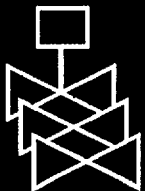
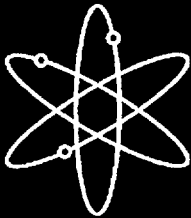




Differing Professional Views or Opinions

2002 Special Review Panel Report



**U.S. Nuclear Regulatory Commission
Office of Human Resources
Washington, DC 20555-0001**



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2002 Special Review Panel Report

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U.S. Nuclear Regulatory Commission
Washington, DC 20555-0001**



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ABSTRACT

On March 20, 2001, the Executive Director for Operations (EDO) of the Nuclear Regulatory Commission (NRC) established a Special Review Panel (SRP or the Panel), to be chaired by James A. Fitzgerald, Deputy Director, Office of Investigations, to evaluate the effectiveness of the Differing Professional Views/Differing Professional Opinions process, as implemented by NRC Management Directive (MD) 10.159, "Differing Professional Views or Opinions." The EDO appointed four senior managers and one National Treasury Employees Union (NTEU) representative to the Panel. The last SRP to review the DPV/DPO Process was convened in 1994.

The EDO directed the Panel to review the informal and formal processes for dealing with differing professional views or opinions. The EDO also directed the Panel to review all DPV/DPOs filed since the last SRP and identify employees whose DPV/DPOs made significant contributions to the agency or to the public health and safety, but may not have been adequately recognized for this contribution. Finally, the EDO asked the Panel to make recommendations on the interim policy guidance he issued in response to the Office of the Inspector General's (OIG) audit and on any other DPV/DPO process issues the Panel believes the Agency should address.

This report documents the SRP's review of the NRC's current DPV/DPO process. The Panel reviewed previous SRP reports, DPV/DPO case files for submittals received and processed since the last review in 1994, other federal agency programs for handling DPV/DPOs, and the OIG September 2000 audit report (OIG-00-A-07) on its Review of NRC's Differing Professional View/Differing Professional Opinion Program. The Panel interviewed selected NRC regional and headquarters senior managers on their views and perspectives of the DPV/DPO process, and interviewed a number of DPV/DPO filers and ad hoc panel members about their views, perspectives, and personal experiences with the process. This report gives the SRP's recommendations for improving the DPV/DPO Process.

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EXECUTIVE SUMMARY

On March 20, 2001, the Executive Director for Operations (EDO) of the Nuclear Regulatory Commission (NRC) established a Special Review Panel (SRP or Panel), to be chaired by James A. Fitzgerald, Deputy Director, Office of Investigations, to evaluate the effectiveness of the Differing Professional Views or Opinions process, as implemented by the NRC Management Directive (MD) 10.159, "Differing Professional Views or Opinions." The EDO appointed four senior managers and one National Treasury Employees Union (NTEU) representative to the Panel. The last Special Review Panel to review the DPV/DPO Process was convened in 1994.

The EDO directed the Panel to review the informal and formal process, as described in MD 10.159, for dealing with differing professional views or opinions, the effectiveness of the process, how well the process is understood by employees, and the organizational climate for having these views or opinions aired and properly decided. The EDO also directed the Panel to review the DPV/DPOs filed since the last SRP to identify employees whose differing professional views or opinions made significant contribution to the agency or to the public health and safety, but may not have been adequately recognized for this contribution. Finally, the EDO asked the Panel to make recommendations on the interim policy guidance he issued in response to the Office of the Inspector General's (OIG) audit and on any other DPV/DPO issues the Panel believes the agency should address.

The SRP first met in May, 2001. The Panel determined that the specific scope of the 2001/2002 review should include:

- a. A review of previous SRP reports;
- b. A review of DPV/DPO files for submittals received and processed since the last review in 1994;
- c. Interviews of selected NRC regional and headquarters senior managers about their views and perspectives of the DPV/DPO Process;
- d. Interviews of a sample of DPV/DPO filers and DPV/DPO ad hoc panel chairs and members on their views, perspectives, and experiences gained with the DPV/DPO Process;
- e. A review of other Federal agencies' programs for handling differing professional views and opinions; and
- f. A review of the NRC OIG September 2000 audit report, Review of NRC's Differing Professional View/Differing Professional Opinion Program.

Overall, the Panel concluded that the information obtained by the SRP is generally consistent with the conclusions in the OIG audit report with regard to the organizational climate within which the current DPV/DPO process operates and the effectiveness of the process, as well as the OIG's inferences regarding how well the process is understood.

The SRP specific findings are as follows:

1. The current DPV/DPO process distributes responsibilities across organizational entities. There is no readily identifiable agency authority responsible for providing program leadership and overseeing process implementation.
2. The current DPV/DPO process is duplicative and its effectiveness could be enhanced.
3. Time frames defined in MD 10.159 are inflexible and frequently not being met. The SRP believes that this causes differing expectations regarding the completion of reviews and that these differing expectations are a source of frustration associated with the process.
4. The current process does not have clearly defined points at which the parties involved are to communicate or exchange information. Differing expectations contribute to inadequate and inconsistent communication with the submitter throughout the process.
5. The candid and open discussion of issues and concerns is an important and necessary element of NRC's safety culture.

In line with these findings, the SRP's recommendations are summarized as follows:

1. Establish an agency-level program manager. The DPO program manager (DPOPM) would have the authority and responsibility to oversee, coordinate and promote the DPO program.
2. Revise the current process to (1) drop the DPV step, (2) define a simplified appeal step, and (3) eliminate the periodic SRP.
3. Ensure that the revised DPO process is flexible enough to allow for workload considerations and case complexity. Nevertheless, the goal should be to close all cases within 120 calendar days of receiving a DPO.
4. Designate clearly defined roles and responsibilities for communication points in the process.
5. Require informal discussions prior to initiating a DPO. To reinforce the importance of this process to the NRC's safety culture:

- (1) expressly state in the MD that the process may be used without fear of retaliation, penalty or reprisal, which are unacceptable actions;
- (2) proactive education and training should be established; and
- (3) when merited, awards or other recognition should be directly linked to the DPO submittal.

FOREWORD

On March 20, 2001, the Executive Director for Operations (EDO) of the Nuclear Regulatory Commission (NRC) established a Special Review Panel (SRP or Panel), to be chaired by James A. Fitzgerald, Deputy Director, Office of Investigations, to evaluate the effectiveness of the Differing Professional Views or Opinions processes, as implemented by NRC Management Directive (MD) 10.159, "Differing Professional Views or Opinions." Subsequently, the EDO appointed four senior managers and one National Treasury Employees Union (NTEU) representative to the Panel. The Panel members were:

James Fitzgerald,
Deputy Director
Office of Investigations
(Chairperson)

Bruce Boger
Director
Division of Inspection Program Management
Office of Nuclear Reactor Regulation

William Brach
Director
Spent Fuel Project Office
Office of Nuclear Materials Safety and Safeguards

John Craig
Assistant for Operations
Office of the Executive Director for Operations

Elliott Greher
Vice President at Large
National Treasury Employees Union
Chapter 208

Bruce Mallett
Deputy Regional Administrator
Region II

Other NRC staff who also contributed significantly to this report :

Pamela Easson
Senior Policy and Program Development Specialist
Office of Human Resources

William Hutchison
Assistant to the Director
Office of Investigations

INTRODUCTION

- **BACKGROUND**

On March 25, 2001, the Executive Director for Operations (EDO) of the Nuclear Regulatory Commission (NRC) established a Special Review Panel (SRP or Panel), to be chaired by James A. Fitzgerald, Deputy Director, Office of Investigations, to evaluate the effectiveness of the Differing Professional Views or Opinions process, as implemented by the NRC Management Directive 10.159 (MD 10.159), "Differing Professional Views or Opinions" (see Appendix A and Appendix B). The EDO appointed four senior managers and one National Treasury Employees Union (NTEU) representative to the Panel. The last SRP to review the DPV/DPO Process was convened in 1994.

- **SCOPE**

The scope of the review, as directed in the EDO's March 25, 2001 memorandum, included both the informal and formal processes, as defined in MD 10.159, for dealing with differing professional views or opinions. Specifically, the EDO tasked the Panel with reviewing the effectiveness of the process, determining how well the process is understood by employees, and assessing the organizational climate for having employees' views or opinions aired and properly decided. In addition, the Panel was directed to review all differing professional views and opinions submitted since the last review to identify employees whose differing professional views or opinions made significant contribution to the agency or to the public health and safety, but may not have been adequately recognized for this contribution. Finally, the EDO asked the Panel to make recommendations regarding his interim policy guidance promulgated in response to the OIG audit as well as any other issues related to the DPV/DPO process that, in the Panel's view, need to be addressed.

- **METHODOLOGY**

The SRP first met in May 2001,¹ and decided on the methodology for the review. The methodology was as follows:

- Review of Previous SRP Reports

The SRP reviewed the three previous SRP Reports:

¹ Many of the Special Review Panel members were extensively involved in the NRC Incident Response Center activities following the September 11 terrorist events, which resulted in some delay in the Panel's review process.

- Differing Professional Opinions, 1987 Special Review Panel (NUREG-1290)
 - Differing Professional Views or Opinions, 1990 Special Review Panel (NUREG-1414)
 - Differing Professional Views or Opinions, 1994 Special Review Panel (NUREG-1518)
- Review of NRC MD 10.159

The Panel reviewed MD 10.159 to understand the current DPV/DPO process and to provide a sound basis for reviewing program implementation.
 - Review of DPV and DPO Records

Since the previous SRP in 1994, the NRC has received and processed 39 DPVs and 8 DPOs. Panel members recused themselves from reviewing cases in which they had been involved. The Panel reviewed all 47 case files in detail.

The Panel considered the timeliness of the DPV/DPO Process; the reasonableness of the case closure; the adequacy of documentation supporting the closure; communication with the DPV/DPO filer; and whether the SRP should interview the filer. The Panel also considered whether the filer of the DPV/DPO warranted any special recognition, such as a special letter of commendation or an award, based both on special recognition previously received and on the significance of the filer's concerns to agency activities.
 - Interviews of Senior Regional and Headquarters Managers

To give the Panel a broader understanding of management's current expectations and perspectives for possible future direction of the DPV/DPO Process, the SRP sought the views of the agency's senior management from the regions and headquarters. The Panel members arranged interviews at the Office Director and Regional Administrator level, as well as with the EDO Deputy Directors. These interviews were conducted by a team of available Panel members.
 - Interviews of Selected DPV/DPO Filers, Chairpersons and Ad Hoc Panel Members

The SRP members chose 19 DPV/DPO filers, ad hoc DPV/DPO panel chairpersons, and panel members to interview. The purpose of the interviews was not to reopen any individual DPV/DPO review, or to determine the appropriateness of the closeout of the DPV/DPO, but to solicit suggestions for

improving the process from individuals with first hand experience.

- Review of Other Federal Agencies' Programs

The SRP considered whether the programs of other Federal agencies for dealing with differing views had features that could be applicable to the NRC environment. To assist in the review of other Federal agency programs, the SRP obtained the support of Dr. N. Mann of Resolution Dynamics, Incorporated. Dr. Mann conducted a survey of approximately 20 Federal agencies (including the Federal Aviation Administration, the Department of State, the Department of Energy, the National Transportation Safety Board, and the Securities and Exchange Commission). Programs identified in other agencies were less formal and less proceduralized than the NRC DPV/DPO program. Some Federal agencies have a fairly informal process for addressing differing professional views. One agency has a hotline number available to staff and others to raise concerns, while another agency fully expects the internal deliberative process to provide a sound basis for vetting issues and building consensus before taking a position. DOE's process is modeled on the NRC DPV/DPO process.

- Review of the NRC Office of the Inspector General (OIG) September 2000 Audit

The SRP reviewed the OIG's September 2000 "Audit Report on the NRC Differing Professional View/Differing Professional Opinion Program" (OIG-00-A-07) and concluded that the survey of the staff conducted by the OIG in June 1998, as well as the interviews conducted in conjunction with the audit, reasonably reflected current staff views, and, therefore, an additional survey of the NRC staff by the SRP was not needed. OIG auditors met with the Panel to discuss their conclusions. They later gave the Panel the checklists that they used to evaluate compliance with MD 10.159, the list of questions they used to guide interviews with the NRC staff, and a copy of the interview response worksheet.

- Analysis and Evaluation by the Special Review Panel

After the document reviews and interviews discussed above, the SRP prepared summary lists of criteria, standards, and concerns. The SRP concluded that the process should be simplified, emphasize fairness and objectivity, and have clearly defined steps, statements of expectations, and communication

points. An outline of the suggested steps for processing DPOs is presented in Appendix C. Other conclusions are contained in the findings and recommendations in this report.

- Review of DPV/DPO Submittals with a View Toward Possible Recognition

The EDO directed the Panel to review all DPV/DPOs filed on issues relating to the agency's mission since the last SRP review in 1994 and to identify employees who may not have been recognized for DPV/DPOs that significantly contributed to the agency or to public health and safety. The Panel reviewed a total of 47 DPV/DPO files.

In its evaluations, the Panel considered the significance of the issue involved in the differing view or opinion, the quality of the submittal, and its impact on agency operations.

As a result of its initial review, the Panel identified sixteen cases that were considered as potential candidates for recommendations for recognition. Upon further review and evaluation, the Panel determined that three of these DPV/DPO submittals did not meet the significance threshold and that six DPV/DPO filers had, in fact, already been adequately recognized for their DPV/DPO contributions. The Panel specifically identified seven filers of differing views or opinions as deserving of recognition, none of whom have previously received recognition directly attributable to their filings.

As stated in a separate memorandum to the EDO, the Panel recommends that two filers be given Special Act Awards pursuant to MD 10.72, "Incentive Awards." Both DPV/DPOs resulted in changed and improved regulatory decisions. The Panel further recommends that five filers be given letters of commendation for their contributions to agency programs.

- **GENERAL FINDING**

Information obtained by the SRP is generally consistent with the conclusions in the OIG audit with regard to the organizational climate within which the current DPV/DPO process operates and the effectiveness of the process, as well as the OIG's inferences regarding how well the process is understood.

Among the tasks the EDO assigned to the SRP were the assessment of the organizational climate within which the DPV/DPO process operates, the effectiveness of the agency's process for dealing with

differing professional views or opinions, and how well they are understood by employees. Prior to the inauguration of the Panel, the Office of Inspector General reviewed the DPV/DPO program and generally covered these subjects.

The Panel recognized the OIG's efforts as valuable input to its consideration of the DPV/DPO environment at the NRC. In addition to a review of the audit report, the Panel met with the OIG auditors to discuss their conclusions. They provided the Panel with DPV/DPO checklists that were used to evaluate compliance with the Management Directive, and a worksheet which indicated the response to interview questions. As discussed in the OIG audit report, some of the DPV/DPO filers were satisfied with the process, deeming it effective and timely; however, others were not. The OIG report concluded that there was a perception that submittals could result in retaliation.

With regard to the organizational climate at the NRC for having differing views and opinions aired and dispositioned, agency senior managers appreciated the importance of the DPV/DPO process to the agency. The perception of some filers, however, was that utilizing the process could damage one's career at NRC and/or result in retaliation. Whether based on fact or not, this perception taints the organizational climate in which the process operates and could impact the willingness of some employees to air their differing views.

With regard to the effectiveness of the process, the DPV/DPO filers interviewed by the OIG were divided on whether or not the current process was efficient and effective. The OIG determined that negative staff perceptions of its utility in resolving professional differences, too many inconsistencies in the MD and in the application of the process, the absence of a tracking system, and the lack of management reviews to determine whether the program is working as intended, all diminish the program's effectiveness. The OIG also concluded that the process is not implemented in a timely manner due to a failure to adhere to milestones established for DPVs in the MD and the existence of only two milestones in the DPO process.²

The Panel's interviews with filers elicited the same wide divergence of opinion on the effectiveness of the process. Those who felt the process was ineffective cited the lack of feedback to the filer during the pendency and at the conclusion of the process, the failure of the process to address "all" the issues, the lack of objectivity of the ad hoc panel members and the failure of the process to meet timeliness

2

Responding to the OIG recommendations to improve the process, the EDO agreed with the audit report's recommendations and committed to address them in a revision of the Management Directive. On February 27, 2001, the EDO issued interim guidance to provide that ad hoc DPV panel chairs and, to the extent possible, other panel members are not in a position of authority over the filer, and to establish a mechanism for tracking the process milestones.

guidelines as possible causes. Interviews of ad hoc panel chairmen and members revealed a general satisfaction with the process as a means of evaluating differing views or opinions. However, some managers and ad hoc panel members felt that the current DPV time line is unrealistically short and that the issues for review need to be defined at the outset and not subject to redefinition later in the process. The interviews of managers and participants in the process did not demonstrate that it was ineffective, but rather that its effectiveness could be enhanced by certain modifications, such as those contained in the OIG's recommendations and the recommendations put forth in this report.

Regarding the understanding of the process, interviews conducted by the OIG revealed that most filers read MD 10.159 before they undertook the process. The Panel's interviews showed a general understanding of the DPV/DPO process as presented in MD 10.159. Some ad hoc panel members considered the MD to be helpful and a useful support as they worked their way through the process. Nevertheless, as pointed out by the OIG, there are inconsistencies in the application of the process.

The Specific SRP findings and recommendations are described in the following sections of this report. To facilitate an understanding of how these may be incorporated within the proposed DPO process, the Panel developed Appendix C (Guidelines for Processing Differing Professional Opinions (DPO's), and Appendix D (Flowchart). Appendices C and D are not intended to be definitive. More detailed information will be provided in the revised MD.

SPECIAL REVIEW PANEL FINDINGS AND RECOMMENDATIONS

1. FINDING: The current DPV/DPO process distributes responsibilities across organizational entities. There is no readily identifiable agency authority responsible for providing program leadership and overseeing process implementation.

DISCUSSION: In its interviews and review of the OIG audit, the Panel determined that two specific aspects of the DPV/DPO process could be enhanced. One aspect relates to availability of information on the process and another relates to oversight of the process.

Availability of Information on the Process : The primary source of information related to the DPV/DPO process is contained in MD 10.159. Although the MD was referenced by submitters and proved to be

useful, in some cases different interpretations and lack of guidance led to an inconsistency in submittals and inefficiencies in ad hoc panel reviews. Unlike the allegation process, which provides an agency-level authority, the DPV/DPO process relies upon the Management Directive to provide information to potential filers. As a result, employees and managers do not have a resource outside of their management chain available to discuss issues and explore options.

Oversight of the Process: In general, responsibility for oversight of the DPV/DPO process implementation is diffuse throughout the agency. DPVs are dispositioned by headquarters and regional offices. Responsibility for review, evaluation, and follow up action resides in these organizations. Moreover, transfer of DPVs between these organizations is not proceduralized. The Office of Human Resources has a limited role in DPO oversight, but it has no role in DPV oversight. Several concerns were expressed over the lack of closure of action items identified in Office Director and Regional Administrator decisions. Until the EDO directed the implementation of a DPV status table on April 18, 2001, no single tracking system existed for oversight and documentation of DPV milestone progress.

The SRP determined that there is no single NRC official exercising ownership of the process and its implementation. There is little uniformity in interpreting the MD, which has resulted in differences in implementation and expectations. In the Panel's view, placing agency wide responsibility and accountability for the oversight of the process in a designated official who would oversee the process, coordinate various aspects of its implementation, serve as the authority on the MD and update it as necessary, track implementation and otherwise act as a champion of the process, could improve the understanding of the process among managers and employees alike. The SRP suggests that MD 8.8, "Management of Allegations", could be useful as a guide in revising and improving the DPO process and that improvements to be included in MD 10.159 would include an initial screening review.

RECOMMENDATION:

Establish an agency-level program manager. The DPO Program Manager (DPOPM) would have the authority and responsibility to oversee, coordinate, and promote the DPO program, and, to accomplish this, would perform duties such as:*

- Establish and maintain performance measures
- Monitor process for consistency (e.g., program implementation and filer recognition)
- Audit office and regional performance and records and report results to the EDO and Commission annually
- Update MD 10.159 as necessary
- Conduct an acceptance screening of all DPOs early in the process
- Facilitate the transfer of DPOs from one office to another
- Serve as agency champion, expert, and spokesperson for the process
- Establish agency training requirements for the process
- Issue yellow announcements annually and as necessary, to enhance agency awareness of the process

*This list is not intended to be all inclusive.

2. FINDING: The current NRC DPV/DPO process is duplicative and its effectiveness could be enhanced.

DISCUSSION: The current DPV/DPO process was revised to include an informal (DPV) step following the 1987 SRP's recommendation described in the 1987 Special Review Panel Report. That Panel's report discussed a process which had the following characteristics. It was highly structured, required extensive documentation, and involved long time delays to address issues. The 1987 review concluded with recommendations to simplify and clarify the process.

While the process was revised following the 1987 review and after other SRP reviews, there is significant similarity between (1) the staff views expressed and Panel findings from previous reviews, and (2) the staff views expressed and Panel findings resulting from this review, conducted by the 2002 SRP. In general, the staff comments expressed about the current process reflected many, if not all, of the same concerns described by prior SRPs. Employees interviewed during the current review (including staff members who had filed a DPV/DPO, ad hoc panel members, and senior managers) indicated concerns about

virtually every aspect of the current process. These concerns included: the level of documentation required, the time delays in processing cases, the resources required to process cases, that the process was cumbersome, the lack of safety significance associated with some issues being examined, the need to defer higher safety significant work to address DPVs/DPOs, the disconnect between the safety significance and complexity of the issue(s) in many DPVs/DPOs and the short schedules for their review provided in the MD.

In the current process, the first step (DPV) is intended to be informal with a minimal level of documentation. The second step is intended to be more formal, with more documentation. However, the Panel concluded that actual practice can be described as following a formal process twice. The case files which were reviewed did not reflect a less formal DPV step. The DPV step often involved the same extensive documentation, resource expenditure, and time to complete as the DPO step. The SRP concluded that the "true" informal stage is actually concluded prior to the filing by the staff member and that the written filing constitutes the formal DPO.³

The Panel further concluded that a detailed second stage of formal review was unnecessary but agreed that providing the filer with an opportunity to appeal was reasonable. In the Panel's view, a simple written appeal to the EDO or Commission, as appropriate, should suffice. The appeal should focus on perceived procedural or technical weaknesses in the OD/RA's decision. The DPO appeal process is not intended to provide a complete replication of the DPO review already conducted by the OD/RA. Therefore, no additional panel should be formed at this stage. However, the EDO or Commission has complete discretion to handle the appeal in any manner deemed appropriate on a case by case basis.

MD 10.159 provides that an SRP should be periodically established to (1) review the effectiveness of the program and (2) review DPVs and DPOs completed since the last review to identify employees who have made significant contributions to the agency or to public health and safety but have not been adequately recognized for this contribution. Consequently, some supervisors indicated that DPVs/DPOs should not be considered as part of the annual assessment and employee recognition process. The SRP concluded that continuous program

³ Under the current process, DPVs are not made publicly available unless a DPV submitter indicates in writing a desire that this be done with or without release of his or her name. If such a request is made, the DPV file is placed in the Public Document Room after a releasability review coordinated by the Freedom of Information Act/Privacy Act (FOIA/PA) Branch of the Office of the Chief Information Officer (OCIO). However, in the case of DPOs, appropriate portions of the file are made publicly available in accordance with the Freedom of Information Act. If the SRP's recommendation for a revised DPO process is implemented, the Panel believes that the DPO file should not be made publicly available unless requested by the submitter in a manner similar to the current DPV process. The Panel is concerned that regularly placing the revised DPO files in the Public Document Room could have a chilling effect on the willingness of employees to submit differing opinions.

oversight provided by the DPOPM would eliminate the need for the periodic reviews currently defined in MD 10.159.

RECOMMENDATION:

Revise the current process to (1) drop the DPV step, (2) define a simplified appeal step, and (3) eliminate the periodic SRP.

3. FINDING: Time frames defined in MD 10.159 are inflexible and frequently not being met. The SRP believes that this causes differing expectations regarding the completion of reviews and that these differing expectations are a source of frustration associated with the process.

DISCUSSION:

MD 10.159 provides guidelines for the completion of certain portions of the DPV or DPO reviews. For example, DPV guidelines found in the MD Handbook suggest 5 calendar days to assign a panel, 7 calendar days for the panel to obtain sufficient information to review, 30 additional calendar days to complete the panel review, and 7 additional calendar days for the Office Director or Regional Administrator to make the final decision and provide it to the filer. Thus, there is a suggested 49 calendar day time frame for completion of DPV reviews. There is also a 30 calendar day time frame for completion of DPO reviews after receipt of all solicited views. Based on interviews of managers and staff and review of DPV and DPO case files, the SRP noted that case turnaround time from initial receipt of the submission to the Office Director or Regional Administrator decision was not in keeping with the 49 calendar day goal in multiple cases. This finding is consistent with that expressed in the OIG audit report and the 1987 Special Review Panel report.

File reviews and interviews of process participants by the SRP revealed that the following circumstances contributed to deficiencies in timeliness: (1) delays by receiving offices in transferring accountability for the review and processing of a DPV to another office (e.g., Regional Office transfer to the Office of Nuclear Reactor Regulation); (2) subject matter complexity; (3) assignment of low priority to the DPV/DPO relative to other work of the ad hoc panel members and/or the Office

Director or Regional Administrator; (4) little perceived consequence to exceeding time frames at an Agency level; and (5) issue expansion and/or multiplication during the process.

There have been instances where the DPV/DPO process has been utilized at the initiative of management rather than at the behest of the employee who entertained the differing view. On other occasions, DPV/DPO reviews have been instituted and thereafter the scope of the review has been expanded either in accordance with the desires of the filer or the interest of the ad hoc panel members. The Panel concludes that these deviations from the process contributed to delay in dispositioning the DPVs/DPOs and should be avoided in the revised DPO process.

The 49 calendar day time frame appears to be too short compared to the work effort needed to review complex cases. Several managers supported this conclusion in their interviews. The managers also indicated that the MD time frame goal does not allow flexibility to appropriately place the DPV resolution in the queue with work of higher priority. The managers indicated that the time frame should be specified, but allow for flexibility to prioritize the DPV relative to other high priority work, and to adjust for the complexity of the DPV review. Filers indicated that whatever time frame goal is established, the goal should allow for timely communication to the filer, and should be in keeping with the safety significance of the issue. For example, one filer indicated that the current process sends a message that the issue is not important if it takes more than 60 calendar days to resolve.

The Panel concludes that a time frame goal for overall completion of cases should be specified along with intermediate milestones as currently in the MD. The goal for the completion of the review of each case should be established during the initial days of the review and communicated to the submitter. There should also be a requirement to justify exceeding the 120 calendar day time frame goal to the EDO or Commission, as appropriate (with a copy to the DPOPM), in the rare case where particular circumstances may require such modification.

While some differing opinions may not involve issues which are of such safety significance as to demand immediate action, the timely dispositioning of all DPOs is still important. In the SRP's view, the potential negative effects in staff attitudes and the NRC's safety culture caused by delays in handling DPOs are such that all DPOs should be considered a high priority and dispositioned in a timely manner. The timely disposition is, by itself, an important and high priority activity.

RECOMMENDATIONS:

- a. Process guidelines should continue to indicate that routine cases should strive for closure within 60 calendar days, but there should be flexibility to plan for 120 calendar days to allow for complex cases and high priority work. The revised DPO Process should contain an overall maximum time limit for case completion. Every case should be completed within 120 calendar days of receipt, unless in the rare circumstance, an exception is approved by the EDO or Commission, as appropriate.
- b. The process should be modified to establish procedures for the transfer of cases between offices. The procedures should contain guidelines for timeliness and points of contact between offices, similar to the guidelines used in the allegation review process.
- c. The process should be clarified to avoid allowing the processing of cases as a DPO when the request was not submitted as a DPO. This could include a clarification of what should be processed using the DPO process or using an alternative review process.
- d. Continue with the mechanism to track DPO case reviews, and include this as a metric in office operating plans.
- e. Provide guidance to the ad hoc review panel to focus on the issues raised by the filer and to not expand the scope of the review beyond those issues.

4. FINDING: The current process does not have clearly defined points at which the parties involved are required to exchange information. Differing expectations contribute to inadequate and inconsistent communication between the cognizant office and the filer throughout the process.

DISCUSSION:

Discussions with agency managers and staff disclosed that the communication problems identified in previous SRP reports and in the recent OIG audit report remain a challenge.

SRP interviews of ad hoc panel members indicated that they sometimes needed clarification of the issues at the beginning of the panel review. Discussions with filers would serve to ensure that issues are clearly defined and appropriate for consideration under that process. The addition of such a requirement in MD 10.159 (i.e., having the panel meet with the filer to discuss the issue), could help clarify the issue(s) by allowing an initial discussion with the filer to better define the concern. This step could also help determine whether the concerns involve technical or programmatic issues and provide an early indication of the risk significance associated with the issues. Additionally, ad hoc panel members noted that parties are not always informed when changes in schedules or milestones are made and that copies of the OD/RA decision are rarely shared with panel members.

The most common concern expressed by the filers interviewed by the SRP was the lack of feedback at various stages of the process. Specifically, they indicated that because the MD does not establish milestones and/or due dates for the sharing of information among the parties during the course of the process, very little feedback was actually provided to them while their DPVs were under review. The general consensus was that they, as filers, were not kept informed about the progress of their case. This absence of feedback contributed to the filer's general lack of appreciation for the amount of time required to conduct a thorough review, and on occasion, to a minimalization by the filer of the overall effort involved in the review process.

There was extensive discussion within the SRP regarding the need to include a requirement for an exchange of information among all parties at various stages throughout the DPO process. The establishment of an agency DPOPM will play a major role in this regard. Part of his/her task, along with issuing standard letters of acknowledgment and tracking the progress of the DPO toward meeting timeliness goals,

would be to ensure that information exchanges take place throughout the DPO process. In the course of reviewing actual DPV files, the SRP noted that one office director routinely communicated his appreciation to the filer for bringing his or her concerns to management's attention. Such acknowledgment, in conjunction with the sharing of information throughout the process, could promote recognition for the contributions being made by the filer and could minimize perceptions of retaliation.

RECOMMENDATIONS:

- a. Ad hoc panels should meet with filers early in the process to define and clarify the scope of the issue(s) presented.
- b. Roles and responsibilities with regard to providing feedback should be clearly defined in MD 10.159 in order to facilitate the sharing of information at each stage of the DPO process.

5. Finding: The candid and open discussion of issues and concerns is an important and necessary element of NRC's safety culture.

Discussion: Free and open discussion of differing professional viewpoints has long been deemed essential to the development of sound regulatory policy and decisions. In the Panel's interviews, NRC managers and staff were consistent in their recognition of the importance of such dialogue. Several staff members expressed their desire "to see something change" or "to help insure that safety was not degraded" as the reason they engaged in the DPV/DPO process.

From its review of the DPV/DPO files and interviews with process participants, the Panel determined that the true "informal" stage for airing differing professional opinions is in discussions with peers and first line supervisors as the agency's position is being developed. Candid and open discussion of issues and concerns at this stage should be valued and encouraged. Recognizing this, the SRP also concluded that differing opinions should not be entered into the formal DPO process until such prefatory discussions have taken place. The initial screening by the DPOPM, with the assistance of agency subject matter experts, could play an important role in fostering and ensuring that such discussions have taken place. If a staff member has a

concern about participating in candid discussions such as these, this could be discussed with the DPOPM.

There was a perception expressed by some filers that filing a DPO could have a negative impact on a career at NRC and subject the filer to retaliation. This perception was encountered in the 1987 SRP review as well as the 2000 OIG audit and during this Panel's interviews of filers. Such a perception could impact the willingness of some employees to express differing opinions and utilize the DPO process. While the Panel recognizes that it may not be possible to dispel this perception completely, the Panel concluded that additional actions are necessary to help reduce this perception.

The Panel believes that the revised MD should more clearly and directly state that the process may be used without fear of retaliation, penalty or reprisal, which are unacceptable actions. The Panel notes that the Department of State's Dissent Channel (their version of the DPO process) contains such explicit provisions. Education of staff and managers to assure that actions are not perceived as retaliatory and timely presentation of awards or other forms of recognition to employees who raise issues that result in significant contributions to the agency's mission (both are OIG recommendations with which the EDO has concurred) should also serve to overcome negative perceptions of the process. Awards or other recognition should be directly and visibly connected to the DPV/DPO submittal. Decisions concerning recognition should be made by the OD/RA at the end of the process.

RECOMMENDATIONS:

- a. In the revised DPO process, require that informal discussions on the issue(s) or concern(s) which may become the subject of a potential differing opinion, should precede the filing of a DPO.
- b. Expressly state in the revised MD 10.159 that the process may be used without fear of retaliation, penalties or reprisals, which are unacceptable actions.
- c. In order to improve the staff's perception of the process, proactive education and training should be established, and when merited, awards or other recognition should be directly linked to the DPO submittal.

Appendix A
Special Review Panel Charter

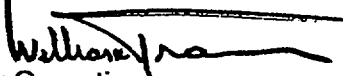


UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

March 20, 2001

MEMORANDUM FOR: James A. Fitzgerald, Deputy Director
Office of Investigation

FROM: William D. Travers 
Executive Director for Operations

SUBJECT: DIFFERING PROFESSIONAL VIEWS OR OPINIONS SPECIAL
REVIEW PANEL

In accordance with Management Directive 10.159, "Differing Professional Views or Opinions", the Executive Director for Operations (EDO) periodically convenes a special review panel to assess the DPV and DPO process within the agency. The last DPV/DPO special review panel met in 1994.

An October 2000, OIG audit report included a recommendation that I convene a special review panel at regularly scheduled intervals. Accordingly, I am hereby designating you as chairman of a Special Review Panel as called for in MD 10.159.

This Special Review Panel will assess the informal processes for dealing with differing ~~professional views or opinions, including the effectiveness of the processes, how well they are~~ understood by employees, and the organizational climate for having these views or opinions aired and properly decided. In addition, the Review Panel will review differing professional views or opinions on any matter relating to the agency's mission submitted since the last review to identify employees whose differing professional views or opinions made significant contributions to the agency or to the public health and safety but have not been adequately recognized for this contribution.

Several changes need to be incorporated into the policy surrounding the conduct of DPVs/DPOs in the agency. I have issued interim policy guidance in this regard under separate cover (copy attached). The panel will also be tasked with advising me regarding any other changes that need to be made in the DPV/DPO process. I welcome your recommendations concerning this guidance as well as any other issues that need to be addressed. Management Directive 10.159, "Differing Professional Opinions" will be revised to reflect all required changes after the panel files the final report.

The results of the Panel's evaluation should be submitted to me in the form of a report, including proposed revisions to the Management Directive, if any, and award recommendations, if any, by June 15, 2001, unless an extension of time is necessary.

HR staff will be available to assist in facilitating the convening of the panel, if necessary. Refer any questions to Paul Bird (PEB), 415-7516.

Attachment: As stated

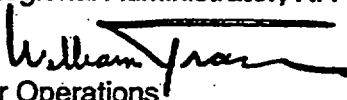


UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

February 27, 2001

MEMORANDUM TO: Samuel J. Collins, Director, NRR
Ashok C. Thadani, Director, RES
William F. Kane, Director, NMSS
Hubert J. Miller, Regional Administrator, RI
Luis A. Reyes, Regional Administrator, RII
James E. Dyer, Regional Administrator, RIII
Ellis W. Merschoff, Regional Administrator, RIV

FROM: William D. Travers 
Executive Director for Operations

SUBJECT: INTERIM GUIDANCE ON DPV PROCESS

In the staff's October 30, 2000, response to the OIG's Audit Report OIG-00-A-07, "Review of NRC's Differing Professional View/Differing Professional Opinion Program," we agreed with the following seven recommendations in the audit report:

1. ~~Revise the Management Directive (MD) to include (a) standardized procedures for~~ managing the DPV process, (b) EDO oversight to ensure milestones are met, (c) a mechanism for the EDO to track all DPVs and DPOs processed in the agency, and (d) tracking of resolutions and follow up actions of all the DPVs and DPO.
2. Convene a special review group to assess program operations at regularly scheduled intervals.
3. Revise the MD to reflect additional DPO milestones and schedules similar in concept to those contained in the DPV process, and ensure information is consistent in all publications for the DPV/DPO process.
4. Require DPV status updates to ensure that regional administrators and office directors provide (1) effective oversight and (2) required documentation.
5. Revise the MD to ensure, to the extent possible, that the ad hoc panel composition is made of staff not in a position of authority over the submitter.
6. Educate staff and managers to assure that actions are not perceived as retaliatory.
7. Present awards for issues that result in a significant contribution to the agency's mission.

The next revision to Management Directive 10.159 (MD) will address all of these recommendations and is expected to be available no later than September 30, 2001. However, I am providing the following interim guidance to address recommendations 1, 4, and 5 as follows:

- The Chair of the DPV Panel should not be in a position of authority over the submitter, and to the extent possible, the other DPV panel members should not be in a position of authority over the submitter.

- Each Office and Region should complete a tracking system DPV Status Table (attached), bi-weekly, and submit it to the DPO/DPV Coordinator, OEDO, to support effective oversight of the program. The DPV Status Table includes the major milestones presented in the MD and additional milestones that are being considered for the next revision of the MD. Since, it is important that the DPV submitter's name(s) be kept confidential at the office and region level, you will note that each DPV should be assigned a number to be used as the identifier in the status table. (See the following implementing instructions.)

The draft DPV Status Table was developed to be responsive to the OIG recommendations and considered information received from some of the offices. Although it is important to improve oversight of the DPV process, the additional information-reporting burden on the Offices and Regions should be minimized. Therefore, the draft DPV Status Table is being provided for your review and comment. Please provide comments to the OEDO DPO/DPV Coordinator by March 1, 2001. Following receipt of your comments, the DPO Status Table will be finalized and sent to you with a date for initiating DPV status reporting.

In addition, as the MD is being revised, it would be useful to have information on the system presently being used by the offices and regions to track DPV milestones. In that light, please provide a copy of your current office letters, instructions, etc. that define the process in your office/region including the method and reports related to your tracking the status of DPV milestones. Please provide copies of your DPV tracking system documents, to Isabelle Schoenfeld, DPO/DPV Coordinator, OEDO, e-mail: iss, MS: 016E15, by March 9, 2001.

Attachment: DPV Status Table

Appendix B
Management Directive 10.159

U.S. NUCLEAR REGULATORY COMMISSION

DIRECTIVE TRANSMITTAL

TN: DT-99-32

To: NRC Management Directives Custodians

Subject: Transmittal of Directive 10.159, "Differing Professional Views or Opinions"

Purpose: Directive and Handbook 10.159 are being revised to implement the changes addressed in an SRM from SECY to the EDO dated May 18, 1999 (see SECY-99-065) and to add responsibilities of the CIO to cover procedures in the handbook. Changes also were made to the Exhibit to correct time frames.

Note: Upon receipt of a Differing Professional View (DPV), office directors and regional administrators should contact the Chief, Human Resources Policy and Programs, Office of Human Resources, for guidance on processing the DPV, particularly as regards to the confidentiality of submitters.

Office and Division of Origin: Office of Human Resources
Division of Human Resources Policy and Programs

Contact: J. David Woodend, 415-7102

Date Approved: August 15, 1998 (Revised: December 15, 1999)

Volume: 10 Personnel Management

Part: 7 General Personnel Management Provisions

Directive: 10.159 Differing Professional Views or Opinions

Availability: Rules and Directives Branch
Office of Administration
David L. Meyer (301)415-7162 or
Jeannette P. Kiminas (301)415-7086

Differing Professional Views or Opinions

***Directive
10.159***

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U. S. Nuclear Regulatory Commission

Volume: 10 Personnel Management

Part: 7 General Personnel Management Provisions

HR

Differing Professional Views or Opinions Directive 10.159

Policy

(10.159-01)

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

Objectives

(10.159-02)

- To establish an informal process for expressing differing professional views (DPVs) and a formal process for expressing differing professional opinions (DPOs) concerning issues directly related to the mission of the NRC. (021)
- To ensure the full consideration and prompt disposition of DPVs and DPOs by affording an independent, impartial review by qualified personnel. (022)
- To ensure that all employees have the opportunity to express DPVs and DPOs in good faith, have these views heard and considered by NRC management, and, to the extent practicable, participate fully in the process from beginning to end. (023)
- To protect employees from retaliation in any form for expressing a differing viewpoint. (024)
- To recognize submitters of DPVs and DPOs when they have contributed significantly to the mission of the agency. (025)
- To provide for periodic assessment, as necessary, to ensure that implementation of these procedures accomplishes the stated objectives and to recommend appropriate changes. (026)

Organizational Responsibilities and Delegations of Authority (10.159–03)

Commission (031)

- Notifies the Director, Office of Human Resources (HR), that a DPO has been received. (a)
- Convenes an ad hoc review panel for the review of a DPO. (See Handbook 10.159(C)(2) for more information on the panel.) (b)
- Determines the disposition of DPOs submitted by employees in offices reporting directly to the Chairman or Commission and informs the DPO submitter of the final decision and the rationale for it. (c)
- Takes action, as appropriate, on matters that appear to be of immediate health or safety significance. (d)
- Utilizes appropriate and qualified sources inside and outside the NRC to assist in reviewing a DPO. (e)
- Provides to the Office of the Executive Director for Operations (EDO) a summary of the issue and its disposition for the Weekly Information Report. (f)
- Reviews applicable portions of DPV/DPO files for information exempt under the Freedom of Information Act (FOIA), and identifies such information, if any, to the Information Services Branch (ISB), Office of the Chief Information Officer (OCIO). (g)
- Sends all completed DPO case files to HR in accordance with Handbook 10.159(C)(4). (h)
- Periodically reviews and modifies the DPV and DPO process based on recommendations from the EDO and the special review panel. (i)

Chairman
(032)

Reviews reports from office directors of Commission-level offices, as appropriate, on any delays in followup actions on DPVs after the final decision memorandum has been given to the submitter, the reason for the delay(s), and revised schedules for the completion of the action(s).

Executive Director for Operations (EDO)
(033)

- Notifies the Director, HR, that a DPO has been received. (a)
- Convenes an ad hoc review panel for the review of a DPO (see Handbook 10.159 (C)(2) for more information on the panel). (b)
- Determines the disposition of DPOs submitted by employees in offices reporting directly to the EDO and informs the DPO submitter of the final decision and the rationale for it. (c)
- Takes action, as appropriate, on matters that appear to be of immediate health or safety significance. (d)
- Utilizes appropriate and qualified sources inside and outside the NRC to assist in reviewing a DPO. (e)
- Provides a summary of the issue and its disposition in the Weekly Information Report (NRC weekly memorandum from the Office of the EDO to the Commissioners). (f)
- Reviews applicable portions of DPV/DPO files for information exempt under FOIA regulations, and identifies such information, if any, to the ISB, OCIO. (g)
- Sends all completed DPO case files to HR in accordance with Handbook 10.159(C)(4). (h)
- Periodically appoints members to a special review panel to review the effectiveness of the DPV and DPO process. (i)
- Reviews the special review panel's report and makes recommendations to the Commission, as necessary. (j)
- Publishes periodic announcements declaring that diversity of viewpoints is a strength and a potential source of valuable ideas. (k)

Volume 10, Part 7 – General Personnel Management Provisions
Differing Professional Views or Opinions
Directive 10.159

Chief Information Officer (CIO)

(034)

- Ensures that documents related to DPVs and DPOs are publicly releasable before forwarding these documents to the PDR. (a)
- Establishes records disposition schedules for DPVs and DPOs in accordance with regulations of the National Archives and Records Administration. (b)
- Maintains at the NRC File Center all completed DPOs according to the authorized disposition contained in NUREG-0910, "NRC Comprehensive Records Disposition Schedule." (c)

**Deputy Executive Director for
Management Services (DEDM)**

(035)

Reviews reports from staff office directors or regional administrators, as appropriate, on any delays in followup actions on DPVs after the final decision memorandum has been given to the submitter, the reason for the delay(s), and revised schedules for the completion of the action(s).

Director, Office of Human Resources (HR)

(036)

- Monitors the number of DPO submittals being processed in the agency. (a)
- Transmits all completed DPO case files for review and disposition in accordance with Handbook 10.159(C)(4). (b)
- Ensures that appropriate parts of DPOs and their dispositions are disseminated or made available to the public in accordance with the provisions of the FOIA. (c)
- Provides administrative support to the Commission, EDO, office directors, regional administrators, and the special review panel in carrying out their responsibilities for DPV and DPO processing. (d)

**Chief Financial Officer,
Chief Information Officer,
Office Directors, and
Regional Administrators**
(037)

- Inform the Chairman for Commission offices or DEDM for EDO offices, as appropriate, of any delays in followup actions on DPVs after the final decision memorandum has been given to the submitter, the reason for the delay(s), and a revised schedule for the completion of the action(s). (a)
- Determine the disposition of a DPV submitted by an employee within their office or region and inform the DPV submitter of the decision and its rationale. (b)
- Appoint an ad hoc review panel when a DPV is submitted by an employee assigned to their office or region, and include an employee designated by the Office of Enforcement to be a fourth member of a review panel when the subject of the DPV involves an enforcement issue. (See Handbook 10.159 (B)(3)(b) for more information about the panel.) (c)
- Take action on and advise the EDO or Commission of submittals that appear to be of immediate health and safety significance or that may be directly relevant to a decision pending before the Commission. (d)
- Utilize technical assistance from other NRC offices and regions or from outside the agency, as necessary, to address a highly specialized issue. (e)
- Provide a summary of the issue and its disposition in the Weekly Information Report. (f)
- Submit a completed DPV (or applicable portions of DPV) to the PDR when the submitter requests in writing that the DPV be made public in accordance with Handbook 10.159(B)(4)(e). (g)
- Maintain documentation necessary to preserve an accurate record of the DPV proceedings in accordance with Handbook 10.159(B)(5). (h)
- Review applicable portions of DPV/DPO files for information exempt under FOIA regulations, and identify such information, if any, to the ISB, OCIO. (i)

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**Chief Financial Officer,
Chief Information Officer,
Office Directors, and
Regional Administrators**
(037) (continued)

- When an employee chooses to continue the issue through the formal DPO process, a copy of the DPV records should be provided to the EDO or Commission, as appropriate. (j)

Definitions
(10.159–04)

Confidential Submittal. A DPV or DPO that is submitted by an employee through an NRC manager who knows that the submitter is an agency employee.

Differing Professional Opinion. A DPV becomes a DPO after it has been processed and decided and the submitter requests that the matter be considered further by the EDO or Commission.

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

Retaliation. Personnel action that is taken (or not taken in the case of a personnel benefit), recommended, or threatened because of the expression or support of a DPV or DPO (see “Prohibited Personnel Practices”).

Applicability
(10.159–05)

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

Handbook
(10.159–06)

The handbook provides procedures for the expression and disposition of DPVs or DPOs.

References

(10.159–07)

Federal Advisory Committee Act (5 U.S.C. App. I).

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

Management Directive 10.72, “Incentive Awards.”

— 10.99, “Discipline, Adverse Actions, and Separations.”

— 10.101, “Employee Grievances.”

NUREG-0910, “NRC Comprehensive Records Disposition Schedule.”

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

Differing Professional Views or Opinions

***Handbook
10.159***

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Procedures for the Expression and Disposition of Differing Professional Views and Opinions

Introduction (A)

In the free and open discussion of agency issues, professional differences of opinion are common. Employees normally try, and are encouraged, to resolve their concerns through discussions with their co-workers and immediate supervisors. Individual employees are permitted to document their differing professional viewpoints and attach them to proposed staff positions or other documents, to be forwarded with the position as it moves through the management approval chain. Individual employees are strongly encouraged to discuss their differing professional viewpoints within the chain of command, especially with their immediate supervisors, as a first step towards resolution of the issue. No recordkeeping or documentation of this discussion is required. (1)

A difference of opinion, developed in the free and open discussion of work matters, only becomes a differing professional view (DPV) or a differing professional opinion (DPO) when the employee brings it to management's attention in accordance with these procedures. (2)

In some cases, informal discussions may not resolve the matter and an employee may be convinced that the agency and the public would be better served if another opinion prevailed. To file a differing professional view, an employee must submit a written statement to his or her supervisor, line management official, office director, or regional administrator using the procedures in this handbook. Anonymous submittals will not be considered under the provisions of this process. (3)

Introduction (A) (continued)

Issues that do not qualify as differing professional views or opinions include issues that are or could have been appropriately addressed under grievance procedures, personnel appeal procedures, or are governed by law or Governmentwide regulation; issues that are subject to collective bargaining; issues involving allegations of wrongdoing that are appropriately addressed by the Office of the Inspector General; issues submitted anonymously which, if safety significant, are appropriately addressed under NRC's Allegation Program; issues that are deemed to be frivolous or otherwise not in accordance with the policy underlying these procedures; and issues raised by an employee that already have been considered, addressed, or rejected pursuant to this directive absent significant new information. (4)

Issues raised through the informal process are called DPVs. Responsibility for ensuring review of the DPV and making and communicating a decision on the issue rests within the office or region of the submitter. This office or region may utilize expertise elsewhere in the agency to assess or resolve the issue. Although the informal process may appear to be structured, it is intended to be a vehicle for the prompt, nonconfrontational consideration of issues by an impartial review panel, independent of an employee's direct supervisors, with a minimum of documentation. (5)

If the employee is not satisfied with the disposition of the issue through the informal process of a DPV, the employee may file a DPO. The DPO would be filed with the Executive Director for Operations (EDO) if working in a region or an office reporting to the EDO, or with the Commission if working in an office reporting to the Chairman or Commission. If an issue is submitted directly to the EDO or Commission before consideration as a DPV, it is immediately forwarded to the submitter's office or region for review as a DPV through the informal process before action is considered through the formal DPO process. (6)

The exhibit to this handbook provides a quick-reference guide for processing DPVs and DPOs. (7)

Informal Process for Expressing Differing Professional Views (B)

Submittals (1)

The DPV process is initiated by a written statement submitted by an employee of NRC either through the management chain or directly to the office director or regional administrator who will then forward it to a specially convened ad hoc review panel within 5 calendar days. Employees who are contemplating the submittal of a DPV and officials who receive a DPV are encouraged to contact the Director, Office of Human Resources (HR), for guidance on the process. (a)

The written statement, while being brief, must in all cases include—(b)

- A summary of the prevailing staff view, existing management decision or stated position, or the proposed or established agency practice (i)
- A description of the submitter's views and how they differ from any issues discussed in item (i) above (ii)
- An assessment of the consequences should the submitter's position not be adopted by the agency (iii)

All submittals must go through the DPV process before they can be processed as a DPO. (c)

Certain types of issues are excluded from this process and may be rejected by the office director or regional administrator. These include those issues that do not qualify as a DPV as stated in Section (A)(4) of this handbook. (d)

Confidentiality (2)

If an employee wishes to submit a DPV but desires confidentiality, the employee may submit an unsigned DPV to an NRC manager who agrees to act as a surrogate submitter. Disposition of the DPV will then be completed in accordance with these procedures. To protect the employee's confidentiality in such cases, it may not be possible to provide acknowledgment of receipt of the statement or disposition directly to the submitter. In these cases, the manager who forwarded the DPV shall relay to the originator both the acknowledgment of receipt and all reports received by that manager concerning disposition or resolution of the DPV. (a)

Informal Process for Expressing Differing Professional Views (B) (continued)

Confidentiality (2) (continued)

Anonymously submitted DPVs are not covered by the provisions of this directive and handbook. Anonymous submissions will be referred to the Office of Investigations, the Office of the Inspector General, or the appropriate Allegation Program Manager. (b)

DPV Ad Hoc Review Panel (3)

An ad hoc review panel will be established on a case-by-case basis in each office and region to review each DPV. The panel is appointed in writing by the regional administrator or office director. To the extent possible, DPV panels should not involve individuals who have directly participated in the formulation of the agency position that is at issue. (a)

The panel should include—(b)

- A chairperson and one member appointed by management who is technically qualified in the subject area being reviewed (i)
- A third panel member chosen by the ad hoc panel chairperson from a list proposed by the employee submitting the DPV (The submitter may consult with the exclusive bargaining unit representative to nominate qualified individuals who are willing to serve as a third panel member.) (ii)
- A fourth panel member chosen by the Director, Office of Enforcement (OE), when the subject of the DPV involves an enforcement issue (iii)
- When deemed appropriate by the office director or regional administrator, one member of the Atomic Safety and Licensing Board Panel may be appointed as an additional member of the ad hoc panel (iv)

The panel shall—(c)

- Review the DPV and make recommendations to the office director or regional administrator (i)
- Determine whether sufficient documentation was provided by the DPV submitter for the panel to undertake a detailed review (ii)

Informal Process for Expressing Differing Professional Views (B) (continued)

DPV Ad Hoc Review Panel (3) (continued)

- Request technical assistance through the submitter's office director or regional administrator, if necessary (iii)

The panel should normally review the DPV within 7 calendar days of receipt to determine if enough information has been supplied to undertake a detailed review of the issue. The panel should informally contact the employee or the manager who forwarded the DPV to discuss the information provided and request any additional information, if needed. (d)

Those involved in the informal review process shall give priority handling to an issue that may involve immediate or significant health and safety concerns. This includes calling the issue to the immediate attention of higher management. (e)

Review and Decision (4)

To the extent possible, DPV reviews should be conducted independently and not involve individuals who have directly participated in the formulation of the agency position that is at issue. The review should include communication with submitters (or their representative) to provide them with the opportunity to further clarify their views. (a)

Office directors or regional administrators may utilize technically qualified sources inside and outside the NRC to assist in reviewing the DPV. If assistance from outside the agency is required, the requirements of the Federal Advisory Committee Act must be considered. (b)

Once the panel has received the necessary information to begin a review, the panel normally should take no more than 30 calendar days to make a recommendation to the office director or regional administrator. (c)

The office director or regional administrator should review the panel's recommendations and provide the employee or manager who submitted the DPV with a decision and rationale for that decision. Normally, this should occur within 7 calendar days after receipt of the panel's recommendations. (d)

Informal Process for Expressing Differing Professional Views (B) (continued)

Review and Decision (4) (continued)

A summary of the issue and its disposition should be included in the Weekly Information Report to advise interested employees of the outcome. If the submitter indicates in writing a desire to have his or her DPV made available to the public, with or without release of his or her name, the appropriate office director or regional administrator should send the completed DPV case file to the FOIA/PA (Freedom of Information Act and Privacy Act) Officer, Office of the Chief Information Officer (OCIO). The FOIA/PA Officer will coordinate the review of the records in the DPV case file with the originating offices/regions for a releasability determination. When the review is complete, the FOIA/PA Officer will return the DPV case file to the appropriate director or regional administrator. The office director or regional administrator will send the releasable portions of the DPV case file to the Public Document Room (PDR). (e)

Extenuating circumstances may cause delays in concluding the DPV process. Notice of delays should be communicated to the submitter or, in the event of a confidential statement, communicated to the manager who forwarded the DPV. If the review and disposition of the DPV does not occur within 60 calendar days from the date of receipt by the office director or regional administrator, the reason for delay should be reported to the Deputy Executive Director for Management Services (DEDM) for employees of these offices reporting directly to the EDO or to the Chairman for employees in offices reporting directly to the Commission. (f)

Followup Actions (5)

If followup items or additional information needs are recommended by the panel and agreed to by the office director or regional administrator, completion dates for those actions are to be established and communicated to the submitter, or in the event of a confidential statement, to the manager who forwarded the DPV. In establishing completion dates, consideration should be given to the safety significance of the issue, the age of the issue, and the priority of other work in the office. If the schedule for the followup items is not met, the reason for the delay, and a revised schedule for the completion of the action(s) should be communicated to the submitter, or in the event of a confidential statement, to the manager who forwarded the DPV, and

Informal Process for Expressing Differing Professional Views (B) (continued)

Followup Actions (5) (continued)

reported to the Chairman for employees in offices reporting directly to the Commission, or to the DEDM for employees in offices reporting directly to the EDO.

Records (6)

DPV records should be maintained and available only within the region or office unless the DPV was sent to the PDR, where it also will be available. A copy of the panel report and decision memorandum should be sent to the Director, OE, whenever a DPV ad hoc review panel includes a member chosen by OE. (a)

If the DPV is not settled to the satisfaction of the submitter and the submitter requests in writing that the issue be further reviewed under formal DPO procedures, the office director or regional administrator will forward the original case file along with a statement of views on the unresolved issue(s) to the EDO or Commission, as appropriate, for consideration as a formal DPO. (b)

Offices and regions shall maintain files of resolved DPVs for 2 years after a special review panel has published the report of its review. Then the DPV files shall be retired to the NRC Archival Facility through the OCIO for a 10-year retention in accordance with NRC Schedule 1-2.2.b. (c)

Formal Process for Expressing Differing Professional Opinions (C)

Submittals (1)

The formal DPO review process may be initiated by an employee, after the DPV process has been completed, by submitting a written statement to the EDO, for employees in offices reporting to the EDO, or to the Commission, for employees in offices reporting to the Chairman or Commission. (a)

Written DPO submittals must meet the same criteria established for the submittals of a DPV. Certain types of issues are excluded from this process and may be rejected by the EDO or Commission. Issues that do not qualify as a DPO are stated in Section (A)(4) of this handbook. (b)

Formal Process for Expressing Differing Professional Opinions (C) (continued)

Submittals (1) (continued)

If the EDO or Commission receives a DPO that has not been considered through the DPV process, the EDO or Commission shall forward it within 5 calendar days to the appropriate office director or regional administrator for processing as a DPV. Offices and regions will then operate under the provisions of Section (B) of this handbook. (c)

DPO Ad Hoc Review Panel (2)

The EDO or Commission will convene an ad hoc review panel and appoint a chairperson and second technically qualified panel member. The submitter of the DPO may submit names for the chairperson to select a third panel member. Also, when deemed appropriate by the EDO or Commission, one member of the Atomic Safety and Licensing Board Panel may be appointed as an additional member of the ad hoc panel. To the extent possible, DPO panels should not involve individuals who have directly participated in the formulation of the agency position that is at issue. (a)

The panel—(b)

- Reviews the DPO and makes recommendations to the EDO or Commission (i)
- Determines whether sufficient documentation was provided by the DPO submitter for the panel to complete a detailed review (ii)
- Requests technical assistance from appropriate source(s) within or outside the agency, as necessary (iii)

Any NRC employee or manager involved in the DPO process shall give immediate priority attention to issues involving significant health and safety concerns. This includes advising the office director, regional administrator, or the EDO or Commission, as appropriate, of any immediate safety concerns. (c)

Review and Decision (3)

To the extent possible, DPO reviews should be conducted independently and not involve individuals who have directly participated in the formulation of the agency position that is at issue. (a)

Formal Process for Expressing Differing Professional Opinions (C) (continued)

Review and Decision (3) (continued)

The EDO or Commission may utilize technically qualified sources inside and outside the NRC to assist in reviewing the DPO. In considering the DPO, the EDO or Commission should review the decision of the office director or regional administrator as well as the ad hoc review panel's recommendations and any other source who has reviewed the issue. (b)

The EDO or the Commission will provide the submitter with a decision and rationale for that decision. Normally, this should occur within 30 calendar days after receipt of all solicited views requested by the EDO or Commission. (c)

Extenuating circumstances may cause the EDO or Commission to delay in making a final decision. In such cases, the submitter should be advised of the timeframe for considering the issue. (d)

After the EDO or Commission makes a decision on a DPO and communicates the outcome to the submitter (or to the manager who forwarded the DPO), the matter is considered closed and will not be considered further absent significant new information. (e)

Records (4)

The EDO and Commission will send all completed DPO case files to HR. Normally, the case file will include, at a minimum, the DPVs and DPOs submitted by the filer, the DPV and DPO panel reports, and the DPV and DPO decision memoranda. Any other documents, such as other correspondence related to the DPV and DPO between the submitter and the EDO or the Commission, deemed by the EDO or Commission to be essential to an understanding of the case also may be forwarded as a part of the case file. The memorandum transmitting the file to HR should include a list of documents contained in the file and a statement indicating which documents, or portions of documents, may be released to the public, subject to a routine Freedom of Information Act review. (a)

HR will make the file, or appropriate portions of the file, available to the public in accordance with the provisions of the Freedom of Information Act. To accomplish this, HR will request the FOIA/PA Officer, OCIO, to initiate a review of the documents identified by the

Formal Process for Expressing Differing Professional Opinions (C) (continued)

Records (4) (continued)

EDO or Commission as releasable to ascertain which portions of the record, if any, are exempt from disclosure to the public. The Freedom of Information (FOI) staff will request offices and regions to review the documents to determine which documents or portions of documents should or should not be released to the public. The offices and regions conducting the reviews should then advise FOI staff of those documents or portions of documents that should or should not be released to the public. FOI staff will then resolve any discrepancies and return the case file to HR, indicating which documents or portions of documents the reviewers have identified as releasable to the public. (b)

HR will transmit a copy of the releasable portions of the file to the Document Control Desk, OCIO, for Nuclear Documents System processing and distribution to the PDR. PDR staff will maintain the sanitized copy consistent with the retention of the official record. HR also will transmit the original DPO file to the NRC File Center, OCIO, for retention. DPO files are not currently scheduled and must be retained by the NRC File Center until a records disposition schedule for this material is approved by the National Archives and Records Administration. (c)

Resources To Assist Originators of Differing Professional Views or Opinions (D)

To assist submitters in preparing adequate written DPV or DPO statements, the submitter's immediate supervisor, in consultation with other management officials, will determine the amount of the employee's work time and administrative support to be provided in response to the employee's request for assistance. If called to testify before a licensing board or presiding officer, the employee may receive, upon request, assistance from the legal staff to prepare testimony or other documents to be filed with the board. Such assistance will be solely for the purpose of facilitating the filing of the necessary documents and will not constitute legal representation of the employee by the legal staff.

Special Review Panel (E)

A special review panel periodically assesses the DPV and DPO process, including its effectiveness, how well it is understood by employees, and the organizational climate for having such views aired and properly decided. Members of the special review panel are appointed by the EDO after consultation with the Chairman. (1)

The special review panel will prepare a report on the basis of its assessment and submit it to the EDO for consideration. The EDO will forward the report with any comments or recommendations to the Commission for approval. The report or its executive summary also will be distributed to all employees. (2)

In addition, the special review panel will review DPVs and DPOs completed since the last review to identify employees who have made significant contributions to the agency or to public health and safety but have not been adequately recognized for this contribution. When award recommendations have not been made, they may be made by the special review panel in accordance with provisions of NRC's "Incentive Awards Program" (Management Directive (MD) 10.72). Recommendations for awards will be included in the special review panel's report. (3)

Prevention of Retaliation (F)

Any NRC employee who retaliates against another employee for submitting or supporting a DPV or DPO is subject to disciplinary action in accordance with MD 10.99, "Discipline, Adverse Actions, and Separations." This applies to retaliatory actions as defined in the directive and to all prohibited personnel practices specified in the Civil Service Reform Act of 1978, as amended. (1)

Employees who allege that retaliatory actions have been taken because of their submittal or support of a DPV or DPO may seek redress through the negotiated grievance procedure or through the grievance procedure described in MD 10.101, "Employee Grievances." (2)

Exhibit Processing Differing Professional Views or Opinions

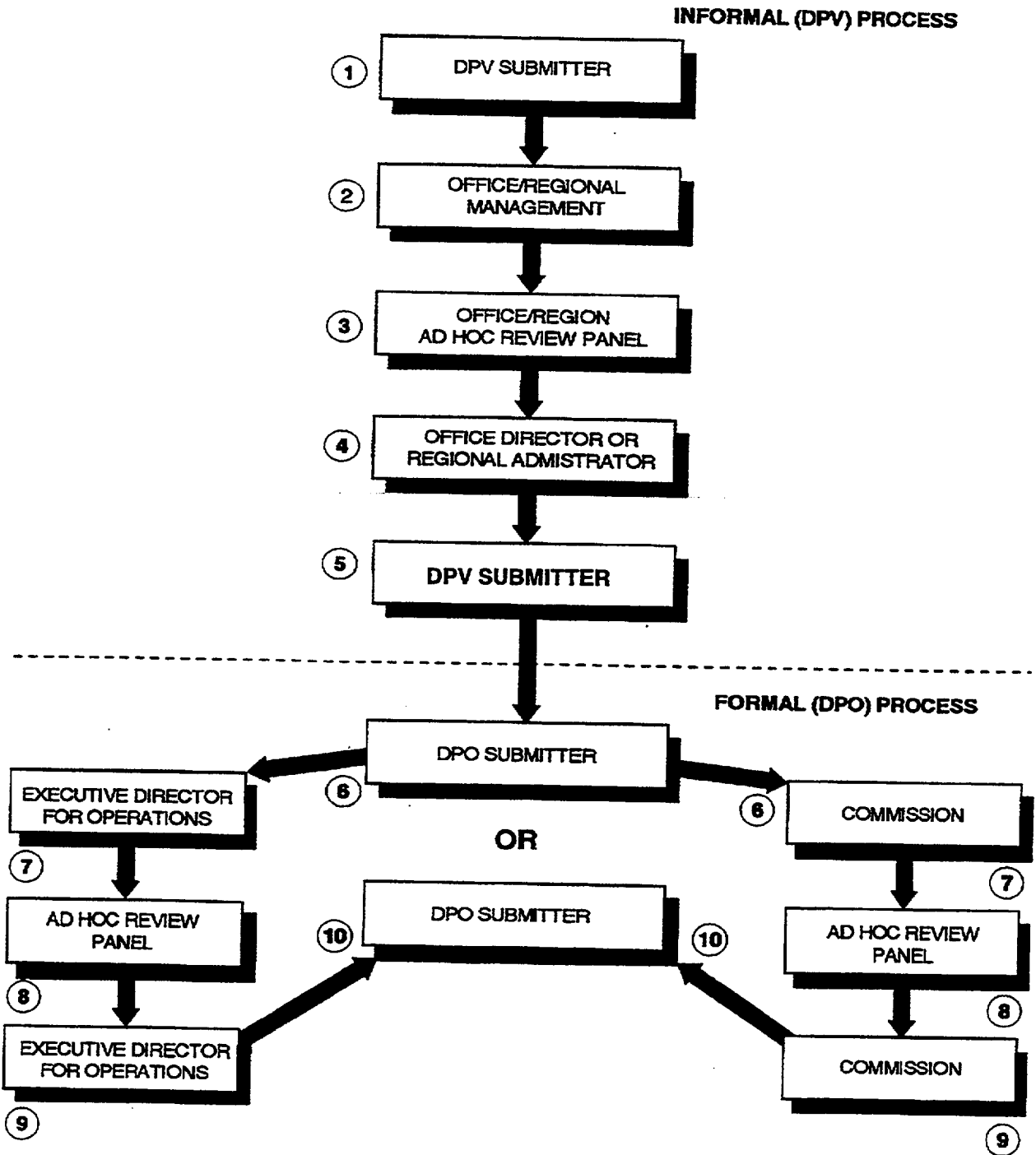


Exhibit (continued)

Key:

- ① Employee writes a differing professional view (DPV).
- ② The DPV should be submitted directly or through line management to the employee's office director or regional administrator. If submitted to another NRC organization, it is forwarded to the employee's office director or regional administrator for processing through the informal DPV process. The employee's office director or regional administrator acknowledges receipt and forwards the submittal to the ad hoc review panel for action within 5 days. The office director or the regional administrator appoints the panel chairperson and a technically qualified panel member. The submitter may provide a list of qualified individuals to the panel chairperson who selects one of them to serve as a third member of the ad hoc review panel.
- ③ The ad hoc review panel makes initial review to determine the adequacy of the submittal within 7 days of receipt, considers the DPV, and provides the submitter's office director or regional administrator a report of the findings and a recommended course of action, usually within 30 calendar days.
- ④ The office director or the regional administrator considers the ad hoc review panel's report, makes a decision on the DPV, provides a written decision to the submitter, and includes a summary of the issue and its disposition in the NRC Weekly Information Report, usually within 7 calendar days. The DPV file is retained in the office or region. If the submitter has indicated in writing a desire to have his or her DPV made available to the public, with or without release of his or her name, portions of the DPV releasable under the Freedom of Information Act will be submitted through the Director, HR, to the Public Document Room by the office director or regional administrator at that time.
- ⑤ On the basis of the office director's report, the submitter may consider the matter closed.
- ⑥ If the submitter does not consider the matter closed, a written differing professional opinion (DPO) statement expressing continuing concerns may be submitted to the Commission, for offices reporting directly to the Chairman or Commission, or to the Executive Director for Operations (EDO), for offices reporting to the EDO.
- ⑦ Upon receipt of a formal DPO and after making sure that the issues contained therein have first been processed as a DPV, the Commission or the EDO contacts HR and may contact the submitter's office director or regional administrator to obtain all records that may aid in the formal DPO review process. The Commission or EDO convenes an ad hoc review panel and appoints a chairperson and second technically qualified panel member. The submitter of the DPO submits names for the chairperson to select a third panel member.
- ⑧ The ad hoc review panel considers the DPO and provides the Commission or EDO a report of findings and a recommended course of action, normally within 30 calendar days after receipt of all solicited views.
- ⑨ The Commission or EDO considers the ad hoc review panel's report, makes a decision on the DPO, and provides a written decision to the submitter within 30 days of receipt of the panel's recommendation. The case file is then forwarded to HR.
- ⑩ Upon the submitter's receipt of a decision from the Commission or EDO, the DPO process is concluded.

Appendix C

GUIDELINES FOR PROCESSING DIFFERING PROFESSIONAL OPINIONS (DPOs)

The potential DPO filer and his/her management, up to and including the Division Director, should engage in discussions of the issue as soon as it arises. There are no time limits for the completion of these discussions, no tracking requirements, and no requirement to keep written records. At the conclusion of these discussions, if the employee still believes that the agency and the public would be better served if another opinion prevailed, he/she may submit a formal Differing Professional Opinion (DPO) by following the procedures stated below.

① **The DPO submission** - The filer must submit a written DPO statement to the DPOPM, in accordance with the requirements stated in MD 10.159. (A standard format will be included in MD 10.159). The written statement must provide evidence that the preconditions presented in MD 10.159 have been met. The filer must also provide the names of three possible panel members in order for the package to be considered complete.

Withdrawing a DPO - A DPO may be withdrawn at any time prior to the issuance of a decision. In order to initiate a withdrawal, the filer should submit a written request to the DPOPM, who will notify the appropriate OD/RA. Withdrawal does not preclude the OD/RA from pursuing the issue raised but the continued pursuit of the issue will no longer be subject to DPO process rules and/or time frame requirements.

② **Screening of the DPO by the DPOPM** - The DPOPM will review the written submittal for compliance with the criteria stated above. Filings submitted as DPOs that do not meet these criteria will be returned to the filer without action. Typically, within 8 calendar days of receipt, the DPOPM will issue a memorandum to the filer (with a copy to the appropriate OD/RA) indicating that the DPO has either been rejected or accepted for action. The justification for the action taken will be stated in the memo. The DPOPM may call upon agency subject matter experts as appropriate, for assistance in the screening process to assure that the issues are clearly delineated. *(For tracking purposes, the DPO "process clock" starts on the date of this memorandum).*

③ **Appointment of the DPO Ad Hoc Panel by the OD/RA** - Generally, within 5 calendar days after receipt of the DPO from the DPOPM, the cognizant OD/RA will select the members of the ad hoc panel, considering any potential conflict of interest or chain of command concerns relevant to the issue or to the submitter, and will appoint them to the panel by issuing a standard tasking memo to each member, with a copy to the DPOPM. One member of the panel will be selected from the prioritized list submitted by the filer.

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

⑤ **Ad Hoc Panel Report Issued to OD/RA** - Ad hoc panels are expected to complete their review and make their recommendation to the OD/RA within 30 calendar days after the meeting with the filer. This time frame may not be appropriate for more complex cases and may be extended with the approval of the EDO, through the DPOPM.

⑥ **Report is Returned to Panel for Further Work** - At his/her option, the OD/RA may return the report to the panel with specific rework instructions (e.g., revise for clarification or provide further information). Revised panel reports will be provided to the OD/RA, generally within 7 calendar days. This time frame may not be appropriate for more complex cases and may be extended with the approval of the EDO, through the DPOPM.

⑦ **Management Decision is Issued** -The OD/RA will issue his/her decision (in a standard format to be determined) to the DPO filer, generally within 10 calendar days of the acceptance of the final panel report. Decision memos should include recognition of the filer's efforts, if deemed appropriate by the OD/RA. Copies of the decision memo will be sent to the filer, the filer's management, the OD/RA for the DPO, the DPOPM and to any individuals/organizations tasked with follow-up actions or implementations. All routine DPO cases should be completed within 60 days of acceptance of the issue as a DPO and all complex cases within 120 days. This time frame may only be extended with the approval of the EDO, through the DPOPM.

⑧ **Decision implementation and reporting** - Implementation of a management decision will be tracked by the DPOPM.

DPO Appeal Process

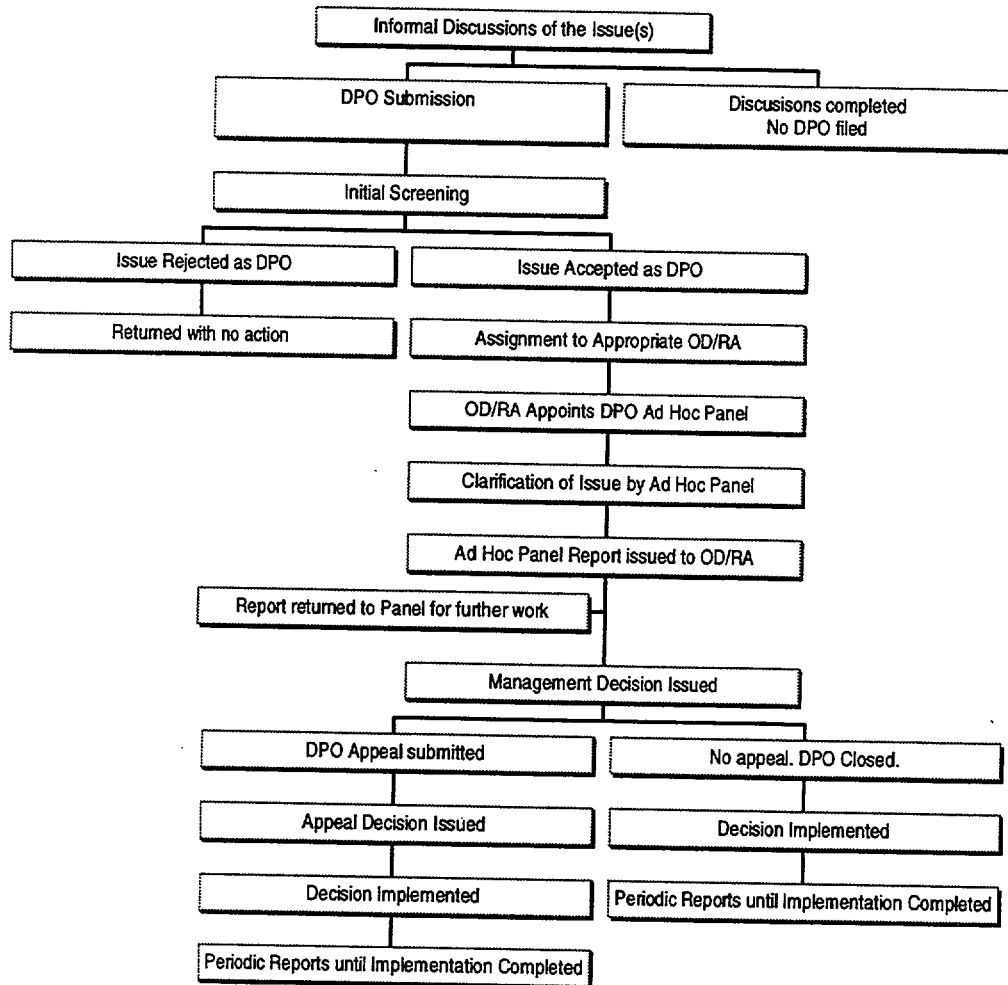
① **DPO Appeal-** An appeal may be filed no later than 21 calendar days after the issuance of the management decision. This appeal should be addressed to the EDO or the Commission, as appropriate, and filed through the DPOPM. A copy of the appeal will be sent to the OD/RA for the DPO by the DPOPM.

Withdrawing an Appeal - A DPO appeal may be withdrawn at any time prior to the issuance of the decision. In order to initiate a withdrawal, the filer should submit a written request to the DPOPM with a copy to the EDO or the Commission, as appropriate.

② **Appeal Summary Decision-** An appeal decision will be issued by the EDO or Commission, as appropriate, no later than 60 calendar days after receipt of the appeal. Copies of the decision will be provided to the OD/RA for the DPO, the DPOPM and individuals or organizations tasked with follow-up or implementation actions. Upon issuance of the appeal decision to the filer, the DPO process will be concluded and the matter will be considered closed.

③ **Decision implementation and reporting** - Implementation of an appeal decision will be tracked by the DPOPM.

Appendix D - Flow Chart



BIBLIOGRAPHIC DATA SHEET

(See instructions on the reverse)

1. REPORT NUMBER
(Assigned by NRC, Add Vol., Supp., Rev.,
and Addendum Numbers, if any.)

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Same as above

10. SUPPLEMENTARY NOTES

11. ABSTRACT *(200 words or less)*

In March 2001, the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) appointed a Special Review Panel (SRP) to assess the Differing Professional View or Opinion (DPV/DPO) process. The panel was convened pursuant to MD 10.159 and was asked to assess the current process for effectiveness, to evaluate the organizational climate within which the process currently operates and to report on the general understanding of the process by agency staff. The panel was also asked to review case files for recognition and to recommend improvements in the program.

This report presents the Special Review Panel's evaluation of the NRC's current process for dealing with Differing Professional Views or Opinions and includes the panel's findings and recommendations for change.

12. KEY WORDS/DESCRIPTORS *(List words or phrases that will assist researchers in locating the report.)*

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differing professional opinion
special review panel
DPV/DPO process

13. AVAILABILITY STATEMENT

unlimited

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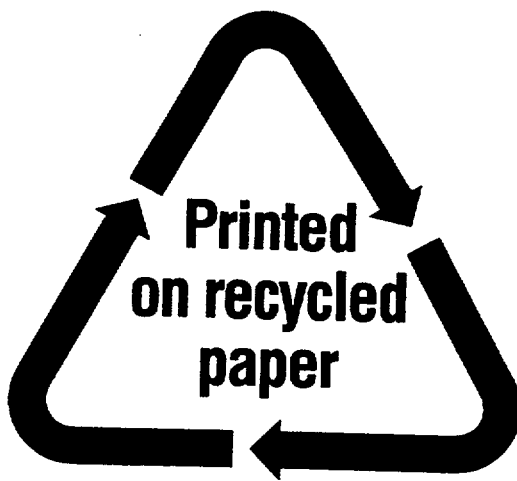
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