Management above RCP ~~Director~~.

(i) Alleged wrongdoing or performance concerns involving the Agreement State RCP-D~~irector~~ should be referred to Senior Line Management above the RCP-D~~irector~~.

(ii) Alleged employee wrongdoing or performance concerns involving the Agreement State program or employees, that were previously referred to the RCP-D~~irector~~, and which have not been appropriately addressed, should be referred to Senior Line Management above the RCP D~~irector~~.

(c) Referrals to State Inspector General (IG) or Attorney General (AG).

(i) Alleged employee wrongdoing or performance concerns involving the Agreement State program or employees, that were previously referred to Senior Line Management above the RCP-D~~irector~~, and which have not been appropriately addressed, should be referred to the State IG or AG.

(ii) Alleged wrongdoing or performance concerns involving Senior Line Management above the RCP-D~~irector~~ should be referred to the State IG or AG.

~~**C. Processing Allegations Involving Agreement State Licensees**~~

~~1. Allegations which involve an Agreement State licensee received by STP FSME staff should be forwarded to the STP FSME OAC within five days of receipt.~~

~~2. The STP OAC should inform the appropriate Regional OAC or Regional State Agreements Officer (RSAO) by telephone or e-mail of the receipt and referral of the allegation within 14 days of receipt by STP OAC. The alleger will be informed of the referral and of the NRC contact regarding the handling of the concerns.~~

~~3. The STP OAC prepares a memorandum referring the allegation to the appropriate Regional OAC. The memorandum should include a header "Not for Public Disclosure." The identity of the alleger should not be included in the memorandum see Appendix B.~~

~~4. The distribution should follow MD 8.8 direction "only to those with a need to know." STP distribution includes a copy with attachments to the Allegations File, and a copy of the cover memorandum w\o attachments to all others identified on the distribution list. (Sample referral memorandum attached as Appendix B.)~~

~~5. However, if the Allegations also address Agreement State performance or wrongdoing concerns, after coordination with the appropriate Regional Office, STP should refer the concerns to the State.~~

~~D~~E. Processing Allegations or Agreement State program performance concerns Involving Intimidation and Harassment and Other Alleged Violations Under the

Energy Reorganization Act of 1974 (ERA), Section 211.

Staff should inform the alleger of his/her rights under Section 211 of the ERA. However, if the Allegations also address Agreement State performance or wrongdoing concerns, after coordination with the appropriate Regional Office, FSME should transfer the concerns to the State. In accordance with Handbook 8.8, staff should inform the alleger of his/her rights under Section 211 of the ERA.

The STP OAC should refer the allegations to the appropriate Regional Office for action according to paragraph C, *Processing Allegations Involving Agreement State Licensees*, of this section. However, if the Allegations also address Agreement State performance or wrongdoing concerns, after coordination with the appropriate Regional Office, STP should refer the concerns to the State.

E. Processing Concerns Involving Agreement State Performance or Wrongdoing

1. The STP OAC should inform STP management of allegations within five days of receipt by STP OAC. If the concerns are of a high potential safety significance, STP management will be informed immediately.

2. Within 30 calendar days of receipt, STP will review the allegation and determine the appropriate action(s).

3. Referrals to Agreement State Officials.

   (a) Referrals to RCP Directors and to Senior Line Management above the RCP Director should be transferred through STP correspondence.

   (b) Referrals to Agreement State IG or AG offices should be transferred through STP or OI correspondence.

4. Referral Criteria

   (a) Referrals to RCP Director.

      (i) Alleged performance or wrongdoing concerns involving Agreement State employees below the RCP Director should be referred to the RCP Director. (Sample transmittal letter attached as Appendix D.)

      (ii) Alleged performance concerns involving the Agreement State program, should be initially referred to the RCP Director. (Sample transmittal letter attached as Appendix D.)

   (b) Referrals to Senior Line Management above RCP Director.

      (i) Alleged wrongdoing or performance concerns involving the Agreement State RCP Director should be referred to Senior Line Management above the RCP Director.

      (ii) Alleged employee wrongdoing or performance concerns involving the Agreement State program or employees, that were previously referred

~~to the RCP Director, and which have not been appropriately addressed, should be referred to Senior Line Management above the RCP Director. (Sample transmittal letter attached as Appendix D.)~~

~~(c) Referrals to State IG or AG.~~

~~(i) Alleged employee wrongdoing or performance concerns involving the Agreement State program or employees, that were previously referred to Senior Line Management above the RCP Director, and which have not been appropriately addressed, should be referred to the State IG or AG.~~

~~(ii) Alleged wrongdoing or performance concerns involving Senior Line Management above the RCP Director, should be referred to the State IG or AG.~~

~~(iii) Alleged employee wrongdoing or performance concerns involving an Agreement State program which has demonstrated a disregard for investigating and handling alleged concerns, should be referred to the State IG or AG.~~

~~(iv) Alleged wrongdoing or performance concerns, which involve areas of significant regulatory concern as described in Handbook 8.8, Part III, *Staff Requirements to Advise OI of Matters of Potential Wrongdoing, should be referred to the State IG or AG.*~~

F. Follow up and Closure of Allegations

1. All ~~allegations~~ concerns concerning matters outside of the guidance in MD 8.8 and outside Agreement State jurisdiction should be closed ~~after sending a combined acknowledgment and closure letter to the Alleger~~in accordance with guidance obtained during an ARB meeting. ~~(Sample transmittal letter attached as Appendix E.)~~

2. All transfer letters to the State, including those in which the alleger's identity is released, should request a response. An acknowledgment letter is sent to the alleger. After the transfer to the State is completed and the State has responded, the ARB will reconvene to determine the next steps including closure of the concern. Concerns transferred to the RCPD should be addressed at the time of the next periodic meeting or IMPEP review of the Agreement State~~All allegations referred to NRC offices should be closed after sending a combined acknowledgment and closure letter to the alleger and sending a referrala referral memorandum to the NRC office~~. ~~(See Appendix B and Appendix E.)~~

3. All transfers to the State without the release of the alleger's identity should include a request for a response indicating the results or resolution of the matter within 60 days. After the State has responded, the ARB will reconvene to determine the next steps including closure of the concern. If after 60 days no

response is received from the State, periodic follow-up with the State regarding its response to the transfer should be made by the Director, DILR. If after 90 days no response is received from the State, a letter should be sent to the State requesting a response within 30 days. If the response has not been received within 30 days, the original transfer that was made to the RCPD should then be re-transferred to the Senior Line Management above the RCPD for action. Alternatively, if the original transfer was made to the Senior Line Management, it should then be re-transferred to the State AG or IG, as appropriate. If the original transfer was made to the State AG or IG, and there is no response, then the concern should be considered by FSME management, either individually, or in consultation with the Management Review Board to determine: 1) whether a special IMPEP review of the State or OI investigation (after Commission approval) should be conducted; or 2) whether a letter to a higher Government official should be sent. The alleger should be informed of the status of the transfer to the State~~All referral letters to the State, including those in which the alleger's identity is released, should request a response. A combined acknowledgment and closure letter is sent to the alleger. After the referral to the State is completed, the concern should be closed. Performance concerns referred to the RCP Director should be addressed at the time of the next periodic meeting or IMPEP review of the Agreement State, in accordance with paragraph 5 of this section~~.

~~(See Appendix E.)~~

4. All Agreement State licensee allegations transferred without the release of the alleger's identity, and all performance concerns transferred to the RCPD should be addressed at the time of the next periodic meeting or IMPEP review of the Agreement State, whichever comes first~~All referrals to the State without the release of the alleger's identity should include a request for a response indicating the results or resolution of the matter within 60 days. If after 60 days no response is received from the State, periodic follow-up with the State regarding its response to the referral should be made by the STP FSME OAC and/or OI staff. If after 180 days no response is received from the State, a letter should be sent to the State requesting a response within 30 days. (Sample transmittal letter attached as Appendix F.) If no response is received within 30 days, the referrals made to the RCP Director, should be re-referred to the Senior Line Management above the RCP Director for action. If the referral was made to the Senior Line Management, it should be re-referred to the State AG or IG, as appropriate. If the referral was made to the State AG or IG, the concern should be considered by STPFSME, either individually, or in consultation with the Management Review Board to determine: 1) whether a special IMPEP review of the State or OI investigation (after Commission approval) should be conducted; 2) whether a letter to a higher Government official should be sent; or 3) whether the concern(s) should be closed. The alleger should be informed of the status of the referrals to the State~~.

5. The IMPEP team leader or periodic meeting leader should coordinate with the Region or the FSME OAC any information received during the IMPEP review or periodic meeting which will assist in the update and/or closeout of the allegation files. Information regarding allegations involving Agreement State licensees should be coordinated with the Regional OAC and the NRC Regional State~~s~~ Agreements Officer (RSAO) for referral to the Agreement State. Information regarding alleged concerns involving Agreement State performance should be coordinated with the FSME OAC~~All Agreement State licensee allegations referred without the release of the alleger's identity, and all performance concerns referred to the RCP Director should be addressed at the time of the next periodic meeting or IMPEP review of the Agreement State, whichever comes first.~~

~~The IMPEP team leader or periodic meeting leader should coordinate with the Regional or STP FSME OAC any information received during the IMPEP review or periodic meeting which will assist in the update and/or closeout of allegation files. Information regarding allegations involving Agreement State licensees should be coordinated with the Regional OAC. Information regarding alleged concerns involving Agreement State performance should be coordinated with the STP FSME OAC~~.

~~G. STP Meetings - Processing Complex Agreement State Alleged Concerns~~

~~1. Criteria for Holding STP Meetings.~~

~~The STP Director may hold a meeting to discuss any alleged concern received by STP. A meeting should be held for all alleged concerns involving an immediate health and safety issue. A meeting should be held if the concern or concerns are generic (have the potential of affecting multiple jurisdictions, e.g., sealed source & device concern involving multiple jurisdictions or presenting health and safety concerns in multiple jurisdictions). A meeting may be held when the alleged concern or concerns involve more than one category of alleged concern - performance, wrongdoing, or Agreement State licensee or if there is no clear delineation of the type of concern. In addition, on at least a quarterly basis, a status meeting will be held to discuss all open allegations with STP management.~~

~~2. Convening a Meeting~~

~~(a) Preparations for the meeting including dissemination of pertinent information should be performed by the STP OAC in coordination with STP administrative staff.~~

~~(b) Participants at the meeting should include the STP Director, or designated representative, the STP OAC or designated representative, representatives from the Office of the General Counsel, the Office of Investigations, and other NRC offices (i.e., Office of Nuclear Material Safety and Safeguards, and NRC Regional Offices), as appropriate.~~

~~(c) The guidance in Handbook 8.8, Part I, applicable to Allegation Review Board Meetings should be followed.~~

G. Contact Information

The FSME allegation and Agreement State performance concern program is administered by the FSME OAC.

For allegations the OAC can be reached via email at:
FSMEAllegation.Resource@nrc.gov

For Agreement State performance concerns, via email at:
FSMEConcerns.Resource@nrc.gov.

VI. APPENDICES

~~Appendix A - Allegation Report Form~~

~~Appendix B - Sample STP Allegation Referral Memorandum~~

Appendix A~~C~~ ~~-~~ Ability of Agreement States to Protect Alleger~~'~~s Identity from Public Disclosure

~~Appendix D - Sample Letter Referring Allegation to State RCP Director, Senior Line Management, State IG or AG~~

~~Appendix E - Sample Language for Letter to the Alleger~~

~~Appendix F - Sample Follow-up Letter for Referrals Over 180 Days to State RCP Director, Senior Line Management, State IG or AG~~

VII. REFERENCES

1. MD 8.8, *Management of Allegations*, and associated Handbook 8.8

2. Staff Requirements Memorandum - SECY-98-192 - Resolution of Allegations Concerning the Performance of Agreement State Programs, dated December 8, 1998.

~~**ALLEGATION REPORT FORM**~~

~~**AGREEMENT STATE AND/OR FACILITY NAME:**~~

~~Alleger:~~
~~_____~~

~~Address:~~
~~_____~~

~~_____~~

~~_____~~

~~Home Phone:_____~~

~~Work Phone:_____~~

~~Alleger's preference for method of contact (mail, phone, etc.) And time of contact:~~

~~Date Received:_____ Received by:_____ Title:~~
~~_____~~
~~Identity Protection Requested: Y or N~~

~~**Disclosure of Alleger's Identity:**~~
~~**The Individual receiving the Allegation:** Inform the alleger of the degree to which their identity can be protected. This is necessary since some allegers may incorrectly assume that the NRC can or will protect their identity under all circumstances. Inform individuals to whom the NRC has not granted confidentiality in accordance with the Commission's "Statement of Policy on Confidentiality" **verbatim** of the following:~~

~~In resolving technical issues, the NRC intends to take all reasonable efforts not to disclose your identity unless~~
- ~~You clearly indicate that you have no objection to being identified.~~
- ~~Disclosure is necessary because of an overriding safety issue.~~
- ~~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.~~
- ~~Disclosure is necessary in furtherance of a wrongdoing investigation, including an investigation of harassment and intimidation (H&I) allegations.~~
- ~~Disclosure is necessary to support a hearing on an enforcement matter.~~
- ~~You have taken actions that are inconsistent with and override the purpose of protecting your identity.~~

~~For allegations involving H&I, the NRC will normally disclose your identity during an NRC investigation if you are the victim of the discrimination.~~

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

~~Information provided under the Freedom of Information Act (FOIA) will, to the extent consistent with that act, be purged of names and other potential identifier of allegers; however, disclosures may be necessary under this act.~~

~~If it is necessary to release your identity for reasons discussed above, we will make reasonable efforts to contact you and explain the need for the disclosure.~~

~~**U.S. Department of Labor (DOL) RIGHTS (if applicable):** If you believe you have been discriminated against for engaging in a protected activity, you may have personal remedies through the DOL. The complaint must be submitted in writing within 180 days of occurrence of the discriminatory act to ensure that your personal employee rights are~~

	~~protected. The complaint should be filed with the Office of the Administrator Occupational Safety and Health Administration, DOL, Room S3502, 2000 Constitution Avenue, NW, Washington, DC 20210, or with the regional DOL office having jurisdiction over the matter..~~ ~~Confidentiality Protection Requested: Y or N~~
~~What is the allegation or concern?~~	
~~How did alleger find out about the allegation or concern?~~	
~~Where did alleged action or activity occurred?~~	
~~When did allegation or concern occur?~~	
~~Who is involved/witnessed action or activity?~~	
~~How or why did it occur?~~	
~~What evidence or records, if any, can be examined?~~	
~~Did the individual express a concern to the licensee, facility or Agreement State involved?~~	
~~What is the status of the licensee's, facility's, or State's action?~~	

Appendix A (continued)

What is this an issue of? (Circle all applicable): (a) Safety; (b) Safeguards; (c) Drugs; (d) Falsification; (e) Discrimination (advise alleger of the 180 day DOL reporting requirement); (f) Agreement State personnel wrongdoing; (g) Agreement State performance; (h) Agreement State Licensee.
The alleger informed verbatim of the limitations on the protection of identity as described in Part I (A)(1)(b) through (e) of the allegations handbook 8.8 of Protection of Alleger Identity: Yes or No

PREPARED BY:	DATE PREPARED:
DATE PROVIDED TO STP OAC:	

Appendix AC

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SAMPLE STP ALLEGATION REFERRAL MEMORANDUM

NOT FOR PUBLIC DISCLOSURE

MEMORANDUM TO: **(Name of Office Allegation Coordinator)**
Office Allegation Coordinator
(Name of Office, i.e., Region IV)

FROM: **(Name of STP Office Allegation Coordinator)**
Office of State and Tribal Programs (STP)

SUBJECT: ALLEGATION RECEIVED BY STP, REGARDING ALLEGED **(Type of concern, i.e., OCCUPATIONAL EXPOSURE)** AT **[Facility name, City and State]**

USE FOR ALL REFERRALS

On **[insert date],** the Office of State and Tribal Programs received a concern(s) regarding (concern description) at the **[Facility name, City and State]. [INSERT FOR ALLEGATIONS INVOLVING AGREEMENT STATES LICENSEES]** This facility is under the regulatory jurisdiction of **[name of State],** an Agreement State.

In accordance with Management Directive 8.8, we are referring this allegation to you for any actions you deem appropriate in accordance with this procedure. If you have any questions, or if we can be of any assistance, I can be reached at **[insert telephone number of STP OAC and e-mail address].**

Attachment:
As stated

Distribution:
STP OAC, w/attach.
Allegations File

DOCUMENT NAME: G:
To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy

OFFICE	STP		STP:DD		STP:D	
NAME	STP OAC		Deputy Director, STP		Director, STP	

Appendix A~~C~~

~~DATE~~	~~date~~	~~date~~	~~date~~

APPENDIX A

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 they can protect the alleger~~"~~'s identity, this information should not be released to the State.
Louisiana	NO	
Maine	NO	No response received from State. Without a clear indication from the State that they 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 they can protect the alleger~~"~~'s identity, this information should not be released to the State.
Massachusetts	YES	
Minnesota		
Mississippi	NO	
Nebraska	YES	
Nevada	YES	
New Hampshire	NO	The information must be labeled confidential.
New Jersey		

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Appendix A~~C~~

STATE	IS THE STATE ABLE TO PROTECT ALLEGER'S IDENTITY?	COMMENTS
New Mexico	NO	
New York	NO	
North Carolina	YES	
North Dakota	YES	
Ohio	YES	
Oklahoma	YES	
Oregon	YES	
Pennsylvania		
Rhode Island	NO	
South Carolina	YES	
Tennessee	NO	
Texas	NO	No response received from State. Without a clear indication from the State that they 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.
Virginia		
Washington	Yes	
Wisconsin		

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Appendix ~~C~~ A (continued)

	~~STATE~~	~~IS THE STATE ABLE TO PROTECT ALLEGER'S IDENTITY?~~	~~COMMENTS~~
	~~Utah~~	~~No~~	~~The information must be labeled confidential.~~
	~~Washington~~	~~YES~~	

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Appendix D

LETTER REFERRING ALLEGATION TO STATE RCP DIRECTOR, SENIOR LINE MANAGEMENT, STATE IG OR AG

Agency Representative
And Agency's Address

SUBJECT: REFERRAL OF MATTER RECEIVED BY STP REGARDING [Name of State Employee, or Name of Agreement State Program]

Dear _____:

USE FOR ALL LETTERS

The Office of State and Tribal Programs (STP) has received information regarding a potential [insert performance and/or wrongdoing] concern involving [insert name of State employee, or name of Agreement State Program]. Details are described in the enclosure to this letter.

The State of [insert name of State] has entered into an Agreement with the U.S. Nuclear Regulatory Commission (NRC) under which the NRC discontinues its authority to regulate Atomic Energy Act materials as specified in Section 274 of the Act, and the State of [insert name of State], as an Agreement State, assumes that authority. Under this Agreement, the State of [insert name of State] has jurisdiction over this concern(s). We ask that you review and address these concerns/this matter as you deem appropriate. We would appreciate your informing us of your resolution of this matter.

[INSERT IF THE ALLEGER AGREES TO THE RELEASE OF HIS/HER NAME TO THE STATE]

This information was submitted to STP by [insert name of alleger(s), address, and telephone number]. [insert name of alleger(s)] has agreed to cooperate with the State and can be reached by your office. We have also provided your address and telephone number to the individual so that they may contact you in the future regarding this matter. When your actions are completed, please inform alleger of the results of your action(s) or resolution of this matter.] [Insert for performance concerns transmitted to the RCP Director: STP will review your response to this matter during the next periodic meeting, or Integrated Materials Performance Evaluation Program (IMPEP) review, whichever comes first.]

CERTIFIED MAIL
RETURN RECEIPT REQUESTED {Only use on first page of all allegation letters.}

Appendix D (continued)

[INSERT IF THE ALLEGER DOES NOT AGREE TO THE RELEASE OF HIS/HER NAME TO THE STATE]

The individual who provided this information to the NRC requested that his/her identity not be provided to you. Therefore, we ask that you provide a response directly to me so that we may inform the individual of the resolution of these matters. We would appreciate a response within 60 days informing us of the details of your actions or resolution of this matter. In the event the alleger changes his/her mind about contacting the State, we have provided your address and telephone number to the individual so that they may contact you in the future.

USE FOR ALL LETTERS

We ask that your response only be sent to me at the following address. No other copies should be sent to the NRC.
STP Director (ADDRESSEE ONLY)
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Mail Stop O-3-C-10
Washington, DC 20555

If your response contains personal privacy, proprietary, or confidential information, such information shall be contained in a separate enclosure, appropriately marked, so that it will not be subject to public disclosure.

The response requested by this letter and the accompanying enclosure are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. 96-511.

We also request that you control and limit the distribution of this letter and its enclosures. These documents should be limited to State personnel with a "need to know." Your cooperation with us is appreciated. If you have any questions, please contact [insert name of STP OAC] at [insert STP OAC telephone number] or myself at [insert STP Director's telephone number].

Sincerely,

STP Director
Enclosure: As stated

Distribution:
STP OAC, w/encl.
Allegations File

DOCUMENT NAME: G:\
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O F	STP		STP:DD		STP:D				

Appendix D (continued)

~~FICE~~										
~~NAME~~		~~STP OAC~~		~~Deputy Director~~		~~Director, STP~~				
~~DATE~~		~~date~~		~~date~~		~~date~~				

Appendix D (continued)

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~~(Header) NOT FOR PUBLIC DISCLOSURE~~

~~SAMPLE ENCLOSURE TO LETTER TO STATE REFERRING ALLEGATION~~

~~Enclosure to letter dated (date) to XYZ Agreement State.~~

~~The Office of State and Tribal Programs has received information from a concerned individual that the XYZ Agreement State inspector who responded to the incident at ABC Facility did not [insert details]. Additionally, the concerned individual stated that there is off-site contamination at the ABC Facility and the Agreement State is not enforcing their regulations.~~

~~(Footer) NOT FOR PUBLIC DISCLOSURE~~

Appendix E

~~SAMPLE LANGUAGE FOR LETTERS TO THE ALLEGER~~

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~~FOR ALL LETTERS~~

~~STP [ ] A [ ]~~

~~ALLEGER'S NAME~~
~~AND ADDRESS~~

~~Subject: Concerns You Raised to the NRC Regarding _____~~
~~(Agreement State and/ or Agreement State and Licensee/ or Other)~~
~~Dear _____:~~

~~This refers to your (telephone conversation, letter, etc.) with _____, on _____, in which you expressed concerns related to _____(insert name of facility). Specifically, you indicated that __(describe each concern clearly)____.~~
~~If we have misunderstood or mischaracterized your statements as described above, please contact me so that we can assure that your concerns are adequately characterized.~~

~~COMBINED ACKNOWLEDGMENT AND CLOSURE LETTER FOR CONCERNS OUTSIDE MD 8.8, GUIDANCE AND AGREEMENT STATE JURISDICTION~~

~~As was discussed on _____, the United States Nuclear Regulatory Commission does not have jurisdiction in the area in which you have raised concerns. In addition, your concerns did not raise any health and safety concerns related to the regulation of radioactive materials.~~

~~We plan no further action. Thank you for informing us of your concerns.~~

~~CERTIFIED MAIL~~
~~RETURN RECEIPT REQUESTED~~
~~(Note: The above caption should be on the first page and on the official record copy.)~~

~~FOR ACKNOWLEDGMENT LETTERS WHERE ALLEGER'S IDENTITY NOT RELEASED TO STATE~~

~~The United States Nuclear Regulatory Commission (NRC) intends to take all reasonable efforts not to disclose your identity to any organization, or individual outside the NRC, or the public unless you clearly indicate no objection to being identified. However, you should be aware that your identity could be disclosed if disclosure is necessary to ensure public health and safety, to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust, to support a hearing on an NRC enforcement matter, or if you have taken actions that are inconsistent with and override the purpose of protecting an alleger's identity.~~

Appendix E (continued)

The NRC does not have jurisdiction over the activities that are discussed in your concerns, we are referring you concerns to the State of _____. You agreed with this referral and indicated that you did not want your identity released to the State. Your concerns were referred to:

INSERT: NAME; ADDRESS; AND PHONE NUMBER FOR PERSON IN STATE TO WHICH CONCERNS WERE REFERRED

We have asked that the State inform us of their actions to address your concerns. We will provide you a copy of their response upon receipt. In addition, we will review the State's response to your concerns during the next [Insert periodic meeting or Integrated Materials Performance Evaluation Program (IMPEP) review] of the [Insert State] Agreement State Program, which is scheduled for_____ [Insert date of the periodic meeting or IMPEP]. We will also inform you of the results of this review.

FOR ACKNOWLEDGMENT LETTERS WHERE ALLEGER'S IDENTITY RELEASED TO STATE

The U.S. Nuclear Regulatory Commission does not have jurisdiction over the activities that are discussed in your concerns, we are referring you concerns to the State of _____. You agreed with this referral and to the release of your identity. Your concerns were referred to:

INSERT: NAME; ADDRESS; AND PHONE NUMBER FOR PERSON IN STATE TO WHICH CONCERNS WERE REFERRED

We have asked that the State inform you of the actions they take to address your concerns and have requested that they also provide a copy to us. We plan no further action on the concerns referred to the State, at this time. We will review the State's response to your concerns during the next [Insert periodic meeting or Integrated Materials Performance Evaluation Program (IMPEP) review] of the [Insert State] Agreement State Program, which is scheduled for_____ [Insert date of the periodic meeting or IMPEP]. We will inform you of the results of our review.

FOR ACKNOWLEDGMENT LETTERS IF ADDITIONAL INFORMATION IS NEEDED FROM THE ALLEGER

We have determined that we need additional information from you before we can proceed with any actions relative to your concerns. We have attempted to contact you by telephone without success. I would appreciate your contacting me as soon as possible, so that we can discuss your concerns further. I can be reached toll free at 1-800-368-5642, ext. _____.

Appendix E (continued)

~~FOR FOLLOW-UP LETTERS IF ADDITIONAL INFORMATION WAS PROMISED BUT NOT RECEIVED~~

~~You indicated that you would be providing additional information regarding your concerns. Since you have not contacted us, we can not proceed with any actions relative to your concerns. We plan no further action regarding your concerns and consider your concerns closed. If you decide to submit additional information in the future, we will address your concerns at that time.~~

~~FOR LETTERS ADDRESSING ALLEGATIONS REGARDING IMPROPER ACTIONS BY NRC STAFF~~

~~With respect to your concerns regarding alleged improper actions by NRC staff, these matters have been referred to the NRC Office of Inspector General (OIG), and if you should have any questions or other comments on these matters, you should contact the OIG directly at 1-800-233-3497.~~

~~FOR LETTERS INVOLVING DISCRIMINATION~~

~~If you believe you were discriminated against for raising safety concerns, you can seek personal remedies through the U.S. Department of Labor (DOL). The complaint must be submitted in writing within 180 days of the occurrence 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. You should contact DOL at _____ (DOL ADDRESS AND PHONE INFORMATION).~~

~~FOR STATUS LETTERS~~

~~This letter is a follow-up to our letter of _____, and telephone conversations of _____[Insert if appropriate.] In the letter of _____ [Insert date of letter], we indicated that we would be referring your concerns to _____ [Insert State Agency Name] for action. We asked the State to inform us of their actions to address your concerns. We also indicated that we would provide you a copy of their response upon receipt. To date, we have not received a response. We will correspond with you further upon receipt of the State's response.~~

~~FOR CLOSEOUT LETTERS~~

~~The Office of State and Tribal Programs (STP) has completed its actions in response to your concerns relating to _____. The enclosure to this letter describes how your concerns were resolved.~~

~~We trust these actions have been responsive to your concerns and we plan no further action. Thank you for informing us of your concerns.~~

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Appendix E (continued)

USE FOR ALL LETTERS

If a request is filed under the Freedom of Information Act (FOIA) related to your area(s) of concern, the information provided will, to the extent consistent with that act, be purged of names and other potential identifiers. Further, you should be aware you are not considered a confidential source unless confidentiality has been formally granted in writing.

Thank you for notifying us of your concerns. [Insert in All Initial Letters to First Time Allegers: Enclosed is a brochure entitled "Reporting Safety Concerns to the NRC," which provides a description pf the NRC process in these matters.] If you have any additional questions, or if the NRC can be of further assistance in this matter, please call me at 1-800-368-5642, extension [INSERT NUMBER].

Sincerely,

_____ Allegation Coordinator

Enclosure:
As stated

Distribution:
Allegation File STP-____-A-____-____

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OFFICE		STP		STP:DD		STP:D					
NAME		STP OAC		Deputy Director, STP		Director, STP					
DATE		date		date		date					

Appendix F

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FOLLOW-UP LETTER FOR REFERRALS OVER 180 DAYS TO STATE RCP DIRECTOR, SENIOR LINE MANAGEMENT, STATE IG OR AG

Agency Representative
And Agency's Address

SUBJECT: REFERRAL OF MATTER RECEIVED BY STP REGARDING (Name of State Employee, or Name of Agreement State Program), Dated [Insert Date of Transmittal Letter]

Dear _____:

USE FOR ALL LETTERS

The Office of State and Tribal Programs (STP) in letter dated [insert dated] from [insert "me" or name of individual] to [insert you or name of individual] referred information regarding a potential [insert performance and/or wrongdoing] concern involving [insert name of State employee, or name of Agreement State Program]. A copy of that letter is enclosed.

To date, we have not received a response. We realize that these matters can require considerable time to address and resolve. However, the Nuclear Regulatory Commission (NRC) has a responsibility to respond to the individual who initially referred this matter to us. Without a response from you, we are unable to adequately address the individual's concern. We would appreciate a response within 30 days informing us of the status of your actions or the details of your actions to resolve this matter. We ask that your response only be sent to me at the following address. No other copies should be sent to the NRC.

STP Director (ADDRESSEE ONLY)
Office of State and Tribal Programs
U.S. Nuclear Regulatory Commission
Mail Stop O-3-C-10
Washington, DC 20555

If your response contains personal privacy, proprietary, or confidential information, such information shall be contained in a separate enclosure, appropriately marked, so that it will not be

Appendix F

~~subject to public disclosure. This letter and its enclosure should be controlled and distribution limited to personnel with a "need to know."~~

~~CERTIFIED MAIL~~
~~RETURN RECEIPT REQUESTED~~ ~~{Only use on the first page of all allegation letters}~~

~~Appendix F (Continued)~~

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~~The response requested by this letter and the accompanying enclosure are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. 96-511.~~

~~We also request that you control and limit the distribution of this letter and its enclosures. These documents should be limited to State personnel with a "need to know." Your cooperation with us is appreciated. If you have any questions, please contact [insert name of STP OAC] at [insert STP OAC telephone number] or myself at [insert STP Director's telephone number].~~

~~Sincerely,~~

~~STP Director~~

~~Enclosure:~~
~~As stated~~

~~Distribution:~~
~~STP OAC, w/encl.~~
~~Allegations File~~

~~DOCUMENT NAME: G:\~~
~~To receive a copy of this document, indicate in the box: "C" = Copy without attachment/enclosure "E" = Copy with attachment/enclosure "N" = No copy~~

~~OFFICE~~		~~STP~~		~~STP:DD~~		~~STP: D~~					
~~NAME~~		~~STP OAC~~		~~Deputy Director, STP~~		~~Director, STP~~					
~~DATE~~		~~date~~		~~date~~		~~date~~					