To:	U.S. Nuclear Regulatory Commission (NRC) Management Directive Custodians
Subject:	Transmittal of Management Directive 10.158, "NRC Non-Concurrence Process"
Purpose:	The NRC promotes discussion and consideration of differing views in the preparation and review of agency documents. Individuals have various mechanisms for expressing their views about agency decisions. This directive describes a non-concurrence process for individuals with concerns about documents in the concurrence process that they had a role in creating or reviewing. This directive complements Directive 10.160, "Open Door Policy," and Directive 10.159, "The NRC Differing Professional Opinions Program," and relies on provisions of Directive 3.57, "Correspondence Management."
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NRC Non-Concurrence Process

Directive 10.158

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NRC Non-Concurrence Process

Directive 10.158

Policy
(10.158-01)

The U.S. Nuclear Regulatory Commission (NRC) promotes discussion and consideration of differing views in the preparation and review of agency documents. Individuals have various mechanisms for expressing their views about agency decisions. This directive and associated handbook describe a Non-Concurrence Process (NCP) for eligible individuals with concerns about documents in the concurrence process that they had a role in creating or reviewing. This directive complements Directive 10.160, "Open Door Policy," and Directive 10.159, "The NRC Differing Professional Opinions Program," and relies on provisions of Directive 3.57, "Correspondence Management."

Objectives
(10.158-02)

- To promote discussion and consideration of differing views on documents in the concurrence process. (021)
- To provide a non-concurrence option for individuals with concerns about documents in the concurrence process that they had a role in creating or reviewing. (022)
- To provide a uniform approach to processing non-concurrences. (023)

Organizational Responsibilities
(10.158-03)

Executive Director for Operations (EDO)
(031)

- For documents signed by EDO, reviews NCP Form and other relevant information, and either signs document or returns to document sponsor for additional action. (a)
- For documents being signed and transmitted to Commission: (b)
    - At a minimum, provides records of all non-concurrences as background information. (1)

- Determines whether to make explicit reference to non-concurrences and provide records as enclosures. (2)

Office Directors and Regional Administrators
(032)

- Ensure that non-concurrences are processed in accordance with this directive and handbook. (a)
- For documents they are signing, review NCP Form and other relevant information, and either sign documents or return to document sponsor for additional action. (b)
- For documents being signed and transmitted to OEDO: (c)
  - At a minimum, provide records of all non-concurrences as background information. (1)
  - Determine whether to make explicit reference to non-concurrences and provide records as enclosures. (2)
- Prior to making non-concurrence records publicly available, assure that records are screened in accordance with all requirements related to the public release of agency records. (d)

Director, Office of Enforcement
(033)

- Maintains this directive and handbook. (a)
- Provides guidance on implementation of the NCP. (b)
- Conducts periodic assessments to evaluate the adequacy of this directive and handbook. (c)
- Makes recommendations to OEDO for changes to this directive and handbook. (d)

Definitions
(10.158-04)

Document sponsor. The manager or team leader responsible for originating and controlling changes to a document that is in the concurrence process and is the subject of a non-concurrence. (041)

Non-concurrence. The act of formally indicating disagreement with a document in the concurrence process that the individual had a role in creating or reviewing. (042)

Withdrawal of non-concurrence. The voluntary act by a non-concurring individual to withdraw a non-concurrence, resulting in the discontinuation of the Non-Concurrence Process. (043)

Applicability
(10.158-05)

This directive and handbook apply to all NRC headquarters and regional office employees except NRC boards and advisory committees that report directly to the Commission.

Handbook
(10.158-06)

Handbook 10.158 provides guidance on initiating, documenting, reviewing, processing, withdrawing, and keeping records of non-concurrences on documents in the review and concurrence process.

References
(10.158-07)

NRC Management Directives—

3.53, “NRC Records Management Program”

3.57, "Correspondence Management"

10.72, "Incentive Awards"

10.99, "Discipline, Adverse Actions, and Separations"

10.101, "Employee Grievances and Appeals of Adverse Actions"

10.159, "The NRC Differing Professional Opinions Program"

10.160, "Open Door Policy"

NTEU & NRC Collective Bargaining Agreement, Effective April 1, 2005

NRC Non-Concurrence Process

Handbook
10.158

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NRC Non-Concurrence Process

Introduction (A)

The U.S. Nuclear Regulatory Commission (NRC) promotes the expression and discussion of differing views in the preparation and review of agency documents. Individuals have various mechanisms for expressing their views, including informal discussions, the Open Door Policy described in Directive 10.160, and the Differing Professional Opinions (DPO) Program described in Directive 10.159. This directive and handbook describe a Non-Concurrence Process (NCP) for eligible individuals with concerns about documents undergoing review and concurrence. This directive relies substantially on Directive 3.57, "Correspondence Management," for guidance on the concurrence process.(1)

Relationship of NCP to Open Door Policy and DPO Program (2)

The NCP complements the other mechanisms for raising concerns, but is not as broad as the Open Door Policy because the NCP applies only to concerns about documents in concurrence (i.e., it cannot be used once a document is signed out) and may be used only by individuals who are eligible to non-concur. The Open Door Policy can be used by any employee to discuss "any work-related issue or concern" with agency supervisors and managers. The NCP also differs from the DPO Program because the NCP can be used to challenge positions in draft documents, before a final position is established. The DPO Program applies only to positions that are no longer under staff review, and has certain prerequisites and exclusions that do not apply to the NCP. (a)

Expectations for informal discussions prior to using NCP (3)

All employees – including those who may not be eligible to use the NCP – have a responsibility to express and discuss differing views as early as possible in the preparation and review of agency documents. Individuals with concerns and those responsible for originating and issuing documents, including document sponsors and signers, have a responsibility to seek solutions to concerns that might otherwise result in a non-concurrence. Non-concurrence should be necessary only when informal discussions are unable to resolve an individual's concerns and the individual seeks a response through the NCP. (a)

Applicability of Non-Concurrence Process (B)

The NCP applies to all documents in the concurrence process, including those that require review and concurrence by multiple NRC offices before issuance. Special considerations apply to documents being transmitted by an office director to the Office of the Executive Director for Operations (OEDO) or by OEDO to the Commission. These are described in Section F. (1)

Eligibility to use the NCP (2)

NRC headquarters and regional employees, except members of boards and advisory committees reporting to the Commission, may non-concur in a document. Their views will be considered in accordance with the NCP provided the following criteria are met. (a)

- The document is undergoing review and concurrence. (i)

- The non-concurring individual is one of the following: (ii)

    - the author of the document; (1)
    - on document concurrence; (2)
    - a contributor tasked with providing document content; or (3)
    - a reviewer tasked by the document sponsor or a supervisor to review the document (4)

Individuals not eligible to use the NCP (3)

Individuals who are not eligible to use the NCP are encouraged to use informal discussions and the Open Door Policy to express their concerns to the document sponsor, document signer or other managers involved in the document concurrence process. (a)

Description of Non-Concurrence Process (C)

The NCP is a three-part process: 1) the initiation of a non-concurrence; 2) the document sponsor's review; and 3) the document signer's review. The following is a basic description of the NCP beginning with the initiation of a non-concurrence. Exhibit 1 is a graphic representation of this process. (1)

Part 1 – Initiation of a non-concurrence (2)

- Non-concurring individual informs own supervisor and document sponsor that NCP is being initiated (a)
- Non-concurring individual indicates non-concurrence on document concurrence page, and describes reasons for non-concurrence on NRC Form 757 (NCP Form) (b)
- Non-concurring individual sends form to own supervisor and document sponsor (c)
- Non-concurring individual's supervisor uses NCP Form to provide any additional information to be considered by the document sponsor (d)

Part 2 – Document sponsor's review (3)

- Document sponsor reviews information provided by non-concurring individual and individual's supervisor (a)
- Document sponsor confers with others, including the document signer, as

necessary (b)

- Document sponsor uses NCP Form to describe proposed actions, if any, to address non-concurrence (c)
- Document sponsor places NCP Form in document package and: (d)
  - returns revised document to non-concurring individual and others who previously concurred, in accordance with MD 3.57, or (i)
  - returns unrevised document to concurrence process (ii)

Part 3 – Document signer's review (4)

- Document signer reviews NCP Form and all relevant information (a)
- Document signer confers with others, as necessary (b)
- Document signer either signs document, indicating agreement with the proposed actions, or returns document to document sponsor for additional action. (c)

Individual Responsibilities for NCP (D)

Individual employees, managers, document sponsors and document signers all have a responsibility for assuring that any differing views that are expressed are considered in the document preparation and review process, and that the NCP, if initiated, is effectively and efficiently implemented. The following is a summary of those responsibilities. (1)

All Employees (2)

- Raise concerns – and propose solutions – as early as possible in the document preparation and review process. (a)

- Discuss differing views with own supervisor and the document sponsor before initiating non-concurrences. (b)

- Initiate and document non-concurrences in accordance with this handbook. (c)

- Be clear and succinct in describing reasons for non-concurrence on NCP Form. (d)

All Team Leaders, Supervisors and Managers (3)

- Encourage individuals to express concerns – and to propose solutions – as early as possible in the document preparation and review process. (a)

- Make individuals aware of all of their options for expressing and resolving differing views, including informal discussions, the Open Door Policy, the NCP, and the DPO Program. (b)

- Assure that individuals who have expressed differing views are not

excluded from further discussions of an issue and are not treated disparately (see Section H). (c)

- Consider recognition of individuals whose expression of differing views has resulted in an improved outcome or made a valuable contribution to the decision-making process. (d)

- Do not hold non-concurring individuals, document sponsors or others involved in the NCP accountable for delays in document issuance provided they endeavored to meet their responsibilities as described in this handbook. (e)

- Adjust document schedules, as necessary, to allow adequate time for addressing non-concurrences in accordance with the requirements of this directive. (f)

- Provide timely input to document sponsors if providing information related to an individual's non-concurrence. (g)

Document sponsors (3)

For the purpose of this directive, document sponsors are defined as the team leader or manager responsible for originating and controlling changes to a document in the concurrence process. Although similar to the concept of "document originator" in MD 3.57, the document sponsor is assumed to have control over changes to a document and is given significant responsibilities for implementing the NCP. These include: (a)

- Discuss document concerns with individuals and seek solutions to address concerns that might otherwise result in a non-concurrence. (i)

- Remove individuals from document concurrence in accordance with Section E(2). (ii)

- Confirm that non-concurring individuals are eligible to use the NCP in accordance with Section B(2). (iii)

- Inform management, including own supervisor, as appropriate, upon receipt of a non-concurrence. (iv)

- Review and process non-concurrences in accordance with this handbook. (v)

- At the conclusion of the NCP, inform non-concurring individuals of the outcome. (vi)

- Make document signer aware of any important concerns expressed by individuals who chose not to, or were not eligible to, pursue a non-

concurrence, including concerns that formed the basis for a request for removal from concurrence. (vii)

Document signers (4)

- Review and process non-concurrences in accordance with this handbook. (a)
- Conduct final reviews of non-concurrences except as provided in Section E(6). (b)
- For any important concerns expressed by individuals who chose not to, or were not eligible to, pursue a non-concurrence, including concerns that formed the basis for a request for removal from concurrence, determine whether action should be taken to address the concern or communicate it to others. (c)

Additional Implementation Guidance (E)

Timeliness of NCP (1)

This handbook establishes no specific time limit for the review of non-concurrences. The intent is to resolve non-concurrences as part of the normal document concurrence process and in accordance with the normal document schedule. In all cases, the review of non-concurrences shall be complete before the document is issued. (a)

All employees involved in this process have a responsibility to make the NCP as timely, efficient and effective as possible. Concerns should be promptly raised and thoroughly and promptly addressed. Information provided to support the NCP, whether from a non-concurring individual, the individual's supervisor, or another office, should be provided in a timely manner. In addition, all parties should endeavor to be succinct in completing NCP forms and related records; only information which is necessary to make or support a decision on a non-concurrence should be provided. (b)

Notwithstanding efforts to be prompt, the NCP requires that certain actions occur before a document can be issued, and some documents may be delayed beyond their normal schedules. Document sponsors should adjust document schedules, as necessary, to allow adequate time to address non-concurrences in accordance with the requirements of this directive. Non-concurring individuals, document sponsors and others involved in the non-concurrence process shall not be held accountable for delays in document issuance provided they endeavored to meet their responsibilities as described in this handbook. In evaluating such efforts, managers should recognize that in some cases the first opportunity individuals have to clearly formulate their concerns is when a document is presented to them for review or concurrence. (c)

Removing Individuals from Document Concurrence (2)

Individuals on document concurrence may be removed from concurrence based on redundancies in the concurrence chain, unavailability to review a document, or document concerns that do not, from the individual's perspective, warrant non-concurrence. Document sponsors normally should remove individuals at their request, but must assure that the document concurrence chain remains appropriate based on the document's subject matter. In no case should a document sponsor remove an individual from document concurrence to avoid a non-concurrence. (a)

Individuals on document concurrence may request removal by: (b)

- Manually or electronically marking through, or entering the word "Remove" in, their concurrence block, without initialing or dating the block, as indicated in the example below; or (i)

- Asking the document sponsor to remove their name and concurrence block from the document. (ii)

OFFICE	NRR	OE	OE
NAME	ASmith / AS	AJones/ **Remove**	WBrown / WB
DATE	10/22/06		11/01/06

or

OFFICE	NRR	OE	OE
NAME	ASmith / AS	AJones/	WBrown / WB
DATE	10/22/06		11/01/06

If removal from concurrence is requested, the individual's concurrence block shall be completely removed from the official record copy of the document. (c)

Individuals who request removal from concurrence based on document concerns should be encouraged – but not required – to use the NCP to address their concerns. However, removal from concurrence is not a non-concurrence for the purpose of this directive and handbook, and the provisions of the NCP should not be followed. Document sponsors have a responsibility to make the document signer aware of any important concerns that formed the basis for a request for removal from concurrence. (d)

Initiating Non-Concurrences (3)

To initiate a non-concurrence, individuals shall: (a)

- Inform the document sponsor and their own supervisor. (i)

- Enter the non-concurrence on the document concurrence page, as discussed below. (ii)

- Complete Section A of the NCP Form and submit the form to the document sponsor with a copy to their own supervisor. (iii)

Indicating Non-Concurrence on Documents (4)

Individuals on document concurrence who non-concur shall, as indicated in the example below: (a)

- Manually or electronically enter "Non-Concur" in their concurrence block. (i)

- Manually or electronically initial and date the block. (ii)

OFFICE	NRR	OE	OE
NAME	ASmith / AS	AJones/ **AJ Non-Concur**	WBrown / WB
DATE	10/22/06	**10/24/06**	11/01/06

The electronic, official record copy of the concurrence page shall include the same information. Adding the term "Non-Concur" may require adding a line to the "Name" row in the concurrence table. (b)

Individuals who are not on document concurrence, such as document reviewers and contributors, shall: (c)

- Manually or electronically enter their organization and name on the document concurrence page, or a copy of the document concurrence page. (i)

- Manually or electronically enter "Non-Concur," and initial and date it. (ii)

- Provide this information to the document sponsor and request that a concurrence block be added to the official record copy of the document to record the non-concurrence. (iii)

The electronic, official record copy of any document on which there a non-concurrence shall include: (c)

- A concurrence block for the non-concurring individual. (i)

- The individual's name and organization. (ii)

- The term "Non-Concur," and the date of the non-concurrence. (iii)

If a non-concurring individual subsequently concurs, the concurrence page shall be modified accordingly, and the official record copy of the document shall not indicate that a non-concurrence was associated with the document. (d)

Using the NCP Form (5)

NRC Form 757, "Non-Concurrence Process," (NCP Form) is available from the NRC's forms management system and shall be used to facilitate the NCP. Individuals, their supervisors and document sponsors should be succinct in describing the reasons for, and actions taken to address, non-concurrences.(a)

The form may be filled out and transferred electronically or printed and filled in by hand. If the non-concurrence involves classified, safeguards (SGI), or sensitive unclassified non-safeguards (SUNSI) information, e.g., proprietary or allegation-related information, the form shall be marked and handled in accordance with the appropriate requirements. Once initiated, the form shall be completed and processed in the following manner: (b)

- The non-concurring individual shall complete Section A, which records basic information about the document, identifying information about the non-concurring individual, and the reasons for non-concurrence. Section A also should be used to describe proposed alternatives. The non-concurring individual shall submit the form to the document sponsor, and simultaneously provide a copy to his or her own supervisor. (i)

- The individual's supervisor shall complete Section B, which records information the individual's supervisor (or organization) wants the document sponsor to consider. Providing this information is optional. However, whether or not information is provided, the supervisor shall complete Section B and send it to the document sponsor. (ii)

- The document sponsor shall complete Section C, which records actions taken to address the non-concurrence, and, at the bottom of the page, the status of the non-concurrence. If no actions are taken, the reasons should be recorded. (iii)

- Section C shall be revised to reflect changes in the actions taken to address the non-concurrence, or in the status of the non-concurrence (e.g., if the non-concurring individual later concurs or withdraws the non-concurrence). The document sponsor shall assure that Section C is current before declaring the NCP Form an official agency record. (iv)

- Section D of the form shall be used as a continuation page for Sections A, B and C, and the check boxes at the top of the page shall be used to indicate which section is being continued. If more than one section is continued, each shall be continued on a separate page and marked to indicate which section of the form is being continued. (v)

- The document sponsor shall place a copy of the completed form in the document concurrence package. If the non-concurring individual continues to non-concur, the form shall be placed immediately behind the concurrence page. If the non-concurring individual concurs or withdraws the non-concurrence, the form shall be placed in the background section. (vi)

- All NCP Forms are official agency records (although normally non-public) and shall be maintained in accordance with Section G. (vii)

Reviewing Non-Concurrences (6)

The following guidance applies to document sponsors and document signers involved in reviewing non-concurrences: (a)

- The document sponsor shall, at a minimum, consider input from the non-concurring individual and any additional information provided by the individual's supervisor before deciding what, if any, actions should be taken to address a non-concurrence. (i)

- To preclude process iterations, the document sponsor should confer with interested parties, including others on document concurrence and the document signer, before completing Section C of the NCP Form. (ii)

- The document sponsor may request assistance from other offices if the expertise needed to resolve a non-concurrence resides elsewhere in the agency. However, the document sponsor's organization shall retain the responsibility for deciding what changes, if any, are made to a document to address a non-concurrence. (iii)

- The document sponsor shall describe proposed actions to address the non-concurrence in Section C of the NCP Form. If no actions are taken, the reasons should be recorded on the form. (iv)

- If the document is revised to address the non-concurrence, the document sponsor shall return the revised document to the non-concurring individual and others who previously concurred, in accordance with MD 3.57. (v)

- If the document is not revised to address the non-concurrence, the document sponsor shall return the document to the concurrence process, with the NCP Form behind the concurrence page in the package. (vi)

- The document signer shall review all information relevant to the non-concurrence, and may confer with interested parties, as necessary, before making a final decision on the non-concurrence. The document signer shall either sign the document or return it to the document sponsor for additional action. (vii)

- If the document signer and document sponsor are the same, the final review of the non-concurrence shall be elevated to the next level of management within the organization, and the reviewing manager shall be added to document concurrence. (viii)

- If the document signer is not a Senior Executive Service (SES) manager, the final review of the non-concurrence shall be elevated to the first SES management level above the document signer and the reviewing manager shall be added to document concurrence. (ix)

- At the conclusion of the process, i.e., after the document signer has made a final decision on the non-concurrence, the document sponsor shall inform the non-concurring individual, and assure that the NCP Form accurately reflects actions taken to address the non-concurrence and the final status of the non-concurrence (non-concurring individual either concurs, non-concurs or withdraws) before declaring the form an official agency record. (x)

Processing Documents With Non-Concurrences (7)

The document concurrence process may continue if a non-concurrence is initiated. However, the steps taken will depend on the circumstances. The following guidance applies: (a)

- A document that is in sequential concurrence (i.e., moving from person to person) should not be permitted to move forward in the concurrence process until a proposed disposition of the non-concurrence is formulated and the NCP Form is placed in the document concurrence package. The provisions of MD 3.57 apply. (i)

- If a document is sent out for parallel review and concurrence, and a non-concurrence is initiated by one of the reviewers, the document sponsor has discretion in deciding how to continue with the concurrence process. (ii)

    - If the issue involved in the non-concurrence is one of general interest, the document sponsor should consider informing the other reviewers and requesting their views on the issue. (1)

    - If the issue involved in the non-concurrence is of limited interest to other reviewers, the document sponsor may allow the review and concurrence process to continue, but is obligated to re-circulate the document to them if the non-concurrence results in substantive changes. (2)

For documents being signed and transmitted to either OEDO or the Commission, records of all non-concurrences shall be provided as background information or as enclosures in accordance with Section F. (b)

Withdrawing Non-Concurrences (8)

A non-concurring individual may withdraw a non-concurrence at any time prior to the issuance of a document by informing the document sponsor. If a non-concurrence is withdrawn: (a)

- The NCP is discontinued, and the involved document shall be processed as if there were no non-concurrence associated with it. (i)

- The document sponsor and document signer have no further obligation to review the non-concurrence. (ii)

- Section C of the NCP Form shall be revised by the document sponsor to indicate the non-concurrence is withdrawn, and the current version of the form shall be placed in the background section of the document package and retained as an agency record. If the non-concurrence is withdrawn before the NCP is completed, the document sponsor should note this in Section C. (iii)

- The concurrence page for any document involving a withdrawn non-concurrence shall be revised to eliminate any indication of the non-concurrence. The non-concurring individual shall either: (iv)

    - Indicate concurrence on the document; or (1)

    - Request to be removed from document concurrence in accordance with Section E.2., "Removing Individuals from Document Concurrence." (2)

- If a document involving a withdrawn non-concurrence is being signed and transmitted to either OEDO or the Commission, records of the withdrawn non-concurrence shall be provided as background information or as an enclosure in accordance with Section F. (v)

Submitting Documents to OEDO or Commission (F)

If a document involving a non-concurrence is being prepared for signature by the EDO, the process described above is fully applicable. In particular, as the document signer, the EDO would review all information relevant to the non-concurrence, confer with interested parties as necessary, and either sign the document or return it to the document sponsor for additional action. (1)

The remainder of this section discusses special considerations that apply to final, signed documents being transmitted to OEDO or the Commission. The primary objective is to assure that OEDO and the Commission are made aware of non-concurrences and how they were addressed by the staff, especially in cases where a recommendation is being made to OEDO or the Commission. COM-SECY-05-0045 (ML061810497), dated June 30, 2006, states that "Staff papers

and memoranda coming to the Commission should include any significant differing opinions that arose during the process." (2)

If a non-concurrence is associated with a document being signed out by an office director or regional administrator to OEDO, or by OEDO to the Commission, the following guidance applies: (3)

- Records of all non-concurrences – including those addressed to the satisfaction of the non-concurring individual and those that are withdrawn – shall, at a minimum, be transmitted with the document as background information. (a)

- Whether to make explicit reference to a particular non-concurrence, and enclose the associated records, is within the discretion of the document signer (i.e., office director or EDO). (b)

Keeping Records of Non-Concurrences (G)

The document sponsor's organization is responsible for record-keeping associated with the NCP. (1)

All NCP Forms and other records created to document non-concurrences are official agency records. Thus, all non-concurrence records, including records of non-concurrences that are subsequently withdrawn: (2)

- Shall be retained in ADAMS, or other record retention systems if ADAMS is not the appropriate repository. (a)

- If retained in ADAMS, shall be profiled in accordance with ADAMS template NRC-006 and shall be included in a package with the final version of the document that was the subject of the non-concurrence. (b)

- If retained in paper record retention systems, shall be co-located with the final version of the document that was the subject of the non-concurrence. (c)

- Shall be retained on the same retention schedule as the document that was the subject of the non-concurrence; (d)

- Shall normally be non-public, even if the document they are associated with is publicly available, unless subject to special requirements. (e)

    - Based on unique licensing requirements, the need to make non-concurrence records associated with the high level waste repository program publicly available is governed by the provisions of 10 CFR Part 2, Appendix J. (i)

- Subject to all other requirements related to the public release of agency

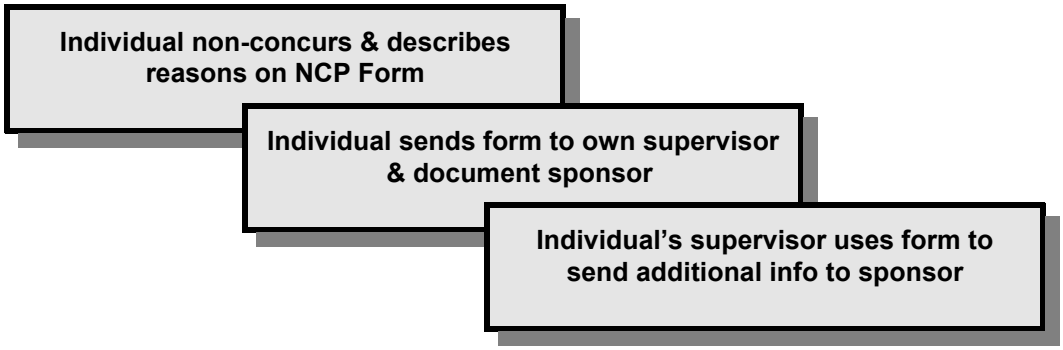
records, may be made publicly available at the request of the non-concurring individual or in response to a Freedom of Information Act request. (f)

Prohibition of Retaliation (H)

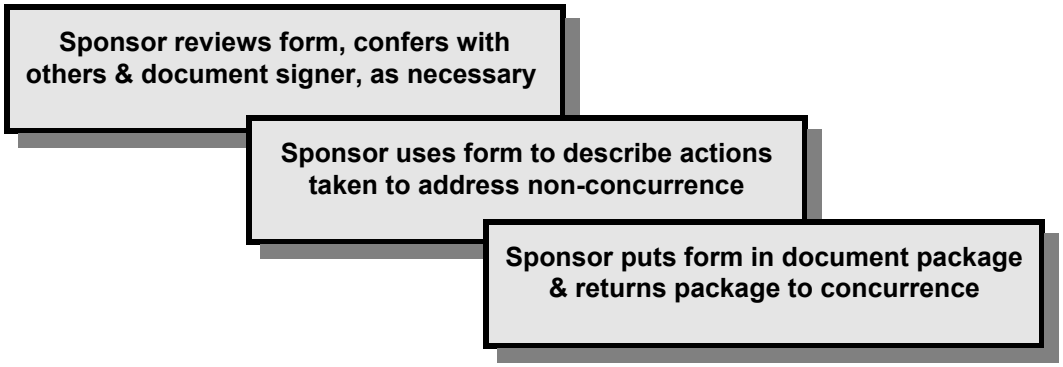
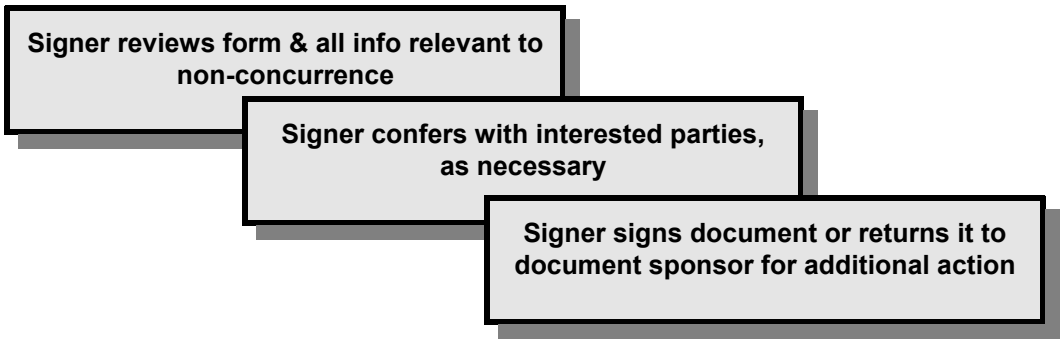
Retaliation against individuals who non-concur is prohibited and may result in disciplinary action. Employees who believe that retaliatory actions have been taken because of their non-concurrence may seek redress through the negotiated grievance procedure (Article 51 of the Collective Bargaining Agreement) or through the grievance procedure described in MD 10.101, “Employee Grievances and Appeals of Adverse Actions,” or through other avenues available to Federal Government employees, as appropriate. (1)

Exhibit 1
Non-Concurrence Process

Part 1 – Initiation of non-concurrence



Part 2 – Document sponsor's review



Part 3 - Document signer's review