



**UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001**

November 8, 2019

MEMORANDUM TO: David C. Lew, Regional Administrator, Region I
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and Safeguards
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Andy A. Shuttleworth, Director, Office of Investigations

FROM: Margaret M. Doane */RA K. Steven West for/*
Executive Director for Operations

SUBJECT: ALLEGATION GUIDANCE MEMORANDUM 2019-001,
"LICENSEE-IDENTIFIED FITNESS-FOR-DUTY DRUG AND
ALCOHOL VIOLATIONS BY INDIVIDUALS"

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. Several improvements have already been implemented. The AGM directs that licensee-identified wrongdoing related to fitness-for-duty (FFD) drug and alcohol violations by nonlicensed individuals not be processed in the Allegation Program. This direction is intended to focus staff actions on risk significant issues while reinforcing the primary responsibility of the licensee to ensure appropriate actions are taken to address fitness for duty violations by members of its staff and its contractors. Where the licensee fails to fulfill its obligations, the NRC will take appropriate enforcement actions.

The staff initially identified this action in SECY-16-0035, "Additional Re-Baselining Products," dated March 18, 2016, related to streamlining the Allegation Program, but it held the action in abeyance until related modifications were made to the Enforcement Policy. 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 (Agencywide Documents Access and Management System Accession No. ML17003A227) and the next revision of MD 8.8.

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BACKGROUND:

The NRC defines the requirements and standards for establishing, implementing, and maintaining FFD programs in Title 10 of the *Code of Federal Regulations* (10 CFR) Part 26, “Fitness for Duty Programs.” In 10 CFR 26.75, “Sanctions,” the agency specifies, in part, the minimum sanctions that licensees shall impose when an individual has violated the drug and alcohol provision of the licensee FFD policy (e.g., immediate unfavorable termination of the individual’s authorization for at least 14 days for the first violation, 5 years for the second violation, and permanent denial of access for any act or attempted act to subvert the testing process). Although the NRC also took enforcement action on occasion, a recent revision to Section 4.1 of the Enforcement Policy (*Federal Register* notice, 84 FR 24363) specifies that the NRC will not typically consider enforcement action against nonlicensed individuals for FFD drug- or alcohol-related violations unless the licensee fails to impose the required sanctions against the individual or if there is an apparent deficiency in implementation of the licensee’s FFD program.

Currently, when the NRC is informed of licensee-identified FFD violations they are processed in the Allegation Program with other wrongdoing concerns. Between 2012 and mid-2019, approximately 55 licensee-identified drug- or alcohol-related violations by nonlicensed individuals were entered into the Allegation Program and were the subject of an Allegation Review Board. The Office of Investigations (OI) investigated approximately 30 percent of these and took more than 9 months to complete those investigations, on average. The staff then spent several more months processing cases that involved deliberate misconduct through the enforcement process, and five cases ultimately resulted in Severity Level III or lower violations against nonlicensed individuals months after the licensee had already taken the required sanctions.

Given the change described above to the Enforcement Policy and the expected staff resource savings by eliminating the need to process such cases through the Allegation Program, the NRC will no longer process as allegations those licensee-identified drug- and alcohol-related FFD violations by nonlicensed individuals. The NRC would continue to process within the Allegation Program those cases for which the licensee fails to take the required sanctions against the individual or it is apparent that there are deficiencies in implementation of the licensee’s FFD program if, in either of these cases, they involve an indication of wrongdoing.

Changes to Management Directive 8.8

The staff will modify the list of concerns that are excluded from the definition of an allegation in the MD 8.8 Handbook as indicated below.

- MD 8.8 Handbook, Section VI, “Glossary”

Allegation—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 follow-up.
- 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.
- Licensee-identified fitness-for-duty (FFD) drug- and alcohol-related violations by nonlicensed individuals.
- Misconduct by NRC employees or NRC contractors.
- 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.
- 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-suspected wrongdoing concern).
- 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 OI are also tracked as allegations to facilitate headquarters and regional

office monitoring of related OI follow-up. It is also noted that allegation concerns are not limited to matters that constitute a potential violation of NRC requirements.

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 e-mail to Lisamarie.Jarriel@nrc.gov.

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