



# ALLEGATION MANUAL

U.S. Nuclear Regulatory Commission  
Office of Enforcement  
Washington, DC 20555

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## 1.0 The NRC Allegation Program

### 1.1 Program Description

The Agency Allegation Advisor (AAA) in the Office of Enforcement (OE) advises the Commission on allegation program-related policy matters and oversees the day-to-day activities of the agency's allegation program, which administers the evaluation of safety concerns received by the NRC from sources outside the agency. Members of the public or workers performing activities associated with NRC-regulated matters may report safety concerns to the NRC through various means (e.g., speaking with NRC staff, calling the NRC Safety Hotline, submitting a concern in writing, submitting a concern via the NRC public web site). Each regional office and certain headquarters offices retain an Office Allegation Coordinator (OAC) and many retain an allegation coordination staff that works with the OAC to manage allegation processing within that office.

This manual describes how allegations are received, evaluated, and closed by the NRC. As a companion to Management Directive (MD) 8.8, "Management of Allegations," this manual is intended to provide assistance to NRC staff in implementing the allegation program in practice. Because the practices used to implement the allegation program and monitor allegation status change periodically, the Allegation Manual will function as a living document on the NRC internal web site so that users will have access to the latest guidance and reference information. [Note: The Allegation Manual repeats many sections of MD 8.8 verbatim. These sections are highlighted in *italics* in the Allegation Manual, with the specific MD 8.8 reference provided.]

*There is no threshold for the acceptance of a concern that meets the definition of an "allegation" provided in the Manual Glossary (Manual Section 9.0). The type and amount of effort required to evaluate and close an allegation concern is determined by the Allegation Review Board (ARB) on a case-by-case basis. Allegation evaluation is accomplished by technical review, inspection, evaluation of information requested from the affected licensee<sup>1</sup> or another NRC regional or headquarters office, obtaining the results of investigations or evaluations conducted by the NRC Office of Investigations (OI), the Department of Justice (DOJ), the Department of Labor (DOL), a State agency, or another Federal agency, or by any combination of these actions. Allegor identity protection is an important aspect of the allegation program. All reasonable efforts are taken not to disclose an alleger's identity outside the NRC (unless NRC is compelled to do so for any of the reasons described in Manual Section 4.2.a), and an alleger's identity is only revealed within the agency on a need-to-know basis. NRC staff is responsible for controlling documents that could reveal an alleger's identity, using applicable allegation documentation control guidance. (8.8 Handbook, Sections I.B and I.C)*

Recognizing that licensees have the first responsibility for safety and are in the best position to respond promptly to a safety matter, the NRC encourages workers to first raise safety concerns with the licensee. For this to happen, workers must feel free to raise potential safety issues directly to management and/or by way of established corrective action processes. The NRC

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<sup>1</sup>For allegation program purposes, the term "licensee" refers to an organization/individual, or a contractor, subcontractor, or vendor to an organization/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.

recognizes that if workers are subjected to harassment, intimidation, retaliation, or discrimination by management for reporting safety concerns, a “chilled” work environment may be created that would inhibit workers from reporting additional safety concerns. If this happens, a valuable source of information for maintaining and improving safety is lost. In its simplest sense, the fact that a worker who performs tasks associated with NRC-regulated activities chooses to submit an allegation to the NRC provides indication that, for some reason, the worker did not want to raise the concern internally, or that the worker submitted the concern internally to management or by way of an established corrective action process, but was not satisfied with and/or informed of the actions in response. For this reason, the trending of allegation information provides input to NRC’s efforts to monitor whether licensees promote a work environment conducive to employees raising safety concerns, i.e., a safety conscious work environment (SCWE).

## **1.2 Policy and Objectives**

Management Directive 8.8, Sections I.A and I.B discuss the NRC’s policy and objectives related to the implementation to the NRC Allegation Program.

## **1.3 History of the NRC Allegation Program**

NRC (and its predecessor, the Atomic Energy Commission (AEC)) has received concerns from external stakeholders about activities associated with agency-regulated licensees and facilities since the establishment of the AEC in the 1940s. Until the 1980s, such concerns not handled by way of a formal NRC process (e.g., hearing, petition) were received, evaluated, and responded to individually by the regional or headquarters office with responsibility for oversight of the affected facility or licensed activity. Such concerns received prior to late-1982 were not handled in accordance with a centralized procedure or captured in a common database. Since December 1982, the NRC has followed guidance approved by the Executive Director for Operations (EDO) for the handling of allegations, including the establishment of the Allegation Management System (AMS), a common agency database for recording allegation follow up activities.

In June 1987, existing agency guidance related to allegation management, alleger identity protection, and staff interface with the NRC Office of Investigations (OI) was gathered and incorporated into an agency-wide guidance document, NRC Manual Chapter 0517, "Management of Allegations." A revision to Manual Chapter 0517 was issued on April 3, 1990.

In July 1993, the EDO established a review team to reassess the NRC's program for protecting allegers against retaliation. The review team was chartered to consider whether the Commission had taken sufficient steps within its authority to create an environment within the regulated community in which employees felt free to raise concerns without fear of retaliation. On January 7, 1994, NUREG-1499, "Report of the Review Team for Reassessment of the NRC's Program for Protecting Allegers Against Retaliation," was issued, documenting the recommendations of the review team. NUREG-1499 offered 47 specific recommendations to improve NRC’s program for protecting allegers against retaliation. The recommendations addressed strengthening the NRC allegation program, modifying NRC enforcement policy for more effective deterrents against violations, issuing Commission policy statements to encourage licensee action, prioritizing and supporting OI investigations to minimize the impact of retaliation, and increasing NRC investigation of discrimination matters and interaction with the DOL Whistleblower Protection Program (hereafter referred to as the “DOL process”) which

performs independent reviews of discrimination claims submitted under Section 211 of the Energy Reorganization Act of 1974 (ERA) for the purpose of personal remedy.

NRC staff analyzed the NUREG-1499 recommendations and on March 29, 1994, the EDO provided the Commission with the results of the staff's review along with a plan for implementing the recommendations in SECY-94-089, "Response to the Report of the Review Team for Reassessment of the NRC's Program for Protecting Allegers Against Retaliation." Staff implementation of most of the review team recommendations was accomplished via the development or modification of agency policy, procedures and directives related to the allegation program and the evaluation of discrimination concerns (namely, the development and revision of MD 8.8, "Management of Allegations," the development and revision of a Commission policy statement on the "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation," and revisions to the NRC Enforcement Policy and Enforcement Manual). The most notable changes to the allegation program resulting from the implementation of the NUREG-1499 recommendations were:

- establishing the AAA position
- developing an agency policy statement on SCWE, i.e., "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation" [May 14, 1996; 61 FR 24336]
- developing inspection guidance related to SCWE (Problem Identification & Resolution inspection guidance)
- including allegation responsiveness as a measure of NRC staff performance
- conducting annual audits (now biennial assessments) of the implementation of the allegation program in the regional and certain headquarters offices
- requiring periodic training for individuals having substantial involvement in the receipt and/or evaluation of allegations
- developing an allegation program brochure (NUREG/BR-0240) to provide external stakeholders with a plain language, general description of the NRC allegation program
- developing allegation program timeliness milestones for evaluating allegations and providing responses to allegers
- developing an allexer survey to obtain feedback about NRC's implementation of the allegation program
- clarifying the allegation program criteria for formally requesting information from the licensee as part of allegation evaluation
- improving the AMS database to enable NRC staff and management to better monitor allegation status and trends
- establishing a toll free telephone number for the Office Allegation Coordinators (OAC)
- developing specific criteria for determining the priority of a wrongdoing or discrimination investigation
- clarifying possible NRC actions in response to a credible threat of retaliation
- improving NRC's interface with DOL
- considering enforcement discretion in some discrimination cases depending on licensee response
- considering providing raw data to the public related to the number of allegations received by NRC

NRC staff response to NUREG-1499 offered that all but 4 of the 47 recommendations should be adopted, and the Commission agreed with the staff's suggestions. The four NUREG-1499 recommendations that were not adopted involved developing an NRC survey instrument to



assess the licensee's environment for raising concerns, requesting that licensees place employees claiming discrimination for raising safety concerns in a "holding period" pending an initial ruling by DOL, and two recommendations involving the determination of civil penalty amounts for substantiated discrimination concerns.

On May 1, 1996, the initial version of NRC MD 8.8 was issued, incorporating the guidance of and superseding NRC Manual Chapter 0517 as the agency's primary allegation program guidance document, and incorporating many of the NUREG-1499 recommendations. MD 8.8 is periodically revised to incorporate direction in Allegation Guidance Memoranda (AGM) issued between revisions of the MD and other pertinent allegation program-related policy information.

On December 12, 1995, the EDO established another review team, the Millstone Independent Review Group (MIRG), to conduct an independent evaluation of the history of the handling of employee concerns and allegations related to activities at Millstone Station. The MIRG conducted a retrospective review of the NRC's handling of Millstone allegations received between 1985 and 1995. All of the allegations chosen for review by the MIRG were received by the NRC prior to the implementation of actions to address the NUREG-1499 recommendations and therefore were not reflective of the improvements that ultimately resulted from the implementation of those recommendations. On September 16, 1996, the MIRG issued the "Report of Millstone Independent Review Group Regarding Millstone Station and NRC Handling of Employee Concerns and Allegations." The MIRG forwarded its results and eight recommendations for improvements in the NRC's handling of allegations to the Commission by memorandum dated October 31, 1996. The MIRG recommendations are summarized in the following:

- Change agency attitude that allegations are a necessary burden; enhance sensitivity to the allegation program as a valuable tool for accomplishing the NRC's mission
- Avoid under-reaction to claims of discrimination
- Develop expert resources to help establish and monitor effective performance indicators for measuring employee trust and confidence in licensee management's ability to resolve employee concerns without fear of discrimination
- Recognize the potential chilling effect created by NRC enforcement that is publicly perceived as being soft on discrimination
- Recognize the potential chilling effect of inadequate licensee correction of discrimination problems, especially when a licensee has minimized or denied discrimination findings
- Appreciate allover unfamiliarity with NRC processes, and provide more informative responses to help allover put their concerns into better perspective
- Expedite completion of AAA initiatives and NUREG-1499 recommendations to improve the allegation program
- Reevaluate participation of both licensee and allover attorneys during NRC discrimination investigations

Staff response to the MIRG recommendations was multi-phased, with pertinent issues being addressed through:

- staff training, including training conducted by the AAA
- presentations at OAC counterpart meetings and at counterpart meetings and seminars for other NRC staff,
- discussions at NRC Senior Management Meetings

- establishing firmer schedules for interviewing an individual who alleges wrongdoing, including discrimination
- modifying NRC inspection guidance for review of licensee employee concerns programs
- opening agency dialog with regard to possible NRC approaches for gaining insight into the licensee's work environment and proposing that the Commission seek public comment on how best to assure that licensees establish and maintain a SCWE
- ensuring that cover letters forwarding enforcement actions related to discrimination concerns are appropriately worded based on the facts pertaining to each case
- revising staff guidance on the timeliness of follow-up of corrective actions for violations involving discrimination cases
- considering establishing agency responsibility for programmatic oversight of follow-up actions related to discrimination cases under a single organization
- enhancing staff guidance for developing the basis for closure of an allegation
- expediting completion of the NUREG-1499 recommendations

In March 1997, in response to a congressional request, the General Accounting Office (GAO) issued a report entitled "Nuclear Employee Safety Concerns - Allegation System Offers Better Protection, But Important Issues Remain." Specifically, Congress had expressed concern that the employee protection rules, as implemented by NRC and DOL, may not adequately protect nuclear workers who raise safety issues. Congress asked GAO to describe how workers are protected from discrimination by federal laws and determine the status of recommendations made in internal NRC and DOL reviews of the programs that evaluate the concerns and implement the employee protection rules. From an NRC perspective, the GAO review focused primarily on the handling of discrimination allegations, and ongoing activities to improve the process (primarily the status of NRC's implementation of the NUREG-1499 recommendations). In its report, GAO acknowledged the progress of NRC's ongoing efforts to improve the allegation, investigation, and enforcement processes related to discrimination allegations and offered the following recommendations:

- improve the timeliness of DOL's processing of discrimination complaints
- complete implementation of the NUREG 1499-recommendations
- ensure that the NRC's AMS database includes information on the status of DOL discrimination cases
- improve NRC's knowledge of the work environment at nuclear power plants (by tracking and monitoring discrimination allegations and settlements, using an allexer survey to obtain feedback, and performing systematic follow-up of chilling effect letters(CEL)) (CELs are described in Manual Section 5.2.i.6))

In response to GAO's report recommendation regarding DOL process timeliness, considerable improvement was achieved as a result of two changes to the DOL evaluation process. First, the responsibility for DOL's initial investigation of ERA Section 211 discrimination concerns was transferred from the DOL Wage and Hour Division to the DOL Occupational Safety and Health Administration (OSHA). Secondly, DOL established an Administrative Review Board for the review of appeals to decisions made by DOL Administrative Law Judges (ALJ), as opposed to requiring that this review be performed by the Secretary of Labor. Regarding the GAO report recommendations related to NRC, changes were accomplished through the completion of actions in response to the NUREG-1499 and MIRC recommendations.

On February 4, 1999, the first revision of MD 8.8 was issued, incorporating interim program guidance implemented by AGMs issued since 1996 (specifically, AGM 96-02 related to assuring

the technical adequacy of the basis for closing an allegation, AGMs 98-01 and 98-01, Revision 1, related to informing alleged and licensees of the completion of OI investigations, and AGM 98-02 which revised the criteria for investigating allegations of discrimination). This MD 8.8 revision also implemented additional changes in response to the NUREG-1499 and MIRG recommendations.

On April 14, 2000, the EDO chartered the Discrimination Task Group (DTG) to evaluate issues associated with matters covered by the NRC's employee protection standards, including SCWE. Specifically, the DTG was tasked to: (1) evaluate NRC handling of matters covered by its employee protection regulations; (2) propose recommendations for improving the process for handling such matters; (3) ensure that the application of the enforcement process coincides with an environment where workers are free to raise concerns in accordance with NRC employee protection regulations; and (4) coordinate with internal and external stakeholders in developing recommendations for changes to the process. An NRC Senior Management Review Team (SMRT) was established to review the final recommendations of the DTG and provide additional perspectives.

In April 2001, the DTG issued its draft report describing the review process and presenting preliminary recommendations. Based on the comments received on the draft report, the DTG expanded the scope of the final report. In addition to presenting recommendations to improve the then current process for handling discrimination matters, the final DTG report, issued in April 2002, presented a series of basic policy questions for consideration in determining the NRC's approach to discrimination matters. Substantive comments/recommendations from the DTG final report are noted below:

- NRC should continue with its program of receiving allegations, performing investigations when appropriate, and administering enforcement sanctions to provide an incentive for licensees to maintain a SCWE;
- a higher threshold for initiating OI discrimination investigations should be considered, beyond the fact that a whistleblower must articulate a *prima facie* showing that an act of discrimination may have occurred;
- the Enforcement Policy supplements should be revised to include more factors for consideration of discrimination matters than the individual's position in the organization;
- to improve the timeliness and consistency of NRC assessment of discrimination matters, enforcement related to discrimination cases should be centralized under OE;
- the deferral of discrimination cases to DOL should be eliminated;
- the use of Alternative Dispute Resolution (ADR) with regard to resolving complaints of discrimination should be evaluated further by NRC;
- rulemaking should be initiated to authorize the NRC to issue civil penalties to contractors working for NRC licensees;
- NRC should consider financial assistance to whistleblowers and representatives to attend an enforcement conference; and
- NRC enforcement policy should be revised to encourage licensees provide training to managers on federal employee protection regulations.

The final DTG recommendations were provided to the Commission in September 2002 in SECY-02-0166. Many, but not all, of the DTG's recommendations were implemented (e.g., the NRC has not raised the threshold for OI initiation of a discrimination investigation). The most notable changes to the NRC allegation program implemented as a result of the DTG recommendations were the elimination of the option to defer NRC investigation of a

discrimination matter while the matter is in the DOL review process, the incorporation of Early Alternative Dispute Resolution (Early ADR) as an option for handling discrimination concerns (in October 2004), and the issuance of Regulatory Issue Summary (RIS) 2005-18, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment," dated August 25, 2005, which provided licensees with NRC perspectives on establishing and maintaining a SCWE.

On September 8, 2003, the Commission issued a Staff Requirements Memorandum (SRM) which directed the staff to develop a pilot program, as described in SECY-03-0115, to evaluate the use of ADR in handling allegations of discrimination. In SECY-04-0044, dated March 12, 2004, the staff recommended the implementation of a pilot program involving the use of Early ADR for alleged discrimination concerns prior to an NRC investigation. Briefly, in instances when an alleged has articulated a prima facie showing of potential discrimination for engaging in protected activity, the alleged is offered an opportunity to use Early ADR, a form of mediation, as a means of obtaining resolution of his/her discrimination concern without OI investigation or NRC enforcement action. The use of Early ADR has been successful in effecting the prompt resolution of a number of cases of alleged discrimination and has since become a permanent part of the NRC allegation program.

In the aftermath of the terrorist attacks of September 11, 2001, restrictions were placed on the dissemination of sensitive security-related information outside NRC in an effort to preclude the release of information useful to potential adversaries. These controls were also applied to information provided to allegeders raising security-related concerns to the NRC. The restrictions made it difficult for NRC to assure allegeders that their concerns were addressed, and a number of allegeders, dissatisfied with the limited NRC response, pursued their concerns publicly in 2005 and 2006. The staff did not consider public response to be the most advisable primary means of addressing security-related allegation concerns, and in SECY-07-0032, dated February 12, 2007, proposed new guidance for responding to individual allegeders who raise security-related concerns in an effort to be as responsive to an allegeder as is possible, while continuing to protect any information that could be used by an adversary to exploit a potential security vulnerability. The Commission approved the allegation program changes proposed by SECY-07-0032 which were implemented by AGM 2007-01, issued in May 2007.

In the 2008-2010 time frame, allegation program enhancements were implemented in response to lessons learned related to the handling of allegations in 2007 regarding inattentive security officers at the Peach Bottom Atomic Power Station (Peach Bottom). Lessons learned reviews included an assessment by the AAA, a Region I review team analysis, and a Senior Executive Review Panel (SERP) evaluation of the events related to the Peach Bottom allegations. The Commission approved recommendations for enhancing the allegation program resulting from these reviews, and directed the staff to discuss pending changes with internal and external stakeholders. The Office of the Inspector General (OIG) also conducted an Event Inquiry and issued a report (OIG Event Inquiry OIG-07-65 dated August 22, 2008) identifying findings in four areas. A reconvened SERP determined that actions identified in the SERP report of March 5, 2008 (COMSECY-08-0009), and approved by the Commission, addressed the four areas of findings in the OIG report. The SERP also recommended that certain additional actions be taken by the staff to clarify current practices in the policy documents guiding the staff's implementation of the allegation program. New or enhanced guidance for NRC staff responsible for handling allegations was provided in AGM 2008-001, issued December 29, 2008, and AGM 2008-001, Revision 1, issued February 2, 2010, in the following program areas: Allegation Terminology; Contacting Allegers; Licensee-Initiated Alternative Dispute Resolution Processes; Allegation Requests for Information; NRC Assessment of Licensee Responses to Requests for Information; Resident and Non-Resident Inspector Knowledge of Allegation

Activity; Allegation Closure Documentation Involving a Licensee Response to a Request for Information; Public Discussion of Specific Allegation-Related Information; and Allegor Responses after Closure.

In November 2010, a revision to MD 8.8 was issued. Specifically, changes made as part of this MD 8.8 revision addressed Commission direction in the SRM for:

- SECY-02-0166 regarding the handling of discrimination issues;
- SECY-04-0020 regarding the sensitivity of security information;
- SECY-04-0044 regarding the use of Early ADR with regard to allegations of discrimination;
- SECY-02-0163 regarding staff responsiveness to allegor responses after allegation closure;
- SECY 06-0122 regarding enhancing the Reactor Oversight Process to more fully address safety culture;
- SECY-07-0032 regarding correspondence with allegors on security-related concerns;
- SECY-04-0191 related to RIS-05-026, which discusses Control of Sensitive Unclassified Non-Safeguards Information (SUNSI) Related to Nuclear Power Reactors;
- SECY-05-101 related to RIS-05-031, which discusses Control of Security-Related SUNSI Handled by Individuals, Firms, and Entities Subject to NRC Regulation of the Use of Source, Byproduct, and Special Nuclear Material; and
- COMSECY-08-009, which provided the recommendations of the Senior Executive Review Panel (SERP) regarding lessons learned from the agency's response to allegations of inattentive security officers at Peach Bottom in 2007.

Also incorporated were changes prescribed in AGMs issued since the issuance of an MD 8.8 revision in February 1999, most of which directed the implementation of recommended staff actions pursuant to the SECY documents noted in this paragraph (specifically, AGMs 2000-001, 2003-001, 2004-002, 2004-003, 2004-003 (Revision 1), 2005-001, 2007-001, 2008-001, and 2008-001(Revision 1)). Also, to better focus MD 8.8 as a policy document, much of the specific detail related to allegation program implementation and practice formerly specified in the MD 8.8 Handbook was removed and transferred to this Allegation Manual, which is available publicly as well as on the OE home page on the NRC internal web site.

MD 8.8 was revised on January 29, 2016, incorporating guidance provided in AGM 2011-001, "Late-Filed Allegations," dated November 20, 2011, and AGM 2012-001, "NRC Chilling Effect Letters," dated March 9, 2012. Other changes indicated in the January 2016 MD 8.8 revision are noted below:

- Changes prescribed in 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 information that may be publicly released.
- The responsibility for Regional Administrators and specified NRC 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 also applies to staff in the offices of each NRC Commissioner.
- The responsibility for headquarters office directors and regional administrators to consult with the AAA for the development of OAC position descriptions.
- Clarification that the ARB chairperson makes the final decisions regarding the actions proposed during the ARB meeting and provides final approval for requested actions.

- Incorporation of 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 DOL 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 NRC staff conclusions regarding the results of the OI investigation.

#### **1.4 Applicability**

*The policy and guidance in this Manual applies to all NRC employees and NRC contractors except employees and contractors of the NRC Office of the Inspector General (OIG). OIG has internal procedures in place to ensure that allegations received by OIG are transferred to the appropriate action office (see "Action Office" definition in the Glossary, Manual Section 9.0) for processing. Matters concerning NRC staff or contractor misconduct under OIG purview and are not processed as allegations in accordance with MD 8.8 and this Manual. Consistent with Manual Section 5.6.i, 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." (8.8, Section IV)*

#### **1.5 Training**

*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, 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. (8.8 Handbook, Section II.R)*

In addition to providing information with regard to established and/or new agency policy and guidance related to the implementation of the NRC allegation program, other skills required to support effective allegation processing should be emphasized during periodic training such as: listening and communication skills; avoiding prejudgment (i.e., focusing on the safety aspects of an allegor's concerns and not on perceived motives or emotional issues that may accompany the concerns); inspection techniques to mask the fact that an issue relates to an allegation; ways to independently verify information provided by licensees in response to allegation concerns for which information has been requested from the licensee; effective ways to protect allegor identity, using appropriate document control techniques and security storage containers; processing Freedom of Information Act (FOIA) or Privacy Act (PA) requests that relate to allegation matters; and how to deal with allegor requests for confidential source status.

#### **1.6 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 (8.8 Handbook, Section II.S). AGMs are drafted by the AAA and circulated to appropriate offices for review and concurrence. AGMs that provide guidance on the implementation of existing allegation program policy, but do not involve a policy change, are approved by the OE Director.*

AGMs that involve changes in allegation program policy are approved by the EDO. All AGMs created between formal revisions to MD 8.8 will be incorporated into the subsequent revision of MD 8.8. A listing of AGMs is included in Manual Appendix B.

## **1.7 NRC Public Website Information Related to the NRC Allegation Program**

Information regarding NRC's Allegation Program is available on NRC's public website. The home page of the NRC public website includes a link entitled "Report a Safety Concern" (<http://www.nrc.gov/about-nrc/regulatory/allegations/safety-concern.html>) that directs the requestor to a web page with several additional links to information related to the allegation program. In addition to defining an allegation, providing responses to Frequently Asked Questions (FAQ) about the allegation program, and providing guidance related to NRC SCWE policy, there are links to NRC Allegation Program Annual Trend Reports and statistics related to allegations received by the NRC.

The NRC Allegation Program Annual Trend Reports provide, national, regional, and site-specific trend analysis related to allegations received by the NRC in the previous calendar year. Recent significant staff activities involving the allegation program and related policies are also discussed in the report.

Allegation statistics are included on the NRC public website with regard to the following:

- Allegations Received from All Sources External to the NRC
- Allegations Received from Onsite Sources
- Discrimination Allegations Received
- Open Allegations
- Substantiated Allegations
- Substantiated Allegations with Regulatory Response

The statistics reflect allegations for the current calendar year and the 4 previous calendar years for operating power reactors, non-operating power reactors (power reactor license applicants or permanently shutdown power reactors), and fuel cycle facilities. Because of the smaller work force sizes associated with the large majority of materials licensees other than fuel facilities, the potential for identification of an allegeder would be increased if such information was publicly available. For this reason, allegation statistics about materials licensees other than fuel cycle facilities are not provided publicly on the NRC website or in the NRC Annual Allegation Trend Report.

The allegation statistics on the NRC public website also do not include potential wrongdoing matters identified by NRC staff or identified to the NRC by licensee personnel acting in their official capacities. These items are entered into the NRC allegation program so that the responsible NRC regional or headquarters office may track investigation activity related to the potential wrongdoing matter via the AMS database. These items are not reflected in the statistics posted on the NRC public website because they are not representative of improprieties raised to NRC by external sources, onsite or offsite.

MD 8.8 is available on the NRC public website at the following link: <http://www.nrc.gov/reading-rm/doc-collections/management-directives/volumes/vol-8.html>

The most recent version of NUREG/BR-0240, "Raising Safety Concerns to the NRC," is available on the NRC public website at the following link: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0240/>

NUREG/BR-0240 provides a plain language description of NRC's allegation program and contains information pertinent to individuals who choose to use it, including information about alleged identity protection, confidentiality, how discrimination concerns are handled, and SCWE.



## **2.0 Responsibilities and Authorities**

The responsibilities and authorities for implementation of the NRC Allegation Program are provided in MD 8.8, Section III. Responsibilities and authorities are provided in MD 8.8 Sections III.A through III.M for the following offices/positions:

- III.A The Commission
- III.B Executive Director for Operations (EDO)
- III.C Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital (DEDM)
- III.D Office of General Counsel (OGC) and the Regional Counsel
- III.E Office of the Inspector General (OIG)
- III.F Chief Information Officer
- III.G Director, Office of Enforcement (OE)
- III.H Director, Office of Investigations (OI)
- III.I Director, Office of Nuclear Material Safety and Safeguards (NMSS)
- III.J Office of the Chief Human Capital Officer (OCHCO)
- III.K Office Directors and Regional Administrators
- III.L Agency Allegation Advisor (AAA)
- III.M Office Allegation Coordinator (OAC)

Allegation Manual Appendix C provides information on how to contact the agency OACs.

## **3.0 Allegation Intake**

### **3.1 Allegation Receipt**

#### **3.1.a Allegation Definition**

*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 the Manual Glossary (Manual Section 9.0). (8.8 Handbook, Section I.A.1)*

#### **3.1.b Allegor Definition**

*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. Any NRC employee may receive an allegation. An allegor's concern may be made known to NRC by several methods (e.g., in person, by telephone, by letter, by e-mail, in print). An allegation may also be recognized by an NRC staff member in information provided in a public forum including, but not limited to: television, radio, newspaper, internet, social media. (8.8 Handbook, Sections I.A.2 and II.A) The NRC maintains a Facebook account, a Twitter account, a YouTube account, and a blog on its public website. These points of contact are monitored for allegations by the NRC Office of Public Affairs (OPA).*

The most common sources of allegations are licensee employees, former licensee employees, contractor employees, former contractor employees, or individuals who provide allegations anonymously. NRC commonly refers to allegors in these categories as "onsite sources" (NRC assumes that most anonymous allegations are provided by licensee or contractor onsite personnel who are unsure or fearful of having their identity associated with the concern(s)). Other less common sources of allegations to NRC are private citizens, special interest groups, State and Local government representatives, representatives of other Federal agencies, and the news media.

While the NRC allegation program was developed and intended to field concerns provided to the NRC by external sources, there is one type of concern raised internally by NRC staff that is tracked in the allegation program. As indicated in Manual Section 3.1.a above, potential licensee wrongdoing identified by NRC staff that prompts an investigation by NRC OI is also processed as an allegation. This is to permit the responsible action office to track all OI activity related to action office licensees in a database over which the action office has control (i.e., AMS). Since AMS tracks all other assertions of potential wrongdoing (i.e., those provided by allegors or identified by the licensee), it is prudent from an administrative standpoint to also track the other assertions of potential wrongdoing that may be investigated by OI (i.e., those identified by NRC staff) in AMS. It is noted that if an NRC staff-identified wrongdoing matter is entered into AMS, but ultimately does not result in the initiation of an OI investigation, the item is re-categorized in the AMS database as a "non-allegation," and provided back to responsible NRC staff for whatever action is deemed appropriate.

### **3.1.c Collect calls**

In general, NRC employees are not permitted to accept collect telephone calls from sources external to the agency. However, it is appropriate to accept a collect call from an alleged or potential alleged. This exception to Management Directive 2.3, "Telecommunications," has been approved by the Infrastructure Operations Branch Chief in the NRC Office of the Chief Information Officer (OCIO).

### **3.1.d NRC Staff Member/Allegor Interaction**

*If an allegation is received in person or by telephone, the NRC staff will be courteous, professional, and responsive to the alleged (8.8 Handbook, Section II.B.1).* The manner in which NRC staff interacts with an alleged is a measure of program integrity and affects how alleged, other NRC staff, and the public view the allegation program. The staff member should not question the alleged's motivation or suggest that contacting the NRC was in any way inappropriate. Also, the treatment of an alleged should not vary based on the apparent safety significance of the allegation. Inappropriate NRC handling of issues of lesser significance may affect the willingness of individuals to raise significant safety issues.

### **3.1.e Allegation Receipt and Provision of Identity Protection Information**

#### **3.1.e.1 Receiving the Allegation**

*A staff member who receives an allegation in person or by telephone will attempt to obtain as much information as possible about the alleged's concern(s) so that safety significance may be determined and to facilitate NRC review of the concern(s) (see Manual Section 3.1.o. and Manual Exhibit 1). If the alleged'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 alleged and so that the alleged may be subsequently contacted if additional information is needed. Allegation process identity protection provisions should be provided to the alleged. If the alleged is willing to provide his or her name and contact information, he or she is informed that NRC will provide feedback regarding the allegation by way of the responsible regional or headquarters office, i.e., the action office. (8.8 Handbook, Sections II.B.4(a), (b), and (c))*

It is to be emphasized that the NRC employee receiving an allegation in person or by telephone should obtain as much information as possible regarding the alleged's concerns. Even if the receiving employee is aware that the incoming allegation will not ultimately be assigned to his/her (regional or headquarters) office, he/she should continue to take the entire allegation, as opposed to simply obtaining contact information from the alleged and providing that contact information to the NRC region or office the receiving employee believes will be responsible for allegation evaluation. This precludes the possibility of missing an allegation either because the alleged provides incorrect contact information or the receiving employee has recorded the contact information provided by the alleged incorrectly.

If the receiving employee is confident that he/she knows the action office that will ultimately be responsible for evaluating the allegation, the receiving NRC employee should so inform the alleged. If the alleged requests contact information after being informed about the NRC action office by the receiving employee, the receiving employee should provide the alleged with the contact information for the NRC action office.

Subsequently, in addition to providing the action office with allegation receipt documentation, the receiving employee should inform the action office that he/she has provided the allegor with contact information for the action office.

In the rare circumstance that an allegor insists on speaking directly to the action office after being informed about the action office by the NRC receiving employee, the receiving employee should contact the action office, with the allegor physically present or on the phone, and ensure that the allegor is connected directly to the action office. This should be done either by handing the phone receiver to the allegor (if he/she is physically present) after contacting the action office, or in the case of an allegation received by phone, by ensuring that the action office is on the phone and is speaking directly with the allegor after the call has been transferred.

As indicated, an effort should be made during the initial contact with an allegor to inform the allegor of the degree to which NRC can protect his/her identity. Manual Section 4.0 discusses the standard level of identity protection provided to all allegors along with guidance related to the granting, if necessary, of confidential source status to an allegor. Manual Exhibit 1, "Information to be Obtained/Provided During the Initial Contact with the Allegor," and Manual Exhibit 1A, "Sample Allegation Intake Form," provide a summary of the information to be related to the allegor regarding identity protection. If the allegation program identity protection policy was not discussed during the initial contact with an allegor who has provided his/her identity to the NRC, and release of the allegor's identity is necessary in order for NRC to evaluate the allegation, an effort should be made as soon as possible to inform the allegor about the allegation process identity protection policy and why NRC believes release of the allegor's identity is necessary. Otherwise, information regarding the allegation process identity protection policy will normally be provided in the acknowledgment letter to the allegor.

### **3.1.e.2 Allegation Receipt by Non-Technical Personnel**

If a non-technical staff member receives a telephone call from an allegor, the non-technical staff member should attempt to obtain the allegor's contact information and then forward the caller to responsible regional or headquarters office allegation staff, enforcement staff, the responsible branch chief, or a technical staff member as soon as possible. If an appropriate technical staff member is not available, or if the allegor does not want to be transferred, the non-technical staff member receiving the call should obtain as much information as possible from the allegor, including the allegor's name, home mailing address, and home phone number (if the allegor is willing to provide contact information), or find out if the allegor would be willing to participate in a subsequent telephone call with more knowledgeable regional or headquarters office technical staff. The non-technical staff member should provide the allegor with call back information for the regional or headquarters office allegation staff.

### **3.1.e.3 Allegation Receipt Date**

Since agency goals have been established (see Manual Section 8.1.c) for accomplishing certain allegation process milestones (for example, providing the allegation to the appropriate OAC, convening the initial ARB meeting, issuing an acknowledgment letter to the allegor), the date of allegation receipt must be established. General guidance is that the date of allegation receipt is the date the information containing the allegation is

received by the agency, either by an individual employee, or via a regional or headquarters office docket room. However, clarification of the allegation receipt date may be necessary in certain circumstances, as described below:

- For allegations submitted in hard copy to the agency (mail, package receipt), the date of allegation receipt is the date the information is marked as received by the regional or headquarters office docket room. There have been instances when a received allegation was delayed in being provided to the appropriate OAC due to administrative issues or an initial lack of recognition that the received information contained an allegation. While the responsible action office should inform the alleege of the reason for any delay in feedback, the agency allegation receipt date will not be altered as a result of the delay.
- For allegations received by telephone, the allegation receipt date is the date of the telephone conversation, not the date the NRC employee documents the allegation (if done at a later date).
- For allegations received by electronic mail (e-mail), the allegation receipt date is normally the date of the incoming e-mail message. This will always apply for electronic mail submitted to contact points on the NRC public website (such as NRC Allegation@nrc.gov) because these contact points are monitored on a continuous basis by the agency. However, for allegations submitted by e-mail to an individual NRC employee, some discretion may be applied in establishing the allegation receipt date, since NRC employees are not required to monitor their work e-mail accounts on weekends, holidays, or when in leave status. For example, if an allegation is submitted to an NRC employee's e-mail account while the NRC employee is on annual leave, the allegation receipt date will be established when the NRC employee checks his/her incoming e-mail after returning from leave.
- For allegations forwarded to the staff by OIG, the allegation receipt date is the date the responsible office received the information transferred from OIG. This is because OIG is allotted time to evaluate information received by that office for potential NRC staff misconduct, waste, fraud, or abuse, before transferring the information to the technical staff (see Manual Sections 3.2.e and 5.1.a.2).
- For allegations received during an OI interview, the allegation receipt date may vary depending on the context of the issue discussed. Normally, if an allegation is provided during an individual's interview with OI, the OI investigator is to document the allegation immediately after the interview, and forward it to the appropriate OAC within 5 calendar days. However, on occasion, an allegation provided during an OI interview may not initially be recognized as an allegation because it is interpreted by the investigator as amplifying evidence related to the wrongdoing matter under investigation. If this occurs, and the allegation is not recognized until a subsequent review of the OI transcript by responsible technical staff, the allegation receipt date may be established as the date the technical staff member reviewed the OI transcript. This is to be determined on a case-by-case basis, depending on the information provided and NRC staff participating in the interview (see Manual Section 3.2.s).

If other unique circumstances are presented that put the establishment of the allegation

receipt date into question, consult the AAA.

### **3.1.f Providing NRC Contact Information to the Alleger**

#### **3.1.f.1 OAC Contact Information**

The OAC is the normal point of contact for an allegor (see Manual Section 3.3.b.8). After obtaining the allegation detail, if the NRC employee receiving an allegation is not the OAC, the receiving employee should provide the allegor with contact information for the action office OAC, if known, and/or with the toll free number of the regional or headquarters office that will process the allegation.

#### **3.1.f.2 The NRC Safety Hotline**

In addition to providing the NRC regional and headquarters office toll free telephone numbers, NRC Form 3, "Notice to Employees," also provides the toll free telephone number for the NRC Safety Hotline (1-800-695-7403). This toll free number is also provided when one clicks the "Report a Safety Concern" link on the home page of the NRC public website. If dialed during normal working hours, the call is routed to the regional OAC in the area of the call. If the call is not answered by the OAC or if it is made during off-hours, the NRC Safety Hotline will transfer to the Headquarters Operations Officer, who will take the allegation and relay the information to the responsible OAC for processing during the next business day or immediately to the appropriate NRC duty officer if the allegation involves an immediate or significant safety issue. Regarding connection with an OAC during working hours, it is noted that the NRC Safety Hotline is geographically based, i.e., the toll free call will be directed to the regional office OAC with oversight for the geographical area from which the telephone call originates. For this reason, if an allegor raises concerns about an NRC licensed facility in the geographical area of one NRC Region but does not live in that area, the allegor should not be provided with the NRC Safety Hotline number for future contact with NRC but rather should be provided with the toll free number for the regional or headquarters office that is responsible for evaluating the allegation. This geographical restriction also applies to cell phone numbers, i.e., if the NRC Safety Hotline is dialed from a cell phone, the regional OAC related to the cell phone's area code will be contacted regardless of the caller's physical location.

### **3.1.g Caller Identification**

*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 NRC for future reference, if needed. 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?" (8.8 Handbook, Section II.B.4(d)(i))*

*If the caller indicates that it is acceptable for 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. (8.8 Handbook, Section II.B.4(d)(ii))*

*In this instance, the allegation receipt documentation should clearly document that the allegor wished to remain anonymous, that NRC used caller ID to obtain the contact information, and the allegor's response to the above question. [Note: Any indication that this practice is negatively impacting the allegation program should be reported to the Agency Allegation Advisor.] (8.8 Handbook, Section II.B.4(d)(iii))*

### **3.1.h Providing an Allegation to the Appropriate Action Office**

If the NRC initial contact person does not have the capability to evaluate the information provided or to determine the appropriate action office within NRC, the initial contact person should, after obtaining as much information as possible from the allegor, inform the allegor that he/she will be contacted by another member of the NRC staff who is more familiar with the issues. This initial contact person should make every effort to contact a regional or headquarters office OAC or personnel in OE responsible for oversight of the allegation program to assure that the issue is forwarded to the appropriate action office as quickly as possible. This should be done within 5 calendar days of receiving the allegation and immediately if the allegation is perceived to involve an immediate and/or significant safety issue or otherwise warrant more prompt attention.

Regarding the assignment of action office responsibility for processing a received allegation within the agency, the general guidance is that allegations related to activities at licensed facilities be assigned to the regional or headquarters office responsible for oversight of the facility-in-question. Allegations that are generic in nature or that apply to activities uniquely conducted by offices located in NRC headquarters (e.g., vendor inspection, review of power reactor license change requests) are normally assigned to the responsible headquarters office. There may be exceptions to this general guidance based on the information provided, and the number and complexity of the concerns. Other specific guidance related to the assignment of the allegation action office is provided below:

- Region I is responsible for:
  - materials issues located in the geographical area of Region I and Region II combined, including the forwarding of issues to Agreement States in those geographical areas
  - allegations related to the U.S. Navy
  - allegations related to the U.S. Department of Agriculture (USDA)
- Region II is responsible for:
  - allegations related to activities at fuel facilities, regardless of their geographic location
  - allegations related to activities at power reactor or fuel facility construction sites
- Region III is responsible for:
  - allegations involving Veterans Administration (VA) hospitals, regardless of their geographic location

- Region IV is responsible for :
  - allegations related to the U.S. Air Force
  - allegations related to the Callaway Plant in Missouri, which is located in the geographical area of Region III (Region III retains responsibility for the oversight of materials issues in the State of Missouri)
- The Office of Nuclear Material Safety and Safeguards (NMSS) is responsible for:
  - allegations related to decommissioned research and test reactors (RTRs)
  - allegations related to the inappropriate sale of radioactive material on the internet
- The Office of Nuclear Reactor Regulation (NRR) is responsible for:
  - allegations related to operating RTRs
- The Office of Nuclear Security and Incident Response (NSIR) is responsible for:
  - allegations related to offsite emergency preparedness issues (NSIR maintains the agency's liaison with the Federal Emergency Management Agency (FEMA))
  - allegations related to security Force-on-Force exercises
  - allegations related to terrorist threats or other threat assessment matters
- The Office of International Programs (OIP) is responsible for:
  - concerns related to the improper import or export of radioactive material
- Financial assurance, decommissioning funding, and facility insurance matters are assigned to the headquarters office responsible for oversight of the related licensed facility

Following the tsunami that caused destruction of the reactors at the Fukushima Daiichi facility in Japan, the agency received many concerns about the results of the accident and what the NRC has learned from the incident that could be applied to commercial power reactors in the U.S. While a small percentage of the concerns were U. S. plant-specific matters that were addressed via the allegation program, the large majority of the concerns were general and related to additional requirements to be considered by the NRC for commercial power reactors in the U.S. to address lessons learned. These general matters were not processed as allegations and were addressed through the recently established Japan Lessons-Learned Project Directorate in NRR. Additional concerns related to the Fukushima Daiichi event should be forwarded via e-mail to: [JLD.PublicResource@nrc.gov](mailto:JLD.PublicResource@nrc.gov)

### **3.1.i Allegor Request for No Further Contact**

*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 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). (8.8 Handbook, Section II.B.6(a))*

*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 Allegation Review Board (ARB), attempt an additional contact with the allegor. (8.8 Handbook, Section II.B.6(b))*

*Such communication should be made verbally, if possible, preferably not at the allegor's place of employment. All communications with the allegor shall be documented in the allegation file. 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. (8.8 Handbook, Section II.B.6(b)(i),(II),and(iii))*

*The purpose of this additional attempt to contact the allegor is to obtain additional information related to the allegation, if needed; 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 NRC issuing an RFI to the licensee; to explain the advantages of continued involvement in the allegation process; and to encourage the allegor's continued involvement. (8.8 Handbook, Section II.B.6(c)(i),(ii),and (iii))*

*Sometimes, the allegor will continue to reject contact with the NRC even after the additional contact from NRC discussed earlier in this Manual Section is made. In such cases, the contacting staff member should encourage the allegor to, at a minimum, accept allegation closure documentation from NRC regarding his or her concerns so that he or she can review NRC's conclusions and provide feedback, if desired. 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, 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 NRC determines that additional information is needed to ensure adequate public health and safety. (8.8 Handbook, Section II.B.6(d)(i),(ii),and(iii))*

*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 documentation that NRC was unable to contact the allegor; or the ARB record documenting an ARB decision not to attempt an additional contact with the allegor. (8.8 Handbook, Section II.B.6(e))*

### **3.1.j Receipt of Security-Related Allegations**

*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 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 MD12.7, "NRC Safeguards Information Security Program," for additional details). If a setting is inappropriate for transmitting such information, separate arrangements will be made to enable proper transmittal. (8.8 Handbook, Sections II.B.5(a)and II.B.5(b))*

- When interacting with allegors such as security officers or others likely to be in possession of Safeguards Information (SGI), it is important to remind these individuals

that such information requires special handling in accordance with 10 CFR 73.21. For example, e-mails require encryption, mailing requires double wrapping, phone calls/facsimiles must be on a secure line, etc.

- If it is suspected that the concern may include SGI, it is important to verify this prior to engaging the licensee. Appropriate NRC personnel with expertise in the area should have access to secure phone or facsimile lines and the use of such lines is encouraged to ensure a thorough discussion and well-informed decision.
- As always, the name of the alleged should be withheld from the licensee if at all possible. When it is necessary to provide the alleged's name to retrieve and properly control SGI, responsible NRC personnel should ensure that the information is, in fact, SGI before releasing the alleged's name. Per allegation process guidance, the alleged should be notified if his/her name or other personnel identifier is to be, or has been, released. Given NRC's authority to classify SGI, there is no requirement to gain acceptance from the alleged that the concern involves SGI, or to delay corrective actions to enable the alleged to provide feedback.

### **3.1.k Off-the-Record Information**

*NRC does not accept "off-the-record" information from allegeders. NRC staff advises an allegeder who attempts to provide information "off-the-record" that all information received by NRC is accepted officially and appropriately acted upon. (8.8 Handbook, Sections II.B.3(a) and II.B.3(b))* Similarly, an allegeder will occasionally provide information to a member of the NRC staff who knows the allegeder's identity, but request that his/her concerns be treated "anonymously." In this instance, the receiving employee should employ the guidance provided in Manual Section 3.1.i above. The allegeder's identity shall be recorded in the allegation file for future reference, if NRC should determine that it is necessary to contact the allegeder to pursue a safety matter.

### **3.1.l Alleger Interview**

*In some cases, either as part of initial allegation receipt or at a later point in the evaluation of an allegation, an interview with the allegeder 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 allegeder requests an interview with 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 allegeder 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 allegeder, travel costs can be offered with management approval and will be borne by the action office. (8.8 Handbook, Section II.J.2)*

### **3.1.m NRC/Alleger Meeting Location**

Any meeting between NRC and an allegeder at the licensee's facility may compromise the allegeder's identity. However, if the licensee's facility is the only plausible site for such a meeting, the meeting should be arranged at a location that is comfortable for the allegeder and that will provide as much privacy as possible. An allegeder may wish to meet in person at an offsite location to provide his/her concerns to the NRC. In this instance, effort should be

made to accommodate the allegor's request. However, it is important that the location of the information exchange be comfortable and safe for both the allegor and NRC staff participating in the meeting. If the allegor requests to meet at an offsite location, the staff member who received the request should contact the OAC and his/her supervisor to obtain agreement as to an appropriate location for the information exchange. Consideration should be given to having another NRC staff member accompany the interviewer to increase the accuracy of the information recorded.

### **3.1.n Dealing with Hostile/Abusive Interaction**

If during contact with an allegor, the allegor becomes hostile and/or abusive, the NRC employee is not required to continue the discussion and withstand the abuse. In this situation, the NRC employee should politely end the conversation and either offer to re-contact the allegor or provide the allegor the opportunity to re-contact NRC after he/she has had an opportunity to collect himself/herself.

### **3.1.o Information to be Obtained/Provided During the Initial Contact with the Allegor**

The NRC staff member receiving the allegation will be courteous and professional. The NRC staff member will ask appropriate questions to obtain as much information as possible about the allegor's concerns. Suggested information to be obtained, questions to ask, and information to provide follow (a condensed version of this information, along with the standard allegor identity protection provisions, is also reflected in Manual Exhibit 1). A sample Allegation Intake Form incorporating this information is provided in Manual Exhibit 1A.

#### **Concern Details:**

- Nature and details of the allegation concerns. For each concern, ask:
  - When did it occur? Was there a sequence of events leading to the problem or is the problem represented by a sequence of events?
  - Where did it occur (facility, building, location)?
  - What equipment/system is involved (equipment description, model, series, etc.)?
  - Who is involved?
  - Were there any witnesses to the issue/event? If so, what are their names?
  - Can the allegor explain how or why this happened?
  - Does the allegor know of a specific requirement, procedure, commitment, etc. that was violated?
  - What is the potential safety impact of the matter?
  - How did the allegor find out about the concern? Did the allegor identify the concern or find out about it from other sources?
  - Is there any physical evidence that the NRC can examine?
  - What records should the NRC review?
  - Does the allegor have any documentation that would assist the NRC in its review?
  - Are there other individuals NRC should contact for additional information? (If others are named by the allegor, the allegor should be informed that these people may or may not be interviewed by the NRC, as the NRC will determine during the course of its evaluation of the concern whether contact is necessary.)
  - What is the current status of the issue? Is it ongoing? Are any corrective or

compensatory actions in place?

- Ask the allegor if he/she raised the concerns with management. If so, who in management was notified and what action has management taken? [Note: If the concern(s) discussed by the allegor is/are already in the licensee's corrective action program but has/have not yet been evaluated or resolved by the licensee, the allegor should be informed that NRC will not normally pursue such matters without an explanation as to why it is necessary for NRC to pursue the issue independent of the licensee's corrective action process. That is, the allegor should be asked to explain why the issue has not been or will not be appropriately addressed through the licensee's corrective action process, preferably with specific examples of inadequate licensee corrective action.]
- Ask the allegor if he/she would object to the NRC requesting information from the licensee in writing or referring the concern(s) to another appropriate entity (e.g., State, Agreement State, other Federal agency) for review. If the allegor objects, ask the allegor to clarify why such a request would be inappropriate or ineffective and document the allegor's response for the allegation file.

#### **Identity Protection:**

- Inform the allegor about the standard identity protection provisions related to the NRC allegation program:

#### **Allegation Process Standard Identity Protection Policy**

**NRC takes all reasonable efforts not to disclose your identity. Identifying information is only distributed internally by NRC staff on a need-to-know basis.** If

asked, we will neither confirm nor deny that you raised a concern to the NRC, except when required to do so for any of the following (rare and exceptional) reasons:

- Overriding health or safety issue
  - Court order or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust
  - To support a hearing on an enforcement matter
  - Disclosure necessary to further a wrongdoing investigation (OI discretion)
  - If you take actions that are inconsistent with and override the purpose of protecting your identity (e.g., informing the media)
  - Disclosure mandated by FOIA
- If allegor has no objection to being identified, NRC may reveal his/her identity outside the agency if it is necessary to evaluate the allegation
  - For discrimination concerns -inform the allegor that NRC will disclose his/her identity to the licensee and/or the employer during an NRC discrimination investigation
  - If allegor states that many are aware of his/her concern, it is acceptable to inform him/her that, while the NRC will continue efforts to protect his/her identity, doing so may be difficult
- Ask the allegor if he/she is concerned about the protection of his/her identity. If the

allegor indicates that NRC protection of his/her identity is not of concern, remind the allegor (while informing him/her of the NRC allegor identity protection provisions) that, in any event, an allegor's identity is not normally released outside the NRC unless releasing the allegor's identity is necessary to obtain resolution to the allegation, or otherwise serves the agency's mission.

- If the allegor provides contact information but requests no further contact from the NRC, refer to Manual Section 3.1.i for specific instructions related to handling such a request.

#### **Contact and Identifying Information:**

If not already provided during the discussion of the allegor's concerns, obtain the following contact and identifying information before concluding the discussion:

- The date of the contact
- The allegor's full name, home mailing address (not business), telephone number, and employer
- The facility and activity involved, and the allegor's position or relationship to the facility or activity involved. If the allegor indicates that he/she is a former licensee employee or a former contractor employee, clarify whether the stated concern involves a matter related to the allegor's activities when he/she was a licensee or contract employee. If the concern does not involve matters related to the allegor's activities while a licensee or contract employee, the source of the allegation should be characterized as a private citizen vs. a former licensee employee or former contractor employee.
- Obtain the allegor's preference for method and time of contact. **[Note:** Electronic mail (e-mail) is an acceptable method of contact if it is the allegor's preference and it is explained to the allegor that NRC may not be able to protect information transmitted over the Internet (see Manual Section 3.2.f).] If the allegor prefers the standard form of contact (written correspondence), he/she will receive a copy of the current version of the NRC Allegation Program brochure, NUREG/BR-0240, "Reporting Safety Concerns to the NRC," along with his/her allegation acknowledgment letter. If the allegor prefers to receive feedback electronically, the brochure is available on the NRC public website at the following link:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0240/>

A Spanish translation of the NRC Allegation Program brochure is also available at the same web link.

#### **Additional Information to be Obtained/Provided When an Allegor Has Raised a Discrimination Concern:**

- What was the allegor's protected activity? (e.g., What safety issue(s) did the allegor raise?, Did the allegor refuse to engage in what he/she felt was an illegal practice after identifying the alleged illegal practice to the employer?, Had the allegor requested NRC to institute action against the licensee?, Did the allegor testify before NRC, Congress, or in any Federal or State proceeding regarding licensee compliance with NRC regulatory

statutes?)

- When did the alleged engage in protected activity?
- What personnel action was taken against the alleged? (e.g., employment termination, suspension, layoff, demotion, transfer, lower performance appraisal)
- When was the personnel action taken? (**Note:** If the alleged was informed of a forthcoming personnel action, but the personnel action has not yet been taken, document the date that the alleged was informed that personnel action was to be taken against him/her.)
- Was the individual who took the personnel action against the alleged aware that the alleged engaged in protected activity? If so, how?
- If the alleged's protected activity involved providing information to NRC, was management aware that the alleged provided information to NRC?
- What does the alleged believe are the links/causal connections between the protected activity and the subsequent personnel action? (e.g., temporal proximity, disparate treatment, lack of documentation to support taking the personnel action)
- Ask the alleged if there is any documentation that would assist the NRC in reviewing the discrimination matter.
- Failure-to-Hire Discrimination Claims: If the alleged's discrimination claim involves a failure-to-hire, a higher threshold for establishing prima facie applies. See Manual Section 5.2.a.7 and Manual Exhibit 26, "Supporting Information Related to a Failure-to-Hire Discrimination Concern," for a list of additional questions to ask.
- If the alleged is still employed at the facility, and expresses concern that retaliatory action will be taken against him/her in the near future, obtain details about the threatened action and the likelihood of its occurrence. For example:
  - Is the alleged's concern based on a specific threat (e.g., "My supervisor told me I would be fired on (date)") or is it based on hearsay (e.g., "I've heard rumor that I may be fired")?
  - If the threat is specific, is it documented (e.g., in an e-mail, in a memo or note to the alleged or to the alleged's personnel file)?
  - Are other individuals aware of the threat of retaliation?

If the expressed fear of retaliation appears credible, the alleged should be informed that the matter will be discussed with NRC management and that NRC will contact the alleged in the future regarding further options. In such situations, NRC may, with the alleged's approval, consider notifying the licensee about the agency's knowledge of the potential retaliatory action, potential effects on the work environment and consequences to the licensee if discrimination is substantiated, and the NRC's intention to monitor the situation. The NRC decision to notify the licensee should be determined at an ARB meeting with support from OGC or regional counsel and OI. Such action by NRC is independent of the Early ADR or DOL processes.

- Ask the allegor if he/she has contacted the Department of Labor (DOL), a State whistleblower protection office (for state employees or for concerns against Agreement State licensees), or the Merit Systems Protection Board (MSPB)(for federal employees) regarding the alleged discrimination matter. A federal employee may also be informed of his/her ability to file a complaint with the Office of Special Counsel (OSC). It is noted that Section 629 of the Energy Policy Act of 2005 added NRC employees, NRC contractors and subcontractors, and DOE employees, contractors, and subcontractors to those individuals covered under ERA Section 211. This statute allows these individuals to file discrimination claims with DOL, and for federal employees, in lieu of or in addition to MSPB or OSC. Discrimination claims filed by NRC employees under ERA Section 211 are not processed as allegations.

- Federal Employees: MSPB and OSC

For federal employees with a discrimination complaint, the following guidance applies. While the employee may initially contact either MSPB or the OSC, initial OSC actions may involve efforts to have the matter addressed through normal channels before OSC will initiate an investigation. If the alleged retaliation involves a personnel action that is applicable to MSPB, OSC will normally suggest that the employee first participate in the MSPB appeal process. The employee may file an appeal directly to MSPB no later than 30 days after the effective date of the action being appealed, or 30 days after receipt of the agency's decision, whichever is later.

If the personnel actions do not fall under MSPB jurisdiction, the employee must first file a complaint with the OSC before filing with MSPB. After the OSC complaint process is exhausted, the employee may then file an appeal with MSPB no later than 65 days after the date that OSC notified the employee in writing that it had terminated its investigation. If OSC has not notified the employee that it will seek corrective action within 120 days of the filing date, the employee may file an appeal with MSPB at any time after the 120-day period expires.

- State Agency Employees

It is noted that for employees of State agencies, filing a discrimination complaint with DOL may not be an option. 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.

- If the allegor has not contacted DOL, a State whistleblower protection office, or MSPB/OSC, as applicable, provide the appropriate contact information to the allegor or direct the allegor to the responsible OAC, who will provide the contact information. If DOL is the appropriate contact, allegors are to be instructed to contact one of the ten DOL/OSHA Regional Offices, depending on the location of the corporate entity involved in the alleged discriminatory action. The web link below provides a map of the ten DOL regions. On the web page, click on the region where the corporate entity involved in the alleged discriminatory act is located to bring up the address of the associated DOL/OSHA Regional Office.

<http://www.osha.gov/html/RAmap.html>

A DOL/OSHA Fact Sheet entitled “Your Rights as a Whistleblower” is available at the following web link:

<https://www.osha.gov/Publications/OSHA3638.pdf>

Manual Exhibit 9 provides the text of 29 CFR Part 24, “U.S. Department of Labor Procedures for Handling Discrimination Complaints Under Federal Employee Protection Statutes.”

Contact information for MSPB is available at the following web link:

<http://www.mspb.gov/contact/contact.htm>

Contact information for OSC is available at the following web link:

<http://www.osc.gov/contacts.htm>

- If the allegor raises a discrimination concern, it is appropriate to provide the allegor with contact information for DOL for the purposes of seeking a personal remedy. The following applies to the allegor’s interface with DOL:
  - 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 definition of “Protected Activity” in the Manual Glossary).
  - 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.
  - A written complaint must be filed with DOL within 180 days of the date of the discriminatory action or the date any notice, in writing or otherwise, of an adverse personnel action is received by the allegor, whichever occurred first.
  - Any technical issue that provides a basis for the discrimination concern that the allegor indicates has not been adequately resolved by the licensee is evaluated by the NRC allegation process without regard to action that may be taken by DOL. In this regard, when NRC is notified by DOL that it is investigating a complaint of discrimination under ERA Section 211, and the allegor has not also brought 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 NRC), submit the DOL complaint for entry into the allegation process, and contact the allegor to obtain clarification with regard to the allegor’s concerns.

When a discrimination concern is provided directly to NRC and not DOL, an allegor is to be informed of the information above regarding DOL and that:

- NRC will determine whether or not an investigation is warranted based on the



information provided by the allegor.

- 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.
- NRC may complete its investigation of the discrimination concern before resolution by DOL and may take action independent of DOL.
- **DO NOT** provide information about the Early-ADR process during the initial contact with an allegor who is raising a discrimination concern, since OGC/Regional Counsel must establish that an allegor has articulated a prima-facie showing of potential discrimination before Early-ADR may be offered to an allegor.

**Additional Information to be Obtained When an Allegor Has Raised a SCWE Concern:**

The following are suggested questions that may be used when discussing an allegor's assertion of a problem with the SCWE at the facility-in-question, i.e., a "chilling effect" or chilled work environment. A chilling effect is defined as 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. A chilled work environment is 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. It is not intended that these questions be asked verbatim, but rather, that they form the basis for gathering insights regarding whether there are impediments to a SCWE at the facility.

- "Are there any specific concerns you or others haven't raised? If so, will you tell us about them now?"
- "What specifically happened and when that impacted your willingness to raise safety concerns (or to challenge actions or decisions you believe are unsafe)?"
- "What types of concerns are you hesitant to raise and why? Can you give some examples?" [Try to ascertain what impact such concerns would have on safety (nuclear safety related?) by getting examples.]
- "What avenues are you hesitant to use to raise concerns and why?" [e.g., supervisor, senior management, corrective action program, employee concerns program, NRC, etc.]
- "Which organizations and how many individuals are impacted by the chilled work environment?"
- "Who is contributing to the chilled work environment and what influence does this individual have on those that are chilled?"
- "Do you believe management is aware of the chilled work environment? If yes, have actions been taken to address the situation and do you feel the actions have been effective?"

- “In general, are you aware of actions taken by your management to prevent and detect chilled work environments? If yes, do you feel their actions are generally effective?”

### 3.2 Allegation Receipt Considerations and Handling Scenarios

The most common allegation receipt scenario involves a technical concern related to an NRC-licensed facility that is received by NRC from an “onsite source.” “Onsite sources” are comprised of licensee employees, contractor employees, former licensee or contractor employees who raise concerns about activities occurring while they were onsite and/or otherwise involved in licensed activities, or individuals who provide allegations anonymously (NRC assumes that most anonymous allegations are provided by onsite personnel who are unsure or fearful of having their identity associated with their concern(s)). However, a number of allegations are received that do not follow this framework. Some allegation receipt circumstances and some allegation sources require specific handling considerations. The following sections describe a number of specific allegation receipt circumstances and associated processing considerations.

#### 3.2.a Receipt of a Concern Involving an Agreement State

##### 3.2.a.1 Agreement State Licensee and Agreement State Performance Concerns

*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 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. 2021)). 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"). (8.8 Handbook, Sections II.D.1) If such an item has already been entered into AMS, the entry shall be coded as a "Non-Allegation" at the AMS Allegation Level, and individual concerns shall be coded as "Agreement State" at the AMS Concern Level.*

*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. (8.8 Handbook, Section II.D.2)*

*Concerns involving State regulatory bodies that oversee the activities of Agreement State licensees are not processed as allegations and include concerns regarding the performance of such State regulatory bodies or their personnel, and concerns regarding potential wrongdoing committed by State regulatory bodies or their personnel (see SECY-98-192, <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/1998/secy1998-192/1998-192scy.pdf>). If an NRC*

*employee receives or is informed about such a concern, the NRC employee should promptly forward the matter to the Agreement State Performance Concerns Coordinator in the Office of Nuclear Materials 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. (8.8 Handbook, Section II.E) If such an item has already been entered into AMS, the entry shall be coded as a "Non-Allegation" at the AMS Allegation Level, and individual concerns shall be coded as "Agreement State" at the AMS Concern Level.*

### **3.2.a.2 Information to Obtain/Provide Regarding an Agreement State-Related Concern**

Staff should take the following actions when receiving an Agreement State licensee concern in person or by telephone:

- Obtain as much information as possible from the individual regarding his/her concern(s) as suggested in Manual Section 3.1.o.
- Inform the individual that his/her concerns are under the jurisdiction of an Agreement State, explain the Agreement State program (i.e., that the State 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), and note that the NRC's course of action in these matters is to refer the concern(s) to the Agreement State for evaluation. If the individual indicates an objection to NRC referral of his/her concerns to the Agreement State, the individual is to be informed that the NRC is compelled to refer the concern(s) to the Agreement State for evaluation because of program commitments established by the agreement between NRC and the Agreement State.
- Inform the individual that Agreement States prefer to be contacted directly since it allows the State to obtain all the necessary information from the source of the concern(s), facilitates the ability of the State to evaluate and respond to the concern(s), and provides the advantage of a more timely response to the concerned individual in most cases.
- Inform the concerned individual that the State may not be able to protect his/her identity (see Manual Exhibit 2, "Ability of Agreement States to Protect Allegor's Identity From Public Disclosure") and suggest that the concerned individual discuss any concerns he/she may have about identity protection with the State.
- After the Agreement State program is explained to the concerned individual, ask if the concerned individual would like to contact and be contacted by the Agreement State. If direct contact with the Agreement State is acceptable to the concerned individual, provide the concerned individual with the Agreement State contact information (<http://nrc-stp.ornl.gov/asdirectory.html>) and indicate to the concerned individual that NRC will be taking no further action other than forwarding the concern to the Agreement State. The concern(s) provided by the concerned individual is/are then to be provided to the responsible RSAO, who will forward the information to the Agreement State. Such matters are not processed as allegations. No ARB meeting, entry into AMS, or additional correspondence with the concerned individual is

necessary. Also, there is no need to request a response from the Agreement State in these instances. Concerns raised about Agreement State licensees that are received anonymously are handled in a similar fashion in that the concerns are to be referred to the Agreement State by the RSAO, are not processed as allegations, and no response from the Agreement State is requested. If the anonymous concerned individual re-contacts NRC, is able to identify himself/herself as the individual who previously raised the concern, and requests feedback regarding the Agreement State licensee's actions, the concerned individual should be informed that the concern was forwarded to the Agreement State with no response requested. In this instance, the concerned individual should again be provided contact information for the Agreement State and asked if he/she would be willing to contact the State directly. Otherwise, an effort should be made to obtain the Agreement State response and provide it at a later time to the concerned individual.

### **3.2.a.3 Allegation of Discrimination against an Agreement State Licensee**

If the individual asserts potential discrimination by an Agreement State licensee for raising a safety concern, the individual should be informed that he/she may file a written discrimination complaint with DOL within 180 days from the date of the alleged's notification of the discriminatory act, in accordance with the guidance noted in Manual Section 3.1.o, or with appropriate State employee protection entities. Since the individual's identity would be divulged to the Agreement State licensee as part of a DOL/OSHA investigation, it is unlikely that the individual would request NRC to protect his/her identity. If the individual were to do so, he/she should be informed that neither DOL nor the Agreement State can pursue the discrimination claim without divulging the individual's identity.

It is noted that OI will not normally open an investigation involving an assertion of discrimination related to an Agreement State licensee. Also, Early-ADR does not apply to a discrimination claim against an Agreement State licensee, since NRC is compelled to provide the Agreement State with information about an Agreement State-related concern. That is, if NRC-sponsored Early-ADR was to be employed, the concerned individual and the Agreement State licensee would be the two parties offered mediation via Early-ADR, and the Agreement State would not be engaged, which is contrary to the agreement between NRC and the Agreement State. In the rare circumstance that an investigation is opened by OI in regard to an Agreement State licensee matter, the Agreement State licensee and the alleged will be notified of the results of the OI investigation. Additionally, as prescribed by the Agreement, the RSAO will inform the Agreement State about the investigation outcome.

If a concerned individual files a discrimination complaint with DOL against an Agreement State licensee, but the individual does not contact NRC, the matter is not to be processed as an allegation. When the DOL complaint is eventually provided to NRC (because of the Memorandum of Understanding (MOU) between NRC and DOL, DOL will provide a copy of such discrimination complaints to NRC because of their relationship to nuclear or radiological safety matters), a copy of the DOL complaint shall be provided to the responsible RSAO, who will inform the Agreement State as prescribed by the Agreement.

#### **3.2.a.4            Actions If Concerned Individual Does Not Agree to Contact the Agreement State**

If the concerned individual's identity is known, and the concerned individual does not agree to contact or be contacted by the Agreement State and/or has concerns about the release of his/her identity to Agreement State personnel, concerns submitted in this context that meet the NRC definition of an allegation shall be processed as an allegation and entered into AMS for tracking. In this instance, NRC's allegation identity protection policy should also be reviewed with the allegor (see Manual Exhibit 1).

The concern(s) provided by the allegor are provided to the responsible RSAO, who will forward the concern(s) to the Agreement State. The information referred to the Agreement State by the RSAO should be in a form that protects the identity of the allegor, including rewriting the allegation concern(s), if appropriate. The RSAO should request the Agreement State to provide a response to the allegation concerns to an appropriate NRC regional contact (i.e., OAC or RSAO). Additionally, if the concerned individual indicates that the Agreement State should not subsequently refer the allegation to the Agreement State licensee because the allegor questions the ability of the Agreement State licensee to respond appropriately to the allegation, NRC (the RSAO) may request the Agreement State to refrain from a subsequent referral to the Agreement State licensee, unless an overriding safety issue is identified and immediate referral to the Agreement State licensee is warranted. However, the ultimate decision as to the method of evaluation of the allegation lies with the Agreement State. The RSAO will provide documentation of his/her contact with the Agreement State and transmittal of the allegation-related information to the OAC for the related allegation file. A copy of the Agreement State's response is provided to the allegor by way of an allegation closure letter, or other agreed upon means of correspondence, and constitutes closure of the allegation. The closure documentation to the allegor should indicate that the agreement between NRC and the Agreement State does provide for periodic NRC monitoring of the Agreement State's follow-up of such matters and that this NRC monitoring occurs either during periodic meetings with the Agreement State, or during periodic Integrated Materials Performance Evaluation Program (IMPEP) reviews.

If the concerned individual does not agree to contact or be contacted by the Agreement State and/or has concerns about the release of his/her identity to Agreement State personnel, and the Agreement State requests the allegor's identity, follow the Manual guidance related to protecting the identity of allegors, including allegors who have been granted confidential source status (Manual Section 4.0).

If an allegor objects to NRC referral of the allegation information to the Agreement State, the referral will still be made to the Agreement State, over the allegor's objection, protecting the identity of the allegor, because of program commitments between NRC and the Agreement State.

#### **3.2.a.5            Actions If Unable to Determine Whether Individual Objects to Agreement State Contact**

When concerns involving an Agreement State licensee are received from a known individual other than by telephone or in person (e.g., by e-mail, mail, or other written

correspondence) and telephone contact is possible, the staff should contact the individual by telephone and follow the guidance in Manual Section 3.2.a.2 regarding the handling of Agreement State-related concerns. If telephone contact is not possible (i.e., if the staff is unable to ascertain whether the concerned individual does or does not object to having his/her identity provided to the Agreement State), the concern(s) should be processed as an allegation and entered into AMS. In such instances, the acknowledgment letter to the allegor should offer the allegor the opportunity to provide or have the NRC provide his/her identity to the Agreement State so that the Agreement State may contact the individual directly regarding his/her concerns. If the allegor subsequently contacts NRC and indicates a willingness to contact or be contacted by the Agreement State, or that he/she has already been in contact with the Agreement State, the allegation may be closed once it is confirmed that the Agreement State has the allegor's contact information.

### **3.2.a.6 Receipt of Both Agreement State Licensee and Agreement State Performance Concerns**

If an allegor raises concerns about an Agreement State licensee in addition to performance or wrongdoing concerns related to Agreement State officials, the Agreement State licensee allegation concerns shall be entered into the allegation process by the responsible regional office. The receiving office shall inform NMSS about the performance or wrongdoing concerns related to Agreement State officials, and refer the details of those concerns to NMSS for processing outside of the allegation process. It is presumed, in such scenarios, that the allegor does not prefer to contact or be directly contacted by Agreement State oversight personnel since the allegor is also asserting performance and/or wrongdoing concerns regarding Agreement State officials.

After considering the subject matter of the information provided, NMSS may wish to process both the Agreement State performance or wrongdoing concerns and the allegation concerns, so that the allegor can have a single point of contact. NMSS shall discuss this proposed approach with the regional office normally responsible for oversight of the related Agreement State licensee activities. If this approach is agreed upon, NMSS shall open an allegation to track the evaluation of the allegation concerns. If the regional office had already opened an allegation in AMS, it shall be closed and the Allegation Level Activity changed to "Transferred Out." If the information is initially received by NMSS, and it is NMSS's preference to handle both the Agreement State performance or wrongdoing concerns and the allegation concerns, NMSS shall notify the regional office normally responsible for oversight of the related Agreement State licensee activities to gain agreement with the evaluation approach and also so that the RSAO is informed about the concerns.

### **3.2.a.7 Concerns Involving Both an Agreement State Licensee and Another Federal Agency**

Concerns regarding an Agreement State licensee that also fall under the purview of another Federal agency will be forwarded to the appropriate Federal agency in coordination and concurrent with the referral of the concern to the associated Agreement State. If the concerned individual is willing to contact and be contacted directly by Agreement State personnel and the other Federal agency about the evaluation of his/her concern(s), the concerns, along with the individual's identifying information, are provided

to the appropriate RSAO for referral to the Agreement State and are not processed as allegations. The referral to the other Federal agency may be accomplished by the RSAO or other staff, as assigned.

If the individual does not want his/her identity disclosed to the Agreement State or the other Federal agency, the concern(s) will still be referred to the Agreement State and the other Federal agency, in a manner that protects the alleged's identity, including rewriting the concern(s). The concerned individual should be provided with the name of a contact person at both the Agreement State and the other Federal agency either in writing or by phone. The individual's concerns related to the Agreement State are to be entered into the allegation process and tracked to closure. A copy of the Agreement State's response is provided to the alleged by way of an allegation closure letter, or other agreed upon means of correspondence, and constitutes closure of the allegation. The NRC will not act as the intermediary between the concerned individual and the other Federal agency other than for NRC licensee-related emergency preparedness issues (FEMA). Rather, the individual is provided with contact information for the other Federal agency and informed that NRC has referred the concern(s) to the other federal agency and that he/she would need to contact the other Federal agency if feedback is desired.

### **3.2.b Processing Potential Wrongdoing Matters Identified by NRC Staff**

#### **3.2.b.1 NRC Staff Identification of Potential Wrongdoing**

*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. Such matters, although not from a source external to the NRC are also tracked as allegations if they prompt investigation by OI. This facilitates the action office monitoring of related OI follow-up. 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 an allegation and identify them for consideration by the allegation program, if not identified by the alleged as a potential wrongdoing matter. (8.8 Handbook, Section II.C)*

#### **3.2.b.2 Identifying Potential Wrongdoing in Testimony Provided to the NRC**

Staff may also identify a potential wrongdoing matter on the basis of information provided by an external source in other settings not necessarily related to an allegation matter (e.g., testimony provided during an enforcement conference, or testimony provided by a witness interviewed by OI as part of a separate wrongdoing or discrimination investigation). Occasionally, an individual providing testimony will discuss a matter involving potential wrongdoing, but not recognize that he/she has described a potential wrongful act on his/her part or on the part of a company or another individual. In these instances, such matters should be documented, considered as NRC staff-identified potential wrongdoing issues, and submitted to the OAC for consideration by the ARB. Normally, allegation correspondence (acknowledgment, status, or closure letters) is not provided to the individual who provided the testimony in these cases. If responsible NRC staff identify, at any point during its subsequent evaluation, that the person who provided the testimony did view the information he/she provided as an assertion of potential wrongdoing, the person who provided the testimony should be contacted by the OAC or other staff, as assigned, to determine whether he/she would like to receive correspondence from NRC related to the evaluation of the potential

wrongdoing matter. If this occurs, correspondence will be provided to the individual in accordance with allegation process guidance. However, acknowledgment letter and allegation closure timeliness metrics will not apply in this instance.

### **3.2.b.3 ARB Consideration of NRC Staff-Identified Wrongdoing**

Based on the information provided, the ARB, with OI input, will consider whether an OI investigation is to be initiated. If the available information provides specific indication of potential wrongdoing, the ARB will normally recommend that OI initiate an investigation. Manual Section 5.7.a.5(g) provides additional guidance to support NRC staff determination as to whether a concern involves a specific indication of potential wrongdoing. A matter of this type that does not prompt an OI investigation is not considered to be an allegation and should be reflected in AMS as a “non-allegation,” if it had already been entered into the AMS database. In these instances, the matter is returned to responsible technical staff for processing, as deemed appropriate, in accordance with established inspection and program review guidance (e.g., the Reactor Oversight Program).

### **3.2.b.4 Identifying Potential Wrongdoing in Licensee Corrective Action Program Documentation**

With the implementation of the Reactor Oversight Program, it was recognized that NRC inspectors could identify issues involving potential wrongdoing during their review of licensee-generated documentation. In many cases, such items are identified through review of licensee corrective action program (CAP) documents. Such items are to be assessed as NRC staff-identified potential wrongdoing vs. licensee-identified potential wrongdoing because the licensee is not required to notify the NRC of matters involving potential wrongdoing if there is no associated reporting requirement (i.e., if the licensee identifies a matter involving potential wrongdoing (including discrimination) through its internal processes, it is NRC’s expectation that the licensee will appropriately address such matters internally, just as it is NRC’s expectation that the licensee will address other technical issues identified internally that do not involve potential wrongdoing and that do not fall under NRC reportability requirements). If a licensee does choose to formally notify NRC about an issue it believes involves wrongdoing, then it is to be processed as a “licensee-identified” potential wrongdoing allegation (see Manual Section 3.2.c).

## **3.2.c Processing Potential Wrongdoing Matters Identified by the Licensee**

### **3.2.c.1 Licensee-Identified Potential Wrongdoing**

In general, inadequacies discussed during routine conversations between licensee employees acting in their official capacity and NRC staff are not intended to be treated as allegations. However, if the information provided by the licensee employee provides indication of potential wrongdoing, the information should be documented and submitted to the OAC for consideration as an allegation. The OAC (in consultation with responsible staff and OI) is allotted some discretion as to when the matter should be entered as an allegation, depending on the information provided by the licensee and the status of the licensee’s investigation. For example, a licensee, as a matter of courtesy, may inform NRC that an issue potentially involving wrongdoing or discrimination was raised internally and that an internal licensee investigation is being or will be initiated. Entering



such a matter into the allegation process upon receipt could be premature, since the initial NRC action would normally be to wait for the licensee to develop preliminary findings or to complete its investigation. If it is determined that the matter will not initially be entered into the allegation process, the OAC and/or responsible staff will monitor the progress of the licensee's investigation and obtain feedback, as appropriate. Once the licensee's investigation is completed or at any point in which responsible NRC staff find that a specific indication of potential wrongdoing has been articulated or that available information provides sufficient evidence for NRC to conclude that wrongdoing/discrimination may have occurred, the matter should be entered into the allegation process for ARB consideration and discussion with OI regarding the possible initiation of an OI investigation. Responsible staff should also keep in mind that extension of the time to initiate NRC evaluation may impact the NRC statute of limitations related to the imposition of a civil penalty. Manual Section 5.7.a.5(g) provides additional guidance to support NRC staff determination as to whether a concern involves a specific indication of potential wrongdoing.

If upon notifying the NRC, the licensee indicates that its internal investigation has already been completed, responsible staff should attempt to obtain a copy of the licensee's completed investigation of the matter so that all pertinent facts are available for review in determining whether an OI investigation should be initiated. The matter should be documented and submitted to the OAC for entry into the allegation process as a licensee-identified potential wrongdoing matter.

Unlike NRC staff-identified potential wrongdoing matters, when a licensee-identified issue is entered as an allegation because it is determined to be a matter of potential wrongdoing, it will remain characterized as an allegation, regardless of whether or not an OI investigation is opened. The reason for retaining the characterization as an allegation is that, even if an OI investigation is ultimately not initiated, the allegation process provides the staff with a means of documenting how the potential wrongdoing issue was ultimately dispositioned by the licensee, since there may not necessarily be any additional NRC follow up. Allegation correspondence (acknowledgment, status, or closure letters) will not be provided to the licensee staff member who provided the information to NRC. However, if an OI investigation is opened regarding the licensee-identified potential wrongdoing matter, the licensee will be notified of the results of the OI investigation in accordance with NRC Enforcement Program guidance (see Part II, Sections 1.1.5.1 and 1.1.6 of the Enforcement Manual).

### **3.2.c.2            Actions When Licensee Informs NRC about a Completed Investigation into an Internally-Raised Discrimination Concern**

Occasionally, a licensee representative, acting in his or her official capacity, will notify the NRC about an internally-raised assertion of discrimination for engaging in protected activity. Normally, if the licensee has completed an investigation into an internal assertion of discrimination for engaging in protected activity, and chooses to inform the NRC about the results of the internal investigation, the matter should be entered into the allegation process for consideration by the ARB, regardless of the licensee's conclusion. As indicated in Manual Section 3.2.c.1, responsible NRC staff should attempt obtain a copy of the licensee's completed investigation into the matter so that all pertinent facts are available for responsible NRC staff and the ARB to review in determining whether to recommend that an OI investigation be initiated.

Initial ARB discussion should consider how the issue was resolved by the licensee and whether a mutually agreeable settlement between the licensee and the individual was reached and documented. If a settlement was reached, and the licensee has provided the NRC with a copy of the settlement agreement, a copy of the settlement agreement will be provided to OGC where it will be reviewed to determine whether it contains any restrictive language. If the agreement contains no restrictive language, NRC may consider closing the matter with no investigation or enforcement action, similar to the consideration given when settlements are reached via the Early ADR process.

If the licensee and the individual have accomplished resolution of the discrimination matter by other than a documented settlement, the ARB should make an effort to determine whether an OI investigation is necessary based on available information. After reviewing the licensee-generated documentation that describes the circumstances of the discrimination concern and how it was internally resolved, the ARB, with OI input, will determine if it is appropriate for OI to proceed with a full investigation. The offer of Early ADR is not an option in this instance since the individual did not raise the concern directly to NRC and since internal resolution of the discrimination matter has already been achieved.

In those instances in which OI has opened an investigation (which will prompt OI to request an interview with the individual who was purportedly discriminated against), the initial ARB should assign an action to the OI investigator to ask the affected individual if he/she would like to be kept apprised of NRC's progress in reviewing the matter. If the affected individual responds affirmatively, OI will inform the OAC so that the individual will receive a letter acknowledging his/her interest in being provided feedback about NRC's review, status letters approximately every 6 months thereafter, and a closure letter when the NRC evaluation is completed. If the affected individual requests that NRC not pursue an investigation of his/her discrimination concern, the staff may initiate action to close the concern. In this instance, closure documentation to the affected individual, if it is requested, should indicate that NRC is closing the concern based on the affected individual's desire not to participate in an OI investigation, but that NRC would open a new allegation concern in the future if the affected individual reconsiders pursuit of the discrimination matter.

### **3.2.d Processing Allegations Received in Letters to the Commission or the EDO**

#### **3.2.d.1 Allegations Received by the Commission or the EDO**

Staff in the Office of the Secretary of the Commission (SECY) and the Office of the Executive Director for Operations (OEDO) may receive an allegation addressed to the Commission, the EDO, or a deputy executive director. The SECY/EDO staff receiving the allegation shall place a blue "Warning - Sensitive Allegation Material" cover sheet (NRC Form 762) on top of the document to alert recipients that the package involves an allegation. The SECY/EDO staff should alert responsible action office management or OE (if unsure of the responsible action office) of the receipt of an allegation by the senior NRC official. Since alleged identity protection is a consideration in such instances, the SECY/EDO staff should refrain from including or making reference to the received documentation in any information provided either externally (e.g., publicly in the Agency Documents Access and Management System (ADAMS), on the NRC public website) or internally (e.g., Commission E-Reader, EDO Daily Notes) to the NRC staff.

### **3.2.d.2            Actions When Allegation-Related Information in SECY/EDO Ticketed Correspondence is Not Initially Recognized as an Allegation**

If a regional or headquarters office recognizes that ticketed correspondence distributed by SECY or EDO contains an allegation that was not identified before the ticketed correspondence was sent to regional or headquarters office personnel, the regional or headquarters office must promptly notify SECY or EDO staff so that the internally distributed documents can be recalled and information can be retracted from any electronic locations where it is being maintained in a manner contrary to SUNSI guidance (e.g., ADAMS). NRC Form 762 cover sheets will be placed on the packages before redistribution. If the documentation was placed in ADAMS for a period of time, the responsible action office should inform the allogger about the period of time that the information was made publicly available and the potential that the information could have been accessed by individuals external to the NRC during that time frame.

### **3.2.d.3            SECY/EDO Retention of Allegation-Related Documentation**

It is noted that for tracking purposes, SECY and EDO maintain copies of incoming allegation information that was sent directly to the Chairman, the Commissioners, or the EDO. The allegation records retained by SECY/EDO are to be treated on a strictly need-to-know basis and handling and control of the records will be in accordance with MD 8.8, this Manual, and applicable SUNSI guidance.

### **3.2.d.4            Allegation Correspondence/Closure Documentation Involving SECY/EDO Ticketed Correspondence**

A common question in such cases involves whether to provide separate responses to the allegation and to the letter that the allogger initially sent to the Chairman, a Commissioner or the EDO. Generally, if one letter can be written that is responsive to both the allegation concern(s) and to points made in the allogger's letter to the Chairman, a Commissioner or the EDO, that action is preferable to writing two letters containing repetitive information. This can be best accomplished if the SECY/EDO agree that the signature of the Chairman/Commissioner/EDO/Deputy Executive Director for Operations (DEDO) on the response is not necessary, and that the signature authority can be delegated to those who would normally sign allegation-related correspondence or others, as designated.

In some cases, the Chairman/Commissioner/EDO/DEDO will indicate that he/she prefers to sign correspondence acknowledging and/or closing the allegation. In that instance, additional coordination is required to assure that appropriate correspondence is developed. If a letter to be signed by the Chairman/Commissioner/EDO/DEDO can be written so that it addresses all allegation process correspondence requirements in terms of content, then only one letter should be sent. However, if the Chairman/Commissioner/EDO/DEDO does not wish to include in his/her correspondence all of the information normally provided in allegation process correspondence (e.g., identity protection information, DOL information, ADR offer (if appropriate)), additional correspondence would need to be sent to the allogger containing the necessary information about the allegation program.

Regarding the timeliness of response to allegations contained in letters to the Chairman,

a Commissioner or the EDO/DEDO, the best scenario is to capture the issue in the allegation program as soon as possible and gain acceptance from SECY/EDO staff that it is acceptable to provide feedback in accordance with the existing allegation program timeliness goals for acknowledgment, status, and closure letters. In all cases, since the date of allegation receipt is the date the allegation is received by the Chairman, a Commissioner or the EDO, it is important to maintain all documentation related to the ticketed correspondence in the allegation file so that any issues related to response timeliness or letter content are clearly explained.

Internal distribution of the response to ticketed correspondence (i.e., to close the ticket) that also involves an allegation should be limited (e.g., SECY, EDO, and others with a need-to-know) and the information provided should be redacted to exclude allegor-identifying information. The AAA or an OAC should be consulted regarding the appropriate individuals or offices to be placed on distribution.

### **3.2.e Processing Allegations Received by the OIG**

The guidance in MD 8.8 and this Manual applies to all NRC employees except employees of OIG. However, it is recognized that OIG does occasionally receive issues (usually via the OIG Hotline) that should be characterized and processed as allegations. While the OIG Hotline (1-800-233-3497) is intended for use as a means for individuals to report misconduct, waste, fraud, and potential wrongdoing on the part of NRC employees or NRC contractors, some individuals use the OIG Hotline to report items that are not under OIG purview, including allegations. OIG may also receive allegations electronically through a common portal on the OIG portion of the external NRC website at:

<http://www.nrc.gov/insp-gen/complaint.html>

OIG has internal procedures in place to ensure that allegations received by that office are transferred to the technical staff for processing. When OIG receives an issue that it feels may constitute an allegation, OIG will forward the issue to staff in OE responsible for allegation program oversight. OE then forwards the allegation information to the appropriate regional or headquarters office for processing in accordance with MD 8.8 and this Manual. In transferring these matters to the technical staff, OIG may occasionally request that the staff inform OIG as to the final disposition of the allegation.

Manual Section 5.1.a.2 discusses the establishment of the allegation receipt date for allegations transferred to the technical staff by OIG.

### **3.2.f Receipt of Allegations by Electronic Mail**

#### **3.2.f.1 NRC Actions in Response to an Allegation Received by E-Mail**

If an allegation is submitted via e-mail and the allegor does not object to being contacted again by NRC, the OAC or designated staff shall inform the allegor via telephone or e-mail response that he/she will be contacted again by NRC, normally within 30 days, either by letter, e-mail, telephone, or a personal visit, as agreed upon, at which time the NRC will acknowledge its receipt and understanding of the allegor's concerns. If a postal address is provided in the initial e-mail, or is ultimately obtained through additional contacts with the allegor, standard allegation process written correspondence

(acknowledgment, status, and closure letters) is the preferred means of interaction with the alleged. All contacts with the alleged should be documented in the allegation file. When an allegation is received via e-mail and the e-mail does not include a phone number and/or a postal address, it is acceptable to correspond with an alleged via e-mail, provided the alleged has confirmed by phone, e-mail, or other means that he/she authored the e-mail and requests that NRC correspond with him/her via e-mail. For this circumstance, a sample e-mail response is provided in Manual Section 3.2.f.2 below. If the alleged does not confirm to the receiving office that he/she submitted the allegation, the allegation source should be entered into the AMS as "anonymous." If the alleged's initial e-mail message includes a phone number and/or a postal address, and the alleged does not indicate an objection to being contacted again by the NRC, it is not necessary to include the precautionary wording about internet security noted in Manual Section 3.2.f.2 in an e-mail response to the alleged.

### **3.2.f.2 Response to Allegations Received by E-Mail When Other Contact Information is Not Available**

When an allegation is received via e-mail and the e-mail does not include a phone number and/or a postal address, the following language should be used in the initial e-mail response:

"The NRC is in receipt of your e-mail dated \_\_\_\_\_. We are reviewing the information that you provided to determine what NRC follow-up activities will be conducted. If you would like the NRC to provide you with the results of our review, please contact (the appropriate Office Allegation Coordinator) at 1-800-xxx-xxxx. If you prefer a response via e-mail, you may confirm that preference by contacting us by telephone, responding to this e-mail, or other means (facsimile, etc.). Please be advised that we cannot protect the information during transmission on the Internet and there is a possibility that someone else could read our response while it is in transmission to you. If you do not confirm your desire to communicate via the Internet by contacting us by telephone or responding to this e-mail, we will not transmit any additional information to you via the internet.

The NRC brochure "Reporting Safety Concerns to the NRC" contains information that you may find helpful in understanding our process for review of safety concerns. It includes an important discussion of our identity protection procedures and limitations. The brochure can be found on the NRC public web site at the following link:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0240/>

### **3.2.f.3 Response to Allegor Request for NRC Correspondence by E-Mail When the Request is Not Received by E-Mail**

If an alleged's request for NRC to correspond via e-mail is made in any way other than e-mail (e.g. during a conversation or indicated in a written letter), the OAC or designated staff member shall verify the accuracy of the e-mail address and ensure that the alleged understands internet security risks before transmitting alleged identifying information or providing the web link to NRC Brochure NUREG/BR-0240. The following language should be used in the initial e-mail response:

"The NRC understands that you have requested correspondence via e-mail. To ensure that this information is correct, please confirm by contacting us by telephone, responding to this e-mail, or other means (facsimile, etc.). Please be advised that the NRC cannot protect the information during transmission on the internet and there is a possibility that someone else could read our response while it is in transmission to you. If you do not confirm your desire to communicate via the internet by contacting us by telephone or responding to this e-mail, we will not transmit any additional information to you via the internet."

#### **3.2.f.4 Suggested Format of Allegation Correspondence Provided by E-Mail**

For allegeders requesting contact via e-mail, in order to promote consistency of allegation process correspondence, it is suggested that acknowledgment, status and closure letters be prepared as prescribed for written allegation program correspondence, and then included as an attachment to the e-mail message to the allegeder.

#### **3.2.f.5 Handling E-mail Request to Verify Information at an Alternate Website**

On occasion, an allegation received by e-mail will provide a link to an alternate website and indicate that certain information (such as a signature) may be verified by clicking on the link. The receiving employee should not click on the link, due to the potential that the link may contain computer malware. In such instances, the NRC Computer Security Office (CSO) should be contacted at [CS\\_IRT@nrc.gov](mailto:CS_IRT@nrc.gov) and informed about the request in the allegeder's e-mail. Do not forward the e-mail to [CS\\_IRT@nrc.gov](mailto:CS_IRT@nrc.gov) until subsequently requested to do so by CSO. CSO will determine whether the allegeder's e-mail and its attachments are free of malware and whether the link can be opened.

### **3.2.g Allegations Received via the NRC Public Website**

#### **3.2.g.1 NRC Public Website Points of Contact**

Allegations and other concerns may be submitted directly to NRC at the following e-mail address: [allegation@nrc.gov](mailto:allegation@nrc.gov). The web link containing this e-mail address is located on the public portion of the NRC website at:

<http://www.nrc.gov/about-nrc/regulatory/allegations/safety-concern.html>

In addition to receiving allegations via [allegation@nrc.gov](mailto:allegation@nrc.gov), and via the OIG portion of the NRC public website as discussed in Manual Section 3.2.e., other potential allegation information may be submitted to the NRC public website via comment/question entry forms that are monitored by various NRC offices. These web contact links are located at the following web address:

<http://www.nrc.gov/about-nrc/contactus/contact-pages.html>

#### **3.2.g.2 Providing Allegations Received on the NRC Public Website to the Responsible Action Office**

Concerns received via the [allegation@nrc.gov](mailto:allegation@nrc.gov) e-mail address are monitored by OE staff

and forwarded to the appropriate regional or headquarters office for processing as allegations or other issues, as appropriate. If allegation staff in OE are not available to monitor the e-mail received at [allegation@nrc.gov](mailto:allegation@nrc.gov), OE will solicit the support of other regional and headquarters office allegation staff who have been given rights to view the incoming information on [allegation@nrc.gov](mailto:allegation@nrc.gov) by e-mail proxy. E-mails forwarded from [allegation@nrc.gov](mailto:allegation@nrc.gov) should be included as attachments rather than within a forwarded message. This will allow the action office to respond directly to the alleged's original e-mail message. Concerns received by other NRC program offices via other comment/question entry forms on the NRC external website are monitored by the headquarters offices responsible for those subject matter areas and dispositioned accordingly, including the forwarding of potential allegation issues to OE or to the affected regional or headquarters office. Once an allegation received in this manner is forwarded to the proper action office, it is to be handled as described in Manual Section 3.2.f., "Receipt of Allegations by Electronic Mail."

### **3.2.h Handling Allegations That May Impact Licensing or Certification Decisions or Allegations That Are Filed Late**

#### **3.2.h.1 "Late-Filed" Allegations**

*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. (8.8 Handbook, Section II.P.1)*

If it appears that the volume of open allegations may prevent their full consideration because of the time frame of the licensing or certification schedule or operational decision, the action office will screen the allegations for materiality and assign priorities to the allegations that must be resolved before the licensing or certification action can be taken or operational decision can be made. The following screening criteria are to be considered:

- The likelihood that the allegation is correct, taking into consideration the knowledge, experience, and expertise of the alleged and the extent of credible contrary information or lack thereof,
- The materiality of the allegation, if current, and
- The need for prompt consideration of the allegation because of significant or immediate safety concerns and public interest in avoiding undue delay.

#### **3.2.h.2 Notifications regarding "Late-Filed" Allegations**

*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. (8.8 Handbook, Section II.P.2)*

The action office will determine whether the allegation involves a matter previously considered during the course of the facility's licensing, certification, or resumption of operation review or during an evaluation of prior allegations. If found to contain information new and potentially material to the licensing or certification decision or to a decision to resume operation, the allegation will be further evaluated by the action office. Documentation of the action office's conclusions should focus only on whether the allegations provide new information that is material to the licensing or certification decision or to a decision to resume operation. The bases for the action office's determination and conclusions on the late-filed allegations must be documented at the time the staff reaches these conclusions.

### **3.2.h.3 Assessment of Safety Significance of "Late-Filed" Allegations**

*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). (8.8 Handbook, Section II.P.3)*

### **3.2.h.4 Determining the Resolution of a Substantiated Material Allegation**

As indicated in Manual Section 3.2.h.1, allegations that are material to the staff's findings for a pending licensing, certification, or operational decision must be evaluated by the NRC and, if substantiated, resolved before the NRC can issue the license or certificate or approve operations. If the NRC determines the incoming allegation to be material, then the staff should expedite efforts to determine whether the allegation itself is true or, if such a determination cannot be made quickly, the likelihood that the allegation is true, considering the knowledge, experience, and expertise of the allegor, the knowledge of the NRC staff members familiar with the matter in question, and the extent of credible information contributing or contrary to the allegation assertion. If the staff determines either that the allegation has been substantiated or that the likelihood the allegation will be substantiated is high, the staff must render a conclusion about the corrective actions planned and taken to resolve the inadequacy or potential inadequacies identified. If the staff determines that the allegation concern, if not fully corrected, would have potential immediate impact on public health and safety, then it should render a conclusion that the corrective actions must be completed and that the pending agency decision will be delayed until the corrective actions are completed. If the allegation is material to the pending agency decision but the completion of



corrective actions does not have an immediate impact on public health and safety, the staff must evaluate the proposed corrective actions to determine whether they will appropriately resolve the substantiated allegation concern, whether extent-of-condition has been appropriately considered, and whether the estimated times for completion of the corrective actions are reasonable and commensurate with the safety significance of the concern. If the staff determines the corrective actions proposed or in progress to be acceptable, the staff may conclude that the NRC may issue the license or certificate or that operations may resume without restriction. Otherwise, it may be appropriate to consider attaching a restricting condition to the license or certificate or to impose an operational restriction.

### **3.2.i Allegations Provided to the NRC Headquarters Operations Officer (HOO)**

#### **3.2.i.1 Receipt of Allegation-Related Calls by the HOO**

Occasionally, the NRC Headquarters Operations Center at 301-816-5100 will be contacted by an allogger, either directly or when a call to an OAC via the NRC Safety Hotline (1-800-695-7403) is transferred to the HOO. The NRC Safety Hotline automatically transfers calls to the HOO after hours or during office hours when the OAC does not answer the phone. Since telephone calls to the NRC Headquarters Operations Center are recorded, the HOO will send an electronic version of the recorded telephone call (.wav file) to the responsible action office OAC and to allegation program staff in OE. This usually occurs within 24 hours of the HOO's receipt of the telephone call.

#### **3.2.i.2 Processing Allegation-Related Information Received by the HOO**

The OAC listens to the telephone call recorded by the HOO, documents pertinent information (e.g., caller identifying/contact information, affected facility information, the caller's stated concerns, comments, or opinions, etc.), and processes the issue(s) as appropriate. If the issue(s) provided by the caller represent(s) an allegation, the OAC will initiate appropriate allegation receipt documentation and either enter the allegation into the AMS database, or transfer it to an appropriate regional or headquarters office, if the HOO initially forwarded the call information to the incorrect regional or headquarters office.

#### **3.2.i.3 Re-Contacting the Allegor to Obtain Additional Information Related to HOO Calls**

If additional information is needed to clarify the allegation concern(s), the OAC or other assigned staff will re-contact the allegor to obtain the additional information, as would be done with any received allegation lacking specific information.

#### **3.2.i.4 Handling Non-Allegation Issues Received by the HOO**

If the issues discussed by the caller do not represent an allegation, the receiving OAC will forward the information as appropriate. If forwarded internal to NRC, the office to which the information is forwarded will be responsible for any additional correspondence with the caller. If the entity to which the information is to be referred is external to NRC (e.g., State agency, another federal agency, local law enforcement) the OAC, or other assigned staff, should facilitate the provision of information to the caller that will enable

the caller to contact the external entity. NRC may also consider forwarding the information directly to the external entity, if the issue appears to involve an imminent threat to public health and safety or otherwise be of significant concern. If this path is chosen, NRC should make every effort to inform the caller that such a referral was made.

It is noted that .wav files forwarded by the HOO constitute working files for NRC recordkeeping purposes and therefore should be summarized or transcribed as appropriate. After the allegation is summarized or transcribed, it is not necessary to retain an electronic copy of the .wav file.

### **3.2.i.5 Allegation Calls to the HOO During Normal Work Hours**

If an alleged calls the HOO during normal work hours when it is known that the associated regional/headquarters office is open and functioning (e.g., not closed due to weather conditions), the HOO will attempt to call the responsible OAC and transfer the call. If the OAC is not reachable, the HOO will take the allegation and forward the recorded telephone call to the responsible action office OAC and the allegation program staff in OE as indicated in Manual Section 3.2.i.1.

## **3.2.j Allegations Provided by Media Personnel or Identified in Media Outlets**

### **3.2.j.1 Allegations in the Media**

It is not NRC practice to monitor the news media or internet for allegations. However, if NRC is made aware of potential allegation information in the media either through direct contact with a member of the media, or through NRC staff identification of a potential allegation in information provided by the media (e.g., in a newspaper, on the radio, on the Internet), the information should be processed as an allegation. This Manual section describes items to be considered in determining whether to treat a news reporter or other media outlet representative as an alleged, whether to treat the actual source of the information (if known) as the alleged, or whether to treat the issue as an allegation without a specific source.

When an NRC staff member identifies a concern in the media that meets the definition of an allegation, it is often difficult to determine the source of the information and who, if anyone, should receive correspondence related to the allegation. In these instances, the allegation may initially be treated as not having a specific source, unless the NRC requires additional information and seeks out and identifies the information source. The primary areas to consider in determining how to evaluate such an allegation and whether or not correspondence will be provided involve: a) how the information is received; b) how much is known about the source of the information; and c) the level of detail in the information provided.

### **3.2.j.2 Information Received Directly from Media Personnel**

Reporters contacting the NRC will have varying amounts of information related to an allegation, depending on how the reporter was made aware of the concern, how much detail about the concern was provided to or has been gathered by the reporter, and the current status of the reporter's investigation. The reporter may indicate that he/she is

preparing an article, that he/she is ready to publish an article, that an article has already been published, or that he/she is simply looking for facts related to a concern involving an NRC-regulated facility. As a general rule, an NRC Public Affairs representative should be involved in all contacts with news media personnel. If correspondence with a reporter is necessitated, an NRC Public Affairs representative should either develop or be on concurrence for the correspondence.

With regard to the source of the information, the reporter may indicate that the information was provided by a known individual, that it was provided by a known, but confidential source, that it was provided anonymously, or that it is the result of the reporter's own research. Regarding the level of detail provided by the reporter, the information will either be of sufficient detail for NRC staff to evaluate the concern, or will lack sufficient detail to enable the NRC to do an informed review, such that NRC review without additional information would be difficult or is not possible.

If the reporter provides information that meets the definition of an allegation, is of sufficient detail to enable NRC evaluation, and comes from an anonymous or confidential source or by way of the reporter's own research, the normal allegation process should be followed, including correspondence with the reporter as the alleged. If the reporter does not supply information in sufficient detail to enable an NRC evaluation, an NRC Public Affairs representative should re-contact the reporter and ask for more detail, with support from the technical staff. If sufficient additional detail is provided to enable an informed NRC review as a result of this additional contact with the reporter, the staff should evaluate the allegation, as appropriate. If sufficient additional detail is not provided, the NRC Public Affairs representative may inform the reporter that NRC has insufficient information to enable a review, and intends to provide no further feedback. In this instance, the allegation would then be closed based on a lack of sufficient detail.

While it is unlikely that the reporter would provide the name of an unnamed or confidential source, the reporter should be informed that it is NRC's preference to discuss the concern directly with the information source, if possible. If the reporter refuses to provide NRC with the name of an unnamed or confidential source, NRC may suggest the type of additional information that is being sought and ask the reporter if he/she would be willing to contact the unnamed or confidential source to obtain the additional information. If the reporter initially provides the name of his/her source, or provides the name of a confidential source in response to an NRC request, NRC staff should attempt to locate/contact the named source and ask if he/she would like to receive correspondence from the NRC. If this occurs, the NRC Public Affairs representative should be asked to inform the reporter that it is the NRC's preference to deal directly with the source of the information, but that the reporter may be informed of the results of NRC's evaluation at the completion of our review, if this is acceptable to the named source. If the named source cannot be located/contacted, allegation correspondence should be provided to the reporter.

If NRC is successful in contacting the named source and is able to obtain sufficient information from the named source to enable NRC review, the normal allegation process should be followed, with the named source as the alleged. If the named source does not provide sufficient detail to enable an informed NRC review, the allegation may be closed based on a lack of sufficient detail.

### **3.2.j.3 Information Identified in Media Outlets**

If an NRC staff member is made aware of a potential allegation through review of information on a media outlet (e.g., TV, radio, newspaper article, Internet blog), if sufficient detail is provided to enable an informed NRC review, and if the name of the actual source of the information is not provided, the information may be treated as not having a specific source (i.e., “anonymous”) and processed accordingly. However, if initially, or at any time during the evaluation of the allegation, the NRC staff believes it is necessary to obtain additional detail related to the allegation concern either to initiate or to further its evaluation, an attempt should be made to contact the media outlet to obtain additional information. For example, if a print article included the name of a reporter, NRC staff may choose to request an NRC Public Affairs representative (with NRC technical staff support) to contact the reporter with questions. If additional detail is provided to enable NRC to initiate a review or continue an ongoing review, the reporter should be asked if he/she wants correspondence from the NRC. If so, allegation process correspondence should then be developed, with the reporter as the allegor. Since the concern was provided in a media article, the reporter should be informed that NRC will not be able to protect his/her identity as the source of the concern. If additional specific information cannot be obtained from the reporter, the reporter should be informed that there is insufficient information for NRC review, and that the NRC intends to provide no further feedback. In this instance, the allegation would be closed based on a lack of sufficient detail.

If the media report/article/blog indicated that the information was provided by an unnamed or confidential source, and the NRC staff believes it is necessary to make an effort to contact the actual source of the information, the staff should attempt to obtain contact information from the media outlet. If appropriate, NRC staff may choose to request the support of an NRC Public Affairs representative in obtaining this information. If the media outlet contact agrees to provide the name of the information source, NRC staff should attempt to locate/contact the named source and ask if he/she would like to receive allegation correspondence from the NRC. If this occurs, the media outlet contact should be informed that it is the NRC’s preference to deal directly with the source of the information, but that the media outlet contact may be informed of the results of NRC’s evaluation at the completion of our review, if this is acceptable to the named source.

If the media outlet contact refuses to provide NRC with the name of an unnamed or confidential source, NRC may suggest the type of additional information that is being sought and ask the media outlet contact if he/she would be willing to contact the unnamed or confidential source to obtain the additional information. If the name of the information source is ultimately provided and if NRC is successful in contacting the named source and obtaining sufficient information to enable an informed NRC review, the normal allegation process should be followed, with the named source as the allegor. If the named source does not provide additional detail or if the named source cannot be located/contacted, NRC may either continue with its evaluation of the allegation based on available information or close the allegation based on a lack of sufficient detail. It is noted that OI also has the authority to obtain information through the issuance of a subpoena.

If the information identified on the media outlet contains the name of the information source, responsible NRC staff will attempt to contact/locate the named source and ask if he/she wants NRC correspondence. If NRC is able to contact the named source, and

the named source confirms that he/she is the information source, the named source will be established as the alleged and allegation process correspondence should be developed accordingly. Since the concern and the source's name were provided in a media article, the named source should be informed that NRC will not be able to protect his/her identity as the source of the concern.

If the named source cannot be contacted, the concern(s) should be treated as an anonymous allegation and processed in that manner. If responsible NRC staff determine that additional information is needed in order to pursue the allegation but are unsuccessful in contacting the named source, the media outlet should be contacted in an effort to obtain contact information for the named source. If the media outlet cannot provide contact information for the named source but provides sufficient additional detail to enable an informed NRC review, the media outlet representative should be asked if he/she wants correspondence from the NRC, and if so, the staff will develop allegation process correspondence, with the media outlet representative as the alleged.

If the media outlet representative does not want correspondence, NRC may document allegation closure via a memorandum to the allegation file. If the media outlet representative cannot provide contact information for the named source, and cannot provide sufficient additional detail to enable an informed NRC review, the media outlet representative should be informed that there is insufficient information for NRC review, and that the NRC intends to provide no further feedback.

### **3.2.k Allegations Provided by State, Local, or Other Federal Government Officials**

This section provides guidance as to whether correspondence should be provided to State, Local, or other Federal Government officials, acting in their official capacity, who provide allegation information to the NRC. This section also addresses the content of allegation process correspondence to these individuals, if written feedback from NRC is requested.

#### **3.2.k.1 Determining Whether Written Feedback to a State, Local, or Federal Government Official is Necessary**

When a State, Local, or other Federal Government official, acting in their official capacity, provides allegation information to NRC, the action office OAC or other assigned staff should contact the official to determine if he/she wants correspondence from the NRC regarding the referred information. In many situations, these officials will request no additional feedback from NRC, indicating that the matter being referred to NRC is outside of the other agency's regulatory jurisdiction, and as such, that additional feedback from NRC is unnecessary. If feedback is not requested, NRC will honor that request and process the allegation without providing additional feedback to the State, Local, or other Federal Government official. However, the NRC may re-contact the official at any time to discuss the matter if it is determined that additional information is needed.

If the official requests feedback from the NRC, the contacting NRC staff member will ascertain the preferred means of contact. Often, the official will request a courtesy telephone call or an e-mail from NRC after the matter is closed as opposed to written correspondence. If the official requests written feedback, the contacting NRC staff

member should ascertain if the official would like to receive periodic feedback, as established by the normal allegation process, or if a letter from NRC after the matter is closed is sufficient.

### **3.2.k.2 Content of Written Correspondence to State, Local, or Federal Government Official**

Regarding the content of written correspondence to State, Local, and other Federal Government officials in these circumstances, since these individuals are providing this information to NRC while acting in their official capacity, it is not appropriate to include the standard NRC allegation process discussion about alleged identity protection or filing a discrimination complaint. These individuals are not seeking identity protection from or discretion by NRC, nor do they have any interest in filing a discrimination complaint. It is acceptable to write abbreviated correspondence to these individuals, omitting much of the standard allegation process correspondence “boiler-plate.” However, if the State, Local, or other Federal Government official indicates that the information being forwarded to NRC was provided to their agency by another individual, the correspondence to the official should emphasize that it is NRC policy to protect the identities of individuals who raise safety concerns, where appropriate and possible, to preclude retaliation by employers or stigmatization by coworkers or members of the public, and that the official’s cooperation is needed in recognizing that sensitivity.

## **3.2.l Allegations Raised in an NRC Public Meeting**

### **3.2.l.1 Public Meeting Definition**

An NRC public meeting is a planned, formal encounter open to public observation between one or more NRC staff members and one or more external stakeholders physically present at a single meeting site, with the expressed intent of discussing substantive issues that are directly associated with the NRC's regulatory and safety responsibilities. The term “public meeting” is traditionally associated with the Commission's efforts to provide information to the public and to seek public views on various generic and site-specific issues. These meetings are open to a wide variety of individuals with an interest in the subject matter and a willingness to follow the ground rules established for the conduct of the meeting. [This discussion is not intended to refer to “hearings” associated with adjudicatory proceedings under the Commission's Rules of Practice in 10 CFR Part 2. The term “hearing” relates primarily to Commission adjudicatory proceedings on various types of licenses and licensing actions (e.g., initial issuance of a license, amendment of an existing license, renewal of a license). Specific requirements regarding participation in and the conduct of hearings are provided in 10 CFR Part 2.]

### **3.2.l.2 Receipt of an Allegation During a Public Meeting**

On occasion, an allegation will be received during an NRC public meeting. If the allegation is received in a private conversation between the concerned individual and an NRC staff member, the allegation will be processed per standard practice, with the alleged being afforded standard allegation process identity protection. More often however, a concern raised at an NRC public meeting is presented in an open forum, where all of the meeting attendees are made aware of the concern because the

concerned individual provides his/her concern verbally. The concerned individual may or may not give his/her name when providing the concern. If a concern received in this manner is determined to be an allegation, and the allegor provided his/her name when stating the concern, the allegor should be informed by NRC (in a separate, private conversation) that while NRC will attempt to protect the allegor's identity with regard to the concerns raised, to the extent possible, doing so may be difficult since the concern(s) was/were presented in an open forum. If the allegor did not provide his/her name when stating the concern, he/she may assert during this separate, private conversation with NRC, that since he/she did not associate his/her name with the concern, and knew no one else attending the meeting, identity protection can be achieved. NRC will consider the allegor's input and other circumstances relating to how the concern was presented at the meeting, on a case-by-case basis, in its efforts to protect the allegor's identity.

If a concern is submitted in writing as a comment or question which is then read aloud to all of the meeting attendees by a meeting proctor, and the concern is determined to be an allegation, the allegor will be afforded standard allegation process identity protection, provided the allegor's identity has not been divulged to the meeting attendees. **[Note:** Because of the increased potential for allegation receipt at a public meeting, NRC staff attending a public meeting should refrain from providing information associating an allegor with a stated concern to the extent possible, unless meeting ground rules are such that an individual is required to identify himself/herself as the source of a comment or concern, regardless of whether it is provided verbally or in writing.]

### **3.2.1.3 Considering Wider Distribution of the Response to an Allegation Raised During a Public Meeting**

Since such allegations are raised publicly, the ARB will consider the possibility of a wider distribution for the response to the allegation. The ARB should make this decision in coordination with the AAA and after discussion with the allegor, considering the circumstances under which the concern was raised and whether the needs of the agency and the public are better served by making the response public. If the ARB determines that a wider distribution of the response to the allegation is appropriate (e.g., by posting the response in ADAMS, discussing it in a press release, including it in the "For the Record" page on NRC's public website, discussing it in a blog on the NRC public website, adding a section to an NRC inspection report, etc.), the allegor is to be informed of NRC's intent to do so. Additionally, the document effecting public distribution of the allegation response should not include the allegor's name or any other identifying information. To ensure that such action does not lead the public to assume that all allegation concerns are or will be made public, the document shall clearly indicate the reason for discussing the allegation publicly, including allowances made by the allegor, and must highlight that this course of action is not standard. A record of the discussion with the allegor regarding more public dissemination of the allegation-related activities shall be documented in the allegation file. The ARB shall consider any objections raised by the allegor.

If the allegor expresses an objection to public distribution of the allegation response, the objection should be considered by responsible staff and the ARB. However, given the public manner in which the allegation was provided, responsible staff and the ARB may proceed with wider distribution of the allegation response, if it is determined that the needs of the agency and the public outweigh the allegor's objection.

### **3.2.m 10 CFR 2.206 Petitions and Allegations Forwarded to Staff via the 10 CFR 2.206 Petition Process**

#### **3.2.m.1 10 CFR 2.206 Petitions**

Section 2.206 under 10 CFR Part 2, Subpart B (hereafter referred to as “2.206”) indicates that any person may file a request to institute a proceeding pursuant to 10 CFR 2.202 to modify, suspend, or revoke a license, or for any other action as may be proper. The request must specify the action requested and set forth the facts that constitute the basis for the request. The EDO will assign the request to a responsible NRC headquarters office director for appropriate action. Within a reasonable time after the request has been received, the assigned headquarters office director will either institute the requested proceeding or provide a written response to the person who made the request indicating that no proceeding will be instituted in whole or in part, with respect to the request, and the reasons for the decision.

#### **3.2.m.2 Acceptance/Rejection Criteria for 2.206 Petition Processing**

Although 2.206 petitions have attributes of an allegation (i.e., they are assertions of impropriety or inadequacy associated with NRC-regulated activity), concerns that are ultimately processed under 2.206 are not processed as allegations since they are being addressed in a separate, formal, public process. Guidance for submitting 2.206 petitions is provided in MD 8.11, “Review Process for 10 CFR 2.206 Petitions,” and on the NRC public website at: <http://www.nrc.gov/about-nrc/regulatory/enforcement/petition.html#submit2206>. Part III, Section (C), “Criteria for Petition Evaluation,” of the MD 8.11 Handbook provides useful guidance with regard to whether a submitted concern will be accepted or rejected for 2.206 processing.

As noted above, not all items that are submitted as 2.206 petition requests are ultimately processed under 10 CFR 2.206. For this reason, staff should be aware of the attributes of items that would be rejected for 2.206 processing so that such issues are not forwarded. The following points pertain:

- 10 CFR 2.206 indicates that a petition must be filed either by hand delivery, mail, telegram, e-mail, or on a compact disc. MD 8.11 specifically indicates that a 2.206 petition is a written request.
- 10 CFR 2.206 specifies that the request must be addressed to the EDO.
- If an individual calls and makes a 2.206-like request, provides specific supporting facts, and is not concerned about identity protection, but the submitted issue does not meet the definition of an allegation, the individual should be informed about the 2.206 process and it should be suggested that he/she submit the potential 2.206 concern in writing to the EDO.
- Since an anonymous caller cannot be re-contacted to suggest that he/she submit an apparent 2.206 petition in writing, or to provide any subsequent feedback to the caller about the concern, anonymous concerns should not be submitted to the 2.206



process. Additionally, if in the initial processing of a potential 2.206 petition, a petitioner whose identity is known does not agree to the issue being made public and the disclosure of his/her identity, the petitioner is to be informed that the 2.206 process cannot provide identity protection and that the concern will be forwarded to another process for review (e.g., the allegation process).

- If a petition contains information regarding alleged wrongdoing, the wrongdoing issue (or relevant part of the petition, if only part of the petition involves alleged wrongdoing) will be processed as an allegation. If the 2.206 request containing the alleged wrongdoing concern has already been made public in ADAMS, the alleged should be provided feedback that the NRC will not be able to protect his/her identity as the source of the wrongdoing allegation.
- A 2.206 request must specify the action requested and set forth the specific facts supporting the request for NRC to take enforcement-related action. Unsupported assertions of safety problems or general opposition to nuclear power are not considered sufficient grounds for action under 2.206. MD 8.11 indicates that such general requests will be treated either as allegations or routine correspondence.

This item is particularly relevant to situations involving natural phenomena and their effect on operating reactors (examples, plants potentially affected by the path of an oncoming hurricane, plants affected by the 2011 Midwest flooding events). In such situations, the agency will receive multiple contacts from external sources requesting that NRC take action to shut down the reactors that are affected or may be affected by the event. In a large majority of these contacts, the concerned individual is not asserting a specific safety problem, but a concern that the natural phenomenon may cause a safety problem. In most cases, these matters would not be processed as 2.206 petitions or as allegations. The concerned individual should be informed that the NRC is aware of the ongoing situation, that preparatory and compensatory actions are being taken in response to the event, and that NRC is continuing to follow the licensee's actions. If one or more of the reactor facilities affected by the event has already been shut down, the concerned individual can be so informed. Since the majority of such matters will not be processed as allegations, it is not imperative that the OAC be the point of contact for the concerned individual. In fact, for situations in which multiple contacts are being received to the extent that involving allegation program staff would adversely affect their ability to implement the allegation program, consideration should be given to soliciting support from other regional or headquarters staff (e.g., responsible technical staff, OPA/Regional Public Affairs representatives).

### **3.2.m.3 Concerns Forwarded to the Staff After Rejection from 2.206 Process**

In those instances when the assigned program office director advises the requestor that no 2.206 proceeding will be instituted regarding a particular concern, the concern is forwarded to the staff for processing, as appropriate. If such a concern meets the definition of an allegation, it shall be entered into the allegation process by the appropriate action office. The concern is not considered an allegation until after the requestor has received formal feedback from NRC indicating that his/her concern will not be evaluated under the 2.206 process. If a concern that is not processed under 2.206 is determined to be an allegation, the allegation receipt date shall be the date of the letter informing the petitioner (now alleged) that the matter is not being evaluated under 2.206.

**3.2.m.4 Identity Protection Considerations for Processing Allegation Concerns Related to Matters Rejected by the 2.206 Process**

When a concern is forwarded to the allegation process after being rejected by the 2.206 process, the allegor should normally be provided feedback that the NRC will not be able to protect his/her identity with regard to the allegation, since the concern was initially raised and responded to in a public manner. This assumes that the incoming 2.206 petition request and/or the agency's response to that request have already been placed in ADAMS. If this documentation has not been placed in ADAMS, it would be acceptable in such circumstances to continue with efforts to protect the allegor's identity.

**3.2.m.5 Closure of an Allegation Later Submitted to and Accepted for Processing Under 2.206**

If an allegor submits a 10 CFR 2.206 petition concerning the same issue(s) as his/her previously submitted allegation, and the issue is accepted for evaluation under 10 CFR 2.206, the concerned individual is to be informed that the pending allegation will be closed and that the concern(s) will be evaluated and responded to pursuant to 10 CFR 2.206.

**3.2.m.6 2.206 Petition Related to a Similar or Identical Existing Allegation – Exclusion from Closure Timeliness Metrics**

If a 10 CFR 2.206 petition is submitted on a matter similar or identical to an existing allegation and is ultimately accepted for 2.206 processing, the NRC will normally not be able to respond to the allegor for the previous allegation until evaluation of the related 10 CFR 2.206 petition is completed. For this reason, such an allegation would not be subject to allegation process closure timeliness metrics.

**3.2.n Allegation-Related Information Requests from and Outreach to Members of Congress or State Officials**

**3.2.n.1 Responding to Requests for Allegation-Related Information from Members of Congress or State Officials**

NRC is occasionally asked to provide information regarding allegations that may involve a constituent of a member of Congress or a State official. NRC generally is responsive to this type of request, although it is also important that the Congressman/Senator or State official is made aware of the fact that the information being provided is sensitive allegation-related material and warrants sensitive handling, including measures to protect the identity of the allegor, as appropriate. Further, in some circumstances the agency may seek to work with the requester to find mutually acceptable ways of providing investigatory information without compromising the independence of the agency's investigation efforts.

The following language should be used in all responses to members of Congress or State officials when the subject of their request concerns information related to an allegation: "Please also note that this information is being evaluated in our allegation program and identifies an allegor. NRC policy requires us to protect an allegor's identity

with regard to the concern raised to the extent possible. This policy helps to assure all individuals who may wish to report safety concerns to NRC that they may do so without being unnecessarily subjected to adverse consequences that might follow their being publicly identified as the source of the concerns. We request your assistance in recognizing the sensitivity of this information by protecting the allegor's identity, including their job title and other identifying information."

The development of such correspondence should be coordinated with the Office of Congressional Affairs (OCA) and/or NRC State liaison personnel.

### **3.2.n.2      Considering Outreach to Members of Congress or State Officials**

NRC will, on rare occasion, receive a request from a Member of Congress or a State official to be kept informed about allegation-related activities that are pertinent to the missions of both the NRC and the interested party. When such requests are made, they are often in response to allegation-related matters that receive substantial public interest, such as the Peach Bottom inattentive security officer concerns that received considerable public attention in 2007-2008. If such a request is received, the responsible office should initiate efforts (with the support of the Office of Congressional Affairs and/or NRC State liaison personnel) to better understand the request and establish agreement as to what type of information is to be shared, how it is to be shared, and the time frame within which the information is to be shared. Since such action is not typical to standard allegation program policy related to the release of allegation-related information, it is suggested that the ground rules for such an agreement be established via a meeting or conference call with the interested party to specifically identify the type of information and level of detail the NRC will provide and to ensure that the sensitivity of allegation-related information is emphasized to those who will receive the information.

The terms of such an agreement will be determined on a case-by-case basis, as the type and amount of information requested will differ in each case. For reference purposes, the following list provides the criteria that were established for one such agreement:

- maintain open and prompt communication channels
- NRC will inform (the State) of substantiated concerns that impact public health and safety and (State) functions that respond to such concerns
- NRC will promptly inform (the State) of an item of immediate safety significance, or if substantiated, could impact offsite emergency response or be of high safety significance
- NRC will inform (the State) if NRC has indication that an issue is to become public
- (the State) will treat sensitive information in an appropriate manner
- (the State) will inform NRC of any planned response to information provided by the NRC before (the State) makes the response public

Such agreements are to be confirmed in writing, usually via a letter from the responsible

Regional Administrator or Office Director to the Senator/Congressman or State official.

**3.2.o Inspections Requested and Potential Violations Raised per 10 CFR 19.16(a) and 10 CFR 19.15(b)**

**3.2.o.1 Processing Requests Under 10 CFR 19.16(a) and 10 CFR 19.15(b) as Allegations**

Since a request for an inspection pursuant to 10 CFR 19.16(a) or a potential violation raised under 10 CFR 19.15(b) involves an asserted impropriety or inadequacy associated with radiological working conditions, and since 10 CFR 19.15 and 10 CFR 19.16 include no provision for providing feedback to the concerned individual, such matters should be documented as allegations and tracked accordingly. Whether or not the alleged's identity is to be protected in these instances depends on whether or not the alleged has requested that his/her name and the name of other individuals appear in the information provided to the licensee or on any record published, released or made available by the Commission (see Manual Section 4.2.).

**3.2.o.2 10 CFR 19.16 – Requests by Workers for Inspection**

10 CFR 19.16(a) provides guidance by which workers may request NRC inspections when they believe that a violation exists or has occurred in licensed activities with regard to radiological working conditions. Specifically, the request must be provided in writing to the NRC Regional Administrator, or to an NRC inspector, and provide the specific grounds for the request, and shall be signed by the worker or a worker representative. Prior to performing the inspection, the NRC will provide the licensee with a copy of the request, with the worker's name redacted, if so requested.

**3.2.o.3 10 CFR 19.15 – Consultation with Workers during Inspections**

10 CFR 19.15(b) indicates that during the course of an inspection, any worker may privately bring to the attention of the inspector, either orally or in writing, any past or present condition which he/she has reason to believe may have contributed to or caused any violation of NRC requirements, or any unnecessary exposure of an individual to radiation from licensed radioactive material under the licensee's control. Any such notice in writing shall comply with the requirements of 10 CFR 19.16(a).

The qualifier "privately" indicates that it is acceptable for a worker to inform the NRC about a concern without first reporting the concern to the licensee. Both 10 CFR 19.15(b) and 10 CFR 19.16(a) support the conclusion that not all written concerns brought to NRC inspectors must be provided to the licensee. However, the actions taken by NRC to notify the licensee under 10 CFR 19.16(a) are applicable to radiological working condition concerns received in writing from workers under 10 CFR 19.15(b).

**3.2.p Allegations Related to the Distribution of Products Containing Exempt Quantities of Byproduct Material**

**3.2.p.1 Exempt Distribution and Possession Licenses - Background**

Consumer products containing byproduct and source material that are used by the general public are exempted from licensing requirements only if NRC determines that

the products or types of uses do not constitute an unreasonable risk to the common defense or security or to public health and safety and the environment. Radiation safety features are built into the sealed source or device and the amount of radioactive material that can initially be distributed in such a device is restricted. 10 CFR Part 30 exempts members of the public from the requirements for an NRC license when they receive, possess, use, transfer, own, or acquire byproduct material in products such as silicon chips, electron tubes, check sources, gun sights, and smoke detectors. NRC applies its regulatory control to the manufacturing and transfer of these products, with specific requirements in 10 CFR Part 32.

Generally, distribution of byproduct material to persons exempt from regulatory authority (the general public) can only be made by persons who have a specific license from NRC authorizing the distribution of their products to persons exempt from the requirements for an NRC license. Manufacturers and distributors of these products must be licensed in order to initially transfer or distribute them to persons exempt from licensing. The licensed distributor is required to satisfy NRC that all products are manufactured, tested, and distributed in accordance with the regulations and specifications provided in its license application. These specific licenses are issued by NMSS and are referred to as "exempt distribution" or "E" licenses.

Exempt distribution licenses only authorize the product(s) to be distributed to persons exempt from licensing and generally do not authorize possession or use of radioactive material by the distributor. Persons who manufacture, process, produce or initially transfer for sale products containing byproduct material must meet the general requirements of 10 CFR 30.33 for possession and use of licensed material on Federal property, in an Agreement State, or in any State subject to NRC jurisdiction. They must also be authorized under specific license for the possession and use of byproduct material. Therefore, applicants for exempt distribution licenses may need to file a separate application for a specific license authorizing possession and use of byproduct material, incident to distribution, with the NRC Regional Office or Agreement State for the State in which the material will be possessed and/or used. An exempt distribution license cannot be issued until the applicant obtains a possession and use license.

### **3.2.p.2 Processing Allegations Related to Exempt Distribution and Possession License Issues**

#### **3.2.p.2(a) NRC Responsibilities Related to Exempt Distribution and Possession License Issues**

NRC has received a number of concerns regarding the alleged unauthorized sale of products containing exempt quantities of byproduct material by retailers that do not retain appropriate exempt distribution and/or possession licenses. When allegations of this type are received, questions often arise as to which NRC action office should retain oversight responsibility for processing the allegation, since responsibility for certain regulatory actions related to exempt distribution and/or possession licenses lie with different NRC offices. As indicated in Manual Section 3.2.p.1 above, NMSS retains responsibility for the issuance of licenses in this area. NMSS is also responsible for the development of rulemaking and for the issuance of generic guidance and correspondence to inform appropriate stakeholders of clarifications in or changes to NRC regulatory oversight in this area. However, since NMSS does

not retain substantive inspection resources, any specific NRC inspection activity needed to evaluate an asserted concern in this area, for the most part, is accomplished by specialist inspectors in the Regional Offices. If such inspection activity results in the issuance of violations and/or the consideration of escalated enforcement action, the Regional Office conducting the inspection would issue the violation(s) and/or pursue escalated enforcement.

**3.2.p.2(b) Determining the Action Office for an Exempt Distribution-Related Allegation**

For the reasons described in Manual Section 3.2.p.2(a) above, the action office for a particular allegation related to exempt distribution and possession license issues will be determined on a case-by-case basis, depending on the issue(s)-in-question, the number of retailers involved in the alleged unauthorized activity, the location of the retailers, the need for NRC inspection activity, and the possibility that the outcome of the NRC evaluation will have generic application and/or prompt the development of NRC generic communication. As an example, if an allegation is received that a product is being sold without an exempt distribution license at two specific retail locations in geographic area of one NRC region, and the obvious NRC follow up action is to perform an inspection, it is appropriate in this instance for the allegation to be assigned to the affected regional office to pursue the matter via inspection. However, if an allegation is received that a nationwide retailer is selling a product without an appropriate exempt distribution license, NMSS would be the action office for such an allegation, likely soliciting the regional offices for any needed inspection support. Additionally, it is noted that NMSS will coordinate all allegations related to the sale of e-license/e-distribution-related products on the Internet. The AAA should be consulted if an agreement cannot be reached between NMSS and affected regional offices as to the action office for the allegation. If an issue of this type is being coordinated by a regional office, the regional OAC will notify the NRC Headquarters OACs in OE, who will notify NMSS so that NMSS can monitor/trend the volume and type of e-license/e-distribution allegations being received by the agency.

**3.2.p.2(c) Sale of Products Containing Exempt Quantities of Byproduct Material by Foreign Vendors**

Another related issue has involved the sale of products containing exempt quantities of byproduct material by foreign vendors. If a foreign vendor retains a corporate entity in the U.S., NRC may pursue follow up action regarding the allegation with the designated U.S. location of the vendor. However, there have been a number of issues brought to the attention of the NRC related to foreign vendors with no specific tie to a U.S. corporate entity. NRC has discussed this matter internally and at this point in time, has determined that individual U.S. consumers will not be requested to obtain possession licenses in these instances and also that the safety significance of the individual circumstances does not appear to warrant the pursuit of actions against the foreign companies (e.g., notifying them of the NRC licensing requirements, requesting that distribution to U.S. consumers be stopped, pursuit of restrictions with U.S. Customs). Notwithstanding, the fact remains that the purchase of products containing exempt quantities of byproduct material by consumers in the U.S. from entities that do not hold licenses from NRC to distribute the products is a

concern related to NRC-regulated activity. Therefore, concerns regarding such issues should continue to be processed as allegations and discussed with the Office of International Programs, even though the NRC's ability to take action against the foreign vendor may be limited. Cataloging such issues in the AMS database will allow NRC staff to retain a record of such occurrences, should NRC decide to pursue more restrictive actions in the future.

### **3.2.q Receipt of Additional Concerns from the Same Allegor Before NRC Evaluation**

#### **3.2.q.1 Receipt/Acknowledgment of Additional Concerns from the Same Allegor**

If a regional or headquarters office receives additional allegation concerns from the same allegor before the NRC evaluation is conducted, and the new concerns can be included in the planned evaluation, the regional or program office should (not must) include the new concern(s) in the existing allegation file. If new concerns are received that cannot be accommodated in the planned evaluation or if the concerns are received after the evaluation has been conducted, a new allegation must be opened. If it is possible to include the new concerns in an existing allegation, the ARB should be reconvened to discuss the new concerns and the receipt of the new concerns must be acknowledged in a subsequent letter to the allegor, preferably within 30 days of the receipt of the new concerns. This will ensure that the staff understands the concerns and that the allegor is made aware of NRC's acknowledgment of the new concerns.

#### **3.2.q.2 Additional Concerns Identified in an Allegor's Interview Transcript**

The requirement to acknowledge new concerns also applies in instances when the staff identifies new concerns through the review of a transcript of an interview with the allegor. After the technical staff has summarized the new concern(s) derived from the review of the transcript, the regional or program office should (not must) include the new concern(s) in the existing allegation file if the new concern(s) can be included in the planned evaluation of technical concerns contained within the allegation. If evaluation of the new concerns cannot be accommodated in the planned evaluation or if the concerns are received after the evaluation has been conducted, a new allegation file must be opened. See Manual Section 3.2.s for additional discussion regarding allegations identified within an OI interview transcript and designation of the allegation receipt date.

### **3.2.r Allegations that are "Vague" or Lack Sufficient Detail to Enable NRC Evaluation**

Occasionally, an allegation for which additional information cannot be obtained (e.g., anonymous allegor, attempts to contact the allegor are unsuccessful, allegor indicates after being contacted by NRC that he/she has no additional information to provide, allegor refuses to provide additional information) may be too general or "vague" and lack sufficient detail to enable NRC evaluation. Nonetheless, as long the information provided meets the definition of an allegation as prescribed in the Manual Glossary, the allegation should be documented so that it may be pursued at a later time if additional clarifying information is obtained. The fact that an allegation is "vague" or lacks detail should not be used as a justification to exclude the allegation from the process. If the ARB determines that an

allegation cannot be pursued because it lacks detail, the allegation should be closed either via a letter to the alleger or a closure memorandum to the allegation file (if the allegation is anonymous or if subsequent contact with the alleger is not possible) indicating the additional detail that would be necessary to enable an NRC evaluation.

### **3.2.s Identification of Allegations by OI Staff or from OI Interview Transcript Review - Determination of Allegation Receipt Date**

OI keeps independent records regarding the investigations it conducts, including records related to confidential sources recruited by OI. If during an investigation, OI identifies any records or other information regarding safety issues that meet the definition of an allegation, OI is to document the allegation and promptly provide the information to the responsible OAC for processing, within 5 calendar days of recognizing the allegation.

On occasion, the OI investigator may interpret new allegation information provided by the alleger or another investigation witness as amplifying evidence in support of the previous assertion of wrongdoing/discrimination, as opposed to a new allegation. In such instances, the new allegation may not be recognized until the interview transcript is subsequently reviewed by a member of the technical staff. These circumstances will be evaluated on a case-by-case basis to determine the date of receipt of the allegation. If responsible technical staff and the OAC acknowledge that the new allegation information is closely associated with the matter being investigated such that it may have been difficult for the OI investigator to interpret the information as a new allegation, the allegation receipt date may be established as the date the technical staff reviewed the interview transcript. However, if it is obvious to responsible technical staff and the OAC that the new allegation concern(s) is not/were not associated with the wrongdoing/discrimination issue being investigated (i.e., and should have been recognized by the OI investigator as a new allegation), or if a member of the technical staff accompanied the OI investigator on the interview, the interview date will be established as the date of allegation receipt. If responsible staff and the OAC cannot agree on the allegation receipt date, the AAA should be consulted. In all cases, the new allegation should be documented and promptly provided to the responsible OAC so that allegation processing may begin. The letter to the alleger acknowledging the new allegation concern(s) should note the date of the OI interview but clarify that the allegation was identified as a result of subsequent technical staff review.

### **3.2.t Processing Allegations Related to Combined License (COL) Applicants**

The following discussion provides direction as to how allegations related to COL applicants (new reactors) are to be handled:

#### **3.2.t.1 Starting Point for COL Applicant Allegation Processing**

NRC will begin accepting allegations related to a COL applicant when the application is tendered. It is not appropriate to wait until after the COL application is docketed (i.e., after the COL application completeness and technical sufficiency reviews by NRC have been completed) to begin processing allegations.

Since requesting feedback from the applicant/prospective licensee regarding allegation concerns is an option occasionally employed as part of the evaluation of an allegation, before the COL application letter is submitted, the individual within the applicant's organization to whom such issues are to be provided should be determined through



discussion between the applicant and the NRC (possibilities: senior site manager, licensing manager, Employee Concerns Program (ECP) manager (if an ECP exists)).

### **3.2.t.2 Rejected COL Application -Treatment of “Allegation-Like” Issues Provided to NRC While the COL Application is Rejected and Before Application Re-submittal**

During the time frame after a COL application has been rejected and before it is re-submitted, “allegation-like” issues should be documented by the staff and logged into AMS so that the issues are retained for an historical perspective and for future reference, if needed, during the subsequent NRC review of the resubmitted COL application. During this time frame, issues that occur in the “rejected” time frame will be characterized in the AMS database as “non-allegations.” However, allegation program alleged identity protection provisions will be applied to the concerned individual. Furthermore, these items should be documented and brought to the ARB by the responsible action office for discussion and also so that the ARB may consider providing the information to the prospective applicant, if appropriate. If the concerned individual objects to the NRC providing the information to the prospective applicant, it would have to be reaffirmed to the individual that NRC's regulatory oversight at this point is limited and that other than recording the information and informing NRC staff who would be involved in a re-submitted COL application review, there is likely no other specific action the NRC would be able to take at the time.

It is noted that there is a possibility that issues could be received in the “rejected” time frame that NRC might be able to pursue, such as discriminatory actions that occurred after the application was tendered and before it was rejected. Issues of this type should be discussed with OGC and/or Regional Counsel on a case-by-case basis to determine if NRC has jurisdiction.

### **3.2.t.3 Responsible NRC Offices for Allegation Issues Related to COL Applicants**

Allegations related to COL applicants will be processed by either NRO or Region II depending on the subject matter of the allegation, as indicated below:

- NRO for generic allegation issues related to COL application reviews
- NRO for allegation issues related to the site-specific COL application reviews
- NRO for vendor issues, onsite or offsite. If, in the future, RII provides “resident inspectors” to certain vendor facilities that will provide parts/components/assemblies to multiple facilities under construction, RII would process allegation matters related to the specific vendor facility, with technical support from NRO.
- RII for site-specific construction inspection allegation matters
- RII for allegation issues related to onsite activities conducted by licensee personnel, contractors, and subcontractors
- NRO and RII will share oversight of allegation matters related to activities performed offsite by contractors or subcontractors. Offsite activities performed by contractors or subcontractors for site-specific purposes will be handled by RII. Offsite activities performed by contractors or subcontractors that involve generic COL application issues will be handled by NRO.

#### **3.2.t.4 Processing Allegations at a Co-Located Site**

A co-located site is one that has both a facility under construction and an existing operating facility or facilities. Responsibility for allegation processing is to be assigned as follows:

- If the allegation/concerns solely affect the plant under construction, the allegation should be assigned to Region II or NRO, as indicated in Manual Section 3.2.t.3.
- If the allegation/concerns solely affect the operating plant(s), the allegation should be assigned to the regional office with oversight for the operating plant(s).
- If the allegation has multiple concerns and the concerns can be distinctly separated between those that affect the operating plant(s) and those that affect the construction site, two allegation files should be opened, one operating plant allegation assigned to the regional office with oversight for the operating plant(s), and one construction site allegation assigned to Region II or NRO, as indicated in Manual Section 3.2.t.3.
- If an allegation/concern truly affects all of the facilities at the site to an equal degree (e.g., a SCWE concern that is asserted to affect all facilities, and company SCWE policy is the same for all personnel at both the operating facility and the construction facility), then the allegation concern should be handled as one allegation and assigned to the regional office with oversight for the operating plant(s).

In each of these situations, mechanisms should be established within the agency to assure that regional offices with oversight for co-located operating plant(s) are kept informed of allegation activity related to the co-located construction site, and conversely that Region II and/or NRO with oversight responsibility for the co-located construction site are kept informed of allegation activity related to the co-located operating site.

Additionally, in discussing allegation matters related to either the construction side or the operating side of a co-located facility, the ARB may conclude that a concern, while not specifically asserted by the allegor, could affect the alternate side (e.g., the ARB may conclude that a concern about the operating plant may also affect the construction site). In these situations, how the action office follows up on the “alternate side” aspect of the allegation, including proposed follow up actions, may be discussed at the ARB or other routine meetings held by responsible action office staff (e.g., Should additional inspection activity be performed to look at the matter on the alternate side of the site?). However, unless the matter involves potential wrongdoing, this “alternate side” aspect should not be attributed to the allegor, or treated as an additional allegation concern, and need not be tracked via AMS, as such effort would not be in response to an allegor’s assertion. If the “alternate side” aspect involves a potential wrongdoing matter and an OI investigation is prompted by the ARB, a separate “NRC staff-identified” wrongdoing allegation should be opened to track the matter.

#### **3.2.t.5 Applying the Allegation Process to COL Applicant Contractors, Subcontractors, and Vendors**

As long as the contractor, subcontractor, or vendor retains a corporate entity in the U.S., existing NRC allegation process guidance will apply.

### **3.2.t.6 Applying of the Allegation Process to COL Issues Related to Foreign Vendors**

Issues that meet the NRC definition of an allegation, regardless of the involved party (including foreign vendors) are to be categorized as allegations. However, NRC follow-up action may be limited due to complications related to agreements and interactions with the foreign country. For example, if a foreign vendor is discovered via investigation to be providing fraudulent components or component assemblies, the options for NRC enforcement action may be limited if the foreign vendor does not retain a corporate entity in the U.S. However, NRC may consider other actions, such as the issuance of NRC generic correspondence providing detail about the results of the investigation. Regarding matters of alleged discrimination, it is likely that NRC employee protection statutes will not apply to employees in foreign countries. Therefore, an offer of Early Alternative Dispute Resolution (Early ADR) or the initiation of an OI investigation will not be options in this instance. Since NRC will be unable to determine, based solely on the facts supplied by the concerned individual, whether the individual was discriminated against, a suggestion could be made to the concerned individual to contact a whistleblower protection office within their country, if one exists. If interaction with the foreign country is a consideration as part of the evaluation of the allegation, the Office of International Programs (OIP) should be consulted.

### **3.2.t.7 Concerns Related to the COL Review**

If NRC review of a particular COL licensing issue has not been initiated or completed, and NRC receives an assertion that there are problems that should be explored by NRC (e.g., an assertion that an Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC) item will not be met), such assertions are normally not entered into the allegation process. Rather, the concerned individual should receive correspondence, external to the allegation process, thanking him/her for providing the clarifying information about the licensing issue, and indicating that the NRC will consider the information supplied by the concerned individual in the agency's technical review. Such issues should be tracked in a retrievable manner by the responsible NRC office (e.g., via a Yellow Ticket) to allow a more specific response to the concerned individual, if one is requested. For example, the concerned individual may be informed that the results of the NRC review will be issued publicly at a later time via the Safety Evaluation Report (SER) or Final Environmental Impact Statement (FEIS). However, if the stated assertion involves potential wrongdoing (e.g., that the applicant lied to the NRC or intentionally provided incomplete and inaccurate information), an allegation file should be opened with regard to the wrongdoing aspect of the concern.

If NRC review of a particular licensing issue has been completed, and NRC receives an assertion that there are problems with the issue that should be explored by NRC, an allegation file should be opened to evaluate the matter, regardless of whether wrongdoing has been asserted.

### **3.2.t.8 Expectations for CAP and SCWE Programs in Construction Organizations**

The ability to identify conditions adverse to quality applies to reactor construction sites as well as to operating reactor facilities. It is presumed that a primary CAP will be in place that is equivalent to the 10 CFR Part 50, Appendix B CAP at operating plants. In

order for a CAP to work efficiently and effectively, the NRC expects licensees to promote a SCWE at their operating facilities. It is expected that similar policy will be applied to the work force at a reactor construction site.

### **3.2.u “Non-Allegations”**

#### **3.2.u.1 What is a non-allegation?**

*There is no threshold for the acceptance of a concern that meets the s definition of an allegation” provided in the Manual Glossary. (8.8 Handbook, Section I.B.1)* However, information, questions, or concerns submitted for consideration by the allegation process that do not meet the NRC’s definition of an allegation should not be processed as allegations. These items are commonly referred to as “non-allegations.” This interpretation is made by comparing the information provided to the three basic criteria that constitute an NRC allegation:

- Does the information involve an asserted inadequacy or impropriety?
- Is the issue associated in some way with NRC-regulated activity?
- Is NRC already aware of the validity of the concern?

This interpretation is usually made as the receiving NRC employee consults with his/her supervisor and the OAC while documenting the information provided by a concerned individual. If, after this initial consultation, it is unclear whether information provided by the concerned individual constitutes an allegation, it is appropriate to discuss the information at an ARB in an effort to obtain a decision. If the ARB cannot reach a conclusion as to whether the concern-in-question should be processed as an allegation, the AAA should be consulted. Some regions/offices assign an allegation number to such issues and then re-code the item in the AMS database as a “non-allegation” if the ARB determines that the issue is not an allegation. Some regions/offices document the issue on allegation process forms, but withhold assigning an allegation number until the ARB has reached a conclusion. Either approach is acceptable.

On occasion, an NRC employee will receive a concern he/she believes is an allegation but does not realize that the matter has already been evaluated by the NRC and that other NRC staff members are aware of the validity of the concern, and/or that the concern is not associated with NRC-regulated activity (i.e., is not an allegation). After such items are provided to the OAC, the determination as to whether the concern should or should not be processed as an allegation should be made quickly after the date of receipt by the agency so that feedback can be provided to the concerned individual by NRC staff aware of the disposition of the concern. Prompt determination of the issue as a non-allegation will also preclude the possibility of challenging allegation program timeliness metrics if, for example, it is determined after additional NRC review that the validity of the concern is not known and that the concern is associated with NRC-regulated activity (i.e., that the concern should be processed as an allegation).

If the incoming item is clearly not an allegation, the OAC has the authority to provide it to the appropriate organization within or external to the agency for appropriate action/response. In most cases, items that are ultimately determined not to be allegations need to be forwarded appropriately so that feedback can be provided. Often such items are forwarded to a responsible regional or headquarters office, sometimes to

OPA (i.e., when the incoming item is a general question about what NRC does that would normally not be answered by another NRC office), and sometimes the OAC will take the initiative to answer the issue because the response is simple and requires the provision of a small amount of information, an address, or a phone number (for example, when an individual raises a discrimination concern based on sex, race, or age, the OAC can provide the individual with contact information for the Equal Employment Opportunity Commission (EEOC)).

When providing feedback to a concerned individual in response to a non-allegation, it is normally not necessary to explain why the issue is not an allegation, or to make a declarative statement like... "NRC determined that this was not an allegation." In most instances, the concerned individual is only interested in a response to his/her concern, not a discussion as to why his/her concern was not addressed by a specific NRC process. As an example, if a concern is raised about age discrimination, the concerned individual should be provided contact information for EEOC. It is not relevant to the concerned individual that the matter will not be addressed by NRC's Allegation Program. In the infrequent instances when a concerned individual insists that a non-allegation be processed by NRC as an allegation, it may be appropriate to provide an explanation as to why the NRC is not evaluating the matter as an allegation (see Manual Section 3.2.u.9).

Also, there will be rare occasions when no NRC feedback is necessary in response to a "non-allegation." For example, if an individual copies NRC along with multiple other federal agencies and/or other organizations on an issue that has nothing to do with NRC, it is acceptable to make a decision that no NRC response is needed. If the responsible office has questions about whether or not a response should be provided to a specific non-allegation issue, the AAA may be consulted.

### **3.2.u.2 MD 8.8 Exclusions to the Allegation Definition**

The "allegation" definition provided in MD 8.8 and the Manual Glossary describes certain circumstances that are not to be characterized as NRC allegations, specifically:

- Technical questions generated by NRC staff. (NRC staff members should direct technical concerns to NRC management for evaluation within appropriate processes (e.g., inspection program, safety evaluation). If an NRC staff member disagrees with the agency's disposition of an issue, alternate paths exist to which the staff member may make known his/her disagreement (open door policy, non-concurrence process, differing professional opinion program)).
- Inadequacies provided to NRC staff by licensee employees acting in their official capacity. 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.
- Matters already entered into a licensee's CAP that are not otherwise accompanied by an assertion of inadequate licensee follow up. Licensee CAPs provide the

primary mechanism for the identification and resolution of problems. Once an issue is entered into the CAP, 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 CAP was not or will not be handled properly by the licensee (preferably with specific examples of inadequate licensee corrective action), such an item should not be processed as an allegation.

- Matters being handled by other formal processes, such as petitions for rulemaking, petitions filed in accordance with 10 CFR 2.206 or contentions filed in hearings or other formal proceedings
- Misconduct by NRC employees or NRC contractors
- Non-radiological occupational health and safety issues
- Concerns related to Agreement State licensee activities when the concerned individual agrees to have his/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 or licensing activities that are forwarded to NRC as a matter of conducting official business, and matters involving law enforcement and other Government agencies.

### **3.2.u.3 NRC Staff-Identified Wrongdoing Issues Not Investigated by OI**

An NRC staff-identified potential wrongdoing issue that is not ultimately investigated by OI is not considered to be an allegation and should be reflected in AMS as a “non-allegation,” if the matter had already been entered into the AMS database. In these instances, the matter is returned to responsible technical staff for processing, as deemed appropriate, in accordance with established inspection and program review guidance (e.g., the Reactor Oversight Program).

### **3.2.u.4 Proposed License/Certificate Changes or License/Certificate Application Issues**

If NRC review of a proposed license/certificate change or license/certificate application issue has not been initiated or completed, and NRC receives an assertion that there are problems that should be explored by NRC, such assertions are normally not entered into the allegation process. Rather, the concerned individual should receive correspondence, external to the allegation process, thanking him/her for providing the clarifying information about the issue, and indicating that the NRC will consider the concerned individual’s information in the NRC’s technical review. Such issues should be tracked in a retrievable manner by the responsible office (e.g., via a Yellow Ticket) to allow a more specific response to the concerned individual, if one is requested. For example, the concerned individual can be informed that the results of the NRC review

will be issued publicly at a later time via an appropriate document (e.g., SER or FEIS).

Notwithstanding the above, if the stated assertion involves potential wrongdoing (e.g., that the party supplying the proposed license/certificate change or license/certificate application information lied to the NRC or intentionally provided incomplete and inaccurate information), an allegation should be opened with regard to the wrongdoing aspect of the concern. If NRC review of a proposed license/certificate change or license/certificate application issue has been completed, and NRC receives an assertion that there are problems with the issue that should be explored by NRC, an allegation file should be opened to evaluate the matter, regardless of whether wrongdoing has been asserted.

### **3.2.u.5 Tracking DOL Proceedings Subsequent to a Discrimination Concern Settled in Early ADR**

If a discrimination concern is settled in Early ADR, NRC will not open an OI investigation or issue an enforcement action, nor will NRC's disposition of the discrimination concern be altered by a subsequent DOL decision if the alleged had also filed the same discrimination concern with DOL/OSHA. The action office may leave the allegation file open awaiting the final DOL action; however, additional correspondence with the alleged regarding the discrimination concern is unnecessary since NRC's conclusion will not change. If the action office chooses to leave the allegation file open and continue corresponding with the alleged while the discrimination concern remains open in the DOL process, the correspondence shall provide no indication that the NRC's conclusion regarding the discrimination concern could change as a result of a subsequent positive DOL finding.

It is also acceptable to close an allegation file when a discrimination concern has been settled via Early ADR with a related DOL case remaining open (as long as all other concerns in the allegation file are closed). If the action office chooses to close the allegation file in such instances, a new "non-allegation" is to be opened to track the ongoing DOL proceeding. The reason for tracking the DOL process at this point is because a subsequent DOL decision may conclude that the alleged was discriminated against, and Part II, Section 1.3.17 of the Enforcement Manual indicates that the NRC would at that time consider issuing a letter asking the licensee to describe the SCWE impacts resulting from the DOL finding of discrimination. This type of non-allegation is discussed in more detail in Manual Section 5.9.g.2.

### **3.2.u.6 Use of AMS to Track "Non-Allegations"**

Generally, concerns that do not meet the definition of an allegation should not be entered into the AMS database. However, if the action office prefers to enter such items into AMS to facilitate tracking of the feedback provided in response to these items, this is acceptable, provided the item is categorized in the AMS database as a "non-allegation." In fact, for an allegation with multiple concerns that contains a "non-allegation" concern, including all of the concerns in AMS may provide for better administrative control of actions to be taken and feedback to be provided by the action office. [Note: Records of concerns not entered in the AMS or "non-allegation" concerns entered into AMS should be maintained in accordance with office or regional procedures that apply to those matters.]

### **3.2.u.7 NRC Staff or Contractor Misconduct Issues Related to an Allegation**

#### **3.2.u.7(a) Exclusion of OIG-Related Information from the AMS Database**

A singular concern about NRC staff or contractor misconduct (i.e., an OIG issue) should not be entered into the AMS database. However, if an allegation with multiple concerns also contains a concern involving an OIG issue, it is acceptable to include in AMS as a placeholder, a non-descript concern, categorized as a "non-allegation," called "OIG Item" for better administrative control of actions to be taken and feedback to be provided by the action office to the allogger. No specific information about the OIG item is to be entered into AMS. This serves as a reminder to the OAC to provide feedback to the allogger, via the acknowledgment letter or other agreed upon means of correspondence, regarding how the allogger may obtain information about the disposition of the OIG item, including the provision of contact information for OIG.

#### **3.2.u.7(b) Handling OIG Information Related to an Allegation**

If, while providing an allegation, the allogger also relays concerns regarding misconduct of NRC staff or NRC contractors, the OIG-related information should not be included in the allegation file. One means of accomplishing this is to sanitize a copy of the received allegation documentation to redact OIG-related issues and indicate on the copy that the missing information involves issues of alleged misconduct by NRC staff or contractors that have been provided to the appropriate SES manager and NRC legal representative (OGC or Regional Counsel) for referral to OIG. The sanitized copy of the allegation receipt documentation can then be placed in the allegation file.

NRC staff or contractor misconduct issues shall not be discussed at the ARB (only the allegation concerns are to be discussed). Additionally, specific concerns regarding alleged misconduct by NRC staff or contractors will normally not be articulated in the acknowledgement letter to the allogger. The allegation staff should consult with the responsible SES manager and NRC legal representative regarding what information can be provided to the allogger in the acknowledgment letter regarding any alleged NRC misconduct issue. If the SES manager and NRC legal representative have already referred the matter to OIG, it may be appropriate to inform the concerned individual that such action has been taken. If the responsible SES manager and the NRC legal representative have reviewed the submitted assertion of misconduct by NRC staff or contractors and determined that referral to OIG is not warranted, the acknowledgement letter to the allogger can indicate that the concerns were received and that the concerned individual may contact OIG at 1-800-233-3497 if he/she has any questions or other comments regarding NRC staff conduct.

### **3.2.u.8 Exclusion of "Non-Allegation" Documentation from ADAMS**

Correspondence with a concerned individual that deals only with non-allegation issues should not include allegation tracking numbers. However, such correspondence also



should normally not be put into ADAMS, as it is to be assumed that the concerned individual supplied the information to NRC with an expectation that the identity protection provisions afforded by the allegation process would be applicable. In this regard, it is appropriate to apply the allegation process identity protection provisions to the concerned individual in these instances because it is not necessary to make public the fact that an external source has provided information to the NRC, regardless of whether the information meets the definition of an allegation. Notwithstanding the above, if the concerned individual indicates that he/she is not concerned about the protection of his/her identity, or specifically requests that the NRC response be made public, it is acceptable to make the NRC response public and to also make it publicly available in ADAMS.

### **3.2.u.9 Responding to a Concerned Individual's Request that a "Non-Allegation" Matter Be Processed as an Allegation**

If a concerned individual insists that his/her concern be processed by NRC as an allegation, even though the concern does not meet the NRC's definition of an allegation, the concerned individual should be informed as appropriate (e.g., via e-mail, via response letter, or via an allegation acknowledgment letter (if the concerned individual provided other concerns that met the NRC's allegation definition)), that NRC determines whether a received issue is to be processed as an allegation. Sample language for informing a concerned individual that a particular concern is not being processed as an NRC allegation is provided below:

"On a daily basis, NRC receives issues/concerns/comments/contentions, etc. from numerous individuals about various subjects that relate to NRC activities. Our goal is to respond to all of them, but our first task is to assign them to an appropriate process within the agency to enable a response. As examples, items submitted in accordance with 10 CFR 2.206 (a public petition to NRC to suspend, revoke, or modify a license) are responded to publicly under that process, and contentions filed against the issuance of a reactor operating license or license renewal are responded to under another process. Items that do not meet the criteria specified by other formal NRC response processes, and that are not allegations, are provided to knowledgeable staff for response.

For an issue to be processed as an NRC allegation, the NRC needs to determine that it meets our definition of an allegation, i.e. "an inadequacy or impropriety associated with NRC-regulated activity, the validity of which has not been established." It is important to ensure that only items that meet the NRC's definition of an allegation are placed in the allegation process, so that they may be acted upon efficiently, effectively, and responsively. Based upon our evaluation, it was determined that your issue did not meet the NRC's definition of an allegation, because it dealt with (.....), and (was not an inadequacy or impropriety associated with NRC-regulated activity) or (because NRC was already aware of the issue and is completing evaluation efforts related to it). Therefore, your question/comment will be responded to by staff knowledgeable of NRC's response efforts."

### **3.2.u.10 Charging Work Time Related to "Non-Allegations"**

Once it is clarified that information, questions, or concerns submitted for consideration by the allegation process are "non-allegations," NRC staff should not subsequently

charge work time to allegation follow up effort. Time spent determining whether an issue was an allegation may be charged to allegation follow up effort.

### **3.2.u.11 Third-Party Discrimination Concerns**

On occasion, a concerned individual will indicate that he/she believes that another individual has been discriminated against for engaging in protected activity. As with the receipt of any concern, the NRC staff member should obtain as much information as possible about the asserted concern. However, as a general rule, the concerned individual should be informed that the NRC does not pursue third-party claims of discrimination. This approach is taken fundamentally because the staff has found that individuals are reluctant to participate in an inquiry of asserted discrimination which they have neither initiated nor consented to; and that doing so can potentially compromise both the information provided, as well as the rapport between the NRC staff and that individual. The concerned individual may have received inaccurate information about something that happened to the other individual or may simply have a different interpretation of what happened and whether it was discriminatory in nature. It is preferred that a discrimination concern be provided directly to the NRC by the affected individual so that NRC may obtain feedback from and correspond directly with that individual.

For third-party assertions of discrimination, the concerned individual should be provided with information about filing a discrimination claim with NRC and DOL, and asked to provide this information to the individual he/she feels has been discriminated against. If the concerned individual chooses to provide this information to the other individual, the other individual may then consider whether he/she desires to provide the discrimination concern directly to the NRC.

For tracking purposes, third party discrimination concerns are not processed as allegations. However, should the concerned individual indicate that because of the perceived discrimination against the other individual, he/she or a group of individuals are now afraid to raise safety concerns, an allegation should be opened to address the chilling effect concern.

[Note: It is emphasized that the NRC position not to pursue a third-party concern only applies to discrimination concerns and not to technical concerns. Any technical concern that meets the definition of an allegation, regardless of its source, will be evaluated by the NRC.]

### **3.2.v Allegations Involving Multiple Allegers**

Occasionally, a group of individuals will raise an allegation to the NRC. Similarly, multiple individual allegers may raise the same allegation to the NRC on separate occasions but in the same relative time frame. These circumstances present questions as to how the allegation(s) should be administered in terms of how many allegations should be opened; and how many of the allegers should be provided correspondence related to the evaluation of the allegation. Such circumstances should be treated on a case-by-case basis depending on how the information was presented to the NRC, the outcome of the initial discussion between NRC staff receiving the allegation and the alleger(s), and the relative time frame within which the allegations were received (if the case involves the receipt of the same

allegation from multiple individuals on separate occasions). The OAC, with ARB input (if necessary), should weigh the known facts about the allegation concern to determine how to evaluate it effectively and efficiently, while being appropriately responsive to those who are interested in the outcome of NRC's follow up. Important items for the OAC (and the ARB) to consider are the allegation acknowledgment letter and initial ARB timeliness requirements, and the need to assure that the stated concerns are truly the same (i.e., if information presented by different allegeders is similar, but not necessarily the same, a concern could be missed or inappropriately altered if responsible NRC staff group statements from multiple individuals together as one concern).

### **3.2.v.1 Allegation Received from a Group**

If several individuals present an allegation concern to NRC in a group setting, it is often advantageous to summarize the concerns at the end of the discussion, as they are understood by NRC staff receiving the allegation, in an effort to gain acknowledgment from all of the concerned individuals attending the discussion regarding the allegation concerns in question. It may also be advantageous in this setting to establish a single point of contact from the group to whom allegation-related correspondence will be provided.

### **3.2.v.2 Receiving the Same Allegation Concern from Multiple Individuals**

If the same allegation concern is received from different individuals at different times, it may be advantageous, from an administrative standpoint, to only open one allegation having multiple allegeders. This will permit the OAC and responsible staff to track allegation evaluation activity and correspondence needs in one allegation file vs. multiple allegation files. This approach should normally only be applied if the allegations involve a specific technical matter and are received within a short time frame (e.g., within 1 or 2 days). As an example, if a security guard is inattentive in a parked patrol vehicle, and within a day of the occurrence, multiple site employees have reported it to the NRC resident inspector, it would be acceptable to record the issue as one allegation with multiple allegeders. However, if the time frame between submittal of the concerns is too long, the timeliness of allegation correspondence and actions related to later submittal(s) may be affected. For example, if the same concern is submitted multiple weeks after a concern is originally submitted, and before the NRC evaluation is conducted, it may be better to open a new allegation, to assure that acknowledgment letter and initial ARB timeliness requirements are met for the more recent allegation.

For discrimination or chilling effect/chilled work environment concerns, in most situations, it would not be appropriate to group multiple allegeders into one allegation, since the number of concerns NRC receives related to chilled work environment and alleged discrimination provide insight into the SCWE at the facility. As an example, if three individuals informed the NRC that they were disciplined for raising the same safety concern and that their entire department was chilled as a result, it would be more appropriate to open three separate allegations that include a discrimination concern and a chilled work environment concern.

It is always acceptable to open a separate allegation for each individual, if the action office determines that this is appropriate in order to evaluate the concerns provided.

### **3.2.w Allegations Regarding the Inappropriate Sale of Radioactive Material on the Internet**

Allegations are occasionally received that involve an assertion that someone is inappropriately attempting to sell a product containing radioactive material on the internet. An NMSS staff member has been assigned to monitor the internet for such items, and for this reason, allegations in this area are forwarded to the NRC Headquarters allegation staff in OE for processing by NMSS. For issues of this type that involve Agreement States, the responsible RSAO is to be invited to related NMSS discussions, so that he/she is kept informed.

### **3.2.x Discrimination Concerns Received/Processed by Other Authorities Prior to NRC**

#### **3.2.x.1 DOL Receipt of Discrimination Allegation Prior to NRC**

According to the MOU between NRC and DOL (see Manual Exhibit 7), DOL will promptly notify NRC of any complaint filed with DOL alleging discrimination within the scope of ERA Section 211, and will promptly provide NRC with a copy of the complaint. When NRC is notified by DOL that it is investigating a complaint of discrimination under ERA Section 211, and the allegor has not also brought his/her discrimination concern to NRC, the action office shall obtain a copy of the complaint from DOL (if DOL has not already provided it to the NRC), submit the DOL complaint for allegation processing, and contact the allegor to obtain clarification with regard to the allegor's concern, including the technical concern(s) that provide(s) the basis for the claim of discrimination. The allegation receipt date will be the date the DOL complaint is received by NRC.

#### **3.2.x.2 NRC-Related Discrimination Concerns Processed by Other Authorities**

An individual will occasionally file a claim of discrimination that is associated with NRC-regulated activity with an external authority (e.g., a State whistleblower protection office, U.S. District Court, or the MSPB or OSC for Federal licensees). When NRC learns of the external authority's review, the concern should be entered into the allegation process, with the date of allegation receipt being the date NRC was informed about the discrimination claim. If the external authority's review has yet to be completed, NRC will process the discrimination claim as if it had just been received by NRC (i.e., ARB, prima facie determination, Early ADR offer (if appropriate), OI investigation (if appropriate)). If the external authority has already substantiated discrimination related to matters associated with NRC-regulated activity, the concern will also be entered into the allegation process, with the date of allegation receipt being the date NRC was informed about the substantiated discrimination claim. In addition to processing the allegation, NRC will normally engage the licensee independently regarding potential SCWE impacts from the finding of discrimination (see Manual Section 5.2.i.2).

### **3.2.y Considerations Regarding Concerns about Issues Already Under Inspection or Investigation**

Part of the criteria for determining whether an issue should be processed as an allegation includes determining whether the validity of the issue is known by the NRC. In general, if the concern involves current activities at an NRC-licensed facility, and NRC does not yet

know if the stated concern is valid, the concern should be processed as an allegation. (This above statement is not intended to refer to a concern already captured in a licensee's CAP that remains under evaluation and is not accompanied by an assertion that it is not being adequately addressed by the licensee.) However, on a case-by-case basis, some circumstances may be presented involving matters for which NRC inspection/investigation is well in progress and/or near completion that may affect whether the issue should be considered by the allegation process, and if handled as an allegation, whether the matter should be processed as a new allegation or responded to under an existing allegation file. Examples are provided below:

#### Example 1 – Issue Already Being Inspected by NRC

An NRC resident inspector is evaluating issues related to a malfunctioning safety-related pump. The licensee had previously identified abnormal vibration in the pump and informed the inspector of its plans for troubleshooting the problem and their proposed actions depending on the results of the evaluation. The inspector has been following all of the licensee's efforts related to the pump work. A plant worker returning from vacation is unaware of the ongoing activity and while entering the plant, engages the resident inspector. The worker tells the resident inspector that before he went on vacation, he heard a noise coming from the pump and thought it was something NRC might want to look into. While such a statement could be processed as an allegation, further discussion with the concerned individual might preclude the need to address his input by way of the allegation process. For example, if the inspector informs the concerned individual that the licensee had already informed him about the pump vibration and that he has been closely following the licensee's corrective actions, and during that discussion, the concerned individual indicates that he is satisfied that the inspector will properly evaluate the issue and that no specific additional feedback is necessary, it would be acceptable in such a circumstance not to process the concerned individual's statement as an allegation. However, if the concerned individual requests feedback, responsible action office staff will determine the method for tracking how that feedback is to be provided (e.g., region/office action item tracking system, open a non-allegation).

If the matter being inspected by NRC is the subject of an existing, open allegation, a new allegation file could be opened or responsible staff could decide to include the concerned individual's name and information in the existing open allegation file so that feedback could be provided at the same time feedback is provided to the original alleger. If the concerned individual's contact information is included in the existing allegation file, actions should be assigned to assure that prompt feedback is provided to the individual (i.e., a letter acknowledging receipt of his/her concern). [For alleger identity protection purposes, the concerned individual should not be informed that the issue being inspected is related to a previously submitted allegation.] If the concerned individual raises other concerns at the same time that are determined to be allegations, responsible staff should consider capturing all of the concerns as a new allegation to coordinate feedback to the individual.

#### Example 2 – Issue Already Being Investigated by OI

A member of the public submits a concern regarding a matter already under investigation by OI and indicates that he/she wants feedback. While such a concern can always be processed as a new allegation, feedback could also be provided under an existing, open allegation file. Since an allegation is opened for any matter under

investigation by OI, the concerned individual should be informed that NRC will evaluate the matter and that the outcome of NRC's evaluation will be provided at a later time. In this instance, since the concerned individual specifically requested feedback, the responsible staff could choose to include the concerned individual's name and contact information in the existing allegation file related to the investigation as a reminder to provide feedback to the concerned individual. A letter should be provided to the concerned individual within about 30 days, acknowledging NRC's receipt of his/her concern. [In this Example, the concerned individual may or may not recognize that his/her concern involves potential wrongdoing or that NRC OI conducts investigations into such matters. When providing initial feedback to the concerned individual, this level of detail should not be provided. For alleged identity protection purposes, the concerned individual should not be informed that the issue is allegation-related or that an investigation is ongoing.] If the concerned individual raises additional concerns at the same time that are determined to be allegations, responsible staff should consider capturing all of his/her concerns in a new allegation file to coordinate feedback to the individual.

When considering such circumstances, responsible staff should carefully assess the information provided by the concerned individual to determine whether it may involve different aspects of the matter already being inspected or investigated that could constitute a separate allegation. For example, if in Example 1 above, the concerned individual also told the inspector that he overheard that the licensee did not have a qualified replacement part and was planning to use a refurbished, but unqualified replacement part as an alternative to repair the pump, such a concern would be processed as a separate allegation.

As for all input provided by external stakeholders, it is appropriate for NRC to consider if feedback is appropriate and if so, how it will be provided to the concerned individual. For issues that ultimately are not processed as allegations, the means of response would be determined by the responsible office (e.g., no feedback (if appropriate), in-person discussion, phone call, e-mail, letter).

The likelihood that the outcome of NRC's review will be publicly available must also be considered in determining how feedback will be provided. For matters involving an OI investigation, the licensee will always receive correspondence on the public docket regarding the results of the investigation. Inspection items however, are not always documented in an inspection report. If the inspection effort was not allegation-related, and the significance of the issue was such that it would not be discussed in an inspection report, the responsible office would need to determine if, how, and when feedback could be provided to the concerned individual. Alternatively, a concerned individual may accept a simple explanation from NRC that if the inspection findings are significant, they will be reflected in a forthcoming inspection report, and if the findings are not significant, the findings would not be documented. As indicated in Example 1 above, if the inspection effort is allegation-related, responsible staff could choose to include the concerned individual's name and contact information in the previous allegation file and use the allegation file as a reminder to provide feedback.

Lastly, in the case of multiple individuals approaching NRC with a concern similar to a matter already being inspected or investigated, the responsible office may also consider whether the public would be better served by wider dissemination of the inspection or investigation results, even if the inspection effort relates to an allegation (allegation files are opened for all investigations). (See Manual Section 4.3 for additional discussion regarding

circumstances when public dissemination of allegation-related information might be considered.)

### **3.2.z Concerns Related to a Licensee Employee Concerns Program**

An ECP is a program established internally by many licensees as an alternate path for a facility worker to submit concerns outside of his/her management chain or via an established suggestion program or CAP. If a worker is uncomfortable providing concerns through his/her management chain or to other formal programs established for evaluating worker concerns (e.g., a CAP established to meet the requirements of 10 CFR Part 50, Appendix B, Criterion XVI, an industrial safety concern program), an ECP is a viable alternate path that provides for evaluation, resolution, and feedback regarding the concern, while also providing a level of identity protection to the worker to the extent practical. While there is no NRC requirement for a licensee to have an ECP, the establishment of an ECP is considered by NRC to be a positive contributor to maintaining the SCWE at a licensee's facility (see NRC Regulatory Issue Summary 2005-18, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment," dated August 25, 2005).

The fact that there is no NRC requirement for an ECP has occasionally caused confusion as to whether an ECP-related concern should be processed as an allegation. To make this determination, the ARB should carefully consider whether the concern-in-question is "associated with NRC-regulated activity" as prescribed in NRC's allegation definition. The following are examples of ECP-related concerns that are "associated with NRC-regulated activity" and warrant being processed as allegations:

- A concern raised to NRC that an ECP did not adequately address a condition adverse to quality (as prescribed in 10 CFR Part 50, Appendix B, Criterion XVI for a reactor facility or equivalent regulatory guidance for a materials facility). [Note: General concerns that the ECP is unresponsive or their evaluations are inadequate should prompt the staff to request additional specific information with which to judge if the issues themselves that the allegor believes were not addressed or not addressed adequately are associated with regulated activity.]
- A concern raised to NRC that a matter raised through ECP involves potential wrongdoing (including discrimination) associated with NRC-regulated activity.
- A concern raised to NRC that activity within ECP has caused a chilling effect or a chilled work environment causing workers to be hesitant to raise safety concerns to ECP and/or to other programs that can receive conditions adverse to quality.

Since maintaining an ECP is not an NRC regulatory requirement, ECP-related concerns that deal solely with how the program is administered are concerns that would normally not be processed as allegations. Examples of such ECP administrative concerns are noted below:

- ECP does not have enough drop boxes for concerns to be left anonymously
- ECP referred my concern to another part of the company (HR, legal, contractor)
- ECP did not do enough to protect my identity (as an example, if such a concern was raised to NRC by an individual who raised an isolated chilling effect concern to ECP, it is reasonable to inform the concerned individual that the nature of such a concern creates a higher likelihood that individuals interviewed by the ECP investigator about the concern may surmise the concerned individual's identity)

Even if it is determined that an ECP-related matter is not directly associated with NRC-regulated activity, the ARB should always consider whether the concern may have a bearing on the SCWE (for example, if multiple individuals are indicating to NRC a reluctance to use ECP because of identity protection issues, this could be viewed as a problem potentially affecting the work environment). The ARB should at least consider whether the concern should be provided to the licensee for informational purposes. Since NRC considers an ECP to be a positive contributor to the SCWE and since an ECP can field a condition adverse to quality, disclosure of such matters to the licensee will help maintain the ECP as a viable alternate path for raising a concern.

### **3.2.aa Concerns Raised by Current NRC Employees About Activities at a Former Employer**

On rare occasion, a current NRC employee will raise a concern associated with NRC-regulated activities at a former employer. If the concern involves a technical matter, it should be provided by the employee to the responsible NRC region/office for review and action as deemed appropriate. The concern will not be processed as an allegation and the employee will not receive written feedback via the allegation program or from the responsible NRC region/office. If the employee is interested in how his/her technical concern was/is being evaluated, the employee may contact the responsible NRC region/office and request feedback verbally and/or by being directed to NRC documentation responsive to the issue.

If the concern raised by the current NRC employee about his/her former employer involves potential wrongdoing or discrimination, the concern will be processed within the NRC allegation program as a matter of NRC staff-identified potential wrongdoing. As is the case with other NRC staff-identified potential wrongdoing items, the employee will not receive allegation process correspondence regarding the evaluation of the issue. However, the employee may contact the responsible OAC regarding the disposition of the NRC staff-identified wrongdoing matter.

In the case of a current NRC employee indicating that he/she was discriminated against for engaging in protected activity at his/her former employer, it is appropriate for the responsible OAC to provide feedback regarding the disposition of the issue, given its subject matter. If it is determined that the employee established a prima facie showing of potential discrimination, the OE ADR Program manager shall be notified prior to offering the NRC employee an opportunity to participate in Early ADR with his/her former employer. The OE ADR Program Manager will discuss related facts with OGC in order to obtain a legal opinion as to whether Early ADR should be offered.

## **3.3 Processing the Received Allegation**

### **3.3.a Actions of the Receiving Employee and Action Office Staff**

#### **3.3.a.1 Informing Responsible Staff About a Received Allegation**

*An NRC employee receiving an allegation will inform his or her supervisor and also provide the information to the appropriate OAC. The allegation is initially assessed by these individuals to determine if it involves a potential overriding safety issue.*

*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 the Office of Enforcement who will forward it to the appropriate OAC. (8.8 Handbook, Sections II.H.1(a), II.H.1(a)(i) and II.H.1(A)(ii))

### **3.3.a.2 Documenting an Allegation Concern**

#### **3.3.a.2(a) Allegation Documentation**

*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. The receiving employee shall follow the Sensitive Unclassified Non-Safeguards Information (SUNSI) handling requirements for transmitting allegation information to the OAC. If the received information contains Safeguards Information (SGI), the receiving employee shall refer to M D 12.7 for documentation guidance. (8.8 Handbook, Sections II.H.1(b), II.H.1(B)(i) and II.H.1(B)(ii))*

The means of documenting allegation receipt are specific to each regional and headquarters office. Employees should acquaint themselves with the procedures and forms used in their office for allegation receipt documentation.

#### **3.3.a.2(b) Documenting Concern Descriptions**

When an allegation concern is documented, it is important to describe the concern as it associates to NRC-regulated activity, i.e., per the definition of an allegation. This facilitates the evaluation of the concern from a safety and regulatory perspective, and makes it easier to provide a conclusion to the allegor regarding the results of NRC's evaluation and to ultimately determine whether the allegation concern should be categorized as "substantiated" in AMS. In many instances, allegors are not as familiar with the regulatory requirements and guidance related to a concern they provide as are NRC technical staff. Therefore, in crafting NRC's interpretation of the allegor's concern, it is occasionally necessary for NRC staff receiving potential allegation information to make efforts to clearly associate it, if possible, with matters that involve NRC oversight. If the allegor's identity is known, and if there is any question about the interpretation of the concern, responsible staff should consider contacting the allegor to obtain additional detail. Also, an allegor whose identity is known will have a subsequent opportunity to contact the NRC if he/she has questions with regard to how the NRC has described his/her concern after receiving his/her acknowledgment letter.

#### **3.3.a.2(c) Articulating Underlying Technical Concerns Related to Allegations of Wrongdoing or Discrimination**

Every effort should be made to separate the allegation into distinct concerns to facilitate ARB discussion and the assignment of follow-up actions. If the allegation includes a wrongdoing or discrimination concern, ensure that the technical issue underlying the wrongdoing or discrimination concern is appropriately captured. For a discrimination concern, the technical matter that is the basis for the allegor's protected activity should be captured as a separate allegation concern if it meets the definition of an allegation, and remains unresolved at the time the discrimination

concern is provided to NRC. For example, if the allegor claims to have been discriminated against for identifying inadequacies in a procedure, and the allegor indicates that the procedure inadequacy still exists, the procedure inadequacy should be documented as a separate allegation concern. However, if the allegor indicates that the procedure inadequacy was resolved appropriately via the facility's CAP and is not of current concern, it would not be necessary to document the procedure inadequacy as a separate allegation concern. Similarly, for an assertion of wrongdoing, the receiving employee should obtain information from the allegor to determine whether the technical matter that is the basis for the asserted willful act remains unresolved and fits the definition of an allegation. If so, the technical matter should be documented as a separate allegation concern. See Manual Section 5.7.a.5(g) for guidance with regard to determining whether an OI Investigation is warranted in response to an allegation of wrongdoing.

### **3.3.a.3 Forwarding Allegation Reference Documentation to the OAC**

If the allegor's submitted information also includes hard copy documentation (letters, envelopes, reference documents, drawings, etc.), the receiving employee shall ensure that the OAC receives the original documentation either by hand delivering it to the OAC, or by making a copy and then forwarding the original documentation to the OAC by mail or alternate carrier. If it is possible to transmit the information to the OAC by e-mail or facsimile, this may be done in the interim, provided the receiving employee verifies that the OAC received the e-mailed or faxed information. Once the receiving employee has verified that the OAC has received the original allegation documentation, he/she will destroy the documentation in his/her possession.

### **3.3.a.4 General Restriction on Allegation Review Activities Prior to an ARB**

*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 follow-up 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. (8.8 Handbook, Section II.H.1(c))*

### **3.3.a.5 Actions of Responsible Action Office Staff**

*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: (8.8 Handbook, Section II.H.1(d))*

- *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 Manual Section 5.1 for ARB guidance). It is acceptable for responsible action office staff to re-contact the allegor for additional clarifying information prior to the ARB, if necessary.*

- *propose the necessary follow-up actions for discussion at an ARB meeting and, as requested by the ARB, implement those actions,*
- *propose actions to be explored during the ARB meeting, if time does not permit staff review before the ARB.*

*(8.8 Handbook, Sections II.H.1(d)(i), II.H.1(d)(ii), and II.H.1(d)(iii))*

### **3.3.a.6 Allegation Discussion/Meeting Precautions**

The following precautions are to be considered with regard to discussions or meetings that involve allegation information:

- Before a discussion/meeting involving allegation information, ensure that participating personnel are identified and are authorized to have access to the information to be discussed.
- Advise personnel participating in the discussion/meeting of the protective measures required for allegation information.
- Ensure that no discussion takes place that is audible or visible to persons not authorized access to or without a need to know the information.

### **3.3.a.7 General Reference Questions for ARB Preparation**

The following is a list of general reference questions to aid responsible staff in assessing a received allegation concern and determining proposed courses of action for presentation to the initial ARB:

- Is there an overriding safety concern that must be promptly addressed? If the concern is not an overriding safety issue but still has time sensitivity associated with it, what actions are necessary and within what time frame?
- Has the staff previously addressed the issue?
- Have a substantial number of similar allegation concerns been provided to NRC?
- What is the potential for wrongdoing and will investigative assistance be needed? If so, what is the regulatory basis for the underlying technical concern?
- Does the allegation file contain sufficient information to permit a thorough evaluation? If not, identify the additional information needed.
- Is disclosure of the alleged's identity necessary to enable a thorough evaluation of the allegation concern?
- Can the issues be adequately addressed by a technical inspection in a timely manner? Consider the schedule of the next baseline inspection that may address the subject matter of the concern and whether this time frame will provide a timely response to the alleged. If timeliness is an issue, consider whether a resident inspector could review the issue more quickly. If review of an allegation concern cannot be included in a sample of issues during a routine inspection or reviewed by a resident inspector without significant licensee involvement, an RFI to the licensee may be a more appropriate option.
- Identify any peripheral issues that could develop.

- Has the issue been entered into the licensee's CAP? If so, what is the justification for doing additional follow up? Has the alleged articulated why the licensee has not or will not appropriately address the concern by way of the CAP? With specific examples?
- Are there any licensing actions, enforcement actions, actions previously assigned by the ARB, or other pending allegation concerns that could be affected by the allegation concern being reviewed? When an allegation involves a case pending before a licensing board or the Commission, information concerning the allegation should be provided to NRR, NRO, or NMSS as soon as possible to assist in determining whether notification should be made to the presiding officer in an administrative adjudicatory matter. NRR, NRO, or NMSS must make this decision promptly in accordance with office procedures.
- Can inspection or other resources be effectively utilized to pursue the issue or is the allegation concern too vague? If further consideration of the allegation concern does not appear to be warranted, it is acceptable to make a recommendation to the ARB that the alleged be informed that NRC will be unable to pursue the matter without additional specific information.
- Can licensee resources reasonably be used in resolving the allegation? Consider potential problems associated with issuing an RFI to the licensee. (See Manual Section 5.6.d.4 regarding ARB consideration of an RFI to the licensee.)
- Does the allegation have the potential to require escalated enforcement action?
- Determine if other NRC offices should be notified (e.g., if the allegation has generic implications, a program office may need to be engaged).
- Establish a schedule for the evaluation of each allegation concern that is consistent with the licensing schedule, if applicable.

### **3.3.b OAC Actions**

#### **3.3.b.1 OAC Activities**

*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. (8.8 Handbook, Section II.H.2(a))*

#### **3.3.b.2 ARB Scheduling**

*The OAC convenes an ARB of appropriate personnel to review each allegation for safety significance and determine appropriate actions to evaluate the allegation (see Manual Section 5.1 for ARB guidance). (8.8 Handbook, Section II.H.2(b))*

#### **3.3.b.3 Provision of Allegation-Related Information to Responsible Staff**

*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 identification of and a focus on allegation trend areas. (8.8 Handbook, Section II.H.2(c))*

### **3.3.b.4 OAC Actions Regarding Concerns Outside NRC Jurisdiction**

*As appropriate, an ARB may assign the following actions to the OAC or other designated staff:*

- *Notify appropriate agencies of concerns outside NRC jurisdiction;*
- *Provide external agency contact information to the concerned individual (e.g., the contact information for the Equal Employment Opportunity Commission (EEOC) for alleged discrimination related to age, sex, race, or ethnic origin).*

**Note:** *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. (8.8 Handbook, Section II.H.2(d) footnote)*

### **3.3.b.5 OAC Actions Regarding Generic Concerns or Concerns Involving Technical Expertise of an NRC Office**

*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 (8.8 Handbook, Section II.H.2(e)) (See Manual Sections 5.6.a and 5.6.c):*

- *Notify headquarters offices and other regional offices that may be affected, (8.8 Handbook, Section II.H.2(e)(i)) and;*
- *Discuss the potential for allegation transfer to a headquarters office, (8.8 Handbook, Section II.H.2(e)(ii)) or;*
- *Discuss the potential need to request information from a headquarters office. (8.8 Handbook, Section II.H.2(e)(iii))*
  - *To request input from 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 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 Instruction, April 23, 2014, available at <http://epm.nrc.gov/inspection/cip/TAR-site/default.aspx>).*
  - *To request input from NSIR, use a Report on Interaction (see NSIR Office Procedure ADM-113, Revision 0, "Report on Interaction Process," November 2011).*

### **3.3.b.6 OAC Actions Regarding Vague Concerns or Concerns Lacking in Detail**

*If the information received from a prospective allegor is vague or lacks sufficient detail to enable appropriate determination of a relationship to matters under NRC purview and/or*

safety and regulatory significance, the OAC will assist the staff in obtaining additional information through further contact with the allegor, preferably prior to the initial ARB.

### **3.3.b.7 Identification of Concerns**

As requested, the OAC will assist the staff in identifying and separating the issues involved in a received allegation into distinct concerns:

#### **3.3.b.7(a) Most Common Concern Types**

- technical concerns
- wrongdoing concerns (willful noncompliance with an NRC requirement, submittal of incomplete or inaccurate information, falsification of required records, provision/use of counterfeit/fraudulent parts)
- discrimination concerns (including harassment, intimidation, and retaliation)
- technical concerns that form the basis for assertions of wrongdoing or discrimination concerns
- chilled work environment concerns
- safety culture concerns (other than those involving SCWE)

#### **3.3.b.7(b) Separating Information Provided by the Allegor into Distinct Concerns**

In most instances, it is preferable to break down the issues described by the allegor into distinct concerns that may be responded to separately. If too many aspects of an issue described by an allegor are grouped into one concern, it can make evaluation efforts cumbersome and complicate the description of concern closure. However, aspects of an issue provided by an allegor may be so intertwined in certain instances that there are occasions when it is appropriate to group a number of aspects into a single concern.

#### **3.3.b.7(c) Developing a List of Concerns**

If the allegor's identity is known, the development of the enclosure to an acknowledgment letter describing the allegor's concerns provides an appropriate opportunity to present the allegor's concerns clearly, as NRC understands them. In such instances, if the allegor does not agree with NRC's description of his/her concerns, or feels that the NRC overlooked a concern or an aspect of a concern, the allegor is offered an opportunity in the acknowledgment letter to contact the NRC and provide clarification.

### **3.3.b.8 OAC as Primary Allegor Point of Contact**

Since the OAC is responsible for ensuring that communications are maintained with the allegor other than for OI-recruited confidential sources, the OAC should normally be the NRC's single point of contact for the allegor. Establishing a single point of contact provides better control of communications, develops rapport, establishes continuity in the flow of information between the regional and headquarters offices, and contributes to the protection of the allegor's identity. In some instances, such as for complex technical issues or issues inspected by the staff, it may be helpful to designate an additional NRC

staff member as a technical point of contact, or to designate the other NRC staff member as the single point of contact. This designation is at the discretion of regional or headquarters office management.

### **3.3.b.9 Informing NMSS of Allegation Related to Theft, Diversion or Loss of Special Nuclear Material**

10 CFR 73.71 and 10 CFR 74.11 require licensees to inform the NRC Operations Center within 1 hour of any event involving the possible theft, diversion, or loss of special nuclear material (SNM). Since it is possible for NRC to be informed about such events by other means (for example, in an allegation), it is important for NRC staff to also be aware of the need to quickly elevate such information to responsible staff. However, it cannot be assumed that every NRC employee who could receive an allegation of this type would know who to contact and how quickly they should be notified. If any OAC receives an allegation related to the possible theft, diversion, or loss of special nuclear material (SNM), the Branch Chief in the NMSS Division of Fuel Cycle Safety, Safeguards, and Environmental Review responsible for material control and accounting (MC&A) is to be immediately notified. NMSS is responsible considering the entry as an Abnormal Occurrence of any substantiated theft, diversion, or loss of licensed, risk-significant radioactive sources, or formula quantities of SNM; or attacks that result in radiological sabotage. NMSS is also responsible for reporting any substantiated indication of a loss of formula quantities of SNM or substantiated inventory discrepancies of formula quantities of SNM that are judged to be caused by theft or diversion or by substantial program breakdown.

In this context, "substantiated" refers to a situation where indication of loss, theft, or unlawful diversion, such as an allegation of diversion, report of lost or stolen material, statistical processing difference, or other indication of loss of material control or accountability cannot be refuted following an investigation, and requires further action on the part of NRC or other proper authorities. A formula quantity of SNM is defined in 10 CFR 74.4, i.e., in any combination in a quantity of 5000 grams or more by the following formula: (grams of U235) + 2.5(grams of U233 + grams of plutonium). A substantial breakdown of the accountability system involves unacceptable performance or an operational event related to an item control system associated with the licensee's facility information technology system, or any other indication of loss of material control or accountability that cannot be refuted following an investigation.

### **3.3.c Allegation File Documentation Including Document Handling, Sensitivity, and Storage**

#### **3.3.c.1 Allegation Number**

*A unique identifying number is established for each allegation when the OAC documents the allegation in the Allegation Management System (AMS) database. (8.8 Handbook, Section II.H.3(a))* The OAC inputs pertinent information regarding each allegation into AMS upon allegation receipt and as the allegation is evaluated to facilitate the reporting of allegation status at periodic intervals to responsible staff.

### **3.3.c.2 Allegation File**

#### **3.3.c.2(a) File Creation/Maintenance**

*The OAC creates a hard copy file for each allegation to contain all allegation-related documentation (8.8 Handbook, Section II.H.3(b)), including documentation of related OI investigations of wrongdoing concerns and DOL review of discrimination concerns. It is important to retain all pertinent documentation related to the allegation (including (as applicable) - receipt documentation, completed ARB forms, RFI worksheet, correspondence, conversation records, OI report, alleged interview transcript, inspection report, staff evaluations, "3-week e-mail" documentation, DOL decisions, response after closure (RAC) documentation, pertinent e-mail messages, etc.) so that a complete and accurate record of NRC's allegation evaluation activity is established. Manual Exhibit 24 provides a checklist to aid in determining whether an allegation file contains necessary documentation. For documentation that is available in ADAMS (e.g., inspection reports), it is acceptable to include a reference in the allegation file instead of including a copy of the entire report.*

#### **3.3.c.2(b) Exclusion of Allegation File Information from ADAMS**

Allegation documentation **shall not** be processed or recorded in ADAMS or any other electronic location with the potential for public access. The staff shall also refrain from placing in ADAMS information that discusses specific allegation process related activities but does not relate to a specific allegation (for example, ARB schedules, program self-assessment documentation, allegation status reports). This guidance does not apply to documents that relate to an allegation that are normally publicly available (e.g., inspection reports).

#### **3.3.c.2(c) Retention of Confidentiality Agreements**

For allegeders with confidential source status, the signed confidentiality agreement shall be maintained in the related allegation file, subject to the security requirements imposed for confidential allegation information (see Manual Section 3.3.c.8). The file should include documentation describing why confidential source status was granted.

#### **3.3.c.2(d) Allegation File Retrievability**

*Allegation files are to be retrievable only by allegation number (i.e., there must be no allegeder identifying information on the outside of the allegation file folder). (8.8 Handbook, Section II.H.3(b))*

### **3.3.c.3 Prohibition on Maintaining a Separate List Relating Allegation Numbers to Alleger Names**

NRC Allegation files are **NOT** maintained as a Privacy Act (PA) System of Records, that is, "a group of any records under the control of any agency from which information is retrieved by the name of the individual or by some identifying number, symbol, or other



identifying particular assigned to the individual." A separate listing relating allegor names to allegation numbers may not be kept as this would turn the file system into a PA System of Records without following legal requirements and could lead to criminal or civil penalties for employees who maintain such a list. No employee shall maintain an official or unofficial index cross-referencing an allegation number to the allegor's name or other personal identifier without express permission from the Agency Allegation Advisor (AAA). All documentation must be clearly marked with the allegation number so that the records are filed, stored, and retrieved by the allegation number and not by any personal identifier of the allegor or confidential source. This does not apply to OI investigation-related documents maintained in an allegation file (i.e., investigation report, interview transcripts). While OI maintains its investigation-related documents within a PA System of Records, retaining OI information in an allegation file does not make the allegation file part of a PA System of Records.

#### **3.3.c.4 Allegation File Cover Sheets**

*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 Manual Exhibit 3). 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 Manual Exhibit 4). Note: Allegation file storage and access control mechanisms are outlined in Manual Section 3.3.c.7. (8.8 Handbook, Sections II.H.3(c)(i) and II.H.3(c)(ii))*

#### **3.3.c.5 Protection of Documents Removed from the Allegation File**

*Documentation that contains the identity of an allegor or other information that would identify the allegor may be separated from the official allegation file, if it is appropriately protected. The documentation must have the appropriate cover sheet to indicate that it contains sensitive allegation information. The documentation should be conspicuously marked (typed or stamped) to indicate that the document identifies an allegor, depending on the document type. 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 document type that specifically identifies the allegor or contains other allegor identifying information. More specific guidance regarding allegation file documentation handling under SUNSI handling requirements is provided in Manual Section 3.3.c.8. 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. (8.8 Handbook, Sections II.H.3(d), II.H.3(d)(i), II.H.3(d)(ii), II.H.3(d)(iii), and II.H.3(d)(iv))*

#### **3.3.c.6 Preliminary Notifications Referencing Allegation Information**

*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 1120, "Preliminary Notifications" for additional information). The PN should not identify the source of the allegation concern(s), the fact that the information was provided by an allegor, or the fact that the information is the subject of an allegation. Responsible staff should obtain the approval of the action office director before issuance of the PN. (8.8 Handbook, Sections II.H.3(e), II.H.3(e)(i), and*

II.H.3(e)(ii)

### **3.3.c.7 Storage of Official Agency Allegation Files and Documents**

#### **3.3.c.7(a) Storage Location**

*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. (8.8 Handbook, Section II.H.4.(a))*

#### **3.3.c.7(b) Storage Location Access Control**

*Keycard access to NRC buildings provides adequate security for allegation files and documents containing the identity of an alleged. However, caution should be taken to place the information in an inconspicuous location if non-NRC personnel or NRC personnel without a need-to-know are to be in a particular work area. 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. (8.8 Handbook, Section II.H.4(b)) (See Allegation Information SUNSI guidance in Manual Section 3.3.c.8 for more specific information regarding allegation file storage.)*

#### **3.3.c.7(c) Limitation on Distribution of Allegation Documentation**

*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. (8.8 Handbook, Section II.H.4(c))*

#### **3.3.c.7(d) Allegation File Check Out Control**

The OAC should maintain a system for locating an allegation file when it is taken from its normal storage location (e.g., a file check-out log, a check out form that is placed in the physical file location from which the file was removed.)

#### **3.3.c.7(e) Allegation Information Photocopy Control**

The OAC exercises control over the reproduction (photocopy or other) of information related to an allegation. Multiple copies or simultaneous review copies must be returned to the allegation file or destroyed unless the information has been redacted to remove information that could identify the alleged. Employees must take precautions to ensure that there are no unauthorized copies of sensitive allegation information residing in electronic systems.

#### **3.3.c.7(f) Allegation Documentation Control at Staff Work Stations**

Allegation files or allegation-related information removed from the allegation file by staff for allegation processing purposes is to be kept in an inconspicuous location at

the staff member's work location when not in use (e.g., in a desk drawer). Duplicate allegation working files that retain an NRC Form 762 cover sheet may be stored overnight in the staff member's work location, but are also to be kept in an inconspicuous location. The information should be returned to the allegation file when not in use and should not be retained at the staff member's work location for an extended period of time. Information or documents containing the identity of a confidential source must be returned to the OAC for storage in the official allegation file before the end of the workday and may not be stored in another location overnight. The official allegation files should not be taken out of the NRC regional or headquarters offices under any circumstances. Once work on an allegation file has been completed and the staff member's working file is no longer needed, the information should be destroyed, returned to the OAC for destruction, or returned to the official file for possible future use by another staff member.

### **3.3.c.7(g) Exclusion of OIG-Related Information from the Allegation File**

For allegations that also include assertions of misconduct on the part of NRC staff or contractors, records pertinent to those assertions should not be retained in the allegation file, but rather are to be forwarded to the appropriate office director or regional administrator for review and possible transfer to OIG.

### **3.3.c.7(h) Allegation File Retention/Destruction Requirements**

Closed allegation files should be retained under the control of the OAC for at least 2 years and then may be archived. Allegation files may be destroyed 10 years after the cases are closed in accordance with "NRC Comprehensive Records Disposition Schedule" (NUREG-0910). The Information and Data Operations Branch – Operations Division in OCIO is the appropriate contact organization for information regarding the transfer of allegation files to the archive facility.

### **3.3.c.7(i) Retention of Allegation Information by NRC Offices That Are Not Action Offices**

OEDO and SECY maintain copies of incoming allegation information that was sent directly to the Chairman, the Commissioners, or the EDO for tracking purposes. It is also necessary for the FOIA, Privacy and Information Collections Branch in the OCIO Customer Service Division, as well as OI, to maintain allegation information in the course of performing the official duties of those offices. The allegation records retained by these organizations are to be treated on a strictly need-to-know basis and handling and control of the records will be in accordance with MD 8.8, this Manual, and applicable SUNSI guidance. The OCIOFOIA, Privacy and Information Collections Branch may reproduce allegation information without the specific authorization of the OAC and need not store confidential allegation information in a location designated for confidential allegation information. All other requirements apply. OI maintains independent records regarding the criminal or civil investigations it conducts, including records related to OI confidential sources.

Distribution of the response to allegation-related ticketed correspondence also should be limited (e.g., SECY, EDO, and others with a need-to-know). The AAA or an OAC should be consulted regarding the appropriate individuals or offices to be placed on distribution.

### **3.3.c.7(j) Exceptions**

Any exceptions to the allegation documentation handling requirements noted in Manual Section 3.3.c.7(a) through 3.3.c.7(i) above will be considered on a case-by-case basis by the AAA.

### **3.3.c.8 Allegation Information - SUNSI Handling Guidance**

SUNSI is to be properly handled, marked, and adequately protected from unauthorized disclosure. "SUNSI" refers to any information of which the loss, misuse, modification, or unauthorized access can reasonably be foreseen to harm the public interest, the commercial or financial interests of the entity or individual to whom the information pertains, the conduct of NRC and Federal programs, or the personal privacy of individuals. Allegation information is one of seven information groups categorized as SUNSI. NRC employees, consultants, contractors, and subcontractors are responsible for ensuring that specified procedures are followed to protect SUNSI. The NRC internal web address containing SUNSI handling requirements is:

<http://www.internal.nrc.gov/sunsi/>.

#### **3.3.c.8(a) Applicable SUNSI Allegation Document Categories**

- Confidential Allegation Information
- Sensitive Allegation Information

#### **3.3.c.8(b) Authority to Designate**

- OAC in coordination with office or region

#### **3.3.c.8(c) Access – Who May Have Access?**

- OAC
- NRC personnel based on a need-to-know the information to perform their official duties. A security clearance is not required for access to allegation information. However, if any doubt exists as to whether it is proper to grant access to allegation information, consult with the cognizant OAC.

#### **3.3.c.8(d) Marking**

- What documents should be marked?
  - OACs will mark any hard copies of correspondence from allegers, including allegers with confidential source status that is removed/copied from the official file and provided to the staff that contain the identity of the individual or other information which could identify the alleger.
  - Mark the allegation number on the front page of letters to allegers and on the upper right corner or each subsequent page.
- Who may authorize document marking?

- OAC
- How should a document be marked?
  - For allegation information in hard copy from an allegor that is removed/copied from the official file and provided to the staff, where appropriate, the OAC will stamp “This document identifies an allegor (or confidential source)” on the bottom of each page of hard copy correspondence from an allegor or confidential source.
  - To prevent the inadvertent release to a third party of correspondence to an allegor, type the allegation number on the front page and on the upper right corner of each subsequent page of letters to allegors.
- When is portion or page marking required?
  - No portion marking required

### **3.3.c.8(e) Cover Sheet**

- When should a cover sheet be used?
  - On all allegation files and on all allegation documentation which contains the identity of the allegor, including an allegor who has been granted confidential source status or other information that could identify an allegor.
- What cover sheet is used?
  - Red Allegation Cover Sheet (NRC Form 761), “Confidential Allegation Material:” for documents containing the identity of an allegor with confidential source status.
  - Blue Allegation Cover Sheet (NRC Form 762), “Sensitive Allegation Material” for all others.

### **3.3.c.8(f) Reproduction**

- How many copies may be made?
  - Only reproduction authorized by the OAC is allowed. Verbal authorization is acceptable. Specific exemptions must be granted by the AAA on a case-by-case basis.
  - Multiple copies or simultaneous review copies must be returned to the file or destroyed, unless the information has been sanitized with regard to the identity of the allegor and other information that could reveal his/her identity. Specific exemptions must be granted by the AAA on a case-by-case basis. [Note: Where restrictions are imposed on reproduction, the employee must also ensure that there are no non-authorized copies residing in electronic

systems, such as on the network drive, local hard drive, or portable media.]

### **3.3.c.8(g) Processing on Electronic Systems**

- On what information systems may the document be processed?
  - NRC LAN and other systems accredited under MD 12.5, “NRC Cybersecurity Program.”
- Is encryption required while data is at rest?
  - Yes. Follow the policy outlined in Yellow Announcement No. 157.  
<http://www.internal.nrc.gov/announcements/yellow/2008/2008-157.html>
- May the information be processed in ADAMS?
  - **No**

### **3.3.c.8(h) Use at Home**

- May I use the document at home?
  - No, for Confidential Allegation Information.
  - For other Allegation Information, allegation files may not be removed from the regional or program offices. However, copies of allegation information which do not contain the identity of the allegor or other information which could identify the allegor can be used at home under the following conditions:
    - Employees are prohibited from routinely using, handling, or storing the information at their residences.
    - Occasional use at an employees’ residence requires the approval of the employee’s immediate supervisor or above.
    - To ensure that the information is not viewed or accessed inadvertently or willfully by a person not authorized access, the employee must ensure that the information cannot be seen by a family member, guest, or any other individual who is not authorized access.
    - Information should not be saved/stored on a hard drive if the computer is shared with others. Work should be performed and saved on removable media that is fully encrypted according to Yellow Announcement No. 157 Information Technology Security Policy.  
<http://www.internal.nrc.gov/announcements/yellow/2008/2008-157.html>.
- May I use the information at home under NRC Flexible Workplace Program
  - No, for Confidential Allegation Information.

- For other Allegation Information, if you are approved to work at home under the NRC Flexible Workplace Program, use in accordance with standards set forth in NRC Form 624, Flexible Workplace Program Participation Agreement. Allegation files may not be removed from the regional or headquarters offices. However, copies of allegation information which do not contain the identity of the alleged or other information which could identify the alleged can be used at home under the following conditions:
  - To ensure that the information is not viewed or accessed inadvertently or willfully by a person not authorized access, the employee must ensure that the information cannot be seen by a family member, guest, or any other individual who is not authorized access.
  - All employees, including the staff and contractors, are prohibited from installing peer-to-peer (P2P) software on agency computers without the explicit written approval of an agency Designated Approving Authority. In addition, employees are prohibited from processing SUNSI on home computers unless connected to and working within CITRIX, the NRC Broadband Remote Access System. Employees are prohibited from downloading or storing SUNSI to the hard drive of a home computer when connected to and working within CITRIX. Employees are also prohibited expressly from processing SUNSI on home computers even when an encrypted floppy disk, CD, DVD, or thumb drive is the storage media.
  - Employees who work at home must perform electronic processing of SUNSI on either (1) a home computer within the virtual environment provided by the agency through CITRIX or (2) an NRC-issued laptop with NRC-approved encryption software.

**3.3.c.8(i) Use While Traveling or Commuting**

- May I use the information while on official travel or commuting to or from work?
  - No, for Confidential Allegation Information.
  - Yes, for Sensitive Allegation Material, if it has been redacted to remove alleged identification or fingerprinting information. If Yes, staff must abide by the following requirements:
    - Use of the information is discouraged while traveling on public transportation. To ensure that the information is not viewed or accessed inadvertently or willfully, the employee must ensure that it cannot be seen by persons not authorized access. Particular care should be taken on a public conveyance or in waiting rooms where others may be sitting and standing in close proximity to where the information is being used.
    - Individuals should hand carry protected information during travel only if other means for transmitting the information, e.g., mailing ahead, secure faxing, are not readily available or are operationally unacceptable. If hand carrying is determined to be the best transport method, care must be

exercised to ensure that the information is not compromised through loss or inadvertent access.

- Information must be kept in the traveler's personal possession to extent possible, and stored, appropriately wrapped, in hotel security facilities if possible.
- Information must not be saved/stored on a personally owned computer. Work must be performed on an encrypted laptop computer or other encrypted mobile IT device to preclude unauthorized access if the laptop or device is lost or stolen.
- The information should be returned to an NRC authorized storage location at the earliest possible opportunity.

### **3.3.c.8(j) Physical Copy Transmission**

- May I transmit paper or electronic media, including CD-ROM, disk or tape?
  - Yes. Only to another NRC employee who has a need-to-know the information to perform their official duties.

Special Requirements: Internal correspondence containing information that could reveal the identity of an allegor, including an allegor with confidential source status, which is transmitted via mail must be transmitted in a sealed envelope marked **"To Be Opened By Addressee Only."**

Staff must abide by the following requirements:

Inside the NRC: Information may be –

- Hand-carried by an individual authorized access. The individual shall retain the information in his/her possession to the maximum extent possible unless he/she places the document in the custody of another individual who has authorized access.
- Sent via NRC's interoffice mail system.
- Sent via NRC pouch service between headquarters and the regions. Transmit in a single opaque envelope.
- Transmitted via commercial express carrier.

Outside the NRC:

***For correspondence other than to allegors –***

- Hand carry by an individual authorized access. The individual shall retain the information in his/her possession to the maximum extent possible unless he/she places the document in the custody of another individual who has authorized access.



- Send by NRC Messenger/NRC contract messenger.
- Send by U.S Postal Service: First Class Mail, Registered Mail, Express Mail, Certified Mail.
- Transmit via commercial express carrier.

***For correspondence to allegeders –***

- Send letters to allegeders only by U.S. Postal Service, Certified Mail, or alternative private carriers if they provide a record of receipt by the allegeder or an authorized agent.

Incoming to the NRC: Electronic submissions, including CD-ROMs, submitted to the NRC should follow the E-Rule "Guidance for Electronic Submission to the Agency," available on NRC's external Web site at: <http://www.nrc.gov/site-help/e-submittals.html>.

Encryption: All electronic media (CD-ROM, disk, tape, hard drives, thumb drives, etc.) must be encrypted according to Yellow Announcement No. 157. <http://www.internal.nrc.gov/announcements/yellow/2008/2008-157.html>

**3.3.c.8(k) Electronic Copy Transmission**

- May I transmit the document electronically by e-mail or fax?
  - Yes. Only via NRC LAN to another NRC employee who has a need-to-know the information to perform their official duties.

Additional Requirements for Allegation Material:

- Internal electronic files, faxes, or e-mails should include appropriate allegation cover sheets.
- Electronic transmittals should have the name of the allegeder and other personal identifiers redacted unless the recipient has a need-to-know this information and should have "*Sensitive Allegation Material*" in the subject line.

Abide by the following requirements:

Inside the NRC (including regions): Information may be e-mailed or faxed. Electronic file must contain appropriate markings.

Outside the NRC:

- Fax: May use non-secure facilities where it is confirmed that a recipient who is authorized to access the information will be present to receive the information.

- E-Mail: Email correspondence with allegeders is permitted only after coordination with an OAC. Encryption is currently not required by the NRC. A separate policy to address encryption of transmitted data will be issued by the Computer Security Office when it is approved.
- Otherwise, transmit a physical copy in the manner set forth above.

### **3.3.c.8(l) Storage**

- Confidential Allegation Material: Must be stored in a secure container reserved only for that material. Information which may reveal the identity of an allegeder with confidential source status must be returned to the OAC for storage in the agency file before the end of the workday and may not be stored in another location overnight. The AAA will consider exemptions to these requirements on a case-by-case basis.
- Sensitive Allegation Material: May be stored in a non-locking agency file when being used where there is supplementary security including electronic access controls (keycards) and/or guards on duty. If management determines that additional protection is needed or if supplementary security controls are not available, the information should be stored in key locked file cabinets or equivalent storage containers. **[Note:** A staff member may retain allegation information in his/her office during or beyond the end of the workday, if the information retains an appropriate cover sheet and is stored in an inconspicuous location (e.g., in a desk drawer or cabinet) whenever leaving his/her office, as long as the file does not contain Safeguards Information or involve a confidential source.] Official files must be stored in an officially designated location. Allegation files are not to be removed from the NRC office designated as their official storage location unless being transferred to another office or unless necessary for certification that records are true copies of the Office of the Secretary.
- Duplicate Allegation Working Files: Should have the name of the allegeder or other identifying information redacted or have the appropriate cover sheet.

### **3.3.c.8(m) Destruction**

- Specific Requirements for Allegations: Drafts of all staff-generated information or documents related to allegations should be destroyed when the document is finalized.
- Official Record Version: Destroy in accordance with “NRC Comprehensive Records Disposition Schedule” (NUREG-0910). Allegation files may be destroyed 10 years after cases are closed.
- Non-Official Record Copies: Destroy copies other than the official record version by any means that can prevent reconstruction in whole or in part, including the following methods:
  - Place in Classified and Sensitive Unclassified Waste Disposal Containers.

- Tear document into one-half inch pieces or smaller.
- Destroy by burning, pulping, pulverizing, shredding or chemical decomposition.
- Electronic Data: Use special approaches to delete sensitive unclassified data from electronic storage media. These approaches, as mentioned in the MD 12.5 Handbook, include –
  - Destruction of the physical media.
  - Obliteration or wiping of the sensitive data through the use of an approved software product such as, BCWIFE or SDELETE.
  - Erasure of all data through degaussing.

**3.3.c.8(n) Decontrol Authority**

- AAA

**3.3.c.9 Other Allegation Document Handling Considerations**

**3.3.c.9(a) Inadvertent or Unauthorized Release of Allegation Information**

Whenever SUNSI, which includes allegation information, is inadvertently released or disclosed by the NRC or its contractors, the responsible office must report the release to management within 1 hour either by 1.) clicking on the "Report a Safety/Security Incident" button on the NRC internal website, or 2.) contacting the hotline for the ADM Division of Facilities and Security (DFS), 310-415-6666. ADM/DFS maintains the Incident Response Database, and is responsible for forwarding reports to appropriate offices. If the release includes alleged identifying information, the staff shall also notify the AAA and OIG directly. If the report is made using the button on the NRC internal website, the individual making the report is given several options, including the following:

- Report a Physical Security Incident
- Report a Computer Security Incident
- Report a Personal Security Incident
- Report a Workplace Injury or Illness

**[Note:** Inadvertent release of allegation information in hard-copy (i.e., via a letter sent to an alleged by mail or alternate carrier) should be reported via the "Report a Physical Security Incident" button.]

All safety/security incidents should include the following information:

- date of incident
- equipment or system involved (e.g., computer, facsimile, phone)

- highest level of information involved in the incident
- brief description of the corrective actions currently being implemented

If the inadvertent release occurs via ADAMS or NRC's public web site, the ADAMS Support Center must also be immediately notified. (See Manual Section 4.2.h for additional detail regarding actions to be taken if an alleged's identity is released inadvertently.)

### **3.3.c.9(b) Release of Information to the Public**

Allegation information is not considered for routine release to the public via ADAMS. However, allegation documentation requested by the public via the Freedom of Information Act must be reviewed to determine whether the documentation, or part thereof, is releasable or is exempt from public disclosure (see MD 3.1, "Freedom of Information Act"). The presence or absence of cover sheets or markings as "Allegation Information," "Investigation Information," or similar markings, does not determine whether a document may be withheld from the public. Whenever an NRC employee has a question as to whether information can be released, the employee should consult with the employee's supervisor or—

- The FOIA Privacy and Information Collections Branch, CSD/OCIO if a request for information involves the FOIA or the PA.
- The AAA regarding allegation information.

### **3.3.c.9(c) "No Comment" Policy Regarding the Accuracy of Released Allegation Information**

Should an NRC employee be contacted by an organization outside of the agency to confirm or deny either the accuracy or sensitivity of the purported release of allegation information in the public domain, NRC employees should respond to such a request with a "no comment" statement. If an NRC employee has any questions about how to handle a request for comment about an unauthorized release of allegation information in the public domain, the employee should consult with his/her supervisor and the responsible OAC.

## **4.0 Protection of Allegor Identity**

### **4.1 Allegor Identity Protection**

#### **4.1.a Informing an Allegor About the Allegation Program Identity Protection Policy**

*An allegor will be informed of the degree to which his or her identity can be protected by NRC. If an allegation is received in person or by telephone, information about allegor identity protection should be provided during the initial discussion, if possible. 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. This action is taken so that an allegor does not incorrectly assume that his or her identity is protected by NRC under all circumstances. For an allegor who has been granted confidential source status, identity protection is also referred to as confidentiality (8.8 Handbook, Sections II.F.1, II.F.2, and II.F.3)(see Manual Section 4.4, the definitions of "identity protection," "confidentiality," and "confidential source" in the Manual Glossary, and Manual Section 4.5.b for specific detail related to the granting of confidential source status.).*

#### **4.1.b Allegation Program Identity Protection Policy**

*NRC will take all reasonable efforts not to disclose an allegor's identity. (8.8 Handbook, Section II.F.4) 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. 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. (8.8 Handbook, Sections II.F.4(a) and II.F.4(b))*

*The responsible NRC manager will: (8.8 Handbook, Section II.F.5)*

- *Provide allegation-related information to staff that are assigned allegation follow-up action, including allegor identifying information if necessary to evaluate the allegation, after coordinating with the OAC. (8.8 Handbook, Section II.F.5(a))*
- *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. (8.8 Handbook, Section II.F.5(b))*
- *Ensure that the allegation-related information does not include the identity of the allegor when provided to resident and non-resident inspectors who have not been assigned to evaluate the allegation. (8.8 Handbook, Section II.F.5(c)) To support this effort, the responsible regional manager may request information from the OAC, for example, an AMS report of all allegations opened in the previous 12 months that are associated with a particular facility and/or area of inspection.*

*OI is always made aware of an allegeder's identity if an allegation includes a potential wrongdoing or discrimination concern, and is otherwise informed of the allegeder's identity as deemed appropriate. (8.8 Handbook, Section II.F.4(d))*

#### **4.1.c Implementing the Allegation Program Identity Protection Policy**

*NRC practice is to neither confirm nor deny to a licensee or the public that an individual is an allegeder, except when compelled to disclose an allegeder's identity for any of the reasons indicated in Manual Section 4.2.a. The following provisions apply to protecting the identity of all allegeders, including those who have been granted confidential source status: (8.8 Handbook, Section II.F.6)*

- *Inspections and inspection-related documents should address relevant issues without acknowledging that an issue was raised in the context of an allegation. (8.8 Handbook, Section II.F.6(a))*
- *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."(8.8 Handbook, Section II.F.6(b))Regional administrator or headquarters office director approval is not required to inform the licensee that an OI investigation is related to an allegation, because licensees are aware that OI investigations are tracked by the NRC allegation program.[See Manual Section 5.1.b.2 for guidance regarding rare circumstances when the ARB might consider publicly identifying an issue as an allegation. (8.8 Handbook, Section II.F.11)]*
- *NRC-generated documents related to an allegation are not to include information that could identify an allegeder, with the exception of allegation intake documentation, OI reports, OI interview transcripts, and letters addressed to the allegeder. (8.8 Handbook, Section II.F.7)*

*Information identifying the allegeder may be released to the licensee when the allegeder has clearly indicated no objection to being identified, and releasing the allegeder's identity is necessary to evaluate the allegation, or if NRC determines that the release is necessary to support the agency's mission. (8.8 Handbook, Section II.F.8)*

*When information identifying the allegeder is released to the licensee, the identity of the allegeder should normally be provided to the licensee verbally rather than in a letter requesting information from the licensee. Written documentation of the allegeder's lack of objection to the identity release will be noted in the related allegation file. (8.8 Handbook, Sections II.F.9(a) and II.F.9(b))*

*Before information generated by OI is released to the public, OI will review and redact information that could identify an allegeder. (8.8 Handbook, Section II.F.10)*

- *As a general rule, documents containing the allegeder's identity and information that could identify the allegeder are maintained in the official allegation file or related OI investigation files, or both. When practical, the allegeder'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 which would repeat the allegor's name many times.] Allegation file documentation must be appropriately controlled as noted in Manual Section 3.3.c. (8.8 Handbook, Sections II.F.4(c), II.F.4(c)(i), and II.F.4(c)(ii))*

- If an allegation concern is referred or if an RFI is sent to the licensee for response, the concern should be modified (reworded and/or retyped) as necessary to protect the allegor's identity (see Manual Section 5.6.d.6 for further discussion of precautions taken to protect the identity of an allegor when allegation concerns are provided external to NRC for review).
- Allegation file information and documentation that could reveal the identity of an allegor shall not be reproduced without the authorization of the responsible OAC, the Director, OI, or the responsible headquarters office director or regional administrator. Drafts of staff-generated information or documents related to allegations should be destroyed when the document is finalized.
- Internal correspondence containing the allegor's identity or information that could reveal the identity of an allegor must be transmitted in a sealed envelope marked "To Be Opened by Addressee Only." For NRC internal electronic transmittals via e-mail to staff members with a need-to-know, the sender is not required to redact the allegor's identity and other personal identifiers from the e-mail; however, the e-mail should include "Sensitive Allegation Material" in the subject heading to alert the receiving staff member(s) that the e-mail contains sensitive information. Similarly, allegation-related written correspondence to other staff members may contain allegor identifying information if the receiving staff member(s) has/have a need-to-know. Notwithstanding, it is good practice to refrain from including allegor identifying information in internal e-mail messages and in written correspondence to other staff members, if at all possible. Additionally, the staff should only send correspondence to the allegor over the Internet at the allegor's request, since NRC cannot protect the information during transmission on the Internet and there is the possibility that the transmission could be intercepted (see Manual Section 3.3.c.8 for additional information regarding the handling of allegation information (SUNSI) and Manual Section 3.2.f regarding the receipt of allegations via e-mail).
- Care should be taken when using previous allegation letters to develop new letters. Inadvertent allegor identity releases can occur when allegor identifying information from a previous allegation letter is not deleted during the development of a new letter to a different allegor.
- Care should be taken when sending and responding to allegation-related issues via electronic mail. Inadvertent allegor identity releases can occur when the "auto fill" function of Microsoft Outlook enters the name of an individual who should not have access to the allegation-related matter and the sender does not verify that only appropriate individuals are on the e-mail distribution list before sending the e-mail.

## 4.2 Limitations on Allegor Identity Protection

### 4.2.a Circumstances that May Require NRC to Disclose an Allegor's Identity

*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 during initial receipt of the allegation or other discussion with the allegor prior to the issuance of an acknowledgment letter, if possible, or in an acknowledgment letter (after initial receipt of the allegation), or in a confidentiality agreement (if the allegor has been granted confidential source status). (8.8 Handbook, Sections II.F.12(a), II.F.12(a)(i), II.F.12(a)(ii), and II.F.12(A)(iii))*

*The allegor is informed that NRC may be compelled to disclose his or her identity under one or more of the following circumstances: (8.8 Handbook, Section II.F.12(b))*

- *Disclosure is necessary because of an overriding safety issue (OSI). (8.8 Handbook, Section II.F.12(b)(i))*
- *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. (8.8 Handbook, Section II.F.12(b)(ii))*
- *Disclosure is necessary to support a hearing on an enforcement matter. (8.8 Handbook, Section II.F.12(b)(iii))*
- *Disclosure is necessary to further a wrongdoing investigation. (8.8 Handbook, Section II.F.12(b)(iv))*
- *The allegor has taken actions that are inconsistent with and override the purpose of protecting the allegor's identity. (8.8 Handbook, Section II.F.12(b)(v)) [This criterion would apply in instances where an allegor has become "widely known" in association with a particular allegation concern or concerns (see Manual Section 4.2.f for guidance regarding "widely known" allegors).]*
- *Disclosure is mandated by the Freedom of Information Act (FOIA). (8.8 Handbook, Section II.F.12(b)(vi)) (see Manual Section 6.0 for FOIA guidance)*

### 4.2.b Actions if Allegor Does Not Object to Identity Disclosure

*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 obtain resolution of the allegation, or if NRC determines that the release is necessary to support the agency's mission. (8.8 Handbook, Section II.F.12(c))*

### 4.2.c Allegor Identity Disclosure Regarding a Discrimination Concern

*For allegations involving discrimination, the allegor is informed that NRC will disclose his or her identity to the licensee, the alleged discriminating entity (if not the licensee), or both. Otherwise, it would be impossible to pursue such an investigation. (8.8 Handbook, Section II.F.12(d))*



#### **4.2.d Potential for Allegor Identity Disclosure Regarding a Wrongdoing Investigation**

*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. (8.8 Handbook, Section II.F.12(e))*

#### **4.2.e Obtaining Management Approval for Allegor Identity Release**

*When the allegor has not agreed to identity release, and it is necessary for NRC to release the allegor's identity for any of the reasons outlined in Manual Section 4.2.a, 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 Manual Section 4.5.e for guidance regarding identity disclosure. (8.8 Handbook, Section II.F.12(f))*

#### **4.2.f "Widely Known" Allegor**

##### **4.2.f.1 What is a Widely Known Allegor?**

An allegor that is "widely known" is one who has publicly identified himself/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. If questions arise as to whether an allegor should be considered "widely known," the AAA should be consulted. Additionally, when an action office determines for any reason, that it is necessary to release the identity of an allegor because the allegor is considered "widely known" in association with an allegation concern, the AAA is to be notified so that the allegor's "widely known" status is reaffirmed before the identity release. In such instances, every effort should be made to notify the allegor that NRC has determined that he/she is "widely known" in association with a particular allegation concern or concerns since NRC can no longer protect the allegor's identity as the source of the concern(s).

##### **4.2.f.2 FOIA Request Related to a Widely Known Allegor**

In response to a FOIA request that involves an allegor that is "widely known," the OAC will notify the regional or headquarters office FOIA/PA Coordinator and the OCIO FOIA, Privacy and Information Collections Branch that the AAA has approved the release of the allegor's name. When the OCIO FOIA Privacy and Information Collections Branch prepares the response to the FOIA requester, a note will be placed on top of the package that a widely known allegor is involved in the records being released. When the AAA (or designee) concurs in the FOIA response, the OAC will be notified so that the allegor may be contacted regarding the pending release of his/her name. The OAC will notify the OCIO FOIA, Privacy and Information Collections Branch and the AAA after the allegor has been contacted.

#### **4.2.f.3 Consideration of Widely Known Alleger Status Regarding a Discrimination Concern Involving the DOL Process**

When a DOL/OSHA decision related to an allegor who has filed a discrimination complaint is appealed to a DOL Administrative Law Judge (ALJ), information related to the appeal is placed on the DOL OALJ website (<http://www.oalj.dol.gov/>). The appearance of the allegor's name on the OALJ website may not include information indicating that the allegor also contacted the NRC, and therefore does not automatically require that the allegor be designated as "widely known." However, it is recognized that there could be other circumstances related to the appeal of a DOL/OSHA finding to the OALJ that would result in the allegor being declared "widely known" (for example, if the appeal documentation clearly indicates that the allegor filed concerns with the NRC). These instances should be considered on a case-by-case basis.

#### **4.2.f.4 Publicly Available Information about Court Proceedings - "Practical Obscurity"**

On occasion, a media report will surface indicating that a worker is involved in a court proceeding relating to actions taken by the licensee against the worker, allegedly for engaging in protected activity. Questions have arisen in this circumstance about whether the allegor should be declared "widely known." In most instances, the answer to this question is NO, based on a legal doctrine known as "practical obscurity." Practical obscurity refers to the principle that private information in public records is protected from disclosure as the result of practical barriers to access. If an allegor has filed a discrimination complaint in court, the court generally affords the complainant practical obscurity, and therefore, the allegor should not be considered widely known unless he/she (or his/her legal representative) specifically identifies the allegor in the media as the source of the concern.

The above notwithstanding, the responsible office could decide, after considering factors related to the concern that acknowledging the allegor as the source of the concern would better serve the agency's mission and the general public. If such a conclusion is reached, it would be appropriate to inform the allegor and/or his/her legal representative that NRC, if asked, intends to acknowledge the allegor as the concern source.

#### **4.2.g Notifying the Allegor about the Release of His/Her Identity**

*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: (8.8 Handbook, Section II.F.12(g))*

- *it is necessary to release the allegor's identity to any organization, individual, or to the public, for any of the reasons outlined in Manual Sections 4.2.a. and 4.2.b; (8.8 Handbook, Section II.F.12(g)(i))* The staff should consult with the appropriate regional administrator or headquarters office director prior to the identity release.
- *the allegor's name or other personal identifier has already been released for any of the reasons outlined in Manual Sections 4.2.a. and 4.2.b; (8.8 Handbook, Section II.F.12(g)(ii)) or*

- *it is known that the allegor's identity may be compromised or was released inappropriately by NRC (see Manual Sections 3.3.c.9(a) and 4.2.h for information regarding staff actions after an inappropriate identity release). (8.8 Handbook, Section II.F.12(g)(iii))*

#### **4.2.h Actions Following an Inadvertent Allegor Identity Release**

If an allegor's identity is inappropriately released to the public domain, actions in response to such an occurrence should be taken in three phases: 1.) contact the affected individuals; 2.) make NRC internal notifications; and 3.) complete corrective actions.

- **Contact the Affected Individuals**

Contact the individuals involved in the identity release (i.e., the allegor and those individuals to whom the allegor's identity was inappropriately released). The allegor should be contacted as soon as possible, preferably by telephone. Staff contacting the allegor should apologize for the identity release and inform him/her of the actions taken or to be taken to retrieve the information and limit any further release to the public. The staff contacting the allegor should inquire as to whether the allegor has any additional concerns because of the identity release (e.g., Does he/she believe the identity release will affect his/her employment/work environment or his/her willingness to raise additional concerns, or the willingness of others to raise concerns?). The individual(s) to whom the allegor's identity was inadvertently released should be asked to return or destroy the information or delete it if it was sent electronically.

As prescribed in Manual Section 4.2.g, MD 8.8 Handbook Section II.F.12(g) also prescribes that the allegor be notified of the inadvertent release in writing. If unable to contact the allegor by phone, written notification should be provided as soon as possible by either letter or e-mail. If responsible staff were able to contact the allegor by telephone about the identity release, written correspondence (letter or e-mail) describing what occurred and actions taken in response to the occurrence may be provided in the next written correspondence prescribed by the allegation process (acknowledgment, status, or closure letter).

- **Make NRC Internal Notifications**

The AAA should be notified as soon as possible about the identity release. All such incidents must also be reported within 1 hour by clicking the "Report a Safety/Security Incident" button on the NRC internal website or calling ADM/DFS at 301-415-6666 as described in Manual Section 3.3.c.9(a).

- **Complete Corrective Actions**

After making the initial notifications indicated above, the implementation of corrective actions established in response to the identity release should be tracked to closure via an appropriate regional office/headquarters office action item/corrective action tracking mechanism.

#### **4.2.i Potential Allegor Identity Disclosure Related to a Concern/Request Submitted Regarding 10 CFR 19.16(a)**

Whether or not an allegor's identity is to be protected regarding a request for an inspection pursuant to 10 CFR 19.16(a) depends on whether or not the allegor has requested that his/her name and the name of other individuals appear in the information provided to the licensee or on any record published, released or made available by the Commission. A 10 CFR 19.16(a) request for inspection is made available to the licensee by the action office. The names of the requestor and other individuals may be withheld from such a request if requested by the worker. If an allegation does not involve a written request for inspection under 10 CFR 19.16(a), no licensee notification is required.

#### **4.3 Considering Public Discussion of Specific Allegation-Related Information**

Typically, communication of information related to NRC's evaluation and conclusion regarding an allegation is limited to the allegor who raised the concern and to a small number of NRC and licensee individuals (if the allegation involved an RFI) with a need-to-know and who participated in the evaluation. If the allegation involves a security concern, the communication of information may be further limited. This is in keeping with an important objective of the NRC allegation program to protect an allegor's identity. In certain cases, however, dissemination of allegation-related information to a broader audience has been necessary and has proven beneficial to obtaining a more comprehensive response. Although rare, such an approach directed by the ARB in appropriate circumstances can improve public confidence by more openly discussing program activities while continuing to protect the identity of the allegor. When appropriate, this ARB consideration should be made both with regard to advertising allegation inspection/investigation efforts and disseminating the results of an allegation evaluation. Manual Section 5.1.b.2 provides guidance for the ARB consideration of more public discussion of allegation program activities.

Possible avenues for communicating the results of an allegation evaluation in a more public manner include, but are not limited to, NRC generic communications (e.g., RIS, information notice), the NRC's public website (e.g., Allegation Program web page, press releases), inspection reports, or other regulatory documents.

#### **4.4 Advising an Allegor about Confidential Source Status**

##### **4.4.a Advising an Allegor about Confidential Source Status**

*Most allegors accept the standard allegor identity protection provisions discussed in Manual Sections 4.1 and 4.2 and will provide the NRC with detail regarding their concern(s) on that basis. (Handbook 8.8, Section II.F.13(a)) Occasionally however, an allegor will decline to provide detailed information to 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. (Handbook 8.8, Section II.F.13(a)(i))*

*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 definitions of "identity protection," "confidentiality," and "confidential*

source" in the Manual Glossary.) (Handbook 8.8, Section II.F.13(a)(ii))

*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. (Handbook 8.8, Section II.F.13(a)(iii))*

*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 Manual Section 4.5 and the standardized confidentiality agreement form in Manual Exhibit 5 for additional guidance related to the granting of confidential source status).(Handbook 8.8, Section II.F.13(a)(iv))*

#### **4.4.b Allegor Request for Confidential Source Status**

*If the allegor requests confidential source status before providing information, the guidance in Manual Section 4.5 is to be followed. (Handbook 8.8, Section II.F.13(b))*

#### **4.4.c Allegor Refusal to Provide Information – Option for Subpoena**

*Sometimes an allegor refuses to accept an offer of confidential source status and to provide relevant information. In such circumstances, NRC may consider issuance of a subpoena or other means to obtain needed information, if the NRC has the allegor's contact information. (Handbook 8.8, Section II.F.13(c))*

*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 document the allegation in as much detail as possible, and 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. (Handbook 8.8, Sections II.F.13(d), II.F.13(d)(i), and II.F.13(d)(ii)) (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. (Handbook 8.8, Section II.F.13(d) footnote))*

### **4.5 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 the OIG as noted in Manual Section 5.6.i, the OIG follows its own guidance concerning the granting and revoking of confidentiality. (8.8 Section IV, Preface)*

#### **4.5.a General**

##### **4.5.a.1 Commission Policy Statement on Confidentiality**

*On April 5, 1996, the Commission approved a revision to the policy on confidentiality,*

*which sets forth agencywide policy on protecting the identity of allegeders and confidential sources, including allegeders who are granted confidential source status. The Commission's inspection and investigatory programs rely, in part, on individuals voluntarily coming forward with information about 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 MD 8.8, Section IV, and instructions in this Manual and the OI Investigations Procedures Manual provide for implementation of the Commission's policy statement. (8.8 Handbook, Section IV.A.1)*

#### **4.5.a.2 Confidential Source Status Is Not Granted Routinely**

*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 NRC, or that confidential source status should be routinely granted to allegeders, particularly in light of the identity protection afforded all allegeders. 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. (8.8 Handbook, Section IV.A.2)*

#### **4.5.b Granting Confidential Source Status**

##### **4.5.b.1 Determining Whether a Grant of Confidential Source Status is Warranted**

*Confidential source status may be offered to an allegeder if the allegeder is reluctant to provide information (a standardized confidentiality agreement form is available in Manual Exhibit 5). If an allegeder 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 allegeder's reason for the request, allegeder involvement in and actions related to the information, regulatory jurisdiction, and whether NRC or others may already have knowledge of the information. (8.8 Handbook, Section IV.B.1)*

If an allegeder makes a request for confidentiality, the following information should be obtained from the allegeder to help determine whether or not the allegeder may be granted confidential source status:

- Has the allegeder provided the information to anyone else? For example, is the information already widely known, with the allegeder as its source?
- Does NRC already know of the information, obviating the need to establish the allegeder as a confidential source?
- Does the allegeder have a past record that would weigh either in favor of or against granting confidential source status in this instance? For example, has the allegeder abused grants of confidential source status in the past?
- Is the information that the allegeder is offering within the jurisdiction of NRC? (i.e., Should the allegeder be referred to another agency?)

- Why does the alleged desire confidential source status? What would be the consequences to the alleged if his/her identity was revealed?
- Does it appear that the alleged caused the condition or committed the violation and could likely be subject to civil or criminal prosecution?

#### **4.5.b.2 Considering an Offer of Confidentiality to an Alleged Who Has Not Requested Confidential Source Status**

*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 (see Manual Sections 4.5.b.4 and 4.5.b.5) may offer confidential source status if an alleged is not providing information for fear of identity disclosure. In this instance, as on the occasion when an alleged requests confidentiality, pertinent information must be gathered, as noted in Manual Section 4.5.b.1, to determine whether or not a grant of confidential source status is warranted. (8.8 Handbook, Section IV.B.2)*

#### **4.5.b.3 Information Provided to an Alleged Who Has Been Granted Confidential Source Status**

*When confidential source status is granted, the alleged is to be provided information regarding the confidentiality agreement, the sensitivity of the information the alleged is providing (including the potential that the information itself could reveal the source's identity), how the alleged's confidentiality is controlled within the NRC, and how the NRC will respond to questions about the alleged's confidential source status. (8.8 Handbook, Section IV.B.3) The following points should be discussed with the alleged:*

- Explore the sensitivity of the information being provided by the alleged with a view to determining whether the information itself could reveal the source's identity.
- Inform the alleged that because of the tight controls imposed on the release of his/her identity within NRC, he/she should not expect others within NRC to be aware of his/her confidential source status. Therefore, the alleged would be responsible for bringing his/her confidential source status to the attention of other NRC personnel if the alleged desires similar confidential source treatment by these personnel when information is provided to them.
- Inform the alleged that if inquiries are made regarding his/her status as a confidential source, NRC will neither confirm nor deny his/her status.
- Review the "Confidentiality Agreement" (see Manual Exhibit 5) with the alleged if it temporarily is not possible to provide him/her with a copy of the agreement.

#### **4.5.b.4 Authority to Grant Confidential Source Status**

*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 alleged. The Executive Director for Operations*

*(EDO) and the Director of 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 Special Agents in Charge (SAIC) have received this designation from the EDO or the Director, OI. (8.8 Handbook, Section IV.B.4)*

#### **4.5.b.5 Documentation of Authority to Grant Confidential Source Status**

*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 formally documented 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. (8.8 Handbook, Section IV.B.5)*

#### **4.5.b.6 Temporary Grant of Confidential Source Status**

*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 approximately 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 Manual Section 4.5.c). 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 OAC or, in the case of OI, in accordance with the OI Investigations Procedures Manual. (8.8 Handbook, Section IV.B.6)*

#### **4.5.b.7 Requirement to Inform Senior Management when Confidential Source Status Has Been Granted**

*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 also shall approve any variance from the standard confidentiality agreement and each denial of confidential source status. (8.8 Handbook, Section IV.B.7)*

#### **4.5.b.8 Maintenance of Confidentiality Agreements and Related Documentation**

*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 its OI Investigations Procedures Manual. (8.8 Handbook, Section IV.B.8)*



#### **4.5.b.9 Actions to Support the Protection of Confidential Source Status**

*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). (8.8 Handbook, Section IV.B.9)*

#### **4.5.b.10 Actions if Confidential Source Status Has Been Breached or Jeopardized**

*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 (see Manual Sections 3.3.c.9(a) and 4.2.h for staff actions after an inappropriate identity release). (8.8 Handbook, Section IV.B.10)*

#### **4.5.b.11 OI Granting of Confidential Source Status**

##### **4.5.b.11(a) OI Grant of Confidential Source Status to an Alleger**

If OI receives a request for confidential source status from an allegor who is already known to the regional or headquarters office allegation staff and/or responsible technical staff, OI will forward the allegation information and the name of the prospective confidential source to the action office OAC who will then be the primary point of contact with the allegor. The granting of confidential source status by the action office will then be considered in accordance with Manual Sections 4.5.b.1 through 4.5.b.7. In some instances however, based on an allegor's request and/or on a need for OI to recruit and maintain the allegor as an OI confidential source for investigative purposes, OI may directly grant confidential source status to the allegor. On these occasions, OI will forward the information related to the allegor's concerns to the action office OAC so that allegation tracking may be initiated, but the name of the allegor/OI confidential source will not be disclosed to the action office by OI. OI will be the point of contact for an allegor recruited by OI as a confidential source and will be responsible for communicating with the allegor, as agreed upon, including the distribution of allegation acknowledgment, status, and closure letters, if appropriate. Action office staff may be requested to support OI in the development of allegation correspondence to the allegor. Any additional contacts with the allegor/OI confidential source will be at OI's discretion and in accordance with the OI Investigations Procedures Manual. As requested, the OAC will coordinate with OI regarding communications with the allegor to ensure that sensitive information is not compromised.

##### **4.5.b.11(b) OI Recruiting of Confidential Sources Who Are Not Allegors**

OI may also recruit as a confidential source, an individual who is not providing an

allegation to NRC but who is providing testimony and/or other evidence as a witness in a matter of alleged wrongdoing. It is recognized that OI will apply the general guidance provided in Manual Sections 4.5.b.1 through 4.5.b.7 in considering whether to grant confidential source status to the individual. Any additional contacts with the OI confidential source will be at OI's discretion and in accordance with the OI Investigations Procedures Manual.

#### **4.5.c Revocation of Confidential Source Status**

##### **4.5.c.1 Authority to Revoke Confidential Source Status**

*A decision to revoke confidential source status can only be made by the Commission, the EDO, or the Director of 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 of OI may only revoke grants of confidential source status originally made by OI. (8.8 Handbook, Section IV.C.1)*

##### **4.5.c.2 Circumstances Warranting Revocation of Confidential Source Status**

*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 NRC. (8.8 Handbook, Section IV.C.2)*

##### **4.5.c.3 Contacting Allegor Prior to Revocation of Confidential Source Status**

*Before revoking confidential source status, 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. (8.8 Handbook, Section IV.C.3)* All written communications with a confidential source who requests or requires a response shall be sent by certified mail or an alternate carrier that requires verification of receipt.

#### **4.5.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. (8.8 Handbook, Section IV.D)*

#### **4.5.e Official Disclosures**

##### **4.5.e.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. (8.8 Handbook, Section IV.E.1)*

#### **4.5.e.2 Other Disclosures**

##### **4.5.e.2(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, NRC will seek to minimize the disclosure through protective orders or other means. (8.8 Handbook, Section IV.E.2(a))*

##### **4.5.e.2(b) NRC Adjudicatory Bodies**

*The Commission, as the ultimate adjudicatory authority within 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. (8.8 Handbook, Section IV.E.2(b)(i))*

*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. (8.8 Handbook, Section IV.E.2(b)(ii))*

*The Commission notes that 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. (8.8 Handbook, Section IV.E.2(b)(iii))*

##### **4.5.e.2(c) Congress**

*Disclosure to Congress may be required in response to a written 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. (8.8*

**4.5.e.2(d) Federal and State Agencies**

*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 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 of 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 the following paragraph. 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 NRC. (8.8 Handbook, Section IV.E.2(d)(i))*

*As an exception to the discussion in the above paragraph regarding efforts to notify a confidential source about the need to release his/her identity to another federal or state agency, when OI and the Department of Justice (DOJ) are pursuing the same matter or when OI is working with another law enforcement agency, the EDO or the Director of 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. (8.8 Handbook, Section IV.E.2(d)(ii))*

## **5.0 Allegation Evaluation**

### **5.1 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. (8.8 Handbook, Section II.I)*

#### **5.1.a Participants and Functions**

##### **5.1.a.1 ARB Quorum**

*An ARB consists of a chairperson (an action office director, division director, deputy director, or senior manager designee), preferably with oversight responsibility related to the licensee that is the subject of the allegation, 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 ~~suspected~~ 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. (8.8 Handbook, Section II.I.1(a))*

##### **5.1.a.2 Initial ARB Schedule**

*Normally, an initial ARB meeting is to be held within 30 calendar days of allegation receipt by the agency. When an allegation involves an overriding safety issue, an ARB should be held as soon as possible. [Note: 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 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.] (8.8 Handbook, Section II.I.1(b))*

When an allegation is transferred to the technical staff by OIG, the date the allegation is received by the action office from OIG will be recorded in AMS as the allegation receipt date. In such instances, if the identity of the alleged is known, the acknowledgment letter to the alleged (see Manual Section 5.3) should relate both the date that OIG received the alleged's information and the date the action office received the allegation documentation from OIG.

##### **5.1.a.3 OAC/Allegation Coordination Staff ARB Functions**

The primary function of the OAC in attendance at the ARB is to advise the ARB on allegation process and policy matters and to ensure that the actions approved by the ARB are reflective of the direction provided in MD 8.8, this Manual, and other applicable guidance documents. Action office allegation coordination staff will document the decisions of the ARB and use the ARB meeting minutes to update the AMS database.

The action office allegation coordination staff will ensure that ARB attendees are informed of specific actions assigned to them or their organizations. A hard copy of the ARB meeting minutes is placed in the allegation file.

## **5.1.b ARB Proceedings**

### **5.1.b.1 Pre-ARB Preparation and Actions to Facilitate ARB Discussion**

As indicated in Manual Section 3.3.a.5, it is preferable that, prior to the ARB meeting, responsible action office staff and management have reviewed the allegation receipt documentation (or other pertinent information, if the ARB is being reconvened for a particular allegation) to facilitate ARB discussion. To further contribute to the efficiency and effectiveness of the ARB meeting and to facilitate the recording of decisions made by the ARB, it is recommended that prior to the ARB meeting, responsible action office staff submit to the OAC, on forms designated by the action office, an electronic version of the proposed courses of action for each allegation to be discussed at the ARB. The submittal of this information, coupled with the use of overhead projection capabilities, will enable the ARB meeting attendees to collectively view and discuss proposed courses of action, and accept or modify them as appropriate. A sample ARB decision record form is provided in Manual Exhibit 6.

### **5.1.b.2 ARB Discussion and Proposed Actions**

*The ARB accomplishes the following (8.8 Handbook, Section II.1.2(a)):*

- *Considers the safety significance of each allegation concern. (8.8 Handbook, Section II.1.2(a)(i))* The intent of a safety significance determination by the ARB is to provide perspective with regard to assigned follow-up actions, i.e., concerns involving higher safety significance should prompt a quicker response. The safety significance determination applies primarily to technical matters and should consist of a brief statement describing potential safety implications of the concern, presuming the concern is true. As an example, the safety significance determination for an allegation concern about a leaking nuclear gauge might state..."If true, a worker standing near the gauge for a full work shift could receive unnecessary dose." It is preferred that comparative qualifiers (e.g., low, medium, high) not be used to describe safety significance because they are relative and lack description of the safety issue. In assessing each concern for safety significance, the ARB also assesses whether the concern may have generic implications, and as appropriate, considers notification of other headquarters or regional offices, processing a TIA, TAR, or Report on Interaction from another headquarters or regional office, or transfer to another headquarters or regional office. In allegation context, a generic concern is one that affects multiple facilities and has the potential to affect others, or involves a structure, system, component, or process that may be used at multiple NRC-regulated facilities (e.g., a concern about a defect in a product supplied by a vendor to the nuclear industry). If there is disagreement regarding the oversight responsibility for an allegation with generic implications, the AAA should be consulted.
- *Assigns follow-up actions and estimated completion times for concern evaluation consistent with the safety and risk significance of the allegation concerns, as*

*determined by the ARB. Assigns actions for allegor feedback as prescribed by the allegation process and supplemental allegor feedback, as deemed appropriate. (8.8 Handbook, Section II.1.2(a)(ii))*

- *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,<sup>2</sup>*
  - *Requesting feedback from the affected licensee through a Request for Information (RFI) or another NRC regional or headquarters office via 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. (8.8 Handbook, Section II.1.2(a)(iii))*
- *Provides guidance and direction to assigned action office staff. (8.8 Handbook, Section II.1.2(a)(iv))*
- *Recommends offering an allegor 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 (See Manual Section 5.2.f and NUREG/BR-0313, "Pre-Investigation ADR Program.") (8.8 Part I, Section II.1.2(a)(v)) [NRC public website link: <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0313/>]*
- *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 allegor). (See Manual Section 5.9.g.4 for guidance regarding the determination of the appropriate security information category.) (8.8 Handbook, Section II.1.2(a)(vi))*
- *Facilitates discussions of allegations involving alleged 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. Manual Section 5.7 provides detail regarding the requirement for staff to notify OI of allegations of potential wrongdoing and to engage OI to coordinate follow-up 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*

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<sup>2</sup>Assigned staff may perform independent inspection activity to verify a condition indicated in a licensee's RFI response. While discussion of such additional inspection activity at an ARB is not mandatory, the proposed inspection activity should be discussed with the OAC and the responsible branch chief to determine if presentation to the ARB may be appropriate.

*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 the Manual Glossary)), to support the staff in obtaining additional information regarding the allegation. The ARB may also 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 alleged 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. (8.8 Handbook, Section II.1.2(a)(vii))*

With regard to an ARB request for an OI Assist, the most common circumstance of this type involves a technical matter for which an alleged or an NRC staff member identifies that wrongdoing may have occurred. The ARB evaluates the evidence provided and concludes, with the agreement of the attending OI representative, that additional information must be gathered in order to determine if there is specific indication of potential wrongdoing (which is needed in order for OI to open a full investigation). In many cases, the technical staff is asked to perform additional inspection in an effort to obtain the additional detail related to the matter of potential wrongdoing. Less frequently, if the ARB determines that OI's expertise is needed in order to obtain the additional information, OI is requested to open an OI Assist. In rare instances, after the OAC and responsible staff have gathered information from an alleged making a claim of discrimination and Regional Counsel (or OGC) indicates that there is insufficient data to make a prima facie call, OI may also be asked to conduct an Assist to gather additional information in an effort to help Regional Counsel (or OGC) determine whether an alleged has articulated a prima facie showing of discrimination (see Manual Section 5.2.a.1(a))

It is suggested that OI be provided with source documentation specifically related to the matter of alleged wrongdoing, if available. For example, if the alleged wrongdoing matter involved an alleged willful violation of a procedure, the applicable version of the procedure should be obtained and provided to OI as the basis document. This will help assure that the investigation is appropriately focused and that the violation can be legally supported.

- *Facilitates discussion of alleged wrongdoing and discrimination matters with OI at various stages of review, as necessary. (8.8 Handbook, Section II.1.2(a)(viii))*  
Additionally, for any concern involving alleged harassment, intimidation, retaliation, or discrimination for engaging in NRC protected activity, the ARB should discuss how the matter may have affected the willingness of employees at the facility-in-question to raise safety concerns and consider appropriate follow up action (e.g., RFI to the licensee, initiation of a new investigation, augmentation of an ongoing investigation, chilling effect letter). See Manual Section 5.2 for more discussion of allegation process/ARB considerations with regard to matters of alleged discrimination and potential chilling effect.
- *Requests legal reviews by representatives of OGC or regional counsel, as appropriate. (8.8 Handbook, Section II.1.2(a)(ix))*



- 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 such an 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. (8.8 Handbook, Section II.1.2(a)(x))*
- Establishes written minutes documenting issues discussed, meeting participants, safety significance assessments provided, investigation priorities established, and actions assigned by the ARB (8.8 Handbook, Section II.1.2(a)(xi)) to effect allegation evaluation and closure, including the scheduling of subsequent ARB meetings, as deemed appropriate.*

### **5.1.b.3 Exclusion of OIG-Related Issues from ARB Discussion**

If an allegation also contains concerns about alleged wrongdoing or misconduct issues on the part of NRC staff or NRC contractors, the issues are not to be discussed at an ARB meeting. As indicated in Manual Section 3.3.c.7(g), documentation related to such matters is to be forwarded to the appropriate office director or regional administrator for review/referral to OIG, and excluded from the allegation file.

### **5.1.b.4 Reconvening the ARB**

*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. Additionally, 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. (8.8 Handbook, Section II.1.2(b))*

#### **5.1.b.5 Taking Credit for Another NRC Meeting at Which a Decision is Made Regarding an Allegation as an ARB Meeting**

##### **5.1.b.5(a) Taking Credit for Another Action Office Meeting as an ARB Meeting**

If a decision is made at another action office meeting regarding the processing of an allegation, the action office may take credit for the meeting as a periodic ARB meeting if the meeting was attended by personnel forming an ARB quorum as defined in Manual Section 5.1.a.1. As an example, if a determination is made that the priority of an ongoing OI investigation should be changed at a periodic meeting between a Regional Administrator and staff with the regional OI SAIC (often referred to as an OI Prioritization Meeting), the meeting may be credited as an ARB provided the attendees at the meeting form an ARB quorum. NRR, NRO, NSIR, and NMSS management have a similar discussion with OI every 3-4 months prior to a scheduled ARB meeting for each office. The allegation-related decisions made at such a meeting (in the example, to change the OI investigation priority) should be documented on the standard form used by the regional or headquarters office to document ARB decisions, and recorded in AMS by the OAC.

##### **5.1.b.5(b) Taking Credit for an Enforcement Panel as an ARB Meeting**

If NRC evaluation of an allegation prompts the scheduling of an enforcement panel (e.g., if staff review results in the pursuit of escalated enforcement action, or for an OI preliminary investigation outbrief), the decisions made at the enforcement panel may be credited as ARB decisions, provided they relate directly to the allegation. The allegation-related decisions made at the enforcement panel may be documented on the standard form used by the regional or headquarters office to document ARB decisions, or on the standard form used to document enforcement panel decisions, as long as the standard form used to document enforcement panel decisions records similar information to that recorded on the standard form used to document ARB decisions. In either case, the fact that the meeting constituted an ARB meeting and the allegation-related decisions made at the meeting should be recorded in AMS by the OAC.

#### **5.1.b.6 "E-Mail" or "Walk-around" or "Virtual" ARB Meeting**

Events or personnel availability issues will occasionally make it difficult to physically gather appropriate staff in a conference room for the purpose of conducting an ARB meeting. If it should become necessary to obtain an ARB decision on short notice in order to move forward the evaluation of an allegation, and it is not possible to physically convene the ARB, an ARB decision may be reached by contacting the members of the ARB individually to obtain their approval for the proposed action. Such an effort is usually accomplished by the OAC (since OAC participation is required to form an ARB quorum), and may be done electronically (by e-mail) or in-person (by discussing the proposed ARB decision individually with each ARB member). Once all of the ARB members have been contacted and agree with the proposed action, the individual coordinating the "e-mail" or "walk-around" or "virtual" ARB (usually the OAC) should

inform the ARB members of the completed ARB decision, denoting all of the staff members who were part of the ARB, and document the ARB decision for the allegation file. (It is recommended that this approach only be considered for routine, non-controversial decisions (e.g., a decision to add a recently submitted allegation concern to an already planned inspection activity). It is not recommended that this approach be employed for complex or controversial allegation matters. In these situations, every effort should be made to hold the ARB in its normal setting to facilitate open discussion.)

#### **5.1.b.7 Considering ARB Discussion of an Allegor’s Interview Transcript or of the Results of an OI Assist to Staff**

*If an OI investigation has been initiated regarding an allegation involving an allegor whose identity is known, and the allegor is interviewed by OI, the transcript or summary of interview with the allegor shall be provided to the action office OAC so that it may be reviewed 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. (8.8 Handbook, Section II.1.2(c))* Similarly, if a previous ARB decision resulted in the opening of an OI Assist to Staff to determine whether a full investigation is warranted (i.e., whether a specific indication of potential wrongdoing exists), the ARB should reconvene to discuss the results of OI’s Assist.

#### **5.1.b.8 Documenting ARB Decisions in AMS**

*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 entered 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. (8.8 Handbook, Section II.1.2(d))*

### **5.1.c Documentation of ARB Minutes/Decisions**

#### **5.1.c.1 Content of ARB Meeting Minutes**

The minutes for each ARB meeting should identify the following:

- Allegation number
- Meeting date
- Participants
- Purpose of the ARB
- Plant(s)/facilities affected, including generic application and implications
- Actions assigned and schedules for the assigned actions to provide feedback to the allegor, and to evaluate and close the allegation
- Assessment of the safety significance of each concern, and particularly those determined to require immediate regulatory action

- Security concern category (if a concern is security-related) for the purpose of determining how much detail may be provided external to NRC (see Manual Section 5.9.g.4)
- Priority level for an OI investigation and the rationale for the priority assigned, or the rationale for not conducting an OI investigation, as appropriate
- Proposed technical reviews, inspections, and/or OI investigations or assists
- Rationale for requesting information from the licensee via an RFI or for referring an allegation concern to another agency or external entity for review. [Note: The ARB may, on occasion, conclude that the licensee or external entity should be informed about a concern but not require the licensee or external entity to respond to the concern because the concern is vague, lacks specificity, or is unclear in its association with NRC-regulated activity. This approach should only be considered on rare occasion. As a general rule, if a submitted concern meets the NRC's definition of an allegation, however vague, and it is possible to inspect the concern, an effort should be made to evaluate the concern either by inspection or by requesting feedback from the licensee or other appropriate entity. Additionally, the fact that an allegation is submitted anonymously does not provide sufficient justification for not requesting feedback from a licensee or other appropriate entity.]
- Basis for an ARB decision to submit an allegation-related RFI to the licensee if one or more of the criteria for taking such action are not met or if one of the conditions inhibiting an RFI to the licensee applies (see Manual Sections 5.6.d.2, 5.6.d.3, and 5.6.d.4)
- Comments/positions provided by OGC or regional counsel
- Potential actions in response to a history of inadequate RFI responses from the licensee (see Manual Section 5.6.d.8(c)(2)).
- Indications of a chilling effect or a potential safety conscious work environment problem (if applicable)
- Basis for subsequent ARB meetings

This information should be documented on forms designated by the action office for this purpose. A sample ARB decision record form is provided in Manual Exhibit 6.

#### **5.1.c.2 Approval of ARB Meeting Minutes**

The ARB chairperson should approve the minutes, either by signing or initialing the ARB decision record, or by including an electronic note on the ARB decision record indicating that the ARB members (including the chairperson) agree with the ARB meeting minutes and assigned actions included on the form.

#### **5.1.c.3 Distribution of ARB Meeting Minutes**

The OAC provides the minutes to the ARB meeting participants. If OI or OGC (or regional counsel) was unable to participate in an ARB meeting, the minutes shall also be provided to the appropriate staff in OI and OGC (or regional counsel).

## 5.2 ARB Consideration of Discrimination Concerns and Chilling Effect/Chilled Work Environment Issues

### 5.2.a ARB Discussions Involving Allegations of Discrimination

#### 5.2.a.1 Prima Facie Determination and Early ADR Offer

*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 alleger (see definition of prima facie showing of discrimination in the Manual Glossary). For a prima facie discrimination case, the ARB will assign an action to offer the alleger 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, "Pre-Investigation ADR Program," available at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0313/>. (8.8 Handbook, Section II.1.3(a))*

#### 5.2.a.1(a) Responsibility for Prima Facie Determination

Regional Counsel (for Regional allegations) and OGC (for NRC Headquarters allegations) are responsible for determining whether an alleger has provided a sufficient pattern of facts to establish a prima facie showing of potential discrimination. This conclusion is usually provided by Regional Counsel/OGC at an ARB meeting. If Regional Counsel/OGC is unable to attend the ARB meeting at which the determination of a prima facie showing is discussed, the ARB will assign an action to Regional Counsel/OGC to evaluate the facts provided by the alleger and make a prima facie determination.

When receiving an allegation, NRC staff members are asked to obtain as much information as possible about the concerns raised by the alleger. When an alleger raises a discrimination concern, suggested questions for staff receiving the allegation include questions that relate to the determination of a prima facie showing of potential discrimination. While it is appropriate for the technical staff to ask such questions and record the alleger's response (some regional/headquarters offices have developed forms for recording the alleger's responses to the prima facie questions), it is to be emphasized that recording the answers to the prima facie questions by a technical staff member receiving the allegation does not "establish" prima facie. The final conclusion regarding a prima facie showing is made **only** by Regional Counsel/OGC.

Normally, the OAC and/or responsible technical staff will gather sufficient information from the alleger to allow Regional Counsel (or OGC) to determine whether a prima facie showing of potential discrimination has been articulated. However, on rare occasion, after the OAC and/or responsible technical staff complete efforts to obtain as much information from the alleger as possible and after Regional Counsel (or OGC) has reviewed that information, there may not be sufficient detail to make a definitive prima facie call. In such instances, the ARB may conclude that additional effort is needed, using OI's expertise by way of an OI Assist, to gather information to

enable NRC to make the prima facie call. If an OI Assist is employed for this purpose, the reason should be well documented in the allegation file, making clear that an offer of Early ADR would not be precluded if the allegor was to provide OI sufficient additional information to enable Regional Counsel (or OGC) to make the prima facie call. Such documentation will clearly differentiate this effort from that of an interview with the allegor during the course of a full OI discrimination investigation after a prima facie call has already been established (in the latter case, an Early ADR offer would not be an option, since OI had already opened a full investigation and has conducted substantive investigative activity related to a prima facie case of alleged discrimination – see Manual Section 5.2.a.3).

#### **5.2.a.1(b) Causation/Nexus – The 4th Prima Facie Question**

With regard to the pattern of facts that must be presented by the allegor in order to establish a prima facie showing of potential discrimination, the first three items are relatively straight forward (i.e., What was the protected activity? What was the adverse action? Did the person(s) who took the adverse action know about the protected activity?) The last prima facie question is more subjective, and asks the allegor to describe the causal link (also referred to as the "nexus") between the protected activity and the adverse personnel action. To illustrate, temporal proximity is the simplest example to describe. If an allegor's employment is terminated within a day or two of raising a safety concern, a nexus between the raising of the safety concern and the employment termination is clearly indicated. If an allegor claims that his/her employment was terminated due to a safety concern that he/she raised 5 years ago, although all other facts must be evaluated, it would be more difficult for Regional Counsel/OGC to conclude that there was a nexus between the protected activity and the adverse action. In order to establish prima facie, Regional Counsel/OGC only have to reach a conclusion that the protected activity was likely to have been a contributing factor to the adverse personnel action. Regional Counsel/OGC do not have to conclude that the protected activity was a significant or motivating factor.

#### **5.2.a.1(c) Is Self-Declaration of Fatigue Related to Fitness-for-Duty Considered Protected Activity?**

NRC RIS 2002-07, "Clarification of NRC Requirements Applicable to Worker Fatigue and Self-Declarations of Fitness-for-Duty," provides guidance on the handling of circumstances wherein a worker declares himself/herself unfit for duty due to excessive fatigue. On occasion, in response to a worker's declaration that he/she is unfit for duty due to fatigue, a licensee has taken disciplinary action against the worker, most often because the licensee believes that the worker is abusing licensee policies through excessive requests for leave. When such circumstances occur, and the worker submits a discrimination concern to the NRC, a common question has emerged as to whether the self-declaration that the worker is unfit for duty due to fatigue constitutes protected activity.

NRC provided clarifying information in response to the issuance of RIS 2002-07 indicating that self-declaration of unfitness for duty due to fatigue can be a protected activity when there is a good faith effort by the worker to comply with 10 CFR Part 26. The RIS was intended to provide protection for workers who are being overworked and are fatigued through no fault of their own. As an example, if a

worker declares that he/she is too tired to work because he/she is being asked to work a 12-hour shift for the 14<sup>th</sup> consecutive day, it would be reasonable to assume that the worker made such a declaration in good faith. However, a self-declaration of fatigue does not protect a worker from being untruthful or negligent. If the licensee makes a reasonable determination that the worker was negligent with respect to maintaining his/her fitness-for-duty, the worker is not immune from disciplinary action.

#### **5.2.a.2 Exceptions to Offering Early ADR and Assignment of Tentative OI Investigation Priority**

*Exceptions to offering Early ADR to the allegor 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 allegor, the ARB may assign an investigation priority of High, Normal, or Low, using guidance set forth in Manual Section 5.7.a.5(c), 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. (8.8 Handbook, Section II.1.3(b))*

#### **5.2.a.3 Determination of Action Subsequent to Early ADR Offer**

*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. (8.8 Handbook, Section II.1.3(c))*

Normally, if Early ADR is not used or is unsuccessful, the OI investigator assigned to initiate a discrimination investigation will contact the allegor to discuss his/her interest in participating in the investigation. On rare occasion, if the allegor is to be contacted for other reasons in the same time frame, another staff member (e.g., the OAC) may be requested to ask the allegor during that discussion about his/her interest in participating in a discrimination investigation. In either case, if the allegor indicates an interest in participating in a discrimination investigation, the arrangement of an initial interview with the allegor would be accomplished by OI. Once an investigation is initiated by OI and substantive investigative activity has been conducted, the offer of Early ADR is no longer an option.

#### **5.2.a.4 Review of Allegor Transcript (if OI Investigation is Initiated)**

For allegations of alleged discrimination, the transcript of an OI interview with the allegor should be provided to the OAC, so that it may be reviewed by the OAC and responsible technical staff, as appropriate, to determine if additional technical concerns or additional

information related to existing technical concerns were provided, or if additional discussion with OI is appropriate as a result of information presented by the allegor during the interview. As necessary, another ARB may be convened to discuss the need for further action by the technical staff regarding the allegor's technical concerns or to discuss with OI whether information presented by the allegor during the interview might have an effect on the previously determined priority for the investigation.

#### **5.2.a.5 Discrimination Concern Terminology**

Discrimination, as it relates to matters under NRC jurisdiction, involves an adverse action taken by an employer against an employee, at least in part, for engaging in protected activity. There are a number of specific process and legal terms associated with the evaluation of a discrimination concern that may be referred to occasionally by involved individuals (e.g., the allegor, legal representatives for the licensee and/or the allegor, a DOL investigator, Regional Counsel/OGC). To support responsible NRC staff understanding of such terminology, a listing of the terms is provided below and the term definitions are provided in the Allegation Manual Glossary (Manual Section 9.0).

- Adverse Action
- Burden of Proof (Standards of Evidence)
- Chilling Effect
- Discrimination
- Disparate Treatment
- Dual Motive
- Early Alternative Dispute Resolution
- Harassment and Intimidation
- Hostile Work Environment
- Pretext
- Prima Facie Showing of Discrimination
- Protected Activity
- Retaliation
- Safety Conscious Work Environment

#### **5.2.a.6 Failure-to-Hire Discrimination Concerns**

A failure-to-hire discrimination concern differs from other discrimination concerns in that it involves an allegor who is not an employee of the company that is being accused of the discriminatory action. For this reason, the threshold for establishing a prima facie showing of alleged discrimination in a failure-to-hire scenario is higher than prima facie requirements for a more conventional discrimination case (i.e., one involving an employee and his/her employer). Specifically, in order to establish a prima facie showing, an individual submitting a failure-to-hire discrimination claim must allege facts that, if true, would establish that:

- the allegor engaged in protected activity
- the allegor applied for and addressed the specifications for the position for which he/she applied
- the employer knew of the allegor's conduct, which constituted protected activity
- despite the allegor's qualifications, he/she was rejected
- after the rejection, the position was filled or remained open and the employer



- continued to seek applicants from persons with the alleged's qualifications
- the alleged's protected activity was a contributing factor in not being hired

Manual Exhibit 27 provides a list of items to be considered with regard to failure-to-hire discrimination concerns. Manual Exhibit 27 may be used to support prima facie determination or as an investigation tool, if prima facie has already been established.

## **5.2.b NRC Response to Fears of Retaliation**

*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. (8.8 Handbook, Section II.N.1)*

*If 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 NRC has received information from an individual concerned that retaliation may occur for engaging in protected activities. (8.8 Handbook, Section II.N.2)*

*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. 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 (8.8 Handbook, Section II.N.3)*

*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. (8.8 Handbook, Section II.N.4) (See Manual Section 5.2.i for additional information. See the terms "chilling effect" and "chilled work environment" in the Manual Glossary)*

## **5.2.c NRC/DOL Interface and the DOL Review Process**

### **5.2.c.1 NRC/DOL Memorandum of Understanding**

The interface between NRC and DOL with regard to allegations of discrimination is described in the MOU between NRC and DOL. The most recent revision of the NRC/DOL MOU was issued on September 8, 1998 (see Manual Exhibit 7). The MOU establishes areas of cooperation between the NRC and DOL regarding the processing, investigation, and issuance of enforcement actions related to discrimination complaints

filed with DOL in accordance with ERA Section 211. A flow chart depicting the parallel NRC and DOL review processes regarding matters of alleged discrimination under ERA Section 211 is provided in Manual Exhibit 8.

## **5.2.c.2 The DOL Process**

### **5.2.c.2(a) Filing a Discrimination Complaint with DOL/OSHA**

#### **5.2.c.2(a)(1) DOL/OSHA Filing Requirement**

An employee (or former/prospective employee) may file a complaint with DOL/OSHA if he/she has been subject to retaliation with unfavorable employment action because the worker was involved in protected activity. OSHA enforces several whistleblower laws, including those subject to NRC jurisdiction as encompassed by ERA Section 211. The NRC employee protection regulations (e.g., 10 CFR 50.7, 10 CFR 30.7, etc.) were established following the enactment of ERA Section 211. Discrimination complaints under ERA Section 211 must be filed in writing with DOL/OSHA within 180 days of the date of the alleged discriminatory action or the date the individual received any notice, in writing or otherwise, of an adverse personnel action, whichever occurred first. Such a complaint should be filed with the appropriate DOL OSHA Regional Office (i.e., the DOL/OSHA Regional Office associated with the geographical location of the employer).

Contact information for the ten DOL OSHA Regional Offices is located at the following web link: <http://www.osha.gov/html/RAmap.html>

#### **5.2.c.2(a)(2) DOL/OSHA Investigation**

After receiving an ERA Section 211 discrimination concern, DOL/OSHA initiates an evaluation to determine if the employer retaliated against the worker, i.e., if the protected activity was a contributing factor in its decision to take adverse employment action. Adverse actions may include:

- Employment termination or layoff
- Blacklisting
- Performance appraisal downgrade
- 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, less desirable work schedule, less desirable work location (isolated))
- Denial of overtime or promotion, or reassignment affecting the prospects for promotion
- Constructive discipline, including verbal or written counseling
- Denial of training
- Failure to hire or rehire
- Intimidation/harassment; hostile work environment
- Failure to receive routine annual pay increase or bonus, other reduction in pay, hours, or benefits
- Exclusion from activities to which co-workers are invited

- Disparate treatment

OSHA conducts an in-depth interview with each complainant to determine whether to conduct a full investigation. In order for OSHA to determine that retaliation took place, the investigation must reveal that:

- The employee engaged in protected activity;
- An adverse action was taken against the employee after the employee engaged in protected activity;
- The employer knew about the protected activity; and
- The protected activity was a contributing factor in the employer's decision to take the adverse action against the employee.

If the evidence supports the worker's claim of discrimination, OSHA will ask the employer to restore the worker's job, earnings and benefits, usually in the form of a settlement between the worker and the employer. OSHA reviews settlement agreements between complainants and their employers reached during the investigative stage to ensure that they are fair, adequate, and reasonable, in the public interest, and that the worker's consent was knowing and voluntary. (See Manual Section 5.2.h.5 for discussion of situations when an alleged is engaged in both a DOL/OSHA discrimination evaluation and NRC-sponsored Early ADR.) A limited number of these agreements contain clauses wherein a complainant waives the right to seek further employment with the employer. In those cases, OSHA must ensure that such clauses are consistent with the underlying purposes of its whistleblower protection programs.

If the evidence supports the worker's claim of discrimination and a settlement cannot be reached, OSHA will issue its findings and an order requiring the employer to reinstate the employee, pay back wages, restore benefits and other possible remedies in an effort to make the employee "whole." While in the OSHA evaluation stage, a DOL discrimination complaint is not a matter of public record.

In 2014, DOL/OSHA initiated an effort to provide DOL/OSHA findings to the NRC via electronic mail. If delays are experienced in receiving DOL/OSHA findings, the AAA should be informed so that interaction with DOL/OSHA may be initiated to determine the reason for the delays and potential solutions.

#### **5.2.c.2(a)(3) DOL/OSHA Investigator Request for Information from NRC Related to a Discrimination Concern**

While input from the NRC is not required in order for DOL/OSHA to reach a finding with regard to a discrimination concern, under the guidance of the NRC/DOL MOU, a DOL/OSHA 11(c) investigator will occasionally request information from the NRC regarding NRC's evaluation of the same concern. If the related NRC evaluation (including an OI investigation, if applicable) is ongoing, past practice has been to share information with DOL/OSHA by making the records available for review at a location and time mutually agreed upon between NRC and DOL. If NRC's investigation and enforcement action have been completed, NRC will provide copies of the requested information upon DOL's request.

## **5.2.c.2(b) DOL Office of Administrative Law Judges (OALJ)**

### **5.2.c.2(b)(1) Appeal of the DOL/OSHA Finding to the OALJ**

If the DOL/OSHA investigation did not result in a settlement between the worker and the employer, the finding of the DOL OSHA investigation may be appealed to the OALJ. If the DOL/OSHA finding was in the employer's favor, and the worker disagrees with the finding, the worker may appeal the DOL/OSHA finding to the OALJ. Conversely, if the DOL/OSHA finding was in the worker's favor, and the employer disagrees with the finding, the employer may appeal the DOL/OSHA finding to the OALJ. The time frame for filing an appeal to OALJ is usually short (~5 days) and is specified in the written DOL/OSHA finding.

OALJ is the administrative "trial court" for many of DOL's programs. It is headquartered in Washington, D.C., and has District Offices located in Boston, MA, Cherry Hill, NJ, Cincinnati, OH, Covington, LA, Newport News, VA, Pittsburgh, PA, and San Francisco, CA. Administrative law judges (ALJ) hear cases involving a wide variety of labor-related actions, including ERA Section 211 whistleblower cases. OALJ's mission is to render fair and equitable decisions under the governing law and the facts of each case.

Since OALJ is an administrative court, its decisions are a matter of public record, and improper *ex parte* communication with OALJ is prohibited by statute and regulation. If a worker or employer makes an improper *ex parte* communication with OALJ, including messages sent by e-mail, OALJ is required to put that communication on the public record. Also, OALJ cannot and will not provide assistance to persons seeking legal advice. Rather, for questions about the interpretation of labor laws or where to file a complaint, OALJ will direct the requestor to the agency having administrative responsibility and expertise over the subject matter (NRC in the case of ERA Section 211 matters). However, general questions about OALJ programs may be addressed by e-mail (OALJ-Questions@dol.gov) or by letter or phone to:

Office of Administrative Law Judges  
United States Department of Labor  
Suite 400 North  
800 K Street, NW  
Washington, DC 20001-8002

(202) 693-7300  
(202) 693-7365 (FAX)

### **5.2.c.2.b(2) Right to a Hearing Before an ALJ and Hearing Waivers/Dismissal**

Individuals have the right to appear at a hearing before an ALJ in person, by counsel, or by other representative, to examine and cross-examine witnesses, and to introduce into the record documentary or other relevant evidence related to the complaint of discrimination. If all parties waive their right to appear before the ALJ or to present evidence or argument personally or by representative, it is

not necessary for the ALJ to give notice of and conduct a hearing. A waiver of the right to appear before the ALJ must be made in writing and filed with the Chief ALJ or the assigned ALJ. Where such a waiver has been filed by all parties, and they do not appear before the ALJ personally or by representative, the ALJ makes a record of the relevant written evidence submitted by the parties, together with any pleadings they may submit with respect to the case. Such documents are the evidence in the case and provide the basis for the ALJ's decision and closure of the record. A request for hearing may also be dismissed by the ALJ upon its abandonment or settlement by the party or parties who filed it.

**5.2.c.2(b)(3) Motion for summary decision.**

At least twenty days before a scheduled hearing before the ALJ, either party may move, with or without supporting affidavits, for a summary decision by the ALJ on all or any part of the proceeding. The other party may, within ten days after service of the motion, serve opposing affidavits or a counter motion for summary decision by the ALJ. The ALJ may set the matter for argument and/or call for submission of briefs. When a motion for summary decision is made and supported, a party opposing the motion must set forth specific facts showing that there is a genuine issue of fact for the hearing. The ALJ may enter summary judgment for either party if the evidence shows that there is no genuine issue as to any material fact and that a party is entitled to summary decision. Where a genuine question of material fact is raised, the ALJ shall, and in any other case may, schedule the evidentiary hearing.

**5.2.c.2(b)(4) Formal Hearings**

ALJ hearings are open to the public. However, in unusual circumstances, the ALJ may order a hearing or any part thereof closed, where to do so would be in the best interests of the parties, a witness, the public or other affected persons. All ALJ hearings are mechanically or stenographically reported. All evidence upon which the ALJ relies for decision is contained in the transcript of testimony, either directly or by appropriate reference. All exhibits introduced as evidence are incorporated into the record. Transcripts may be obtained from OALJ by the parties in the proceeding for all hearings and the public for open hearings.

When there is a hearing, the record shall be closed at the conclusion of the hearing unless the ALJ directs otherwise. Once the record is closed, no additional evidence shall be accepted into the record except upon a showing that new and material evidence has become available which was not readily available prior to closure of the record. However, the ALJ shall make part of the record any supporting documentation, any determinations thereon, and any approved correction to the transcript.

**5.2.c.2(b)(5) ALJ Decision**

Within twenty days of filing of the transcript of the testimony or such additional time as the ALJ may allow, each party may file with the ALJ, subject to the ALJ's discretion, proposed findings of fact, conclusions of law, and order together with

a supporting brief expressing the reasons for such proposals. Such proposals are to be provided to all parties in the proceeding. Within a reasonable time after the time allowed for the filing of the proposed findings of fact, conclusions of law, and order, or within thirty days after receipt of an agreement reached between the parties disposing of the disputed matter in whole, the ALJ shall make his/her decision. The decision of the ALJ includes findings of fact and conclusions of law regarding each material issue of fact or law presented on the record. The decision of the ALJ is based upon the whole record, and is to be supported by reliable and probative evidence.

If the ALJ's decision is not appealed, it becomes the final administrative decision of the Secretary of Labor.

### **5.2.c.2(c) DOL Administrative Review Board (DOL ARB)**

#### **5.2.c.2.(c)(1) Appeal of the ALJ Decision to the DOL ARB**

The ALJ's decision may be appealed to the DOL ARB. If the ALJ decision is in the employer's favor, and the worker disagrees with the decision, the worker may appeal the ALJ decision to the DOL ARB. Conversely, if the ALJ decision is in the worker's favor, and the employer disagrees with the decision, the employer may appeal the ALJ decision to the DOL ARB. The time frame for filing an appeal to the DOL ARB is usually short (~5 days) and is specified in the written ALJ decision.

Prior to April 1996, appeals of ALJ decisions were filed with the Secretary of Labor who, after review of the information related to the appeal, rendered the final DOL agency decision. In April 1996, the Secretary of Labor established the DOL ARB to fulfill this function. The DOL ARB consists of a maximum of five members, one of whom is designated the Chair. The Secretary of Labor appoints the members of the DOL ARB based upon their qualifications and competence in matters within the DOL ARB's authority. In matters involving ERA Section 211, the DOL ARB has the responsibility to act for the Secretary of Labor in issuing final DOL agency decisions arising in review or on appeal of decisions of the ALJ.

It is noted that if a licensee appeals a DOL ALJ decision that discrimination occurred as a result of raising safety concerns, NRC will consider taking enforcement action on the basis of the DOL ALJ decision rather than waiting for the DOL ARB decision in the case. In some cases, if the action involves a civil penalty, the licensee will be permitted to delay payment of the penalty until after the DOL ARB ruling, as specified in the Enforcement Manual. It is also noted that, while the occurrence is rare, DOL ARB decisions related to ERA Section 211 cases may be subsequently appealed to Federal district or appellate courts.

If the DOL process is complete and NRC has completed its review and/or an investigation of the discrimination concern and informed the alleged and the licensee of its conclusions (including any enforcement action taken, if applicable), it is not necessary to keep the allegation file open or to reopen a closed allegation file in order to track an alleged's appeal to a Federal court (see

exception noted in Manual Section 5.2.c.2(d)). The allegor should be informed in the closure letter (if the allegation is not yet closed), or in an additional letter if the allegation is already closed that NRC is aware that the matter is under review by a Federal court, and that unless the Federal court decision provides evidence that would prompt NRC to revisit its earlier conclusion, no further action is planned.

#### **5.2.c.2(d) Right to File with U.S. Circuit Court if DOL Final Decision Not Issued After One Year**

Item (b)(4) of Section 629 of the Energy Policy Act of 2005 included additional guidance regarding an action the allegor may take if he/she has filed a discrimination complaint with DOL. Specifically, the Act indicates that if DOL has not issued a final decision within one year after a complaint is filed, and there is no showing that such delay is due to bad faith of the person seeking relief, such person may bring an action in the appropriate U.S. Circuit Court. In this instance, a DOL decision is not being appealed to the Federal court. Rather, the allegor is submitting the discrimination claim to the Federal court due to inaction on the part of DOL. For this reason, it is appropriate to keep the allegation file open until the Federal court has rendered a decision with regard to the matter of alleged discrimination.

#### **5.2.c.3 NRC Allegation File Status Related to Discrimination Matters in the DOL Process**

In general, when an allegor has filed a discrimination complaint with DOL, NRC will keep the related allegation file open until the DOL review process is completed, regardless of the NRC conclusions related to the complaint of discrimination. This permits NRC review of DOL findings and adjudicatory decisions related to the discrimination complaint to determine whether preliminary NRC conclusions related to the discrimination concern should be amended or if additional NRC evaluation is warranted. However, if a discrimination concern has already been resolved via Early ADR, the outcome of a related DOL proceeding will not have a bearing on NRC's conclusion. See Manual Sections 3.2.u.5 and 5.9.g.2 for discussion regarding NRC tracking of the open DOL case to assure that the issuance of a letter requesting the licensee to describe SCWE impacts resulting from the DOL finding of discrimination would be considered if a subsequent DOL decision concludes that the allegor had been discriminated against.

#### **5.2.c.4 Allegor's Right to File with DOL**

An allegor may file a discrimination complaint with DOL regardless of NRC's conclusion as to whether the allegor has established a prima facie showing of potential discrimination. If an allegor files a discrimination complaint with DOL under ERA Section 211, the NRC/DOL MOU indicates that DOL will inform the NRC about the complaint of discrimination. If a considerable period of time elapses after the receipt of a discrimination concern for which NRC did not establish prima-facie (e.g., several months from the date of allegation receipt) and there is no indication that the allegor has filed a discrimination complaint with DOL, there is no requirement for the action office to keep the discrimination concern open for the full DOL 180-day filing period to assure that the allegor has not filed a discrimination complaint with DOL/OSHA. The discrimination concern and/or the allegation file, as appropriate, should be closed whenever NRC

action with regard to the alleged discrimination is completed and there is clear indication that related DOL action is completed or that there is no DOL involvement. There have been rare occasions when, due to administrative oversight, NRC is not informed that an individual had filed a discrimination complaint with DOL/OSHA. If this occurs after a discrimination concern previously submitted to NRC is closed, a new discrimination concern shall be opened based on the content of the DOL complaint.

#### **5.2.c.5 Technical Issues Related to a Discrimination Concern**

Technical issues that relate to a discrimination concern are evaluated through the allegation process and should be acted upon without regard to the action that may be taken by DOL. In this regard, when NRC is notified by DOL that it is investigating a complaint of discrimination under ERA Section 211, the action office shall obtain a copy of the complaint from DOL, and contact the alleged by telephone and/or in writing (usually via an acknowledgment letter (see Manual Section 5.3 and Manual Exhibit 12)), describing the alleged's safety concerns as understood by the NRC and providing the alleged an opportunity to clarify his/her safety concerns.

#### **5.2.c.6 State Employees – Inability to File an ERA Section 211 Complaint with DOL**

Workers employed by any State do not have the option of filing a discrimination complaint with DOL unless the State specifically waives its Eleventh Amendment sovereign immunity (since a State's sovereign immunity extends to proceedings before a federal ALJ). If a State is "non-consenting," (i.e., has not waived its sovereign immunity) the employee may still have a personal remedy option under State whistleblower regulations, if they exist.

#### **5.2.d DOL Settlement Prior to OI Investigation Completion**

If an NRC OI investigation has been initiated at the time a DOL/OSHA settlement is reached, the OI investigation will continue to its conclusion. The fact that a settlement was reached through DOL/OSHA does not provide justification for closure of the OI investigation, since the goal of the OI investigation (to determine whether the licensee has violated an NRC employee protection regulation) is different than the goal of the DOL/OSHA review, which initially is to negotiate a settlement between the alleged and the employer, if possible, and subsequently to render a finding, if settlement is not possible.

#### **5.2.e Different Conclusions Reached by DOL and NRC**

On occasion, NRC's conclusion regarding a discrimination concern will disagree with DOL's conclusion. This is acceptable. There is no requirement that the conclusions agree, or that if there is disagreement, it has to be resolved between NRC and DOL. Responsible NRC staff always review DOL decisions related to a discrimination concern investigated by OI, regardless of whether the OI and DOL conclusions agree, to determine whether the DOL proceedings present any additional facts that may have a bearing on or result in a change to NRC's final decision.

Manual Section 5.9.f.3 discusses actions to be taken if an OI investigation has been conducted and is completed prior to the completion of DOL proceedings regarding a



discrimination concern. The NRC Enforcement Program governs actions that may be taken by NRC in this circumstance. For example, if an OI investigation substantiates the discrimination concern prior to the completion of the DOL process, NRC may choose to proceed with enforcement action at that time. If a proposed civil penalty accompanies the enforcement, NRC may inform the licensee that payment of the civil penalty can be deferred until final DOL process decisions are rendered, since there is a possibility that the facts articulated in future DOL decisions may affect NRC's final conclusion and the ultimate enforcement action. NRC may also choose to await completion of the DOL process before proceeding with enforcement action.

If, in reviewing the DOL documentation, NRC concludes it has a different opinion regarding DOL's decision on the merits of the discrimination case, there are mechanisms through which responsible NRC staff (with OGC support) can provide opinions or concerns to DOL or inform DOL that its decisions may be affecting NRC's enforcement of its regulations (see Manual Sections 5.2.f.5 and 5.2.f.6).

## **5.2.f NRC Contacts for DOL Information (8.8 Handbook, Section III)**

*NRC may contribute to the record in DOL adjudications. The contacts for each are as follows:*

### **5.2.f.1 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. 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 Manual Exhibit 9, 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. (8.8 Handbook, Section III.A)*

### **5.2.f.2 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 of OI, who will consult with the Director of OE. (see Manual Section 5.2.c.2(a)(3)) For cases that have been referred to the DOJ for potential criminal prosecution, the Director, OI must also consult with DOJ before responding to the request. (8.8 Handbook, Section III.B)*

**5.2.f.3            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. (8.8 Handbook, Section III.C)*

**5.2.f.4            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. (8.8 Handbook, Section III.D)*

**5.2.f.5            Amicus Curiae Briefs**

*The NRC will consider filing amicus curiae briefs when it is determined that the outcome of an issue may affect 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 NRC. All requests for amicus curiae briefs should be provided to the Assistant General Counsel for Materials Litigation and Enforcement. (8.8 Handbook, Section III.E)*

**5.2.f.6            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 NRC and the Secretary of Labor should be provided to the Assistant General Counsel for Materials Litigation and Enforcement. (8.8 Handbook, Section III.F)*

**5.2.g            Concerns about DOL Performance or the Validity of Information Provided to DOL**

If a concern is received about the performance of DOL personnel in reviewing a submitted complaint of discrimination, or about the validity of information provided by a licensee during hearings before a DOL ALJ, DOL may be informed of such matters at the following address:

U.S. Department of Labor  
Office of Investigations  
Complaint Analysis Office  
Room S 5514  
200 Constitution Avenue, NW  
Washington, DC 20210

OI and OE should also be informed of such concerns so that these offices may consider the relevance of the information to related investigations or enforcement action.

## 5.2.h Early Alternative Dispute Resolution (Early ADR)

### 5.2.h.1 Implementation of Early ADR

On September 8, 2003, the Commission issued an SRM which directed the staff to develop a pilot program, as described in SECY-03-0115, to evaluate the use of ADR in handling allegations of discrimination. In response, the staff recommended in SECY-04-0044, dated March 12, 2004, that the pilot program scope consist of the trial use of Early ADR for cases involving alleged discrimination for engaging in protected activity prior to an NRC investigation. Early ADR has since become a permanent aspect of the NRC allegation process. A flow chart depicting the Early ADR process is provided in Manual Exhibit 10. Additional information regarding the NRC Early ADR Program may be obtained on the following NRC public website link:

<http://www.nrc.gov/about-nrc/regulatory/enforcement/adr/pre-investigation.html>

### 5.2.h.2 Prerequisite to Offer of Early ADR – Prima Facie Showing

Early ADR involves mediation (a form of ADR) between an employer (or former/prospective employer) and an employee (or former/prospective employee) with a *prima facie* showing of potential discrimination, prior to any NRC investigation. Regional Counsel or OGC determination of a *prima facie* showing must be established by the ARB, prior to offering Early ADR. Since timely resolution of the discrimination issue is a primary aspect of Early ADR, every effort should be made to discuss whether a *prima facie* showing has been articulated at the initial ARB meeting. If the ARB is provided with a determination from Regional Counsel or OGC that a *prima facie* showing of potential discrimination exists, the ARB will normally recommend that the allegor, and subsequently the employer (or former/prospective employer), if the allegor agrees, be offered the opportunity to use Early ADR. Exceptions to such a recommendation should be rare and based on a compelling and clear reason not to offer the opportunity to utilize the benefits the Early ADR program offers. Exceptions to offering Early ADR must be pre-approved by the Director, OE. Proposed exceptions to offering Early ADR should be brought to the attention of the OE ADR Program Manager, who will brief the Director, OE in support of the Director's decision.

If OI is requested by the ARB to conduct an Assist to Staff to interview the allegor to help determine if the allegor has articulated a *prima facie* showing of potential discrimination, and a Regional Counsel or OGC *prima facie* determination is made at a follow up ARB meeting, OI activity will stop its activities at this point in deference to an Early ADR offer to the allegor.

### 5.2.h.3 Early ADR Offer

Since timely resolution of the discrimination issue is a primary aspect of Early ADR, every effort should be made to include the Early ADR offer in the acknowledgment letter to the allegor. Once the use of Early ADR is approved by the ARB, the OAC will include the option to enter into Early ADR in the acknowledgment letter. The correspondence will inform the allegor of the option, if he/she so chooses, to contact the Early ADR mediation contractor for information regarding the Early ADR process. The acknowledgment letter informs the allegor that the NRC has engaged an Early ADR mediation contractor to aid the allegor and the employer (former or prospective

employer) in resolving the dispute and encourages the allegor to contact the Early ADR mediation contractor for further information on Early ADR. If the allegor has not filed the discrimination concern with DOL/OSHA, the acknowledgment letter also informs him/her that NRC's Early ADR process does not stay the DOL/OSHA 180-day requirement for filing a complaint. A copy of NRC's, "Pre-Investigation ADR Program" brochure (NUREG/BR-0313) is also included. The most recent version of the brochure is located at the following link on the NRC public web site:

<http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0313/>

The language offering Early ADR to the allegor is included in the sample allegation acknowledgment letter in Manual Exhibit 12. Upon issuance of the correspondence that includes the Early ADR offer, the OAC will transmit a copy to the OE ADR Program Manager, and a description of the prima facie elements of the discrimination concern. The correspondence should be sent to the "OEADR Resource" e-mail address so that the information can be acted upon promptly by the OE ADR Program Manager, or the OE staff member who is acting for the OE ADR Program Manager, if he/she is unavailable. The OAC will enter an action of "ADR Offered" into AMS at the time correspondence is sent to an allegor extending an offer to enter into the Early ADR process. The start date on this action will be the date of the correspondence and the planned completion date should be 10 days after the correspondence is issued. The OAC will also select "ADR" under the OI action field at both the allegation and concern levels of AMS. The OE ADR Program Manager does not provide any information to the Early ADR mediation contractor about the prima facie determination until after the allegor has contacted the Early ADR mediation contractor. This contact provides verification to the Early ADR mediation contractor that the individual contacting the Early ADR mediation contractor was offered Early ADR by the NRC.

Early ADR should be offered to the allegor whenever Regional Counsel/OGC determines that a prima facie showing has been articulated, even if the allegor has already filed a discrimination complaint with DOL/OSHA. While involvement in one process may have a bearing on the other, it would be inappropriate to assume that the allegor would not consider Early ADR because he/she is already in contact with DOL/OSHA. Since DOL/OSHA's primary goal is to effect a mutually agreeable settlement between the allegor and his/her employer or former employer, DOL/OSHA may choose to defer its efforts if the allegor indicates to DOL/OSHA that he/she prefers to first attempt mediation via NRC's Early ADR process. Notwithstanding, there is no requirement for DOL/OSHA to hold their investigation pending a conclusion reached via Early ADR.

#### **5.2.h.4 Lack of Allegor/Employer Response to Early ADR Offer**

##### **5.2.h.4(a) Allegor Lack of Response to Early ADR Offer**

If the allegor does not respond with a decision regarding Early ADR within 10 days after receiving the correspondence offering Early ADR, the OAC should attempt to contact the allegor and request a decision, as discussed below in Manual Section 5.2.h.4(b).

#### **5.2.h.4(b) Soliciting Alleger Response to Early ADR Offer**

It is not unusual for allegers to take longer than the 10-calendar day time frame after receipt of the acknowledgement letter to respond to the NRC and the agency has routinely allowed additional time for the alleger to make a decision regarding the use of Early ADR. In order to apply a degree of consistency to the amount of time afforded to an alleger to make a decision regarding Early ADR, it is suggested that a 20-calendar day "grace period" be allowed to pass after the 10-calendar day response time frame indicated in the acknowledgment letter. If the alleger does not engage the Early ADR mediation contractor during that additional 20-calendar day time frame, the staff may, at that time, turn the issue over to OI for initiation of an investigation, as long as there is no compelling reason to allow additional delay (provided the region/program office has informed the alleger that OI will take action to initiate an investigation after the 20-calendar day grace period expires and that the Early ADR program will be unavailable to the alleger with regard to his/her discrimination concern once OI has initiated an investigation). If at this point, the alleger does not wish to participate in an OI investigation of his/her discrimination concern, or if the staff is unable to re-contact the alleger, the staff may initiate action to close the concern. Closure documentation to the alleger should indicate that NRC is closing the concern based on the alleger's lack of participation in Early ADR and desire not to participate in an OI investigation, but that NRC would open a new allegation concern in the future if the alleger reconsiders pursuit of the discrimination matter.

#### **5.2.h.4(c) Other Considerations Related to Alleger Early ADR Offer**

Manual Sections 5.2.h.4(a) and 5.2.h.4(b) are to be considered general guidance as there may be occasions when deviation from the guidance is acceptable. For example, if during the time after the 20-calendar day additional time frame expires and before OI contacts the alleger in an effort to set up an interview, the alleger contacts the Early ADR mediation contractor, it would make sense to allow Early ADR to proceed in that instance. Similarly, if a discrimination concern is turned over to OI, and upon initial contact by OI, the alleger indicates that he/she will be pursuing Early ADR, it would likely be appropriate in such a circumstance for OI to allow the alleger a short period of time (e.g., a week) to contact the Early ADR mediation contractor.

#### **5.2.h.4(d) Employer Lack of Response to Early ADR Request**

As indicated in Manual Section 5.2.h.6, if the alleger chooses to pursue the Early ADR offer with the Early ADR mediation contractor, the Early ADR mediation contractor's initial action is to attempt to obtain the employer's agreement to mediate. On occasion, the employer is unresponsive to the request to mediate. Normally, in these instances, the NRC Early ADR Program Manager will contact the Early ADR mediation contractor and request that additional attempts are made to contact the employer to obtain a decision as to whether or not the employer wishes to participate in Early ADR. Since the Early ADR program is voluntary, it is inappropriate for NRC to pursue why the employer is being unresponsive to the Early ADR request.

If the employer continues to be unresponsive, the responsible office and the OE ADR Program Manager will discuss whether the Early ADR offer to the licensee should be

rescinded. If it is agreed that the Early ADR offer will no longer be available to the licensee, the Early ADR Program Manager shall inform the Early ADR mediation contractor that NRC is moving forward with the OI investigation. At the same time, the OAC or responsible staff will inform the alleged that NRC has chosen to initiate an OI investigation.

Normally, the NRC should not wait longer than a month from the date the alleged agrees to pursue Early ADR to request the Early ADR mediation contractor to attempt to contact the employer to obtain a decision as to whether or not it is going to participate in Early ADR.

#### **5.2.h.5 Prohibition of Early ADR Offer After OI Case Initiation**

Once OI has initiated an investigation into a matter of alleged discrimination, and substantive investigative activity has been conducted, Early ADR is no longer an option for the alleged or the employer (or former/prospective employer). NRC investigates assertions of discrimination for engagement in protected activity because of its potential to negatively affect the SCWE, not to address the alleged's desire for personal remedy. While the alleged and the employer (or former/prospective employer) may pursue subsequent internal efforts to settle their differences, NRC will not consider such action as equivalent to Early ADR or as a reason to terminate the OI investigation. The policy of continuing the OI investigation in this circumstance will also deter any perception on the part of the licensee that external action can be taken to stop the OI investigation, for example, by requesting the alleged to inform NRC that he/she wishes to withdraw the discrimination concern submitted to NRC in deference to efforts to reach a settlement with the licensee.

Notwithstanding the above discussion, if the alleged has not yet been interviewed by OI, there are circumstances when NRC would consider cessation of OI investigative activities and closure of the discrimination concern. Assuming that an alleged's discrimination concern was determined to be prima facie and that the alleged declined to participate in Early ADR, the next step in the process is for OI to initiate an investigation. If upon OI's initial contact with the alleged, the alleged indicates that he/she does not wish to participate in the OI investigation, or formally withdraws the discrimination complaint, closure documentation to the alleged may be initiated indicating that NRC is closing the concern based on the alleged's withdrawal or desire not to participate in the OI investigation.

#### **5.2.h.6 Early ADR Mediation Process**

##### **5.2.h.6(a) Notification of DOL/OSHA Regarding Early ADR Mediation**

If, in addition to agreeing to participate in mediation via Early ADR with the licensee, the alleged has also filed a discrimination complaint with DOL/OSHA, the licensee may and in most cases will inform DOL/OSHA that the Early ADR mediation is to take place. However, in some instances, this notification does not occur. If it becomes apparent to the NRC that DOL/OSHA is unaware of the pending Early ADR mediation, it is acceptable for the responsible OAC or other assigned staff to notify the assigned DOL/OSHA investigator that both parties have agreed to mediate via Early ADR, in keeping with the intent of the MOU between NRC and DOL that information about the review of discrimination concerns be shared as appropriate.

Since DOL/OSHA's initial evaluation efforts are targeted toward negotiating a settlement between the allegor and the employer or (former/prospective employer) (see Manual Section 5.2.c.2(a)(2)), it is prudent that such information be shared with DOL/OSHA by NRC to assure that DOL/OSHA is aware of the alternative mediation effort (Early ADR). Notwithstanding the suggested action noted above, there is no requirement that the NRC notify DOL/OSHA in this circumstance.

#### **5.2.h.6(b) Allegor Retention of Legal Representation for Early ADR**

Although the allegor is not required to have legal representation to participate in the NRC's Early ADR program, on occasion, an allegor will solicit the services of an attorney to represent him/her during the mediation process. In the standard acknowledgment letter, the allegor is informed that if he/she retains legal representation or obtains legal representation in the future, the NRC will not communicate with the legal representative unless the allegor provides NRC with the legal representative's name and contact information, and indicates that he/she wants NRC to provide copies of future correspondence to him/her and to the legal representative or to communicate directly with the legal representative. The allegor is also informed that if the legal representative contacts the NRC before the allegor informs the NRC about his/her legal representation, the NRC will neither confirm nor deny that the allegor contacted the NRC since it is agency policy to protect the identity of individuals who submit allegations.

#### **5.2.h.6(c) Initiation of Mediation Process**

If the allegor wishes to participate in Early ADR, his/her first action is to contact the NRC's Early ADR mediation contractor. The Early ADR mediation contractor will then request the allegor to sign an Agreement to Mediate. A sample Agreement to Mediate is provided in Manual Exhibit 11. The Early ADR mediation contractor then contacts the OE ADR Program Manager and requests information related to the discrimination concern (i.e., the facts that led to NRC's determination that the allegor had articulated a prima facie showing of potential discrimination). Once the signed Agreement to Mediate is received from the allegor, the Early ADR mediation contractor will coordinate initiation of mediation with the employer (or former/prospective employer), including the initial step of obtaining the employer's (or former/prospective employer's) agreement to mediate. ]

If the allegor is an employee of a licensee contractor, the Early ADR mediation contractor will also inform the allegor when requesting the allegor to sign the Agreement to Mediate that both his/her employer (the licensee contractor) and the licensee will be informed about the mediation request. The allegor will be informed by the Early ADR mediation contractor that although the licensee will not be provided with the allegor's identity, his/her identity will be disclosed to his/her employer (the licensee contractor). The Early ADR mediation contractor is to inform the OE ADR Program Manager once the licensee contractor has been contacted. The OE ADR Program Manager will then inform the licensee that the licensee contractor has received an offer to participate in Early ADR (without divulging the allegor's identity).

#### **5.2.h.6(d) Mediation Status**

The OE ADR Program Manager will periodically update the OACs regarding the

status of each pending Early ADR case via e-mail or status reports on the internal ADR webpage. This information will serve as documentation that the alleged has entered into Early ADR with the licensee. Once the alleged enters into Early ADR with the licensee, the “ADR Offered” action in AMS will be closed, an action of “ADR Allegor” will be entered into AMS, and the allegation file will be exempted from the allegation closure timeliness metrics. A planned completion date of 90 days from the date the alleged entered into Early ADR will be entered into AMS under this action so that the date when settlement is expected can be tracked.

#### **5.2.h.7 Review of Early ADR Settlement Agreement**

Upon settlement of the dispute, the settlement agreement will be transmitted to the OE ADR Program Manager. The OE ADR Program Manager will, in turn, transmit the settlement agreement to OGC for review to ensure that the agreement does not contain any restrictive clauses potentially in violation of 10 CFR 50.7(f) or other similar NRC employee protection rules. Specifically, 10 CFR 50.7(f) states that...“No agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the Department of Labor pursuant to ERA Section 211, as amended, may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity as defined in paragraph (a)(1) of this section including, but not limited to, providing information to the NRC or to his or her employer on potential violations or other matters within NRC’s regulatory responsibilities.” Most licensees have achieved compliance with this requirement by including a provision in the agreement with the employee that explicitly provides that nothing in the agreement shall be construed to restrict an employee’s ability to engage in protected activity.

Occasionally, a party will provide a settlement agreement to the OAC rather than the OE ADR Program Manager. In such instances, the OAC should forward the settlement agreement to the OE ADR Program Manager.

The OE ADR Program Manager will notify the OAC of the results of OGC’s review of the settlement and provide the OAC with a copy of the agreement for the allegation file. Since settlement agreements will not be final until three days after the agreement is signed, the OACs should ensure that OGC has accepted the agreement and that it has been at least three days since the settlement was signed before the allegation file is closed. Given an acceptable agreement, the OAC can close the allegation in AMS and issue a closure letter to the alleged. When a settlement agreement is acceptable to the NRC, the OE ADR Program Manager will inform the mediator, who will provide this information to the licensee. For concerns settled via ADR that are deemed acceptable by NRC, the concern should be coded as Not Applicable (N/A) vs. “substantiated” or “unsubstantiated” in AMS. If the settlement agreement is unacceptable to the NRC, NRC will contact the Early ADR mediation contractor, who will contact the mediator. OGC also may contact the attorney for either party or both parties to discuss the content of the settlement agreement. If the OAC has not been notified of a settlement agreement within 90 days, the OAC should contact OE’s ADR Program Manager to determine the status of the case.

#### **5.2.h.8 Actions if Settlement is Not Reached**

If the parties have not agreed to a settlement and an extension is not granted, or if the



parties do not agree to mediate, the OAC will schedule an ARB to discuss appropriate disposition of the allegation or continue with the allegation process described in MD 8.8 for prima facie cases of discrimination. If the initial ARB has discussed disposition of the discrimination concern in the event that the parties did not mediate the dispute, another ARB is not necessary. Where good cause is shown and all parties agree, the NRC may allow a small extension to the 90-day limit to allow for completion of a settlement agreement before reconvening an ARB.

#### **5.2.h.9 Early ADR Mediation Contractor Responsibilities**

The Early ADR mediation contractor will maintain a roster of experienced mediators and will serve as the intake neutral responsible for developing and processing the necessary information for mediation under Early ADR. No further action by the OAC is necessary during the Early ADR process. Should any party seek to discuss the Early ADR process in detail, the party should be referred to the Early ADR mediation contractor. Any underlying technical issues will be treated as separate issues within the allegation program and are not subject to any of the requirements or restrictions of the Early ADR Program.

#### **5.2.h.10 Employer Internal Dispute Resolution Processes**

The NRC has encouraged employers to develop dispute resolution processes internal to their company, similar to NRC's Early ADR process described in NUREG BR-0313, for use in conjunction with their own employee concerns programs (see Federal Register Notice 69 FR 50219 dated August 13, 2004, NRC Enforcement Policy; Alternate Dispute Resolution). If an employee who alleges retaliation for engaging in protected activity utilizes a licensee's program to settle the discrimination concern, either before or after contacting the NRC, the licensee may voluntarily report the settlement to the NRC as a settlement within the NRC's jurisdiction. If notified of the settlement prior to initiation of an OI investigation, OGC will review the settlement, as described in Manual Section 5.2.h.7 above, for restrictive agreements potentially in violation of 10 CFR 50.7(f), or other, similar NRC employee protection rules. OGC may contact the alleged's attorney, the licensee's legal counsel, or both to discuss the content of the settlement agreement. If no such restrictive agreements exist, the NRC will not investigate or take enforcement action.

#### **5.2.h.11 Considering DOL/OSHA Settlement Agreements as Equivalent to Early ADR**

If the alleged files a discrimination complaint with DOL/OSHA, DOL/OSHA will occasionally complete negotiation of a settlement before OI initiates an investigation. Whether the settlement achieved through DOL/OSHA should be considered similar to an internal licensee-sponsored settlement and thus given credit as being equivalent to a settlement achieved via Early ADR is considered on a case-by-case basis. If DOL/OSHA releases the settlement agreement to NRC for review (or if the licensee provides the agreement to NRC, and there is no restriction on doing so) and NRC (OGC) finds the agreement to be reasonable and non-restrictive, NRC may consider such a settlement as being equivalent to a settlement achieved via Early ADR, depending on the specific circumstances of the case. As an example, if the licensee was negotiating in good faith with the employee when the employee decided to file a discrimination claim with DOL, and DOL/OSHA's effort simply involved overseeing the completion of the

negotiations between the employee and the licensee, it would be reasonable to assume that NRC could accept the settlement in that instance as equivalent to Early ADR.

#### **5.2.h.12 Confidentiality of Mediation Activities**

Mediation activities under Early ADR are subject to the confidentiality provisions of the Administrative Dispute Resolution Act (ADRA), 5 U.S.C Sections 571-584 (<http://www.adr.gov/pdf/confid.pdf>) and the federal ADR Council's Guidance document entitled, "Confidentiality in Federal ADR Programs." (<http://www.federalregister.gov/articles/2000/10/04/00-25397/confidentiality-in-federal-alternative-dispute-resolution-programs-evaluation-of-federal-alternative>)

Actions of the intake neutral, who develops case information and processes that information in preparation for mediation, aiding in resolution of the conflict, are also subject to the confidentiality provisions specified in 5 U.S.C and the federal ADR Council's guidance document. Since OACs will not be functioning as intake neutrals and will instruct allegeders who wish to participate in Early ADR to contact the Early ADR mediation contractor regarding Early ADR issues, OAC communications with the allegeder will not be confidential and will therefore not need to be marked or controlled other than as instructed by Section II.H of the MD 8.8 Handbook. In addition, the agreement to mediate and the final settlement document, which will be maintained in the allegation file, will not be confidential and should not be marked as such. Further specific guidance on the confidentiality provisions of the ADRA can be found in the federal ADR Council's Guidance document. Of particular interest to the allegation program is the following guidance from the report:

- Confidentiality applies under the ADRA to communications when a person seeking ADR services contacts an appropriate neutral. Therefore, communications with the OAC before the allegeder enters into Early ADR are not subject to the confidentiality provisions of 5 U.S.C. Sections 571-584. In addition, confidentiality does not apply to communications made after a final written agreement is reached or after resolution efforts aided by the neutral have otherwise ended.
- The confidentiality protections of the ADRA only apply if the intake person has been appropriately identified as a neutral by the agency to aid parties in resolving such disputes. As such, communications between the OAC and the allegeder are not subject to the confidentiality provisions of 5 U.S.C. Sections 571-584 as long as the OAC informs the allegeder, through the acknowledgment letter and in subsequent communications, that the allegeder should contact the Early ADR mediation contractor to discuss issues related to Early ADR mediation.
- The ADRA requires that dispute resolution communications remain confidential. The Act defines dispute resolution communication as any oral or written communication prepared for the purposes of a dispute resolution proceeding. Therefore, communications with the OAC, not prepared for the purpose of the dispute resolution proceeding, are not subject to the confidentiality provisions of 5 U.S.C. Sections 571-584.

Dispute resolution communications between a neutral and a party that are confidential under the ADRA are specifically exempted from disclosure (see FOIA Section

552(b)(3)<sup>3</sup>). As such, dispute resolution communications, including oral comments during conflict resolution between the alleged, the third party neutral, and the licensee, which are not Federal records, are not subject to the disclosure requirements of FOIA. In addition, other FOIA exemptions may apply to Early ADR communications.

#### **5.2.h.13 Non-Compliance or Slow Compliance with Terms of Settlement Agreement**

Since NRC is not a party to the settlement agreement, it does not have the authority to compel either party to comply with the terms of a settlement agreement that the parties have executed. The parties' rights are typically explained in the agreement. If there is a breach by one party, the other party may resort to the judicial system to enforce the terms of the agreement.

### **5.2.i Chilling Effect/Chilled Work Environment Allegations**

#### **5.2.i.1 Chilling Effect/Chilled Work Environment Concern Types**

NRC will occasionally receive a concern that an event, interaction, decision, or policy change at a licensee has resulted in a perception that the raising of safety concerns is being suppressed or is discouraged. If this perception is held by one individual or a small number of individuals, the occurrence can best be described as having a "chilling effect" on this person or these individuals. If the concern is that the occurrence has created a work environment where the willingness of a group of employees or the entire facility is inhibited, it is referred to as an assertion of a "chilled work environment." Suggested questions to ask an alleged who is providing a chilling effect or chilled work environment concern are provided in Manual Section 3.1.o and Manual Exhibit 1. Chilling effect/chilled work environment concerns are often, but not always, related to discrimination concerns. Examples of chilling effect/chilled work environment allegation concerns are provided below:

##### Chilling Effect/Chilled Work Environment Concerns Related to Discrimination Issues

- discrimination against the alleged has caused the alleged and/or others to be chilled
- discriminatory action against another individual has caused the alleged and/or others to be chilled
- non-NRC-related discrimination has "chilled" workers, causing the alleged and/or others to be unwilling or hesitant to raise nuclear/radiological safety issues

##### Chilling Effect/Chilled Work Environment Concerns Related to Management Behaviors (Other than Discrimination)

- Concerns are addressed improperly, slowly, or not at all
- Positive feedback is given for limiting concerns raised

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<sup>3</sup>5 U.S.C. Section 552 b(3) - (b) This section (i.e., 5 U.S.C. Section 552, Public Information) does not apply to matters that are -- (3) specifically exempted from disclosure by statute (other than section 552b of this title), if that statute-- (A)(i) requires that the matters be withheld from the public in such a manner as to leave no discretion on the issue; or (ii) establishes particular criteria for withholding or refers to particular types of matters to be withheld; and (B) if enacted after the date of enactment of the OPEN FOIA Act of 2009 (i.e., Oct. 29, 2009), specifically cites to this paragraph."

- Management requires that corrective action program items be screened prior to submittal
- No access to supervisor, avoidance
- Management over-emphasizes schedules
- Management requires workers to perform activities they communicate are improper or unsafe
- Workers who raise concerns are sent for psychological counseling
- Workers who raise concerns are treated negatively/chastised by management (troublemaker, not a “team player”) or differently (singled out)

### **5.2.i.2 ARB Proposed Actions in Response to Chilling Effect/Chilled Work Environment Concerns**

It is first noted that NRC’s primary focus in these matters is determining whether the work environment of a group or groups within a licensee’s facility, or the entire facility has been chilled (i.e., whether the event, interaction, decision, or policy change-in-question has negatively impacted the SCWE at the facility). NRC cannot draw a definitive conclusion related to a concern from one individual that he/she was “chilled.” In making such an allegation, the allegor is providing his/her personal reaction to the occurrence. Therefore, NRC cannot respond by indicating that the allegor did not have the reaction he/she described or that he/she reacted incorrectly. The only response NRC can provide to a single individual’s assertion of a chilling effect is to evaluate the occurrence described and provide feedback as to whether NRC believes a “reasonable person” would find the occurrence to be “chilling” in nature. If action was taken by the licensee, the NRC response to such a concern can also inform the allegor as to the nature of those licensee actions. For example, a possible response to the allegor who alleges that only he/she is chilled vs. the greater work environment might be...”The licensee recognized that the statement made to you could have been perceived negatively, and has counseled (the individual) who made the statement.” If the action office is unaware of any actions taken by the licensee in response to the assertion of chilling effect, another option would be to notify the licensee about the issue for information only, without providing the allegor’s identity. If the allegor objects to such an action, the information should normally not be provided to the licensee, and the concern should be closed with no further action.

An allegor who raises a chilling effect concern will also occasionally state that he/she will not raise additional concerns because the licensee routinely assigns evaluation responsibilities to the individual who initially raised the concern as a punitive measure. Licensee feedback regarding such an assertion will often indicate that such action is used as a motivational tool, to allow the individual who submitted the concern to participate in its resolution. NRC should evaluate such matters closely to determine if the licensee has assigned evaluation responsibilities to an individual who is appropriately qualified to do the evaluation and/or if other factors provide indication that the licensee’s actions were, in fact, punitive.

Regarding the evaluation of chilling effect/chilled work environment concerns, there is no specific evaluation option prescribed for each type of concern mentioned in 5.2.h.1 above. The evaluation option recommended by the ARB will depend on the amount of detail that is provided by the allegor along with NRC knowledge and insight related to the SCWE at the facility. The possible evaluation options are as follows:

- No NRC action (acknowledge and close)
- Inform the licensee with no response required
- NRC inspection (e.g., Problem Identification and Resolution (PI&R) inspection, PI&R sample, ECP inspection)
- RFI to the licensee
- OI Assist (or OI Supplemental review during a related investigation)
- Chilling Effect Letter (CEL) (a discussion or meeting with licensee management may be an additional action considered by the action office prior or subsequent to the issuance of a chilling effect letter)

Listed below are the types of questions that should be explored by the ARB in an effort to determine the appropriate approach to evaluating a chilling effect/chilled work environment concern:

#### ARB Considerations Related to Information Supplied by the Allegor

- What happened and how has it impacted the willingness of workers to raise safety concerns (or to challenge actions or decisions that may be unsafe)?
- How many workers have been potentially chilled? Does the concern affect only the allegor, a small group, a department, or the whole facility? Did the allegor provide the names of others he/she believes may have been chilled or who have indicated that they are chilled?
- When did the chilling action or event occur?
- What influence does the individual who caused the chilling effect/chilled work environment have on those who are chilled?
- Is the alleged chilling effect/chilled work environment based on the allegor's opinion? Or have others told the allegor they are chilled?
- What avenues for raising concerns are workers hesitant to use? (communication w/supervisor or senior management, CAP, ECP, NRC, others)
- Is a certain type of concern not being raised?
  - If so, what type and why are workers hesitant to raise this type of concern? Examples (examples will help determine impact on safety)?
  - Are there specific concerns the allegor or others have not raised? Examples?
- Is management aware of the chilling effect/chilled work environment? If yes, have actions been taken to address the situation and have those actions been effective?"
- In general, has management taken action to prevent and detect chilled work environments at this plant/facility? If yes, have those actions been effective?"

#### ARB Considerations Related to NRC Knowledge Regarding Facility SCWE

- Overall volume of worker concerns (NRC allegations increasing? Usage of licensee CAP/ECP decreasing?)
- Are there any currently open discrimination concerns related to the facility?
- Is there a history of NRC or DOL discrimination findings related to the facility?
- Has there been a trend in the last 12-18 months toward settlements of discrimination concerns via DOL, Early ADR, or otherwise that is indicative of an effort to mask work environment problems?

- Has NRC received multiple allegations in the last 12-18 months about the same issue? From the same group or different groups?
- Are there trends in concerns raised in the last 12-18 months that could produce a reluctance to raise concerns, such as excessive overtime, perceived schedule/cost pressures, large maintenance backlogs, deferred corrective action, etc.?
- Can recent inspection results provide input to the state of the SCWE at the facility (PI&R, other)? For example, have there been issues related to:
  - licensee effectiveness in identifying safety issues;
  - lack of effective evaluation, follow-up, and corrective action for findings made by the QA organization, concerns entered into the licensee’s CAP, or issues raised to the licensee’s ECP;
  - delays in or absence of feedback for concerns raised to ECP;
  - breaches of confidentiality for concerns raised to ECP
- If the chilling effect/chilled work environment concern is related to a licensed facility with an NRC resident inspector, what are the perceptions of the resident inspectors with regard to the facility SCWE?
- Are there any recent SCWE/Safety Culture survey results that would provide input to the state of the facility SCWE? Has the licensee implemented recommended corrective actions from the survey?
- Is the licensee already aware of a chilling effect/chilled work environment problem at the site? If so, have corrective actions been taken and are they effective?

The evaluation option chosen by the ARB will be informed by the answers to the above questions. The first two evaluation options noted above (no NRC action, provide to licensee for information only) indicate that, based on the information provided by the allegor and NRC staff knowledge about the SCWE at the facility, the ARB has determined that there was insufficient information related to a potential chilled work environment to warrant further review. In this circumstance, if the allegor also objected to the NRC engaging the licensee, an ARB decision of “No NRC Action” would be appropriate. If the allegor did not object to the NRC informing the licensee about the concern, the ARB could decide to provide the concern to the licensee for informational purposes.

The next three evaluation options (NRC inspection, RFI to licensee, OI Assist (or OI Supplement to investigation)) indicate that the ARB has determined that sufficient information was provided to suggest that action should be taken to gain more insight into whether a chilled work environment may exist at the facility, and if so, the severity of the problem. In this respect, Manual Section 5.6.d should be consulted by the ARB in order to determine whether the issuance of an RFI to the licensee is a viable option. If an RFI is not a viable option, and the allegor provided sufficient information to enable the NRC to conduct an inspection, inspection effort should be considered by the ARB as a proposed course of action. In some instances, the ARB may choose, instead of or in addition to a proposed inspection effort, to request the support of OI by way of an OI Assist or an OI Supplemental evaluation during a related investigation (i.e., if OI is already engaged in the investigation of a discrimination or wrongdoing matter that is asserted to be a contributor to the chilled work environment concern), in determining whether a chilled work environment exists.

SCWE evaluation tools used by either the licensee responding to an RFI or by the NRC during an inspection include interviews, document reviews, and observations. Interviews can be done in focus groups or one-on-one and should include workers and management in the impacted organizations. Workers should not be interviewed with their management present, as this may be intimidating and prevent the workers from providing candid input. It can also be useful to interview an organization at the facility that is not alleged to be chilled to establish a control group perspective. Those interviewed should be representative of the subject group. Another source of insight into the health of the SCWE is the ECP manager. Interview questions should be designed to solicit information in the following key areas:

- How many workers are impacted and in which organizations/groups?
- Which reporting avenues are workers hesitant to use to raise concerns and why?
- What types of concerns are workers hesitant to raise and why? Record examples.

Basic SCWE principles should be explored with interviewees including whether or not the worker perceives that:

- Workers are retaliated against for raising concerns
- Management encourages workers to raise concerns
- Management is responsive to concerns raised
- The CAP and ECP (if applicable) are effective and responsive
- Management effectively prevents or mitigates occurrences of discrimination and chilling effect

Documents that should be considered for review include:

- Relevant documents provided or referred to by the allegor
- ECP files/CAP data
- SCWE and/or safety culture self-assessments
- SCWE policy
- SCWE communications
- SCWE and/or safety culture training materials

Direct observations of interactions between workers and management also can provide insight into the work environment. Examples of such interactions include pre-job briefs, daily status meetings, all-hands meetings, and plant review committee discussions (such as a corrective action review committee). Because it is often difficult for NRC special inspection teams to observe such interactions without the presence of team members impacting those interactions, it is usually helpful to solicit such information from a resident inspector (if there are resident inspectors at the site) whose presence in such meetings is not unusual or perceived to be so.

In order to close a chilled work environment allegation, the NRC typically needs information specific to the 3 key areas noted above regarding the number of workers impacted, the reporting avenues affected, and the types of concerns workers are hesitant to raise. Although not an absolute, the NRC has historically viewed a negative response rate from the affected group of 20% or higher as a matter potentially needing attention by licensee management. This value can vary depending on other factors, for

example, the safety significance of the work performed by the group. With regard to reporting avenues, NRC's concern increases as more reporting avenues are impacted. Furthermore, hesitation to raise concerns to supervision or through the established corrective action program is typically of more concern to NRC than if workers are reluctant to raise concerns to alternate avenues, such as the ECP or NRC. The type of concerns workers indicate they are reluctant to raise plays a key role in whether or not the NRC will conclude that the work environment is chilled.<sup>4</sup> All 3 areas should be considered collectively when determining whether the allegation of a chilled work environment is substantiated or not.

In the context of a chilled work environment allegation, the last evaluation option (CEL) indicates that, based on the information provided by the allegor and NRC knowledge about the facility SCWE, the NRC has concluded that a chilled work environment exists at the facility. It also indicates that NRC has looked at the ability of the licensee to recognize the severity of the chilled work environment problem and the effectiveness of any actions taken by the licensee in an effort to remedy the problem, and is concerned that the licensee is not making sufficient progress. A CEL is placed on the public docket and publicly notifies the licensee of the NRC's concern about the SCWE. A CEL also informs the workforce that NRC has engaged the licensee regarding the chilled work environment matter and will monitor the licensee's corrective actions. [See Manual Section 5.2.i.6 for detailed discussion regarding the issuance of a CEL and subsequent evaluation and closure actions.]

It is noted that NRC Enforcement Program guidance also calls for the consideration of a letter requesting information from the licensee about SCWE impacts resulting from a positive finding of discrimination made by DOL during its review of a discrimination concern. Regardless of whether NRC has made a similar finding or even completed its review of the same matter, this type of letter recognizes that a DOL decision has been placed on the public record indicating that an individual was discriminated against by the licensee. In this instance, the letter requests the licensee to provide a response to the NRC as to whether other workers at the facility may have been "chilled" as a result of the DOL finding/decision, and whether any actions were taken by the licensee to mitigate that perception. Similarly, if NRC substantiates a discrimination concern in the absence of a DOL discrimination claim, NRC's post-investigation efforts also involve requesting the licensee to respond to the potential chilling effect of the substantiated discrimination concern.

The AAA may be requested to participate in ARB discussions related to chilled work environment allegations, when appropriate, and should always be consulted when the regional or headquarters office is initiating discussion regarding the possible issuance of a CEL to the licensee (see Manual Section 5.2.i.6). It is not necessary to request AAA participation in the ARB if a request for information is to be sent to the licensee related to potential SCWE effects resulting from a positive DOL discrimination finding.

Beyond the work environment considerations noted above, the responsible action office may determine that the state of the SCWE at a particular facility has been so adversely

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<sup>4</sup>The NRC's primary interest is that workers feel free to raise nuclear, quality, and radiological concerns. Therefore, from a regulatory perspective, the NRC cannot substantiate a chilled work environment unless such concerns are the ones the workforce is hesitant to raise.



affected by negative contributing factors that more substantial regulatory action is warranted, such as the issuance of an order with the purpose of providing adequate assurance of reasonable protection of public health and safety. Such action may include:

- a request or order that the licensee obtain an independent evaluation of its environment for raising safety concerns
- an order to establish independent third-party oversight of the environment for raising safety concerns

Such actions should be coordinated with appropriate levels of NRC management and other NRC guidance that may direct review of a licensee's SCWE (e.g., NRC Inspection Manual Chapter 0305).

#### **5.2.i.3 Consideration of Chilling Effect/Chilled Work Environment Concerns Not Related to NRC-Regulated Activity**

As indicated in Manual Section 5.2.i.1 above, a concern is occasionally submitted to the NRC that a non-NRC-related discrimination matter (e.g., sexual harassment, age discrimination, racial discrimination) has "chilled" workers, and that as a result, workers will also be unwilling to raise nuclear, quality or radiological safety issues. In this circumstance, the allegor is to be informed that the NRC cannot pursue a discrimination matter that is not under NRC regulatory purview. If the individual has not contacted the proper authority with regard to the discrimination matter, NRC should make an effort to provide contact information to the individual (e.g., EEOC).

With regard to the assertion of a chilling effect or chilled work environment, the allegor should be requested to provide specific examples of other workers indicating that the non-NRC-related matter has caused them to be hesitant or unwilling to raise a nuclear, quality, or radiological safety issue. If such information is provided, the chilling effect/chilled work environment concern should be considered by the ARB. If the individual cannot provide specific examples indicating that others have been chilled to raise nuclear, quality, or radiological safety issues, the action office should not enter the concern into AMS and instruct the individual to pursue the non-NRC-related discrimination matter through the appropriate authorities. (The concern may be entered into AMS as a 'non-allegation' if accompanied by other concerns related to NRC-regulated activities.)

#### **5.2.i.4 Chilling Effect Comments Solicited by NRC during PI&R Inspections and Supplemental Reactor Oversight Program (ROP) Inspections for Degraded Cornerstones**

During the performance of PI&R Inspections (NRC Inspection Procedure (IP) 71152), supplemental ROP inspections to support NRC response to reactor facilities with one or more or repetitive degraded cornerstones (i.e., IPs 95001, 95002 and 95003), and other special and supplemental inspections related to materials licensees and nuclear industry vendors, NRC inspectors solicit comments from site workers regarding the environment for raising safety concerns at the site. Comments are occasionally received asserting that problems exist with the SCWE. In general, such comments should not be treated as

allegations, since NRC is directly requesting the feedback with regard to the work environment as part of the inspection. If an individual providing such comments during one of these inspections asks about the means of NRC response, he/she should be informed that feedback will be available in the forthcoming inspection report.

Notwithstanding the above, inspectors should be sensitive to other concerns raised during the above noted inspections that are not in direct response to questions about the work environment and that should be considered as potential allegations. As examples, if an individual discusses a specific technical concern that meets the definition of an allegation or any concern involving potential wrongdoing, such matters should be documented separately by the inspector for entry into the allegation program.

#### **5.2.i.5 Inspecting Chilling Effect/SCWE Concerns at a Vendor**

Since there are no direct regulatory requirements applicable to the viability of a corrective action program at a vendor, the licensee imposes its 10 CFR Part 50, Appendix B (or equivalent) requirements as part of the vendor contract. On this basis, corrective action programs are routinely evaluated during vendor inspections. Problems found during vendor inspections are identified as “non-conformances” (as in non-conformance with the contract) rather than findings or violations. Through evaluation of corrective actions taken and discussion with vendor employees, NRC vendor inspectors can gain perspective on the work environment for raising concerns.

#### **5.2.i.6 Chilling Effect Letters**

Through application of the NRC’s Enforcement Policy, appropriate enforcement action may be taken against a licensee that has discriminated against an employee for raising safety concerns. The intent of such action is, in part, to prompt the licensee to take actions to mitigate the potential “chilling effect” that the discriminatory act may have caused. In addition to informing the licensee about a potential chilling effect related to a discrimination concern substantiated by NRC, there are other circumstances wherein NRC may request information from the licensee about the work environment at the facility and/or inform the licensee that the NRC is concerned that the work environment at a facility may be chilled.

In the case of a discrimination concern filed directly with DOL, the MOU between the NRC and DOL states that the two agencies will cooperate to the fullest extent possible in every case of alleged discrimination involving employees of NRC licensees. As noted in Manual Section 5.2.i.2, when an initial DOL/OSHA investigation concludes that discrimination occurred, the NRC staff considers how the DOL finding will affect the SCWE. In particular, the staff needs to be assured that awareness in the workplace of DOL’s discrimination finding has not created a chilling effect (i.e., has not discouraged other employees and contractors from raising safety concerns). The NRC Enforcement Manual currently provides detailed guidance on requesting information from the licensee about SCWE impacts in such cases (Enforcement Manual, Part II, Section 1.3.17). (The Enforcement Manual appears on the agency’s public Web site at: <http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html#manual>.) In response to a DOL finding of discrimination, this request for information serves three purposes: (1) to notify the licensee publicly of the NRC’s concern that the initial DOL discrimination finding may have negatively affected the licensee’s SCWE, (2) to obtain

information on the licensee's assessment of its employees' willingness and ability to raise safety concerns at the facility and the description of any remedial action the licensee has taken or plans to take to address any identified weakness as a result of its assessment, and (3) to obtain information on the licensee's position with regard to whether discrimination occurred. It is also appropriate to consider similar correspondence to the licensee for findings of discrimination associated with NRC-regulated activity made by other external authorities, such as MSPB, OSC, or federal/state courts.

The Enforcement Manual also recognizes that the staff may consider the issuance of another communication referred to as a chilling effect letter (CEL). Specifically, a CEL may be appropriate in certain circumstances involving allegations and other indications of a chilled work environment that do not involve a finding of discrimination. The Enforcement Manual directs the staff to this section of the Allegation Manual for guidance describing such circumstances. The guidance that follows summarizes the factors to consider when deciding to issue a CEL, the process used to make that determination, the contents of the CEL, the evaluation of a CEL response, and the closure of the CEL.

#### **5.2.i.6(a) General Guidance Regarding CELs**

In addition to the potential chilling effect resulting from NRC or DOL findings of discrimination, other licensee actions that the workforce perceives to be discriminatory, repressive, or otherwise unresponsive to employee concerns, could potentially affect the SCWE. The NRC Enforcement Manual recognizes that these other circumstances may warrant the issuance of a CEL if the NRC, when considering such circumstances, becomes concerned about the licensee's recognition of a chilled work environment or about the effectiveness of any actions taken by the licensee in response. The following discussion describes the circumstances under which the issuance of a CEL may be warranted in the absence of a finding of discrimination and the process for its issuance, evaluation, and closure.

##### **5.2.i.6(a)(1) What is a CEL?**

A CEL is a regulatory tool targeted toward ensuring that the licensee is taking appropriate actions to foster a workplace environment that encourages employees (including contractors) to raise safety concerns and to feel free to do so without fear of retaliation. The purpose of the CEL is:

- to notify the licensee of the NRC's concern with the SCWE at its facility on the public record
- to obtain information about the licensee's assessment of its employees' willingness to raise safety concerns at the facility and the description of any remedial action the licensee has taken or plans to take to address any identified weakness as a result of its assessment

## 5.2.i.6(a)(2) Situations That Warrant CEL Issuance

CELs are intended to have a positive impact on a licensee's workforce and, specifically, on that part of the workforce that the NRC believes is "chilled," (i.e., workers who perceive that the licensee is suppressing or discouraging the raising of safety concerns or is not addressing these concerns when they are raised). These letters are the tool that the NRC uses to inform workers that the agency has engaged their management about its SCWE concern and that the agency will monitor the licensee's actions to address that concern. Such communication can have a positive effect on the workers' willingness to raise issues. However, the agency recognizes that issuing a CEL when an already healthy SCWE exists could negatively affect the SCWE (i.e., cause individuals to become concerned about raising concerns simply based on the NRC's assertion that others on site are chilled). For that reason, the NRC must issue a CEL only when appropriate in the absence of a finding of discrimination. The discussion below describes situations of this type in which the NRC would normally issue a CEL.

Section 5.2.i.2 above describes 3 key areas for which information is needed to determine if a work environment is chilled, namely:

- The number and organizational affiliation of workers impacted;
- The number of reporting avenues to which workers are hesitant to raise concerns; and
- The types of concerns workers are hesitant to raise.

Below is a nonexclusive list of factors that provides insight into the licensee's SCWE within these 3 key areas. The staff should consider these factors when evaluating whether the issuance of a CEL is warranted. The staff should evaluate each case on its own merit; however, it should consider past examples with similar facts, circumstances, and organizational structure to ensure consistency and predictability relating to the issuance of CELs. A list of previously issued CELs is available on OE's webpage at <http://www.internal.nrc.gov/OE/> under "Quick Links". No one factor is considered to be inherently determinative of a chilled environment. Accordingly, the following factors, as applicable, should be considered collectively rather than in isolation. In addition, from case to case, the same factor may weigh differently depending on the facts and circumstances of each case.

Lastly, the staff should counterbalance the perceived need for the issuance of a CEL in these situations with a determination as to whether the licensee is taking timely and effective remedial actions that the NRC anticipates will enhance the SCWE in a timely manner.

### ➤ Allegations: Number, Receipt Rate, Nature, and Source

Number of Allegations – Of interest is the number of allegations coming from onsite sources over a particular review period compared to the reactor industry median over that same review period. (The minimum median value for a calendar year review period is 3 allegations received from onsite sources.) [**Note:** It may be appropriate to include a review of allegation

concerns from other sources as well (e.g., chilling effect concerns from offsite sources or concerns from allegers claiming to be providing them on behalf of onsite individuals).] The reactor industry median is used for both reactor and materials licensees (and other employers subject to NRC authority) because it is derived from a homogeneous population and, therefore, is a good comparative number for this exercise. Taking into account the varying workforce size at different sites, the following guideline can be used to determine which sites may warrant further consideration<sup>5</sup>:

- 1-unit reactor sites (or any site/facility with fewer than 800 persons) with an onsite allegation volume greater than 2.25 times the median
- 2-unit reactor sites (or any site/facility with 800-1100 persons) with an onsite allegation volume greater than 3 times the median
- 3-unit reactor sites (or any site/facility with more than 1100 persons) with an onsite allegation volume greater than 4.5 times the median

The staff should recognize and take into consideration when using the above algorithms that during times of significant site activity, the site population may increase substantially (e.g., construction or extensive modification activities). For example, if a site with typically less than 800 persons is experiencing a prolonged shutdown period during which the site population is significantly increased, application of the algorithm for a larger site population may be considered more appropriate.

**Receipt Rate** – The staff should consider whether the allegations were received during the review period at an increasing, decreasing or steady rate.

**Nature of Concerns** – Of interest is:

- any concern specifically indicating fear or reluctance to raise concerns (e.g., claims of discrimination, chilled environment concerns, or indications of fundamental problems with the licensee’s corrective action program)
- any substantiated chilling effect concern determined by either the NRC or the licensee
- any concern that may have a significant impact on safety or security

**Source of Allegations** – Of interest is:

- a trend in a particular functional organization or contractor group (**Note:** an organization’s direct impact on safe operations or decision-making should be taken into consideration)

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<sup>5</sup>These criteria are also used to determine which entities (NRC-licensed site/facility, contractor, or vendor) warrant additional discussion in the Annual Allegation Trend Report.

- multiple concerned individuals vs. many allegations from a small number of alлегers. (**Note:** the staff should be careful not to assume a single source of multiple allegations represents only one alлегer. One alлегer may represent others that have asked him/her to submit their concerns because they are not comfortable doing so themselves.)
- the percentage of anonymous alлегers

➤ NRC Inspection Observations: In addition to observations and findings identified by routine NRC inspections, PI&R, Special or Supplemental Inspections can provide historical insight into the SCWE.

PI&R SCWE Observations – IP 71152, “Problem Identification and Resolution,” provides a list of questions that the staff can use to assess whether impediments to raising concerns exist. The questions are designed to address four primary elements of a SCWE: (1) the employees’ willingness to raise concerns and whether management’s behaviors encourage them to do so, (2) employee perception of the effectiveness of the corrective action program as the primary avenue to raise concerns, (3) employee perception of the effectiveness of an alternative program if one exists, such as an ECP, and (4) employee perception of the effectiveness of management actions to detect and prevent retaliation and chilling effects.

SCWE Observations in Special and Supplemental Inspections – The following special and supplemental inspections may also generate observations about the SCWE:

- IP 35007, "Quality Assurance Program Implementation During Construction and Pre-Construction Activities" (Appendix 16 - Inspection of Criterion XVI - Corrective Action)
- IP 40001, "Resolution of Employee Concerns"
- IP 40002, "Inspections to Review Allegations"
- IP 40100, "Independent Safety Culture Assessment Followup"
- IP 40801, "Self-Assessment, Auditing, and Corrective Action at Permanently Shutdown Reactors"
- IP 43002, "Routine Inspections of Nuclear Vendors"
- IP 43003, "Reactive Inspections at Nuclear Vendors"
- IP 88110, "Quality Assurance: Problem Identification, Resolution and Corrective Action"
- IP 93100, "Safety-Conscious Work Environment Issue of Concern Followup"
- IP 95001, "Supplemental Inspection for One or Two White Inputs in a Strategic Performance Area"
- IP 95002, "Supplemental Inspection for One Degraded Cornerstone or Any Three White Inputs in a Strategic Performance Area"
- IP 95003, "Supplemental Inspection for Repetitive Degraded Cornerstones, Multiple Degraded Cornerstones, Multiple Yellow Inputs or One Red Input"

- IP 95003.02, "Guidance for Conducting an Independent NRC Safety Culture Assessment"

➤ Licensee Tools to Establish, Maintain and Assess The SCWE: Assessments, Policies, Communications, Training, and Corrective Action Programs

- SCWE/Safety Culture Assessments – Of interest is the scope of a self-assessment or independent survey, significant findings (e.g., functional area pockets of concern), and actions taken by the licensee to address identified SCWE weaknesses. Safety culture assessments often include insights on the cultural SCWE component.
- SCWE Policy Statements – Of interest is language describing expectations for management behavior to proactively encourage employees to raise concerns, unrestricted access to multiple avenues for raising concerns, and prohibitions on retaliation.
- SCWE Communications – Of interest is the media that management uses to communicate its SCWE expectations, its message, and the frequency of such communication.
- SCWE Training – Of interest is who is being trained (e.g., all supervisors), the content of the training (e.g., employee rights, avenues for raising concerns, related policies, and supervisor expectations) and whether refresher training is offered and at what frequency.
- ECP – Of interest is the licensee's ECP data in comparison to allegation program data trends (e.g., the number of concerns raised within the ECP, the rate of these concerns over the review period, the nature and safety significance of the concerns, the source of concerns, any substantiated chilling effect or discrimination concerns, and the percentage of anonymous concerns).
- Corrective Action Program – Of interest are any changes in usage trends, restrictions, if any, on writing a condition report, and the existence of any incentives for limiting the number of employee-raised concerns.

➤ Specific Events with the Potential to Chill the SCWE

The staff should consider the number of individuals who witnessed the event or who are potentially affected by it, the notoriety of the event, the position, responsibility, and level of influence of the individual(s) causing the chilling effect, and the egregiousness of the behavior.

➤ Reporting Avenues Affected by the Chilling Effect

Of interest is which and how many avenues for reporting concerns are potentially impacted, including, but not limited to direct communication with a supervisor, the CAP, ECP, and the NRC.

- Licensee's Remedial Actions in Response to Negative SCWE Trends or an Event

The staff should place greater weight on this factor than those articulated above. Of interest is whether the staff views the licensee's remedial actions to be timely and appropriate and to have a likelihood of success in enhancing the SCWE and negating any prior chilling effect.

#### **5.2.i.6(a)(3) Process for Considering a CEL and Administrative Coordination**

The ARB deliberates on the issuance of a CEL that is not associated with a finding of discrimination. (As discussed in Manual Section 5.2.i.6, the process for considering and issuing requests for information from the licensee related SCWE impacts resulting from a finding of discrimination can be found in the Enforcement Manual.) Representatives from OE (AAA or designee) and from the appropriate regional or headquarters office must participate in these deliberations. The process for considering the issuance of a CEL and the necessary administrative coordination include the following:

- The appropriate region or headquarters office shall draft an ARB briefing sheet that describes the basis and the rationale for issuing the CEL, using the factors discussed in Manual Section 5.2.i.6(a)(2).
- The AAA or his/her designee should participate on the ARB. If the AAA or designee is not available, the ARB Chair shall contact the AAA, review the ARB decisions, and determine the need for additional ARB discussion.
- The ARB Chair, after consultation with the Regional Administrator or Office Director, as appropriate, will make the final determination on whether to draft a CEL for concurrence.
- If the ARB Chair determines that the staff should issue a CEL, an Enforcement Action (EA) number for the CEL will be obtained to track all related documents. The EA number should appear on the CEL and all related NRC correspondence. The EA number should not be closed until the staff issues a letter that acknowledges the NRC's acceptance of the licensee's actions, completed and planned, in response to the CEL. (See Section 5.2.i.6(a)(5)).
- The OE Director or his/her designee and the AAA shall be on concurrence for the CEL. CELs issued by a region or headquarters office shall be under the signature authority of the applicable Regional Administrator, Office Director, or his/her designee.
- The region or headquarters office will communicate the decision to issue a CEL to the Office of the Executive Director for Operations and, if appropriate, to the Commission.



#### **5.2.i.6(a)(4) Contents of a CEL**

If the staff determines that a CEL is warranted, the CEL should:

- Describe the NRC's concern and its basis and include specific considerations that led the agency to issue the CEL while recognizing the need to protect the identities of any alleged involved.
- Reference the NRC's SCWE Policy Statement entitled, "Freedom of Employees in the Nuclear Industry to Raise Safety Concerns without Fear of Retaliation" (Volume 61 of the *Federal Register*, page 24336; May 14, 1996), or RIS 05-018, "Guidance for Establishing and Maintaining a Safety Conscious Work Environment," dated August 25, 2005, or both, to make the licensee aware of the NRC's expectations in this area.
- Request that the licensee respond to the NRC's concerns (typically within 30 days). The nature of the requested response may differ depending on the extent of the SCWE concern. For example, the letter may include a request for a management meeting as well as a written response, or it may request (for broader or more significant issues) the licensee to conduct an assessment of the SCWE.
- Request that the licensee provide information on its SCWE assessment and any associated corrective actions and to describe how it will measure the effectiveness of any corrective actions.
- Instruct the licensee to provide the basis for determining that the number and the cross-section of individuals interviewed or surveyed as part of its review and the scope of the interviews and surveys was appropriate.
- Request that the licensee notify the affected members of the workforce of the issuance of the CEL and the NRC's concerns and focus on the SCWE.
- Explain that the licensee's response will be made public. (The staff should add the final copy of the CEL to ADAMS and make it publically available.)
- Request that persons independent of the organization or group associated with the NRC's concern conduct an assessment of the SCWE.

#### **5.2.i.6(a)(5) Evaluation of the Licensee's Response and Closure of CELs**

After the licensee has responded to a CEL, the office responsible for the issuance of the CEL, in collaboration with other NRC offices whose participation in the review of the licensee's response is necessitated (e.g., the region, OE, or other headquarters office, as appropriate) will review the scope of the licensee's assessment of the work environment, the independence of those involved in the evaluation, and the adequacy and effectiveness of any corrective actions proposed or taken. Closure of a CEL is contingent upon an NRC determination that the licensee has made reasonable progress toward addressing the underlying issues that led to the issuance of the CEL.

#### **5.2.i.6(a)(5)(A) Evaluation of Licensee Surveys/Interviews**

If the licensee conducted surveys or interviews, the staff should evaluate the results and conclusions and should:

- Evaluate the survey/interview questions to determine whether they involve an employee's reluctance to raise concerns, his/her reluctance to self-identify problems, his/her awareness of others who have experienced negative consequences for raising concerns, management support for raising concerns and maintaining a SCWE, and the effectiveness of the licensee's CAP and ECP (if applicable) in addressing concerns.
- Evaluate the sample size of the surveys or interviews, or both, and determine whether they included participants from an appropriate cross-section of the population (e.g., management/non-management, bargaining unit/non-bargaining unit, part time/full time workers, or contractors) and whether they are representative of the population being assessed.
- Consider conducting follow-up interviews or focus groups to validate the licensee's assessment.

#### **5.2.i.6(a)(5)(B) Evaluation of Licensee Corrective Actions**

If the licensee's assessment indicates areas of weakness, the staff should evaluate the licensee's corrective actions for appropriateness and should:

- Consider whether the actions address the underlying problems, whether they are of sufficient scope and depth, and whether the licensee will implement them in a timely fashion.
- Examine the adequacy of the effectiveness measures for monitoring the results of the corrective actions.
- Follow up, as appropriate, to monitor the licensee's progress toward improving the SCWE and to determine whether the actions taken have been effective. For a reactor licensee, the staff has historically conducted such follow-up activities during quarterly assessments of the CAP.

#### **5.2.i.6(a)(5)(C) Unsatisfactory Licensee Response to CEL**

If any aspect of the licensee's response is not satisfactory, the staff should contact the licensee to discuss the need for additional information or should conduct inspections to obtain the needed information, or do both.

#### **5.2.i.6(a)(5)(D) CEL Closure**

The staff should consider closure of the CEL after reviewing the licensee's response(s) and any additional information gathered through follow-up

inspections. After the office that issued the CEL, in consultation with the other NRC offices that participated in reviewing the licensee's response (e.g., the region, OE, or other headquarters office, as appropriate), determines that the licensee's response is acceptable (i.e., that reasonable progress has been made in addressing the underlying issues that led to the issuance of the CEL), that office shall issue a letter acknowledging the NRC's acceptance of the licensee's response. If appropriate, the letter should indicate the NRC's intent to monitor the licensee's progress toward improving the SCWE through baseline inspection activities to verify sustainability of any actions taken.

For power reactor licensees, the issuance of a CEL represents a theme as defined by the Reactor Oversight Process, and the staff's review of the licensee's response will be instrumental in determining whether a substantive cross-cutting issue exists in the SCWE cross-cutting area (See Manual Chapter 0305, "Operating Reactor Assessment Program"). For that reason, the staff's assessment and closure of a CEL issued to a power reactor may be documented in the mid-cycle or end-of-cycle assessment letter, or in a separate letter. See Manual Section 5.9.g.7 for a discussion of how the closure of a CEL pertains to the closure of related allegation concerns.

## **5.3 Acknowledgment Letter**

### **5.3.a Acknowledgment Letter Description**

*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 (and all other written correspondence to an allegor) 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, as understood by the NRC, preferably in a separate enclosure, along with information relevant to the issues involved (e.g., the Early-ADR and DOL processes (if discrimination is alleged), identity protection, important contacts, whether concerns are being referred to another entity (like an Agreement State) or whether a request for information from the licensee is being considered). (8.8 Handbook, Section II.J.1(a)) A standardized acknowledgment letter is provided in Manual Exhibit 12, which contains templates for acknowledging circumstances commonly encountered as part of allegation receipt. Additionally, a brochure describing the NRC allegation program (NUREG/BR 0240, "Reporting Safety Concerns to the NRC") is provided to the allegor with the acknowledgment letter.*

### **5.3.b Responsibility for Acknowledgment Letter Issuance When an Allegation is Transferred**

If it is determined that the responsibility for evaluating an allegation is to be transferred from the receiving office to another action office (see Section 5.6.c regarding NRC allegation transfer), and the receiving office makes the transfer promptly, for example, within about one week of receipt (i.e., providing ample time for the action office to which the allegation is being transferred to meet allegation program acknowledgment letter timeliness guidelines), the acknowledgment letter should be issued by the action office to which the allegation is transferred. If the receiving office experiences a delay in reassigning the allegation such

that the acknowledgment letter timeliness goal is jeopardized (for example, if the allegation is not transferred until two or more weeks after the allegation is initially received), the receiving office should issue a brief acknowledgment letter to the alleege, indicating that the allegation is being transferred to another NRC office and that the alleege will receive feedback from that office in the near future. The subsequent letter to the alleege from the action office to which the allegation is transferred will contain the components of the standard acknowledgment letter, including the enclosure restating the alleege's concerns, as understood by the NRC. The letter should normally be sent within 30 calendar days of the date of the allegation transfer.

### **5.3.c Verification of Letter Receipt**

*Whenever possible, acknowledgment letters (and all other written correspondence to an alleege) should be sent using a delivery mechanism that allows for verification of receipt.* There is an exception regarding an allegation status letter to an alleege that does not contain specific detail related to NRC's evaluation of one or more concerns (for example, a basic status letter that only indicates that NRC's review of remaining open concerns is ongoing). In such instances, it is acceptable to send the status letter via standard U.S. mail without receipt verification. *[Note: For instances in which an alleege requests electronic correspondence (e-mail), the OAC should request the alleege to verify receipt of the information.] (8.8 Handbook, Section II.J.1(a))* An acknowledgment letter or closure letter to the alleege, a response to an alleege's Response After Closure, or a status letter that includes concern closure information or other detail related to the evaluation of specific allegation concerns may be sent by U.S. Certified Mail, which will prompt the forwarding of a signed return receipt, or by an alternative private carrier. If an alternative private carrier is used, a signed record of receipt by the alleege or an authorized agent, such as a relative, a roommate, or other authorized person, must also be obtained. The action office may use an alternate post office box for the return address rather than an NRC address as an added measure of alleege identity protection.

### **5.3.d Acknowledgment Letter and Other Allegation Letter Marking**

To help prevent the inadvertent release of correspondence to an alleege to third parties by NRC staff, the allegation number is to be clearly typed on the front page of the acknowledgment letter (and all other letter correspondence to an alleege) and on the upper right corner of each subsequent page. This will help reduce the possibility of staff not recognizing that the letter concerns an allegation and may contain alleege identifying information. In addition, the OAC will clearly stamp "This document identifies an alleege (or confidential source)" on the bottom of each page of any hard copies of correspondence to or from alleegees provided to the staff, which contains the identity of an alleege or other information which could identify the alleege. Original documents maintained under the control of the OAC do not need to be stamped in this manner.

Also, it is noted that acknowledgment letters and all other letter correspondence to an alleege are not required to comply with the guidance in NRC Management Directive 3.57, "Correspondence Management," that calls for inclusion of the first initial and last name of the letter addressee in the top left corner of pages beyond the cover page. This represents an effort to limit alleege identity releases. The provision of the allegation number on the upper right hand corner of subsequent pages sufficiently associates them with the cover page.

### **5.3.e Inclusion of Early ADR Offer and Related Information**

*If discrimination has been alleged, and a prima facie showing of potential discrimination has been articulated, the acknowledgment letter shall offer the alleged 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. Additionally, a brochure describing the Early ADR process, NUREG/BR 0313, "Pre-Investigation ADR Program," is provided with the acknowledgment letter. The OAC will inform OE that an offer of Early ADR has been made. [Note: The alleged 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 alleged before Early ADR is offered.] (8.8 Handbook, Section II.J.1(b))*

### **5.3.f Informing the Allegor About Possible Limitations on Feedback Regarding Security Concerns**

*For sensitive, security-related concerns, the acknowledgment letter will reiterate the concern(s) raised but will inform the alleged that NRC, following evaluation of the concerns, may only be able to provide limited information regarding the staff's review, assessment, and findings. The enclosure to the acknowledgment letter describing the alleged's security-related concerns should not contain any marking indicating that it may contain sensitive security information. Since it is only a restatement of an alleged's assertion, and since the staff has no control over the distribution of the letter once it is sent to the alleged, any such marking would only cause unwarranted attention to the information in the acknowledgment letter enclosure. The letter shall not include classified, Safeguards, or sensitive security information. (8.8 Handbook, Section II.J.1(c))*

### **5.3.g Acknowledgment (or Other) Letter Returned to Action Office**

If an allegation acknowledgment (or other) letter to an alleged is returned to the action office by the delivery service (for example, if the action office is informed that the letter was undeliverable or that there was no such address), the OAC should attempt the following:

- Review the allegation file to determine if the correct address was entered on the envelope. If not, resend the acknowledgment (or other) letter using the correct address.
- If there are no discrepancies in the alleged contact information, the OAC should attempt to contact the alleged by any other available means (e.g., telephone, electronic mail) to determine why the letter was not claimed. If the matter is resolved, resend the acknowledgment (or other) letter to the correct address.
- If the OAC is unsuccessful in contacting the alleged by telephone or electronic mail, a final effort should be made to obtain contact information for the individual through other means. For example, if it is known that the alleged is a licensee employee, the OAC may request assistance from an NRC resident or specialist inspector in obtaining contact information or in arranging a subsequent contact with the alleged. Additionally, the OAC may attempt to obtain contact information by way of Internet directory sites. Also, in some instances, OI has offered support in obtaining contact information for an alleged. If the matter is resolved, resend the acknowledgment (or other) letter to the correct

address.

- Lastly, if the address matches the address noted in the allegation file, and other attempts to contact the allegor are unsuccessful, resend the letter via standard mail (U.S. Postal Service). If the address is correct, the letter will be delivered to that address. If the address is incorrect, or if the allegor is no longer at the address, the letter will be returned to the action office.

If, after attempting the above actions, the OAC is unable to contact the allegor, no additional effort to contact the allegor is necessary. The staff should continue its efforts to evaluate the submitted allegation concerns (excluding concerns involving alleged discrimination which cannot be pursued without the allegor's cooperation). The action office may take credit for the issuance of an acknowledgment letter in such a circumstance using the date the original acknowledgment letter was sent.

## **5.4 Interfacing with the Allegor during Allegation Evaluation**

### **5.4.a Advantages of Interaction with the Allegor during Allegation Evaluation**

Engaging the allegor during allegation evaluation is beneficial because it helps ensure that:

- the NRC and the allegor share a mutual understanding of the concerns raised;
- pertinent information is obtained from the allegor;
- the allegor is informed of NRC's intention to consider an RFI to the licensee, if appropriate; and
- NRC's conclusions regarding the concerns are provided to the allegor after the NRC has completed its evaluation, affording an opportunity for allegor assessment and feedback.

Although an allegor's involvement is preferred, the agency recognizes that some individuals prefer to remain anonymous, or, even when their identity is known, not to be contacted by NRC staff after initially raising a concern. In all instances when an allegor has requested no further contact, a reasonable effort should be made to communicate with the allegor to ensure that all pertinent allegation-related information is obtained and to discuss the value of continued involvement in the allegation process (see Manual Section 3.1.i). Furthermore, in its communications with the allegor, the staff should encourage the allegor to, at a minimum, accept documentation of the staff's evaluation efforts to facilitate effective communication of NRC's conclusions and obtain allegor feedback. At various stages during the evaluation of the allegation, the responsible Branch Chief, with support from the OAC, should consider whether an additional contact with the allegor should be made to obtain more detail related to the concerns raised. Additionally, before providing closure documentation to the allegor, responsible NRC staff should consider whether it would be appropriate to contact the allegor by phone to facilitate understanding of the actions taken to address his/her concerns. Specific consideration should be given to those concerns the staff is unable to substantiate involving complex technical issues, high profile events, discrimination or wrongdoing allegations.

### **5.4.b Allegor Interview**

*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 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. (8.8 Handbook, Section II.J.2) [Note: If an allegor visits the NRC action office for the interview, it is advised that the allegor be directed not to sign the visitor log at the reception area, or if some form of sign-in is required, that the allegor's signature be recorded in a location other than on the visitor log. This action is suggested for allegor identity protection purposes since licensee personnel are frequent visitors to the NRC regional and headquarters offices and could identify that the allegor had visited the NRC by observation of other signatures on the visitor log.]*

#### **5.4.c Location of Allegor Interview**

Any meeting between NRC and an allegor on-site may compromise the allegor's identity. However, if unavoidable, the meeting should be arranged at an onsite location that is comfortable for the allegor and that will provide as much privacy as possible. An allegor may wish to meet in person at an offsite location to provide his/her concerns to the NRC. In this instance, effort should be made to accommodate the allegor's request. However, it is important that the location of the information exchange be comfortable and safe for both the allegor and NRC staff obtaining the information. If the allegor requests to meet at an offsite location, the staff member who is to obtain the information should contact the OAC and his/her supervisor to obtain concurrence and to assure that the information exchange occurs at an acceptable location. Consideration should be given to having another NRC staff member accompany the interviewer to increase the accuracy of the information recorded.

#### **5.4.d Allegor Request to Actively Participate in NRC Evaluation or for Verification of NRC Completion of Requested Evaluation Efforts**

##### **5.4.d.1 Allegor Request to Actively Participate in NRC Allegation Evaluation**

On occasion, an allegor who is not concerned about the protection of his/her identity will request that he/she be permitted to actively participate in NRC's evaluation of the allegation. It is recognized that the allegor provides valuable insight with regard to his/her concerns, and NRC employees are instructed to obtain as much information as possible from the allegor when receiving an allegation. While all input provided by the allegor during initial intake and during the course of NRC's evaluation is accepted and considered, the allegor shall not be permitted to actively participate with NRC in its allegation inspection/investigation/review activities. When a concerned individual raises a concern internally to his/her employer, it follows that he/she may take part in the employer's response effort. However, when a concerned individual submits an allegation to the NRC, he/she is submitting the concern(s) to an external regulatory authority. In order to maintain the integrity of the allegation process, the external regulatory authority (NRC) must conduct an independent, unbiased evaluation. For this reason, it would be inappropriate to allow the allegor to, for example, be included as a member of an inspection team that has been assigned to evaluate an allegation concern.

When discussing the need for NRC's allegation evaluation to be independent, an allegor

will occasionally question how the NRC can consider a licensee's response to an RFI to be an independent review. In this instance, the alleger should be informed that licensee feedback is requested because the licensee has primary responsibility for ensuring safe operation of the facility through ready access to site personnel, equipment, and documentation. The NRC does not participate in the licensee's review or suggest outcomes. The licensee's feedback is only used as an additional source of information that NRC can evaluate as part of its efforts to determine whether the allegation concern is substantiated. As part of the review of a licensee's RFI response, it is NRC's responsibility to judge whether the licensee's overall response or aspects of the response have been mischaracterized in terms of validity and/or interpretation of safety and regulatory significance. If any such misinterpretations are identified, NRC will challenge the licensee's feedback and consider alternate means to support its conclusion regarding the validity of the allegation concern.

#### **5.4.d.2 Alleger Requests for Specific NRC Allegation Evaluation Actions or NRC Verification that Requested Actions Were Completed**

In submitting an allegation, the alleger will sometimes request or suggest that NRC take specific actions as part of its evaluation effort. Since the alleger is familiar with the concern and provides valuable insight, NRC will often implement some or all of the alleger's suggested actions during the course of the evaluation. In evaluating the allegation, NRC will follow all leads to their logical conclusion. This may or may not involve the completion of all actions requested or suggested by the alleger.

If an alleger requests specific NRC action in response to his/her allegation concern, the alleger should be informed that:

- NRC has accepted and reviewed all of the information provided by the alleger.
- Based on that review, a course of action was developed by NRC and the information was provided to the inspectors reviewing and/or agents investigating the concern.
- To maintain the integrity of the inspection/investigation process, NRC protects the details regarding the inspections/investigations it conducts.

In addition, if an alleger asks whether NRC has completed a requested action, such as interviewing a specific individual suggested by the alleger, the alleger should be informed that:

- To protect the integrity of the inspection/investigation process, and to ensure that those individuals who are interviewed are candid with NRC, we can neither confirm nor deny who was interviewed.
- NRC trusts that you (the alleger) understand the need for NRC to maintain the sensitive nature of these interactions.
- When the evaluation is complete, the alleger may request information related to the allegation concern under the FOIA (however, interviewee names and other identifying information will be redacted from the records that are released in accordance with FOIA guidance).



## 5.5 Evaluation by NRC Technical Staff

### 5.5.a Implementing Assigned Allegation Follow-up Actions

Staff implement the allegation follow-up activities requested by the ARB or as directed by management to address an OSI. These activities may include technical review or inspection by responsible staff, or the review of documentation generated by other organizations that have been requested to provide input related to the allegation (i.e., information requested from the affected licensee via an RFI or from another NRC regional or headquarters office, or the results of investigations or evaluations conducted by NRC OI, DOJ, DOL, a State agency, or another Federal agency). *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).* (8.8 Handbook, Section II.J.3(a))

### 5.5.b Documenting Allegation Concern Evaluation

*The technical staff will document 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. [Note: See Manual Section 5.9 for guidance regarding staff development of allegation closure documentation.]* (8.8 Handbook, Section II.J.3(b))

### 5.5.c Considering Generic or Potential Wrongdoing Implications during Allegation Evaluation

Follow-up of allegations should consider not only the specific allegation concern but the overall area of concern, including the potential for generic implications and wrongdoing. For example, an allegation directed toward an item or activity that is not safety-related may affect a safety-related item or activity as a result of generic implications. When a number of allegations and/or allegation concerns point to a broader problem, the action office should consider broadening the scope of the inquiry to determine the extent of the problem.

## 5.6 Allegation Transfers, RFIs, and Referrals

### 5.6.a Considering an Allegation Transfer, RFI, or Referral

*Other actions that may be considered in support of allegation evaluation are (8.8 Handbook, Section II.J.4(a)(i)):*

- *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.*

*[Note: Normally, ARB approval is obtained before the actions noted in Bullet 1 through Bullet 4 above 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. (8.8 Handbook, Section II.J.4(a)(ii))]*

*Matters necessitating referral to law enforcement agencies shall be coordinated with OI. (8.8 Handbook, Section II.J.4(a)(iii))*

*Matters necessitating referral to an Agreement State should be coordinated with the appropriate RSAO. (8.8 Handbook, Section II.J.4(a)(iv))*

### **5.6.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 via 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. (8.8 Handbook, Section II.J.4(b))*

For a concern that is not within NRC jurisdiction, the action office may inform the concerned individual that the concern will be forwarded to the appropriate external organization or entity and/or provide contact information for the appropriate external organization or entity to the concerned individual so that the concerned individual may contact the external organization or entity directly, if he/she so chooses. In these instances, NRC should not act as an intermediary between the concerned individual and the external organization or entity, and the concerned individual should be so informed.

### **5.6.c Allegation Transfers and Allegation-Related TIAs, TARs, or Reports on Interaction**

#### **5.6.c.1 Allegation Transfer**

*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. (8.8 Handbook, Section II.J.4(C)(i))*

### **5.6.c.2 Resolution of Differences Regarding Allegation Transfer**

If the receiving office and another action office cannot reach agreement on the assignment of responsibility for evaluating the allegation, the assignment should be negotiated between the respective ARB chairpersons. If resolution cannot be reached, the AAA will attempt to facilitate the discussion and, if necessary, propose a solution. If resolution cannot be facilitated by the AAA, the issue of responsibility shall be escalated to higher levels of management.

### **5.6.c.3 Allegation-Related TIAs, TARs, and Reports on Interaction**

*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, so that the headquarters office from which technical assistance is being requested is made aware of allegation response timeliness issues. (8.8 Handbook, Section II.J.4(c)(ii))* The document requesting technical assistance should reference the allegation number but not include the alleged's name or any other alleged identifying information in either the cover document or any attachments. An appropriate allegation cover sheet (NRC Form 761 or 762) should be attached to the documents to ensure appropriate handling by staff to protect the alleged's identity. The action office OAC should maintain periodic contact with technical review personnel and the OAC in the assisting office, as appropriate, to obtain status of the review being conducted by the assisting office and to provide reminders to the assisting office with regard to allegation response timeliness issues. An allegation-related TAR, TIA, or Report on Interaction is not to be considered a public document and should not be placed into ADAMS or docketed.

## **5.6.d Requests for Information from the Licensee**

### **5.6.d.1 Policy Regarding the Issuance of an RFI to the Licensee**

NRC policy regarding the issuance of an RFI to a licensee to obtain input related to the evaluation of an allegation is described in the bullets below:

- *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. (8.8 Handbook, Section II.J.4(d)(i), 1<sup>st</sup> Bullet)*
- *A licensee has primary responsibility for ensuring 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 closure whenever possible and appropriate, and in all instances involving an OSI. (8.8 Handbook, Section II.J.4(d)(i), 2<sup>nd</sup> Bullet)*
- *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 NRC*

*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. (8.8 Handbook, Section II.J.4(d)(i), 3<sup>rd</sup> Bullet)*

- *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 allegor 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. (8.8 Handbook, Section II.J.4(d)(i), 4<sup>th</sup> Bullet)*
- *Additional guidance in this area is provided in Manual Section 5.6.d.4 and Manual Exhibit 13, "Allegation Review Board Worksheet." This worksheet is intended to support discussion at the ARB when an RFI to the licensee is being considered. (8.8 Handbook, Section II.J.4(d)(i), 5<sup>th</sup> Bullet)*

#### **5.6.d.2 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 would generally not consider an RFI from the licensee if any of the following conditions apply: (8.8 Handbook, Section II.J.4(d)(ii))*

- *Information cannot be released in sufficient detail to the licensee without compromising the identity of the allegor (unless the allegor has no objection to the NRC's requesting information from the licensee and understands the possibility that his or her identity may be compromised). (8.8 Handbook, Section II.J.4(d)(ii), 1<sup>st</sup> Bullet)*
- *The licensee could compromise an OI investigation or inspection because of knowledge gained by the licensee from the RFI. (8.8 Handbook, Section II.J.4(d)(ii), 2<sup>nd</sup> Bullet)*
- *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. (8.8 Handbook, Section II.J.4(d)(ii), 3<sup>rd</sup> Bullet)*
- *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. (8.8 Handbook, Section II.J.4(d)(ii), 4<sup>th</sup> Bullet)*

#### **5.6.d.3 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 under Manual Section 5.6.d.2 above. 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 the proposed RFI (discussed in Manual Section 5.6.d.5) 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 the RFI is warranted. In addition to providing the RFI to the licensee, responsible NRC staff should refer to Manual Section 4.5.e.1 if the staff believes that the identity of the confidential source must be disclosed to the licensee to appropriately address the OSI. (8.8 Handbook, Section II.J.4(d)(iii))*

#### **5.6.d.4 ARB Considerations Regarding an Allegation-Related RFI to the Licensee**

##### **5.6.d.4(a) ARB Discussion Related to a Proposed RFI**

MD 8.8 requires a number of issues to be considered when deciding whether an allegation concern will be reviewed/inspected by the NRC technical staff, investigated by OI, evaluated by a licensee in response to an allegation-related RFI, evaluated by an external agency or entity, or whether a combination of these actions will be employed. To assist the staff in making this determination and describing the basis for the action assigned by the ARB, a worksheet has been developed delineating current guidance, as well as additional direction involving the consideration of trends in allegations, NRC inspection and investigation history, and other activities (see Manual Section 5.6.d.4(b) and Manual Exhibit 13). In some cases, it may be appropriate to conduct an NRC inspection even though an RFI was sent to the licensee.

In determining whether to issue an RFI to the licensee regarding one or more concerns within an allegation, provided the conditions of Manual Section 5.6.d.2 do not apply, the ARB should also consider the following:

- Could the release of information inadvertently bring harm to the allegor?
- Has the allegor voiced objections to the NRC requesting information from the licensee in writing regarding his/her allegation concerns?
- What is the licensee's past performance in dealing with allegation-related RFIs, including the likelihood that the licensee will effectively investigate, document, and resolve the allegation concern?
- Has the allegor already taken this concern to the licensee with unsatisfactory results? If the answer is "yes," if the concern is within NRC's jurisdiction, and if the allegor objects to the RFI, a written RFI to the licensee should normally not be pursued.
- Are resources to inspect/investigate available within the regional or headquarters office?

After considering the above criteria (provided the conditions of Section 5.6.d.2 do not apply), the ARB may recommend an RFI to the licensee without meeting all of the criteria, if adequate justification exists, the ARB affirms that justification, and the justification is documented in the allegation file.

#### **5.6.d.4(b) Allegation RFI Worksheet**

Manual Exhibit13, “Allegation Review Board Worksheet - Considering a Request for Information to the Licensee,” is supplied as guidance for use by the responsible Branch Chief or designee, if desired, to support discussion at the ARB when an RFI is being considered. The specific ARB decision regarding an RFI and the basis for that decision shall be documented in the ARB meeting summary. If the RFI worksheet is used to document the ARB decision regarding an RFI, the completed worksheet shall be maintained in the allegation file.

There will be certain situations when the use of the RFI worksheet (or equivalent) is unnecessary because the actions compelled as a result of the concern raised do not involve an RFI to the licensee. Examples:

- Agreement State concerns – if processed as an allegation, NRC is compelled to refer the concern to the Agreement State for evaluation.
- Reactor offsite emergency preparedness concerns – NRC is compelled to refer these concerns to FEMA for evaluation.
- Discrimination concerns for which the underlying technical concern is already resolved – in these situations, the discrimination concern will be evaluated either via Early ADR, OI investigation, or it will not be evaluated because the allegor does not establish a prima facie showing of potential discrimination, refuses to participate in an OI investigation, or formally withdraws the discrimination concern. In no circumstance would NRC send a discrimination concern involving NRC protected activity to the licensee for evaluation via an RFI.

#### **5.6.d.5 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 allegor is aware that an RFI may be or will be provided to the licensee is normally confirmed via the acknowledgment letter to the allegor. However, this understanding may be otherwise documented (e.g., in the summary of the initial contact with the allegor, or in a telephone conversation record). (8.8 Handbook, Section II.J.4(d)(iv))*

If the allegor cannot be reached by telephone and if the RFI option has not been previously discussed, a letter (usually the acknowledgment letter) may be used to inform the allegor of the NRC’s intent to submit the RFI to the licensee. The letter is to inform the allegor that NRC will evaluate the licensee’s response actions and that the allegor will be informed of the NRC’s evaluation and conclusions regarding the licensee’s feedback. If the allegor does not respond or has an objection to the RFI but does not respond to the NRC letter within a reasonable time frame (e.g., 10-14 calendar days from receipt of the NRC letter), the RFI may be submitted to the licensee despite the allegor’s objection or lack of response after the NRC has considered the factors described in Manual Sections 5.6.d.2, 5.6.d.3, and 5.6.d.4.

#### **5.6.d.6 RFI Letter to the Licensee**

The letter transmitting the RFI to the licensee should include as much specific information as possible about the allegation concern to enable the licensee to conduct a comprehensive evaluation. However, caution must be taken with the amount of detail provided to the licensee so as not to compromise the identity of the alleged. If the staff cannot include sufficient detail in the RFI letter without jeopardizing the alleged's identity, the NRC should either inspect the allegation in its entirety or conduct additional inspection activities to supplement information to be obtained from the licensee in its response to the RFI. The RFI letter to the licensee should be concurred in by responsible staff and the OAC.

##### **5.6.d.6(a) RFI Level of Detail**

*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 also expected to note any instance identified during the course of its review in response to an RFI 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 Manual Exhibit 14. (8.8 Handbook, Section II.J.4(d)(v), Bullets 1 through 7)*

NRC is not limited to providing only a description of the alleged's concern. If additional information is needed by the NRC to thoroughly address the concern, it should be requested in the RFI in a manner that does not limit the licensee's evaluation.

##### **5.6.d.6(b) RFI Containing Security-Related Information**

*The RFI letter requesting information from the licensee regarding allegations that contain security-related information should be treated as SUNSI and should be handled in accordance with established agency guidance. This requirement refers to information requests concerning 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. (8.8 Handbook, Section*

*II.J.4(d)(v), Bullets 8 and 9)*

**5.6.d.6(c) Request for Licensee Callback**

*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 follow-up and response, and to discuss the licensee's plans for evaluating the concerns that are the subject of the RFI. (8.8 Handbook, Section II.J.4(d)(v), Bullet 10)* The licensee shall be requested to contact the NRC prior to, or as early into the licensee's conduct of the evaluation as possible. A record of the conversation with the licensee shall be included in the allegation file. Manual Exhibit 25 provides a form that may be used to document the licensee's callback with regard to an RFI. During this discussion, the staff should be mindful not to dictate specific requirements that may restrict or limit the licensee's response. Rather, this discussion is intended to ensure that the actions proposed by the licensee to evaluate the allegation concern(s) appear likely to result in a product that meets the NRC's stated expectations and thoroughly addresses the concern(s) raised. If upon completion of this or subsequent discussions, it is determined that the licensee's plan of action is unlikely to be successful, the responsible Branch Chief will reconvene the ARB to consider a follow-up telephone call with senior licensee management, or NRC inspection activity. If the licensee does not contact the NRC within 10 working days of receiving the RFI letter, it is appropriate for NRC (the OAC or other assigned staff) to contact the licensee to obtain feedback regarding the licensee's plans for evaluating the concerns noted in the RFI.

**5.6.d.6(d) Internal Routing of RFI Letters**

Internal NRC routing of allegation-related RFI letters, and particularly those containing SUNSI Security-Related Information shall be limited to NRC and NRC contractor personnel with a need-to-know the information for the conduct of official business. Use NRC Form 762, "Sensitive Allegation Material" cover sheets for internal routing of allegation RFI letters to licensees. Additional coversheets related to SUNSI Security-Related Information are not required.

**5.6.d.6(e) RFI Letter Transmittal**

SUNSI handling requirements for Allegation Information govern the transmittal of allegation-related information outside the agency. Under current SUNSI guidance, the RFI letter is sent to the licensee via hard-copy. In order to facilitate the timeliness of the licensee's response efforts, the RFI letter may be sent to the licensee at the same time via facsimile, provided the licensee can assure that an individual with a need-to-know will immediately retrieve the facsimile upon receipt, so that others without a need-to-know cannot access the information. At this time, e-mail transmittal of the RFI letter is not permitted because protection of the information cannot be guaranteed.

**5.6.d.6(f) Summary of RFI Letter Administrative Guidelines**

The following list summarizes the administrative guidelines that apply to the RFI letter along with the RFI letter attributes discussed in Manual Sections 5.6.d.6,



5.6.d.6(a), 5.6.d.6(b), 5.6.d.6(c), 5.6.d.6(d), and 5.6.d.6(e) above:

The RFI letter should:

- Provide reference to the related allegation number on the cover page and in the upper right hand corner of each subsequent page
- Be concurred in by responsible staff and the OAC
- Be written in a manner that does not include the identity of the alleged or information that could permit the licensee to identify the alleged (see Manual Section 4.1.c). If it is appropriate to provide the licensee with the name of the alleged or other individuals in order to review the RFI, the names should not be included in the RFI letter. Rather, the names should be provided in a telephone conversation with appropriate licensee staff as the regional or headquarters office initially forwards the RFI letter.
- Request a licensee response within a specific time frame (usually 30 calendar days)
- Request the licensee to limit distribution of the RFI letter, and whatever information may be enclosed with it, to individuals with a need-to-know.
- Request that the licensee's response be provided only to the responsible OAC, with no additional copies to other NRC staff, and that the response not to be provided to the Document Control Desk. For OACs that maintain a separate post office box, licensees should be requested to send the response to the OAC post office box and not to the office docket room.
- Convey NRC's expectation that the licensee's evaluation of the concern(s) is independent, thorough, objective, and of sufficient scope and depth to resolve the concern(s) and that the licensee's response describes how these criteria were met
- Convey NRC's expectation that the licensee evaluator's qualifications and independence are appropriate to evaluate the concern(s) and that the licensee's response describes how this criterion was met
- Convey NRC's expectation that the licensee provide the basis for: (1) determining the number and cross-section of individuals interviewed and the interview questions used, if interviews are to be conducted during the course of the evaluation; and (2) the adequacy of sample sizes, if samples of documentation, systems, structures, or components are to be evaluated during the course of the evaluation
- Request the licensee to contact the NRC to ensure a common understanding of the scope of the allegation and the NRC's expectations for follow-up and response, and to discuss the licensee's plans for evaluating the concerns that are the subject of the RFI

- Request the licensee to include in its response, a description of the results of causal analyses and generic implications, along with corrective actions taken as a result of any substantiated concerns
- Request the licensee to include in its response, the identification of any compliance issue with regard to NRC regulatory requirements or NRC commitments, and to describe the corrective actions taken or planned, and the corrective action documentation that addressed the issue
- For an RFI letter that does not involve SUNSI Security-Related Information, any page of the letter that contains a description of an allegation concern should be marked "NOT FOR PUBLIC DISCLOSURE" at the top and bottom of the page. It is preferable that the cover letter to the allegation request for information be written generally so that no information about specific allegation concerns is contained in it. In this manner, only the pages of an attachment describing the concerns would need to be marked. Do not add additional page marking such as "Sensitive Allegation Material," as this only further relates the document to an allegation.
- For an RFI letter that does involve SUNSI Security-Related Information, the letter should be marked "Official Use Only - Security Related Information" on the top and bottom of each page. The letter should instruct the licensee to mark the top of each page of its response as "Security Related Information - Withhold under 10 CFR 2.390." It is preferable that the cover letter be written generally so that no information about specific allegation concerns is contained in it.
- If the allegation is received in writing, the alleged's incoming correspondence normally should not be sent to the licensee as part of the RFI letter. Rather, the alleged's concerns should be summarized in an enclosure to the RFI letter without providing information that could identify the alleged. If the alleged has agreed to be identified, and identifying the alleged to the licensee is necessary to meet the agency's mission, information that could identify the alleged, other than his/her name and contact information, can be included in the RFI letter. If the ARB determines that the safety implications of a specific allegation warrant providing a copy of the information supplied by the alleged to the licensee as part of the RFI letter rather than an NRC summary of the information, responsible staff should attempt to notify the alleged of the NRC's proposed action and obtain agreement from the alleged, in writing, if possible. If the alleged objects to the inclusion of his/her original correspondence in the RFI letter, NRC staff should acknowledge the alleged's feedback and, if possible, come to an agreement with the alleged as to the content of the information that will be transmitted to the licensee. If the alleged objects to the inclusion of his/her original correspondence in the RFI letter and NRC does not agree with the alleged's objection because the matter represents an OSI, the NRC may include the alleged's incoming correspondence in the RFI letter over the alleged's objection. The results of any such interface with the alleged should be documented in the allegation file.
- Regarding the content of the information provided to the licensee for evaluation, NRC is not limited to only providing a description of the alleged's concern(s). The RFI letter should also request additional specific information needed by the NRC

to address the concern thoroughly, but in a manner that does not limit the licensee's evaluation. Additional questions may be added to the RFI, as deemed appropriate by the action office, to prompt licensee follow up on targeted issues. [Note: On occasion, a response will be requested from the licensee regarding an allegation concern that is vague, lacks specificity, or is unclear. In such instances, NRC should acknowledge in the enclosure to the RFI letter that the concern is vague, or lacks specificity or clarity, and ask the licensee to evaluate the concern to the best of their ability, given the information provided.]

- If the alleged has previously raised the issue internally to the licensee and was not satisfied with the licensee's feedback, and does not object to NRC providing an RFI to the licensee regarding the concern, the letter to the licensee should, in addition to describing the concern, describe the asserted inadequacy in the licensee's internal response efforts.

#### **5.6.d.7 Licensee Questions about Allegation-Related RFIs and Requests for Extension of Response Time**

##### **5.6.d.7(a) Licensee Request for Additional Detail**

During the course of the licensee's review in response to an allegation-related RFI, the licensee may on occasion contact the NRC (usually the OAC or the branch chief responsible for oversight of the facility that is the subject of the allegation) to ask for additional specific information regarding the allegation concern to facilitate the licensee's review effort. It is acceptable for staff to review the allegation file based on such a request to determine whether there is any additional information that can be provided to the licensee. In determining what, if any, additional information can be provided to the licensee, staff should be sensitive to alleged identity protection considerations. If the staff determines that additional specific information cannot be provided to the licensee without jeopardizing the protection of the alleged's identity, the licensee contact should be informed that the NRC has reviewed the allegation file and can provide no additional information. Feedback to the licensee in response to such requests may be provided telephonically, and should be documented in the allegation file.

##### **5.6.d.7(b) Allegor Identity Protection Considerations when Discussing an RFI with the Licensee**

Although many licensee employees are aware of the NRC's alleged identity protection provisions, on occasion, during conversations with NRC regarding an allegation-related RFI, a licensee representative will surmise the identity of the alleged based on the information provided in the RFI letter, and ask the NRC contact if it is acceptable to contact the individual for additional information during the course of its review. The NRC response to such a question should be similar to the following... "The NRC will neither confirm nor deny that a specific person contacted the NRC with concerns"...and that...."the licensee can talk to anyone it deems necessary in order to investigate and resolve the concerns." If the licensee representative provides a specific question about the allegation concerns that he/she believes will facilitate the licensee's review effort, the OAC (or other NRC contact) will inform the licensee that he/she will review the allegation file to determine whether

additional information may be provided to the licensee. While the OAC's (or other NRC contact's) follow up action in this instance may also involve contacting the alleged in an effort to obtain additional information, the OAC (or other NRC contact) will not acknowledge that this course of action was taken when providing feedback to the licensee.

**5.6.d.7(c) Licensee Request to Withhold Provision of Information to NRC in Response to an RFI Because of Potential FOIA Exposure**

The sample RFI letter provided in Manual Exhibit 14 specifically requests that the licensee refrain from providing personal privacy, proprietary, or safeguards information in an RFI response. Manual Exhibit 14 also indicates that if the provision of such information is necessary in order to provide an acceptable RFI response, the licensee should also provide a bracketed copy of the response identifying the information the licensee believes NRC should withhold from public disclosure. In addition to applying this RFI letter guidance, a licensee will occasionally inform NRC of its intent to withhold information requested by an RFI because of the potential that the NRC could subsequently be requested to release the information in response to a FOIA request. This occurs more frequently when sensitive information is involved (such as when an RFI requests information related to ECP evaluations), but could occur in any circumstance. NRC will assess such instances on a case-by-case basis to determine whether it is necessary to obtain and retain the documentation in NRC possession, or if NRC actions related to the allegation can be accomplished by other means, such as by dispatching NRC staff to review the documentation at a licensee facility. If the NRC believes it is necessary in such instances to obtain and retain the documentation, an initial step would be to submit an additional request that the information be provided by the licensee. Such a request could be accomplished via a telephone call between NRC and licensee management and/or by a follow-up RFI letter to the licensee. If the licensee persists in refusing to provide the information, and NRC continues to believe that the provision of the information is necessary, OI should be consulted regarding the possible issuance of a document subpoena. The discussion above also applies to other allegation processing matters involving information requested from the licensee, such as when OI requests specific documentation from the licensee in support of an investigation.

**5.6.d.7(d) Licensee Request for Extension of RFI Response Time**

For certain matters involving an allegation-related RFI to the licensee, a licensee may request more time to provide an appropriate response to the concerns than the requested response time frame indicated in the RFI letter. On these occasions, a licensee representative contacts an NRC employee cognizant of the allegation (usually the OAC or the branch chief responsible for oversight of the facility that is the subject of the allegation) to request an extension of time. The authority to grant such time extensions will be as delegated by regional or headquarters office management. As an example, a regional or headquarters office may establish that for short extension requests (up to 2 weeks), it is acceptable for the OAC to grant the extension request, but that for extension requests of longer duration (several weeks or months) the OAC should engage the responsible branch chief in responding to the licensee. In any event, staff should consider the reason for the licensee's extension

request and the issue of allegation response timeliness in determining whether to grant an extension of time to the licensee.

#### **5.6.d.8 Staff Review of Licensee Response to an RFI**

##### **5.6.d.8(a) General Guidance Regarding NRC Review of a Licensee RFI Response**

The NRC has historically conducted separate reviews and reached independent conclusions regarding allegation concerns for which information has been requested from a licensee via an RFI. Prior to 2009, guidance to NRC staff for performing this review was unstructured and the amount of detail provided by the staff in allegation closure documentation regarding its review and conclusions related to allegation concerns involving an RFI response was varied. In late-2008, a “Checklist for NRC Staff Review of Licensee Response to an Allegation Request for Information” (Manual Exhibit15) was developed as a reference guide for NRC staff to use, if desired, in performing its review of the licensee’s 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 follow-up questions on the material provided by the licensee, or*
- *Conduct an independent inspection or technical review.*

*If the licensee does not conduct a thorough review, the staff may request the licensee to perform a supplemental RFI review or NRC may independently inspect or investigate the allegation concern(s). The staff conclusions about the licensee’s response and any independent verification, inspection, or investigative efforts should be documented for inclusion in allegation closure documentation. (8.8 Handbook, Section II.J.4(d)(vi), Bullets 1, 2, 3, and 5)*

##### **5.6.d.8(b) Checklist for NRC Staff Review of Licensee Response to an RFI**

The “Checklist for NRC Staff Review of Licensee Response to an Allegation Request for Information” (Manual Exhibit15) outlines areas that may be assessed by the staff and includes a number of questions to assist the staff reviewer in assessing the adequacy of the RFI response. The checklist asks the NRC reviewer to document the agency’s assessment of the following aspects of the licensee’s response to the RFI:

- evaluator independence

- evaluator competence
- depth and scope of evaluation
- effectiveness of corrective actions
- potential compliance issues identified<sup>6</sup>
- independent review by NRC
- overall conclusion

If the licensee's response contained information indicative of a finding or apparent violation, but the licensee's response does not recognize the finding or apparent violation, the staff should consider the following:

- If the staff identifies a potential finding or violation through review of a licensee's response to an allegation-related RFI, the potential finding or violation is to be evaluated in accordance with the Reactor Oversight Program Significance Determination Process and/or traditional NRC enforcement and, after notifying the licensee of the finding or violation, the results of that evaluation will be described in the closure documentation to the alleged, along with the details of any corrective actions taken or initiated by the licensee.
- Licensees are to be informed of the finding or violation before the alleged is informed either verbally and/or via closure documentation. If the finding or violation is one that is to be documented in a future NRC inspection report, the licensee is to be informed verbally by NRC before closure documentation is sent to the alleged that a finding or violation was identified and will be documented in a future inspection report. If the staff identifies a minor violation in a reactor licensee RFI response, the licensee is to be informed verbally that a minor violation was identified and that, for appropriate reasons, it will not be documented in an inspection report. The closure letter to the alleged will inform the alleged that a minor violation was identified, and that the licensee was informed about the minor violation, but that because the violation is minor, it will not be documented in an inspection report.

#### **5.6.d.8(c) Determining the Adequacy of the Licensee's RFI Response**

In addition to reviewing the licensee's RFI response for adequacy, Manual Section 5.6.d.8(a) and Manual Exhibit 15 indicate that the staff's review should include some alternate verification of aspects of the information provided, such as by:

- posing additional questions to the licensee (This should be coordinated with the OAC and the branch chief responsible for evaluation of the allegation.)
- performing or coordinating a brief independent inspection activity to verify a condition indicated in the response (This should be coordinated with the OAC and the branch chief responsible for evaluation of the allegation. If such additional inspection activity was not previously discussed with the ARB, involve

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<sup>6</sup>While a licensee may recognize a potential violation of NRC requirements during its review of an allegation-related RFI, NRC makes final decisions regarding enforcement. If a potential violation of NRC requirements is identified by the licensee in its response to an RFI, the violation will be dispositioned in accordance with the guidance contained in the NRC Enforcement Manual and NRC Inspection Manual Chapters describing documentation of enforcement action.

the OAC and responsible branch chief in a discussion to determine if the proposed activity should be presented to the ARB.)

- reviewing the results of recently conducted NRC inspections in the functional area related to the allegation concerns
- verifying the existence and applicability of technical references noted in the response
- verifying the existence and applicability of procedures referenced in the response
- verifying the existence, content, and status of corrective action program documentation referenced in the response
- checking calculations noted in the response
- comparing the licensee's feedback to similar circumstances at other facilities on the basis of the staff reviewer's knowledge and experience

The reviewer will inform the responsible branch chief and the OAC of the results of the evaluation. If the licensee's RFI response is determined to be acceptable and, combined with any additional relevant information, provides the basis for closure, responsible NRC staff will proceed with the development of closure documentation for the allegation concern.

If, after review of the licensee's RFI response, additional information is needed and it is determined that a substantively different evaluation plan than previously approved by the ARB is needed to obtain necessary information, the ARB should be reconvened to discuss the proposed alternate action. Such alternate action may include:

- Preparing a supplemental RFI to be submitted to the licensee, highlighting areas that were not adequately responded to in the licensee's initial response;
- Conducting an independent NRC inspection;
- Opening a separate allegation to initiate an OI investigation for an issue involving potential wrongdoing;
- Initiating an OI assist to obtain additional or clarifying information.

If the staff can address clarifications to the licensee's response to an RFI by means of a brief conversation with the licensee, an ARB would not normally need to be reconvened.

If it is determined that the licensee's response or a portion of the licensee's response is inadequate, inaccurate, or otherwise unacceptable, *the staff should inform the licensee of an identified inadequacy in the licensee's response to the RFI (8.8 Handbook, Section II.J.4(d)(vi), Bullet 4)*. The staff may proceed to closure if other

information is available that supports closure of the concern; however, the licensee should still be informed of the inadequacy of its response to the RFI.

Staff actions taken to address an inadequate licensee response to an RFI should be documented in the allegation file and in AMS. An AMS action entry entitled “Inadequate Licensee RFI Response” has been included in the AMS database for this purpose. The AMS description field for this action should indicate the inadequacy and specific additional actions taken by the staff. This will allow for a more informative data search regarding the adequacy of licensees’ responses to prior RFIs when evaluating the appropriateness of using an RFI for future allegations.

**5.6.d.8(c)(1) Determining When to Record a Licensee RFI Response as Inadequate in AMS**

Occasionally, NRC will be prompted to take additional allegation follow-up action because of a deficiency in a licensee’s RFI response. If only minor additional effort is required (e.g., a request for clarification regarding information in the RFI response or asking the licensee a simple additional question), more than likely, the licensee’s RFI response would not be viewed as inadequate. Also, if the reason for a deficient licensee RFI response was because NRC’s RFI letter to the licensee was unclear or confusing, the OAC should not record an “Inadequate Licensee RFI Response” action in AMS.

If significant additional effort by NRC is required because of a deficient licensee RFI response, responsible staff and the OAC should consider whether the licensee’s response should be deemed “inadequate,” prompting the recording of an “Inadequate Licensee RFI Response” action in AMS. The following are some examples of issues related to a licensee’s RFI response that, more than likely, would cause the RFI response to be determined “inadequate:”

- the RFI response is so lacking in detail that it prompts NRC to issue another RFI letter or to initiate an NRC inspection
- the RFI response does not provide a response to one or more of the concerns provided to the licensee in the RFI letter
- the RFI response is not responsive to specific questions asked in the RFI letter to the licensee
- the RFI response describes a condition that constitutes a finding related to or a violation of regulatory requirements, but the licensee does not recognize the inadequacy and/or describe corrective actions
- the RFI response focuses on defending the licensee’s actions rather than being responsive to a perceived problem (as an example, when an RFI response to a perceived chilled effect matter focuses on describing why the licensee’s actions should not have been perceived as chilling, rather than on determining whether the occurrence created a chilled work environment and describing what actions the licensee took to understand the situation and provide feedback to the workforce)



- the RFI response provides information that appears to be materially false and/or intentionally misleading in regard to matters under NRC purview

If an “Inadequate Licensee RFI Response” action is recorded in AMS, the Action office will include discussion in the action description text field as to why the licensee’s RFI response was determined to be inadequate. A non-descript statement such as... “The ARB determined that the licensee’s response was inadequate”... is not sufficient.

#### **5.6.d.8(c)(2) Potential Actions in Response to History of Inadequate RFI Responses**

If, after discussion with the responsible Branch Chief and the OAC, it becomes apparent that there has been a recent history of inadequate RFI responses from a particular site or facility, the matter should be scheduled for discussion at an ARB meeting. [The time period for considering a history of inadequate RFI responses will vary based on the volume of allegations received at a particular facility and events/ongoing issues at the facility, but in general, RFI responses in the prior 2 years would be considered as part of the review prior to the ARB discussion.] The ARB will discuss the nature of the recent inadequate RFI responses, the time frame within which the inadequate RFI responses have been received, what follow-up action has been/will be taken by the NRC, and how the review of the history of inadequate responses will be documented in the ARB minutes and in AMS. The ARB should consider an appropriate means of notifying licensee senior management about the inadequacies in their RFI responses (e.g., a telephone call to or meeting with licensee senior management) and obtaining information from the licensee regarding planned corrective actions to address the history of inadequate RFI responses. If the ARB determines that a call to or meeting with licensee senior management is necessary, and if the involved licensee operates a fleet of plants crossing NRC regional boundaries, the OAC will notify the OAC(s) in the other affected regional office(s), as appropriate.

In rare circumstances, the ARB may choose to stop issuing RFIs to the licensee on a temporary basis until the action office concludes that the licensee has taken appropriate actions to improve the quality of subsequent RFI responses. This option should only be considered if the ARB concludes that, in the near term, the licensee is unlikely to provide an adequate response to an RFI.

#### **5.6.d.8(c)(3) History of Inadequate RFI Responses from a Company Operating a Reactor Fleet**

Regional OACs should be mindful that inadequate RFI responses from a reactor fleet operator could be indicative of a generic problem that could affect other regional OACs who interface with the same fleet operator. If there is indication that a history of inadequate RFI responses is coming from a company that operates a reactor fleet, additional efforts should be considered to determine whether the problem is plant-specific or applicable to some or all of the facilities in the reactor fleet. This additional information may be gathered anecdotally via individual or counterpart discussions with the NRC regional allegation

coordinators, or through querying the AMS database for information related to inadequate RFI responses involving the reactor fleet operator. The AAA should be engaged whenever such questions arise for help in coordinating efforts to gather information related to the actions of the fleet operator.

## **5.6.e Referral of Concerns About Agreement State Licensees**

### **5.6.e.1 Requirement to Refer a Concern Related to an Agreement State Licensee**

*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. If an individual who contacts NRC with concerns about an Agreement State licensee agrees to contact and 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. 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. (8.8 Handbook, Sections II.J.4(e)(i), II.J.4(e)(ii), and II.J.4(e)(iii))*

### **5.6.e.2 Determining Whether to Process a Concern Related to an Agreement State Licensee as an Allegation**

Determining whether an Agreement State referral is to be tracked as an allegation depends upon the concerned individual's willingness to have his/her identity provided to the Agreement State, whether both Agreement State Licensee concerns and Agreement State performance or wrongdoing concerns are raised, and whether additional concerns are raised that involve other agencies or jurisdictions (see Manual Section 3.2.a for detailed guidance regarding the processing of Agreement State-related concerns).

### **5.6.e.3 Concerns Involving an Agreement State Licensee That Are Under Jurisdiction of Another Federal Agency**

A concern about an Agreement State licensee that falls within the purview of another Federal agency will be referred to the appropriate Federal Agency in addition to the affected Agreement State. If the concerned individual objects to the release of his/her identity to the Agreement State and/or the other Federal Agency, such a referral should be made in a manner that protects the identity of the concerned individual, including rewriting the concern. The concerned individual should be informed that the matter is not within NRC jurisdiction and that he/she may contact the Agreement State and/or the other Federal Agency directly if feedback is desired. If the other Federal Agency requests the identity of the concerned individual, follow the guidance in Manual Section 4.0 that discusses identity protection for allegers, including allegers with confidential source status. The letter to the Federal Agency will also provide the name of a contact person in the Agreement State organization. Such matters are not considered allegations or entered into the AMS database.

#### **5.6.e.4 Concerns Involving Both an NRC License and a State License**

An allegation/concern may be received wherein the facility-in-question possesses both a State license and an NRC license (e.g., a State possession license and an NRC distribution licensee for certain radioactive material). Before the allegation/concern is referred, all reasonable efforts should be made to determine the jurisdiction under which the activities occurred. If the jurisdictional lines are unclear, the State should be promptly notified of the allegation/concern in an effort to clarify jurisdiction as the State may have information that may assist in determining the jurisdiction of the allegation/concern. If, after consultation with the State, jurisdictional lines remain unresolved, the State and NRC should confer to agree upon the agency taking the lead in addressing the allegation/concern. If either agency determines in the course of reviewing the allegation/concern that some aspects of the allegation/concern are within the other agency's jurisdiction, that agency would be so informed. Any correspondence with or document transmitting the allegation/concern to the State should request that NRC be notified if the State identifies any improper activities under NRC's jurisdiction.

#### **5.6.f Referral of Industrial Safety Concerns to OSHA and/or the Licensee**

##### **5.6.f.1 Processing Industrial Safety Concerns**

*Industrial safety concerns submitted to NRC within the purview of OSHA are to be handled in accordance with NRC Inspection Manual Chapter (MC) 1007, "Interfacing Activities Between Regional Offices of NRC and OSHA," and applicable regional or headquarters office procedures (8.8 Handbook, Section II.J.4(f)).* Industrial safety concerns are not considered NRC allegations and need not be entered into the AMS database. The responsible staff may track follow-up regarding an industrial safety concern in an action item tracking system within the action office as deemed appropriate. If an industrial safety concern is submitted by an allegor along with allegation concerns, responsible staff may also choose, from an administrative standpoint, to enter the industrial safety concern into AMS as an "OSHA" concern so that tracking and documentation efforts for both the OSHA issue and the NRC allegation concerns are coordinated.

##### **5.6.f.2 Identity Protection Considerations Related to OSHA Referrals**

If it is determined that the industrial safety concern should be referred to the licensee and/or OSHA, the concern should be referred to the licensee in a manner that protects the identity of the concerned individual, including rewriting the concerns. If the concerned individual objects to the release of his/her identity to OSHA, the allegor is to be informed of the NRC's limitations on the protection of his or her identity, that the issues are not within NRC's jurisdiction, and that he/she may contact OSHA directly if feedback is desired. Contact information for OSHA should be provided to enable the concerned individual to contact OSHA in the future. NRC should not act as an intermediary for the evaluation of industrial safety issues. If OSHA requests the name of the concerned individual from NRC, follow the guidance in Manual Section 4.0 that discusses identity protection for allegors, including allegors with confidential source status.

### **5.6.f.3 NRC Inspection Manual Chapter 1007**

It is noted that Manual Chapter 1007 has sufficient flexibility to allow staff to make an informed decision as to whether it is appropriate to refer an industrial safety issue to the licensee and/or to OSHA over the objections of the allegor. Specifically, stipulations in Manual Chapter 1007 prompting the notification of the licensee and/or OSHA call for the stated concern to be an existing industrial safety hazard with indication that the hazard is not being addressed by the licensee. If these criteria do not apply, responsible staff have the prerogative to refrain from informing the licensee about the issue. Also, Manual Chapter 1007, Section 04.04 does not require notification of OSHA in all situations, but rather indicates that the Regional OSHA Liaison Officer “determines whether events and conditions having industrial safety significance at NRC-regulated facilities are to be reported to the appropriate OSHA Area and/or Regional Office.” If an alleged industrial safety hazard no longer exists, notification of OSHA may not be necessary, as OSHA’s primary focus is on existing industrial safety hazards, and particularly on matters that represent imminent danger to workers.

### **5.6.g Referral of Concerns to Government Agencies and Military Organizations**

*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).] (8.8 Handbook, Section II.J.4(g)(i))*

*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. (8.8 Handbook, Section II.J.4(g)(ii))*

*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. (8.8 Handbook, Section II.J.4(g)(iii))*

*Identity protection of the concerned individual should be considered in staff referrals of such matters under the identity protection guidance in Manual Section 4.0. (8.8 Handbook, Section II.J.4(g)(iv))*

The concerned individual’s identity can be provided to these organizations if the concerned individual agrees and such agreement is documented. If the concerned individual objects to the release of his/her identity to these organizations, the concerned individual is to be informed of the NRC’s limitations on the protection of his/her identity, that the issues are not within NRC’s jurisdiction, and that he/she may contact the organization directly if feedback is desired. Referrals should be made in a manner that protects the identity of the allegor, including rewriting the concern. Contact information should be provided to enable the concerned individual to contact the organization in the future. NRC should not act as an intermediary for the evaluation of these matters. If the organization requests the name of the concerned individual from NRC, follow the guidance in Section 4.0 of the Manual that discusses identity protection for allegors, including allegors with confidential source status.

#### **5.6.h Referrals of Offsite Emergency Preparedness Matters Related to NRC-Licensed Facilities to the Federal Emergency Management Agency (FEMA)**

*Allegations involving offsite emergency preparedness matters related to NRC-licensed facilities are to be assigned to NSIR. 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 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. (8.8 Handbook, Section II.J.4(h)) While NSIR is the action office for such matters, at this time, the OACs in the Office of Enforcement handle allegation program administrative matters related to NSIR allegations (AMS tracking, scheduling of ARBs, etc.).*

#### **5.6.i Referrals to OIG**

*Occasionally, a submitted allegation may also include one or more assertions related to NRC staff or contractor misconduct or mismanagement of agency programs or operations. 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 entered in the AMS. 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 transfer to OIG, as appropriate. Such matters should not be discussed during an ARB meeting. (8.8 Handbook, Section II.J.4(i))* When responding to alleged inquiries about concerns referred to OIG, the alleged is to be informed that the concern has been given to OIG and that OIG may be contacted directly for further details via the OIG Hotline (1-800-233-3497). See Manual Section 3.2.u.7 for documentation handling considerations with regard to the referral of concerns to OIG.

#### **5.6.j Referrals of Concerns About OIG**

If an individual wishes to file a concern against an NRC OIG employee other than senior management, the alleged should be directed to contact the OIG Hotline (1-800-233-3497). If an individual wishes to file a concern against NRC OIG senior management or any other agency's OIG concerning the OIG's handling of his/her concern, the concerned individual should be provided the following contact information:

Integrity Committee  
Councils of the Inspectors General on Integrity and Efficiency (CIGIE)  
935 Pennsylvania Avenue, NW  
Room 3973  
Washington, DC 20535-0001

Phone: (202) 324-3768  
E-mail: [IC\\_Complaints@ic.fbi.gov](mailto:IC_Complaints@ic.fbi.gov)

## **5.7 Evaluation of Wrongdoing Concerns**

### **5.7.a Providing an Allegation Concern to OI for Initiation of an Investigation**

#### **5.7.a.1 Informing OI of Matters Involving Potential Wrongdoing**

*If potential wrongdoing or discrimination has been alleged, OI must be informed, as 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. (8.8 Handbook, Section II.J.5(a))*

#### **5.7.a.2 Handling Allegations Involving Both Wrongdoing and an Overriding Safety Issue**

*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. (8.8 Handbook, Section II.J.5(b)) [Note: OI tracks such information releases in the OI investigation file. If the action office decides, after consultation with OI, to delay informing a licensee about an issue, this decision and the basis on which the delay is founded, consistent with public health, safety, or security, should be documented by the action office and the decision reexamined every 3 months to ensure its continuing validity.]*

#### **5.7.a.3 OI Investigation of Discrimination Concerns**

*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. (8.8 Handbook, Section II.J.5(c)).*

#### **5.7.a.4 Informing the Department of Justice of Substantiated Wrongdoing**

*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. (8.8 Handbook, Section II.J.5(d))

#### **5.7.a.5 Initiating, Prioritizing, and Terminating OI Investigations**

*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. (8.8 Handbook, Section V))*

##### **5.7.a.5(a) Wrongdoing Definition and Examples**

*Wrongdoing consists of either a willful violation of regulatory requirements through deliberate action or a violation resulting from careless disregard of regulatory requirements (examples: deliberate violation of a safety-related procedure, providing false or inaccurate information in an effort to influence an NRC decision related to the license, portraying fraudulent or counterfeit parts sold to the nuclear industry as qualified to perform safety-related functions). 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. (8.8 Handbook, Section V.A.1)*

##### **5.7.a.5(b) Notification of OI**

*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").(8.8 Handbook, Section V.A.2)*

##### **5.7.a.5(c) Office Director Requests for OI Investigation**

*In addition to the discussion in Manual Sections 5.7.a.5(a) and 5.7.a.5(b) 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. (8.8 Handbook, V.A.3)*

##### **5.7.a.5(d) Providing Information to OI and Scheduling the ARB**

*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 follow-up actions related to wrongdoing issues. An OI representative must be invited to any ARB meeting that is*

*scheduled to discuss alleged wrongdoing. (8.8 Handbook, Section V.B.1)*

**5.7.a.5(e) Providing Discrimination Concern Detail to OI**

*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 alleged has articulated a prima facie showing of potential discrimination, the ARB will assign an action to offer the alleged the opportunity to use Early ADR as a means of obtaining issue resolution (see Manual Section 5.2.f). If Early ADR is employed and is successful in obtaining a settlement between the alleged and his or her employer or former or 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 alleged, if the alleged or the licensee has been unresponsive to the offer of Early ADR, or if the alleged 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. (8.8 Handbook, Section V.B.3)*

**5.7.a.5(f) Allegation Process Activity Related to Alleged Wrongdoing or Discrimination Matters**

**5.7.a.5(f)(1) ARB Actions and Provision of Draft Notice of Violation**

*Potential wrongdoing or alleged discrimination matters, regardless of their origin, should be coordinated with the OAC for entry into and tracking via 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 the guidance set forth in Manual Section 5.7.a.5(i). 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. (8.8 Handbook, Section V.B.4) Regional Counsel (for regional allegations) and OGC (for headquarters office allegations) should confirm that the draft NOV is valid to assure that OI resources are not applied inappropriately (i.e., wrongdoing cannot be substantiated if an NRC regulation has not been violated). While important to all allegation matters involving potential wrongdoing, the determination of a valid draft NOV is particularly important in instances where NRC management has requested that an OI investigation be opened or when OI self-initiates an investigation since, in these instances, a draft NOV is not initially provided.*



**5.7.a.5(f)(2)                      Disposition of Underlying Technical Issues**

Responsible technical staff at the initial ARB and any subsequent ARBs related to the potential wrongdoing or alleged discrimination matter should ensure that the underlying technical issues are discussed. If an underlying technical issue remains unresolved, the ARB should determine and assign appropriate follow-up action to the technical staff. If the ARB can reach a conclusion that the underlying technical issue no longer exists or has been satisfactorily resolved by the licensee, then the ARB should document that fact and note that only the wrongdoing or discrimination matter remains open.

**5.7.a.5(g)                      Determining Whether OI Investigation is Warranted in Response to Allegations of Wrongdoing**

Due to the potential impact on safety, all technical matters involving potential wrongdoing are evaluated on a priority basis. Once received by the OAC, an allegation of wrongdoing is brought to the attention of appropriate OI staff (i.e., OI headquarters staff or regional SAIC), OGC or Regional Counsel, and responsible action office staff. These individuals initially discuss the concern(s) to evaluate the safety significance and to determine if immediate action is needed. An ad-hoc/emergency ARB is normally scheduled if it is determined that immediate action is needed.

In determining whether an investigation is warranted, a specific indication of wrongdoing should be indicated in the facts related to the assertion of wrongdoing. To determine whether a specific indication of wrongdoing exists, the circumstances surrounding the activities that gave rise to the allegation must be considered, and the allegation, if proven true, must constitute a violation of regulatory requirements. In reviewing and evaluating the circumstances related to the wrongdoing concern, responsible staff should obtain as much information as possible without harming any evidence that OI may explore when performing an investigation. Normally, in order to gather sufficient information to enable the ARB to make an informed decision regarding whether OI should be requested to initiate an investigation, responsible staff should consider the following steps in advance of the ARB, or include one of the following proposals in the initial ARB evaluation plan:

- For an alleged-identified allegation with indications of potential wrongdoing, the plan for evaluating the allegation is prepared before any information is obtained from the licensee. If the statements provided by the alleged, as informed by NRC staff with knowledge of the area in question, clearly represent a specific indication of potential wrongdoing, responsible staff may recommend at the initial ARB that an investigation be initiated by OI. If it is unclear that a specific indication of potential wrongdoing has been articulated, as approved by the initial ARB, responsible staff should consider re-contacting the alleged and/or performing an inspection in an attempt to gather more information. The ARB can also request assistance from OI (i.e., an OI Assist to Staff), to support the staff in obtaining additional information. The ARB may also consider requesting information from the licensee via an RFI regarding the circumstances surrounding the violation. To avoid the possibility of interference with any subsequent OI investigation, any RFI and/or inspection should not directly

request whether the individuals alleged to have been involved in the matter knew that their actions were contrary to regulatory requirements, or otherwise indicate that an NRC investigation may be under consideration. The option of issuing an RFI to the licensee should not typically be considered before an attempt is made to gather more information directly from the alleged or via inspection activity or via an OI Assist to Staff. The additional information gathered through one or more of these efforts will enable the ARB to reach an independent determination of whether a specific indication of wrongdoing exists.

- For a licensee-identified indication of potential wrongdoing, responsible staff should obtain and review, when available, a copy of the licensee's investigation of the matter. Obtaining the licensee's investigation and a summary of actions taken by the licensee as a result will enable the ARB to better determine whether a violation of NRC requirements may have occurred, whether the violation may have been willful, and if so, what the priority of any subsequent OI investigation should be. OI should be engaged in the review of the licensee's investigation documentation, and may open an OI Assist to Staff to record its review efforts.

Notwithstanding the above, if at any time prior to the completion of the licensee's internal investigation, responsible NRC staff find that preliminary information provided by the licensee articulates specific indication of potential wrongdoing or provides sufficient evidence for NRC to conclude that wrongdoing/discrimination may have occurred, the matter should be entered into the allegation process for ARB consideration and discussion with OI regarding the possible initiation of an OI investigation. It is also noted that OI always retains the prerogative to initiate an investigation before the licensee's investigation is completed, and in rare circumstances, may request the licensee to terminate its investigation in deference to the OI review.

- For an NRC-identified indication of potential wrongdoing, responsible staff should compile sufficient information about the circumstances surrounding the underlying technical matter to determine the regulation that was potentially violated and whether a specific indication of wrongdoing exists. If the information provided by the NRC staff member initiating the concern, along with information compiled by responsible staff about related circumstances clearly represents a specific indication of potential wrongdoing, responsible staff may recommend at the initial ARB that an investigation be initiated by OI. If it is unclear that a specific indication of potential wrongdoing has been articulated, as approved by the initial ARB, responsible staff should consider performing an inspection in an attempt to gather more information. The ARB can also request assistance from OI (i.e., an OI Assist to Staff), to support the staff in obtaining additional information. The ARB may also consider issuing an RFI to the licensee regarding the circumstances surrounding the violation. To avoid the possibility of interference with any subsequent OI investigation, any RFI and/or inspection should not directly request whether the individuals alleged to have been involved in the matter knew that their actions were contrary to regulatory requirements, or otherwise indicate that an NRC investigation may be under consideration. The option of issuing an RFI to the licensee should not typically be considered before an attempt is made to gather more information via inspection activity or via an OI Assist to Staff. The additional information gathered through one or more of these

efforts will enable the ARB to reach an independent determination of whether a specific indication of wrongdoing exists.

If an OI Assist to Staff is opened to support staff efforts in obtaining additional information about a potential wrongdoing matter, an allegation number should be assigned so that an allegation file number exists to which the OI Assist to Staff effort may be attributed. For an NRC-staff identified concern involving potential wrongdoing, if the results of the OI Assist to Staff do not result in the opening of a full OI investigation, the allegation Activity in AMS will be characterized as a “Non-Allegation.”

Once sufficient information regarding the circumstances surrounding an allegation of potential wrongdoing has been obtained to enable the ARB to evaluate whether the matter should be investigated, an ARB should be scheduled to document whether OI will be requested to initiate an investigation. The action recommended to the ARB should include the following:

- A summary of the concern;
- A draft NOV for the technical issue alleged to involve wrongdoing, preferably with an associated Severity Level;
- An explanation of the circumstances and rationale for concluding that a specific indication of wrongdoing is or is not presented;
- If known, a summary of the licensee’s evaluation of the issue and any corrective actions taken or planned;
- The likely enforcement outcome if the concern is substantiated;
- If it is to be recommended that OI initiate an investigation, a clear indication of those individuals who would be considered the subjects of the investigation.

Prior to or at the ARB, the following factors may be considered, along with any other pertinent information, in discussing/affirming whether a specific indication of wrongdoing exists warranting investigation by OI:

- Whether the individual whose actions gave rise to the alleged violation was very recently and specifically trained, briefed, or instructed in how to correctly perform the activity, or whether there were clear postings, signs, or procedures in use that tend to indicate the individual may have known at the time of the alleged violation that his/her conduct did not conform to regulatory requirements;

*Example: A decontamination technician attends a morning briefing of the day’s work activities where he is specifically instructed to clean vessel-head tensioning nuts inside a specially-designed bucket using a wire brush, but later the same day, instead cleans them on a table using abrasive pads.*

- Whether the individual was very experienced in performing the specific activity that gave rise to the alleged violation, or whether the individual was newly-assigned or had lesser experience performing the activity;

- Whether the individual had recently performed the same activity that is the subject of the alleged violation correctly and in compliance with regulatory requirements;

*Example: A security officer assigned to perform a fire watch in a certain room initially decides not to enter the room because the entrance is restricted as a locked, high-radiation area and the officer does not have an appropriate radiation work permit, but as the deadline for completing the fire watch draws near, the officer enters the room through another entrance that is also marked as restricted without first obtaining the proper authorization.*

- Whether statements obtained from those involved in the activity that gave rise to the alleged violation are materially inconsistent regarding what happened, when it happened, why it happened, who was involved, etc.; or offer an explanation of events that is not consistent with the physical circumstances and therefore implausible;

*Example: A worker indicates in a log book that a required check or surveillance of a piece of equipment was performed, but at the time of the log book entry, the equipment was not onsite or in the location recorded as having been checked.*

- Whether there was any acknowledgement or admission by an individual that suggests he/she knew at the time of the alleged violation that his/her conduct did not conform to regulatory requirements.

#### **5.7.a.5(h) Periodic Status Meetings with OI to Discuss Investigation Priorities**

*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. (8.8 Handbook, Section V.B.4)*

#### **5.7.a.5(i) OI Prioritization Guidance**

Individuals responsible for evaluating an allegation should come to the ARB meeting prepared to discuss the investigative priority of the allegation concern and the rationale for the priority of the issue, assuming that the allegation concern is true. Guidance for assigning an investigation priority of high, normal or low are provided below. Examples are provided to assist in applying the priority guidance. Judgment must still be exercised in each case to ensure that the appropriate priority is established. The priority of an investigation being conducted by OI may be adjusted as appropriate by the affected regional administrator or program office director at periodic meetings held with OI to discuss investigation priority and status. The Director of OE should be consulted, as appropriate, in applying the priority guidance. A tabular version of the OI prioritization guidance is provided in Manual Exhibit 16.

##### **5.7.a.5(i)(1) High Priority**

The high-priority matter, if it is proven, is of very significant regulatory concern. The potential consequences for safety, given the position of the person(s) involved, any apparent lack of integrity of that person, and the safety significance of the underlying matter, if the violation should be found willful, are high and likely would result in prompt regulatory action by NRC. The person(s) involved in the willful violation very likely would be removed from licensed activities for a substantial period of time. Normally, it would be expected that the violation, without considering the issue of intent, would not likely be categorized at less than a Severity Level III or, if it would be categorized at less than a Level III, would involve management at the level of a mid-level manager or above (this means if willfulness is proven, it likely will be at least a Severity Level III violation).

Examples of circumstances prompting a high-priority investigation include the following:

- A licensee or contractor manager (second-line supervisor or above), reactor operator, or radiation safety officer (RSO) directing, performing, or condoning (meaning the individual is aware of the apparent willfulness of the violation and does not act to report or stop it) any deliberate violation, including providing false information to the NRC or creating false licensee records, that may raise an integrity issue calling into question NRC's reasonable assurance.
- Any individual directing, performing, or condoning a deliberate violation in which, without consideration of intent, the underlying violation is at least of significant regulatory concern and would be categorized at Severity Level I, II, or III.
- Any individual knowingly providing incomplete and inaccurate information to NRC or a licensee with the purpose of influencing a significant regulatory decision, such as a favorable restart decision, operability decision, issuance of a license amendment, not proceeding with an escalated enforcement action, or issuance of a notice of enforcement discretion.
- Any individual deliberately covering up a matter so that a required report was not made to NRC in which it would have been likely for NRC to have promptly (within several days) sent inspectors or issued correspondence to the licensee to follow up on the matter if NRC had known of the information, or in which the cover-up was to prevent identification of a significant matter during an NRC inspection.
- Any individual willfully providing inaccurate or incomplete information to NRC, to a licensee, or creating false records that in fact cause a wrong decision to be made by either NRC or a licensee (i.e., if accurate or complete information had been provided, a substantively different decision would have been made with regard to regulatory or safety significance; the inaccurate information in fact had an influence).
- Any individual tampering with vital equipment at a power reactor that indicates a potential act of sabotage.

- Any individual suspected of a deliberate violation, which would otherwise be categorized as a normal priority were it not for the need for an immediate investigation because there are indications that evidence may be lost or tampered with.
- Allegations of discrimination:
  - resulting from the provision of information regarding nuclear safety or regulatory issues directly to the NRC
  - caused by a licensee or a contractor, or a mid-level manager or above (consistent with the current enforcement policy classification of Severity Level I or II violations)
  - for raising concerns of degraded or nonconforming conditions that if true would impact the operability of a safety-related structure, system, or component, or safeguards equipment
  - that appear particularly blatant or egregious
- Other matters to which, because of the potential regulatory significance, a regional administrator or an office director with the concurrence of a Deputy Executive Director for Operations assigns a high priority.

#### **5.7.a.5(i)(2) Normal Priority**

The normal-priority matter, if it is proven, is of significant regulatory concern. The person causing the willful violation may be removed from licensed activities. The potential consequence for safety is of concern. Normally it would be expected that the violation, without considering the issue of intent, would not likely result in a Severity Level I, II, or III violation except a Severity Level III violation excluded in the examples of high-priority matters or a matter covered under normal-priority as indicated below (this means if willfulness is proven, it will likely be at least a Severity Level III violation).

Examples of circumstances prompting a normal-priority investigation are those that do not meet the standards for a high-priority investigation, such as:

- Any individual directing, performing, or condoning (meaning the individual is aware of the apparent willfulness of the violation and does not act to report or stop it) a deliberate violation in which without consideration of intent, the underlying violation would be categorized at a Severity Level IV or Green violation, and the violation was either NRC-identified, or involves a supervisor or a licensed operator, or the licensee has not taken sufficient corrective action (including sufficient disciplinary action).
- Cases involving discrimination not amounting to a high priority.
- Any individual providing information, knowing it is incomplete and inaccurate, directly or indirectly to NRC or in records (if it is a relatively isolated matter or not a significant record) maintained by a licensee or deliberately covering up a matter not required to be reported to prevent identification during an NRC inspection.

- Licensee officials directing, performing, or condoning violations in careless disregard of regulatory requirements in which the underlying violation, without consideration of intent, would not be categorized at a Severity Level I, II, or III.
- Willful failure to submit a required report to NRC in a matter not considered a high priority.
- Relatively isolated deliberate failure to file a Form 241, "Report of Proposed Activities in Non-Agreement States," notwithstanding the examples considered a high priority.

**5.7.a.5(i)(3) Low Priority**

The low-priority matter, if it is proven, is of concern but does not rise to the significance of a high or normal priority. The person causing the willful violation would not likely be removed from licensed activities.

Examples of circumstances prompting a low-priority investigation include the following:

- The situation in which, without consideration of intent, the underlying violation would be characterized as a minor violation or as an SL IV or Green violation for situations that are licensee-identified, involve only low-level non-supervisory personnel, and for which the licensee has taken sufficient corrective action (including significant disciplinary action against the responsible individual(s)).
- Relatively isolated falsification of a record or falsification of records that are not significant.
- Violations caused by careless disregard not covered in higher priorities.
- Licensee- or contractor-identified willful violations of limited safety significance committed by individuals holding relatively low-level positions.

For some circumstances of potential wrongdoing considered to be of low priority, the ARB, with OI agreement, may determine that initiation of an investigation is not recommended. Such a determination will be made by the ARB on a case-by-case basis, considering the involved employee's position within the organization, the significance of the safety issue underlying the potential wrongdoing, the potential severity level of the infraction without consideration of intent, the quality and comprehensiveness of any related licensee investigation, and the comprehensiveness of corrective actions taken by the licensee.

**5.7.a.5(j) Resolution of Differences**

**5.7.a.5(j)(1) OI Investigation Status Report and Estimated Completion Date**

*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. (8.8 Handbook, Section V.C.1)*

#### **5.7.a.5(j)(2) Disagreement with Assigned Investigation Priority**

*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/status discussion with the regional administrator or his or her designee, the headquarters office should contact the regional office promptly to resolve the difference of opinion. (8.8 Handbook, Section V.C.2)*

*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. (8.8 Handbook, Section V.C.3)*

*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. (8.8 Handbook, Section V.C.4)*

#### **5.7.a.5(k) Initiation of an Investigation by OI**

##### **5.7.a.5(k)(1) What is an Investigation?**

*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. (8.8 Handbook, Section V.D.1)*

#### **5.7.a.5(k)(2) OI Efforts Prior to Initiation of an Investigation**

Prior to the initial ARB meeting, OI reviews available information and details related to the matter of alleged wrongdoing, and may interview the alleged and/or responsible NRC staff in an effort to determine whether sufficient specific evidence of potential wrongdoing is available to warrant the initiation of an OI investigation. OI will discuss its preliminary findings with responsible staff at the initial ARB meeting, where a decision will be reached, with input from OI, as to whether a full OI investigation is to be initiated. OI will likely proceed with further investigation if the following determinations are made:

- A regional administrator or office director (on his/her own behalf or via the ARB) believes that the alleged wrongdoing has had or could have an impact on public health, safety, and security, provided that these matters are within NRC jurisdiction.
- The OI SAIC determines that a reasonable basis exists to believe that the matter involves wrongdoing and a full investigation is necessary to determine possible regulatory action.
- The OI SAIC determines that sufficient information is available to support the allegation of wrongdoing and to warrant initiation of a full investigation.

#### **5.7.a.5(k)(3) Requirement to Consult the Commission Regarding an Investigation into an Individual's Character**

*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. (8.8 Handbook, Section V.D.2)*

#### **5.7.a.5(k)(4) OI Self-Initiation**

*OI may self-initiate investigations or assists as deemed appropriate by the Director, OI. (8.8 Handbook, Section V.D.3)* After an action office is notified that OI has self-initiated an investigation, an ARB will be convened. This ARB will provide a forum for discussing the specifics of the matter of suspected wrongdoing, providing a draft NOV for the regulation that has allegedly been intentionally violated, discussing related licensee evaluations and corrective actions, if known, and discussing the likely enforcement outcome. If the technical staff is unable to construct a draft NOV, the ARB will provide a formal mechanism for informing OI of this fact, so that additional OI resources may be preserved.

#### **5.7.a.5(k)(5) OI Assessment of Preliminary Investigation Efforts**

Following preliminary investigative efforts, OI will notify the responsible regional or headquarters office of its decision on whether or not to proceed with further investigation, normally within 90 calendar days to include the estimated

completion date. If a matter is to be closed without further investigation, OI will so notify the regional or program office, indicate the basis for its decision, and follow up with a report of investigation or closure memorandum.

#### **5.7.a.5(k)(6) Reconsideration of OI Priority**

If it is determined that the need for, or priority of, an investigation has changed after a matter has been accepted by OI for investigation, that information is to be provided to the responsible OI SAIC or the Director, OI and to the OAC so that the priority and/or the need for the investigation may be reconsidered by responsible regional or headquarters office staff and OI. This matter may be discussed at a periodic meeting held between the affected regional administrator or program office director and OI to discuss investigation priority and status, or at an ARB meeting.

#### **5.7.a.5(l) Termination of Investigations**

##### **5.7.a.5(l)(1) Preliminary Investigation Findings Indicating No Violation**

*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. (8.8 Handbook, Section V.E.1) [It is noted that the staff should normally be able to inform OI, prior to the initiation of an investigation, that the matter of potential wrongdoing, if substantiated, would not constitute a violation.]*

##### **5.7.a.5(l)(2) Other Factors Contributing to an OI Decision to Terminate an Investigation**

*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. (8.8 Handbook, Section V.E.2)*

A case may be closed by OI in certain instances when preliminary investigative findings indicate sufficient evidence of wrongdoing to warrant further investigation if a determination is made that higher priority cases take precedence. For low- and normal-priority cases, OI may close a case if its projection of resource allocations indicates that the investigation could not be initiated within a reasonable time, generally 6 months.

#### **5.7.a.6 Resolution of Matters Returned by OI Without Investigation**

##### **5.7.a.6(a) Options for Handling Matters Returned to the Staff by OI without Completing an Investigation**

*Matters returned to the staff by OI without having completed a full investigation for the reasons discussed in Manual Section 5.7.a.5(l) above will be handled by the staff*

*as part of its established process for resolving inspection findings. Staff follow-up may include additional inspections, written requests for information from the licensee, meetings between the staff and the licensee, proceeding with enforcement action on the basis of 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 Manual. (8.8 Handbook, Section V.F.1)*

While any open technical matter related to the wrongdoing matter that is no longer being investigated by OI may be further evaluated by any means deemed necessary by the ARB, the wrongdoing issue would normally be forwarded to the licensee requesting a response and the licensee would be required to respond to the matter forwarded by NRC. Upon receipt of the licensee's response, an ARB would be held to discuss the information provided by the licensee and to determine if OI is interested in pursuing the wrongdoing matter further at that time. At this point in time, OI may elect or decline to pursue the wrongdoing matter. If OI reopens its investigation, communication should be reestablished with the alleged to inform him/her of the new OI activity. If OI chooses not to reopen its investigation, the allegation may be closed (assuming all technical concerns in the allegation are also closed).

If the licensee response indicates it determined not only that the alleged's wrongdoing concern occurred, but that similar and/or additional acts of wrongdoing also occurred, a new allegation should be opened to evaluate the new licensee-identified potential wrongdoing issue(s). At that point, an ARB would be convened to discuss the licensee's response, including the newly identified potential wrongdoing issues(s). The ARB could consider re-contacting the original alleged as a courtesy about the additional occurrences of potential wrongdoing, but this should not occur until after OI has completed the new investigation.

#### **5.7.a.6(b) Closing Matters without a Full OI Investigation**

*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. (8.8 Handbook, Section V.F.2)* These determinations should be documented in a memorandum that should become part of the permanent record. If the issue was being handled as an allegation, this memorandum should be made part of the allegation file.

### **5.8 Periodic Status Letters to Allegers**

#### **5.8.a Status Letter Requirement and Frequency**

*In instances of unusual delay in evaluating the allegation, the OAC or other designated staff should ensure that the alleged is provided periodic status letters regarding the NRC's evaluation of concerns. Normally, the alleged should be advised every 180 days or sooner of the status of pending open allegation concerns. For wrongdoing issues, the alleged should be informed that the review is in progress. A standardized status letter is available in Manual Exhibit 17. If a closure letter is to be issued to the alleged within 2 weeks of the date*

*a status letter is due, it is not necessary to send the status letter. (8.8 Handbook, Section II.K)*

#### **5.8.b Allegation Concerns Closed in a Status Letter**

If some but not all concerns within an allegation are closed, the allegor should normally be advised of the results of NRC's evaluation of those concerns via a status letter. The OAC may use his/her discretion in determining when to send the letter, depending on when the next correspondence with the allegor is scheduled. For example, if the next scheduled status letter is to be issued within 60 days or if it is anticipated that the closure letter will be issued within 60 days, it would be acceptable to close the concern(s) within that letter. However, if a concern is closed after a recent status letter has been issued, and it is not anticipated that remaining open concerns will be closed within the following 4 to 6 months, the action office should consider issuing an additional status letter, in the interim, to inform the allegor of the closure of the concern.

#### **5.8.c Guidance for Closing Concerns in a Status Letter**

Guidance for providing closure documentation related to allegation concerns is provided in Manual Section 5.9, and should be applied to allegation concerns closed within a status letter. If a technical inspection has been performed, it is appropriate to enclose a copy of pertinent portions of the related inspection report with the status letter. For the closure of security concerns in a status letter, see the guidance for closing security-related concerns in Manual Section 5.9.g.4.

#### **5.8.d Status Letter Marking**

To help prevent the inadvertent release of correspondence to an allegor to third parties by NRC staff, the allegation number is to be clearly typed on the front page of the status letter and on the upper right corner of each subsequent page. This will help reduce the possibility of staff not recognizing that the letter concerns an allegation and may contain allegor identifying information.

### **5.9 Allegation Closure**

#### **5.9.a 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 technical branch chief shall review and concur in the basis for closing each allegation concern, as developed by the technical staff. (8.8 Handbook, Section II.L.1)* Concurrence may be documented in an e-mail or a memorandum from the branch chief to the OAC that provides the basis for closure of each concern within the allegation, through concurrence in the closure letter, or, in those cases in which the branch chief issues the closure letter, by his/her signature. This documentation is to be included in the allegation file.

#### **5.9.b OAC Actions**

*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, a finding, 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. Manual Section 5.9.d 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. (8.8 Handbook, Section II.L.2(a))*

*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 Manual Section 5.9.c below and also concurs in the closure document. The OAC is also responsible for entering allegation concern closure information in the AMS. (8.8 Handbook, Section II.L.2(b))*

## **5.9.c Documentation of Allegation Evaluation**

### **5.9.c.1 Closure Document Description**

*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 closure documentation should: (1) identify each allegation concern as provided or as modified by the allegor, (2) describe the licensee's evaluation and response, and (3) 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. (8.8 Handbook, Section II.L.3(a)) [Note: **Do not provide the licensee's conclusion** with regard to whether an allegation concern was substantiated in the closure letter or closure memorandum. Only the NRC's conclusion with regard to the validity of the concern is relevant. Including both conclusions in the closure document*

may confuse the reader as to the actual conclusion. This is of particular concern for a closure letter to an allegor.]

*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. (8.8 Handbook, Section II.L.3(b)) A standardized closure letter and closure memorandum to the allegation file are available in Manual Exhibits 18 and 19. (8.8 Handbook, Section II.L.3(c)) Manual Exhibit 20 provides a sample closure letter for an allegation involving security-related concerns.*

### **5.9.c.2 Closure Document Content**

The final closure document should be a stand-alone document that reiterates each concern, the details of concern evaluation by the licensee (if applicable) and the NRC, NRC conclusions regarding the validity of the concern, and whether any findings or violations of regulatory requirements were identified. Corrective actions taken by a licensee in response to an allegation-related RFI, if applicable, should be discussed. The document should include a description of any actions taken by the NRC to verify the information provided by the licensee in the RFI response. If allegation concern closure is documented in an inspection report, the report is to be written in a manner that will address relevant issues without acknowledging that the issues were raised in the context of an allegation. This document constitutes the basis for closure of the allegation and should be included in the allegation file either in hard copy or by reference.

### **5.9.c.3 Closure Document Enclosures/Attachments**

The closure letter should include, preferably in a separate enclosure, a restatement of the allegor's concerns along with the results of NRC's evaluation. The closure letter should inform the allegor about actions taken by the licensee to resolve the concerns and actions taken by NRC to evaluate and determine the validity of the allegor's concerns. If some or all of the allegor's concerns were inspected by the NRC, and the related NRC inspection report has been issued at the time the closure letter is sent, the allegor should be provided with a copy of the NRC inspection report and directed to those portions of the inspection report that address his/her concerns. However, if some or all of the concerns within an allegation were sent for licensee evaluation by way of an RFI, it is not recommended that a copy of the licensee's response be provided as an attachment to the closure letter. The reason for this is to help maintain the viability of licensee efforts to review allegation-related RFIs. Specifically, licensee RFI evaluations often involve interviews with numerous employees at the facility, and the licensee RFI response to NRC often discusses specific comments made by specific interviewees in an effort to provide comprehensive feedback about the matter-in-question. The concern with providing a copy of the licensee's response to the allegor is that a licensee employee may be less willing in the future to provide information to licensee personnel following up on an NRC allegation-related RFI if it is perceived that his/her comments are routinely made available by the NRC to an individual (the allegor) who could make the information public.

#### **5.9.c.4 Closure Document Conclusions Related to Concerns Involving a Licensee RFI**

As indicated in Manual Section 5.9.c.1, if evaluation of an allegation concern involves an allegation-related RFI to the licensee, the NRC closure documentation regarding such a concern should include only NRC's conclusions with regard to the licensee's response, not the licensee's conclusions. Any NRC independent verification, inspection, or investigative efforts should also be documented in the allegation concern closure discussion. The documentation of allegation concern closure may reference feedback provided by the licensee but should also distinctly describe NRC's evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response.

#### **5.9.c.5 Closure Letter Marking**

To help prevent the inadvertent release of correspondence to an alleged to third parties by NRC staff, the allegation number is to be clearly typed on the front page of the closure letter and on the upper right corner of each subsequent page. This will help reduce the possibility of staff not recognizing that the letter concerns an allegation and may contain alleged identifying information.

### **5.9.d Determining Whether an Allegation Concern is Substantiated**

#### **5.9.d.1 Applying the Allegation Definition to Determine Whether an Allegation Concern is Substantiated**

Whether or not an allegation concern is to be coded in AMS as "substantiated" is determined by the action office, based on the action office's evaluation of all available information and feedback related to the concern, including the assessment of any feedback information provided by other NRC offices, State agencies, other Federal agencies, or the licensee. To maintain the integrity of the allegation process, the action office must determine whether the allegation concern is valid based on the NRC's definition of an allegation, i.e., whether NRC evaluation of the allegation concern resulted in the validation of an impropriety or inadequacy associated with NRC-regulated activities. When a licensee's RFI response is reviewed as part of the NRC's evaluation of an allegation, NRC should only consider the facts and documentary evidence provided by the licensee, and not the licensee's conclusion as to whether a concern was substantiated.

While the licensee's response to an RFI will often include a conclusion as to whether the licensee believes the concern was substantiated, this conclusion may not always correlate with NRC's allegation definition. As an example, a licensee evaluating a chilled work environment concern might respond that indication of a chilled work environment was identified in a small work group, but a successful team building session was held with the work group, and since there is no NRC requirement related to maintaining a SCWE, the concern was not substantiated. NRC evaluation of this fact pattern, considering the NRC allegation definition, would conclude that an inadequacy associated with NRC-regulated activity was substantiated.

#### **5.9.d.2            Difference Between Allegation Closure Document Discussion and Determining Whether to Code an Allegation as Substantiated in AMS**

It is to be emphasized that how allegation concern closure is described in the closure document and whether or not the allegation concern should be categorized as “substantiated” in AMS are distinctly separate actions. It is possible to “substantiate” any statement from an allegor that is ultimately determined to be true, and it is recommended that allegor facts/statements/conditions determined to be valid are credited as such in the closure documentation. However, as indicated in Manual Section 5.9.d.1, the action office must determine whether its evaluation of the allegation concern resulted in the validation of an impropriety or inadequacy associated with NRC-regulated activities. If a condition described by an allegor is determined to be true, but that affirmed condition is not contrary to established procedure or related regulatory guidance, does not have an adverse safety impact, or does not reduce safety margin, then the related concern should be characterized by the allegation process (in AMS) as being “unsubstantiated.”

#### **5.9.d.3            Use of the Term “Substantiated” or “Unsubstantiated” in Allegation Closure Documentation**

In describing the closure of an allegation concern, it is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding NRC evaluation of the concern. However, the staff should not feel compelled to provide an overall concern conclusion using the term “substantiated” or “unsubstantiated” if doing so would muddle the response. If all aspects of a concern were found to be valid, including its alleged impropriety or inadequacy associated with NRC-regulated activities, it would be appropriate to describe the overall concern as being “substantiated” or “valid” or “true.” However, if certain facts/statements/conditions described by the allegor are found to be true and credit is given for those items in the closure document, but the allegation concern itself is not determined to be valid, it may be confusing to the allegor to then categorize the overall concern in the closure letter as “unsubstantiated.” In such instances, it is more appropriate to first acknowledge those allegor facts/statements/conditions that were found to be true, then indicate that NRC was unable to confirm or validate an impropriety or inadequacy associated with NRC-regulated activity.

#### **5.9.d.4            Other Considerations in Determining Whether a Concern is Substantiated**

External stakeholder perception also exists that NRC inappropriately considers actions taken by licensees in direct response to allegation concerns as a means to interpret the concern as “unsubstantiated.” When a licensee has taken corrective actions in response to an allegation concern, it is likely that the licensee has recognized an inadequacy in the handling of a particular issue and is pursuing correction of that inadequacy. NRC staff evaluating the allegation are to consider these corrective actions and the reasons the corrective actions were taken by the licensee when forming a conclusion related to the allegation concern. If the licensee was prompted to take corrective action to resolve the concern from a nuclear or radiological safety perspective, then it is likely that such an allegation concern would be considered “substantiated” in AMS. However, it is recognized that in some instances, corrective actions are taken by the licensee for administrative reasons or as a precautionary measure, and not necessarily to resolve a



safety matter.

#### **5.9.d.5 Possibility of Allegor Disagreement with NRC Conclusion**

Given the nature of many allegation concerns, which often involve opinions, differing interpretations, or a lack of clarity with regard to whether an activity was appropriate, or in accordance with regulatory requirements, it is understandable that there will be occasions when an allegor disagrees with or is confused by NRC's response. The staff's goal is to be as concise as possible when rendering a conclusion with regard to an allegation concern, so that instances in which an allegor disagrees with the NRC characterization of the issue are minimized. When such instances occur, the allegation closure letter offers the allegor an opportunity to question or challenge the NRC conclusions.

#### **5.9.d.6 "Unsubstantiated" Discrimination Concerns**

On occasion, an NRC conclusion that a discrimination concern was "unsubstantiated" will be misleading to an allegor. In a number of discrimination cases, while licensee actions representing potential retaliation, harassment, intimidation, and discrimination may be identified during the course of the investigation, the totality of the evidence does not show by a preponderance of the evidence that a discriminatory act occurred. In such instances, it is more appropriate to indicate to the allegor that NRC did not find sufficient evidence to conclude that discrimination occurred, rather than to state that NRC did not substantiate that discrimination occurred or that NRC has concluded that discrimination did not occur.

Suggested Wording: "Based on our investigation, we did not find sufficient evidence to conclude that discrimination occurred. This does not mean that we have determined that discrimination did not occur. It means that the evidence available to the NRC was not sufficient to prove that discrimination occurred."

### **5.9.e Discussion of Enforcement/Assessment Process Outcomes in Allegation Concern Closure Documentation**

#### **5.9.e.1 Closure Documentation Reference to Enforcement Outcome – Level of Detail**

While it is appropriate to indicate in response to an allegor's concern whether the NRC evaluation of the concern identified a violation of NRC requirements or an ROP or cROP finding, it is not imperative that the allegor be informed of the specific enforcement action taken or finding categorization applied via the ROP or cROP. In other words, it is sufficient, in most instances, to indicate that a violation or finding was identified and that the categorization of the violation or ROP/cROP finding and the licensee's follow up activities will be determined by the NRC Enforcement Process or the ROP/cROP. However, if the violation or ROP/cROP finding has already been determined or categorized, and responsible staff believe that providing specific information about the NRC violation or finding will improve the concern response, this information may be discussed in the closure letter. With regard to a substantiated discrimination concern in particular, it is logical that the allegor would have an interest in the specific NRC regulatory action taken against the licensee. Examples of closure letter wording

applicable to different types of violations and findings are provided in Manual Exhibit 18.

#### **5.9.e.2 Provision of Operating Reactor Enforcement Process Outcomes Not Documented in Inspection Reports**

As indicated in Manual Section 5.9.c.3, if inspection effort and enforcement action (if any) related to an allegation is documented in an inspection report, and the related inspection report is issued before the closure letter is distributed, appropriate portions of the inspection report should be included in the closure documentation sent to the alleged. However, it is to be emphasized that allegation follow-up is not normally documented in an inspection report unless it results in a finding or violation warranting documentation in accordance with NRC Inspection Manual Chapters 0610, 0612, 0613, 0615, 0616, and 0617 (i.e., the violation is more than minor or the finding is Green or greater). If the evaluation of an allegation results in a minor violation, the minor violation should be processed per standard practice and should normally not be documented in an inspection report (i.e., the fact that the minor violation is associated with an allegation should not be used as justification to document it in an inspection report).

For minor violations, the licensee is to be informed of the minor violation (normally at an inspection exit meeting) before the alleged is informed of the minor violation either verbally or in writing via allegation closure documentation. The closure documentation to the alleged must explain that, in most cases, NRC does not document minor violations in inspection reports. While it is appropriate to notify the licensee about the minor violation, the licensee should not be informed that the minor violation is related to an allegation (although the licensee may already be aware of that an issue is allegation-related if the licensee had been previously informed about the issue via an allegation-related RFI). The date and means by which the licensee was notified of the minor violation should be documented in the allegation file.

**Caution:** NRC Inspection Manual Chapters 0612, 0616, and 0617 currently contain incorrect guidance noting that a minor violation can be documented in an inspection report solely for the purpose of closing an allegation. Part I, Section 2.1 of the Enforcement Manual indicates that there are “very few exceptions” when a minor violation should be documented in an inspection report. Allegation follow-up is not indicated as one of those exceptions. For this reason, if a minor violation is documented in an inspection report solely to document allegation closure, and circumstances do not reflect one of the “exceptions” noted in the Enforcement Manual, the fact that the minor violation is related to an allegation would be established. Offices responsible for updating IMCs 0612, 0616, and 0617 have been notified and intend to change these procedures in future.

#### **5.9.f Notification of Results of OI Investigations and Assists**

##### **5.9.f.1 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 sensitive security information) and should not contain information that could reveal the identity of an *allegor*. In keeping with *allegor* identity protection considerations, the distribution list of additional entities and individuals receiving a copy of the letter both internal and external to NRC should be minimized (e.g., to NRC staff responsible for follow up of the allegation, to a senior licensee representative (usually the letter addressee), and to other external stakeholders by commitment). If NRC is requested by an additional external stakeholder to provide a copy of the letter that was sent to the licensee, a copy may be provided since the letter was initially placed on the public docket. *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 *allegor* 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 *allegor* should indicate that the complete OI report may be requested under the FOIA. (8.8 Handbook, Section II.L.4(a))**

More specifically, the action office issues an e-mail to cognizant individuals in the action office and other headquarters offices describing the issue and OI's investigation conclusion and giving those individuals 3 weeks to review the report and provide dissenting views. This is often referred to as the "3-week e-mail." **[Note:** If the *allegor* has not talked with OI during the course of the investigation, and the investigation is closed administratively (i.e., OI does not provide an investigation conclusion), it is not necessary to send the 3-week e-mail.] If no dissenting views are received during the 3-week review period, the action office will prepare a closure letter to the *allegor* and a letter to the licensee indicating that the investigation has been closed and providing the results of the investigation ( a short summary of the OI investigation results with the staff's conclusions or a copy of the OI report synopsis may be provided to the licensee; the *allegor* will be provided with a short summary of the OI investigation results with the staff's conclusions). Provision of a short summary of the OI investigation results to the licensee is preferred vs. the OI report synopsis so that the closure correspondence related to the unsubstantiated wrongdoing concern appropriately reflects that the conclusion is an agency conclusion vs. solely an OI conclusion. If the action office chooses to provide the OI synopsis vs. a short summary, the letter to the licensee should reflect that responsible NRC technical staff reviewed the investigation report and agreed with OI's conclusion. If the only licensee employee interviewed by OI was the *allegor*, the licensee may not be aware that an investigation was opened. In this case, it is not necessary to send a letter to the licensee. If OI speaks with any licensee employee other than the *allegor*, the letter informing the licensee of investigation closure will be provided.

The OI synopsis normally should not contain information that could reveal the identity of the *allegor*. However, if the action office chooses to provide the OI synopsis vs. a short

summary and believes the release of the OI synopsis, as written, may reveal the identity of the alleged, it is acceptable to paraphrase the OI synopsis in the letter to the licensee, rather than attaching the synopsis. Similarly, if a short summary is provided vs. the OI synopsis, the short summary should be written in a manner that does not reveal the identity of the alleged.

If there are no dissenting views, it is not necessary to request the approving official of the OI report, or his/her designee, if he/she is in agreement with the content of letters to the alleged and the licensee as OI has already issued its weighing of the evidence in the OI investigation report. When the staff's conclusion related to the investigation is the same as OI's conclusion, the Director, OE shall agree (by way of no dissenting views) that the letters can be transmitted. This agreement indicates that no dissenting reviews were received or the dissenting views were resolved, DOJ declined the case, or completed its action, and NRC does not intend to take enforcement action.

If OI has concluded that the matter under investigation was substantiated, but the staff disagrees and concludes wrongdoing was not substantiated and that no enforcement action will be taken, the official approving the OI report will not be asked if he/she agrees with the content of the letters provided to the alleged and the licensee indicating the staff's conclusion that the matter was not substantiated.

Lastly, if as a result of dissenting views, the staff disagrees with an OI unsubstantiated conclusion and believes that wrongdoing has been substantiated, the guidance in Manual Section 5.9.f.2 will be followed with regard to pending enforcement action.

#### **5.9.f.2 Notification of OI Investigation Closure When Enforcement Action Is Pending**

*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. (8.8 Handbook, Section II.L.4(b)(i))*

*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 described in Part II, Sections 1.3.5 and 1.3.10 of the NRC 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. (8.8 Handbook, Section II.L.4(b)(ii)) In keeping with alleged identity protection considerations, the distribution list of additional entities and individuals receiving a copy of the letter both internal and external to NRC should be minimized (e.g., to NRC staff responsible for follow up of the allegation, to a senior licensee representative (usually*

the letter addressee), and to other external stakeholders by commitment). If NRC is requested by an additional external stakeholder to provide a copy of the letter that was sent to the licensee, a copy may be provided since the letter was made public when it was issued.

More specifically, the licensee is informed of the results through the issuance of a letter indicating that NRC is considering an issue for escalated enforcement and inviting the licensee to an enforcement conference or offering the licensee the choice of responding in writing. **[Note:** Prior to an enforcement conference, the licensee is offered an opportunity to approach resolution of the proposed enforcement through mediation with the NRC using Post-Investigation ADR). This is not to be confused with the offer of Early-ADR discussed in Manual Section 5.2.f which involves mediation between the alleged and the alleged's employer prior to the initiation of an OI investigation into a matter of alleged discrimination.]

The concurrences on the letter to the licensee are those required by the enforcement process and also serve as the approval to provide a redacted version of the OI report to the alleged. If the enforcement action is against an individual, without accompanying action against a licensee or contractor, OE should be contacted before providing a redacted version of the OI report to the alleged. Copies of these letters should be included in the allegation file.

An individual (or an individual's attorney with an individual's expressed consent) may request a copy of the transcript of his/her own interview with OI in order to prepare for a preliminary enforcement conference. As long as the OI investigation is completed and closed, and the Directors of OI and OE are consulted and agree, the transcript may be released.

If the proposed enforcement is resolved through Post-Investigation ADR, the licensee will receive a Confirmatory Order confirming the actions agreed upon during the Post-Investigation ADR mediation session. The Confirmatory Order is issued on the public record and a period of time (normally 20 days) is allotted wherein interested persons that may be affected by the Order are afforded an opportunity to request a hearing. In the case of an OI substantiated discrimination concern, it is reasonable to assume that the alleged would like to be informed about the content of the Confirmatory Order. In this instance, action should be taken so that the alleged is provided a copy of the Confirmatory Order within the hearing request period after the order is issued.

### **5.9.f.3 Release of OI Investigation Synopsis or Redacted Report Concerning 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 Part II, Sections 1.3.5 and 1.3.10 of the Enforcement Manual (see Allegation Manual Section 5.9.f.2). 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 of the results of the OI investigation and the staff's conclusions (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. (8.8 Handbook, Section II.L.4(c))*

OI will discuss the results of a substantiated discrimination investigation with DOJ. If DOJ indicates an interest in prosecution, OE will determine when the parties to the DOL proceeding will be informed of OI's conclusion, and inform the responsible regional or program office of its decision. Once OE has approved the release of the OI findings to the parties to the DOL proceeding, the responsible regional or headquarters office will prepare the letters transmitting the findings. The letters will inform both parties of OI's conclusion and note that the agency is reviewing the conclusion and that the OI conclusion does not represent the final agency position, pending NRC review of final DOL decisions. The OI conclusion will be provided to the licensee by way of a short OI report summary that includes the staff's conclusions or by including the OI investigation synopsis as an attachment to the letter. The OI conclusion will be provided to the alleged by way of a short OI report summary that includes the staff's conclusions. The OI synopsis normally should not contain information that could reveal the identity of the alleged. However, if the regional or headquarters office provides the OI synopsis to the licensee vs. a short OI report summary and believes the release of the OI synopsis, as written, may reveal the identity of the alleged, it is acceptable to paraphrase the OI synopsis in the letter to the licensee, rather than attaching the synopsis itself. Similarly, if a short OI report summary is provided to the licensee vs. the OI synopsis, it should be written in a manner that does not reveal the identity of the alleged.

If a pre-decisional enforcement conference is to be held with regard to the discrimination concern, the Director, OE, will decide whether the licensee will be provided a redacted copy of the OI report rather than a short OI report summary or an investigation synopsis. If the redacted report is provided to the licensee, a copy of the redacted report will also be provided to the alleged, and the redacted report will be placed on the public record. The letters also will inform both parties that the complete OI report may be requested under the FOIA, if desired. At this point in time, if the OI report is requested under FOIA, even though the DOL case and related allegation file remain open, the OI report would be released, after review and appropriate redaction (i.e., a 7(A) FOIA exemption should not be applied in this instance) (see Manual Section 6.7).

If the staff agrees with OI's investigation conclusion, the official approving the OI report will be asked if he/she is in agreement with the content of the letters to the alleged and licensee, if the Director of OE, or his/her designee, agrees that the letters can be transmitted. If the staff reaches a different conclusion than OI, the official approving the OI report will not be asked to indicate agreement with the content of the letters to the alleged and licensee. The responsible regional or headquarters office will place copies of the letters in the related allegation and enforcement files.

If final DOL decisions do not alter an earlier determination that a discrimination concern was unsubstantiated, the alleged will receive a closure letter indicating that the completed DOL proceedings did not alter the prior finding of no discrimination. The

licensee should also be notified of the NRC's final conclusion in a brief letter on the public record. For substantiated discrimination cases, the licensee will be informed of the NRC's final conclusion by way of the Enforcement process.

#### **5.9.f.4 Closure of Issues in OI Assists to the Staff**

*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. (8.8 Handbook, Section II.L.4(d)(i))*

*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 Manual Sections 5.9.f.1, 5.9.f.2, and 5.9.f.3. 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. (8.8 Handbook, Section II.L.4(d)(ii))*

For an OI Assist to Staff that does not progress to a full investigation, a 3-week e-mail, as mentioned in Manual Section 5.9.f.1 above, does not need to be developed, since no decision has been made with regard to a matter of potential wrongdoing. However, if OI has interviewed other members of the licensee's staff in addition to the alleged, a letter should be sent to the licensee, similar to the letter described in Manual Section 5.9.f.1, indicating the reason for the OI review and the fact that no indication of wrongdoing was identified.

#### **5.9.g Specified Allegation Closure Guidelines**

Respectively, Manual Exhibits 18, 20, and 19 provide sample closure documents for use when (1) the allegation involves other than security-related concerns, (2) the allegation involves security-related concerns, and (3) the allegation involves an anonymous alleged, NRC staff-identified or licensee-identified potential wrongdoing, or an alleged who specifically requests no correspondence from the NRC. *Certain types of allegation concerns require the application of additional specific guidance when developing closure documentation. (8.8 Handbook, Section II.L.3(d)) Examples would include closure of a discrimination concern that has been resolved through Early ADR, determining the amount of information that may be included in an allegation closure letter regarding sensitive, security-related concerns, 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 below. (8.8 Handbook, Section II.L.3(d)(ii))*

### **5.9.g.1 Allegation Closure Documentation for a Concern Involving an Allegation-Related RFI to the Licensee**

As indicated in Manual Section 5.6.d.8, in addition to reviewing the licensee's response to an allegation-related RFI for adequacy (i.e., scope and depth, evaluator independence, evaluator competence, corrective actions, potential compliance issues, overall conclusion), staff review should include some alternate verification of aspects of the information provided.

When the staff has completed its evaluation and determined that sufficient information is available to determine the validity of the allegation concerns, the assigned technical branch will develop allegation closure documentation for ultimate incorporation into a closure letter to the alleged or closure memorandum to the allegation file, as appropriate. The closure documentation should summarize pertinent information from the licensee's response, and specifically describe the staff's evaluation and conclusions regarding the allegation concerns based on all pertinent information, including the licensee's RFI response. In particular, the closure documentation should clearly:

- Identify each concern as stated in the acknowledgment letter or as modified in more recent interactions with the alleged;
- Describe the licensee's evaluation and response, **but not the licensee's conclusion(s)**, and;
- Document the NRC's evaluation of the licensee's response and overall conclusions regarding the validity of the concern.

The description of NRC's evaluation of the licensee's response should articulate any NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response. Specific details should be included as necessary to convey the extent of the NRC evaluation. In addition, the description should describe the safety/security and regulatory significance of a substantiated concern.

### **5.9.g.2 Closure of a Discrimination Concern Resolved Through Early ADR**

If a discrimination concern has been resolved through Early ADR, the settlement agreement will be reviewed by OGC, in coordination with OE, to assure that the agreement does not contain any restrictive language potentially in violation of applicable NRC employee protection rules. Given an acceptable agreement, the discrimination concern can be closed via a closure letter to the alleged acknowledging the agreement. The employee protection regulations require, in part, that ... "no agreement affecting the compensation, terms, conditions, or privileges of employment, including an agreement to settle a complaint filed by an employee with the DOL pursuant to Section 211 may contain any provision which would prohibit, restrict, or otherwise discourage an employee from participating in protected activity...including, but not limited to, providing information to the NRC, or to his other employer on potential violations or other matters within NRC's regulatory responsibilities."



The OE ADR Program Manager will notify the OAC of the results of OGC's review of the settlement and provide the OAC with a copy of the agreement for the allegation file. If OGC determines that the agreement is acceptable, the OE ADR Program Director will send brief letters to the allegor and the licensee informing both parties that NRC has received and reviewed the settlement agreement and found no restrictive clauses, and that an NRC investigation will not be conducted (see Manual Exhibit 21). Since the settlement agreements will not be final until three days after the agreement is signed, the OACs should ensure both that OGC has accepted the agreement and that it has been at least three days since the settlement was signed before the allegation file is closed. Given an acceptable agreement, the action office can issue a closure letter to the allegor.

If the Early ADR settlement agreement is unacceptable to the NRC, NRC will contact the Early ADR mediation contractor who will contact the mediator. OGC may also contact the attorney for either party or both parties to discuss the content of the settlement agreement. If the OAC has not been notified of a settlement agreement within 90 days of the initiation of Early ADR mediation, the OAC should contact the OE ADR Program Manager to determine the status of the case.

Normally, if a discrimination concern includes DOL involvement, the related allegation file will not be closed until after the final DOL decision is made because DOL decisions are reviewed by NRC to determine if they may impact a preliminary NRC decision related to the discrimination concern. However, if a discrimination concern has already been resolved via Early ADR, the outcome of a related DOL proceeding will not have a bearing on NRC's conclusion regarding the discrimination concern. The action office may leave the allegation file open awaiting the final DOL action; however, additional correspondence with the allegor regarding the discrimination concern is unnecessary since NRC's conclusion will not change. If the action office chooses to leave the allegation file open and continue corresponding with the allegor while the discrimination concern remains open in the DOL process, the correspondence shall provide no indication that the NRC's conclusion regarding the discrimination concern could change as a result of a subsequent positive DOL finding.

It is also acceptable for the action office to consider closing the allegation, even though the related DOL proceeding has not been completed. If a subsequent DOL decision concludes that the allegor was discriminated against, Part II, Section 1.3.17 of the Enforcement Manual indicates that NRC would consider issuing a letter requesting the licensee to describe SCWE impacts resulting from the DOL finding of discrimination. For this reason, if the action office chooses to close the allegation file because the discrimination concern was settled via Early ADR, a new "non-allegation" shall be opened in AMS to track the ongoing DOL proceeding. The non-allegation will not have an associated allegor, or require correspondence with an allegor. It will be a placeholder to track the status of the DOL case. If DOL ultimately closes the case as unsubstantiated, the non-allegation would be closed by the OAC with no further action. If DOL was to conclude that discrimination occurred, appropriate staff will be informed so that actions can be initiated (ARB or enforcement panel) to discuss the possible issuance of a letter requesting the licensee to describe SCWE impacts resulting from the DOL finding of discrimination.

### **5.9.g.3 Closure of an Agreement State Concern When the Alleger Has Requested that NRC Protect His/Her Identity**

For allegations involving Agreement State licensee activities, when an allegor has not permitted the NRC to provide his/her identity to the Agreement State, standard practice is to include in the closure letter to the allegor, a copy or summary of the Agreement State's response to the referred allegation. It is noted that although it is expected that state entities overseeing Agreement State licensee activities will retain a program that can receive and evaluate concerns provided by external sources, the agreement between the Agreement State and the NRC does not mandate that that the Agreement State's program be equivalent to the NRC's allegation program. Therefore, the Agreement State may not always evaluate an allegor's concern to the degree and in the time frame that the same concern would be evaluated under the NRC's allegation program. Although done very rarely, an Agreement State may choose, for example, to limit its review, or not to initiate a review of a submitted concern if the issue was determined to be of lower significance with matters of higher significance taking precedence. In such instances, the NRC closure letter to the allegor should describe the Agreement State feedback and indicate that NRC evaluates the Agreement State's program for evaluating concerns from external sources during periodic visits and IMPEP reviews.

### **5.9.g.4 Closure of Security-Related Concerns**

#### **5.9.g.4(a) Level of Detail in Closure Letter, the Allegation File, and AMS**

For a security-related concern, the level of detail to be provided in the closure letter to the allegor will vary, based upon the sensitivity of the concern. General guidance for determining concern sensitivity is provided in Manual Section 5.9.g.4(c). Manual Section 5.9.g.4(d) provides general guidance on the content of closure documentation as it relates to determined concern sensitivity. It is to be emphasized that the guidance in Manual Sections 5.9.g.4(c) and 5.9.g.4(d) is not absolute and that concern sensitivity and the content of closure documentation provided external to the NRC shall always be informed by knowledgeable NRC security staff, who may determine that more or less information than is suggested in Manual Section 5.9.g.4 is to be provided. Another factor that may be considered by knowledgeable NRC security staff when determining the amount of information that may be released in closure documentation is whether the allegor is a current member of the security force. As a general rule, closure documentation to the allegor should contain the amount of information that can be provided without divulging SUNSI or more sensitive security information (SGI). Regardless of the categorization of the concern, NRC must always protect information that could be exploited by an adversary.

It is also noted that for allegors who are current members of the facility security force with normal access to such information, more detail may be provided verbally to such individuals if the concerns are determined to be at a Category II and Category III sensitivity level (see Manual Sections 5.9.g.4(c) and 5.9.g.4(d)). In those instances when information is provided verbally to an allegor who is a current member of the security force before written closure documentation is provided, it would be possible to limit the amount of detail provided in subsequent written closure documentation by simply indicating that specific closure details were discussed with the allegor during a

prior telephone conversation.

Concern evaluation details that knowledgeable NRC security staff ultimately determine should not be provided verbally or in the closure documentation to the alleged are to be included in the allegation file, and recorded in AMS by the OAC (except for Safeguards Information). AMS and other internal allegation documentation that contain staff findings regarding security-related issues (such as a closure memorandum) should continue to include both the NRC inspection or licensee evaluation details and information concerning whether the concern was substantiated.

#### **5.9.g.4(b) Applicable Security-Related Issues**

This guidance specifically addresses those closure letters to allegeders that contain information or records concerning a licensee's physical protection, classified matter protection, material control and accounting program for special nuclear material, Security Orders, or Confirmatory Action Letters. With regard to fitness for duty issues, the guidance applies only to those issues that are programmatic or relate specifically to security personnel. The guidance specifically relates to security-related information that is not designated as Safeguards Information or classified as National Security Information or Restricted Data, but is nonetheless sensitive because it relates to the security of NRC-licensed facilities or materials.

#### **5.9.g.4(c) Security Information Categories**

*Information provided in closure letters to allegeders 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. This category should be determined based on the allegation concern, as received, assuming that the concern is true (8.8 Handbook, Section II.L.3(d)(i)):*

- *Category I - Security-related concerns that involve a potential generic security vulnerability. Letters to allegeders will reiterate the concerns, but provide no details regarding the NRC's evaluation or conclusion. (8.8 Handbook, Section II.L.3(d)(i), Bullet 1)*
- *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 allegeders 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 allegeder 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.) (8.8 Handbook, Section II.L.3(d)(1), Bullet 2)*

- *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 allegeders 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 of the compensatory actions taken such that information that an adversary could exploit is protected. The letter to the allegeder 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. (8.8 Handbook, Section II.L.3(d)(i), Bullet 3)*

*Additional information may be provided verbally to the allegeder for Category II and Category III concerns if requested and the staff can verify that the allegeder 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. (8.8 Handbook, Section II.L.3(d)(i), Footnote)*

#### **5.9.g.4(d) Guidance for Closure Letters to Allegers Based on Security Information Category**

The following general guidance applies to the amount of detail that may be provided to allegeders in written closure documentation related to security concerns, based on determined security sensitivity (category). The amount of information that is ultimately provided in allegation closure documentation will be informed by knowledgeable NRC security staff who may conclude that more or less information than suggested in this section is to be provided.

##### Category I

The staff will provide limited information for both substantiated and unsubstantiated security-related concerns that involve a potential generic industry vulnerability. Letters to allegeders will reiterate the issues raised in sufficient detail. Cognizant NSIR and/or regional security inspection management will concur on the closure letter to the allegeder. Closure letter language similar to the following would be used:

“While we are fully committed to our goal of ensuring openness in our regulatory process, we must balance that goal with ensuring the continued safety and secure operation of nuclear facilities in our country. Normally, when we have completed our review of an allegation, we provide the allegeder with information as to whether his/her concern was substantiated and details on the actions taken by the NRC to evaluate the concern. However, due to the nature of the security-related issue(s) associated with your concern(s) and to ensure that we are not unnecessarily releasing information that would reveal any potential security-related vulnerabilities, we are unable to provide you with specific details regarding the NRC's evaluation of your concern.”

## Category II

For those security-related concerns that, if true, would constitute more than a minor finding or violation at greater than Severity Level IV, as determined by applicable guidance or review panels, the staff will provide limited information in response to both substantiated and unsubstantiated concerns. Letters to allegeders will reiterate the issues raised in sufficient detail. Cognizant NSIR and/or regional security inspection management will concur on the closure letter to the allegeder. The sample closure letter language shown above for Category I concerns can be used in Category II closure letters as well, with the last sentence alternatively indicating that only limited information regarding the NRC's evaluation can be provided, and with the addition of language similar to the following:

“While we cannot provide the specific details regarding our evaluation of your concern, we note that an NRC assessment was conducted in the security area that included a review of your concern(s). Based on that NRC assessment, no findings were identified. **[Or]** The NRC assessment identified at least one finding. Identified deficiencies were promptly corrected or addressed by compensatory action, thereby establishing licensee compliance with applicable physical protection and security requirements. To ensure that we do not unnecessarily release information that would reveal potential security-related vulnerabilities, we are unable to inform you if any finding is specifically associated with the concern(s) you raised.”

If the allegeder requests additional information and the staff can verify that he/she 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, the staff will offer to discuss the specifics of the agency's actions and conclusions with the allegeder. Employment and position verification will not be sought without prior permission from the allegeder.

## Category III

For those security-related concerns that, if true, would, at most, constitute a minor finding or violation at Severity Level IV or lower, as determined by applicable guidance and review panels, the staff will provide a complete response to the allegeder, once required compensatory actions, if any, are in place. The response to both substantiated and unsubstantiated concerns will include a description of the actions taken by the staff to evaluate the concern and the staff's conclusion regarding the validity of the concern, but would not include a description of the compensatory actions taken. Cognizant NSIR and/or regional security inspection management will concur on the closure letter to the allegeder.

If follow up of a security-related concern results in a minor finding or violation requiring compensatory actions, and if the allegeder requests additional information and the staff can verify that he/she 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, the staff will offer to

discuss the compensatory actions with the alleged. Employment and position verification will not be sought without prior permission from the alleged.

A tabulation of the security information categories with illustrative examples is provided in Manual Exhibit 22, and a sample allegation closure letter reflecting information to be provided for the three security information categories is provided in Manual Exhibit 20.

It is recognized that in some instances, it may be appropriate to provide allegeders with additional details regarding the agency's handling of their security-related concerns or with less information than suggested above. Such deviations must be coordinated with NSIR and/or regional security inspection management, as appropriate.

Regardless of the categorization of the concern, NRC will continue to protect information that an adversary could exploit. Each action office shall coordinate their efforts with NSIR and/or regional security inspection management.

#### **5.9.g.5 Content of Closure Letter to an Alleger Indicating that Radiation Exposure Has Caused a Medical Condition**

For an allegation concern involving radiation exposure, an allegeder may occasionally indicate that he/she believes that the radiation exposure has resulted in a medical condition, and request NRC advice or commentary regarding the medical condition. After responding to the concern about the alleged radiation exposure, the following discussion may be provided regarding the allegeder's request for feedback about his/her medical condition:

"In your (conversation on (date)) **OR** (letter dated (date)), you indicated that your alleged exposure to radioactive materials may have contributed to your medical condition. While we are sympathetic to the illness (or condition) you are battling, please understand that the NRC cannot offer a medical diagnosis or make recommendations for medical treatment. We assume that you are under the care of a physician for your illness and recommend that you consult your physician regarding this matter."

#### **5.9.g.6 Items Returned to the Staff Without a Full Investigation by OI**

As indicated in Manual Section 5.7.a.6(a), *matters returned to the staff by OI without having completed a full investigation will be handled by the staff as part of its established process for resolving inspection findings. Staff follow-up 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 Manual. (8.8 Handbook, Section V.F.1) Part II, Section 1.1.19 of the Enforcement Manual includes additional guidance regarding actions to be taken if OI administratively closes an investigation and returns the matter to the technical staff.*

Notwithstanding the above, it is noted that *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. (8.8 Handbook, Section V.F.2) These determinations should be documented in a memorandum to the allegation file.*

## **5.9.g.7 Closure of Chilling Effect Concerns**

### **5.9.g.7(a) Closure of a Chilling Effect Concern Affecting One Individual**

NRC cannot draw a definitive conclusion related to a concern from one individual that he/she was chilled. In making such an allegation, the allegor is providing his/her personal reaction to the occurrence. Therefore, NRC cannot respond by indicating that the allegor did not have the reaction described or that he/she reacted incorrectly. The only response NRC can provide to a single individual's assertion of a chilling effect is to evaluate the occurrence described and provide feedback as to whether NRC believes a "reasonable person" would find the occurrence to be chilling in nature. If action was taken by the licensee, the NRC response to such a concern can also inform the allegor as to the nature of those licensee actions. For example, a possible response to the allegor might be..."The licensee recognized that the statement made to you could have been perceived negatively, and has counseled the individual who made the statement." If the action office is unaware of any actions taken by the licensee in response to the assertion of chilling effect, another option would be to notify the licensee about the issue for information only, without providing the allegor's identity. If the allegor objects to such an action, the information should normally not be provided to the licensee, and the concern should be closed with no further action.

### **5.9.g.7(b) Closure of Unsubstantiated Chilled Work Environment Concerns**

An allegation of a chilled work environment may be evaluated through a number of inputs depending on the specifics of the allegation, including existing NRC knowledge regarding the facility SCWE, NRC follow-up inspection activity, questions asked during an OI Assist or during ongoing OI investigation activity involving the same facility, licensee response to an RFI, results of recent licensee surveys related to the site SCWE and safety culture, and results of NRC's most recent PI&R inspection or other inspections that evaluate the condition of the SCWE. NRC's conclusion regarding the allegation may be based on any or all of these inputs. If NRC is unable to conclude that a chilled work environment exists, the closure documentation should inform the allegor about the various inputs contributing to this conclusion, and also include a statement that based on those inputs the NRC could not conclude that a chilled work environment existed with regard to the department/facility in question.

### **5.9.g.7(c) Closure of a Substantiated Chilled Work Environment Concern Not Involving a Chilling Effect Letter**

As a result of the inputs noted in Manual Section 5.9.g.7(b), the NRC may conclude that a chilled work environment did exist, as asserted by the allegor, but also that the licensee has taken or is taking appropriate corrective actions to address the matter

that created the chilled work environment and to mitigate its consequences. In such instances, the allegation closure documentation should inform the allegor about the various inputs contributing to NRC's conclusion that a chilled work environment did exist in the department/facility in question. The closure documentation should also describe the corrective actions the licensee has taken or is taking and why NRC believes those actions are appropriate and sufficiently comprehensive to address the current problem and to mitigate its potential to negatively affect the remainder of the facility workforce. The allegor should also be offered an opportunity to re-contact NRC in the future if he/she finds the licensee's corrective actions to be ineffective and/or if the work environment concerns persist or recur.

**5.9.g.7(d) Chilling Effect/Chilled Work Environment Concerns Closed as a Result of a Chilling Effect Letter Issued in the Absence of a Finding of Discrimination**

Manual Section 5.2.i.6(a) describes the circumstances warranting NRC issuance of a CEL to the licensee in the absence of a finding of discrimination. Briefly, such a letter is issued when available inputs provide indication of an ongoing SCWE problem at the facility and NRC is concerned that the licensee has not made sufficient progress in addressing the problem. These letters are the tool that NRC uses to publicly inform workers that the agency has engaged management about the SCWE problem and will be monitoring the licensee's actions. Often, in advance of the issuance of such a CEL, the NRC will have received multiple allegations regarding the chilled work environment at the facility. Since the CEL is a public document and provides NRC's conclusions regarding the facility SCWE as well as NRC's intentions to assess and monitor the licensee's response actions, these allegations may be closed based on the issuance of the CEL.

Also, after the issuance of the CEL, NRC may receive subsequent allegations that the chilled work environment persists and/or that the licensee's corrective actions are not working to resolve the SCWE problem. It is not uncommon for NRC to receive additional chilling effect allegations for a considerable period of time after the issuance of a CEL. SCWE problems warranting the issuance of a CEL are complex and are often caused by a number of contributing factors that have been allowed to persist for an extended time frame. Such problems are not remedied quickly. Months to years of effort are often required of the licensee to remedy the problems that caused the chilled work environment, train managers and staff, as appropriate, monitor performance in the SCWE area as corrective actions are being implemented to assure that the corrective actions are working and useful, and regain the trust of the workforce. If a SCWE allegation received after the issuance of a CEL is a matter that is reflective of the previously identified problem that should be addressed by the corrective actions that are in progress, the allegor should be so informed. If a SCWE allegation received after the issuance of a CEL involves factors that are different than the previously identified problem, the allegation should be evaluated as a new SCWE concern.

**5.9.g.8 Evaluation/Closure of Remaining Open Allegation Concerns After a Reactor Facility Has Ceased Power Operation**

When a power reactor is permanently shut down, the licensee must provide NRC with a



formal declaration (per 10 CFR 50.82(a)(1)(i)) that power operations have permanently ceased. As this action is being accomplished by the licensee, there will likely be a population of remaining open allegation concerns related to the facility while it was in an operational condition. The action office must review these remaining open concerns to determine how/whether they will be evaluated and how they will be closed.

Investigations/evaluations related to remaining open wrongdoing or discrimination concerns will continue to be processed to closure, since the possibility exists that an alleged wrongdoer could obtain employment with another licensee and possibly engage in similar (wrongful) activity. The disposition of other open allegation concerns will be determined by the action office on a case-by-case basis.

If NRC actions related to a specific allegation concern are to be altered from the actions originally directed by the ARB, the concern should be discussed via a follow-up ARB meeting, so that the amended actions may be presented to senior management (the ARB chairman) and documented in the allegation file. The following options are available to the action office, with examples of factors that may be considered by responsible staff:

Option 1: Continue to evaluate the allegation as originally directed by the ARB

- The concern will be relevant to licensee activities in a non-operational condition.
- NRC staff evaluation activity related to the concern has already been completed. In this instance, it would be appropriate to provide the allegor with feedback related to the already completed evaluation.
- An NRC inspection/evaluation planned while the plant was operating is one that is performed regardless of operational status and will be conducted notwithstanding the plant's transition to non-operational status. If such an inspection/evaluation is to be conducted, and it is reasonable to incorporate the allegation review within the inspection/evaluation activity, the allegation evaluation should be accomplished in this manner.

Option 2: Modify the allegation evaluation

- Send an RFI to the licensee vs. conducting an inspection that was originally directed by the ARB. If a previously planned NRC inspection will no longer be conducted because of the plant's transition to non-operational status, but responsible NRC staff believe that obtaining feedback regarding the concern is relevant for other reasons, an RFI to the licensee is a means of gathering such information.
- Send the concern to the licensee for information only vs. conducting an NRC inspection or requesting feedback from the licensee via an RFI. If responsible staff believe that evaluation of the concern by NRC is not relevant because of the plant's transition to non-operational status, but that the licensee may gain some perspective on the work environment at the facility by learning about issues that are being submitted to NRC, this option may be appropriate. In this instance, sending a concern to the licensee for information only would constitute closure of the concern.

Option 3: Close the concern with no additional action

- Concern does not have a bearing on current (non-operational) activities at the facility. If responsible staff believe that accomplishing allegation evaluation as

prescribed by the original ARB is irrelevant because of the plant's transition to non-operational status, and that no other feedback is warranted (e.g., from the licensee), the action office may consider the option of closing the concern with no additional action. As an example, if an inspection was planned to observe system modification work in response to an allegation, but the system modification is cancelled because the system is not needed in the plant's non-operational condition, it would be appropriate to close the concern by informing the allegor that no additional action by NRC is necessary.

- Concern is dated and relevance to current (non-operational) activities is questionable. Using this reasoning to close an allegation concern with no additional action requires the informed judgment of responsible staff in the action office (e.g., How dated is the concern? How irrelevant is the concern to current activities?). Closure documentation for the allegation in this instance must clearly explain NRC's reason for closure with no additional action. As an example, if a concern was received from a former contractor about a work environment problem in a particular plant department 2 years ago, but that plant department has since been disbanded or undergone a substantial staff reduction as part of the plant's transition to non-operational status, responsible NRC staff might conclude that evaluating such a concern is unnecessary and not relevant to current activities at the plant.
- Allegor did not provide sufficient detail to enable a focused NRC evaluation. (See Manual Section 3.2.r, "Allegations that are "Vague" or Lack Sufficient Detail to Enable NRC Evaluation.")

The options/examples noted in this Manual Section are not all-inclusive and are provided to support the action office's case-by-case determination of necessary actions in response to remaining open allegation concerns after power reactor operations have permanently ceased. The informed judgment of responsible staff should be applied to all such recommendations and these recommendations should be discussed with the ARB chairman so that final decisions are confirmed and the bases for those decisions are documented. It is also acknowledged that subsequent to the termination of power operations, NRC may continue to receive allegations related to activities that occurred while the plant was in operational status. The considerations discussed above will also apply to such concerns.

## **5.10 Allegor Response After Closure (RAC)**

### **5.10.a Allegor Feedback After Allegation 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 the 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 or the new allegation (if applicable), and indicating that additional NRC feedback is forthcoming. (8.8 Handbook,*

## *Section II.M)*

While it is expected that the final NRC correspondence in response to an allegation-related RAC will be documented in writing, it is acceptable for the initial “30 day” response to the allegor (if it is not the final response) to be accomplished by electronic mail or via a documented telephone discussion.

### **5.10.b AMS Documentation of Response After Closure and NRC Follow-Up**

An action has been included in AMS entitled “Response After Closure” to enable the recording of efforts taken to respond to such allegor feedback. This AMS action should be used exclusively to record negative allegor feedback. Whenever positive feedback is provided by allegors, it is acceptable to record such feedback in AMS, using an alternate AMS action item, such as “Letter from Allegor” or “Phone Call from Allegor.”

### **5.10.c Multiple Responses After Closure Regarding the Same Allegation/Concern**

On occasion, an allegor will submit multiple responses after closure regarding the same allegation/concern. Each such submittal should be considered by the ARB to determine if additional evaluation by NRC is appropriate. As indicated in Manual Section 5.10.a., if the information submitted by the allegor contains new or additional detail, the ARB should also consider whether to open a new allegation.

The allegor may also occasionally request that his/her allegation concern receive an independent review by another NRC office. If the ARB determines that an independent review is appropriate, the review should be arranged. Even if the allegor has not requested an independent review, the ARB should consider whether it may be appropriate to solicit feedback from a regional or headquarters office if the concern in question is highly technical, safety significant (if true), or of considerable public interest.

In the circumstance when no additional detail has been provided by the allegor in multiple responses after closure and the allegor continues to disagree with NRC’s conclusion(s), the ARB may discuss the development of final correspondence to the allegor. If all reasonable efforts have been made by the action office to re-evaluate the allegation/concern, including the consideration of NRC independent review, if it was requested, it is acceptable for the ARB to propose a final letter (or other means of correspondence) to the allegor indicating that NRC has completed its efforts in response to the allegation and that, unless new or additional detail can be provided by the allegor, no additional feedback will be provided by NRC regarding the allegation/concern-in-question. If the allegor has indicated that the NRC’s performance in responding to the allegation/concern represents misconduct, waste, fraud or abuse, the correspondence should also indicate that the allegor may contact the NRC OIG.

## **6.0 Freedom of Information Act Requests**

### **6.1 Allegation-Related FOIA Requests**

*Upon receipt of a FOIA request, it is normal practice under the Privacy Act to protect from release, an allegor's identity or allegor-identifying information unless mandated by the FOIA in some circumstances. (See Manual Sections 1.2 and 4.2.a). "Fingerprinting" information that may lead to identifying an allegor is normally redacted when responding to a FOIA request. In cases involving non-discrimination issues in which NRC determines that it is appropriate to release the identity of an allegor because the allegor is considered "widely known" in association with an allegation concern, the responsible OAC will make reasonable efforts to inform the allegor before the FOIA release. The means of determining an allegor to be "widely known" in association with an allegation concern and subsequently notifying the allegor about the information release are discussed in Manual Section 4.2.f (See definition of "widely known allegor" in the Manual Glossary). (8.8 Handbook, Section II.Q.1)*

### **6.2 "Fingerprinting" Information**

"Fingerprinting" information includes any piece or pieces of information which, separately or combined, may be analyzed and result in the identification of the allegor. Questions regarding whether specified information would fingerprint or has fingerprinted an allegor may be directed to an OAC, a regional/headquarters office FOIA coordinator, the AAA, regional counsel or a designated OGC attorney, or the FOIA Privacy, and Information Collections Branch in OCIO (see Manual Exhibit 23).

### **6.3 General Guidance for Responding to Allegation-Related FOIA Requests**

*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 allegors. 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 (allegor or third party), is provided in Sections 6.4 through 6.13 below and in Manual Exhibit 23. (8.8 Handbook, Section II.Q.2)*

### **6.4 OE Allegation-Related FOIA Response Reviews**

Management Directive 3.1, "Freedom of Information Act," directs the AAA or his/her designee in OE to review and concur in all responses to FOIA requests involving allegation records. Through concurrence, the AAA certifies that the information to be disclosed from the record, or portion thereof, would not cause harm to an open allegation or disclose the identity of an allegor whose identity still warrants protection. This supplemental review by OE provides an independent look and quality check of the documents identified and reviewed by the regional and headquarters offices in response to allegation-related FOIA requests. Effort is made by OE to complete the review and provide the results to the FOIA Privacy, and Information Collections Branch in OCOI within 5 working days, so as not to delay FOIA response times.

[Note: A Project AIM 2020 efficiency has eliminated the OE FOIA review discussed in Manual Section 6.4 for allegations that involve a discrimination concern. OE is currently implementing this recommendation as an interim measure and OCIO has agreed to make the changes to MD

3.1, "Freedom of Information Act," Handbook Sections II.A.14, and II.H.1, during the next required MD update.]

## **6.5 FOIA Exemptions Related to Withholding Allegor-Identifying Information**

The FOIA exemptions that may justify withholding information that would identify an allegor, witness, or confidential source are 5 U.S.C. 552(b)(7)(C), and (b)(7)(D). These FOIA exemptions are to be considered on a case-by-case basis by those responding to an allegation-related FOIA request including the OAC, the Director of OI (for OI confidential sources), regional counsel or a designated attorney in OGC, a regional/headquarters office FOIA coordinator, OCOI FOIA Privacy, and Information Collections Branch support personnel, or other designated individuals. FOIA Exemption 7(C) authorizes protection of records or information compiled for law enforcement purposes for which release could reasonably be expected to constitute an unwarranted invasion of personal privacy. Allegors and witnesses who have standard allegation process identity protection or have been granted confidential source status are protected under FOIA Exemption 7(D). As such, NRC may withhold information that has the potential for causing the identity of these individuals to be revealed.

## **6.6 Withholding Release of an Allegor's Name in Response to a FOIA Related to an Overriding Safety Issue**

In cases in which the NRC has disclosed the name of an allegor to the licensee in furtherance of an investigation or because of an overriding safety issue, the NRC will continue to withhold the allegor's name from release pursuant to a FOIA request from another party, unless the allegor is already widely known in association with the allegation. The reason for withholding the allegor's name in this instance is to protect the allegor from public scrutiny or criticism that might arise if the allegor's identity was publicly revealed.

## **6.7 FOIA Exemption 7(A)**

During review of an open allegation file, all documentation related to the allegation may be exempt from release under FOIA, in accordance with FOIA Exemption 7(A), when the release of information could reasonably be expected to interfere with potential or ongoing law enforcement proceedings. When an allegation is closed, its documentation may be subject to release under the FOIA, with appropriate redactions to protect the identity of the allegor and to avoid the release of other sensitive information.

While Exemption 7(A) would apply in most circumstances if an allegation is still open, information can be released from an open allegation file in response to a FOIA request in some cases.

Examples:

- if a FOIA request is submitted after an OI investigation is completed and all subsequent related actions, including enforcement, are also completed, and the only remaining action is to develop allegation closure documentation, it would be difficult to assert in this circumstance that the allegation was still open. (In this instance, every effort should be made to issue the allegation closure documentation before the FOIA response documentation is released.)

- as noted in Manual Section 5.9.f.2, an individual may be provided with a copy of the transcript of his/her interview with OI in order to prepare for a preliminary enforcement conference.
- as noted in Manual Section 5.9.f.3, when OI has completed its investigation of a discrimination concern but the allegation file remains open because the matter remains open with DOL, information about the results of the OI investigation is provided to both the allegor and the licensee in the form of an OI synopsis, or other appropriate summary of the OI investigation report, or a redacted copy of the OI report itself. The letters providing this information to the allegor and the licensee also inform both parties that the complete OI report may be requested under the FOIA, if desired. Subsequently, if the OI report is requested under FOIA by the allegor, or another party (including the licensee), even though the DOL case and related allegation file remain open, the OI report would normally be released, after review and appropriate redaction.

The decision to release the OI report should be determined on a case-by-case basis, since FOIA Exemption 7(A) specifies that an open case can be withheld in its entirety if release of the information could inappropriately interfere with the efforts of any regulatory authority evaluating a particular concern, not just NRC. As an example, if OI concludes that a discrimination concern is unsubstantiated, but the matter remains open with DOL, it is possible that the release of the OI report could interfere with DOL's evaluation. Since, in most instances of this type, the investigation stage of DOL's review has already been completed (i.e., the concern is past the DOL/OSHA investigative stage and is with either DOL/ALJ or DOL/ARB), it is reasonable to assume that releasing the OI report will not impact subsequent DOL investigatory efforts. Notwithstanding, this aspect must be considered before making the decision to release the OI report. There is no requirement for NRC to notify DOL of its decision in this matter.

## **6.8 Document Retention Requirements Applying to FOIA Exemption 7(A)**

When withholding the release of an entire allegation file under FOIA Exemption 7(A), the OAC may either provide the records to the FOIA contact in OIS with indication that they are to be withheld or retain the records and provide the FOIA contact with a 7(A) certification signed by two individuals (see Management Directive 3.1, "Freedom of Information Act," for further information). If a 7(A) certification is used, the FOIA request will "freeze" the documents in the file for 6 years, i.e., the documents cannot be destroyed because they have been captured under a FOIA request. A copy of the 7(A) certification form should be placed in the allegation file as a reminder of the "document freeze." In the absence of a 7(A) certification form, when an allegation file is closed, only those documents necessary to account for official action are required to be retained.

## **6.9 Allegor FOIA Request for Documents from Closed Allegations Submitted by the Allegor**

When an allegor files a FOIA request seeking documents from closed allegation files that were submitted by him/her, much of the related allegation file may be released, unless the documents would identify a witness or affect the personal privacy of another individual, the documents were covered by attorney/client privilege, the document contains pre-decisional information, or the release of a particular document could reasonably be expected to harm an NRC investigation. Manual Exhibit 23 provides additional detail regarding information that may be

withheld/redacted, and FOIA exemptions that may be applied depending on the affiliation of an individual identified in a document that has been captured under FOIA. If an alleged's FOIA request captures an open allegation, the contents of the open allegation file may be withheld in whole or in part, under Exemption 7(A), 7(C) or 7(D). If an alleged files a FOIA request seeking the documents from his/her own open allegation file(s), the entire file may be withheld under Exemption 7(A) if disclosure could reasonably be expected to interfere with an ongoing investigation or proceeding. However, anytime Exemption 7(A) is employed, each record or category of records must be considered for disclosure on a case-by-case basis. It is also noted that a FOIA request made by an alleged for information pertaining to himself/herself must be accompanied by written certification of the alleged's identity (see MD 3.1, "Freedom of Information Act").

### **6.10 Third Party FOIA Request**

When a FOIA request is filed by a third party (i.e., the public, the licensee, licensee counsel, licensee employees, or the media), the agency will not release the name of the alleged or fingerprinting information related to the alleged unless the alleged is widely known in association with the allegation. The third party will receive redacted versions of the documents protecting the name of the alleged or witnesses, if any, and any other information that might allow the requestor (or the public) to identify the alleged or witnesses. The staff will also redact information concerning other persons mentioned who have personal privacy interests, information covered by the attorney/client privilege, information that is pre-decisional, safeguards or proprietary information, or information that would interfere with an ongoing investigation. Manual Exhibit 23 provides additional detail regarding information that may be withheld/redacted, and FOIA exemptions that may be applied depending on the affiliation of an individual identified in a document that has been captured under FOIA. The third party will receive licensee and agency technical evaluations and the OI investigation synopsis. When a third party files a FOIA request seeking documents from an open allegation file, the entire file may be withheld if disclosure could reasonably be expected to interfere with an ongoing investigation or proceeding. However, each record or category of records must be considered for disclosure on a case-by-case basis to determine whether Exemption 7(A) applies. If Exemption 7(A) does not apply, information that merits withholding under another exemption may be withheld (see Manual Section 6.7).

### **6.11 Third Party FOIA Request for Allegations Submitted by a Specific Individual**

If a FOIA request is filed by a third party for allegations submitted to NRC by a specific individual, the requestor should be informed that the NRC cannot confirm or deny the existence of records subject to the request, because even denying the existence of records could provide information that the documents the FOIA requester is seeking indeed exist. This neither-confirm-nor-deny response is occasionally referred to as a "Glomar response," based on a legal case that established this precedent. If a Glomar response is employed, case law has demonstrated that it is unnecessary for responsible staff to provide estimates for efforts required to respond to the FOIA request.

### **6.12 Use of AMS to Create Reports Responsive to FOIA Requests**

Both the AAA and the OACs are authorized to create special reports derived from the AMS database using Microsoft Access to be responsive to FOIA requests. For this reason, every effort should be made to ensure that data entered into AMS is current and accurate (see Manual

Section 7.3.j). Reports prepared for the purpose of responding to FOIA requests must be suitably redacted to protect the identity of the alleged and any witnesses before being released.

### **6.13 FOIA Response Reference Table**

A reference table providing guidance for the processing of FOIA requests after an OI investigation is closed and enforcement action is completed is provided in Manual Exhibit 23.



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

### **7.1 AMS Description**

*The AMS is a computerized information system that contains a summary of significant data pertinent to each allegation. AMS is not a Privacy Act system of records because information cannot be retrieved by alleege name or by any type of identifier assigned to the alleege's name. (8.8 Handbook, Section II.O.1)*

*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. (8.8 Handbook, Section II.O.2)*

### **7.2 Access to AMS Database**

*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. (8.8 Handbook, Section II.O.5)*

Both the AAA and OACs are authorized to create special reports derived from the AMS database using Microsoft Access either to meet the needs of the NRC staff and management or to be responsive to FOIA requests. Reports prepared for the purpose of responding to FOIA requests must be suitably redacted to protect the identity of the alleege and/or other individuals who warrant protection before being released.

### **7.3 AMS Data Entry and Usage Guidance**

Information related to the description and use of AMS is contained in the AMS Users Guide (ADAMS Accession # ML11319A172). The AMS Users Guide provides the AMS user with the information necessary to enter, maintain, retrieve, and report on allegations documented within the AMS, including examples of data entry screens, system messages, and report formats. The following items reflect other specific guidance to be followed regarding the entry of data into AMS:

#### **7.3.a Allegation Number**

A unique identifying number is established for each allegation when the OAC documents the allegation in the AMS database. Although the AMS database is not the official agency record, the OAC inputs pertinent information regarding each allegation into AMS upon allegation receipt, usually within 10 working days of receipt, and as the allegation is evaluated to facilitate the reporting of allegation status at periodic intervals to responsible staff.

#### **7.3.b Allegation Concern Entry Threshold**

All concerns submitted to NRC that meet the definition of an allegation as specified in the Manual Glossary shall be entered into AMS. Therefore, there is no threshold for the acceptance of an allegation concern with regard to level of detail, relationship to a specific NRC regulation, or risk/safety significance. These factors may affect the type and amount of follow up activity that will be applied in response to the concern as determined by the ARB,

but should not be used to screen an allegation out of the process.

### **7.3.c Exclusion of Sensitive Information**

*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. (8.8 Handbook, Section II.O.3)* While recognizing that SGI shall not be placed in AMS, an effort should be made to briefly describe a security concern involving SGI in AMS without divulging SGI. For example, rather than entering a non-descript item in the concern description section of AMS (such as “SGI information”), a very brief description such as “security staffing” or “access control” could be used to provide some indication of the nature of the concern.

### **7.3.d Exclusion of Investigative Evidence**

*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/or investigations concerning alleged events. (8.8 Handbook, Section II.O.4)*

### **7.3.e Cross-Referencing**

If allegation concerns are raised that relate to other allegation concerns already in the AMS database, a cross-reference should be included in AMS entries for the new allegation concern that relate it to the existing allegation concern and vice versa.

### **7.3.f Non-Allegations in AMS**

Generally, concerns submitted to the agency that do not meet the definition of an allegation should not be entered into the AMS database. However, if the action office prefers to enter such items into AMS to facilitate tracking of the feedback provided in response to these items, this is acceptable, provided the item is categorized in the AMS database as a “non-allegation.” In fact, for an allegation with multiple concerns that contains a concern that does not fall under the allegation definition, including all of the concerns in AMS may provide for better administrative control of actions to be taken and feedback to be provided by the action office.

When a “non-allegation” concern is included in AMS, a description is to be provided as to why the item was determined not to be an allegation. The best approach is to describe the part or parts of the allegation definition that is/are not met (i.e., An assertion of impropriety or inadequacy?; Associated with NRC-regulated activity?; Answer known?). Simply indicating in AMS that....“The ARB determined that this was not an allegation.”.... is not sufficient.

### **7.3.g OIG-Related Information**

A single concern involving NRC staff or contractor misconduct or mismanagement of agency programs that is being referred to OIG should not be entered into the AMS database. However, if an allegation with multiple concerns also contains a concern involving referral to OIG, for better administrative control of actions to be taken and feedback to be provided by the action office to the allegor, it is acceptable to include in AMS as a placeholder, a non-descript concern, categorized as a “non-allegation,” called “OIG Item.” No specific

information about the OIG item is to be entered into AMS. This serves as a reminder to the OAC to provide feedback to the allegor, via the acknowledgment letter or other agreed upon means of correspondence, regarding how to get information about the disposition of the OIG item, including the provision of contact information for OIG.

### **7.3.h Exclusion of Law Enforcement Information**

Information related to referrals to the DOJ, law enforcement, and military agencies and organizations should not be entered into AMS unless the referral relates to the organization in its capacity as an NRC licensee (as examples, the Navy and Air Force hold NRC materials licenses).

### **7.3.i Consistency of Concern Description and Basis for Closure Information**

The description of concerns and the basis for closure contained in the AMS should be consistent with the information related to those concerns that is contained in the acknowledgment and closure letters to the allegor or in closure memoranda to the allegation file.

### **7.3.j Timeliness of AMS Data Entry**

Since AMS data is subject to requests under FOIA, every effort should be made to ensure that the data in AMS is current and accurate. As an example, a conclusion regarding the substantiation of an allegation concern should not be entered into AMS until the concern is formally closed. Since a FOIA request captures data at the moment the request is accepted, any preliminary information entered into AMS regarding the validity of a particular concern would also be captured, and if released, could be misinterpreted by the FOIA requestor as the NRC presuming the outcome of the evaluation of an allegation concern.

### **7.3.k Allegations Affecting Multiple Offices**

For allegations that require action by multiple regional and/or headquarters offices, the involved OACs should attempt to agree on a lead action office for allegation follow up, if possible, allowing for the entry of only one allegation into AMS. However, if such an approach makes administrative handling difficult, the opening of multiple allegation files may be considered.

### **7.3.l Entry of OI Case Number**

For wrongdoing or discrimination allegation concerns that prompt investigation by OI, the case number assigned by OI should be entered into AMS as a cross-reference.

### **7.3.m Entry of EA or IA Number**

For allegation concerns that result in enforcement action that is assigned an Enforcement Action (EA) or Individual Action (IA) number, the EA or IA number should be entered in to AMS as a cross-reference.

### **7.3.n Status of Allegations with Open DOL Cases**

For open DOL cases related to discrimination concerns, if NRC review/investigation has

found the discrimination concern to be unsubstantiated, or for substantiated cases, when NRC decides to await completion of the DOL process before considering enforcement action, the allegation file should be kept open in AMS while the DOL case remains open. This permits NRC evaluation of subsequent decisions resulting from the DOL process to determine if these decisions will affect the existing NRC conclusion that is based on the results of the OI investigation. However, if a discrimination concern has already been resolved via Early ADR, the outcome of a related DOL proceeding will not affect NRC's conclusion. The action office may leave the allegation file open awaiting the final DOL action; however, additional correspondence with the alleged regarding the discrimination concern is unnecessary since NRC's conclusion will not change. If the action office chooses to leave the allegation file open and continue corresponding with the alleged while the discrimination matter remains in the DOL process, the correspondence shall provide no indication that NRC's conclusion regarding the discrimination concern could change as a result of a positive DOL finding. It is also acceptable for the action office to consider closing the discrimination concern, even if the related DOL proceeding has not been completed.

Notwithstanding the above, if a subsequent DOL decision concludes that the alleged was discriminated against, Part II, Section 1.3.17 of the Enforcement Manual indicates that NRC would consider issuing a letter requesting the licensee to describe SCWE impacts resulting from the DOL finding of discrimination. For this reason, if the action office chooses to close the allegation file before the final DOL action because the discrimination concern was settled via Early ADR, a new "non-allegation" shall be opened in AMS to track the ongoing DOL proceeding. The non-allegation will not have an associated alleged, or require additional correspondence with the original alleged. It will be a placeholder to track the status of the DOL case. If DOL ultimately closes the case as unsubstantiated, the non-allegation would be closed by the OAC with no further action. If DOL concludes that discrimination occurred, appropriate staff will be informed so that actions can be initiated (ARB or enforcement panel) to discuss the possible issuance of a letter requesting the licensee to describe SCWE impacts resulting from the DOL finding of discrimination.

### **7.3.o AMS Entries Related to Early ADR**

For discrimination allegations involving Early ADR, the OAC will enter an action of "ADR Offered" into AMS at the time an acknowledgment letter is sent to an alleged extending an offer to enter into the Early ADR process. The start date on this action will be the date of the acknowledgment letter and the planned completion date should be 10 calendar days after the acknowledgment letter is issued. The OAC will also select "ADR" under the OI action field at the allegation and concern levels of AMS. The OE ADR Program Manager will provide the OAC with a copy of the signed agreement to mediate as documentation that the alleged has entered into Early ADR with the licensee. Once the alleged enters into Early ADR with the licensee, the "ADR Offered" action in AMS will be closed, an action of "ADR Alleged" will be entered into AMS, and the allegation is exempted from the allegation timeliness metrics. A planned completion date of 90 calendar days from the date the alleged entered into Early ADR will be entered into AMS under this action so that the OAC can track the date when settlement is expected. Given an acceptable agreement, the OAC can issue a closure letter to the alleged and then close the allegation in AMS. For concerns settled via Early ADR that are deemed acceptable by NRC, the concern should be coded as Not Applicable (N/A) vs. "substantiated" or "unsubstantiated" in AMS.

### **7.3.p ERA Section 211 Information Entry**

For discrimination concerns, the "Section 211 Violation" input at the Allegation Level of AMS should be checked "Yes," and the "Violation Sect. 211" block should be checked "Yes" at the Concern Level of AMS for the specific concern or concerns that involve an assertion of discrimination for engagement in protected activity. At the AMS Concern Level, select the "Discipline" related to the discrimination concern vs. inputting "Discrimination" in the Concern Level "Discipline" block. For example, if a control room operator submits a discrimination concern against Operations department management, at the AMS Concern Level, the "Violation Sect. 211" block should be checked "Yes," and "Operations" should be highlighted in the "Discipline" block. There will be some instances when it is difficult to categorize a specific functional discipline related to the discrimination issue. In those instances it is acceptable to select "Discrimination" in the Concern Level "Discipline" block.

It is to be emphasized that the AMS Allegation Level "Section 211 Violation" input and AMS Concern Level "Violation Sect. 211" input should be checked "Yes" in any instance of asserted discrimination for engaging in protected activity. These AMS entries should not be changed to "No" at a later time if, for example: the concern is later determined not to represent a prima facie showing of potential discrimination; the alleged subsequently "withdraws" his/her discrimination concern; the alleged refuses to participate in an NRC OI investigation; or the discrimination concern is investigated but not substantiated by OI.

The "Unknown" option for the AMS Allegation Level "Section 211 Violation" input and AMS Concern Level "Violation Sect. 211" inputs should be rarely used, and should only be entered in AMS when the incoming concern is confusing and it is difficult to tell if the alleged is actually making a claim of discrimination. In these instances further contact is needed with the alleged to determine whether the AMS entry can be changed to "Yes" or "No."

### **7.3.q Third Party Discrimination Concerns**

For tracking purposes, although NRC does not normally investigate third-party allegations of discrimination, such concerns are to be entered into the AMS database as assertions of discrimination under ERA Section 211. A selection of "Third Party" is provided in the "Violation Sect. 211" blocks at both the Allegation and Concern levels of AMS. Should the alleged indicate that because of the perceived discrimination against the other individual, he/she or a group of individuals are now afraid to raise safety concerns, a separate concern should be entered into AMS with the Concern Discipline coded as "Chilling Effect." The chilling effect/chilled work environment concern should be considered by the ARB separate from the third-party discrimination assertion.

### **7.3.r Inadequate Licensee RFI Response**

Staff actions taken to address the inadequacy of a licensee's response to an RFI should be documented in the allegation file and in AMS. An action entry entitled "Inadequate Licensee RFI Response" has been included in the AMS database for this purpose. The AMS description field for this action should indicate the inadequacy and specific additional actions taken by the staff (a non-descript statement such as... "The ARB determined that the licensee's RFI response was inadequate"... is not sufficient). This will allow for a more informative data search regarding the adequacy of licensee responses to prior RFIs when evaluating the appropriateness of using an RFI for future allegations.

### **7.3.s Response After Closure**

An action has been included in AMS entitled “Response After Closure” to enable the recording of efforts taken to respond to negative allegor feedback. It is acceptable to record positive feedback provided by allegors, using an alternate AMS action item, such as “Letter from Allegor” or “Phone Call from Allegor.”

### **7.3.t Identifying Means of Correspondence**

If the method of NRC response requested by the allegor is other than written correspondence, AMS entries for the Acknowledgement Letter, Status Letters, and the Closure Letter should clarify the means of correspondence. For example, the Acknowledgement Letter Action text could read, “Acknowledgement Letter provided via e-mail, as requested by allegor.”

### **7.3.u Contractor, Subcontractor, or Vendor Involved in Discrimination Concern**

If an allegation includes a discrimination concern that involves a contractor, subcontractor or vendor, the related licensee is recorded in AMS as the primary Facility. The contractor, subcontractor or vendor involved in the alleged discrimination matter should also be included in AMS as an associated Facility (if it has an NRC license), or as an associated Outside Organization.

### **7.3.v Agreement State Concerns**

If an individual providing an Agreement State licensee concern agrees to contact and be contacted directly by Agreement State personnel about the evaluation of his/her concern(s), such matters are provided to the appropriate RSAO for referral to the Agreement State and are not processed as allegations. If such an item has already been entered into AMS, the entry shall be coded as a "Non-Allegation" at the AMS Allegation Level, and individual concerns shall be coded as "Agreement State" at the AMS Concern Level.

### **7.3.w Awareness of Auto-Fill Function when Adding New Concern**

When a new concern is added within an allegation, AMS fills the new concern with data from the previous concern to facilitate data entry. Be mindful of this when adding new concerns and assure that incorrect data is removed or changed. As an example, if Concern 1 of an allegation is a discrimination concern with the Section 211 block checked “Yes,” the Section 211 block will be checked “Yes” for the next concern added. If the new concern is not a discrimination concern, inaccurate data entry will result.

### **7.3.x Prima Facie Information**

The AMS Concern Level includes a data input item for the prima facie determination related to a discrimination concern. This item should be entered into AMS after Regional Counsel (for regional allegations) or OGC (for headquarters allegations) has made the prima facie determination.

## **7.4 AMS Database Maintenance, Monitoring, and Security**

### **7.4.a Service Level Agreement Between OE and OIS**

A Service Level Agreement (SLA) is maintained between OE and OCIO regarding the oversight, monitoring, and security of the AMS database. Since OE does not maintain staff knowledgeable in the information technology aspects of database administration and security, OIS performs the large majority of these tasks through the SLA.

AMS resides on the Business Application Support System (BASS) operated by the OCIO Business Process Improvement and Applications Division. BASS provides a consolidated UNIX environment with centralized services for operating systems and database administration for several NRC system applications, including AMS. Through the SLA, these applications can rely on BASS for hardware, operating system, database server, and application server protection.

### **7.4.b System Owner Responsibilities Related to AMS Database Oversight**

OE, as the AMS System Owner, has responsibilities related to monitoring staff access to AMS data, reporting database problems to OCIO, and responding to OCIO requests related to system administration, oversight, testing, and security assessment. These areas are discussed below. Additionally, as needed, OE allegation program staff may add data fields to the AMS database if it is determined that the agency requires such data to be gathered for future evaluation. OE allegation program staff may also provide training to agency allegation coordination staff regarding changes to database administration and/or function (support from OCIO may be solicited by OE for such efforts).

#### **7.4.b.1 System Access Level Monitoring**

Since initial sign-on to AMS is authenticated via network LAN user identification, an agency-wide level of system access security is provided in that manner. Regarding individual staff member access to AMS, OE allegation program staff evaluate staff access to AMS data approximately every 4 months. To perform this task, OE queries the database with regard to those NRC staff members who have been granted Administrator or Coordinator access. Since the Administrator and Coordinator access levels can manipulate data within the database, it is important to assure that only appropriate staff are granted these levels of access. After obtaining the data with regard to NRC staff members with Administrator or Coordinator level access to the database, the allegation program staff in OE assess whether the access levels have been assigned appropriately. Any questions are directed to allegation coordination staff in the regional or headquarters offices to verify whether an individual should or should not be assigned a particular level of database access, using the "least privilege" approach, i.e., staff members assigned an access level in the AMS database should be assigned the lowest possible access level, as appropriate. After obtaining feedback from the regional and/or headquarters allegation program staff, OE modifies the assigned access levels in AMS accordingly. With regard to Read-Only access to the AMS database, the individual regional and headquarters offices decide which staff members require this level of access.

#### **7.4.b.2 System Problems/Warnings**

Any problems/warnings experienced regarding the use of the AMS database are reported to OCIO for evaluation and response. Normally, allegation program coordination staff report system problems/warnings to allegation program staff in OE, who forward the issue to OCIO for evaluation. However, it is acceptable for allegation coordination staff to forward AMS system problems/warnings directly to OCIO, provided allegation program staff in OE are also informed about the indicated problem/warning. Problems may be reported to OCIO at the following e-mail address: [AMSHelp.Resource@nrc.gov](mailto:AMSHelp.Resource@nrc.gov).

Conversely, OCIO will notify OE allegation program staff regarding problems identified with the function of the database, and when it is required to take the AMS database out-of-service for maintenance or evaluation of such problems. OE allegation program staff subsequently notify agency allegation coordination staff in the regions and headquarters offices with regard to the problems identified by OCIO and/or the period of time within which the database will be taken out of service.

#### **7.4.b.3 OCIO Requests Related to System Administration, Oversight, Testing, And Security Assessment**

Periodically, OCIO will request a system owner (OE for AMS) to review documentation related to database oversight and monitoring (e.g., security audit, system logs) to verify that requirements related to database oversight and security are being met. OE will review the documentation and provide feedback to OCIO, as requested. Because OE may not be familiar with all of the information technology aspects of such requests, OE may request support from OCIO to help understand the nature of the request, and the expectations for OE feedback. Documentation provided to OE by OCIO regarding database oversight and monitoring should be retained by OE for future reference (OCIO will designate retention requirements for such documentation).

OCIO conducts periodic contingency tests to determine whether the AMS database can be quickly brought back into service after an event that disables the system. OE allegation program staff may be requested to participate in these tests from the perspective of confirming that the system has been taken down, and subsequently determining that the system has been successfully restored to service.

Regarding database security, OCIO conducts periodic scans and an annual security assessment, and takes actions to resolve any anomalies identified as a result of these efforts. Problems requiring resolution may be formalized into a Plan of Action and Milestone (POA&M). A POA&M identifies tasks to be accomplished in support of Certification and Accreditation (C&A). It details resources required to accomplish the elements of the C&A, any milestones/dates in meeting the tasks, and scheduled completion dates for the tasks. The purpose of a POA&M is to identify, assess, prioritize, and monitor the progress of corrective efforts for security weaknesses found in programs and systems. OCIO will discuss any POA&M identified as a result of a security assessment with OE, as the resolution of a POA&M is the responsibility of the System Owner.



## **8.0 Allegation Program Oversight**

### **8.1 Biennial Allegation Program Assessments**

#### **8.1.a Assessment Requirement**

As specified in MD 8.8 Section III.L.9, the AAA performs a biennial assessment of allegation activities conducted by each regional office and specified headquarters offices. For the purposes of the allegation program, OI, OE, OGC, OIG, and RES are not considered action offices, and are not subject to biennial allegation program assessment.

#### **8.1.b Assessment Team**

The assessments are conducted by a team of individuals, including allegation program oversight staff from OE and normally one or more OACs from an alternate regional or headquarters office.

#### **8.1.c Areas Reviewed During the Allegation Program Assessment**

The allegation program assessment is conducted against the requirements of MD 8.8, “Management of Allegations,” any AGMs issued since the previous revision of MD 8.8, and the Allegation Manual. The biennial assessment includes a review of a 10% sample of the allegation files closed (minimum of 2 files) during the previous calendar year, along with an assessment of performance against established program goals, allegation review boards, resolution of alleged responses after case closure, allegation status tracking, and other focus areas, as deemed appropriate. Since the number of files reviewed is a relatively small percentage of the total number of files closed in the previous calendar year, a “smart” sample is chosen to assure that some files are of a more complex nature (e.g., files involving multiple concerns, wrongdoing, discrimination, Early ADR, etc.), and that the sample involves different facilities and concern types, and allegations closed throughout the year. This assures that a broader spectrum of program attributes will be looked at as part of the file review.

As requested, the assessment team will look at a small sample of open files, and offer suggestions on completed actions. These suggestions will be offered in an advisory capacity and are not documented in the assessment team report. The region/program office will be provided an opportunity to recommend specific open allegation files for the assessment team to review. If time does not permit the assessment team to review the open files during the onsite assessment, arrangements can be made for staff in OE to review the files at a later time.

The assessment team will provide feedback on ARB quality through its review of documented ARB decision records as part of the allegation file reviews conducted during the assessment rather than through comments related to the observation of any ARB meeting conducted during the assessment (since allegations that are the subject of ARBs conducted during the assessment are not part of the closed allegation population being evaluated by the assessment team). However, if an ARB is conducted while the assessment team is onsite, the assessment team may choose to attend the ARB. The assessment team will participate in and offer comments during such ARBs, and will provide advice as requested by ARB participants.

Additional discussion of review areas focused upon by the allegation program assessment team is provided in the following:

#### **8.1.c.1 Capture of and Response to Allegor Concerns**

A significant goal of the NRC Allegation Program is the appropriate capture of and response to allegor concerns. For the closed allegation file reviews, all file documentation that may contain an allegor's concern is reviewed (i.e., correspondence from the allegor, supporting information provided by the allegor, records of telephone conversations with the allegor, transcripts/summaries of OI or other staff interviews with the allegor, and DOL process correspondence, if applicable) to determine if all of the allegor's concerns were captured. For any concerns captured subsequent to initial allegation receipt, the assessment evaluates whether these concerns were promptly processed. The basis for closure for each allegation concern reviewed is assessed for completeness and accuracy, and availability within the allegation file.

Acknowledgment letters and other file correspondence are reviewed to assure that the identified concerns are properly characterized. Concerns identified after initial allegation receipt should also have been acknowledged with the allegor (it is understood that in some cases, such a concern can be acknowledged and resolved in a status or closure letter, or reviewed and acknowledged via another allegation file). Correspondence to the allegor is also reviewed to determine whether pertinent allegation process guidance is appropriately described (e.g., Early ADR guidance, DOL guidance, sensitivity of security-related concerns, licensee RFI information). Closure letters are reviewed to assure that the allegor has been informed in sufficient detail of the NRC determination regarding each concern, including a conclusion as to the validity of the concern. For security-related concerns, since current NRC policy may result in the provision of limited information to an allegor regarding the staff's review and conclusions, the allegation file should contain sufficient detail to demonstrate that the concern was evaluated and resolved.

The assessment also provides commentary regarding any significant issues/problems identified by the region or headquarters office during the course of the assessed calendar year related to the area of allegation concern identification and resolution, including a discussion of how the issue(s) was/were remedied and any lessons learned that were developed as a result.

#### **8.1.c.2 Allegor Identity Protection**

Another significant goal of the NRC Allegation Program is the protection of allegor identity. The assessment provides general commentary regarding process identity protection and if appropriate, will include discussion regarding any significant issues/problems related to allegor identity protection occurring during the course of the assessed calendar year, including how the issue(s) was/were remedied and any lessons learned that were developed as a result.

#### **8.1.c.3 Process Timeliness Goals**

Several critical timeliness metrics apply to the implementation of the NRC Allegation Program. For the calendar year evaluated, the assessment documents how the regional

or headquarters office performed with regard to the specific process metrics indicated below:

- ARBs - All initial ARBs are to be held within 30 days of receipt of the allegation by the action office. For any concerns captured subsequent to initial allegation receipt, the assessment evaluates whether these concerns were taken to an ARB within 30 days of when the additional concern was received.
- Acknowledgment Letters - For allegations with allegeders whose identity is known, 90% of acknowledgment letters are to be issued within 30 days and 100% within 45 days of allegation receipt. It is recognized that in some instances, allegeders do not provide sufficient information during allegation receipt to permit future contact, or specifically request that the NRC not provide correspondence to them regarding their concerns. In these instances, the reason(s) for not providing an acknowledgment letter (or other process correspondence) to the allegeder should be clearly documented in the allegation file.
- Allegation File Closure - For allegations that do not rely on an evaluation by other government agencies (e.g., DOL, FEMA, Agreement State), or do not involve an Early ADR mediation or an NRC OI investigation of alleged wrongdoing or discrimination or an OI Assist to Staff, the agency goals are to close 90% of these allegations within 150 days, 95% within 180 days, and 100% within 360 days. As is implied by the goals themselves, it is recognized that allegation file closure times will occasionally extend beyond the goal due to the specific circumstances and complexities involved. [See Manual Section 8.1.c.6 below for discussion of closure timeliness expectations for allegation files that are not covered by the allegation closure timeliness metrics.]

The assessment report discusses how the region or headquarters office performed with regard to the specific process metrics indicated above for the calendar year evaluated. Any significant discrepancies (e.g., missed initial ARB or acknowledgment letter, technical allegation closure >360 days) identified during the assessment file review or other review conducted by the region or headquarters office during the course of the assessed calendar year is discussed in more detail, including a discussion of how the issue(s) was/were ultimately remedied and any lessons learned that were developed.

#### **8.1.c.4 ARB Quality**

A general assessment of ARB quality provides commentary regarding the overall efficiency and effectiveness of ARBs conducted at the regional or headquarters office. This includes an assessment of the quality of ARB documentation/minutes (e.g., Is the allegation concern accurately described?, Are assigned actions and expectations for concern evaluation clear?, Is sufficient discussion provided for taking (or not taking) certain actions?). Input for such an assessment can be accomplished through ARB documentation review and interviews with ARB participants. Expectations/program guidelines for ARB conduct and documentation are denoted in MD 8.8 and this Manual.

#### **8.1.c.5 Response After Closure**

Following a review of the survey results received from allegeders from 2000 to 2002 regarding their satisfaction with the NRC allegation process, the AAA prepared a

Commission Paper with a recommendation that the surveys be discontinued, due to a lack of meaningful response. While the Commission agreed to discontinue the surveys, the staff was directed (in the SRM for SECY-02-0163) to monitor other feedback provided by alleged during the course of normal process implementation about the adequacy of NRC closure of their concern(s) via the allegation process, to determine if process modifications may be necessary. A negative response from an alleged in response to allegation closure is documented in AMS as a "Response After Closure." The allegation program assessment reviews all Responses After Closure (RAC) provided during the assessed calendar year to evaluate the adequacy of the follow-up NRC response, and to offer comments, if necessary, as to whether any process modifications may be needed based on the alleged feedback. When obtaining the list of RACs to be reviewed for the assessment, all RACs responded to in the assessed calendar year are captured, including RAC responses related to allegations closed in prior years, and concern-related RACs for allegations that are not yet closed.

The assessment provides commentary with regard to any significant issues/problems identified by the region or headquarters office during the course of the assessed calendar year related to a RAC, including a discussion of how the issue(s) was/were remedied and any lessons learned that were developed as a result.

#### **8.1.c.6 Closure Timeliness Expectations Related to Allegation Files Not Under the Metrics**

##### **8.1.c.6(a) Timeliness of Closure of Technical Concerns Not Under the Metric**

A number of allegation files that are excluded from the allegation file closure timeliness metrics include additional technical concerns that would otherwise be covered by the metrics. Even though the timeliness metrics do not apply to these additional technical concerns, it is expected that every effort will be made to evaluate and close them within the approximate time frames outlined by the closure timeliness metrics. If during a program assessment, a determination is made that efforts were not taken to evaluate and close such concerns in as timely a manner as appropriate, the assessment team would view this as a negative observation.

##### **8.1.c.6(b) Timeliness of Allegation File Closure after OI Investigation Closure**

Manual Sections 5.9.f.1 and 5.9.f.2 describe actions to be taken to close an allegation file after closure of a related OI investigation. The amount of time required to close the allegation file after closure of the OI investigation will vary based on specific circumstances, on whether other concerns within the allegation remain open, and on whether or not enforcement action is being pursued. The general expectation is that the action office will close the allegation file in as timely a manner as appropriate, considering these contributing factors. If in the judgment of the assessment team, it is determined that there was an excessive delay in closing the allegation file after all of the actions related to the related OI investigation were completed, a negative observation may be identified by the assessment team.

#### **8.1.d Assessment Checklist**

A checklist to support performance of the allegation program assessments is included in Manual Exhibit 24. The checklist is intended for use by the members of the assessment team, but may also be used by regional and headquarters office allegation coordination staff on a routine basis for self-assessment purposes, including reviews aimed at assessing the completeness of individual allegation files upon closure.

The checklist consists of two sections. The first section addresses general allegation program controls/administration. The second section addresses individual allegation file completeness. The checklist also provides references to some aspects of the allegation program that are not routinely evaluated during an allegation program assessment (e.g., allegation training, regional/office implementation procedures, charging time to allegation activity).

#### **8.1.e Allegation Program Assessment Categorization**

The biennial assessment describes overall program performance by indicating whether established program performance goals (indicated below) were met/exceeded, and by indicating whether any findings of significance were identified during the assessment. As appropriate, additional commentary will be provided as to whether performance has improved, is being sustained, or is declining; whether there are any apparent program weaknesses and/or strengths; and program efficiency and effectiveness.

- As examples:
- a clean assessment would be categorized as....“Met/exceeded all program goals, no findings of significance.”
  - a lower assessment categorization might be....“Met/exceeded all program goals with one exception, limited findings of significance.”
  - a more negative categorization might be....” Met/exceeded some program goals, missed more than one program goal, several findings of significance.”

"Limited" findings of significance will be defined as 3 or less, and "several" as more than 3. "Findings of significance" are described in further detail in Manual Section 8.1.g below.

#### **8.1.f Allegation Program Performance Goals**

- |                            |  |
|----------------------------|--|
| <u>Identity Protection</u> | Goal: No inappropriate releases of alleged identity or information that could otherwise compromise an alleged's identity   |
| <u>Response Quality</u>    | Goal: Appropriate capture of and response to concerns provided by the alleged for the files reviewed during the assessment |
| <u>Timeliness</u>          | Goal: Hold all initial ARBs within 30 days   |
|                            | Goal: Acknowledgment letters - 90% in 30 days, 100% in   |

45 days

Goal: Closure (non-OI, DOL, ADR, FEMA, Agreement State) - 90% in 150 days, 95% in 180 days, 100% in 360 days

Response After Closure

Goal: Appropriate response - i.e., any new information is evaluated and appropriately responded to, or if no additional NRC action is warranted, proper rationale is provided. If appropriate, a new allegation is opened.

ARB Quality

Goal: Effective conduct, i.e., proper attendance, program guidance applied, thorough decision documentation

**8.1.g Definition of an Allegation Program Assessment Finding of Significance**

For consistency, and in an effort to clarify what types of assessment findings would be considered more significant than others (and would be highlighted during the assessment exit meeting), the following list describes items that would be considered “findings of significance”:

- inadvertently releasing an allegor's identity or inappropriate release/disclosure of allegation-related information in a manner that could compromise the allegor's identity or the NRC's evaluation of the issue
- not identifying an allegor's concern, or identifying one very late in processing, making response very untimely
- responding inadequately or inappropriately to an allegor's concern. [Examples would be situations where the original response had to be revised without receiving any new information from the allegor, where the closure narrative does not support the conclusion, or where the scope and depth of the evaluation was not adequate.]
- missing the 45-day deadline for an acknowledgment letter or sending no acknowledgment letter at all
- having an initial ARB at > 30 days [The significance of such a finding depends on how late the initial ARB actually occurred and how it was compensated for, i.e., if held shortly after day 30, it is less difficult to make up for time lost, than if the initial ARB is held considerably later.]
- taking more than 360 days to close a technical allegation, where the delay could have been avoided with better administrative control and tracking and/or better response by assigned technical staff

For clarification, these refer to distinct findings that would be identified during the specific allegation file reviews, or during the review of pertinent AMS data in preparation for the assessment. As indicated above, a broader summary with regard to overall program performance and performance against process goals will be provided to region/headquarters office management at the assessment exit meeting. A “finding of

significance” will affect the conclusion as to whether program goals have been met in some (but not all) cases. [For example: the release of an alleged’s identity would result in a conclusion that the Identity Protection goal was not met. However, if several acknowledgment letters were issued in >30 days, but <45 days from allegation receipt, the Acknowledgement Letter timeliness goal would be met as long as 90% or more of the acknowledgment letters were issued in 30 days or less.] Also, while the above list represents an effort to highlight “findings of significance,” it is not intended to be exclusive of all other potentially significant findings. That is, if another finding, not specifically identified in the above list, is identified during course of an allegation program assessment that produces a substantive negative impact on the program, such a finding may also be considered “significant.” The assessment team will consider giving credit for actions taken by the region or headquarters office in response to a finding of significance, if the region or headquarters office self-identified the item, took prompt and appropriate corrective action once identified, and took actions in an effort to prevent recurrence. Comments by the assessment team on other issues not considered to be “findings of significance” will be referred to as “observations.”

#### **8.1.h Assessment Report**

After the assessment, a summary report will be developed. As indicated in Manual Section 8.1.e, the assessment team report will describe overall program performance by indicating whether established program performance goals were met/exceeded, and by indicating whether any findings of significance were identified during the assessment. As appropriate, additional commentary will be provided as to whether performance has improved, is being sustained, or is declining; whether there are any apparent program weaknesses and/or strengths; and program efficiency and effectiveness. The assessment team will include the discussion of significant findings and observations representing a theme in the body of the assessment team report. An “observation theme” refers to an item of lesser significance that is observed by the assessment team on multiple occasions (3 or more) within the allegations files reviewed. The regional or headquarters office will be provided with an opportunity to review and comment on a draft of the assessment team report before it is issued in final form. The regional or headquarters office will not be requested to concur in the draft report, but rather will be offered an opportunity to provide comments and identify inaccuracies. The assessment team report will include references to MD 8.8 and AGMs as appropriate so that the basis for a significant finding or observation theme is clear.

Isolated observations and comments from the assessment team reviews will not be discussed in the assessment team report but rather will be collated for discussion in an OAC counterpart setting. The isolated observations and comments from the assessment team reviews will be provided to the OAC at the conclusion of the assessment for information and use as deemed appropriate.

Given the lower significance of isolated observations and comments and the fact that these items will have already been discussed with regional or headquarters office allegation coordination staff during the assessment, these items will normally not be discussed during the assessment exit meeting. However, as deemed appropriate or as requested by the regional or headquarters office receiving the assessment, such items may be discussed at the exit meeting.

If performance goals were missed and/or significant findings were identified, the regional or headquarters office will be asked to provide a response to the AAA describing how specific

problems were resolved and what actions have been proposed or were taken in an effort to preclude recurrence, unless sufficient response was provided to the assessment team during the on-site review. It is also possible, on a case-by-case basis, that a region or headquarters office may be asked to respond to an observation theme or an observation that was not considered to be a finding of significance, if the assessment team and/or the AAA feel that such a response would be helpful to other regional or headquarters offices or would provide important insight to program performance.

## **8.2 Allegation Program Self-Assessments**

From 1996 to 2005, the AAA performed an annual assessment of allegation activities conducted by each regional office and specified headquarters offices. In February 2006, the AAA announced that these assessments would be conducted biennially. The assessment frequency was reduced in recognition of the results of allegation program implementation assessments conducted in prior years, which indicated that the regional and headquarters offices consistently met or exceeded the performance and quality requirements denoted in MD 8.8. During the years in which a regional/headquarters office assessment is not conducted by the AAA, the office or region shall conduct a self-assessment and submit the results of that self-assessment to the AAA for review. This section provides general guidance for conducting the self-assessment.

### **8.2.a Self-Assessment Activities**

It is recognized that the regional/headquarters office allegation programs already include inherent continuing self-assessment through several means, for example, metrics monitoring, periodic status assessment of open allegation files, quality reviews of closed allegation files, lessons-learned documentation related to identified problems, selected self-assessments of certain program functions, etc. These continuing regional/headquarters office assessment efforts are encouraged and are not intended to be replaced by the self-assessment guidance contained in this Manual Section. Credit for these continuing self-assessment activities can and should be taken in the regional or headquarters office self-assessment report provided to the AAA. In addition, it is suggested that the self-assessment include complete file reviews (similar to those performed during the AAA biennial program assessment) of a small sample of allegation files closed in the previous calendar year (at least 5% (minimum of 2 files)) to assess the general implementation of program guidance, e.g., capturing concerns, adequacy of response to concerns, protecting alleege identity, meeting process timeliness guidance, ARB quality, allegation file completeness, implementation of Early ADR guidance (if applicable), etc. As discussed in Manual Section 8.1.c, a “smart” sample should be chosen to assure that a broad spectrum of program attributes will be looked at as part of the file review. The file reviews shall be performed by an individual knowledgeable of allegation program requirements and independent of the program and files under review, e.g., an allegation coordinator from another office or region, or a manager or senior staff member not responsible for program implementation or involved in the resolution of any of the specific allegation files selected for review.

### **8.2.b Self-Assessment Guidelines**

By way of the self-assessment file reviews and other internal assessment activities accomplished over the previous calendar year, the region or headquarters office performing the self-assessment shall provide general commentary and assessment with regard to the



program areas noted in Manual Sections 8.1.c.1 through 8.1.c.5. A checklist has been provided (see Manual Exhibit 24) to assist in the performance of allegation file review as part of the self-assessment.

Regarding the RAC review, it is emphasized that the self-assessment shall review **all** RACs responded to during the assessed calendar year to evaluate the adequacy of the follow-up NRC response, and to offer comments, if necessary, as to whether any process modifications may be needed based on the alleged feedback. When obtaining the list of RACs to be reviewed for the self-assessment, assure that all RACs responded to in the assessed calendar year are captured, including RAC responses related to allegations closed in prior years, and concern-related RACs for allegations that are not yet closed.

While not specified in Manual Sections 8.2.c.1. through 8.2.c.5 above, other items that may be evaluated as part of a regional or headquarters office self-assessment are as follows:

- internal tracking mechanisms
- internal status discussions for open allegations
- routine status letters
- timeliness to get issues to the OAC
- timeliness to get information into AMS
- allegation-related FOIAs
- Agreement State issues
- referrals to other agencies/OSHA
- allegation documentation storage/control
- staff training
- upkeep of regional instructions/procedures
- timeliness of closure of allegation files to which the closure timeliness metrics do not apply after all actions have been completed

## 9.0 Glossary (8.8 Handbook, Section VI)

**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), the Office of Nuclear Regulatory Research (RES), 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. [Note: Allegations related to security Force-on-Force exercises are under the responsibility of NSIR.] The Office of Investigations (OI), the Office of Enforcement (OE), the Office of General Counsel (OGC), the Office of the Inspector General (OIG), and the Office of Nuclear Regulatory Research (RES) are not considered action offices for the purposes of this Manual.*

**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 counseling, 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>*

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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.*

- *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;*
- *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.*

*Although not from a source external to 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.*

***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 the 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.*

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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 Review Board (ARB).** A board established by regional administrators and headquarters office directors to determine the safety significance and appropriate NRC follow-up 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 Office of Investigations (OI), OE (or regional enforcement personnel), and Office of the General Counsel (OGC) (or regional counsel) may participate as deemed necessary by the ARB chairperson.

**Alleger.** An individual who or 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.** 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.

**Burden of Proof (Standards of Evidence).** Burden of proof refers to the obligation that one party shift the proposed conclusion from that offered by the opposing party. For a matter of alleged discrimination, the worker holds the initial burden of proof through the requirement to establish a prima facie showing of potential discrimination. Once the worker establishes a prima facie showing, the burden of proof shifts to the employer to provide evidence to justify that the adverse personnel action taken was legitimate and non-discriminatory.

The evidence provided by both parties is evaluated by the legal/regulatory body rendering a conclusion with regard to the matter of alleged discrimination. For an NRC OI investigation to substantiate a discrimination concern, the investigation must conclude that discrimination occurred by a preponderance of the evidence. NRC employs the preponderance of the evidence standard for essentially all of its investigative and adjudicatory decisions. Preponderance of the evidence is the typical standard of evidence in civil cases, and implies that the prevailing party must present a level and quality of evidence that outweighs that of the other party. It is commonly referred to as the "more likely than not standard," or the "more probable than not standard," or the "51% standard." In a DOL discrimination case, the worker has the burden to prove his/her case by a preponderance of the evidence. If the legal/regulatory body determines that an equal level/quality of evidence has been provided by both parties, the defendant prevails.

Preponderance of the evidence is the lowest (easiest to meet) of the three standards of proof applied to civil and criminal issues. The other two, in order of rigorousness are "clear and convincing evidence" and "beyond a reasonable doubt" and are described in more detail below:

Clear and convincing evidence: Clear and convincing evidence is a higher burden of proof than preponderance of the evidence. Clear and convincing proof means that the evidence presented by a party must be substantially more probable to be true than not. In this standard, a greater degree of believability must be met than the "more likely than not" proof needed when applying the preponderance of the evidence standard. To prove something by clear and convincing evidence, the party with the burden of proof must demonstrate that the matter is substantially more likely than not to be true.

The “clear and convincing” standard applies to specific types of civil cases. With regard to NRC-related discrimination cases, this standard is applied when the employer has the burden of establishing, by clear and convincing evidence, that it would have taken the same action against the worker regardless of the protected activity. However, the employer has this burden only after the worker establishes by a preponderance of the evidence that he/she was retaliated against. If the worker cannot establish, by a preponderance of the evidence, that he/she was retaliated against, the burden of proof does not shift to the employer. If the worker does show, by a preponderance of the evidence, that he/she was discriminated against, then the burden of proof would shift and the employer would have to demonstrate, by clear and convincing evidence, that it would have taken the adverse personnel action regardless of the individual’s engagement in protected activity.

Beyond a reasonable doubt: This is the highest standard used as the burden of proof and typically only applies in criminal proceedings. The only matters involving NRC-regulated activity to which the “beyond a reasonable doubt” standard would apply are substantiated OI investigations accepted by the DOJ for criminal prosecution.

For NRC-related discrimination claims, DOL/OSHA, DOL/ALJ and the DOL/ARB weigh the evidence based on the discussion above when evaluating a discrimination claim filed under ERA Section 211. This also applies if a DOL ARB final decision is appealed to a Federal Circuit Court of Appeals. However, it is to be noted that the above discussion does not address every possible scenario involving burdens of proof and standards of evidence, particularly when decisions are appealed, where the standard may change depending on what is being appealed and at what stage the appeal was filed.

***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 is available as Manual Exhibit 5).

***Confidentiality.*** Identity protection for an allegor who has been granted confidential source status. (See the definitions of “identity protection” and “confidential source” in this Glossary.)

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

***Disparate Treatment.*** Disparate treatment, in the context of a matter of alleged discrimination, occurs when a person is treated differently or less favorably than others in a similar situation. At issue in a case of disparate treatment is whether the employer's actions were motivated by discriminatory intent.

**Dual Motive.** Dual motive is referenced when evidence suggests two explanations for action taken against an employee—one constituting a legitimate business reason, and the other demonstrating a prohibited practice. Dual motive cases typically arise when an employer does not specifically state an illegitimate reason for an employment decision, but defends its actions by indicating that they were reasonable and taken for "just cause." When such decisions are challenged, the legal/regulatory authority is asked to decide whether an employer acted for legitimate or illegitimate reasons. For NRC-related discrimination concerns, a dual motive case is one in which it is asserted that a worker's engagement in protected activity contributed to the employer's decision to take an adverse personnel action, beyond any other reason stated by the employer. As indicated in the definition of the term "pretext," it could be decided that the employer's actions were fully discriminatory (i.e., that the reasons stated by the employer were pretextual), that the employer's actions were not discriminatory, or that the employers actions were taken for both prohibited and legitimate reasons (i.e., dual motive). In such cases, the employer would attempt to establish, by clear and convincing evidence, that there were legitimate business reasons for taking the adverse personnel action and that it would have taken the action even in the absence of protected activity.

**Early Alternative Dispute Resolution (Early ADR).** For allegation process purposes, a process involving the use of a neutral mediator to facilitate discussion between an allogger 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 alloggers 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/>).

**Harassment and Intimidation.** Harassment is any action or behavior toward a person that has the effect or perceived effect of causing the person to be uncomfortable or afraid of working in the employment environment. Harassment covers a wide range of offensive intentional behaviors intended to be disruptive, and is characteristically repetitive, often contributing to a hostile work environment (see definition of "hostile work environment"). Harassment that progresses to the point of establishing a hostile work environment is a form of discrimination.

Harassment that is threatening in nature is a form of intimidation. Intimidation literally means to "fill with fear" and refers to actions intended to coerce or inhibit by threats, insults or aggressive behavior. Intimidation involves an action or actions with the objective or perceived objective of preventing or discouraging a person from engaging in protected activities. Additionally, it is possible for a threat of discrimination to be considered an adverse action under Section 211 depending on case specific circumstances. Regional Counsel/OGC should be consulted whenever an allogger informs NRC about a threat of discrimination so that the matter can be evaluated in more detail from a legal perspective to assure that the concern, if substantiated, is associated with NRC-regulated activity. Intimidation is a form of discrimination.

**Hostile Work Environment.** A hostile work environment is a discriminatory work environment that is either pervasive and regular, or acute but severe, that detrimentally affects the employee, and that is created because the employee engaged in protected activity. A hostile work environment involves unwelcome conduct and/or comments, often harassing in nature that unreasonably interferes with an employee's work performance. Anyone in the workplace can be involved in the creation of a hostile work environment (manager, co-worker, contractor, vendor). The victim can be anyone affected by the conduct, not just the individual at whom the offensive

conduct is directed. In order for action to be taken against the employer, the employee must establish a prima facie showing of potential discrimination in relation to an asserted hostile work environment. The employee must show that the harassment affected a term, condition, or privilege of employment. This means that the harassment was severe enough to interfere with the individual's ability to work effectively and that the employee encountered an atmosphere in which the harassing conduct was so severe or pervasive that a reasonable co-worker would conclude that it impacted his/her freedom to raise safety concerns. Also, it must be demonstrated that the employer was aware of the hostile work environment and either failed to take prompt and effective action to remedy the situation or took no action at all. For reference, a DOL ARB decision from a Clean Air Act discrimination case (ARB 99-094) provided a list of factors to be weighed in evaluating a hostile work environment claim, as noted below:

- the complainant suffered intentional discrimination because of his/her membership in a protected class
- the discrimination was pervasive and regular
- the discrimination detrimentally affected the complainant
- the discrimination would have detrimentally affected a reasonable person of the same protected class, and
- the existence of respondeat superior liability (This a legal term referring to the fact that an employer is responsible for employee actions performed within the course of their employment.)

**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 the NRC. For an allegor who has been granted confidential source status, identity protection is also referred to as "confidentiality."*

**Inspection (Technical Review).** *For allegation process purposes, 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 allegation process purposes, this term refers to an organization/individual, or a contractor, subcontractor, or vendor to an organization/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 immediate action by the licensee to evaluate and address the issue.*

**Presiding Officer.** *The Commission, and 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.*

**Pretext.** In general terms, pretext refers to a motive alleged or an appearance assumed in order to conceal a true purpose, intention or condition. When an employer's asserted justification for taking an adverse personnel action is not found to be valid or when it is found that the circumstance suggested by the employer for taking the action was not relied upon, the reasoning offered by the employer is termed pretextual. After the employer has provided evidence in an effort to demonstrate that its actions were legitimate and non-discriminatory, the employee in response will attempt to show, by a preponderance of the evidence, that the employer's reasons are either not believable or that discrimination was more likely the employer's motivation. If the employee's efforts are successful, it would be concluded that the reason offered by the employer for taking the personnel action was a pretext. If the employee's efforts are not successful, it would be concluded that the employer's action was not motivated by the employee's protected activity. Lastly, the employee could be successful, in part, and a decision could be rendered that the employer's action was motivated by both prohibited and legitimate reasons (i.e., dual motive).

**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 in order 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 allegor identifying information or classified, Safeguards, 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 in order 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 additional information from the licensee regarding the validity of an allegation concern to enable a complete NRC assessment in response to the concern.

**Retaliation.** The act of taking an adverse action against an individual, at least in part, for engaging in protected activities (see Manual Section 5.2.c.2(a)(2) for examples of adverse action). Retaliation is a form of discrimination.

**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 concerns are promptly 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 alleger.** *An alleger 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 Manual Section 5.7).*

## List of Abbreviations/Acronyms

### Term Abbreviations

ADR	Alternative Dispute Resolution
ADRA	Alternative Dispute Resolution Act
AEC	Atomic Energy Commission
AGM	Allegation Guidance Memorandum
ADAMS	Agencywide Documents Access and Management System
AMS	Allegation Management System
ARB	Allegation Review Board
Assist	OI Assist to Staff
BASS	Business Application Support System
Caller ID	Caller Identification
CAP	Corrective Action Program
CD/CD-ROM	Compact Disc, Compact Disc – Read-Only Memory
CEL	Chilling Effect Letter
CFR	Code of Federal Regulations
COL	Combined License
cROP	Construction Reactor Oversight Program
DTG	Discrimination Task Group
DVD	Digital Video Disc
EA	Enforcement Action
ECP	Employee Concerns Program
EGM	Enforcement Guidance Memorandum
ERA	Energy Reorganization Act
FEIS	Final Environmental Impact Statement
FOIA	Freedom of Information Act
FR	Federal Register
HOO	Headquarters Operations Officer
ICP	Internal Commission Procedures
ICR	Cornell University Institute for Conflict Resolution
IMC	Inspection Manual Chapter
IMPEP	Integrated Materials Performance Evaluation Program
IN	Information Notice
IP	Inspection Procedure
ISR	Investigation Status Report
IT	Information Technology
ITAAC	Inspections, Tests, Analyses, and Acceptance Criteria
MC&A	Material Control and Accounting
MD	Management Directive
MIRG	Millstone Independent Review Group
MML	Master Materials License
MOU	Memorandum of Understanding
NCV	Non-Cited Violation
NOV	Notice of Violation
OSI	Overriding Safety Issue
P2P	Peer-to-Peer
PA	Privacy Act
PII	Personally Identifiable Information

## List of Abbreviations/Acronyms

### Term Abbreviations (continued)

PI&R	Problem Identification and Resolution
PN	Preliminary Notification
RAC	Response After Closure
RFI	Request for Information
RIS	Regulatory Issue Summary
ROP	Reactor Oversight Program
RTR	Research and Test Reactor
RSO	Radiation Safety Officer
SAIC	Special Agent in Charge (OI)
SCWE	Safety Conscious Work Environment
SER	Safety Evaluation Report
SERP	Senior Executive Review Panel
SGI	Safeguards Information
SL	Severity Level
SLA	Service Level Agreement
SMRT	Senior Management Review Team
SNM	Special Nuclear Material
SRM	Staff Requirements Memorandum
SUNSI	Sensitive Unclassified Non-Safeguards Information
TIA	Task Interface Agreement
TAR	Technical Assistance Request
U.S.C.	United States Code

### NRC Positions/Organizations

AAA	Agency Allegation Advisor
ADM	Office of Administration
DEDO	Deputy Executive Director for Operations
DEDM	Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration and Human Capital
EDO	Executive Director for Operations
NMSS	Office of Nuclear Material Safety and Safeguards
NRR	Office of Nuclear Reactor Regulation
NRO	Office of New Reactors
NSIR	Office of Nuclear Security and Incident Response
OCA	Office of Congressional Affairs
OCIO	Office of the Chief Information Officer
OCHCO	Office of the Chief Human Capital Officer
OE	Office of Enforcement
OGC	Office of General Counsel
OI	Office of Investigations
OIG	Office of the Inspector General
OIP	Office of International Programs
OPA	Office of Public Affairs
RES	Office of Nuclear Regulatory Research
RI	NRC Region I
RII	NRC Region II

## List of Abbreviations/Acronyms

### NRC Positions/Organizations (continued)

RIII	NRC Region III
RIV	NRC Region IV
RSAO	Regional State Agreement Officer
SECY	Office of the Secretary of the Commission

### External Organizations

ALJ/OALJ	Administrative Law Judge/DOL Office of Administrative Law Judges
CIGIE	Councils of the Inspectors General on Integrity and Efficiency
DOE	Department of Energy
DOJ	Department of Justice
DOL	Department of Labor
DOL ARB	Department of Labor Administrative Review Board
DOT	Department of Transportation
EEOC	Equal Employment Opportunity Commission
EPA	Environmental Protection Agency
FEMA	Federal Emergency Management Agency
GAO	Government Accountability Office
MSPB	Merit Systems Protection Board
OSC	Office of Special Counsel
OSHA	Occupational Safety and Health Administration
USDA	U.S. Department of Agriculture
VA	Veterans Administration

## Appendix A

### References, NRC Policy Documents, and Procedures Related to the Allegation Process

#### 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).*
- *Inspector General Act of 1978, as amended (5 U.S.C. App. 3, et seq.).*
- *Title 18, U.S.C., "Crimes and Criminal Procedures"*

#### 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, and 76.7, "Employee Protection," and 150.20, "Recognition of Agreement State Licensees."*
- *29 CFR 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."*

## 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"
- 8.8 "Management of Allegations"
- 8.11 "Review Process for 10 CFR 2.206 Petitions."
- 9.19 "Organization and Functions, Office of Enforcement."
- 10.158 "NRC Non-Concurrence Process"
- 10.159 "The NRC Differing Professional Views Program"
- 10.160 "Open Door Policy."
- 12.2 "NRC Classified Information Security Program."
- 12.4 "NRC Communications System Security Program."
- 12.5 "NRC Cybersecurity Program."
- 12.6 "NRC Sensitive Unclassified Information Security Program."
- 12.7 "NRC Safeguards Information Security Program."

## Commission Policy Statements

- 9/13/84; 49 FR 36032 *Investigations, Inspections, and Adjudicatory Proceedings*
- 3/19/85; 50 FR 11030 *Handling of Late Allegations*
- 1/24/89; 54FR 3424 *Conduct of Nuclear Power Plant Operations (first NRC mention of Safety Culture)*
- 8/14/92; 57 FR 36678 *Alternative Means of Dispute Resolution*
- 5/14/96; 61 FR 24336 *Freedom of Employees in the Nuclear Industry to Raise Safety Concerns Without Fear of Retaliation*
- 5/23/96; 61 FR 25924 *Protecting the Identity of Allegers and Confidential Sources*

Commission Papers (SECY, COMSECY) - if an associated Staff Requirements Memorandum (SRM) is retrievable on the NRC website, it is indicated

SECY-84-26	Staff Processing of Allegations Involving Applications for Operating Licenses
SECY-84-249B	Handling of Late Allegations
SECY-90-354	Resolution of Investigative Priorities When There is Initial Strong Evidence of Misconduct
SECY-94-089	Response to the Report of the Review Team for Reassessment of NRC's Program for Protecting Allegers Against Retaliation
SECY-96-045	Commission Policy Statement on Protecting the Identity of Allegers and Confidential Sources
SECY-96-056	Policy Statement, "Freedom of Employees in the Nuclear Industry to Raise Safety and Compliance Concerns Without Fear of Retaliation"
SECY-96-199	Plan to Better Focus Resources on High Priority Discrimination Cases
SECY-97-006	Follow-up to the Annual Report on Allegations and Responses to Recommendations of the Millstone Independent Review Group
SECY-97-147	Re-Evaluation of SECY-96-199 Issues; Plan to Better Focus Resources on High Priority Discrimination Cases (SRM)
SECY-97-260	Resolution of Public Comments in Response to Request for Public Comments in the Federal Register Notice, "Safety Conscious Work Environment" (SRM)
SECY-98-176	Proposed Options for Assessing a Licensee's Safety Conscious Work Environment (SRM)
SECY-98-192	Resolution of Allegations Concerning the Performance of Agreement State Programs (SRM)
SECY-99-002	Agreement State Compatibility Designation for NRC Employee Protection Regulations (SRM)
SECY-99-071	Assessing the Effectiveness of the Allegation Program from Review of Survey Forms Sent to Allegers (SRM)
SECY-99-273	Impact of Changes to the Inspection Program for Reactors on Implementing the Allegation Program (SRM)
SECY-00-177	Implementing the Allegation Program under the Revised Reactor Oversight Process (SRM)



SECY-01-113 Rulemaking Plan: Fatigue of Workers at Nuclear Power Plants (SRM)

SECY-02-098 Status of the Staff's Evaluation of the Possible Use of Alternative Dispute Resolution in the Agency's Enforcement Program

SECY-02-0163 Survey of Allegers

SECY-02-166 Policy Options and Recommendations for Revising the NRC's Process for Handling Discrimination Issues (SRM)

SECY-03-115 Alternative Dispute Resolution Review Team Pilot Program  
Recommendations for Using Alternative Dispute Resolution (ADR)  
Techniques in the Handling of Discrimination and Other External Wrongdoing Issues (SRM)

SECY-04-020 Treatment of Physical Protection Under the Reactor Oversight Program

SECY-04-044 Proposed Pilot Program for the Use of Alternative Dispute Resolution in the Enforcement Program (SRM)

SECY-04-111 Recommended Staff Actions Regarding Agency Guidance in the Areas of Safety Conscious Work Environment and Safety Culture (SRM)

SECY-04-191 Withholding Sensitive Unclassified Information Concerning Nuclear Power Reactors from Public Disclosure (SRM)

SECY-04-195 Rulemaking Plan: Clarification of NRC Civil Penalty Authority Over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities

SECY-05-101 Withholding from Disclosure Sensitive Unclassified Information Concerning Materials Licenses and Certificate Holders

SECY-05-187 Status of Safety Culture Initiatives and Schedule for Near-Term Deliverables (SRM)

SECY-05-212 Proposed Rulemaking - Clarification of NRC Civil Penalty Authority over Contractors and Subcontractors Who Discriminate Against Employees for Engaging in Protected Activities (RIN 3150-AH59) (SRM)

SECY-07-032 Recommended Staff Actions Regarding Correspondence with Allegers Involving Security-Related Concerns (SRM)

COMSECY-08-0009 Report of the Senior Executive Review Panel - Peach Bottom Lessons Learned (SRM)

Generic NRC Communications (Bulletins, Circulars, Information Notices (IN), Regulatory Information Summaries (RIS))

*IE Information Notice 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*

#### NUREGs

*NUREG/BR-0240, "Reporting Safety Concerns to the NRC"*

*NUREG/BR-0313, "Pre-Investigation ADR Program"*

*NUREG-1499, "Reassessment of NRC's Program for Protecting Allegers Against Retaliation"*

*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-1600, "NRC Enforcement Policy"*

#### NRC Inspection Manual Chapters

*NRC IMC 0305, "Operating Reactor Assessment Program."*

*NRC IMC 1007, "Interfacing Activities Between Regional Offices of NRC and OSHA."*

*NRC IMC 1120, "Preliminary Notifications."*

*NRC IMC 2505, "Periodic Assessment of Construction Inspection Program Results."*

#### NRC Inspection Procedures

*IP 35007, "Quality Assurance Program Implementation During Construction and Pre-Construction Activities" (Appendix 16 - Inspection of Criterion XVI - Corrective Action)."*

- IP 40001, "Resolution of Employee Concerns."
- IP 40002, "Inspections to Review Allegations."
- IP 40100, "Independent Safety Culture Assessment Followup."
- IP 43003, "Reactive Inspections at Nuclear Vendors."
- IP 71152, "Identification and Resolution of Problems."
- IP 88110, "Quality Assurance: Problem Identification, Resolution and Corrective Action."
- IP 93100, "Safety-Conscious Work Environment Issue of Concern Followup."
- IP 95001, "Supplemental Inspection for One or Two White Inputs in a Strategic Performance Area"
- IP 95002, "Supplemental Inspection for One Degraded Cornerstone or Any Three White Inputs in a Strategic Performance Area"
- IP 95003, "Supplemental Inspection for Repetitive Degraded Cornerstones, Multiple Degraded Cornerstones, Multiple Yellow Inputs or One Red Input"
- IP 95003.02, "Guidance for Conducting an Independent NRC Safety Culture Assessment"

#### Other Documents

- NRC Announcement No. 18, "Reporting Suspected Wrongdoing "Office of the Inspector General (OIG)," March 3, 1994.
- *NRC Enforcement Manual*, <http://www.nrc.gov/about-nrc/regulatory/enforcement/guidance.html#manual>.
- Office of Investigations, *Investigations Procedures Manual*, Revised August 2006.
- *Memorandum of Understanding (MOU) between the U.S. Nuclear Regulatory Commission (NRC) and the Department of Labor (DOL) [Federal Register 10/27/1998, Vol. 63, No. 207, Pgs. 57324-57325]*
- *Internal Commission Procedures (ICPs)*, available at <http://www.nrc.gov/about-nrc/policy-making/internal.html>.
- *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.*
- *NMSS Procedure SA-400, "Management of Allegations," January 22, 2001.*
- *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.

- 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](#)).

## Appendix B

### Allegation Guidance Memoranda

<u>AGM #</u>	<u>DATE</u>	<u>SUBJECT</u>
96-01	11/12/96	Additional Measures to Protect the Identity of Allegers and Confidential Sources
96-01, Rev. 1	03/14/97	Additional Measures to Protect the Identity of Allegers and Confidential Sources (Revision 1)
96-02	11/12/96	Assuring the Technical Adequacy of the Basis for Closing an Allegation
98-01	01/29/98	Informing Allegers and Licensees of Completion of Investigations by the Office of Investigations
98-01, Rev. 1	06/26/98	Informing Allegers and Licensees of Completion of Investigations by the Office of Investigations (Revision 1)
98-02	10/19/98	Revising the Criteria for Investigating Discrimination Allegations (ML012410431)
00-01	07/05/00	Guidance on Correspondence, Releasing Information in (FOIA) Requests, and Defining Discrimination and the Elements of a Prima Facie Case of Discrimination(ML003727873)
03-01	03/11/03	Authorized Use of Hand-Delivered Commercial Carriers as an Alternate Means of Communicating with Allegers (ML030500270)
AAA Memo	06/11/03	“Written Notice” Language Concerning Department of Labor (DOL) Filings
04-02	07/29/04	Guidance on Confirmation of Identity of Concerned Individuals who Submit Allegations via Internet (ML042150016)
04-03	10/15/04	Implementation of the Alternative Dispute Resolution Pilot Program within the Allegation Program
04-03, Rev. 1	04/27/05	Implementation of the Alternative Dispute Resolution Pilot Program Within the Allegation Program (Revision 1) (ML051160015)
AAA Memo	07/19/05	Lessons Learned - Engaging Allegers With Potential Safeguards Information

AAA Memo	12/14/05	Review of Inadvertent Releases of Allegor Identities
05-01	03/16/06	Guidance on Correspondence to Licensees and Concerned Individuals Regarding Security-Related Concerns (ML060750008)
07-01	05/14/07	Updated Guidance on Correspondence to Licensees and Concerned Individuals Regarding Security-Related Concerns (ML071310407)
08-01	12/29/08	Interim Guidance in Response to Lessons Learned from the Allegation Assessment of Inattentive Security Officers at Peach Bottom Atomic Power Station (ML083640272)
AAA Memo	04/21/09	Modifications to the Allegation Program Assessment Process (ML091110541)
AAA Memo	09/09/09	Allegation Program Refresher Training - Identity Protection and Processing Requirements (ML092400437)
08-01, Rev. 1	02/02/10	Final Guidance in Response to Lessons Learned from the Allegation Assessment of Inattentive Security Officers at Peach Bottom Atomic Power Station (ML092400437)
11-01	11/20/11	Late Filed Allegations (ML11227A241)
12-01	03/09/12	NRC Chilling Effect Letters (ML1205A058)

## Appendix C

### Allegation Program Contact Information

#### NRC Office Allegation Coordinators (OAC) – Contact information

<http://www.internal.nrc.gov/OE/> - from OE internal web page, click “OE Rosters” then “NRC Allegation Staff” to view a current listing of OAC names, OAC e-mail addresses, group e-mail addresses, region/office toll free telephone numbers, OAC phone numbers, and fax numbers

NRC Safety Hotline: 1-800-695-7403 (contacts OAC for the geographical area from which the call originates during normal working hours, contacts the NRC Headquarters Operations Officer during other hours)

#### NRC Region/Headquarters Toll Free Telephone Numbers:

Region I: 1-800-432-1156  
Region II: 1-800-577-8510  
Region III: 1-800-522-3025  
Region IV: 1-800-952-9677  
NRC Headquarters: 1-800-368-5462

NRC OIG Hotline: 1-800-233-3497

The NRC Safety Hotline toll free number, the region/headquarters toll free telephone numbers, and the OIG Hotline toll free number are also located on NRC Form 3, “Notice to Employees”  
[http://www.nrc.gov/reading-rm/doc-collections/forms/form3\\_us.pdf](http://www.nrc.gov/reading-rm/doc-collections/forms/form3_us.pdf)

NRC Headquarters Operations Officer: 1-800-816-5100

Agency Allegation Advisor: 301-415-8529

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Department of Labor (DOL) Contact Information

- Occupational Safety and Health Administration (OSHA)
- Office of Administrative Law Judges (OALJ)
- Administrative Review Board (DOL ARB)
- U.S. Circuit Courts of Appeals

#### DOL National Office

U.S. Department of Labor  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

DOL National Toll Free Numbers - 1-866-487-2365 (1-866-4USADOL), 1-800-397-6251  
DOL/OSHA National Toll Free Number - 1-800-321-OSHA(6742)

#### For Concerns about DOL Performance or the Validity of Information Provided to DOL:

U.S. Department of Labor  
Office of Investigations  
Complaint Analysis Office  
Room S 5514  
200 Constitution Avenue, NW  
Washington, DC 20210

DOL OSHA Regional Field Offices  
<http://www.osha.gov/html/RAmap.html>

Regional Office – OSHA Region 1  
JFK Federal Building, Room E340  
Boston, Massachusetts 02203  
(617) 565-9860  
(617) 565-9827 FAX

Regional Office – OSHA Region 3  
U.S. Department of Labor/OSHA  
The Curtis Center-Suite 740 West  
170 S. Independence Mall West  
Philadelphia, PA 19106-3309  
(215) 861-4900  
(215) 861-4904 FAX

Regional Office – OSHA Region 5  
230 South Dearborn Street, Room 3244  
Chicago, Illinois 60604  
(312) 353-2220  
(312) 353-7774 FAX

Regional Office – OSHA Region 7  
Two Pershing Square Building  
2300 Main Street, Suite 1010  
Kansas City, Missouri 64108-2416  
(816) 283-8745  
(816) 283-0547 FAX

Regional Office – OSHA Region 9  
90 7th Street, Suite 18100  
San Francisco, California 94103  
(415) 625-2547  
(415) 625-2534 FAX

Regional Office – OSHA Region 2  
201 Varick Street, Room 670  
New York, New York 10014  
(212) 337-2378  
(212) 337-2371 FAX

Regional Office – OSHA Region 4  
61 Forsyth Street, SW  
Room 6T50  
Atlanta, Georgia 30303  
(678) 237-0400  
(678) 237-0447 FAX

Regional Office – OSHA Region 6  
525 Griffin Street, Suite 602  
Dallas, Texas 75202  
(972) 850-4145  
(972) 850-4149 FAX

Regional Office – OSHA Region 8  
1999 Broadway, Suite 1690  
Denver, Colorado 80202  
720-264-6550  
720-264-6585 FAX

Regional Office – OSHA Region 10  
1111 Third Avenue, Suite 715  
Seattle, Washington 98101-3212  
(206) 553-5930  
(206) 553-6499 FAX

DOL OSHA Regional Contacts (as of 9/30/2014)

OSHA Region 1 – Michael Mabee  
OSHA Region 2 – John Scheck  
OSHA Region 3 – William Seguin  
OSHA Region 4 – Ben Ross  
OSHA Region 5 – Sherrill Benjamin  
OSHA Region 6 – Gerald Foster  
OSHA Region 7 – Robert Mercer  
OSHA Region 8 – Rita Lucero  
OSHA Region 9 – Joshua Paul  
OSHA Region 10 – Victoria Coleman

DOL OSHA Regional Contact e-mail addresses:  
(Last Name).(First Name)@dol.gov

DOL OSHA National Toll Free Number to Report Unsafe Working Conditions or Safety & Health Violations - 1-800-323-6742

DOL – OALJ

U.S. Department of Labor  
Office of Administrative Law Judges  
Suite 400 North  
800 K St., NW, Washington, DC 20001-8002

Telephone: 202-693-7300  
Fax: 202-693-7365  
[www.oalj.dol.gov/](http://www.oalj.dol.gov/)



OALJ Questions: [OALJ-Questions@dol.gov](mailto:OALJ-Questions@dol.gov)

DOL ARB

U. S. Department of Labor  
Administrative Review Board  
Room S-5220  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210

Telephone: (202) 693-6200  
Fax: (202) 693-6220  
<http://www.dol.gov/arb/>

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U. S. Circuit Courts of Appeals

Washington D.C. Office  
U. S. Courts of Appeals for the Federal Circuit  
717 Madison Place, NW  
Washington, D.C. 20439  
(202) 275-8000

Circuit Courts of Appeals Addresses/Phone Numbers

U. S. Court of Appeals for the 1st Circuit  
1 Courthouse Way  
Boston, Massachusetts 02210  
(617) 748-9057

U. S. Court of Appeals for the 2nd Circuit  
Thurgood Marshall U.S. Courthouse  
40 Foley Square  
New York, NY 10007  
(212) 857-8500

U. S. Court of Appeals for the 3rd Circuit  
21400 U.S. Courthouse  
601 Market Street  
Philadelphia, PA 19106  
(215) 597-2995

U. S. Court of Appeals for the 4th Circuit  
1100 East Main Street  
Richmond, VA  
(804) 916-2700

U. S. Court of Appeals for the 5th Circuit  
600 S. Maestri Place  
New Orleans, LA 70130-3408  
(504) 310-7700

U. S. Court of Appeals for the 6th Circuit  
540 Potter Stewart U.S. Courthouse  
100 East Fifth Street  
Cincinnati, Ohio 45202  
(513) 564-7000

U.S. Court of Appeals for the 7th Circuit  
Room 2722  
219 S. Dearborn Street  
Chicago, IL 60604  
(312) 435-5850

U.S. Court of Appeals for the 8th Circuit  
Thomas F. Eagleton United States Courthouse  
111 South 10th Street  
Room 26.325  
St. Louis, MO 63102  
(314) 244-2600

U.S. Court of Appeals for the 9th Circuit  
P.O. Box 193939  
San Francisco, CA 94119-3939  
(415) 355-8000

U. S. Court of Appeals for the 10th Circuit  
The Byron White U.S. Courthouse  
1823 Stout Street  
Denver, CO 80257  
(303) 844-3157

U.S. Court of Appeals for the 11th Circuit  
56 Forsyth St. N.W.  
Atlanta, Georgia 30303  
(404) 335-6100

U.S. Court of Appeals for the 12th Circuit  
333 Constitution Avenue  
Washington, D.C. 20001  
(202) 216-7000

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Merit Systems Protection Board (MSPB)

1615 M Street, NW  
Washington, DC 20419  
(202) 653-7200 - telephone  
(202) 653-7130 - fax  
(800) 209-8960 - toll free message line  
[mspb@mspb.gov](mailto:mspb@mspb.gov)

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U. S. Office of Special Counsel (OSC)

Headquarters Office  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505

Tel: (202) 254-3600  
Fax: (202) 254-3711  
[www.osc.gov/](http://www.osc.gov/)

For complaints alleging prohibited practices in federal employment:

Complaints Examining Unit  
U.S. Office of Special Counsel  
1730 M Street, N.W., Suite 218  
Washington, D.C. 20036-4505  
Tel: (800) 872-9855  
(202) 254-3670

A list of OSC contacts is located at: <http://www.osc.gov/contacts.htm>

=====  
NRC Agreement States

NRC Agreement State Contact Information  
<http://nrc-stp.ornl.gov/asdirectory.html>

=====  
Equal Employment Opportunity Commission (EEOC)

U.S. Equal Employment Opportunity Commission  
131 M Street, NE  
Washington, DC 20507  
(202) 663-4900  
1-800-669-4000  
[info@eoc.gov](mailto:info@eoc.gov)

=====  
U. S. Department of Energy

U. S. Department of Energy  
1000 Independence Ave., SW  
Washington D.C.  
(202) 586-2203

DOE Office of the Inspector General  
1000 Independence Ave. SW  
Washington, DC 20585

DOE IG Field Offices – <http://energy.gov/ig/about-us/field-offices>

Radiation Emergency Assistance Center/Training Site (REAC/TS) at the Oak Ridge Institute for Science and Education (ORISE) – provides dose estimates for medical events and radiological incident medical consultation

Address: MC-100-44  
P. O. Box 117  
Oak Ridge, TN 37831

Phone: 865-576-3146  
Emergency Phone: 865-576-1005

DOE National Laboratories

Brookhaven National Lab  
P.O. Box 5000  
Upton, NY 11973-5000  
(631) 344-8000

National Energy Technology Laboratory  
626 Cochrans Mill Road  
P. O. Box 10940  
Pittsburgh, PA 15236-0940  
(412) 553-7681  
(other locations in Morgantown, WV,  
Houston, TX, Fairbanks, AK, and Albany, OR)

Oak Ridge National Laboratory  
P.O. Box 2008  
Oak Ridge, TN 37831  
(865) 574-4160

Argonne National Laboratory  
9700 S. Cass Avenue  
Argonne, IL 60439  
(630) 252-2000

Pacific Northwest National Laboratory  
P. O. Box 999  
Richland, WA 99352  
(509) 375-2121  
1-888-375-7665

National Renewable Energy Laboratory  
1617 Cole Blvd.  
Golden, CO 80401-3305  
(303) 275-3000

Idaho National Laboratory  
2525 Fremont Avenue  
Idaho Falls, ID 83415  
(866) 495-7440

Los Alamos National Laboratory  
P. O. Box 1663  
Los Alamos, NM 87545  
(505) 667-5061

Lawrence Livermore National Laboratory  
7000 East Avenue  
Livermore, CA 94550  
(925) 422-1100  
925-422-1370 FAX

Princeton Plasma Physics Laboratory  
P.O. Box 451  
Princeton, NJ 08543-0451  
(609) 243-2000

Savannah River National Laboratory  
Savannah River Site  
Aiken, SC 29808  
(803) 725-3020

Fermi National Accelerator Laboratory  
P.O. Box 500  
Batavia, IL 60510-5011  
(630) 840 3000  
(630) 840 4343 FAX

Ames Laboratory  
311 TASF  
Ames, IA 50011-3020  
(515) 294-2770

Thomas Jefferson National Accelerator Facility  
12000 Jefferson, Avenue  
Newport News, VA 23606  
(757) 269-7100  
(757) 267-7363 FAX

National Renewable Energy Laboratory  
901 D. Street, S.W. Suite 930  
Washington, D.C. 20024-2157  
(202) 488-2200

Lawrence Berkeley National Laboratory  
1 Cyclotron Road  
Berkeley, CA 94720  
(510) 486-4000

Sandia National Laboratories  
P. O. Box 5800  
Albuquerque, NM 87185  
(505) 284-2001

SLAC National Accelerator Laboratory  
2575 Sand Hill Road  
Menlo Park, CA 94025  
(650) 926-3000

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Department of Justice (DOJ) Radiation Exposure Compensation Program

U.S. Department of Justice  
P. O. Box 146  
Ben Franklin Station  
Washington, D.C. 20044

The Radiation Exposure Compensation Act (RECA) was passed in 1990 to allow partial restitution to individuals who developed exposure to radiation during atmospheric nuclear tests (1945-1962) or after employment in the uranium industry.

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U. S. Environmental Protection Agency

Environmental Protection Agency  
Ariel Rios Building  
1200 Pennsylvania Avenue, N.W.  
Washington, DC 20460  
(202) 272-0167

EPA National Response Center: 1-800-424-8802

=====  
Centers for Disease Control and Prevention  
1600 Clifton Rd. Atlanta, GA 30333, USA  
800-CDC-INFO (800-232-4636)

CDC Link to State Health Departments:  
<http://www.cdc.gov/mmwr/international/relres.html>

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For concerns about NRC OIG:

Integrity Committee  
Councils of the Inspectors General on Integrity and Efficiency (CIGIE)  
935 Pennsylvania Avenue, NW  
Room 3973  
Washington, DC 20535-0001

Phone: (202) 324-3768  
E-mail: [IC\\_Complaints@ic.fbi.gov](mailto:IC_Complaints@ic.fbi.gov)

## Exhibit 1

### Information to be Obtained/Provided During the Initial Contact with the Allegor

**Concern Details:** For each concern, ask: Who, What, When, How, Where, and Why? (names, department, location, system, equipment)

How did you find out about the concern?

Were there witnesses? Are there other individuals who should be contacted?

Is there other information/documentation/physical evidence NRC should review?

What is the potential safety impact? Are there related requirements, procedures, or commitments?

What is the current status? Have any corrective/compensatory actions been taken?

Did you raise the concern to management? If so, what was the response?

**RFI Consideration:** Would you object to NRC requesting information from the licensee or referring part of the review to an appropriate entity (e.g., State, Agreement State, other Federal agency)? If the allegor objects, ask why such action would be inappropriate or ineffective.

At some point in the conversation, discuss the standard identity protection provisions for the NRC allegation program:

#### Allegation Process Standard Identity Protection Policy

**NRC takes all reasonable efforts not to disclose your identity. Identifying information is only distributed internally by NRC staff on a need-to-know basis.** If asked, we will neither confirm nor deny that you raised a concern to the NRC, except when required to do so for any of the following (rare and exceptional) reasons:

- Overriding health or safety issue
  - Court order or NRC adjudicatory authority or to inform Congress or State or Federal agencies in furtherance of NRC responsibilities under law or public trust
  - To support a hearing on an enforcement matter
  - Disclosure necessary to further a wrongdoing investigation (NRC Office of Investigations (OI) discretion)
  - If you take actions that are inconsistent with and override the purpose of protecting your identity (e.g., informing the media)
  - Disclosure mandated by FOIA
- 
- For discrimination concerns, inform the allegor that NRC will disclose his or her identity to the licensee and/or the employer during an NRC discrimination investigation
  - If allegor has no objection to being identified, NRC may reveal his or her identity outside the agency if it is necessary to evaluate the allegation
  - If allegor states that many are aware of his/her concern, it is acceptable to inform him/her that, while the NRC will continue to protect his/her identity, doing so may be difficult

**Obtain and record basic contact information:** If not already provided during the discussion of the allegor's concerns, obtain the following contact and identifying information before concluding the discussion: date, name, **home address**, phone number, facility, employer and position, preferences for method and time of contact

#### Additional Questions for an Allegor Raising a Discrimination Concern:

- What was your protected activity? When did you engage in it?
- What personnel action was taken against you and when was it taken?
- Was the individual who took the personnel action against you aware that you engaged in protected activity? If so, how and when?
- What makes you feel that the personnel action was taken against you because of your engagement in protected activity?
- Is there any documentation that would assist the NRC in reviewing the discrimination issue?
- Have you contacted DOL/OSHA, a State whistleblower protection office (for state employees or for concerns against Agreement State licensees), or the Merit System Protection Board (MSPB)(for federal employees other than DOE employees)?

Note: For State employees, a discrimination claim to DOL may not be an option. State employees should be instructed to consider contacting the State to determine if it has a program for processing such matters.

If the allegor expresses interest in contacting DOL, provide DOL contact information for the appropriate DOL Regional Office, and inform the allegor that:

- Personal remedy may be obtained through DOL if a discrimination complaint is filed in a timely manner and the employer does not have another legitimate reason for the action taken against you.
- A written complaint must be filed with DOL within 180 days of the date of the personnel action or the date any notice of the action, in writing or otherwise, is received by you, whichever occurred first.
- Any unresolved technical issues that provide a basis for the discrimination claim are evaluated by the NRC allegation process without regard to action that may be taken by DOL.

Regarding the possibility that the NRC OI may investigate the discrimination concern, an alleger is also to be informed that:

- NRC will determine whether or not an investigation is warranted based on the information you provide
- If the NRC opens an investigation, your identity will be disclosed
- NRC may complete its investigation before DOL and may take action independent of DOL

**DO NOT** provide information about the Early-ADR process during the initial contact with an alleger raising a discrimination concern, since Regional Counsel/OGC must first establish that an alleger has articulated a prima-facie showing of potential discrimination before Early-ADR is offered.

**Additional Questions for an Alleger Raising a Safety Conscious Work Environment (SCWE) Concern:**

Use the following questions, as necessary, to gather insights regarding whether there are impediments to the SCWE at the facility.

- Are there any specific concerns you or others haven't raised? If so, will you tell us about them now?
- What specifically happened and when that impacted your willingness to raise safety concerns (or to challenge actions or decisions you believe are unsafe)?
- What types of concerns are you hesitant to raise and why? Can you give some examples? [Try to ascertain what impact such concerns would have on safety (nuclear safety related?) by getting examples.]
- What avenues are you hesitant to use to raise concerns and why? [e.g., supervisor, senior management, corrective action program, employee concerns program, NRC, etc.]
- Which organizations and how many individuals are impacted by the chilled work environment? Can you provide the names of others you believe have been chilled or who have indicated to you that they are chilled?
- Who is contributing to the chilled work environment and what influence does this individual have on those that are chilled?
- Do you believe management is aware of the chilled work environment? If yes, have actions been taken to address the situation and do you feel the actions have been effective?
- In general, are you aware of actions taken by your management to prevent and detect chilled work environments? If yes, do you feel their actions are generally effective?

**If the alleger provides contact information but requests no additional contact with NRC:**

Explain the advantages of continued involvement in the allegation process (listed below) and encourage the alleger's continued involvement:

- facilitates understanding of the concerns raised
- allows NRC to obtain additional information as needed,
- affords the alleger the opportunity to assess and provide feedback regarding NRC's conclusions

## Exhibit 1A

### Sample Allegation Intake Form

Allegation Number: -20 -A- (assigned by OAC)		Date Received: / /
Facility:	Docket/License No:	Employee Receiving Allegation:
Allegor Name: Allegor's Employer: Allegor's Position/Title: Home Phone: Home Address:  Other Allegor Contact Information Work Phone: Cell Phone: E-Mail:  Allegation received by: Phone <input type="checkbox"/> In Person <input type="checkbox"/> Letter <input type="checkbox"/> E-Mail <input type="checkbox"/> Fax <input type="checkbox"/> DOL Complaint <input type="checkbox"/> OI Transcript <input type="checkbox"/> Media/Internet <input type="checkbox"/>  Source: Licensee Employee <input type="checkbox"/> Former Licensee Employee <input type="checkbox"/> Contractor <input type="checkbox"/> Former Contractor <input type="checkbox"/> Anonymous <input type="checkbox"/> News Media <input type="checkbox"/> Private Citizen <input type="checkbox"/> Federal Agency <input type="checkbox"/> State Agency <input type="checkbox"/> NRC Staff <input type="checkbox"/> Licensee-Identified <input type="checkbox"/> Special Interest Group <input type="checkbox"/>		<p style="color: red;"><b>Allegation Process Identity Protection Policy - NRC takes all reasonable efforts not to disclose your identity. Identifying information is only distributed internally by NRC staff on a need-to-know basis.</b> If asked, we will neither confirm nor deny that you raised a concern to the NRC, except when required to do so for any of the following (rare and exceptional) reasons:</p> <ul style="list-style-type: none"> <li>Overriding health or safety issue</li> <li>Court order or NRC adjudicatory authority or to inform Congress, State, or Federal agencies per NRC responsibilities under law or public trust</li> <li>To support a hearing on an enforcement matter</li> <li>Disclosure necessary to further a wrongdoing investigation (OI discretion)</li> <li>If you take actions that are inconsistent with and override the purpose of protecting your identity (e.g., informing the media)</li> <li>Disclosure mandated by FOIA</li> </ul> <p style="color: red;">- If you have no objection to being identified, NRC may reveal your identity outside the agency if it is necessary to evaluate the allegation</p> <p style="color: red;">- (For a discrimination concern) The NRC will disclose your identity to the licensee and/or employer during an NRC discrimination investigation</p> <p style="color: red;">- (If allegor states that many are aware of his/her concern, it is acceptable to inform him/her that, while the NRC will continue to protect his/her identity, doing so may be difficult)</p> <p>Identity Protection Information Provided: Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/></p> <p>Confidentiality Requested: Y <input type="checkbox"/> N <input type="checkbox"/></p> <p>Confidentiality Granted: Y <input type="checkbox"/> N <input type="checkbox"/></p> <p>Individual Granting Confidentiality:  <span style="color: green;">(only individuals with delegated authority may grant confidentiality)</span></p>
Number of Concerns:	Does any concern involve a potential immediate safety significant issue? Y <input type="checkbox"/> N <input type="checkbox"/> If Yes, immediately inform management and responsible allegation office.	Allegor informed that a Request for Information (RFI) to the licensee is a potential NRC evaluation option? Y <input type="checkbox"/> N <input type="checkbox"/> If Yes, did the allegor object? Y <input type="checkbox"/> N <input type="checkbox"/> If Yes, describe reason for allegor's objection.
<p><b>Concern Details:</b> For each concern, ask: Who/What/When/How/Where/Why? (names, dept., location, system, equipment)</p> <ul style="list-style-type: none"> <li>- How did you find out about the concern?</li> <li>- Were there witnesses? Are there other individuals who should be contacted?</li> <li>- Is there other information/documentation/physical evidence NRC should review?</li> <li>- What is the potential safety impact? Are there related requirements, procedures, or commitments?</li> <li>- What is the current status? Have any corrective/compensatory actions been taken?</li> <li>- Did you raise the concern to management? If so, what was the response?</li> </ul>		
<p><b>Additional Questions for an Allegor Raising a Discrimination Concern:</b></p> <ul style="list-style-type: none"> <li>- What was your protected activity? When did you engage in it?</li> <li>- What personnel action was taken against you and when was it taken?</li> <li>- Was the person who took the action against you aware that you engaged in protected activity? If so, how and when?</li> <li>- What makes you feel that the personnel action was taken against you because of your engagement in protected activity?</li> <li>- Is there is any documentation that would assist the NRC in reviewing the discrimination issue?</li> <li>- Have you contacted DOL/OSHA, a State whistleblower protection office (for state employees or for concerns against Agreement State licensees), or the Merit Systems Protection Board (for federal employees other than DOE employees)? [Note: For State employees, a discrimination claim to DOL/OSHA may not be an option. State employees should be instructed to consider contacting the State to determine if it has a program for processing such matters.]</li> </ul> <p>If allegor is interested in filing a DOL complaint, provide contact information for the appropriate DOL/OSHA Regional Office (<a href="http://www.osha.gov/html/RAmap.html">http://www.osha.gov/html/RAmap.html</a>), and inform the allegor that:</p> <ul style="list-style-type: none"> <li>- Personal remedy may be obtained through DOL if a discrimination complaint is filed in a timely manner and the employer does not have another legitimate reason for the action taken against you.</li> <li>- A written complaint must be filed with DOL within 180 days of the date of the personnel action or the date any notice of the action, in writing or otherwise, is received by you, whichever occurred first.</li> <li>- Any unresolved technical issues that provide a basis for the discrimination claim are evaluated by the NRC allegation process</li> </ul>		

without regard to action that may be taken by DOL.

Regarding the possibility that the NRC Office of Investigations (OI) may investigate the discrimination concern, an alieger is also to be informed that:

- NRC will determine whether or not an investigation is warranted based on the information you provide
- If the NRC opens an investigation, your identity will be disclosed
- NRC may complete its investigation before DOL and may take action independent of DOL

**Additional Questions for an Alieger Raising a “Chilling Effect”/Safety Conscious Work Environment (SCWE) Concern:**

- Are there any specific concerns you or others haven't raised? If so, will you tell us about them now?
- What specifically happened and when that impacted your willingness to raise safety concerns (or to challenge actions or decisions you believe are unsafe)?
- What types of concerns are you hesitant to raise and why? Can you give some examples? [Try to ascertain what impact such concerns would have on safety (nuclear safety related?) by getting examples.]
- What avenues are you hesitant to use to raise concerns and why? [e.g., supervisor, senior management, corrective action program, employee concerns program, NRC, etc.]
- Which organizations and how many individuals are impacted by the chilled work environment? Can you provide the names of others you believe have been chilled or who have indicated to you that they are chilled?
- Who is contributing to the chilled work environment and what influence does this individual have on those that are chilled?
- Do you believe management is aware of the chilled work environment? If yes, have actions been taken to address the situation and do you feel the actions have been effective?
- In general, are you aware of actions taken by your management to prevent and detect chilled work environments? If yes, do you feel their actions are generally effective?

**If the alieger provides contact information but requests no additional contact with NRC:** Explain the advantages of continued involvement in the allegation process (i.e., facilitates understanding of the concerns raised, allows NRC to obtain additional information as needed, and affords the alieger the opportunity to assess and provide feedback regarding NRC's conclusions) and encourage the alieger's continued involvement.

Concern #:	Discipline:(blank) (blank)	Reactor Department:(blank)
Alieger Informed Licensee: <input type="checkbox"/> Section 211 Violation Asserted? <input type="checkbox"/> Applicable Regulation: [required for wrongdoing concerns] When did the potential violation occur? / /	Functional Area:(blank) (blank)	Safety Significance: [Describe potential safety impact, assuming concern is true.]  If security-related, determine security concern category, based on information received, assuming concern is true (determines level of detail to be provided external to NRC). (See MD 8.8 Handbook, Section II.L.3(d)(i)).(requires security staff input)Cat. I <input type="checkbox"/> Cat. II <input type="checkbox"/> Cat. III <input type="checkbox"/>
Concern Description:		
Concern Details/Background Information:		



Concern #:	Discipline:(blank) (blank)	Reactor Department:(blank)
Alleged Informed Licensee: <input type="checkbox"/> Section 211 Violation Asserted? <input type="checkbox"/> Applicable Regulation: [required for wrongdoing concerns] When did the potential violation occur? / /	Functional Area:(blank) (blank)	Safety Significance: [Describe potential safety impact, assuming concern is true.]  If security-related, determine security concern category, based on information received, assuming concern is true (determines level of detail to be provided external to NRC). (See MD 8.8 Handbook, Section II.L.3(d)(i)).(requires security staff input) Cat. I <input type="checkbox"/> Cat. II <input type="checkbox"/> Cat. III <input type="checkbox"/>
Concern Description:		
Concern Details/Background Information:		

## Exhibit 2

### Ability of Agreement States to Protect Allegor Identity from Disclosure

STATES WITH ABILITY TO PROTECT IDENTITY
Alabama
Arizona
California
Iowa
Illinois
Kansas
Massachusetts
Minnesota
Nebraska
Nevada
New Jersey
North Carolina
North Dakota
Ohio
Oklahoma
Oregon
Pennsylvania
Washington
Wisconsin

The States noted in the table provide some level of identity protection to concerned individuals. All are Agreement States. The type and degree of identity protection available will differ depending on the State. For this reason, if a concerned individual agrees to allow NRC to provide his/her name and contact information to the State, and is interested in the degree to which the State will be able to protect his/her identity, he/she should be instructed to contact the State directly to obtain further detail (See <http://nrc-stp.ornl.gov/> for Agreement State contact information).

Exhibit 3

NRC Form 762 – Sensitive Allegation Material Cover Sheet

**U.S. NUCLEAR REGULATORY COMMISSION**

**- - - WARNING - - -**

**SENSITIVE ALLEGATION  
MATERIAL**

**THE ATTACHED DOCUMENT CONTAINS MATERIAL WHICH MAY RELATE TO AN OFFICIAL NRC INQUIRY OR INVESTIGATION WHICH MAY BE EXEMPT FROM PUBLIC DISCLOSURE PURSUANT TO ONE OR MORE PARTS OF TITLE 10, CODE OF FEDERAL REGULATIONS.**

**OFFICIAL USE ONLY  
SPECIAL HANDLING REQUIRED**

**WHEN NO LONGER NEEDED, DISPOSE OF THE ATTACHED DOCUMENT IN A SENSITIVE UNCLASSIFIED WASTE RECEPTACLE OR BY DESTROYING BY ANY MEANS THAT CAN PREVENT RECONSTRUCTION IN WHOLE OR IN PART. SEE MANAGEMENT DIRECTIVE 12.5 FOR INSTRUCTIONS ON DELETING SENSITIVE ALLEGATION MATERIAL FROM ELECTRONIC STORAGE MEDIA.**

**ACCESS TO INFORMATION CONTAINED HEREIN IS LIMITED TO STAFF AS REQUIRED FOR BRIEFING AND RESOLUTION. DISCLOSURE OF INFORMATION TO UNAUTHORIZED PERSONS IS PROHIBITED.**

**NRC FORM 762  
[9-2005]**

Exhibit 4

NRC Form 761 – Confidential Allegation Material Cover Sheet

**U.S. NUCLEAR REGULATORY COMMISSION**

**- - - WARNING - - -**

**CONFIDENTIAL ALLEGATION  
MATERIAL**

**THE ATTACHED DOCUMENT CONTAINS MATERIAL RELATED TO AN OFFICIAL NRC CONFIDENTIAL ALLEGATION AND IDENTIFIES A CONFIDENTIAL ALLEGATION SOURCE WHICH MAY EXEMPT THIS DOCUMENT FROM PUBLIC DISCLOSURE PURSUANT TO ONE OR MORE PARTS OF TITLE 10, CODE OF FEDERAL REGULATIONS.**

**OFFICIAL USE ONLY**  
**SPECIAL HANDLING REQUIRED**

**RETURN THIS DOCUMENT TO THE DESIGNATED ALLEGATION COORDINATOR WHEN NO LONGER REQUIRED**

**THE DOCUMENT MUST BE SECURED WHEN NOT PERSONALLY ATTENDED. ACCESS TO INFORMATION CONTAINED HEREIN IS LIMITED TO ALLEGATION COORDINATION STAFF AND AUTHORIZED NRC STAFF MEMBERS. DISCLOSURE OF INFORMATION TO UNAUTHORIZED PERSONS IS PROHIBITED.**

**NRC FORM 761  
[9-2005]**

## Exhibit 5

### Confidentiality Agreement

I have information that I wish to provide in confidence to the U.S. Nuclear Regulatory Commission (NRC). I request an express pledge of confidentiality as a condition for providing this information to the NRC.

It is my understanding that consistent with its legal obligations, the NRC, by agreeing to this confidentiality, will adhere to the conditions stated herein. During the course of an inquiry or investigation, the NRC will make its best effort to avoid actions that would clearly be expected to result in disclosure of my identity.

My identity will be divulged outside the NRC only in the following narrow situations:

- (1) When disclosure is necessary because of an overriding safety issue and I agree to this disclosure. If I cannot be reached to obtain my approval or do not agree to disclosure, the NRC staff will contact the Commission for resolution.
- (2) When a court orders such disclosure.
- (3) When required in NRC adjudicatory proceedings by order of the Commission itself.
- (4) In response to a written Congressional request. While such a request will be handled on a case-by-case basis, the request must be in writing and the NRC will make its best efforts to limit the disclosure to the extent possible.
- (5) When requested by a Federal or State agency in furtherance of its statutory responsibilities and the agency agrees to abide by the terms of this confidentiality agreement, and I agree to the release. If I do not agree to the release, my identity may be provided to another agency only in an extraordinary case where the Commission itself finds that furtherance of the public interest requires such release.
- (6) When the Office of Investigations (OI) and the Department of Justice (DOJ) are pursuing an investigation or when OI is working with another law enforcement agency, my identity may be disclosed to DOJ or the other law enforcement agency without my knowledge or consent.
- (7) When required to support a hearing on an NRC enforcement matter.

My identity will be withheld from NRC staff, except on a need-to-know basis. Consequently, I acknowledge that if I have further contacts with NRC personnel, I cannot expect that those people will be cognizant of this confidentiality agreement, and it will be my responsibility to bring that point to their attention if I desire similar treatment for the information provided to them.

I also understand that the NRC will revoke my grant of confidentiality if I take, or have taken, any action so inconsistent with the grant of confidentiality that the action overrides the purpose behind the confidentiality, such as (1) disclosing publicly information that reveals my status as a confidential source or (2) intentionally providing false information to the NRC. The NRC will attempt to notify me of its intent to revoke confidentiality and provide me an opportunity to explain why this action should not be taken.

Other Conditions: (if any)

I have read and fully understand the contents of this agreement. I agree with its provisions.

\_\_\_\_\_  
Date Name and Address \_\_\_\_\_  
\_\_\_\_\_

Agreed to on behalf of the U.S. Nuclear Regulatory Commission.

\_\_\_\_\_  
Date Signature \_\_\_\_\_  
Name and Title \_\_\_\_\_

**Exhibit 6**

**Sample Allegation Review Board Disposition Record**

Allegation Number: -20 -A-		ARB Date: / /
Facility:	Docket/License No:	Responsible Division/Branch:
SR/RI Informed: Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/> Region-Based Inspectors Informed: Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>		Confidentiality Requested: Y <input type="checkbox"/> N <input type="checkbox"/> Confidentiality Granted: Y <input type="checkbox"/> N <input type="checkbox"/>
Allegor Informed of ID Protection Policy: Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>	Received Date: / / 30-Days = / / 150-Days = / / 180-Days = / /	Acknowledged: Y <input type="checkbox"/> N <input type="checkbox"/> N/A <input type="checkbox"/>
ARB Purpose/Issue Discussed:		
<u>ARB Participants</u> Chair: OAC: OI: OGC/Counsel: Branch Chief: Other Attendees:		ARB Type: Initial <input type="checkbox"/> 6-Month <input type="checkbox"/> 10-Month <input type="checkbox"/> Follow Up <input type="checkbox"/> Emergency/Ad-Hoc <input type="checkbox"/>
RFI (to Licensee) Considerations:  <input type="checkbox"/> Overriding Safety Issue  Conditions Inhibiting RFI: <input type="checkbox"/> Will compromise allegor identity protection <input type="checkbox"/> Will compromise investigation or inspection <input type="checkbox"/> Against management that would review RFI <input type="checkbox"/> Federal or State agency disapproves of RFI	Other RFI Considerations if Inhibiting Conditions Do Not Apply <input type="checkbox"/> Release could bring harm to allegor. Describe <input type="checkbox"/> Allegor Objects to RFI. Describe <input type="checkbox"/> Allegor has raised concern to licensee w/unsatisfactory results. <input type="checkbox"/> Recent NRC concerns w/licensee RFI responses.  Other Items Potentially Affecting RFI Response Quality: <input type="checkbox"/> Recent Inspection findings? Last PI&R? Describe <input type="checkbox"/> Substantive Cross-Cutting Issue? Describe <input type="checkbox"/> Allegation history issues? Describe <input type="checkbox"/> Licensee policy/process issues? Describe <input type="checkbox"/> Resource issues? Describe <input type="checkbox"/> Other? Describe  RFI Acceptable? Y <input type="checkbox"/> N <input type="checkbox"/> - Summarize reason (required unless RFI Worksheet is included in the allegation file)	
General Comments/Notes:	Applicable Concern(s):	
<u>OGC/Regional Counsel Input</u> Applicable Concern(s): Discrimination Allegation Prima-Facie Showing? Y <input type="checkbox"/> N <input type="checkbox"/> <input type="checkbox"/> Allegor engaged in protected activity <input type="checkbox"/> Adverse action taken against allegor <input type="checkbox"/> Management knowledge of allegor's protected activity <input type="checkbox"/> Protected activity was, at least in part, a reason for the adverse action  Other OGC/Regional Counsel Comments:		

Concern #:	Discipline: (blank)(blank)	Reactor Department: (blank)
Alleger Informed Licensee: <input type="checkbox"/>	OI Case Number:	OI Priority: High <input type="checkbox"/> Medium <input type="checkbox"/> Low <input type="checkbox"/> Rationale for OI priority or for not initiating OI investigation:
Concern Description:		
Safety Significance: [Describe potential safety impact, assuming concern is true. Assigned action completion dates should be in line with indicated safety significance.]  If security-related, provide the security concern category (for determining the level of detail to be provided external to NRC). Determine category based on information received, assuming that it is true. (requires security staff input) Cat. I <input type="checkbox"/> Cat. II <input type="checkbox"/> Cat. III <input type="checkbox"/>		Applicable Regulation: [required for wrongdoing and discrimination concerns] When did potential violation occur? / /

Action: (blank)(blank) (blank)	Assigned Branch/Individual:	Estimated Completion Date: / /	Completed Date: / /
Comment:			

Action: (blank)(blank) (blank)	Assigned Branch/Individual:	Estimated Completion Date: / /	Completed Date: / /
Comment:			

Action: (blank)(blank) (blank)	Assigned Branch/Individual:	Estimated Completion Date: / /	Completed Date: / /
Comment:			

Action: (blank)(blank) (blank)	Assigned Branch/Individual:	Estimated Completion Date: / /	Completed Date: / /
Comment:			

## Exhibit 7

### Memorandum of Understanding Between NRC and the Department of Labor (DOL)

Notice of Signing of a Revised Memorandum of Understanding Between the NRC and DOL  
[Federal Register 10/27/1998, Vol. 63, No. 207, Pgs. 57324-57325]

SUMMARY: The NRC and DOL entered into a revised Memorandum of Understanding (MOU), effective September 9, 1998. The purpose of the MOU is to facilitate coordination and cooperation concerning the employee protection provisions of Section 211 of the Energy Reorganization Act of 1974, as amended, 42 U.S.C. 5851. Both agencies agree that administrative efficiency and sound enforcement policies will be maximized by this cooperation and the timely exchange of information in areas of mutual interest. The text of the MOU is set forth below.

#### FOR FURTHER INFORMATION CONTACT:

Mr. Edward T. Baker, telephone 301-415-8529  
Office of Nuclear Reactor Regulation, MS O-5E-7  
U.S. Nuclear Regulatory Commission, Washington, D.C. 20555.

Dated at Rockville, Maryland, this 21st day of October 1998.

For the Nuclear Regulatory Commission.

Edward T. Baker III,  
Agency Allegation Advisor, Office of Nuclear Reactor Regulation.

Memorandum of Understanding Between the Department of Labor and the Nuclear Regulatory Commission; Cooperation Regarding Employee Protection Matters

#### 1. Purpose

The NRC and the DOL enter into this agreement to facilitate coordination and cooperation concerning the employee protection provisions of Section 211 of the Energy Reorganization Act of 1974 (ERA), as amended, 42 U.S.C. 5851.

#### 2. Background

Section 211 of the ERA prohibits any employer, including an NRC licensee, license applicant or a contractor or subcontractor of a Commission licensee or applicant, from discriminating against any employee with respect to his or her compensation, terms, conditions or privileges of employment because the employee assisted or participated, or is about to assist or participate in any manner in any action to carry out the purposes of either the ERA or the Atomic Energy Act of 1954 (AEA), as amended, 42 U.S.C. 2011 et sec.



The NRC and DOL have complementary responsibilities in the area of employee protection. DOL has the responsibility under Section 211 of the ERA to investigate employee complaints of discrimination and may, after an investigation or hearing, order a violator to take affirmative action to abate the violation, reinstate the complainant to his or her former position with back pay, and award compensatory damages, including attorney fees. NRC, although without authority to provide a remedy to an employee, has independent authority under the AEA to take appropriate enforcement action against Commission applicants and licensees and their contractors that violate the AEA or Commission requirements, (i.e., 10 CFR 50.7 and similar requirements in other parts of Title 10 of the Code of Federal Regulations) which prohibit discrimination against employees based on their engaging in protected activities. NRC enforcement action may include issuance of a Notice of Violation to the responsible applicant, licensee, contractor, and/or individual; imposition of a civil penalty; issuance of an order removing the responsible individual from licensed activities; and/or license denial, suspension, modification or revocation.

Although each agency will carry out its statutory responsibilities independently, the agencies agree that administrative efficiency and sound enforcement policies will be maximized by cooperation and the timely exchange of information in areas of mutual interest.

### 3. Areas of Cooperation

- a. DOL agrees to promptly notify NRC of any complaint filed with DOL alleging discrimination within the scope of Section 211 of the ERA by a Commission licensee, applicant or a contractor or subcontractor of a Commission licensee or applicant. DOL will provide a quarterly listing of Section 211 complaints received. DOL will promptly provide NRC a copy of all complaints, decisions made prior to a hearing, investigation reports, and orders associated with any hearing or administrative appeal on the complaint. DOL will also cooperate with the NRC and shall keep the NRC informed on the status of any judicial proceedings seeking review of an order of DOL's Administrative Review Board issued in a proceeding under Section 211 of the ERA.
- b. NRC and DOL agree to cooperate with each other to the fullest extent possible in every case of alleged discrimination involving employees of Commission licensees, license applicants, or contractors or subcontractors of Commission licensees or applicants. Every agency agrees to share all information it obtains concerning a particular complaint of discrimination and, to the extent permitted by law, will protect information identified as sensitive that has been supplied to it by the other agency. This cooperation does not require either agency to share information gathered during an investigation until the investigation is complete.
- c. For cases in which the NRC completes its investigation of a Section 211 complaint, and DOL's investigation is still ongoing, the NRC will provide the results of its investigation to the appropriate Occupational Safety & Health Administration (OSHA) contact, subject to Department of Justice (DOJ) constraints on the timing of the release of NRC investigation material. NRC will take all reasonable steps to assist DOL in obtaining access to licensed facilities and any necessary security clearances. Consistent with relevant statutes, NRC regulations, and the availability of NRC resources, the NRC will cooperate with DOL and make available information, agency positions, and agency witnesses as necessary to assist DOL in completing the adjudication record on complaints filed under Section 211.

- d. If the NRC receives a complaint concerning a possible violation of Section 211, it will inform the complainant that a personal remedy is available only through DOL and that the person must personally contact DOL in order to file a complaint. NRC will provide the complainant the local address and phone number of the OSHA office and advise the complainant that OSHA must receive the complaint within 180 days of the alleged discrimination.
- e. Each agency shall designate and maintain points of contact within its headquarters and regional offices for purposes of implementation of the MOU. Matters affecting program and policy issues will be handled by the headquarters offices of the agencies.

#### 4. Implementation

The NRC official responsible for implementation of this agreement is the Chairman of the NRC. The DOL official responsible for implementation of this agreement is the Secretary of Labor.

#### 5. Amendment and Termination

This Agreement may be amended or modified upon written agreement by both parties to the Agreement. The Agreement may be terminated upon ninety (90) days written notice by either party.

#### 6. Effective Date

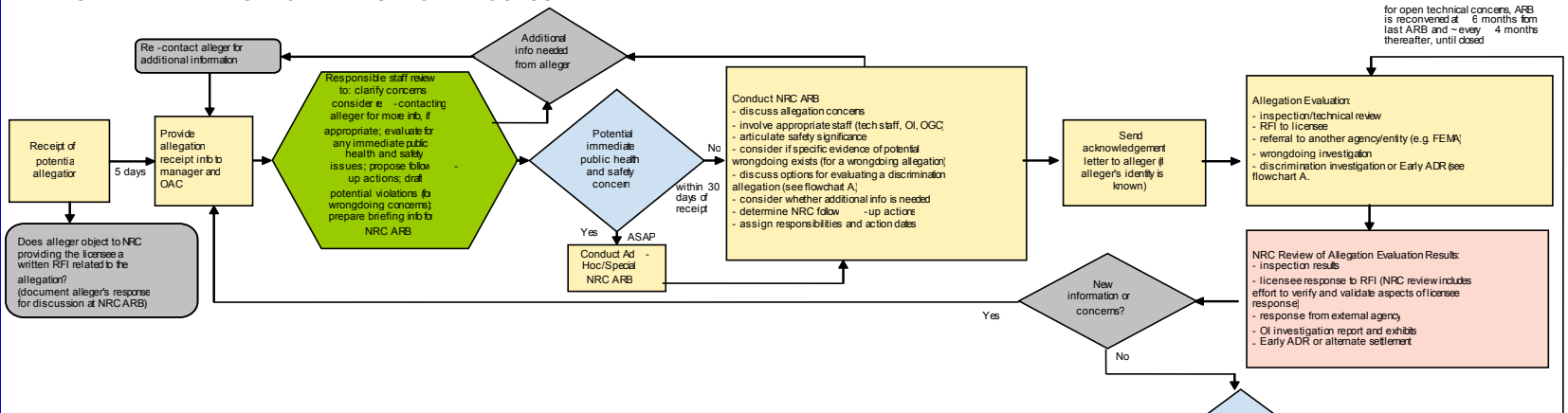
This agreement is effective when signed by both parties.

Shirley Ann Jackson,  
Chairman, U.S. Nuclear Regulatory Commission.  
Dated: September 1, 1998.

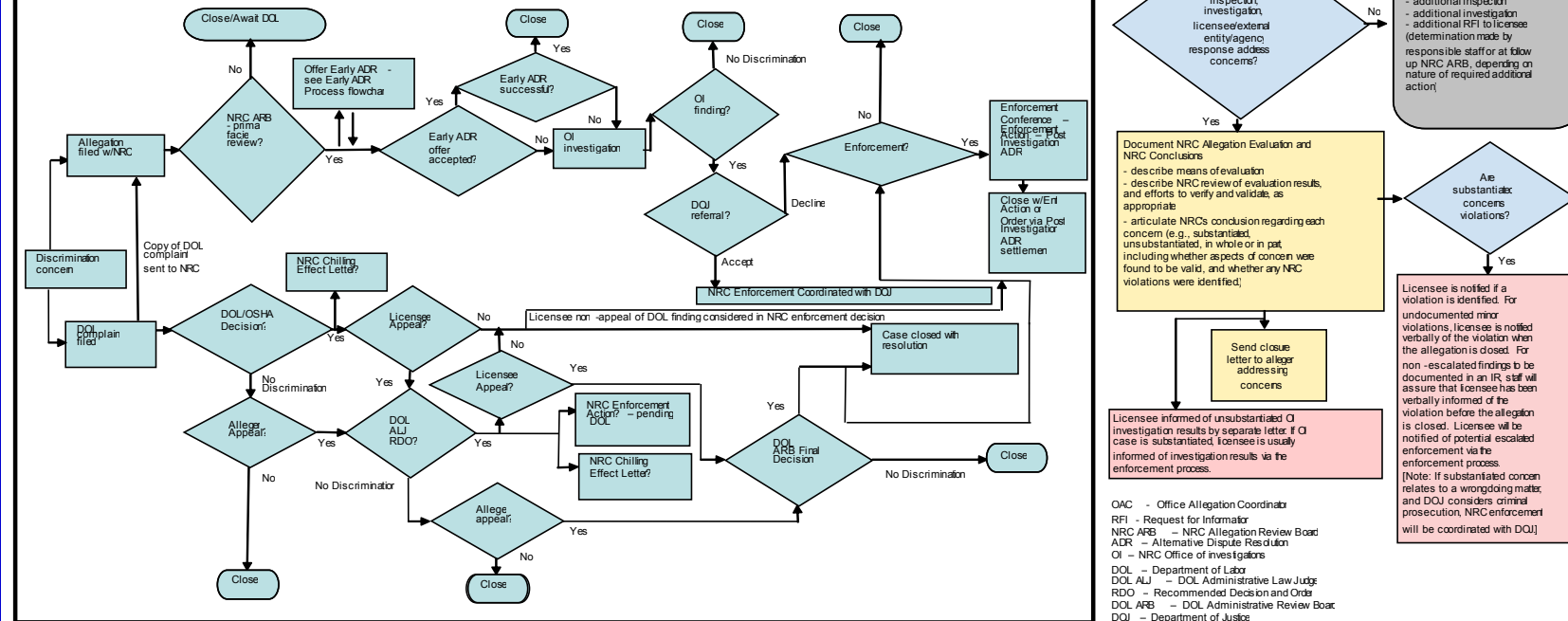
Alexis Herman,  
Secretary of Labor, U.S. Department of Labor.  
Dated: September 9, 1998.

## Exhibit 8 Allegation Process Flow Chart

### STANDARD ALLEGATION EVALUATION PROCESS



### A. DISCRIMINATION ALLEGATION PROCESSING (WITH DOL PROCESS STEPS, IF APPLICABLE)



## Exhibit 9

### 29 CFR Part 24 - U.S. Department of Labor Procedures for Handling Discrimination Complaints Under Federal Employee Protection Statutes

Code of Federal Regulations  
Title 29, Volume 1  
Revised as of July 1, 2003

#### TITLE 29--LABOR--PART 24--PROCEDURES FOR THE HANDLING OF DISCRIMINATION COMPLAINTS UNDER FEDERAL EMPLOYEE PROTECTION STATUTES

##### Sec. 24.1 Purpose and scope.

- (a) This part implements the several employee protection provisions for which the Secretary of Labor has been given responsibility pursuant to the following Federal statutes: Safe Drinking Water Act, 42 U.S.C. 300j-9(i); Water Pollution Control Act, 33 U.S.C. 1367; Toxic Substances Control Act, 15 U.S.C. 2622; Solid Waste Disposal Act, 42 U.S.C. 6971; Clean Air Act, 42 U.S.C. 7622; Energy Reorganization Act of 1974, 42 U.S.C. 5851; and Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. 9610. (b) Procedures are established by this part pursuant to the Federal statutory provisions listed in paragraph (a) of this section, for the expeditious handling of complaints by employees, or persons acting on their behalf, of discriminatory action by employers. (c) Throughout this part, "Secretary" or "Secretary of Labor" shall mean the Secretary of Labor, U.S. Department of Labor, or his or her designee. "Assistant Secretary" shall mean the Assistant Secretary for Occupational Safety and Health, U.S. Department of Labor, or his or her designee.

##### Sec. 24.2 Obligations and prohibited acts.

- (a) No employer subject to the provisions of any of the Federal statutes listed in Sec. 24.1(a), or to the Atomic Energy Act of 1954 (AEA), 42 U.S.C. 2011 et seq., may discharge any employee or otherwise discriminate against any employee with respect to the employee's compensation, terms, conditions, or privileges of employment because the employee, or any person acting pursuant to the employee's request, engaged in any of the activities specified in this section.
- (b) Any employer is deemed to have violated the particular federal law and the regulations in this part if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee because the employee has: (1) Commenced or caused to be commenced, or is about to commence or cause to be commenced, a proceeding under one of the Federal statutes listed in Sec. 24.1(a) or a proceeding for the administration or enforcement of any requirement imposed under such Federal statute; (2) Testified or is about to testify in any such proceeding; or (3) Assisted or participated, or is about to assist or participate, in any manner in such a proceeding or in any other action to carry out the purposes of such Federal statute.
- (c) Under the Energy Reorganization Act, and by interpretation of the Secretary under any of the other statutes listed in Sec. 24.1(a), any employer is deemed to have violated the particular federal law and these regulations if such employer intimidates, threatens, restrains, coerces, blacklists, discharges, or in any other manner discriminates against any employee because the employee has: (1) Notified the employer of an alleged violation of such Federal statute or the AEA of 1954; (2) Refused to engage in any practice made unlawful by such Federal statute or the AEA of 1954, if the employee has identified the alleged illegality to the employer; or (3) Testified before Congress or at any Federal or State proceeding regarding any provision (or proposed provision) of such Federal statute or the AEA of 1954.
- (d) (1) Every employer subject to the Energy Reorganization Act of 1974, as amended, shall prominently post and keep posted in any place of employment to which the employee protection provisions of the Act apply a fully legible copy of the notice prepared by the Occupational Safety and Health Administration, printed as appendix A to this part, or a notice approved by the Assistant Secretary for Occupational Safety and Health that contains substantially the same provisions and explains the employee protection provisions of the Act and the regulations in this part. Copies of the notice prepared by DOL may be obtained from the Assistant Secretary for Occupational Safety and Health, Washington, D.C. 20210, from local offices of the Occupational Safety and Health Administration, or from the Department of Labor's Website at <http://www.osha.gov>.
- (2) Where the notice required by paragraph (d)(1) of this section has not been posted, the requirement in Sec. 24.3(b)(2) that a complaint be filed with the Assistant Secretary within 180 days of an alleged violation shall be inoperative unless the respondent establishes that the complainant had notice of the material provisions of the notice. If it is established that the notice was posted at the employee's place of employment after the alleged discriminatory action occurred or that the complainant later obtained actual notice, the 180 days shall ordinarily run from that date.

Sec. 24.3 Complaint.

- (a) Who may file. An employee who believes that he or she has been discriminated against by an employer in violation of any of the statutes listed in Sec. 24.1(a) may file, or have another person file on his or her behalf, a complaint alleging such discrimination.
- (b) Time of filing.
  - (1) Except as provided in paragraph (b)(2) of this section, any complaint shall be filed within 30 days after the occurrence of the alleged violation. For the purpose of determining timeliness of filing, a complaint filed by mail shall be deemed filed as of the date of mailing.
  - (2) Under the Energy Reorganization Act of 1974, any complaint shall be filed within 180 days after the occurrence of the alleged violation.
- (c) Form of complaint. No particular form of complaint is required, except that a complaint must be in writing and should include a full statement of the acts and omissions, with pertinent dates, which are believed to constitute the violation.
- (d) Place of filing. A complaint may be filed in person or by mail at the nearest local office of the Occupational Safety and Health Administration, listed in most telephone directories under U.S. Government, Department of Labor. A complaint may also be filed with the Office of the Assistant Secretary, Occupational Safety and Health Administration, U.S. Department of Labor, Washington, D.C.20210. (Approved by the Office of Management and Budget under control number 1215-0183)

Sec. 24.4 Investigations.

- (a) Upon receipt of a complaint under this part, the Assistant Secretary shall notify the person named in the complaint, and the appropriate office of the Federal agency charged with the administration of the affected program of its filing.
- (b) The Assistant Secretary shall, on a priority basis, investigate and gather data concerning such case, and as part of the investigation may enter and inspect such places and records make copies thereof, may question persons being proceeded against and other employees of the charged employer, and may require the production of any documentary or other evidence deemed necessary to determine whether a violation of the law involved has been committed.
- (c) Investigations under this part shall be conducted in a manner which protects the confidentiality of any person other than the complainant who provides information on a confidential basis, in accordance with part 70 of this title.
- (d)
  - (1) Within 30 days of receipt of a complaint, the Assistant Secretary shall complete the investigation, determine whether the alleged violation has occurred, and give notice of the determination. The notice of determination shall contain a statement of reasons for the findings and conclusions therein and, if the Assistant Secretary determines that the alleged violation has occurred, shall include an appropriate order to abate the violation. Notice of the determination shall be given by certified mail to the complainant, the respondent, and their representatives (if any). At the same time, the Assistant Secretary shall file with the Chief Administrative Law Judge, U.S. Department of Labor, the original complaint and a copy of the notice of determination.
  - (2) The notice of determination shall include or be accompanied by notice to the complainant and the respondent that any party who desires review of the determination or any part thereof, including judicial review, shall file a request for a hearing with the Chief Administrative Law Judge within five business days of receipt of the determination. The complainant or respondent in turn may request a hearing within five business days of the date of a timely request for a hearing by the other party. If a request for a hearing is timely filed, the notice of determination of the Assistant Secretary shall be inoperative, and shall become operative only if the case is later dismissed. If a request for a hearing is not timely filed, the notice of determination shall become the final order of the Secretary.
- (3) A request for a hearing shall be filed with the Chief Administrative Law Judge by facsimile (fax), telegram, hand delivery, or next-day delivery service. A copy of the request for a hearing shall be sent by the party requesting a hearing to the complainant or the respondent (employer), as appropriate, on the same day that the hearing is requested, by facsimile (fax), telegram, hand delivery, or next-day delivery service. A copy of the request for a hearing shall also be sent to the Assistant Secretary for Occupational Safety and Health and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C.20210.

Sec. 24.5 Investigations under the Energy Reorganization Act.

- (a) In addition to the investigation procedures set forth in Sec. 24.4, this section sets forth special procedures applicable only to investigations under the Energy Reorganization Act.
- (b)
  - (1) A complaint of alleged violation shall be dismissed unless the complainant has made a prima facie showing that protected behavior or conduct as provided in Sec. 24.2(b) was a contributing factor in the unfavorable personnel action alleged in the complaint.
  - (2) The complaint, supplemented as appropriate by interviews of the complainant, must allege the existence of facts and evidence to meet the required elements of a prima facie case, as follows: (i) The employee engaged in a protected activity

or conduct, as set forth in Sec. 24.2; (ii) The respondent knew that the employee engaged in the protected activity; (iii) The employee has suffered an unfavorable personnel action; and (iv) The circumstances were sufficient to raise the inference that the protected activity was likely a contributing factor in the unfavorable action.

- (3) For purposes of determining whether to investigate, the complainant will be considered to have met the required burden if the complaint on its face, supplemented as appropriate through interviews of the complainant, alleges the existence of facts and either direct or circumstantial evidence to meet the required elements of a prima facie case, i.e., to give rise to an inference that the respondent knew that the employee engaged in protected activity, and that the protected activity was likely a reason for the personnel action. Normally the burden is satisfied, for example, if it is shown that the adverse personnel action took place shortly after the protected activity, giving rise to the inference that it was a factor in the adverse action. If these elements are not substantiated in the investigation, the investigation will cease.
- (c) (1) Notwithstanding a finding that a complainant has made a prima facie showing required by this section with respect to complaints filed under the Energy Reorganization Act, an investigation of the complainant's complaint under that Act shall be discontinued if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of the complainant's protected behavior or conduct.
  - (2) Upon receipt of a complaint under the Energy Reorganization Act, the respondent shall be provided with a copy of the complaint (as supplemented by interviews of the complainant, if any) and advised that any evidence it may wish to submit to rebut the allegations in the complaint must be received within five business days from receipt of notification of the complaint. If the respondent fails to make a timely response or if the response does not demonstrate by clear and convincing evidence that the unfavorable action would have occurred absent the protected conduct, the investigation shall proceed. The investigation shall proceed whenever it is necessary or appropriate to confirm or verify the information provided by respondent.
  - (d) Whenever the Assistant Secretary dismisses a complaint pursuant to this section without completion of an investigation, the Assistant Secretary shall give notice of the dismissal, which shall contain a statement of reasons therefor, by certified mail to the complainant, the respondent, and their representatives. At the same time the Assistant Secretary shall file with the Chief Administrative Law Judge, U.S. Department of Labor, a copy of the complaint and a copy of the notice of dismissal. The notice of dismissal shall constitute a notice of determination within the meaning of Sec. 24.4(d), and any request for a hearing shall be filed and served in accordance with the provisions of Sec. 24.4(d) (2) and (3).

#### Sec. 24.6 Hearings.

- (a) Notice of hearing. The administrative law judge to whom the case is assigned shall, within seven calendar days following receipt of the request for hearing, notify the parties by certified mail, directed to the last known address of the parties, of a day, time and place for hearing. All parties shall be given at least five days notice of such hearing. However, because of the time constraints upon the Secretary by the above statutes, no requests for postponement shall be granted except for compelling reasons or with the consent of all parties.
- (b) Consolidated hearings. When two or more hearings are to be held, and the same or substantially similar evidence is relevant and material to the matters at issue at each such hearing, the Chief Administrative Law Judge may, upon motion by any party or on his own or her own motion, order that a consolidated hearing be conducted. Where consolidated hearings are held, a single record of the proceedings shall be made and the evidence introduced in one case may be considered as introduced in the others, and a separate or joint decision shall be made, as appropriate.
- (c) Place of hearing. The hearing shall, where possible, be held at a place within 75 miles of the complainant's residence.
- (d) Right to counsel. In all proceedings under this part, the parties shall have the right to be represented by counsel.
- (e) Procedures, evidence and record--
  - (1) Evidence. Formal rules of evidence shall not apply, but rules or principles designed to assure production of the most probative evidence available shall be applied. The administrative law judge may exclude evidence which is immaterial, irrelevant, or unduly repetitious.
  - (2) Record of hearing. All hearings shall be open to the public and shall be mechanically or stenographically reported. All evidence upon which the administrative law judge relies for decision shall be contained in the transcript of testimony, either directly or by appropriate reference. All exhibits and other pertinent documents or records, either in whole or in material part, introduced as evidence, shall be marked for identification and incorporated into the record.
  - (3) Oral argument; briefs. Any party, upon request, may be allowed a reasonable time for presentation of oral argument and to file a prehearing brief or other written statement of fact or law. A copy of any such prehearing brief or other written statement shall be filed with the Chief Administrative Law Judge or the administrative law judge assigned to the case before or during the proceeding at which evidence is submitted to the administrative law judge and shall be served upon each party. Post-hearing briefs will not be permitted except at the request of the administrative law judge. When permitted, any such brief shall be limited to the issue or issues specified by the administrative law judge and shall be due within the time prescribed by the administrative law judge.
  - (4) Dismissal for cause.

- (i) The administrative law judge may, at the request of any party, or on his or her own motion, issue a recommended decision and order dismissing a claim: (A) Upon the failure of the complainant or his or her representative to attend a hearing without good cause; or (B) Upon the failure of the complainant to comply with a lawful order of the administrative law judge.
  - (ii) In any case where a dismissal of a claim, defense, or party is sought, the administrative law judge shall issue an order to show cause why the dismissal should not be granted and afford all parties a reasonable time to respond to such order. After the time for response has expired, the administrative law judge shall take such action as is appropriate to rule on the dismissal, which may include a recommended order dismissing the claim, defense or party.
- (f) (1) At the Assistant Secretary's discretion, the Assistant Secretary may participate as a party or participate as amicus curiae at any time in the proceedings. This right to participate shall include, but is not limited to, the right to petition for review of a recommended decision of an administrative law judge, including a decision based on a settlement agreement between complainant and respondent, to dismiss a complaint or to issue an order encompassing the terms of the settlement.
  - (2) Copies of pleadings in all cases, whether or not the Assistant Secretary is participating in the proceeding, shall be sent to the Assistant Secretary, Occupational Safety and Health Administration, and to the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C. 20210.
- (g) (1) A Federal agency which is interested in a proceeding may participate as amicus curiae at any time in the proceedings, at the agency's discretion.
  - (2) At the request of a Federal agency which is interested in a proceeding, copies of all pleadings in a case shall be served on the Federal agency, whether or not the agency is participating in the proceeding.

Sec. 24.7 Recommended decision and order.

- (a) Unless the parties jointly request or agree to an extension of time, the administrative law judge shall issue a recommended decision within 20 days after the termination of the proceeding at which evidence was submitted. The recommended decision shall contain appropriate findings, conclusions, and a recommended order and be served upon all parties to the proceeding.
- (b) In cases under the Energy Reorganization Act, a determination that a violation has occurred may only be made if the complainant has demonstrated that protected behavior or conduct was a contributing factor in the unfavorable personnel action alleged in the complaint. Relief may not be ordered if the respondent demonstrates by clear and convincing evidence that it would have taken the same unfavorable personnel action in the absence of such behavior. The proceeding before the administrative law judge shall be a proceeding on the merits of the complaint. Neither the Assistant Secretary's determination to dismiss a complaint pursuant to Sec. 24.5 without completing an investigation nor the Assistant Secretary's determination not to dismiss a complaint is subject to review by the administrative law judge, and a complaint may not be remanded for the completion of an investigation on the basis that such a determination to dismiss was made in error.
- (c) (1) Upon the conclusion of the hearing and the issuance of a recommended decision that the complaint has merit, and that a violation of the Act has occurred, the administrative law judge shall issue a recommended order that the respondent take appropriate affirmative action to abate the violation, including reinstatement of the complainant to his or her former position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.
- (2) In cases brought under the Energy Reorganization Act, when an administrative law judge issues a recommended order that the complaint has merit and containing the relief prescribed in paragraph (c)(1) of this section, the administrative law judge shall also issue a preliminary order providing all of the relief specified in paragraph (c)(1) of this section with the exception of compensatory damages. This preliminary order shall constitute the preliminary order of the Secretary and shall be effective immediately, whether or not a petition for review is filed with the Administrative Review Board. Any award of compensatory damages shall not be effective until the final decision is issued by the Administrative Review Board.
- (d) The recommended decision of the administrative law judge shall become the final order of the Secretary unless, pursuant to Sec. 24.8, a petition for review is timely filed with the Administrative Review Board.

Sec. 24.8 Review by the Administrative Review Board.

- (a) Any party desiring to seek review, including judicial review, of a recommended decision of the administrative law judge shall file a petition for review with the Administrative Review Board ("the Board"), which has been delegated the authority to act for the Secretary and issue final decisions under this part. To be effective, such a petition must be received within ten business days of the date of the recommended decision of the administrative law judge, and shall be served on all parties and on the Chief Administrative Law Judge. If a timely petition for review is filed, the recommended decision of the administrative law judge shall be inoperative unless and until the Board issues an order adopting the recommended decision, except that for cases arising under the Energy Reorganization Act of 1974, a preliminary order of relief shall be effective while review is conducted by the Board.

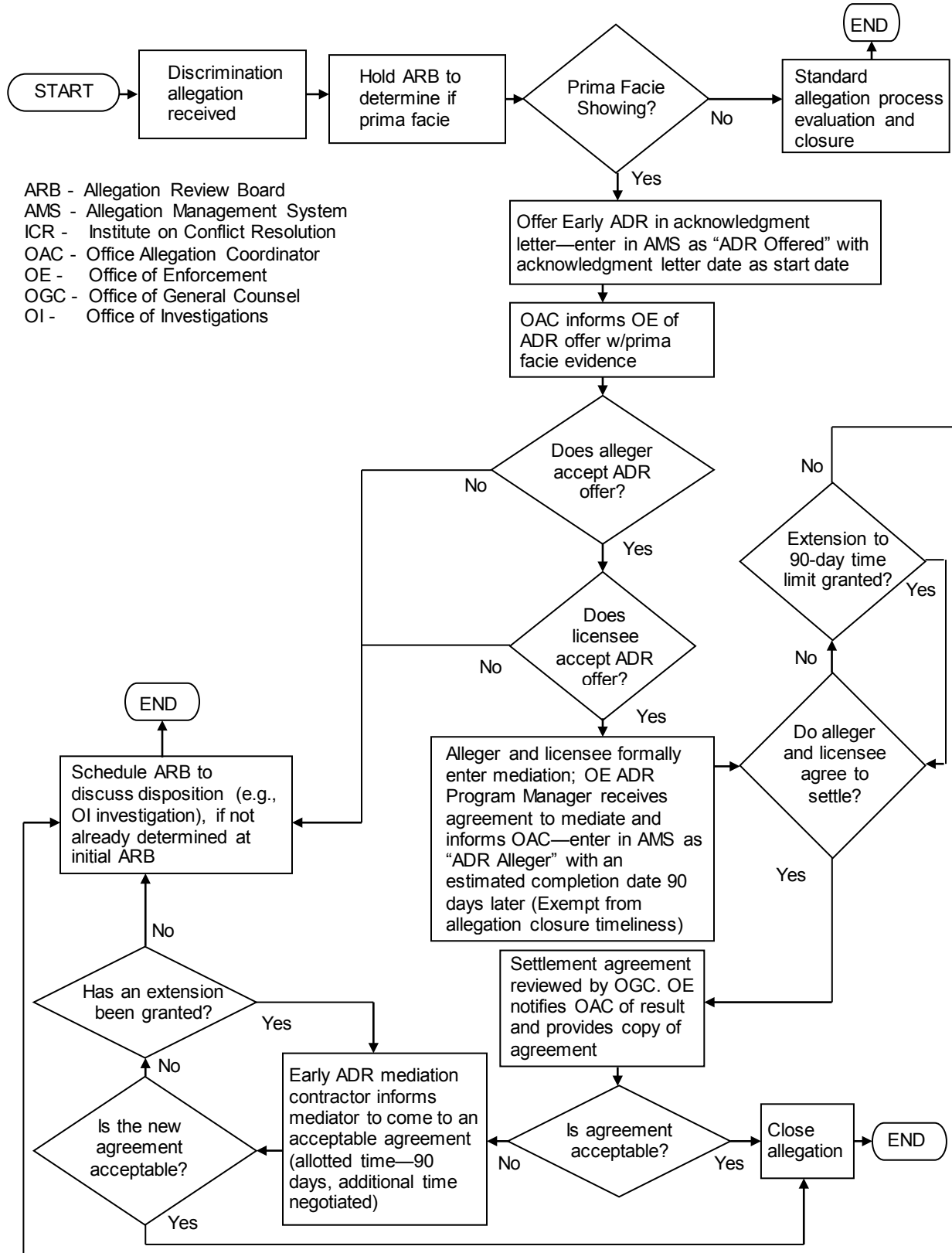
- (b) Copies of the petition for review and all briefs shall be served on the Assistant Secretary, Occupational Safety and Health Administration, and on the Associate Solicitor, Division of Fair Labor Standards, U.S. Department of Labor, Washington, D.C.20210.
- (c) The final decision shall be issued within 90 days of the receipt of the complaint and shall be served upon all parties and the Chief Administrative Law Judge by mail to the last known address.
- (d)
  - (1) If the Board concludes that the party charged has violated the law, the final order shall order the party charged to take appropriate affirmative action to abate the violation, including reinstatement of the complainant to that person's former or substantially equivalent position, if desired, together with the compensation (including back pay), terms, conditions, and privileges of that employment, and, when appropriate, compensatory damages. In cases arising under the Safe Drinking Water Act or the Toxic Substances Control Act, exemplary damages may also be awarded when appropriate.
  - (2) If such a final order is issued, the Board, at the request of the complainant, shall assess against the respondent a sum equal to the aggregate amount of all costs and expenses (including attorney and expert witness fees) reasonably incurred by the complainant, as determined by the Board, for, or in connection with, the bringing of the complaint upon which the order was issued.
- (e) If the Board determines that the party charged has not violated the law, an order shall be issued denying the complaint.

Sec. 24.9 Exception.

This part shall have no application to any employee alleging activity prohibited by this part who, acting without direction from his or her employer (or the employer's agent), deliberately causes a violation of any requirement of a Federal statute listed in Sec. 24.1(a).



## Exhibit 10 - Early Alternative Dispute Resolution (ADR) Process Flow Chart



ARB - Allegation Review Board  
 AMS - Allegation Management System  
 ICR - Institute on Conflict Resolution  
 OAC - Office Allegation Coordinator  
 OE - Office of Enforcement  
 OGC - Office of General Counsel  
 OI - Office of Investigations

## Exhibit 11

### Sample Agreement to Mediate (Early ADR)

**U.S. NUCLEAR REGULATORY COMMISSION  
Office of Enforcement ADR Program  
Administered by (Early ADR Mediation Contractor)**

#### **EARLY ADR AGREEMENT TO MEDIATE**

This Agreement to Mediate is between \_\_\_\_\_ and \_\_\_\_\_ (individually referred to as a "Party" and collectively as the "Parties"). The Parties have agreed to engage in Early ADR (as discussed below) with the following understandings and expectations.

1. The NRC's Early ADR program refers to the use of mediation to resolve complaints of discrimination alleging the violation of the NRC's regulation. Early ADR is not for resolving other safety or technical issues. Generally, the parties to the mediation are the complainant and the employer. The Parties understand that the NRC is not a party in the mediation nor does it attend any meetings with the Parties.
2. With the assistance of an independent neutral mediator that the Parties mutually select, the Parties agree in good faith to attempt to resolve their dispute through mediation without an NRC investigation. The Parties understand that the mediator is not authorized to render any binding decisions.
3. If not already done so, before engaging in settlement discussions but as soon as practicable after signing this agreement, the Parties agree to take the opportunity to familiarize themselves with the Early ADR program by reviewing the information at <http://www.nrc.gov/reading-rm/doc-collections/nuregs/brochures/br0313/> about the Early ADR program.
4. The Parties understand that the mediation process is informal, flexible and entirely voluntary. Each Party may withdraw from the mediation process at any time for any reason.
5. The Parties understand that typically the mediator will conduct a face-to-face session with both Parties in attendance. Each Party will be expected to summarize their position and be willing to consider (but not necessarily agree with) the other Party's contention(s). During the mediation session, the mediator, as he or she deems appropriate, may meet separately with each Party to facilitate communication between the Parties.
6. As soon as practicable after signing this Agreement to Mediate, each Party agrees to cooperate with the other to mutually select a mediator from a list of neutrals provided by the (Early ADR mediation contractor) and agree on a time and place to meet for the mediation session. The Parties understand that the NRC expects that the Early ADR process will take no longer than 90 days after signing the Agreement to Mediate.

Allegation #: \_\_\_\_\_  
ADR #: \_\_\_\_\_

**U.S. NUCLEAR REGULATORY COMMISSION**  
**Office of Enforcement ADR Program**  
**Administered by (Early ADR Mediation Contractor)**

7. The Parties understand that mediation is a confidential process and that the mediator is prohibited by federal law from discussing the mediation proceedings, testifying on anyone's behalf concerning the mediation, or submitting any report on the substance of the discussions. Each Party understands that there are a few exceptions to mediator confidentiality which the mediator will explain further if any participant requests; these exceptions include instances such as where someone expresses an intent to commit violence or where a federal judge orders disclosure to prevent an injustice.
8. The Parties agree not to discuss the substance of the mediation with anyone except with their advisor(s) or legal counsel or as may be required by law. Each Party agrees to ensure that such other person(s) agree to respect the confidentiality of the process. Confidentiality does not extend to information which indicates a potential or existing safety or security issue at any facility.
9. The Parties understand that the NRC will pay the mediator's fee and expenses that the Parties select through (the Early ADR mediation contractor). The Parties are responsible for their own respective expenses such as any travel or lodging expenses or meeting room fees, if any.
10. The Parties agree to be bound by the confidentiality provisions of this Agreement to Mediate regardless of the outcome of the mediation process.
11. If the Parties reach a settlement agreement, the Parties agree to include a provision which allows either party to rescind the agreement for any reason within 3calendar days after its execution.
12. After the execution of the settlement agreement and before the NRC initiates an investigation, one of the Parties must provide a copy of the settlement agreement to the NRC for review for it to be considered as part of the NRC's ADR program. The sole purpose of the NRC's review is to ensure that the terms of the settlement agreement do not restrict the complainant from engaging in a protected activity.
13. The Parties understand that if they settle their dispute and meet the above referenced conditions, the NRC, in accordance with the NRC's policy, will not investigate the discrimination complaint giving rise to this mediation process.
14. The Parties understand that the NRC is not responsible for the mediator's conduct.

Signature (Individual): \_\_\_\_\_ Date: \_\_\_\_\_

Signature (Company Representative): \_\_\_\_\_ Date: \_\_\_\_\_

Name & Title: \_\_\_\_\_

Allegation #: \_\_\_\_\_

ADR #: \_\_\_\_\_

## Exhibit 12

### Sample Allegation Acknowledgment Letter

XXXX-20XX-A-XXXX  
(Alleger's Name and Address)

SUBJECT: Concern(s) You Raised to the NRC Regarding (facility name)

Dear Mr./Mrs./Ms. (Alleger's last name):

USE FOR ALL CONCERNS EXCEPT THOSE RECEIVED VIA DOL/OSHA DISCRIMINATION COMPLAINT

This letter refers to your (letter to, telephone conversation with, electronic mail message to, meeting with, interview with, etc.) (NRC staff member(s)) on/dated (date) in/during which you expressed concerns related to (general concern reference, e.g., maintenance issues, operations issues and alleged discrimination, etc.) at (facility name).

USE IN PLACE OF THE ABOVE SENTENCE IF ALLEGATION WAS RECEIVED VIA A DOL/OSHA DISCRIMINATION COMPLAINT

We are in receipt of the discrimination complaint that you filed with the U.S. Department of Labor (DOL) against \_\_\_\_\_ (licensee/certificate holder/applicant/contractor/vendor) at (site/facility). While your pursuit of a personal remedy in the matter of your (discrimination issue) is being evaluated by DOL, the NRC is tasked with regulating safety at facilities licensed by the NRC or using materials licensed by the NRC. In this role, it is our responsibility to evaluate any safety concerns that you may have raised in this matter. [INCLUDE IF DOL COMPLAINT DOES NOT ARTICULATE SPECIFIC SAFETY ISSUES] In order to determine whether or not you have specific safety concerns warranting NRC review, apart from the employment discrimination issues that are currently before DOL, it is requested that you contact (me/Allegation Coordinator name) at the toll free telephone number noted below so that the details of your technical concerns may be discussed. If you choose, you may provide details regarding your technical concerns in writing to (me/Allegation Coordinator name) at (Allegation Office address).

USE FOR ALL LETTERS

Enclosure 1 to this letter documents your concern(s) as we understand (it/them). We have initiated actions to evaluate your concern(s) and will inform you of our findings. The NRC normally conducts an evaluation of a technical concern within six months, although complex issues may take longer. If the description of (your concern/any of your concerns) as noted in Enclosure 1 is not accurate, please contact me so that we can assure that your concern(s) (is/are) appropriately described and adequately addressed prior to the completion of our review.

CERTIFIED MAIL  
RETURN RECEIPT REQUESTED

(NOTE: This should appear only on the first page and the official record copy.)

USE THE FOLLOWING SENTENCE IF TECHNICAL CONCERNS RELATED TO A DISCRIMINATION MATTER ARE BEING REVIEWED BY NRC

Please understand that your technical concern(s) will be evaluated separately from your discrimination concern, and you will receive a separate response to it/each technical concern. [INCLUDE IF SECURITY-RELATED CONCERNS ARE PART OF THE ALLEGATION] Regarding your security-related concerns, please be aware that the information NRC will provide you regarding our assessment of this issue may be limited, as appropriate, to ensure that we are not unnecessarily releasing information that would reveal any potential security-related vulnerabilities.

USE FOR GENERIC CONCERNS

After review of the information you provided, we have determined that (the concern(s) you raised OR some of the concerns you raised) may impact a number of facilities. Because the resolution of this/these concern(s) will require a review of multiple facilities and may require a review of and/or changes to NRC policy, the time necessary to resolve this/these concern(s) may be extended. Due to the potential general applicability of your concern(s), we have transferred (it/them) to the (affected headquarters office), the NRC office responsible for resolving issues in this area. Your contact at (affected headquarters office) is: (provide name, title, address phone number and e-mail of affected headquarters office allegation coordinator)

USE WHEN A REQUEST FOR INFORMATION (RFI) FROM THE LICENSEE IS PLANNED OR IS AN OPTION

As part of our response to your concern(s), we (may/intend to) request (licensee name) to perform an evaluation and provide a written response to the NRC. In that case [NOTE: Do not use qualifying phrase "In that case" if first sentence of paragraph indicates that NRC intends to issue an RFI to the licensee], your name and any other identifying information will be excluded from the information that is provided to (licensee name) in the request for information. We (have requested/will request) that (licensee name's) evaluation be thorough, objective, and that the evaluator be independent of (licensee name) management responsible for oversight of the functional area related to your concern(s). We will evaluate (licensee name's) response, and consider it in developing our conclusions regarding your concern(s). We will inform you of our disposition once we have evaluated (licensee name's) response and taken any additional actions, if necessary, to address your concern(s). [USE IF APPLICABLE] In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC requesting information from the licensee with regard to your concern(s).

USE IF RFI IS PLANNED OR IS AN OPTION AND ALLEGATION RECEIPT DOCUMENTATION DOES NOT INDICATE WHETHER THE ALLEGER OBJECTS TO NRC ISSUING AN RFI TO THE LICENSEE

Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections to NRC issuing such a request for information. We will consider any objections that you may have before deciding to request a written response regarding your concern(s) from (licensee name), and make every attempt to contact you before a request for information is actually provided to (licensee name). If you do not contact us within [ten] days of the date you receive this letter, it is our intent to proceed with issuance of the request for information to (licensee name).

USE IF, AFTER PRIOR DISCUSSION WITH THE ALLEGER, THE ARB DETERMINES THAT PUBLIC DISCUSSION OF THE ALLEGATION-RELATED INSPECTION OR INVESTIGATION IS PLANNED

As part of our response to your concern(s) and as discussed with you on (date), we plan to publicly discuss that our (inspection/investigation) is related to an allegation to afford others an opportunity to bring pertinent information to our attention. Your name and any other identifying information will be excluded from the information that is discussed. In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC publicly discussing that the (inspection/investigation) is related to concerns raised through the NRC allegation program. Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections at this time to the NRC disclosing the fact that our (inspection/investigation) activities are related to an allegation assessment. We will consider any objections that you may have before doing so. If you do not contact us within [ten] days of the date you receive this letter, it is our intention to proceed with our plans to publicly discuss that our (inspection/investigation) is related to an allegation.

USE IF ADDITIONAL INFORMATION IS NEEDED FROM THE ALLEGER

After evaluating the information you provided, we have determined that we will need additional information from you in order for the NRC to perform an effective review of your concern(s). For example, if you can provide...(provide examples of specific types of information that would support NRC review OR refer to a list of questions provided elsewhere, e.g., in Enclosure 1), such information would help us focus our review effort. [USE IF APPLICABLE] We have attempted to contact you by telephone without success. If you have any additional information to provide, please call (me/Allegation Coordinator name) at the toll free telephone number noted below, or contact (me/Allegation Coordinator name) in writing at (Allegation Office address), within [ten] days of the date you receive this letter. If no additional information is received, (we will take no further action regarding this matter at this time OR we will proceed with our review based on available information).

USE IF ADDITIONAL INFORMATION WAS PROMISED BUT NOT RECEIVED

Based on your (conversation, telephone conversation, interview, etc.) with (NRC staff member(s)) on (date), it was understood that you would provide additional information to facilitate our review of your concern(s). To date, we have received no additional information from you. Please call (me/Allegation Coordinator name) at the toll free telephone number noted below, or contact (me/Allegation Coordinator name) in writing at (Allegation Office address), within [ten] days of the date you receive this letter, to arrange for provision of the information. If no additional information is received, (we will take no further action regarding this matter at this time OR we will proceed with our review based on available information).

USE FOR REFERRALS TO STATES/AGREEMENT STATES

Because the NRC does not have jurisdiction over the activity(ies) in the State (Commonwealth) of \_\_\_\_\_ that are discussed in your concern(s), we are providing your concern(s) to the State (Commonwealth) of \_\_\_\_\_ for review and resolution. [USE IF ALLEGER WILL PERMIT RELEASE OF HIS/HER IDENTITY TO THE STATE/AGREEMENT STATE] Based on your willingness to

contact and be contacted by the State (Commonwealth), as indicated in your (discussion/phone conversation) with (NRC staff member(s)) on (date), we have provided your name and address to the State (Commonwealth) so that the State (Commonwealth) may provide feedback to you directly regarding this matter. If you are interested in the degree to which the State (Commonwealth) of \_\_\_\_\_ will protect your identity regarding your concerns, you should contact the State (Commonwealth) of \_\_\_\_\_ to discuss this matter. Your contact at the State (Commonwealth) of \_\_\_\_\_ is (provide address/phone number/e-mail address of state agency contact). [USE IF ALLEGER WILL NOT PERMIT HIS/HER IDENTITY TO BE PROVIDED TO THE STATE/AGREEMENT STATE] Because you have requested that your name and address not be provided to the State (Commonwealth), we will request the State (Commonwealth) to respond directly to the NRC regarding your concerns. We will inform you of the State's (Commonwealth's) response after we receive it. [USE IF UNABLE TO ASCERTAIN IF ALLEGER WILL PERMIT HIS/HER IDENTITY TO BE PROVIDED TO THE STATE/AGREEMENT STATE] We have attempted but have been unsuccessful in contacting you by telephone to determine if it would be acceptable to provide your name and contact information to the State (Commonwealth). For this reason, we have not provided your name and address to the State (Commonwealth) of regarding this matter and we have requested the State (Commonwealth) to respond directly to the NRC regarding your concerns. We will inform you of the State's (Commonwealth's) response after we receive it. If after receiving this letter, you decide that you would like to contact the State (Commonwealth) directly, you may contact the State (Commonwealth) at: (provide State (Commonwealth) contact information).

#### USE IF A RESPONSE FROM ANOTHER AGENCY IS NEEDED TO RESPOND TO AN ALLEGER'S CONCERN

We have determined that input is needed from (Agency Name) in order for the NRC to provide a complete response to your concern(s) related to (subject area). Therefore, we (are providing/have provided) these concerns to (Agency Name) for review and response. Your name and any other identifying information (will be/has been) excluded from the information that (is/was) provided to (Agency Name). We will review (Agency Name's) response to (this/these) concerns as part of our evaluation, and provide you with the results of that evaluation.

#### USE IF CONCERNS FALL WITHIN THE JURISDICTION OF ANOTHER AGENCY

We have reviewed your concern(s) and determined that the associated activity(ies) (is/are) not under NRC regulatory jurisdiction. The agency with jurisdiction in this matter is (Agency Name) and we have provided your concern(s) to that agency. For any further information on this matter, you may contact (Agency Contact) at (Agency Address).

USE THIS FOR ALL LETTERS [NOTE: Do not include NRC standard identity protection wording indicated in the paragraph below in the acknowledgment letter if the alleged's identity is being provided to a State or other agency/entity or if the alleged is considered a "widely known alleged" with regard to all of his/her concerns that are being acknowledged.]

In evaluating your technical<sup>7</sup>concern(s), the NRC intends to take all reasonable efforts not to disclose your identity to any organization, individual outside the NRC, or the public. It is important to note, particularly if you have raised this issue internally, that individuals can and

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<sup>7</sup>If the alleged has also raised discrimination and/or other wrongdoing concerns, it may be clearer to refer to the concerns being forwarded by RFI in this paragraph as "technical concerns" vs. "concerns."

sometimes do surmise the identity of a person who provides information to the NRC because of the nature of the information or other factors beyond our control. In such cases, our policy is to neither confirm nor deny the individual's assumption. [INCLUDE THE FOLLOWING SENTENCE IF AN RFI IS TO BE ISSUED TO THE LICENSEE] As indicated above, if a written request for information is provided to (licensee name) regarding (your technical concern(s) OR some or all of your technical concerns), your name and other identifying information will be excluded from the information that is provided to (licensee name). [Do not use qualifying phrase "if a request for information is provided to (licensee name)" in the previous sentence if the letter has earlier indicated NRC's intent to send an RFI vs. an option.] Enclosed with this letter is a brochure entitled "Reporting Safety Concerns to the NRC," which includes an important discussion of the identity protection provided by the NRC regarding these matters as well as those circumstances that limit the NRC's ability to protect an alleged's identity. Please read that section of the brochure. [ALTERNATE LANGUAGE FOR REPEAT ALLEGERS - OAC DISCRETION] In an earlier letter to you dated (date), pertaining to a concern/concerns you raised regarding (subject), you were provided an NRC brochure entitled, "Reporting Safety Concerns to the NRC." The brochure includes information regarding the NRC allegation process, identity protection, and the processing of claims of discrimination for raising safety concerns. If you need another copy of the brochure, please contact me. [ALTERNATE WORDING TO ABOVE SENTENCES REFERENCING BROCHURE AVAILABILITY] However, you should be aware that your identity could be disclosed regarding this matter if the NRC determines that disclosure is necessary to ensure public health and safety, to respond 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, to support a hearing on an NRC enforcement matter, per requirements of the Freedom of Information Act (FOIA), or if you have taken actions that are inconsistent with and override the purpose of protecting an alleged's identity.

USE IN PLACE OF ABOVE PARAGRAPH IF ALLEGER IS WIDELY KNOWN WITH RESPECT TO ALL CONCERNS OR IN ADDITION TO ABOVE PARAGRAPH IF ALLEGER IS WIDELY KNOWN WITH RESPECT TO ONE OR SOME CONCERNS

(We are aware OR It is our understanding) that you have (notified the media/discussed at a press conference on (date), identified at a public meeting on (date)) that you provided your concern(s) related to (subject area(s)) to the NRC. As a result, the NRC will be unable to protect your identity with regard to (this concern/these concerns).

USE IF A CONCERN OR CONCERNS INVOLVE A WRONGDOING MATTER OTHER THAN ALLEGED DISCRIMINATION

Also, your identity may be disclosed at the NRC's discretion in order to pursue an investigation of issue(s) involving potential wrongdoing, such as the (subject: e.g., records falsification, deliberate misconduct) issue you brought to our attention.

USE IF A DISCRIMINATION COMPLAINT WAS PROVIDED BUT WAS DETERMINED NOT TO INVOLVE A PRIMA-FACIE SHOWING OF POTENTIAL DISCRIMINATION

We are not initiating an investigation into your assertion of discrimination at this time as explained in Enclosure 1 to this letter [NOTE: provide reasons that a prima-facie showing was not articulated in Enclosure 1 discussion of discrimination concern]. However, please understand that if the NRC initiates an investigation into your discrimination concern in the



future based on additional clarifying information, your identity would be disclosed as part of that investigation since the evaluation of a matter of alleged discrimination without identifying you would be extremely difficult.

Although the NRC is not investigating this matter at this time, please understand that you have the right to file a complaint with the U.S. Department of Labor (DOL) if you believe you have been discriminated against for raising safety concerns and you desire a personal remedy, such as reinstatement or back pay. In order to protect your right to file a discrimination claim with DOL, you must file a written complaint with DOL within 180 days of the date of the alleged discriminatory action or the date you received any notice, in writing or otherwise, of an adverse personnel action, whichever occurred first. Any such complaint can be filed with DOL Regional Offices for the Occupational Safety and Health Administration (OSHA). Your complaint must describe the safety issues(s) you raised, the resulting adverse personnel action taken against you, and the causal relationship between them. If you choose to file a complaint, it should be filed with: (INSERT ADDRESS OF APPROPRIATE OSHA REGIONAL OFFICE).

#### USE IF THE ALLEGER HAS ESTABLISHED A PRIMA-FACIE SHOWING OF POTENTIAL DISCRIMINATION

The NRC staff has reviewed your complaint of discrimination and has determined that an evaluation of your complaint is warranted. The NRC will consider enforcement action against NRC-regulated facilities that are found to have discriminated against individuals for raising safety concerns. However, please understand that the NRC cannot require that a personal remedy be provided to you (e.g., back pay, reinstatement). Means by which you can pursue a personal remedy are described later in this letter.

If you wish, your discrimination concern may be investigated by the NRC Office of Investigations (OI). During an investigation, OI gathers testimonial and documentary evidence related to your discrimination concern. Since performing such an investigation without identifying you would be extremely difficult, please be aware that your name will be disclosed during the course of an NRC investigation into your discrimination concern. If, on the basis of the OI investigation results, the NRC determines that your discrimination concern is substantiated, the NRC will consider enforcement action against (licensee name), as appropriate.

As an alternative to an investigation of your discrimination concern by OI, you may choose to participate in the NRC's alternative dispute resolution (ADR) program, which offers mediation in the handling of a complaint of discrimination. Mediation is a voluntary process where two parties, (you and your employer OR you and your former employer), use an unbiased, neutral individual, or mediator, in an attempt to resolve and settle your complaint. If such an agreement is reached, the NRC will close your discrimination complaint upon settlement and will not perform an investigation. If a settlement is not reached with (your employer OR your former employer), the NRC (OI) may initiate an investigation into your complaint of discrimination. As mentioned above, the NRC's ADR program is voluntary, and any participant may end the mediation at any time. You should be aware that the NRC's ADR program allows the licensee to submit any negotiated settlement to the NRC for review and acceptance as an equivalent to an agreement negotiated through NRC-sponsored mediation, and this may occur with or without your consent. Therefore, any settlement you reach with the licensee, which is submitted to NRC by the licensee and subsequently approved by the NRC will not result in an NRC investigation of your discrimination complaint. Additional information on this program is included in the attached brochure, "NRC's Pre-Investigation ADR Program" and more detailed

information on the program can be found on our website at <http://www.nrc.gov/about-nrc/regulatory/enforcement/adr.html>.

The NRC has asked Cornell University's Institute on Conflict Resolution (ICR) to aid you and (your employer OR your former employer) in resolving your discrimination concern through ADR. If you choose to participate in the NRC's ADR program, you must contact ICR directly at 1-877-733-9415 (toll free). We request that you make a decision regarding your interest in attempting mediation via the ADR program as soon as possible or at least within [ten] days of the date you receive this letter. You may contact ICR to discuss ADR in general, the NRC's ADR program, and any other information you are interested in related to resolving your discrimination concern. If you and (your employer OR your former employer) choose to participate in the ADR program, ICR will assist you in the selection of a mediator who would meet with you and (your employer OR your former employer) in an attempt to settle your complaint. If you select a mediator through ICR, there will be no charge to you (or your employer OR your former employer) for the mediator's services. If you participate in the ADR program, we ask that you complete the program evaluation form (supplied by ICR) at the completion of your participation so that we can evaluate the effectiveness of the program.

You are not required to have legal representation to participate in the NRC's ADR program. However, if you have legal representation or obtain legal representation in the future, the NRC will not communicate with your legal representative unless you provide the NRC with your legal representative's name and contact information, and indicate that you want NRC to provide copies of future correspondence with you to your legal representative or that you want NRC to communicate directly with your legal representative. If your legal representative contacts the NRC before you provide this information, we will neither confirm nor deny that you contacted the NRC since it is our policy to protect the identity of individuals who submit allegations.

The NRC notes that employers are encouraged to develop similar dispute resolution processes internal to their company for use in conjunction with their own employee concerns programs. If you resolve and settle your discrimination concern with your (employer OR your former employer) your (employer OR former employer) may voluntarily report the settlement to the NRC. If NRC is notified of an internal settlement before an NRC OI investigation is initiated, the NRC will request a copy of such a settlement agreement (when completed, if negotiations are ongoing) from the (employer OR former employer) and review it to determine if it contains any restrictive language in violation of NRC employee protection regulations. If no such restrictive language exists, in accordance with agency policy, NRC will close the discrimination complaint and will not perform an investigation.

Additionally, please note that, while participation in the NRC's ADR program may result in negotiation of the issues which form the basis of your discrimination complaint with (your employer OR your former employer) under Section 211 of the Energy Reorganization Act of 1974, the timeliness requirement for filing a claim of discrimination with the U.S. Department of Labor (DOL) (180 days) is in no way altered by the NRC's ADR Program. In this aspect, we note that DOL has the authority to order personal remedies in these matters. For this reason, the filing of a discrimination complaint with DOL should be considered at the same time you are considering use of the NRC ADR program. While there is a likelihood that DOL may choose to await the completion of an attempted ADR mediation given the prospect that a mutually agreeable settlement may be reached, timely filing of a discrimination complaint with DOL assures that DOL will review your discrimination claim in the event that ADR is unsuccessful. In order to protect your right to file a discrimination claim with DOL, you must file a written

complaint with DOL within 180 days of the date of the alleged discriminatory action or the date you received any notice, in writing or otherwise, of an adverse personnel action, whichever occurred first. Any such complaint can be filed with DOL Regional Offices for the Occupational Safety and Health Administration (OSHA). Your complaint must describe the safety issues(s) you raised, the resulting adverse personnel action taken against you, and the causal relationship between them. If you choose to file a complaint, it should be filed with: (INSERT ADDRESS OF APPROPRIATE OSHA REGIONAL OFFICE). (OPTIONAL: Enclosed for your information is a copy of 29 CFR Part 24, DOL's "Procedures for Handling of Discrimination Complaints Under Federal Employee Protection Statutes.")

#### USE WHEN ALLEGER HAS BEEN GRANTED CONFIDENTIALITY

(With respect to your request for confidentiality OR With respect to the Confidentiality Agreement you signed), please be assured that the NRC will make every effort to maintain your confidentiality while resolving this matter. [INCLUDE THE FOLLOWING SENTENCE IF THE CONFIDENTIALITY AGREEMENT HAS YET TO BE EXECUTED] Please read the attached Confidentiality Agreement, sign and date it, and return it in the self-addressed, stamped envelope provided. It is important to note that individuals can and sometimes do surmise the identity of a person who provides information to the NRC because of the nature of the information or other factors beyond our control. In such cases, our policy is to neither confirm nor deny the individual's assumption. [INCLUDE THE FOLLOWING SENTENCES FOR ALLEGED DISCRIMINATION MATTERS] You should be aware that the NRC normally will not investigate a case of potential discrimination against an allegor for raising safety issues if the allegor is a confidential source. A matter of alleged discrimination cannot be investigated if an allegor's name is kept confidential.

#### USE IF AN ALLEGER HAS ALSO PROVIDED ISSUES RELATED TO ALLEGED MISCONDUCT ON THE PART OF NRC STAFF OR NRC CONTRACTORS

With respect to your concern(s) regarding potential misconduct on the part of the NRC staff (and/or NRC contractors), these matters have been referred to the NRC Office of Inspector General (OIG). If you have any questions or other comments on (this matter/these matters), you should contact the OIG directly at 1-800-233-3497. [NOTE: If the issue has not been formally referred to the OIG after review by appropriate personnel within the affected regional or headquarters office, the acknowledgment letter should simply acknowledge the allegor's comments and provide OIG contact information as an option.]

#### USE FOR ALL LETTERS

If a request is filed under the Freedom of Information Act (FOIA) related to your area(s) of concern, the information provided will, to the extent consistent with that act, be purged of names and other potential identifiers. [FOR ALLEGERS WITHOUT CONFIDENTIALITY] Further, you should be aware you are not considered a confidential source unless confidentiality has been formally granted in writing.

[INCLUDE IF NRC BROCHURE WAS NOT REFERENCED EARLIER IN THE ACKNOWLEDGMENT LETTER] Enclosed with this letter is a brochure entitled "Reporting Safety Concerns to the NRC," which contains information that you may find helpful in understanding our process for review of safety concerns. The brochure contains an important discussion of the identity protection provided by the NRC regarding these matters as well as

those circumstances that limit the NRC's ability to protect an alleged's identity. [ADD IF THE ALLEGATION INCLUDES A DISCRIMINATION CONCERN] The brochure also includes a discussion of the right of an individual to file a complaint with the DOL if the individual believes she or he has been discriminated against for raising safety concerns and the individual desires a personal remedy. [ALTERNATE LANGUAGE FOR REPEAT ALLEGERS - OAC DISCRETION] In an earlier letter to you dated (date), pertaining to a concern/concerns you raised regarding (subject), you were provided an NRC brochure entitled, "Reporting Safety Concerns to the NRC." The brochure includes information regarding the NRC allegation process, identity protection, and the processing of claims of discrimination for raising safety concerns. If you need another copy of the brochure, please contact me.

Thank you for notifying us of your concern(s). We will advise you when we have completed our review. Should you have any additional questions, or if the NRC can be of further assistance, please call me toll-free at the NRC Safety Hotline at 1-800-695-7403 (if the alleged resides in the geographical area of the action office) OR the (regional/office) toll-free number 1-800-XXX-XXXX (if the alleged does not reside in the geographical area of the action office) or you may provide information to me in writing at (Allegation Office address). [USE THE FOLLOWING AS DEEMED NECESSARY BY THE OAC] You may also communicate with me by electronic mail, if you so choose. However, when doing so, please call me in advance or provide your phone number in your e-mail message so that I can confirm that you are the source of the information. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is XXX@nrc.gov.

Sincerely,

Enclosure(s): As stated

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FORMAT FOR ENCLOSURE 1 TO ACKNOWLEDGMENT LETTER

STATEMENT OF CONCERNS

ALLEGATION NO. XXX-200X-A-XXXX

Concern 1:

Describe the alleged's first concern.

Concern 2:

Describe the alleged's second concern.

[Repeat for additional concerns]

=====

USE THE FOLLOWING IN RESPONSE TO A DISCRIMINATION CONCERN IF IT WAS DETERMINED THAT THE ALLEGER DID NOT ESTABLISH A PRIMA FACIE SHOWING OF DISCRIMINATION.

In order for the NRC to initiate an investigation into a matter of alleged discrimination pursuant to 10 CFR 50.7 (or other appropriate NRC employee protection regulation), a set of facts must be presented which demonstrates that: (1) the worker engaged in protected activity (e.g., raised a nuclear or radiological safety issue); (2) an adverse personnel action was taken against the worker; (3) the employer knew that the worker had engaged in the protected activity; and (4) the protected activity was, at least in part, a reason that the employer took the adverse action. We

have reviewed the information you provided and note that you have not articulated a pattern of facts as described above. [Explain why prima facie was not met, e.g. no evidence that alleged engaged in protected activity, no evidence that adverse personnel action was taken, no evidence that employer was aware of the protected activity, etc.] For (this reason/these reasons), the NRC will not be initiating an investigation into this matter.

**Exhibit 13**

**Allegation Review Board Worksheet**  
Considering a Request for Information to the Licensee

The purpose of this worksheet is to assist the staff in determining whether it should issue a request for information (RFI) to a licensee and to support the development of the proposed basis for the Allegation Review Board (ARB) assignment of this action. Circumstances may exist, as indicated below, that support the use of an RFI in conjunction with an NRC inspection, technical review, or investigation activity. The ARB meeting summary shall document the specific ARB decision regarding an RFI and the basis for that decision. If the RFI worksheet is used to document the ARB decision regarding an RFI, the completed worksheet shall be maintained in the allegation file.

Note: For the purposes of this worksheet, the term "licensee" refers to any NRC licensee, certificate holder, license or certificate applicant, or vendor that may be the subject of an allegation concern, and the term "inspection" refers to any NRC inspection or technical review activity.

Allegation Number: \_\_\_\_\_

Affected Concern(s): \_\_\_\_\_

**A. Overriding Safety Issue**

Yes  No  Does the allegation concern represent an overriding safety issue (OSI)?

Note: An RFI will normally be issued to the licensee (verbally first, then in writing) if an OSI exists regardless of any other factor noted on this worksheet. In this instance, the consideration of a waiting period for allegor feedback on a proposed RFI is waived. Other factors discussed below should be considered to determine if conducting an NRC inspection in conjunction with the RFI is preferable.

Comment: \_\_\_\_\_

**B. RFI Inhibiting Conditions**

If the concern does not involve an OSI, consider the validity of the following statements related to conditions that would normally inhibit the issuance of an RFI:

- True  False  The allegor objects to the NRC issuing an RFI, and information cannot be released in sufficient detail to the licensee without compromising the allegor's identity.
- True  False  The licensee could compromise an NRC investigation or inspection because of knowledge gained from the RFI.
- True  False  The concern is against senior licensee management such that an independent and effective evaluation is unlikely through the use of an RFI.
- True  False  A Federal or State agency providing the information does not approve of the RFI.

**RFI** (i.e., either all of the above statements are "False" or see "Comment" below)

**Inspection or Investigation** (i.e., either one or more of the above statements is "True" or see "Comment" below)

Comment: \_\_\_\_\_

Note: If it is ultimately determined that an RFI will be issued but the above conditions may limit the effectiveness of the RFI, the ARB should consider NRC inspection or investigation activities to supplement information to be obtained from the RFI response.

**C. Allegation and Inspection History Consideration**

Consider the validity of the following statements related to the history of, or trends in, allegations, NRC inspections, and investigations that may indicate that an NRC inspection or investigation is preferable to an RFI or that it should be considered in conjunction with an RFI. As needed, the headquarters offices should request assistance from the regional offices in obtaining this information.

- True  False  The action office is aware of problems with the site’s responses to RFIs in the last 2 years that could impact the quality of the licensee’s response to an RFI related to this concern.
- True  False  The facility is one of a fleet of plants to which another NRC regional office has engaged licensee senior management or has stopped issuing RFIs on a temporary basis because of a recent history of inadequate RFI responses from the corporate organization.
- True  False  The action office is aware of allegation trends at the site in the past 2 years, whether substantiated or not, that indicate that the NRC should independently evaluate the concern(s) (e.g., multiple or repeated allegations of a similar nature).
- True  False  The mid-cycle or end-of-cycle review (reactor licensees) or other assessment results indicate problems with the site’s ability to identify and resolve problems, which could impact the quality of the licensee’s response to an RFI related to this concern.

- RFI** (i.e., either all of the above statements are “False” or see “Comment” below)
- Inspection or Investigation** (i.e., either one of more of the above statements is “True” or see “Comment” below)

Comment: \_\_\_\_\_

**D. Inspection Consideration**

Consider the validity of the following statements that might indicate that an NRC inspection or investigation of the concern(s) is preferable to an RFI or that it should be considered in conjunction with an RFI.

- True  False  The allegor objects to the NRC issuing an RFI to the licensee (e.g., the allegor is concerned that there could be negative repercussions).
- True  False  The allegor has taken the concern to the licensee with unsatisfactory results.
- True  False  The NRC evaluation can be as, or more, timely and efficient than the licensee’s evaluation.
- True  False  The allegation concern can be evaluated during an ongoing inspection or one that the NRC expects to conduct in the near future.
- True  False  The NRC is already evaluating other aspects of the same or similar issues, and an evaluation of the allegation concern can be included.
- True  False  Significant public and Commission interest warrants an independent assessment of concern(s).
- True  False  Other reasons to consider in conducting an inspection. Describe: \_\_\_\_\_

- RFI** (i.e., either the statements marked “False” collectively suggest an RFI is preferable or see “Comment” below)
- Inspection or Investigation** (i.e., either the statements marked “True” collectively suggest an NRC inspection or investigation is preferable or see “Comment” below)

Comment: \_\_\_\_\_

**E. Proposal for an ARB-Assigned Action and Basis**

RFI  Inspection or Investigation  Both

Basis: \_\_\_\_\_



## Exhibit 14

### Sample Allegation Request For Information (RFI) Letter To The Licensee

OFFICIAL USE ONLY – SECURITY-RELATED INFORMATION  
(Use this header on each page if the RFI contains SUNSI Security-Related Information)

Licensee management representative  
Licensee address

XXXX-YYYY-A-XXXX

Dear \_\_\_\_\_:

The U.S. Nuclear Regulatory Commission recently received information concerning activities at (site/facility). We request that (licensee name) evaluate the information described in the Enclosure to this letter and submit the results of that evaluation to (regional or headquarters office). Within 30 days of the date of this letter, we ask that you inform (regional or headquarters office contact) in writing of the details of your evaluation and your findings related to the validity of the information provided. If (licensee name) determines a concern to be substantiated, please discuss (licensee name's) consideration of appropriate root or apparent causes and generic implications of the substantiated concern, and the appropriateness of corrective actions taken or planned commensurate with the significance of the issue. Additionally, if your evaluation identifies any potential compliance issue with regard to NRC regulatory requirements or NRC commitments, please inform us regarding the requirement or commitment that may have been violated, the corrective actions taken or planned, and the corrective action documentation that addressed the issue. We ask that you reference our tracking number (XXXX-YYYY-A-XXXX) in your written response and also that you make any records of your evaluation available for possible NRC inspection.

The NRC will review your response to determine whether: (a) the individual conducting the investigation was independent of the organization with responsibility for the related functional area; (b) the evaluator has sufficient knowledge and experience to conduct a review in the related functional area; and (c) the evaluation was of sufficient depth and scope. Your response should describe how each of these attributes was satisfied. If individuals were interviewed as part of your review, your response should include the basis for determining that the number and cross section of individuals interviewed was appropriate to obtain the information necessary to fully evaluate the concern(s), and the interview questions used. If your evaluation included a sample review of related documentation and/or potentially affected structures, systems, and components, your response should include the basis for determining that the selected sample size was appropriately representative and adequate to obtain the information necessary to fully evaluate the concern(s). The NRC will consider these factors in reviewing the adequacy of your evaluation of this/these issue(s) and in developing our conclusions with regard to the concerns provided in the Enclosure.

We request that your response only be sent to (regional or headquarters office contact) at the following address: [Name and address of regional or headquarters office contact]. No other copies should be sent to the NRC, i.e., your response should not be docketed or otherwise submitted to the NRC Document Control Desk. We also request that your response contain no

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(Use this footer on each page if the RFI contains SUNSI Security-Related Information)

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(Use this header on each page if the RFI contains SUNSI Security-Related Information)

Addressee

XXXX-YYYY-A-XXXX

personal privacy, proprietary, or safeguards information. If personal privacy or proprietary information is necessary to provide an acceptable response, please provide a bracketed copy of your response that identifies the information that should be protected and a redacted copy of your response that deletes such information. If you request withholding of such material, you must specifically identify the portions of your response that you seek to have withheld and provide in detail the bases for your claim of withholding (e.g., explain why the disclosure of information will create an unwarranted invasion of personal privacy or provide the information required by 10 CFR 2.390(b) to support a request for withholding confidential commercial or financial information). If safeguards information is necessary to provide an acceptable response, please provide the level of protection described in 10 CFR 73.21.

[FOR RFI THAT CONTAINS SECURITY-RELATED SENSITIVE UNCLASSIFIED NON-SAFEGUARDS INFORMATION (SUNSI), INCLUDE THIS PARAGRAPH] The information in the Enclosure to this letter contains SUNSI Security-Related Information in accordance with 10 CFR 2.390(d)(1) and its disclosure to unauthorized individuals could present a security vulnerability. Please mark the top of each page of your response with “Security-Related Information – Withhold Under 10 CFR 2.390,” and follow the instructions for withholding information contained in 10 CFR 2.390 (b)(1). In accordance with 10 CFR 2.390 (b)(1)(ii), NRC is waiving the requirement for your response to be accompanied by an affidavit.

This letter and its enclosure should be controlled and distribution limited to personnel with a “need to know.” The response requested by this letter and the accompanying enclosure are not subject to the clearance procedures of the Office of Management and Budget as required by the Paperwork Reduction Act of 1980, Pub. L. 96-511.

Lastly, we ask that you contact (responsible NRC supervisor) as your review effort begins, to assure a common understanding of the issues discussed in the Enclosure, and the NRC’s expectations for follow-up and response and to discuss your plan to evaluate the issues. Please contact (regional or headquarters office contact) at (telephone #) with this information within 10 working days and with any additional questions you may have at this time concerning this request.

Sincerely,

[NRC manager as designated by  
region/headquarters office management]

Enclosure: As stated

bcc w/encl: Allegation File No. XXX-YYYY-A-XXXX

OFFICIAL USE ONLY – SECURITY-RELATED INFORMATION  
(Use this footer on each page if the RFI contains SUNSI Security-Related Information)

SAMPLE ENCLOSURE TO RFI LETTER TO THE LICENSEE REGARDING AN ALLEGATION

OFFICIAL USE ONLY – SECURITY-RELATED INFORMATION

(Use this header on each page if the RFI contains SUNSI Security-Related Information)

NOT FOR PUBLIC DISCLOSURE

(Use this header on each page of the RFI enclosure if RFI DOES NOT contain SUNSI Security-Related Information)

Issue 1:

XXXX-YYYY-A-XXXX

The NRC has received information that ... (for each concern, provide as much information as possible to enable the licensee to perform an effective review. The information is to be provided in a manner that does not include the identity of the allegor or information that could permit the licensee to identify the allegor, and that does not compromise an ongoing NRC investigation or inspection.)

[Note: If the allegation is received in writing, the allegor's incoming correspondence normally should not be forwarded with the RFI. Rather, the allegor's concerns are summarized in this enclosure, including being rewritten so as not to use the allegor's exact wording. If the ARB determines that the safety implications of an allegation concern warrant providing a copy of the original information supplied by the allegor with the RFI rather than an NRC summary, every effort should be made to notify the allegor of the NRC's proposed action and obtain agreement from the allegor, in writing, if possible. If the allegor objects to the inclusion of his/her original correspondence in the RFI, NRC should acknowledge the allegor's feedback and, if possible, come to an agreement with the allegor as to the content of the information that will be transmitted. If the allegor objects to the inclusion of his/her original correspondence in the RFI and NRC does not agree with the allegor's objection because the matter represents an overriding safety issue, the NRC may include the allegor's incoming correspondence in the RFI over the allegor's objection. The results of any such interface with the allegor should be documented in the allegation file.]

In addition to the response information requested in the cover letter, we ask that your response address or include the following:

Examples of additional detail that may be requested:

- ...answers to the following questions related to this issue
- ...a description of the process that monitors this issue
- ...a description of or a copy of the procedure that governs this activity
- ...a diagram that shows how the equipment interfaces with other systems

[Note: If the allegor has previously raised the issue internally to the licensee and was not satisfied with the licensee's feedback, and does not object to NRC providing a written RFI to the licensee regarding the concern, the letter to the licensee should, in addition to describing the concern, describe the asserted inadequacy in the licensee's internal response efforts.]

Please contact (responsible NRC supervisor) as your review effort begins within 10 working days of receiving this letter to assure a common understanding of the issues in this Enclosure and NRC's expectations for follow-up and response and to discuss your plan to evaluate the issues.

NOT FOR PUBLIC DISCLOSURE

(Use this footer on each page of the RFI enclosure if RFI DOES NOT contain SUNSI Security-Related Information)

OFFICIAL USE ONLY – SECURITY-RELATED INFORMATION

(Use this footer on each page if the RFI contains SUNSI Security-Related Information)

## Exhibit 15

### Checklist for NRC Staff Review of Licensee Response to an Allegation Request for Information

The purpose of this checklist is to assist the staff in evaluating the adequacy of a licensee's response to an allegation request for information (RFI) and in independently verifying aspects of the information provided by the licensee and to support the development of the proposed basis for additional staff actions if the NRC determines that the licensee's response is inadequate, inaccurate, or otherwise unacceptable.

Note: The term "licensee" in the worksheet refers to any NRC licensee, certificate holder, license or certificate applicant, or vendor that may be the subject of an allegation concern.

Allegation Number: \_\_\_\_\_

Affected Concern(s): \_\_\_\_\_

#### A. Determining the Adequacy of the Licensee's Response to an Allegation RFI

Note: "Yes" answers normally indicate that the licensee's response to an RFI is adequate, whereas "No" answers indicate that additional action may be necessary.

##### Evaluator Independence

Yes  No  Does the relationship between the individual(s) chosen by the licensee to evaluate the concern(s) and the concern(s) being evaluated allow for appropriate objectivity (e.g., a third party or internal evaluator but not in the same management chain as those involved in the concern(s))?

Note: Use best judgment for smaller organizations when clear management chain independence may not be possible.

Comments: \_\_\_\_\_

##### Evaluator Competence

Yes  No  Based on the information provided, does it appear that the evaluator has a sufficient level of knowledge and experience to conduct a review of the related functional area? Comments: \_\_\_\_\_

##### Depth and Scope of Evaluation

Yes  No  Are all RFI-related concerns addressed?

Yes  No  Is the evaluation rigor commensurate with the level of concern detail provided? For example, if appropriate, did the evaluation include a review of the extent of condition, an assessment of the root or apparent cause, or generic considerations?

Yes  No  Does the evaluation support the conclusions provided by the licensee?

Yes  No  Did the evaluation consider all affected personnel, groups, and departments? For example, if interviews were conducted, did the licensee describe the basis for the number and cross-section of individuals interviewed and is the basis adequate? Were the interview questions appropriate?

Yes  No  N/A  If the NRC asked additional specific questions, are they answered satisfactorily?

Yes  No  N/A  If the RFI referenced the names of specific individuals, did the licensee contact those individuals or appropriately consider their involvement in the allegation concern?

Yes  No  N/A  If the RFI referenced specific documentation, did the licensee evaluate that documentation or appropriately consider it in the evaluation of the allegation concern?

Yes  No  N/A  If the licensee reviewed a sample of related documentation or a sample of potentially affected structures, systems, and components, did the licensee describe the sample and provide the basis for determining that the sample size was appropriately representative?

Comments: \_\_\_\_\_

#### Effectiveness of Corrective Actions

Yes  No  N/A  If applicable, did the licensee take appropriate immediate corrective actions?

Yes  No  N/A  If applicable, were operability and reportability determinations appropriate?

Yes  No  N/A  If applicable, were appropriate corrective actions proposed?

Yes  No  N/A  If applicable, were issues entered into the corrective action program?

Comments: \_\_\_\_\_

#### NRC Violations (substantiated concerns only)

Yes  No  N/A  If the substantiated concern represents a finding or violation, did the licensee appropriately acknowledge and articulate the potential finding or violation in response to the RFI? Comments: \_\_\_\_\_

## B. NRC Independent Review Effort

The NRC staff that evaluates the licensee RFI response should attempt to independently validate aspects of the information provided by the licensee. Indicate any of the following that apply:

- Additional questions posed to the licensee.
- Performed or coordinated an independent inspection or technical review activity to verify a condition indicated in the response.
- Reviewed the results of recently conducted NRC inspections in the functional area related to the allegation concerns.
- Verified the existence and applicability of technical references noted in the response.
- Verified the existence and applicability of procedures referenced in the response. Ensured that the revision number referenced is appropriate.
- Verified the existence and content of corrective action program documentation referenced in the response.
- Checked calculations noted in the response.
- Other. Describe: \_\_\_\_\_

Comments: \_\_\_\_\_

## C. CONCLUSION

- Adequate RFI Response                       Inadequate RFI Response

Basis: \_\_\_\_\_

Note: Notify the responsible branch chief and the Office Allegation Coordinator of the results of this review.
--

## Exhibit 16

### OI Investigation Priority

HIGH PRIORITY	NORMAL PRIORITY	LOW PRIORITY
<p>Matter, if proven, is of very significant regulatory concern. The potential consequences for safety, given the position of the person(s) involved, any apparent lack of integrity of that person(s), and the safety significance of the underlying matter, if the violation should be found willful, are high and likely would result in prompt regulatory action by NRC. The person(s) involved in the willful violation very likely would be removed from licensed activities for a substantial period. Normally, it would be expected that the violation, without considering the issue of intent, would not likely be categorized at less than a Severity Level III or, if it would be categorized at less than a Level III, it would involve management at the level of a mid-level manager or above (this means if willfulness is proven, it likely will be at least a Severity Level II violation).</p>	<p>Matter, if proven, is of significant regulatory concern. The person causing the willful violation may be removed from licensed activities. The potential consequence for safety is of concern. Normally it would be expected that the violation, without considering the issue of intent, would not likely result in a Severity Level I, II, or III violation except a Severity Level III violation excluding the examples of a high priority matter or a matter covered under normal priority as indicated below (this means if willfulness is proven, it will likely be at least a Severity Level III violation).</p>	<p>Matter, if proven, is of concern but does not rise to the significance of a high or normal priority. The person causing the willful violation would not likely be removed from licensed activities</p>
<p>Licensee or contractor manager (second line supervisor or above), reactor operator, or radiation safety officer (RSO) directing, performing, or condoning (meaning individual is aware of the apparent willfulness of the violation and does not act to report or stop it) any deliberate violation, including providing false information to the NRC or creating false licensee records, that may raise an integrity issue calling into question NRC's reasonable assurance.</p> <p>Any individual directing, performing, or condoning a deliberate violation in which, without consideration of intent, the underlying violation is at least of significant regulatory concern and would be categorized at Severity Level I, II, or III.</p> <p>Any individual knowingly providing incomplete and inaccurate information to NRC or a licensee with the purpose of influencing a significant regulatory decision such as a favorable restart decision, operability decision, issuance of a license amendment, not proceeding with an escalated enforcement action, or issuance of a notice of enforcement discretion.</p> <p>Any individual deliberately covering up a matter so that a required report was not made to NRC in which it would have been likely for NRC to have promptly (within several days) sent inspectors or issued correspondence to the licensee to follow up on the matter if NRC had known of the information, or in which the cover-up was to prevent identification of a significant matter during an NRC inspection.</p> <p>Any individual willfully providing inaccurate or incomplete information to NRC, to a licensee, or creating false records that in fact cause a wrong decision to be made by either NRC or a licensee (i.e., if accurate or complete information had been provided, a substantively different decision would have been made with regard to regulatory or safety significance; the inaccurate information in fact had an influence).</p> <p>Any individual tampering with vital equipment at a power reactor that indicates a potential act of sabotage.</p> <p>Any individual suspected of a deliberate violation, which would otherwise be categorized as a normal priority, were it not for the need for an immediate investigation because there are indications that evidence may be lost or tampered with.</p> <p>Allegations of discrimination:</p> <ul style="list-style-type: none"> <li>- resulting from the provision of information regarding nuclear safety or regulatory issues directly to the NRC caused by a licensee or contractor, mid-level manager, or above (consistent with the current enforcement policy classification of Severity Level I or II violations)</li> <li>- resulting from raising concerns of degraded or non-conforming conditions that if true, would impact the operability of a safety-related structure, system, or component, or safeguards equipment</li> <li>- that appear particularly blatant or egregious</li> </ul> <p>Other matters to which, because of the potential regulatory significance, a regional administrator or office director with the concurrence of a Deputy EDO assigns a high priority.</p>	<p>Any individual directing, performing, or condoning (meaning the individual is aware of the apparent willfulness of the violation and does not act to report or stop it) a deliberate violation in which without consideration of intent, the underlying violation would be categorized at a Severity Level IV or Green violation, and the violation was either NRC-identified, or involves a supervisor or a licensed operator, or the licensee has not taken sufficient corrective action (including sufficient disciplinary action).</p> <p>Cases involving discrimination not amounting to a high priority.</p> <p>Any individual providing information, knowing it is incomplete and inaccurate, directly or indirectly to NRC or in records (if it is a relatively isolated matter or not a significant record) maintained by a licensee or deliberately covering up a matter not required to be reported to prevent identification during an NRC inspection.</p> <p>Licensee officials directing, performing, or condoning violations in careless disregard of regulatory requirements in which the underlying violation, without consideration of intent, would be categorized at a Severity Level I, II, or III.</p> <p>Willful failure to submit a required report to NRC in a matter not considered a high priority.</p> <p>Relatively isolated deliberate failure to file a Form 241, "Report of Proposed Activities in Non-Agreement States," notwithstanding the examples considered a high priority.</p>	<p>The situation in which, without consideration of intent, the underlying violation would be characterized as a minor violation OR as an SL IV or Green violation for situations that are licensee-identified, involve only low level non-supervisory personnel, and for which the licensee has taken sufficient corrective action (including significant disciplinary action against the responsible individual(s)).</p> <p>Relatively isolated falsification of a record or falsification of records that are not significant.</p> <p>Violations caused by careless disregard not covered in higher priorities.</p> <p>Licensee- or contractor-identified willful violations of limited safety significance committed by individuals holding relatively low level positions.</p> <p>For some circumstances of potential wrongdoing considered to be of low priority, the ARB, with OI agreement, may determine that initiation of an investigation is not recommended. Such a determination will be made by the ARB on a case-by-case basis, considering the involved employee's position within the organization, the significance of the safety issue underlying the potential wrongdoing, and the comprehensiveness of corrective actions taken by the licensee.</p>



## Exhibit 17

### Sample Allegation Status Letter

(Alleger's Name and Address)

XXXX-20XX-A-XXXX

SUBJECT: Concerns You Raised to the NRC Regarding (facility name)

Dear Mr./Mrs./Ms. (alleger's last name):

#### USE FOR ALL LETTERS

This letter pertains to the concern(s) you raised to the NRC in your (letter of, electronic mail message dated, conversation with (NRC staff member) on, interview with (NRC staff member) on, meeting with the resident inspector on, etc.) (date), regarding (general concern reference, e.g., maintenance issues, operations issues and alleged discrimination, etc.) at (facility name). (Use the following sentences, as appropriate, if the alleger provided information in addition to that provided in the initial correspondence or contact.) In addition to the information you provided on (initial allegation receipt date), you also (called (NRC staff member(s)), wrote to the NRC, met with (NRC staff member(s))) on (date). In/During this/these subsequent (letter(s), conversation(s), meeting(s)), you provided additional information regarding (general additional concern reference).

#### USE IF ALL CONCERNS ARE STILL OPEN

Your concern(s) ((is/are) being reviewed by NRC) OR ((Licensee name) was requested to provide a written response to your concern(s) for NRC evaluation). We are reviewing (licensee name's) response to determine if any additional action by NRC is appropriate. When we have completed our review, we will notify you of our findings, actions, and the final evaluation of your concern(s).

USE IF, AFTER PRIOR DISCUSSION WITH THE ALLEGER, THE ARB DETERMINES THAT PUBLIC DISCUSSION OF THE ALLEGATION-RELATED INSPECTION OR INVESTIGATION IS PLANNED (AND THIS WAS NOT DISCUSSED IN THE ACKNOWLEDGEMENT LETTER OR A PREVIOUS STATUS LETTER)

Allegation-related correspondence is not normally placed on the public record. However, as part of our response to your concern(s) and as discussed with you on (date), we plan to publicly discuss that our (inspection/investigation) is related to an allegation to afford others an opportunity to bring pertinent information to our attention. The NRC believes this will further the agency's mission by (state reason for public dissemination). Your name and any other identifying information will be excluded from the information that is discussed. In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC publicly discussing that the (inspection/investigation) is related to concerns raised through the NRC allegation program. Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections at this time to the NRC disclosing the fact that our (inspection/investigation) activities are related to an allegation

CERTIFIED MAIL

RETURN RECEIPT REQUESTED (Note: Use only on the first page)

assessment. We will consider any objections that you may have before doing so. If you do not contact us within [ten] days of the date you receive this letter, it is our intention to proceed with our plans to publicly discuss that our (inspection/investigation) is related to an allegation.

#### USE IF SOME CONCERNS ARE CLOSED WHILE OTHERS ARE STILL OPEN

We have completed our review of (some, XX number) of your concerns, as indicated in the Enclosure to this letter. (On a separate enclosure (see sample Enclosure), restate each concern and describe the NRC evaluation and conclusions for every issue for which NRC efforts have been completed since the last correspondence with the allegor.) (Use the following sentence if concern results are documented in an inspection report.) We note that detailed results of NRC inspection efforts regarding this/these concern(s) are further documented in NRC Inspection Report (XX-XXX/20XX-XXX) which has been enclosed for your information. The NRC staff (is continuing with its review of your other concern(s) OR has requested a written a response from (licensee) regarding your other concern(s) OR is reviewing (licensee name's) response to your concern(s), etc.). When we have completed our review, we will notify you of our findings, actions, and the final evaluation of your concern(s).

#### FOR ALLEGATION CONCERNS INVOLVING SECURITY-RELATED INFORMATION

[If any of the concerns being closed in the status letter are security-related, refer to Enclosure 20, "Sample Closure Letter to Allegor (For Security-Related Concerns)," for appropriate cover letter wording depending on the security concern category.]

#### USE IF A DISCRIMINATION CONCERN WAS INVESTIGATED AND NOT SUBSTANTIATED BY OI, BUT THE DISCRIMINATION ISSUE IS OPEN IN THE DOL PROCESS

The NRC Office of Investigations (OI) initiated an investigation to determine [if you were discriminated against for (briefly describe protected activity)]. The results of the OI investigation were documented in OI Report No. \_\_\_\_ dated (date) . The OI investigation concluded that there was not sufficient evidence developed during the investigation to substantiate that [discrimination] occurred. (NOTE: Categorical statements, such as ..."The NRC concluded that discrimination did not occur"....should not be used.) However, because DOL review is still in progress, the NRC will not make a final agency decision regarding this matter until the final DOL decision has been rendered and NRC has had an opportunity to review it to determine if it will affect the conclusion of the OI investigation.

We are providing the results of the OI investigation to the parties involved in the DOL review related to your discrimination concern. [A copy of the synopsis of the OI report] OR [A summary of the results of the OI investigation] OR [a redacted copy of the OI report] is enclosed. Please note that the complete OI investigation report, including supporting documentation, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information pursuant to the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, Requests for Records.

#### USE FOR ALL LETTERS

Thank you for notifying us of your concerns. We will advise you when we have completed our review. If I can be of further assistance, please call me toll-free at the NRC Safety Hotline at

1-800-695-7403 (if the allegor resides in the geographical area of the action office) OR the (regional/office) toll-free number 1-800-XXX-XXXX (if the allegor does not reside in the geographical area of the action office). You may also provide information to me in writing at (Allegation Office address). [USE THE FOLLOWING AS DEEMED NECESSARY BY THE OAC] You may also communicate with me by electronic mail, if you so choose. However, when doing so, please call me in advance or provide your phone number in your e-mail message so that I can confirm that you are the source of the information. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is XXX@nrc.gov.

Sincerely,

Enclosure(s): As stated

=====

IF CONCERNS WERE CLOSED SINCE THE LAST LETTER TO THE ALLEGER, PROVIDE THE CLOSURE INFORMATION FOR THOSE CONCERNS IN AN ENCLOSURE TO THE STATUS LETTER AS DESCRIBED BELOW

FORMAT FOR STATUS LETTER ENCLOSURE DESCRIBING NRC EVALUATION OF ALLEGATION CONCERNS

RESPONSE TO CONCERNS  
ALLEGATION NO. XXXX-YYYY-A-XXXX

Concern 1:

Restate the allegor's concern as provided in the acknowledgment letter, as modified by the allegor, or as clarified by the allegor (if the allegor provided clarifying information to better describe his/her concern during the course of NRC's review).

Response to Concern 1:

[Provide a direct answer to each of the closed concerns, stating what was evaluated, how it was evaluated, and providing NRC's conclusions regarding the validity of the concern. It is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding the evaluation of the concern. However, if providing such an overall conclusion will be confusing to the allegor (e.g., if aspects of the concern were substantiated, but the alleged impropriety or inadequacy was not found to be valid), alternate wording may be used, such as... "while NRC was able to substantiate that certain (facts/statements/conditions regarding \_\_\_\_\_) were true, NRC was unable to confirm or validate an impropriety or inadequacy associated with NRC-regulated activity." (If appropriate add: We have documented our findings in (inspection report number, or other document citation) dated \_\_\_\_\_. A copy of the relevant section(s) of the report/document is/are enclosed.]

FOR A CLOSED CONCERN THAT INVOLVED AN RFI TO THE LICENSEE

[If an RFI was sent to the licensee, the documentation of allegation concern closure should reference the feedback provided by the licensee but should also distinctly describe NRC's

evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response. Specifically, in addition to restating the alleged concern, the concern response should separately describe (1) the licensee's evaluation and response and (2) NRC's evaluation of the licensee's response and NRC's overall conclusions regarding the validity of the concern. The description of NRC's evaluation of the licensee's response should articulate any NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response.]

#### FOR CLOSED ALLEGATION CONCERNS INVOLVING SECURITY-RELATED INFORMATION

[If any of the concerns being closed in the status letter are security-related, refer to Enclosure 20, "Sample Closure Letter to Allegor (For Security-Related Concerns)," for appropriate response wording depending on the security concern category.]

[Repeat for Additional Concerns]

**Exhibit 18**

**Sample Closure Letter to Allegor  
(For Other Than Security Concerns)**

Alleger's Name and Address

XXXX-YYYY-A-XXXX

SUBJECT: Concern(s) You Raised to the NRC Regarding (Site/Facility)

Dear (Alleger's Name):

USE FOR ALL LETTERS

The NRC has completed its follow up in response to the concern(s) you brought to our attention on (date) regarding (site/facility). You were concerned about (brief summary of concerns) OR Your concerns were related to (brief reference to functional area(s), e.g., operations, operator qualification, health physics program implementation, maintenance backlog, plant configuration control, etc.). Enclosure 1 to this letter restates your concern(s) and describes the NRC's review and conclusions with regard to (that/each) concern.

SUBSTITUTE THE FOLLOWING FOR THE ABOVE PARAGRAPH IF THE ALLEGER FAILED TO PROVIDE ADDITIONAL INFORMATION, AS NEEDED OR REQUESTED

This letter refers to our letter to you dated \_\_\_\_\_, in which we requested that you contact us to provide additional information regarding your concern(s) related to (general description of concern(s)) at (site/facility). You discussed (this/these) concern(s) (in your letter dated (date)) (during your conversation with \_\_\_\_\_ on (date)). (If additional telephone or personal contacts occurred, refer to them here.) Since you have not contacted us to provide the additional information we requested, the NRC plans no further action regarding this/these matter(s). (Add the following sentence, if appropriate.) (We have, however, alerted our inspectors to your general concerns so that they can pay particular attention to those areas during their routine inspections.)

USE IF, AFTER DISCUSSION WITH THE ALLEGER, IT WAS AGREED THAT NRC WILL DISCUSS THE ALLEGATION EVALUATION AND RESULTS IN A PUBLIC FORUM

Allegation-related correspondence is not normally placed on the public record. However, as part of our response to your concern(s) we plan to publicly discuss the results of our evaluation by (communication vehicle). The NRC believes this will further the agency's mission by (state reason for public dissemination). Your name and any other identifying information will be excluded from the information that is released. In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC publicly discussing the results of our evaluation of this (these) concern(s). Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections at this time to the NRC disclosing the results of our assessment and the fact that they were raised in the allegation program. We will consider any objections that you may have before doing so. If you do not contact us within [ten] days of the date you receive this letter, it is our intention to proceed with our plans to publicly discuss the NRC's allegation evaluation and results.

USE IF THE ALLEGATION INVOLVED A WRONGDOING/DISCRIMINATION CONCERN THAT WAS INVESTIGATED AND SUBSTANTIATED

The NRC Office of Investigations (OI) initiated an investigation to determine [if you were discriminated against for (briefly describe protected activity)] OR [if wrongdoing occurred related to (describe potential wrongdoing activity)]. The results of the OI investigation were documented in OI Report No. \_\_\_\_\_ dated (date). The NRC has concluded, based on the results of the OI investigation, that your [discrimination/wrongdoing] concern was substantiated. [Regulatory action in regard to this substantiated concern is being addressed through the NRC Enforcement process.] OR [NRC has issued (discuss enforcement action) to the licensee with regard to this substantiated concern.] Please note that the complete OI investigation report, including supporting documentation, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information pursuant to the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, Requests for Records.

USE IF THE ALLEGATION INVOLVED A WRONGDOING/DISCRIMINATION CONCERN THAT WAS INVESTIGATED BUT NOT SUBSTANTIATED (DOL review re: discrimination issue, if applicable, is closed)

The NRC Office of Investigations (OI) initiated an investigation to determine [if you were discriminated against for (briefly describe protected activity)] OR [if wrongdoing occurred related to (describe potential wrongdoing activity)]. The results of the OI investigation were documented in OI Report No. \_\_\_\_\_ dated (date). The NRC has concluded, based on the results of the OI investigation, that there was not sufficient evidence developed during the investigation to substantiate that [discrimination] OR [wrongdoing] occurred. (NOTE: Categorical statements, such as ... "The NRC concluded that discrimination (or wrongdoing) did not occur".....should not be used.) Please note that the complete OI investigation report, including supporting documentation, may be made available to the public under the Freedom of Information Act (FOIA) subject to redaction of information pursuant to the FOIA. Requests under the FOIA should be made in accordance with 10 CFR 9.23, Requests for Records.

USE FOR ALL LETTERS

Allegations are an important source of information in support of the NRC's safety mission. We take our safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. We believe that our actions have been responsive to your concerns. (USE NEXT SENTENCE IN CASES WHERE WE HAVE NOT SUPPORTED THE ALLEGER'S CONCERNS - otherwise, remove it.) If, however, new information is provided that suggests that our conclusions should be altered, we will reevaluate that information to determine if additional evaluation is indicated. Should you have any additional questions, or if the NRC can be of further assistance, please call me toll-free at the NRC Safety Hotline at 1-800-695-7403 (if the allegor resides in the geographical area of the action office) OR the (regional/office) toll-free number 1-800-XXX-XXXX (if the allegor does not reside in the geographical area of the action office) or you may provide information to me in writing at (Allegation Office address). [USE THE FOLLOWING AS DEEMED NECESSARY BY THE OAC] You may also communicate with me

CERTIFIED MAIL or Other Appropriate Carrier  
RETURN RECEIPT REQUESTED (Note: This statement should appear on the first page and the official record copy.)

by electronic mail, if you so choose. However, when doing so, please call me in advance or provide your phone number in your e-mail message so that I can confirm that you are the source of the information. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is XXX@nrc.gov.

Sincerely,

Enclosure(s): As stated

## FORMAT FOR ENCLOSURE DESCRIBING NRC EVALUATION OF ALLEGER'S CONCERNS

### RESPONSE TO CONCERNS ALLEGATION NO. XXXX-YYYY-A-XXXX

#### Concern 1:

Restate the allegor's concern as provided in the acknowledgment letter, as modified by the allegor, or as clarified by the allegor (if the allegor provided clarifying information to better describe his/her concern during the course of NRC's review).

#### Response to Concern 1:

(Provide a direct answer to each of the allegor's concerns, stating what was evaluated, how it was evaluated, and providing NRC's conclusions regarding the validity of the concern. It is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding the evaluation of the concern. However, if providing such an overall conclusion will be confusing to the allegor (e.g., if aspects of the concern were substantiated, but the alleged impropriety or inadequacy was not found to be valid), alternate wording may be used, such as... "while certain (facts/statements/conditions regarding \_\_\_\_\_) were found to be true, an impropriety or inadequacy associated with NRC-regulated activity could not be confirmed or validated." (If appropriate add: We have documented our findings in (inspection report number, or other document citation) dated \_\_\_\_\_. A copy of the relevant section(s) of the report/document is/are enclosed.)

#### FOR ANY CONCERN THAT INVOLVED AN RFI TO THE LICENSEE

[If an RFI was sent to the licensee, the documentation of allegation concern closure should reference the feedback provided by the licensee but should also distinctly describe NRC's evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response. Specifically, in addition to restating the allegor's concern, the concern response should separately describe (1) the licensee's evaluation and response and (2) NRC's evaluation of the licensee's response and NRC's overall conclusions regarding the validity of the concern. The description of NRC's evaluation of the licensee's response should articulate NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response.]

[Repeat for Additional Concerns]

#### Suggested Wording for Closure Letter Responses to Certain Types of Concerns

If NRC Action Is Complete and the Concern Involved 10 CFR 2.390 Information, in Whole or in Part, Include the Following in the Concern Response:

"Your concern dealt with (proprietary information, personal privacy matters about another individual, medical records, etc.) and the details are exempt from disclosure to you or the public in general, so we are unable to provide you with specific details related to our evaluation." (Add a brief statement as to whether or not the concern was substantiated, unsubstantiated, or



partially substantiated without providing specific details of the findings.) (If the concern involved security-related information, refer to Enclosure 20, "Sample Closure Letter to Allegor (For Security-Related Concerns)," for appropriate response wording depending on the security concern).]

If OI Returns a Potential Wrongdoing Issue, Including Employee Discrimination to the Staff for Lack of Resources or Based on Priority, Include the Following in the Concern Response:

"On the basis of our review of your concern of (describe wrongdoing concern) and other cases needing investigation by the NRC, the NRC will not be expending further investigatory efforts on the potential wrongdoing aspects of your concern. This is not a finding that your wrongdoing concern does not have merit. Rather it is recognition that the NRC must focus its limited investigatory resources on cases of higher priority. (Explain what was done with the technical aspect of the wrongdoing concern (e.g., "The staff reviewed the impact on safety of the alleged falsified record and determined...", etc.). (For discrimination cases only). Accordingly, absent a finding of discrimination by DOL (if applicable), or any additional substantial information and/or evidence from you that would support your discrimination concern(s), the staff plans no further follow-up on the concern you provided to the NRC."

Discussion of Enforcement/Assessment Process Outcomes:

While it is appropriate to indicate in response to an alleger's concern whether the NRC's evaluation of the concern identified a violation of NRC requirements or an ROP or cROP finding, it is not imperative that the alleger be informed of the specific enforcement action taken or finding categorization via the ROP or cROP. In other words, it is sufficient, in most instances, to indicate that a violation or finding was identified and that the categorization of the violation or finding and the licensee's follow up activities will be determined by the Enforcement Process or the ROP or cROP. However, if the violation or finding has already been determined or categorized, and responsible staff believe that providing specific information about the NRC violation or finding will improve the concern response, this information may be discussed in the closure letter. With regard to a substantiated discrimination concern in particular, it is logical that the alleger would have an interest in any specific NRC regulatory action taken against the licensee. The following examples of closure letter wording apply to different types of violations and findings:

1. Concern Resulting in a Minor Violation Not Being Documented in an Inspection Report

The safety significance of the violation of [briefly discuss identified violation] was evaluated by the NRC and found to be minor. The licensee has been informed of this matter and has (entered this matter into the corrective action program, initiated/taken corrective actions, etc.). Minor violations represent items of low safety significance and are not subject to formal enforcement action or documentation by the NRC. Therefore, this minor violation will not be documented in an inspection report, and no further regulatory action is planned.

2. Concern Resulting in the Issuance of a Non-Cited Violation

During the NRC (inspection/investigation) of this matter, a violation of NRC requirements was identified. The NRC categorized the issue as a Non-Cited Violation (NCV) because the issue had limited safety significance, was not repetitive, and was entered into the licensee's Corrective Action Program. (Licensee name) is required to correct the NCV.

### 3. Concern Resulting in the Issuance of a Notice of Violation (and/or a Civil Penalty)

During the NRC (inspection/investigation) of this matter, a violation of NRC requirements was identified. The NRC issued a Notice of Violation (and Proposed Imposition of Civil Penalty in the amount of (\$\_\_\_\_\_)) to the licensee (attached). (Licensee name) is required to inform us of the corrective actions it has taken or plans to take regarding the identified violation. Our inspectors will continue to monitor (licensee name's) activities to ensure proper resolution of this matter.

### 4. Concern Resulting in the Identification of an Apparent Violation that the NRC Is Considering for Escalated Enforcement Action

During the NRC (inspection/investigation), an apparent violation of NRC requirements was identified. The NRC has notified (licensee name) of this issue (attached) and has given (licensee name) the opportunity to respond to the apparent violation in writing or to participate in a pre-decisional enforcement conference before NRC makes its enforcement decision. If NRC subsequently concludes that significant enforcement action is warranted, the action will be made publicly available at a later time. We will continue our oversight of this matter to ensure proper resolution.

#### Sample Closure Letter Wording Related to an Offsite Emergency Preparedness Concern that has been Referred to FEMA:

As indicated in our previous correspondence to you dated (date), we contacted the Federal Emergency Management Agency (FEMA) to assist in reviewing the issue. In a letter dated (date of FEMA referral response), FEMA provided the results of their review and evaluation of the issue. Based on the information you provided to us and additional information provided by FEMA, the NRC staff (has substantiated/was unable to substantiate) your concern. (If concern(s) are substantiated, add the following) Specifically, the staff substantiated (give description of substantiation). The NRC will pursue the substantiated concern(s) with the licensee. Any actions deemed necessary will be taken in accordance with the NRC Enforcement process.

#### Unsubstantiated Discrimination Concerns:

Similar to a "chilling effect" concern provided by a single individual, an allegor providing a discrimination concern is offering his/her personal reaction to an event/action that he/she believed to be discriminatory in nature. Therefore, to make a categorical statement in the closure letter to the allegor that "discrimination was not substantiated" can be confusing since the allegor may continue to feel that actions taken by his or her employer or former employer were discriminatory. A more appropriate statement in this instance is ..."We did not obtain sufficient evidence to conclude that you were discriminated against."

If an OI investigation was conducted, the closure letter to the allegor will inform him/her that the investigation has been closed 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).

Sample Closure Letter Wording When an ECP Concern Does Not Contain Sufficient Detail or Evidence of an Inadequacy Associated with Regulated Activities to Warrant NRC Follow-up

The NRC does not currently have a requirement for licensees to retain an ECP. However, since ECPs provide an alternate means for employees to raise issues and can receive concerns involving nuclear, quality, and radiological safety, the NRC does have an interest in how ECP programs handle such concerns. If such concerns are being handled inappropriately or ineffectively, the NRC would be interested in any additional information you may have in this area.

If the Allegor Asserts Misconduct by NRC in the Handling of His/Her Concern:

The NRC plans no further action regarding this concern. However, if you believe that there was NRC misconduct involved in the handling of the allegation, you may contact the NRC Office of the Inspector General (OIG) through any of the following methods:

Telephone: 1-800-233-3497

Via the NRC Website: <http://www.nrc.gov/insp-gen/complaint.html>

In Writing: U.S. Nuclear Regulatory Commission  
Office of the Inspector General  
Hotline Program, Mail Stop O5-E13  
11555 Rockville Pike  
Rockville, MD 20852

## Exhibit 19

### Sample Closure Memorandum to File (For Anonymous Allegations, NRC Staff-Identified or Licensee-Identified Wrongdoing, Or When An Alleger Specifically Requests No Correspondence From NRC)

MEMORANDUM TO: Allegation File XXXX-20XX-A-XXXX or OAC

FROM: (responsible staff member or OAC)

SUBJECT: CLOSURE OF ALLEGATION XXXX-20XX-A-XXXX REGARDING  
(site/facility)

On \_\_\_\_\_, the NRC received an anonymous allegation [or opened an allegation file based on an NRC staff-identified or licensee-identified wrongdoing matter] that/regarding (subject of allegation) at (facility).

#### USE WHEN ALLEGER HAS SPECIFICALLY REQUESTED NO CORRESPONDENCE

On \_\_\_\_\_, the NRC received an allegation that/regarding (subject of allegation) at (facility). During the course of the staff's review, the allegor specifically requested not to receive correspondence from NRC related to this matter. [An attempt was made to re-contact the allegor to explain the advantages of continued involvement in the allegation process. However, the staff was unsuccessful in re-contacting the allegor.] OR [Although the advantages of continued involvement in the allegation process were explained to the allegor during a telephone call on \_\_\_\_\_ / in a letter dated \_\_\_\_\_, the allegor insisted that no further contact be provided by the NRC.] NRC follow-up action is described in this memorandum.

#### USE FOR ALL CLOSURE MEMORANDUMS

An allegation review board(s) (ARB(s)) was/were convened on (date(s)). The ARB(s) concluded that (describe actions prescribed) to evaluate the allegation (or NRC staff-identified/licensee-identified wrongdoing matter). Enclosure 1 to this letter lists the concern(s) and describes the staff's review and conclusions regarding that/each concern.

Based on the anonymous nature of the allegation OR Since the allegor specifically requested not to receive correspondence from NRC OR Since this is an NRC staff-identified wrongdoing OR a licensee-identified wrongdoing matter, no response to the allegor is appropriate. (USE IF APPROPRIATE) Remaining NRC actions in this matter will be processed and tracked through the enforcement process.

This allegation is closed.

Enclosure(s): As stated

## FORMAT FOR ENCLOSURE TO CLOSURE MEMORANDUM

### Concern 1:

Describe each concern as provided or as modified by the allegor (if the allegor provided clarifying information to better describe his/her concern during the course of NRC's review).

### Response to Concern 1:

(Provide a direct answer to each concern, stating what was evaluated, how it was evaluated, and providing NRC's conclusions regarding the validity of the concern. It is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding the evaluation of the concern. However, if providing such an overall conclusion would be confusing (e.g., if aspects of the concern were substantiated, but the alleged impropriety or inadequacy was not found to be valid), alternate wording may be used, such as... "While certain (facts/statements/conditions regarding \_\_\_\_\_) were found to be true, an impropriety or inadequacy associated with NRC-regulated activity could not be confirmed or validated." (If appropriate add: NRC findings regarding this concern are documented in (inspection report number, or other document citation) dated \_\_\_\_\_. A copy of the relevant section(s) of the report/document is/are enclosed.)

### FOR ANY CONCERN THAT INVOLVED AN RFI TO THE LICENSEE

[If an RFI was sent to the licensee, the documentation of allegation concern closure should reference the feedback provided by the licensee but should also distinctly describe NRC's evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response. Specifically, in addition to restating the allegor's concern, the concern response should separately describe (1) the licensee's evaluation and response and (2) NRC's evaluation of the licensee's response and NRC's overall conclusions regarding the validity of the concern. The description of NRC's evaluation of the licensee's response should articulate any NRC staff independent verification, inspection, or investigative efforts conducted to validate aspects of the licensee's response.]

[Repeat for Additional Concerns]

[See Exhibit 18, "Sample Closure Letter to Allegor (For Other than Security Concerns)," for Suggested Wording in Response to Certain Types of Concerns (e.g., if concern involved 10 CFR 2.390 information, if OI returns potential wrongdoing issue to staff without completing the investigation, if concern involves enforcement/assessment process outcomes.)

## Exhibit 20

### Sample Closure Letter to Allegor (For Security Related concerns)

Alleger's Name  
and Address

XXXX-20XX-A-XXXX

Subject: Concerns You Raised to the NRC Regarding (Facility Name)

Dear (Alleger's Name):

[FOR ALL LETTERS] The NRC has completed its follow-up in response to the concern(s) you brought to our attention on (date) regarding security issues at (facility name). [FOR CATEGORY III CONCERNS] Enclosure 1 to this letter restates your concern(s) and describes the NRC's review and conclusions regarding (that concern/each concern) [Add the following to this sentence FOR CATEGORY III CONCERNS WHICH RESULT IN A MINOR FINDING OR VIOLATION AT SEVERITY LEVEL IV OR LOWER REQUIRING COMPENSATORY ACTIONS, WHEN THE ALLEGER IS A SECURITY FORCE MEMBER AT THE FACILITY] and makes note of a discussion that [was OR is to be] held with you to discuss compensatory actions taken in relation to your concern(s). [Note: FOR CATEGORY III CONCERNS, the letter to the allegor may indicate the number of findings characterized as Green or lower (for ROP findings) or violations characterized as Severity Level IV or lower.]

[FOR CATEGORY I AND II CONCERNS] While we are fully committed to our goal of ensuring openness in our regulatory process, we must balance that goal with ensuring the continued safety and secure operation of nuclear facilities in our country. Normally, when we have completed our review of an allegation, we provide the concerned individual with information as to whether their concern was substantiated and details on the actions taken by the NRC to evaluate the concern. However, due to the nature of the security-related issue(s) associated with your concern(s) and to ensure that we are not unnecessarily releasing information that would reveal any potential security-related vulnerabilities, [FOR CATEGORY I CONCERNS] we are unable to provide you with specific details regarding the NRC's evaluation of your concerns. [FOR CATEGORY II CONCERNS] we can provide only limited information regarding the NRC's evaluation of your concern(s). [FOR CATEGORY I CONCERNS] A restatement of your concerns is provided in Enclosure 1. [FOR CATEGORY II CONCERNS] Enclosure 1 to this letter restates your concern(s) and provides indication as to whether our evaluation resulted in a finding or violation [Add the following to this sentence FOR CATEGORY II CONCERNS WHICH RESULT IN A MINOR FINDING OR VIOLATION AT SEVERITY LEVEL IV OR LOWER REQUIRING COMPENSATORY ACTIONS, WHEN THE ALLEGER IS A SECURITY FORCE MEMBER AT THE FACILITY] and makes note of a discussion that [was OR is to be] held with you to discuss the NRC's actions and conclusions regarding your concern(s). [Note: If applicable FOR CATEGORY II CONCERNS, the letter should not discuss the number of ROP findings above Green or violations above Severity Level IV.]

CERTIFIED MAIL (or Other Appropriate Carrier)  
RETURN RECEIPT REQUESTED (NOTE: This statement should appear on the first page and the official record copy.)

[FOR CATEGORY II AND III CONCERNS. USE IF, AFTER CONSULTATION WITH THE ALLEGER, IT WAS AGREED THAT NRC WILL DISCUSS ALLEGATION EVALUATION AND RESULTS IN A PUBLIC FORUM]

Allegation-related correspondence is not normally placed on the public record. However, as part of our response to your concern(s), we plan to publicly discuss the results of our evaluation by (indicate communication vehicle). The NRC believes this will further the agency's mission by (state reason for public dissemination). Your name and any other identifying information will be excluded from the information that is released. In your conversation with (NRC employee name) on (date), you indicated that you would not object to the NRC publicly discussing the results of our evaluation of this (these) concern(s). Please contact (me/Allegation Coordinator name) at the toll free telephone number noted below if you have any objections at this time to the NRC disclosing the results of our assessment and the fact that they were raised in the allegation program. We will consider any objections that you may have before doing so. If you do not contact us within [ten] days of the date you receive this letter, it is our intention to proceed with our plans to publicly discuss the NRC's allegation evaluation and results.

[FOR ALL LETTERS] Thank you for informing us of your concerns. Allegations are an important source of information in support of the NRC's safety mission. We take our safety responsibility to the public seriously and will continue to do so within the bounds of our lawful authority. We believe that our actions have been responsive to your concerns. (FOR CATEGORY II AND III CONCERNS, USE NEXT SENTENCE IN CASES WHERE WE HAVE NOT SUPPORTED THE ALLEGER'S CONCERNS - otherwise, remove it.) If, however, new information is provided that suggests that our conclusions should be altered, we will reevaluate that information to determine if additional evaluation is indicated. Should you have any additional questions, or if the NRC can be of further assistance, please call me toll-free at the NRC Safety Hotline at 1-800-695-7403 (if the allegor resides in the geographic area of the action office) OR the (regional/office) toll-free number 1-800-XXX-XXXX (if the allegor does not reside in the geographical area of the action office) or you may provide information to me in writing at (Allegation Office address). [USE THE FOLLOWING AS DEEMED NECESSARY BY THE OAC] You may also communicate with me by electronic mail, if you so choose. However, when doing so, please call me in advance or provide your phone number in your e-mail message so that I can confirm that you are the source of the information. Also, please be advised that the NRC cannot protect the information during transmission on the Internet and there is a possibility that someone could read your response while it is in transit. My e-mail address is XXX@nrc.gov.

Sincerely,

Enclosure(s): As stated

FORMAT FOR ENCLOSURE TO CLOSURE LETTER TO ALLEGER FOR SECURITY-RELATED CONCERNS

RESPONSE TO CONCERNS  
ALLEGATION NO. XXXX-YYYY-A-XXXX

Concern 1:

Restate the allegor's concern as provided in the acknowledgment letter, as modified by the allegor, or as clarified by the allegor (if the allegor provided clarifying information to better describe his/her concern during the course of NRC's review).

Response to Concern 1:

FOR CATEGORY III CONCERNS

[Provide a direct answer to the allegor's concern, stating what was evaluated, how it was evaluated, and providing NRC's conclusions regarding the validity of the concern. For Category III concerns involving a minor finding or violation at Severity Level IV or lower and requiring compensatory actions, it may be indicated that corrective/compensatory actions were taken, but do not provide the specifics of the corrective/compensatory actions. It is preferable that an overall conclusion be provided indicating that the concern was substantiated, unsubstantiated, or partially substantiated, as long as that overall conclusion is well supported by the accompanying discussion regarding the evaluation of the concern. However, if providing such an overall conclusion will be confusing to the allegor (e.g., if aspects of the concern were substantiated, but the alleged impropriety or inadequacy was not found to be valid), alternate wording may be used, such as... "While NRC was able to substantiate that certain (facts/statements/conditions regarding \_\_\_\_\_) were true, NRC was unable to confirm or validate an impropriety or inadequacy associated with NRC-regulated activity."]

FOR ANY CATEGORY III CONCERN THAT INVOLVED AN RFI TO THE LICENSEE

[If an RFI was sent to the licensee, and the security concern is determined to be Category III, the documentation of allegation concern closure should reference the feedback provided by the licensee [NOTE: Do not discuss specifics of corrective/compensatory actions taken] but should also distinctly describe NRC's evaluation and conclusions regarding the concern based on all pertinent information, including the licensee's RFI response. Specifically, in addition to restating the allegor's concern, the concern response should separately describe (1) the licensee's evaluation and response (without describing corrective/compensatory actions) and (2) NRC's evaluation of the licensee's response and NRC's overall conclusions regarding the validity of the concern. The description of NRC's evaluation of the licensee's response should articulate any NRC staff independent verification, inspection, or investigative efforts conducted (do not discuss any efforts to independently verify corrective/compensatory actions) to validate aspects of the licensee's response.]

FOR CATEGORY III CONCERNS INVOLVING A MINOR FINDING OR VIOLATION AT SEVERITY LEVEL IV OR LOWER AND REQUIRING COMPENSATORY ACTIONS

The safety significance of the violation of [briefly discuss identified violation] was evaluated by the NRC and found to be minor. (Licensee name) has been informed of this matter and has



promptly corrected the identified deficiency/deficiencies or taken prompt compensatory action, thereby establishing licensee compliance with applicable physical protection and security requirements). [NOTE: Do not discuss specifics of corrective/compensatory actions taken.] Minor violations represent items of low safety significance and are not subject to formal enforcement action or documentation by the NRC. Therefore, this minor finding/violation will not be documented in an inspection report, and no further regulatory action is planned.

#### FOR CATEGORY II CONCERNS, USE THE FOLLOWING LANGUAGE

While we cannot provide the specific details regarding our evaluation of your concern, we note that (an NRC inspection was recently conducted in the security area OR [IF THE CONCERN INVOLVED AN RFI TO THE LICENSEE] we note that NRC staff recently requested that (licensee name) evaluate this/these and other matter(s) in the security area). NRC staff reviewed the (licensee name's) response to ensure that it was of adequate scope and depth. (Based on the NRC assessment no findings were identified OR the NRC assessment resulted in at least one finding). Identified deficiencies were promptly corrected or addressed by compensatory action, thereby establishing licensee compliance with applicable physical protection and security requirements. To ensure that we do not unnecessarily release information that would reveal potential security-related vulnerabilities, we are unable to inform you if any finding is specifically associated with the concern(s) you raised. [Note: If applicable, the letter may state either that at least one security finding was Greater than Green, or at least one matter is being considered for escalated enforcement.]

#### FOR CATEGORY II CONCERNS AND CATEGORY III CONCERNS WHICH RESULT IN A MINOR FINDING OR VIOLATION REQUIRING COMPENSATORY ACTIONS, WHEN THE ALLEGER IS A SECURITY FORCE MEMBER AT THE FACILITY

Since you are a member of the security force and are permitted access to information related to physical security matters at (facility name), (NRC staff member name(s)) discussed with you on (date) OR scheduled a telephone conference with you and with (NRC staff member name(s)) on (date) to discuss [FOR CATEGORY III CONCERNS REQUIRING COMPENSATORY ACTIONS] the compensatory actions taken in relation to your concern(s) OR [FOR CATEGORY II CONCERNS] the NRC's actions and conclusions regarding your concern(s).

#### FOR CATEGORY I CONCERNS, USE THE FOLLOWING LANGUAGE

As indicated in the cover letter, normally, when we have completed our review of an allegation, we provide the concerned individual with information as to whether their concern was substantiated and details on the actions taken by the NRC to evaluate the concern. However, due to the nature of the security-related issue(s) associated with your concern(s) and to ensure that we are not unnecessarily releasing information that would reveal any potential security-related vulnerability, we are unable to provide you with specific details regarding the NRC's evaluation of your concern.

[Repeat for additional concerns]

## Exhibit 21

### Sample Letters From OE ADR Program Manager Informing Allegor and Licensee That NRC Will Not Investigate a Discrimination Concern Following a Negotiated Settlement (NRC Sponsored Early ADR or Other)

#### Sample Letter to Allegor

Date

[Allegor Name & Address]

Subject: ADR [Insert No.] (Insert Allegation #) - Settlement Agreement

Dear Mr./Ms. [Allegor name]:

This letter acknowledges receipt of the alternative dispute resolution settlement agreement between you and [Insert Company name], dated [Insert date of settlement agreement]. The U.S. Nuclear Regulatory Commission has reviewed this agreement and has found no restrictive provisions in violation of 10 CFR [50.7 (f)] [Note: modify based on the type of licensee]. Therefore, in accordance with the Commission's policy published on August 13, 2004, in the Federal Register (69FR50219), the NRC will not investigate or take enforcement action relating to your allegation of discrimination which is the subject of your settlement agreement.

Please be advised however that your settlement agreement does not impact the underlying technical issue(s), if any, relating to your allegation of discrimination or any other allegation you may have filed with the NRC. Thus, the technical issue(s), if any, will be treated separately within the allegation program and addressed accordingly. Please visit [www.nrc.gov/about-nrc/regulatory/allegations/what-is-allegation.html](http://www.nrc.gov/about-nrc/regulatory/allegations/what-is-allegation.html) for additional details about the NRC's Allegation Program.

Sincerely,

\_\_\_\_\_  
ADR Program Manager  
Office of Enforcement

#### Sample Letter to Licensee

Date

[Insert Representative's name, Company & Address]

Subject: ADR [insert No.] - Settlement Agreement

Dear Mr./Mrs. [Insert Representative name]:

This letter acknowledges receipt of the alternative dispute resolution settlement agreement between [Insert Company Name] and [Insert Allegor's full name], dated [Insert date of settlement agreement]. The U.S. Nuclear Regulatory Commission has reviewed this agreement

and has found no restrictive provisions in violation of 10 CFR [50.7(f)] [Note: modify based on the type of licensee]. Therefore, in accordance with the Commission's policy published on August 13, 2004, in the Federal Register (69FR50219), the NRC will not investigate or take enforcement action relating to the allegation of discrimination which is the basis of the referenced settlement agreement.

Sincerely,

---

ADR Program Manager  
Office of Enforcement

## Exhibit 22

### Guidance for Correspondence to Allegers with Security-Related Concerns

Concern Category	Description	Response	Examples
I	Involves a potential generic industry security vulnerability.	Letter to alleger will reiterate issues raised in sufficient detail, but staff actions and conclusions will not be described. Cognizant NSIR and/or regional security inspection management will concur on allegation closure letter.	*Failure, degradation or other deficiency in a model or brand of security equipment (e.g., intrusion detection system, contraband detection equipment) that affects multiple licensees.
II	If true, would constitute more than minor finding or violation, as determined by applicable guidance or review panels.	Letter to alleger will reiterate issues raised in sufficient detail. Letter will state whether findings were identified and deficiencies corrected, but without specific detail. Response provided once required compensatory action, if any, are in place. Cognizant NSIR and/or regional security inspection management will concur on allegation closure letter. If requested and the alleger is a security force member at the facility with normal access to such information, the staff will discuss agency actions and conclusions. Employment and position verification will not be sought without prior permission from the alleger.	*Failure to control work hour limits within requirements that results in a fitness-for-duty issue.  *Failure to maintain a required number of armed responders.  *Failure to install, test and implement a protected area intrusion detection system in accordance with the manufacturer or licensee design or performance specifications.
III	If true, would, at most, constitute a minor finding or violation, as determined by applicable guidance or review panels.	Response provided once required compensatory actions, if any, are in place. Response will describe staff actions and staff's conclusion regarding concern validity, but not a description of compensatory actions, if any are taken. Cognizant NSIR and/or regional security inspection management will concur on allegation closure letter. If requested, and the alleger is a security force member at the facility with normal access to such information, and a review of the concern resulted in a finding or violation requiring compensatory actions, the staff will discuss the compensatory actions with the alleger. Employment and position verification will not be sought without prior permission from the alleger.	(1) Not a finding: *Failure to provide security personnel coverage to a post that is not a regulatory committed position.  (2) Minor finding: *Failure to meet height requirements in a section of the protected area fence, but the infraction is not a significant dimensional discrepancy.

Exhibit 23

**FOIA Processing Guidance for Investigation and Allegation Related Material  
(after OI Case and Allegation is Closed and Initial Enforcement Action is Issued/Cited)<sup>1</sup>**

**FOR ANY OI CASE/ANY ALLEGATION RECORDS:**

**Perform This**

**Requester is: Type of Review:**

<b>Alleger (or their Atty) 1<sup>st</sup> Party*</b>	<b>Not Public</b>	<b>(1+2+3)</b>
<b>Summary of How to Handle 1<sup>st</sup> Party Requests:</b>		
For <u>Allegers</u> requesting information about their allegation/investigation—release their name, job titles/description of duties, Personally Identifiable Information (PII) and any other information they provided about themselves.		
For <u>Witnesses/Defendants/Confidential Sources</u> —withhold under Ex 7(C) their names, sufficiently unique <sup>2</sup> job titles/description of duties, PII and “fingerprinting” information. Withhold under Ex 7(D) as well as Ex 7(C) if assurance of confidentiality was expressly given (NRC policy requires written documentation of such assurance) or may reasonably be inferred (although this will be the rare occasion; for example, a witness refusing to be interviewed at work).		
For <u>other individuals mentioned (not interviewed) in the file</u> —withhold their names, sufficiently unique job titles/description of duties and PII using Ex 7(C).		
<b>All Others</b>	<b>3<sup>rd</sup> Party*</b>	<b>Yes Public (1+2+3)</b>
<b>Summary of How to Handle 3<sup>rd</sup> Party Requests:</b>		
For <u>Allegers—Widely, Publicly known<sup>3</sup></u> —release their name and job titles/description of duties. Withhold their PII under Ex 7(C).		
For <u>other Allegers/Witnesses/Defendants/Confidential Sources</u> —withhold under Ex 7(C) their name, sufficiently unique job titles/description of duties, PII and “fingerprinting” information. Withhold under Ex 7(D) as well as Ex 7(C) if assurance of confidentiality was expressly given or may reasonably be inferred [see notes in 1 <sup>st</sup> party discussion]		
For <u>other individuals not allegers or witnesses (mentioned/not interviewed)</u> — withhold under Ex 7(c) their name, sufficiently unique job titles/description of duties and PII .		

**Types of Reviews:**

- (1) ALLEGER<sup>2</sup>/WITNESS/DEFENDANT/CONFIDENTIAL SOURCE FINGERPRINTING SCRUB (see page 2 for additional information)**
- (2) OTHER PROTECTED INFORMATION SCRUB (see page 3 for additional information)**
- (3) ADDENDUM (see page 4 for additional general guidance)**

**\*How to Handle Specific Documents in BOTH Reviews:**

In ROI, Exhibits and administrative documents (such as ROI cover memo, OI background documents, and emails/records from any office): Withhold under Ex 7(C) names of Investigators/OI Admin staff/FODs/SAICs and other information sufficiently unique that release could reasonably be expected to identify the employee (e.g., last four digits of their work phone number), but release their job titles unless sufficiently unique, such as SAIC.

Withhold under Ex 7(C) licensee’s or private attorney’s name

Withhold law firm’s name under Ex 7(C) if release could reasonably be expected to identify the attorney (e.g., a sole practitioner, or if only one attorney in the firm works on this subject matter).

In any documents:

Release names and job titles of NRC Senior Managers, Resident Inspectors, NRC technical experts, Regional Counsel and other NRC employees (except if the person is a witness or alleger in, or a subject of, the investigation, then withhold under Ex 7(C)).

<sup>1</sup> NOV/Order/CO/NCV/Exercise of Discretion/Closeout Letter is Issued/Cited.

<sup>2</sup> For purposes of this document, the term “sufficiently unique” means that the information, if released, could reasonably be expected to identify the individual about whom the information pertains.

<sup>3</sup> Widely Known Alleger-The Agency Allegation Advisor determines if the alleger is widely publicly known (and documents this determination in writing), i.e., an alleger who has publicly identified himself/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. If determined to be widely known, alleger fingerprint scrub is unnecessary.

<p>(1) <u>ALLEGER<sup>2</sup>/WITNESS/DEFENDANT/CONFIDENTIAL SOURCE FINGERPRINTING SCRUB:</u> Withhold all information that, if released, could reasonably be expected to identify the individual.</p>
<p>EXAMPLES OF PROTECTED INFORMATION—Use Exemption 7(C) to withhold this information. Exemption 7(D) may also be used to withhold information only if there was an express or implied assurance of confidentiality.</p>
<p>A. Core Personal Privacy Information—name, sufficiently unique job titles/description of duties and PII (including home address, social security number, date and place of birth, mother’s maiden name, biometric records, home/cell/pager/blackberry number, personal email address, military service information, education history, medical history, and other personally sensitive information such as alcoholism, drug addiction, other health problems, and financial transactions)</p>
<p>(i) Pronouns—If the work group is very small and there are only a few women in it or there are very few women in a particular occupation, in order to protect the identity of the woman/women, you must redact all masculine and feminine singular pronouns (ii) References to Date and Time of Events and Meetings that, if released, could reasonably be expected to identify the Allegor/Witness/Defendant/Confidential Source (iii) References to a Supervisor, Co-workers, Small Work Groups, or Associations that, if released, could reasonably be expected to identify the Allegor/Witness/Defendant/Confidential Source (iv) Attorney (private or licensee) (v) Law firm’s name if release could reasonably be expected to identify the attorney (e.g., a sole practitioner, or if only one attorney in the firm works on this subject matter) (vi) References to, or Initials of, individuals on forms or other documentation if the identity of that individual is being protected</p>
<p>B. Employment History—If sufficiently unique, Job Titles, Positions, Termination Date, and Duties Description. If release could reasonably be expected to identify the person being protected, number of years in various positions.</p>
<p>C. Employee Badge number, Direct Work Telephone Numbers Identifying Office Locations and mailstops that are sufficiently unique.</p>
<p>D. Performance Information—References to disciplinary letters, dates of disciplinary letters, text from disciplinary letters, Personal Improvement Plans, appraisal ratings, appraisal narrative, any other employee’s or manager’s name and comments about performance if such information could reasonably be expected to identify the employee</p>
<p>E. Training Attendance Records (unless the course is mandated for a large group of employees, such as annual XXXX training)—[ABC Class] on [XX/XX/XX]</p>

<p>(2) <u>OTHER PROTECTED INFORMATION SCRUB:</u></p>
<p><u>OGC/Regional Counsel’s Opinion—Exemption 5</u>—Located in the Report of Investigation (ROI) and possibly the Investigation Status Record. This is attorney-client privileged material.</p>
<p><u>Predecisional/Drafts—Exemption 5</u>—Drafts or position papers that express opinions, or make recommendations, on legal or policy matters prior to the adoption of a final agency decision on the matter and that have not been expressly adopted by the final decision-maker. This is to protect from disclosure our deliberative process as well as encourage open and frank exchange of advice, opinion and ideas. This is also to protect against public confusion that might result from disclosure of reasons and rationales that were not in fact ultimately the grounds for an agency’s action. This exemption is for internal government documents, with limited exceptions. Also, this exemption should be used only if it is reasonably foreseeable that disclosure of the information would result in harm; a harm statement needs to be provided.</p>
<p><u>10 CFR 2.390 (some older documents may refer to 10 CFR 2.790)—Exemption 4</u>—Licensee Referred Records—Records the licensee provided <i>that have a “2.390 Proprietary” stamp, or other withholding statement on the document, and/or were accompanied by a 2.390 affidavit letter.</i> This category consists of trade secrets and commercial or financial information that was obtained from a person and is privileged or confidential. Information on a licensee’s physical protection or material control and accounting program may also be covered by Exemption 4 when received from the licensee if it is “privileged or confidential.” If the licensee was required to submit the information to the NRC, it is considered “confidential” if disclosure would be likely to impair the Government’s ability to obtain necessary information in the future or to cause substantial harm to the competitive position of the licensee. If the licensee voluntarily submitted the information, it is considered “confidential” if the licensee would customarily not release that type of information to the public. We bracket the records or recommend they be released. OIS/FOIA Privacy and Information Collections Branch will</p>

<p>send them back to the licensee with NRC's recommendation for release, giving the licensee 10 days to respond. The licensee either agrees or provides additional justification for why the records should be withheld. <i>You need to provide the address/contact for the licensee. Records that we have determined are to be withheld in their entirety on the basis of another exemption are not referred to the licensee.</i></p>
<p><b>Security-Related Information (not Safeguards)—Exemption 7(F)</b>—Disclosure of information that could reasonably be expected to endanger the life or physical safety of an individual, such as Allegation/Investigation records of security-related violations/enforcement actions. This category would include records created by the NRC that contain detailed plant security information, including (a) our evaluations of a licensee's control and accounting procedures for safeguarding licensed nuclear material, (b) our evaluations of detailed measures for the physical security of a licensed facility, particularly information that could facilitate attempts at sabotage, diversion of nuclear material, or other attacks detrimental to public health and safety, (c) our evaluation of licensee information revealing vulnerabilities of nuclear facilities or materials to theft or sabotage, and (d) certain facility drawings showing specific locations of equipment/materials.</p>
<p><b>Condition Reports—Exemption 7(C)</b>—In condition reports (e.g., problem identification forms, incident reports, and work reports), withhold report numbers, dates of event, month/year written, title, specific title paraphrasing, and names of the author, reviewer, and approver. Though rare, determine on a case-by-case basis if the report should be withheld in its entirety (e.g., if the remaining information after the information mentioned in the previous sentence is redacted is meaningless, or if the only way to prevent an unwarranted invasion of personal privacy would be to withhold the entire report).</p>
<p><b>Licensee Employee Concern Program (ECP) Files—Exemption 7(C)</b>—Any information in the ECP files that could reasonably be expected to identify the Allegor/Witness/Defendant/Confidential Source (such as the date that the individual went to the ECP). Though rare, determine on a case-by-case basis if the ECP file should be withheld in its entirety (e.g., if the remaining information after the information mentioned in the previous sentence is redacted is meaningless, or if the only way to prevent an unwarranted invasion of personal privacy would be to withhold the entire file).</p>
<p><b>Information Related Solely to Internal Personnel Rules and Practices of an Agency—Exemption 2</b>—Following the Supreme Court's decision in 2011 in <i>Milner v. Department of the Navy</i>, this exemption is limited to information pertaining to an agency's rules and practices dealing with employee relations or human resources, such as vacancy crediting plans or parking regulations. In addition, this exemption should be used only if it is reasonably foreseeable that disclosure of the information would result in harm; a harm statement needs to be provided. Consequently, this exemption is rarely used.</p>
<p><b>All teleconference bridge passcodes—Exemption 6</b></p>
<p><b>Investigative Techniques—Exemption 7(E)</b>—Information that would disclose techniques and procedures for law enforcement investigations or prosecutions not generally known by the public, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. Although, in general, you cannot use Exemption 7(E) to withhold information pertaining to techniques and procedures well known by the public, i.e., "wiretap" or "polygraph," Exemption 7(E) may be used to withhold information regarding how a well-known technique or procedure was actually used in a particular investigation. A harm statement needs to be provided.</p>

<p>(3) <a href="#">ADDENDUM (additional general guidance)</a>:</p>
<p><a href="#">RECORDS OTHER THAN OI/NRC STAFF/LICENSEE RECORDS</a>:</p>
<p><b>Records from Other Federal Agency</b>—Generally, do not bracket their records, unless there is information in the record that OI wants withheld. OI needs to bracket that information and indicate the FOIA exemption. You need to inform OIS/FOIA about this material. OIS/FOIA refers the records to that agency.</p> <p>Some Federal agencies (TVA, VA) are also licensees. You need to make a determination whether they are acting in their capacity as a sister agency or commercial entity. If the records were obtained from the agency because it has an NRC license, the records are treated the same as records from any other licensee (See the "10 CFR 2.390" Section on page 3). If the records were obtained from the agency in its capacity as another Federal agency, then the records are treated the same as if they came from another Federal agency, not bracketed and referred back to that agency by OIS/FOIA.</p>

**Exhibit 24**

**Allegation Program Assessment Checklist**

**Allegation Program Controls/Administration – General**

1.0 Allegation Document Control/Program Information Sensitivity and Protection	
1.1	Files kept in a proper location. File access is controlled by the OAC.
1.2	Allegation files involving a confidential source or containing SGI are maintained in a location separate from other files that do not contain such information.
1.3	Files are easily retrievable. Mechanism exists for OAC to retrieve a file being reviewed by the staff (e.g., check-out sheet)
1.4	Files retain appropriate cover sheets when removed from storage location.
1.5	Files contain all documentation related to the allegation (receipt documentation, completed ARB forms, RFI worksheet, correspondence, conversation records, OI report, allegor interview transcript, inspection report, staff evaluations, 3-week e-mail info, DOL decisions, RAC documentation, pertinent e-mail messages, etc.). If it is impractical to retain a supporting document in the file, a reference to the document is provided.
1.6	Process documentation distributed by the OAC (e.g., allegation receipt info, ARB preparatory documents, allegation status reports) or other allegation information forwarded to the staff is appropriately controlled, i.e., via cover sheets, if hard copy, or via e-mail message designation (“Sensitive Allegation Information” in subject line).
1.7	Documents with allegor identifying information are marked to indicate that the documents identify an allegor.
1.8	If allegation includes an OIG-related issue, the OIG issue is properly redacted from the allegation receipt info, and handled separately per region/office procedures.
1.9	Document development related to allegations containing Safeguards Information is processed on a secure drive, not connected to the LAN
1.10	In addition to cautions taken re: written allegation documentation (reports, e-mails, AMS, etc.) region/office staff demonstrate sensitivity to allegation information by:
	- refraining from discussion of allegation information in hallways or public areas
	- refraining from using allegor names during discussion of allegation activities, unless it is necessary to appropriately evaluate the allegation
	- assuring that individuals engaging in allegation-related meetings/discussions have a “need-to-know”
1.11	There were no instances involving the inappropriate release of an allegor’s identity or information that could identify an allegor.

2.0 AMS Documentation	
2.1	AMS reflects the content of the official allegation record (the hard-copy allegation file)
2.2	AMS excludes names of non-NRC personnel
2.3	AMS does not contain SGI
2.4	Dates for allegation-related actions are correctly entered in AMS
2.5	AMS data is kept current (most important - initial receipt info, ARB decisions/assigned actions, correspondence dates, concern/allegation closure dates)
2.6	Database entries are coded in AMS per program guidance



3.0 Allegation Status/Tracking	
3.1	Office/region keeps responsible staff aware of open allegation status and assigned actions (usually accomplished through distribution of AMS reports, but may be supplemented with periodic meetings, as necessary).
3.2	Mechanism in place for informing resident and non-resident inspectors about open allegations and past allegation trends.
3.2	Office/region tracks performance against allegation program timeliness goals.
3.3	Region/office management meets periodically with OI to check status of currently open OI investigations, and discuss whether investigation priority is appropriate.

4.0 Allegation Training	
4.1	New employees complete basic allegation training within 30 days
4.2	Region/office employees who perform work involving NRC-regulated activity and/or who have the opportunity to periodically interface with NRC licensee personnel or external stakeholders complete allegation refresher training biennially

5.0 Region/Office Program Implementation Guidance	
5.1	A procedure governing the implementation of the allegation program has been established and is maintained by the region/office.
5.2	In general, the regional/office implementing procedure conforms to MD 8.8 and the Allegation Manual.
5.3	Items in the region/office implementing procedure that conflict with MD 8.8/Allegation Manual are either more conservative than MD 8.8/Allegation Manual guidance or reflect region/office-specific info that does not affect program implementation.

6.0 Charging Time to Allegation Program Activities	
6.1	Region/office employees appropriately charge time to allegation-related activity

## Individual Allegation File Assessment

1.0 Allegation Receipt	
1.1	Allegation forwarded to OAC within 5 <u>calendar</u> days
1.2	Allegation receipt documentation complete. Allegation concerns clearly described, in sufficient detail, and fit the NRC allegation definition. Any additional or supporting info provided by the allegor (e.g., letters, e-mails, drawings, etc.) was included in the file.
1.3	Allegor contact information was recorded (if the allegor was willing to provide it).
1.4	If received electronically, the allegor's identity was confirmed via either telephone or follow-up e-mail (in response to standard NRC e-mail response). Allegor treated anonymously if unable to confirm.
1.5	If received in person or by phone, allegor was informed about identity protection policy. If not informed at time of receipt, allegor was informed of identity protection policy through alternate means (e.g., additional phone call, acknowledgment letter).
1.6	Allegor informed about Licensee RFI as potential NRC evaluation option.
1.7	If received in person or by phone, and a concern involves discrimination or chilling effect, allegor was asked additional questions to help support a prima-facie evaluation by OGC/Regional Counsel or to further document the asserted SCWE problem. If not asked at time of receipt, and if additional info is needed to understand the concern, questions were asked through alternate means (e.g., additional phone call, ack. letter).
1.8	If allegor provided contact information but requested no additional contact with NRC, the advantages of continued involvement in the process were explained (i.e., facilitates understanding of concerns raised, allows NRC to obtain additional info as needed, and affords the allegor the opportunity to assess and provide feedback regarding NRC conclusions). The allegor's continued involvement was encouraged.
1.9	If the allegation involved security-related and/or Safeguards Information, the information was received and handled appropriately
1.10	If the allegor promised additional information, efforts were made to obtain it.
1.11	If confidentiality was offered to the allegor, allegation file retained the completed Confidentiality Agreement and the proper cover sheet (NRC Form 761).
1.12	If the allegor's identity was intentionally released or if confidentiality was revoked, appropriate justification/approval for such action is noted in the allegation file.

2.0 Allegation Review Board	
2.1	ARB convened within 30 <u>calendar</u> days of receipt <u>by the agency</u> (unless transferred from OIG – in such cases, date received from OIG is the action office receipt date).
2.2	If the allegation involved an OSI, an ARB was held as soon as possible.
2.3	ARB quorum met (chairperson, OAC, responsible staff member)
2.4	If allegation involved potential wrongdoing, OI and OGC(Reg. Counsel) attended the ARB (or the ARB assigned an action for OI/OGC(Reg. Counsel) review).
2.5	ARB minutes were complete - captured required actions, reasoning for RFI (if applicable), safety significance discussion, comments and other pertinent information.
2.6	ARB assigned actions were clear, appropriate to accomplish concern evaluation, and in accordance with program guidance. The reasoning for a selected evaluation approach was documented, as appropriate.
2.7	RFI (to licensee) Worksheet completed and included in the file (or file included an equivalent alternate description of whether MD 8.8 RFI criteria were met and the ARB's decision related to RFI)
2.8	If allegor objected to RFI, and ARB recommended RFI over allegor's objection, allegor

	was informed of the decision, and record of discussion w/allegor was placed in the file.
2.9	Safety significance of each concern was discussed. Expected completion times for assigned follow-up actions were commensurate with the safety significance.
2.10	For a discrimination concern, ARB discussed and ARB record documented prima-facie conclusion by OGC/Regional Counsel, or assigned action to OGC/Regional Counsel to render a prima-facie decision for inclusion in the file, if unable to attend the ARB.
2.11	If prima-facie was articulated, ARB assigned action to offer Early ADR to the allegor.
2.12	If OI investigation was recommended:
	- a draft Notice of Violation was provided.
	- investigation priority assignment and basis was discussed and recorded.
	- action was assigned to gather and provide source documentation to OI [This is a suggestion <u>not a requirement</u> because some regions/offices accomplish this action via the ARB. The intent is to help assure that the investigation is appropriately focused and that the violation can be legally supported. For example, if the wrongdoing matter involved an alleged willful violation of a procedure, OI needs to refer to the true basis document, i.e., the applicable version of the procedure.]
	- the underlying technical issue(s) was/were appropriately dispositioned (processed as a separate allegation concern(s), if not currently resolved)
2.13	If an OI investigation was opened, and review of the allegor's interview transcript identified new issues or contained information suggesting a change in investigation priority, the allegation was re-ARB'd to discuss these issues.
2.14	If the allegation contained security-related concerns, the concerns were categorized, as received, assuming they were true, for the purpose of determining how much detail could ultimately be provided to the allegor.
2.15	ARB held 6 months after initial ARB and every 4 months thereafter (unless the only open issue(s) involve OI, DOL, or other matters not under staff control)
2.16	Other follow-up ARBs are held, as appropriate (e.g., new/clarifying info provided by allegor, preliminary findings indicated an OI priority change was in order)

<b>3.0 Acknowledgement Letter</b>	
3.1	Letter issued within 30 <u>calendar</u> days of receipt <u>by the agency</u> . (unless transferred from OIG – in such cases, date received from OIG is the action office receipt date).
3.2	Letter clearly stated the allegor's concerns, preferably in a separate enclosure.
3.3	Letter included information about allegation process identity protection policy.
3.4	If allegation included a discrimination concern, letter provided DOL rights.
3.5	If allegation included a discrimination concern that constituted a prima facie showing, letter included an offer of Early ADR
3.6	If allegation included security concerns, letter informed the allegor that NRC feedback regarding the concern may be limited.
3.7	If action office's intent was to obtain information external to the agency to support evaluation (via RFI or referral), it was discussed in the acknowledgement letter.
3.8	Letter informed allegor of disposition or referral of items not being addressed as allegations (e.g, OIG referrals, non-NRC matters referred to local, state, or federal government agencies, issues related to Agreement State officials, etc.), and a point of contact was provided to the allegor. (This may also be done via a status or closure letter.) Allegor's name was not released externally without the allegor's permission.
3.9	Acknowledgment letter concurred in by appropriate staff and the OAC
3.10	Acknowledgement letter sent via a mechanism that allowed for verification of receipt (or allegor was requested to verify receipt of electronic correspondence)

4.0 Allegation Evaluation	
4.1	Allegation evaluated as timely as possible, considering concern complexity.
4.2	Actions designated by the ARB were completed as assigned and in a timely manner
4.3	Alleger was contacted if additional detail and/or supporting information was needed
4.4	If an inspection was conducted, it was consistent with ARB assigned action and safety significance, and fully addressed the concern(s).
4.5	If an allegation-related inspection effort was documented in an inspection report, the report documentation did not fingerprint the alleger.
4.6	Documentation of evaluation in support of concern/allegation closure was clear, free of errors, and supported a conclusion as to whether the concern(s) were valid.
4.7	If allegation involved an unsubstantiated OI case or assist related to a potential wrongdoing matter, the file contained documentation of the 3-week e-mail process.
4.8	If a concern within an allegation file was dispositioned as a "non-allegation," the file includes an explanation as to why the concern was not an allegation.
4.9	If concern evaluation resulted in a regulatory action (NOV, NCV, etc.), the file included the inspection record or other documentation of the action.
4.10	If concern evaluation resulted in a regulatory action, the licensee was notified before or at the same time the alleger was notified of the regulatory action.

5.0 Periodic Status	
5.1	Status letter issued to the alleger every 6 months for allegation files open >180 days.
5.2	If supplemental concerns/details were provided by the alleger, they were acknowledged in a status letter (or included in a new allegation).
5.3	Status letter(s) provided closure documentation for any concerns closed since the previous status letter and noted concerns remaining under review.
5.4	If a discrimination concern involved an open DOL case, and if a related OI investigation was completed, both the alleger (via a status letter) and the licensee were informed about the results of the investigation (letter to licensee put in ADAMS).
5.5	Status letter(s) were clear and free of errors.
5.6	Status letter(s) were concurred in by appropriate staff and the OAC
5.7	Status letter sent via a mechanism that allowed for verification of receipt (or alleger was requested to verify receipt of electronic correspondence)

6.0 Request for Information (RFI) to Licensee	
6.1	RFI letter provided sufficient info to enable the licensee to resolve the issue without fingerprinting the alleger
6.2	If a verbal RFI was made (e.g., in response to an OSI), a record was created and placed in the allegation file regarding the information provided to the licensee. Verbal RFI was followed up with a written RFI.
6.3	The RFI letter:
	- included the allegation # on the cover page and top right-hand corner of other pages and pages were marked, as appropriate
	- excluded identifying information related to the alleger or other individuals and otherwise did not compromise the alleger's identity (in a few cases, alleger's name and/or names of other implicated individuals may be provided to the licensee verbally, if necessary, and agreed to by the alleger)
	- requested licensee to limit distribution of RFI letter and its enclosure

	- requested that licensee respond only to the OAC (not the public docket)
	- conveyed expectations for independence, scope, evaluator qualification, and basis for determining numbers of interviews and sample sizes
	- requested contact from licensee to discuss plan for evaluation
	- requested that licensee's response identify any potential findings or violations and include causal analyses, corrective actions and generic implications
	- did not include alлегers verbatim incoming correspondence (normally)
	- described inadequate licensee internal response efforts (if аллегer had raised the concern internally and was not satisfied with the licensee's feedback)
6.4	RFI letter sent to a single licensee point of contact
6.5	RFI letter concurred in by appropriate staff and the OAC
6.6	Allegation file included a record of action office discussion with licensee (callback) regarding the licensee's RFI evaluation plan
6.7	If licensee RFI response was determined to be inadequate, proper actions were taken by responsible staff in response (e.g., re-ARB (if appropriate), phone call to licensee, discussion w/licensee management) and "Inadequate RFI Response" action was recorded in AMS describing why responsible staff found it inadequate.

7.0 Agreement State Issues	
7.1	Concerned individual was informed that NRC is compelled to provide a concern about an Agreement State licensee to the Agreement State
7.2	If concerned individual agreed that NRC could provide his/her identity to the Agreement State, along with his/her concern(s), the information was forwarded, through the Regional State Agreement Officer (RSAO), to the Agreement State. (Such matters are not processed as allegations. If an allegation number was opened in AMS, it was re-categorized as a "non-allegation.")
7.3	If concerned individual did not want NRC to provide his/her identity to the Agreement State, the concern(s) was/were processed as an allegation, with NRC as intermediary. NRC provided the Agreement State's response to the аллегer.
7.4	If the matter was processed as an allegation, the information that was forwarded to the Agreement State for evaluation did not fingerprint the аллегer.
7.5	If a concern involved the performance of an Agreement State program or actions of Agreement State officials, it was provided to NMSS for processing, and was not processed as an allegation.

8.0 Allegation Transfers and TIAs/TARs/Reports on Interaction	
8.1	If an allegation was transferred to another region/office, the other region/office was contacted, and agreed to the transfer.
8.2	If the allegation was not transferred promptly, the receiving office and the office to which the allegation was transferred reached agreement as to which office would hold the initial ARB and prepare/send the acknowledgment letter (if one was necessary).
8.3	If a TIA, TAR, or Report on Interaction was requested, the response received by the action office was complete and as timely as possible. (If an extended review was anticipated, the action office periodically reminded the office performing the TIA, TAR, or Report on Interaction of the allegation closure timeliness goals.)

9.0 Government and Other Referrals	
9.1	Allegation-related referrals to other federal government agencies were made

	appropriately (e.g., DOE, DOT, EPA, FEMA, MMLs).
9.2	Industrial safety issues were handled in accordance with NRC Manual Chapter 1007; referrals to OSHA were made, as appropriate.
9.3	Issues involving both an Agreement State and another government agency were referred to both.
9.4	Alleger/CI was provided with contact information regarding the referral.
9.5	Alleger/CI's identity was not released outside NRC without his/her permission.
9.6	Government and other referral letters concurred in by appropriate staff and the OAC (if necessary).

10.0 Allegation Closure	
10.1	Allegation file included a closure letter to the alleger or a closure memo to the allegation file (if the alleger was anonymous or if contact was not possible or proper)
10.2	Action office captured and responded to all concerns within the allegation
10.3	Allegation file contained sufficient documentation to support closure of all concerns
10.4	If allegation involved an unsubstantiated OI case or assist, and OI interviewed more individuals than the alleger, a letter was sent to the licensee providing the OI investigation synopsis or a short summary of the OI investigation report with the staff's conclusions (after the 3-week e-mail comment period) and placed in ADAMS.
10.5	The closure letter to the alleger or closure memo to the file:
	- identified each concern as provided or modified by the alleger, preferably in a separate enclosure
	- if an RFI was sent, closure letter described licensee's evaluation and response (and <u>did not</u> provide the licensee's conclusion or include a copy of the licensee's response – only NRC's conclusion is relevant)
	- documented NRC evaluation and conclusion (if an RFI was sent, also documented NRC's evaluation of RFI response including any independent verification)
	- described enforcement action, if taken, or pending enforcement, as appropriate
	- attached supporting closure documentation, as appropriate (e.g., inspection report, short summary of OI report conclusion, enforcement documentation (if available))
	- If concern evaluation resulted in a documented regulatory action, the closure documentation included the inspection record and disposition of the action or, if yet to be issued, indicated that the regulatory action was to be made public in the future.
10.6	If a discrimination concern included DOL involvement, the related allegation file was not closed until after the final DOL decision was made (there are rare exceptions, e.g., if the discrimination concern has already been resolved via Early ADR).
10.7	If DOL published a finding that the alleger was discriminated against, staff considered follow-up action per established NRC guidance (letter requesting licensee feedback re: SCWE impacts, enforcement)
10.7	If a discrimination concern was resolved through Early ADR, evidence of OGC's approval of the settlement agreement was included in the allegation file.
10.8	Appropriate guidance was followed regarding the closure of security-related concerns in terms of the amount of information provided external to NRC
10.9	Closure letter was concurred in by appropriate staff and the OAC
10.10	Closure letter sent via a mechanism that allowed for verification of receipt (or alleger was requested to verify receipt of electronic correspondence)

11.0 Allegation Response After Closure (RAC)	
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11.1	Negative feedback provided by an allexer after a concern or allegation was closed (i.e., a RAC) was discussed at an ARB meeting.
11.2	RAC was appropriately dispositioned and responded to in a reasonable time frame.
11.3	Initial feedback provided in ~ 30 days. If initial feedback was not the final response to the RAC, it may be accomplished by phone or e-mail, unless it is an acknowledgment letter for a newly opened allegation. Final RAC response provided in writing.
11.4	Response to the RAC was included in the allegation file (or the file contained alternate justification for not responding to the RAC, if appropriate).
11.5	If the RAC resulted in the opening of another allegation file, the first file referenced the new file.
11.6	RAC response concurred in by appropriate staff and the OAC
11.7	RAC response sent via a mechanism that allowed for verification of receipt (or allexer was requested to verify receipt of electronic correspondence)

**Exhibit 25**

**RFI Licensee Callback – Conversation Record**

Allegation Number: -20 -A-		Responsible Branch:
Facility:	Concern Number(s):	Call Date:
	NRC Call Participant(s):	Licensee Call Participant(s):
Brief Summary of Concerns in RFI:		
Conversation Summary:		
	Does licensee’s plan of action appear likely to result in an appropriate response? Y <input type="checkbox"/> N <input type="checkbox"/> If No, why?	Do you think additional ARB discussion is necessary to ensure proper allegation evaluation? Y <input type="checkbox"/> N <input type="checkbox"/> If Yes, why?
Prepared By:	Date Prepared:	
Title:		
Provide completed form to Allegation Program staff along with available supporting documentation (e.g., licensee e-mail, etc.)		



## Exhibit 26

### Supporting Information Related to a Failure-to-Hire Discrimination Concern

1. When did the allegor apply for the job?
  - Was the job open when the allegor applied?
  - Did the allegor apply before or after the indicated due date?
  - Did the allegor apply after the position had already been filled?
2. How did the allegor learn of the job opening?
  - Was it advertised? Word-of-mouth?
  - Did the allegor apply for a specific position or any available position?
3. Why did the allegor think he/she was qualified for the job?
  - What were the job requirements?
  - How do the allegor's qualifications compare to the posted job requirements?
  - Did the allegor have past work experience in jobs with similar job requirements?
4. Why was the allegor rejected from the job for which he/she applied?
5. What was the allegor's suggested reason for not getting the job?
  - Was it because he/she engaged in protected activity?
  - Was it because of his/her work experience/credentials?
6. How recently has the allegor worked in the nuclear industry?
7. What is the allegor's geographic proximity to the job for which he/she applied?
8. How was the allegor informed that he/she did not get the job?
  - Was the message provided via letter, phone call, e-mail, or in person?
  - What reasons (if any) did the employer provide for not hiring the allegor?
  - Was the allegor informed that another applicant was hired?
    - If so, how do the allegor's qualifications compare with the other individual
9. Were other applicants rejected for the same position at the same time?
  - If so, did the allegor know how many, who they were, and why they were not hired?
10. After the allegor learned that he/she was not hired, did the employer keep the position open and hire someone else?
  - Did the allegor know who was hired for the job for which he/she applied?
  - Did the allegor know the qualifications of the person who was hired?
  - Did the allegor feel that the person who was hired was qualified for the job?
  - Did the allegor offer a suggestion as to why the other person was hired and he/she was not?