



**Office of Nuclear Material Safety and Safeguards
Procedure Approval**

Management of Agreement State Licensee Concerns

SA-401

Issue Date:

Review Date:

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NOTE

***Any changes to the procedure will be the responsibility of the NMSS Procedure Contact.
Copies of the NMSS procedures are available through the NRC website.***

I. INTRODUCTION

- A. This document describes the process by which the U.S. Nuclear Regulatory Commission (NRC) Office of Nuclear Material Safety and Safeguards (NMSS) coordinates concerns involving Agreement State licensees.
- B. There are two types of concerns involving Agreement State licensees: concerns that are under the jurisdiction of the NRC; and concerns that are not under the jurisdiction of the NRC (e.g., radiation-producing machines, mining operations, ores).
- C. As used in this document, the term “concerned individual” refers to the person or organization that submits a concern involving an Agreement State licensee to the NRC. Anonymous concerns are accepted.
- D. NMSS procedure SA-400, *Management of Agreement State Program Performance Concerns* (Agencywide Documents Access and Management System (ADAMS) Accession No. ML16203A470), addresses the NRC’s process for managing performance or wrongdoing concerns regarding organizations or personnel from State regulatory bodies that oversee Agreement State licensee activities. Agreement State program performance concerns are not addressed in this procedure.

II. OBJECTIVES

- A. To ensure that concerns involving Agreement State licensees that are under the jurisdiction of the NRC are promptly provided to the Headquarters Allegation Team (HQAT) in the NRC’s Office of Enforcement.
- B. To ensure that concerns involving Agreement State licensees that are not under NRC jurisdiction are promptly provided to the Regional State Agreements Officer (RSAO) for referral to the Agreement State.
- C. To provide guidance for use by the Agreement States on the NRC’s process for managing concerns involving Agreement State licensees.
- D. To ensure that Agreement State licensee concerns are handled by an established process.

III. BACKGROUND

Management Directive (MD) 8.8, *Management of Allegations* (ADAMS Accession No. ML15344A045), establishes the NRC’s policies and procedures for handling allegations concerning NRC-regulated activities. MD 8.8 defines an allegation as 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: (1) performance or wrongdoing concerns regarding organizations or personnel from State regulatory bodies that oversee Agreement State licensee activities; and (2) concerns related to Agreement State licensee activities.

This document provides more specific guidance on handling concerns related to Agreement State licensee activities.

IV. ROLES AND RESPONSIBILITIES

A. Branch Chief, Agreement State Programs Branch, Division of Material Safety, State, Tribal, and Rulemaking Programs:

1. Ensures that staff members are familiar with the policies and procedures outlined in this guidance.

B. Agreement State Program Performance Concern (ASPPC) Coordinator:

1. Provides advice, guidance, and assistance to NMSS and Regional staff in implementing the policies and procedures outlined in this guidance.
2. Upon receipt of a concern involving an Agreement State licensee for which the NRC does not have jurisdiction, promptly forwards the concern to the appropriate RSAO for referral to the Agreement State.
3. Upon the receipt of a concern involving an Agreement State licensee for which NRC has jurisdiction, promptly forwards the concern to the HQAT for processing in accordance with MD 8.8, *Management of Allegations*, and the NRC's *Allegation Manual, Revision 1* (ADAMS Accession No. ML17003A227).

C. All NMSS Employees:

1. Maintain a working knowledge of the policies and procedures in this guidance.
2. Record the receipt of any concern involving an Agreement State licensee in as much detail as possible. Contact the ASPPC coordinator to determine whether concern should be routed to the HQAT or RSAO within 5 days of receipt.

3. Protect the identity of concerned individuals in accordance with policies and procedures outlined in this guidance. The identity of the concerned individual should only be provided to ASPPC coordinator or the HQAT.

D. Regional State Agreements Officers

1. Refers concerns involving Agreement State licensees to the Agreement State in accordance with this guidance and Regional procedures.
2. Contacts Agreement States when follow up information is necessary to determine the status of concerns forwarded to the Agreement State for review and action.
3. Provides data to the Integrated Materials Performance Evaluation Program (IMPEP) team leader on concerns involving Agreement State licensee(s) for which the NRC has jurisdiction that were referred to the States for review.

E. Office of Enforcement, Headquarters Allegation Team (HQAT)

1. Processes concerns involving Agreement State licensees for which the NRC has jurisdiction in accordance with MD 8.8, *Management of Allegations*, and the NRC's *Allegation Manual, Revision 1*.

V. GUIDANCE

A. Processing Concerns Involving Agreement State Licensees that are under NRC jurisdiction

1. Concerns that involve an Agreement State licensee that are under NRC jurisdiction should be forwarded to the HQAT. The HQAT will process the Agreement State licensee concern as a "misdirected call" in accordance with MD 8.8, Handbook Section II.D, and the NRC's *Allegation Manual*, Section 3.2.a.
2. If the concerned individual is willing to contact and/or be contacted directly by Agreement State personnel about the evaluation of their concern, then such matters will be provided by the HQAT to the appropriate RSAO for referral to the Agreement State and are not processed as NRC allegations.
3. If the concerned individual does not want to be directly contacted by the Agreement State or have his or her identity disclosed to the Agreement State, the NRC will still refer the concern to the Agreement State through the RSAO. However, the individual's identity will not be disclosed, and the NRC will request a response from the State. If requested by the concerned

individual, the NRC will provide him or her with the State's response. Such matters are entered into the NRC's allegation process by the HQAT and tracked by the HQAT until closure.

- B. Processing Concerns Involving Agreement State Licensees that are not under NRC jurisdiction (e.g., radiation-producing machines, mining operations, ores)
 - 1. Concerns involving Agreement State licensees that are not under NRC jurisdiction are provided to the RSAO for referral to the Agreement State. RSAOs should inform the concerned individual that the NRC can refer the issue anonymously to the State if the individual does not want to provide their identity to the State. However, because the NRC has no jurisdiction over these concerns, they are not tracked after referral to the State. Thus, if the concerned individual is not willing to be contacted by the State, there is no process to provide the individual with information on the resolution of their concern.
 - 2. Agreement State licensee concerns that are not under NRC jurisdiction do not need to be tracked in any manner.
- C. Processing Concerns that Meet the NRC's Definition of an Allegation under NRC Jurisdiction
 - 1. Allegations involving areas of NRC's jurisdiction received by NMSS staff are outside the scope of this procedure and are processed in accordance with MD 8.8.
- D. Follow-up of Agreement State Licensee Concerns that are under NRC Jurisdiction
 - 1. All referrals to the State without the release of the concerned individual's identity should include a request for a response from the State indicating the results or resolution of the matter within 60 days. The HQAT will follow-up on referrals in accordance with MD 8.8.
 - 2. Upon the discretion of the IMPEP coordinator and IMPEP team lead, Agreement State licensee concerns transferred to the Radiation Control Program Director should be addressed at the time of the next periodic meeting or IMPEP review of the Agreement State. The NRC evaluates the State's handling of Agreement State licensee concern referrals during the IMPEP review of the State program under the Common Performance Indicator, *Technical Quality of Incident and Allegation Activities*. NMSS procedure SA-105, *Reviewing the Common Performance Indicator, Technical Quality of Incident and Allegation Activities* (ADAMS Accession No.

ML16034A472), describes how the NRC evaluates whether Agreement States are properly handling licensee concerns referred to the State from the NRC.

E. Concerned Individual's Identity Protection When Making Referrals to Agreement States

Before making any referrals to an Agreement State, the concerned individual should be informed of the referral. In addition, staff should determine the ability of the State to protect the identity of the concerned individual by referring to Appendix A, *Ability of Agreement States to Protect Concerned Individual's Identity from Public Disclosure*. When contacting the concerned individual, staff should inform the concerned individual of the NRC's plans to refer the concern(s) to the State, inform the concerned individual of the State's ability to protect his or her identity from public release, and inquire whether the concerned individual wishes for his/her identity to be released to the State.

The staff should also encourage the concerned individual to contact the State directly regarding his/her concern(s). The staff should inform the concerned individual that the Agreement States prefer to be contacted directly, since it allows the State to obtain all the necessary information directly and facilitates a timely response. In addition, the staff should inform the concerned individual that while the NRC has Agreement State oversight responsibility, the NRC has little authority to take independent action or to require action by an Agreement State as a result of performance or wrongdoing concerns in the absence of a credible health and safety concern.

If the concerned individual indicates that he/she would like to contact the State directly, the staff should provide the concerned individual with the State's contact person's name, e-mail, and telephone number. This information can be obtained from the NRC's Directory of Agreement State Directors at <https://scp.nrc.gov/asdirectory.html>. If the concerned individual indicates that he/she would not like to contact the State directly, and would like their identity protected, staff should take all reasonable efforts not to disclose the concerned individual's identity.

F. Contact Information

1. The ASPPC coordinator is located in the Division of Material Safety, State, Tribal, and Rulemaking Programs in NMSS. The Agreement State Concern Coordinator can be contacted by e-mail at: AgreementStateConcern.Resource@nrc.gov.

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2. The HQAT is located in the NRC's Office of Enforcement and can be reached at Allegation@nrc.gov or (800) 695-7403.

VI. APPENDICES

Appendix A - Ability of Agreement States to Protect Concerned Individual's Identity from Public Disclosure

VII. REFERENCES

1. Draft NMSS Procedure SA-400, *Management of Agreement State Program Performance Concerns* (ADAMS Accession No. ML16203A470)
2. Management Directive (MD) 8.8, *Management of Allegations*, and associated Handbook 8.8 (ADAMS Accession No. ML15344A045)
3. NRC Allegation Manual, Rev. 1. (ADAMS Accession No. ML17003A227)
4. Draft NMSS Procedure SA-105, *Reviewing the Common Performance Indicator, Technical Quality of Incident and Allegation Activities* (ADAMS Accession No. ML16034A472)

VIII. ADAMS REFERENCE DOCUMENTS

For knowledge management purposes, all previous revisions of this procedure, as well as associated correspondence with stakeholders, that have been entered into ADAMS, are listed below.

1N o.	Date	Document Title/Description	Accession Number
1	10/ /17	STC-xxxx – Opportunity to Comment on Office of Nuclear Material Safety and Safeguards Procedures: Draft Revision of SA-400, "Management of Agreement State Program Performance Concerns" and Draft SA-401, "Management of Agreement State Licensee Concerns" (STC-17-0XX)	MLXXXXXXXX
2	10/ /17	Draft Procedure SA-401, <i>Management of Agreement State Licensee Concerns</i> (this document)	MLXXXXXX

Appendix A

Ability of Agreement States to Protect Concerned Individual's Identity from Public Disclosure

AGREEMENT STATE	IS THE STATE ABLE TO PROTECT CONCERNED INDIVIDUAL'S IDENTITY?	COMMENTS
Alabama	YES	
Arizona	NO	
Arkansas	NO	
California	YES	
Colorado	NO	
Florida	NO	
Georgia	NO	
Iowa	YES	
Illinois	YES	
Kansas	YES	
Kentucky	NO	All information is subject to open records requests and can be released at the request and approval of the Attorney General.
Louisiana	NO	
Maine	YES	Identity can be protected in limited situations, such as where Federal law protects this information.
Maryland	YES	
Massachusetts	YES	
Minnesota	YES	Identity no longer protected in the case of a court hearing.

AGREEMENT STATE	IS THE STATE ABLE TO PROTECT CONCERNED INDIVIDUAL'S IDENTITY?	COMMENTS
Mississippi	NO	
Nebraska	YES	
Nevada	YES	
New Hampshire	NO	The information must be labeled confidential.
New Jersey	YES	
New Mexico	NO	
New York	YES	
North Carolina	YES	
North Dakota	YES	
Ohio	NO	There is no confidentiality as to an alleged's identity unless the alleged is a whistleblower and meets the requirements of Ohio Administrative Code 3701:1-38-09.
Oklahoma	YES	
Oregon	YES	
Pennsylvania	YES	
Rhode Island	NO	
South Carolina	YES	
Tennessee	NO	Although the State has open records laws, the State takes precautions to prevent release of alleged's information. An individual can provide a code name and refer to that code name to receive information on allegation follow up actions. Allegation files are maintained as confidential.
Texas	NO	

AGREEMENT STATE	IS THE STATE ABLE TO PROTECT CONCERNED INDIVIDUAL'S IDENTITY?	COMMENTS
Utah	NO	The information must be labeled confidential.
Virginia	YES	
Washington	YES	
Wisconsin	YES	