

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

MD 8.17		LICENSEE COMPLAINTS AGAINST NRC EMPLOYEES	DT-17-168
Volume 8:	Licensee Oversight Programs		
Approved By:	Victor M. McCree Executive Director for Operations		
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EXECUTIVE SUMMARY			
Directive and Handbook 8.17, "Licensee Complaints Against NRC Employees," are revised to clarify areas of notification, documentation, and resolution of licensee complaints against U.S. Nuclear Regulatory Commission employees.			

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I. POLICY

It is the policy of the U.S. Nuclear Regulatory Commission to manage complaints raised by licensees of alleged improper action by NRC employees in a way that promotes open communication between the licensees and the NRC¹. While most complaints against NRC employees originate with licensees, management may elect to invoke these procedures for complaints against employees that originate with sources other than a licensee (e.g., vendors, applicants for licenses, or licensee contractors).

II. OBJECTIVES

- Implement the licensee complaint process in a fair and objective manner. Be fair to the NRC employee against whom the complaint is made, to the licensee representative making the complaint, and to the mission-related needs of the NRC.
- Expeditiously determine the validity and significance of the complaint against an NRC employee and, where appropriate, take corrective action.
- Acknowledge the receipt of a complaint and inform the licensee representative making the complaint of the resolution of the concern.

III. ORGANIZATIONAL RESPONSIBILITIES AND DELEGATIONS OF AUTHORITY

A. Executive Director for Operations (EDO)

Establishes and oversees the process for responding to complaints raised by licensees against NRC employees.

B. Office of the General Counsel (OGC)

Provides legal counsel to NRC officials who review complaints of improper action by NRC employees. Advises those officials responsible for taking appropriate action once the complaint has been investigated.

¹ Although the term “employee” is used throughout this document, Management Directive (MD) 8.17 also addresses complaints against NRC contractors and individuals performing work in accordance with interagency agreements (IAA) and U.S. Department of Energy (DOE) laboratory agreements.

C. Office of the Inspector General (OIG)

Investigates allegations of fraud, waste, abuse, or misconduct by NRC employees, as well as allegations of mismanagement of agency programs, consistent with Title 10 of the *Code of Federal Regulations* (CFR) 1.12, "Office of the Inspector General."

D. Chief Human Capital Officer (CHCO)

Provides guidance to NRC officials regarding disciplinary, adverse, and other personnel actions.

E. Office Directors and Regional Administrators

1. Implement the process to respond to complaints raised by licensees against NRC employees.
2. Assign responsibility for this process to a senior management representative (SMR) in his or her office (usually the deputy office director or the deputy regional administrator).
3. Review and approve the course of action proposed by the SMR for resolution of the complaint.
4. Determine the course of action when the complaint involves the designated SMR.
5. Respond to complaints related to the action of an individual or individuals who are performing work in accordance with a U.S. Department of Energy (DOE) laboratory agreement or an interagency agreement (IAA) awarded by the office.

F. Senior Management Representative (SMR)

Acts as the principal NRC official who oversees the implementation of this process in his or her office or region and serves as the focal point for communications with other offices and the licensee representative raising the complaint.

G. Regional Counsels

1. Implement the tasks in this process designated to the regional counsel, including maintaining records and advising the staff on the standards for conduct and performance.
2. Serve as backup to the regional SMR in his or her absence.

H. Director, Acquisition Management Division (AMD), Office of Administration (ADM)

Responds to complaints related to actions of an individual or individuals who are performing work in accordance with an NRC contract or an IAA awarded by the Acquisition Management Division, Office of Administration.

I. Division Directors

Implement portions of this process as tasked by the SMR.

IV. APPLICABILITY

The policy and guidance in this directive and handbook apply to all NRC employees, as well as NRC contractors and individuals performing work in accordance with IAA and DOE laboratory agreements.

V. DIRECTIVE HANDBOOK

Handbook 8.17 describes the process to follow when a licensee raises a complaint of improper action against an NRC employee. The process in Handbook 8.17 is also followed when a licensee raises a complaint of improper action against an NRC contractor or individual performing work in accordance with IAA and DOE laboratory agreement.

VI. REFERENCES

Code of Federal Regulations

5 CFR Part 2635, "Standards of Ethical Conduct for Employees of the Executive Branch."

10 CFR 1.12, "Office of the Inspector General."

U.S. Nuclear Regulatory Commission Documents

"Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and National Treasury Employees Union," November 1, 2009, at <http://www.internal.nrc.gov/HR/pdf/cba.pdf>.

Management Directives—

3.53, "NRC Records and Document Management Program."

7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."

8.8, "Management of Allegations."

10.99, "Discipline, Adverse Actions, and Separations."

NRC Inspection Manual, Chapter 1201, "Conduct of Employees," at <http://pbadupws.nrc.gov/docs/ML1114/ML111470227.pdf>.

"Nuclear Regulatory Commission Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace," January 24, 2007 (ADAMS Accession Number [ML12054A261](#)).

NUREG-0910, Revision 4, "NRC Comprehensive Records Disposition Schedule," March 2005 ([ML051390495](#)).

United States Code

Inspector General Act of 1978, as amended (5 U.S.C. App. 3).

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I. LICENSEE COMPLAINTS AGAINST NRC EMPLOYEES

A. Processing Complaints

1. The process for handling a licensee complaint against a U.S. Nuclear Regulatory Commission employee includes the actions by which the NRC will receive, document, act on, resolve, or forward to other authorities (e.g., the Office of the Inspector General (OIG)) complaints against an NRC employee. Although the term “employee” is used throughout this document, the process is also applicable for handling licensee complaints against NRC contractors and individuals performing work in accordance with interagency agreements (IAA) and U.S. Department of Energy (DOE) laboratory agreements. While most complaints against NRC employees originate with licensees, management may elect to invoke these procedures for complaints against employees that originate with sources other than a licensee (e.g., vendors, applicants for licenses, or licensee contractors).
2. Complaints of improper action can be matters of conduct or job performance. These terms, as they apply herein, may include—
 - (a) **Misconduct.** Action or inaction by an employee that adversely affects the ability of NRC or one of its components to perform the NRC’s mission efficiently and effectively. Examples of conduct issues are misuse of position, fraud and other questions of honesty and integrity, waste and abuse, and conflicts of interest.
 - (b) **Unacceptable Performance.** Failure of an employee to accomplish assigned duties or responsibilities. Performance issues are usually resolved as management issues (i.e., are not referred to OIG) and generally relate to the staff member’s regulatory and technical competence.
3. Allegations of fraud, waste, abuse, misconduct, or mismanagement of agency programs by an NRC employee must be reported to OIG. (See Management Directive (MD) 8.8, “Management of Allegations.”) Office or division directors who receive reports or are made aware of alleged violations must report these allegations directly to OIG. Nothing in MD 8.17 is intended to limit any licensee, NRC employee, or member of the public from contacting OIG directly with a concern.
4. There may be special circumstances that require immediate and appropriate NRC inquiry and action. These circumstances will be discussed with OIG and could include, for example, complaints that raise immediate public health and safety concerns or ongoing offensive conduct in the workplace (e.g., sexual or racial harassment). These are to be reported to NRC management, even if reported to OIG. (For further details, see “Nuclear Regulatory Commission Policy and Procedure for Preventing and Eliminating Harassing Conduct in the Workplace,” January 24, 2007 (Agencywide Documents Access and Management System (ADAMS) Accession Number [ML12054A261](#)).

5. All complaints of improper action by an NRC employee will be given high priority and resolved as quickly as possible. Time is of the essence in these matters because of the effect of the complaint on the NRC employee and because of the agency action that may be required.
6. Employees will be notified that a complaint has been made against them as soon as practicable. All complaints will be processed in a manner that does not conflict with applicable sections of the "Collective Bargaining Agreement Between U.S. NRC and National Treasury Employees Union (NTEU)." Should NRC bargaining unit employees have a complaint raised against them, employee options include, but are not limited to, speaking with their NTEU representatives. NRC bargaining unit employee rights are further delineated in the Collective Bargaining Agreement, available at <http://www.internal.nrc.gov/HR/pdf/cba.pdf>.
7. Exhibit 1 of this handbook is a flow chart showing each step of the licensee complaint process.

B. First Contact

1. Receipt of Complaint

An NRC employee approached by a licensee with a complaint of misconduct or unacceptable performance against an NRC employee should advise the complainant that he or she has the option of contacting OIG directly or of contacting the senior management representative (SMR) who has the responsibility for implementing the licensee complaint process. If the complainant decides to contact OIG or the SMR, the recipient need only obtain the complainant's name and address and provide them to OIG or the SMR, as appropriate. For complaints not referred to OIG or the SMR by the complainant, the recipient of the complaint will collect all the information (as discussed below in Section I.B.2 of this handbook) and then fully brief the appropriate SMR on the issue.

2. Recipient's Actions

- (a) If the complainant does not wish to contact OIG or the SMR, the recipient should ask the complainant to put the complaint in writing so that it is captured accurately. If the complainant refuses, elicit as many specific details as possible, including facts believed to provide evidence of improper actions, dates and time when the improper action took place or is expected to occur, the name, mailing address, and telephone number of the complainant, as well as the names, addresses, and telephone numbers of other individuals who could provide additional or corroborating information. Document all of the information, including how the recipient became aware of the information, and forward it immediately to the SMR. Although the recipient of the complaint should obtain all available information from the complainant, the recipient is not authorized to conduct any followup inquiry.

- (b) Inform the complainant that while his or her complaint will be handled discreetly, subsequent personnel or investigative actions may make it necessary to involve the complainant further and may require disclosing the identity of the complainant. Inform the SMR of the complainant's position regarding further involvement.
- (c) Do not disclose the identity of the individual or individuals who are the subject of the complaint or any details of the complaint to anyone other than the SMR. The recipient should personally handle all documentation of the complaint and pass it on to the SMR.
- (d) If the recipient is unable to reach the SMR promptly and the complaint concerns an issue requiring immediate resolution (e.g., as the fitness for duty of an employee seeking immediate site access), the recipient should contact a member of the accused's management chain, beginning with the branch chief or the division director.

C. Initial Actions of the Senior Management Representative

1. General

- (a) If the complainant contacts the SMR, the SMR will discuss the issue with the complainant, make sure that the written complaint contains all the necessary information, and determine the complainant's position regarding further involvement. The SMR will obtain sufficient information from the complainant to determine whether an investigation is warranted. If the complaint relates to an NRC employee from another office, the receiving SMR will inform the appropriate SMR of the other office.
- (b) After the receipt of a complaint, the SMR will consult with the Office of the Chief Human Capital Officer (OCHCO) and the Office of the General Counsel (OGC), or the regional counsel, as necessary, to determine the appropriate course of action. The SMR will decide whether the complaint falls within one of two categories: alleged misconduct or unacceptable performance.

2. Determining OIG Involvement

- (a) If the complaint appears to involve NRC employee or contractor fraud, waste, abuse, mismanagement in an NRC program or operation, or misconduct (including allegations of misconduct that could significantly affect public health or safety), the SMR will ensure that OIG is immediately provided all pertinent information regarding the complaint. For this type of complaint, the SMR will contact the Assistant Inspector General for Investigations or the Senior Level Assistant for Investigative Operations in OIG to discuss the complaint. The SMR will indicate the complainant's preference for whether he or she wants further involvement.

(b) OIG will review the complaint to determine whether further action is warranted and, if so, what type of action is needed. Allegations that suggest poor performance or that warrant a technical review are generally referred to NRC management. If OIG accepts the complaint for action, no further formal investigative action will be taken by the SMR. When requested by OIG, the SMR will give OIG a written report of action taken on the complaint.

3. OIG-Handled Complaints

If the complaint is handled by OIG, the matter will be treated in a manner consistent with MD 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals." The SMR will seek the views of OIG regarding whether the employee and/or management should be informed of the complaint and its referral to OIG. Dissemination of information about the matter will depend on the mission-related needs of the OIG and the NRC. The SMR will document the referral and OIG's position regarding dissemination of the information, to whom it was provided, and then close the file.

4. Staff Office-Handled Complaints

If the complaint involves only unacceptable performance or OIG refers the complaint back to the agency staff office and/or the SMR, the complaint will be handled as described in Sections I.D through H of this handbook. The term "investigation" found in Sections I.D through I.H of this handbook refers to NRC actions that may be a part of the action plan. For complaints referred from OIG back to the agency staff office and/or the SMR, the SMR will notify OIG of the outcome of any agency inquiry, including whether the complaint was substantiated or not; what, if any, disciplinary action was taken; and any action taken to modify the employee's assignments. The SMR will consult with the office director or the regional administrator and the appropriate division director to decide whether or not modifications to an employee's assignments will be made.

5. Complaints Against a Contractor

If the complaint involves only unacceptable performance or OIG refers a complaint back to the agency staff office that relates to the actions of an individual or individuals who are performing work for NRC in accordance with a contract, an IAA, or a DOE laboratory agreement that involved Acquisition Management Division (AMD), Office of Administration (ADM), the SMR will also consult with AMD, ADM.

D. Documenting Complaints

1. Upon receipt of the complaint, the SMR will prepare a file for the complaint. The file label will bear a designation (e.g., NRR (office acronym)-MD817-YY-XX, with the appropriate office acronym, year, and complaint number. The last number in the label will begin with "01" and continue in ascending order, reverting back to 01 at the beginning of each new calendar year (e.g., NRR-MD817-04-02 indicates the second specific complaint reported against the NRR staff in 2004). Any NRC employee can have more than one complaint file in a given year. A file will not be identified by employee name or other personal identifier.
2. Files and documents containing personal information must be kept in a secure file cabinet or safe when not in the personal control of the SMR or an authorized reviewer and must not be entered into the ADAMS. Any formal records generated in reviewing the complaint will be maintained in the designated file for a period of 5 years. Following the 5-year retention period, the records may be destroyed. (See NUREG-0910, Revision 4, "NRC Comprehensive Records Disposition Schedule," March 2005, ADAMS Accession Number [ML051390495](#).)

E. Detailed Guidance for Resolution of a Complaint

1. Senior Management Representative (SMR) Actions

For complaints not received in writing, the term "potentially significant" in Sections I.E.1(a) and I.E.1(b) is subject to judgement. In making the determination, although not limited to, the following aspects should be considered: (1) method by which the complaint is made (i.e., specific phone call versus sidebar conversation); (2) nature of the communication (i.e., complainant expresses serious concerns versus a desire to simply ensure that NRC management is aware); and (3) nature of the issue (i.e., gross misconduct versus isolated incident of unacceptable performance with minimal impact). The overall goal is to ensure that prudent NRC action is taken on complaints not received in writing. If in doubt, proceed with actions in accordance with Section I.E.1(b) of this handbook.

- (a) If a complaint is not received in writing from a complainant, and the SMR does not believe that the complaint is potentially significant enough to warrant an investigation, the SMR will—
 - (i) Refer the complaint to the employee's division director to resolve outside of the MD 8.17 process.
 - (ii) No further formal investigative action will be taken by the SMR. The SMR will document the referral, document why the complaint is not considered potentially significant, and then close the file.

- (b) If the SMR believes that the complaint is potentially significant enough to warrant an investigation, or if the complainant documents the complaint in writing, the SMR will—
 - (i) Proceed with the complaint as documented by the complainant by carrying out actions Section I.E.1(c) through Section I.E.1(e) in this handbook, and
 - (ii) Document the complaint in an acknowledgement letter to the complainant or prepare a memorandum to the file if the complainant refused further contact.
- (c) The SMR will then take the following steps:
 - (i) Inform the division director of the NRC employee(s) identified in the complaint and authorize release to the division director of information contained in the complaint file. The SMR will provide a tasking document to the division director identifying the specific complaint to be addressed and the alleged wrongdoings or improper actions, if known.
 - (ii) Carefully consider the timing of when to inform the employee of the complaint. To the extent possible, the SMR will notify the employee as soon as practicable. Early notification permits the employee to promptly correct any improper or offensive conduct. However, this action must be weighed against the advantage of permitting the employee to complete his or her work activity (e.g., for an inspector, wait until after the inspection report is issued) without creating a concern that the employee's knowledge of the complaint affected the impartiality of his or her work activities. (See NRC Inspection Manual, Chapter 1201, "Conduct of Employees," available at <http://pbadupws.nrc.gov/docs/ML1114/ML111470227.pdf>.)
 - (iii) After reviewing the division director's recommendations and proposed action plan, recommend an action plan to the appropriate office director or regional administrator who must approve the action plan before it can be implemented.
 - (iv) Notify the complainant in writing when the NRC has addressed the complaint and whether or not the complaint was substantiated. No details of any personnel action will be included. A copy of the correspondence will be placed in the complaint file. Prepare a memorandum to the file if the complainant refused further contact.
- (d) During an investigation, to the extent practicable, the employee will be permitted to provide relevant information before the SMR discusses the matter with licensee staff (other than the complainant) or other agency staff. The affected employee should be provided an adequate amount of official time to respond. The identity of the complainant will not be provided to the employee at any point in the investigation, unless it is necessary to the conduct of the investigation.

- (e) Preventing an employee from participating in assigned activities should be considered only when it is necessary to protect the employee, prevent inadvertent compromise of an ongoing investigation, or protect the mission-related needs of the NRC. The SMR will consult with OGC or the regional counsel, the Director of the Division of Resource Management and Administration (DRMA) (for regional employees), and the Chief Human Capital Officer (CHCO) on the method for implementing restrictions on employee activities. If the employee is an NRC contractor, the SMR will also consult with AMD, ADM.

2. Division Director Actions

- (a) The division director will minimize the disclosure of information regarding the complaint to protect the privacy of the accused. However, the division director may delegate actions to other managers or supervisory personnel and seek guidance from the regional counsel or OGC, as appropriate, or from the regional personnel officer or the CHCO, as appropriate, and as needed to resolve the complaint. In consultation with the OCHCO representative, the division director will understand when Union representation is appropriate (e.g., if the complaint is against a NRC bargaining unit employee) by reviewing and applying the applicable section of the "Collective Bargaining Agreement Between U.S. Nuclear Regulatory Commission and National Treasury Employees Union," available at <http://www.internal.nrc.gov/HR/pdf/cba.pdf>.
- (b) The division director will direct the affected employee not to contact any involved or suspected licensee or licensee employee, or pursue resolution of the complaint independently. At this time, the employee may request to be excused from duties involving that particular licensee or site, pending resolution of the complaint.
- (c) The division director will inform the employee of the issue(s), providing full details of the complaint in writing and obtaining the employee's written version of events. After receiving the employee's written version of the events, the division director will inform the SMR of—
 - (i) Any followup actions needed to ascertain additional facts and to evaluate the significance of the complaint (e.g., interview complainant, licensee, licensee employees, and NRC coworkers; and evaluate work patterns).
 - (ii) The proposed action plan to execute any of the above, including a schedule for implementation.
 - (iii) A recommendation, if warranted, to preclude the accused employee from participating in any activities related to the licensee and/or work activity identified in the complaint. (Any employee request to be excused from these activities also should be communicated along with the recommendation.)

- (d) The division director will execute the approved action plan in a timely manner and keep the SMR and the affected employee up-to-date with status reports. At a minimum, verbal status reports will be provided at intervals of 30 days until the matter is resolved.

F. Actions if the Complaint is Substantiated

1. If the complaint is substantiated, the division director will document the substantiated conduct. The division director will consult with the Director of DRMA, OCHCO, and OGC on what appropriate personnel actions should be taken and advise the SMR. If the employee is an NRC contractor, the division director will also consult with AMD, ADM. In these cases, the SMR will advise the office director or the regional administrator on any proposed personnel actions.
2. If the investigation results in the initiation or taking of formal disciplinary action against the accused employee, the disciplinary action will be carried out in accordance with MD 10.99, "Discipline, Adverse Actions, and Separations," and the "Collective Bargaining Agreement Between the U.S. Nuclear Regulatory Commission and the National Treasury Employees Union." The employee has a right to review the material on which the discipline is based and that is relied on to support the reasons for the discipline. NRC bargaining unit employees are entitled to Union representation to the extent applicable in the Collective Bargaining Agreement and law, rule, and regulation. When a matter being investigated by management discloses new, significant information regarding allegations of misconduct, OIG will be contacted with these additional facts and provided the opportunity to assume jurisdiction over the matter.
3. After SMR approval of actions to be taken, the SMR will inform the employee of the findings in writing within 5 calendar days and initiate the appropriate remedial action. Any personnel action to be taken will be processed consistent with applicable law, regulation, and policies. The SMR will document the decisions and subsequent actions in the file.

G. Actions if the Complaint is not Substantiated

1. If it is determined that the record does not substantiate the complaint, the division director (following discussions with the SMR and with his or her approval) will inform the employee in writing within 5 calendar days of SMR approval. The SMR will document the decisions and subsequent actions in the file.
2. If the complaint is not substantiated, the SMR will have to consider the possibility of an improper motive underlying the complaint. The SMR should consider issues such as—
 - (a) Could the complaint possibly have been made to divert attention from a violation of NRC requirements, to retaliate, or to fetter the NRC employee from performing his or her duties?

- (b) Is there evidence that a trend of unsubstantiated complaints exists?
- 3. If there is evidence of any improper motive on the part of the complainant, the SMR will consult with the office director or the regional administrator regarding a course of action to address the improper motive within NRC's regulatory authority.

H. Periodic Status Reports

The division director will provide the SMR and the affected employee with status reports as specified in Section I.E.2(d) of this handbook. The SMR will meet with the office director or the regional administrator on a monthly basis to discuss the status of active complaints. For complaints that remain open after 120 days, the SMR will discuss the circumstances surrounding the delay; the status of the investigation, describing the progress achieved thus far; and the estimated time to completion. The office director or the regional administrator will review this information to determine if the efforts devoted to the investigation and the estimated completion date are appropriate.

I. Annual Review of Results

Each regional or office SMR will review annually the complaints received during the preceding calendar year to determine the number of complaints received, substantiated and unsubstantiated, and to identify trends and assess results. The review will be documented in a report to the office director or regional administrator who will implement any appropriate actions on the basis of lessons learned.

EXHIBIT

Exhibit 1 Flow Chart of the Licensee Complaint Process

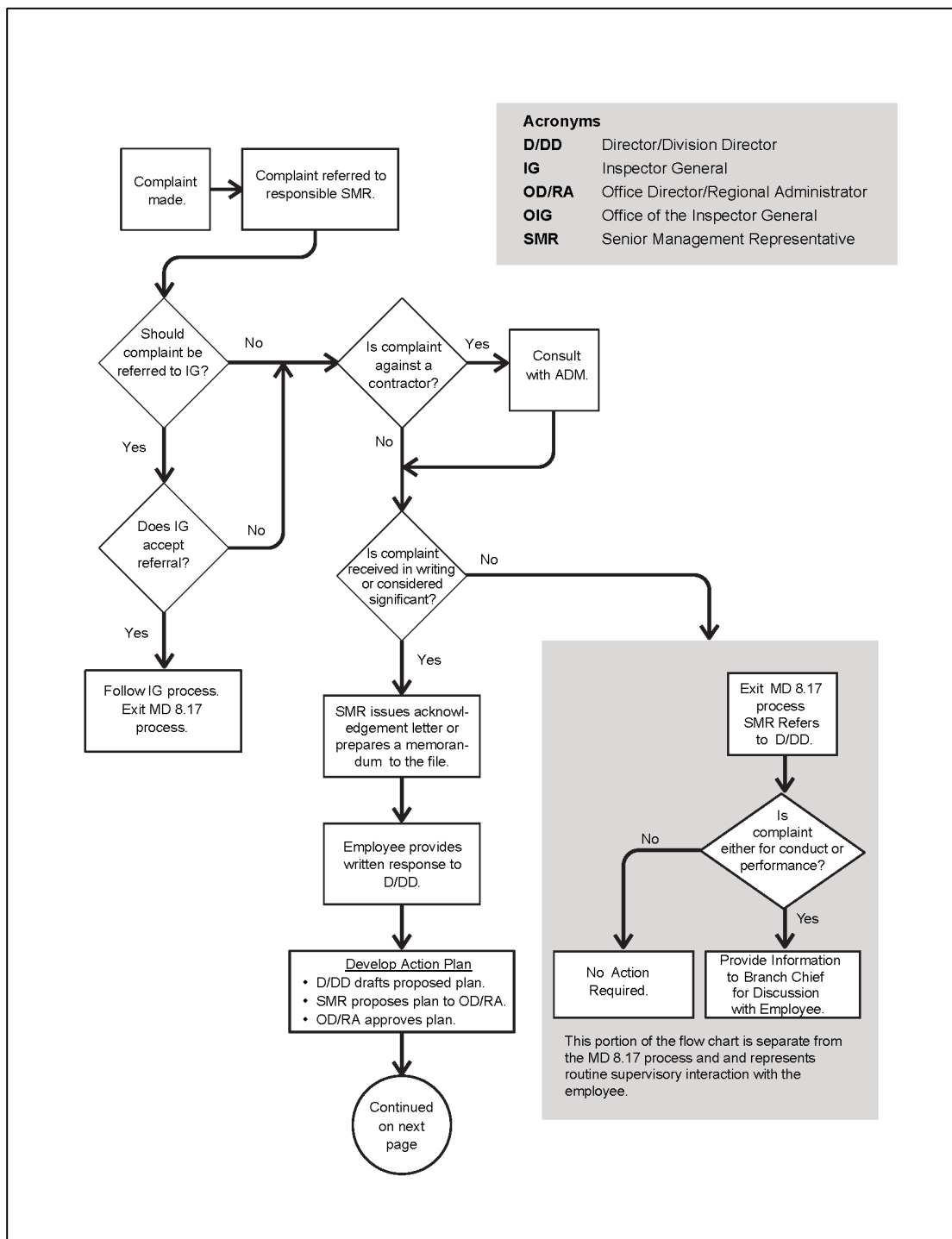


Exhibit 1 Flow Chart of the Licensee Complaint Process (continued)

