

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

**MD 10.159 NRC DIFFERING PROFESSIONAL
OPINION PROGRAM**

DT-23-17

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

Approved By: David L. Pelton, Director
Office of Enforcement

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EXECUTIVE SUMMARY

Management Directive (MD) 10.159, "NRC Differing Professional Opinion Program," is revised to—

- Update the U.S. Nuclear Regulatory Commission's (NRC) policies and procedures for the Differing Professional Opinion (DPO) Program to be used by an NRC employee or contractor when they have a differing view about an established technical, legal, or policy issue (including an administrative or corporate support issue) related to the mission of the NRC. NRC employees and contractors are required to adhere to the policy and procedures for engaging in the DPO Program set forth in this MD and any applicable regional or headquarters office implementing procedures.
- Address issues and feedback from previous program reviews, including participant feedback, Office of the Inspector General Safety Culture and Climate Surveys, Federal Employee Viewpoint Survey, "Study of Reprisal and Chilling Effect for Raising Mission-Related Concerns and Differing Views at NRC," dated June 19, 2018, and lessons learned from implementation of the Differing Views Program Improvement Project approved recommendations.
- Clarify NRC employee's communication expectations with external stakeholders, including at NRC committee meetings (e.g., Advisory Committee on Reactor

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

- Safeguards (ACRS), Committee to Review Generic Requirements (CRGR), and/or Advisory Committee on the Medical Uses of Isotopes (ACMUI)), during the DPO process.
- Introduce the rapid resolution process and DPO Tiger Team.
 - Update the timeliness goals.
 - Introduce the ability of Deputy Office Directors and Deputy Regional Administrators to serve the role of DPO decision-maker.
 - Introduce the ability for Senior Level advisors to serve as a DPO panel chair.
 - Introduce the DPO appeal kickoff meeting.
 - Clarify the expectations for handling DPO records during the DPO process.
 - Reference the “Policy and Procedures for Addressing Allegations of Retaliation for Raising Safety Concerns.”
 - Reference the “Differing Views Program Best Practices Guide.”

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I. POLICY

- A.** It is the policy of the U.S. Nuclear Regulatory Commission (NRC) to support a Differing Professional Opinion (DPO) Program that an eligible NRC employee or contractor, as defined in this directive, Section IV, “Applicability,” can use when they have a differing view about an established technical, legal, or policy issue (including an administrative or corporate support issue) related to the mission of the NRC as addressed in the NRC’s Strategic Plan.
- B.** The NRC encourages all NRC employees and contractors to raise differing views promptly and without fear of reprisal. The exchange of views conducted in an open and free environment provides the ideal forum where differing views can be considered and addressed in an efficient and timely manner that improves decision-making and supports the agency’s safety and security mission.
- C.** All NRC employees and contractors are expected to discuss their differing views with their immediate supervisors on a regular, ongoing basis, including during the preparation and review of agency documents. These informal discussions should be enough to resolve most issues. However, if informal discussions do not resolve differing views, employees have various mechanisms for having their differing views considered and addressed by management, including the Open Door Policy described in Management Directive (MD) 10.160, “Open Door Policy,” and the Non-Concurrence Process (NCP) described in MD 10.158, “NRC Non-Concurrence Process.”
- D.** An employee’s decision to participate or not participate in the DPO process shall have no impact on an employee’s separate right to bring safety concerns to the NRC Office of the Inspector General (OIG), the Office of Special Counsel (OSC) or Congress, as appropriate.
- E.** In case of conflict between this MD and regional or headquarters office procedures, this MD takes precedence.

II. OBJECTIVES

- Promote early discussion and consideration of differing views on established technical, legal, or policy issues.
- Affirm that the DPO Program strengthens the NRC and is a potential source of valuable ideas.

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- Provide, to inform management decision-making, a formal process for expressing a DPO concerning a differing view related to the mission of the NRC as addressed in the NRC’s Strategic Plan (see NUREG-1614, “Strategic Plan”).
 - Ensure that all NRC employees and contractors can (a) express a DPO, (b) have their views considered and addressed by NRC management, and (c) be kept informed of the status of milestones throughout the process.
 - Ensure that the concerns raised in a DPO submittal receive a thorough and impartial review by a review panel of employees who are knowledgeable in the DPO’s subject area.
 - Ensure that the DPO process is executed effectively, efficiently, and in a timely manner consistent with the (1) importance of prompt action on the issue, (2) safety significance of the issue, (3) complexity of the issue, and (4) priority of other work activities affecting the availability of participants.
 - Emphasize that reprisal (i.e., harassment, intimidation, retaliation, or discrimination) by management or a peer against an employee for participating in the DPO process is inappropriate and not tolerated.
 - Recognize employees and contractors whose differing views, expressed through a DPO, result in a valuable contribution to the mission of the agency.

III. ORGANIZATIONAL RESPONSIBILITIES

A. Commission

1. Fosters an environment that allows individuals to raise differing views without fear of reprisal; promotes methods for raising a differing view that supports the agency’s mission.
2. Acts, 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 concerning differing views under the purview of an office reporting directly to the Commission, including—
 - (a) Informing the DPO submitter of the final decision and the rationale for the decision.
 - (b) Providing the Differing Views Program Manager (DVP PM) with a copy of a DPO appeal decision.

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- (c) Maintaining the documentation necessary to preserve an accurate record during 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 and/or DPO website.
4. Reviews and approves, as appropriate, an extension request beyond the 77-business day timeliness goal for the disposition of a DPO appeal concerning a differing view under the purview of an office reporting directly to the Commission.

B. Office of the Inspector General (OIG)

1. Investigates complaints of fraud, waste, and abuse. As appropriate, investigates NRC employee or contractor misconduct including, but not limited to, allegations of reprisal for raising differing views and complaints of mismanagement of agency programs.
2. Will make reasonable efforts to comply with requests for statistical data from OE, including requests for the number of reprisal allegations submitted in a given time frame, as well as opened investigations and substantiated investigations. 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.

C. Office of the General Counsel (OGC)

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 and the Differing Views Best Practices Guide.
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 (48 CFR, “Federal Acquisition Regulations System,” Part 20, “Nuclear Regulatory Commission,” (NRCAR)) or local contract clauses, when necessary, to ensure consistency with the guidance in this MD.

D. Executive Director for Operations (EDO)

1. Fosters an environment that allows individuals to raise a differing view without fear of reprisal; promotes methods for raising a differing view that supports the agency's mission.
2. Ensures enough resources are available to administer an effective DPO Program.
3. Reviews evaluations of the DPO Program and makes recommendations to the Commission, as necessary.
4. Acts, 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. Acts, as necessary, to disposition a DPO appeal concerning differing views under the purview of 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 DVP PM with a copy of a DPO appeal decision.
 - (c) Maintaining the documentation necessary to preserve an accurate record during 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 and/or DPO website.
6. Reviews and approves, as appropriate, an extension request for the disposition of a DPO appeal beyond the 77-business day timeliness goal.
7. Considers recognition for DPO Program participants when the expression of a DPO contributes to a positive environment for raising differing views or results in a valuable contribution to the mission of the agency.
8. Reviews DPO summaries and includes them in the Weekly Information Report. Summaries are only included in the Weekly Information Report for publicly available DPOs.
9. Publishes periodic announcements that affirm that the DPO Program strengthens the NRC, is a potential source of valuable ideas, and that an employee should feel comfortable using the program without fear of reprisal.
10. Coordinates with the Office of Enforcement (OE) on employee feedback collection methods and action plans conducted by the OEDO that address the DPO Program and the environment for raising differing views.

E. Director, Office of Enforcement (OE)

1. Provides overall guidance, resources, and direction to develop, implement, assess, and manage the DPO Program.
2. Directs periodic assessments of the DPO Program.
3. Recommends changes to DPO Program policies and practices to the EDO and Commission, as appropriate.
4. Reviews and approves, as appropriate, an extension request for the disposition of a DPO decision beyond the 135-business day timeliness goal.
5. Coordinates with the DVP PM on the assignment of an accepted DPO to the appropriate office director (OD) or regional administrator (RA) (see “Delegation of Authority for Differing Professional Opinion Decisions” ([ML23181A143](#))).
6. Coordinates with the DVP PM, DPO decision-maker, and the DPO submitter to establish a DPO panel.

F. Office of the Chief Information Officer (OCIO)

1. Establishes records disposition schedules for DPOs in accordance with regulations of the National Archives and Records Administration.
2. Maintains all completed DPO case files 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 and the Differing Views Best Practices Guide.
4. Ensures that NRC Form 680, “Differing Professional Opinion,” and NRC Form 690, “Differing Professional Opinion - Appeal,” are available in the NRC Forms Library.
5. Provides advice, as requested, on handling, marking, and protecting Controlled Unclassified Information (CUI) that is in a DPO record.

G. 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 NRCAR clauses and local contract clauses are consistent with the guidance in this MD.
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 remain unaltered, as appropriate.
5. Collaborates with OE and 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, DPO panel report, and DPO decision for a contractor DPO.

H. Office of the Chief Human Capital Officer (OCHCO)

1. Ensures that fostering an environment for raising differing views without fear of reprisal and promoting methods for raising differing views are an integral part of agency personnel policies and practices.
2. Coordinates with OE on employee feedback collection methods and action plans conducted by OCHCO that address the DPO Program and the environment for raising differing views.
3. Supports data collection compiled by OE that addresses concerns of reprisal against employees who have engaged in the 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.
4. Administers the Agency's Policy and Procedures for Addressing Allegations of Retaliation for Raising Safety Concerns (ARRSC).

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

1. Foster an environment that allows individuals to raise a differing view without fear of reprisal and promote methods for raising a differing view that support the agency's mission.

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2. Ensure that office policies, guidance, and practices within their areas of responsibility are consistent with the guidance in this MD.
 3. Ensure that their staff implements this MD.
 4. Act, 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. Act, as necessary, to disposition a DPO that is assigned to their office or region, including—

NOTE: An office director or regional administrator may delegate authority for dispositioning a DPO to the deputy office director or deputy regional administrator. In such instances, the deputy will serve as the DPO decision-maker and conform to the guidance provided in this MD (see “Delegation of Authority for Differing Professional Opinion Decisions” ([ML23181A143](#))).

- (a) Coordinate with the DVP PM; Director, OE; and DPO submitter to establish a DPO panel.
- (b) Use technical assistance from other NRC offices and regions or from outside the agency, as necessary, to address a highly specialized differing view.
- (c) Provide the DVP PM and DPO submitter with status updates of DPOs in accordance with established schedules, ensure that milestones are met, and take corrective action for missed milestones.
- (d) Request approval from the Director, OE, for DPO extensions beyond the 135-business 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 DVP 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 follow-up 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 and/or DPO website.
- (i) Provide the DVP 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 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 and the Differing Views Best Practices Guide.
 - (k) Inform the Director, OE; DVP PM; and submitter of any delays in follow-up 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 issues(s) in a DPO appeal to the EDO or Commission, as appropriate. If the DPO decision was delegated to a deputy office director or deputy regional administrator, the individual that dispositioned the DPO should also provide the statement of views, when possible.
 7. Consider recognition for DPO Program participants when the expression of a DPO contributes to a positive environment for raising differing views or results in a valuable contribution to the mission of the agency.
 8. 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.)
 9. Ensure that a proposed personnel action involving a 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.
 10. Coordinate with OE on employee feedback collection methods 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), Protected Critical Infrastructure Information (PCII)) that is in a DPO record.

K. Team Leaders, Supervisors, and Managers

1. Encourage employees to express differing views and propose solutions as early as possible in the decision-making process.
2. Make employees aware of the NRC mechanisms for expressing and resolving differing views, including informal discussions, the Open Door Policy, NCP, and DPO Program.

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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 DPO 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 differing views 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 all agency requirements and the Differing Views Best Practices Guide if a DPO submitter requests discretionary release to the public, with or without redactions, as appropriate.
 9. Consider recognition for DPO Program participants when the expression of a DPO contributes to a positive environment for raising differing views 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, "Reprisal," of the handbook to this directive).
 11. Ensure that a proposed personnel action involving a 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.

L. Differing Views Program Manager (DVP PM)

1. Promotes an environment for raising 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.

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4. Supports periodic assessments of the DPO Program and recommends modifications to the DPO Program and associated 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 website.
 8. Advises the appropriate level(s) of management to act 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 Commission, EDO, ODs and RAs, or their deputies, 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 differing views meeting the applicability requirements, as described in Section I.C, "Applicability of the DPO Program," of the handbook to this directive, 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; DPO decision-maker; and the DPO submitter and issues a tasking memorandum describing the expectations for the panel's review of the DPO.
 14. Receives a DPO appeal, requests that the DPO decision-maker provide a statement of views on the contested issue(s), and transmits all necessary information to the EDO or Commission, as appropriate.
 15. Maintains DPO case files.
 16. Submits the official record copy of the completed DPO case file (both publicly and non-publicly available portions) to the Document Processing Center, OCIO, for declaration in ADAMS when the DPO process is complete in accordance with Section V, "DPO Records," of the handbook to this directive.
 17. Supports initiatives designed to recognize the value of the DPO Program.

18. Informs an employee who alleges that retaliatory actions have been taken because of 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.
19. 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.
20. Coordinates with offices on any employee feedback collection method and action plans that the office plans to conduct that address the DPO Program.

M. All Employees and Contractors

1. Raise differing views and propose solutions as early as possible in the decision-making process.
2. Discuss differing views with their immediate supervisor as early as possible in the review process and before initiating a DPO.
3. Engage in the DPO Program in accordance with the guidance in this MD.
4. Ensure that DPO records that include classified and or sensitive unclassified information (e.g., SGI, PCII, CUI) 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 their DPO, even if they disagree.
6. Treat an employee or contractor who expresses a differing view or participates in the DPO Program respectfully. Ensure employees or contractors are not subjected to reprisal or marginalized 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 Appointment (as defined in MD 10.145, “Senior Level System,” and the Commissioner Assistant Handbook) (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, “Federal Acquisition Regulations System,” Part 20, “Nuclear Regulatory Commission.”

Nuclear Regulatory Commission Documents

ADAMS Template OE-011 ([ML053430016](#)).

Controlled Unclassified Information Programs, at <https://drupal.nrc.gov/cui>.

Commissioner Assistant Handbook, at <https://usnrc.sharepoint.com/sites/ochco-hub/PDF/Executive/comm-asst-handbook.pdf>.

Differing Views Best Practices Guide ([ML20024E057](#)).

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

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.”

10.99, “Discipline and Adverse Actions.”

10.101, “Employee Grievances.”

10.145, "Senior Level Service."

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."

12.6, "NRC Controlled Unclassified Information (CUI) Program."

12.7, "NRC Safeguards Information Security Program."

Memorandum from K. Steven West, Deputy Executive Director for Materials, Waste, Research, State, Tribal, Compliance, Administration, and Human Capital Programs, to George T. Wilson, Director, Office of Enforcement, "Tasking in Response to Recommendations Resulting from the 'Differing Views Program Improvement Project,'" May 2, 2019 ([ML19120A480](#)).

Memorandum from Daniel H. Dorman, Executive Director for Operations, to Those on the Distribution List, "Delegation of Authority for Differing Professional Opinion Decisions," July 19, 2023 ([ML23181A143](#)).

NRC and National Treasury Employees Union Collective Bargaining Agreement, at https://0da9c44c-fddc-4802-be67-7a0950243ebf.usfiles.com/ugd/0da9c4_8335164d2bf2408b8a0fbb7e75fbf89f.pdf.

NRC Forms Library, at <https://usnrc.sharepoint.com/teams/NRC-Forms-Library/SitePages/Home.aspx>.

NRC Internal website on the Differing Professional Opinion Program, at <https://usnrc.sharepoint.com/teams/NRC-Differing-Professional-Opinions>.

NUREG 1614, "Strategic Plan."

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

Plain Language Action Plan, at <https://intranet.nrc.gov/oedo/65573>.

Policy and Procedures for Addressing Allegations of Retaliation for Raising Safety Concerns ([ML20280A713](#)).

Weekly Information Report, at <https://www.nrc.gov/reading-rm/doc-collections/commission/secys/index.html>.

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) website, at www.archives.gov.

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

United States Code

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

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

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I. INTRODUCTION

A. Background

1. The U.S. Nuclear Regulatory Commission (NRC) strives to establish and maintain an environment that encourages all NRC employees and contractors to raise differing views promptly without fear of reprisal. The exchange of views conducted in a free and open environment provides the ideal forum where differing views can be considered and addressed in an efficient and timely manner that improves decision-making 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 to express a DPO. A DPO is defined as an expression of a position that differs from an established technical, legal, or policy position (including an administrative or corporate support issue) related to the mission of the NRC as addressed in the NRC’s Strategic Plan.

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

1. The DPO Program allows an NRC employee or contractor to have their DPO evaluated by a panel of NRC subject matter experts independent from the issue(s) subject to the DPO and considered and responded to by an office director (OD) or regional administrator (RA), or their deputy. The DPO Program includes a DPO appeal process that allows an NRC employee to have their DPO considered and responded to by the Executive Director for Operations (EDO), or the Commission for those offices reporting to the Commission. The DPO Program complements the other mechanisms (e.g., Open Door Policy and NCP) for raising 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. 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 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.
5. Using the NCP does not prohibit an employee from raising the same concerns in the DPO Program after the NCP is complete and the subject document has been issued.

C. Applicability of the DPO Program

1. Eligibility to Use the DPO Program

- (a) The DPO process is available to NRC employees and contractors to seek formal resolution of differing views about established technical, legal, or policy issues (including administrative or corporate support issues).
- (b) The DPO appeal process is available to all NRC employees, but is not available to contractors.
- (c) The DPO process and DPO appeal process are not available to employees on NRC Limited Appointment (as defined in MD 10.145 and the Commissioner Assistant Handbook and by reason of the confidential, policy making, policy determining, or policy advocating nature of the position) and Commissioners.
- (d) Individuals serving in a representational capacity may not use the DPO process with respect to issues and decisions that relate to the matters in controversy in a proceeding in which they are actively representing the agency (e.g., an attorney in the Office of the General Counsel (OGC) who represents the agency in litigation may not use the DPO process as it relates to matters in controversy in the litigation). But OGC attorneys who are not representing the staff or agency could engage in the DPO process with respect to those issues.

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 differing view 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 differing view becomes a DPO only when the differing view is submitted in accordance with the procedures in this handbook and is accepted by the agency's Differing Views Program Manager (DVP PM) 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 pre-decisional (i.e., positions have not been established), more appropriately considered under other agency processes, or not within the jurisdiction of the NRC to resolve including, but not limited to—

- (a) Issues that are still under staff review where an official position has not been established yet, in a signed and dated memorandum, letter, paper, or other approved correspondence constituting an official agency record;

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- (b) Issues that are under review by the Commission and/or 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 reprisal for raising concerns, and complaints of mismanagement of agency programs that are appropriately addressed by the Office of the Inspector General (OIG) and or the Office of Special Counsel (OSC);
 - (f) Issues submitted anonymously that 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 differing view is through informal discussions, which 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 appropriate. There are no time limits for completion of these discussions, no tracking requirement, and no requirement to keep written records.
2. All NRC employees and contractors have a responsibility to discuss differing views as early as possible in the decision-making process. All NRC employees and contractors have a responsibility to seek solutions to differing views 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 differing view.

5. Informal discussion is typically a prerequisite for engaging in the DPO Program. However, 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.
6. Before formally submitting a DPO, an individual may contact the DVP PM to discuss their differing view or seek guidance on engaging in the DPO Program.
7. Engaging in the DPO Program does not preclude an individual from continuing informal discussions in the interest of resolving concerns.

E. Rapid Resolution

1. The benefits of resolving differing views informally are substantial. Often, issues can be resolved faster and with fewer resources, resulting in a win-win scenario for the parties involved. To support this, the DVP PM may try to resolve issues informally during the screening stage. This process is called rapid resolution.
2. During rapid resolution, the DVP PM reviews the differing view and initiates informal discussions with relevant individuals to further understand the issue. Commonly, the DVP PM will coordinate a meeting with the submitter and decision-maker to discuss the differing view. Other individuals may be present at this meeting (e.g., Director, Office of Enforcement (OE), other knowledgeable technical staff, and/or representatives from OGC).
3. If the submitter and decision-maker agree on a path forward to resolve the differing view through rapid resolution, and the submitter decides to withdraw the DPO, the case will be closed. If the submitter and decision-maker do not come to an agreement, the DPO will continue through the formal process.
4. The timeliness goal for completion of rapid resolution is 10 business days after completion of the DPO submittal screening. Rapid resolution may be performed in parallel to the screening process. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.

F. Communications During the DPO Program

1. The DPO Program is an internal agency process that relies on open communication to support the decision-making process.
2. Once a DPO has been accepted in accordance with the guidance in Section II.C, "Screening, Dispatching, and Tracking," of this handbook, the DVP PM will acknowledge the existence of the DPO by including the subject of the DPO on the

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- internal DPO website and indicating that it is pending. To balance open communication and the sensitivity of an open DPO case review, the nature of the DPO concerns may be shared internally (e.g., Summary of Issues (SOI) developed by the DPO panel). However, DPO records, including the DPO submittal and DPO panel report, should only be distributed or shared on a need-to-know basis until the DPO case is closed and is not to be used to influence the DPO panel or DPO decision-makers.
3. It is appropriate for employees to discuss the details of an open DPO with co-workers as part of the evaluation and review process. However, employees must follow agency guidance and policies for releasing of information to the public. The DVP PM should be notified of all outside inquiries about active cases.
 4. Open DPOs may be discussed in detail during NRC committee meetings (e.g., Advisory Committee on Reactor Safeguards (ACRS), Committee to Review Generic Requirements (CRGR), Advisory Committee on the Medical Uses of Isotopes (ACMUI)), including meetings open to members of the public, provided that the DPO submitter coordinates with their management. This does not supersede guidance for the discussion of Controlled Unclassified Information (CUI) material that may be embedded in the DPO, which must be handled in accordance with established NRC policy. It is expected that NRC staff and management will clearly communicate to the NRC committee (e.g., ACRS, CRGR, ACMUI) that the differing view discussed represents the opinion of a staff member(s) and that management is evaluating the differing view raised but has not reached a final decision.
 5. 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 decision-making process. It is also critical to update the DPO submitter on the timeline for resolving the concern, including delays in the process, if they arise.
 6. Engaging in the DPO Program does not preclude an individual from continuing informal discussions in the interest of resolving concerns.

G. 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 135 business days and a DPO appeal within 77 business days.
2. The 135-business day timeliness goal for the disposition of a DPO begins on the day a DPO is submitted until the day a DPO decision is issued. The 77-business day timeliness goal for the disposition of a DPO appeal begins on the day a DPO appeal is submitted until the day a DPO appeal decision is issued.

3. The DVP PM must be notified when milestone activities are completed, or provided an explanation for the delay. The DVP PM will document the completion of milestones for each DPO case that is opened and provide updated schedules on the DPO website.
4. Because the scope and complexity of DPOs can vary widely, the timeliness expectations for each milestone are expressed strictly as goals—a way of meeting the overall timeliness goal. It is important to ensure that DPOs receive a thorough review. The DPO Program should not result in a schedule-driven process that fails to recognize the safety significance and complexity of the issues and should recognize the priority of other work in the NRC affecting the availability of DPO participants. Schedules should factor in several 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 135 business days to resolve a DPO and longer than 77 business days to resolve a DPO appeal. Similarly, circumstances may warrant prompt action and resolving a DPO in less than 135 business days or a DPO appeal in less than 77 business days.
5. The 135-business day timeliness goal for dispositioning a DPO may only be extended with the approval of the Director, OE. The extension request should include the reasons for the delay, actions being taken to address the delay, and a new completion schedule.

II. THE DPO PROCESS

A. Submitting a DPO

1. Before formally submitting a DPO, an individual may contact the DVP PM to discuss their differing view or seek guidance on engaging in the DPO Program.
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 DVP PM using NRC Form 680, “Differing Professional Opinion,” (DPO Form) located on the DPO internal website (available at <https://usnrc.sharepoint.com/teams/NRC-Differing-Professional-Opinions>). The DPO submittal must include—
 - (a) A summary of the existing agency position with which the submitter disagrees.
 - (b) A reference to when the existing agency position was established and where it may be found, including reference to a specific document (including the Agencywide Documents Access and Management System (ADAMS) accession number), if applicable.

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- (c) A description of the submitter's differing view, how it differs 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) The submitter's opinion of whether each of the following are high, medium, or low:
 - (i) Importance of prompt action on the issue,
 - (ii) Safety significance of the issue, and
 - (iii) Complexity of the issue.
 - (e) An indication of whether the differing view may be directly relevant to a decision pending before the Commission, including reference to a specific document (including the ADAMS accession number), if applicable.
 - (f) An affirmation that discussions of the differing view took place with the submitter's immediate supervisor, within the individual's management chain, or within the management chain that is responsible for the position that the submitter disagrees with; 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.
 - (g) 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 DVP PM will discuss the issue with the submitter and may encourage continuing informal discussions in the interest of resolving the differing view.
 - (h) The area(s) of technical expertise needed to properly assess the issue. In addition, the names of potential DPO panel members, in priority order, or a statement that no names of potential DPO panel members will be provided.
 - (i) Title and ADAMS accession number for any document referenced in the DPO that is available in ADAMS, and a brief statement regarding the relevance of the document to the differing view. A copy of the document should not be attached to the DPO.
 - (j) A copy of any document referenced in the DPO that is not available in ADAMS, and a brief statement regarding its relevance to the issue.

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- (k) An indication of whether the DPO submitter requests that management determine whether discretionary release of the DPO case file to the public, with or without redactions, is appropriate when the DPO is closed. A submitter may change their original preference during the DPO process by notifying the DVP PM in writing. (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 Plain Language Action Plan (available at <https://intranet.nrc.gov/oedo/65573>).
 4. If any part of the submittal includes classified and or controlled unclassified information (e.g., Safeguards Information (SGI), Protected Critical Infrastructure Information (PCI)) 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.

B. Confidential Submittal

1. If an individual wishes to submit a DPO but desires confidentiality (i.e., limiting their identity to a surrogate submitter), the individual may submit an unsigned DPO to an NRC manager or the DVP 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 relay information between the individual and other DPO participants to support implementation of the procedures in this handbook. Any public notices or summaries of the DPO should be redacted to protect the individual's confidentiality.
4. While all reasonable efforts will be made by the surrogate submitter, there may be instances that prevent the submitter's identity from being protected. All agency records are subject to consideration for public release upon receipt of a request under the Freedom of Information Act of 1966 (5 U.S.C. 552).

5. 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 Allegations Advisor, as appropriate.

C. Screening, Dispatching, and Tracking

1. The DVP 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.
2. The DVP 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 DVP PM may seek the assistance of a subject matter expert(s) (e.g., Tiger Team) in determining the appropriate action office. The timeliness goal for screening and a determination of whether to use the rapid resolution process is within 10 business days of receipt of a DPO submittal. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.
3. Because the benefits of resolving a differing view informally are substantial, before formally accepting the DPO, the DVP PM may contact the submitter and the appropriate management chain and encourage continuing informal discussions in the interest of resolving concerns (e.g., rapid resolution). 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.
4. If an issue is not accepted for processing as a DPO, the DVP PM will—
 - (a) Notify the submitter of the decision and rationale.
 - (b) Inform the submitter of other possible next steps and methods through which to pursue their concerns (e.g., informal discussion, the Open Door Policy, the NCP, or the negotiated grievance procedure).
5. If the DPO is accepted, the DVP PM will—
 - (a) Assign a DPO control number that will be used to track the DPO throughout the review process.

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- (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) Notify the submitter that their DPO has been accepted for review in the DPO Program.
 - (d) Coordinate a DPO kickoff meeting.
 - (e) Notify the Office of the EDO (OEDO) to support dispatch and tracking of the DPO, including—
 - (i) The appropriate action office and the DPO decision-maker for the DPO decision and
 - (ii) The due date for a DPO decision.

D. Receipt of DPO

1. The DPO decision-maker may contact the DVP PM when they receive the DPO to help support an understanding of the process. The DVP PM may offer advice on various issues, including best practices for establishing the DPO panel, timeliness and resources considerations, and communication.
2. The DPO decision-maker may believe that it is not necessary to establish a DPO panel to review the DPO because the DPO decision-maker completely agrees with the submitter's DPO. Additional information about this circumstance can be found in Section I.E, "Rapid Resolution."

E. DPO Tiger Team Support

1. The Tiger Team establishes a list of subject matter experts throughout the agency that can be called upon to quickly understand and assess the issues raised in a DPO submittal to the extent that it can assist in resolving differing views and recommend potential DPO process flexibilities, when needed.
2. The Tiger Team may make recommendations to support the DPO Program, including—
 - (a) Whether the DPO submittal raises a repeat issue without significant new information (discussed in Section I.C.3 of this handbook);
 - (b) Strategies and recommendations that may resolve the issue through rapid resolution (Section I.E of this handbook);

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- (c) Specific staff with expertise and/or technical areas that may be valuable when forming a DPO panel, and if there is reason to consider a panel with more than/fewer than the standard three members (discussed in Section II.F of this handbook);
 - (d) The importance of prompt action, safety significance, and complexity of the issues raised in the DPO submittal (discussed in Section II.A of this handbook); and
 - (e) Other agency processes that may be more appropriate for dispositioning the issue (discussed in Section I.C.3 of this handbook).
3. Tiger Team membership will be based on a list of subject matter experts in various areas throughout the agency. The Tiger Team is not a replacement for a DPO panel. OE will make reasonable efforts to not include an individual who has directly participated in the formulation of the agency position that is at issue.

F. Establishing a DPO Panel

1. The DVP PM will coordinate with the Director, OE; DPO decision-maker; and DPO submitter to establish a DPO panel to conduct a thorough and 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 timeliness goal for establishing the DPO panel is within 10 business days of dispatching the DPO to the appropriate DPO decision-maker or at the conclusion of rapid resolution, if appropriate. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.
2. The DPO panel should normally have three members, including a member from the list of potential panel members identified by the DPO submitter, if provided. In consultation with the Tiger Team (discussed in Section II.E of this handbook), the Director, OE, and DPO decision-maker may establish a panel with fewer or more than three members.
3. The following considerations apply to appointing DPO panel members. Deviation from these considerations requires approval of the EDO.
 - (a) The DPO panel chair must be a Senior Executive Service manager or Senior Level advisor normally from an office other than the office assigned action on the DPO.
 - (b) Under no circumstance should the DPO panel chair 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.

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- (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 formulating the agency position at issue or has a conflict of interest with creating the panel report.
 - (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.
4. The DVP PM will issue a tasking memorandum identifying the panel members and describing the expectations for the panel's review of the DPO. Copies of the memorandum will be provided to the DPO decision-maker, submitter, and Director, OE. If the DPO submitter does not report to the DPO decision-maker 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 DVP PM will file the record in the applicable DPO case file folder in the ADAMS MainLibrary.
 5. The DVP PM should coordinate a kickoff meeting with the submitter, panel members, and DPO decision-maker to outline the DPO process, facilitate a common understanding of the differing view, and align on a schedule for the review and issuance of a DPO decision.
 6. See Section I. F, "Communications During the DPO Program," of this handbook for additional guidance on communications during the DPO Program.

G. DPO Panel Review

1. The DVP PM should offer to meet with the DPO panel members to help them understand the DPO process.
2. See Section I. F, "Communications During the DPO Program," of this handbook for additional guidance on expectations regarding communications during the DPO Program.
3. The DPO panel will review the DPO submittal and meet with the submitter as soon as practical 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.

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4. The DPO panel will promptly develop a succinct SOI to ensure that there is a common understanding of the submitter's safety concerns. The DPO panel may meet with the submitter to support development of the SOI.
 5. The DPO panel will send the SOI to the submitter for comment and consensus. The request should include a timeliness expectation for feedback. The submitter will promptly review the SOI and provide comments, as necessary. In case of no response from the submitter, after 10 business days, the DPO panel may continue with the review and evaluate the issues as described and understood from the DPO submittal.
 6. The DPO panel chair will send the agreed upon SOI to the submitter, with a copy to the other panel members, the DPO decision-maker, and the DVP PM. The SOI will be included in the DPO panel report.
 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 should not be a factor in the review.
 8. Any new issues outside the scope of the agreed upon SOI should normally be handled through informal discussions between the submitter and their immediate supervisor or the management chain responsible for the issue, through the initiation of a new DPO, or through a separate tasking from the DPO decision-maker. The Director, OE, and DPO decision-maker must approve the addition of new issues outside of the agreed upon SOI if they arise during the review.
 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 and impartial review.
 10. 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.
 11. In certain situations, it may be appropriate for the DPO panel to seek input from a standing NRC committee (e.g., ACRS, CRGR, ACMUI). It may also be beneficial for the DPO submitter to participate in an NRC committee meeting.
 12. In certain situations (such as highly complex, specialized issues), it may be appropriate for the DPO panel to seek expertise from outside the agency (e.g., national laboratories) to support the evaluation of the issues addressed in the DPO. The DPO panel chair should promptly consult with the DPO decision-maker and notify the DVP PM in these cases. A reasonable effort should be made to ensure

that the selected outside the agency expert does not have an interest on the issues addressed in the DPO.

13. The DPO panel chair should promptly notify the DVP PM, DPO submitter, and the DPO decision-maker of schedule-related issues that could affect the timeliness of the process (discussed in Section I.G of this handbook).

H. DPO Panel Report

1. The DPO panel will document its conclusions and recommendations in a report to the DPO decision-maker. Note that the DPO panel report is a resource for the DPO decision-maker, but the DPO panel report's recommendations and or conclusions are not binding on the DPO decision-maker as the decision authority lies fully with the DPO decision-maker (or DPO appeal decision-maker, for DPO appealed cases.)
2. A DPO panel report should be written in plain language consistent with the Plain Language Action Plan.
3. The report must focus on 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 and recommendations.
4. If the DPO panel identifies additional issues or additional recommendations beyond the scope of the DPO, the DPO panel may provide the information to the applicable OD or RA in a separate memorandum. If the DPO panel has feedback related to the DPO process, they should communicate directly with the DVP PM.
5. The DPO panel should provide a copy of the report to the submitter, DVP PM, and Director, OE. Additional NRC management and staff may be provided copies of the DPO panel report at the discretion of the EDO, Deputy EDO, responsible OD or RA (or their deputy), and the Director, OE.
6. The DPO panel report should be profiled in accordance with ADAMS template OE-011 and identified as non-public with viewer rights limited to those included on distribution of the report. The ADAMS accession number should be sent to the DVP PM, who will file the record in the applicable DPO case file folder in the ADAMS Main Library.
7. The timeliness goal for issuance of the DPO panel report is 75 business days from the date of the memorandum establishing the DPO panel. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.

I. DPO Decision

1. The DPO decision normally is issued by the OD or RA for the office or region in which the subject document originated. The OD or RA may choose to delegate authority for issuing the DPO decision to the appropriate Deputy OD or Deputy RA.
2. The timeliness goal for issuance of a DPO decision is within 30 business days of receiving the DPO panel report. See Section I. G of this handbook for additional guidance on timeless goals and expectations during the DPO Program.
3. A DPO decision should be written in plain language consistent with the Plain Language Action Plan. The level of detail must be sufficient so that an independent reader can understand the basis for the decision and outcome.
4. Although not a requirement, the DPO decision-maker should consider meeting with the submitter before issuing the DPO decision.
5. The DPO decision-maker 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, DPO panel, or other knowledgeable staff that they deem necessary before issuing a DPO decision. The DPO decision-maker also notifies the DVP PM and DPO submitter, of schedule-related issues that could affect the timeliness of the process.
6. In rare cases, the DPO decision-maker may believe an addendum to the DPO panel report is necessary. The need for an addendum must be discussed with the DVP PM and the submitter. An addendum may be appropriate if the DPO decision-maker believes that the report is incomplete, unclear, or if the DPO decision-maker needs additional information to support an informed decision. The DPO decision-maker must request an addendum to the DPO panel in writing, with copies to the submitter, DVP PM, and Director, OE. The DPO panel will provide addenda to the DPO decision-maker, with copies to the submitter, the DVP PM, and the Director, OE.
7. The DPO decision-maker issues the DPO decision in a memorandum to the submitter that includes the decision on the DPO, its rationale, and any follow-up actions, as necessary. Copies of the DPO decision will be sent to the DPO panel members, DVP PM, and Director, OE. Additional NRC management and staff may be provided copies of the DPO decision at the discretion of the EDO, Deputy EDO, responsible OD or RA (or their deputy), and the Director, OE. If follow-up actions are identified, the DPO decision-maker normally will issue a separate memorandum tasking any individuals or organizations with developing, tracking, and implementing follow-up actions. Because the DPO decision may not be available to a broader audience within the agency until after the releasability review is complete or pending a DPO appeal decision, if applicable, the tasking memorandum should be written as

a standalone document that does not rely on staff reviewing the DPO decision. If follow-up actions are identified in another office, the DPO decision-maker will coordinate with the applicable OD or RA to discuss possible follow-up actions in their office. See Section VI, "Follow-Up Actions," of this handbook for additional guidance on follow-up actions.

8. The DPO decision-maker should provide the DVP PM with a brief description of the issue raised in the DPO and its disposition. For public DPOs, the summary should be included in the Weekly Information Report. For non-public DPOs, the DVP PM should send the summary to the OEDO point-of-contact to be shared with the Commissioner's Assistants. Summaries of non-public DPOs are not posted in the Weekly Information Report because that is a public document. All summaries should also be posted on the DPO website. The DVP PM will hold the summary until the case is closed (i.e., when a DPO decision is issued and not appealed or when a DPO appeal decision is issued) and the DPO case file is declared an official agency record (OAR) in ADAMS.
9. A submitter's DPO does not release the submitter from the obligation to perform assigned tasks associated with the final decision, even if they do not agree.
10. The submitter may request a meeting with the DPO decision-maker to discuss the DPO decision.

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 contractors.
2. Before formally submitting a DPO appeal, an individual may contact the DVP PM to discuss their differing view or seek guidance.
3. An NRC employee who submitted a DPO, is not satisfied with the DPO decision, and wants an additional review and response may file an appeal through the DVP PM, using NRC Form 690, "Differing Professional Opinion—Appeal," (DPO Appeal Form).
4. A DPO appeal should be filed within 15 business days of receipt of the DPO decision. An extension to this deadline requires approval by the Director, OE. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.
5. The basis for the DPO appeal should be clearly and succinctly described and should focus on perceived technical flaws in the DPO decision and why the agency should come to a different conclusion.

6. The scope of the DPO appeal must be limited to the scope of the DPO and the SOI.
7. If the submitter identifies additional issues or additional recommendations beyond the scope of the DPO, which are relevant to the differing view that is under appeal, the submitter should provide the information to the DPO appeal decision-maker (EDO or Commission, as applicable) in a separate memorandum.
8. DPO appeal submittals should be written in plain language consistent with the Plain Language Action Plan.
9. If any part of the appeal submittal includes classified and or CUI (e.g., Safeguards Information (SGI), Protected Critical Infrastructure Information (PCII)) the form must be marked and handled under the appropriate requirements.
10. The submitter should avoid using proper names (titles or organizations are acceptable) in the DPO appeal discussion.
11. The submitter should refrain from making statements that could be interpreted as derogatory, inappropriate, or otherwise unprofessional in the DPO appeal discussion. (Allegations of waste, fraud, abuse, or inappropriate conduct should be forwarded to OIG.)

B. Screening and Dispatching

1. The DVP 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 eligibility criteria outlined in Section I.C.3 of this handbook for DPO submittals also apply to DPO appeal submittals. The timeliness goal for screening a DPO appeal submittal is within 5 business days of receipt of a DPO appeal submittal. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.
2. If the DPO appeal is not accepted, the DVP PM will—
 - (a) Notify the submitter of the decision and rationale.
 - (b) Inform the submitter of other potential methods to pursue their concerns (e.g., Open Door Policy, informal discussion).
3. If the DPO appeal is accepted, the DVP PM will—
 - (a) Notify the submitter that their DPO appeal is accepted for review in the DPO Program.

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- (b) Notify the DPO appeal decision-maker, applicable Deputy EDO, DPO decision-maker, OD, or RA to whom the DPO submitter reports (if different than the DPO decision-maker), and 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 DPO decision-maker and request a written statement of views (SOV) on the contested issues.
4. The timeliness goal for the DPO decision-maker to provide the DVP PM a written SOV on the contested issues is within 10 business days of receipt of the request. The DPO decision-maker may request assistance from the DPO panel or other staff, as necessary, to support a comprehensive SOV. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.
 5. The DVP PM will dispatch the DPO appeal package (including the DPO appeal, SOV, DPO decision, DPO panel report, DPO submittal, and, in rare circumstances, other relevant DPO records that were relied upon in the panel report or DPO decision that are not available in ADAMS) to the DPO appeal decision-maker.

C. DPO Appeal Review

1. Appeals are reviewed by the EDO for DPOs in offices reporting to the EDO and by the Commission for DPOs in offices reporting to the Commission.
2. The DPO appeal decision-maker should designate a point-of-contact to support implementation of the DPO Program and communications with the DVP PM (e.g., communicating the status of a DPO appeal, tracking follow-up actions).
3. The DVP PM should coordinate an appeal kickoff meeting to outline the DPO process, facilitate a common understanding of the differing view, and align on a schedule for the review and issuance of a DPO appeal decision. The appeal kickoff meeting should include the DPO submitter, DPO panel member(s), DPO decision-maker, and DPO appeal decision-maker (or their designee). The submitter may request whether all parties meet at one appeal kickoff meeting or if there are two separate appeal kickoff meetings. The two separate meetings would include (1) the DPO submitter and the DPO appeal decision-maker (or their designee) and (2) the DPO appeal decision-maker (or their designee), DPO panel member(s), and the DPO decision-maker.
4. The DPO appeal decision-maker 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 DPO appeal decision-maker will review the information in the DPO appeal package and rely upon knowledgeable staff members, the

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

5. The DPO appeal decision-maker 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 DPO appeal decision-maker will notify the DVP PM and DPO submitter, of schedule-related issues that could affect the timeliness of the process.

D. DPO Appeal Decision

1. The timeliness goal for the DPO appeal decision-maker to provide the submitter with a decision on the appeal is within 60 business days of receipt of the DPO appeal package. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.
2. A DPO appeal decision should be written in plain language consistent with the Plain Language Action Plan. The level of detail must be sufficient so that an independent reader can understand the basis for the decision and outcome.
3. Although not a requirement, the DPO appeal decision-maker should consider meeting with the submitter before issuing the DPO appeal decision.
4. The DPO appeal decision-maker issues the DPO appeal decision in a memorandum to the submitter that includes the decision on the DPO appeal, its rationale, and any follow-up actions, as necessary. Copies of the DPO appeal decision will be sent to the DPO decision-maker, DPO panel members, DVP PM, and Director, OE. Additional NRC management and staff may be provided copies of the DPO appeal decision at the discretion of the EDO, Deputy EDO, responsible OD or RA (or their deputy), and the Director, OE. If follow-up actions are identified, the DPO appeal decision-maker normally will issue a separate memorandum tasking any individuals or organizations with developing, tracking, and implementing follow-up actions. Because the DPO appeal decision may not be available to a broader audience within the agency until after the releasability review is complete, the tasking memorandum should be written as a standalone document that does not rely on staff reviewing the DPO appeal decision. (See Section VI, "Follow-Up Actions," of this handbook for additional guidance on follow-up actions.)
5. A decision on a DPO appeal by the EDO or 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 DPO appeal decision-maker provides the DVP PM with a brief description of the issue raised in the DPO appeal and its disposition. For public DPOs, the summary should be included in the Weekly Information Report. For non-public DPOs, the DVP PM should send the summary to the OEDO point-of-contact to be shared with the Commissioner's Assistants. Summaries of non-public DPOs are not posted in the Weekly Information Report because that is a public document. All summaries should also be posted on the DPO website. The DVP PM will keep the summary on hold until the DPO case file is declared an OAR in ADAMS.

IV. SUBMITTING DOCUMENTS TO THE COMMISSION THAT INCLUDE A DPO

- A. Staff will make the Commission 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 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 DVP 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. Additional NRC management and staff may be provided viewer rights at the

discretion of the EDO, Deputy EDO, responsible OD or RA (or their deputy), and the Director, OE.

6. All DPO records, including those documenting follow-up actions, must be distributed to the submitter, DVP PM, and Director, OE.

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 DVP PM will create a new record (DPO case file) and profile the record using ADAMS template OE-011.
2. The DPO case file will include, at a minimum—
 - (a) An introduction cover page explaining the DPO Program and listing the documents included in the file, if applicable;
 - (b) DPO submittal;
 - (c) Memorandum establishing the DPO panel;
 - (d) DPO panel report; and
 - (e) DPO decision.
3. If an appeal is submitted, the DPO case file will also include—
 - (a) DPO appeal,
 - (b) SOV from the DPO decision-maker, and
 - (c) DPO appeal decision.
4. The DPO case file may also include any other documents that are essential to understand the case (e.g., documents relied upon in the panel report or DPO decision that are not in ADAMS but were relied upon in the decision-making process).
5. The DVP PM will ask the submitter if they would like management to determine whether discretionary release of the DPO case file to the public, with or without redactions, is appropriate. If the DPO submitter requests that the DPO case file be non-public, the DVP 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 DVP 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

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- 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).) If the submitter would like management to determine whether discretionary release of the DPO case file to the public is appropriate, with or without redactions, the DVP PM will coordinate the review of the DPO case file with the originating office or region for a releasability determination. For public DPO case files, the submitter may also request that their name be redacted from the public version. 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. The DPO decision-maker has the final responsibility for determining what portions of the DPO case file should be released, with OGC consultation and concurrence, as necessary.
6. The releasability review must be performed consistent with all agency requirements and the Differing Views Best Practices Guide. The timeliness goal for completion of the releasability review is 10 business days. See Section I. G, "Timeliness of the DPO Program," of this handbook for additional guidance on timeless goals and expectations during the DPO Program.
 7. The originating office or region has the responsibility for creating a redacted DPO case file record, if necessary. Redacted DPO case file records will use the same document name, followed by the annotation, "-Redacted-Public," will be sent to the DVP PM, and subsequently filed in the applicable DPO folder within the DPO case file in the ADAMS Main Library.
 8. The DPO decision-maker will notify the DVP PM when the releasability review is completed.
 9. The DVP PM will ensure records are profiled appropriately to reflect the determination and send the DPO case file to the Document Processing Center (DPC), Office of the Chief Information Officer, to be declared OAR(s) and filed in the applicable DPO folder within the DPO Case File in the ADAMS Main Library.
 10. 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.
 11. 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."

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12. The DVP PM will post all closed DPO case files (including public and non-public) on the internal DPO website to inform employees of the outcome.

VI. FOLLOW-UP ACTIONS

- A.** If follow-up actions are identified as part of addressing a DPO, the DPO decision-maker will issue a separate memorandum tasking any individuals or organizations with developing, tracking, and implementing them.
- B.** If follow-up actions are identified in another office, the DPO decision-maker will coordinate with the applicable OD or RA to discuss possible follow-up actions. If the other OD or RA agrees with the follow-up actions, the OD or RA will issue a separate memorandum tasking any individuals or organizations within their office with developing, tracking, and implementing them.
- C.** The OD or 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 follow-up actions.
- D.** The OD or RA is responsible for assuring that follow-up actions are completed.
- E.** The OD or RA will keep the submitter and DVP PM informed of the progress of follow-up actions, including notification when actions are completed.
- F.** All documents generated because of DPO follow-up actions should 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.
- G.** All documents generated because of DPO follow-up actions should be distributed to the submitter, DVP PM, and Director, OE.
- H.** The DVP PM will record follow-up actions and final implementation of decisions resulting from the DPO process.
- I.** If the schedule for follow-up actions is not met, the OD or RA is responsible for identifying the reason for the delay and developing a revised schedule for completion of the actions. The OD or RA will communicate this information to the Director, OE; DVP PM; and submitter. The Director, OE, may notify the OEDO for offices reporting directly to the EDO, or the Commission for offices reporting directly to the Commission of significant or recurring schedule delays.

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- J. The DPO decision-maker 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 emails, Daily Notes, communications with the Commission, or communication plans.
 - K. The DPO decision-maker is responsible, in consultation with OGC, for determining whether to submit a board notification to the Atomic Safety and Licensing Board (ASLB) if the DPO is relevant to any issue in an ongoing proceeding.
 - L. If follow-up actions are identified as part of addressing a DPO appeal, the DPO appeal decision-maker will issue a separate memorandum tasking any individuals or organizations with developing, tracking, and implementing them.
 - M. The individuals or organizations are responsible for assuring that follow-up actions are completed.
 - N. The individuals or organizations will keep the submitter, DVP PM, and DPO appeal decision-maker informed of the progress of follow-up 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 No. for the DPO case file. The manager responsible for publishing the *Federal Register* notice has the discretion, in consultation with the DPO decision-maker, to include a synopsis of the issues included in the DPO and the agency's evaluation and outcome. For non-publicly available DPOs, the appropriate staff or management should coordinate with the Director, OE, to determine whether it is appropriate to discuss the DPO, and at what level of detail, in the *Federal Register* notice.

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 their DPO

and engage in DPO-related activities should be based on an agreement between the employee and their immediate supervisor. See Section I.G, “Timeliness of the DPO Program,” of this handbook for additional guidance on timeless goals and expectations during 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 sent to the DVP PM.
4. Time associated with participating in the DPO Program normally should be charged to the activity code identified in the Differing Views Program Best Practices Guide (available on the DPO SharePoint site at <https://usnrc.sharepoint.com/teams/NRC-Differing-Professional-Opinions>).
5. Staff may charge time associated with completing DPO follow-up actions to the DPO activity code if another activity code is not available.

B. Administrative Assistance

If an employee requests administrative assistance to support their 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 DVP 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 notifying the DVP PM in writing, with copies to the DPO decision-maker and DPO appeal decision-maker.
- B.** The DVP PM will acknowledge the request.

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- C. Withdrawal of a DPO or DPO appeal does not preclude the DPO decision-maker or DPO appeal decision-maker 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 DPO website.

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 (i.e., 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. Managers must ensure that a proposed personnel action involving a 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 participated in the DPO Program.
- F. Managers must take appropriate action, to include referral to the OIG, 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 they have been reprimanded against because of engaging in the DPO Program has several resources available to them, including—
 1. Their immediate supervisor;
 2. Another supervisor or manager using the Open Door Policy;
 3. The NRC Policy and Procedures for Addressing Allegations of Retaliation for Raising Safety Concerns (ARRSC), administered by OCHCO;
 4. The NRC's OIG;

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5. The negotiated grievance procedure described in the Collective Bargaining Agreement between the NRC and the National Treasury Employees Union (for bargaining unit employees);
 6. The administrative grievance procedure described in MD 10.101, "Employee Grievances" (for non-bargaining unit employees); and
 7. The U.S. Office of the Special Counsel (more information is available at <http://www.osc.gov/>).

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 differing views without fear of reprisal.
2. The NRC supports a contractor's expression of mission-related differing views associated with the contractor's work for the NRC that may differ from an established NRC position.

B. Scope and Applicability

1. The DPO process guidance in this MD applies to NRC contractors, contractor personnel, and subcontractor personnel.
2. The guidance in this handbook supersedes the guidance regarding contractor differing professional opinions included in 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," 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. Reprisal against contractors for using the DPO process is inappropriate and will not be tolerated.

XII. WEB GUIDANCE

The NRC's internal DPO website and Differing Views Program Best Practices Guide include a variety of resources to assist individuals engaging in the DPO Program (available at <https://usnrc.sharepoint.com/teams/NRC-Differing-Professional-Opinions>).

XIII. GLOSSARY

Chilling Effect

A condition that occurs when an event, interaction, inaction, decision, or policy change results in a reasonable perception that the raising of a mission-related 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 (NRC) manager or through the Differing Views Program Manager because the submitter wishes their identity to be protected from disclosure to all others involved in the process.

Differing Professional Opinion (DPO)

An expression of a differing view that differs from an established agency technical, legal, or policy position (including administrative or corporate support issues) related to the mission of the NRC. A DPO can cover a broad range of differing views, provided the opinion is related to the agency's mission and to the strategic goals and objectives that support the mission as addressed in the NRC's Strategic Plan.

DPO Appeal Decision-maker

The Executive Director for Operations (EDO) is responsible for issuing a DPO appeal decision for differing views arising in offices that report to the EDO. The Commission is responsible for issuing a DPO appeal decision for differing views arising in offices that report to the Commission.

DPO Appeal Form

NRC Form 690, "Differing Professional Opinion--Appeal," that must be used to submit a DPO appeal.

DPO Case File

A file that includes a cover page and copies of DPO records that are essential to an understanding of the case, such as the submittal, memorandum establishing the DPO panel, DPO panel report, DPO decision, DPO appeal, statement of views, and DPO appeal decision.

DPO Decision-maker

The office director (OD) or regional administrator (RA) responsible for issuing a DPO decision. An OD or RA may delegate this role to a deputy OD or deputy RA.

DPO Form

NRC Form 680, "Differing Professional Opinion," that must be used to submit a DPO.

DPO Panel

NRC subject matter experts independent from the issue(s) subject to the DPO tasked with conducting a thorough and impartial review of the DPO and issuing a report that includes recommendations to be considered, along with other relevant information, by a DPO decision-maker and or a DPO appeal decision-maker.

Non-Concurrence Process

Used by an employee with a differing view about a document in the concurrence process (described in MD 10.158, "NRC Non-Concurrence Process").

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 their immediate supervisor (described in MD 10.160, "Open Door Policy").

Reprisal

As defined in this management directive, 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 DVP 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 their identity to the surrogate submitter).