



# U.S. Nuclear Regulatory Commission

## Office of Nuclear Material Safety and Safeguards Office Instruction

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Office Instruction: **NMSS-ADM124, REV 1**

Office Instruction Title: **NMSS Interface with the Office of Investigations and Management of Allegations**

Revision Number: **Initial Issuance**

Effective Date: **February 8, 2012**

Primary Contact: **Kevin Mattern, OAC  
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Responsible Organization: **NMSS/FCSS/TSB**

Summary of Changes: This is the first revision of ADM124, " NMSS Interface with the Office of Investigations and Management of Allegations." This replaces NMSS P&PL 1-24, (REV 7), Procedures for Handling Reports Received from the Office of Investigations, and NMSS P&PL 1-27 (REV 6) Management of Allegations. The changes incorporated into this revision reflect the Office Allegation Coordinator and the latest revision of Management Directive 8.8, "Management of Allegations" and its associated Allegations Manual. Other changes are primarily administrative.

Training: None

ADAMS Accession No.: ML11356A099

<b>Primary Office Owner</b>	<b>PBPA</b>	<b>Date</b>
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## NMSS OFFICE INSTRUCTION

ADM124, Revision 1

### NMSS Interface with the Office of Investigations and Management of Allegations

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#### 1. **PURPOSE**

Section 161 of the Atomic Energy Act authorizes the U.S. Nuclear Regulatory Commission (NRC) to conduct investigations. NRC established the Office of Investigations (OI) to investigate alleged or suspected wrongdoing by NRC licensees, certificate holders, permittees, applicants, contractors, subcontractors, vendors of such entities, and/or by management, supervisory, and other employed personnel of such entities who may have committed violations of the Atomic Energy Act, the Energy Reorganization Act, and rules, orders, and licenses conditions issued by the Commission. NRC Management Directive (MD) 8.8, "Management of Allegations," provides detailed instructions on the handling of allegations by all program offices. The NRC Enforcement Manual, Section 6.2, "Office of Investigations (OI) Investigations and Reports," describes the processing of OI Reports of Investigation (ROIs). This office instruction provides a synopsis of MD 8.8 and the Enforcement Manual with reference to more detailed guidance. Note that alleged or suspected wrongdoing by NRC employees or NRC contractors will be investigated by the Office of the Inspector General (OIG) in accordance with MD 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals," and is not covered in this office instruction.

#### 2. **GENERAL REQUIREMENTS**

This Office of Nuclear Material Safety and Safeguards (NMSS) Office Instruction establishes the policies and procedures for interface with the OI and management of allegations in NMSS. This document supersedes NMSS P&P Letter 1-27, Revision 6, dated March 1, 2000.

The Commission has assigned OI the responsibility for conducting investigations involving alleged or suspected wrongdoing by NRC licensees, certificate holders, permittees, applicants, contractors, subcontractors, vendors of such entities, and/or by management, supervisory, and other employed personnel of such entities who may have willfully committed violations of the Atomic Energy Act, the Energy Reorganization Act, and rules, orders, and license conditions issued by the Commission; documenting investigations in an appropriate ROI; and informing agency managers of the results of investigations. Wrongdoing is defined in MD 8.8 as an intentional violation of regulatory requirements or a violation resulting from careless disregard of, or reckless indifference to, regulatory requirements. The Regions or Headquarters may follow up on certain technical concerns concurrent with an OI investigation or as a result of an investigation. Regions and Headquarters staff will coordinate the review of technical issues with OI to reduce the potential of compromising an OI investigation unless an overriding immediate health and safety concern is identified.

Following receipt of alleged or suspected wrongdoing information, the NRC staff determines whether a violation of NRC requirements occurred. Normally, this matter will be discussed during an Allegation Review Board (ARB) meeting with OI and the Office of the General Counsel (OGC) in attendance. If the ARB determines a specific indication of wrongdoing exists and that an investigation is

warranted, OI will decide whether an OI investigation will be initiated. If OI initiates an investigation, OI staff will notify the NMSS Office Allegation Coordinator (OAC) of the OI case number, and lead investigator. In the absence of a specific indication of wrongdoing, OI may also initiate an Assist to NRC Staff to obtain additional information regarding an allegation or suspected violation. OI may also self-initiate investigations and an Assist to Staff. Completed ROIs are provided to the cognizant Regional office or Headquarters program office from the Director, OI or the assigned OI Field Office Director. OI provides the NMSS OAC copies of all ROIs related to fuel fabrication, transportation, reactor spent fuel storage and disposal of spent fuel and high-level radioactive waste and vendors. Due to their sensitive content and the potential for enforcement action or criminal prosecution, these OI reports receive limited distribution and must be handled as sensitive information. Information regarding the handling of sensitive information can be found in the "NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI)," which is located on NRC's internal web page at <http://www.internal.nrc.gov/sunsi/>.

The Executive Director for Operations has directed all Regional Administrators and Program Office Directors to (1) adopt internal procedures for processing investigations reports received from OI; (2) keep abreast of ongoing investigations; and (3) review results of completed investigations to determine the impact on their areas of responsibility. While the appropriate Regional Administrator will normally be responsible for resolving matters involving a specific licensee, NMSS is responsible for resolving matters involving vendors and for initiating actions to resolve matters having generic implications or broad programmatic impact, as well as for providing insights into licensee performance to the Regions for those issues for which OI has determined that willful wrongdoing has occurred.

### **3. SPECIFIC REQUIREMENTS**

The following items are addressed in this section:

- 3.1 Assignment of the NMSS Office Allegation Coordinator, the NMSS Allegation Review Board, and the NMSS Enforcement Coordinator,
- 3.2 Management of Allegations
- 3.3 Informing OI of suspected Wrongdoing
- 3.4 Disposition of Reports of Investigation Received From OI

#### **3.1 Assignment of the NMSS Office Allegation Coordinator, the NMSS Allegation Review Board and the NMSS Enforcement Coordinator**

In accordance with MD 8.8, the Director, NMSS, appoints, with recommendation from the Directors of the Division of Spent Fuel Alternative Strategies (DSFAS), Division of Fuel Cycle Safety and Safeguards (DFCSS) and the Division of Spent Fuel Storage and Transportation (DSFST), the NMSS OAC. The Director, NMSS establishes an ARB for each allegation to determine the safety significance and appropriate NRC follow-up actions. An ARB, typically scheduled by the OAC, consists of a chairperson (an action office director, division director, deputy director, or senior manager designee), the OAC, and at

least one other responsible individual from the action office. Other personnel may participate as deemed necessary by the ARB chairperson. The Director, NMSS assigns the OAC. The OAC is the primary interface between OI and NMSS on matters related to NMSS allegations. The Office Enforcement Coordinator (OEC) is the primary interface between OI and NMSS on matters involving enforcement. The OAC oversees NMSS implementation of the agency allegation program. An ARB reviews all allegations assigned to NMSS and determines the appropriate action.

The Director, NMSS, appoints, with recommendation from the Directors of the DSFAS, DFCSS, and DSFST, the OEC. The OEC is the primary interface point between the Office of Enforcement (OE) and NMSS. Further information on the responsibilities of the OAC, OEC, and ARB can be found in MD 8.8.

### **3.2 Management of Allegations**

Allegations are managed in accordance with MD 8.8 and the NRC Allegation Manual (<http://www.internal.nrc.gov/OE/allegation-manual.html>). As part of the NMSS allegation review process the ARB evaluates allegations for alleged or suspected wrongdoing. An allegation is defined in MD 8.8 as a declaration, statement, or assertion of impropriety or inadequacy associated with NRC-regulated activities, the validity of which has not been established. Any NRC employee may receive an allegation. The procedure in MD 8.8, Section II.B, should be followed when recording information from an allegor. If an allegor desires to speak to NRC personnel directly responsible for allegations, he or she should call 1-800-368-5642 to contact a member of the NMSS allegation staff. Occasionally, the NRC Headquarters Operations Center at 301-816-5100 will be contacted by an allegor, usually after normal hours, when the NRC Safety Hotline (1-800-695-7403) automatically transfers to that location. Since telephone calls to the NRC Headquarters Operations Center are recorded, the Headquarters Operations Officer will send an electronic version of the recorded telephone call (.wav file) to the responsible action office OAC and to allegation program staff in the Office of Enforcement.

### **3.3 Informing OI of Wrongdoing**

An NRC employee who receives an allegation will inform his or her supervisor (without revealing the name of the allegor) and also provide the information to the OAC within 5 days. The staff should also inform the OAC if the staff identifies a specific indication of wrongdoing so that the OAC can inform OI and bring the matter before an ARB. Although the staff may notify OI directly of an allegation involving wrongdoing, it is preferred that OI notification be accomplished through the OAC. Typically, OI will advise the ARB of its decision whether to initiate an investigation during the ARB meeting. Absent a specific indication of wrongdoing, if the allegation is to be resolved by NMSS instead of through an OI investigation or Assist to Staff, a lead technical contact is appointed. The OAC will convene an ARB to review and screen the allegation in accordance with MD 8.8 and will also notify OI of the ARB meeting if the allegation potentially involves willful wrongdoing. An OI and OGC representative should participate in the ARB meeting for any suspected wrongdoing. At the ARB meeting, the OI

representative will notify the OAC and the ARB panel if OI will initiate an investigation.

During an OI investigation, the technical staff will assist OI as needed. In addition, the staff will review OI transcripts of interviews with alleged to ensure that any potential new allegations are identified and brought into the allegation process. The OAC will provide a checklist for the technical staff to record the results of the OI transcript reviews. The form will be kept in the allegation case file.

### **3.4 Disposition of Reports of Investigation Received From OI**

All ROIs are provided to the Director, NMSS, through the OAC. The ROI will identify the allegations that were addressed during the investigation. The OAC will review the ROIs to determine if they relate to open NMSS allegations. If the ROI does not relate to an NMSS allegation, the OAC will pass it to the OEC for review.

Some ROIs may contain a large number of exhibits. In lieu of providing the exhibits to NMSS, OI may elect to make the exhibits available for review in the offices of OI.

All ROIs will be routed in sealed envelopes or hand carried. The ROIs should also be covered by a green cover sheet indicating "Investigation Information." If the ROI is removed from the allegation case file, it should also be covered with a blue cover sheet indicating that the ROI relates to an allegation. (Further guidance regarding the handling of ROIs can be found in the "NRC Policy for Handling, Marking, and Protecting [SUNSI](#).")

All NMSS personnel involved with the review of ROIs shall take appropriate action to ensure that the contents of these reports and related correspondence are not released to, or discussed with, other NRC employees without first establishing a need to know the information. The ROI will be kept in a closed container, such as a file drawer, when it is not being used and must be maintained within NRC space secured by key card access. The ROI and exhibits may be transported to an employees' home or other telecommuting venue in accordance with SUNSI Handling Requirements for Investigation Information.<sup>1</sup>

Under no circumstances should information contained in ROIs be released to individuals outside the NRC.

### **3.4.1. Review of ROIs Related to NMSS Allegations**

#### Substantiated Allegations

For allegations where OI has substantiated willful wrongdoing, the OAC will inform the appropriate staff and the OEC. The OEC is responsible for informing OE so that an enforcement panel can be scheduled. The normal enforcement process will be followed in accordance with the NRC Enforcement Manual. This process actively engages NMSS personnel as needed in determining the appropriate enforcement action in accordance with the Commission's enforcement policy.

#### Non-Substantiated Allegations

In cases where OI has not substantiated willful wrongdoing, the OAC will normally issue an e-mail within one week after receiving the ROI, indicating that no enforcement action is being considered and soliciting comments from appropriate NRC offices within a three-week time limit (3-week e-mail), in accordance with section 6.4.2.1 of the NRC Enforcement Manual. The 3-week e-mail will be sent to the NMSS Office Director, the OE Office Director, the OEC, the OGC Assistant, and other knowledgeable staff.

The lead reviewer for the allegation will review the ROI to (1) identify issues which may need enforcement action, (2) provide agreement or disagreement with the report's conclusions, (3) identify any other issues which require evaluation, coordination, or review by the staff or OI, and (4) ensure any potential new allegations are identified and brought into the allegation process. The lead reviewer will include knowledgeable technical staff in the review, as needed.

The lead reviewer should issue documentation of the review within three weeks of receipt of the ROI. The OAC will provide a checklist (ROI Review Checklist) for the staff to record the results of the ROI review. The completed form should be returned to the NMSS OAC. The form will be kept in the allegation case file and will be available for review. No other copies of the form should be provided without permission of the OAC.

#### Agreement with ROI Conclusions

If no comments are received by the end of the 3-week period, the allegation can be closed. The OAC will inform the licensee or vendor, as appropriate, that the investigation is complete and that no enforcement action is being proposed. The OAC will issue another email to the recipients of the 3-week e-mail that no comments were received and the allegation will be closed.

#### Disagreement with ROI Conclusions

If the OAC is informed that there is disagreement with the conclusions of the ROI such that the lead reviewer and the Branch, in consultation with other NRC personnel, believe that subsequent agency action may be

affected, the lead reviewer should document the disagreement on the ROI Review Checklist and provide the form to the NMSS OAC. The information provided on the checklist should summarize the report and include the following:

1. An assessment of the conclusions reached by OI. This is to be based on an examination of the underlying facts and evidence in the report. The reviewer should develop independent conclusions. The staff is not obligated to accept, without question, the OI conclusions. If the staff is aware of relevant information not included in the report, the reviewer can consider the information in an analysis. However, the reviewer must note the use of facts from outside the report.
2. The identification and assessment of the safety significance of the technical and managerial issues raised by the report.
3. The plan and schedule for addressing the issues raised by the report. This may include oversight of regional action items.
4. An assessment of the impact of the report on continued plant operations or pending licensing decisions.
5. A statement of understanding with OI to confirm a common acknowledgement of the disagreement and a determination whether additional OI engagement or field activities may or may not be helpful in resolving the disagreement.

The reviewer should provide the information to the OAC within the 3-week time period. The OAC will notify the OEC, who should promptly inform OE and the OGC attorney reviewing the ROI per the NRC Enforcement Manual.

Documentation regarding the review of an ROI must not identify allegers, and all copies must be kept in the NMSS allegation file, where they will be available for review.

Copies are not to be placed in branch reading files or the ADAMS Main Library. "limited Internal Distribution — Sensitive Allegation Material" must be typed at the top and bottom of each page.

The ROI will be returned to the OAC for reports being tracked as allegations, with a copy of the documentation regarding the review.

Occasionally, OI will administratively close a case where no NRC regulatory nexus can be identified, or due to a lack of OI resources to investigate a low priority or low safety significant concern. In such cases where NMSS is the action office, the matter will be reviewed by the OEC or OAC for determination of appropriate action and, if necessary, discussed at an ARB meeting. The action should be documented and may include inspection, requests to the licensee or vendor for additional information, enforcement action or closure of the matter. This



determination should be provided to OE, which has the responsibility for tracking activities associated with OI investigations.

## RESPONSIBILITIES AND AUTHORITIES

### Director, NMSS

1. Approves all policies and procedures concerning the management of allegations in NMSS.
2. Approves all confidentiality agreements issued by NMSS.
3. Approves all OI referrals initiated by NMSS outside the ARB process.

### Division Directors

1. The Division Director having technical responsibility in the area in which the allegation lies is responsible for scheduling and conducting an ARB meeting, in coordination with the OAC, within 30 days of receipt of the allegation by NMSS.
2. The Division Director is responsible for ensuring that allegations that fall within the division's purview are reviewed by the staff prior to ARB meetings, and that appropriate personnel are in attendance (or tied in by telephone) at ARB meetings to discuss the plans for resolving such allegations, including:
  - a. An assessment of the safety significance of the allegation;
  - b. Recommendations on a plan of action and a schedule for resolving the allegation;
  - c. Recommendations on the need for OI involvement regarding suspected wrongdoing;
  - d. Recommendations on referring the matter to the licensee or another organization; and
  - e. Recommendations on the priority that should be assigned to recommended actions.
2. The Division Director is responsible for ensuring that all allegations are resolved in a manner which is timely under the circumstances and professional in scope and depth. Allegations having relatively high safety significance should be addressed expeditiously. Less significant allegations should be addressed as priorities and resources permit, but normally within 180 days of receipt. The NMSS goal is to have allegations addressed within 90 days.
4. The Deputy Director of the cognizant division will normally chair ARB meetings for allegations within the division's purview. In the absence of the Deputy Division Director, the cognizant Branch Chief may serve as chairman.

5. The Division Director will brief the Office Director on assigned allegations that are open longer than 120 days and are not expected to be closed by 180 days.

#### Branch Chiefs, Section Leaders, Staff Members

All Branch Chiefs, Section Leaders, and staff members are responsible for:

1. Ensuring that the OAC is immediately informed of allegations that are received by staff members.
3. Assuring that allegations assigned to them for action are acted upon and resolved in a timely manner.
3. Protecting the identity of alleged in accordance with policies and procedures outlined in MD 8.8, the Allegation Manual and this document.
4. Providing status and/or closeout information for assigned allegations, including all relevant review documentation, promptly to the OAC.

#### Office Allegation Coordinator

Serves as the administrative point of contact for the collection and management of information received from alleged. In particular the OAC will:

1. Forward information related to allegations to the appropriate division(s) so that allegations can be reviewed prior to ARB meetings. Ensure that ARB members receive a summary of the allegations that will be discussed at the ARB meeting.
2. Record the results of the ARB discussions, including any assignments and guidance issued by the ARB, on a form that will be signed by the ARB chairman, maintained as a record of the ARB meeting, and distributed to cognizant staff members as appropriate.
3. Ensure that information related to allegations received within the office is entered into the Allegation Management System (AMS) after the ARB has determined the appropriate assignment responsibility and that current status of allegations is maintained in the AMS.
4. Coordinate with the Allegation Coordinators of other affected Offices or Regions for allegations that pertain to regional or other office responsibilities.
5. Establish, for each allegation received and entered in the AMS, the official allegation file containing: (a) original allegation, including an itemized list of concerns if the allegation contains more than one concern, (b) ARB documentation, (c) documentation of all contacts and correspondence with the alleged, (d) documentation for all contacts and correspondence with the licensee (if applicable), (e) documentation of the NMSS evaluation and resolution of the allegation, (f) documentation of OI referral (if applicable), (g) inspection reports, and (h) documentation of the disposition of each concern.

6. Serve as the interface and principal contact between the NMSS staff and the OI staff.

#### Allegation Review Board

The ARB is responsible for conducting an initial review of each allegation or suspicion of wrongdoing: 1) to ensure that the safety significance of each allegation is given appropriate consideration; 2) to ensure that allegations are assigned to the appropriate division and branch; 3) to ensure that appropriate guidance and direction is given to the responsible division/branch; 4) to ensure that generic issues are identified and acted on appropriately; 5) to ensure that alleged wrongdoing is discussed with OI and addressed appropriately; and 6) to screen discrimination complaints at various stages of the Department of Labor process to determine whether a referral to OI is warranted or enforcement action considered. For particularly sensitive or complex allegations, the ARB should consider providing guidance to the responsible staff on the development and review of inspection or other resolution plans. The ARB's routine responsibilities include:

1. Meeting as necessary to review all allegations received, normally within 30 days of receipt, to review and approve resolution plans and schedules, and to review significant new information related to allegations previously reviewed by the ARB.
2. Conducting special meetings to review allegations with high potential safety significance or those that require prompt review; and
3. Reviewing allegations that are approaching 180 days in processing to determine if additional efforts may be required to facilitate resolution within the timeliness goal of 180 days.

#### Branch Chief or Staff Member to Whom Allegation is Assigned

1. Develop an action plan to resolve the allegation in a timely fashion, usually within 180 days.

After approval of the action plan by the ARB, carry out the action plan in accordance with ARB guidance. Care should be exercised to ensure that resolution, site visit, or inspection plans minimize the potential for identifying an alleged to licensee management and to ensure that each identified concern is specifically reviewed and resolved.

2. Maintain close coordination with the OAC to ensure appropriate follow-up on all assigned allegations, and to ensure that the OAC is informed of the status of all referred allegations. The OAC should be given the opportunity to review, prior to issuance, all NMSS inspection reports relating to the review or closure of allegations.

**4.     REFERENCES**

1.     NRC Management Directive 8.8, "Management of Allegations"
2.     NRC Allegations Manual
3.     NMSS Office Instruction P&PL 127, "Management of Allegations"
4.     NRC Enforcement Manual 4. NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI)
5.     10 CFR 1.36 Office of Investigations

## CHANGE HISTORY

NMSS-ADM 124 - Change History			
Publication Date	Description of Changes	Method Used to Announce & Distribute	Training
	Initial issuance. The purpose of this OI is to provide guidance to NMSS staff regarding allegations and interactions with the Office of Investigations.	Posting on Web page and SharePoint site, and NMSSBOX	None

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<sup>i</sup> New guidance as of 2011, 10 CFR 1.36 Office of Investigations.