

**U.S. NUCLEAR REGULATORY COMMISSION MANAGEMENT DIRECTIVE (MD)**

<b>MD 10.158</b>	<b>NRC NON-CONCURRENCE PROCESS</b>	<b>DT-17-214</b>
<i>Volume 10, Part 7:</i>	General Personnel Management Provisions	
<i>Approved By:</i>	Mark A. Satorius	
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<i>Issuing Office:</i>	Office of Enforcement	
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<b>EXECUTIVE SUMMARY</b>		
<p>Directive and Handbook 10.158 contain NRC’s policies and procedures for the Non-Concurrence Process (NCP) to be used by an employee with a concern about a document in the concurrence process that he or she had a role in creating or reviewing. NRC employees are required to adhere to the policy and procedures for engaging in the NCP set forth in this directive and any applicable regional or headquarters office implementing procedures. In case of conflict between this management directive (MD) and regional or headquarters office procedures, this MD takes precedence.</p>		
<p>MD 10.158 supersedes the interim policy on the NCP issued by the Executive Director for Operations on November 29, 2006. This MD incorporates lessons learned from implementation of the interim policy, insights from employee feedback, and recommendations from an Office of Inspector General audit (OIG-11-A-02). This MD clarifies roles and responsibilities for employees engaging in the NCP, defines the role of the NCP Program Manager, introduces a requirement for an NCP tracking number, and revises NRC Form 757, “Non-Concurrence Process.”</p>		
<p>NOTE: A summary of the revisions to the interim policy that are incorporated in the MD is on the NRC’s internal NCP Web site. The NCP Web site also includes a variety of resources and aids to assist employees engaging in the NCP, including a flow chart, Frequently Asked Questions, and procedures for the “Releasability Review of NCP Forms.”</p>		

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**TABLE OF CONTENTS**

<b>I. POLICY</b> .....	<b>3</b>
<b>II. OBJECTIVES</b> .....	<b>3</b>
<b>III. ORGANIZATIONAL RESPONSIBILITIES</b> .....	<b>4</b>
A. Executive Director for Operations (EDO) .....	4
B. General Counsel (GC).....	5
C. Inspector General (IG).....	5
D. Director, Office of Enforcement (OE) .....	5
E. Chief Human Capital Officer (CHCO) .....	6
F. Director, Office of Information Services (OIS) .....	6
G. Office Directors and Regional Administrators .....	6
H. Director, Division of Security Operations (DSO), Office of Nuclear Security and Incident Response .....	7
I. Team Leaders, Supervisors, and Managers .....	7
J. Non-Concurrence Process Program Manager (NCP PM) .....	8
K. All Employees.....	9
<b>IV. APPLICABILITY</b> .....	<b>9</b>
<b>V. DIRECTIVE HANDBOOK</b> .....	<b>10</b>
<b>VI. REFERENCES</b> .....	<b>10</b>

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## I. POLICY

- A. It is the policy of the U.S. Nuclear Regulatory Commission to support a Non-Concurrence Process (NCP) that an eligible employee (as defined in this directive, Section IV, "Applicability") can use when he or she has a concern about a document that they had a role in creating or reviewing in the concurrence process.
- B. The NRC strives to establish and maintain an environment that encourages all NRC employees and contractors to raise concerns and differing views promptly without fear of reprisal through various mechanisms. The free and open exchange of views or ideas conducted in a non-threatening environment provides the ideal forum where concerns and alternative views can be considered and addressed in an efficient and timely manner that improves decisionmaking and supports the agency's safety and security mission.
- C. All NRC employees are expected to discuss their views and concerns with their immediate supervisors on a regular, ongoing basis, including during the preparation and review of agency documents. These informal discussions should be sufficient to resolve most issues. However, if informal discussions do not resolve concerns, employees have various mechanisms for expressing and having their concerns and differing views heard and considered by management, including the Open Door Policy described in Management Directive (MD) 10.160, "Open Door Policy," and the Differing Professional Opinions (DPO) Program described in MD 10.159, "The NRC Differing Professional Opinions Program."

## II. OBJECTIVES

- Promote early discussion and consideration of differing views on or alternative approaches to documents in the concurrence process (including documents concerning administrative or corporate support issues and documents that require review and concurrence by multiple NRC offices before issuance).
- Affirm that the NCP strengthens the NRC and is a potential source of valuable ideas.
- Provide, as a means to inform management decisions, a non-concurrence option for an employee with a concern about a document that he or she had a role in creating or reviewing in the concurrence process.
- Provide a consistent approach to processing non-concurrences to ensure that a non-concurrence is heard, understood, and considered by employees included in the concurrence process so that the non-concurrence informs and supports the decisionmaking process.

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- Ensure that the NCP is executed effectively, efficiently, and timely, consistent with the (1) importance of prompt action on the issue, (2) safety significance of the issue, (3) complexity of the issue, and (4) priority of other work activities affecting the availability of participants.
  - Emphasize that reprisal (i.e., harassment, intimidation, retaliation, or discrimination) by management or a peer against an employee for participating in the NCP is inappropriate and is not tolerated.
  - Recognize an employee whose differing views, expressed through the NCP, results in an improved outcome or a valuable contribution to the agency decision.

### III. ORGANIZATIONAL RESPONSIBILITIES

#### A. Executive Director for Operations (EDO)

1. Fosters an environment that allows individuals to raise a concern and differing view without fear of reprisal; promotes methods for raising a concern that supports the agency's mission.
2. Ensures sufficient resources are available to administer an effective NCP.
3. Reviews evaluations of the NCP and approves policy revisions.
4. Reviews NRC Form 757, "Non-Concurrence Process," (NCP Form) (available in the [NRC Forms Library](#) on SharePoint) and other relevant information for a document signed by the Executive Director for Operations (EDO) and either signs the document or returns the NCP Form and concurrence package to the NCP Coordinator for additional action.
5. For documents being signed and transmitted to the Commission:
  - (a) Ensures that the NCP Form is included as an enclosure to the document.
  - (b) Determines whether to make explicit reference to the non-concurrence in the document.
6. Publishes periodic announcements that affirm that the NCP strengthens the NRC, that the NCP is a potential source of valuable ideas, and that an employee should feel comfortable using the process without fear of harassment, intimidation, retaliation, or discrimination.
7. Coordinates with the Office of Enforcement (OE) on employee surveys and action plans conducted by the Office of the EDO (OEDO) that address the NCP and the environment for raising concerns and differing views.

**B. General Counsel (GC)**

1. Provides legal counsel on selected matters regarding implementing the NCP.
2. Provides legal counsel, as requested, on discretionary release of NCP records consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI) (available at <http://www.internal.nrc.gov/sunsi/pdf/SUNSI-Policy-Procedures.pdf>); MD 3.4, "Release of Information to the Public"; MD 3.1, "Freedom of Information Act"; and the procedures for "Releasability Review of NCP Forms" on the NRC's internal Web site (<http://www.internal.nrc.gov/>) if a non-concurring employee requests discretionary release to the public.
3. Concurs on the discretionary release of all NCP Forms that include attorney-client information or attorney work-product or otherwise involve NRC attorneys.

**C. Inspector General (IG)**

Investigates complaints of fraud, waste, abuse, or misconduct by an NRC employee or contractor; allegations of retaliation for raising concerns; and complaints of mismanagement of agency programs.

**D. Director, Office of Enforcement (OE)**

1. Provides overall guidance and direction to develop, implement, assess, and manage the NCP.
2. Performs periodic assessments of the NCP.
3. Recommends NCP policy revisions to the EDO.
4. Appoints a program manager and a backup program manager for the NCP.
5. Coordinates with the Office of the Chief Human Capital Officer (OCHCO) on employee surveys and action plans conducted by OCHCO that address the NCP and the environment for raising mission-related concerns and differing views.
6. Coordinates with OCHCO to collect data concerning allegations of reprisal or retaliation against employees who have engaged in the NCP to help assess and support an effective NCP. This data collection is solely for the purpose of assessing and supporting the NCP and does not include employee-specific or actual details on any grievance, complaint, or adverse action.

**E. Chief Human Capital Officer (CHCO)**

1. Ensures that fostering an environment for raising concerns and differing views without fear of reprisal and promoting methods for raising concerns are an integral part of agency personnel policies and practices.
2. Coordinates with OE on employee surveys and action plans conducted by OCHCO that address the NCP and the environment for raising mission-related concerns and differing views.
3. Supports data collection compiled by OE that addresses concerns of reprisal or retaliation against employees who have engaged in the NCP to help assess and support an effective NCP. This data collection is solely for the purpose of assessing and supporting the NCP and does not include employee-specific or actual details on any grievance, complaint, or adverse action.

**F. Director, Office of Information Services (OIS)**

1. Provides advice, as requested, on discretionary release of an NCP Form consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 3.4; MD 3.1; and the procedures for "Releasability Review of NCP Forms" on the NRC's internal Web site, if a non-concurring employee requests discretionary release to the public.
2. Ensures that the NCP Form is available in the NRC Forms Library.

**G. Office Directors and Regional Administrators**

1. Foster an environment that encourages an employee to raise a concern and a differing view. Promote methods for raising concerns and differing views that support the agency's mission (e.g., periodically communicate that the NCP strengthens the NRC, that the NCP is a potential source of valuable ideas, and that an employee should feel comfortable using the process without fear of harassment, intimidation, retaliation, or discrimination).
2. Ensure that office policies, guidance, and practices within their area of responsibility are consistent with this MD.
3. Ensure that their staff implements this MD.
4. Coordinate with OE on employee surveys and action plans conducted by their office that address the NCP and the environment for raising differing views.

5. Review the NCP Form and other relevant information for a document they are signing and either sign the document or return to staff for additional action.
6. For documents being signed and transmitted to OEDO:
  - (a) Ensure that the NCP Form is included as an enclosure to the subject document.
  - (b) Determine whether to make explicit reference to the non-concurrence in the subject document.
7. Serve as the NCP Approver for documents being prepared for signature by the EDO.

#### **H. Director, Division of Security Operations (DSO), Office of Nuclear Security and Incident Response**

Provides advice, as requested, on handling, marking, and protecting classified and sensitive unclassified information (i.e., Safeguards Information (SGI) and Protected Critical Infrastructure Information (PCII)) that is on an NCP Form.

#### **I. Team Leaders, Supervisors, and Managers**

1. Encourage employees to express concerns and to propose solutions as early as possible in the document preparation and review process.
2. Make employees aware of the NRC mechanisms for expressing and resolving differing views, including informal discussions, the Open Door Policy, the NCP, and the Differing Professional Opinions Program.
3. Ensure that an employee engaged in an NCP is included in further discussions of the issues that are related to the non-concurrence, as appropriate, and is not treated disparately for participating in the NCP.
4. Ensure that a non-concurring employee, the NCP Coordinator, or others involved in the NCP are not held accountable for delays in document issuance, provided they endeavor to meet their responsibilities as described in this directive handbook.
5. Adjust document schedules as necessary to allow adequate time for addressing a non-concurrence according to the requirements of this MD.
6. Provide timely input to the NCP Coordinator related to an employee's non-concurrence.
7. Ensure that an NCP Form that includes classified and sensitive unclassified information (SGI, PCII, and SUNSI) is appropriately handled, marked, and protected in accordance with agency policies and procedures.

8. Ensure that an NCP Form is saved in the appropriate recordkeeping system (e.g., Agencywide Documents Access and Management System (ADAMS)).
9. Ensure that a releasability review is performed on an NCP Form consistent with agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 3.4; MD 3.1; and the procedures for "Releasability Review of NCP Forms" on the NRC's internal Web site, if a non-concurring employee requests discretionary release to the public.
10. Consider recognizing an employee whose expression of differing views in the NCP has resulted in an improved outcome or made a valuable contribution to the agency decision.
11. Take appropriate action in response to an allegation of reprisal against a non-concurring employee and other participants in the NCP and chilling effect concerns related to the NCP.

**J. Non-Concurrence Process Program Manager (NCP PM)**

1. Promotes an environment for raising concerns and differing views that supports an effective NCP.
2. Oversees the development, implementation, maintenance, and assessment of the NCP.
3. Serves as the agency expert and spokesperson for the NCP; serves as the agency champion to make employees aware of the availability and intent of the NCP.
4. Recommends modifications to the NCP and guidance, and updates this MD as necessary.
5. Collaborates with OCHCO to identify training needs related to the NCP.
6. Maintains a system to assign and track NCP Forms.
7. Develops and maintains NCP-related information on NRC's internal and external Web sites.
8. Informs an employee who alleges that retaliatory actions have been taken because of their submittal of a non-concurrence or their participation in the NCP of the multiple avenues available to them to pursue their allegation included in Section XI of the handbook to this directive.

9. Shares employee feedback and concerns related to the implementation of the NCP with team leaders, supervisors, and managers, as appropriate and provides advice on actions to take to support the continued willingness of employees to use the NCP.
10. Coordinates with offices on any employee survey that the office plans to conduct that addresses the NCP and the environment for raising concerns and differing views.

#### **K. All Employees**

1. Raise concerns and propose solutions as early as possible in the document preparation and review process.
2. Discuss differing views with their immediate supervisor and team leader or supervisor responsible for controlling changes to the document that is in the concurrence process before initiating non-concurrences.
3. Initiate and document a non-concurrence in good faith for genuine concerns and in accordance with this MD.
4. Be clear and succinct in describing reasons for a non-concurrence on the NCP Form.
5. Ensure that an NCP Form including classified and sensitive unclassified information (SGI, PCII, and SUNSI) is appropriately handled, marked, and protected in accordance with agency policies and procedures.
6. Review an NCP Form included in a document concurrence package when asked to review to support an informed decision.
7. Treat respectfully an employee who expresses a differing view or participates in the NCP and do not marginalize, harass, intimidate, retaliate, or discriminate against an employee for expressing a differing view or participating in the NCP.

#### **IV. APPLICABILITY**

MD 10.158 applies to all NRC employees, except members of NRC boards and advisory committees that report directly to the Commission, employees on NRC Limited (Excepted) appointment (by reason of the confidential, policy-making, policy-determining, or policy advocating nature of the position), and Commissioners. MD 10.158 does not apply to NRC contractors.

## V. DIRECTIVE HANDBOOK

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

## VI. REFERENCES

### *Code of Federal Regulations*

10 CFR Part 2, Subpart J, "Agency Rules of Practice and Procedure," "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository."

### *Nuclear Regulatory Commission Documents*

ADAMS Template NRC-006 (ML063120159).

Audit of NRC's Non-Concurrence Process (OIG-11-A02), at <http://www.nrc.gov/reading-rm/doc-collections/insp-gen/2011/oig-11-a-02.pdf>.

Internal Commission Procedures, at <http://www.nrc.gov/about-nrc/policy-making/internal.html>.

Management Directives—

3.1, "Freedom of Information Act."

3.4, "Release of Information to the Public."

3.53, "NRC Records and Document Management Program."

3.57, "Correspondence Management."

10.101, "Employee Grievances."

10.159, "The NRC Differing Professional Opinions Program."

10.160, "Open Door Policy."

NRC and National Treasury Employees Union Collective Bargaining Agreement, at <http://www.internal.nrc.gov/HR/pdf/cba.pdf>.

NRC Forms Library, at <http://portal.nrc.gov/nrcformsportal/default.aspx>.

NRC Internal Web site on the Non-Concurrence Process:

<http://www.internal.nrc.gov/OE/NCP>.

NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI), at <http://www.internal.nrc.gov/sunsi/pdf/SUNSI-Policy-Procedures.pdf>.

Rights and Protections Regarding Whistleblower Protection, Anti-Discrimination and Retaliation, at <http://www.internal.nrc.gov/HR/pdf/rights-and-protections.pdf>.

### ***Other Documents***

The Department of Labor, Occupational Safety and Health Administration, Office of Whistleblower Protection, at <http://www.whistleblowers.gov>.

The U.S. Office of the Special Counsel, at <http://www.osc.gov/>.

### ***United States Code***

Energy Reorganization Act of 1974, as amended.

Freedom of Information Act of 1966 (5 U.S.C. 552).

U.S. NUCLEAR REGULATORY COMMISSION DIRECTIVE HANDBOOK (DH)

**DH 10.158**

**NRC NON-CONCURRENCE PROCESS**

**DT-17-214**

*Volume 10,  
Part 7:*

General Personnel Management Provisions

*Approved By:*

Mark A. Satorius  
Executive Director for Operations

*Date Approved:*

March 14, 2014

*Cert. Date:*

N/A, for the latest version of any NRC directive or handbook, see the [online MD Catalog](#).

*Issuing Office:*

Office of Enforcement

*Contact Name:*

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301-415-2742

**EXECUTIVE SUMMARY**

Directive and Handbook 10.158 contain NRC's policies and procedures for the Non-Concurrence Process (NCP) to be used by an employee with a concern about a document in the concurrence process that he or she had a role in creating or reviewing. NRC employees are required to adhere to the policy and procedures for engaging in the NCP set forth in this directive and any applicable regional or headquarters office implementing procedures. In case of conflict between this management directive (MD) and regional or headquarters office procedures, this MD takes precedence.

MD 10.158 supersedes the interim policy on the NCP issued by the Executive Director for Operations on November 29, 2006. This MD incorporates lessons learned from implementation of the interim policy, insights from employee feedback, and recommendations from an Office of Inspector General audit (OIG-11-A-02). This MD clarifies roles and responsibilities for employees engaging in the NCP, defines the role of the NCP Program Manager, introduces a requirement for an NCP tracking number, and revises NRC Form 757, "Non-Concurrence Process."

NOTE: A summary of the revisions to the interim policy that are incorporated in the MD is on the NRC's internal NCP Web site. The NCP Web site also includes a variety of resources and aids to assist employees engaging in the NCP, including a flow chart, Frequently Asked Questions, and procedures for the "Releasability Review of NCP Forms."

## TABLE OF CONTENTS

<b>I. INTRODUCTION.....</b>	<b>3</b>
A. Background .....	3
B. Relationship of NCP to Concurrence Process .....	3
C. Removing an Employee from Document Concurrence .....	4
D. Relationship of NCP to Open Door Policy and Differing Professional Opinions Program.....	4
E. Applicability of NCP .....	5
F. Exercising Discretion to Engage in NCP .....	6
G. Informal Discussions .....	7
H. Communications During NCP .....	7
I. Timeliness of NCP.....	8
<b>II. INITIATION OF THE NON-CONCURRENCE PROCESS .....</b>	<b>9</b>
A. Notifying Intent to Engage in NCP .....	9
B. Indicating Non-Concurrence on a Document .....	9
C. Documenting a Non-Concurrence on the NCP Form .....	10
D. NCP Tracking Numbers.....	11
E. Submitting a Non-Concurrence.....	11
F. Supervisor’s Comments for Consideration.....	12
<b>III. REVIEW OF NON-CONCURRENCE IN CONJUNCTION WITH DOCUMENT REVIEW .....</b>	<b>13</b>
A. Identifying the NCP Approver (Roles and Responsibilities).....	13
B. Identifying the NCP Coordinator (Roles and Responsibilities).....	13
C. Coordinating NCP Review .....	14
D. Documenting Evaluation on NCP Form .....	16
<b>IV. FINAL REVIEW AND APPROVAL OF NON-CONCURRENCE BEFORE ISSUANCE OF DOCUMENT .....</b>	<b>17</b>
A. NCP Approver .....	17
B. Document Signer Issues Document.....	18
C. NCP Form Finalized .....	18
D. Non-Concurring Employee .....	19
<b>V. SUBMITTING DOCUMENTS TO THE OFFICE OF THE EXECUTIVE DIRECTOR FOR OPERATIONS OR THE COMMISSION.....</b>	<b>19</b>
<b>VI. KEEPING RECORDS OF NON-CONCURRENCES .....</b>	<b>19</b>

<b>VII. FOLLOWUP ACTIONS.....</b>	<b>21</b>
<b>VIII. DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER THAT INCLUDE A NON-CONCURRENCE.....</b>	<b>22</b>
<b>IX. RESOURCES TO ASSIST EMPLOYEES ENGAGING IN THE NON-CONCURRENCE PROCESS.....</b>	<b>22</b>
A. Official Time .....	22
B. Administrative Assistance .....	22
C. Process Assistance .....	22
D. Legal Assistance .....	23
<b>X. DISCONTINUING THE NON-CONCURRENCE PROCESS .....</b>	<b>23</b>
<b>XI. REPRISAL.....</b>	<b>24</b>
<b>XII. WEB GUIDANCE.....</b>	<b>25</b>
<b>XIII. GLOSSARY.....</b>	<b>25</b>

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## **I. INTRODUCTION**

### **A. Background**

The U.S. Nuclear Regulatory Commission strives to establish and maintain an environment that encourages all NRC employees to raise concerns and differing views promptly without fear of reprisal, including during the preparation and review of agency documents. The free and open exchange of views or ideas conducted in a non-threatening environment provides the ideal forum where concerns and alternative views can be considered and addressed in an efficient and timely manner that improves decisionmaking and supports the agency's safety and security mission. Employees have various mechanisms for expressing their views, including informal discussions, the Open Door Policy described in Management Directive (MD) 10.160, "Open Door Policy," and the Differing Professional Opinions (DPO) Program described in MD 10.159, "The NRC Differing Professional Opinions Program." This management directive (MD) describes a Non-Concurrence Process (NCP) for eligible employees with concerns about documents in the concurrence process that they had a role in creating or reviewing.

### **B. Relationship of NCP to Concurrence Process**

This management directive (MD) relies on MD 3.57, "Correspondence Management," for guidance on the concurrence process. The NCP serves as a communication tool to ensure that management is aware of information during the decisionmaking process that

is subsequently reflected and documented in the concurrence process. As such, the NCP is a secondary supporting process for the concurrence process.

### **C. Removing an Employee from Document Concurrence**

1. U.S. Nuclear Regulatory Commission employees are expected to raise concerns promptly and discuss their views with their immediate supervisors on a regular, ongoing basis. Employees should be encouraged but not required to use the NCP to address their concerns. The NCP is a voluntary process.
2. An employee has the right not to concur on a document for which he or she is listed on concurrence. Consistent with this right, an employee may request to be removed from concurrence based on their concerns about the document. However, removal from concurrence is not a non-concurrence for the purpose of this MD, and the provisions of the NCP should not be followed.
3. An employee's request to be removed from concurrence does not release the employee from the obligation to perform assigned tasks associated with the processing of a document with which he or she does not agree.
4. If removal from concurrence is requested, the employee's concurrence block must be completely removed from the official record copy of the document.
5. If an employee requests to be removed from concurrence, the employee's supervisor has a responsibility to ensure that the document concurrence remains appropriate based on the document's subject matter.
6. A supervisor is responsible for making document signers and others on concurrence aware of any important concerns that form a request for removal from concurrence before a document is issued.
7. An employee must not be removed from a document's concurrence to prevent that employee from engaging in the NCP.

### **D. Relationship of NCP to Open Door Policy and Differing Professional Opinions Program**

1. The NCP addresses the voluntary act of formally indicating disagreement with a document in the concurrence process that the employee had a role in creating or reviewing. The NCP complements the other mechanisms (e.g., Open Door Policy and Differing Professional Opinions (DPO) Program) for raising concerns or expressing differing views.
2. The NCP is not as broad as the Open Door Policy that can be used by any NRC employee or contractor to discuss "any work-related issue or concern" with agency supervisors and managers. The NCP applies only to concerns about a document in

concurrence (i.e., it cannot be used once a document is signed out or before a document is formally routed through concurrence) and may be used only by an employee with concerns about a document in the concurrence process for which he or she is eligible or approved to non-concur.

3. Using the Open Door Policy is not a precondition or a part of the NCP, although exercising the Open Door Policy during the NCP is not prohibited. (See Section I.F of this handbook for additional guidance on informal discussion during the NCP.)
4. The NCP differs from the DPO Program because 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. The NCP, on the other hand, is used to address a position in a draft document before a final position is established.
5. Using the NCP does not prohibit an employee from raising the same concerns in the DPO Program after the NCP has been completed and the subject document has been issued.

#### **E. Applicability of NCP**

1. Documents Subject to NCP
  - (a) Except as noted in (b) in this section, the NCP extends to all documents in the concurrence process, including documents concerning administrative or corporate support issues and documents that require review and concurrence by multiple NRC offices before issuance.
  - (b) The NCP does not apply to documents that address personnel actions or issues that involve individual employees or groups of employees (e.g., awards, promotions, disciplinary actions, reorganizations, or determinations about security clearances and access for national security reasons), or issues for which an office's responsibilities are representational in nature (for example, the Office of the Chief Human Capital Officer (OCHCO) for collective bargaining or the Office of the General Counsel (OGC) for administrative proceedings).
  - (c) 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 V of this handbook.

## 2. Eligibility to Use the NCP

All NRC employees (except members of boards and advisory committees reporting to the Commission, employees on NRC Limited (Excepted) appointment, Commissioners, and NRC contractors) are eligible to non-concur in a document. This includes employees in administrative or corporate support positions. The following criteria must also be met:

- (a) The document is currently undergoing review and formal concurrence.
- (b) The non-concurring employee is one of the following:
  - (i) The author of the document,
  - (ii) Included in the document concurrence block,
  - (iii) A contributor tasked with providing document content,
  - (iv) A reviewer tasked with reviewing the document, or
  - (v) An employee expected to review or contribute to the document as a part of his or her normal position and responsibilities (e.g., an individual in a backup or acting position).

## F. Exercising Discretion to Engage in NCP

1. An individual who is not eligible to use the NCP (including an NRC contractor) is encouraged to use informal discussion and the Open Door Policy to express a concern to his or her immediate supervisor, document signer, or other manager involved in the document concurrence process.
2. An NRC employee who is not eligible to use the NCP may approach his or her immediate supervisor, document signer, another manager in their organization, or the NCP Program Manager (PM) and request to engage in the NCP if he or she believes they have specific information that would enhance the decisionmaking process and that use of the NCP would be in the interest of the agency as a knowledge management tool.
3. A document signer should allow an employee to engage in the NCP if he or she believes the employee has specific information that would enhance the decisionmaking process and use of the NCP would be in the interest of the agency as a knowledge management tool.
4. A document signer may approach an employee who has expressed concerns during informal discussions and ask if he or she would like to voluntarily use the NCP if the document signer believes it is in the best interest of the agency and would address concerns in a less formal process than the DPO Program.

5. A document signer may exercise discretion and add any employee to a document's concurrence for the purpose of allowing the employee to engage in the NCP if the document signer believes the employee has specific information that would enhance the decisionmaking process and that use of the NCP would be in the interest of the agency as a knowledge management tool.

### **G. Informal Discussions**

1. The routine, recommended process for resolving a disagreement is through informal discussions, which may take place within an office or between offices if another office is responsible for the position that is being challenged.
2. An employee, including one who may not be eligible to use the NCP, has a responsibility to express and discuss differing views as early as possible when a document is being prepared and reviewed. An employee with concerns, and one responsible for originating and issuing a document, has a responsibility to seek solutions to concerns that might otherwise result in a non-concurrence.
3. Because the benefits of resolving an issue informally are substantial, potential impediments to communication, such as management levels and organizational lines, should not constrain the process of seeking resolution.
4. Non-concurrence should be necessary only when an informal discussion is unable to resolve an employee's concerns and the employee seeks a response through the NCP.
5. Informal discussion is a precondition for engaging in the NCP.
6. Engaging in the NCP does not preclude an employee from continuing informal discussions in the interest of resolving concerns.

### **H. Communications During NCP**

1. The NCP is an internal agency process that relies on open communication to support the decisionmaking process.
2. Once an NCP Form has been submitted in accordance with the guidance in Section II.E of this handbook, the NCP PM will acknowledge the existence of the non-concurrence by including the subject of the NCP on the NRC internal Web site and indicating that it is "Pending."
3. Although it is appropriate for an employee to discuss the details of the non-concurrence with his or her co-workers as part of the evaluation, as with other predecisional processes, an employee should not discuss specific details of the non-concurrence outside of the agency. (When necessary, employees may disclose, at a

high level, the existence of a non-concurrence and the nature of the concern being reviewed.)

4. The non-concurring employee should be included in discussions involving the issues associated with the non-concurrence, when warranted, to maximize the understanding of the issues and improve the decisionmaking process.

#### **I. Timeliness of NCP**

1. This handbook establishes no specific time limit for the completion of the NCP because a non-concurrence should be processed as part of the normal document concurrence process and under the normal document schedule. (See the relationship to the concurrence process in Section I.A of this handbook.)
2. An employee involved in the NCP has a responsibility to make the NCP as timely, efficient, and effective as possible with a goal of resolving a non-concurrence within the normal document schedule.
3. Although no specific time limit for completing the NCP exists, timeliness goals have been included for various stages of the process, recognizing that the content of non-concurrences can vary widely, thereby affecting completion times.
4. An employee has a responsibility to raise concerns promptly during the document preparation process and must notify his or her supervisor as soon as they decide to engage in the NCP.
5. The amount of time afforded to an employee to develop information and submit a non-concurrence should be based on agreement between the individual and his or her immediate supervisor in consultation with the document signer. The amount of time afforded to an employee to submit a non-concurrence should reflect the importance of prompt action on the issue, the safety significance of the issue, the complexity of the issue, and the priority of other work activities affecting the employee. A supervisor should recognize that in some cases, the first opportunity an employee has to clearly formulate their concerns is when a document is presented to the employee for review or concurrence. An employee should endeavor to be succinct in completing NRC Form 757, "Non-Concurrence Process," (NCP Form) located on the NRC Forms Library, available at <http://portal.nrc.gov/nrcformsportal/default.aspx>, and include only information that is necessary to make or support a decision on the non-concurrence. An NCP Form should ideally be submitted within 1 week of the verbal notification of the intent to engage in the NCP.
6. A non-concurrence should be reviewed in a timely manner that supports a thorough review of the issues. Information provided to support the NCP, whether from the employee's supervisor, another employee, or another office, should be provided in a

- timely manner. An NCP Form should be succinct and only include information that is necessary to make or support a decision on the issues subject to non-concurrence.
7. An effort should be made 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 to support a well-informed decision.
  8. A document signer should request an extension as soon as practical to allow adequate time for addressing a non-concurrence.
  9. A document schedule should be adjusted, as necessary, to allow adequate time to address a non-concurrence and support an informed decision under the requirements of this directive.
  10. A non-concurring employee, and any other employee involved in the non-concurrence process, must not be held accountable for a delay in a document's issuance, provided he or she tried to meet their responsibilities as described in this handbook. In evaluating these efforts, a manager should recognize that in some cases, the first opportunity an employee has to formulate concerns clearly is when a document is presented to the employee for review or concurrence.

## **II. INITIATION OF THE NON-CONCURRENCE PROCESS**

### **A. Notifying Intent to Engage in NCP**

1. An employee has a responsibility to raise concerns promptly during the document preparation process. The employee must notify his or her immediate supervisor and the team leader or supervisor responsible for controlling changes to the document that is in the concurrence process as soon as receiving a formal document package for review and deciding to formally engage in the NCP.
2. The NCP cannot be initiated until a formal document package has been routed for concurrence. An employee should continue to use informal discussions (including e-mails or memoranda) to express any concern or differing view until a document package is routed for concurrence.
3. The amount of time afforded to an employee to develop information related to a non-concurrence should be based on agreement between the employee and his or her immediate supervisor in consultation with the document signer. (See the timeliness expectations addressed in Section I.H of this handbook.)

### **B. Indicating Non-Concurrence on a Document**

1. An employee on document concurrence who non-concurs must initial, date, and enter the word "Non-Concur" in the concurrence block.

2. The electronic, official record copy of the concurrence page must include the same information. (Adding the term “Non-Concur” may require adding a line to the “Name” row in the concurrence table.)
3. An employee who is eligible or allowed to engage in the NCP who is not on a document’s concurrence must add his or her name and organization on the document’s concurrence page (or a copy of the document’s concurrence page), add the word “Non-Concur,” and initial and date it. The employee must provide this information to the document signer and request that a concurrence block be added to the official record copy of the document to record the non-concurrence.
4. If a non-concurring employee subsequently concurs (e.g, the employee agrees that the action taken to address his or her concern is sufficient such that they agree that the technical content in their area of responsibility is accurate; the overall approach of the document is appropriate; and the document is consistent with the NRC’s programs and policies in their area of responsibility), the concurrence page must be modified accordingly. There should be no indication on the official record copy of the document that a non-concurrence was associated with the document. The check box included on the NCP Form will be marked to indicate the employee’s concurrence and the NCP Form will be retained as an official agency record, will be included in a package with the final document (if retained in the Agencywide Documents Access and Management System (ADAMS)) or co-located with the final document (if retained in a paper retention system), and will serve as a knowledge management tool on the issue.

### **C. Documenting a Non-Concurrence on the NCP Form**

1. The non-concurring employee completes Section A of the NCP Form. Section A records basic information about the subject document (including the title and ADAMS accession number), identifies information about the non-concurring employee, and describes the reasons for non-concurrence. Section A should also be used to describe proposed alternatives. Section A should be succinct and only include information that is necessary to make or support a decision on the issue(s) subject to the non-concurrence. The discussion should be limited to issues directly related to the subject document.
2. If the non-concurrence involves classified, safeguards (SGI), or sensitive unclassified non-safeguards (SUNSI) information (e.g., proprietary or allegation-related information), the form must be marked and handled under the appropriate requirements.
3. To avoid a possible chilling effect, a non-concurring employee should avoid using proper names (titles or organizations are acceptable) in the reasons for the non-concurrence discussion in Section A.

4. A non-concurring employee should refrain from making statements that could be interpreted as derogatory, inappropriate, or otherwise unprofessional in the reasons for the non-concurrence discussion in Section A. (Allegations of waste, fraud, abuse, or inappropriate conduct should be forwarded to the Office of the Inspector General (OIG).)
5. If more than one employee non-concurs for the same reasons, Section A should reflect the additional names and signatures. Additional names can be included in the section of the form, "Reasons for Non-Concurrence and Proposed Alternatives." (Employeees must submit separate NCP Forms if the reasons for the non-concurrence are different.)
6. The non-concurring employee checks the appropriate box to indicate whether or not he or she would like a written evaluation of their non-concurrence and the rationale for the agency's final decision (i.e., documented in the "Comments for the NCP Approver to Consider" part of Section B and the "Evaluation of Non-Concurrence and Rationale for Decision" part of Section C).

#### **D. NCP Tracking Numbers**

1. All non-concurrences must have an NCP tracking number. The NCP tracking number should be included on every page of the NCP Form (including continuation pages).
2. A non-concurring employee must request an NCP tracking number before submitting a non-concurrence by completing, signing, and dating Section A of the NCP Form and e-mailing it (and any continuation pages) and a copy of the subject document (if it is not in ADAMS) to the NCP PM at [NCPPM.Resource@nrc.gov](mailto:NCPPM.Resource@nrc.gov), or by calling (301) 415-2741.
3. The NCP PM will confirm that a non-concurring individual is eligible to use the NCP.
4. The NCP PM will either send the non-concurring employee an e-mail with the NCP tracking number (and send a copy of the e-mail to the document signer) or explain why use of the NCP is not appropriate and recommend alternatives to pursue his or concerns (e.g., informal discussion or Open Door Policy for issues that are not in the formal concurrence process or the DPO process for issues that are no longer in the concurrence process where the subject document has already been issued).
5. An employee can appeal the NCP PM's decision not to assign an NCP tracking number by contacting the Director, OE.

#### **E. Submitting a Non-Concurrence**

A non-concurring employee includes the NCP tracking number on Section A of the NCP Form, scans it (and any other continuation pages), and e-mails a PDF of the NCP Form to his or her immediate supervisor, the document signer, all other individuals on

concurrence for the document, and [NCPPM.Resource@nrc.gov](mailto:NCPPM.Resource@nrc.gov). An NCP Form should ideally be submitted within 1 week of the verbal notification of the intent to engage in the NCP.

#### **F. Supervisor's Comments for Consideration**

1. If the non-concurring employee indicates that a written evaluation of their non-concurrence is not requested, the non-concurring employee's immediate supervisor is not obligated to document comments in Section B of the NCP Form. However, the non-concurring employee's immediate supervisor should read Section A and share his or her views on the non-concurrence with the document signer verbally. The supervisor also has the discretion to document comments in Section B.
2. If the non-concurring employee indicates that he or she would like a written evaluation of their non-concurrence, the non-concurring employee's immediate supervisor promptly completes Section B of the NCP Form, which records information the individual's supervisor or organization wants the document signer to consider. This information can be especially helpful when issues cross organizational boundaries.
3. The supervisor may complete Section B of the NCP Form by documenting that he or she has no comments.
4. Depending on the degree of agreement with non-concurrence in Section A of the NCP Form, the supervisor may choose to non-concur on the document and include the rationale for non-concurrence in Section B of the NCP Form rather than submit a separate NCP Form.
5. If Section B includes classified, SGI, or SUNSI information (e.g., proprietary or allegation-related information), the form must be marked and handled under the appropriate requirements.
6. A supervisor should avoid using proper names (with the exception of the non-concurring individual) and should refrain from making statements that could be interpreted as derogatory, inappropriate, or otherwise unprofessional.
7. The supervisor must sign and date an NCP Form, regardless of whether or not the non-concurring employee has requested a written evaluation. (The supervisor's signature verifies that he or she has read and considered the non-concurrence.) The supervisor includes the NCP tracking number on Section B of the NCP Form, signs and dates it, scans it (and any other continuation pages), and e-mails a PDF of the NCP Form to the document signer, the non-concurring individual, all other individuals on concurrence for the document, and [NCPPM.Resource@nrc.gov](mailto:NCPPM.Resource@nrc.gov). An NCP Form should ideally be submitted within 3 to 5 days of receiving Section A of the NCP Form.

8. If the non-concurring employee's immediate supervisor is the document signer, then the supervisor sends Sections A and B of the NCP Form to the next Senior Executive Service (SES) manager within the organization.

### **III. REVIEW OF NON-CONCURRENCE IN CONJUNCTION WITH DOCUMENT REVIEW**

#### **A. Identifying the NCP Approver (Roles and Responsibilities)**

1. The NCP Approver is the NRC official who is responsible for:
  - (a) Overseeing the review of the NCP,
  - (b) Approving the documentation of the response to the NCP before the subject document is issued,
  - (c) Recordkeeping associated with the NCP Form, and
  - (d) Ensuring that any followup actions are completed.
2. The NCP Approver is normally the document signer except in the following situations.
  - (a) If the document signer is not an SES manager, then the document signer will send Section A and Section B of the NCP Form to the first SES manager in the line organization who will serve as the NCP Approver.
  - (b) If the document signer is an SES manager and is the non-concurring employee's immediate supervisor, then the document signer will send Section A and Section B of the NCP Form to the next SES manager within the organization who will serve as the NCP Approver.
  - (c) If the document signer is the EDO, the lead office director will serve as the NCP Approver. (See Section V of this handbook for additional guidance on documents being transmitted to the OEDO.)
3. In those instances when the NCP Approver is not the document signer, the NCP Approver must be added to the document concurrence and the document signer will continue to sign the subject document.

#### **B. Identifying the NCP Coordinator (Roles and Responsibilities)**

1. The NCP Approver identifies an employee who will serve as the NCP Coordinator.
2. The NCP Approver may choose to act as the NCP Coordinator.

3. The NCP Coordinator is responsible for:
  - (a) Coordinating the review of the NCP in a neutral, facilitative manner in conjunction with the document concurrence.
  - (b) Keeping the non-concurring employee informed of the status and progress of the NCP review, including changes to the plan or schedule for reviewing the subject document.
  - (c) Ensuring that the non-concurring employee is included in further discussions on the issue (such as when others need information and explanation to understand the issues included in the non-concurrence).
  - (d) Documenting the disposition of the non-concurrence in Section C of the NCP Form, if the non-concurring employee requests a written evaluation of the non-concurrence.
  - (e) Ensuring that the non-concurring employee is informed of the outcome of the NCP.
  - (f) Getting input from the non-concurring employee on whether the employee would like management to perform a review to support public release of the NCP Form (with or without release of his or her identity) when the process is complete.
  - (g) Assisting and coordinating the releasability review to determine whether and how to release the NCP Form (with or without redactions).
  - (h) Assisting and coordinating the placement of the final NCP Form in ADAMS.
  - (i) Sending the final NCP Form to the non-concurring individual, and the NCP PM.
4. The NCP Coordinator should have an understanding of the issues addressed in the subject document sufficient to coordinate a meaningful response to the issues in the non-concurrence. This may result in the selection of an NCP Coordinator outside of the NCP Approver's organization. (For example, an employee from the Office of Nuclear Security and Incident Response may be the NCP Coordinator on a Regulatory Issues Summary issued from the Office of Nuclear Reactor Regulation if the non-concurrence addresses security issues.)

### **C. Coordinating NCP Review**

1. The NCP Coordinator must, at a minimum, consider input from the non-concurring employee and any additional information provided by the individual's supervisor before deciding what, if any, actions should be taken to address a non-concurrence.
2. The NCP Coordinator should consider arranging a meeting with the non-concurring employee, his or her immediate supervisor, other employees on concurrence, and interested stakeholders to help support an understanding of the issues included in

- the non-concurrence. The NCP PM may be invited to attend to help employees understand the NCP and the roles and responsibilities associated with it.
3. The NCP Coordinator should confer promptly with other interested parties, including the NCP Approver and others on document concurrence, to reach alignment on the approach to address the issues in the non-concurrence. (Although these discussions may minimize the need to revise the approach for addressing the non-concurrence, it is recognized that the approach may be revised as part of the ongoing evaluation of the issues associated with the non-concurrence.)
  4. The NCP Approver may request assistance from other offices if the expertise needed to evaluate a non-concurrence resides elsewhere in the agency. However, the NCP Approver's organization must retain the responsibility for deciding what changes, if any, are made to a document to address a non-concurrence.
  5. The NCP Approver may choose to notify other managers about the non-concurrence and may seek input from other managers to support the decisionmaking process.
  6. In certain situations, it may be appropriate for the NCP Approver to seek input from standing NRC committees (e.g., Advisory Committee on Reactor Safeguards (ACRS)). It may also be beneficial for a non-concurring employee to participate in an ACRS meeting.
  7. In certain situations (such as highly complex, specialized issues), it may be appropriate for the NCP Approver to seek expertise from outside the agency to support the evaluation of the issues addressed in the non-concurrence.
  8. The NCP Coordinator must ensure the non-concurring employee is included in further discussions of an issue, when warranted, to maximize the understanding of the issues and improve the decisionmaking process.
  9. The NCP Coordinator must update the non-concurring employee on the status and progress of the NCP, including changes to the plan or schedule for reviewing the subject document. This is especially important when substantial time is required to review the non-concurrence or when outside input is sought.
  10. If the non-concurring employee subsequently chooses to concur, the cover sheet of the NCP Form should reflect that the employee "concurred." The NCP should continue and the NCP Form should be forwarded to the NCP Approver for completion. The NCP Form must be retained as an official agency record and knowledge management tool for the issue.

**D. Documenting Evaluation on NCP Form**

1. If the non-concurring employee has indicated in Section A of the NCP Form that he or she would like a written evaluation of their non-concurrence, the NCP Coordinator should confer with other interested parties, including the NCP Approver and others on document concurrence, before completing the "Agreed Upon Summary of Issues" and the "Evaluation of Non-Concurrence and Rationale for Decision" parts of Section C of the NCP Form.
2. The NCP Coordinator will promptly develop a succinct summary of issues (SOI) (ideally, within 3 to 5 days of receipt of the NCP Form) to ensure that there is a common understanding of the employee's concerns. The NCP Coordinator may meet with the non-concurring employee to support development of the SOI.
3. The NCP Coordinator will e-mail the SOI to the non-concurring employee for comment and consensus. The request should include a timeliness expectation for feedback.
4. The non-concurring employee will promptly review the SOI (ideally within 1 to 2 days) and e-mail a markup of the SOI to the NCP Coordinator.
5. The NCP Coordinator will document the agreed upon SOI in Section C of the NCP Form and include the date the SOI was agreed upon.
6. Any new issues outside the scope of the agreed upon SOI should be handled through informal discussions or through the initiation of a new non-concurrence.
7. The NCP Coordinator describes the evaluation of the non-concurrence (including actions that were taken to address the non-concurrence) and the rationale for the agency's position in Section C of the NCP Form. The level of detail must be sufficient so that an independent reader can understand the basis for the decision and outcome. If no action is taken, the reason(s) should be recorded on the form.
8. Section C of the NCP Form must reflect any issues that were addressed to the satisfaction of the non-concurring employee.
9. The NCP Coordinator is responsible for revising Section C of the NCP Form, as warranted, to reflect any changes in the evaluation of the non-concurrence or any additional actions taken to address the non-concurrence.
10. If the non-concurring employee has indicated that he or she would like a written evaluation of their non-concurrence, the NCP Approver has discretion in deciding how to continue with the concurrence process.
  - (a) If the non-concurrence issue is one of general interest, the document concurrence may be suspended until a proposed disposition of the non-concurrence is formulated and documented in Section C of the NCP Form and

the NCP Form (including Sections A, B, and C) is placed behind the concurrence page in the package and returned to the concurrence process.

- (b) If the non-concurrence issue is of limited interest to other reviewers, the NCP Approver may allow the review and concurrence process to continue.
  - (c) Regardless of whether the concurrence process is suspended or not, the concurrence package (including Sections A, B, and C of the NCP Form) must be recirculated to all employees on concurrence to support an informed decision.
  - (d) Employees who have previously concurred do not need to re-concur unless substantive changes have been made to the subject document.
  - (e) Employees who have previously concurred may choose to withdraw their concurrence and request additional discussion based on the non-concurrence issues.
  - (f) The non-concurring employee may choose to concur or continue to non-concur based on changes, if any, made to the subject document. It is not necessary for the non-concurring employee to revise or re-submit his or her non-concurrence.
11. If, during the course of the review, the non-concurring employee decides that he or she no longer wants a written evaluation of their non-concurrence, Section C of the NCP Form should be modified to reflect this change (e.g., “Subsequent to a discussion with the NCP Approver, the non-concurring employee informed the NCP Approver on June 19, 2013, that they no longer wanted a written evaluation of their non-concurrence.”). The NCP Approver is no longer obligated to complete the documented evaluation in Section C of the NCP Form, although the NCP Approver may choose to document the evaluation and rationale for the final decision and outcome.

#### **IV. FINAL REVIEW AND APPROVAL OF NON-CONCURRENCE BEFORE ISSUANCE OF DOCUMENT**

##### **A. NCP Approver**

1. The NCP Approver reviews all information relevant to the non-concurrence and may confer with interested parties, including the non-concurring employee, before making a final decision on the subject document and the non-concurrence.
2. If the non-concurring employee has indicated that he or she would like a written evaluation of their non-concurrence, the NCP Approver is responsible for ensuring that the “Evaluation of Non-Concurrence and Rationale for Decision” part of Section C of the NCP Form accurately reflects actions taken to address the non-concurrence and the rationale for the agency position, and the cover sheet of the NCP Form reflects the final status of the non-concurrence (non-concurring employee either

concurred, continued to non-concur, agreed with some of the changes to the subject document but continued to non-concur, or requested that the NCP be discontinued) before declaring the form an official agency record.

3. The NCP Approver may return Section C of the NCP Form to the NCP Coordinator for additional action and may request revisions to the subject document.
4. If the non-concurring employee raises issues that go beyond the issues in the subject document, then the NCP Approver has the discretion to decide whether to address the additional issues in Section C of the NCP Form.
5. The NCP Approver has the discretion to speak with the non-concurring employee about the outcome of the review and/or choose to allow the non-concurring employee an opportunity to review the "Evaluation of Non-Concurrence and Rationale for Decision" part of Section C of the NCP Form before the process is complete. (A written response is not expected nor included as part of the NCP.)
6. The NCP Approver must sign and date all NCP Forms, regardless of whether or not the non-concurring employee has requested a written evaluation or whether the process has been discontinued. (The NCP Approver's signature verifies that he or she has read and considered the non-concurrence.)
7. The NCP Approver notifies the document signer when he or she has signed Section C of the NCP Form to support issuance of the subject document.

#### **B. Document Signer Issues Document**

Unless there is a compelling reason, the document signer does not sign the subject document until the evaluation of the non-concurrence is complete and Section C of the NCP Form is signed by the NCP Approver.

#### **C. NCP Form Finalized**

1. The NCP Coordinator will ensure that the non-concurring employee is informed when the evaluation is complete and the NCP Approver has signed Section C of the NCP Form.
2. The NCP Coordinator will record the outcome of the process on the cover sheet for the NCP Form by checking the appropriate box to indicate that the non-concurring employee either, "concurred," "continued to non-concur," "agreed with some of the changes to the subject document, but continued to non-concur," or "requested process be discontinued."
3. The NCP Coordinator will get input from the non-concurring employee on whether the employee would like management to perform a review to support public release of the NCP Form (with or without release of his or her identity) and ensure that the

cover sheet for the NCP Form either states, "This record is non-public and for official use only," or "This record has been redacted prior to discretionary release to the public."

#### **D. Non-Concurring Employee**

An employee's non-concurrence does not release the employee from the obligation to perform assigned tasks associated with the final position and decision with which he or she does not agree.

### **V. SUBMITTING DOCUMENTS TO THE OFFICE OF THE EXECUTIVE DIRECTOR FOR OPERATIONS OR THE COMMISSION**

- A.** If a document involving a non-concurrence is being prepared for signature by the EDO, the lead office director (or deputy director) will serve as the NCP Approver and will identify the NCP Coordinator, and the non-concurrence will be evaluated before being forwarded in the concurrence package to the EDO. As the document signer, the EDO will review the NCP Form and all information relevant to the non-concurrence; confer with interested parties, as necessary; and either sign the document or return the concurrence package to the NCP Approver and NCP Coordinator for additional action.
- B.** 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 ensure that OEDO and the Commission are made aware of a non-concurrence and how it was addressed by the staff, especially in cases where a recommendation is being made to OEDO or the Commission. Internal Commission Procedures state, "SECY papers and action memoranda coming to the Commission should include any significant differing opinions that arose during the process."
- C.** 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:
  - 1. The NCP Form must, at a minimum, be included as an enclosure to the subject document.
  - 2. The document signer (i.e., office director or EDO) has the discretion whether to make explicit reference to the non-concurrence in the subject document.

### **VI. KEEPING RECORDS OF NON-CONCURRENCES**

- A.** The organization responsible for recordkeeping associated with the subject document is responsible for recordkeeping associated with the NCP.

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- B.** All NCP Forms and other records created to document non-concurrences are official agency records.
  - C.** All NCP Forms (including NCP Forms where a written evaluation is not requested and NCP Forms associated with cases that are subsequently discontinued) must be retained in ADAMS or another record retention system if ADAMS is not the appropriate repository (e.g., when safeguards or allegations information is involved).
  - D.** The NCP Form is not placed in ADAMS until the process is complete and all applicable sections of the NCP Form are complete.
  - E.** If the non-concurring employee has not requested a written evaluation of their non-concurrence, the NCP Form will be profiled as non-public in ADAMS and normally made available to all NRC viewers. (The NCP PM should be consulted in instances when management believes that it is appropriate to restrict NRC viewers.)
  - F.** If the non-concurring employee has requested a written evaluation of their non-concurrence, when the NCP is complete, the NCP Coordinator will get input from the non-concurring employee on whether the employee would like management to perform a review to support public release of the NCP Form (with or without release of his or her identity).
  - G.** If the non-concurring employee does not want the NCP Form made available to the public, then the NCP Form will be profiled as non-public in ADAMS and normally made available to all NRC viewers. The NCP PM should be consulted in instances when management believes that it is appropriate to restrict NRC viewers (e.g., cases involving proprietary or other sensitive information). (As with all agency records, the NCP Form is subject to public release upon receipt of a request under the Freedom of Information Act of 1966 (5 U.S.C. 552).)
  - H.** If the non-concurring employee would like discretionary release of the NCP Form to the public, the organization responsible for the document that is the subject of the non-concurrence is also responsible for performing a releasability review to support the discretionary release of the NCP Form. (Note: Regardless of an employee's preference for public release of an NCP Form, it is management's responsibility to determine whether public release (with or without redactions) is appropriate.)
  - I.** The NCP Coordinator should assist and coordinate the releasability review to determine whether and how to release the NCP Form (with or without redactions).
  - J.** The NCP Coordinator coordinates the releasability review with the NCP PM if the NCP Form requires redactions.

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- K. The NCP Approver is responsible for making the decision on the discretionary release of the NCP Form (with or without redactions).
  - L. The releasability review must be performed under current agency practices and guidance, including the NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI); MD 3.4, "Release of Information to the Public"; MD 3.1, "Freedom of Information Act"; and the procedures for "Releasability Review of NCP Forms" on the NRC's internal Web site.
  - M. If retained in ADAMS, an NCP Form must be profiled using ADAMS template NRC-006 (ADAMS accession number ML063120159), and be included in a package with the final version of the document that was the subject of the non-concurrence.
  - N. An NCP Form must not be directly distributed as an attachment to external correspondence (even if the NCP Form is public in ADAMS).
  - O. If the NCP Form is retained in a paper record retention system, it must be co-located with the final version of the document that was the subject of the non-concurrence.
  - P. An NCP Form must be retained on the same retention schedule as the document that was the subject of the non-concurrence.
  - Q. Based on unique licensing requirements, the need to make NCP Forms associated with the high-level waste repository program publicly available is governed by the provisions of Part 2 of Title 10 of the *Code of Federal Regulations*, Appendix J, "Procedures Applicable to Proceedings for the Issuance of Licenses for the Receipt of High-Level Radioactive Waste at a Geologic Repository."
  - R. The NCP PM will post all closed NCP Forms (including public and non-public) on the internal Web site to inform employees of the outcome except in those instances when management believes that it is appropriate to restrict NRC viewers.

## VII. FOLLOWUP ACTIONS

- A. If followup actions are identified as part of addressing a non-concurrence, the NCP Approver is responsible for ensuring that actions are completed and must notify the non-concurring employee when actions have been completed.
- B. The NCP Approver is responsible for deciding what actions or communications are necessary, if any, to address finalization of the NCP and issuance of the NCP Form. This is particularly important for an NCP Form that includes topics of high interest, changes in agency position, and/or that will be publicly available. Actions or communications could include e-mails, daily notes, communications with the Commission, or communication plans.

- C. The NCP Approver is responsible, in consultation with the OGC, for determining whether to submit a board notification to the Atomic Safety and Licensing Board Panel (ASLBP) if the non-concurrence is relevant to any issue in an ongoing proceeding.

## **VIII. DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER THAT INCLUDE A NON-CONCURRENCE**

If a publicly available non-concurrence is associated with a document for which the NRC is seeking public comment (such as a proposed rule, policy, or other draft technical document), or is associated with a final document for which the NRC has sought public comments (including final NUREGs), then the *Federal Register* notice must include a reference to the non-concurrence and must include the ADAMS accession number for the NCP Form. The NCP Approver has the discretion to include a synopsis of the issues included in the non-concurrence and the agency's evaluation and outcome.

## **IX. RESOURCES TO ASSIST EMPLOYEES ENGAGING IN THE NON-CONCURRENCE PROCESS**

### **A. Official Time**

1. An employee who wants to participate in the NCP is allowed to do so as part of the employee's regular duties and is allowed to use official time to complete the NCP submittal. The amount of time afforded to a non-concurring employee to develop information related to his or her non-concurrence should be based on agreement between the employee and his or her immediate supervisor. (See Section I.H of this handbook for more guidance on the timeliness expectations for the NCP.)
2. Time associated with participating in the NCP should normally be charged to the same Technical Assignment Control (TAC) number established for the subject document. (The NCP PM should be consulted in those instances when management believes that the NCP should not be charged to the same TAC number established for the subject document.)

### **B. Administrative Assistance**

If a non-concurring employee requests administrative assistance to support his or her non-concurrence, the employee's immediate supervisor, in consultation with other management officials, should determine the amount of administrative support to be provided to the non-concurring employee.

### **C. Process Assistance**

The NCP PM is available to answer questions and assist all employees with implementing the NCP.

**D. Legal Assistance**

If called to testify before a licensing board or a presiding officer, a non-concurring employee may receive, upon request, assistance from OGC, as appropriate.

**X. DISCONTINUING THE NON-CONCURRENCE PROCESS**

- A.** A non-concurring employee may request that the NCP be discontinued at any time before the completion of the NCP and issuance of a document by sending an e-mail to the NCP Coordinator or the NCP Approver and the NCP PM. The employee is not obligated to provide a reason for his or her request to discontinue the NCP.
- B.** If the NCP is discontinued, the involved subject document shall be processed as if there were no non-concurrence associated with it.
- C.** If the NCP is discontinued before the process is complete, the employee's immediate supervisor, the NCP Coordinator, and the NCP Approver may choose to pursue the issues addressed in the non-concurrence, but the review of the non-concurrence will no longer be subject to the requirements of the NCP included in this MD.
- D.** If the NCP is discontinued before the process is complete, the employee's immediate supervisor has the discretion to document his or her views in Section B of the NCP Form and the NCP Coordinator and NCP Approver have the discretion to document actions taken to address the non-concurrence and the rationale for the agency's position in Section C of the NCP Form.
- E.** If the NCP is discontinued, Section C of the NCP Form must be revised by the NCP Coordinator to indicate that the non-concurring employee has requested that the process be discontinued and the cover sheet for the NCP Form must indicate that the non-concurring employee has requested that the process be discontinued. The current version of the form must be placed in the background section of the document package as the document continues through the concurrence process and must be retained as an official agency record consistent with the guidance in Section VI of this handbook.
- F.** The concurrence page for any document where the NCP was discontinued shall be revised to eliminate any indication of the non-concurrence. The non-concurring employee shall either:
  - 1. Indicate concurrence on the document; or
  - 2. Request to be removed from document concurrence in accordance with Section I.B, "Removing an Employee from Document Concurrence."

- G.** The EDO will determine whether to mention the discontinued NCP in any communication with the Commission and whether to provide the discontinued NCP Form as an enclosure.
- H.** If the NCP is discontinued, the NCP Form will be retained as an official agency record, will be limited to internal use only, and will not be posted on the internal Web site.

## **XI. REPRISAL**

- A.** Non-concurring employees and other participants in the NCP must be free to participate in the NCP without fear of reprisal (harassment, intimidation, retaliation, or discrimination) by management or peers.
- B.** Reprisal for or discouraging the use of the NCP by management or peers will not be tolerated and may lead to disciplinary action.
- C.** Reprisal for discouraging the use of the NCP could be grounds for an employee grievance, a whistleblower complaint under the Energy Reorganization Act, or a complaint to the Office of Special Counsel. (See additional information in Section XI.H of this handbook.)
- D.** A manager must ensure that a proposed personnel action involving a non-concurring employee is not taken in retaliation for involvement in the NCP and that performance appraisals do not reflect negatively on the use of, or participation in the NCP. This includes not holding a non-concurring employee, NCP Coordinator, or others involved in the NCP accountable for reasonable delays in a document's issuance, provided they endeavor to meet their responsibilities as described in this handbook.
- E.** The guidance in this handbook does not preclude a supervisor from initiating, pursuing, or continuing to pursue an unrelated personnel action affecting an employee who has used the NCP.
- F.** A manager must take appropriate action in response to an allegation of reprisal against a non-concurring employee and other participants in the NCP, and chilling effect concerns related to the NCP.
- G.** An employee who believes that he or she has been harassed, intimidated, retaliated against, or discriminated against because of engaging in the NCP has several resources available to them, including:
  - 1. Their immediate supervisor;
  - 2. Another supervisor or manager under the Open Door Policy;
  - 3. The NCP PM;

4. The Office of the Chief Human Capital Officer;
5. The NRC's Inspector General;
6. The negotiated grievance procedure described in the Collective Bargaining Agreement between the NRC and the National Treasury Employees Union (for bargaining unit employees);
7. The administrative grievance procedure described in MD 10.101, "Employee Grievances," (for non-bargaining unit employees);
8. The Department of Labor, Occupational Safety and Health Administration, Office of Whistleblower Protection. (Complaints must be filed within 180 days. More information is available at <http://www.whistleblowers.gov/>); or
9. The U.S. Office of the Special Counsel. (More information is available at <http://www.osc.gov/>.)

## **XII. WEB GUIDANCE**

The [NRC internal Web site](#) includes a variety of resources and aids to assist employees engaging in the NCP, including a flow chart, [Frequently Asked Questions](#), and procedures for the "Releasability Review of NCP Forms."

## **XIII. GLOSSARY**

### **Chilling Effect**

A condition that occurs when an event, interaction, inaction, decision, or policy change results in a reasonable perception that the raising of a mission-related concern or differing view to management is being suppressed, is discouraged, or will result in reprisal (harassment, intimidation, retaliation, or discrimination).

### **Differing Professional Opinion (DPO)**

A conscientious expression of a judgment or position that differs from an established staff view, disagrees with a management decision or policy position, or takes issue with an established agency practice involving technical, legal, or policy issues (including administrative or corporate support issues). A DPO can cover a broad range of concerns, provided the opinion is related to the agency's mission and to the strategic goals and objectives that support the mission as addressed in the NRC's Strategic Plan. (The DPO process is described in MD 10.159, "The NRC Differing Professional Opinions Program.")

**Discontinuing NCP**

The voluntary act by a non-concurring employee to request that the NCP be discontinued.

**Document Signer**

The employee responsible for the content of the document and for signing the document.

**Non-Concurrence**

The act of formally indicating disagreement with a document in the concurrence process that the employee had a role in creating or reviewing.

**NCP Approver**

The Senior Executive Service (SES) manager responsible for overseeing the review of a non-concurrence in the NCP, approving the documentation of the response to the non-concurrence before the subject document is issued, and recordkeeping associated with the NCP Form. (The NCP Approver also concurs on the subject document before it is issued.)

**NCP Coordinator**

The NRC employee assigned by the SES NCP Approver to support the implementation of the NCP for a particular non-concurrence.

**NCP Form**

NRC Form 757, "Non-Concurrence Process," (NCP Form) that must be used to document non-concurrences. The NCP Form is located in the NRC Forms Library on SharePoint at <http://portal.nrc.gov/nrcformsportal/default.aspx>. The NCP Form includes high-level implementation guidance.

**Reprisal**

As defined in this management directive (MD), reprisal includes harassment, intimidation, retaliation, or discrimination by management or employees against those who express or support a differing view while engaging in the NCP.

**Retaliation**

As defined in this MD, adverse personnel action that is taken (or not taken in the case of a personnel benefit), recommended, or threatened because of the expression or support of a differing view while engaging in the NCP.