

SUMMARY OF COMMENTS ON SA-400, "Allegations"

I. Sent to the Agreement States for Comment: March 11, 2011 (FSME-11-022)

Comments/Dated:

State of Illinois – (03/16/11) (e-mail received)
State of Minnesota – 04/14/11 (e-mail received)
State of New Mexico – 03/14/11 (e-mail received)
State of Pennsylvania - 04/13/11 (e-mail received)
State of Wisconsin - 04/14/11 (e-mail received)
State of Texas - 04/20/11 (letter received)

State of Illinois

Comment 1:

Appendix A: State confirms it can still protect alleged's identify.

Response:

We agree with this comment. However, no changes to the procedure were necessary in response to this comment.

State of Minnesota

Comment 1:

Appendix A: State comments it can protect an alleged's identity until there is a court hearing where the alleged may be required to testify.

Response:

We agree with this comment. Appendix A was revised to add "YES" to the second column in the Minnesota row to indicate the State can protect the alleged's identify.

State of New Mexico

Comment 1:

Appendix A: The State confirms it can not protect the alleged's identify.

Response:

We agree with this comment. However, no changes to the procedure were necessary in response to this comment.

State of Pennsylvania

Comment 1:

Appendix A should be filled in to say “YES.” Pennsylvania is able to protect allegers’ identity.

Response:

We agree with this comment. Appendix A was revised to add “YES” to the second column in the Pennsylvania row to indicate the State can protect the allegers’ identify.

State of Wisconsin

Comment 1:

Appendix A should be revised to indicate Wisconsin can protect allegers’ identity.

Response:

We agree with this comment. Appendix A was revised to add “YES” to the second column to the Wisconsin row to indicate the State can protect the allegers’ identity.

State of Texas

Comment 1:

Appendix A: The Texas Department of State Health Services (DSHS) stated that the State can not protect the allegers’ identity. All information including the identity of allegers (both licensees and state personnel), is presumed to be public unless expressly exempted.

Response:

We agree with this comment. However, no changes to the procedure were necessary in response to this comment.

Comment 2:

Appendix A: Delete the current comment in the Texas “comments” column. (Ability of Agreement States to Protect Allegers’ Identity from Public Disclosure).

Response:

We agree with this comment. Appendix A was revised to delete the information in the Texas row comment column.

Comment 3:

Sections V.D.2(b)(ii)(Referrals to Senior Line Management above Radiation Control Program

Director (RCPD)) and (c)(ii) (Referrals to State Inspector General (IG) or Attorney General (AG), state that if the RCPD doesn't fully and timely address an allegation, then this should be referred to Senior Line Management above the RCPD. After that, if the referral is not appropriately addressed it should be referred to the State Inspector General or Attorney General. DSHS also recommends that the State's NRC Liaison officer be added to these Sections.

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 4:

DSHS is unclear as to the reasons for the deletion of Appendices D-F regarding the referral form templates.

Response:

We agree with this comment. The referral letter templates will be added back to the procedure.

II. Sent to the NRC Offices for Comment: March 11, 2011

Comments/Dated: Region I – 04/19/11 (e-mail)
Region III – 04/15/11 (e-mail)
DWMEP - – 03/14/11 (e-mail)
FSME ASPB – 04/11/11 (e-mail)
MSSA – 03/25/11 (e-mail)
OGC – 03/30/11 (e-mail)

Region I:

Comment 1:

Section IV.A.5: Suggest deleting. This role belongs to the Regional State Agreements Officers and should be moved to Section IV.G.

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 2:

Section IV.D.9.: Change to read "Promptly informs the appropriate Regional OAC **and** Regional State Agreement Officer ..."

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 3:

Section V.D.: Change the title to read “Processing Concerns Involving ASPCs or Wrongdoing.” Also change D.1. to read “Allegations which involve ASPCs or wrongdoing and received ...”

Response:

We appreciate but disagree with the comment. No changes were made to the document in response to this comment.

Comment 4:

Section V.E.: Change the title to read “Processing Allegations or ASPCs Involving Intimidation ...”

Response

We appreciate the comment, however Section V.E. has been removed from the procedure.

Comment 5:

Section V.: This section does not accurately follow the guidance in MD 8.8 Handbook Section D, which was updated on November 15, 2010. For example: MD 8.8 Handbook Section D.1. states: “Individuals who contact the NRC with concerns about Agreement State licensees are often unaware of the Agreement State program. However, once the Agreement State program is explained, most individuals indicate a willingness to contact and be contacted directly by Agreement State personnel about the evaluation of their concerns(s). Such matters are provided to the appropriate Regional State Agreements Officer (RSAO) for referral to the Agreement State and **are not processed as allegation.**” This is not reflected in SA-400 Section V. Also suggest having OE provide comments on this procedure for completeness.

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 6:

Section V.F.1.: Change to “all concerns involving matters outside ...”

Response:

We appreciate the comment, however Section V.F.1.: has been removed from the procedure.

Comment 7:

Section V.F.3.: Change the 3rd sentence to say “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 RSAO.”

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 8:

Section VIII. ADAMS Reference Documents: This section is missing and should be added for consistency with all other SA Procedures. This section should contain the current and previous version MLs for knowledge transfer purposes.

Response

We agree with this comment.

Comment 9:

Appendix A: Why are there several comments that state: “Without a clear indication from the State that they can protect the alleged’s identify this information should not be released to the State.”? The Agreement States have regulatory authority. It should be NRC’s duty to inform the concerned individual of the State’s policy and if a concerned individual still agrees to allow their information to be given to the State, we should provide it.

Response:

While we appreciate the comment, we believe that the NRC should not have the responsibility to inform the alleged of the State’s policy if the State fails to provide NRC a clear indication they can protect the alleged’s identity. The State has the responsibility to interpret and inform NRC of their ability to protect an alleged’s identity.

We agree that the NRC should identify concerned individuals when they agree to be identified in the referral. We revised the document by adding language in Appendix A comment column to clarify that the alleged’s identity should not be released to the State only when the alleged requests not to be identified in NRC’s referral of their concern to the State.

DWMEP

Comment 1:

This revision copies a lot of information from MD&H 8.8 “Management of Allegations” and by doing this, if MD&H changes, then the FSME Procedure SA-400 will need to be changed as well.

Response:

We agree with this comment. The procedure was revised accordingly.

Region III

Comment 1:

Appendix A “Ability of Agreement States to Protect Allegor’s Identity from Public Disclosure” be updated to reflect that both Minnesota and Wisconsin can protect an allegor’s identify and forwarded copies of both State’s e-mails regarding this matter.

Response:

We agree with this comment. The procedure was revised accordingly.

MSSA

Comment 1:

Page 8. In F.5., we recommend the following sentence be included:

“Documentation of information gathered through the periodic meeting or IMPEP review on performance concerns should be sent to the FSME OAC in accordance with MD 8.8 and the associated handbook unless directed otherwise by the ARB.”

Response:

We agree with this comment in part. The procedure was revised accordingly with the exception of the reference to MD 8.8. Agreement State Program Performance Concern process is not discussed in MD 8.8.

FSME ASPB

Comment 1:

Section IV.A. 5: Suggests that the technical lead assigned to the allegation, if the ARB panel agrees, should have the responsibilities to make follow-up calls to the States to check on the status of concerns referred to them instead of the Director of DILR.

Response:

We appreciate but disagree with the comment. No changes were made to the document in response to this comment

OGC

Comment 1:

Section III. Recommend deleting reference to Staff Requirements Memo (SRM)- SECY-98-192 – Resolution of Allegations Concerning the Performance of Agreement State Programs, dated December 8, 1998 and referring to the Allegation Manual.

Response:

We appreciate, but disagree with the comment to reference the NRC's Allegation Manual, because (1) it is a non-public document and (2) it does not provide guidance on handling Agreement State Program Performance concerns. No changes were made to the document to address this comment.

Comment 2:

Section IV.A.1. Make the following changes: “Oversees the management of the ~~allegation and~~ Agreement State program performance concerns (ASPC) ~~and~~ **allegations** program in FSME in accordance with MD 8.8.”

Response

While we appreciate the editorial comment, the staff has decided not to revise the procedure to address this comment.

Comment 3:

Section IV.A.2. Make the following changes: “Serves as Chair (or designates an acting chair) of the Allegation Review Board (ARB) for all ~~ASPCs~~ **allegations (including those concerns involving an Agreement State licensee in which the concerned individual is unwilling to contact or have his or her identity disclosed to the Agreement State).**”

Comment based on the assumption that the MD 8.8 Handbook, Section II.D. states that concerns involving an Agreement State licensee do not fall within the ASPC category and ASPCs do not meet the NRC definition of “allegation” in MD 8.8.

Response

While we appreciate the comment, the staff will not delete reference to ASPCs in the sentence and add parenthetical “(including those concerns involving an Agreement state licensee in which the concerned individual is unwilling to contact or have his or her identity disclosed to the Agreement State).” The procedure has been revised to create a separate process for handling Agreement State Program Performance Concerns (ASPPCs). The Director, Materials Safety and State Agreements (DMSSA) will chair (or designates an acting chair) of the State Concern Review Board (SCRB) for complex or immediate health and safety concerns related to Agreement State performance. No changes were made to the document in response to this comment.

Comment 4:

Section IV.A.3. Make the following changes: “As ARB Chair, ensures that safety significance, resolution plan, review priority, and wrongdoing matters are considered for each ~~ASPC~~allegation being tracked in the NRC’s allegation process.”

Response:

While we appreciate the comment,,the procedure has been revised to create a separate process for handling Agreement State Program Performance Concerns (ASPPCs). The State Concern Review Board (SCRB), when convened, will handle ASPPCs. No changes were made to the document in response to this comment.

Comment 5:

Section IV.A.6. Make the following changes: “Approves and signs all correspondence transferring ~~ASPC~~concerns to the States with concurrence by the cognizant Branch Chief and OAC.”

Response:

We appreciate, but disagree with the comment. The staff prefers to use the term “ASPPC” to refer to Agreement State Program Performance Concerns that are specifically addressed by this procedure. No changes were made to the document to address this comment.

Comment 7:

Section IV.A.7. Make the following changes: “Approves and signs closure material for ~~ASPC~~allegations and concerns with concurrence by the cognizant Branch Chief and OAC.”

Response:

We appreciate, but disagree with the comment to delete “ASPC” and insert the term “concerns.” The staff prefers to use the term “ASPPC” to refer to Agreement State Program Performance Concerns that are specifically addressed by this procedure. The procedure has also been revised to create a separate process for handling Agreement State Program Performance Concerns (ASPPCs). The State Concern Review Board (SCRB), when convened, will handle ASPPCs and the Allegation Review Board (ARB) will handle allegations. No changes were made to the document in response to this comment.

Comment 8:

Section IV.B.1. Make the following changes: “Ensure that the policies and procedures outlined in MD 8.8 and in ~~this guidance~~these procedures are implemented by division staff.”

Response:

We appreciate the comment, but this statement has since been removed from the procedure.

Comment 9:

Section IV.B.2. Make the following changes: “Participate, as required, as members of ~~the~~ ARB ~~for ASPG.~~”

Response:

We appreciate the comment, but this statement has since been removed from the procedure.

Comment 10:

Section IV.B.3. Make the following changes: “Ensure that cognizant technical and management staff attend meetings of the ARB when ~~ASPG~~allegations within their purview are discussed. Attending staff must have the authority to agree to actions and schedules approved by the ARB.”

Response:

We appreciate the comment, but this statement has since been removed from the procedure.

Comment 11:

Section IV.C.1. Make the following changes: “Ensure that staff members are familiar with the policies and procedures outlined in MD 8.8 and in ~~this guidance~~these procedures.”

Response:

We appreciate the comment, but this Section has since been removed from the procedure.

Comment 12:

Section IV.C. 2. Make the following changes: “Participate in the ARB process within their purview for allegations ~~and ASPG.~~”

Response:

We appreciate the comment, but this Section has since been removed from the procedure.

Comment 13:

Section IV.C.4. Make the following changes: “Ensure that the Lead Staff Reviewer is available to brief the ARB on the concerns during the ~~ARB~~ meeting.”

Response:

We appreciate the comment, but this Section has since been removed from the procedure.

Comment 14:

Section IV.C.5. Make the following changes: “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.”

Response:

We appreciate the comment, but this Section has since been removed from the procedure.

Comment 15:

Section IV.C.6. Make the following changes: “Approve and concur on all closure letters ~~to alleged for ASPCs.~~”

Response:

We appreciate the comment, but this Section has since been removed from the procedure.

Comment 16:

Section IV.D.1. Make the following changes. “Administers the allegation and ASPC review program in FSME, in accordance with MD 8.8 and ~~this guidance.these procedures.~~”

Response:

We appreciate, but disagree with the comment. FSME State Agreement procedures are considered guidance to NRC staff and Agreement States. No changes were made to the document to respond to this comment.

Comment 17:

Section IV.D. 4. Make the following changes. “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.these procedures.~~ As an ARB ~~advisor~~member, ensures that safety significance, resolution plan, review priority, and wrongdoing matters are considered for each allegation ~~or ASPC~~ during the ARB meeting.”

Response:

We appreciate, but disagree with the comment to replace “guidance” with “procedures.” . FSME State Agreement procedures are considered guidance to NRC staff and Agreement States. No changes were made to the document to respond to this comment.

Comment 18:

Section IV.D.9. Added the following provision, “~~Informs the alleger of his or her rights under Section 211 of the Eenergy Reorganization Act of 1974~~”

Response:

We appreciate the comment, but this Section has since been removed from the procedure.

Comment 19:

Section IV.D 10. Make the following change, “Ensures the proper transfer to the appropriate Regional OAC and RSAO of allegations regarding Agreement State licensees received by FSME- (i.e, those allegations in which concerned individual is willing to contact and be contacted directly by the requisite Agreement State personnel).”

Response:

We appreciate, but disagree with the comment. Parenthetical is incorrect because the NRC also transfers allegations to the State even when the concerned individual does not want their identity disclosed. However, the NRC will not disclose the identity of the alleger or concerned individual in that situation. No changes were made to the document to address this comment.

Comment 20:

Section IV.E.1. Make the following changes, “~~Considering the requirement to hold the ARB within 30 days of receipt of the allegation or ASPC, coordinates~~Coordinates with the OAC in determining the best date for holding the ARB- proceeding (ARB must be held within 30 days of receipt of the allegation).”

Response:

We appreciate the comment, but this Section has since been removed from the procedure.

Comment 21:

Section IV.E. 2. Make the following changes, “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 meeting.”

Response:

We appreciate the comment, but disagree with the comment. No change made.

Comment 22:

Section IV.F.1. Make the following changes, “Maintain a working knowledge of the policies and procedures in MD 8.8 and ~~this guidance~~ **these procedures.**”

Response:

We appreciate, but disagree with the comment to replace “guidance” with “procedures.” . FSME State Agreement procedures are considered guidance to NRC staff and Agreement States. No changes were made to the document to respond to this comment.

Comment 23:

Section IV.F.4. Make the following changes, “Protect the identity of alleged in accordance with policies and procedures outlined in MD 8.8 and ~~this guidance~~ **these procedures.** The identity of the alleged should only be provided to the OAC.”

Response:

We appreciate, but disagree with the comment to replace “guidance” with “procedures.” . FSME State Agreement procedures are considered guidance to NRC staff and Agreement States. No changes were made to the document to respond to this comment.

Comment 24:

Section IV.F.5. Make the following changes, “In accordance with MD 8.8, all allegation **and ASPC** 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.”

Additional comment was “not clear what is meant by “and trash.”

Response:

We agree with the comment to add “and ASPC.” The procedures was revised accordingly.

We agree with the comment it was not clear what is meant by “and trash.” The phrase “and trash” refers to a “trash” file in a computer. The procedure was revised to clarify this point.

Comment 25:

Section IV.G.2. Make the following changes: “Upon request by FSME, participate in ARB meetings ~~to address various Agreement State concerns.~~”

Response:

We appreciate, but disagree with the comment. No changes were made to the document to respond to this comment.

Comment 26:

Section V. "Guidance is not binding. This document appears to be written as staff procedures, which are generally meant to be followed by staff. I recommend using a heading such as "Processing Allegations and ASPCs."

Response:

We appreciate, but disagree with the comment. Most SA documents contain a Section entitled "Guidance" which informs staff on how to implement the procedure. While the NRC does expect NRC staff to follow the procedures in SA-400, they are considered guidance and not binding. The office will continue to entitle Section V. "Guidance" to be consistent with other office procedure documents. No changes were made to the document to respond to this comment.

Comment 27:

Section V.A. make the following change: "Allegations involving areas of NRC's jurisdiction received by FSME staff are outside the scope of these procedures 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.*"

Response:

We appreciate, but disagree with the comment. The sentence refers to SA-400 and should remain in singular form. No changes were made to the document to address this comment.

Comment 28:

Section V.C. Recommend that the appropriate MD 8.8 Sections be identified.

Response:

We appreciate, but disagree with the comment. No changes were made to the document to respond to this comment.

Comment 29:

Section V.C. Make the following change in the second sentence: "When contacting the allegor, staff should inform the allegor of the NRC's plans to transfer the allegation or concern to the State, inform the allegor of the State's ability to protect his/ or her identity from public release, and inquire whether the allegor wishes for his/her identity to be released to the State.

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 30:

Section V.C. This is a key decision point. Based upon my read of the Allegations Manual and MD 8.8, if the alleger is willing to contact or be contacted by the Agreement State, the matter can be transferred to the Agreement State; the matter is not tracked as an allegation – there is no ARB. If the alleger is not willing to have his or her concerns and identity disclosed to the Agreement State, the- matter is retained by the NRC and processed as an Allegation.”

Response:

We appreciate the comment. An ARB can be held to evaluate any allegations. However, the NRC only enters allegations regarding Agreement State licensees into the NRC allegation management system database when the alleger does not want their identity disclosed to the State. The procedure has also been revised to create a separate process for handling Agreement State Performance Concerns (ASPPCs). The State Concern Review Board (SCRB), when convened, will handle ASPPCs . The ASPPCs will be entered into the NRC’s ASPPC tracking database. The document was revised accordingly.

Comment 31:

Section V.D.1. Make the following changes: “~~Allegations which involve an Agreement State Performance concern~~ or wrongdoing concerns, regarding organizations or personnel from State regulatory bodies that oversee Agreement State licensee activities, 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.*”

Response:

We appreciate, but disagree with the comment. No changes were made to the document to respond to this comment.

Comment 32:

Section V.D.2. Identify who is responsible for making such referrals.

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 33:

Section V.E. Delete section: “~~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
allegor 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.”~~

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 34:

Section V.F. 1. Delete: ~~“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.”~~

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 35:

Section V.F.2. Delete third sentence. ~~“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.”~~

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 36:

Section V.F.3. Make the following changes: “All transfers to the State without the release of the allegor’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 request~~ that was made to the RCPD should then be ~~forwarded 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 ~~forwarded re-transferred~~ to the State AG or IG, as appropriate. If the original ~~transfer request~~ 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 alleged should be informed of the status of the [request for information transfer](#) to the State.”

Response:

We agree with this comment. The procedure was revised accordingly.

Comment 37:

Section V.F.4. Make the following changes: “All Agreement State licensee allegations-[transferred without the release of the alleged’s identity](#), retained by the NRC because the alleged did not want his or her identity disclosed to the Agreement State, and all [ASPC 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.”

Response:

We appreciate, but disagree with the comment. The NRC still refers all concerns involving Agreement State licensees and all ASPPCs to the Agreement State even when the CI does not want to disclose his or her identity. The NRC also evaluates the State’s handling of these referrals during the IMPEP review. No changes were made to the document to respond to this comment.

Comment 38:

Section V.F.5. Comment that the second sentence needs to be revised “to reflect that allegations are those made against an Agreement State licensee and the alleged does not want his or her identify disclosed. Such matters are retained by the NRC and processed as allegations. Matters involving Agreement State licensees, for which the alleged does not object to having his or her identify disclosed, are transferred to the Agreement States and not processed as allegations. Matters involving Agreement State regulatory body performance or wrongdoing are not treated as allegations.”

Response:

We appreciate, but disagree with the comment. Allegations against Agreement State licensees are always referred to the Agreement State and not treated as an NRC allegation. The NRC only uses the NRC allegation management system database to track these referrals when the CI does not want to disclose his or her identity to the State.