

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

MD 10.158 NRC NON-CONCURRENCE PROCESS DT-20-12

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Part 7:

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 Director, Office of Enforcement

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Issuing Office: Office of Enforcement

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EXECUTIVE SUMMARY

Management Directive (MD) 10.158, “NRC Non-Concurrence Process,” contains U.S. Nuclear Regulatory Commission (NRC) policies and procedures for the Non-Concurrence Process (NCP) to be used by an eligible NRC employee with a differing view about a document in the concurrence process. NRC employees are required to adhere to the policy and procedures for engaging in the NCP set forth in this MD and any applicable regional or headquarters office implementing procedures. In case of conflict between this MD and regional or headquarters office procedures, this MD takes precedence.

This MD is revised to—

- Address issues and feedback from previous program reviews, including participant feedback, Office of the Inspector General Safety Culture and Climate Surveys, Federal Employee Viewpoint Survey, “Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at NRC,” dated June 19, 2018, and lessons learned from implementation of the Differing Views Program Improvement Project approved recommendations.
- Establish the NCP approver as the Senior Executive Service manager above the document signer in the line organization.

For updates or revisions to policies contained in this MD that were published after the MD was signed, please see the Yellow Announcement to Management Directive index ([YA-to-MD index](#)).

- Clarify NRC employee’s communication expectations with external stakeholders, including at Advisory Committee on Reactor Safeguards (ACRS) meetings, during the NCP.
- Outline the process for signing a subject document before the NCP is closed.
- Clarify the NCP coordinator’s responsibility for reviewing NCP forms before discretionary release to the public.
- Introduce the rapid resolution process.
- Reference the Differing Views Best Practices Guide.

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I. POLICY

- A. It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to support a Non-Concurrence Process (NCP) that an eligible NRC employee, as defined in this directive, Section IV, "Applicability," can use when they have a differing view about a document in the concurrence process.
- B. The NRC encourages all employees to raise differing views promptly and without fear of reprisal. The exchange of views conducted in an open and free environment provides the ideal forum where differing 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 differing views with their immediate supervisor on a regular, ongoing basis, including during the preparation and review of agency documents. These informal discussions should be enough to resolve most issues. However, if informal discussions do not resolve differing views, NRC employees have various mechanisms for having their differing views considered and addressed by management, including the Open Door Policy described in Management Directive (MD) 10.160, "Open Door Policy," the NCP, and the Differing Professional Opinion (DPO) Program described in MD 10.159, "NRC Differing Professional Opinion Program."

II. OBJECTIVES

- Promote early discussion and consideration of differing views on 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 a non-concurrence option for an eligible NRC employee with a differing view about a document in the concurrence process, in order to inform management decisions. Please refer to Section I.D.2 of the handbook to this directive for additional information regarding the eligibility to use the NCP.
- 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.

- Ensure that the NCP is executed effectively, efficiently, and in a timely manner 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 not tolerated.
- Recognize employees whose differing views, expressed through the NCP, result in an improved outcome or valuable contribution to an agency decision.

III. ORGANIZATIONAL RESPONSIBILITIES

A. Executive Director for Operations (EDO)

1. Fosters an environment that allows individuals to raise differing views without fear of reprisal; promotes methods for raising a differing view that supports the agency's mission.
2. Ensures enough 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), and other relevant information for a document to be 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, is a potential source of valuable ideas, and that employees should feel comfortable using the process without fear of reprisal.

7. Coordinates with the Office of Enforcement (OE) on employee feedback collection methods and action plans conducted by the Office of the EDO (OEDO) that address the NCP and the environment for raising differing views.

B. Office of the General Counsel (OGC)

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 <https://drupal.nrc.gov/sites/default/files/SUNSI-Policy-Procedures.pdf#search=NRC%20Policy%20for%20Handling>); MD 12.6, "NRC Sensitive Unclassified Information Security Program"; MD 3.4, "Release of Information to the Public"; MD 3.1, "Freedom of Information Act"; and the procedure for "Releasability Review of NCP Forms" (available at <https://drupal.nrc.gov/oe/24534>) if a non-concurring employee requests that management determine whether discretionary release of the NCP form to the public, with or without redactions, is appropriate.
3. Concurs on the discretionary release of all NCP forms that include attorney-client information, attorney work-product, or otherwise involve NRC attorneys.

C. Office of the Inspector General (OIG)

Investigates complaints of fraud, waste, and abuse. As appropriate, investigates NRC employee misconduct including, but not limited to, allegations of retaliation for raising concerns and complaints of mismanagement of agency programs, as appropriate.

D. Director, Office of Enforcement (OE)

1. Provides overall guidance and direction to develop, implement, assess, and manage the NCP.
2. Directs periodic assessments of the NCP.
3. Recommends NCP policy revisions to the EDO.
4. Establishes staff resources for the NCP.
5. Coordinates with the Office of the Chief Human Capital Officer (OCHCO) on employee feedback collection activities conducted by OCHCO that address the NCP and the environment for raising 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 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. Office of the Chief Human Capital Officer (OCHCO)

1. Ensures that fostering an environment for raising 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 feedback collection activities conducted by OCHCO that address the NCP and the environment for raising differing views.
3. Supports data collection compiled by OE that addresses concerns of reprisal against employees who have engaged in the NCP to help assess and support an effective NCP. This data collection is 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. Office of the Chief Information Officer (OCIO)

1. Provides advice, as requested, on the discretionary release of an NCP form consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 12.6; 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 that management determine whether discretionary release of the NCP form to the public, with or without redactions, is appropriate.
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 employees to raise differing views.
2. Promote methods for raising differing views that support the agency's mission.
3. Ensure that office policies, guidance, and practices within their area of responsibility are consistent with those outlined in this MD.
4. Ensure that their staff implements the policies and procedures described in this MD.

5. Coordinate with OE on employee feedback collection methods and action plans conducted by their office that address the NCP and the environment for raising differing views.
6. Review the NCP form and other relevant information for a subject document they are signing and either sign the subject document or return to staff for additional action.
7. For subject 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.
8. Typically, 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 (NSIR)

In coordination with the appropriate program office or region, 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 differing views 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 DPO 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.
5. Adjust document schedules, as necessary and to the extent possible, to allow adequate time for addressing a non-concurrence according to the requirements described in 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 (e.g., SGI, PCII, and SUNSI or Controlled Unclassified Information (CUI)) is appropriately handled, marked, and protected in accordance with agency policies and procedures.
8. Ensure that a non-concurring employee, the NCP coordinator, and others involved in the NCP charge time associated with participating in the NCP to the activity code identified in the "Differing Views Best Practices Guide" (available at <https://drupal.nrc.gov/node/24526>).

J. Differing Views Program Manager (DVP PM)

1. Promotes an environment for raising 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 NCP guidance.
5. Collaborates with OCHCO to identify training needs related to the NCP.
6. Maintains a system to assign and track NCP cases.
7. Develops and maintains NCP-related information on the NRC's internal [Web site](#).
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 pursue their allegation included in Section XI, "Reprisal," 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 support the continued willingness of employees to use the NCP.
10. Coordinates with offices on any employee feedback collection methods that the office plans to conduct that address the NCP and the environment for raising differing views.

K. All Employees

1. Raise differing views and propose solutions as early as possible in the document preparation and review process.
2. Discuss differing views with their immediate supervisor as early as possible in the review process and before initiating a non-concurrence.
3. Initiate a non-concurrence in accordance with the policies and procedures described in 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 (e.g., SGI, PCII, and SUNSI or CUI) is appropriately handled, marked, and protected in accordance with agency policies and procedures.
6. Refrain from making statements that could be interpreted as derogatory, inappropriate, or otherwise unprofessional in the NCP form.
7. Review an NCP form included in a document concurrence package to support an informed decision.
8. Treat an employee who expresses a differing view or participates in the NCP respectfully and do not marginalize, harass, intimidate, retaliate, or discriminate against an employee for expressing a differing view or participating in the NCP.

IV. APPLICABILITY

- A.** MD 10.158 applies to all NRC employees, except members of NRC boards and advisory committees that are subject to the Federal Advisory Committee Act or report directly to the Commission, employees on NRC Limited (Excepted) appointment (by reason of the confidential, policymaking, policy-determining, or policy-advocating nature of the position), and Commissioners. MD 10.158 does not apply to NRC contractors.
- B.** Individuals serving in a representational capacity may not use the NCP with respect to a document that is being prepared for, and relates to the matters in controversy in, a proceeding in which they are actively representing the agency (e.g., an attorney in the Office of the General Counsel (OGC) who represents the agency in litigation may not use the NCP as it relates to matters in controversy in the litigation). But OGC attorneys who are not representing the staff or agency, but who are involved in reviewing issues related to the litigation (e.g., the development of a safety, environmental, or policy document), could engage in the NCP with respect to those documents.

V. DIRECTIVE HANDBOOK

Handbook 10.158 provides guidance on initiating, documenting, reviewing, processing, discontinuing, 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, "Agency Rules of Practice and Procedure," Subpart J, "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).

"Differing Views Best Practices Guide," available at <https://drupal.nrc.gov/node/24526>.

Final Report: Differing Views Program Improvement Project (ML19133A284).

Internal Commission Procedures, available 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."
- 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."
- 10.101, "Employee Grievances."
- 10.159, "NRC Differing Professional Opinion Program."
- 10.160, "Open Door Policy."
- 10.99, "Discipline and Adverse Actions".
- 12.6, "NRC Sensitive Unclassified Information Security Program."

NRC Form 757, "Non-Concurrence Process," in the NRC Forms Library, available at <https://usnrc.sharepoint.com/teams/NRC-Forms-Library/SitePages/Home.aspx>.

NRC Internal Web Site on the Non-Concurrence Process, available at <https://drupal.nrc.gov/node/24526>.

NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI).

The U.S. Nuclear Regulatory Commission and National Treasury Employees Union Collective Bargaining Agreement, available at <https://www.nrc.gov/docs/ML1609/ML16092A326.pdf>.

Other Documents

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

United States Code

Energy Reorganization Act of 1974, as amended.

Federal Advisory Committee Act (Pub.L. 92-463).

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-20-12

*Volume 10,
Part 7:*

General Personnel Management Provisions

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Director, Office of Enforcement

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Contact Name: [Differing Views Program Manager](#)

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This MD is revised to—

- Address issues and feedback from previous program reviews, including participant feedback, Office of the Inspector General Safety Culture and Climate Surveys, Federal Employee Viewpoint Survey, “Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at NRC,” dated June 19, 2018, and lessons learned from implementation of the Differing Views Program Improvement Project approved recommendations.
- Establish the NCP approver as the Senior Executive Service manager above the document signer in the line organization.
- Clarify NRC employee’s communication expectations with external stakeholders, including at Advisory Committee on Reactor Safeguards (ACRS) meetings, during the NCP.

- Outline the process for signing a subject document before the NCP is closed.
- Clarify the NCP coordinator’s responsibility for reviewing NCP forms before discretionary release to the public.
- Introduce the rapid resolution process.
- Reference the Differing Views Best Practices Guide.

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I. INTRODUCTION

A. Background

The U.S. Nuclear Regulatory Commission (NRC) strives to establish and maintain an environment that encourages all NRC employees to raise differing views promptly and without fear of reprisal, including during the preparation and review of agency documents. The exchange of views conducted in a free and open environment provides the ideal forum where differing 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," a Non-Concurrence Process (NCP) for eligible NRC employees with differing views about documents in the concurrence process, described in this MD, and the Differing Professional Opinions (DPO) Program described in MD 10.159, "NRC Differing Professional Opinion Program." Using the NCP does not prohibit employees from raising the same differing views in the DPO Program after the NCP is completed and the subject document is issued.

B. Relationship of NCP to Concurrence Process

This 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. The NCP supports the agency's concurrence process.

C. Removing an Employee from Document Concurrence

1. Employees are expected to raise differing views promptly and discuss their views with their immediate supervisor on a regular, ongoing basis. Employees should be encouraged, but not required, to use the NCP to address their differing views. The NCP is a voluntary process.
2. Employees have the right not to concur on a document for which they are listed on concurrence. Consistent with this right, employees may request to be removed from concurrence based on their differing views about the document. However, removal from concurrence is not a non-concurrence for the purpose of this MD, and the provisions of the NCP do not apply.
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 should 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 differing views that resulted in staff requesting removal from concurrence before a document is issued.
7. An employee may not be removed from a document's concurrence with an intent to prevent that employee from engaging in the NCP.

D. Applicability of the NCP

1. Documents Subject to the 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—
 - (i) Address personnel actions or issues that involve individual employees or groups of employees (e.g., performance evaluations, awards, promotions, disciplinary actions, reorganizations, or determinations about security clearances and access for national security reasons),
 - (ii) Issues that are subject to collective bargaining, and
 - (iii) Issues involving allegations of fraud, waste, abuse, or misconduct by NRC staff or contractors, allegations of retaliation for raising concerns, and complaints of mismanagement of agency programs that are appropriately addressed by the Office of the Inspector General (OIG).
- (c) Special consideration is given 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 considerations are described in Section V of this handbook, "Submitting Documents to the Office of the Executive Director for Operations or the Commission."

2. Eligibility to Use the NCP

- (a) All NRC employees (except members of boards and advisory committees that are subject to the Federal Advisory Committee Act or report directly to the Commission, employees on NRC Limited (Excepted) appointment, Commissioners, and NRC contractors) are eligible to non-concur on a document. This includes employees in administrative or corporate support positions.

(b) Individuals serving in a representational capacity may not use the NCP with respect to a document that is being prepared for, and relates to the matters in controversy in, a proceeding in which they are actively representing the agency (e.g., an attorney in the Office of the General Counsel (OGC) who represents the agency in litigation may not use the NCP as it relates to matters in controversy in the litigation). But OGC attorneys who are not representing the staff or agency, but who are involved in reviewing issues related to the litigation (e.g., the development of a safety, environmental, or policy document), could engage in the NCP with respect to those documents. The following criteria also must be met:

- (i) The document is currently undergoing formal concurrence and
- (ii) The non-concurring employee is one of the following:
 - The author of the document,
 - Included in the document concurrence block,
 - A contributor tasked with providing document content, or
 - A reviewer tasked with reviewing the document.

E. Exercising Discretion to Engage in the NCP

1. Individuals who are not eligible to use the NCP are encouraged to use informal discussion and the Open Door Policy to express a differing view to their immediate supervisor, document signer, or other manager involved in the document concurrence process.
2. NRC employees who are not otherwise eligible to use the NCP as described in Section I.D.2 may approach their immediate supervisor, document signer, another manager in their organization, or the Differing Views Program Manager (DVP PM) and request to engage in the NCP, at management's discretion, if they believe they have specific information that would enhance the decisionmaking process and that the use of the NCP would be in the interest of the agency.
3. A document signer may approach an employee who has expressed a differing view during informal discussions and ask if they would like to voluntarily use the NCP. This may be considered if the document signer believes it is in the best interest of the agency and would address the differing view in a more efficient and effective way than waiting to formally address the differing view after the decision is issued.

F. Informal Discussions

1. The routine, recommended process for resolving a differing view is through informal discussions. Unless there are extenuating circumstances, informal discussions are necessary and a precondition for engaging in the NCP.

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 in the decisionmaking process. An employee responsible for originating and issuing a document has a responsibility to seek solutions to differing views that might otherwise result in a non-concurrence.
3. Non-concurrence should be necessary only when informal discussions are unable to resolve an employee's differing view in a timely manner and the employee seeks a response through the NCP. The DVP PM is available to facilitate informal communications with involved parties as part of the screening stage of the NCP.
4. Engaging in the NCP does not preclude an employee from continuing informal discussions. Employees who engage in the NCP are encouraged to continue informal discussions in parallel in the interest of resolving differing views.

G. Rapid Resolution

1. The benefits of resolving differing views informally are substantial. Often, issues can be resolved faster and with fewer resources, resulting in a win-win scenario for the parties involved. To support this, the DVP PM may try to resolve issues informally during the screening stage. This process is called rapid resolution.
2. During rapid resolution, the DVP PM reviews the differing view and initiates informal discussions with relevant individuals to further understand the issue. Commonly, the DVP PM will coordinate a meeting with the submitter and decisionmaker to discuss the differing view. Other individuals may be present at this meeting (e.g., Director, Office of Enforcement (OE), and/or other knowledgeable technical staff, representatives from OGC).
3. If the submitter and decisionmaker agree on a path forward to resolve the differing view, and the submitter decides to withdraw the NCP, the case will be closed. If the submitter and decisionmaker do not come to an agreement, the NCP will continue through the formal process.

H. Communications During NCP

1. The NCP is an internal agency process that relies on open communication to support the decisionmaking process.
2. Although it is appropriate for an employee to discuss the details of the non-concurrence with their co-workers as part of the evaluation and review process, employees must follow guidance and policy including the "NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information" (SUNSI); MD 12.6, "NRC Sensitive Unclassified Information Security Program"; and MD 3.4, "Release of Information to the Public."

3. For the purpose of participating in Advisory Committee on Reactor Safeguards (ACRS) meetings, including meetings open to members of the public, open NCPs may be discussed in detail, provided that the non-concurring employee coordinates with their management. This does not supersede guidance for the discussion of SUNSI and Controlled Unclassified Information (CUI) material that may be embedded with the NCP, which must be handled in accordance with established NRC policy. It is expected that NRC staff and management will clearly communicate to the ACRS that the differing view discussed represents the opinion of a staff member(s) and that management is evaluating the concerns raised but has not reached a final decision.
4. The non-concurring employee should be included in discussions involving the issues associated with the non-concurrence, when warranted, to maximize understanding of the issues and improve the decisionmaking process.

I. Timeliness of NCP

1. All parties involved in an NCP have the 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.
2. Employees have a responsibility to raise differing views promptly during the document preparation process and should notify their supervisor as soon as they decide to engage in the NCP.
3. There is no specific time limit for the completion of the NCP. The due date of the subject document drives the schedule for the completion of the NCP. The non-concurrence should be processed as part of the normal document concurrence process and under the normal document schedule. However, document signers should adjust schedules, as necessary, to allow adequate time to address a non-concurrence and support an informed decision under the requirements described in this MD.
4. There is a timeliness goal for initiation of the NCP. An NCP form normally should be submitted within 5 business days of notification of the intent to engage in the NCP.
5. The amount of time afforded to an employee to submit a non-concurrence should be reasonable and based on agreement between the individual and their immediate supervisor, taking into consideration the employee's workload priorities and in consultation with the document signer. Please refer to Section IX.A for additional guidance on charging time associated with participating in the NCP.
6. NCP participants should review a non-concurrence in a timely manner that supports a thorough review of the issues. NRC staff supporting the review should provide supplemental information, in a timely manner, as necessary.

7. The NCP requires that actions required by the NCP process be complete before a document can be issued and some documents may be delayed beyond their normal schedules to support a well-informed decision.
8. Non-concurring employees, and any other employees involved in the non-concurrence process, should not be held accountable for delays in a document's issuance.

II. INITIATION OF THE NON-CONCURRENCE PROCESS

A. Notifying Intent to Engage in NCP

1. Employees have a responsibility to raise differing views promptly during the document preparation process. Employees should notify their immediate supervisor and the document signer immediately upon deciding to formally engage in the NCP.
2. The NCP cannot be initiated until a formal document package has been routed for concurrence. Employees should continue to use informal discussions to express any differing views until a document package is routed for concurrence.

B. Indicating Non-Concurrence on a Document

1. A document that is the subject of an NCP should reflect a non-concurrence in the same way it reflects a concurrence.
2. The document signer, in coordination with NCP approver, has the discretion of whether to make explicit reference to the non-concurrence in the subject document. For documents published in the Federal Register that include a non-concurrence, please refer to Section VIII for additional guidance.
3. If a non-concurring employee subsequently concurs (e.g., the employee agrees that the action taken to address their differing view 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), there should be no indication on the official record copy of the document that a non-concurrence was associated with the document.
4. The cover page for the NCP form should indicate whether at the completion of the process the employee concurs or continues to non-concur on the subject document. The NCP form should be retained as an official agency record, 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 serve as a knowledge management tool on the issue.

C. NCP Form Section A: Documenting a Non-Concurrence on the NCP Form

1. A non-concurring employee documents their differing view by completing Section A of the NCP form and notifies the DVP PM of its completion. 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 and potential impact on mission. A non-concurring employee should also use Section A 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.
2. If the non-concurrence involves classified, safeguards (SGI), SUNSI or CUI (e.g., proprietary or allegation-related information), the submitter shall mark and handle the form 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. The 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 are outside the scope of the NCP and should be forwarded to the Office of the Inspector General (OIG) in accordance with MD 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals." If the DVP PM identifies such statements during the screening process, they should take action to forward such allegations to the IG and then request that the submitter revise their NCP form before continuing the screening process.
5. If more than one employee non-concurs for the same reasons, Section A should reflect the additional names. Employees should submit separate NCP forms if the reasons and/or proposed alternatives for the non-concurrence are different.
6. The non-concurring employee checks the appropriate box to indicate whether or not they 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).
7. The non-concurring employee checks the appropriate box to indicate whether they request that management determine whether discretionary release of the NCP form to the public, with or without redactions, is appropriate.
8. The non-concurring employee signs and shares the NCP form (and any other continuation pages) with the DVP PM.

D. NCP Tracking Numbers

1. The DVP PM will screen a completed, signed, and dated NCP submittal and confirm that a non-concurring individual is eligible to use the NCP. If a submittal is accepted for review under the NCP, the DVP PM will assign an NCP tracking number and will acknowledge its existence on the internal [NCP Web site](#). All non-concurrences must have an NCP tracking number.
2. If the submittal is not accepted for review under the NCP, the DVP PM will send the non-concurring employee a written explanation documenting why use of the NCP is not appropriate and recommend alternatives to pursue their differing views, if possible (e.g., informal discussion, Open Door Policy for issues that are not in the formal concurrence process, or the DPO Program for issues that are no longer in the concurrence process where the subject document is already issued).
3. An employee can appeal the DVP PM recommendation not to accept the submittal for evaluation under the NCP by contacting the Director, OE.

E. NCP Form Section B: Supervisor's Comments for Consideration

1. If the non-concurring employee indicates that a written evaluation of the 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 shall read Section A and share their views on the non-concurrence with the document signer. The supervisor also has the discretion to document comments in Section B.
2. If the non-concurring employee indicates that they would like a written evaluation of the non-concurrence, the non-concurring employee's immediate supervisor promptly completes Section B of the NCP form. This information can be especially helpful when issues cross organizational boundaries.
3. Depending on their degree of agreement with the 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.
4. If Section B includes classified, SGI, SUNSI, or CUI (e.g., proprietary or allegation-related information), the form must be marked and handled under the appropriate requirements.
5. A supervisor should avoid using proper names, except for the name of the non-concurring individual, and should refrain from making statements that could be interpreted as derogatory, inappropriate, or otherwise unprofessional.

6. The supervisor will sign and date an NCP form, regardless of whether the non-concurring employee has requested a written evaluation. The supervisor's signature verifies that they read and considered the non-concurrence. The supervisor signs the form and sends it to the document signer, NCP approver, non-concurring employee, all other individuals on concurrence for the document, and the DVP PM.

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

F. Identifying the NCP Approver (Roles and Responsibilities)

1. The NCP approver is the NRC official who is responsible for—
 - (a) Overseeing review of the NCP,
 - (b) Approving 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 Senior Executive Service (SES) manager above the document signer within the line organization. If the SES manager above the document signer is the non-concurring employee's immediate supervisor, then the next SES manager within the organization will serve as the NCP approver. Please refer to Section XIII of this Directive Handbook (DH) for additional information regarding the NCP approver.
3. If the document signer is the Executive Director for Operations (EDO), then the lead office director or regional administrator normally serves as the NCP approver. The EDO has the discretion, as appropriate, to assign a Deputy EDO (DEDO) to serve as the NCP approver. See Section V, "Submitting Documents to the Office of the Executive Director for Operations or the Commission," of this handbook for additional guidance on documents being transmitted to OEDO.
4. The document signer should add the NCP approver to the document concurrence and the document signer will continue to sign the subject document.

G. 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 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 outcome 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 to understand the issues included in the non-concurrence.
 - (d) Documenting 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) Assisting and coordinating, with appropriate management input, the releasability review to determine whether and how to release the NCP form (with redactions, as necessary).
 - (f) Assisting and coordinating placement of the final NCP form in ADAMS.
 - (g) Sending the final NCP form to the document signer, NCP approver, non-concurring employee, all other individuals on concurrence for the document, and the DVP PM.
4. The NCP coordinator should understand the issues addressed in the subject document enough to coordinate a meaningful response to the issues in the non-concurrence.

H. Coordinating NCP Review

1. The NCP coordinator should, at a minimum, consider input from the non-concurring employee and any additional information provided by the individual's supervisor before recommending actions, if any, that should be taken to address the non-concurrence.
2. 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.
3. The NCP coordinator should ensure that the non-concurring employee is included in further discussions involving the concerns raised in the NCP, when warranted, to maximize the understanding of the issues and improve the decisionmaking process.

4. The NCP coordinator should 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 important, especially when substantial time is required to review the non-concurrence or when outside input is sought.

I. Documenting Evaluation on NCP Form as it Relates to the Document Review

1. The NCP coordinator will develop a summary of issues (SOI) to ensure that there is a common understanding of the employee's differing views.
2. The NCP coordinator will send the SOI to the non-concurring employee.
3. The non-concurring employee will promptly review the SOI and send a markup of the SOI to the NCP coordinator.
4. 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.
5. 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.
6. 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. There should be enough detail 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.
7. 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.
8. If the non-concurring employee has indicated that they would like a written evaluation of their non-concurrence, the NCP approver has discretion in deciding how to continue with the concurrence process. At management's discretion, 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 in the package and returned to the concurrence process. The NCP approver may also choose to allow the review and concurrence process to continue in parallel with the evaluation of the non-concurrence.
9. Regardless of whether the concurrence process is suspended, the concurrence package, including completed Sections A, B, and C of the NCP form, must be recirculated to all employees on concurrence to support an informed decision.
10. Employees who have previously concurred do not need to re-concur unless substantive changes have been made to the subject document.

11. Employees who have previously concurred may choose to withdraw their concurrence and request additional discussion based on the non-concurrence issues.
12. 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 their non-concurrence.
13. If at the end of the review process, the non-concurring employee subsequently chooses to concur, the cover sheet of the NCP form should reflect that the employee "concurred." There should be no indication on the official subject document record that a non-concurrence was associated with the document. The NCP form must be retained as an official agency record and knowledge management tool for the issue.
14. If, during the review, the non-concurring employee decides that they no longer want a written evaluation of their non-concurrence, Section C of the NCP form should be modified to reflect this change. The NCP approver is no longer obligated to complete the documented evaluation in Section C of the NCP form, although the NCP approver may still choose to document the evaluation and rationale for the final decision and outcome.
15. If, before disposition of the non-concurrence concerns, the non-concurring employee is no longer an NRC employee, the NCP will continue the review process and will default to the information provided by the non-concurring employee, as described in the NCP form.

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. 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.
3. If the non-concurring employee has indicated that they would like a written evaluation of their non-concurrence, the NCP approver is responsible for ensuring that NCP form Section C, block 9, "Evaluation of Non-Concurrence and Rationale for Decision," 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 (i.e., 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. If changes were made to the subject document, the non-concurring employee should be allowed to review the revised subject document before completing the cover sheet.

4. The NCP approver has the discretion to communicate with the non-concurring employee about the outcome of the review.
5. The NCP approver shall sign and date the NCP form, regardless of whether the non-concurring employee has requested a written evaluation or whether the process has been discontinued. The NCP approver's signature verifies that they considered the non-concurrence in the decisionmaking process.
6. The NCP approver notifies the document signer upon signing Section C of the NCP form to support issuance of the subject document.

B. Document Signer Issues Document

The document signer signs the subject document after the evaluation of the non-concurrence is complete and Section C of the NCP form is signed by the NCP approver. In the rare circumstance that the subject document must be signed before completing the non-concurrence, the document signer will coordinate with the Director, OE, before signing the subject document.

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 confirm that the non-concurring employee still requests that management determine whether discretionary release of the NCP form to the public, with or without redactions, is appropriate.
3. 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 "concurred"; "continued to non-concur"; "agreed with some of the changes to the subject document, but continued to non-concur" or if the process was discontinued because "non-concurring employee(s) requested that the process be discontinued"; or the "subject document was withdrawn."
4. The NCP coordinator will ensure that the cover sheet for the NCP form reflects whether the record is non-public and for official use only, or if the record has been reviewed and approved for public dissemination.

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 they do 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) normally serves as the NCP approver. The EDO has the discretion, as appropriate, to assign a DEDO to serve as the NCP approver. 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 for additional action.
- B.** The remainder of Section V 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 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 (available at <https://www.nrc.gov/docs/ML1929/ML19296A025.pdf>) 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 be included as an enclosure to the subject document.
 2. The document signer (i.e., office director or EDO), in coordination with the NCP approver, 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 also responsible for recordkeeping associated with the NCP.
- B.** All NCP forms and other records created to document non-concurrences are official agency records.

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- 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 normally 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 DVP 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).
 - F.** If the non-concurring employee has requested a written evaluation of their non-concurrence, when the NCP is complete, the NCP coordinator will confirm that the non-concurring employee still requests that at the end of the process management determines whether discretionary release of the NCP form to the public, with or without redactions, is appropriate. Regardless of the non-concurring 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.
 - 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 DVP PM should be consulted in instances when management believes that it is appropriate to restrict access for NRC viewers (e.g., cases involving proprietary or other sensitive information). As with all agency records, the NCP form is subject to consideration for public release upon receipt of a request under the Freedom of Information Act of 1966 (5 United States Code 552, "Public Information; Agency Rules, Opinions, Orders, Records, and Proceedings").
 - H.** The NCP coordinator will assist and coordinate the releasability review.
 - I.** The releasability review must be performed under current agency practices and guidance, including SUNSI; MD 12.6, "NRC Sensitive Unclassified Information Security Program"; 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 [NCP Web site](#).
 - J.** All NCP forms retained in ADAMS must be profiled using ADAMS template NRC-006 (ADAMS accession number ML063120159), and normally be included in a package with the final version of the document that was the subject of the non-concurrence.

- K. An NCP form must be retained on the same retention schedule as the document that was the subject of the non-concurrence.
- L. 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."
- M. The DVP PM will post closed NCP cases (including public and non-public) on the internal [NCP Web site](#) to inform employees of the outcome. Limited information may be available in those instances when management believes that it is appropriate to restrict access for NRC viewers (e.g., cases involving proprietary or other sensitive information).

VII. FOLLOWUP ACTIONS

- A. If followup actions are identified as part of addressing a non-concurrence, the NCP approver is responsible for ensuring that the actions are completed and should notify the non-concurring employee when the actions have been completed or a timeframe for the actions expected to occur in the future.
- 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.
- C. The NCP approver is responsible, in consultation with 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 an ongoing proceeding.

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

If a publicly available NCP case 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 a final NUREG), 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. For non-publicly available NCP cases, the appropriate staff and/or management shall coordinate with the Director, OE, to determine whether it is appropriate to discuss a technical level of detail.

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

A. Official Time

1. An employee who wants to participate in the NCP may do so as part of the employee's regular duties and may use official time to complete the NCP submittal. The amount of time afforded to a non-concurring employee to develop information related to their non-concurrence should be reasonable and based on agreement between the employee and their immediate supervisor. See Section I. I, "Timeliness of NCP," of this handbook for more guidance on the timeliness expectations for the NCP.
2. Time associated with participating in the NCP should be charged to the activity code identified in the "Differing Views Best Practices Guide" (available at <https://drupal.nrc.gov/node/24526>).

B. Administrative Assistance

If a non-concurring employee requests administrative assistance to support their non-concurrence, the employee's immediate supervisor should determine the amount of administrative support to be provided to the non-concurring employee.

C. Process Assistance

The DVP 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 through written communication (e.g., email) to the NCP coordinator, NCP approver, and DVP PM.
- B.** If the NCP is discontinued, the subject document must be processed as if there were no non-concurrence associated with it.
- C.** If the NCP is discontinued before the process is complete, the non-concurring employee's immediate supervisor, NCP coordinator, and NCP approver may choose to pursue the issues addressed in the non-concurrence, but the provisions of the NCP do not apply.

- D. If the NCP is discontinued before the process is complete, the non-concurring employee's immediate supervisor has the discretion to document their 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 recirculated to those on concurrence and it must also be retained as an official agency record consistent with the guidance in Section VI, "Keeping Records of Non-Concurrences," of this handbook.
- F. If the NCP is discontinued, the NCP form will be retained as an official agency record, limited to internal use only.
- G. The concurrence page for any document where the NCP was discontinued must 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 this handbook, Section I.C, "Removing an Employee from Document Concurrence."
- H. 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.

XI. REPRISAL

- A. Non-concurring employees and other participants in the NCP shall be free to participate in the NCP without fear of reprisal (e.g., harassment, intimidation, retaliation, or discrimination) by management or peers.
- B. Reprisal for engaging in, or discouraging the use of, the NCP by management or peers must not be tolerated and may lead to disciplinary action.
- C. Reprisal for engaging in, or discouraging the use of, the NCP could be grounds for an employee grievance or a whistleblower complaint. See additional information in Section XI.G of this handbook.

- D. Managers shall ensure that a personnel action is never taken based in retaliation for participating 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.
- 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. Supervisors shall 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 they have 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 Office of the Chief Human Capital Officer;
 - 4. The NRC's Inspector General;
 - 5. The negotiated grievance procedure described in the "Collective Bargaining Agreement Between the NRC and the National Treasury Employees Union" (for bargaining unit employees);
 - 6. The administrative grievance procedure described in MD 10.101, "Employee Grievances," (for non-bargaining unit employees); and
 - 7. The U.S. Office of the Special Counsel. (More information is available at <http://www.osc.gov/>.)
- H. For the latest version of resources, refer to the internal [NCP Web site](#).

XII. WEB GUIDANCE

The internal [NCP Web site](#) includes a variety of resources to assist employees engaging in the NCP, including the "Differing View Best Practices Guide."

XIII. GLOSSARY

Adverse Action

For the purposes of this MD, adverse (personnel) action is defined in the glossary section of MD 10.99, "Discipline and Adverse Actions."

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 (e.g., harassment, intimidation, retaliation, or discrimination).

Decisionmaker

For the purposes of the NCP and its MD, a decisionmaker is also the NCP approver. Please refer to the "Non-Concurrence Process Approver" definition.

Differing Professional Opinion (DPO)

A conscientious expression of a position that differs from an established staff view, management decision or policy position involving technical, legal, or policy issues (including administrative or corporate support issues). A DPO can cover a broad range of differing views, 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 program is described in MD 10.159, "NRC Differing Professional Opinion Program."

Differing Views Program Manager (DVP PM)

Please refer to Section I.J for a list of the organizational responsibilities of the DVP PM.

Discontinuing a Non-Concurrence Process

The voluntary act by a non-concurring employee to request that an already accepted case for review under the NCP be discontinued at any time before the completion of the NCP. Please refer to Section X of this DH for additional guidance and information.

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 by an eligible employee.

Non-Concurrence Process Approver

NRC employee serving in a Senior Executive Service (SES) role who is responsible for overseeing the review of a non-concurrence in the NCP, approving 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.

Non-Concurrence Process Coordinator

NRC employee assigned by the NCP approver to support the evaluation and documentation of a non-concurrence.

Non-Concurrence Process Form

NRC form 757, "Non-Concurrence Process" (NCP form), that must be used to document non-concurrences. The NCP form is in the NRC Forms Library.

Removal from Concurrence

For the purposes of this MD, this occurs when an employee requests to be removed from concurrence based on their differing views about the document. However, removal from concurrence is not a non-concurrence for the purpose of this MD, and the provisions of the NCP do not apply. Please refer to Section I.C. of this DH for additional guidance and information.

Reprisal

As defined in this MD, 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.

Submitter

NRC employee with a differing view who is engaging in the NCP.

Withdrawing a Non-Concurrence

Withdrawing the non-concurrence refers to the voluntary act by a non-concurring employee to request that the NCP submittal be withdrawn before the NCP review is conducted. This typically occurs during the rapid resolution of the NCP screening stage, where the submitter and decisionmaker agree on a path forward to resolve the differing view, the submitter decides to withdraw the NCP, and the case is closed. If the submitter and decisionmaker do not come to an agreement, the NCP will continue through the formal process. Note that only an NCP submitter can withdraw an NCP. Please refer to Section I.G of this DH for additional guidance and information regarding the “Rapid Resolution” process.