

April 23, 2018

MEMORANDUM TO: Those on the Attached List

FROM: Victor M. McCree */RA/*
Executive Director for Operations

SUBJECT: ALLEGATION GUIDANCE MEMORANDUM 2018-001, "ALLEGATION PROGRAM EFFICIENCIES"

The purpose of this allegation guidance memorandum (AGM) is to provide guidance to the U.S. Nuclear Regulatory Commission (NRC) staff responsible for handling allegations. This guidance was developed as part of a broader agency effort to improve the NRC's agility, effectiveness, and efficiency, including prioritizing and rebaselining the agency's work. The following efficiencies have been identified and will be implemented through this AGM: (1) the NRC will no longer act as an intermediary for Agreement State concerns when the individual does not want his or her identity disclosed to the Agreement State, and (2) requests for inspections under Title 10 of the *Code of Federal Regulations* (10 CFR) 19.16(a) will no longer be required to be processed through the Allegation Program. Management Directive (MD) 8.8, "Management of Allegations," dated January 29, 2016, and the Allegation Manual, dated December 22, 2016, provide current staff guidance. The updated guidance in this AGM is effective immediately and will remain in effect until otherwise directed. The staff will incorporate this guidance into the Allegation Manual and the next revision of MD 8.8.

BACKGROUND:

In developing its recommendations for rebaselining the NRC's work, the staff identified several Allegation Program efficiencies for implementation. Some have already been implemented, while others were scheduled for implementation beyond fiscal year 2017. The staff described these longer term efficiencies in Enclosure 1 to SECY-2016-0035, "Additional Re-Baselining Products," dated March 18, 2016, under "Streamline the Allegation Program," to make the program more efficient by defining the concerns described below as those not warranting formal processing under MD 8.8.

Concerns about Agreement State Licensees

Most individuals who contact the NRC with safety concerns about Agreement State licensees are unaware of the Agreement State Program. (Agreement States are those that have entered into an agreement with the NRC under which those States have assumed regulatory responsibility over certain byproduct and source material, as well as small quantities of special nuclear material.) When the NRC receives concerns about Agreement State licensees, the staff

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explains the Agreement State Program to the individual and confirms his or her willingness to contact and be contacted directly by the Agreement State. The staff does not process the concern as an allegation if the individual is willing to be contacted by the Agreement State; however, the staff provides the concern to the Regional State Agreements Officer for referral to the Agreement State whether or not the individual agrees to have his or her identity released to the State. If an individual does not wish his or her identity to be divulged to the Agreement State, current guidance indicates that the staff should process these types of concerns as allegations and request a response from the State. The State's response would then be the basis of the closure letter for the concerned individual. In this scenario, the concerned individual remains anonymous to the Agreement State.

These types of concerns represent approximately 1 percent of allegations received and processed from 2012 through 2017. Although these represent a small percentage of the total number of allegations received during this timeframe, approximately half involved multiple concerns and a third remained open longer than 180 days, requiring the staff to issue at least one, sometimes multiple, status letters to the concerned individuals. Furthermore, pursuant to the allegation process, an Allegation Review Board convened and reviewed each allegation before its referral to the Agreement State. The staff also had to write a closure letter to the alleged after the staff received the Agreement State's evaluation. Therefore, the staff believes an efficiency could be achieved if the NRC does not act as an intermediary when an individual providing an Agreement State licensee concern does not want his or her identity divulged to the Agreement State. The NRC staff will still refer the concern to the Agreement State in accordance with the agreement, without divulging the concerned individual's identity, but the staff will inform the individual that he or she must contact the Agreement State directly if a response is desired. This modified guidance does not apply to concerns about Agreement State program oversight, which the Office of Nuclear Material Safety and Safeguards will continue to process outside of the Allegation Program.

10 CFR 19.16(a) Requests for the U.S. Nuclear Regulatory Commission Inspection

The regulation in 10 CFR 19.16(a) indicates that workers who believe a violation of regulations or license conditions has occurred may submit a written request for an inspection to the appropriate NRC Regional Administrator. Specific language in 10 CFR 19.16, "Requests by Workers for Inspections," and 10 CFR 19.17, "Inspections Not Warranted; Informal Review," provides a "formal process" for handling these requests. Historically, the NRC has received very few, if any, requests of this type, which is likely a result of the more recognized allegation process, which is described both on the public Web site and NRC Form 3, "Notice to Employees." Although 10 CFR 19.16(a) is not explicitly referenced, NRC Form 3 provides the general context of the regulation and notes that a worker in the nuclear industry can request an NRC inspection if he or she feels the employer has not corrected violations involving radiological working conditions. Licensees are required by law to post NRC Form 3, which describes protected activities and encourages employees to take concerns to their supervisors. It also explains how allegations of licensee violations can be reported directly to the NRC and does not require the allegation to be raised in written form. The definition of an allegation excludes matters being handled by another formal process. If a specific request is made in accordance with 10 CFR 19.16(a), because there is sufficient guidance in 10 CFR 19.16 and 10 CFR 19.17 to consider such a request as being "under another formal process", these concerns will no longer be considered as allegations nor be required to be processed in the Allegation Program.

Changes to Management Directive 8.8

As a result of the previously discussed efficiencies, as well as to clarify existing language, the staff will modify the definition of an allegation and related exclusions in the MD 8.8 Handbook as indicated below.

- MD 8.8 Handbook, Section I.A.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.~~ **Wrongdoing, whether suspected by an alleger (including members of the public or licensee workers), identified by licensee management acting in their official capacity, or suspected by NRC staff, is normally processed as an allegation.** A more detailed definition including exceptions is provided in Section VI, “Glossary,” of this handbook.

- MD 8.8 Handbook, Section VI, “Glossary”

A declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. **Wrongdoing, whether suspected by an alleger (including members of the public or licensee workers), identified by licensee management acting in their official capacity, or suspected by NRC staff, is normally processed as an allegation.**

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;
- Matters already entered into a licensee’s corrective action program that are not otherwise accompanied by an assertion of inadequate licensee followup;
- Matters being handled by other formal processes, such as petitions for rulemaking, petitions filed under 10 CFR 2.206, **requests for inspections by workers under 10 CFR 19.16(a)**, or contentions filed in hearings or other formal proceedings;
- Misconduct by NRC employees or NRC contractors;
- ~~Non-radiological~~ Occupational health and safety issues (**NOTE: the memorandum of understanding between the NRC and the Occupational Safety and Health Administration describes NRC’s authority and**

responsibility for facility conditions that affect the safety of radioactive materials);

- 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 (NOTE: If the matter reported to the NRC is indicative of a wrongdoing matter under NRC purview, it should be entered into the process as an NRC staff-identified wrongdoing concern); 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 the Office of Investigations (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.

Additionally, the staff will modify the following sections of the MD 8.8 Handbook for consistency with the new guidance:

- MD 8.8 Handbook, Section II.D.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.~~ **The individual will be informed that he or she must contact the Agreement State directly if a response is desired.**
- MD 8.8 Handbook, Section J.4.(e)(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~~ **the concern(s) will be referred to the Agreement State, without providing the individual's identity, and the individual will be informed that he or she must contact the Agreement State directly if a response is desired.**
- MD 8.8 Handbook, Section L.3.(d)(ii)
~~Other examples~~ **Another example** would include ~~be the~~ closure of a discrimination concern that has been resolved through Early Alternative Dispute Resolution ~~and the closure of concerns related to Agreement State licensees that have been tracked as allegations because the allover 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~~ **this** and other specified conditions is provided in the Allegation Manual.

Lastly, the NRC is modifying Section II.F.6.(b) of the MD 8.8 Handbook to remove the reference to 10 CFR 19.16(a):

- MD 8.8 Handbook, Section II.F.6

NRC practice is to neither confirm nor deny to a licensee or the public that an individual is an allegor, except when compelled to disclose an allegor'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 allegors, 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."~~

Any questions about this guidance should be directed to Lisamarie Jarriel, the Agency Allegation Advisor in the Allegations Center of Expertise. Ms. Jarriel can be reached at (301) 287-9006 or by email at Lisamarie.Jarriel@nrc.gov.

SUBJECT: ALLEGATION GUIDANCE MEMORANDUM 2018-001, "ALLEGATION PROGRAM EFFICIENCIES" DATED: APRIL 23, 2018.

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MEMORANDUM TO THOSE ON THE ATTACHED LIST DATED:

SUBJECT: ALLEGATION GUIDANCE MEMORANDUM 2018-001, "ALLEGATION PROGRAM EFFICIENCIES"

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