

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

**MD 10.159 NRC DIFFERING PROFESSIONAL
OPINION PROGRAM**

DT-15-16

*Volume 10,
Part 7:* General Personnel Management Provisions

Approved By: Mark A. Satorius
Executive Director for Operations

Date Approved: August 11, 2015

Expiration Date: August 11, 2020

Issuing Office: Office of Enforcement

Contact Name: Renée Pedersen
301-415-2742

EXECUTIVE SUMMARY

Directive and Handbook 10.159 are revised to update the U.S. Nuclear Regulatory Commission's policies and procedures for the Differing Professional Opinion (DPO) Program to be used by an NRC employee or contractor when he or she has a conscientious expression of a judgment or position that differs from an established staff view, agency practice, management decision, or policy position involving technical, legal, or policy issues (including administrative or corporate support issues). NRC employees and contractors are required to adhere to the policy and procedures for engaging in the DPO Program set forth in this management directive (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 revision reflects insights and addresses issues and feedback from previous program reviews (including participant feedback), the Office of Inspector General Safety Culture and Climate Survey, a Business Process Improvement review, a benchmarking study, and the Internal Safety Culture Task Force report. This MD clarifies roles and responsibilities for employees engaging in the DPO Program, provides improved implementation guidance for the DPO and DPO appeal process, and emphasizes that the program applies to established positions that involve technical, legal, or policy issues (including administrative or corporate issues). A summary of the revisions to the MD is on the NRC's internal DPO Web site (at <http://www.internal.nrc.gov/OE/DPO/>). The DPO Web site also includes a variety of resources and aids to assist employees engaging in the DPO Program, including frequently asked questions and flow charts. Also, the names of the program and the MD are retitled from the plural "Differing Professional Opinions" to the singular "Differing Professional Opinion."

TABLE OF CONTENTS

I. POLICY	2
II. OBJECTIVES	3
III. ORGANIZATIONAL RESPONSIBILITIES	4
A. Chairman or Commission	4
B. Executive Director for Operations (EDO)	5
C. General Counsel (GC).....	6
D. Inspector General (IG).....	6
E. Director, Office of Enforcement (OE)	6
F. Chief Human Capital Officer (CHCO)	7
G. Director, Office of Information Services (OIS).....	7
H. Director, Office of Administration (ADM).....	8
I. Office Directors (ODs) and Regional Administrators (RAs)	8
J. Director, Division of Security Operations (DSO), Office of Nuclear Security and Incident Response	10
K. Team Leaders, Supervisors, and Managers	10
L. DPO Program Manager (DPO PM).....	11
M. All Employees and Contractors.....	13
IV. APPLICABILITY	13
V. DIRECTIVE HANDBOOK	14
VI. REFERENCES	14

I. POLICY

- A.** It is the policy of the U.S. Nuclear Regulatory Commission to support a Differing Professional Opinion (DPO) Program that an employee or contractor (as defined in this directive, Section IV, “Applicability”) can use when he or she has a conscientious expression of a judgment or position that differs from an established staff view, disagrees with a management decision or policy position, or takes issue with an established agency practice involving technical, legal, or policy issues (including administrative or corporate support issues).

-
- B.** The NRC strives to establish and maintain an environment that encourages all NRC employees and contractors to raise concerns and differing views promptly, without fear of reprisal, through various mechanisms. The free and open exchange of views or ideas conducted in a non-threatening environment provides the ideal forum where concerns and alternative views can be considered and addressed in an efficient and timely manner that improves decisionmaking and supports the agency's safety and security mission.
- C.** All NRC employees and contractors are expected to discuss their views and concerns with their immediate supervisors on a regular, ongoing basis. These informal discussions should be sufficient to resolve most issues. However, if informal discussions do not resolve concerns, employees have various mechanisms for expressing and having their concerns and differing views heard and considered by management, including the Open Door Policy described in Management Directive (MD) 10.160, "Open Door Policy," and the Non-Concurrence Process (NCP) described in MD 10.158, "NRC Non-Concurrence Process."

II. OBJECTIVES

- Promote early discussion and consideration of differing views or alternative approaches from currently held views or practices.
- Affirm that the DPO Program strengthens the NRC and is a potential source of valuable ideas.
- Provide, as a means to inform a management decision, a formal process for expressing a DPO concerning an issue related to the mission of the NRC and to the strategic goals and objectives that support the mission as addressed in the NRC's Strategic Plan (see NUREG-1614, "Strategic Plan").
- Ensure that all NRC employees and contractors have the opportunity to (a) express a DPO in good faith; (b) have their views heard, considered, and responded to by NRC management; and (c) be kept informed of the status of milestones throughout the process.
- Provide that a DPO is subjected to a thorough and impartial review by an independent review panel of employees who are knowledgeable in the DPO subject area.
- Ensure that the DPO process is executed effectively, efficiently, and timely, consistent with the (1) importance of prompt action on the issue, (2) safety significance of the issue, (3) complexity of the issue, and (4) priority of other work activities affecting the availability of participants.
- Emphasize that reprisal (i.e., harassment, intimidation, retaliation, or discrimination) by management or a peer against an employee for participating in the DPO process is inappropriate and is not tolerated.

-
- Recognize a submitter of a DPO and other program participants when the expression of a differing opinion or participation in the DPO Program results in a valuable contribution to the mission of the agency.

III. ORGANIZATIONAL RESPONSIBILITIES

A. Chairman or Commission

1. Fosters an environment that allows individuals to raise a concern and differing view without fear of reprisal; promotes methods for raising a concern that support the agency's mission.
2. Takes action, as appropriate, on a DPO submittal that appears to be of immediate public health or safety significance or that may be directly relevant to a decision pending before the Commission.
3. Takes all necessary actions to disposition a DPO appeal that is submitted by an employee in an office reporting directly to the Chairman or the Commission, including:
 - (a) Informing the DPO submitter of the final decision and the rationale for the decision.
 - (b) Providing the DPO Program Manager (DPO PM) with a copy of a DPO Appeal Decision.
 - (c) Maintaining the documentation necessary to preserve an accurate record during the course of the DPO appeal process in accordance with Section V, "Keeping Records of DPOs," of the handbook to this directive.
 - (d) Providing a brief description of the disposition of DPO appeals to the Office of the Executive Director for Operations (OEDO) for the Weekly Information Report (available on the OEDO internal Web site at <http://www.internal.nrc.gov/oedo/>).
 - (e) Performing a releasability review of DPO appeal records consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting Sensitive Unclassified Non-Safeguards Information (SUNSI) (available at <http://www.internal.nrc.gov/ois/divisions/irsd/sunsi/>; MD 3.4, "Release of Information to the Public"; MD 3.1, "Freedom of Information Act"; and the procedures for "Releasability Review of DPO Records" on the NRC's internal DPO Web site, if a DPO submitter requests discretionary release to the public).
4. Reviews and approves, as appropriate, an extension request beyond the 120-day timeliness goal for the disposition of a DPO submitted by an employee in offices reporting directly to the Chairman or the Commission.

B. Executive Director for Operations (EDO)

1. Fosters an environment that allows individuals to raise a concern and differing view without fear of reprisal; promotes methods for raising a concern that support the agency's mission.
2. Ensures sufficient resources are available to administer an effective DPO Program.
3. Reviews evaluations of the DPO Program and makes recommendations to the Commission, as necessary.
4. Takes action, as appropriate, on a DPO submittal that appears to be of immediate public health or safety significance or that may be directly relevant to a decision pending before the Commission.
5. Takes all necessary actions to disposition a DPO appeal that is submitted by an employee in an office reporting directly to the EDO, including:
 - (a) Informing the DPO submitter of the final decision and the rationale for the decision.
 - (b) Providing the DPO PM with a copy of a DPO Appeal Decision.
 - (c) Maintaining the documentation necessary to preserve an accurate record during the course of the DPO appeal process in accordance with Section V, "Keeping Records of DPOs," of the handbook to this directive.
 - (d) Providing a brief description of the disposition of DPO appeals for the Weekly Information Report.
 - (e) Performing a releasability review of DPO appeal records consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 3.4; MD 3.1; and the procedures for "Releasability Review of DPO Records" if a DPO submitter requests discretionary release to the public.
6. Reviews and approves, as appropriate, an extension request for the disposition of a DPO beyond the 120-day timeliness goal.
7. Considers recognition for DPO submitters and DPO Program participants when the expression of a differing opinion or participation in the DPO Program contributes to a positive environment for raising concerns or results in a valuable contribution to the mission of the agency.
8. Reviews descriptions of DPO issues and their disposition from the offices, the regions, and the Commission and includes them in the Weekly Information Report.

9. Publishes periodic announcements that affirm that the DPO Program strengthens the NRC, that the DPO Program is a potential source of valuable ideas, and that an employee should feel comfortable using the program without fear of harassment, intimidation, retaliation, or discrimination.
10. Coordinates with the Office of Enforcement (OE) on employee surveys and action plans conducted by the OEDO that address the DPO Program.

C. General Counsel (GC)

1. Provides legal counsel on selected matters regarding implementing the DPO Program.
2. Provides legal counsel, as requested, on discretionary release of DPO records consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 3.4; and the procedures for "Releasability Review of DPO Records" if a DPO submitter requests discretionary release to the public.
3. Concurs on the discretionary release of all DPO records that include attorney-client information or attorney work-product or otherwise involve NRC attorneys.
4. Collaborates with OE and the Office of Administration (ADM) in revising the Nuclear Regulatory Commission Acquisition Regulation clauses or local contract clauses, when necessary, to ensure consistency with the guidance in this MD.

D. Inspector General (IG)

1. Investigates complaints of fraud, waste, abuse, or misconduct by an NRC employee or contractor; allegations of retaliation for raising concerns; and complaints of mismanagement of agency programs.
2. Supports data collection compiled by OE that addresses allegations of reprisal or retaliation against employees who have engaged in the DPO Program to help assess and support an effective DPO Program. This data collection is solely for the purpose of assessing and supporting the DPO Program and does not include employee-specific or actual details on any allegation.

E. Director, Office of Enforcement (OE)

1. Provides overall guidance, resources, and direction to develop, implement, assess, and manage the DPO Program.
2. Performs periodic assessments of the DPO Program.
3. Recommends changes to DPO Program policies and practices to the EDO and Commission, as appropriate.

4. Appoints a senior program manager and a program specialist for the DPO Program.
5. Coordinates with the DPO PM the assignment of an accepted DPO to the appropriate office director (OD) or regional administrator (RA).
6. Coordinates with the DPO PM, the appropriate OD or RA, and the DPO submitter to establish an independent ad hoc review panel (DPO Panel).

F. Chief Human Capital Officer (CHCO)

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

G. Director, Office of Information Services (OIS)

1. Establishes records disposition schedules for DPOs in accordance with regulations of the National Archives and Records Administration.
2. Maintains all completed DPOs (and appeals, when applicable) in the Agencywide Documents Access and Management System (ADAMS) according to the authorized disposition schedule contained in NUREG-0910, "NRC Comprehensive Records Disposition Schedule."
3. Provides advice, as requested, on the discretionary release of DPO records consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 3.4; MD 3.1; and the procedures for "Releasability Review of DPO records" on the NRC's internal DPO Web site, if a DPO submitter requests discretionary release to the public.
4. Ensures that NRC Form 680, "Differing Professional Opinion," and NRC Form 690, "Differing Professional Opinion - Appeal," are available in the NRC Forms Library in SharePoint (available at <http://fusion.nrc.gov/nrcformsportal/default.aspx>).

H. Director, Office of Administration (ADM)

1. Ensures that staff in the Acquisition Management Division (AMD) is aware of and complies with the guidance in Section XI, "The DPO Process For Contractors," of the handbook to this directive.
2. Ensures that DPO-related guidance in MD 11.1, "NRC Acquisition of Supplies and Services," is consistent with the guidance in this MD.
3. Ensures that DPO-related Nuclear Regulatory Commission Acquisition Regulation (NRCAR) (Title 48 of the *Code of Federal Regulations* (CFR), Part 20) clauses and local contract clauses are consistent with the guidance in this MD and associated handbook. (See the DPO internal Web site at <http://www.internal.nrc.gov/OE/DPO/> for detailed clause information.)
4. Ensures that DPO-related NRCAR clauses or local contract clauses are inserted in full text in all new cost reimbursement solicitations, and contracts that result from existing solicitations, for professional services, as appropriate and remain unaltered.
5. Collaborates with OE and the Office of the General Counsel (OGC) in revising the NRCAR clauses or local contract clauses, when necessary, to ensure consistency with the guidance in this MD.
6. Receives a request for additional agency funding from a contractor to cover the cost of preparing a DPO if there are insufficient obligated funds under the contract.
7. Modifies a contract to obligate additional agency funding for contractors to prepare a DPO.
8. Receives a copy of a DPO submittal, a DPO Panel report, and a DPO Decision for a contractor DPO.

I. Office Directors (ODs) and Regional Administrators (RAs)

1. Foster an environment that allows individuals to raise a concern and differing view without fear of reprisal; promote methods for raising a concern that support the agency's mission. (For example, periodically communicate that the DPO Program strengthens the NRC, that the DPO Program is a potential source of valuable ideas, and that an employee should feel comfortable using the process without fear of harassment, intimidation, retaliation, or discrimination.)
2. Ensure that office policies, guidance, and practices within their area of responsibility are consistent with the guidance in this MD.
3. Ensure that their staff implements this MD.

-
4. Take action, as appropriate, on a DPO submittal that appears to be of immediate public health or safety significance or that may be directly relevant to a decision pending before the Commission.
 5. Take all necessary actions to disposition a DPO that is assigned to their office or region, including:
 - (a) Coordinate with the DPO PM; the Director, OE; and the DPO submitter to establish a DPO Panel. (DPO PM has the lead responsibility for establishing the DPO Panel.)
 - (b) Use technical assistance from other NRC offices and regions or from outside the agency, as necessary, to address a highly specialized issue.
 - (c) Provide the DPO PM with status updates of DPOs in accordance with established schedules, ensure that milestones are met, and take corrective action for missed milestones.
 - (d) Request EDO approval for DPO extensions beyond the 120-day timeliness goal.
 - (e) Review the DPO Panel's conclusions and recommendations and any other information to support an informed decision.
 - (f) Provide the submitter (or the DPO PM or manager who has agreed to act as a surrogate for the submitter) with a decision and rationale for the decision (DPO Decision).
 - (g) Identify and assign appropriate followup actions, if applicable, and establish completion dates.
 - (h) Provide a brief description of the DPO Decision and its disposition to OEDO for the Weekly Information Report.
 - (i) Provide the DPO PM with copies of all DPO Panel reports, DPO Decisions, and statements of views (for DPO appeals) and maintain the documentation necessary to preserve an accurate record during the course of the DPO Program in accordance with Section V, "Keeping Records of DPOs," of the handbook to this directive.
 - (j) Perform a releasability review of DPO records consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 3.4; MD 3.1; and the procedures for "Releasability Review of DPO Records" if a DPO submitter requests discretionary release to the public.
 - (k) Inform the Director, OE; the DPO PM; and the submitter of any delays in followup actions on a DPO 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.

6. Provide a statement of views on the contested issue(s) in a DPO appeal to the EDO or the Chairman or the Commission, as appropriate.
7. Consider recognition for a DPO submitter and DPO Program participants when the expression of a differing opinion or participation in the DPO Program contributes to a positive environment for raising concerns or results in a valuable contribution to the mission of the agency.
8. Take appropriate action, to include referral to OIG, in response to an allegation of reprisal against a DPO submitter and other participants in the DPO Program and chilling effect concerns related to the DPO Program. (See additional information in Section X of the handbook to this directive.)
9. Ensure that a proposed personnel action involving a DPO submitter or DPO participant is not taken in retaliation for involvement in the DPO Program and that performance appraisals do not reflect negatively on the use of, or participation in the DPO Program. (The guidance in this MD does not preclude a supervisor from initiating, pursuing, or continuing to pursue an unrelated personnel action affecting an employee who has used or participated in the DPO Program.)
10. Coordinate with OE on employee surveys and action plans conducted by their office that address the DPO Program.

J. Director, Division of Security Operations (DSO), Office of Nuclear Security and Incident Response

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

K. Team Leaders, Supervisors, and Managers

1. Encourage employees to express concerns and to propose solutions as early as possible in the decisionmaking 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. Support informal discussions between employees and other management chains when differing views cross organizational boundaries.
4. 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.

-
5. Support employees in their organization by affording official time to develop DPOs and DPO appeal submittals and engage in DPO-related activities.
 6. Ensure that an employee engaged in the DPO Program is included in further discussions of the issues that are related to the DPO, as appropriate, and is not treated disparately for participating in the DPO Program.
 7. Support DPO Panel members in their organization by ensuring that work schedules are adjusted and resources are available to accommodate the DPO Program.
 8. Ensure that a releasability review is performed on DPO records consistent with agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 3.4; MD 3.1; and the procedures for "Releasability Review of DPO Records" on the NRC's internal DPO Web site, if a DPO submitter requests discretionary release to the public.
 9. Consider recognition for a DPO submitter and DPO Program participants when the expression of a differing opinion or participation in the DPO Program contributes to a positive environment for raising concerns or results in a valuable contribution to the mission of the agency.
 10. Take appropriate action, to include referral to the OIG, in response to an allegation of reprisal against a DPO submitter and other participants in the DPO Program and chilling effect concerns related to the DPO Program. (See additional information in Section X of the handbook to this directive.)
 11. Ensure that a proposed personnel action involving a DPO submitter or DPO participant is not taken in retaliation for involvement in the DPO Program and that performance appraisals do not reflect negatively on the use of, or participation in the DPO Program. (The guidance in this MD does not preclude a supervisor from initiating, pursuing, or continuing to pursue an unrelated personnel action affecting an employee who has used or participated in the DPO Program.)

L. DPO Program Manager (DPO PM)

1. Promotes an environment for raising concerns and differing views that supports an effective DPO Program.
2. Oversees the development, implementation, maintenance, and assessment of the DPO Program.
3. Serves as the agency expert and spokesperson for the DPO Program; serves as the agency champion to make the staff aware of the availability and intent of the DPO Program; and serves as liaison between the staff and management.

-
4. Supports periodic assessments of the DPO Program and recommends modifications to the DPO Program and guidance.
 5. Collaborates with OCHCO to identify training needs related to the DPO Program.
 6. Maintains a system to assign and track DPOs.
 7. Develops and maintains DPO-related information on the NRC's internal and external Web sites.
 8. 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.
 9. Provides advice and programmatic support to the Chairman, Commission, the EDO, ODs, and RAs in carrying out their responsibilities for DPO processing.
 10. 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.
 11. Receives all DPO submittals from submitters and conducts an acceptance screening in coordination with the Director, OE, to ensure that only issues suitable for treatment as DPOs are addressed in the program.
 12. With the assistance of agency subject matter experts, as necessary, and with the coordination of the Director, OE, assigns an accepted DPO to the appropriate OD or RA for decision and provides notification and rationale for the assignment.
 13. Establishes a DPO Panel in coordination with the Director, OE, the appropriate OD or RA, and the DPO submitter and issues a tasking memorandum describing the expectations for the panel's review of the DPO.
 14. At the submitter's request, may consult with the submitter selecting and nominating individuals to serve as a third panel member.
 15. Receives a DPO appeal, ensures that the deciding OD or RA provides a statement of views on the contested issue, and transmits all necessary information to the EDO or the Chairman or the Commission, as appropriate.
 16. Maintains DPO Case Files.
 17. Submits the official record copy of the completed DPO Case File (both publicly and non-publicly available portions) to the Document Processing Center, OIS, for declaration in ADAMS when the submitter requests in writing that the DPO be made publicly available in accordance with Section V, "DPO Records," of the handbook to this directive.

-
18. Supports initiatives designed to recognize the value of the DPO Program.
 19. Informs an employee who alleges that retaliatory actions have been taken because of their submittal of a DPO or their participation in the DPO Program of the multiple avenues available to them to pursue their allegation included in Section X.G of the handbook to this directive.
 20. Shares employee feedback and concerns related to the implementation of the DPO Program with team leaders, supervisors, and managers, as appropriate and provides advice on actions to take to support the continued willingness of employees to use the DPO Program.
 21. Coordinates with offices on any employee survey that the office plans to conduct that addresses the DPO Program.

M. All Employees and Contractors

1. Raise concerns and propose solutions as early as possible in the decisionmaking process.
2. Engage in the DPO Program in accordance with the guidance in this MD.
3. Initiate a DPO in good faith for genuine concerns and be clear and succinct in describing reasons for a DPO or appeal on the DPO or DPO Appeal Form, respectively.
4. Ensure that DPO records that include classified and sensitive unclassified information (SGI, PCII, and SUNSI) are appropriately handled, marked, and protected in accordance with agency policies and procedures.
5. Perform assigned tasks associated with the final position and decision on his or her DPO even though he or she disagrees.
6. Treat respectfully an employee or contractor who expresses a differing view or participates in the DPO Program and do not harass, intimidate, retaliate, or discriminate against an employee for expressing a differing view or participating in the DPO Program.

IV. APPLICABILITY

MD 10.159 applies to all NRC employees, including supervisors and managers, and to NRC contractors (see Section XI, "The DPO Process For Contractors," of the handbook to this directive), except employees on NRC Limited (Excepted) appointment (by reason of the confidential, policy making, policy determining, or policy advocating nature of the position), and Commissioners.

V. DIRECTIVE HANDBOOK

Handbook 10.159 provides guidance on initiating, documenting, reviewing, processing, withdrawing, and keeping records of DPOs and DPO appeals.

VI. REFERENCES

Code of Federal Regulations

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

48 CFR Part 20, "NRC Acquisition Regulation."

Nuclear Regulatory Commission Documents

ADAMS Template OE-011 (ML053430016).

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

Management Directives—

- 3.1, "Freedom of Information Act."
- 3.4, "Release of Information to the Public."
- 3.53, "NRC Records and Document Management Program."
- 3.57, "Correspondence Management."
- 7.4, "Reporting Suspected Wrongdoing and Processing OIG Referrals."
- 8.8, "Management of Allegations."
- 10.101, "Employee Grievances."
- 10.158, "NRC Non-Concurrence Process."
- 10.160, "Open Door Policy."
- 11.1, "NRC Acquisition of Supplies and Services."
- 12.2, "NRC Classified Information Security Program."
- 12.7, "NRC Safeguards Information Security Program."

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

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

NRC Internal Web site on the Differing Professional Opinion Program, at <http://www.internal.nrc.gov/OE/DPO/>.

NRC Plain Language Action Plan, at <http://www.internal.nrc.gov/NRC/PLAIN/indexold.html>.

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

NUREG 1614, "Strategic Plan."

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

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

Weekly Information Report, at www.internal.nrc.gov/OEDO.

Other Documents

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

The National Archives and Records Administration (NARA) Web site, at www.archives.gov.

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

United States Code

Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.).

Federal Advisory Committee Act of 1972 (Pub. L. 92-463).

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

**DH 10.159 NRC DIFFERING PROFESSIONAL
OPINION PROGRAM**

DT-15-16

*Volume 10,
Part 7:* General Personnel Management Provisions

Approved By: Mark A. Satorius
Executive Director for Operations

Date Approved: August 11, 2015

Expiration Date: August 11, 2020

Issuing Office: Office of Enforcement

Contact Name: Renée Pedersen
301-415-2742

EXECUTIVE SUMMARY

Directive and Handbook 10.159 are revised to update the U.S. Nuclear Regulatory Commission’s policies and procedures for the Differing Professional Opinion (DPO) Program to be used by an NRC employee or contractor when he or she has a conscientious expression of a judgment or position that differs from an established staff view, agency practice, management decision, or policy position involving technical, legal, or policy issues (including administrative or corporate support issues). NRC employees and contractors are required to adhere to the policy and procedures for engaging in the DPO Program set forth in this management directive (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 revision reflects insights and addresses issues and feedback from previous program reviews (including participant feedback), the Office of Inspector General Safety Culture and Climate Survey, a Business Process Improvement review, a benchmarking study, and the Internal Safety Culture Task Force report. This MD clarifies roles and responsibilities for employees engaging in the DPO Program, provides improved implementation guidance for the DPO and DPO appeal process, and emphasizes that the program applies to established positions that involve technical, legal, or policy issues (including administrative or corporate issues). A summary of the revisions to the MD is on the NRC’s internal DPO Web site (at <http://www.internal.nrc.gov/OE/DPO/>). The DPO Web site also includes a variety of resources and aids to assist employees engaging in the DPO Program, including frequently asked questions and flow charts. Also, the names of the program and the MD are retitled from the plural “Differing Professional Opinions” to the singular “Differing Professional Opinion.”

TABLE OF CONTENTS

I. INTRODUCTION.....	3
A. Background	3
B. Relationship of the Differing Professional Opinion (DPO) Program to the Open Door Policy and the Non-Concurrence Process (NCP)	3
C. Applicability of the DPO Program	4
D. Informal Discussions	5
E. Communications During the DPO Program	6
F. Timeliness of the DPO Program	7
II. THE DPO PROCESS	8
A. Submitting a DPO	8
B. Confidential Submittal	10
C. Screening, Dispatching, and Tracking	10
D. Receipt of DPO	12
E. Establishing a DPO Panel	12
F. DPO Panel Review	14
G. DPO Panel Report	15
H. DPO Decision	16
III. THE DPO APPEAL PROCESS.....	17
A. Submitting a DPO Appeal	17
B. Screening and Dispatching	18
C. DPO Appeal Review	19
D. DPO Appeal Decision	20
IV. SUBMITTING DOCUMENTS TO THE COMMISSION THAT INCLUDE A DPO	21
V. KEEPING RECORDS OF DPOs	21
VI. FOLLOWUP ACTIONS	24
VII. DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER THAT INCLUDE A DPO	25
VIII. RESOURCES TO ASSIST EMPLOYEES ENGAGING IN THE DPO PROGRAM	25
A. Official Time	25
B. Administrative Assistance	26
C. Process Assistance	26
D. Legal Assistance	26

IX. WITHDRAWING A DPO OR DPO APPEAL	26
X. REPRISAL	27
XI. THE DPO PROCESS FOR CONTRACTORS	28
A. Policy.....	28
B. Scope and Applicability.....	28
XII. WEB GUIDANCE.....	29
XIII. GLOSSARY	29

I. INTRODUCTION

A. Background

1. The U.S. Nuclear Regulatory Commission strives to establish and maintain an environment that encourages all NRC employees and contractors to raise concerns and differing views promptly without fear of reprisal. The free and open exchange of views or ideas conducted in a non-threatening environment provides the ideal forum where concerns and alternative views can be considered and addressed in an efficient and timely manner that improves decisionmaking and supports the agency's safety and security mission. Employees have various mechanisms for expressing their views, including informal discussions; the Open Door Policy described in Management Directive (MD) 10.160, "Open Door Policy"; the Non-Concurrence Process (NCP) described in MD 10.158, "NRC Non-Concurrence Process"; and the Differing Professional Opinion (DPO) Program described in this MD.
2. This MD describes a program that an employee or contractor (as defined in Section I.C.1 of this handbook) can use when he or she has a differing professional opinion. A DPO is defined as a conscientious expression of a judgment or position that differs from an established staff view, disagrees with a management decision or policy position, or takes issue with an established agency practice involving technical, legal, or policy issues (including administrative or corporate support issues).

B. Relationship of the Differing Professional Opinion (DPO) Program to the Open Door Policy and the Non-Concurrence Process (NCP)

1. The DPO Program includes a DPO process that allows an NRC employee or a contractor to have his or her DPO evaluated by an independent panel and considered and responded to by an office director (OD) or regional administrator (RA). The DPO Program includes a DPO appeal process that allows an NRC employee to have his or her DPO considered and responded to by the Executive

Director for Operations (EDO), or the Chairman or the Commission for those offices reporting to the Chairman or the Commission. The DPO Program complements the other mechanisms (e.g., Open Door Policy and NCP) for raising concerns or expressing differing views.

2. The DPO Program is not as broad as the Open Door Policy that can be used by any NRC employee to discuss any work-related issue or concern with any agency supervisor or manager, beyond informal discussions with his or her immediate supervisor. The DPO Program applies only to positions that are no longer under staff review.
3. Using the Open Door Policy (i.e., raising a concern beyond an employee's immediate supervisor) is not a prerequisite or a part of the DPO Program, although exercising the Open Door Policy while participating in the DPO Program is not prohibited. (See Section I.D, "Informal Discussion," of this handbook for additional guidance on informal discussion during the DPO Program.)
4. The DPO Program differs from the NCP because the NCP applies only to positions that are still under staff review in a draft document before a final position is established. The NCP cannot be used before a document is formally routed through concurrence or after a document is signed and issued.
5. Using the NCP does not prohibit an employee from raising the same concerns in the DPO Program after the NCP has been completed and the subject document has been issued.

C. Applicability of the DPO Program

1. Eligibility to Use the DPO Program (The DPO Program consists of the DPO process and the DPO appeal process.)
 - (a) The DPO process is available to NRC employees and NRC contractors to seek formal resolution of disagreements about established technical, legal, or policy positions or issues (including administrative or corporate support issues).
 - (b) The DPO appeal process is available to all NRC employees, but is not available to NRC contractors.
 - (c) The DPO process and DPO appeal process are not available to employees on NRC Limited (Excepted) appointment.
2. Issues Subject to the DPO Program
 - (a) A broad range of issues and concerns can be considered under the DPO Program (including administrative or corporate support issues) 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.

-
- (b) A difference of opinion becomes a “DPO” only when the opinion is submitted in accordance with the procedures in this handbook and is accepted by the agency’s DPO Program Manager (DPO PM) as appropriate for consideration under the DPO Program.

3. Issues Not Subject to the DPO Program

There are issues that may not be considered under the DPO Program because they are premature or predecisional (i.e., positions have not been established), are more appropriately considered under other agency processes, or are not within the jurisdiction of the NRC to resolve, including—

- (a) Issues that are still under staff review or inspection activity, where an official position has not yet been established in a signed and dated memorandum, letter, paper, or other approved correspondence constituting an official agency record;
- (b) Issues that are under review by the Commission that are appropriately addressed under another process, such as the Open Door Policy;
- (c) Issues that are being, or should be, addressed under grievance procedures, or personnel appeal procedures, or those that are governed by law or Governmentwide regulation;
- (d) Issues that are subject to collective bargaining;
- (e) Issues involving allegations of fraud, waste, abuse, or misconduct by NRC staff or contractors, allegations of retaliation for raising concerns, as well as complaints of mismanagement of agency programs that are appropriately addressed by the Office of the Inspector General (OIG);
- (f) Issues submitted anonymously that, if safety-significant, are appropriately addressed under the NRC Allegations Program (See MD 8.8, “Management of Allegations.”);
- (g) Issues raised by an individual that already have been considered, addressed, or not accepted based on the process described in this MD, unless significant new information is available; and
- (h) Issues determined to be outside the jurisdiction of the NRC to resolve or unrelated to the NRC’s mission.

D. Informal Discussions

1. The routine, recommended process for resolving a disagreement is through informal discussions, which may take place with an individual’s immediate supervisor, within an office or between offices if another office is responsible for the position that is being challenged.

-
2. All NRC employees and NRC contractors have a responsibility to express and discuss differing views as early as possible in the decisionmaking process. All NRC employees and NRC contractors have a responsibility to seek solutions to concerns that might otherwise result in a DPO.
 3. Because the benefits of resolving an issue informally are substantial, potential impediments to communication, such as management levels and organizational lines, should not constrain the process of seeking resolution.
 4. An individual should seek a response through the DPO Program only when an informal discussion or use of another process, such as the Open Door Policy or the NCP, is unable to resolve an individual's concerns.
 5. Informal discussion is typically a prerequisite for engaging in the DPO Program. (See exception in Section I.D.6.) These discussions may take place with an individual's immediate supervisor, within an individual's management chain, or within the management chain that is responsible for the position that the submitter disagrees with, whichever is most appropriate. There are no time limits for completion of these discussions, no tracking requirement, and no requirement to keep written records.
 6. Because the agency wants to ensure that mission-related concerns are brought to senior management's attention, individuals may engage in the DPO Program if there are extenuating circumstances that prevented informal discussion within the appropriate management chain.
 7. Before formally submitting a DPO, an individual may contact the DPO PM to discuss his or her concerns or seek guidance on engaging in the DPO Program.
 8. Engaging in the DPO Program does not preclude an individual from continuing informal discussions in the interest of resolving concerns.

E. Communications During the DPO Program

1. The DPO Program is an internal agency process that relies on open communication to support the decisionmaking process.
2. Once a DPO has been accepted in accordance with the guidance in Section II.C of this handbook, the DPO PM will acknowledge the existence of the DPO by including the subject of the DPO on the internal DPO Web site and indicating that it is "Pending."
3. Although it is appropriate for employees to discuss the details of the DPO with co-workers as part of the evaluation, as with other predecisional processes, employees should not discuss details of the DPO outside of the agency. (This guidance does not prohibit disclosure otherwise protected by statute or law.) The DPO PM should be notified of all outside inquiries and requests for information

about active cases (301-415-2741; DPOPM.Resource@nrc.gov). When necessary, employees may disclose, at a high level, the existence of an active DPO and the nature of the concern being reviewed.

4. The DPO submitter should be included in discussions involving the issues associated with the DPO, when warranted, to maximize the understanding of the issues and improve the decisionmaking process.
5. Engaging in the DPO Program does not preclude individuals from continuing informal discussions in the interest of resolving concerns.

F. Timeliness of the DPO Program

1. All individuals have a responsibility to make the DPO Program as timely, efficient, and effective as possible with a goal of resolving a DPO within 120 calendar days and a DPO appeal within 80 calendar days.
2. The 120-day timeliness goal for the disposition of a DPO begins on the day a DPO is accepted until the day a DPO Decision is issued. The 80-day timeliness goal for the disposition of a DPO appeal begins on the day a DPO appeal is accepted until the day a DPO Appeal Decision is issued.
3. The DPO PM will provide a generic schedule of milestone activities associated with dispositioning a DPO and a DPO appeal to all DPO participants and DPO submitters. (DPO and DPO Appeal Milestones and Timeliness Goals are included on the NRC's internal DPO Web site.) Timeliness goals for each milestone are identified strictly as goals—a way of meeting the overall timeliness goal.
4. The DPO PM must be notified when milestone activities are completed or provided an explanation for the delay. The DPO PM will document the completion of milestones for each DPO case that is opened and send updated schedules to all DPO participants and the DPO submitter.
5. Because the scope and complexity of DPOs can vary widely, the timeliness expectations for dispositioning DPOs and DPO appeals are expressed as goals. It is important to ensure that issues receive a thorough and credible review. Schedules should factor in a number of circumstances, including the importance of prompt action on the issue, the safety significance of the issue, the complexity of the issue, and the priority of other work activities affecting the availability of DPO participants. Because these circumstances can vary widely, it may require longer than 120 calendar days to resolve a DPO and longer than 80 calendar days to resolve a DPO appeal. Similarly, circumstances may warrant prompt action and resolving a DPO in less than 120 calendar days or a DPO appeal in less than 80 calendar days.

6. The 120-day timeliness goal for dispositioning a DPO may only be extended with the approval of the EDO (or the Chairman or the Commission for employees reporting to the Chairman or the Commission). The responsible OD or RA must request an extension in accordance with the appropriate process, including the reasons for the delay, actions being taken to address the delay, and a new completion schedule.
7. The DPO PM will note revised timeliness goals and send updated schedules to all DPO participants and the DPO submitter.

II. THE DPO PROCESS

A. Submitting a DPO

1. Before formally submitting a DPO, an individual may contact the DPO PM to discuss his or her concerns or seek guidance on engaging in the DPO Program, such as best practices for developing a DPO submittal.
2. To submit a DPO, an individual (or group of individuals) must follow the procedures stated in this handbook and must submit a written statement to the agency DPO PM using NRC Form 680, "Differing Professional Opinion," (DPO Form) located in the NRC Forms Library on SharePoint, available at <http://fusion.nrc.gov/nrcformsportal/default.aspx>. The DPO Form must include—
 - (a) A summary of the prevailing staff view, the existing management decision or stated position, or the established agency practice involving technical, legal, or policy issues that the submitter disagrees with.
 - (b) A reference to when the prevailing staff view, existing management decision or stated position, or agency practice was established and where it may be found, including reference to a specific document (including the Agencywide Documents Access and Management System (ADAMS) number), if applicable.
 - (c) A description of the submitter's views, how they differ from the established position, the safety or security significance of the issue (including if the submitter believes the issue represents an immediate public health and safety concern), an assessment of the consequences if the submitter's position is not adopted by the agency, and proposed alternatives.
 - (d) An indication of whether the issue may be directly relevant to a decision pending before the Commission, including reference to a specific document (including the ADAMS number), if applicable.
 - (e) An affirmation that discussions of the issue took place with the submitter's immediate supervisor, within the individual's management chain or within that management chain that is responsible for the position that the submitter

disagrees with, whichever is most appropriate; identification of individuals involved in discussions; and an approximation of when discussions occurred. (Identifying who was involved in discussions is particularly important when issues cross organizational boundaries.)

- (f) An indication that extenuating circumstances exist that prevented discussions, if informal discussions have not taken place. Because informal discussions are the routine, recommended approach for addressing differing views and because the benefits of resolving issues informally are substantial, the DPO PM will discuss the issue with the submitter and may encourage continuing informal discussions in the interest of resolving concerns.
 - (g) The names of three potential DPO Panel members, in priority order, or a statement that no names of potential DPO Panel members will be provided. (The submitter may request assistance from the exclusive bargaining unit representative, or the DPO PM in developing this list. Submitters are strongly encouraged to identify potential DPO Panel members to promote process credibility and provide necessary flexibility to establish a DPO Panel in a timely manner.)
 - (h) Titles and ADAMS accession numbers for any documents referenced in the DPO that are available in ADAMS, and a brief statement regarding the relevance of each document to the issue. Copies of these documents should not be attached to the DPO.
 - (i) Copies of any documents referenced in the DPO that are not available in ADAMS, and a brief statement regarding their relevance to the issue.
 - (j) An indication of whether the DPO submitter wants the DPO Case File to be non-public or made publicly available when the DPO is closed. (A submitter is provided another opportunity to express his or her preference for record availability when the case is closed.) (For documents included in the DPO Case File, see Section V.A, "Handling DPO Records During the DPO and DPO Appeal Process," of this handbook.)
3. DPO submittals should be written in plain language consistent with the NRC's Plain Language guidance on the NRC's internal Web site so that submittals are complete, concise, and easy to read.
 4. If any part of the submittal involves classified, safeguards (SGI), or sensitive unclassified non-safeguards (SUNSI) information (e.g., proprietary or allegation-related information), the form must be marked and handled under the appropriate requirements.

-
5. The submitter should avoid using proper names (titles or organizations are acceptable) in the DPO discussion.
 6. The submitter should refrain from making statements that could be interpreted as derogatory, inappropriate, or otherwise unprofessional in the DPO discussion. (Allegations of waste, fraud, abuse, or inappropriate conduct should be forwarded to OIG.)
 7. If more than one individual is submitting the DPO, the form should reflect the additional names and signatures. (Individuals must submit separate DPO Forms if the reasons for the DPO are different.)
 8. The submitter signs and scans the DPO Form (and any other continuation pages), and e-mails a PDF of the DPO Form to DPOPM.Resource@nrc.gov.

B. Confidential Submittal

1. If an individual wishes to submit a DPO but desires confidentiality (i.e., limiting his or her identity to a surrogate submitter), the individual may submit an unsigned DPO to an NRC manager or, if the individual prefers, to the DPO PM, who agrees to act as a surrogate submitter.
2. Provided the submittal is accepted for processing as a DPO, it will be addressed, to the extent possible, in accordance with the procedures in this handbook.
3. To protect the individual's confidentiality in such cases, the surrogate submitter will sign the DPO Form as the "Surrogate Submitter" and will take actions, as necessary to relay information between the individual and other DPO participants to support implementation of the procedures in this handbook. For example, the surrogate submitter will relay requests for information to support the review, including the development of the Statement of Concerns and will forward documents to the individual about the disposition of the DPO, including acceptance of the submittal for review in the DPO Program, establishment of the DPO Panel, the DPO Panel report, and the DPO Decision. Any public notices or summaries of the DPO will be redacted to protect the individual's confidentiality.
4. DPOs that are submitted anonymously (i.e., the submitter's identity is entirely unknown) are not covered by the provisions of this MD and may be referred to the Office of Investigations, the OIG, or the Agency Allegation Advisor, as appropriate.

C. Screening, Dispatching, and Tracking

1. The DPO PM will coordinate the screening and assignment of a DPO submittal with the Director, Office of Enforcement (OE), to determine if it should be accepted for review under the DPO Program and to determine the appropriate action office. The

-
- DPO PM will screen each submittal in accordance with the provisions of Section I.C, "Applicability of The DPO Program," and Section II.A, "Submitting a DPO," of this handbook. If the action office is not clear from the description of the issue, the DPO PM may seek the assistance of a subject matter expert or experts in determining the appropriate action office. Screening, acceptance, and dispatch normally should occur within 10 calendar days of receipt of a DPO submittal.
2. Because the benefits of resolving an issue informally are substantial, before formally accepting the DPO, the DPO PM may contact the submitter and the appropriate management chain and encourage continuing informal discussions in the interest of resolving concerns. If the issues are resolved to the satisfaction of the submitter and the appropriate management chain:
 - (a) The appropriate management chain will document the resolution and e-mail it to the submitter with a copy to DPOPM.Resource@nrc.gov.
 - (b) The submitter will withdraw the submittal by sending an e-mail to DPOPM.Resource@nrc.gov with a copy to the submitter's immediate supervisor and the appropriate management chain.
 3. If an issue is not accepted for processing as a DPO, the DPO PM will—
 - (a) Send an e-mail to the submitter notifying him or her of the decision and rationale.
 - (b) Inform the submitter of other methods through which to pursue their concerns (e.g., informal discussion, the Open Door Policy, the NCP, or the negotiated grievance procedure).
 - (c) Provide copies of returned submittals to the senior manager overseeing the staff review or inspection activity for premature submittals or to the submitter's supervisor or OD or RA for all other returned submittals.
 4. If the DPO is accepted, the DPO PM will—
 - (a) Assign a DPO control number that will be used to track the DPO throughout the review process and any appeal that may arise.
 - (b) Open a file and create a folder based on the DPO control number in the DPO Case File folder in the ADAMS Main Library in which key documents generated during the DPO process will be filed.
 - (c) Send a confirmation e-mail to the submitter that his or her DPO has been accepted for review in the DPO Program. (The date of the e-mail is the date the DPO is accepted.)

-
- (d) Send an e-mail to the office of the EDO (OEDO) to support dispatch and tracking of the DPO, including—
 - (i) The appropriate action office and the OD or the RA for the DPO Decision;
 - (ii) The incoming DPO submittal (in ADAMS);
 - (iii) Special DPO processing instructions (in ADAMS);
 - (iv) Tracking for a DPO Decision (with the due date identified in terms of the 120-day timeliness goal);
 - (v) Tracking for a memorandum tasking any individuals or organizations with developing, tracking, and implementing followup actions (if applicable); and a summary of the DPO Decision for the Weekly Information Report (due 2 weeks after the DPO Decision is issued) (The report is available at <http://www.nrc.gov/reading-rm/doc-collections/commission/secys/weekly-info.pdf>.);
 - (vi) Identification of routing, including the EDO (or the Chairman, Commission, and SECY for those offices reporting to the Chairman or the Commission); the applicable Deputy EDO; the Director, OE; the DPO PM; and the OD or the RA to whom the DPO submitter reports (if different than the OD or the RA responsible for dispositioning the DPO).

D. Receipt of DPO

1. The OD or the RA should consider contacting or arranging a meeting with the DPO PM when he or she receives the DPO to help support an understanding of the process and the roles and responsibilities associated with it. The DPO PM may offer advice on various issues, including best practices for establishing the DPO Panel, timeliness and resources considerations, and communication issues.
2. In rare and exceptional cases, the OD or the RA may believe that it is not necessary to establish an independent ad hoc review panel to review the DPO because the OD or the RA completely agrees with the submitter's DPO. The DPO PM must be consulted in these cases. The OD or the RA may choose to forgo a panel review and issue a decision on the DPO (DPO Decision) only if the DPO Decision is in alignment with the DPO. (The OD or the RA should follow the guidance in Section II.H, "DPO Decision," of this handbook.) Issuing a DPO Decision provides documentation of the resolution of the DPO and serves as a knowledge management tool for the issue.

E. Establishing a DPO Panel

1. The DPO PM will coordinate with the Director, OE; the OD or the RA responsible for dispositioning the DPO; and the DPO submitter to establish an independent, ad hoc review panel (DPO Panel) to conduct a thorough, impartial review of the DPO and

-
- issue a report including conclusions and recommendations. (See the exception in Section II.D.2 of this handbook.) The DPO Panel normally should be established within 14 calendar days of dispatching the DPO to the appropriate OD or RA.
2. The DPO Panel should have at least three members, including a member from the list, if provided, of potential panel members identified by the DPO submitter.
 3. The DPO PM may add an additional panel member for any DPO involving an enforcement issue and will coordinate the selection with the Director, OE.
 4. The following considerations apply to appointing DPO Panel members.
 - (a) The chairperson must be a Senior Executive Service (SES) manager normally from an office other than the office assigned action on the DPO.
 - (b) Under no circumstance should the chairperson be the immediate supervisor or the second-line supervisor of the submitter and, to the extent possible, should not be in the submitter's chain of command.
 - (c) A DPO Panel member should not be in a position of authority over the submitter.
 - (d) To the extent possible, a DPO Panel should not include an individual who has directly participated in the formulation of the agency position that is at issue.
 - (e) A DPO Panel member should have the knowledge and skills necessary to evaluate the DPO.
 - (f) DPO Panel members must have sufficient time available to support the DPO process in accordance with timeliness goals.
 - (g) The DPO Panel should be viewed as credible and independent.
 5. The DPO PM will issue a tasking memorandum identifying the panel members and describing the expectations for the panel's review of the DPO and provide copies of the memorandum to the OD or the RA, the submitter, and the Director, OE. If the DPO submitter does not report to the OD or the RA responsible for the disposition of the DPO, a copy of the memorandum should be distributed to the OD or the RA to whom the submitter reports. The memorandum will include the DPO number in the subject line, be profiled in accordance with ADAMS template OE-011, "Differing Professional Opinion (DPO) Case File," and be identified as non-public with limited viewer rights to those included on distribution of the memorandum. The DPO PM will file the record in the applicable DPO Case File folder in the ADAMS Main Library.

F. DPO Panel Review

1. The DPO Panel Chair normally should arrange a meeting with the panel members and the DPO PM to help the DPO Panel understand the DPO process and the roles and responsibilities associated with it.
2. The DPO Panel will review the DPO submittal and meet with the submitter as soon as practical (normally within 7 calendar days of the issuance of the memorandum establishing the panel) to ensure that the DPO Panel understands the submitter's concerns and scope of the issues. The scope of the DPO is limited to the issues described by the submitter in the original DPO submittal. The DPO PM may be invited to attend to help an employee understand the DPO Program and the roles and responsibilities associated with it.
3. The DPO Panel will promptly develop a succinct summary of issues (SOI) (ideally, within 3 to 5 days of meeting with the submitter) to ensure that there is a common understanding of the submitter's concerns. The DPO Panel may meet with the submitter to support development of the SOI.
4. The DPO Panel will e-mail the SOI to the submitter for comment and consensus. The request should include a timeliness expectation for feedback.
5. The submitter will promptly review the SOI (ideally within 1 to 2 days) and e-mail a markup of the SOI to the DPO Panel.
6. The DPO Panel chair will e-mail the agreed upon SOI to the submitter, with a copy to the other panel members, the OD or the RA, and DPOPM.Resource@nrc.gov.
7. The DPO Panel's review will be confined to the issues determined to be within the scope of the DPO and the SOI. The submitter's qualifications or possible motives for submitting the DPO will not be a factor in the review.
8. Any new issues outside the scope of the agreed upon SOI should be handled through informal discussions between the submitter and his or her immediate supervisor or the management chain responsible for the issue, through the initiation of a new DPO, or through a separate tasking from the OD or the RA.
9. The DPO Panel will perform a detailed review of the issues and conduct any record reviews, interviews, and discussions it deems necessary for a thorough, complete, objective, independent, and impartial review.
10. The DPO Panel may talk to other employees about the issues raised in the DPO as part of the review, but will not share copies of the DPO Form.

11. The DPO Panel may request assistance from other offices if the expertise needed to evaluate a DPO resides elsewhere in the agency. However, the DPO Panel must retain the responsibility for conclusions and recommendations in the DPO report.
12. In certain situations, it may be appropriate for the DPO Panel to seek input from a standing NRC committee (e.g., Advisory Committee on Reactor Safeguards (ACRS)). It may also be beneficial for the DPO submitter to participate in an ACRS meeting.
13. In certain situations (such as highly complex, specialized issues), it may be appropriate for the DPO Panel to seek expertise from outside the agency to support the evaluation of the issues addressed in the DPO. The DPO Panel chairperson should promptly consult with the OD or the RA and notify the DPO PM in these cases.
14. The DPO Panel should re-interview individuals as necessary to clarify information obtained during the DPO Panel's review and ensure the submitter is included in further discussions of an issue, when warranted, to maximize the understanding of the issues.
15. The DPO Panel chairperson should consider establishing a routine meeting for the DPO Panel (for example, once a week).
16. The DPO Panel chairperson should e-mail periodic updates on the status of the review (including changes to the plan or schedule for reviewing the DPO) directly to the submitter with a copy to the OD or the RA; the Director, OE; and DPOPM.Resource@nrc.gov. This is especially important when substantial time is required to review the DPO or when outside input is sought.
17. The DPO Panel chairperson should promptly notify the DPO PM and the OD or the RA to discuss schedule-related issues that could affect the timeliness of the process.

G. DPO Panel Report

1. The DPO Panel will normally document its conclusions in a report to the OD or the RA within 21 calendar days of completing its review. (The DPO PM will provide additional guidance for the format of the report.)
2. A DPO Panel Report should be written in plain language consistent with the NRC's Plain Language guidance on the NRC's internal Web site (available at <http://www.internal.nrc.gov/NRC/PLAIN/indexold.htm>) so that the report is complete, concise, and easy to read.

3. The report must focus within the scope of the DPO and the SOI and the level of detail must be sufficient so that an independent reader can understand the basis for the conclusions.
4. The DPO Panel should consider whether recommendations are appropriate to address possible process improvements.
5. If the DPO Panel identifies additional issues or additional recommendations beyond the scope of the DPO, the DPO Panel should provide the information to the OD or the RA in a separate memorandum.
6. The DPO Panel should provide a copy of the report to the submitter, the DPO PM, and the Director, OE.
7. The DPO report must be profiled in accordance with ADAMS template OE-011, and be identified as non-public with viewer rights limited to those included on distribution of the report. The ADAMS accession number should be e-mailed to DPOPM.Resource@nrc.gov and the DPO PM will file the record in the applicable DPO Case File folder in the ADAMS Main Library.

H. DPO Decision

1. The OD or the RA reviews the DPO Panel's report and any other information that may be relevant to the DPO and considers any additional discussions with the submitter, the DPO Panel, or other knowledgeable staff that he or she deems necessary for a thorough, complete, objective, independent, and impartial review before issuing a DPO Decision.
2. In rare and exceptional cases, the OD or the RA may believe an addendum to the DPO Panel report is necessary. The need for an addendum must be discussed with the DPO PM and the submitter. An addendum is only appropriate if the OD or the RA believes that the report is incomplete, unclear, or if the OD or the RA needs additional information to support an informed decision. The OD or RA must request an addendum to the DPO Panel in writing, generally within 7 calendar days, with copies to the submitter and the DPO PM. The DPO Panel will provide addendums to the OD or the RA generally within 7 calendar days, with copies to the submitter, the DPO PM and the Director, OE. This timeframe may not be appropriate for more complex cases and may be extended, as necessary, to ensure the completion of a thorough review.
3. The OD or the RA should consider speaking with the submitter before issuing the DPO Decision.
4. The OD or the RA normally will issue a DPO Decision within 21 calendar days of receiving the DPO Panel report. (The DPO PM will provide additional guidance for the format of the DPO Decision.)

5. The OD or the RA issues the DPO Decision in a memorandum to the submitter that includes the decision on the DPO, the rationale for it, and any followup actions that are necessary. The level of detail must be sufficient so that an independent reader can understand the basis for the decision and outcome. (See Section VI of this handbook for additional guidance on followup actions.) Copies of the DPO Decision memorandum will be sent to the DPO Panel members, the submitter's management, the DPO PM, and the Director, OE.
6. A DPO Decision should be written in plain language consistent with the NRC's Plain Language guidance on the NRC's internal Web site so that the DPO Decision is complete, concise, and easy to read.
7. If followup actions are identified, the OD or the RA normally will issue a separate memorandum tasking any individuals or organizations with developing, tracking, and implementing followup actions.
8. If followup actions are identified in another office, the OD or the RA will coordinate with the applicable OD or RA to discuss possible followup actions in his or her office.
9. The OD or the RA should provide the DPO PM with a brief description of the issue raised in the DPO and its disposition for inclusion in the Weekly Information Report. (The DPO PM will provide additional guidance for the format of the summary.) The DPO PM will hold the summary until the case is closed (when a DPO Decision is issued and not appealed or when a DPO Appeal Decision is issued).
10. A submitter's DPO does not release the submitter from the obligation to perform assigned tasks associated with the final position and decision with which he or she does not agree.
11. The submitter may request a meeting with the OD or the RA to discuss the DPO Decision if the submitter does not understand the decision and needs clarification.

III. THE DPO APPEAL PROCESS

A. Submitting a DPO Appeal

1. The DPO appeal process is available only to current NRC employees; it is not available to NRC contractors.
2. Before formally submitting a DPO appeal, an individual may contact the DPO PM to discuss his or her concerns or seek guidance on engaging in the DPO Program, such as best practices for developing a DPO appeal submittal.

3. Before submitting a DPO appeal, the submitter may request a meeting with the OD or the RA to discuss the DPO Decision if the submitter does not understand the decision and seeks clarification.
4. An NRC employee who submitted a DPO and who is not satisfied with the DPO Decision and wants an additional review and response may file an appeal through the agency DPO PM, using NRC Form 690, "Differing Professional Opinion -- Appeal," (DPO Appeal Form) available in the [NRC Forms Library on SharePoint](#).
5. A DPO appeal must be filed within 21 calendar days of receipt of the OD or the RA DPO Decision.
6. The basis for the DPO appeal should be clearly and succinctly described on the form and should focus on perceived flaws in the DPO Decision and why the agency should come to a different conclusion.
7. The scope of the DPO appeal must be limited to the scope of the DPO and the SOI.
8. If the submitter identifies additional issues or additional recommendations beyond the scope of the DPO, the submitter should provide the information to the EDO (or the Chairman or the Commission, as applicable) in a separate memorandum.

B. Screening and Dispatching

1. The DPO PM will coordinate the screening of a DPO appeal submittal with the Director, OE, to determine if it should be accepted for review under the DPO Program. A DPO appeal that expands the scope of the contested issues beyond what the submitter originally provided and agreed to may not be accepted for review. The screening to determine acceptance normally should occur within 4 calendar days of receipt of a DPO appeal submittal.
2. If the DPO appeal is not accepted, the DPO PM will—
 - (a) Send an e-mail to the submitter notifying him or her of the decision and rationale.
 - (b) Inform the submitter of other methods through which to pursue his or her concerns.
 - (c) Provide copies of a returned submittal to the OD or the RA who issued the DPO Decision.
3. If the DPO appeal is accepted, the DPO PM will—
 - (a) Send a confirmation e-mail to the submitter that his or her DPO appeal is accepted for review in the DPO Program. (The date of the e-mail is the date the DPO appeal is accepted.)

-
- (b) Send a notification e-mail to the EDO (or the Chairman or the Commission and SECY for those offices reporting to the Chairman or the Commission), the applicable Deputy EDO, the OD or the RA responsible for issuing the DPO Decision, the OD or the RA to whom the DPO submitter reports (if different than the OD or the RA responsible for dispositioning the DPO), and the DPO Panel members that a DPO appeal has been accepted for review in the DPO Program.
 - (c) Provide a copy of the appeal to the OD or the RA who issued the DPO Decision and request a written statement of views (SOV) on the contested issues.
4. The OD or the RA will provide the DPO PM a written SOV on the contested issues, normally within 14 calendar days of receipt of the request. The OD or the RA may request assistance from the DPO Panel or other staff, as necessary, to support a comprehensive SOV. This is especially important if the submitter provides new information that is still within the scope of the DPO. If the OD or the RA is unable to provide the SOV within 14 calendar days, the DPO PM must be provided a reason for the delay and a new completion schedule.
 5. The DPO PM will dispatch the DPO appeal package (including the DPO appeal, the SOV, the DPO Decision, the DPO Panel report, the DPO submittal, and other relevant DPO records) to the EDO (or the Chairman or the Commission, as applicable) for review and decision.

C. DPO Appeal Review

1. Appeals are reviewed by the EDO for DPOs in offices reporting to the EDO and by the Chairman or the Commission for DPOs in offices reporting to the Chairman or the Commission.
2. The EDO or the Chairman or the Commission normally should arrange a meeting with the DPO PM when they receive the DPO appeal to help support an understanding of the process and the roles and responsibilities associated with it.
3. The EDO or the Chairman or the Commission should designate a point of contact (POC) to support implementation of the DPO Program and communications with the DPO PM (e.g., communicating the status of a DPO appeal, tracking followup actions, coordinating a DPO Case File releasability review, etc.). The name of the POC should be e-mailed to DPOPM.Resource@nrc.gov.
4. The EDO or the Chairman or the Commission has the discretion to conduct the review of the appeal in any manner they deem appropriate. No additional DPO Panel needs to be formed at this stage. The EDO or the Chairman or the Commission will review the information in the DPO appeal package and rely upon knowledgeable

staff members, the submitter, the DPO Panel, or other resources, as necessary, to assist them in their consideration of the appeal.

5. The EDO or the Chairman or the Commission, as appropriate, will establish a schedule for review of the DPO appeal, factoring in the importance of prompt action on the issue, the safety significance of the issue, the complexity of the issue, and the priority of other work activities. The 80-day timeliness goal for the disposition of the DPO appeal (i.e., the day a DPO appeal is accepted until the day a DPO Appeal Decision is issued) may need to be adjusted. Changes in the schedule should be communicated to the DPO PM, who will document the milestones in the appeal and keep the DPO submitter informed of the status.

D. DPO Appeal Decision

1. The EDO or the Chairman or the Commission normally should provide the submitter with a decision on the appeal within 60 calendar days of receipt of the DPO appeal package. (The DPO PM will provide additional guidance for the format of the DPO Appeal Decision.)
2. The EDO or the Chairman or the Commission should consider speaking with the submitter before issuing the DPO Appeal Decision.
3. The EDO or the Chairman or the Commission issues the DPO Appeal Decision in a memorandum to the submitter that includes the decision on the DPO appeal, the rationale for it, and any followup actions that are necessary. The level of detail must be sufficient so that an independent reader can understand the basis for the decision and outcome. (See Section VI of this handbook for additional guidance on followup actions.) Copies of the DPO Appeal Decision memorandum will be sent to the OD or the RA who issued the DPO Decision, the DPO Panel members, the submitter's management, the DPO PM, and the Director, OE.
4. A DPO Appeal Decision should be written in plain language consistent with the NRC's Plain Language guidance on the NRC's internal Web site so that DPO Appeal Decision is complete, concise, and easy to read.
5. A decision on a DPO appeal by the EDO or the Chairman or the Commission is not subject to further appeal. Once a DPO Appeal Decision has been issued, action under the DPO Program will be concluded and the case closed.
6. The EDO or the Chairman or the Commission provides the DPO PM with a brief description of the issue raised in the DPO appeal and its disposition for inclusion in the Weekly Information Report. (The DPO PM will provide additional guidance for the format of the summary.) The DPO PM will keep the summary on hold until the DPO Case File is declared an official agency record (OAR) in ADAMS.

IV. SUBMITTING DOCUMENTS TO THE COMMISSION THAT INCLUDE A DPO

- A.** The staff will ensure that the Commission is made aware of a DPO and how it was addressed, especially in cases where a recommendation is being made to the Commission. Internal Commission Procedures (available at <http://www.nrc.gov/about-nrc/policy-making/internal.html>) state, "SECY papers and action memoranda coming to the Commission should include any significant differing opinions that arose during the process."
- B.** If a DPO is associated with a document being signed out by an OD or an RA to OEDO or by OEDO to the Commission:
 - 1. The DPO Case File must, at a minimum, be included as an enclosure to the subject document.
 - 2. The document signer (i.e., OD, RA, or EDO) has the discretion whether to make explicit reference to the DPO in the subject document.

V. KEEPING RECORDS OF DPOs

A. Handling DPO Records During the DPO and DPO Appeal Process

- 1. All DPO records created to document the disposition of a DPO are OARs.
- 2. All DPO records must include the DPO number.
- 3. All DPO records must be retained in ADAMS or another record retention system if ADAMS is not the appropriate repository (e.g., when classified, safeguards, or allegations information is involved).
- 4. If retained in ADAMS, the DPO PM is responsible for profiling DPO and DPO appeal submittals in accordance with ADAMS template OE-011.
- 5. All DPO records retained in ADAMS will be profiled in ADAMS as non-public during the DPO process and the viewer rights will be limited to those identified on distribution.
- 6. All DPO records, including those documenting followup actions, must be distributed to the submitter, the DPO PM, and the Director, OE.
- 7. All DPO records will be declared OARs when the correspondence is issued. The ADAMS accession number for the record will be e-mailed to DPOPM.Resource@nrc.gov and the record will be filed in the applicable DPO case file folder in the ADAMS Main Library.

B. Creating a DPO Case File When the DPO Case is Closed

1. When a DPO case is closed (i.e., when a DPO Decision is issued without appeal or when a DPO Appeal Decision is issued), the DPO PM will create a new record (DPO Case File) by generating a PDF file based on previously issued DPO records and profiling the record using ADAMS template OE-011.
2. At a minimum, the DPO Case File will include—
 - (a) An introduction cover page explaining the DPO Program, listing the documents included in the file, and providing justification for redacted documents, if applicable;
 - (b) DPO submittal;
 - (c) Memorandum establishing the DPO Panel.
 - (d) DPO Panel report; and
 - (e) DPO Decision memorandum issued by the OD or the RA.
3. If an appeal is submitted, the DPO Case File will also include—
 - (a) DPO appeal;
 - (b) SOV from the OD or the RA; and
 - (c) DPO Appeal Decision issued by the EDO or the Chairman or the Commission.
4. The DPO Case File may also include any other documents that are essential to understand the case.
5. The DPO PM will ask the submitter (by e-mail) if they want the DPO Case File non-public or public (with or without their name redacted).
6. If the DPO submitter requests that the DPO Case File be non-public, the DPO PM will coordinate the review of the DPO Case File with the originating office or region to determine whether it is appropriate to make it available to all NRC viewers or restrict NRC viewers (e.g., cases involving proprietary or other sensitive information). The DPO PM will subsequently profile the record as non-public in ADAMS, reflect appropriate NRC viewers, have it declared an OAR, and file it in the appropriate ADAMS DPO folder. (As with all agency records, the DPO Case File is subject to public release upon receipt of a request under the Freedom of Information Act of 1966 (5 U.S.C. 552).)
7. If the submitter would like discretionary release of the DPO Case File to the public (with or without release of his or her identity), the DPO PM will coordinate the review

-
- of the DPO Case File with the originating office or region for a releasability determination. (Note: Regardless of a submitter's preference for public release of a DPO Case File, it is management's responsibility to determine whether public release (with or without redactions) is appropriate.)
8. The releasability review must be performed consistent with all agency requirements, including the NRC Policy for Handling, Marking, and Protecting SUNSI; MD 3.4; MD 3.1; and the procedures for "Releasability Review of DPO Records" on the NRC's internal DPO Web site.
 9. The OD or the RA has the final responsibility for determining what portions of the DPO Case File should be released (with OGC consultation and concurrence, as necessary).
 10. The originating office or region has the responsibility for creating a redacted DPO Case File record, if necessary (e.g., if the submitter wants identity protection, if the record includes safeguards information, etc.). Redacted DPO Case File records will be profiled in ADAMS similar to the original document and will use the same document name, followed by the annotation, "-Redacted-Public," will be e-mailed to DPOPM.Resource@nrc.gov, and subsequently filed in the applicable DPO folder within the DPO Case File in the ADAMS Main Library.
 11. The OD or the RA will notify the DPO PM when the releasability review has been completed.
 12. The DPO PM will ensure records are profiled appropriately to reflect the releasability determination and send the DPO Case File(s) to the Document Processing Center (DPC), OIS, to be declared OAR(s) and filed in the applicable DPO folder within the DPO Case File in the ADAMS Main Library.
 13. The National Archives and Records Administration's (NARA) current retention schedule (available at www.archives.gov) requires that DPO case files be retained in ADAMS for a period of 30 years.
 14. Based on unique licensing requirements, the need to make DPO Case Files 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."
 15. The DPO PM will post all closed DPO Case Files (including public and non-public) on the internal DPO Web site to inform employees of the outcome except in those instances when management determines that it is appropriate to restrict NRC viewers.

VI. FOLLOWUP ACTIONS

- A. If followup actions are identified as part of addressing a DPO, the OD or the RA will issue a separate memorandum tasking any individuals or organizations with developing, tracking, and implementing them.
- B. If followup actions are identified in another office, the OD or the RA will coordinate with the applicable OD or RA to discuss possible followup actions. If the other OD or RA agrees with the followup actions, the OD or the RA will issue a separate memorandum tasking any individuals or organizations within his or her office with developing, tracking, and implementing them.
- C. The OD or the RA will open a new ticket in a tracking system to track the implementation and completion of any followup actions.
- D. The OD or the RA is responsible for establishing completion dates. In establishing completion dates, consideration should be given to the need for prompt action, the safety significance of the issue, and the priority of other work activities in the office responsible for the followup actions.
- E. The OD or the RA is responsible for assuring that followup actions are completed.
- F. The OD or the RA will keep the submitter and the DPO PM informed of the progress of followup actions, including notification when actions are completed.
- G. All documents generated as a result of DPO followup actions should be profiled in accordance with ADAMS template OE-011, include the DPO control number in the reference field in the ADAMS profile, and be filed in the ADAMS folder for the DPO in the DPO Case Files folder in the ADAMS Main Library.
- H. All documents generated as a result of DPO followup actions must be distributed to the submitter, the DPO PM, and the Director, OE.
- I. The DPO PM will record followup actions and final implementation of decisions resulting from the DPO process in the DPO database and will keep all parties informed regarding the status of the actions.
- J. If the schedule for followup actions is not met, the OD or the RA is responsible for identifying the reason for the delay and developing a revised schedule for completion of the actions. The OD or the RA will communicate this information to the Director, OE; the DPO PM; and the submitter. The Director, OE, may notify the applicable Deputy EDO for

offices reporting directly to the EDO, or to the Chairman for offices reporting directly to the Commission of significant or recurring schedule delays.

- K.** The OD or the RA is responsible for deciding what actions or communications are necessary, if any, when the DPO Decision is issued or when the DPO case is closed. This is particularly important for a DPO that includes topics of high interest, changes in agency position, and/or that will be publicly available. Actions or communications could include e-mails, Daily Notes, communications with the Commission, or communication plans.
- L.** The OD or the RA 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 DPO is relevant to any issue in an ongoing proceeding.
- M.** If followup actions are identified as part of addressing a DPO appeal, the EDO or the Chairman or the Commission will issue a separate memorandum tasking any individuals or organizations with developing, tracking, and implementing them.
- N.** The individuals or organizations are responsible for assuring that followup actions are completed.
- O.** The individuals or organizations will keep the submitter, the DPO PM, and the EDO or the Chairman or the Commission informed of the progress of followup actions, including notification when actions are completed.

VII. DOCUMENTS PUBLISHED IN THE FEDERAL REGISTER THAT INCLUDE A DPO

If a publicly available DPO is associated with a document for which the NRC is seeking public comment (e.g., a policy or other draft technical document), or is associated with a final document for which the NRC has sought public comments (including final NUREGs), then the *Federal Register* notice must include a reference to the DPO and must include the ADAMS accession number for the DPO Case File. The manager responsible for publishing the *Federal Register* notice has the discretion, in consultation with the responsible OD or RA, to include a synopsis of the issues included in the DPO and the agency's evaluation and outcome.

VIII. RESOURCES TO ASSIST EMPLOYEES ENGAGING IN THE DPO PROGRAM

A. Official Time

1. An employee who wants to participate in the DPO Program is allowed to do so as part of the employee's regular duties and is allowed to use official time to complete the DPO and DPO appeal submittals and engage in DPO-related activities. The

amount of time afforded to an employee to develop information related to his or her DPO and engage in DPO-related activities should be based on an agreement between the employee and his or her immediate supervisor. (See Section I.F of this handbook for more guidance on the timeliness expectations for the DPO Program.)

2. DPO Panel members should use official time to engage in DPO-related activities. DPO Panel members should coordinate with their immediate supervisors to ensure that work schedules are adjusted and resources are available to accommodate the DPO Program.
3. Questions or concerns on time for engaging in DPO-related activities should be forwarded to the DPO PM.
4. Time associated with participating in the DPO Program normally should be charged to the activity code identified in the FAQs on the internal DPO Web site.

B. Administrative Assistance

If an employee requests administrative assistance to support his or her DPO or DPO appeal submittal, the employee's immediate supervisor, in consultation with other management officials, should determine the amount of administrative support to be provided to the employee.

C. Process Assistance

The DPO PM is available to answer questions and assist all employees with using the DPO Program.

D. Legal Assistance

If called to testify before a licensing board or a presiding officer, a DPO submitter may receive, upon request, assistance from OGC, as appropriate.

IX. WITHDRAWING A DPO OR DPO APPEAL

- A. A DPO or a DPO Appeal may be withdrawn at any time before the issuance of a DPO Decision or DPO Appeal Decision by sending an e-mail to DPOPM.Resource@nrc.gov, with copies to the OD or the RA, the EDO, or the Chairman or the Commission, as appropriate. The submitter is not obligated to provide a reason for his or her request to withdraw the DPO or DPO appeal.
- B. The DPO PM will send an e-mail acknowledging the request and indicating the date on which the withdrawal was effective.

-
- C. Withdrawal of a DPO or DPO appeal does not preclude the OD or the RA, or the EDO or the Chairman or the Commission, from pursuing the issue raised, but any subsequent review of the issue is no longer subject to the requirements of the DPO included in this MD.
 - D. If the DPO or DPO appeal is withdrawn, the DPO Case File will be retained as an OAR, will be limited to internal use only, and will not be posted on the internal Web site.

X. REPRISAL

- A. DPO submitters and other participants in the DPO Program must be free to participate in the DPO Program without fear of reprisal (harassment, intimidation, retaliation, or discrimination) by management or peers.
- B. Reprisal for or discouraging the use of the DPO Program by management or peers will not be tolerated and may lead to disciplinary action.
- C. Reprisal for or discouraging the use of the DPO Program could be grounds for an employee grievance, a whistleblower complaint under the Energy Reorganization Act of 1974, as amended (42 U.S.C. 5801 et seq.), or a complaint to the NRC OIG or the Office of the Special Counsel. (See additional information in Section X.F of this handbook.)
- D. A manager must ensure that a proposed personnel action involving a DPO submitter or DPO participant is not taken in retaliation for involvement in the DPO Program and that a performance appraisal does not reflect negatively on the use of, or participation in the DPO Program.
- 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 or participated in the DPO Program.
- F. A manager must take appropriate action in response to an allegation of reprisal against a DPO submitter or other participants in the DPO Program, and chilling effect concerns related to the DPO Program.
- G. An employee who believes that he or she has been harassed, intimidated, retaliated against, or discriminated against because of engaging in the DPO Program has several resources available to them, including the following:
 1. His or her immediate supervisor;
 2. Another supervisor or manager using the Open Door Policy;
 3. The DPO PM;

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

XI. THE DPO PROCESS FOR CONTRACTORS

A. Policy

1. The NRC strives to establish and maintain an environment that encourages all NRC employees and contractors to promptly raise concerns and differing views without fear of reprisal.
2. The NRC supports a contractor's expression of professional health and safety-related concerns associated with the contractor's work for the NRC that may differ from a prevailing NRC staff view, disagree with an NRC decision or policy position, or take issue with proposed or established agency practices. An occasion may arise when an NRC contractor, contractor personnel, or subcontractor personnel believes that a conscientious expression of a competent judgment is required to document these concerns on matters directly associated with its performance of the contract.

B. Scope and Applicability

1. The DPO process guidance in this MD applies to NRC contractors, contractor's personnel, or subcontractor personnel.
2. The guidance in this handbook supersedes the guidance included in Section XV.L, "Contractor Differing Professional Opinions (DPOs)," of the handbook for MD 11.1, "NRC Acquisition of Supplies and Services."

3. Individuals should follow specific process guidance included in the DPO-related clauses in 48 CFR Chapter 20, "NRC Acquisition Regulation" (see the DPO internal Web site for detailed clause information), or local contracting clauses.
4. The DPO process for contractors does not include an opportunity for appeal.
5. DPO records associated with contractor DPOs should be handled in accordance with the guidance in Section V of this handbook.
6. Retaliation against contractors for using the DPO process is inappropriate and will not be tolerated.

XII. WEB GUIDANCE

The [NRC's internal DPO Web site](#) includes a variety of resources and aids to assist individuals engaging in the DPO Program, including flow charts, [Frequently Asked Questions](#), DPO and DPO Appeal Milestones and Timeliness Goals, and procedures for the "Releasability Review of DPO Records."

XIII. GLOSSARY

Chilling Effect

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

Confidential Submittal

A Differing Professional Opinion (DPO) that is submitted by an employee through a U.S. Nuclear Regulatory Commission manager or through the DPO Program Manager because the submitter wishes his or her identity to be protected from disclosure to all others involved in the process.

Differing Professional Opinion (DPO)

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

DPO Case File

A PDF file that includes a cover page and copies of DPO records that are essential to an understanding of the case, such as the submittal, the DPO Panel report, and the DPO Decision.

DPO Appeal Form

NRC Form 690, "Differing Professional Opinion--Appeal," that must be used to submit a DPO appeal. The DPO Appeal Form is located in the NRC Forms Library on SharePoint at <http://fusion.nrc.gov/nrcformsportal/default.aspx>.

DPO Form

NRC Form 680, "Differing Professional Opinion," that must be used to submit a DPO. The DPO Form is located in the NRC Forms Library on SharePoint at <http://fusion.nrc.gov/nrcformsportal/default.aspx>.

Non-Concurrence Process

A process (described in MD 10.158, "NRC Non-Concurrence Process") used by an employee with a concern about a document in the concurrence process, that he or she had a role in creating or reviewing.

Open Door Policy

A process (described in MD 10.160, "Open Door Policy") used by an employee to discuss any work-related issue or concern with any agency supervisor or manager beyond informal discussions with his or her immediate supervisor.

Reprisal

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

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 DPO Program.

Surrogate Submitter

The DPO PM, or an NRC manager who agrees to act on behalf of an individual who wishes to submit a DPO but desires confidentiality (i.e., limiting his or her identity to the surrogate submitter).