U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

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To: NRC Management Directives Custodians

Subject: Transmittal of Management Directive 10.159, "The NRC Differing Professional Opinions Program"

Purpose: Directive and Handbook 10.159 have been revised to reflect (1) program changes recommended in the Office of the Inspector General (OIG) September 2000 audit report (OIG-00-A-07, "Review of the NRC's Differing Professional View/Differing Professional Opinion Program") and (2) program changes as recommended by the Special Review Panel that concluded in June 2002 (see NUREG-1763).

No change bars have been used in MD 10.159 because of the extent of the revision.

Office of Origin: Office of Enforcement

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A-1

The NRC Differing Professional Opinions Program

Directive 10.159

Contents

Policy 1
Objectives 1
Organizational Responsibilities and Delegations of Authority 2
Commission 2
Executive Director for Operations (EDO) 3
Deputy Executive Directors for Operations (DEDOs) 4
Assistant for Operations (AO) 4
Chief Information Officer (CIO) 5
Office Directors and Regional Administrators (ODs and RAs) 5
Differing Professional Opinions Program Manager (DPOPM) 7
Definitions 11
Applicability 11
Handbook 12
References 12

The NRC Differing Professional Opinions Program Directive 10.159

Policy
(10.159-01)

It is the policy of the U.S. Nuclear Regulatory Commission to maintain a working environment that encourages employees to make known their best professional judgments even though they may differ from the prevailing staff view, disagree with a management decision or policy position, or take issue with a proposed or established agency practice involving technical, legal, or policy issues.

Objectives
(10.159-02)

- To foster informal discussions with peers and supervisors on issues involving professional judgments that may differ from a currently held view or practice. (021)

- To establish a formal process for expressing differing professional opinions (DPOs) concerning issues directly related to the mission of NRC.* (022)

- To ensure the full consideration and prompt disposition of DPOs by affording an independent, impartial review by knowledgeable personnel. (023)

*Note: The specific process for an employee to use in filing a DPO is described in the handbook of this management directive.

Objectives

(10.159-02) (continued)

- To ensure that all employees have the opportunity to (a) express DPOs in good faith, (b) have their views heard and considered by NRC management, and (c) be kept fully informed of the status of milestones throughout the process. (024)

- To protect employees from retaliation in any form for expressing a differing opinion. (025)

- To recognize submitters of DPOs when their DPOs have resulted in significant contributions to the mission of the agency. (026)

- To provide for agencywide oversight and monitoring, to ensure that implementation of these procedures accomplishes the stated objectives, and to recommend appropriate changes when required. (027)

Organizational Responsibilities and Delegations of Authority

(10.159-03)

Commission

(031)

- Determines the disposition of DPO appeals that are submitted by employees in offices reporting directly to the Chairman or the Commission and informs the DPO submitter of the final decision and the rationale for the decision. (a)

- Takes action, as appropriate, on DPO submittals that appear to be of immediate public health or safety significance or that may be directly relevant to a decision pending before the Commission. (b)

- Reviews and approves, as appropriate, an extension request for the disposition of a DPO beyond the 120-day time frame, for complex cases. (c)

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Commission

(031) (continued)

- Provides a brief description of the DPO issue(s) and its (their) disposition for the Weekly Information Report to the Office of the Executive Director for Operations (OEDO). (d)

- Sends all completed DPO appeal case files to the Differing Professional Opinions Program Manager (DPOPM) in accordance with Handbook 10.159, Section (E)(3). (e)

Executive Director for Operations (EDO)

(032)

- Determines the disposition of DPO appeals that are submitted by employees in offices reporting directly to the EDO and informs the DPO submitter of the final decision and the rationale for the decision. (a)

- Takes action, as appropriate, on DPO submittals that appear to be of immediate public health or safety significance or that may be directly relevant to a decision pending before the Commission. (b)

- Reviews and approves, as appropriate, an extension request for the disposition of a DPO beyond the 120-day time frame, for complex cases. (c)

- Reviews descriptions of DPO issues and their disposition from the offices, the regions, and the Commission and includes them in the Weekly Information Report (NRC weekly memorandum from the OEDO to the Commissioners). (d)

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Executive Director for Operations (EDO)

(032) (continued)

- Reviews the DPOPM's reports and makes recommendations to the Commission, as necessary. (e)
- Publishes periodic announcements affirming that diversity of viewpoints is a strength and a potential source of valuable ideas. (f)
- Sends all completed DPO appeal case files to the DPOPM in accordance with Handbook 10.159, Section (E)(3). (g)

Deputy Executive Directors for Operations (DEDOs)

(033)

- Provide oversight of the DPOPM's tracking of DPOs, including their disposition and followup actions. (a)
- Review the DPOPM's status updates to ensure that regional administrators (RAs) and office directors (ODs) provide effective oversight and required documentation of missed milestones. (b)

Assistant for Operations (AO)

(034)

Serves as the OEDO's primary interface with the DPOPM.

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Chief Information Officer (CIO)

(035)

- Establishes records disposition schedules for DPOs in accordance with regulations of the National Archives and Records Administration. (a)

- Maintains all completed DPOs (and appeals, when appropriate) in the Agencywide Documents Access and Management System (ADAMS) according to the authorized disposition schedule contained in NUREG-0910, "NRC Comprehensive Records Disposition Schedule." (b)

- Ensures that DPO information is consistent in any publications that address the DPO process. (c)

- In collaboration with the DPOPM, ensures that appropriate parts of DPOs and their disposition are disseminated or made available to the public in accordance with the provisions of the Freedom of Information Act (FOIA) if the DPO submitter requests that the DPO file be made publicly available. (d)

Office Directors and Regional Administrators (ODs and RAs)

(036)

- Take action, as appropriate, on DPO submittals that appear to be of immediate public health or safety significance or that may be directly relevant to a decision pending before the Commission. (a)

- Appoint an ad hoc review panel when a DPO is assigned to their office or region, ensuring that an employee designated by the Office of Enforcement is included as a fourth member of a

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Office Directors and Regional Administrators (ODs and RAs)

(036) (continued)

review panel when the subject of the DPO involves an enforcement issue. (See Handbook 10.159, Section (D)(4), "DPO Ad Hoc Review Panel," for more information about the panel.) (b)

- Utilize technical assistance from other NRC offices and regions or from outside the agency, as necessary, to address a highly specialized issue. (c)

- Provide the DPOPM with status updates of DPOs in accordance with established schedules, ensure that milestones are met, and take corrective action for missed milestones. (d)

- Review the ad hoc review panel's recommendations and provide the submitter (or the manager who has agreed to act as a surrogate for the submitter) with a decision and rationale for the decision. (e)

- Provide a brief description of the DPO issue(s) and its (their) disposition to the EDO for the Weekly Information Report. (f)

- Inform the DPOPM of any delays in followup actions on DPOs after the final decision memorandum has been given to the submitter, the reason for the delay, and a revised schedule for the completion of the action. (g)

- Maintain the documentation necessary to preserve an accurate record during the course of the DPO proceedings in accordance with Handbook 10.159, Section (D)(7), "Records." (h)

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Office Directors and Regional Administrators (ODs and RAs)

(036) (continued)

- When DPO appeals are filed, the OD or RA who dispositioned the DPO will provide a statement of views on the contested issue(s) to the EDO or the Commission, as appropriate, along with the original case file, when it is sent to the DPOPM. (i)

- Review applicable portions of DPO files for information exempt under FOIA regulations and identify such information, if any, to the FOIA/Privacy Act Team, OCIO, if the DPO file is to be made publicly available. (j)

- Take action to positively recognize DPO submitters, when appropriate. (k)

- Forward the complete file to the DPOPM after the issuance of the final decision memorandum to the submitter. (l)

Differing Professional Opinions Program Manager (DPOPM)

(037)

Implementation of the DPO Process

- Receives all DPO filings from submitters and conducts an acceptance screening to ensure that only issues suitable for treatment as DPOs in accordance with Handbook 10.159, Section (D)(3), "Screening," are included and that the issues have previously been the subject of informal discussions as affirmed in NRC Form 680, "Differing Professional Opinion" (available on InForms). (a)

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Differing Professional Opinions Program Manager (DPOPM)

(037) (continued)

- With the assistance of agency subject matter experts, as necessary, decides the assignment of the DPO to the appropriate OD or RA for decision and provides notification, complete with rationale, for the assignment. (b)

- Ensures timely dispatch of DPOs to the appropriate OD or RA for action. (c)

- Advises the appropriate level(s) of management to take action and informs the Commission and EDO, as appropriate, regarding submittals that appear to be of immediate public health and safety significance or that may be directly relevant to a decision pending before the Commission. (d)

Administration

- Provides advice and programmatic support to the Commission, the EDO, ODs, and RAs in carrying out their responsibilities for DPO processing. (a)

- Maintains the DPO agencywide tracking system. Provides monthly status reports to the AO for distribution to the cognizant DEDO. (b)

- Maintains program records. (c)

- Transmits all completed DPO case files for review and disposition in accordance with Handbook 10.159, Section (D)(5), "Decision." (d)

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Differing Professional Opinions Program Manager (DPOPM)

(037) (continued)

- Submits the official record copy of the completed DPO (both public and non-publicly available portions) to the Document Processing Center, OCIO, for inclusion in ADAMS when the submitter requests (in writing) that the DPO be made publicly available in accordance with Handbook 10.159, Section (D)(7)(b). (e)

- Updates MD 10.159, as necessary. (f)

- Reviews DPO appeals based on the information provided by the submitter on NRC Form 690, "Differing Professional Opinion -- Appeal" (available on InForms). Ensures that the deciding OD or RA has provided a statement of views on the contested issue(s). Transmits the appeal and the OD or RA statement to the EDO or the Commission, as appropriate. (g)

Communication

- Oversees, coordinates, and promotes understanding of the DPO Program. (a)

- Serves as liaison between the staff and management. (b)

- May serve as an employee's surrogate submitter, at the request of the employee, if the employee wishes to submit a DPO but desires confidentiality. (c)

- At the submitter's request, may consult with the submitter, if appropriate, to provide guidance on nominating individuals who are willing to serve as a third panel member. (d)

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Differing Professional Opinions Program Manager (DPOPM)

(037) (continued)

- Serves as the agency champion to make the staff aware of the availability and intent of the DPO Program. (e)

- Serves as the agency expert and spokesperson for the DPO Program. (f)

- Directs employees who allege that retaliatory actions have been taken because of their submittal or their support of a DPO to contact the Office of Human Resources on appropriate avenues through which they can seek redress. (g)

- Establishes agency program training requirements (e.g., the need for stand-alone seminars, adding units on the DPO process to established seminars, establishing Web-based training). (h)

Assessment

- Conducts an in-depth annual program review, including audits of office and regional performance records, and prepares an annual report on the results of the program review (including recommendations for awards made by ODs and RAs) and submits it to the EDO for consideration. The report or its executive summary will be made available to all employees. (a)

- Periodically reviews and, if deemed appropriate, recommends modifications to the DPO process. (b)

- Establishes and maintains DPO Program performance measures. (c)

Organizational Responsibilities and Delegations of Authority

(10.159-03) (continued)

Differing Professional Opinions Program Manager (DPOPM)

(037) (continued)

- Monitors the DPO process for consistency. (d)
- Periodically assesses the DPO process, including its effectiveness, how well it is understood by employees, and the organizational climate for having such views aired and properly decided, and reports the results to the EDO and the Commission. (e)

Definitions

(10.159-04)

Confidential submittal. A differing professional opinion that is submitted by an employee through an NRC manager who knows that the submitter is an agency employee or through the DPOPM.

Differing professional opinion. A conscientious expression of a professional judgment that differs from the prevailing staff view, disagrees with a management decision or policy position, or takes issue with a proposed or an established agency practice involving technical, legal, or policy issues.

Retaliation. 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 professional opinion.

Applicability

(10.159-05)

The policy and guidance in this directive and handbook apply to all NRC employees, including supervisors and managers.

Handbook
(10.159-06)

Handbook 10.159 provides procedures for the expression, monitoring, and disposition of DPOs and appeals.

References
(10.159-07)

NRC Management Directives—

10.72, "Incentive Awards."

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

10.101, "Employee Grievances and Appeals of Adverse Actions."

NUREG-0910, "NRC Comprehensive Records Disposition Schedule."

United States Code—

Federal Advisory Committee Act (Pub. L. 92-463, 5 U.S.C. App. I).

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

"Prohibited Personnel Practices," Merit System Principles (5 U.S.C. 2302(a)(2)(A)).

The NRC Differing Professional Opinions Program

Handbook 10.159

Contents

Procedures for the Expression, Monitoring, and Disposition of Differing Professional Opinions 1
Introduction (A) 1
Preconditions for the Submission of a Differing Professional Opinion (B) . . . 1
Issues That Do Not Qualify as Differing Professional Opinions (C) 2
Implementation of the Differing Professional Opinions Program (D) 3
Submittal (1) 3
Confidentiality (2) 4
Screening (3) 4
DPO Ad Hoc Review Panel (4) 6
Decision (5) 8
Followup Actions (6) 9
Records (7) 10
Process for Filing a Differing Professional Opinion Appeal (E) 11
Submittal (1) 11
Review and Decision (2) 11
Records (3) 12
Resources To Assist Originators of Differing Professional Opinions (F) 13
Withdrawing a Differing Professional Opinion or an Appeal (G) 14
Prevention of Retaliation (H) 14

Exhibits
1 Guidelines for Processing Differing Professional Opinions 16
2 Flowchart of the Differing Professional Opinions and Appeals Process . . 20

Procedures for the Expression, Monitoring, and Disposition of Differing Professional Opinions

Introduction (A)

In the free and open discussion of agency issues, professional differences of opinion are common. Employees normally try, and are encouraged, to resolve their concerns through discussions with their co-workers and supervisors. In addition, individual employees are permitted to document their concerns and attach them to proposed staff positions or other documents to be forwarded with the position as it moves through the management approval chain. These informal day-to-day discussions and/or concerns attached to documents moving through the management approval chain are not part of the DPO process. (1)

Therefore, a difference of opinion, developed in the free and open discussion of technical, legal, or policy issues, only becomes a differing professional opinion (DPO) when the employee submits a formal concern in accordance with the guidance in Section (B) below and the procedures presented in this handbook. Exhibit 1, "Guidelines for Processing Differing Professional Opinions," and Exhibit 2, "Flowchart of the Differing Professional Opinions and Appeals Process," are provided to assist the submitter with the DPO process. (2)

Preconditions for the Submission of a Differing Professional Opinion (B)

In some cases, informal discussions fail to completely cover the matter in question. When the employee believes that the agency and the public would be better served if another opinion prevailed, and all attempts to resolve the technical, legal, or policy issues informally have failed, he or she may submit a formal DPO. The potential DPO submitter and his or her management should

Preconditions for the Submission of a Differing Professional Opinion (B) (continued)

engage in discussions of the issue as soon as it arises. These timely, informal discussions should provide valuable enrichment to the decisionmaking process. There are no time limits for completion of these discussions, no tracking requirements, and no requirements to keep written records; however, it is a precondition to filing a DPO that a reasonable effort is made to engage in these discussions. In the formal DPO submittal, the employee must state that either reasonable efforts through discussions with his or her immediate supervisory managers have been made to address the matter or that there are justifiable reasons why he or she cannot approach the immediate supervisory chain of command and, therefore, believes that the issue or issues must be raised to a higher level. Absent this precondition, the submittal will not be accepted into the DPO process and will be returned to the submitter without action.

Issues That Do Not Qualify as Differing Professional Opinions (C)

Issues that do not qualify as DPOs and that will not be reviewed according to the procedures presented in this directive and handbook include issues that are or could have been appropriately addressed under grievance procedures, or personnel appeal procedures, or those that are governed by law or Government-wide regulation; issues that are subject to collective bargaining; issues involving allegations of wrongdoing that are appropriately addressed by the Office of the Inspector General; issues submitted anonymously that, if safety significant, are appropriately addressed under NRC's Allegation Program; issues that are deemed to be frivolous or otherwise not in accordance with the policy underlying these procedures; and issues raised by an employee that already have been considered, addressed, or rejected pursuant to MD 10.159, unless significant new information has become available.

Implementation of the Differing Professional Opinions Program (D)

To file a DPO, an employee must submit a written statement to the agency Differing Professional Opinions Program Manager (DPOPM) using the procedures stated in this handbook. Anonymous submittals will not be accepted under the provisions of this handbook (see Section (D)(2)(b) below).

Submittal (1)

The DPO process is initiated when an employee submits a written statement to the agency DPOPM. NRC Form 680, "Differing Professional Opinion," is available on InForms for this purpose. The written statement must include the following:

- A summary of the prevailing staff view, the existing management decision or stated position, or the proposed or established agency practice involving technical, legal, or policy issues. (a)

- A description of the submitter's views and how they differ from any issues discussed in item (a) above. (b)

- An assessment of the consequences if the submitter's position is not adopted by the agency. (c)

- The names of three potential ad hoc panel members, listed in priority order, or a statement that he or she will not provide names of potential ad hoc panel members. (The submitter may consult with the exclusive bargaining unit representative, or the DPOPM, if appropriate, to nominate knowledgeable individuals who are willing to serve as a third panel member.) (d)

- Copies of relevant documents referenced in the DPO (e.g., safety evaluation reports, NUREGs) that are available in the Agencywide Documents Access and Management System (ADAMS) should not be attached to the DPO. The submitter should include only titles and accession numbers for such

Implementation of the Differing Professional Opinions Program (D) (continued)

Submittal (1) (continued)

relevant documents, along with a brief statement regarding the relevance of the document to the issue being raised. (e)

Confidentiality (2)

If an employee wishes to submit a DPO but desires confidentiality, the employee may submit an unsigned DPO to an NRC manager or, if the employee prefers, to the DPOPM, who agrees to act as a surrogate submitter. Justifiable reasons why the employee cannot approach his or her immediate chain of command must be included on NRC Form 680, "Differing Professional Opinion." Disposition of the DPO will then be completed in accordance with the procedures stated in this handbook. To protect the employee's confidentiality in such cases, it may not be possible to provide acknowledgment of receipt of the statement or disposition directly to the submitter. In these cases, the manager who forwarded the DPO will provide the DPOPM the information needed for the acceptance review and will relay to the originator both the acknowledgment of receipt and all reports received by that manager concerning disposition or resolution of the DPO issues. Public notices and summaries of the DPO's content will be redacted to protect the employee's confidentiality. (a)

Anonymously submitted DPOs are not covered by the provisions of this directive and handbook and may be referred to the Office of Investigations, the Office of the Inspector General, or the Agency Allegation Advisor, as appropriate. (b)

Screening (3)

The initial screening of the issue for acceptance as a DPO will be coordinated by the DPOPM. The DPO statement will be immediately reviewed to determine if the precondition for acceptance as a DPO has been met, as stated in Section (B). If

Implementation of the Differing Professional Opinions Program (D) (continued)

Screening (3) (continued)

accepted, the DPOPM may seek the assistance of a subject matter expert or experts to help determine the appropriate program office director or regional administrator to assign the DPO for action. Certain types of issues are excluded from the DPO process and will automatically be rejected. These include those issues that do not qualify as a DPO as previously stated in Section (C). In addition, there may be instances when a DPO is submitted prematurely in that the issues in the submitter's DPO are the same issues that are undergoing staff review or inspection activity. In these instances, the DPOPM may refer the DPO back to the submitter and will communicate the submitter's issues to the senior manager overseeing the staff's review or the inspection activity to ensure that the submitter's issues will be taken into consideration. (a)

The review should be completed by the DPOPM within 8 calendar days of receipt of the DPO. If the issue is rejected, the submittal will be returned to the submitter (with a copy to the submitter's OD or RA) with a cover memorandum specifying the reasons for that rejection. (b)

If the precondition has been met, the DPOPM will assign a DPO control number, open a file, notify the Executive Director for Operations (EDO) or the Commission, as appropriate, and the Office of the Secretary of the Commission (SECY) (by e-mail) of the DPO. The DPOPM will acknowledge the acceptance of the DPO for action and, with the assistance of subject matter experts as necessary, within 5 calendar days of acceptance will assign it to the appropriate OD or RA to handle the issue. Generally within 8 calendar days of receipt from the DPOPM, the cognizant OD or RA will select the members of an ad hoc panel. (c)

Implementation of the Differing Professional Opinions Program (D) (continued)

DPO Ad Hoc Review Panel (4)

Responsibility for ensuring review of the DPO and making and communicating a decision on the issue rests with the OD or the RA of the office or the region to which the DPO is assigned. The OD or the RA will appoint an ad hoc panel of experts, generally within 8 days of receipt of the file from the DPOPM. This panel will conduct a thorough review of the issue(s). No one in a position of authority over the submitter should be appointed to the DPO ad hoc review panel. Under no circumstances should the panel chair be the immediate supervisor or the second-line supervisor of the submitter or, to the extent possible, be in the submitter's chain of command. In addition, to the extent possible, DPO panels should not involve individuals who have directly participated in the formulation of the agency position that is at issue. If assistance by a person from outside the agency is desired to serve as a member of the DPO ad hoc review panel or as a consultant to the panel, the requirements of the Federal Advisory Committee Act must be considered. (a)

The memorandum from the DPOPM transmitting the DPO will include the file descriptor and the control number. This control number will be used to track the DPO throughout the process and any appeal that may arise. The OD or the RA will send a standard tasking memorandum to each member of the selected panel and will send a copy of the tasking memorandum to the DPOPM. (b)

The panel should include the following individuals: (c)

- A management-appointed chairperson and one member who is technically knowledgeable in the subject area being reviewed. (i)

- A third panel member chosen by the ad hoc panel chairperson from the list of three potential panel members submitted by the employee filing the DPO. (ii)

Implementation of the Differing Professional Opinions Program (D) (continued)

DPO Ad Hoc Review Panel (4) (continued)

- A fourth panel member chosen by the Director of the Office of Enforcement (OE) when the subject of the DPO involves an enforcement issue. (iii)

- When deemed appropriate by the OD or the RA, a member of the Atomic Safety and Licensing Board Panel may be appointed as a fourth or fifth member of the ad hoc panel. (iv)

The panel will accomplish the following tasks: (d)

- Review the DPO to determine if enough information has been supplied to undertake a detailed review of the issue. (i)

- Schedule and conduct a meeting with the submitter, generally within 8 calendar days of the issuance of the memorandum that establishes the ad hoc panel, to discuss the scope of the issue. The scope should remain fully focused on the issue(s) as stated and will not exceed the issue(s) as defined in the original written DPO. (ii)

- Establish a schedule of milestones for the disposition of the DPO. (iii)

- Request technical assistance through the submitter's OD or RA, if necessary. (iv)

- Conduct a detailed review of the issue(s) being brought forward and/or conduct any records reviews or interviews or hold any discussions it deems necessary to provide a complete, objective, independent, and impartial review. (v)

- Make recommendations to the OD or the RA regarding the disposition of the issues presented in the DPO. (vi)

Implementation of the Differing Professional Opinions Program (D) (continued)

DPO Ad Hoc Review Panel (4) (continued)

To the extent possible, the DPO panel is expected to conduct an independent review. The review should include periodic discussions with the submitter (or his or her representative) to provide the submitter the opportunity to further clarify his or her views and to facilitate the exchange of information. (e)

Once the panel has received the necessary information to begin a review, the panel normally should take no more than 30 calendar days after the initial meeting with the submitter to make a recommendation to the OD or the RA. This amount of time may not be appropriate for complex cases and may be extended in accordance with Exhibit 1 of the handbook. The DPOPM will advise the submitter if the time frame is extended. (f)

The OD or the RA should review the panel's recommendations. He or she may return the report to the panel with specific comments (e.g., revise for clarification or further information) when necessary. Revised panel reports will be provided to the OD or the RA generally within 7 calendar days. The DPOPM will advise the submitter if an extension is warranted. (g)

Decision (5)

The management decision (including a rationale for the decision) will normally be provided to the employee or the manager who submitted the DPO within 10 calendar days after receipt of the panel's final recommendations. Copies of the decision memorandum will be sent to the submitter's management (if different from the OD or the RA for the DPO), the DPOPM, and any individuals or organizations tasked with followup actions or implementation. A brief description of the issue(s) raised in the DPO and its (their) disposition should be included in the Weekly Information Report to advise interested employees of the outcome. (a)

Implementation of the Differing Professional Opinions Program (D) (continued)

Decision (5) (continued)

Ideally, the review and disposition of a DPO should be completed within 60 days. However, the complexity of the issue or extenuating circumstances may necessitate a longer period of review. The submitter or, in the event of a confidential submittal, the manager who forwarded the DPO must be kept advised of the progress of the review and the attainment of milestones. All routine DPO cases are expected to be completed within 60 days of acceptance of the issue as a DPO, and all complex cases within 120 days. The 120-day time frame may only be extended with the approval of the EDO or the Commission for employees reporting to the Chairman or the Commission, through the DPOPM. (b)

Followup Actions (6)

The DPOPM tracks followup actions and final implementation of decisions resulting from the DPO process and is responsible for keeping all parties informed about such actions. If followup items or additional information needs are recommended by the panel and agreed to by the OD or the RA, completion dates for those actions should be established and communicated to the submitter or, in the event of a confidential submittal, to the manager who forwarded the DPO or to the DPOPM. In establishing completion dates, consideration should be given to the safety significance of the issue, the age of the issue, and the priority of other work in the office. If the schedule for the followup items is not met, the reason for the delay and a revised schedule for completion of the action(s) will be communicated to the submitter or, in the event of a confidential submittal, to the manager who forwarded the DPO, and reported to the Chairman for employees in offices reporting directly to the Commission, or to the applicable Deputy Executive Director for Operations (DEDO) for employees in offices reporting directly to the EDO.

Implementation of the Differing Professional Opinions Program (D) (continued)

Records (7)

DPO records should be maintained and made available within the region or office in which the case is being reviewed until the DPO has been closed out (i.e., issuance of the management decision), at which time the complete case file will be forwarded to the DPOPM for disposition. A copy of the panel report and the decision memorandum should be sent to the Director of OE anytime a DPO ad hoc review panel includes a member chosen by OE. (a)

If the submitter has requested that his or her identity not be released, his or her identify will be protected. If the submitter indicates (in writing) a desire to have his or her DPO made available to the public, with or without release of his or her identity, the appropriate OD or RA should send the completed DPO case file to the DPOPM, who will review the file for completion and forward it along with a list of all documents contained in the file to the Freedom of Information Act and Privacy Act (FOIA/PA) Officer, Office of the Chief Information Officer (OCIO). The FOIA/PA Officer will coordinate review of the records in the DPO case file with the originating offices or regions for a releasability determination. When the review has been completed, the FOIA/PA Officer will return the DPO case file to the DPOPM, who will send the releasable portions of the DPO case file to the Document Processing Center (DPC), OCIO, to be declared an Official Agency Record (OAR) and to be placed, as a package, in ADAMS, utilizing the control number that was originally assigned by the DPO PM. The DPOPM will submit the non-releasable portion of the case file to the DPC as a package (in ADAMS) reflecting the assigned control number and restricted viewer rights. The package and document securities will allow viewer rights to only the DPOPM and the EDO, or the Commission, as appropriate. (b)

Process for Filing a Differing Professional Opinion Appeal (E)

Submittal (1)

A DPO submitter who does not consider the DPO to be adequately addressed at the OD or RA level may file a written appeal. The appeal is to be provided to the DPOPM but addressed to the EDO for employees in offices reporting to the EDO or addressed to the Commission for employees reporting to the Chairman or the Commission. In either case, the appeal must be filed within 21 calendar days of receipt of the OD or RA decision. DPO appeals must be submitted in writing in the standard format (NRC Form 690, "Differing Professional Opinion -- Appeal," available on InForms) and must explain the reasons for the appeal. (a)

The appeal should focus on the perceived procedural or technical weaknesses in the OD or RA decision. The DPOPM will review the DPO appeal on the basis of the information provided by the submitter on NRC Form 690. The OD or RA will provide a written statement of views on the contested issue to the EDO or the Commission via the DPOPM. (b)

Review and Decision (2)

The EDO or the Commission, as appropriate, will review the DPO appeal and will provide the individual with a decision and the rationale for that decision normally within 30 calendar days of receipt of the DPO appeal. No additional panel need be formed at this stage. The EDO or the Commission has complete discretion to conduct the appeal in any manner deemed appropriate. The EDO or the Commission may utilize other knowledgeable resources, as needed, to assist in the consideration of the DPO appeal. Extenuating circumstances may cause the EDO or the Commission to delay making a final decision. In such cases, the individual will be so advised. However, the time period for providing a final decision should not exceed 60 calendar days. (a)

Process for Filing a Differing Professional Opinion Appeal (E) (continued)

Review and Decision (2) (continued)

After a decision on the DPO appeal has been made by the EDO or the Commission and communicated to the individual, the DPO process will be concluded and the matter will be considered closed. (b)

Records (3)

The EDO or the Commission will send all completed DPO appeal case files to the DPOPM. At a minimum, the case file will include the DPO filed by the submitter, the DPO ad hoc panel report, and the DPO decision memorandum issued by the OD or the RA. Any other documents, such as other correspondence related to the DPO between the submitter and the EDO or the Commission deemed by the EDO or the Commission to be essential to an understanding of the case, also may be forwarded as a part of the case file. The DPO appeal filed by the submitter and the appeal decision issued by the EDO or the Chairman should also be included. (a)

The memorandum transmitting the file prepared by the EDO or the Commission to the DPOPM should include a list of all documents contained in the file. If the submitter requests that the file be made publicly available, the transmittal memorandum should also include the submitter's statement indicating which documents, or portions of documents, may be released to the public, subject to a FOIA review. (b)

If the submitter requests that his or her identity not be released, his or her identify will be protected. If the submitter indicates (in writing) a desire to have his or her DPO appeal made available to the public, with or without release of his or her identity, the DPOPM will review the file for completion and forward it along with a list of all documents contained in the file to the FOIA/PA Officer, OCIO. The FOIA/PA Officer will coordinate review of the records

Process for Filing a Differing Professional Opinion Appeal (E) (continued)

Records (3) (continued)

in the DPO appeal case file with the originating offices or regions for a releasability determination. When the review has been completed, the FOIA/PA Officer will return the DPO appeal case file to the DPOPM, who will send the releasable portions of the DPO appeal case file to the DPC, OCIO, to be declared an OAR and to be placed, as a package, in ADAMS, utilizing the control number that was originally assigned by the DPOPM. The DPOPM will submit the non-releasable portion of the case file to the DPC as a package (in ADAMS) reflecting the assigned control number and restricted viewer rights. The package and document securities will allow viewer rights to only the DPOPM and the EDO, or the Commission, as appropriate. (c)

The DPOPM will transmit a copy of the releasable portions of the file to the DPC, OCIO, where the documents will be prepared as a package, declared an Official Agency Record (OAR), and entered into ADAMS in accordance with the appropriate ADAMS template. The approved date for the transfer of the case file or the releasable portion of the case file to the public domain will be indicated on the ADAMS template, and the file or appropriate portions of the file will be transferred and made publicly available on that date. The sanitized copy will be maintained consistent with the retention schedule for the official record. The DPOPM will also transmit the original completed, closed-out DPO file to the NRC DPC, OCIO, for retention. The National Archives and Records Administration current retention schedule requires that DPO case files be retained in ADAMS for a period of 30 years. (d)

Resources To Assist Originators of Differing Professional Opinions (F)

In response to the employee's request for assistance in preparing DPO statements, the submitter's immediate supervisor, in

Resources To Assist Originators of Differing Professional Opinions (F) (continued)

consultation with other management officials, will determine the amount of the employee's work time and administrative support to be provided to the DPO submitter. (1)

If called to testify before a licensing board or a presiding officer, the employee may receive, upon request, assistance from the Office of the General Counsel (OGC) to prepare testimony or other documents to be filed with the board. Such assistance will be solely for the purpose of facilitating the filing of the necessary documents and will not constitute legal representation of the employee by the OGC staff. (2)

Withdrawing a Differing Professional Opinion or an Appeal (G)

A DPO (or a DPO appeal) may be withdrawn at any time before the issuance of a decision. To initiate a withdrawal, the submitter should file a written request to the DPOPM, who will forward copies to the OD or the RA, and the EDO or the Commission, as appropriate. The DPOPM will send an acknowledgment letter to the submitter indicating the date on which the withdrawal took effect. Withdrawal does not preclude the OD or the RA, or the EDO or the Commission, from pursuing the issue raised, but the continued pursuit of the issue will no longer be subject to DPO process rules and/or time frame requirements.

Prevention of Retaliation (H)

The DPO Program may be used without fear of retaliation, pressure, penalty, or unauthorized divulgence of its use in cases in which the submitter has requested confidentiality. Discouragement of or penalties for the use of the DPO process will not be tolerated. (1)

Prevention of Retaliation (H) (continued)

No negative reference (direct or indirect) to an employee's use of the DPO Program will be included in any part of the employee's performance evaluation, and any violation of this protection is grounds for an employee grievance. (2)

Managers and supervisors are strongly cautioned against giving the appearance of taking retaliatory actions against employees who submit DPOs. Any NRC employee who retaliates against another employee for submitting or supporting a DPO is subject to disciplinary action in accordance with Management Directive (MD) 10.99, "Discipline, Adverse Actions, and Separations." This restriction applies to retaliatory actions as defined in MD 10.99 and to all prohibited personnel practices specified in the Civil Service Reform Act of 1978, as amended. (3)

Employees who allege that retaliatory actions have been taken because of their submittal or support of a DPO may seek redress through the negotiated grievance procedure or through the grievance procedure described in MD 10.101, "Employee Grievances and Appeals of Adverse Actions," or through other avenues available to Federal Government employees, as appropriate. (4)

Exhibit 1
Guidelines for Processing Differing Professional Opinions

The potential submitter of a differing professional opinion (DPO) and his or her management should engage in discussions as soon as the potential DPO issues have developed. There are no time limits for the completion of these informal discussions, no tracking requirements, and no requirement to keep written records; however it is a precondition to filing a DPO that a reasonable effort is made to engage in these discussions. At the conclusion of these discussions, if the employee still believes that the agency and the public would be better served if another opinion prevailed, he or she may submit a formal DPO by following the procedures stated below. (See Handbook 10.159, Section (B).)

The DPO Submission. The submitter must file a written DPO statement with the Differing Professional Opinions Project Manager (DPOPM) in accordance with the requirements of Management Directive (MD) 10.159 (see NRC Form 680). The written statement must provide evidence that the precondition presented in Handbook 10.159 has been met. The submitter must also provide the names of three potential panel members in order for the package to be considered complete or a statement that he or she will not provide names of potential ad hoc panel members. (See Handbook 10.159, Section (B).) (1)

> **Withdrawing a DPO**. A DPO may be withdrawn at any time before the issuance of a decision. To initiate a withdrawal, the submitter should file a written request with the DPOPM, who will notify the appropriate office director (OD) or regional administrator (RA). Withdrawal does not preclude the OD or the RA from pursuing the issue raised, but the continued pursuit of the issue will no longer be subject to DPO process rules and/or time frame requirements. (See Handbook 10.159, Section (G).)

Screening of the DPO by the DPOPM. The DPOPM will review the written submittal for compliance with the criteria stated above under "The DPO Submission." Filings submitted as DPOs that do not meet these criteria will be returned to the submitter without action. Typically, within 8 calendar days of receipt the DPOPM will issue a

Exhibit 1 (continued)

memorandum to the filer (with a copy to the appropriate OD or RA) indicating that the DPO has either been rejected or accepted for action. The decision to reject a DPO by the DPOPM is final. The justification for the action taken will be stated in the memorandum. The DPOPM may call upon agency subject matter experts, as appropriate, for assistance in the screening process to ensure that the issues are clearly delineated. *(For tracking purposes, the DPO "process clock" starts on the day this memorandum is issued.)* (See Handbook 10.159, Section (D)(3).) (2)

Appointment of the DPO Ad Hoc Panel by the OD or the RA. Generally within 8 calendar days after receipt of the DPO from the DPOPM, the cognizant OD or RA will select the members of the ad hoc panel, keeping in mind any chain of command concerns relevant to the issue or to the submitter, and will appoint them to the panel by issuing a standard tasking memorandum to each member (with a copy to the DPOPM). DPO panels should not involve individuals who have directly participated in the formulation of the agency position. (See Handbook 10.159, Section (D)(4).) (3)

Clarification of DPO Issues by the Ad Hoc Panel. Generally within 8 calendar days of the issuance of the panel memorandum, the panel chair will schedule and conduct a meeting with the submitter to discuss the scope of the issue(s). Issues that exceed those originally presented will not be considered by the panel. After this meeting, the panel will develop a schedule of milestones for the completion of the review of the DPO. Copies of this schedule will be sent to the filer, the OD or the RA for the DPO, and the DPOPM. Any changes in the schedule should be reported to the DPOPM, who will forward copies of the changes to the filer and to the OD or the RA for the DPO. (See Handbook 10.159, Section (D)(4).) (4)

Ad Hoc Panel Report Issued to the OD or the RA. Ad hoc panels are expected to complete their review and make their recommendation to the OD or the RA within 30 calendar days of the meeting with the filer. (See Handbook 10.159, Section (D)(4).) (5)

Report Is Returned to the Panel With Comments. At his or her option, the OD or the RA may return the report to the panel with specific comments (e.g., revise for clarification or provide further information). Revised panel reports will be provided to the OD or the RA generally within 7 calendar days. This time frame may not be appropriate for more complex cases and may be extended with the approval of the EDO, or Commission, as appropriate, through the DPOPM. (See Handbook 10.159, Section (D)(4).) (6)

Exhibit 1 (continued)

Management Decision Is Issued. The OD or the RA will issue his or her decision to the DPO filer generally within 10 calendar days of the acceptance of the final panel report. Decision memorandums should include appropriate recognition of the submitter's efforts, if deemed appropriate by the OD or the RA. Copies of the decision memorandum will be sent to the filer, the filer's management, the OD or the RA for the DPO, the DPOPM, and any individuals or organizations tasked with followup actions or implementations. If the submitter has requested confidentiality, all documents will be redacted. All routine DPO cases should be completed within 60 days of acceptance of the issue as a DPO, and all complex cases within 120 days. This time frame may only be extended with the approval of the EDO, or the Commission for employees reporting to the Chairman or the Commission, through the DPOPM. (See Handbook 10.159, Section (D)(5).) (7)

Decision Implementation and Reporting. Implementation of a management decision (including followup actions) will be tracked by the DPOPM. (See Handbook 10.159, Sections (D)(5) and (6).) (8)

DPO Appeal Process

DPO Appeal. An appeal may be filed no later than 21 calendar days after issuance of the management decision. The appeal should be addressed to the EDO or the Commission, as appropriate, and submitted to the DPOPM in accordance with the requirements of MD 10.159 (see NRC Form 690). The DPOPM will send a copy of the appeal to the OD or the RA for the DPO. (See Handbook 10.159, Section (E)(1).) (1)

> **Withdrawing an Appeal**. A DPO appeal may be withdrawn at any time before the issuance of the decision. To initiate a withdrawal, the submitter should file a written request with the DPOPM and send a copy of the request to the EDO or the Commission, as appropriate. (See Handbook 10.159, Section (G).)

Appeal Summary Decision. An appeal decision will be issued by the EDO or the Commission, as appropriate, generally within 30 days but no later than 60 calendar days after receipt of the appeal. Copies of the decision will be provided to the OD or the RA for the DPO, the DPOPM, and individuals or organizations tasked with followup or implementation actions. Upon issuance of the decision to the filer, the DPO process will

Exhibit 1 (continued)

be concluded and the matter will be considered closed. (See Handbook 10.159, Section (E)(2).) (2)

Decision Implementation and Reporting. Implementation of an appeal decision will be tracked by the DPOPM. (See Handbook 10.159, Sections (D)(5) and (6).) (3)
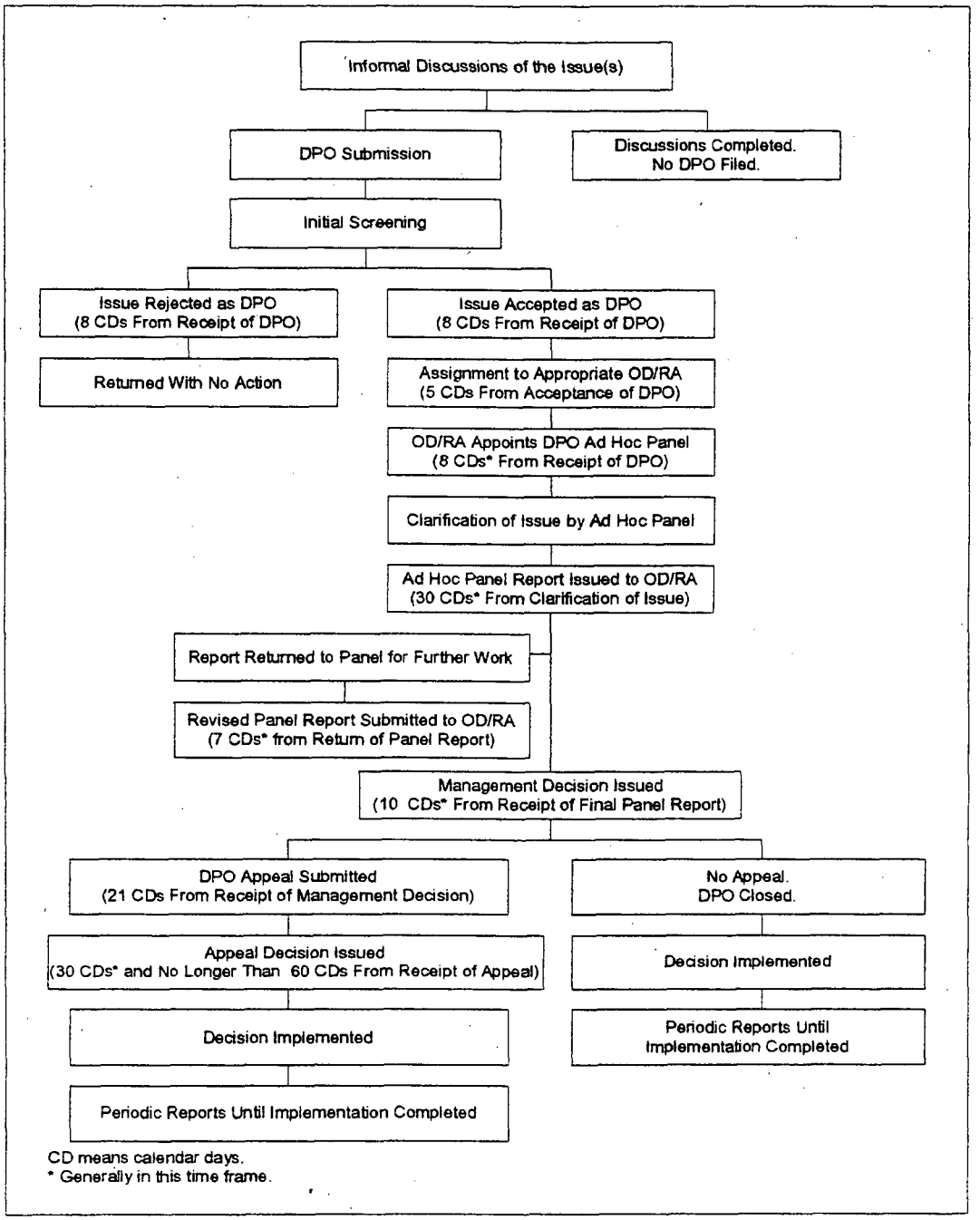
Exhibit 2
Flowchart of the Differing Professional Opinions and Appeals Process