

ATTACHMENT 0609.02

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

0609.02-01 PURPOSE

To define the process by which a licensee may appeal the staff's final significance determination of an inspection finding documented in an NRC inspection report or final significance determination letter as White, Yellow, or Red. Consistent with the intent of the significance determination process (SDP) to assess significance in a timely manner using the best available information, the staff should be cautious to ensure that the appeal process does not become a protracted review requiring extensive staff resources.

0609.02-02 PREREQUISITES

It is assumed that prior to issuing the final significance determination, "coloring" the finding, and documenting this in an inspection report, including the SDP basis for significance, the staff would have completed the following:

- a. Applying the best available information, the responsible inspector would have established the licensee's performance deficiency and characterized the finding as potentially greater than Green. Using the applicable SDP Appendix, the inspector/analyst would have determined the proposed preliminary color for the finding (White, Yellow, Red, or Greater Than Green).
- b. Each finding that the staff's significance determination has preliminarily characterized "White, Yellow, Red, or Greater Than Green" would have been presented to and reviewed by the NRC Significance and Enforcement Review Panel (SERP). Subsequently, the staff would have informed the licensee of the preliminary characterization of the issue in a **preliminary significance determination** letter which included an invitation for the licensee to present additional information.
- c. If the licensee opted for an opportunity to present additional information to the staff either by meeting with regional management at a Regulatory Conference or by submitting additional information in writing on the docket, such information would have been reviewed and dispositioned by the staff. **Additional information that the licensee indicated was not available to present at the Regulatory Conference, should be received by the staff within a reasonable period of time (agreed upon between the licensee and the staff, and documented), to allow the staff adequate time to review the information.**
- d. The staff has sent the licensee a letter which states the staff's final significance determination and broadly responds to the information provided by the licensee.

0609.02-03 LIMITATIONS

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

- a. The staff's significance determination process was inconsistent with the applicable SDP guidance or lacked justification. Issues involving the staff's choice of probabilistic risk modeling assumptions used in the SDP will not be considered appealable under this process, provided the staff documented its justification in those cases where the licensee presented a different point of view.
- b. Actual (verifiable) plant hardware, procedures, or equipment configurations, identified by the licensee to the NRC staff at the Regulatory Conference or in writing prior to the staff reaching a final significance determination, was not considered by the staff.
- c. A licensee submits new information which was not available at the time of the Regulatory Conference. New information will be considered **only** if the licensee informed the **staff that additional information was under development prior to or during the Regulatory Conference, or in their written response to the preliminary significance determination. The information under development should have been received within a reasonable period of time (agreed upon between the licensee and the staff) for the staff to review it.**

0609.02-04 INSPECTION REPORT COVER LETTER TRANSMITTING FINAL SIGNIFICANCE DETERMINATION

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

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

0609.02-05 APPEAL PROCESS

- a. The licensee must submit its letter of appeal to the Regional Administrator (RA) **or to the NRC Office Director responsible for the inspection** within 30 calendar days of the date of the transmittal letter.
- b. The RA **or responsible NRC Office Director** should determine within 30 calendar days of the receipt of the licensee's appeal request whether the appeal meets the above merit guidelines. Following the determination, but still within the 30 calendar days, the RA **or responsible NRC Office Director** should inform the licensee in

writing of the decision and its basis. NRR or NSIR (for Security and emergency planning), should concur on the decision to accept the appeal.

- c. If the appeal is accepted, the associated review and written notification to the licensee stating the results of the appeal review should be limited to 30 calendar days following the acceptance of the appeal. The RA or responsible NRC Office Director will appoint an appeal panel consisting of, at a minimum, two technical experts in the cornerstone being discussed and an enforcement specialist. The RA or responsible NRC Office Director may also request representation by the Office of General Counsel. The cornerstone experts for initiating events, mitigation systems, and barriers will be two persons with risk analysis experience (one from the RA's regional office and one from headquarters). Other persons with related technical expertise may also be appointed from any regional or headquarters office. At least one panel member will not have had prior involvement with the significance determination under appeal. The principal purpose of the panel is to arrive at a consensus regarding the validity of the licensee's appeal.
- d. The appeal panel will review the inspection finding, its significance characterization and basis, any new information that was being developed at the time of the Regulatory Conference, and the licensee's points of contention. The panel will conduct its review based only on docketed information either provided by the licensee, issued by the staff, or otherwise publicly available. The panel may recommend one of the following:
 - 1. No further action and the significance determination is unchanged, or
 - 2. more detailed justification of the basis for the significance determination is required, or
 - 3. change the significance determination (either increase or decrease), as appropriate.

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

- e. The appeal panel will provide its conclusions to the SERP in writing. Within 10 working days of the date of the appeal panel's conclusions, the SERP will consider the results of the appeal panel. The SERP will provide the results of their review to the RA, and to the Director of NRR, or the Director of NSIR (for security or emergency planning), within 5 working days.
- f. Within five working days of receiving the final recommendation memorandum, the RA and the Director of NRR, or the Director of NSIR (for security or emergency planning) will confer and jointly agree on the final decision. Subsequently the RA or responsible NRC Office Director will notify the licensee in writing of the final agency position.

- g. The results of the appeal process are final with no further avenues for appeal within the significance determination process.

END

ATTACHMENT 1

Revision History for IMC 0609.02, "Process for Appealing NRC Characterization of Inspection Findings (SDP Appeal Process)"

Commitment Tracking Number	Issue Date	Description of Change	Training Needed	Training Completion Date	Comment Resolution Accession Number
N/A	CN 05-030 11/22/2005	editorial, such as title changes for concurring managers, redefining limitations.	No	N/A	N/A
N/A	CN 08-004 01/31/08	This revision provides additional detail for considering SDP appeals. The addition of a Prerequisites section, establishment of new time limits, 30 calendar days for merit determination plus additional 30 calendar days for completion. Lastly, the appeal panel's recommendations will go to SERP and the final decision will be signed by the regional administrator and Director, NRR or NSIR (for Security or Emergency Preparedness).	No	N/A	ML080280240
N/A	ML101400502 CN 11-010 06/08/11	This revision clarifies that licensees submit additional information within a reasonable period of time agreed upon between the staff and licensee.	NO	NO	ML103490458