

## U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)

**MD 8.8**

**MANAGEMENT OF ALLEGATIONS**

**DT-17-162**

*Volume 8:* Licensee Oversight Programs

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### **EXECUTIVE SUMMARY**

Management Directive (MD) 8.8 is being revised to reflect minor editorial changes and changes in the U.S. Nuclear Regulatory Commission's policies and procedures for handling allegations associated with NRC-regulated activities to include the following:

- Changes in organizational responsibility (consolidation of the Office of Federal and State Materials and Environmental Management Programs and the Office of Nuclear Material Safety and Safeguards, and centralization of training in the Office of the Chief Human Capital Officer), required training, and position titles (Office of Investigations (OI) Field Office Director (FOD) to OI Special Agent in Charge (SAIC), Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT) to Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital (DEDM));
- Changes prescribed in allegation guidance memoranda (AGMs) issued since the last revision of the management directive in December 2010 (specifically AGM 2011-001, "Late Filed Allegations," dated November 20, 2011, and AGM 2012-001, "NRC Chilling Effect Letters," dated March 9, 2012);
- Changes prescribed by Enforcement Guidance Memorandum (EGM) 2015-001, Revision 1, "Documentation of Security-Related Information in Publicly Available Cover Letters Related to Enforcement Documents," dated June 2, 2015, which relates to the amount of security-related information that may be publicly released (see Section II.L.3(d) of this handbook);

- The responsibility for regional administrators and specified headquarters office directors to assure that all employees within their office or region receive allegation process refresher training biennially. The biennial allegation refresher training requirement will also apply to staff in the offices of each Commissioner (see Section III.K of this directive and Section II.R of this handbook);
- The responsibility for headquarters office directors and regional administrators to consult with the Agency Allegation Advisor for the development of Office Allegation Coordinator position descriptions (see Section III.K of this directive);
- Clarification that the Allegation Review Board (ARB) chairperson makes the final decisions regarding the actions proposed during the ARB meeting and provides final approval for requested actions (see Section II.I.2(d) of this handbook); and
- New language noting that in instances involving unsubstantiated OI cases, when no enforcement action is intended subsequent to an OI investigation, or when NRC decides to wait for completion of the Department of Labor process before taking enforcement action, the allegor will be provided with a short summary of the results of the OI investigation and the licensee will be provided with either the OI investigation synopsis or other appropriate summary describing the staff's conclusions regarding the results of the OI investigation (see Section II.L.4 of this handbook).

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## I. POLICY

- A.** It is the policy of the U.S. Nuclear Regulatory Commission that allegations associated with NRC-regulated activities<sup>1</sup> are properly documented, assigned for evaluation, assessed for safety significance, and evaluated in accordance with this management directive (MD). In implementing this MD, responsible NRC staff will—
- Protect the identities of individuals, where appropriate and possible, to preclude actual or potential discrimination by employers against individuals who engage in NRC-protected activity or stigmatization by coworkers or members of the public.
  - Respond immediately to an allegation involving an overriding safety issue (OSI) (see definition of OSI issue in Section VI, “Glossary,” of this handbook).
  - Request information from licensees in support of allegation evaluation, whenever possible and appropriate, and in all cases involving an OSI.
  - Provide input to agency efforts to monitor whether licensees promote a work environment conducive to employees raising safety concerns through the trending of allegations. Insight is also gained from reviews of licensee employee concerns programs, licensee self-assessments, and observations by NRC inspectors.
- B.** NRC employees are required to adhere to the policy and procedures for handling allegations set forth in this MD and any applicable regional or headquarters office implementing procedures. In case of a conflict between this MD and regional or headquarters office procedures, this MD takes precedence.

## II. OBJECTIVES

- Encourage individuals to identify concerns associated with NRC-regulated activities to their employers or to the NRC.

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<sup>1</sup> For the purposes of this directive, concerns associated with NRC-regulated activities are those that fall within the scope of the agency’s mission.

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- Pursue feedback from responsible parties, where appropriate, when evaluating an allegation.
  - Acknowledge the receipt of allegations and inform individuals who make allegations, where appropriate and possible, of NRC’s evaluation and conclusions regarding their concerns.
  - Investigate allegations of potential wrongdoing.
  - Ensure that individuals making allegations are treated professionally, are encouraged to provide information, and receive timely feedback by way of correspondence, telephone discussions, and visits, as appropriate.
  - Ensure that the identity of an allegor is not disclosed outside the agency unless one of the following applies:
    - The allegor has clearly indicated no objection to being identified, and releasing the allegor’s identity is necessary to evaluate the allegation, or if the NRC determines that the release is necessary to support the agency’s mission.
    - Disclosure is necessary because of an OSI.
    - 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 to further a wrongdoing investigation.
    - An investigation involves a matter of alleged discrimination.
    - Disclosure is necessary to support a hearing on an enforcement matter.
    - Disclosure is mandated by the Freedom of Information Act (FOIA).
    - The allegor has taken actions that are inconsistent with and override the purpose of protecting his or her identity.
  - Ensure that an allegor filing a discrimination complaint is informed that a personal remedy may be available through the Department of Labor (DOL) for any discriminatory practices by his or her employer (or former or prospective employer) for engaging in protected activity under Section 211, “Employee Protection,” of the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.), hereafter referred to as ERA Section 211 (see 10 CFR Parts 19.20, 30.7, 40.7, 50.7, 52.5, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, 76.7, and 150.20).
  - Ensure that, as an alternative to an investigation by the NRC Office of Investigations (OI), an allegor who establishes a *prima facie* showing of potential discrimination for engaging in protected activity is offered the opportunity to engage in mediation with his or her employer (or former/prospective employer) through the NRC’s Early Alternative

Dispute Resolution (Early ADR) program or through a licensee's internal dispute resolution program as a means of obtaining issue resolution, and that the alleged understands that the timeliness requirement for filing a complaint with DOL (180 days) is not altered by the NRC's Early ADR program.

- Ensure that the following types of procedures are established and followed:
  - Procedures for notifying OI of matters that involve potential wrongdoing; and
  - Procedures for the initiation, prioritization, and termination of resulting OI investigations.
- Ensure that concerns pertaining to Agreement State licensees that are not under NRC jurisdiction are provided to the appropriate regional office and referred to the affected Agreement State through the Regional State Agreement Officer (RSAO).
- Ensure that matters related to occupational health and safety are referred to the responsible licensee and to DOL's Occupational Safety and Health Administration (OSHA), as appropriate, in accordance with NRC Inspection Manual Chapter (IMC) 1007, "Interfacing Activities between Regional Offices of NRC and OSHA."
- Ensure that concerns processed as allegations, as defined in Section VI, "Glossary," of this handbook, are entered into and tracked by the Allegation Management System (AMS) database.
- Ensure that each action office, as defined in Section VI, "Glossary," of this handbook—
  - Maintains current and accurate information on assigned allegations in the official agency record (the hard-copy allegation file) and through the AMS.
  - Shares the information with other headquarters and regional offices on a need-to-know basis.

### **III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY**

#### **A. Commission**

1. Approves, as appropriate, the revocation of the confidentiality agreement for an alleged who is granted confidential source status by the Commission, the EDO, or any office reporting to the EDO or to the Commission (see Section IV.C.1 of this handbook).
2. Requires staff to reveal a confidential source in appropriate circumstances as described in Section IV.E.2(b) of this handbook.
3. Provides guidance when the NRC is considering investigating the character or suitability of an entity under the NRC's statutory authority. (This also applies to the personnel of such entity.) The Commission provides this guidance when the matter being considered for investigation is unrelated to a violation of NRC regulatory requirements.

4. Ensure that staff in each NRC Commissioner's office receive biennial allegation refresher training.

**B. Executive Director for Operations (EDO)**

1. Establishes policy and procedures for receiving, tracking, processing, and evaluating allegations.
2. Establishes the policy for initiating, assigning priority, and terminating OI investigations.
3. Resolves differences with regard to the need for and the prioritization of OI investigations that the Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration and Human Capital (DEDM) cannot resolve.
4. Develops the policy for protecting the identity of allegeders, including those allegeders who have been granted confidential source status under a confidentiality agreement.
5. Approves, as appropriate, the release of the identity of an allegeder who has been granted confidential source status by the EDO or an office reporting to the EDO.
6. Designates those persons who may grant confidential source status to an allegeder or who may further delegate the authority to do so.
7. Approves, as appropriate, the revocation of the confidentiality agreement for an allegeder who has been granted confidential source status by the EDO or by offices reporting to the EDO (see Section IV.C.1 of this handbook).
8. Approves allegation guidance memoranda (AGMs) providing interim policy guidance, as necessary, between revisions of this MD.

**C. Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital (DEDM)**

1. Resolves any difference over need, priority, and schedules for investigations that cannot be resolved at the office level with the Director of OI and the director of the responsible office.
2. Oversees the development of agency guidance related to the handling of allegations and the initiation, prioritization, and termination of investigations of allegations of wrongdoing or discrimination.

**D. Office of the General Counsel (OGC) and the Regional Counsel**

1. Provide legal counsel on selected matters regarding interactions with allegeders and the processing of allegations.

2. Provide assistance, as requested, to the action office in preparing notifications to the presiding officer in an administrative adjudicatory matter. See the definitions of action office and presiding officer in Section VI, "Glossary," of this handbook.
3. Provide legal counsel, as requested, on confidentiality agreements, FOIA and Privacy Act requests, AGMs, claims of discrimination (prima facie showing assessment), determinations of willfulness, determinations regarding the existence of a violation, and other matters.
4. Review the regulatory basis, as requested, for investigations to be conducted by OI.
5. Designate a point of contact for providing advice to the Agency Allegation Advisor (AAA) on NRC witnesses and positions relevant to DOL litigation (OGC authority only).
6. Review settlement agreements reached through the Early ADR program, a licensee's internal dispute resolution program, as well as those provided to NRC by DOL involving claims of discrimination for restrictive language contrary to NRC employee protection regulations (OGC authority only) (see 29 CFR Part 24, "U.S. Department of Labor Procedures for Handling Discrimination Complaints under Federal Employee Protection Statutes," for discussion of settlements accomplished related to discrimination complaints filed with DOL).

#### **E. Office of the Inspector General (OIG)**

Investigates complaints of fraud, waste, abuse, or misconduct by NRC staff or contractors, as well as complaints of mismanagement of agency programs (see 10 CFR 1.12, "Office of the Inspector General").

#### **F. Chief Information Officer**

1. Provides data processing support to maintain the AMS.
2. Provides data processing assistance to the AAA, including continuing development, enhancement, and modification of the AMS to meet changing needs.
3. Provides FOIA and Privacy Act policy advice, as necessary, to assist OI and the Office of Enforcement (OE) in complying with FOIA and Privacy Act requests. (See 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding"; 10 CFR Part 9, Subpart A, "Freedom of Information Act Regulations"; 10 CFR Part 9, Subpart B, "Privacy Act Regulations"; and 10 CFR 9.17, "Agency Records Exempt from Public Disclosure.")

#### **G. Director, Office of Enforcement (OE)**

1. Appoints the AAA.
2. Proposes agencywide policy and procedures regarding the processing of allegations to the EDO for approval.

3. Approves AGMs providing interim guidance on implementation of existing allegation program policy, as necessary, between revisions of this MD.
4. Monitors DOL's activities as they relate to ERA Section 211.
5. Administers, or delegates the administration of, enforcement actions taken because of substantiated allegation concerns.
6. Coordinates civil enforcement actions, based on investigations involving DOJ.
7. Administers the Early ADR and Post-Investigation ADR programs.

#### **H. Director, Office of Investigations (OI)**

1. Investigates allegations of wrongdoing or discrimination as requested by the Commission, on OI's initiative, or as advised by staff.
2. Implements the policy for initiating, assigning priority, and terminating investigations.
3. Implements, in conjunction with the EDO, the policy for protecting alleged identity (including the identity of those alleged who have been granted confidential source status pursuant to a confidentiality agreement).
4. Ensures that every effort is made to protect the identity of an alleged unless identity disclosure is necessary to conduct a wrongdoing investigation as delineated in Section II of this directive.
5. Coordinates investigations with Federal, State, and local law enforcement agencies, as necessary.
6. Approves, as appropriate, the revocation of the confidentiality agreement for an alleged who has been granted confidential source status originally made by OI (see Section IV.C.1 of this handbook).
7. Seeks Commission guidance before initiating a full investigation relating to the character or integrity of an individual in instances in which the character or suitability aspects of the matter being considered for investigation are unrelated to a violation of NRC regulatory requirements.
8. Informs the Department of Justice (DOJ) of the results of substantiated investigations and provides interface and support, as requested, when DOJ seeks criminal prosecution.

#### **I. Director, Office of Nuclear Material Safety and Safeguards (NMSS)**

1. Reviews each Agreement State program to ensure that it includes provisions for handling allegations and other concerns related to Agreement State licensee activities.
2. Monitors activities conducted by Agreement States regarding allegations and other concerns involving Agreement State licensees.

3. Assesses, on a periodic basis, Agreement State performance in response to allegations and other concerns that have been referred to the Agreement States for resolution.
4. Reviews concerns asserting performance problems or wrongdoing on the part of Agreement State officials or staff (such matters are not processed as allegations).
5. Supports the Office of International Programs (OIP) with the processing of allegations related to that office.
6. Implements the responsibilities noted in Section III.K for all headquarters office directors and regional administrators.

**J. Office of the Chief Human Capital Officer (OCHCO)**

Develops training specific to the allegation program, in collaboration with OE.

**K. Office Directors and Regional Administrators**

1. Implement the organizational responsibilities noted in Sections III.K.3 and III.K.4 below related to allegation training and alleged identity protection, which apply to all regional and headquarters offices.
2. In addition to the regional offices, the following NRC offices also implement the responsibilities noted in Sections III.K.5 through III.K.15 because these offices have an increased likelihood of receiving allegations:
  - (a) OE,
  - (b) OGC,
  - (c) OI,
  - (d) OIP,
  - (e) NMSS,
  - (f) The Office of New Reactors (NRO),
  - (g) The Office of Nuclear Reactor Regulation (NRR),
  - (h) The Office of Nuclear Regulatory Research (RES), and
  - (i) The Office of Nuclear Security and Incident Response (NSIR).
3. Ensure, through initial and periodic refresher training, and through the development of guidance documentation, as appropriate, that staff are aware of and follow the NRC's policy and procedures for receiving, tracking, processing, and evaluating allegations. Ensure that staff in the regional offices and the following headquarters offices receive allegation refresher training biennially:
  - (a) NMSS,

- (b) NRO,
  - (c) NRR,
  - (d) NSIR,
  - (e) The Office of Congressional Affairs (OCA),
  - (f) OE,
  - (g) OEDO,
  - (h) OGC,
  - (i) OI,
  - (j) OIP,
  - (k) The Office of Public Affairs (OPA),
  - (l) RES, and
  - (m) The Office of the Secretary (SECY).
4. Ensure that all staff protect the identity of allegers (including those allegers who have been granted confidential source status). Implement the Commission's policy statement on confidentiality and approve confidentiality agreements as delegated by the EDO or the Director, OI, in accordance with Commission policy.
  5. Appoint an Office Allegation Coordinator (OAC) and establish an Allegation Review Board (ARB) for each allegation, as appropriate (see definitions of OAC and ARB in Section VI, "Glossary," of this handbook). (**Note:** OGC, OI, OE, and RES are not required to appoint an OAC as they are not considered action offices for the purposes of this MD.) Other headquarters offices should appoint an OAC and establish an ARB if it is deemed that their mission so requires. After receiving an allegation, staff in headquarters offices that do not have an OAC shall transfer the allegations to an assigned, responsible OAC in an action office, who shall coordinate and track the actions taken in response to the allegation (e.g., NSIR-related and NRO-related allegation processing is coordinated by the NRR OAC, and OIP-related allegation processing is coordinated by the NMSS OAC).
  6. Consult with the AAA for the development of OAC position descriptions.
  7. Ensure the availability of staff to receive and assess incoming allegations, prepare for and participate in ARBs, implement allegation evaluation actions prescribed by the ARB (including, but not limited to, technical review and inspection effort, and for OI, through the conduct of investigations), and provide input and support for allegation closure. (See Section II.I.1 of this handbook for additional detail related to ARB participants and functions.)

8. Ensure that allegation-related information is only provided to individuals with a need-to-know. In addition to the notification of staff that are assigned allegation followup action, the responsible NRC manager, in coordination with the OAC, will ensure that resident inspectors are informed about open allegations and past allegation trends related to their assigned facility, and that non-resident inspectors are informed about open allegations and past allegation trends pertaining to areas to be inspected, and other areas as appropriate.
9. As the action office, determine the safety significance and generic safety implications of the allegation, if any, and evaluate the allegation appropriately and as promptly as resources allow and before any applicable licensing decision date. Ensure that technical allegation concerns that have generic safety implications are transferred to the OAC for the responsible headquarters office for action and disseminated to other affected regional and headquarters offices for information, as appropriate.
10. Ensure that safety-significant allegations are promptly reviewed and take any actions necessary to address an OSI.
11. Ensure that allegations concerning NRC licensees, license or certificate applicants, or other affected organizations are reviewed for possible notification of the presiding officer in any related administrative adjudicatory matter and transferred, if applicable, to the responsible headquarters office. The responsible headquarters office will make the notification when required.
12. Review the status and resolution of any allegations that are related to a proposed licensing or escalated enforcement action to determine their effect.
13. Approve the release of an allegeder's identity (unless the allegeder has been granted confidential source status) when circumstances compel the NRC to do so (see Section II.F.12 of this handbook).
14. Ensure that OI is promptly informed if an allegation involves suspected wrongdoing, except when the suspected wrongdoing is on the part of NRC employees or NRC contractors (Issues regarding suspected improper conduct by NRC employees or NRC contractors will be brought directly or through appropriate NRC management to the attention of OIG. Such issues are not processed as allegations. See Section II.J.4(i) of this handbook).
15. Provide technical assistance, as requested, to OI for investigating allegations.
16. As the action office, monitor OI investigations of allegations to ensure that the investigative priority and schedule meet regulatory needs.
17. Ensure that a program self-assessment is performed in alternate years when the AAA is not performing an allegation program assessment at the regional or headquarters office. (**Note:** OI, OE, OGC, and RES are not required to perform biennial self-assessments as they are not considered action offices for the purposes of this MD.)

18. Ensure that the RSAO monitors and assesses, as appropriate, Agreement State responses to allegations and other concerns that have been referred to the Agreement States (regional administrator responsibility only).
19. Ensure that electronic processing of allegation-related information is conducted in accordance with the guidance provided in MD 12.5, "NRC Cybersecurity Program."

**L. Agency Allegation Advisor (AAA)**

1. Oversees implementation of the agency allegation program as set forth in this MD.
2. Develops and implements policy and procedures related to allegations, provides this guidance to the regional and headquarters offices, and maintains this MD and the Allegation Manual.
3. Issues interim guidance in the form of AGMs, as appropriate, between revisions of this MD.
4. Serves as liaison with outside agencies and other NRC offices on allegation-related matters.
5. Ensures that the AMS database accommodates NRC staff needs to track allegations. Works with the Office of the Chief Information Officer (OCIO) to provide AMS enhancements to satisfy new demands and also works with the regional and headquarters offices on emerging uses of AMS data.
6. Provides or coordinates responses to assigned principal correspondence. This includes coordinating responses to inquiries from the following:
  - (a) Commission or other NRC offices,
  - (b) Congress (in coordination with the Office of Congressional Affairs (OCA)),
  - (c) The public, and
  - (d) Other external sources.
7. Helps develop strategy for dealing with a licensee having a significant discrimination allegation history through a thorough review of related documentation, including the results of OI and DOL investigations of discrimination allegations.
8. Supports the regional and headquarters offices through the provision of periodic training on allegation handling and sensitivity.
9. Performs a biennial assessment of allegation activities conducted by each regional office and specified headquarters offices. (Guidance regarding the scope of and evaluation criteria for the biennial allegation program assessment is located in the Allegation Manual.)
10. Provides an annual report to the EDO with an analysis of any allegation trends.

11. Conducts an OAC counterpart meeting at least annually, which will include in its agenda, a discussion of the results of the most recent AAA assessments and regional or headquarters office self-assessments related to the conduct of the allegation program.
12. Serves, with OGC support, as the agency point-of-contact to assist persons requesting NRC information, positions, or witnesses relevant to DOL litigation. Refers requests for assistance to the appropriate contacts within NRC for review in accordance with applicable regulations and Commission policy.
13. Provides input to the agency efforts to evaluate whether licensees are providing a safety conscious work environment (SCWE) through the trending of allegations and insight provided by reviews of licensee employee concerns programs, licensee self-assessments, and NRC inspector observations. The AAA provides input to the regional offices in preparation for the Reactor Oversight Program (ROP) or construction ROP (cROP) end-of-cycle review meetings at which the SCWE cross-cutting area is discussed (see NRC IMC 0305, "Operating Reactor Assessment Program" and NRC IMC 2505, "Periodic Assessment of Construction Inspection Program Results"), and at ROP or cROP mid-cycle and other times on an as-requested basis. Provides similar input for a non-reactor facility (e.g., fuel facility, materials licensee, vendor) for which NRC receives a high volume of allegations.

#### **M. Office Allegation Coordinator (OAC)**

1. Serves as the administrative point-of-contact for the processing and tracking of allegations assigned to the regional and headquarters offices.
2. Administers the action office's allegation program as set forth in the following:
  - (a) MD 8.8,
  - (b) AGM,
  - (c) Allegation Manual, and
  - (d) Applicable regional or headquarters office implementing procedures.
3. Establishes and maintains files, prepares reports, and schedules and participates in ARB meetings.
4. Prepares and distributes ARB meeting minutes and coordinates allegation-related activities with the following, as appropriate:
  - (a) Management and responsible staff,
  - (b) OI,
  - (c) OGC, and
  - (d) OACs of the other action offices.

5. Ensures that the allegation file contains all documentation provided by the alleged and all documents used in making decisions regarding the allegation. The OAC may exclude from the hard-copy allegation file documentation that would be too cumbersome to include if it is referenced and easily retrievable. If the documentation that is too cumbersome to include in the file has been recorded on electronic media (e.g., disk, flash drive), it may be retained in the allegation file in that form.
6. Enters and tracks allegation activities in the AMS from receipt to closure.
7. Participates in OAC counterpart meetings.
8. Responds to FOIA and Privacy Act requests related to allegations.
9. Ensures that management and responsible staff are informed of allegations under their purview. Provides support to the responsible manager, such that the responsible manager is able to inform the resident inspectors and other inspectors, as appropriate, about open allegations, ARB-assigned actions, and past allegation trends related to areas to be inspected.
10. Responds to requests from project managers concerning allegations that involve topics that are also the subject of petitions filed in accordance with 10 CFR 2.206, "Requests for Actions Under This Part."
11. Ensures that allegation-related correspondence and other staff-generated documentation related to allegations (with the exception of OI documentation) is consistent with the requirements of this MD.
12. Ensures that actions taken to evaluate allegations and effect allegation closure are properly documented and appropriately address the concerns provided.
13. Provides, or supports staff in providing information to an alleged regarding the evaluation of his or her allegation, as appropriate, unless notifying the alleged would interfere with ongoing OI, OE, OIG, or DOJ activities or be detrimental to the protection of sensitive and security-related information.
14. Prepares or coordinates the preparation of correspondence with the alleged as indicated in Sections II.J.1, II.K, II.L, and II.M. of this handbook.
15. Takes responsible steps, in coordination with regional management and OGC, to facilitate DOL's investigation of discrimination concerns by assisting DOL in obtaining access to licensed facilities and any necessary security clearances.

#### **IV. APPLICABILITY**

The policy and guidance in this MD applies to all NRC employees and NRC contractors, except employees and contractors of OIG. OIG has internal procedures in place to ensure that allegations received by OIG are transferred to the appropriate action office for processing. Matters concerning NRC staff or contractor misconduct under OIG purview are

not processed as allegations in accordance with this MD. Consistent with Section II.J.4(i) of this handbook, the agency refers such issues or concerns to OIG for its evaluation. Staff requirements for reporting complaints of misconduct by NRC staff or contractors, as well as complaints of mismanagement of agency programs to OIG, are provided in detail in MD 7.4, "Reporting Suspected Wrongdoing and Processing OIG referrals."

## **V. DIRECTIVE HANDBOOK**

Directive Handbook 8.8 contains policy and program guidance for the management and processing of allegations. OE maintains an Allegation Manual containing more detailed discussion of program practices so that users will have access to the latest practice guidance and reference information.

## **VI. REFERENCES**

### ***Code of Federal Regulations***

- 10 CFR 1.12, "Office of the Inspector General."
- 10 CFR 2.206, "Requests for Action Under This Subpart."
- 10 CFR 2.390, "Public Inspections, Exemptions, Requests for Withholding."
- 10 CFR Part 9, Subpart A, "Freedom of Information Act Regulations."
- 10 CFR Part 9, Subpart B, "Privacy Act Regulations."
- 10 CFR Part 9, Subpart D, "Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities."
- 10 CFR 9.17, "Agency Records Exempt From Public Disclosure."
- 10 CFR 19.15(b), "Consultation with Workers During Inspections."
- 10 CFR 19.16(a), "Requests by Workers for Inspections."
- 10 CFR 19.20, 30.7, 40.7, 50.7, 52.5, 60.9, 61.9, 63.9, 70.7, 71.9, 72.10, 76.7, "Employee Protection," and 150.20, "Recognition of Agreement State Licenses."
- 29 CFR Part 24, "U.S. Department of Labor Procedures for Handling Discrimination Complaints Under Federal Employee Protection Statutes."
- 44 CFR Part 353, "Memorandum of Understanding Between Federal Emergency Management Agency and Nuclear Regulatory Commission."

***Nuclear Regulatory Commission Documents***

Allegation Guidance Memoranda (AGM)<sup>2</sup>—

AGM-2011-001, “Late Filed Allegations,” November 20, 2011.

AGM 2012-001, “NRC Chilling Effect Letters,” March 9, 2012.

Allegation Manual, available at <http://www.internal.nrc.gov/OE>.

Enforcement Guidance Memorandum (EGM) 2015-001, Revision 1, “Documentation of Security-Related Information in Publicly Available Cover Letters Related to Enforcement Documents,” June 2, 2015.

Enforcement Manual, available at <http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html>.

Enforcement Policy, available at <http://www.nrc.gov/about-nrc/regulatory/enforcement/enforce-pol.html>.

Generic Communications—Information Notices (IN), Regulatory Information Summaries (RIS)

IN 84-08, “10 CFR 50.7, ‘Employee Protection.’”

IN 98-33, “NRC Regulations Prohibit Agreements that Restrict or Discourage an Employee from Participating in Protected Activities.”

RIS-02-007, “Clarification of NRC Requirements Applicable to Worker Fatigue and Self-Declarations of Fitness-for-Duty.”

RIS-05-018, “Guidance for Establishing and Maintaining a Safety Conscious Work Environment.”

RIS-05-026, “Control of Sensitive Unclassified Non-Safeguards Information Related to Nuclear Power Reactors.”

RIS-05-031, “Control of Security-Related Sensitive Unclassified Non-Safeguards Information Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material.”

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<sup>2</sup> Allegation guidance memoranda (AGMs) provide interim guidance to the NRC staff. These AGMs have been provided as reference to reflect interim guidance issued since the last MD revision. These AGMs have been incorporated into this MD.

Internal Commission Procedures (ICPs), available at <http://www.nrc.gov/about-nrc/policy-making/internal.html>.

Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Department of Labor (DOL) (63 FR 57324-57325), October 27, 1998.

NMSS Procedure SA-400, "Management of Allegations," January 22, 2001.

NRC Inspection Manual, Chapter 0305, "Operating Reactor Assessment Program."

NRC Inspection Manual, Chapter 1007, "Interfacing Activities Between Regional Offices of NRC and OSHA."

NRC Inspection Manual, Chapter 1120, "Preliminary Notifications."

NRC Inspection Manual, Chapter 2505, "Periodic Assessment of Construction Inspection Program Results."

NRC Management Directives—

3.1, "Freedom of Information Act."

3.2, "Privacy Act."

5.6, "Integrated Materials Performance Evaluation Program (IMPEP)."

5.9, "Adequacy and Compatibility of Agreement State Programs."

7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."

8.11, "Review Process for 10 CFR 2.206 Petitions."

9.19, "Organization and Functions, Office of Enforcement."

10.160, "Open Door Policy."

12.2, "NRC Classified Information Security Program."

12.4, "NRC Telecommunications Systems Security Program."

12.5, "NRC Cybersecurity Program."

12.6, "NRC Sensitive Unclassified Information Security Program."

12.7, "NRC Safeguards Information Security Program."

NRC Policy Statement, "Investigations, Inspections, and Adjudicatory Proceedings," 49 FR 36032, September 13, 1984.

NRC Policy Statement, "Handling of Late Allegations," 50 FR 11030, March 19, 1985.

NRC Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," 61 FR 24336, May 14, 1996.

NRC Policy Statement, "Protecting the Identity of Allegers and Confidential Sources," 61 FR 25924, May 23, 1996.

NRC Policy Statement, "NRC Enforcement Policy; Alternative Dispute Resolution," 69 FR 50219, August 13, 2004.

NRO TAR Process Flow Chart, April 23, 2014, available at <http://epm.nrc.gov/inspection/cip/TAR-site/default.aspx>.

NRR Office Instruction COM-106, Revision 4, "Control of Task Interface Agreements," January 6, 2014.

NSIR Office Procedure ADM-113, Revision 0, "Report on Interaction Process," November 2011.

NUREG-1499, "Report of the Review Team for Reassessment of NRC's Program for Protecting Allegers Against Retaliation," January 7, 1994 (hard copy retained by OE).

NUREG-1556, Volume 20, Section 4.14, "Consolidated Guidance About Materials Licensees: Guidance About Administrative Licensing Procedures," December 2000, available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/staff/sr1556/v20/>.

NUREG/BR-0240, "Reporting Safety Concerns to the NRC," available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0240/>.

NUREG/BR-0313, "Pre-Investigation ADR Program," available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0313/>.

Office of Investigations, Investigations Procedures Manual, Revised August 2006.

Yellow Announcement YA-05-0077, "Policy Revision: NRC Policy and Procedures for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI)," October 26, 2005 ([ML051220278](#)).

### **United States Code**

Atomic Energy Act of 1954, as amended (42 U.S.C. 2011 et seq.).

Energy Reorganization Act of 1974, as amended, Section 211, "Employee Protection" (42 U.S.C. 5801 et seq.).

Freedom of Information Act and Privacy Act of 1974, as amended (5 U.S.C. 552, 5 U.S.C. 552a).

Crimes and Criminal Procedure (18 U.S.C.).

## U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)

**DH 8.8**

### **MANAGEMENT OF ALLEGATIONS**

**DT-17-162**

*Volume 8:* Licensee Oversight Programs

*Approved By:* Victor M. McCree  
Executive Director for Operations

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#### **EXECUTIVE SUMMARY**

Management Directive (MD) 8.8 is being revised to reflect minor editorial changes and changes in the U.S. Nuclear Regulatory Commission's policies and procedures for handling allegations associated with NRC-regulated activities to include the following:

- Changes in organizational responsibility (consolidation of the Office of Federal and State Materials and Environmental Management Programs and the Office of Nuclear Material Safety and Safeguards, and centralization of training in the Office of the Chief Human Capital Officer), required training, and position titles (Office of Investigations (OI) Field Office Director (FOD) to OI Special Agent in Charge (SAIC), Deputy Executive Director for Materials, Waste, Research, State, Tribal, and Compliance Programs (DEDMRT) to Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital (DEDM));
- Changes prescribed in allegation guidance memoranda (AGMs) issued since the last revision of the management directive in December 2010 (specifically AGM 2011-001, "Late Filed Allegations," dated November 20, 2011, and AGM 2012-001, "NRC Chilling Effect Letters," dated March 9, 2012);
- Changes prescribed by Enforcement Guidance Memorandum (EGM) 2015-001, Revision 1, "Documentation of Security-Related Information in Publicly Available Cover Letters Related to Enforcement Documents," dated June 2, 2015, which relates to the amount of security-related information that may be publicly released (see Section II.L.3(d) of this handbook);

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For updates or revisions to policies contained in this MD that were published after the MD was signed, please see the Yellow Announcement to Management Directive index ([YA-to-MD index](#)).

- The responsibility for regional administrators and specified headquarters office directors to assure that all employees within their office or region receive allegation process refresher training biennially. The biennial allegation refresher training requirement will also apply to staff in the offices of each Commissioner (see Section III.K of this directive and Section II.R of this handbook);
- The responsibility for headquarters office directors and regional administrators to consult with the Agency Allegation Advisor for the development of Office Allegation Coordinator position descriptions (see Section III.K of this directive);
- Clarification that the Allegation Review Board (ARB) chairperson makes the final decisions regarding the actions proposed during the ARB meeting and provides final approval for requested actions (see Section II.I.2(d) of this handbook); and
- New language noting that in instances involving unsubstantiated OI cases, when no enforcement action is intended subsequent to an OI investigation, or when NRC decides to wait for completion of the Department of Labor process before taking enforcement action, the allegor will be provided with a short summary of the results of the OI investigation and the licensee will be provided with either the OI investigation synopsis or other appropriate summary describing the staff's conclusions regarding the results of the OI investigation (see Section II.L.4 of this handbook).

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## I. OVERVIEW OF THE NRC ALLEGATION PROGRAM

This section provides general information related to the program that manages the receipt, evaluation, and closure of allegations received by the NRC. Additional information regarding the implementation of the NRC Allegation Program under the requirements of this handbook can be found in the Allegation Manual, which is a separate document maintained by the Office of Enforcement (OE).

### A. Allegation and Allegor Definitions

1. An “allegation” is a declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. Potential licensee wrongdoing identified by NRC staff that prompts an investigation by the NRC Office of Investigations (OI) is also processed as an allegation. A more detailed definition including exceptions is provided in Section VI, “Glossary,” of this handbook.
2. An “allegor” is any individual who or organization that submits an allegation to the NRC or who provides information in a public forum that is recognized as an allegation involving a nuclear or radiological safety matter or possible wrongdoing related to a nuclear or radiological safety matter.

### B. Evaluation of an Allegation

1. There is no threshold for the acceptance of a concern that meets the definition of an allegation provided in Section VI, “Glossary,” of this handbook.
2. The type and amount of effort required to evaluate and close an allegation is determined by the Allegation Review Board (ARB) on a case-by-case basis.
3. Allegation evaluation is accomplished through any combination of the following:
  - (a) Technical review;
  - (b) Inspection;
  - (c) Evaluation of information requested from the affected licensee, or another NRC regional or headquarters office; or
  - (d) Obtaining the results of investigations or evaluations conducted by—
    - (i) OI,
    - (ii) The Department of Justice (DOJ),
    - (iii) The Department of Labor (DOL),
    - (iv) A State agency, or
    - (v) Another Federal agency.

**C. Protection of Allegor Identity**

1. Allegor identity protection is an important aspect of the program. All reasonable efforts are taken not to disclose an allegor's identity outside the NRC (unless the NRC is compelled to do so for any of the reasons described in Section II.F.12(b) of this handbook), and an allegor's identity is only revealed within the agency on a need-to-know basis.
2. NRC staff is responsible for controlling documents that could reveal an allegor's identity, using applicable allegation documentation control guidance.

**II. ALLEGATION PROCESS****A. Methods Through Which an Allegation May Be Received**

1. Any NRC employee may receive or recognize an allegation.
2. An allegor's concern may be made known to the NRC by several methods, for example:
  - (a) In person,
  - (b) By telephone,
  - (c) By e-mail, or
  - (d) In print.
3. An allegation also may be recognized by an NRC staff member in information provided in a public forum including, but not limited to—
  - (a) Television,
  - (b) Radio,
  - (c) Newspaper,
  - (d) Internet, or
  - (e) Social media (e.g., Facebook, Twitter, blog).

**B. Allegation Intake**

1. If an allegation is received in person or by telephone, the NRC staff will be courteous, professional, and responsive to the allegor.
2. All communications with the allegor shall be documented in the allegation file.
3. Off-the-Record Information
  - (a) NRC does not accept "off-the-record" information from allegors.

- (b) NRC staff advises an allegor who attempts to provide information “off-the-record” that all information received by the NRC is accepted officially and appropriately acted upon.

#### 4. Obtaining Information from an Allegor

- (a) A staff member who receives an allegation in person or by telephone will attempt to obtain as much information as possible about the allegor’s concern(s) so that safety significance may be determined, and to facilitate the NRC review of the concern(s).
- (b) If the allegor’s name and contact information is not initially provided, an effort should be made to obtain it so that feedback may be provided to the allegor and so that the allegor may be subsequently contacted if additional information is needed. Allegation process identity protection provisions should be provided to the allegor (see Sections II.F.4 and II.F.12 of this handbook).
- (c) If the allegor is willing to provide his or her name and contact information, he or she is informed that the NRC will provide feedback regarding the allegation by way of the responsible regional or headquarters office, i.e., the action office.
- (d) If an allegation is received by telephone, and the allegor is unwilling to provide contact information, the staff member receiving the allegation should record the telephone number, or name, or both from caller identification (caller ID), if available. If, after the NRC’s identity protection policy is explained to the allegor, the allegor still declines to provide contact information, the allegor should be informed that the caller ID information has been recorded by the NRC for future reference, if needed.
  - (i) Specifically, the NRC staff member should pose a question to the allegor similar to the following:

“I understand and respect that you want to remain anonymous, but I should inform you that I can observe (or I can obtain) the phone number from which you are calling. In the rare case that we need to contact you for additional information about your concern(s) to ensure adequate public health and safety, would it be appropriate for us to call this number?”
  - (ii) If the caller indicates that it is acceptable for the NRC to call the number in the future, the caller should be asked whether the number on caller ID is his or her mobile phone, a home phone, or a place of employment, when this information has not been disclosed during the phone call.
  - (iii) In this instance, the allegation receipt documentation should clearly document that the allegor wished to remain anonymous, that the NRC used caller ID to obtain the contact information, and the allegor’s response to the above questions. Note: Any indication that this practice is negatively impacting the allegation program should be reported to the Agency Allegation Advisor (AAA).

## 5. Allegations Involving Security Concerns

- (a) If the allegor is involved in security-related activities or has security concerns, the allegor is to be reminded of the proper protocol for transmitting classified information or Safeguards Information (SGI). See Management Directive (MD) 12.2, "NRC Classified Information Security Program"; MD 12.4, "NRC Telecommunications Systems Security Program"; MD 12.5, "NRC Cybersecurity Program"; MD 12.6, "Sensitive Unclassified Information Security Program"; NRC Yellow Announcement YA-05-0077, "Policy Revision: NRC Policy and Procedures for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI)," issued on October 26, 2005, ([ML051220278](#)); and MD 12.7, "NRC Safeguards Information Security Program," for additional details.
- (b) If a setting is inappropriate for transmitting security-related information, separate arrangements will be made to enable proper transmittal.

## 6. If the Allegor Requests No Contact with the NRC

- (a) On occasion, an allegor will provide contact information but request no further contact with the NRC. When this occurs during the intake process involving allegations received in person or by telephone, the employee receiving the allegation should explain the advantages of continued involvement in the allegation process (i.e., to facilitate the NRC's understanding of the concerns raised, to obtain additional information as needed, to afford the allegor the opportunity to assess and provide feedback regarding NRC's conclusions, and to encourage the allegor's continued involvement).
- (b) If the request for no contact is made in writing, or it is not clear that the NRC employee receiving the verbal contact has explained the advantages of the allegor's continued involvement in the allegation process, then the responsible branch chief, the Office Allegation Coordinator (OAC), or other appropriate NRC staff member will, as requested by the ARB, attempt additional contact with the allegor.
  - (i) Such communication should be made verbally, if possible, preferably not at the allegor's place of employment.
  - (ii) All communications with the allegor shall be documented in the allegation file.
  - (iii) During this discussion, the NRC staff member should remain respectful of the allegor's views and comfort level with remaining engaged in the allegation process.
- (c) The purpose of this additional attempt to contact the allegor is as follows:
  - (i) To obtain additional information related to the allegation, if needed;

- (ii) To inform the allegor that the NRC is considering a Request for Information (RFI) from the licensee, if appropriate, and determine whether the allegor would have any objection to the NRC issuing an RFI to the licensee; and
  - (iii) To explain the advantages of continued involvement in the allegation process and to encourage the allegor's continued involvement.
- (d) If Allegor Continues to Reject Contact with the NRC
- (i) Sometimes, the allegor will continue to reject contact with the NRC even after the additional contact from the NRC is made (see Sections II.B.6(b) and II.B.6(c) of this handbook).
  - (ii) In these cases, the contacting staff member should encourage the allegor to, at a minimum, accept allegation closure documentation from the NRC regarding his or her concerns so that he or she can review the NRC's conclusions and provide feedback, if desired.
  - (iii) If the allegor reaffirms his or her desire not to participate in the allegation process, the agency shall honor the request and not provide the allegor with an acknowledgment letter or a closure letter. In this way, the NRC will not negatively impact the allegor's willingness to use the allegation process in the future. In this circumstance, an additional attempt to contact the allegor will not be made unless the NRC determines that additional information is needed to ensure adequate public health and safety.
- (e) If the additional contact with the allegor is not accomplished, the basis will be documented in the allegation file. Specifically, the allegation file will include—
- (i) Documentation that the NRC was unable to contact the allegor; or
  - (ii) The ARB record documenting an ARB decision not to attempt an additional contact with the allegor.

### **C. Matters of Potential Wrongdoing Identified by NRC Staff**

During inspection or assessment of licensee activities, NRC staff may identify matters that involve potential wrongdoing on the part of licensee employees or licensee contract employees. These matters, although not from a source external to the NRC, are also tracked as allegations if they prompt investigation by OI. This facilitates action office monitoring of related OI followup. Any allegation from an external source that asserts a failure to meet requirements may have the potential for being willful, thus staff must be alert to any implicit issues and indicators of wrongdoing when reviewing such allegations and identify them for consideration by the allegation program, if not identified by the allegor as a potential wrongdoing matter.

**D. Concerns Involving an Agreement State Licensee**

1. An Agreement State is a State that has entered into an agreement with the NRC whereby the NRC has relinquished authority and those States have assumed regulatory authority over certain byproduct, source, and small quantities of special nuclear material. Individuals who contact the NRC with concerns about Agreement State licensees are often unaware of the Agreement State Program (see Section 247b of the Atomic Energy Act (42 U.S.C. 2011)). 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 concern(s). These concerns are provided to the appropriate Regional State Agreements Officer (RSAO) for referral to the Agreement State and are not processed as allegations (see MD 5.6, "Integrated Materials Performance Evaluation Program (IMPEP)," and MD 5.9, "Adequacy and Compatibility of Agreement State Programs").
2. If the individual is unwilling to contact, or to have his or her identity disclosed to, the Agreement State, the NRC will still refer the concern(s) to the Agreement State, without providing the individual's identity, and request a response. These concerns are entered into the allegation process and tracked to closure.
3. Detailed guidance related to the handling of Agreement State licensee concerns is provided in the Allegation Manual.

**E. Concerns Involving Agreement State Oversight**

1. Concerns involving State regulatory bodies that oversee the activities of Agreement State licensees are not processed as allegations and include—
  - (a) Concerns regarding the performance of State regulatory bodies or their personnel; and
  - (b) Concerns regarding potential wrongdoing committed by State regulatory bodies or their personnel.
2. If an NRC employee receives or is informed about a matter discussed in Section II.E.1 above, the NRC employee should promptly forward the matter to the Office of Nuclear Material Safety and Safeguards (NMSS) for evaluation outside the allegation process. See NMSS Procedure SA-400, "Management of Allegations," for information regarding the processing of concerns involving Agreement State oversight.

**F. Allegor Identity Protection**

1. An allegor will be informed of the degree to which his or her identity can be protected by NRC (see Sections II.F.4 through II.F.12 of this handbook).
2. If an allegation is received in person or by telephone, information about allegor identity protection should be provided during the initial discussion, if possible.

3. If an allegation is received by other means (e.g., letter, electronic mail), and the allegor's identity and contact information is known, the OAC, or other designated individual will notify the allegor by telephone (if possible), letter, or electronic mail of the degree to which his or her identity can be protected.
  - (a) This action is taken so that an allegor does not incorrectly assume that his or her identity is protected by the NRC under all circumstances.
  - (b) For an allegor who has been granted confidential source status, identity protection is also referred to as confidentiality. See Section VI, "Glossary," of this handbook for definitions of identity protection, confidentiality, and confidential source, and Section IV, "Granting and Revoking Confidential Source Status," of this handbook for specific detail related to the granting of confidential source status.
4. The NRC will take all reasonable efforts not to disclose an allegor's identity.
  - (a) An allegor's identity, or information that would reveal an allegor's identity, is not normally distributed or discussed among NRC staff. If discussion of allegor identity is necessary to evaluate an allegation, the discussion shall only involve staff with a need to know.
  - (b) Staff should be sensitive to the location of allegation-related discussions to provide reasonable assurance that sensitive allegation information is not disclosed to staff without a need-to-know or to non-NRC personnel.
  - (c) As a general rule, documents containing the allegor's identity and information that could identify the allegor are maintained in the official allegation file or related OI investigation files, or both.
    - (i) When practical, the allegor's name and other identifying information should be redacted from allegation documents before they are distributed outside of the official allegation file or related OI investigation file to assigned staff. Note: For example, it may be impractical to redact the transcript of a lengthy OI interview with an allegor that would repeat the allegor's name many times.
    - (ii) Allegation file documentation must be appropriately controlled as noted in Sections II.H.3(b), II.H.3(c), and II.H.4 of this handbook.
  - (d) OI is always made aware of an allegor's identity if an allegation includes a potential wrongdoing or discrimination concern, and is otherwise informed of the allegor's identity as deemed appropriate.
5. The responsible NRC manager will—
  - (a) Provide allegation-related information to staff who are assigned allegation followup action, including allegor identifying information if necessary to evaluate the allegation, after coordinating with the OAC.

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- (b) Inform resident inspectors about open allegations and past allegation trends related to their assigned facility. Inform non-resident inspectors about open allegations and past allegation trends pertaining to areas to be inspected and other areas, as appropriate. This will afford inspectors with an opportunity to provide information to the responsible manager and the OAC if the inspection effort develops information applicable to other allegation concerns not directly related to the areas to be inspected.
  - (c) Ensure that the allegation-related information does not include the identity of the alleged when provided to resident and non-resident inspectors who have not been assigned to evaluate the allegation.
6. NRC practice is to neither confirm nor deny to a licensee or the public that an individual is an alleged, except when compelled to disclose an alleged's identity for any of the reasons indicated in Section II.F.12 of this handbook. The following provisions apply to protecting the identity of all allegeds, including those who have been granted confidential source status:
    - (a) Inspections and inspection-related documents should address relevant issues without acknowledging that an issue was raised in the context of an allegation.
    - (b) Approval of the applicable regional administrator or headquarters office director is required if a licensee is to be informed that an inspection activity is related to an allegation, such as when a worker requests an inspection under 10 CFR 19.16(a), "Requests by Workers for Inspections."
  7. NRC-generated documents related to an allegation are not to include information that could identify an alleged, with the exception of allegation intake documentation, OI reports, OI interview transcripts, and letters addressed to the alleged.
  8. Information identifying the alleged may be released to the licensee when the alleged has clearly indicated no objection to being identified and releasing the alleged's identity is necessary to evaluate the allegation, or if the NRC determines that the release is necessary to support the agency's mission.
  9. When information identifying the alleged is released to the licensee—
    - (a) The identity of the alleged should normally be provided to the licensee verbally rather than in a letter requesting information from the licensee.
    - (b) Written documentation of the alleged's lack of objection to the identity release and the agency's reasoning for the release will be noted in the related allegation file.
  10. Before information generated by OI is released to the public, OI will review and redact information that could identify an alleged.
  11. In rare circumstances, the ARB might consider publicly identifying an issue as an allegation (see Section II.I.2(a)(x) of this handbook).

## 12. Limitations on Allegor Identity Protection

- (a) All allegors (including those who have been granted confidential source status) are informed of the limitations on the NRC's ability to protect their identity—
  - (i) During the initial receipt of the allegation, or other discussion with the allegor before the issuance of an acknowledgment letter, if possible; or
  - (ii) In an acknowledgment letter (after the initial receipt of the allegation); or
  - (iii) In a confidentiality agreement (if the allegor has been granted confidential source status).
- (b) The allegor is informed that the NRC may be compelled to disclose his or her identity under one or more of the following circumstances:
  - (i) Disclosure is necessary because of an overriding safety issue (OSI).
  - (ii) 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.
  - (iii) Disclosure is necessary to support a hearing on an enforcement matter.
  - (iv) Disclosure is necessary to further a wrongdoing investigation.
  - (v) The allegor has taken actions that are inconsistent with and override the purpose of protecting the allegor's identity.
  - (vi) Disclosure is mandated by the Freedom of Information Act (FOIA) (see Section II.Q of this handbook).
- (c) The NRC may reveal an allegor's identity outside the agency if the allegor has clearly stated no objection to being identified. However, this course of action is not normally taken unless releasing the allegor's identity is necessary to evaluate the allegation, or if the NRC determines that the release is necessary to support the agency's mission.
- (d) For allegations involving discrimination, the allegor is informed that the NRC will disclose his or her identity to the licensee, the alleged discriminating entity (if not the licensee), or to both. Otherwise, it would be impossible to pursue such an investigation.
- (e) For allegations involving wrongdoing, the allegor is informed that his or her identity may be disclosed at OI's discretion to pursue the investigation. In these instances, it is not necessary for OI to consult with the associated action office director to release the allegor's identity. A reasonable effort should be made by the OAC, or other appropriate staff, to contact the allegor and explain why such a disclosure was made.

- (f) When the allegor has not agreed to identity release, and it is necessary for the NRC to release the allegor's identity for any of the reasons outlined in Sections II.F.12(b)(i) through II.F.12(b)(vi) above, the staff (excluding OI) will consult with the action office director to discuss specific circumstances and obtain approval for the identity release. If the allegor has been granted confidential source status, refer to Section IV.E of this handbook for guidance regarding identity disclosure.
  - (g) The OAC or other designated staff member will notify the allegor in writing, and by telephone, if possible, if any of the following determinations are made:
    - (i) It is necessary to release the allegor's identity to any organization, individual, or to the public, for any of the reasons outlined in Sections II.F.12(b)(i) through II.F.12(b)(vi) and Section II.F.12(c) above.
    - (ii) The allegor's name or other personal identifier has already been released for any of the reasons outlined in Sections II.F.12(b)(i) through II.F.12(b)(vi) above.
    - (iii) It is known that the allegor's identity may be compromised or was released inappropriately by the NRC. See the Allegation Manual for staff actions after an inappropriate identity release.
13. Advising an Allegor About Confidential Source Status
- (a) Most allegors accept the standard allegor identity protection provisions discussed in Sections II.F.1 through II.F.12 of this handbook and will provide the NRC with detail regarding their concern(s) on that basis.
    - (i) Occasionally, however, an allegor will decline to provide detailed information to the NRC regarding his or her concern(s) and also may refuse to provide his or her identity, for fear of being identified as the information source.
    - (ii) In such instances, the staff member receiving the allegation should make an effort to understand the reason(s) for the allegor's reluctance to provide the information, inform the allegor of the standard allegor identity protection provisions, and indicate that confidential source status can be provided under certain circumstances (but not for concerns involving discrimination). See Section VI, "Glossary," of this handbook for definitions of identity protection, confidentiality, and confidential source.
    - (iii) If a staff member is not knowledgeable or is unsure about discussing confidential source status, he or she should arrange for the allegor to contact an OAC or responsible manager.

- (iv) If the allegor continues to be reluctant to provide necessary information or expressly requests confidential source status, a confidentiality agreement may be offered to the allegor. See Section IV.B of this handbook and the standardized confidentiality agreement form in the Allegation Manual for guidance related to the granting of confidential source status.
- (b) If the allegor requests confidential source status before providing information, the guidance in Section IV.B of this handbook is to be followed.
- (c) Sometimes an allegor refuses to accept an offer of confidential source status and to provide relevant information. In such circumstances, the NRC may consider issuance of a subpoena or other means to obtain needed information, if the NRC has the allegor's contact information.
- (d) If an allegor persists in not offering necessary information and, in addition, refuses to provide his or her identity, the staff member receiving the allegation will take the following actions:
  - (i) Document the allegation in as much detail as possible.
  - (ii) Advise the allegor that he or she may contact the OAC or a designated staff member in the future for information on the status of any actions being taken on the information supplied.<sup>1</sup>

#### **G. Discrimination Concerns and Department of Labor (DOL) Information**

1. If an allegation involves a claim of discrimination under Section 211 of the Energy Reorganization Act of 1974 (ERA), as amended (hereafter referred to as ERA Section 211), the allegor is to be informed of the following:
  - (a) ERA Section 211 affords personal remedies such as reinstatement and compensation for lost wages when an employer is found by DOL to have discriminated against an allegor for engaging in protected activity. See the definition of protected activity in Section VI, "Glossary," of this handbook.
  - (b) Personal remedies may be obtained through the DOL for any retaliatory or discriminatory practices by the employer if a complaint is filed in a timely manner and the employer does not have a legitimate reason for the adverse action taken against the employee.
  - (c) An ERA Section 211 complaint must be filed with DOL, in writing, within 180 days of the date of the discriminatory action or the date any notice, in writing or

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<sup>1</sup> In any future contact, if one were to occur, the allegor should be requested to provide NRC with evidence that he or she is the individual who originally contacted NRC, such as by providing a previously agreed upon code number or phrase, or a specific detail related to the allegation that only the allegor would know.

otherwise, of an adverse action is received by the allegor. The Allegation Manual provides guidance on obtaining the appropriate DOL contact information.

- (d) The NRC will determine whether or not an investigation is warranted on the basis of the information provided by the allegor.
  - (e) If the NRC opens an investigation, the allegor's identity will be disclosed, since a matter of alleged discrimination cannot be investigated without identifying the allegor.
  - (f) The NRC may complete its investigation of the discrimination allegation before resolution by DOL and may take action independent of DOL.
  - (g) The NRC will evaluate any concern associated with regulated activity that provides a basis for the discrimination concern if the allegor indicates that the concern has not been adequately resolved by the licensee. The NRC will enter the related concern into the NRC allegation process without regard to action that may be taken by DOL. Note: When the NRC is notified by DOL that it is investigating a complaint of discrimination under ERA Section 211, and the allegor previously has not submitted his or her concern(s) to the NRC, the action office shall obtain a copy of the complaint (if DOL has not already provided it to the NRC), enter the concern(s) into the NRC allegation process, contact the allegor, and clarify the basis for the discrimination concern.
2. Employees of State agencies that are NRC or Agreement State licensees may not have the option of filing a discrimination complaint with DOL. Allegors who are State employees should be instructed to consider contacting appropriate State entities to determine if the State has a program for processing such matters. Employees of Federal agencies (other than the Department of Energy (DOE)) who raise allegations of discrimination should be instructed to consider contacting the Merit Systems Protection Board (MSPB).

#### **H. Processing the Received Allegation**

- 1. Actions of the Receiving Employee and Action Office Staff
  - (a) An NRC employee receiving an allegation will inform his or her supervisor and also provide the information to the appropriate OAC.
    - (i) The allegation is initially assessed by these individuals to determine if it involves a potential OSI.
    - (ii) Sometimes the receiving employee is from a headquarters office that does not retain an OAC and is unsure of the appropriate OAC. In that case, the information may be provided to allegation program staff in OE, who will forward it to the appropriate OAC.

- (b) Any employee who receives an allegation will document the allegation and forward it to the responsible OAC, and should do so within 5 calendar days of receipt. The receiving employee should not retain copies of the allegation once it is verified that the allegation has been received by the OAC.
  - (i) The receiving employees shall follow the Sensitive Unclassified Non-Safeguards Information (SUNSI) handling requirements for transmitting allegation information to the OAC.
  - (ii) If the received information contains Safeguards Information (SGI), the receiving employee shall refer to MD 12.7 for documentation guidance.
- (c) Generally, action will not be taken to determine the validity of an allegation, nor will an allegation be discussed with licensees or other affected organizations until after the initial ARB meeting or, in the case of an OSI, after the OAC or designated staff has briefed appropriate NRC management. If NRC management determines that immediate action is necessary to address an OSI, including notification of the licensee before an initial ARB meeting, then a subsequent ARB meeting shall be held as soon as practicable to affirm actions already taken and develop followup actions. If the regional or headquarters office staff that determined the immediate actions to be taken constituted an ARB quorum, and an evaluation plan was approved at that time, documentation of this discussion may be credited as the initial ARB.
- (d) After reviewing the allegation receipt documentation (or other pertinent information, if the ARB is being reconvened for a particular allegation), responsible action office staff will take the following actions:
  - (i) Clarify concerns and develop actions to evaluate the allegation to be recommended to the ARB, including whether the allegation involves a safety concern that requires immediate corrective action (see Section II.I of this handbook for ARB guidance).
  - (ii) Propose the necessary followup actions for discussion at an ARB meeting and, as requested by the ARB, implement those actions.
  - (iii) Propose actions to be explored during the ARB meeting, if time does not permit staff review before the ARB.

## 2. OAC Actions

- (a) The OAC coordinates efforts to support action office evaluation of the allegation in as efficient and effective a manner as possible, considering the circumstances of the issue(s) raised.
- (b) The OAC convenes an ARB of appropriate personnel to review each allegation for safety significance and determine appropriate actions to evaluate the allegation (see Section II.I of this handbook for ARB guidance).

- (c) The OAC ensures that timely and accurate information on allegations is maintained and made available to responsible staff for ARB discussion and allegation evaluation. The OAC also provides responsible managers with status information related to open allegations, and historical allegation data to enable the identification of and a focus on allegation trend areas.
- (d) As appropriate, an ARB may assign the following actions to the OAC or other designated staff:<sup>2</sup>
- (i) Notify appropriate agencies of concerns outside NRC jurisdiction;
  - (ii) Provide external agency contact information to the concerned individual (e.g., the contact information for the Equal Employment Opportunity Commission for alleged discrimination related to age, sex, race, or ethnic origin).
- (e) If an allegation has generic implications or involves licensing, technical expertise, or other activities not performed by the receiving office, the receiving OAC will take the following actions:
- (i) Notify headquarters offices and other regional offices that may be affected.
  - (ii) Discuss the potential for allegation transfer to a headquarters office.
  - (iii) Discuss the potential need to request information from a headquarters office (see Sections II.J.4(a) and II.J.4(c) of this handbook).
    - To request input from the Office of Nuclear Reactor Regulation (NRR), use a Task Interface Agreement (TIA) (see NRR Office Instruction COM-106, Revision 4, “Control of Task Interface Agreements,” January 6, 2014).
    - To request input from NMSS or the Office of New Reactors (NRO), use a Technical Assistance Request (TAR) (see NUREG-1556, Volume 20, Section 4.14, “Consolidated Guidance About Materials Licensees: Guidance About Administrative Licensing Procedures,” December 2000, or NRO TAR Process Flow Chart, April 23, 2014, available at <http://epm.nrc.gov/inspection/cip/TAR-site/default.aspx>).
    - To request input from the Office of Nuclear Security and Incident Response (NSIR), use a Report on Interaction (see NSIR Office Procedure ADM-113, Revision 0, “Report on Interaction Process,” November 2011).

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<sup>2</sup> Alternatively, if the receiving OAC determines that a received concern is clearly outside NRC jurisdiction, the OAC can, without submitting the concern to an ARB, refer the concern to the appropriate entity. The receiving OAC can also provide external agency contact information to the concerned individual without submitting the concern to an ARB.

### 3. Allegation Documentation

- (a) A unique identifying number is established for each allegation when the OAC documents the allegation in the Allegation Management System (AMS) database.
- (b) The OAC creates a hard copy file for each allegation to contain all allegation-related documentation. The allegation files are to be retrievable only by allegation number (i.e., there must be no allegor identifying information on the outside of the allegation file folder).
- (c) Allegation File Cover Sheets<sup>3</sup>
  - (i) If an allegation file is removed from its official storage location for review by assigned staff, a blue "Warning - Sensitive Allegation Material" cover sheet (NRC Form 762) must be attached to the top of the file (see Exhibit 3 of the Allegation Manual).
  - (ii) There is an exception for allegation files involving an allegor with confidential source status, which require a red "Warning - Confidential Allegation Material" cover sheet (NRC Form 761) (see Exhibit 4 of the Allegation Manual).
- (d) Documentation that contains the identity of an allegor or other information that would identify an allegor may be separated from the official allegation file if it is appropriately protected.
  - (i) The documentation must have the appropriate cover sheet to indicate that it contains sensitive allegation information.
  - (ii) The documentation should be conspicuously marked (typed or stamped) to indicate that the document identifies an allegor, depending on the document type.
  - (iii) The following are examples of document types that could identify an allegor:
    - A letter to an allegor;
    - A letter from an allegor;
    - A document from an allegor; or
    - Another type of document that specifically identifies the allegor or contains other allegor identifying information.

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<sup>3</sup> Allegation file storage and access control mechanisms are outlined in Section II.H.4 of this handbook.

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- (iv) More specific guidance regarding allegation file documentation handling under SUNSI handling requirements is provided in the Allegation Manual. Cover sheets must also be attached to allegation documents that are provided in response to a FOIA request and must stay on the package throughout the FOIA process.
- (e) Responsible staff may determine that an allegation-related matter is to be addressed in a Preliminary Notification (PN). A PN is an early notice of an event or issue of possible safety or safeguards significance, generic interest, or high public interest. See NRC Inspection Manual Chapter (IMC) 1120, "Preliminary Notifications," for additional information.
- (i) The PN should not identify—
- The source of the allegation concern(s);
  - The fact that the information was provided by an alleged; or
  - The fact that the information is the subject of an allegation.
- (ii) Responsible staff should obtain the approval of the action office director before issuance of the PN.
4. Storage of Official Agency Allegation Files and Documents (Official Agency Record)
- (a) Official agency allegation files shall be maintained in a designated storage location under the control of the OAC. The OAC will restrict NRC personnel access to allegation files to those with a need-to-know.
- (b) Keycard access to NRC buildings provides adequate security for allegation files and documents containing the identity of an alleged. Allegation files and documents containing the identity of an alleged who has been granted confidential source status or SGI shall be stored in a container approved for such information and shall not be stored with allegation files that do not contain such information. Specific guidance regarding allegation file storage under SUNSI storage requirements is provided in the Allegation Manual.
- (c) The OAC will limit the distribution of allegation file documentation outside of the action office to allegation information that is being transferred to another regional or headquarters office, documentation that is produced in response to an allegation-related FOIA request, or allegation-related documents that are provided to the Office of the Secretary (SECY) for certification that records are true copies.

## I. Allegation Review Board (ARB)

An Allegation Review Board (ARB) is a board established by regional administrators and headquarters office directors to determine the safety significance and appropriate NRC followup actions for each allegation.

### 1. Participants and Functions

- (a) An ARB consists of a chairperson (an action office director, division director, deputy director, or senior manager designee), an OAC, and at least one other responsible individual from the action office. Other personnel may participate as deemed necessary by the ARB chairperson. For matters of potential wrongdoing or alleged discrimination, an OI representative and an Office of the General Counsel (OGC) representative or regional counsel should be in attendance for consultation. If an OI representative is not available or if an OGC representative or regional counsel is not available, the ARB shall assign the absent party or parties an action to review decisions made by the ARB to determine if additional ARB discussion is necessary.
- (b) Normally, an initial ARB meeting is to be held within 30 calendar days of allegation receipt by the agency.<sup>4</sup> When an allegation involves an overriding safety issue, an ARB should be held as soon as possible.

### 2. ARB Proceedings

- (a) The ARB accomplishes the following:
  - (i) Considers the safety significance of each allegation concern.
  - (ii) Assigns followup actions and estimated completion times for concern evaluation consistent with the safety and risk significance of each allegation concern, as determined by the ARB. Assigns actions for alleged feedback as prescribed by the allegation process and supplemental alleged feedback, as deemed appropriate.
  - (iii) Assigns responsibility for allegation evaluation, both within and outside the action office, as appropriate. The basis for an ARB decision to send an allegation-related RFI to the licensee shall be documented in the ARB meeting summary. Allegation evaluation is accomplished by—
    - Conducting an inspection or technical review;

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<sup>4</sup> It is recognized that delays in allegation receipt (and in the subsequent scheduling of an initial ARB) may be encountered in some circumstances. As an example, time needed by the Office of the Inspector General (OIG) to evaluate information received by that office that also includes allegation information may delay receipt of the allegation information by the action office. When such a delay is encountered, the initial ARB should be held as soon as possible, particularly when the alleged's identity is known.

- Requesting feedback from the affected licensee through an RFI or another NRC regional office or headquarters office using a TIA, TAR, or Report on Interaction;
  - Obtaining the results of investigations or evaluations conducted by OI, DOJ, DOL, a State agency, or another Federal agency; or
  - Any combination of these actions.
- (iv) Provides guidance and direction to assigned action office staff.
- (v) Recommends offering an alleged who has articulated a prima facie showing of potential discrimination for engaging in protected activity the opportunity to resolve his or her concern through Alternative Dispute Resolution (ADR). See Section II.I.3 of this handbook and NUREG/BR-0313, "Pre-Investigation ADR Program," at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0313/>.
- (vi) Facilitates discussions with responsible NSIR or regional security inspection personnel regarding the proper categorization of security-related allegation concerns for determining the amount of detail that may be disclosed external to the NRC upon closure of the allegation (e.g., in a closure letter to an alleged). See Section II.L.3(d)(i) of this handbook for guidance regarding the determination of the appropriate security information category.
- (vii) Facilitates discussions of allegations involving wrongdoing and discrimination with OI, including the determination of investigative priorities. Examples of alleged wrongdoing include (1) an assertion that a procedure required to be followed to fulfill a required nuclear safety function was intentionally violated, or (2) that a fraudulent or counterfeit part has been supplied or used intentionally as a replacement for a part that must be appropriately qualified. Section V of this handbook, "Initiating, Prioritizing, and Terminating Investigations by the Office of Investigation (OI)," provides detail regarding the requirement for staff to notify OI of allegations of potential wrongdoing and to engage OI to coordinate followup actions related to wrongdoing and discrimination issues. The ARB assures that a potential violation describing the technical and legal basis for the alleged wrongdoing is provided to OI before the initiation of an investigation. If an alleged wrongdoing concern lacks the specificity needed to determine further regulatory actions, the ARB will first recommend that the staff attempt to gather more information directly from the alleged. The ARB can also request assistance from OI (i.e., an OI Assist to Staff (see definition of "OI Assist to Staff" in Section VI, "Glossary," of this handbook)), to support the staff in obtaining additional information regarding the allegation. The ARB also may consider issuing an RFI to the licensee in an attempt to obtain information associated with, but not directly related to, the wrongdoing concern (e.g., procedural, programmatic, or personnel-related information). However, typically this action should not be

considered before an attempt is made to gather more information directly from the allegor or from inspection activities or from an OI Assist to Staff. The ARB can also request assistance from OI to obtain testimony regarding other matters, including feedback related to the condition of a licensee's safety culture or safety conscious work environment.

- (viii) Facilitates discussion of alleged wrongdoing and discrimination matters with OI at various stages of review, as necessary.
  - (ix) Requests legal reviews by representatives of OGC or regional counsel, as appropriate.
  - (x) Considers, on very rare occasions, and after discussion with the allegor, whether to advertise that inspection or investigation efforts are allegation related (while still protecting the allegor's identity). In these instances, the ARB must determine whether making the allegation-related information available to the public significantly improves the staff's evaluation by affording facility employees an opportunity to bring pertinent information to the NRC's attention (because public dissemination of allegation-related information is not a standard course of action). Similarly, on very rare occasions, such as for allegations raised in a highly public manner, concerns impacting many individuals, and significant safety issues, the ARB, in coordination with the AAA, and after discussion with the allegor, may consider whether documenting the results of an allegation assessment publicly would improve public confidence in the allegation program or if it is necessary to do so to support the agency's mission. To ensure that such action does not lead the public to assume that all allegation concerns are or will be made public, all such communications shall clearly explain the reason for discussing the allegation publicly. In these instances, the ARB should consider any objections raised by the allegor before proceeding and should not normally authorize the action over an allegor's objection. If the ARB reaches a decision to publicize that a forthcoming inspection is allegation-related or to publicly document the results of an allegation assessment, the approval of the applicable regional administrator or headquarters office director shall be obtained before taking the action. The staff should monitor the impact of public dissemination of allegation-related information on the allegation program and report all concerns to the AAA.
  - (xi) Establishes written minutes documenting issues discussed, meeting participants, safety significance assessments provided, investigation priorities established, and actions assigned by the ARB.
- (b) The ARB should be reconvened if new information is presented that changes the safety significance of an allegation concern, indicates that alteration of an existing course of action should be considered, or if additional discussion of the allegation is otherwise deemed necessary. The ARB should be reconvened 6

months after initial receipt, and approximately every 4 months thereafter to review an allegation that is older than 6 months, unless the only open concerns relate to matters involving OI or DOL that have no open technical issue or the technical concern awaits completion of action by another Government agency. An allegation older than 6 months that has an ongoing OI investigation but no open technical issues may be discussed during routine OI investigation status and priority discussions with action office management.

- (c) If an OI investigation has been initiated regarding an allegation involving an allegeder whose identity is known, and the allegeder is interviewed by OI, the transcript or summary of interview with the allegeder shall be provided to the action office OAC for review by responsible regional and headquarters office staff. If new issues are identified or information exists to warrant a change in investigation priority after the transcript or summary of interview has been reviewed by the staff, the ARB should reconvene to determine appropriate action.
- (d) The ARB chairperson makes the final decisions regarding the actions proposed during the ARB meeting and provides final approval for requested actions. After each ARB, the OAC shall document the actions requested and decisions recorded and approved by the ARB in the allegation file and enter them into the AMS database. This course of action ensures that a current record of activity for each allegation is maintained. The OAC will inform the responsible NRC manager of the ARB's final decisions reached and actions assigned. The responsible NRC manager, with the support of the OAC, will ensure that appropriate staff is informed of the ARB decision, particularly those who are assigned specific actions, resident inspectors, and non-resident inspectors, as appropriate.

### 3. ARB Discussions Involving Allegations of Discrimination

- (a) When an allegation of discrimination is received, the ARB, with OGC or regional counsel support, will determine whether a prima facie showing of potential discrimination has been articulated by the allegeder. See definition of prima facie showing of discrimination in Section VI, "Glossary," of this handbook. For a prima facie discrimination case, the ARB will assign an action to offer the allegeder an opportunity to use Early Alternative Dispute Resolution (Early ADR) as a means of obtaining resolution of the issue, as an alternative to an OI investigation. See NUREG/BR-0313.
- (b) Exceptions to offering Early ADR to the allegeder should be rare and shall be approved by the Director, OE, before the initiation of an OI investigation. Although OI will not be requested to initiate an investigation at the initial ARB because of the need to first offer Early ADR to the allegeder, the ARB may assign an investigation priority of High, Normal, or Low, using guidance set forth in the Allegation Manual, for later reference, if Early ADR is not used or is unsuccessful. A tentative investigation priority, if assigned at the ARB, should be

determined without regard to whether DOL is separately investigating the allegation of discrimination. The ARB minutes must document the rationale for the assigned priority.

- (c) If Early ADR (or any other mediation process) is employed and is successful in establishing a settlement between the allegor and his or her employer or former or prospective employer, an OI investigation will not be initiated and enforcement action will not be taken, as long as the agreement is reviewed by OGC and no restrictive covenants in violation of the applicable employee protection rule exist. If Early ADR is not used by the allegor, or if the allegor is unsuccessful in establishing a settlement with his or her employer or former or prospective employer, or if the allegor or licensee has been unresponsive to the Early ADR offer, OI will be requested to initiate an investigation. The contingency action to open an OI investigation may be decided upon at the initial ARB, or affirmed at a followup ARB meeting after knowledge of the unsuccessful Early ADR result has been established.

## **J. Allegation Evaluation**

### **1. Acknowledgment Letter**

- (a) When the identity of an allegor is known, an acknowledgment letter is to be issued to the allegor, normally within 30 calendar days of the date of receipt of the allegation. The acknowledgment letter may be prepared and signed by the OAC or by any appropriate action office official, as established by the action office, with the concurrence of the OAC. The acknowledgment letter shall include a restatement of the allegor's concerns, along with information relevant to the issues involved (e.g., the Early ADR and DOL processes, identity protection, important contacts, whether concerns are being referred to another entity (like an Agreement State), or whether an RFI from the licensee is being considered). A standardized acknowledgment letter is available in the Allegation Manual. Whenever possible, acknowledgment letters (and all other written correspondence to an allegor) should be sent using a delivery mechanism that allows for verification of receipt. Note: For instances in which an allegor requests electronic correspondence (e-mail), the OAC should request the allegor to verify receipt of the information.
- (b) If discrimination has been alleged, and a prima facie showing of potential discrimination has been articulated, the acknowledgment letter shall offer the allegor the opportunity to use Early ADR, while making clear that Early ADR does not stay the 180-day timeliness requirement for filing a discrimination complaint with DOL. The OAC will inform OE that an offer of Early ADR has been made. Note: The allegor should not be offered an opportunity to use Early ADR until after the matter of alleged discrimination has been discussed by the ARB, since the ARB, with OGC or regional counsel support, must conclude that

a prima facie showing of potential discrimination has been articulated by the allegor before Early ADR is offered.

- (c) For sensitive, security-related concerns, the acknowledgment letter will reiterate the concern(s) raised but will inform the allegor that the NRC, following evaluation of the concerns, may only be able to provide limited information regarding the staff's review, assessment, and findings. The letter shall not include classified, SGI, or sensitive security information.

## 2. Allegor Interview by NRC Technical Staff

In some cases, an interview with the allegor by the NRC technical staff may be warranted. Depending on the nature of the allegation and the time sensitivity of the issue, assistance from OI or other resources may be requested. If an allegor requests an interview with the NRC to more clearly explain his or her concerns, or to present information, every effort should be made to accommodate such a request. All contacts with the allegor should be documented and forwarded to the OAC for inclusion in the allegation file. If travel to the action office is necessary, and travel compensation is requested by the allegor, travel costs can be offered with management approval and will be borne by the action office.

## 3. Evaluation by NRC Technical Staff

- (a) After completing inspection activities or review as requested by the ARB or as directed by management to address an OSI, technical staff will notify designated responsible staff and the OAC of the completed actions. The allegation status can then be tracked, and subsequent allegation process activities may be initiated (e.g., the development of closure documentation).
- (b) The technical staff will document the evaluation of each allegation concern in a report or other appropriate correspondence and submit the documentation to the OAC for inclusion in the allegation file, along with all supporting information. See Sections II.L.1 and II.L.3 of this handbook for guidance regarding staff development of allegation closure documentation.

## 4. Allegation Transfers, RFIs, and Referrals

### (a) Considering an Allegation Transfer, RFI, or Referral

- (i) Other actions that may be considered by the ARB in support of an allegation evaluation are—
- Transferring an allegation or specific concerns within an allegation to the appropriate regional or headquarters office;
  - Requesting information from a licensee through an RFI;

- Requesting input from another NRC headquarters office through a TIA, TAR, or Report on Interaction; or
  - Making a referral to another government agency or other external entity.
- (ii) Normally, ARB approval is obtained before the actions noted in Section II.J.4(a)(i), bullet 1 through bullet 4 are taken. However, if in the judgment of the receiving OAC, a concern is clearly under the purview of another regional or headquarters office or is outside the NRC's jurisdiction, the OAC can take the following actions without submitting the concern to an ARB:
- Transfer the allegation or specific concerns within the allegation to the appropriate regional or headquarters office;
  - Refer the concern to the appropriate external agency or entity; or
  - Provide contact information for the external agency or entity to the concerned individual.
- (iii) Matters necessitating referral to law enforcement agencies shall be coordinated with OI.
- (iv) Matters necessitating referral to an Agreement State should be coordinated with the appropriate RSAO.
- (b) Informing an Allegor of an Allegation Transfer, RFI, or Referral

When it is determined that information is to be requested from the licensee or an issue is to be referred to another Government agency or external entity, the allegor should receive feedback regarding such action. The notification may be provided in a letter to or a documented conversation with the allegor. If an allegation is transferred within NRC, feedback may be provided to the allegor by either the receiving office or the office to which the allegation is transferred. The OACs for the offices participating in the transfer will discuss and agree upon which office will inform the allegor about the allegation transfer.

- (c) Allegation Transfers and Allegation-Related TIAs, TARs, or Reports on Interaction
- (i) When a regional or headquarters office receives an allegation and determines that the allegation should be transferred to another regional or headquarters office, the offices must contact each other before the transfer. The office to which the allegation is to be transferred should be in agreement that it is the appropriate action office to evaluate the allegation. If agreement is reached, the allegation is transferred. It is not necessary for the regional or headquarters office that initially received the allegation to enter the allegation into the AMS or conduct an ARB meeting in this instance.
- (ii) When a regional or headquarters office determines that technical assistance is needed from another headquarters office in reviewing an allegation through

a TIA (NRR), TAR (NMSS, NRO), or Report on Interaction (NSIR), the other office must agree to the request for technical review. The fact that the request for technical review is related to an allegation must clearly be documented to assure that the headquarters office from which technical assistance is being requested is made aware of allegation response timeliness issues.

(d) Requests for Information From the Licensee

(i) Policy Regarding the Issuance of an RFI to the Licensee

- Engaging the licensee in the evaluation of an allegation provides NRC with unique insights into the licensee's handling of employee concerns and provides the licensee with unique insights into its own safety culture.
- A licensee has primary responsibility for ensuring the safe operation of the facility and can promptly address issues through ready access to site personnel, equipment, and documentation related to allegation concerns; therefore, action offices should request information from the licensee in support of allegation evaluation whenever possible and appropriate, and in all instances involving an OSI.
- As indicated in the sections that follow, the ARB should refrain from issuing an RFI to the licensee in instances that could compromise an alleged's identity or an OI investigation if it is unlikely that the licensee will be able to perform an independent and effective evaluation, or if a State or Federal agency providing the allegation does not approve of the RFI.
- Other items to be considered by the ARB in deciding whether or not to request information from the licensee include the following: feedback from the alleged regarding the option of issuing an RFI to the licensee, allegation history and trends, whether NRC inspection or technical review is preferred in place of or in addition to an RFI, and past licensee performance in responding to allegation-related RFIs.
- Guidance in this area is provided in the Allegation Manual, which includes an "Allegation Review Board Worksheet," intended to support discussion at the ARB when an RFI to the licensee is being considered.

(ii) Conditions Inhibiting the Issuance of an RFI to the Licensee

A licensee may be asked to provide information regarding an allegation involving an OSI in any circumstance, as deemed appropriate. However, in other circumstances, the staff generally would not consider an RFI from the licensee if any of the following conditions apply:

- Information cannot be released in sufficient detail to the licensee without compromising the identity of the alleged (unless the alleged has no

objection to the NRC's requesting information from the licensee and understands the possibility that his or her identity may be compromised).

- The licensee could compromise an OI investigation or inspection because of knowledge gained by the licensee from the RFI.
- The allegation is made against senior licensee management or parties who would normally receive the RFI, such that an independent and effective evaluation is unlikely.
- The basis of the allegation is information received from a Federal or State agency that does not approve of the information being released to the licensee in an RFI.

(iii) Requesting Information From the Licensee in Response to an Overriding Safety Issue (OSI)

- If an allegation raises an OSI, responsible NRC staff will normally issue an RFI to the licensee verbally and confirm the issue in writing, regardless of any factor in Section II.J.4(d)(ii). An effort will be made to inform the allegor about the issuance of the RFI. In this instance, however, the consideration of a waiting period for allegor feedback regarding a proposed RFI is waived.
- Note: If the allegor has confidential source status, refer to the allegor's confidentiality agreement for specific guidance regarding the release of information to a licensee about an OSI. In this instance, the allegor is normally given an opportunity to voice any objection regarding the RFI. The staff may proceed with the RFI despite the allegor's objection or lack of response when (1) an effort has been made to contact the allegor (if no feedback is provided), (2) sufficient effort is made to evaluate any feedback provided by the allegor, and (3) the staff continues to believe that the RFI is warranted. In addition to providing the RFI to the licensee, responsible NRC staff should refer to Section IV.E.1 of this handbook if the staff believes that the identity of the confidential source must be disclosed to the licensee to appropriately address the OSI.

(iv) Informing the Allegor About an Allegation-Related RFI to the Licensee

- Before an RFI is provided to a licensee regarding an allegation, all reasonable efforts should be made to notify an allegor whose identity is known of the planned RFI.

- The fact that an alleged is aware that an RFI may be or will be provided to the licensee is normally confirmed in the acknowledgment letter to the alleged. However, this understanding may be otherwise documented (e.g., in the summary of the initial contact with the alleged, or in a telephone conversation record).

(v) RFI Letter to the Licensee

- The RFI letter to the licensee regarding an allegation should reference the allegation number and inform the licensee of the concern(s) in a level of detail that will enable the licensee to evaluate the concern but should not include the identity of the alleged or information that could permit the licensee to identify the alleged.
- The RFI letter should request that the licensee review the matter and provide a written report of the results of that review.
- Staff expectations regarding the quality and scope of the licensee's evaluation, the qualifications and independence of review personnel, and limitations on the distribution of the RFI letter and its enclosure(s) should be conveyed, and the licensee should be requested to describe how these attributes were met in its response to the NRC.
- If the licensee conducts interviews or evaluates samples of documentation, systems, structures, or components in response to the RFI letter, the licensee is expected to provide the basis for determining the number of individuals interviewed, the interview questions used, and the adequacy of sample sizes.
- The licensee is expected to note any instance identified during the course of its review in response to an RFI letter indicating that an NRC requirement may have been violated.
- An RFI letter regarding allegations is not issued on the public docket.
- A standardized RFI letter requesting information from the licensee is available in the Allegation Manual.
- The RFI letter requesting information from the licensee regarding allegations that contain security-related information should be treated as SUNSI and should be handled under established agency guidance. This requirement refers to information requests concerning the following: physical protection, material control and accounting for special nuclear material, security-related orders or confirmatory action letters, insider mitigation, access authorization, or fitness-for-duty issues that are programmatic or associated with security personnel. When SUNSI

handling requirements differ between allegation information and sensitive security-related information, the more restrictive guidance applies.

- The RFI letter also shall request that the licensee contact the NRC to ensure a common understanding of the scope of the allegation and the NRC's expectations for followup and response, and to discuss the licensee's plans for evaluating the concerns that are the subject of the RFI.

(vi) Responsible NRC Staff Review of Licensee Response to an RFI

- Responsible NRC staff will review the licensee's response to an RFI for adequacy.
- This review should include some alternate verification of aspects of the information provided. Acceptable verification methods include, but are not limited to, the following:
  - Verify the existence and applicability of technical references, procedures, corrective action documentation, or calculations noted in the licensee's response.
  - Review recent inspection results in the functional area related to the allegation.
  - Ask followup questions on the material provided by the licensee.
  - Conduct an independent inspection or technical review.
- If the licensee does not conduct a thorough review, the staff may request the licensee perform a supplemental RFI review, or NRC independently may inspect or investigate the allegation concern(s).
- The staff should inform the licensee of an identified inadequacy in the licensee's response to the RFI.
- NRC staff conclusions about the licensee's response and any independent verification, inspection, or investigative efforts should be documented for inclusion in allegation closure documentation.
- Guidance for staff review of the licensee's RFI response and actions to be taken if the RFI response is inadequate, inaccurate, or otherwise unacceptable is provided in the Allegation Manual. The Allegation Manual includes a "Checklist for NRC Staff Review of Licensee Response to an Allegation Request for Information."

(e) Referral of Concerns About Agreement State Licensees

- (i) Under the terms of the agreement between NRC and an Agreement State, NRC must refer concerns received regarding Agreement State licensees to the Agreement State for review and evaluation.

- (ii) If an individual who contacts the NRC with concerns about an Agreement State licensee agrees to be contacted directly by the Agreement State after the Agreement State program is described to him or her, the concerns are provided to the appropriate RSAO for referral to the Agreement State and are not processed as allegations.
  - (iii) If the concerned individual is unwilling to contact or to have his or her identity disclosed to the Agreement State, the allegation program is used to track the evaluation of the concerns raised about the Agreement State licensee.
  - (iv) Guidance related to the referral of concerns involving Agreement State licensees is provided in the Allegation Manual.
- (f) Referral of Industrial Safety Concerns to the Occupational Safety and Health Administration (OSHA)
- Concerns submitted to NRC within the purview of OSHA are to be handled under NRC IMC 1007 and applicable regional or headquarters office procedures.
- (g) Referral of Concerns to Government Agencies and Military Organizations
- (i) Concerns under the jurisdiction of Government agencies and the military or other organizations outside NRC's jurisdiction will be referred by designated action office staff to the appropriate organization. (For example, concerns about environmental quality related to other than nuclear material or concerns about the radiological aspects of Superfund sites are to be referred to the Environmental Protection Agency (EPA).)
  - (ii) The appropriate OI field office and the Director, OI, are responsible for notifying Federal, State, and local law enforcement agencies and for the determination of the amount of information to be provided to them.
  - (iii) The concerned individual should be informed that the matter is not within NRC regulatory jurisdiction and that he or she may contact any of these organizations directly.
  - (iv) Identity protection of the concerned individual should be considered in staff referrals of such matters under the identity protection guidance in this handbook (see Sections II.F and IV.B of this handbook).
- (h) Referral of Offsite Emergency Preparedness Matters Related to NRC-Licensed Facilities to the Federal Emergency Management Agency (FEMA)
- (i) Allegations involving offsite emergency preparedness matters related to NRC-licensed facilities are to be assigned to NSIR.
  - (ii) NSIR is the responsible action office for such matters and will refer the concern(s) to and request a response from FEMA to support allegation closure. A Memorandum of Understanding (MOU) between the NRC and

FEMA, contained in Appendix A to 44 CFR Part 353, outlines FEMA's responsibilities with respect to radiological emergency response planning as related to NRC. Note: If an allegation is related to an offsite emergency preparedness issue under the responsibility of a specific NRC licensee (based on the licensee's emergency plan), the allegation is managed in the responsible regional office, unless it is generic in nature.

- (i) Referral to the Office of the Inspector General (OIG)
  - (i) Occasionally, a submitted allegation also may include one or more assertions related to NRC staff or contractor misconduct or mismanagement of agency programs or operations.
  - (ii) Issues regarding suspected improper conduct by NRC employees or NRC contractors will be brought directly or through appropriate NRC management to the attention of OIG. These issues are not considered allegations and are not to be described in the AMS.
  - (iii) Any records pertinent to matters involving OIG should be excluded from the allegation file or appropriately redacted and forwarded either directly to OIG or to the applicable regional administrator or headquarters office director for referral to OIG, as appropriate. Such matters should not be discussed during an ARB meeting.

#### 5. Providing an Allegation Concern to OI for Initiation of an Investigation

- (a) If potential wrongdoing or discrimination has been alleged, OI must be informed because investigation by OI is considered by the ARB as a possible course of action for evaluation of such matters. In these instances, the technical staff should normally coordinate with OI before conducting any inspection activity or providing any information to the licensee related to an allegation. See Sections V.A, "Staff Requirement to Advise OI of Matters of Potential Wrongdoing," V.B, "Submittal of Information to OI," and V.D, "Initiation of an Investigation by OI," of this handbook for more guidance related to the initiation of an OI investigation.
- (b) If an allegation includes an OSI as well as a wrongdoing or discrimination matter, it may be necessary for the technical staff to perform a technical review or release certain information to the licensee before holding an initial ARB, before an OI investigation is initiated, or before the publication of the OI investigation report. In these circumstances, the action office director will inform the OI Special Agent in Charge (SAIC) or the Director, OI, as appropriate, who will advise the action office of the anticipated effect of the technical staff response or the information release on the investigation. The action office will determine if the concerns represent an immediate safety issue to justify the risk of compromising the effectiveness of the pending OI investigation, potential escalated enforcement, or DOJ prosecution, in determining whether to perform the technical review or to release the information.

- (c) When an allegor has made a prima facie showing of potential discrimination, and the allegor has either chosen not to participate in Early ADR, has been unresponsive to the offer of Early ADR, or has been unsuccessful in obtaining an acceptable settlement through Early ADR or any other mediation process, the ARB will recommend that OI initiate an investigation.
- (d) If an allegation related to a wrongdoing or alleged discrimination matter is substantiated, OI will inform DOJ of the investigation conclusion so that DOJ may consider the matter for potential criminal prosecution. In general, the fact that a particular matter has been or will be provided to DOJ will not be disclosed to the licensee or the public. If a regional or headquarters office director believes that he or she must disclose that an allegation has been provided or will be provided to DOJ, the concurrence of the Director, OI, will be obtained before disclosing the information. If DOJ accepts the issue, generally any ongoing NRC investigation activity, enforcement considerations, and allegation closure efforts are held in abeyance pending completion of the DOJ review.

#### **K. Periodic Status Letters to Allegers**

In instances of unusual delay in evaluating an allegation, the OAC or other designated staff should ensure that the allegor is provided periodic status letters regarding the NRC's evaluation of concerns. Normally, the allegor should be advised every 180 days or sooner of the status of pending open allegation concerns. For wrongdoing issues, the allegor should be informed that the review is in progress. A standardized status letter is available in the Allegation Manual. If a closure letter is to be issued to the allegor within 2 weeks of the date a status letter is due, it is not necessary to send the status letter.

#### **L. Allegation Closure**

##### **1. Responsible NRC Staff Action**

As assigned, responsible NRC staff shall develop closure documentation for each allegation concern, describing the scope and depth of the review performed and indicating the staff's conclusion as to the validity of the concern. The responsible branch chief shall review and concur in the basis for closing each allegation concern, as developed by the technical staff.

##### **2. OAC Action**

- (a) The OAC tracks all allegation concerns from receipt to closure. An allegation may not be closed until a determination has been made as to the validity of its concern(s). Occasionally, facts put forth by the allegor may be found to be true, even though the safety implications asserted by the allegor are found not to be valid or not to be representative of a safety problem or a violation of requirements. In these circumstances, closure of the concern involves acknowledging information provided by the allegor that was found to be true, while clearly explaining that an inadequacy associated with NRC-regulated

activity was not substantiated. A concern also can be closed if the ARB and the OAC determine that insufficient information was available to ascertain a conclusion regarding the concern. The Allegation Manual includes suggestions regarding the discussion of allegation concern closure in the closure letter to the allegor or closure memorandum to the allegation file along with issues to be considered in determining whether an allegation concern should be documented as substantiated in the AMS database.

- (b) An allegation cannot be closed until all the concerns within the allegation are closed and a closure letter has been issued to the allegor (if the allegor's identity is known) or a document has been submitted to the allegation file that discusses closure of each concern, if the allegor's identity is unknown, if no written correspondence is to be provided to the allegor at the allegor's request, or if the concerns are NRC-identified or licensee-identified. The OAC prepares or coordinates the preparation of a closure letter to the allegor or closure memorandum to the allegation file as indicated in Section II.L.3 below, and also concurs in the closure document. The OAC also is responsible for entering allegation concern closure information in the AMS.

### 3. Documentation of Allegation Evaluation

- (a) A final document (e.g., memorandum, draft closure letter, inspection report, technical evaluation, field notes, investigation report) will be prepared by responsible staff to document the evaluation and closure of the allegation concerns. The document should describe the safety, security, and regulatory significance for any substantiated concern. If the identity of the allegor is known, the OAC shall prepare or coordinate the preparation of a closure letter to the allegor for signature by the OAC or appropriate manager, setting forth the facts and the NRC's evaluation and conclusions regarding each allegation concern. If a closure letter is not required, the OAC shall prepare or coordinate the preparation of a closure memorandum to the allegation file with an enclosure that restates each allegation concern and describes the NRC's evaluation and conclusions regarding each concern (the document provided to the OAC by responsible staff may be used as the closure memorandum if it contains necessary detail and has OAC concurrence). If a closure letter or closure memorandum references a licensee's RFI response, the responsible NRC staff should—
  - (i) Identify each allegation concern as provided or as modified by the allegor.
  - (ii) Describe the licensee's evaluation and response.
  - (iii) Document NRC's evaluation of the licensee's response and overall conclusions regarding the validity of the concern(s), including NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response.

- (b) If an allegor cannot be contacted or if the ARB decides that the allegor will not be contacted upon closure of the allegation, the basis for not contacting the allegor will be documented in the allegation file.
- (c) A standardized closure letter and closure memorandum to the allegation file are available in the Allegation Manual.
- (d) Certain types of allegation concerns require the application of additional specific guidance when developing closure documentation.
- (i) Information provided in closure letters to allegors regarding security-related concerns will be limited based on the sensitivity of the concern, as defined by the following categories that describe the concern sensitivity from high to low.<sup>5</sup> This category should be determined based on the allegation concern, as received, assuming that the concern is true.
- Category I – Security-related concerns that involve a potential generic security vulnerability. Letters to allegors will reiterate the concerns, but provide no details regarding the NRC’s evaluation or conclusion.
  - Category II – Security-related concerns that, if true, would constitute a more than minor finding or violation categorized at greater than Severity Level IV, as determined by applicable guidance or review panels. Letters to allegors will reiterate the concerns and provide limited information regarding the NRC’s evaluation and conclusions such that information that an adversary could exploit is protected. The letter to the allegor should state that the security finding(s) or violation(s) either are Greater than Green (for Reactor Oversight Process (ROP) or construction ROP (cROP) actions) or are being considered for escalated enforcement action. The letter should not discuss the number of findings above Green or violations above Severity Level IV. (See the Enforcement Manual, NRC IMC 0305, and NRC IMC 2505, “Periodic Assessment of Construction Inspection Program Results,” for guidance related to the categorization of enforcement actions and reactor assessment program findings.)
  - Category III – Security-related concerns that, if true, would at most constitute a minor finding or violation categorized at or lower than Severity Level IV, as determined by applicable guidance or review panels. Letters to allegors will reiterate the concerns and describe the actions taken by the staff to evaluate the concerns and the staff’s conclusions regarding the validity of the concerns, but would not include a description

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<sup>5</sup> Additional information may be provided verbally to the allegor for Category II and Category III concerns if requested and the staff can verify that the allegor is currently employed at the NRC-licensed facility that is associated with the allegation concerns as a member of the security force with normal access to such information.

of the compensatory actions taken such that information that an adversary could exploit is protected. The letter to the alleged may indicate the number of security concerns characterized as Green or lower (for ROP or cROP actions) or violations categorized at or lower than Severity Level IV.

- (ii) Other examples would include closure of a discrimination concern that has been resolved through Early ADR, and the closure of concerns related to Agreement State licensees that have been tracked as allegations because the alleged did not want NRC to provide his or her identity to the Agreement State. Detailed guidance for the closure of allegation concerns related to these and other specified conditions is provided in the Allegation Manual.

#### 4. Notification of Results of OI Investigations and Assists

##### (a) Notification of OI Investigation Closure When No Enforcement Action Is Intended

Following the issuance of an OI report of investigation for which a conclusion was reached, the staff determines whether enforcement is warranted. If it is determined that enforcement is not warranted, the action office informs responsible individuals in the action office and other headquarters offices about the issue and OI's investigation conclusion. Guidance for subsequent staff actions, including review of the OI investigation report, the opportunity to provide dissenting views, what to do if the technical staff disagrees with OI's conclusion and how to inform the licensee about the OI investigation results is provided in Part II, Section 1.1.5 of the NRC Enforcement Manual. If a letter is to be issued informing the licensee of the OI investigation results, it is issued as a public document (if it does not contain SGI or other sensitive security information) and should not contain information that could reveal the identity of an alleged. The letter to the licensee may include the OI investigation synopsis or other appropriate summary describing the staff's conclusions regarding the results of the OI investigation (to the extent practical considering any sensitive security information). The closure letter to the alleged will inform him or her that the investigation has been closed, if applicable, and will provide a short summary of the results of the OI investigation and the staff's conclusions (to the extent practical considering any sensitive security information). The letter to the licensee and the letter to the alleged should indicate that the complete OI report may be requested under the FOIA.

##### (b) Notification of OI Investigation Closure When Enforcement Action Is Pending

- (i) When an enforcement action is pending, the alleged cannot normally be informed of the results of the investigation until the licensee is informed. Guidance for staff actions regarding the review, determination, and implementation of enforcement actions, including notification of the licensee is provided in Part II, Sections 1.1.6, 1.3.5, and 1.3.10 of the NRC Enforcement Manual.

- (ii) Once the licensee has been notified about pending enforcement action regarding a substantiated wrongdoing case, a closure letter may be provided to the alleged informing him or her of the staff's conclusions regarding the wrongdoing concern. It is not necessary to await the issuance of the final enforcement action to the licensee before providing the closure letter to the alleged although the ARB may decide to do so in certain instances. For substantiated discrimination cases (in which a pre-decisional enforcement conference or a Post-Investigation ADR mediation session is to be held), a copy of the letter that transmits information to the licensee about the results of the OI investigation (as prescribed in Part II, Sections 1.3.5, and 1.3.10 of the Enforcement Manual), and includes a factual summary or a redacted copy of the OI investigation report shall be provided to the alleged at the time the letter is sent to the licensee. The letter to the licensee should not contain information that could reveal the identity of the alleged.
- (c) Release of Information Concerning Completed OI Investigations of Discrimination to Parties in an Ongoing DOL Proceeding

When OI has completed an investigation that makes a finding on the merits of a discrimination concern and issues its report to the staff before completion of DOL proceedings on the same matter, the staff will inform the parties to the DOL proceeding of OI's conclusion after coordinating with OE. For substantiated cases in which a predecisional enforcement conference or a post-investigation ADR session is to be held, both parties will be provided with information about the results of the OI investigation as prescribed in Sections 1.3.5 and 1.3.10 of the Enforcement Manual. If NRC decides to wait for completion of the DOL process before proceeding with the enforcement process, or for unsubstantiated cases, a letter will be provided to the licensee with the OI investigation synopsis or other appropriate summary describing the staff's conclusions regarding the results of the OI investigation (to the extent practical considering any sensitive security information). A letter will be provided to the alleged including a short summary of the results of the OI investigation and the staff's conclusions (to the extent practical considering any sensitive security information). Both parties will be provided with information on how to submit a request for the complete OI report under the FOIA.

- (d) Closure of Issues Involving OI Assists to the Staff
- (i) In the absence of a specific indication of wrongdoing, OI may provide its investigative expertise to assist in matters of regulatory concern (e.g., interviewing to obtain additional relevant information). Upon the recommendation of an ARB and approval from an OI SAIC, OI may open an Assist to Staff. When a specific indication of potential wrongdoing is not immediately apparent in the description of an allegation concern or should the staff seek information regarding other regulatory matters, such as the condition of a licensee's safety conscious work environment, OI's

involvement may consist of assisting the NRC staff in determining whether wrongdoing is indicated or to obtain additional information or testimony related to a specific concern.

- (ii) When a specific indication of potential wrongdoing is identified following an OI Assist to Staff, OI will open a full investigation into the wrongdoing matter, and staff closure of the issue will be handled as indicated in Sections II.L.4(a), II.L.4(b), and II.L.4(c) above. When OI's Assist to Staff does not yield a specific indication of wrongdoing or an issue warranting further regulatory review, the matter will be administratively closed by OI. Generally, OI will document the results of any interviews conducted to obtain information about specific concerns in response to staff requests. In these instances, the OAC or assigned staff may use the information as documented by OI to prepare the allegation closure documentation.

#### **M. Allegor Response After Closure**

An allegor may provide feedback regarding NRC's closure of his or her allegation by indicating that the NRC's response was, in some way, insufficient, inaccurate, or otherwise unacceptable. In such instances, responsible action office staff and the OAC should review the allegor's response against the closure correspondence provided to assess the validity of the allegor's feedback. An ARB shall be reconvened so that the matter may be discussed with senior management and to determine appropriate additional actions. The NRC should provide a response to the allegor, normally within 30 days of receiving the allegor's feedback, describing actions taken by the NRC. Occasionally, the NRC will require longer than 30 days to respond to an allegor's response after closure, or the allegor's response after closure will include a new allegation. In such instances, an initial response should be provided to the allegor acknowledging the allegor's feedback and the new allegation (if applicable), and indicating that additional NRC feedback is forthcoming.

#### **N. NRC Response to Fears of Retaliation**

1. The NRC may take action to prevent retaliation before it occurs at a licensee's facility. This NRC action is independent of the Early ADR or DOL processes.
2. If the NRC receives a credible report from an individual expressing reasonable fears of retaliation for engaging in protected activity, and the individual is willing to be identified to the licensee, the action office director should initiate actions to alert the licensee that the NRC has received information from an individual concerned that retaliation may occur for engaging in protected activities.
3. The need to notify the licensee should be discussed at an ARB meeting with representatives from OGC or regional counsel and from OI. If the ARB considers it appropriate to notify the licensee, the ARB should make a recommendation to the regional administrator or headquarters office director that senior licensee

management be notified by either holding a documented meeting, a documented management telephone call, or issuing a letter requesting a written response. The general purpose of this interaction is to inform licensee management of the NRC's knowledge of the matter, potential effects on the safety conscious work environment, consequences to the licensee if discrimination was to occur, and the NRC's intention to monitor the situation. So as not to expose the alleged to undue publicity, a letter written to the licensee should not be docketed or otherwise made publicly available, and if a meeting is held, it should be closed to the public. If a letter is written to the licensee and requests a response, the letter will inform the licensee that the response should not be docketed or otherwise submitted to the NRC Document Control Desk.

4. When a number of individuals from the same licensee or organization express concern about the potential for retaliation or other management behaviors that discourage the reporting of safety issues, other actions may be warranted, especially if a history of discrimination findings or settlements exists. Actions might include an inspection, investigation, survey, issuance of a "Chilling Effect Letter," or other techniques for assessing the climate for raising concerns. See the terms "chilling effect" and "chilled work environment" in Section VI, "Glossary," of this handbook and the Allegation Manual for more information.

#### **O. Allegation Management System (AMS)**

1. The AMS is a computerized information system that contains a summary of significant data pertinent to each allegation. The AMS is not a Privacy Act system of records because information cannot be retrieved by alleged name or by any type of identifier assigned to the alleged's name.
2. Allegations received by the NRC are entered in the AMS database, with each allegation concern being individually indicated and tracked. The AMS database tracks allegations and allegation concerns from receipt to closure, including staff involvement, basic descriptive and status information, and reference to closure documentation.
3. Sensitive information, such as names or other personal identifiers of non-NRC persons must not be entered in the AMS. All information entered must be unclassified, must not contain any SGI or any proprietary or commercial information (10 CFR 2.390), and must not violate the Privacy Act.
4. AMS entries should not reveal information related to criminal or civil wrongdoing on the part of individuals or NRC licensees that could compromise NRC inspections and investigations concerning alleged events.
5. Access to the AMS database is normally limited to the AAA, OACs, other allegation support staff, and representatives of OIG because of the sensitive nature of the information. AMS reports are provided on a need-to-know basis for specified data.

**P. Handling Allegations That May Impact Licensing or Certification Decisions or Allegations That Are Filed Late**

1. Ideally, all substantiated allegations concerning a particular licensing, certification, or operational matter will be satisfactorily resolved by the licensee before any license or certificate is issued or an operational decision is made. If an allegation is material to the staff's findings for these decisions, these allegation concerns are termed "late-filed," and the NRC must determine whether the staff is able to make its finding despite the existence of the allegation, taking into account factors such as the likelihood of substantiation and potential safety or other significance of the allegation to the required findings. The NRC's evaluation of allegations that are not material to the staff's required findings may be evaluated independent of the issuance of the license or certificate or operational decision.
2. If an allegation concern is material to an issue in a licensing or certification proceeding, the action office will promptly consult the appropriate licensing or certifying office (if different from the action office) for assistance in determining appropriate action. If warranted, the action office is responsible for recommending to the licensing or certifying office that it notify the presiding officer in an administrative adjudicatory proceeding of the allegation concerns. The licensing or certifying office will consult with OGC when preparing such notifications.
3. For each pending license or certificate or operational decision, each action office will prepare an assessment of the safety significance of allegation concerns for which the NRC's evaluation is not expected to be completed or, if substantiated, not expected to be resolved by the licensee before the NRC issues the license or certificate or makes the operational decision. When possible, this assessment will be forwarded to the responsible licensing or certifying office not less than 30 working days before the licensee has completed activities necessary to support license or certificate issuance or an operational decision (using the licensee's estimate) and will include a recommendation as to whether any or all of these allegation concerns constitute grounds for delaying issuance of (or otherwise restricting) a license or certificate, or delaying operational approval (or otherwise restricting operation).

**Q. Freedom of Information Act (FOIA) Requests**

1. Upon receipt of a FOIA request, it is normal practice under the Privacy Act to protect from release, an alleged's identity or alleged-identifying information, unless mandated by the FOIA in some circumstances (see Section II of this directive and Section II.F.12 of this handbook). "Fingerprinting" information that may lead to identifying an alleged is normally redacted when responding to a FOIA request. In cases involving non-discrimination issues in which the NRC determines that it is appropriate to release the identity of an alleged because the alleged is considered "widely known" in association with an allegation concern, the responsible OAC will make reasonable efforts to inform the alleged before the FOIA release. The means of determining an alleged to be "widely known" in association with an allegation concern

and subsequently notifying the allogger about the information release are discussed in the Allegation Manual. (See definition of “widely known allogger” in Section IV, “Glossary,” of this handbook.)

2. Disclosures may be necessary to further the NRC mission or to address safety concerns; however, it is NRC policy to provide the maximum protection allowed by the FOIA to protect against the disclosure of the identity of all alloggers. More specific guidance about allegation-related information that may or may not be disclosed in response to a FOIA request, based on the type of information requested and the source of the request, is provided in the Allegation Manual.

#### **R. Training of the NRC Staff**

Since any NRC employee may receive an allegation and since NRC employees must be able to recognize an allegation, all employees shall receive initial training about the implementation of the allegation process. The initial training should normally be provided to a new employee within 30 days of his or her starting date. After completing initial training, staff in the regional offices and the following headquarters offices shall receive allegation refresher training biennially: NMSS, NRO, NRR, NSIR, the Office of Congressional Affairs (OCA), OE, OEDO, OGC, OI, OIP, OPA, RES and SECY. Staff in each NRC Commissioner’s office are also to receive biennial allegation refresher training.

#### **S. Allegation Guidance Memorandum (AGM)**

An AGM will be issued, as necessary, between revisions to MD 8.8 to address changes in allegation program policy or to provide guidance on implementation of existing policy.

### **III. NRC CONTACTS FOR DEPARTMENT OF LABOR (DOL) INFORMATION**

The NRC may contribute to the record in DOL adjudications. The NRC contacts for each type of request related to DOL information are as follows.

#### **A. Requests by Individuals or by DOL**

These requests may involve technical issues associated with protected activity, the organizational structure of nuclear industry employers, or NRC requirements. The NRC is available to assist cognizant DOL personnel and individuals with accessing NRC information, understanding technical issues, or determining whether an individual has engaged in protected activity. The initial contact for requests from individuals outside the agency is the AAA. However, allegation and enforcement staff in the regional or headquarters offices are the NRC contact if DOL is requesting information about a specific allegation. If this contact occurs, staff should respond promptly because DOL investigators have a short statutory time frame within which to complete their investigation (see 29 CFR Part 24, “U.S. Department of Labor Procedures for Handling Discrimination Complaints Under Federal Employee Protection Statutes”). The contact for legal advice is the Assistant General Counsel for Materials Litigation and Enforcement, who will review the request, and if appropriate, transfer it to the proper NRC office for response.

**B. Requests for Reports From OI**

Requests for reports or evidence developed by OI relevant to a complaint under ERA Section 211 shall be provided to the Director, OI, who will consult with the Director, OE. For cases that have been forwarded to DOJ for potential criminal prosecution, the Director, OI, must also consult with DOJ before responding to the request.

**C. Production or Disclosure in Response to Subpoenas or Demands of Courts**

The NRC may be asked to provide documents or information, including witnesses, in a DOL proceeding pursuant to 10 CFR Part 9, Subpart D, "Production or Disclosure in Response to Subpoenas or Demands of Courts or Other Authorities." The OGC contact for such requests is the Solicitor, OGC.

**D. Freedom of Information Act (FOIA) and Privacy Act**

Information can be formally requested through the FOIA and the Privacy Act. The contact for such requests is the Freedom of Information and Privacy Act Officer, OCIO.

**E. Amicus Curiae Briefs**

The NRC will consider filing amicus curiae briefs when it is determined that the outcome of an issue may affect the NRC's enforcement of its regulations. The determination of whether to file a brief will depend on consideration of the facts and circumstances of the case and the importance of the issue to the NRC. All requests for amicus curiae briefs should be provided to the Assistant General Counsel for Materials Litigation and Enforcement.

**F. Correspondence**

The NRC may correspond directly with the Secretary of Labor to express any opinions or concerns on issues raised in DOL proceedings. Requests for communications between the NRC and the Secretary of Labor should be provided to the Assistant General Counsel for Materials Litigation and Enforcement.

**IV. GRANTING AND REVOKING CONFIDENTIAL SOURCE STATUS**

This section provides guidance for granting and revoking confidential source status and for determining when the identity of an allegor who has been granted confidential source status may be released outside the NRC. While the discussion in this part focuses primarily on the granting or revoking of confidential source status for an individual who has raised an allegation to NRC, this guidance also applies to other confidential sources established by OI during the course of a wrongdoing or discrimination investigation who are not considered to be allegors. For matters referred to OIG, as noted in Section II.J.4(i) of this handbook, the OIG follows its own guidance concerning the granting and revoking of confidentiality.

**A. General**

1. On April 5, 1996, the Commission approved a revision to the policy on confidentiality, which sets forth agencywide policy on protecting the identity of alleged and confidential sources, including alleged who are granted confidential source status. The Commission's inspection and investigatory programs rely, in part, on individuals voluntarily coming forward with information about potential safety concerns or perceived wrongdoing. Protecting the identities of confidential sources is a significant factor in ensuring the voluntary flow of this information. This policy statement on confidentiality applies to all Commission offices and directs those offices to make their best efforts to protect the identity of any source. The guidance in this part and instructions in the Allegation Manual and the OI Investigations Procedures Manual provide for implementation of the Commission's policy statement.
2. Although the NRC recognizes the importance of confidentiality, the NRC does not believe that confidential source status should be granted to all individuals who provide information to the NRC, or that confidential source status should be routinely granted to alleged, particularly in light of the identity protection afforded all alleged. Rather, the NRC believes that confidential source status should be granted only when necessary to acquire information related to the Commission's responsibilities or when warranted by special circumstances. Confidential source status ordinarily should not be granted, for instance, when the individual is willing to provide information without being given confidential source status.

**B. Granting Confidential Source Status**

1. Confidential source status may be offered to an alleged if the alleged is reluctant to provide information (a standardized confidentiality agreement form is available in the Allegation Manual). If an alleged makes a request for confidentiality, the NRC must determine whether or not a grant of confidential source status is warranted. The NRC will gather pertinent information regarding the alleged's reason for the request, alleged involvement in and actions related to the information, regulatory jurisdiction, and whether the NRC or others may already have knowledge of the information. The Allegation Manual contains a list of typical questions to ask an alleged for whom the NRC may consider granting confidential source status.
2. Depending on the information gathered from an alleged who has not requested confidential source status, a determination should be made as to whether or not granting confidential source status would be in the best interest of the agency. An authorized NRC employee may offer confidential source status if an alleged is not providing information for fear of identity disclosure (see Sections IV.B.4 and IV.B.7 of this handbook). In this instance, as on the occasion when an alleged requests confidentiality, pertinent information must be gathered, as noted in Section IV.B.1 of this handbook, to determine whether or not a grant of confidential source status is warranted.

3. When confidential source status is granted, the allegor is to be provided information regarding—
  - (a) The confidentiality agreement,
  - (b) The sensitivity of the information the allegor is providing (including the potential that the information itself could reveal the source's identity),
  - (c) How the allegor's confidentiality is controlled within the NRC, and
  - (d) How the NRC will respond to questions about the allegor's confidential source status (see the Allegation Manual regarding information provided to the confidential source).
4. An NRC employee wishing to grant confidential source status must either be delegated the authority to do so or must seek authorization from the appropriate regional or headquarters official. Authorization can be prearranged as circumstances warrant, possibly involving a meeting with the allegor. The Executive Director for Operations (EDO) and the Director, OI, may designate those persons within their organizations who may grant confidential source status or may further delegate the authority to do so. As standard practice, regional administrators, headquarters office directors, and OI SAICs have received this designation from the EDO or the Director, OI.
5. Authority to grant confidential source status is to be documented in writing either through a standing delegation or an ad hoc authorization. In special circumstances, an oral authorization is permissible if it is subsequently confirmed in writing. The authority to grant confidential source status must be documented formally by the action office, such as in an internal regional or headquarters office procedure, in a memorandum to the OAC or, in the case of OI, in accordance with the OI Investigations Procedures Manual.
6. Confidential source status may be temporarily given orally in circumstances in which it is impossible or inappropriate to sign a confidentiality agreement, such as when the information is obtained over the telephone, in a location not conducive to obtaining signatures, or (for OI only) when it is believed that insisting on signing an agreement document would cause the source to refuse to provide the allegation information. Under most of these circumstances, the confidentiality agreement usually will be signed within 2 weeks. If documentation is not or cannot be completed in that time frame, or may never be completed because of the source's reluctance, the EDO or the responsible OI SAIC will determine whether confidentiality should continue (see Section IV.C of this handbook). If confidential source status is granted orally, this permission must be immediately documented by the person granting it and this documentation must be provided to the responsible OAC or, in the case of OI, in accordance with the OI Investigations Procedures Manual.

7. Office directors, regional administrators, and in the case of OI, SAICs shall be informed of each grant of confidential source status issued by their office under a delegation of authority. These senior officials shall approve any variance from the standard confidentiality agreement and each denial of confidential source status.
8. OACs will maintain an accurate record of the status of grants of confidential source status made by their office or region and will maintain copies of signed confidentiality agreements. OI will maintain its records in accordance with the OI Investigations Procedures Manual.
9. In contacts and correspondence with individuals who have been granted confidential source status, the NRC staff shall make their best effort to ensure that contacts and correspondence do not result in the disclosure of the individual as a confidential source. These efforts may include the use of non-Government return addresses, plain envelopes, and rental cars (as opposed to Government-owned vehicles).
10. If at any time and for any reason confidentiality is breached or jeopardized, the appropriate regional administrator or headquarters office director should be informed and the confidential source should be advised. The director of the action office shall be responsible for reviewing the circumstances associated with the release of the identity of the confidential source and will ensure that necessary actions are taken to preclude repetition of the breach. This review and the actions taken must be documented in the allegation file or the OI confidential source file. The Allegation Manual provides guidance for staff actions after an inappropriate identity release.

### **C. Revocation of Confidential Source Status**

1. A decision to revoke confidential source status can be made only by the Commission, the EDO, or the Director, OI, depending on the office that granted confidential source status. The Commission may revoke a grant made by the Commission or any office reporting to the Commission or the EDO. The EDO may revoke grants of confidential source status made by the EDO or by offices reporting to the EDO. The Director, OI may only revoke grants of confidential source status originally made by OI.
2. Confidential source status will be revoked only in extreme cases, such as when a confidentiality agreement is not signed within a reasonable time following an oral grant of confidential source status, when a confidential source takes an action so inconsistent with the grant of confidential source status that the action overrides the purpose of being granted confidential source status, when publicly disclosed information reveals the individual's status as a confidential source, or when the individual has intentionally provided false information to the NRC.
3. Before revoking confidential source status, the NRC will attempt to notify the confidential source and provide him or her with an opportunity to explain why confidential source status should not be revoked.

**D. Withdrawal of Confidential Source Status**

The NRC official granting confidential source status may withdraw confidential source status without further approval, provided that the confidential source has made such a request in writing and the NRC official has confirmed that the requesting individual is the same person who was granted confidential source status, for example, by comparing the signature on the withdrawal request to the signature on the confidentiality agreement.

**E. Official Disclosures**

## 1. Disclosure to the Licensee or Other Affected Organization

The identity of a confidential source may be released outside NRC if there is an OSI and the source agrees to the disclosure. The NRC staff will consult with the EDO before the identity disclosure. If the source cannot be reached to determine if he or she objects to the identity release, or does not agree to disclosure, the staff will contact the Commission for resolution.

## 2. Other Disclosures

## (a) Court Order

A licensee or other entity could obtain a court order requiring NRC to divulge the identity of a confidential source. If this action occurs, the NRC will seek to minimize the disclosure through protective orders or other means.

## (b) NRC Adjudicatory Bodies

(i) The Commission, as the ultimate adjudicatory authority within the NRC, can require the NRC staff to reveal a confidential source. In a separate policy statement on "Investigations, Inspections, and Adjudicatory Proceedings" (49 FR 36032; September 13, 1984), the Commission has provided that any decision by the presiding officer in an administrative adjudicatory matter to order disclosure of the identity of a confidential source must be automatically submitted to the Commission for review.

(ii) In making such a decision, the Commission will consider whether the information provided by the confidential source is reasonably available through alternative means, whether the information relates directly to the substantive allegations at issue in the proceedings, the present employment position of the confidential source, whether a party's right to present rebuttal evidence or to conduct the cross-examination will be violated if he or she is not provided the names, and whether disclosure is necessary to complete the record.

(iii) The Commission notes that the NRC may not have the option of dismissing a case to avoid disclosing a confidential source, such as when the identity of the source is material and relevant to a substantial safety issue or a licensing proceeding.

## (c) Congress

Disclosure to Congress may be required in response to a congressional request. Responding to such requests needs to be in accordance with the procedures listed in Chapter VI of the Internal Commission Procedures (ICPs) (available on the NRC external Web site at <http://www.nrc.gov/about-nrc/policy-making/internal.html>), which addresses NRC responses to Congressional requests for sensitive documents. As specified in Chapter VI of the ICPs, if such requests are received by an office other than OCA, the requests should be referred to OCA for handling. The procedures in Chapter VI also provide that appropriate coordination with pertinent offices will occur as requests are processed. In the event information involving a confidential source is provided to Congress, Congress should be informed that the information provided involves a confidential source and should be protected from any disclosure that might serve to identify the confidential source.

## (d) Federal and State Agencies

- (i) If another agency demonstrates that it requires the identity of a confidential source or information that would reveal such a source's identity in furtherance of its statutory responsibilities, and agrees to provide the same protection to the source's identity that the NRC promised when it granted confidential source status, the action office OAC or OI will attempt to contact the source to determine if he or she objects to the release. If the source is reached and does not object, the EDO or his or her designee, or the Director, OI, or his or her designee, is authorized to provide the information or the identity to the other agency. However, if the source cannot be reached or objects to the release of his or her identity, the source's identity may not be released without the Commission's approval, except as noted in Section IV.E.2(d)(ii) below. The affected agency may then request that the Commission release the source's identity. Ordinarily, the source's identity will not be provided to another agency over the source's objection. In extraordinary circumstances in which furtherance of the public interest requires a release of the source's identity, the Commission may release the identity of a confidential source to another agency over the objections of the source. In these cases, however, the other agency must agree to provide the same protection to the source's identity that was promised by the NRC.
- (ii) As an exception to Section IV.E.2(d)(i), when OI and the DOJ are pursuing the same matter or when OI is working with another law enforcement agency, the EDO or the Director, OI, may reveal the identity of a confidential source to DOJ or the other law enforcement agency, as needed, without notifying the individual or consulting with the Commission.

## **V. INITIATING, PRIORITIZING, AND TERMINATING INVESTIGATIONS BY THE OFFICE OF INVESTIGATIONS (OI)**

This section provides guidance to staff on advising OI of matters of potential wrongdoing and alleged discrimination, submitting pertinent information to OI regarding the priority of investigations, and resolving differences between regional and headquarters offices regarding investigations, the initiation or termination of investigations, and the resolution of matters not investigated.

### **A. Staff Requirement To Advise OI of Matters of Potential Wrongdoing**

1. Wrongdoing consists of either a willful violation of regulatory requirements through deliberate action or a violation resulting from careless disregard of regulatory requirements. All NRC employees should be alert for matters involving potential wrongdoing, as such matters must be reviewed with OI, whether they are identified by an allexer, a licensee representative acting in his or her official capacity, or the NRC staff. The staff will assist OI in the review of matters involving potential wrongdoing at an early stage to facilitate the overall investigative process.
2. Regional and headquarters offices are required to promptly notify OI when the staff is aware of an allegation or other matter that could involve wrongdoing on the part of licensees or other affected organizations or their contractors. Verbal notifications to OI are acceptable. Generally, these matters are brought forward by the staff through routine reporting channels; however, NRC's open door policy provides that NRC employees may contact OI directly when circumstances so dictate (see MD 10.160, "Open Door Policy").
3. In addition to the discussion in Sections V.A.1 and V.A.2 above related to the staff requirement to advise OI of matters involving potential wrongdoing, it is noted that the action office directors and the Director, OE, have the authority to request OI to conduct an investigation.

### **B. Submittal of Information to OI**

1. After OI is initially notified of a matter involving potential wrongdoing, pertinent information (e.g., telephone records, allegation receipt documentation, supporting documents, reference information) should be subsequently transmitted to OI. ARB meetings are normally used to coordinate with OI on followup actions related to wrongdoing issues. An OI representative must be invited to any ARB meeting that is scheduled to discuss alleged wrongdoing.

2. OI is also provided information related to allegations of discrimination under Section 211 of the ERA and invited to ARB meetings at which such matters are discussed. If the ARB determines, with OGC or regional counsel support, that an allegeder has articulated a prima facie showing of potential discrimination, the ARB will assign an action to offer the allegeder the opportunity to use Early ADR as a means of obtaining issue resolution (see Section II.1.3 of this handbook). If Early ADR is employed and is successful in obtaining a settlement between the allegeder and his or her employer or former/prospective employer, OI will not initiate an investigation of the discrimination concern, as long as the agreement is reviewed by OGC and no restrictive covenants in violation of the applicable employee protection regulation exist. If Early ADR is not used by the allegeder, if the allegeder or the licensee has been unresponsive to the offer of Early ADR, or if the allegeder is unsuccessful in establishing a settlement with his or her employer or former or prospective employer, the ARB will recommend that OI initiate an investigation.
3. Potential wrongdoing or alleged discrimination matters, regardless of their origin, should be coordinated with the OAC for entry into the allegation process. Allegation processing will prompt discussion of these matters at an ARB meeting, with OI in attendance, where it is determined whether a potential wrongdoing or alleged discrimination matter is to be investigated. Responsible staff should provide a draft Notice of Violation related to an alleged wrongdoing matter, either at the initial ARB meeting, or shortly thereafter, to clarify the regulation that may have been willfully violated. If the ARB determines that an investigation is to be initiated, a priority of high, normal, or low will be assigned to the investigation, using guidance set forth in the Allegation Manual. If unable to attend the ARB, representatives of OGC or the regional counsel, as appropriate, will be consulted to determine whether there is an appropriate regulatory basis for an investigation to be conducted by OI.
4. The priority of an investigation being conducted by OI may be adjusted as appropriate by the affected regional administrator or headquarters office director at periodic meetings held with OI to discuss investigation priority and status. The Director, OE, should be consulted, as appropriate, in applying the priority guidance.

### **C. Resolution of Differences**

1. After it has been recommended that OI initiate an investigation, OI will generate an Investigation Status Report (ISR) with a case priority as noted by the ARB, and provide a copy to the OAC. OI will conduct a preliminary investigation during a 90-day evaluation phase and then set the estimated completion date if the investigation continues. If there are any concerns involving the estimated completion date assigned to the investigation by OI or about an OI decision not to investigate a particular matter, the directors of the associated regional office, headquarters office, and OE shall be promptly notified so that efforts may be initiated to resolve the difference of opinion.

2. Headquarters offices that are action offices along with OE are responsible for ensuring that necessary investigations are conducted within their areas of responsibility. If a particular headquarters office believes that the priority assigned to a matter under OI investigation should be different from that established by the regional office at an ARB or at a periodic OI priority and status discussion with the regional administrator or his or her designee, the headquarters office should contact promptly the regional office to resolve the difference of opinion.
3. If a decision cannot be reached regarding the appropriate priority for an investigation, the director of the associated headquarters office will review a licensing-related matter under investigation, and the Director, OE, will review an enforcement-related matter under investigation. The headquarters office director will consult with the Director, OI, in an additional effort to reach a conclusion about OI case priority. If the issue of assigned investigation priority remains unresolved after such a review, the Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital (DEDM) will be consulted for resolution.
4. The DEDM shall attempt to resolve any remaining differences over the need, priority, and estimated completion date, for investigations with the Director, OI, and the director of the responsible headquarters office. If unsuccessful in resolving the differences, the DEDM shall refer the matter to the EDO for resolution.

#### **D. Initiation of an Investigation by OI**

1. An investigation is an activity conducted by OI to independently gather and examine testimonial, documentary, and physical evidence, and relevant facts, to assist the staff, OE, and the DOJ in evaluating matters of potential wrongdoing or discrimination. When an OI investigation is initiated, it begins with certain preliminary investigative steps by OI to evaluate the nature and substance of a matter of alleged wrongdoing. If the preliminary investigation efforts indicate that the allegation, if true, was more likely to have been a result of wrongdoing and that the priority assigned to the investigation by the ARB was warranted, OI will continue the investigation to follow appropriate investigative leads to their logical conclusion. Investigative efforts will be documented in an OI report of investigation, or closure memorandum, as appropriate, with copies provided to the associated headquarters office, OGC, OE, and appropriate regional offices.
2. OI will seek the Commission's guidance before initiating a full investigation relating to the character or integrity of an individual when the character or suitability aspects of the matter being considered for investigation are unrelated to a violation of NRC regulatory requirements.
3. OI may self-initiate investigations or assists as deemed appropriate by the Director, OI.

**E. Termination of Investigations**

1. A case may be closed by OI without further investigation if preliminary investigative findings and coordination with the staff indicate that even if the circumstances surrounding the alleged wrongdoing issue were true, there would be no violation of a regulatory requirement.
2. The decision to terminate an OI investigation will be made after a case-by-case assessment by the responsible OI SAIC as based on preliminary investigative findings, the investigation priority, investigative resource limitations, and any other pertinent contributing factor(s). OI will notify the associated regional or headquarters office of its basis for closure.

**F. Resolution of Matters Returned by OI Without Investigation**

1. Matters returned to the staff by OI without having completed a full investigation for the reasons discussed in Section V.E. of this handbook will be handled by the staff as part of its established process for resolving inspection findings. Staff followup may include additional inspections, written requests for information from the licensee, meetings between the staff and the licensee, proceeding with enforcement action by the original or supplemented inspection findings, or other actions, as appropriate. If the matter warrants a higher priority after supplemental information is developed or the original findings are reassessed, the matter may be discussed again with OI for possible investigation under the guidance specified in this handbook.
2. Matters closed without a full investigation by OI may be closed by the staff when the appropriate regional administrator or headquarters office director determines that the issues involved do not warrant the expenditure of additional agency resources, assuming enforcement is not warranted.

**VI. GLOSSARY****Action Office**

The NRC regional or headquarters office that is responsible for reviewing and taking action, as appropriate, to evaluate an allegation. The Office of Nuclear Reactor Regulation (NRR), the Office of New Reactors (NRO), the Office of Nuclear Material Safety and Safeguards (NMSS), the Office of Nuclear Security and Incident Response (NSIR), and the Office of International Programs (OIP) are the action offices for allegations that relate to matters under the purview of the headquarters office, such as generic and vendor issues. The Office of Investigations (OI), the Office of Enforcement (OE), the Office of the General Counsel (OGC), and the Office of the Inspector General (OIG), and the Office of Nuclear Regulatory Research (RES) are not considered action offices for this management directive.

**Adverse Action**

An action that may adversely impact the compensation, terms, conditions, or privileges of employment including, but not limited to, a failure to receive a routine annual pay increase or bonus, demotion or arbitrary downgrade of a position, transfer to a position that is recognized to have a lesser status or be less desirable (e.g., from a supervisory to a non-supervisory position), failure to promote, overall performance appraisal downgrade, verbal or written counselling, or other forms of constructive discipline, or termination.

**Agreement State**

A State that has entered into a formal agreement with NRC by which the State assumes regulatory responsibility over certain byproduct, source, and small quantities of special nuclear material.

**Allegation**

A declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. Excluded from this definition are—

- Technical questions generated by NRC staff. NRC staff members should direct their technical concerns to NRC management for evaluation within appropriate processes (e.g., inspection program, differing professional opinion program);
- Inadequacies provided to NRC staff by licensee employees acting in their official capacity;<sup>1</sup>
- Matters already entered into a licensee's corrective action program that are not otherwise accompanied by an assertion of inadequate licensee followup;<sup>2</sup>
- Matters being handled by other formal processes, such as petitions for rulemaking, petitions filed under 10 CFR 2.206 or contentions filed in hearings or other formal proceedings;
- Misconduct by NRC employees or NRC contractors;

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<sup>1</sup> This exclusion is intended to clarify that inadequacies discussed during official routine conversations between licensee employees and NRC staff are not intended to be treated as allegations. However, if the information provided by the licensee employee involves a wrongdoing issue or the employee expresses dissatisfaction with the licensee's handling of the issue or another licensee, the information should be treated as an allegation.

<sup>2</sup> Licensee corrective action processes provide the primary mechanism for the identification and resolution of problems. Once an issue is entered into the corrective action process, the licensee evaluates an identified problem, categorizes it in terms of safety significance, and takes action toward resolution. Unless a concerned individual can articulate why an item entered into the corrective action process was not or will not be handled properly by the licensee, such items should not be processed as allegations.

- Non-radiological occupational health and safety issues;
- Concerns related to Agreement State licensee activities when the concerned individual agrees to have his or her concerns and identity provided to the Agreement State;
- Performance or wrongdoing concerns regarding organizations or personnel from State regulatory bodies that oversee Agreement State licensee activities;
- Matters reported to NRC by Agreement States resulting from Agreement State inspections; and
- Licensing activities that are forwarded to NRC that involve law enforcement and other Government agencies.

Note: Although the source is not external to the NRC, matters identified by NRC staff that involve potential wrongdoing and that prompt investigation by OI are also tracked as allegations to facilitate headquarters and regional office monitoring of related OI followup. It is also noted that allegation concerns are not limited to matters that constitute a potential violation of NRC requirements.<sup>3</sup>

### **Allegation File**

A file that contains the documentation concerning an allegation, including, but not limited to, correspondence, memoranda to the file, interview records, inspection reports, summaries of telephone conversations, discussions, and meetings, and pertinent information from related Office of Investigations (OI) activities. The hard-copy allegation file is the official agency record.

### **Allegation Guidance Memorandum (AGM)**

A guidance document, issued by the Agency Allegation Advisor (AAA), as necessary, between revisions to Management Directive 8.8, to address changes in allegation program policy or to provide guidance on implementation of existing policy.

### **Allegation Management System (AMS)**

A computerized information system that contains a summary of significant data pertinent to each allegation.

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<sup>3</sup> As an example, a concern about a Commission policy issue, such as a safety conscious work environment (SCWE) problem at a facility is an allegation because of its potential bearing on the willingness of personnel to raise safety issues associated with NRC-regulated activities. While a substantiated concern in this area provides important input to the NRC's assessment of facility performance, a Notice of Violation cannot be issued because there is no applicable regulation.

**Allegation Manual**

A guidance document to assist the NRC staff in implementing the allegation program in practice. Intended for internal use by NRC staff who receive, evaluate, and respond to allegations, the Allegation Manual contains instructions, correspondence templates, and reference information to support allegation processing. The Allegation Manual is maintained by Office of Enforcement (OE) on the NRC internal Web site at <http://www.internal.nrc.gov/OE>. Suggestions for changes or additions to the Allegation Manual should be provided to OE.

**Allegation Review Board (ARB)**

A board established by regional administrators and headquarters office directors to determine the safety significance and appropriate NRC followup for each allegation. The ARB consists of a chairperson (an action office director, division director, deputy director, or senior manager designee), an Office Allegation Coordinator, and at least one other responsible person from the action office. Other personnel, as necessary, including staff from the Office of Investigations (OI), OE (or regional enforcement personnel), and the Office of the General Counsel (OGC) (or regional counsel) may participate as deemed necessary by the ARB chairperson.

**Alleger**

An individual who or an organization that submits an allegation to NRC or that provides information in a public forum that is recognized as an allegation involving a nuclear or radiological safety matter or possible wrongdoing related to a nuclear or radiological safety matter. Anonymous concerns are accepted.

**Amicus Curiae**

A legal term meaning “friend of the court.” The name for a brief filed with the court by an individual who or organization that is not a party to the litigation, but who has views with respect to the subject matter of the litigation.

**Chilled Work Environment**

A condition where the chilling effect is not isolated (e.g., multiple individuals, functional groups, shift crews, or levels of workers within the organization are affected). A chilled work environment is often referred to as a condition that is the opposite of a safety conscious work environment.

**Chilling Effect**

A condition that occurs when an event, interaction, decision, or policy change results in a perception that the raising of safety concerns to the employer or to the NRC is being suppressed or is discouraged.

**Confidential Source**

An individual who requests that NRC formally confirm, in writing, its intent to protect the individual's identity. This confirmation is usually provided through a signed confidentiality agreement" (a standardized confidentiality agreement form is available in the Allegation Manual).

**Confidentiality**

Identity protection for an allegor who has been granted confidential source status. (See Section VI, "Glossary," of this handbook, for definitions of "identity protection" and "confidential source.")

**Discrimination**

Adverse action taken by an employer against an employee, at least in part, for engaging in NRC protected activity.

**Early-Alternative Dispute Resolution (Early-ADR)**

A process involving the use of a neutral mediator to facilitate discussion between an allegor and his or her employer (or former or prospective employer) in an effort to facilitate timely resolution of a discrimination concern as an alternative to an OI investigation. The process is voluntary and applies only to allegors who have articulated a prima facie showing of potential discrimination (see NUREG/BR-0313, "Pre-Investigation ADR Program," available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0313/>).

**Identity Protection**

The protection of information that directly or otherwise could identify an allegor by name and the fact that an allegor provided information to NRC. For an allegor who has been granted confidential source status, identity protection is also referred to as "confidentiality."

**Inspection (Technical Review)**

For the purposes of this directive, an evaluation conducted by NRC staff and used to evaluate an allegation.

**Investigation**

An activity conducted by the Office of Investigations to independently gather and examine testimonial, documentary, and physical evidence, and relevant facts to assist the staff, OE, or the Department of Justice in evaluating allegations of wrongdoing and/or discrimination.

**Licensee**

For the purposes of this management directive, an organization or individual, or a contractor, a subcontractor, or a vendor to an organization or individual that is an applicant for, or holder of, a license, permit, or certification issued pursuant to NRC regulations to operate a facility or to use, manufacture, produce, transfer, receive, acquire, own, possess, distribute, transport, import, or export specified quantities of byproduct, source, or special nuclear material.

**Office Allegation Coordinator (OAC)**

A designated staff member in a regional or headquarters office who serves as the point of contact for that action office regarding the processing of allegations.

**OI Assist to Staff**

A review conducted by OI when there is no specific indication of wrongdoing and responsible NRC staff has requested OI's investigative expertise to assist in a matter of regulatory concern (e.g., interviewing skills to obtain relevant information).

**Overriding Safety Issue**

An issue that may represent an actual or potential immediate, significant, or immediate and significant threat to public health, safety, or security, warranting timely action by the licensee to evaluate and address the issue.

**Presiding Officer**

The Commission, an administrative law judge, an administrative judge, an Atomic Safety and Licensing Board, or other person designated in accordance with the provisions of 10 CFR Part 2, presiding over the conduct of a hearing conducted under the provisions of 10 CFR Part 2.

**Prima Facie Showing of Discrimination**

Facts provided by an allegor that create a reasonable inference that an employer took an adverse action against the allegor for having engaged in protected activity. Specifically, the allegor must provide facts indicating that (1) the allegor engaged in protected activity, (2) an adverse action was taken against the allegor, (3) persons responsible for the adverse action had knowledge of the allegor's protected activity, and (4) the protected activity was, at least in part, a reason for the adverse action. In such circumstances, further investigation and/or development of evidence is needed to establish whether discrimination actually occurred.

**Protected Activity**

Activity related to the administration or enforcement of a requirement imposed under the Atomic Energy Act of 1954, as amended, or the Energy Reorganization Act of 1974, as amended, which include, but are not limited to, providing NRC or the employer with information about alleged violations of either statute or any requirements imposed under either statute; refusing to engage in any practice made unlawful under either statute if the employee identifies the alleged illegality to the employer; requesting NRC to institute action against the employer for administration or enforcement of these requirements; testifying before NRC, Congress, or in any Federal or State proceeding regarding any provision of the statutes; and assisting or participating in, or preparing to assist or participate in, these activities.

**Receiving Office**

The regional or headquarters office that initially receives an allegation. If an allegation falls within the functional responsibility of the receiving office, the action office and the receiving office will be the same.

**Redaction**

The process of concealing information to reasonably assure that a document related to an allegation does not contain alleged identifying information or classified, SGI, sensitive security, privacy, or proprietary information.

**Referral**

Each of the following three actions is categorized as a referral:

- A request for another agency or external entity (other than the licensee) to provide allegation-related feedback,
- The provision of an issue to another agency or entity in its entirety when the issue is not an allegation,
- The provision of an issue to NRC OIG because it relates to suspected improper conduct by NRC employees or NRC contractors, or mismanagement of agency programs or operations.

Specifically, an issue is “referred” when (a) the NRC receiving office retains administrative responsibility for the allegation-related concern-in-question (i.e., is also the action office), but must obtain feedback from another agency or entity to respond to the concern (e.g., FEMA (for offsite emergency preparedness issues); (b) the issue is not under NRC purview (i.e., is not an allegation) and is forwarded by the NRC receiving office to the appropriate external agency or entity (e.g., EPA (for issues related to Superfund sites) or DOE (for radioactive materials issues under DOE purview)); or (c) the issue-in-question is to be forwarded by the NRC receiving office to NRC OIG as a matter involving potential NRC staff or contractor misconduct.

**Regional State Agreement Officer (RSAO)**

A designated staff member in a regional office who serves as the point of contact for the regional office and the Office of Nuclear Material Safety and Safeguards (NMSS) regarding Agreement State radiation control programs. The RSAO provides technical support regarding the assessment of allegation matters involving Agreement State radiation control programs and provides a liaison function for allegations referred to Agreement States.

**Request for Information (RFI)**

A request by the action office for information from the licensee regarding the validity of an allegation concern to enable a complete NRC assessment in response to the concern.

**Safety Conscious Work Environment (SCWE)**

A work environment in which employees are encouraged to raise safety concerns, are free to raise concerns to both their management and NRC without fear of retaliation, where their concerns are properly reviewed, given the appropriate priority, and are appropriately resolved, and where timely feedback is provided.

**Staff**

NRC technical, investigative, and other administrative members.

**Transfer**

An NRC internal exchange of an allegation concern from the NRC receiving office to the NRC regional or headquarters office with responsibility for addressing the allegation (i.e., the action office).

**Widely-Known Allegor**

An allegor who has publicly identified himself or herself to the media, held a press conference, or is otherwise identified in a public setting as the individual who raised a specific allegation concern to the NRC.

**Wrongdoing**

A willful violation of regulatory requirements through deliberate action or a violation resulting from careless disregard of regulatory requirements. See Section V, "Initiating, Prioritizing, and Terminating Investigations by the Office of Investigations (OI)," of this handbook.