

SUBJECT: PAGE CHANGE TO DOE O 442.2, *DIFFERING PROFESSIONAL OPINIONS FOR TECHNICAL ISSUES INVOLVING ENVIRONMENTAL, SAFETY, AND HEALTH TECHNICAL CONCERNS*

1. **EXPLANATION OF CHANGES.** This change reduces the reporting period from quarterly to annually, and updates references and the Office of Primary Interest's name, contact information, and website.
2. **LOCATIONS OF CHANGES.**

| Page | Paragraph | Changed | To |
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| 2 | 4.a. | Employees must be notified quarterly that they have the right to report ES&H technical concerns that have not been resolved through routine work processes through the DPO process in Attachment 2. The notification (e.g., DOECAST and NNSACAST) must provide points of contact (name, phone number and email address of DPO Managers), the web page address for the DPO process, and instructions on where to submit DOE DPOs. | Employees must be notified annually that they have the right to report ES&H technical concerns that have not been resolved through routine work processes through the DPO process in Attachment 2. The notification (e.g., DOECAST and NNSACAST) must provide points of contact (name, phone number and email address of DPO Managers (DPOM)), the Web page address for the DPO process, and instructions on where to submit DOE DPOs. |
| 3 | 5.a.(1) | Provide quarterly notice to all employees of the availability of the DPO process and encourage its use where appropriate. | Provide annual notice to all employees of the availability of the DPO process and encourage its use where appropriate. |
| 3 | 5.b.(1) | Assign DPO Managers and identify an alternate in the event that the designated DPO Manager is unavailable to address the DPO. | Assign DPOMs and identify an alternate in the event that the designated DPOM is unavailable to address the DPO. |
| 3 | 5.d. | Chief, Health, Safety and Security Officer | Associate Under Secretary for Environment, Health, Safety and Security |

| Page | Paragraph | Changed | To |
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| 3 | 5.d.(1) | Maintain a web page for the DPO process including information on the designated DPO Managers and how to submit a DPO. | Maintain a Web page for the DPO process including information on the designated DPOMs and how to submit a DPO. |
| 5 | 8. | <u>CONTACT</u> . Questions concerning this Order should be addressed to the Office of Health, Safety and Security at 301-903-2867. | <u>CONTACT</u> . Questions concerning this Order should be addressed to the Office of Environment, Health, Safety and Security at 301-903-2867. |
| Attach ment 1 Page 1 | 1. | Ensure that all employees and subcontractor employees are notified quarterly that they have the right to report environment, safety, and health technical concerns that have not been resolved through routine work processes through the Department of Energy Differing Professional Opinion (DPO) process (the DOE DPO process can be found in Attachment 2 to DOE O 442.2 and at http://www.hss.doe.gov/nuclearsafety/qa/dpo.html). | Ensure that all employees and subcontractor employees are notified annually that they have the right to report environment, safety, and health technical concerns that have not been resolved through routine work processes through the Department of Energy Differing Professional Opinion (DPO) process [the DOE DPO process can be found in Attachment 2 to DOE O 442.2 (found at https://www.directives.doe.gov/directives-documents/400-series/0442.2-BOrderW) and at http://energy.gov/ehss/doe-differing-professional-opinions]. |
| Attach ment 2 Page 1 | 2 nd Intro Paragraph | The DPO process supplements the DOE Employee Concerns Program established in <u>DOE O 442.1A, <i>Department of Energy Employee Concerns Program</i></u> , as well as site and program specific programs for reporting employee concerns. | The DPO process supplements the DOE Employee Concerns Program established in <u>DOE Order (O) 442.1A, <i>Department of Energy Employee Concerns Program</i></u> , as well as site and program specific programs for reporting employee concerns. |

| Page | Paragraph | Changed | To |
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| Attach ment 2 Page 9 | 7.b. | Sec. 211 of the Energy Reorganization Act, as amended, codified at 42 U.S.C. Sec. 5851, provides DOE and DOE contractor or employees specific whistleblower protection. This statutory provision regarding Federal employees is implemented by the Department of Labor at 29 C.F.R. Part 24, <i>Procedures for the Handling of Retaliation Complaints under Federal Employee Protection Statutes</i> . | Sec. 211 of the Energy Reorganization Act, as amended, codified at 42 U.S.C. Sec. 5851, provides DOE and DOE contractor or employees specific whistleblower protection. This statutory provision regarding Federal employees is implemented by the Department of Labor at 29 Code of Federal Regulations part 24, <i>Procedures for the Handling of Retaliation Complaints under Federal Employee Protection Statutes</i> (10 CFR 24). |
| Attach ment 2 Page 9- 10 | 7.f. | 50 U.S.C. § 2702, <i>Whistleblower Protection Program</i> , which states that the Secretary of Energy shall establish a program to ensure that covered individuals (i.e., employees of the Department of Energy, or of a contractor of the Department, who are engaged in the defense activities of the Department) may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures. | 50 U.S.C. § 2702, <i>Whistleblower Protection Program</i> , which states that the Secretary of Energy shall establish a program to ensure that covered individuals (i.e., employees of DOE, or of a contractor of the Department, who are engaged in the defense activities of the Department) may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures. |

**SUBJECT: DIFFERING PROFESSIONAL OPINIONS FOR TECHNICAL ISSUES
INVOLVING ENVIRONMENTAL, SAFETY, AND HEALTH
TECHNICAL CONCERNS**

1. **PURPOSE.** This Order establishes the Department of Energy (DOE) Differing Professional Opinion (DPO) process for employees to raise technical concerns related to environment, safety, and health (ES&H) which cannot be resolved using routine processes.

The DPO process is intended to supplement, not replace, existing processes designed to address concerns. Employees must first seek to resolve concerns with their first line supervisors or use established concern or complaint resolution systems. If these systems have not dealt, or cannot deal, effectively with an ES&H technical concern, the concern may be submitted to the appropriate DPO manager as described in the DPO process (Attachment 2). In addition, ES&H technical concerns submitted to the DOE Employee Concerns Program (ECP) established in [DOE O 442.1A, Department of Energy Employee Concerns Program](#), may be transferred to the DPO process for review and disposition.

2. **CANCELLATION.** DOE P 442.1, Differing Professional Opinions on Technical Issues Related to Environment, Safety and Health, dated November 16, 2006 and DOE M 442.1-1, Differing Professional Opinions Manual for Technical Issues Involving Environment, Safety and Health, dated November 16, 2006.

Cancellation of a directive does not, by itself, modify or otherwise affect any contractual or regulatory obligation to comply with the directive. Contractor Requirements Documents (CRDs) that have been incorporated into a contract remain in effect throughout the term of the contract unless and until the contract or regulatory commitment is modified to either eliminate requirements that are no longer applicable or substitute a new set of requirements.

3. **APPLICABILITY.**

a. Departmental Applicability.

- (1) Except for the exclusions in paragraph 3.c., this Order applies to all Departmental elements and DOE Federal employees with respect to DPOs on technical issues relating to ES&H. This Order automatically applies to Departmental elements created after it is issued.
- (2) The Administrator of the National Nuclear Security Administration (NNSA) must ensure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will

be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65 to establish Administration specific policies, unless disapproved by the Secretary.

b. DOE Contractors.

- (1) Except for the exclusions in paragraph 3.c., Attachment 1, *the Contractor Requirements Document* (CRD), sets forth the requirements of this Order that will apply to contracts that include the CRD.
- (1) The CRD (Attachment 1), or its requirements, must be included in contracts for the design, construction, management, operation, decontamination, decommissioning, or the demolition of DOE sites or facilities.

c. Exclusions. The provisions of this Order do not apply to—

- (1) Activities conducted under the authority of the Director, Naval Nuclear Propulsion Program, pursuant to Executive Order 12344.
- (2) Activities of the Bonneville Power Administration (BPA) in accordance with Secretarial Delegation Order Number 00-033.00B to the BPA Administrator and Chief Executive Officer, dated July 7, 2009.
- (3) Administrative, contract, or personnel-related issues except to the extent that they are directly related to technical issues regarding ES&H.

4. REQUIREMENTS.

- a. Employees must be notified annually that they have the right to report ES&H technical concerns that have not been resolved through routine work processes through the DPO process in Attachment 2. The notification (e.g., DOECAST and NNSACAST) must provide points of contact (name, phone number and email address of DPO Managers (DPOM)), the Web page address for the DPO process, and instructions on where to submit DOE DPOs.
- b. Employees must be encouraged to raise ES&H technical concerns and to use the DPO process when routine work processes fail to resolve ES&H technical concerns.
- c. Employees must be provided reasonable time and resources to use the DPO process.
- d. Employees must be protected from reprisal or retaliation for reporting DPOs.
- e. Attachment 2 of this Order must be used to process DPOs.

5. RESPONSIBILITIES.

- a. Deputy Secretary.
 - (1) Provide annual notice to all employees of the availability of the DPO process and encourage its use where appropriate.
 - (2) Protect employees from reprisal or retaliation for reporting DPOs.
 - (3) Fulfill the responsibilities assigned to the Under Secretary where there is no Under Secretary.
- b. Under Secretaries (Deputy Secretary where there is no Under Secretary).
 - (1) Assign DPOMs and identify an alternate in the event that the designated DPOM is unavailable to address the DPO.¹
 - (2) Assign a DOE Senior Technical Safety Manager qualified to DOE-Standard-1175, *Senior Technical Safety Manager Functional Area Qualification Standard*, or a Secretarial Officer, as the Final Decision Manager for each DPO.
 - (3) Make decisions on any appeals to DPO Final Decisions.
 - (4) Resolve any differences between the Final Decision Manager and the Secretarial Officer on actions to be taken in response to the DPO decision.
 - (5) Stop or curtail work if necessary to ensure that a facility or activity is in a safe condition until DPO issues have been resolved.
- c. Secretarial Officers.
 - (1) Concur on actions to be taken in response to the DPO decision.
 - (2) Notify contracting officers of contracts affected by the requirements of this directive that the CRD must be included in the affected contracts.
- d. Associate Under Secretary for Environment, Health, Safety and Security.
 - (1) Maintain a Web page for the DPO process including information on the designated DPOMs and how to submit a DPO.
 - (2) Include the review of implementation of the DPO process in periodic assessments.

¹ Suitable alternate DPOMs may include, but are not limited to, other DOE DPOMs designated to address DPOs submitted in accordance with this Order, including DPOMs within the same organization or in other organizations. Reasons for unavailability may include, but are not limited to, the need for a DPOM to recuse himself/herself to avoid a real or perceived conflict of interest.

- e. Personnel identified in the DPO process in Attachment 2 as having responsibilities for the DPO process. Personnel having responsibilities regarding

6. REFERENCES.

- a. DOE O 442.1A, *Department of Energy Employee Concerns Program*.
- b. Public Law (P.L.) 106-65, *National Defense Authorization Act for Fiscal Year 2000*, Section 3212(d), *Administrator for Nuclear Security*, codified at 50 U.S.C. §2402(d).
- c. Executive Order 12344, *Naval Nuclear Propulsion Program*.
- d. *Secretarial Delegation Order Number 00-033.00B to the Administrator and Chief Executive Officer of the Bonneville Power Administration*, dated July 20, 2009.
- e. DOE-Standard-1175, *Senior Technical Safety Manager Functional Area Qualification Standard*.
- f. 5 U.S.C. § 2302, *Prohibited Personnel Practices*.
- g. DOE O 221.1A, *Reporting Fraud, Waste and Abuse to the Office of Inspector General*.
- h. Public Law 92-463, *Federal Advisory Committee Act*, codified at 5 U.S.C. App 2, 6(c).
- i. 42 U.S.C. § 5851, *Employee Protection*.
- j. 29 C.F.R. Part 24, *Procedures for the Handling of Retaliation Complaints under Federal Employee Protection Statutes*.
- k. 10 C.F.R. Part 708, *DOE Contractor Employee Protection Program*.
- l. 10 C.F.R. Part 820, *Procedural Rules for DOE Nuclear Activities*.
- m. 10 C.F.R. Part 851, *Worker Safety and Health Program*.
- n. DOE Order 440.1B, *Worker Protection Program for DOE (including the National Nuclear Security Administration) Federal Employees*.
- o. 50 U.S.C. § 2702, *Whistleblower Protection Program*.

7. DEFINITIONS

- a. Concern as used in this Order and in the DPO process means a good faith expression by an employee related to a technical issue concerning a DOE-related activity of DOE or one of its contractors or subcontractors that should be improved, modified, or terminated.

- b. Differing Professional Opinion as used in this Order and in the DPO process means an opinion involving a technical issue related to ES&H that (1) differs from previous management decisions, stated positions, or established policies or practices; (2) in the opinion of the employee, has not been adequately considered; and (3) if not addressed, has a reasonable probability of having significant negative impact with respect to environment, safety, or health.
 - c. Employee as used in this Order and in the DPO process means any person working for DOE, including NNSA, or a DOE contractor or subcontractor, on a DOE project.
 - d. Reprisal as used in this Order and in the DPO process means any action taken against an employee in response to, or in revenge for, the employee having raised, in good faith, reasonable concerns about an ES&H aspect of DOE-related operations.
 - e. Retaliation as used in this Order and in the DPO process means personnel action that is taken (or not taken in the case of a personnel benefit), recommended, or threatened because of the expression or support of a differing professional opinion. See 5 U.S.C. § 2302 for definition of personnel action.
8. CONTACT. Questions concerning this Order should be addressed to the Office of Environment, Health, Safety and Security at 301-903-2867.

BY ORDER OF THE SECRETARY OF ENERGY:



ELIZABETH SHERWOOD-RANDALL
Deputy Secretary

CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 442.2, *Differing Professional Opinions for*
Technical Issues Involving Environment, Safety and Health

Regardless of the performer of the work, the contractor is responsible for complying with the requirements of this CRD. The contractor is responsible for flowing down the requirements of this CRD to subcontractors at any tier to the extent necessary to ensure the contractor's compliance with the requirements. The contractor must:

1. Ensure that all employees and subcontractor employees are notified annually that they have the right to report environment, safety, and health technical concerns that have not been resolved through routine work processes through the Department of Energy Differing Professional Opinion (DPO) process [the DOE DPO process can be found in Attachment 2 to DOE O 442.2 (found at <https://www.directives.doe.gov/directives-documents/400-series/0442.2-BOrderW>) and at <http://energy.gov/ehss/doe-differing-professional-opinions>]. The notification must provide points of contact (name, phone number and email addresses of DPO Managers) as listed on the DOE DPO web page, as well as the DOE DPO web page address.
2. Protect employees from reprisal or retaliation for reporting a DPO.
3. Provide employees reasonable time and resources to use the DPO Process.
4. Assist DOE as requested in the resolution of DPOs.
5. Report to the DOE when requested on the status of assigned implementation actions resulting from the DPO resolution and on the closure of these implementation actions.

DIFFERING PROFESSIONAL OPINION PROCESS

Department of Energy (DOE) regulations, policies, requirements and processes exist to ensure environment, safety, and health (ES&H) technical concerns are considered and addressed in the performance of its mission. These requirements and procedures promote identification and resolution of issues at the lowest possible level using day-to-day routine work processes to reduce the cost and the time needed to address issues. Employees are encouraged to report concerns to their immediate supervisor, to any level of management, or to offices responsible for dealing with the particular subject matter of the concern. DOE seeks to promote resolution of concerns at the lowest possible level. In rare cases, an employee may decide that the routine work process did not adequately resolve a concern. The Differing Professional Opinion (DPO) process exists for use in these cases; however, before initiating the DPO process, the employee must first attempt to resolve the issue through his/her organization's routine work processes (e.g., discussions with their supervisor or other managers, review and comment processes, and/or local employee concerns processes).

The DPO process supplements the DOE Employee Concerns Program established in [DOE Order \(O\) 442.1A, *Department of Energy Employee Concerns Program*](#), as well as site and program specific programs for reporting employee concerns. ES&H technical concerns that are submitted through the Employee Concerns Program may be referred to this DPO process for review and disposition. The DPO process may also be used to address ES&H technical concerns that are submitted directly to this process after failing to be resolved by routine work processes as stated above.

DPO PROCESS¹

I. STEP 1 - PREPARE AND SUBMIT A DPO

To start the DPO process, the employee submitting the DPO (the submitter)² must submit to the appropriate DPO Manager (DPOM)³ a written document⁴ that provides the following information:

1. **What is the issue? Tell us⁵ what the problem is.**
2. **What is your recommended action?** Tell us what should be done to fix or better address the problem.
3. **What could happen if there is no change?** Tell us what you think the impact will be to the environment or to health and safety if no change is made to the current situation. If possible, include an assessment of the consequences, including the technical basis for the

¹ See the discussion under Administrative, Procedural and Regulatory Requirements regarding the DPO process schedule, as well as the standardized DPO process schedule in Table 2.

² As used in this section, the pronoun "you" means the submitter.

³ To find the appropriate DPO Manager, see your annual employee notification on the DPO Process or the DOE DPO Web page at <http://energy.gov/ehss/doe-differing-professional-opinions> Alternatively, you may submit your DPO through the DOE Employee Concerns Program.

⁴ See Table 1 for an example of an acceptable format for DPO submissions.

⁵ As used in this section, the pronoun "us" means DOE.

consequence if the concern is not addressed. The consequences discussed should be in terms of effects to worker safety or health, or protection of the public or environment from DOE facilities or activities.

4. **Which technical experts would you recommend to be included on the panel to review the DPO?** If you know someone who can help us review the issue properly, please provide a recommendation with contact information.⁶
5. **What should we read to help us resolve the issue?** Include a list of the relevant documents that support your DPO or should be read for a thorough independent review (e.g., sections of safety bases documents, assessments, reports). Either provide a copy of the documents or provide enough information to enable us to obtain them easily.⁷
6. **What else have you tried to resolve this issue and what were the results?** Let us know what you have already tried to resolve this issue. For example, discuss how you used review and comment processes or local DPO processes to raise your issue and/or identify the technical personnel and management with whom you discussed your concern, including the dates (or approximate dates) and what was discussed. What was the outcome of that effort?
7. **What is the scope of the DPO?** To help determine who should review this issue, indicate whether the DPO involves:
 - a. NNSA facilities and/or activities
 - b. Non-NNSA facilities and/or activities
 - c. Nuclear facilities and/or activities
 - d. Non-nuclear facilities and/or activities
8. **What is your contact information?** Provide your name, where you work and what is your position, telephone number, mailing address, and email address.

II. STEP 2 – PERFORM AN ACCEPTANCE REVIEW OF THE DPO (SCREENING)

1. The DPOM must screen the submitted potential DPO to determine if the submittal provides complete information and to verify that the concern involves technical issues that could impact environment, safety, or health, as follows:
 - a. ***Imminent danger.*** In cases where imminent danger is involved, the acceptance process must proceed in parallel with forwarding the available information

⁶ You may consult with your exclusive bargaining unit representative or the DPOM, if appropriate, to nominate knowledgeable individuals who may be technically competent.

⁷ Copyrighted documents that are generally available to the public, such as consensus codes and standards, should not be attached. Published DOE directives and technical standards which are available through the DOE web pages need not be attached. For such documents, the submitter must include complete references of specific sections with a brief statement regarding the relevance of the document to the issue being raised. Copies of other documents may be provided in electronic or paper format.

immediately to line management to initiate a review and take any necessary actions needed to protect individuals and property from imminent danger.

- b. ***Receipt and Logging.*** The DPOM must open a file (electronic or paper), assign a control number (see administrative requirements) and complete the acceptance review.
- c. Insufficient information or out of scope.
 - (1) If there is insufficient information or the submission is out of scope,⁸ the DPOM must return the materials provided to the submitter with the reasons why the submittal does not qualify as a DPO. This action will terminate the DPO process.
 - (2) The submitter may revise the proposed DPO to include any missing information identified by the DPOM. Upon receipt of all missing information, the DPOM must reopen the original control number for the resubmitted proposed DPO; however, the schedules will be reset to the date when the package was resubmitted.
- d. ***Partial acceptance.*** If the DPOM determines that part of the submittal is out of scope, the DPOM must accept for processing only the part that is within scope. The DPOM must inform the submitter what part of the submittal is out of scope and the basis for that determination.
- e. ***Generally excluded issues.*** Issues that are not generally within the scope of the DPO process and that will not be reviewed according to this process include the following:
 - (1) issues that are administrative in nature (such as review and comment procedures),
 - (2) personnel issues (such as performance elements, evaluations and ratings, or work assignments by management),⁹
 - (3) contract issues not relating to technical ES&H issues (such as cost/schedule performance, fees or contract negotiations),
 - (4) issues related to collective bargaining,
 - (5) issues that should be addressed through the grievance process or personnel appeal procedures,

⁸ For out of scope items see items discussed in paragraph 1.e, Generally excluded issues. If the DPO is out of scope, the DPOM may suggest other ways to address the issue (e.g., Employee Concerns Program).

⁹ An example of an issue that would not be included in this process would be an employee who could not perform a task because of a back problem. Although this issue is related to the health of an employee, it is not related to a technical issue and should be handled as a personnel issue. An example of an issue that could be addressed through the DPO Process would be an operation that could result in an interaction of chemicals that would result in a chlorine release and exposure to workers that has not been properly addressed in safety analysis and/or design.

- (6) issues that relate to fraud, waste, and abuse (the DPOM must refer these to the Office of Inspector General),¹⁰
 - (7) issues submitted anonymously or for which confidentiality is requested,¹¹ and
 - (8) issues that have been considered and already addressed under this process unless significant new information is available.
2. If the DPOM refers the submittal to another process or organization, the DPOM will notify the affected line management, unless such communication is specifically prohibited by law, regulation, or DOE directive.

III. STEP 3 - INITIATE THE DPO PROCESS

1. **Administrative Actions.** Concurrent with the acceptance of a DPO, the DPOM must—
 - a. Send an acknowledgement of the acceptance of the DPO for action to the submitter and
 - b. Provide a copy of the DPO to the DOE line manager responsible for the issue that is the subject of the DPO and ask for the basis of the any related requirements or direction and the supporting documentation.
2. **Final Decision Manager.** The Under Secretary (or Deputy Secretary where there is no Under Secretary) must assign the DPO to a Final Decision Manager. Where practicable, the individual assigned responsibility for the Final Decision must be at a level above or independent from the manager who made the contested decision.

IV. STEP 4 - APPOINT AN AD HOC PANEL

1. **Who appoints the Ad Hoc Panel?** The DPOM (in consultation with the Final Decision Manager) must appoint an ad hoc panel of experts, including a chair for the panel, to conduct a thorough review of the DPO. The ad hoc panel chair must be a DOE employee.
2. **Who must be on the Ad Hoc Panel?** The ad hoc panel may consist of as few as one person or as many persons as determined to be appropriate by the DPO Manager convening the panel. The panel must include
 - a. a person who is technically knowledgeable in the subject area being reviewed (this may also be the chairperson), and
 - b. where practicable, a panel member from the recommended list of technical experts provided by the submitter.
3. **Who must not be on the Ad Hoc Panel?** The following persons must not be on the ad hoc panel:

¹⁰ See [DOE O 221.1A, Reporting Fraud, Waste and Abuse to the Office of Inspector General](#).

¹¹ Concerns may be submitted confidentially through the Employee Concerns Program.

- a. persons with a position of authority over the submitter,
 - b. individuals who have directly participated in the formulation of the requirement or direction that is at issue, and
 - c. individuals who have a direct and personal or financial interest in the outcome.
4. **Federal Advisory Committee Act Requirements.** If a person from outside DOE serves as a member of the DPO ad hoc panel or as a consultant to the panel, the requirements of the Federal Advisory Committee Act may be applicable.¹²

V. STEP 5 - REVIEW THE DPO

Ad Hoc Panel Review. The ad hoc panel must:

1. **Identify any additional information needed.** Review the DPO to identify any additional information that is needed to complete the review and request any additional information needed from the submitter, the appropriate DOE Element, or the contractor through the DPOM.
2. **Identify any necessary technical assistance.** Identify and request any technical assistance needed to address the issues raised by the DPO through the DPOM.
3. **Review DPO issue.** Conduct a detailed review of the issue being brought forward and/or conduct any record reviews or interviews or hold any discussions the panel deems necessary to provide a complete, objective, independent, and impartial review.
4. **Ensure independence.** Conduct the review of the DPO using individuals or groups other than those who made the original decision or did the original work to the maximum extent possible.
5. **Initiate discussions with the submitter as needed.** Initiate any discussions with the submitter necessary to further clarify the concern.
6. **Write a report.** Provide a written report, including recommendations and any dissenting opinions, to the assigned Final Decision Manager regarding the disposition of the issues presented in the DPO with a copy to the appropriate DPOM. The DPOM may be asked to facilitate any discussions as needed.
7. **Expedite schedule when needed.** In time-sensitive cases, the Final Decision Manager may direct the panel to provide a report on a shorter schedule when the ad hoc panel is assigned.

VI. STEP 6 – ISSUE FINAL DECISION

¹² Full time employees of DOE Management and Operating Contractors are exempt from the requirements of the Federal Advisory Committee Act.

1. **Final Decision.** The assigned Final Decision Manager must provide the Final Decision (including a documented basis for the decision) to the submitter of the DPO following the panel's final recommendations.
2. **Distribution.** Copies of the Final Decision must also be sent to:
 - a. the submitter's management,
 - b. the DPOM,
 - c. any individuals or organizations tasked with follow-up actions or implementation, and
 - d. each of the panel members.
3. **Deviations from the ad hoc panel's recommendations.**
 - a. If the Final Decision Manager decides to take an action other than the decision recommended by the ad hoc panel, the appropriate Under Secretary (or the Deputy Secretary if there is no Under Secretary) must concur on the decision.
 - b. If DOE management determines that the recommended actions will not be implemented or that alternate actions will be implemented, the DPOM will be informed and those decisions will be tracked and recorded through the DPO process. The Final Decision will indicate what actions are to be taken and indicate if they are different than those recommended by the ad hoc panel.
4. **Concurrence of line management.** For any action required by the decision, the action must receive the concurrence of the Secretarial Officer authorized to take the action or direct the action to be taken. In the event the Secretarial Officer and the Final Decision Manager cannot agree on the actions to be taken, the recommended actions will be provided to the Under Secretary (Deputy Secretary where there is no Under Secretary) for resolution.

VII. STEP 7 – TRACK AND FOLLOW-UP ACTIONS

The DPOM must track the corrective actions for the DPO to completion.

DPO APPEAL PROCESS

APPEAL STEP 1 - PREMEETING

1. **Meeting with the Final Decision Manager.** A submitter who is not satisfied with the Final Decision, continues to believe that a significant technical issue related to ES&H is not being properly addressed, and wants to file an appeal must contact the DPOM no later than 10 working days after receiving the Final Decision to request a meeting and discussion with the assigned Final Decision Manager or his/her designee. That meeting must be held within 15 working days of the request.

2. **Changing the DPO decision.** As a result of the meeting, the assigned Final Decision Manager may decide to change his/her decision. If so, that revised decision must be issued, filed, and distributed consistent with the Final Decision, including copies to any individuals or organizations tasked with new follow-up actions or implementation as a result of the change. In addition, any follow-up actions that are being retracted must be documented and the documentation sent to the individuals or organizations tasked with the original follow-up actions or implementation. Consideration must be made for any follow-up actions that may have been partially or fully completed during the interim.
3. **Changing the decision to appeal.** Alternatively, as a result of the meeting, the individual responsible for submitting the DPO may decide that he/she is satisfied with the results of the review and no further actions are needed.
4. **Deciding to continue the appeal.** If following the meeting the submitter continues to believe that the Final Decision does not adequately resolve the issue and the submitter wants to file an appeal, the submitter must initiate an appeal of the DPO decision in accordance with Appeal Step 2.

II. APPEAL STEP 2 – FILING A DPO APPEAL

1. **Submission of an appeal.** The appeal must be submitted no later than 35 working days after the Final Decision is issued. An appeal must be addressed and sent to the appropriate Under Secretary (Deputy Secretary where there is no Under Secretary) with a copy to the appropriate DPOM and the assigned Final Decision Manager.
2. **Information to be included in the appeal.**
 - a. An explanation of why the submitter still believes that the decision is inadequate or insufficient to ensure protection of ES&H.
 - b. DPO tracking number.
3. **Distribution.** Upon receiving an appeal, the DPOM must forward a copy of the file on the DPO to the appropriate Under Secretary (Deputy Secretary where there is no Under Secretary) including the supporting information and a copy of the Final Decision.

III. APPEAL STEP 3 – APPEAL DECISION

1. **Authority and schedule.** An Appeal Decision must be issued by the applicable Under Secretary (Deputy Secretary where there is no Under Secretary) no later than 45 working days after receipt of the appeal. The official making the Appeal Decision may reconvene the panel, choose and use a new panel, or make the decision without benefit of a panel.
2. **Copies.** Copies of the Appeal Decision, along with any reports, must be provided to the assigned Final Decision Manager for the DPO, the appropriate DPOM, and individuals or organizations tasked with follow-up or implementation actions.
3. **Closure.** Upon issuance of the decision to the submitter, the DPO process will be concluded and the matter will be considered closed.

ADMINISTRATIVE, PROCEDURAL AND REGULATORY REQUIREMENTS

1. **CONTROL NUMBER.** The DPOM must assign a control number to track each DPO. That number must be included on all correspondence on that DPO, including the confirmation the DPOM sends to the submitter of the DPO to inform that person that the DPO has been received and is being processed. This control number will be used to track the DPO throughout the process, as well as any appeal that may arise.
2. **DPO SCHEDULES.**
 - a. Table 2 provides a standard schedule for processing a DPO. Some cases may warrant a longer schedule for one or more steps. If a schedule other than the standard schedule will be used, the DPOM must approve the alternate schedule and send copies of the alternate schedule to the submitter, the Final Decision Manager, the DOE line manager responsible for the position/decision that is the subject of the DPO, and the ad hoc panel chair and members. The DPOM must also file a copy of the alternate schedule and the approval in the DPO file.
 - b. Table 3 provides the schedule for the DPO appeal process. Unlike the schedule for the DPO process, the appeal process follows a fixed schedule.
3. **ACTION TRACKING.** The DPOM must track each DPO to conclusion and send reminder e-mails to individuals who are 5 working days behind schedule. The DPOM must record any follow-up actions identified by the decisions resulting from the DPO process. The assigned Final Decision Manager is responsible for ensuring that these actions are assigned to the proper authority and entered on local tracking systems with scheduled completion dates.
4. **COMPLETION DATES.** In establishing completion dates, consideration must be given to the safety significance of the issue, the age of the issue, and the priority of other work in the office. If the schedule for the follow-up items is not met, the DPOM must communicate the reason for the delay and a revised schedule for completion of the actions to the submitter and to the applicable Under Secretary (or in cases where there is no assigned Under Secretary, to the Deputy Secretary).
5. **RECORDKEEPING REQUIREMENTS.** The DPOM must retain a copy of all correspondence and submittals on the DPO in the DPO file. All correspondence must be marked with the DPO tracking number and the date received. The DPOM must retain the records for a DPO consistent with the requirements of the National Archives and Records Administration records disposition schedule found at <http://www.archives.gov>.
6. **WITHDRAWING A DPO.** The submitter may withdraw the DPO (or appeal) at any time before the issuance of a Final Decision (or Appeal Decision). To initiate a withdrawal, the submitter must file a written request to the appropriate DPOM, who will forward copies to the assigned Final Decision Manager (Under Secretary/Deputy Secretary for an appeal). The DPOM must send an acknowledgment letter to the submitter indicating the date on which the withdrawal took effect. Withdrawal does not preclude DOE from pursuing the issue, but the continued pursuit of the issue will no longer be subject to DPO process and/or time frame requirements. If DOE decides to not

pursue a withdrawn DPO, the DPOM will enter a memorandum in the file documenting the basis for the decision to not pursue the issue.

7. **PROTECTION FROM REPRISAL OR RETALIATION FOR FILING A DPO.**

DOE O 442.2 and the associated Contractor Requirements Document require that employees be protected from reprisal or retaliation in any form for filing DPOs. Additional protection is provided by the following:

- a. 5 U.S.C. § 2302, *Prohibited Personnel Practices*, contains specific language prohibiting individuals from taking adverse personnel action with respect to any Federal employee or applicant for employment because of disclosure of information which the employee reasonably believes evidences a violation of law, rule, or regulation; gross mismanagement; gross waste of funds; an abuse of authority; or a substantial and specific change to public health and safety if the disclosure is not specifically prohibited by law or by Executive Order in the interest of national defense or the conduct of foreign affairs.
- b. Sec. 211 of the Energy Reorganization Act, as amended, codified at 42 U.S.C. Sec. 5851, provides DOE and DOE contractor or employees specific whistleblower protection. This statutory provision regarding Federal employees is implemented by the Department of Labor at 29 Code of Federal Regulations part 24, *Procedures for the Handling of Retaliation Complaints under Federal Employee Protection Statutes* (10 CFR 24).
- c. Title 10 CFR part 708, *DOE Contractor Employee Protection Program*, provides procedures for processing complaints by employees of DOE contractors alleging retaliation by their employers for disclosure of information concerning danger to public or worker health or safety (among other things).
- d. Title 10 CFR part 820, *Procedural Rules for DOE Nuclear Activities*, or 10 CFR part 851, *Worker Safety and Health Program*, provide procedures that may lead to imposition of civil penalties for reprisals against contractor employees.
- e. [DOE Order 440.1B, Worker Protection Program for DOE \(including the National Nuclear Security Administration\) Federal Employees](#), provides DOE workers the right to express concerns related to worker protection without reprisal.
- f. 50 U.S.C. § 2702, *Whistleblower Protection Program*, which states that the Secretary of Energy shall establish a program to ensure that covered individuals (i.e., employees of DOE, or of a contractor of the Department, who are engaged in the defense activities of the Department) may not be discharged, demoted, or otherwise discriminated against as a reprisal for making protected disclosures.

TABLE 1: SAMPLE DIFFERING PROFESSIONAL OPINION SUBMITTAL FORM

| |
|--|
| <p style="text-align: center;">Differing Professional Opinion (DPO) Submittal</p> <p>Respond to the questions below or attach responses. Attach copies of references. Submit the completed form to the DPO Manager (DPOM). See the DPO process in Attachment 2 to DOE O 442.2 for instructions.</p> |
| <p>TO BE ENTERED BY DPOM</p> <p>DPO Title:</p> <p>DPO tracking number:</p> |
| <p>Do you believe this issue involves a risk of imminent danger that would warrant an immediate stop work or a shutdown? YES or NO</p> |
| <p>1. What is the issue?</p> |
| <p>2. What is your recommended action?</p> |
| <p>3. What could happen if there is no change? (Note: Include a basis for the concern.)</p> |
| <p>4. Which technical experts would you recommend to be included on the panel to review the DPO?</p> |
| <p>5. What should we read to help us resolve the issue?</p> |

| | | |
|---|-----------------|---------------|
| 6. What else have you tried to resolve the issue (review and comments, discussions with technical personnel and management, local DPO processes, etc.) and what were the results? | | |
| 7. The scope of the DPO involves (check all boxes that apply)— NNSA facilities and/or activities. Non-NNSA facilities and/or activities. Nuclear facilities and/or activities. Facilities/activities not related to nuclear | | |
| Name: | Date: | Organization: |
| Position or Relationship to DOE: DOE employee DOE contractor DOE subcontractor | | |
| Phone number: | E-mail address: | |
| Complete mailing address: | | |
| Best way to contact you for additional information: | | |
| Signature: | | |

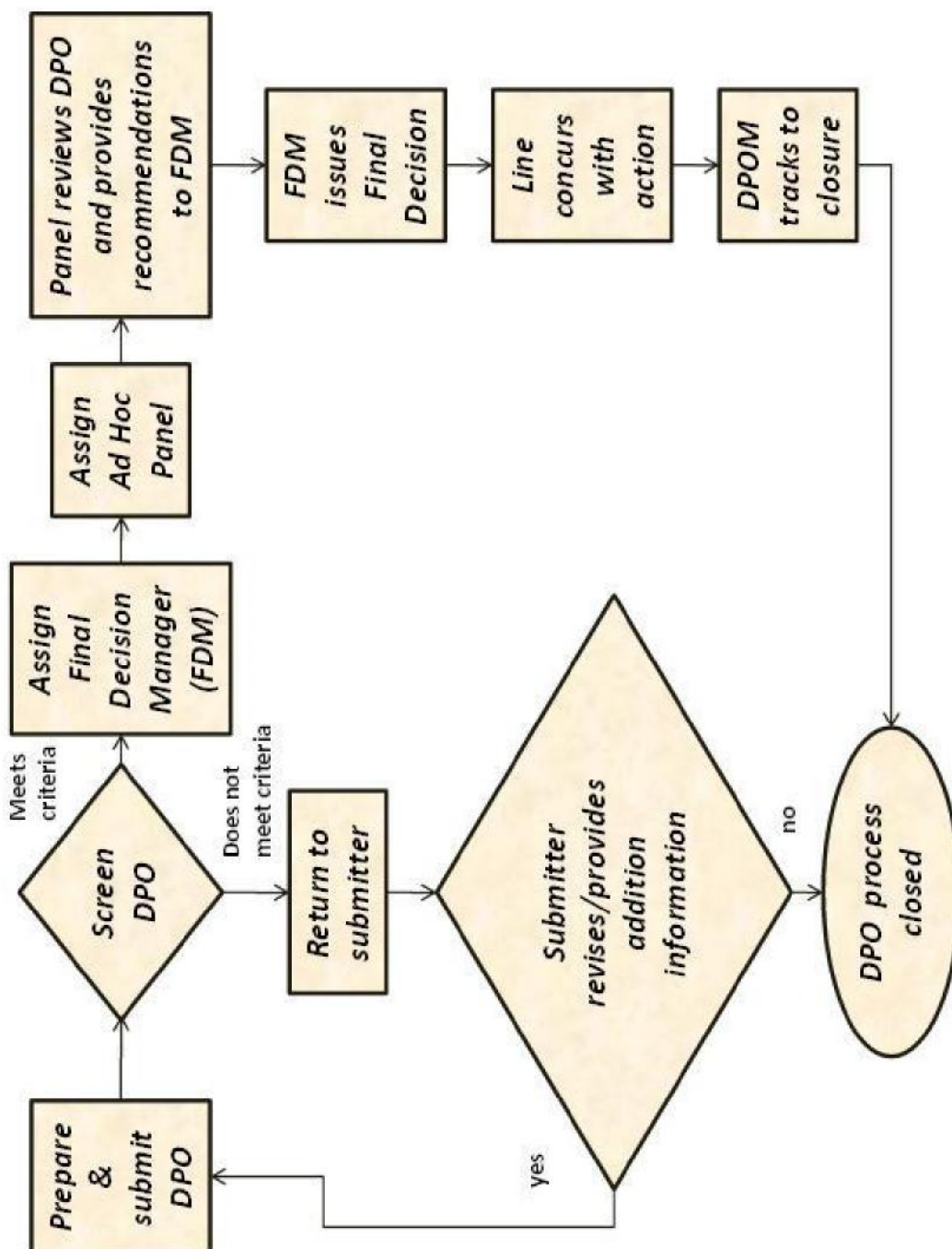
TABLE 2: DPO PROCESS STANDARD SCHEDULE

| STANDARD SCHEDULE FOR PROCESSING A DPO | | |
|---|---|---|
| RESPONSIBLE PARTY | ACTION | TIME FRAME |
| DPO Submitter | Submit proposed DPO to DPO Manager (DPOM). | As needed |
| DPOM | Open a file and assign a control number | Upon receipt of DPO |
| DPOM | Complete acceptance review and send acknowledgement to submitter | Within 10 working days of receiving DPO |
| DPOM | If the DPO is accepted, send a copy of the DPO to the line manager and ask for supporting documentation | Concurrent with acceptance. |
| Under Secretary (Deputy Secretary where there is no Under Secretary) | Assign DPO to appropriate Final Decision Manager | Within 15 working days of accepting the DPO |
| DPOM in consultation with the Assigned Final Decision Manager | Appoint ad hoc panel and designate chair | Within 25 working days of accepting DPO |
| Ad Hoc Panel | Review DPO and provide recommendations in a report to the assigned Final Decision Manager | Within 65 working days of accepting the DPO |
| Final Decision Manager | Review ad hoc panel report and send Final Decision to DPO submitter with copy to DPOM | Within 15 working days of receipt of ad hoc panel's report of recommendations |

TABLE 3: DPO APPEAL PROCESS SCHEDULE

| PROCESSING DPO APPEALS | | |
|-------------------------------|--|---|
| RESPONSIBLE PARTY | ACTION | TIME FRAME |
| Submitter | Request a pre-meeting | Within 10 working days from receiving the Final Decision. |
| Final Decision Manager | Meet with DPO submitter for pre-appeal meeting | Within 15 working days of request by submitter |
| Submitter | Files appeal (if still not satisfied) | Within 35 working days after issuance of Final Decision |
| Under Secretary | Issue appeal decision | Within 45 working days after receipt of appeal |

DPO Process



DPO Appeal Process

