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.

SA-400: Management of Agreement State Performance Concerns and Allegations

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.

II. OBJECTIVES

To ensure that allegations involving Agreement State licensees, 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 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.

IV. ROLES AND RESPONSIBILITIES

A. The Director, Division of Intergovernmental Liaison and Rulemaking (DILR):

1. Oversees the management of the allegation and Agreement State program performance concerns (ASPC) program in FSME in accordance with MD 8.8.

2. Serves as Chair (or designates an acting chair) of the Allegation Review Board (ARB) for all ASPCs.

3. 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 FSME Office Allegation Coordinator (OAC).

5. 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. Ensure 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. Ensure 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, propose resolution plans for consideration by the ARB and ensure that the resolution plan approved by the ARB is followed and the schedule for resolution is met. Promptly notify the OAC of changes to the above.

6. Approve and concur 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. Ensure branch staff completes annual allegation training.

D. The 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.

11. Provides input to the Integrated Materials Performance Evaluation Program (IMPEP) team members when reviewing the common performance indicator, *Technical Quality of Incident and Allegation Activities.*

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

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. All FSME Employees:

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

2. Record the receipt of any allegation and 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.

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.

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.

6. Consult the OAC to determine whether a matter involving Agreement States should be considered as a potential allegation(s) or 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.

8. Completes annual allegation training.

G. 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 in ARB meetings to address various Agreement State concerns.

V. GUIDANCE

A. Processing Allegations Under NRC's Jurisdiction

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

B. Processing Allegations Involving Agreement State Licensees

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

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 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, *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 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 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 or wrongdoing and received by FSME staff should be forwarded to the 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 Director (RCPD).

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

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

(b) Referrals to Senior Line Management above RCPD.

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

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

(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 RCPD, 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 RCPD should be referred to the State IG or AG.

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.

F. Follow up and Closure of Allegations

1. All concerns concerning matters outside of the guidance in MD 8.8 and outside Agreement State jurisdiction should be closed in accordance with guidance obtained during an ARB meeting.

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.

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.

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.

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 Agreements Officer (RSAO) for referral to the Agreement State. Information regarding alleged concerns involving Agreement State performance should be coordinated with the FSME OAC.

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. APPENDIX

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

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.

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		
New Mexico	NO	

STATE	IS THE STATE ABLE TO PROTECT ALLEGER'S IDENTITY?	COMMENTS
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		