
Differing Professional Views or Opinions

1994 Special Review Panel

U.S. Nuclear Regulatory Commission

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



ABSTRACT

In July 1994, the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) appointed a Special Review Panel to assess the Differing Professional View or Opinion (DPV/DPO) process, including "...its effectiveness, how well it is understood by employees, and the organizational climate for having such views aired and properly decided." An additional area within this review was to address "...the effectiveness of the DPO procedures as they pertain to public access and confidentiality." Further, the Panel was charged with the review of the submittals completed since the last review to identify employees who made significant contributions to the agency or to the

public health and safety but had not been adequately recognized for this contribution.

The report presents the Special Review Panel's evaluation of the NRC's current process for dealing with Differing Professional Views or Opinions. Provided in this report are the results of an employee opinion survey on the process; highlights and suggestions from interviews with individuals who had submitted a Differing Professional View or Opinion, as well as with agency managers directly involved with the Differing Professional Views or Opinions process; and the Special Review Panel's recommendations for improving the DPV/DPO process.

EXECUTIVE SUMMARY

A free and open discussion of differing professional views is essential to the development of sound regulatory policy and decisions. In recognition of that fact, since 1976 the U.S. Nuclear Regulatory Commission (NRC) has provided ways for employees to bring their differing professional views to the attention of the highest levels of management. In 1980, NRC Manual Chapter 4125 was published, outlining and describing the NRC's Differing Professional Opinion policy. In mid-1987, a Special Review Panel examined this policy. As a result of that Panel's findings and recommendations, published in NUREG-1290, modifications were made and Manual Chapter 4125, Differing Professional Views or Opinions (DPVs/DPOs), and Manual Chapter 4126, Open Door Policy, were approved September 30, 1988. In December 1989, a Special Review Panel convened to assess the informal and formal process. As a result of that Panel's findings and the conversion of policy into directives, Management Directive 10.159, Differing Professional Views or Opinions, and Management Directive 10.160, Open Door Policy, were issued March 20, 1991.

In accordance with Section 038 of Management Directive 10.159, a Special Review Panel is to periodically assess the effectiveness of the revised procedures. The Executive Director for Operations appointed this Special Panel in July 1994 to examine the current DPV/DPO policies and procedures. The Special Review Panel conducted an employee opinion survey, held interviews, and reviewed the processing of actual Differing Professional Views and Differing Professional Opinions in accordance with the directions provided in Appendix A.

On the basis of its review, the Special Review Panel concluded that revisions resulting from the

previous review have had positive effects on the process; however, most employees still believe that DPV/DPO filers are perceived by management as not being team players, and there is an employee perception of retribution, particularly in the form of career advancement limitations. An associated issue is that of a feeling of skepticism about whether or not a DPV or DPO will be judged fairly by the Agency.

The Panel's key recommendations follow:

1. The Chairman, Commission, and EDO should make public announcements declaring that diversity of viewpoints is a strength and a potential source of valuable ideas, thus making it clear that they believe that employees filing DPVs and DPOs should be fully supported and encouraged to air their views without fear of reprisal.
2. There must be encouragement for full participation by the filer from the beginning to the end of the process.
3. Filers of DPVs should be asked whether they want their DPV file to be placed in the Public Document Room (PDR) and whether they want their names to be withheld from or included in the file.
4. Standing DPV panels should be eliminated and, instead, panels should be constructed on an ad hoc basis depending on the technical issue that must be addressed.
5. The DPO process should be changed to require the establishment of Ad Hoc Review Panels similar to those recommended for the DPV process, including input from the filer, that would result in recommendations to the EDO.

FOREWORD

In July 1994, the Executive Director of Operations of the U.S. Nuclear Regulatory Commission (NRC) appointed a Special Review Panel to evaluate the effectiveness of the Differing Professional Views or Opinions process. The Panel members were:

Guy A. Arlotto,
Deputy Director,
Office of Nuclear Material Safety
and Safeguards.
Appointed as Panel Chairperson.

James F. McDermott,
Deputy Director,
Office of Personnel.

John M. Montgomery,
Deputy Regional Administrator,
Region IV.

Lisa B. Clark,
Office of the General Counsel,
Representative, National Treasury
Employees Union.

Arlene A. Jorgensen-Hillestad,
Office of the General Counsel,
Representative, National Treasury
Employees Union.

Others who contributed extensively to this project include:

Marthe E. Harwell who provided administrative support in the interview process and writing and editing support for the Commission report and the resulting NUREG document.

J. David Woodend who provided advice and guidance in the revisions of Management Directive 10.159.

Kathleen M. Adams who collated the results of the employee opinion survey.

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THE UNIVERSITY OF CHICAGO

SPECIAL REVIEW PANEL REPORT

The United States Nuclear Regulatory Commission (NRC) is regularly faced with making difficult decisions—decisions that can have profound impacts on public health and safety and on our nation's nuclear energy program. As a result, in making important safety decisions, the Commission must have at its disposal the best information available.

For the NRC to successfully meet its regulatory responsibilities, the agency must ensure that the decision-making process includes and considers all points of view in an organizational climate that promotes open discussion.

Background

The NRC's commitment to a free and open discussion of professional views is illustrated in the NRC Open Door Policy (first communicated to agency employees in 1976) and the NRC Differing Professional Opinion Policy (formally established in 1980). These policies permit employees at all levels to provide professional viewpoints on virtually all matters pertaining to the agency's mission.

In 1987, a Commission-appointed panel conducted an extensive review of these policies. As a result of this Panel's findings and recommendations (published in NUREG-1290), Manual Chapter 4125, Differing Professional Views or Opinions, and Manual Chapter 4126, Open Door Policy, were issued and approved September 30, 1988.

In December 1989, the Executive Director for Operations appointed a Special Review Panel to assess the effectiveness of the revised procedures. As a result of this Panel's review, Management Directive 10.159, Differing Professional Views or Opinions, was prepared to include editorial changes to clarify the meaning. The findings of this Panel's review were published in NUREG-1414. Guidance and a discussion of the DPV/DPO process was incorporated as part of the NRC Employee Orientation Program presented to new employees.

In July 1994, the Executive Director for Operations appointed a Special Review Panel to assess the effectiveness of the DPV/DPO process (Appendix A). Specifically, this Panel was asked to assess how well the process was understood by employees, the organizational climate for having views aired and properly decided, and the effectiveness of the DPO procedures as they pertain to public access and confidentiality. Further, this Panel was charged with the review of the submittals completed since the last review to identify employees who made significant contributions to the agency or to the public health and safety but had not been adequately recognized for this contribution.

Key Overall Findings and Recommendations

It is clear that most employees who may consider the filing of a DPV or DPO know about the process. In addition, those who have actually filed DPVs or DPOs found information about the process readily available and easy to use. However, the key issue the Agency must deal with, whether real or perceived, is the fact that most employees believe that DPV/DPO filers are perceived by management as not being team players, and there is an employee perception of retribution, particularly in the form of career advancement limitations. An associated issue is that of a feeling of skepticism about whether or not a DPV or DPO will be judged fairly by the Agency.

The panel concluded that the above are the key issues that must be dealt with if the credibility of the DPV/DPO process is to be assured. Thus, all recommendations focus on potential actions that should be taken to increase credibility.

1. The Chairman, Commission, and EDO should make public announcements declaring that diversity of viewpoints is a strength and a potential source of valuable ideas, thus making it clear that they believe that employees filing DPVs and DPOs should be fully supported and encouraged to air their views without fear of reprisal.

2. There must be encouragement for full participation by the filer from the beginning to the end of the process.
3. Filers of DPVs should be asked whether they want their DPV file to be placed in the Public Document Room (PDR) and whether they want their names to be withheld from or included in the file.
4. Standing Review Panels for DPVs should be eliminated and, instead, both DPV and DPO panels should be constructed on an ad hoc basis, panel composition depending on the technical issue that must be addressed.
5. The DPO process should be changed to require the establishment of Ad Hoc Review Panels similar to those recommended for the DPV process, including input from the filer, that would result in recommendations to the EDO.

The above key overall findings and recommendations are discussed more fully in the following paragraphs under the various headings.

- ORGANIZATIONAL CLIMATE

Employee Perception

FINDING: Employee perception of the organizational climate and resulting effectiveness of the DPV/DPO process has generally not improved. At the same time, certain Regional Offices have had greater success in setting a tone that lets employees know that filing DPVs will not affect their careers adversely.

The Panel learned from the survey results, written responses to questions, and especially from oral remarks during interviews that the process is not frequently used, and thus the evidence suggests that it is not highly effective because of the current organizational climate. As a result, there has been essentially no positive effect on employee perceptions of the DPV/DPO policy since the last review. Specifically, only 34% of those responding to the survey indicated that the current policy is effective. This compares to 39% who so responded in the 1989 employee survey. In addition, the Panel would like to emphasize the fact that almost 65% of the survey respondents

either did not know whether, or disagreed that, the policy provides an effective means of employee expression.

While 25% of those who responded to the survey believe the current climate is favorable for expressing a differing viewpoint, a substantial number of respondents have no opinion (33%) or do not find it favorable (40%). This appears to be a failing in organizational climate. (The 1989 survey indicated that approximately 36% of the staff believed that filing a DPO could adversely affect their careers.)

Some staff members continue to fear reprisal (40%) and note that fear as the primary reason for lack of policy effectiveness. They also believe there is a culture within the NRC that does not want to expose any weakness or error in previous NRC decisions or positions. Employees responding to the survey aired beliefs that submitting a DPV or DPO was "suicidal to your career" and that a filer would be "considered as a troublemaker or non-team player." The second most noted reason for lack of effectiveness is the perception that reviewers are predisposed to the outcome of a DPV/DPO (23%).

Also as a result of the interview process, the Panel found evidence of greater effectiveness in the handling of DPVs in certain Regional Offices. Strong support came from top management down through all levels to the employee. Management expressed the belief that it was the duty of an employee to bring safety concerns to the attention of management and that management should give its full support to the effective and fair review of all concerns. At times, it was felt by management that an issue could be better dealt with when an employee became the agent for the airing of a concern. As a result, an employee would volunteer to be the agent for the airing of a technical concern and the DPV mechanism became activated. The investigation of the problem was greatly facilitated by interaction between the filer of the DPV and the Standing Review Panel.

The Panel became aware of more positive outlooks toward the DPV process from some Regional employees who had actually filed DPVs. These filers expressed in their oral remarks the belief that they had been encouraged to use the process, took the Agency's word, and filed a DPV. They expressed satisfaction with their hearing and

no reluctance to file again if they believed strongly in a position.

Another area of strength in the handling of DPVs was the policy of actively involving the filer during the review of a submitted DPV. This was accepted policy for certain Regional Offices, and the filer often felt that he/she had had a fair hearing of a concern. Even if the employee's recommendation was not implemented, the filer was given management's full explanation of the reason for the decision, often providing broader information than previously available to the employee.

A third area of strength has been the routine inclusion of discussion of the DPV/DPO process during training sessions of regional personnel. Regional Office Instructions include specific sections dealing with DPVs/DPOs and the Open Door Policy. This has resulted in a better understanding of the process by both managers and employees.

One Regional Office also has established a separate mechanism to assist employees who have a concern. An employee with a potential concern is referred to other employees who may have had experience filing a DPV or may be technical experts in the area of concern. This group serves as a facilitating body to answer questions and help during the development process.

Overall, these processes have helped to improve the channels of communication among managers and employees. These enhancements have also demonstrated a level of management sensitivity to the equitable treatment of differing professional viewpoints. Where filer opinion of the results of a DPV was poor, evidence often showed that there had been little or no communication from the initial submittal of a concern to the time of the filer's receipt of an impersonal report from the Standing Review Panel. In fact, some filers resorted to the DPV process only when concerns aired through the normal channels of communication were ignored by management.

The Panel believes that, unless there is a significant change in organizational climate throughout the Agency, consistent with the successful policies that have been adopted in the regions, there will be no constructive change in perception and, as a result, the Agency will have

reached a point of diminishing returns in the effectiveness of the DPV/DPO program.

RECOMMENDATION: Impart to all levels of NRC employees (both managers and employees) through announcements, training, and policy changes the extreme importance of regular communication to address issues openly and frankly (1) before they become escalated to the status of DPVs or DPOs and (2) in a fair, equitable manner when the official process is invoked.

- Advise the Chairman, Commission, and EDO that they should make public announcements declaring that diversity of viewpoints is a strength and a potential source of valuable ideas, thus making it clear that they believe that employees filing DPVs and DPOs should be fully supported and encouraged to air their views without fear of reprisal.
- Reinforce the importance of the DPV/DPO process during Senior Management Meetings and all other staff meetings and during training sessions, emphasizing the safety significance of DPVs/DPOs and their contribution to the accomplishment of the Agency's mission.
- Periodically emphasize to managers and supervisors that there should be no negative connotation associated with one of their employees submitting a DPV/DPO, that reprisal is unacceptable, and that proper and timely processing of such views is important.
- Provide summaries of resolved DPVs in addition to DPOs in the Weekly Information Report.

Review Panel Composition

FINDING: Filers of DPVs/DPOs often observed that the members of a Standing Review Panel did not include individuals who were technically qualified to review the merits of differing view or else consisted of individuals who had been part of the original decision-making process, which contributed to the impression of a strong bias against a filer's view.

Filers of DPVs and DPOs expressed a serious concern with regard to the validity of the

composition of Standing Review Panels as mandated by the present policy. Some filers indicated that people on a panel did not have the technical credentials necessary to evaluate adequately the issue at hand. These filers believed that they could not get a fair hearing by a panel that could not understand the technical intricacies they proposed. The Panel heard suggestions from both filers and some panel chairpersons that the panels reviewing DPVs should include members who are technically qualified to review the concern being aired, not just the present composition of two managers and one filer representative. Some filers also questioned the objectivity of a Standing Review Panel that included member(s) who had perhaps been involved in the original decision-making process related to the filers' concerns. The filers also suggested that the Standing Review Panels in program offices and Regional Offices be abolished and replaced with Ad Hoc Review Panels that would be created on a case-by-case basis, depending on the technical area of concern.

Another area of concern dealt with involvement of the filer in the DPV or DPO process. Some filers expressed disappointment in not having had any communication with the Standing Review Panel during the review process. Others felt that not all their concerns were dealt with, which sometimes resulted from the lack of communication with the panel.

The Panel believes that the creation of Ad Hoc Review Panels for the review of DPVs in program offices and regions would greatly enhance the effectiveness of the DPV process. The panel members should consist of technical experts in the subject area of the DPV (including a manager who may also be a technical expert) as well as a representative of the filer's choice.

In conformance with a revised DPO process, the Panel believes that the Executive Director for Operations also should appoint Ad Hoc Review Panels for DPOs similar to the panels used for the review of DPVs. The panel should consist of technical experts to the extent possible (perhaps including a manager who is also a technical expert) and a representative of the filer's choice.

RECOMMENDATION: Replace the current Standing Review Panel with Ad Hoc Review Panels that are tailor made for each DPV, particularly

related to its technical content, and create a similar panel for the handling of DPOs, making sure that there is direct communication between the panel and the filer.

- Create Ad Hoc Review Panels for DPVs consisting of members who are specialists in the specific technical area of concern (managers and/or staff) and a representative of the filer's choice.
- Create Ad Hoc Review Panels for the review of DPOs consisting of members similar to the panel for the review of DPVs.
- Retain a management representative for each Office and Region to act as a facilitator in the selection and monitoring of Ad Hoc Review Panels.
- Emphasize to Office Directors, Regional Administrators, and Ad Hoc Review Panels that they have specific authority to request technical assistance from another Office/Region or from outside the agency to address a highly specialized technical issue.
- Emphasize to all supervisors and employees that there may be serious consequences to the public if safety issues are not addressed in a timely manner, which would reflect poorly on the credibility of the NRC if erroneous positions were not addressed and corrected without delay.
- Specify that DPV/DPO reviews are to be conducted independently and may not involve individuals who have participated in the formulation of the Agency's position that is at issue.
- Emphasize to panel members the importance of actively involving the filer of a DPV/DPO from the beginning of a submittal to completed review by interacting with the filer to make sure all parties fully understand the concern and the prevailing management position.
- Revise Management Directive 10.159 to include the creation of Ad Hoc Review Panels for DPVs, in lieu of the Standing Review Panel, as well as for DPOs.

- HOW WELL UNDERSTOOD

Overall Perception

FINDING: Virtually all agency employees are aware of the DPV/DPO process; however, managers and employees need positive reinforcement from top management down on the value of the process and additional training to clarify the process.

The survey revealed that the vast majority of NRC employees (93%) know about and are generally familiar with the DPV/DPO policy. Furthermore, 54% of survey respondents agree that the DPV/DPO process is understandable. However, additional efforts are needed to highlight the difference between a DPV and a DPO since 30% of the employees are not aware of the difference. The Panel also noted a lack of consistency in handling DPVs.

Among the inconsistencies identified to the Panel were the following: (a) one filer submitted a DPO without first going through the DPV process; (b) DPV panels were occasionally convened that did not include a representative endorsed by the filer; and (c) DPV results were forwarded to the employee's direct supervisor or Office Director/Regional Administrator rather than to the filer.

In the Panel's judgment, possible causes of this lack of consistency include the following: (a) managers and employees have not received consistent training in this policy and process throughout the agency; and (b) a specific point of contact is absent for information related to DPV/DPO process in the telephone functional directory.

RECOMMENDATION: Improve both manager and employee understanding of the DPV/DPO policy and its proper implementation through several initiatives:

- Provide training to managers and employees on the DPV/DPO process, with special focus on the differences in the Open Door Policy, the DPV process, and the DPO process.
- Examine Regional Office Instructions (ROIs), which include specific information about the DPV/DPO process, and parts of the regular

training for resident inspectors to determine the applicability of similar training for the technical staff in Headquarters as it applies to the DPV/DPO process.

- Encourage supervisors and employees to attend courses on Effective Listening, Effective Communication (group and/or interpersonal), and Conflict Resolution, emphasizing that these are areas essential to the DPV/DPO process.
- Publish a revised Management Directive 10.159 that displays a flow chart diagramming the process earlier in the directive and clarifies the DPV/DPO process.
- Identify a point of contact who can provide advice on the policy, its application to managers and employees, and practical insights to both filers and panel members; include such contact in the Telephone Functional Directory as well as Management Directive 10.159.
- Update the brochure on the DPV/DPO process reflecting changes recommended in this report.
- Distribute an all-employee announcement highlighting the important changes made to the policy as a result of this review and identify the new point of contact.
- Revise the Management Directive to provide for informing the filer of the option available that permits him/her to submit names of individuals for selection of a representative on the Ad Hoc Review Panel.
- Continue to periodically review actual submittals to ensure that the process is working as intended.

Process Misinterpretation

FINDING: Some NRC employees who have expressed a concern to management, often through the Open Door Policy, have found their concerns unilaterally converted into a DPV, without their knowledge and their express desires.

Some employees whose records were reviewed and who participated in interviews expressed a strong

sense of surprise and dissatisfaction when the concerns that they brought to management informally were converted into DPVs without their specific agreement or permission.

RECOMMENDATION: *Respect an employee's choice of mechanism for airing a concern.*

- Revise internal Office and Regional procedures to treat concerns as informally as desired by persons airing them.
- Consider issuing a letter of acknowledgment to a filer of a concern to verify that it was received and to iterate understanding of the issue.
- Check with a person raising a concern before designating a concern as a DPV.
- Emphasize the importance of open communication among all staff members, especially between managers and employees.

● **EFFECTIVENESS**

Employee Recognition

FINDING: *As a result of considering potential awards for filers of DPVs/DPOs, the panel found several areas for improvement.*

The Panel's review of DPV/DPO files and interviews included the subject of recognition for a filer's effort. Chairpersons involved in the review of DPVs/DPOs were asked if any filers were offered recognition for any of their efforts. Only one chairperson acknowledged having given a special award to the filer of a DPV. The person who had filed the DPV did not feel he had received a fair consideration of his view and subsequently filed a DPO on the same subject. In his case, the filer felt the award was only a token award and was not something he had sought in airing his view initially only through the Open Door Policy. (It should be noted that his concern aired through the Open Door Policy was unilaterally treated as a DPV.)

Other filers expressed the view that they would have liked to have received at least a letter of acknowledgment for their concerted effort in the development of a concern.

RECOMMENDATION: *Develop a program of acknowledgment of the effort put forth by an individual who comes forth with valid technical concern.*

- Send a letter of appreciation to the filer of a concern for the level of effort needed to present his/her view.
- Instruct Ad Hoc Review Panels to consider the merit of recommending awards for the filers.

Public Access and Confidentiality

FINDING: *The public has access to the records pertaining to DPOs, but DPVs are not accessible to the public. Furthermore, the issue of confidentiality of the filer has not been addressed.*

The Panel studied the fact that DPVs are not made available to the public by means of placing them in the Public Document Room. The issue of confidentiality of a filer's identity also was examined by the Office of the General Counsel as requested by this Panel. The full text of that analysis is presented in Appendix B.

RECOMMENDATIONS: *(1) Change current procedures to permit filers of DPVs to forward their submittals to the PDR, with or without disclosure of their identities; (2) assure employees that the Agency will make every effort to ensure confidentiality but that it cannot guarantee it; and (3) assure that action be taken so that the filing and disposition of DPVs and DPOs be communicated to appropriate managers within the NRC.*

Report Methodology

The Panel's findings and recommendations provided in this report are based primarily on four sources of information: (1) the results of an NRC employee survey addressing perceptions of the NRC's Differing Professional Views or Opinions Policy, (2) Panel interviews with Review Panel Chairpersons and filers of DPVs/DPOs (Appendix C), (3) background documents on the DPV/DPO process and its use, and (4) personal knowledge and experience from Panel members' involvement in the process.

Employee Survey

To gather information from agency employees, the Panel used an agency survey. The specifics of the survey process are discussed below.

Basic demographic information and perceptions of the current DPV/DPO process were identified as content areas to be included in the survey. For the purposes of this study, demographic information was collected on the respondent's current classification and the office or region in which the respondent works. The principal focus of the survey was to gather information on the effectiveness, understandability, and organizational climate of the DPV/DPO process.

The survey (see Appendix C) was distributed to all non-clerical employees in headquarters and all Regional Offices (approximately 2600 NRC employees). Anonymity was guaranteed to all respondents.

A total of 1409 questionnaires were returned and tabulated by the Workforce and Organizational Analysis component in the Office of Personnel. Frequencies and percentages for each question (along with cross classifications by demographic information and a brief narrative) are available from the Office of Personnel.

Panel Interviews

Questions used by the previous panel were used for the Region and Office Review Panel

Chairpersons, and similar questions were asked of DPV/DPO filers. Interviews were designed to specifically address the experience and possible concerns of the individual.

The Panel made a concerted effort to contact individuals who had left the agency since they had filed DPVs/DPOs. Of the 23 individuals associated with DPVs or DPOs, 17 were still employed by NRC. Of the 17, 15 were interviewed either in person or in writing. Two individuals preferred not to respond in any fashion. Of the six individuals who had left the agency, one was interviewed, four either declined to participate or did not respond, and one was unreachable.

The interviews were conducted either in person or by telephone conference call. Two members of the Panel were present at all interviews: one management representative and one Union representative. A summary of these interviews is provided in Appendix D.

Background Documents and Guidelines

The Panel reviewed a number of documents on the DPV/DPO process, including the previous assessment and documentation regarding the use of the process. These documents provided input for assessing the degree to which the current policy is being properly implemented, the degree of improvement that has occurred since the last assessment, and the specific changes that could be made to improve the process.



APPENDIX A
Special Review Panel Charter



UNITED STATES
NUCLEAR REGULATORY COMMISSION
WASHINGTON, D.C. 20555-0001

July 1, 1994

MEMORANDUM FOR: Guy A. Arlotto, Deputy Director
Office of Nuclear Material Safety & Safeguards

John M. Montgomery
Deputy Regional Administrator, Region IV

James F. McDermott, Deputy Director
Office of Personnel

Jim Thomas, President
National Treasury Employees Union (Chapter 208)

FROM: James M. Taylor
Executive Director for Operations

SUBJECT: DIFFERING PROFESSIONAL VIEWS OR OPINIONS SPECIAL REVIEW
PANEL

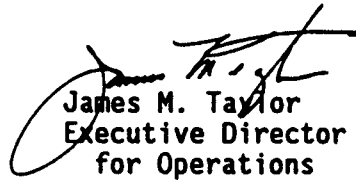
In July of 1990, the Commission approved a Special Review Panel's recommendations of Differing Professional Views or Opinions, and directed that after a suitable time, this matter be revisited to learn how effective the recommendations have been.

Accordingly, I am convening a Special Review Panel to assess the DPV/DPO process, including its effectiveness, how well it is understood by employees, and the organizational climate for having such views aired and properly decided. I am designating Guy Arlotto as Chairman of the Panel. A Union Representative for the Panel is to be determined.

Since the implementation of the new procedures, questions have arisen as to the effectiveness of the DPO procedures as they pertain to public access and confidentiality. Your review should address this item in particular.

In addition, the Panel will review differing professional views and opinions 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.

The results of the Panel's evaluation should be submitted to me in the form of a report, including proposed revisions to the Directives, if any, and award recommendations, if any, by October 18, 1994, unless an extension of time is necessary.



James M. Taylor
Executive Director
for Operations

cc: W. Russell, NRR
R. Bernero, NMSS
E. Beckjord, RES
E. Jordan, AEOD
P. Norry, ADM
G. Cranford, IRM
R. Scroggins, OC
P. Bird, OP
B. Hayes, OI
J. Lieberman, OE
V. Miller, SBCR
R. Bangart, SP
R. Vollmer, OPP
M. Springer, CONS
T. Martin, RI
S. Ebnetter, RII
J. Martin, RIII
L. Callan, RIV

APPENDIX B
Confidentiality of DPV/PDO Filers



CONFIDENTIALITY OF DPV/DPO FILERS

Questions have arisen about the effectiveness of the Differing Professional View or Opinion (DPV/DPO) procedures as they pertain to public access and confidentiality. A key concern is whether the lack of assurance of complete confidentiality will have a chilling effect on individuals submitting DPVs or DPOs. The panel looked into this question particularly by having interactions with personnel from the Office of the General Counsel.

The major difference in accessibility to DPVs versus DPOs is documented in Management Directive 10.159, Differing Professional Views or Opinions. All copies of DPOs are required to be placed in the Public Document Room (PDR). However, there is no requirement that DPVs be placed in the PDR, only that NRC Offices and Regions retain copies of any DPVs filed. DPVs are filed as the first step in an informal process, with DPOs being the next step in elevating the concern to a formal process.

It is important to distinguish between the terms "confidentiality" and "privacy" as they are not synonymous, although the two refer to related concepts. "Privacy" is a term of art in the law and conveys certain legal rights and obligations. The term "confidentiality" carries with it no particular legal significance, although it implies restricted access in whatever manner the privilege may be conferred. Discussion of the present issue focuses on the degree of dissemination appropriate for DPVs or DPOs and the extent of confidentiality afforded to the filers of those documents. For these purposes, confidentiality refers only to the filer's identity and not to the substantive contents of the document.

At the outset, it does not appear that this issue raises any Privacy Act considerations, since DPVs and DPOs are not filed, maintained, or retrieved by any individual identifier, which is the hallmark of a Privacy Act system of records, nor are they contained within a published system of records listed in the agency's Federal Register notice of Privacy Act systems. As such, the Privacy Act imposes no legal restrictions on disclosure of these documents, either within the agency or outside. Therefore, controls on release would be

self-imposed as a function of policy, subject to reasonable interpretation.

Even without Privacy Act applicability, it is possible to create certain expectations of privacy cognizable under the Freedom of Information Act (FOIA) by promulgation of a policy to that effect. This could be one consequence of extending a grant of confidentiality to information that might not otherwise appear to require such protection. However, the extent of such protection also may be subject to legal limitations and could not be represented as absolute. In any event, a legal determination in a particular case would rest on review of the relevant facts in that instance and on full consideration of all pertinent information.

Federal Freedom of Information Act (FOIA) law is generally applicable to this discussion, since such documents fall within the definition of "agency record." The fundamental purpose of the FOIA is to promote disclosure, not to restrict it. Thus, although FOIA law is pertinent to agency determinations concerning documents it is required to disclose and although it may provide legal authority to withhold information subject to a demand, it does not govern elective or voluntary disclosures. Moreover, it would not be binding on the agency's policy of internal availability, because releases within the agency do not constitute disclosures under the FOIA, nor would it give rise to any legal cause of action occasioned by such access.

The first consideration is confidentiality within the NRC. Because we have greater control of an internal process, it can be structured to suit our needs and, if adhered to properly, there would be reasonable assurance that the filer's confidentiality would be protected.

The second consideration is disclosure outside of the agency. At present, a DPO is automatically made public by placing it in the Public Document Room (PDR). If confidentiality was requested, the DPO document would have been redacted to protect the DPO filer's identity before release.

Regardless of whether a concern was handled as a DPO or DPV, if the issue was of such significance that in accomplishing the agency mission the need for the public to know the identity of the filer was

of greater importance than the confidentiality of the filer, then the NRC, relying heavily on input from the legal staff, would have to balance the individual's expectation of confidentiality against the agency's obligation to inform the public to determine if disclosure of the filer's identity should be made. Agency regulations on availability of official records would be consulted in this process. However, in a traditional FOIA-type analysis, the determination would be weighted heavily toward the privacy of the individual.

In exploring this question of confidentiality, the panel asked itself two additional questions: (1) Is there adequate communication within the agency regarding DPVs? (2) Is the basis for differences in disclosure to the public for DPVs and DPOs well founded and deserving of continuation?

Regarding question 1, if a DPV were raised in a regional office on a reactor safety issue, it would be desirable, if not imperative, that it be communicated to appropriate managers in NRC. Our present process does not ensure this communication.

Regarding question 2, the panel discussed the issue with OGC staff members and concluded

that, although some may argue that it is desirable to handle DPVs and DPOs in the same manner regarding disclosure to the public via the PDR, it is the judgment of the panel that this would cause a severe chilling effect that would be counter-productive to the intent of the DPV/DPO process. The filer of a DPV also should be given the opportunity determine whether or not (1) he/she wants the DPV placed in the PDR and (2) he/she wants to include his/her name. In conjunction with this action, the filing and disposition of DPVs as well as DPOs should be communicated to appropriate managers within the agency.

In summary, the panel recommends that the procedures make it clear that the agency will make every effort to ensure confidentiality if requested. However, because of FOIA requirements or other exigencies with which the agency may be faced, it cannot be guaranteed. The panel further recommends that the procedures not be changed to require that DPVs be placed in the PDR as are DPOs but that filers of DPVs be given the opportunity to forward their submittals to the PDR, with or without disclosure of their identities. In addition, action should be taken to ensure that the filing and disposition of DPVs and DPOs be communicated to appropriate managers within the NRC.

APPENDIX C
Survey Questionnaire

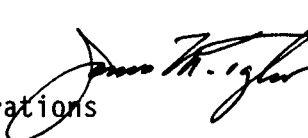


UNITED STATES
NUCLEAR REGULATORY COMMISSION

WASHINGTON, D.C. 20555-0001

September 1, 1994

MEMORANDUM TO: NRC Professional Staff

FROM: James M. Taylor
Executive Director for Operations 

SUBJECT: EVALUATION OF THE NRC PROCESS FOR EXPRESSING A
DIFFERING VIEWPOINT

The purpose of the attached questionnaire is to obtain information about the effectiveness of NRC's process regarding Differing Professional Views or Opinions. The results of this questionnaire will be used by a Special Review Panel comprised of representatives from management and the National Treasury Employees Union (NTEU) to evaluate the current process.

This questionnaire has been endorsed by both NRC management and the NTEU. Your responses are anonymous, and no information will be available as to who did or did not respond to the questionnaire. Your completed questionnaire will be available only to those individuals directly responsible for tabulating the responses.

Your input is very important to ensure that this process remains a valuable and viable technique for expressing professional opinions. Please fold, staple, and return your completed questionnaire to Mail Stop T-3 D2, Office of Personnel, by September 21, 1994.

Attachment: As stated

WE ARE ATTEMPTING TO DETERMINE THE DEGREE TO WHICH THE NRC STAFF FEELS FREE TO COMMUNICATE THEIR PROFESSIONAL VIEWPOINTS AND WHETHER THERE IS GENERAL KNOWLEDGE ABOUT THE INFORMAL AND FORMAL MEANS TO ASSURE THAT SENIOR MANAGEMENT KNOWS ABOUT AND CONSIDERS A DIFFERING PROFESSIONAL VIEWPOINT ASSOCIATED WITH TECHNICAL, LEGAL, OR POLICY ISSUES.

THIS SECTION OF THE QUESTIONNAIRE ADDRESSES YOUR OPINIONS REGARDING THE NRC POLICY FOR EXPRESSING A DIFFERING PROFESSIONAL VIEW (DPV) OR DIFFERING PROFESSIONAL OPINION (DPO).

PLEASE CIRCLE THE LETTER OF THE ANSWER THAT BEST DESCRIBES YOUR RESPONSE.

1. I am currently classified
 - a. In a non-supervisory role.
 - b. As a Section Chief or other first line supervisor.
 - c. As a Branch Chief.
 - d. As an Assistant Director or higher.

2. Where do you work?
 - a. Commissioner's Office or Commission level staff office (ACRS, ACNW, ASLBP, OCAA, OCA, OGC, OIP, OPA, SECY, OIG)
 - b. EDO staff office (EDO, ADM, OC, OE, IRM, OI, OP, OPP, SBCR, SP)
 - c. AEOD
 - d. NRR
 - e. NMSS
 - f. RES
 - g. Region I
 - h. Region II
 - i. Region III
 - j. Region IV

3. How familiar are you with the goals and objectives of the NRC's Differing Professional View (DPV) or Differing Professional Opinion (DPO) policy?
 - a. Very familiar
 - b. Somewhat familiar
 - c. Limited familiarity, but know where to obtain the information.
 - d. I am not aware of this policy.

4. The NRC process for submitting a DPV/DPO is understandable.
- a. Strongly agree
 - b. Agree
 - c. No opinion
 - d. Disagree
 - e. Strongly disagree
5. How familiar are you with the difference between the process for submitting a DPV and a DPO?
- a. Very familiar
 - b. Somewhat familiar
 - c. Limited familiarity, but know where to obtain the information.
 - d. I am not aware of the difference.
6. In your opinion, does the DPV/DPO process provide an effective means for employees to express differing professional views or opinions?
- a. Yes
 - b. No
 - c. Don't know
- 6a. If you answered no to Question 6, was it because you felt:
- a. The process is cumbersome or would take too long.
 - b. You would be viewed negatively by your peers.
 - c. You would be concerned about reprisal.
 - d. The reviewers are predisposed to the outcome.
 - e. Other (please explain): _____
7. Overall, the organizational climate for using the DPV/DPO process at the NRC is favorable.
- a. Strongly agree
 - b. Agree
 - c. No opinion
 - d. Disagree
 - e. Strongly disagree

PLEASE FOLD, STAPLE, AND RETURN YOUR COMPLETED QUESTIONNAIRE TO MAIL STOP T-3 D2, OFFICE OF PERSONNEL. COMPLETED QUESTIONNAIRES MUST BE RETURNED BY SEPTEMBER 21, 1994.

APPENDIX D
Interview Questions and Results



INTERVIEW QUESTIONS AND RESULTS

The Special Review Panel interviewed a total of seventeen individuals who had filed Differing Professional Views or Opinions (DPVs/DPOs) and eleven chairpersons since the last Special Review Panel had been convened in 1989. This compares with the 1989 Special Review Panel who interviewed three filers and four of nine chairpersons who were involved in DPVs or DPOs. Of the interviews conducted by the 1994 Panel, all DPVs were resolved and only one of the three DPOs was not clearly closed. The details of that case are discussed in Section A of this appendix.

In some of the DPVs, two or three individuals proffered a single submittal on one issue of concern. To ensure that the Panel had a complete overview of the participants, all individuals involved in a single issue were interviewed.

A. Interviews With Individuals Who Filed DPVs or DPOs

Purpose and Scope

To assess the overall effectiveness of the DPV/DPO process, the Panel interviewed filers of DPVs/DPOs. The Panel also made a concerted effort to contact individuals who had left the agency since they had filed DPVs/DPOs. Of the 23 individuals associated with DPVs or DPOs, 17 were still employed by NRC. Of the 17, 15 agreed to be interviewed in person or in writing. Two of the 17 individuals preferred not to respond. Of the 6 individuals who had left the agency, 1 was interviewed, 4 either declined to participate or did not respond, and 1 was unreachable.

Before the interviews were conducted, the Panel agreed again that it was not in the panel's charter to address the substance or merits of any of the individual DPVs or DPOs discussed.

The Office of the Inspector General was established since the 1990 Special Review Panel conducted its review. Therefore, question 9. is new to the review process. The questions asked during each interview were as follows:

1. How did you first come to know of and later become involved with the DPV/DPO process?
2. Did the procedures allow the issue to be handled in a timely/effective manner?
3. How easy/difficult was it to find this information?
4. Once you found it, how easy was the chapter to understand?
5. Do you believe the informal DPV process has been helpful in considering a differing opinion?
6. What suggestions or comments do you have to improve the DPV/DPO program?
7. Prior to participating in the process, what was your view of the organizational climate for submitting a DPO? And now, after going through it, how would you describe the organizational climate of the agency?
8. Did you initiate an IG investigation as a result of any circumstances related to your filing a DPV? If so, what happened?
9. Is there anything else you would like to discuss with the Panel?

Summary of Responses

1. How did you first come to know of and later become involved with the DPV/DPO process?

Seven interviewees stated that they became aware of the process through training in their Regional Office and through Regional Office Procedures. Six interviewees were aware of the process through general knowledge from the Management Directive. One interviewee was told by someone at a higher level to handle his concern through the DPO process. One interviewee was informed that his concern was being handled by management through the DPV process, even when the concern had been raised through the Open Door Policy. The two employees who declined to participate in the interview process refused

for the reason that they had not filed DPVs themselves. Instead, management had handled their concerns aired through the Open Door Policy by converting the concerns into DPVs.

2. Did the procedures allow the issue to be handled in a timely/effective manner?

Eleven interviewees felt that the review of concerns was performed in a timely manner. Three interviewees did not believe the review was performed in a timely manner. One interviewee did not respond to this question.

With regard to effectiveness, three interviewees did not believe that the reviews were effective. The other interviewees responded to the timeliness issue without specifically addressing effectiveness.

3. How easy/difficult was it to find this information?

Sixteen of the interviewees found the information on DPVs/DPOs easy to find. One interviewee did not really look for information because he was already aware of the process.

4. Once you found it, how easy was the directive to understand?

Thirteen of the interviewees found the directive easy to understand, with one interviewee specifically stating that the Regional Operating Instruction was easier to understand than the directive. One other interviewee thought that the directive was a poorly written document. Another interviewee did not respond to this question.

5. Do you believe the informal DPV process has been helpful in considering a differing opinion?

Ten interviewees believed that the informal DPV process had been helpful. Two interviewees did not believe that it had been helpful. Two interviewees had filed DPOs, with one individual filing the DPO because the DPV process had not proved satisfactory. One interviewee felt that it would be helpful if all DPVs were sent to a central place and

then sent to the appropriate review group. One interviewee expressed a concern that review groups are not composed of individuals who are technically qualified to review certain complex issues. Such a composition would help the process.

6. What suggestions or comments do you have to improve the DPV/DPO program?

All but one interviewee offered comments and/or suggestions. Eight interviewees believed that the program was a good one that served a necessary purpose. Several in this group felt that they had received a fair hearing, even if their views were not adopted by management.

Three interviewees expressed the general impression that most agency employees think it is "certain death" for their careers to file a DPV or DPO. They are labeled as non-team players. One interviewee further observed that there has been no agency statement of support from the Chairman, Commission, or EDO welcoming DPVs/DPOs or stating that diversity of opinion is a source of strength and constructive ideas. In addition, there has been no public recognition for individuals filing DPVs/DPOs.

Another interviewee believes that the agency should change the name of the process to a phrase such as "minority view." A concern raised by an individual is not necessarily one that constitutes a "differing" opinion. In this filer's case, he had observed a gap in the regulations that needed to be addressed. Originally his concern had been expressed through the Open Door Policy, but his issue was handled as a DPV by his management, something the filer felt was not appropriate without discussing it first with him.

Several individuals expressed the concern that the composition of the review panel was not conducive to the fair hearing of an issue. Some felt that panel members should not be "stake holders" with regard to an issue. The impression was that members would not be free of bias with regard to a previous decision. Some felt that the panel members did not have the technical knowledge qualifying them to perform a meaningful review and suggested that experts outside

NRC or experts in the Technical Training Center (TTC) would be valuable members for a review panel. Others felt that valid technical concerns sometimes became loaded politically because of the potentially negative response from licensees/utilities, thus clouding the technical merit of a concern.

One interviewee felt that there is a lack of assistance in going through the process, especially when dealing with a complex technical issue. He would have very much liked having someone to guide him through the process and evaluate his document to determine if it was clearly presented. The approach of using a Peer Review Group has, in fact, been instituted in one of the Regional Offices specifically to help someone prepare a DPV.

One interviewee did not have direct contact with the review panel. As a result, whatever points in the DPV that were unclear to the panel were not addressed at all. The interviewee felt totally alienated from the process, especially when the review occurred while he was on vacation. He believed that it would have been useful to have had a face-to-face review to make sure that the (1) panel understood the issue and (2) interviewee understood the panel and what it planned to do.

One interviewee in a Regional Office felt that anonymous comments solicited from licensees by NRC management about NRC inspectors makes inspectors feel very vulnerable. He felt that licensees should be required to put comments in writing and substantiate whatever they bring forth.

7. Prior to participating in the process, what was your view (opinion) of the organizational climate for submitting a DPO? And now, after going through it, how would you describe the organizational climate of the agency?

Six of the interviewees (all from Regional Offices) felt that the organizational climate was supportive and welcomed DPVs/DPOs. In fact, one of these interviewees remembered

his management saying that individuals filing DPVs not only had a right to express a differing opinion, they also had a duty to do so. Another interviewee in this group felt that he had received a very fair hearing, even if his view had not prevailed. The panel had taken the time to fully explain a position, which left the interviewee very satisfied that his concern had been considered. Other interviewees with positive experiences had filed more than once without noticing any chilling effect in their careers and felt that they would not hesitate to express other differing views using the DPV mechanism.

Several interviewees were aware of a general feeling of hesitancy or reluctance to file DPVs/DPOs for fear of harm to an individual's career. Another interviewee located in a Regional Office, who had a positive experience with his filing a DPV, felt that Headquarters was not as open to discussion of a concern until a formal process had been initiated.

Nine interviewees felt very strongly that their involvement with DPVs/DPOs had very likely quashed their career at NRC. They felt that the organizational climate was not conducive to a meaningful discussion of views that did not match those of management and that anyone taking on the burden of expressing a concern was participating in a career-limiting exercise. Among these interviewees, there was a general perception of management inflexibility or even intolerance in the handling of issues brought forth as DPVs/DPOs, especially in Headquarters. If a management decision had been made, there was no flexibility in the review of a differing approach. This comment related especially to an observation previously discussed that management involved in an initial decision was not in a position to change its own previous decision. There were too many risks for them to lose face with peers, licensees, or even Congress.

One interviewee succinctly summed up this general impression: The climate at NRC treats the DPO and its filer as a problem, not as a potential resource.

8. Did you initiate an IG investigation as a result of any circumstances related to your filing a DPV? If so, what happened?

Sixteen of the seventeen interviewees had not initiated any IG investigation, primarily because the issues were technical. One interviewee's experience with two DPOs revealed that both issues had eventually gone before the IG or its precursor. He did not have a good experience from the IG involvement in either case.

9. Is there anything else you would like to discuss with the Panel?

Five interviewees had good experiences filing DPVs. In fact, one had been surprised by the "pleasant experience." They all felt that they had received fair hearings on their issues.

One interviewee would like to see NRC publicly state that differing views are valuable to NRC. He also felt that DPVs as well as DPOs should be filed in the Public Document Room.

Another interviewee felt that a DPV/DPO Special Review Panel should go back to review the technical merit of cases. He also felt strongly that Office or Regional Review Panels should bring in a filer to discuss in person the Panel's position.

One interviewee believed that there should be more sensitivity and positive encouragement to use the DPV/DPO process. Management should perhaps emphasize the fact that it is a duty. He also believed that, at a minimum, a letter of appreciation from management for a job well done in putting forth a DPV/DPO would be very encouraging to the filers. This would be in lieu of an award if an award was not appropriate.

One other interviewee observed that NRC management creates an inertia when handling DPVs/DPOs for fear of adding burdens on the industry. Therefore, employees often believe that the outcome of a review of a DPV/DPO will not change anything other than hinder their career progression.

Two interviewees believed that management had a negative bias toward employees who question a management decision/judgment. These interviewees felt that they had been retaliated against in their jobs because they had questioned management decisions that they believed were not based on technical issues. Another interviewee felt that anyone submitting a DPV/DPO in his office would be automatically retaliated against by being placed in a position that had nothing to do with the individual's area of expertise and concern.

One interviewee had not been told that he could suggest the name of an individual of his choice to be a member of the review panel. He sincerely wished that he would have known and could have done so. He also believed that basically management did not want to hear about problems. He also felt that a peer review panel would be useful.

B. Interviews With Region and Office Review Panel Chairpersons

Purpose and Scope

To assess the overall effectiveness of the Differing Professional Views (DPV) and Differing Professional Opinions (DPO) process, the Panel interviewed eleven of the twelve Office and Regional Standing Review Panel Chairpersons to ascertain the level of DPV/DPO activity since the last revision of Management Directive 10.159. The interviews were designed to gain insights on how well the process was working, how it could be improved, and to determine if any individuals using the DPV/DPO process were given recognition.

The questions asked during each interview were as follows:

1. Have any DPVs been brought to your attention since July 1990? If so, how many?
2. How many, if any, were not resolved as DPVs and, therefore, were or are being processed as DPOs?
3. How easy was the process to use?
4. Did the procedures allow the issue to be handled in a timely and effective manner?

5. What suggestions or comments do you have to make the DPV/DPO program more effective or better understood?
6. Did the Office give any recognition to any individuals using the DPV/DPO process?

Summary of Responses

1. Have any DPVs been brought to your attention since July 1990? If so, how many?

Seven offices and regions reported DPV activity (NRR, RES, Region I, Region II, Region III, Region IV, which included a former Region V submittal) since July 1990. Some offices and regions have had more than one Review Panel Chairperson during the four-year period. NRR has had four chairpersons during the period who worked on a total of seven issues. The RES chairperson worked on three DPV issues. The Region I chairperson worked on six issues and forwarded one issue to NRR for resolution. Three chairpersons in Region II worked on four issues. Two chairpersons in Region III worked on three issues and forwarded one issue to NRR for resolution. The chairperson in Region IV had five issues, three of which were referred to NRR for resolution.

2. How many, if any, were not resolved as DPVs and, therefore, were or are being processed as DPOs?

Of the seven offices and regions that reported DPV activity, only two issues became DPOs. One issue became a DPO in NRR as did one issue in Region IV. One of the DPOs reviewed by this Panel was an issue that had been ongoing since the last review cycle. This case is discussed in Section A of this appendix.

3. How easy was the process to use?

All chairpersons who were interviewed felt that the process was easy to use.

4. Did the procedures allow the issue to be handled in a timely and effective manner?

On the whole, the chairpersons felt that the procedures allowed for the timely review of

an issue. One chairperson expressed a concern that if a specific timeline causes a review to be too rushed, it reflects poorly on the panel. A review of the previously handled DPV could reveal incompleteness. Another chairperson in a Regional Office felt that schedules are sometimes difficult to meet because regional personnel are so often on travel. One other chairperson felt that each Office or Region should have a certain amount of flexibility built into the process to deal with the more complex issues.

5. What suggestions or comments do you have to make the DPV/DPO program more effective or better understood?

One Regional chairperson suggested that a Quality Improvement Team be established, perhaps a Peer Review Group, to study whether the program is user friendly. Issues that this group could address include the following: (1) Give advice to individuals with a concern about what process to use. (2) Answer questions about how to proceed. (3) Answer questions about organizational climate (such as, will my supervisor be offended, or the like?). That Region presently has such a peer group helping an individual with concerns to choose the best process. The issue of tracking DPVs should be considered and the outcome shared with employees. This would open up information about the process and make it less intimidating.

Another chairperson felt that perhaps NRC should have a program similar to licensee programs for airing concerns with anonymity. For that NRC may need a separate staff to handle such concerns, especially since the IG only handles issues concerning fraud, waste, and abuse, not technical or safety issues. This chairperson also described the process as perhaps being a failure of the system. The circumstance of escalating an issue to a DPV when an employee aired a concern through the open door policy was also discussed.

One chairperson cautioned that managers must make a strong and continuing effort to keep their minds open to concerns raised. A real problem occurs when a manager does not want to hear about problems. Issues are never black and white, but most often gray. Therefore, there will be disagreements,

especially when dealing with highly intelligent employees who really are experts in a specific technical area. Most managers don't know all things about all issues anyway, so they need to be open-minded.

Another chairperson felt that the agency needs to be very clear in communicating that employees should have a feeling of freedom to raise issues. Employees should not be concerned that raising an issue will affect their career. NRC should emphasize that the system is there for employees to use.

One Regional chairperson expressed concern about the appropriateness of using the DPV process on a current enforcement action. The enforcement process itself allows for views to be expressed. Perhaps the Office of Enforcement should be consulted on this type of issue. This chairperson also observed that management may not express support about the process often enough and that the press of events and issues makes the open door not as easily accessible. To him, the use of the DPV/DPO process shows a clear failure in communication. Having learned how another Regional Office handles DPVs, he perceived that the region handled the process much better than others. He attributed this to the

extensive effort made by his management to communicate support of the process.

Another chairperson feels that the guidance for completion of DPV reviews should be more flexible, recognizing that some issues can be very complex. Extensions of the panel review period should not trigger reports to the EDO or Commission on "the reason for delay."

One chairperson recommended that employees submitting DPVs should follow the directives more closely and adhere to the agreed-upon process. He also suggested that a panel chair should possibly be selected from another office. This could mitigate a perceived chilling effect. A panel should also give the filer an opportunity to review the final draft of a resolution document to facilitate the process, again stressing the importance of communication.

6. Did the Office give any recognition to any individuals using the DPV/DPO process?

One Regional chairperson recollected that individuals who had filed DPVs had received awards, but he was not sure that these reflected any involvement with a DPV.

APPENDIX E
Management Directive 10.159,
Differing Professional Views or Opinions,
as approved March 20, 1991



Differing Professional Views or Opinions

Directive
(Formerly
MC 4125) **10.159**

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U. S. Nuclear Regulatory Commission

Volume: 10 Personnel Management

Part: 7 General Personnel Management
Provisions

OP

Differing Professional Views or Opinions Directive 10.159

Policy

(10.159-01)

This directive and its handbook govern NRC policy, objectives, procedures, responsibilities, and other basic requirements and definitions established to provide for the expression and resolution of differing professional views (DPVs) or differing professional opinions (DPOs) concerning matters related to the agency's mission. The directive establishes an informal as well as a formal process for considering the differing professional viewpoints of employees for issues directly related to the mission of the NRC. (011)

It is the policy of the Nuclear Regulatory Commission and the responsibility of all NRC supervisory and managerial personnel 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. (012)

It is not only the right but the duty of all NRC employees, including managers, to make known their best professional judgments on any matter relating to the mission of the agency. Moreover, both the general public and the Nuclear Regulatory Commission benefit when the agency seriously considers DPVs/DPOs. (013)

Each DPV/DPO will be evaluated on its own merits. The DPV/DPO process offers confidentiality, but not anonymity. (014)

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 government-wide regulation; issues that are subject to collective bargaining; issues

Differing Professional Views or Opinions
Part 7 - General Personnel Management Provisions
Directive 10.159

Policy

(10.159-01) (continued)

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. (015)

Differing Professional Views (DPVs)

- 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. As necessary, this office or region utilizes 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, non-confrontational consideration of issues by an impartial review panel, independent of an employee's direct supervisors, with a minimum of documentation. (016)

Differing Professional Opinions (DPOs)

- If the employee is not satisfied with the disposition of the issue through the informal process, the employee may file a DPO with the 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 Commission. If an issue is submitted directly to the EDO or Commission prior to 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. (017)

Section G of the Handbook Provides a Quick-Reference Guide for Processing Differing Professional Views and Opinions. (018)

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

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). (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/DPOs in good faith, to have these views heard and considered by NRC management, and have protection from retaliation in any form for expressing a differing viewpoint. (023)
- To recognize submitters of DPVs/DPOs when they have contributed significantly to the mission of the agency. (024)
- To provide for periodic assessment, as necessary, to ensure that implementation of these procedures accomplishes the stated objectives and to recommend appropriate changes. (025)

Organizational Responsibilities and Delegations of Authority

(10.159-03)

The Commission

(031)

- Notifies the Director, Office of Personnel, that a DPO has been received. (a)
- Determines the disposition of DPOs submitted by employees in offices reporting directly to the Commission and informs the DPO submitter of the final disposition and rationale. (b)
- Forwards to the EDO DPO submittals from offices reporting directly to the EDO. (c)
- Forwards submittals that have not gone through the DPV process to the submitter's office director for processing as a DPV. (d)
- Forwards anonymous submittals to the Office of Investigations, Office of the Inspector General, or appropriate Allegation Program Manager. (e)

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Part 7 - General Personnel Management Provisions
Directive 10.159

The Commission
(031) (continued)

- Takes action, as appropriate, on matters that appear to be of immediate health or safety significance. (f)
- Utilizes appropriate and qualified sources inside and outside the NRC to assist in reviewing a DPO. (g)
- Provides a summary of the issue and its disposition in the Weekly Information Report. (h)
- Maintains the minimum documentation necessary to preserve an accurate record of the formal proceedings. Sends all completed DPO case files to the Office of Personnel. (i)
- Periodically reviews and modifies the DPV/DPO process based on recommendations from the EDO and the Special Review Panel on Differing Professional Views or Opinions. (j)

The Executive Director for Operations (EDO)
(032)

- Notifies the Director, Office of Personnel, that a DPO has been received. (a)
- Determines the disposition of DPOs submitted by employees in offices reporting directly to the EDO and informs the DPO submitter of the final disposition and rationale. (b)
- Forwards to the Commission DPO submittals from Offices reporting directly to the Commission. (c)
- Forwards submittals that have not gone through the DPV process to the submitter's Office Director or Regional Administrator to be processed as a DPV. (d)
- Forwards anonymous submittals to the Office of Investigations, Office of the Inspector General, or appropriate Allegation Program Manager. (e)
- Takes action, as appropriate, on matters that appear to be of immediate health or safety significance. (f)
- Utilizes appropriate and qualified sources inside and outside the NRC to assist in reviewing a DPO. (g)

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The Executive Director for Operations (EDO)

(032) (continued)

- Provides a summary of the issue and its disposition in the Weekly Information Report. (h)
- Maintains the minimum documentation necessary to preserve an accurate record of the formal proceedings. Sends all completed DPO case files to the Office of Personnel. (i)
- Periodically appoints members to a Special Review Panel to review the effectiveness of the DPV/DPO process. (j)
- Reviews the Special Review Panel's report and makes recommendations to the Commission, as necessary. (k)

Office Directors and Regional Administrators

(033)

- Determine the disposition of DPVs submitted by employees within their office or region and inform the DPV submitter of the decision and its rationale. (a)
- Forward anonymous submittals to the Office of Investigations, Office of the Inspector General, or appropriate Allegation Program Manager. (b)
- Regional Administrators and Office Directors in AEOD, NMSS, NRR, and RES appoint and maintain a standing DPV Review Panel. All other Office Directors appoint DPV Review Panels when a DPV is submitted by an employee assigned to their office. (c)
- Refer all DPVs to the appointed DPV Review Panel for detailed review, except for matters that appear to be of immediate health or safety significance. (d)
- Take action on and advise the EDO or Commission of submittals that appear to be of immediate health or safety significance. (e)
- Utilize technical assistance from other NRC offices and regions or from outside the agency, as necessary, to address a highly specialized issue. If assistance from outside the agency is required, Federal Advisory Committee Act (FACA) requirements must be considered. (f)

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Office Directors and Regional Administrators

(033) (continued)

- Provide a summary of the issue and its disposition in the Weekly Information Report. (g)
- Maintain the minimum documentation necessary to preserve an accurate record of the DPV proceedings. (h)
- 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. (i)

Office or Regional Review Panel

(034)

- Reviews DPVs and makes recommendations to the Office Director or Regional Administrator. (a)
- Determines whether sufficient documentation was provided by the DPV submitter for the Panel to undertake a detailed review. (b)
- Requests technical assistance through the submitter's Office Director or Regional Administrator, if necessary. (c)

The Director, Office of Personnel

(035)

- Monitors the number of DPO submittals being processed in the agency. (a)
- Retains all completed DPO case files of formal proceedings until such time as an assessment is completed by a Special Review Panel. (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 Freedom of Information Act. (c)
- Provides administrative support to the Commission, EDO, Office Directors, Regional Administrators, and the Special Review Panel in carrying out their responsibilities for DPV/DPO processing. (d)

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Managers and Supervisors
(036)

- Upon receipt of a DPV/DPO, submit the incoming correspondence to the Office Director or Regional Administrator for further processing. (a)
- Advise and assist employees in administratively preparing DPVs/DPOs. (b)
- Determine the amount of work time and administrative support to be provided in response to a DPV/DPO submitter's request for assistance. (c)
- When mutually agreeable, maintain the confidentiality of the DPV/DPO submitter by filing and discussing the DPV/DPO on behalf of the employee. (d)

All Employees
(037)

Make known their best professional judgments on any matter relating to the mission of the agency by submitting a DPV/DPO when appropriate.

Special Review Panel
(038)

- Periodically assesses, as requested by the EDO, the DPV/DPO process including the effectiveness of the process, how well it is understood by employees, and the organizational climate for having these views aired and properly decided. (a)
- Based on this assessment, prepares a report to the EDO that recommends appropriate actions to ensure the proper functioning of the DPV/DPO process. (b)
- Identifies and recognizes employees and managers who have made significant contributions to the agency or to public health and safety but were not adequately recognized for their contributions. (c)

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Definitions

(10.159-04)

Differing Professional View

(041)

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. A Differing Professional View (DPV) is to be submitted in writing to the employee's supervisor, line management official, Office Director, or Regional Administrator.

Differing Professional Opinion

(042)

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

Confidential Submittal

(043)

A DPV/DPO that is submitted by an employee through an NRC manager who knows that the submitter is an agency employee. Anonymous submittals will not be considered under the provisions of this policy.

Retaliation

(044)

Injurious action taken against an employee because of the expression or support of a DPV/DPO.

Applicability

(10.159-05)

Employees

(051)

Procedures for the expression and resolution of DPVs/DPOs apply to all NRC employees, including supervisors and managers. The policy supplements other stated rights, duties, and safeguards

Differing Professional Views or Opinions
Part 7 – General Personnel Management Provisions
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Employees
(051) (continued)

applicable to all Federal employees who make their views known either within or outside their agencies, including:

- The independent right of free speech provided by the First Amendment to the U.S. Constitution. (a)
- The right of Government employees to petition the Congress (5 U.S.C. 7102). (b)
- The rights of employees to communicate directly with the Congress as outlined in the Code of Ethics for Government Service (10 CFR 0.735 — Annex A). (c)
- Provisions of the 1978 Civil Service Reform Act dealing with prohibited personnel practices and the regulations of the Merit System Protection Board. (d)

Handbook
(10.159-06)

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

Differing Professional Views or Opinions

Handbook

*(Formerly
Appendix 4125)* **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)

Such differences of opinion, developed in the free and open discussion of work matters, become a Differing Professional View (DPV) or a Differing Professional Opinion (DPO) only when the employee brings them to management's attention in accordance with these procedures. (2)

In these 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 further pursue such matters using these procedures, an employee must submit a written statement in accordance with this Management Directive. An employee may not use these procedures without submitting a written statement. (3)

Informal Process for Expressing Differing Professional Views (B)

Submittals. The DPV process is initiated by a written statement submitted either through the management chain or directly to the Regional Administrator or Office Director who will then forward it to a DPV Review Panel within five calendar days. Individuals who are contemplating the submittal of a DPV and officials who receive a DPV are encouraged to contact the Director, Office of Personnel, for guidance on the process. (1)

The written statement, while being brief, must in all cases include the following: (2)

- a summary of the prevailing staff view, existing management decision or stated position, or the proposed or established agency practice. (a)
- a description of the submitter's views and how they differ from any items discussed in a. above. (b)
- an assessment of the consequences should the submitter's position not be adopted by the agency. (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 10.159-01. (3)

Confidentiality. If an employee wishes to have a differing view considered as a DPV but desires confidentiality, the employee may submit an unsigned DPV to an NRC manager who agrees to forward it to the appropriate official. 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 such 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 its disposition or resolution. (4)

Informal Process for Expressing Differing Professional Views (B)

(continued)

Anonymous submitted DPVs are not covered by the provisions of this Directive. Anonymous submissions will be referred to the Office of Investigations, the Office of the Inspector General, or the appropriate Allegation Program Manager. (5)

DPV Review Panels. A standing Review Panel is to be established and maintained in each Region, AEOD, NMSS, NRR, and RES to review DPVs. Directors of Offices other than those listed above should appoint DPV Review Panels only when a DPV has been submitted by an employee of that office. The panels are appointed in writing by the Regional Administrator or Office Director, and should be chaired by the Deputy Regional Administrator, Deputy Office Director, or equivalent official. Each panel will include a Chairperson and one other member appointed by management. The submitter may consult with the exclusive bargaining unit representative to nominate qualified individuals who would be willing to serve as a third panel member. A third panel member will be chosen by the Chairperson from a list proposed by the employee submitting the DPV. (6)

The panel should normally review the DPV within seven 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 if additional information is needed. (7)

Those involved in the informal review process shall give priority handling to issues that may involve immediate or significant health and safety concerns. This includes calling such issues to the immediate attention of higher management. (8)

Review and Decision. 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. Once the panel has received the necessary information to begin a review, the panel should normally take no more than 30 calendar days to make a recommendation to the Regional Administrator or Office Director. (9)

Informal Process for Expressing Differing Professional Views (B)

(continued)

The Regional Administrator or Office Director 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 seven calendar days after receipt of the panel's recommendations. A summary of the issue and its disposition should be included in the Weekly Information Report to advise interested employees of the outcome. (10)

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 EDO or Commission, as appropriate. (11)

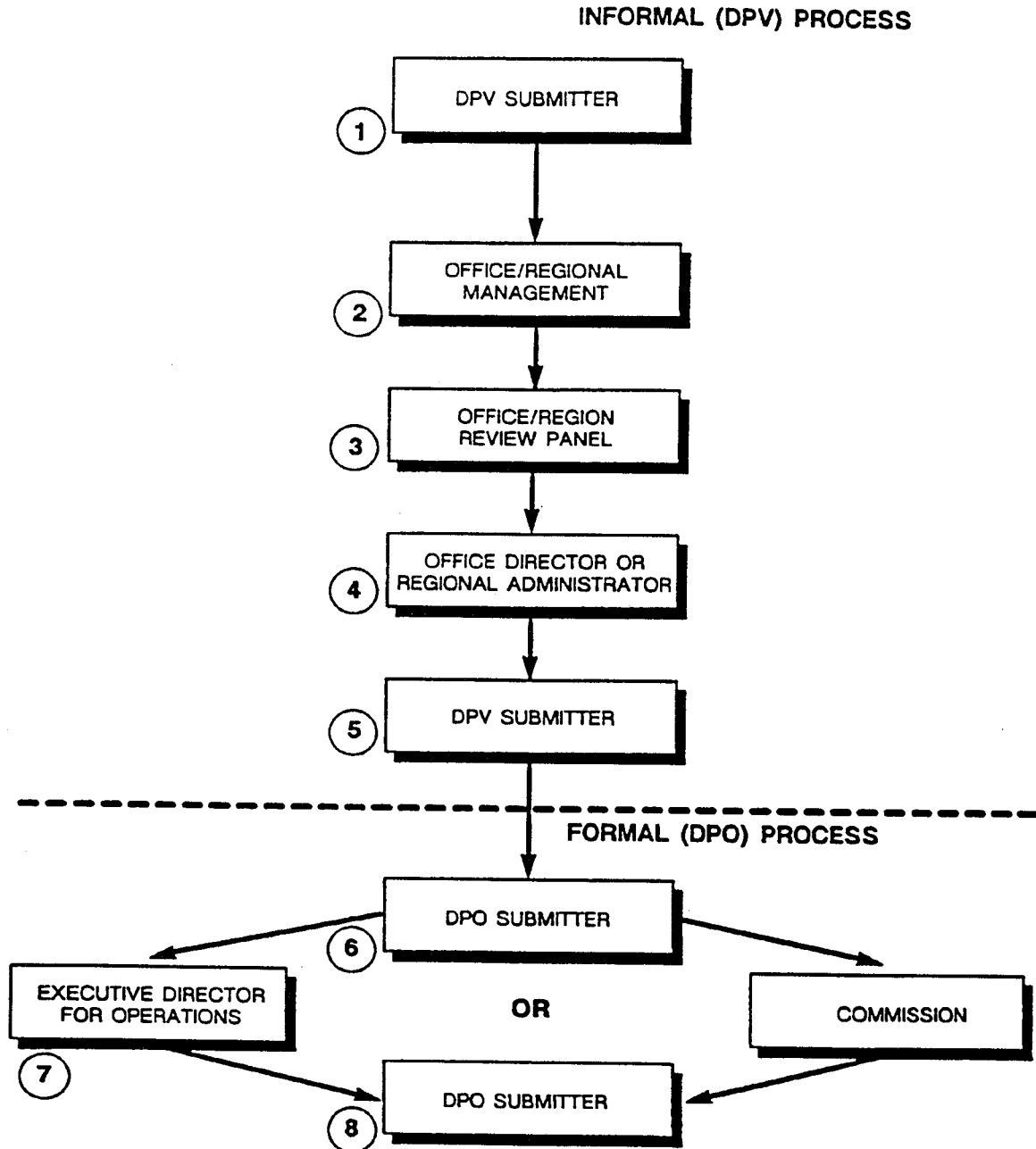
Records. To reduce the administrative burden and resource expenditures, only the minimum documentation necessary to preserve an accurate record of the proceedings should be developed and maintained. These records should be maintained and available only within the Region or Office. If the matter is not 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 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. (12)

Formal Process for Expressing Differing Professional Opinions (C)

Submittals. 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 or Commission, as appropriate. Employees in offices reporting to the EDO shall submit their DPO to

**Differing Professional Views or Opinions
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G. DIFFERING PROFESSIONAL VIEWS OR OPINIONS



DPV/DPO Processing Flow Chart (G) (continued)

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 DPV Review Panel for action. (AEOD, NRR, NMSS, RES, and Regions have standing DPV Review Panels; other offices appoint an ad hoc DPV Review Panel to review the submittal.) The Office Director or Regional Administrator appoints the panel chairperson and another 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 DPV Review Panel.
3. The DPV Review Panel considers the DPV and provides the submitter's Office Director or Regional Administrator a report of findings and a recommended course of action.
4. The Office Director or Regional Administrator considers the DPV 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. The DPV file is retained in the Office or Region.
5. Based on the Office Director's report, the submitter may consider the matter closed.
6. If the submitter does not consider the matter closed, a written DPO statement expressing continuing concerns may be submitted to the Commission or EDO, as appropriate.
7. Upon receipt of a formal DPO, the Commission or EDO contacts the submitter's Office Director or Regional Administrator to obtain all records that may aid in the formal DPO review process. When the Commission or EDO has completed its review, a written decision is provided to the submitter and the case file is forwarded to the Office of Personnel.
8. Upon receipt of a decision from the EDO or Commission, the DPO process is concluded.

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

the EDO. Employees in offices reporting to the Chairman or Commission shall submit their DPO to the Commission. (1)

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 10.159-01. (2)

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 five 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. (3)

In considering the DPO, the EDO or Commission (as appropriate) should review the decision of the Office Director or Regional Administrator as well as the Review Panel's recommendations and any other source who has reviewed the issue. (4)

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. (5)

Review and Decision. 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. (6)

The EDO or Commission may utilize qualified sources inside and outside the NRC to assist in reviewing the DPO. (7)

The EDO or Commission (as appropriate) 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. Extenuating circumstances may cause the EDO or Commission to delay in making a final decision.

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

In such cases, the submitter should be advised of the time frame for considering the issue. (8)

After a decision on a DPO is made by the EDO or Commission and communicated 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. (9)

Records. To reduce the administrative burden and resource expenditures, only the minimum documentation necessary to preserve an accurate record of the proceedings should be developed and maintained. All completed DPO case files will be sent by the EDO and Commission to the Office of Personnel, which 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. (10)

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

To assist submitters in preparing adequate written DPV/DPO statements, the submitter's immediate supervisor, in consultation with their manager, 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 an Appeal Board, 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 should periodically assess the DPV/DPO process including its effectiveness, how well it is understood by

Special Review Panel (E) (continued)

employees, and the organizational climate for having such views aired and properly decided. Members of the Special Review Panel will be appointed by the EDO after consultation with the Chairman. (1)

The Special Review Panel will prepare a report based on this assessment that will be submitted to the EDO for consideration. The report or its Executive Summary will also be distributed to all employees. The EDO will forward the report with any comments or recommended Management Directive changes to the Commission for approval. (2)

In addition, the Special Review Panel will review DPVs/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 (Directive 10.72) (MC 4154). 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/DPO is subject to disciplinary action in accordance with Directive 10.99, "Discipline, Adverse Actions, and Separations" (MC 4171). This applies to retaliatory actions as defined in this Management Directive and to all prohibited personnel practices specified in Section 2302, Title 5, U.S. Code, as amended by the Civil Service Reform Act of 1978. (1)

Employees who allege that retaliatory actions have been taken because of their submittal or support of a DPV/DPO may seek redress through the negotiated grievance procedure or through the grievance procedure described in Directive 10.101, "Employee Grievances" (MC 4157). (2)

DPV/DPO Processing Flow Chart (G)

Steps in processing a DPV/DPO are contained in the following flow chart and narrative explanation of the steps.

APPENDIX F
Revised Management Directive 10.159,
Differing Professional Views or Opinions

Differing Professional Views or Opinions

***Directive
10.159***

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OP

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)

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**Organizational Responsibilities
and Delegations of Authority**
(10.159-03)

The Commission
(031)

- Notifies the Director, Office of Personnel (OP), 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 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 Director, Division of Freedom of Information and Publications Services (DFIPS), Office of Administration (ADM). (g)
- Sends all completed DPO case files to OP 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)

**Executive Director for
Operations (EDO)**
(032)

- Notifies the Director, OP, that a DPO has been received. (a)

**Executive Director for
Operations (EDO)**
(032) (continued)

- 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 Director, DFIPS, ADM. (g)
- Sends all completed DPO case files to OP 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)

**Director, Office of Information Resources
Management (IRM)**
(033)

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

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**Director, Office of Information Resources
Management (IRM)
(033) (continued)**

- Maintains at the NRC File Center all completed DPOs according to the authorized disposition contained in NUREG-0910, "NRC Comprehensive Records Disposition Schedule." (b)

**Director, Office of Personnel (OP)
(034)**

- 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 Freedom of Information Act. (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)

**Office Directors and
Regional Administrators
(035)**

- 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. (a)
- 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.) (b)
- Take action on and advise the EDO or Commission of submittals that appear to be of immediate health or safety significance. (c)
- Utilize technical assistance from other NRC offices and regions or from outside the agency, as necessary, to address a highly specialized issue. (d)

**Office Directors and
Regional Administrators**
(035) (continued)

- Provide a summary of the issue and its disposition in the Weekly Information Report. (e)
- Submit a completed DPV (or applicable portions of DPV) through the Director, OP, to the PDR when the submitter requests in writing that the DPV be made public in accordance with Handbook 10.159(B)(4)(e). (f)
- Maintain documentation necessary to preserve an accurate record of the DPV proceedings in accordance with Handbook 10.159(B)(5). (g)
- Review applicable portions of DPV/DPO files for information exempt under FOIA regulations, and identify such information, if any, to the Director, DFIPS, ADM. (h)
- 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. (i)

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").

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Differing Professional Views or Opinions
Directive 10.159**

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 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 Personnel (OP), 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. (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)

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

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

DPV Ad Hoc Review Panel (3) (continued)

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, portions of the DPV releasable under the Freedom of Information Act, as determined by the Division of Freedom of Information and Publications Services (DFIPS), Office of Administration (ADM), will be submitted through the Director, OP, to the Public Document Room (PDR) by the appropriate office director or regional administrator at that time. (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 EDO for employees of these offices reporting directly to the EDO or to the Commission for employees in offices reporting directly to the Commission. (f)

Records (5)

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)

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

Records (5) (continued)

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 IRM 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)

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. (a)

The panel—(b)

- Reviews the DPO and makes recommendations to the EDO or Commission (i)

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

DPO Ad Hoc Review Panel (2) (continued)

- 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)

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)

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

Records (4)

The EDO and Commission will send all completed DPO case files to OP. 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 OP 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)

OP 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, OP will request the Director, DFIPS, ADM, to initiate a review of the documents identified by the 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 OP, indicating which documents or portions of documents the reviewers have identified as releasable to the public. (b)

OP will transmit a copy of the releasable portions of the file to the Document Control Desk, Information Resources Management (IRM), 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. OP also will transmit the original DPO file to the NRC File Center, IRM, 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 Archive 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 Directive 10.101, "Employee Grievances." (2)

Exhibit Processing Differing Professional Views or Opinions

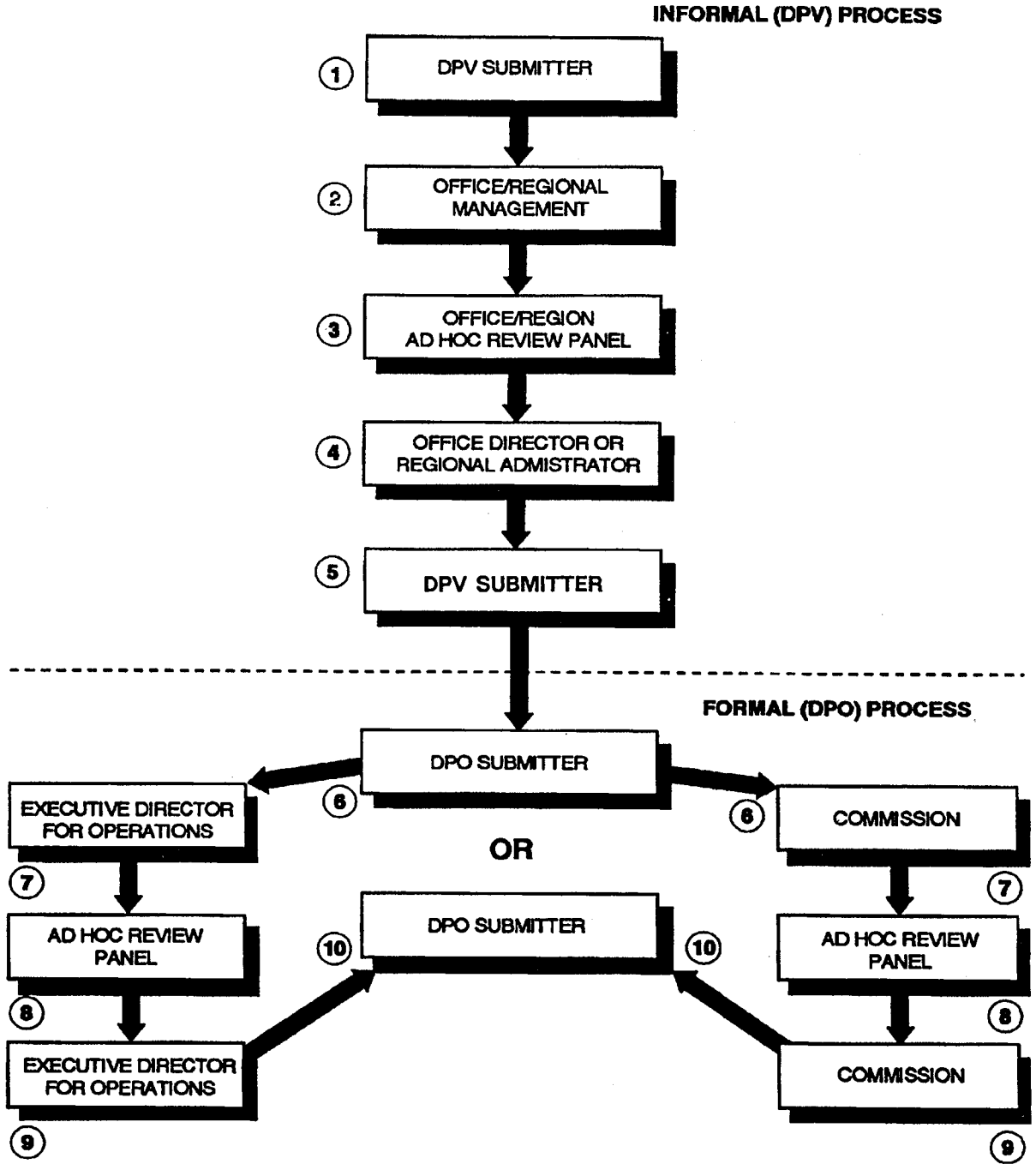


Exhibit (continued)

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 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 7 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 30 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, OP, 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 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 OP 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.
- 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 the Office of Personnel.
- ⑩ Upon the submitter's receipt of a decision from the Commission or EDO, the DPO process is concluded.

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11. ABSTRACT (200 words or less)

In July 1994, the Executive Director for Operations of the U.S. Nuclear Regulatory Commission (NRC) appointed a Special Review Panel to assess the Differing Professional View or Opinion (DPV/DPO) process, including "...its effectiveness, how well it is understood by employees, and the organizational climate for having such views aired and properly decided." An additional area within this review was to address "...the effectiveness of the DPO procedures as they pertain to public access and confidentiality." Further, the Panel was charged with the review of the submittals completed since the last review to identify employees who made significant contributions to the agency or to public health and safety but had not been adequately recognized for this contribution.

The report presents the Special Review Panel's evaluation of the NRC's current process for dealing with Differing Professional Views or Opinions. Provided in this report are the results of an employee opinion survey on the process; highlights and suggestions from interviews with individuals who had submitted a Differing Professional View or Opinion, as well as with agency managers directly involved with the Differing Professional Views or Opinions process; and the Special Review Panel's recommendations for improving the DPV/DPO process.

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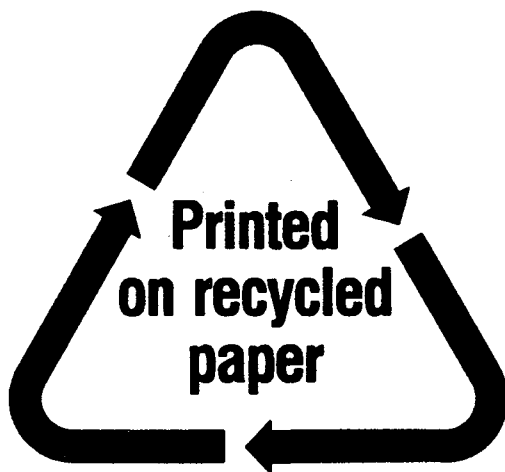
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