

Approved: 1-31-2019

SUBJECT: DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM

1. **PURPOSE.** The purpose of this Order is to establish the criteria and processes to maintain a consistent Employee Concerns Program (ECP) across the Department of Energy (DOE), including the National Nuclear Security Administration (NNSA), that:
 - a. Encourages the free and open expression of Employee Concerns, as defined in this Order;¹
 - b. Provides DOE/NNSA federal, contractor, and subcontractor employees with an independent and formal avenue to raise Employee Concerns; and
 - c. Supports a Safety Culture where Employee Concerns can be promptly identified and resolved without fear of Retaliation/Reprisal.

This Order provides direction to federal employees with respect to implementation of the ECP administered by federal ECP Managers (DOE ECP Managers) at DOE headquarters and at DOE/NNSA Field Offices (DOE ECP). DOE ECPs are available to receive Employee Concerns brought by DOE federal, contractor, and subcontractor employees. The Contractor Requirements Document (CRD) (Attachment 1) sets forth the requirements applicable to any contractor that has the CRD incorporated into its contract. Appendix A sets forth further requirements for the DOE ECPs, but does not impose requirements on contractor-established ECPs (Contractor ECPs).

This Order does not discharge the obligation of employees to meet the filing requirements or established timeframes, or constitute notice to DOE/NNSA, for other established processes.

2. **CANCELS/SUPERSEDES.** DOE O 442.1A, Department of Energy Employee Concerns Program, dated 6-6-01 and DOE Guide 442.1-1, Department of Energy Employee Concerns Program Guide, dated 2-01-99.

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unless and until the contract commitment or regulatory obligation is modified to eliminate requirements that are no longer applicable or substitute a new set of requirements.

¹ Capitalized terms used but not defined in the text of this Order are defined in paragraph 7 of this Order.

3. DEPARTMENTAL APPLICABILITY.

a. Departmental Elements.

- (1) Except for the equivalency in paragraph 3.c., this Order applies to all DOE/NNSA elements, including those elements created after the Order is issued.
- (2) The Administrator of the 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. Except for the equivalency in paragraph 3.c., the CRD (Attachment 1) establishes the requirements of this Order that will apply to contracts that include the CRD. The CRD (Attachment 1) must be included in all contracts and subcontracts that contain Department of Energy Acquisition Regulation (DEAR) clause 970.5204-2, *Laws, Regulations, and DOE Directives*.

c. Equivalencies/Exemptions. In accordance with the responsibilities and authorities assigned by Executive Order 12344, *Naval Nuclear Propulsion Program*, codified at 50 U.S. Code (U.S.C.) Sections 2406 and 2511, and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors will implement and oversee requirements and practices pertaining to this Order for activities under his/her cognizance, as deemed appropriate.

4. REQUIREMENTS.

a. Establishment of the DOE ECP.

- (1) The ECP Director must establish a DOE ECP in accordance with this Order.
- (2) Field Offices must establish a DOE ECP in accordance with this Order. Field Offices may share a DOE ECP, provided that it is in reasonable geographic proximity, and reasonably accessible, to their federal and contractor employees.
- (3) Heads of Departmental Elements may choose to establish their own DOE ECPs for their headquarters federal and contractor employees per paragraph 5.e.(1)(b), in accordance with this Order.
- (4) DOE ECP Managers must have direct access to the Field Office Manager or Head of Departmental Element (or their designees), as applicable, with respect to matters relating to the DOE ECP.

- (5) The ECP Director and DOE ECP Managers must be federal employees.
- b. Communications to Employees. DOE federal and contractor employees must be informed of the following on at least an annual basis:
 - (1) The availability of the ECP as an avenue for filing an Employee Concern;
 - (2) Information as to where an employee may submit an Employee Concern, and that the employee may do so confidentially or anonymously; and
 - (3) That employees are encouraged to seek resolution through local complaint or dispute resolution systems, or with first line supervisors, but that alternatively, they have the right to report Employee Concerns through the ECP.
- c. DOE ECP Implementation. DOE ECPs must be implemented in accordance with approved implementing documentation (as described in Appendix A) and this Order.

5. RESPONSIBILITIES.

- a. Deputy Secretary.
 - (1) Fosters a strong Safety Culture where Employee Concerns can be promptly identified and resolved without fear of Retaliation/Reprisal.
 - (2) Provides an annual notice to federal and contractor employees regarding the ECP, which includes:
 - (a) A statement regarding the availability of the ECP as an avenue for filing an Employee Concern;
 - (b) Federal ECP contact information, and a statement that an employee may submit an Employee Concern confidentially or anonymously; and
 - (c) A statement encouraging employees to seek resolution through local complaint or dispute resolution systems, or with first line supervisors, but that alternatively, they have the right to report Employee Concerns through the ECP.
- b. Under Secretary (of Energy).
 - (1) Establishes and maintains the ECP Director's position within the Office of the Associate Under Secretary for Environment, Health, Safety and Security.

- (2) Supports implementation of the ECP Director's responsibilities as described in paragraph 5.d.
- c. Associate Under Secretary for Environment, Health, Safety and Security (or designee).
- (1) Maintains, manages and provides resources for the implementation of the ECP Director's responsibilities as described in paragraph 5.d.
 - (2) Reviews and, if acceptable, approves the implementing documentation for the ECP Director's ECP.
- d. ECP Director.²
- (1) Develops, promulgates, and implements ECP requirements.
 - (2) Provides guidance and assistance to DOE organizations in effectively implementing ECP directives and policies.
 - (3) Provides support to the Deputy Secretary in preparing the annual notice to federal and contractor employees regarding the ECP, which is described in paragraph 5.a.(2).
 - (4) Information; Site Visits; Training.
 - (a) Develops and maintains the DOE agency-wide system for tracking and trending Employee Concerns.
 - (b) Provides to the Deputy Secretary; the Under Secretary of Energy; the Associate Under Secretary for Environment, Health, Safety and Security; Heads of Departmental Elements; Field Office Managers; the Office of Enterprise Assessments; and DOE federal and contractor employees information on program trends, lessons learned, and the effectiveness of DOE and Contractor ECP implementation.
 - (c) Serves as a resource for other ECPs, and conducts site assistance visits to DOE and contractor organizations to help DOE ECP Managers and Contractor ECP Managers share best practices and implement ECPs in accordance with this Order or the CRD, as applicable.

² The ECP Director also receives and processes certain complaints filed pursuant to 10 Code of Federal Regulations (C.F.R.) part 708, DOE Contractor Employee Protection Program. Information regarding the types of complaints accepted under 10 C.F.R. part 708 and the procedure for processing those complaints is set forth in that regulation.

- (d) Establishes training curricula for DOE ECP Managers and DOE ECP staff, as well as for subject matter experts who support the ECP.
- (1) Coordinates Departmental correspondence prepared in response to external inquiries (e.g., Congressional, Government Accountability Office) regarding the DOE ECP.
- (2) Serves as DOE ECP Manager for those DOE headquarters contractor and federal employees not covered by another headquarters DOE ECP.
 - (a) Develops ECP implementing documentation (as specified in Appendix A) for the ECP Director's ECP. Submits the implementing documentation to the Associate Under Secretary for Environment, Health, Safety and Security or his designee for approval.
 - (b) Decides, based on the approved implementing documentation and the procedures described in Appendix A, how to process concerns for which the ECP Director serves as the DOE ECP Manager.
 - (c) When an Employee Concern must be transferred from another DOE ECP (for example, due to a Conflict-of-Interest), the ECP Director may counsel the transferring office as to a more appropriate venue for the concern, or accept the transfer, and serve as the DOE ECP Manager for the concern, as the ECP Director determines is appropriate.
- e. Heads of Departmental Elements.
 - (1) General.
 - (a) Support DOE federal and contractor employees' rights to raise Employee Concerns to the DOE ECP Manager or ECP Director without fear of Retaliation/Reprisal.
 - (b) For the Departmental Element's federal employees at headquarters, and employees of contractors at headquarters for whom the Departmental Element has oversight authority:
 - 1 Establish and designate a DOE ECP Manager, or
 - 2 Direct such employees with Employee Concerns to the ECP Director.

- (c) Establish, where appropriate, an ECP point-of-contact to facilitate communications between the ECP Director and DOE ECP Managers for which the Departmental Element has responsibility.
 - (d) Provide resources for headquarters DOE ECP Managers within their organizations, including appropriate training for DOE ECP Managers and other ECP personnel in ECP policies, procedures, processes, and practices.
 - (e) Approve and implement Corrective Actions, as appropriate, in response to the issues identified as part of the closure of a federal employee's Employee Concern that has been Substantiated or Partially Substantiated by the DOE ECP Manager or ECP Director.
- (2) With respect to DOE ECP Managers and DOE ECPs at headquarters for whom the Departmental Element has responsibility:
- (a) Review and, if acceptable, approve, the implementing documentation for the DOE ECP.
 - (b) Use Assessment results to evaluate the effectiveness of the DOE ECP and the processes used to implement this Order. Implement improvement actions, when appropriate, to address issues impacting the effectiveness of the DOE ECP.
- (3) With respect to contractors at headquarters for whom the Head of Departmental Element has oversight responsibility:
- (a) Identify contracts to which the CRD applies and notify Contracting Officers when contracts are affected by this Order.
 - (b) Approve, as appropriate, any Corrective Actions to be transmitted to the contractor by the Contracting Officer with respect to a contractor employee's Employee Concern that has been Substantiated or Partially Substantiated by the DOE ECP Manager.
 - (c) Ensure any direction to contractors is issued through the appropriate Contracting Officer.
 - (d) Provide oversight of Contractor ECPs through the appropriate Contracting Officer.
- f. Field Office Managers.
- (1) General; Notifications.

- (a) Support DOE federal and contractor employees' right to raise Employee Concerns to the DOE ECP Manager without fear of Retaliation/Reprisal.
 - (b) Issue, with the support of the Field Office DOE ECP Manager, at least an annual basis, a notice that provides:
 - 1 A statement regarding the availability of the ECP as an avenue for filing an Employee Concern;
 - 2 Local ECP contact information and a statement that an employee may submit an Employee Concern confidentially or anonymously; and
 - 3 A statement encouraging employees to seek resolution through local complaint or dispute resolution systems, or with first line supervisors, but that alternatively, they have the right to report Employee Concerns through the ECP.
- (2) Administration of Field Office DOE ECPs.
- (a) Designate the Field Office DOE ECP Manager, and, as needed, other management position(s) responsible for developing and implementing the Field Office DOE ECP.
 - (b) Review and, if acceptable, approve, the implementing documentation for the Field Office DOE ECP.
 - (c) Consistent with direction from the cognizant Head of the Departmental Element, provide adequate support and resources to DOE ECP Managers for effective implementation of the Field Office DOE ECP, including appropriate training for DOE ECP Managers and other ECP personnel in ECP policies, procedures, processes, and practices.
 - (d) Use Assessment results to evaluate the effectiveness of the Field Office DOE ECP and the processes used to implement this Order. Implement improvement actions, when appropriate, to address issues impacting the effectiveness of the Field Office DOE ECP.
 - (e) Approve and implement, as appropriate, Corrective Actions responsive to the issues identified as part of the closure of a federal employee's Employee Concern that has been Substantiated or Partially Substantiated by the DOE ECP Manager.
- (3) Administration of Field Office Contractor ECPs:

- (a) Identify contracts to which the CRD applies and notify Contracting Officers when contracts are affected by this Order.
 - (b) Approve, as appropriate, any Corrective Actions to be transmitted to the contractor by the Contracting Officer with respect to a contractor employee's Employee Concern that has been Substantiated or Partially Substantiated by the DOE ECP Manager.
 - (c) Ensure any direction to contractors is issued through the appropriate Contracting Officer.
 - (d) Provide oversight of Contractor ECPs through the appropriate Contracting Officer.
- g. DOE Headquarters and Field Office ECP Managers. DOE ECP Managers must:
- (1) Develop ECP implementing documentation as specified in Appendix A, and submit the implementing documentation to the appropriate Head of Departmental Element or Field Office Manager for approval.
 - (2) Implement the ECP, and disposition Employee Concerns, in accordance with this Order and the approved implementing documentation.
 - (3) Review the Contractor's proposed ECP implementing documentation and provide a recommendation to the Contracting Officer as to whether to approve the proposed ECP.
- h. Office of Enterprise Assessments (EA).
- (1) Provides technical assistance, as requested, to DOE organizations in investigations of health, safety, and security concerns.
 - (2) Independently assesses the overall effectiveness of DOE and Contractor ECPs and the processes used to implement this Order, as appropriate.
 - (3) When an Employee Concern is raised to EA management or staff, advises the employee on alternate avenues for raising Employee Concerns, including the DOE ECP or Contractor ECP, as appropriate.
 - (4) Interfaces with the ECP Director and DOE ECP Managers regarding DOE ECP implementation, as well as programmatic implementation impacts.
 - (5) Tracks complaints of Retaliation/Reprisal relating to Employee Concerns to determine if enforcement actions pursuant to 10 C.F.R. part 820 or 10 C.F.R. part 851 are warranted.
- i. Contracting Officers.

- (1) Incorporate the CRD to this Order (Attachment 1) into all contracts for the management and operation of DOE-owned or DOE-leased facilities (i.e., those contracts that contain DEAR clause 970.5204-2, *Laws, Regulations, and DOE Directives*).
- (2) Review initial and/or revised Contractor ECP implementing documentation. The Contracting Officer has 60 calendar days in which to provide DOE comments or approval of implementing documentation or revisions.
- (3) With respect to an Employee Concern raised by a contractor employee through the DOE ECP that has been Substantiated or Partially Substantiated by the DOE ECP Manager, Contracting Officers must:
 - (a) Receive the report from the DOE ECP Manager describing the DOE ECP's findings and making recommendations for resolution of the Employee Concern.
 - (b) Direct the contractor to provide information explaining how the contractor will address the findings, and share that information with the DOE ECP Manager and the Field Office Manager (or, for headquarters matters, the appropriate Head of Departmental Element).
 - (c) Transmit any Corrective Actions to the contractor that are approved by the Field Office Manager (or, for headquarters matters, the appropriate Head of Departmental Element).
- (4) Oversee contractor compliance with the CRD and any Corrective Actions issued to the contractors.
- (5) Notify the Office of Enterprise Assessments' Office of Enforcement when a contractor employee files a complaint of Retaliation/Reprisal with an external entity, as soon as practicable after the Contracting Officer becomes aware of such filing.

j. DOE Managers and Supervisors.

- (1) Support the right of federal and contractor employees to raise Employee Concerns without fear of Retaliation/Reprisal.
- (2) Cooperate with and support ECP investigations.
- (3) Process Employee Concerns that are referred or transferred to their respective organizations consistent with this Order in a prompt, effective, and respectful manner to provide for the safe and efficient operation of programs under their authority.

- (4) Implement Corrective Actions approved by the appropriate Head of Departmental Element or Field Office Manager; evaluate whether additional actions are needed to prevent recurrence of similar issues within their respective organization(s); and consult with the appropriate DOE ECP Manager, ECP Director, or subject matter experts, as needed.

k. Employees.

- (1) Are encouraged to seek resolution through local complaint or dispute resolution systems, or with first line supervisors, but alternatively, have the right to report Employee Concerns through the ECP.
- (2) Have the right, without fear of Retaliation/Reprisal, to report Employee Concerns at any time.
- (3) Must inform the appropriate DOE ECP Manager if a remedy for the Employee Concern he or she has reported is being or has been pursued under other venues or other regulations.
- (4) Must cooperate with and support ECP investigations.

6. REFERENCES.

- a. DOE O 221.1B, Reporting Fraud, Waste and Abuse to the Office of Inspector General, current version.
- b. DOE O 226.1B, Implementation of Department of Energy Oversight Policy, current version.
- c. DOE O 243.1B, Records Management Program, current version.
- d. DOE O 442.2, Differing Professional Opinions for Technical Issues Involving Environmental, Safety, and Health Technical Concerns, current version.
- e. DOE O 470.4B, Safeguards and Security Program, current version.
- f. Title 10 C.F.R. part 708, DOE Contractor Employee Protection Program.
- g. Title 10 C.F.R. part 820, Procedural Rules for DOE Nuclear Activities.
- h. Title 10 C.F.R. part 851, Worker Safety and Health Program.
- i. Title 29 C.F.R. part 24, Procedures for the Handling of Retaliation Complaints Under the Employee Protection Provisions of Six Environmental Statutes and Section 211 of the Energy Reorganization Act of 1974, as amended.
- j. Executive Order 12344, Naval Nuclear Propulsion Program, codified at 50 U.S.C. Section 2406(c).

- k. The Freedom of Information Act (FOIA), as amended, 5 U.S.C. Section 552.
 - l. Privacy Act of 1974 (Privacy Act), as amended, 5 U.S.C. Section 552a.
7. DEFINITIONS. Capitalized terms not otherwise defined above have the meanings given to them in this Definitions section.
- a. Alternative Dispute Resolution (ADR). A process for resolving a dispute through a neutral third party. ADR may take the form of mediation or other techniques. To attempt resolution of an Employee Concern through ADR, all parties must voluntarily agree to utilize an ADR process.
 - b. Anonymous Concern. An Employee Concern submitted by a Concerned Individual who does not reveal his/her identity.
 - c. Assessment. A planned and documented activity performed to determine the adequacy of, and compliance with, established policies, procedures, and other applicable documents and the effectiveness of their implementation.
 - d. Concerned Individual. A current DOE/NNSA federal, contractor or subcontractor employee who expresses an Employee Concern through the ECP.
 - e. Confidentiality. A request by an individual associated with an Employee Concern to have his or her identity protected, to the extent allowable by law, from all persons except ECP staff and those other individuals supporting the ECP that may have a need-to-know.
 - f. Conflict-of-Interest. A situation in which the individual responsible for investigating an Employee Concern has either a direct or indirect association with the Employee Concern, including situations where the individual with processing or investigatory responsibility has or had a personal relationship related to the parties to the Employee Concern, or the Employee Concern itself, that may place his or her objectivity in question to an outside observer.
 - g. Contracting Officer. A person with the authority to enter, administer, and/or terminate federal contracts on behalf of DOE and make related determinations and findings. The term includes authorized representatives of the Contracting Officer acting within the limits of their authority as delegated by the Contracting Officer.
 - h. Corrective Action. An action taken to effectively address a Substantiated or Partially Substantiated Employee Concern and to prevent the recurrence of the issue(s) that led to the Employee Concern.
 - i. Discrimination. Adverse treatment of a Concerned Individual because he/she raised an Employee Concern.

- j. DOE ECP Manager. The individual selected by a Head of a Departmental Element or Field Office Manager to lead the DOE ECP at headquarters or one or more Field Offices, or the person(s) the DOE ECP Manager designates to carry out his or her responsibilities under this Order. The ECP Director may also serve as the DOE ECP Manager for specified DOE headquarters employees.
- k. Duty-to-Act. The responsibility to immediately report to the cognizant federal manager responsible for the activity, and/or the applicable federal support office (e.g., safety or security) for the Field Office or facility, any Employee Concern that is associated with a potential imminent threat to national security, or imminent danger to an individual's safety, public health or safety, and/or the environment, or that could otherwise compromise the safety and/or security of DOE operations and/or facilities.
- l. ECP Director. The individual in the Office of Environment, Health, Safety and Security who serves as point of contact for this Order, serves as the DOE ECP Manager for those DOE headquarters federal and contractor employees whose office does not otherwise have a DOE ECP Manager, and performs the other functions described in this Order.
- m. Employee. Any current DOE/NNSA federal or contractor employee working for or supporting a DOE or NNSA project. For purposes of this Order, references to "contractor employees" includes contractor and subcontractor employees.
- n. Employee Concern. A good faith expression by a Concerned Individual that:
 - (1) An activity, policy, or practice of DOE or one of its contractors or subcontractors—including but not limited to, that which is related to the environment, safety, health, security, quality, and management of DOE facilities and/or operations—should be improved, modified, or terminated; or
 - (2) He or she has been subjected to HIRD (as defined in this Order) by DOE, or one or more of its contractors or subcontractors, for raising an Employee Concern.
- o. Field Office. Any of DOE's officially established organizations and components, including project offices or operations offices, located outside the Washington, D.C. metropolitan area.
- p. Field Office Manager. An individual who is the manager or head of a Field Office, including a project office or operations office manager, or the person(s) the Field Office Manager designates to carry out his or her responsibilities under this Order.
- q. Harassment. A behavior or an action taken by one or more supervisors or co-workers against or toward a Concerned Individual to belittle, humiliate, or impede that Concerned Individual in his or her work environment or job performance

because the Concerned Individual raised an Employee Concern. Harassment may include, but is not limited to, threatening, restraining, coercing, blacklisting, mocking, humiliating, and/or isolating a Concerned Individual.

- r. Harassment, Intimidation, Retaliation/Reprisal, or Discrimination (HIRD). A type of Employee Concern that includes allegations of Harassment, Intimidation, Retaliation/Reprisal, or Discrimination for raising an Employee Concern.
- s. Heads of Departmental Elements. Heads of Departmental Elements include DOE's Under Secretaries, Assistant Secretaries, the NNSA Administrator, Program Office Directors, Power Marketing Administrators, or equivalent DOE officials, or any other official(s) the Head of Departmental Element designates to carry out his or her responsibilities under this Order.
- t. Intimidation. A behavior or an action taken by a supervisor or co-worker against or toward any employee to cause the employee to be fearful of filing an Employee Concern; cease from pursuing an Employee Concern; or otherwise be afraid for his/her safety or job security as a result of filing an Employee Concern.
- u. Partially Substantiated. A type of finding with respect to an Employee Concern in which the DOE ECP Manager has corroborated only part of an Employee Concern, based on supporting evidence.
- v. Referral of an Employee Concern. The forwarding of an Employee Concern from the DOE ECP Manager or Contractor ECP Manager to another office or program or subject matter expert for evaluation. Such referral does not transfer ultimate decision making authority over the Employee Concern to the office or program providing such evaluation.
- w. Retaliation/Reprisal. An adverse action taken against or toward a Concerned Individual with respect to employment (e.g., discharge, demotion, or other negative action with respect to the Concerned Individual's compensation, terms, conditions or privileges of employment) because the employee raised an Employee Concern.
- x. Safety Conscious Work Environment. A work environment in which employees feel free to raise safety concerns to management (and/or a regulator) without fear of Retaliation/Reprisal.
- y. Safety Culture. An organization's values and behaviors modeled by its leaders and internalized by its members, which serve to make safe performance of work the overriding priority to protect the workers, the public, and the environment.
- aa. Self-Assessment. The compliance and performance-based Assessment conducted by the DOE ECP Manager of its program.

- bb. Substantiated. A type of finding with respect to an Employee Concern in which the DOE ECP Manager has corroborated the Employee Concern based on supporting evidence.
 - cc. Transfer of an Employee Concern. The relocation of an Employee Concern from the DOE ECP Manager or Contractor ECP Manager to another organization, when another resolution process exists to address the underlying issue(s) identified in the Employee Concern. Once transferred, the DOE ECP has no further responsibility to the Concerned Individual regarding the Employee Concern.
 - dd. Unsubstantiated. A type of finding with respect to an Employee Concern in which the DOE ECP Manager has not been able to corroborate the Employee Concern based on supporting evidence.
8. CONTACT. Questions surrounding this Order should be addressed to the ECP Director, Office of Environment, Health, Safety and Security, at 202-586-6642.

BY ORDER OF THE SECRETARY OF ENERGY:



DAN BROUILLETTE
Deputy Secretary

ATTACHMENT 1
CONTRACTOR REQUIREMENTS DOCUMENT
DOE O 442.1B, DEPARTMENT OF ENERGY EMPLOYEE CONCERNS PROGRAM

Department of Energy (DOE) and National Nuclear Security Administration contractors that have this Contractor Requirements Document (CRD) incorporated into their contracts are required to maintain an Employee Concerns Program (ECP) in accordance with this CRD. Regardless of the performer of the work, the contractor is responsible for compliance with the requirements of this CRD and for flowing down the requirements to subcontractors at all tiers to the extent necessary to ensure the contractor's compliance with the CRD's requirements.

Pursuant to this CRD, the contractor must:

1. Establish and maintain an ECP suitable for the organization to accept, process and resolve employee concerns in a timely manner.
2. Provide means to inform contractor and subcontractor employees regarding their rights and responsibilities to raise any employee concern related, but not limited to, the environment, safety, health, security, quality, and management of DOE facilities and operations, as well as harassment, intimidation, retaliation/reprisal, or discrimination, to the contractor's ECP or the DOE ECP.
3. Cooperate with and assist the DOE ECP Manager and his/her representatives in (i) assessments of the contractor's ECP program by the DOE ECP Manager, and (ii) the processing of contractor employee concerns that are submitted to the DOE ECP. This includes, but is not limited to, responding to the allegations in the employee concern, and making pertinent information, including relevant documentation, available to the DOE ECP Manager and his/her representatives, as necessary for DOE to address the submitted concern.
4. Implement corrective actions as directed by the contracting officer or his/her representatives.
5. Notify the contracting officer when the contractor becomes aware that a contractor employee has filed a formal complaint of retaliation/reprisal, including a complaint submitted pursuant to 10 CFR part 708, DOE Contractor Employee Protection Program; 41 U.S.C. § 4712, Enhancement of Contractor Protection from Reprisal for Disclosure of Certain Information, or a complaint filed with the U.S. Department of Labor under 29 C.F.R. part 24, Procedures for Handling Retaliation Complaints.
6. At least every six months, or more frequently if requested by the DOE ECP director, provide a summary of employee concerns activity data with respect to the contractor's ECP to the DOE ECP director and the appropriate DOE ECP Manager, through the Field Office Manager (or Head of Departmental Element, as applicable), or their respective designees.

7. As a means of establishing an effective program, the contractor's ECP should utilize ECP best practices, which may include, but are not limited to:
 - a. Ensuring that there is an ECP Manager who reports to a designated executive in the contractor management chain;
 - b. Establishing a case-file system of documentation and records for concerns raised;
 - c. Establishing a process that provides anonymity and confidentiality for employees who raise concerns unless the contractor is legally compelled to disclose such information;
 - d. Providing avenues for informal resolution of concerns;
 - e. Allowing for the use of alternate dispute resolution;
 - f. Referring concerns to other appropriate organizations to investigate a concern; and
 - g. Documenting acceptance or dismissal of a concern, including "closure" of a concern after an investigation into its merits.

The complete implementing documentation for the contractor's ECP must be provided to the contracting officer no later than 90 calendar days after date that this CRD becomes incorporated into an existing contract or by the effective date of a new contract that incorporates this CRD. The contracting officer has 60 calendar days in which to provide DOE comments or approval.

APPENDIX A

ADDITIONAL REQUIREMENTS APPLICABLE TO DOE ECPs

DOE ECP Managers are responsible for (i) developing ECP implementing documentation that sets forth the policies and procedures to be followed by the DOE ECP, (ii) obtaining approval of the ECP implementing documentation from the appropriate Head of Departmental Element or Field Office Manager, and (iii) implementing the DOE ECP in accordance with the approved implementing documentation. The implementing documentation must address the following:

1. Intake, Processing of Employee Concerns, and Confidentiality.
 - a. Intake of Employee Concerns. When a Concerned Individual initiates an Employee Concern, the DOE ECP Manager must perform an intake with the Concerned Individual, if the identity of the Concerned Individual is known, to clearly understand and document the Employee Concern.
 - b. Processing of Employee Concerns. The DOE ECP Manager must inform the Concerned Individual about the ECP process and may inform the Concerned Individual of other formal and informal avenues of redress available to the Concerned Individual to attempt to resolve an Employee Concern.
 - c. Confidentiality.¹ Records created or maintained as part of the ECP are federal records and, where applicable, are subject to the Privacy Act and/or the Freedom of Information Act (FOIA). To the extent possible, the DOE ECP Manager must protect the identities of the individual(s) who identify concerns, any individual(s) who are subject(s) of the concern, and/or information that may compromise the identity of individuals interviewed or named by interviewees in connection with the investigation.
 - (1) A Concerned Individual may submit an Employee Concern without revealing his/her identity, in which case the Employee Concern is referred to as an Anonymous Concern.
 - (2) If a Concerned Individual or a witness requests Confidentiality, the DOE ECP Manager must maintain Confidentiality to the greatest extent possible. The DOE ECP Manager must inform the Concerned Individual of the limitations on protection of Confidentiality under circumstances such as:

¹ Confidentiality is the cornerstone of an effective ECP. Situations exist in which Concerned Individuals may fear Retaliation/Reprisal or Intimidation by supervisors or co-workers if they provide information to the ECP. Recognizing that some individuals will raise Employee Concerns only if they believe their identities will not be disclosed, the protection of the identity of these individuals is a significant factor in ensuring cooperation of Concerned Individuals.

- (a) The existence of a Duty-to-Act (additional information regarding the Duty-to-Act is provided in paragraph 3.a. of this Attachment);
 - (b) Disclosure or reporting required by law, rule, regulation, court order or DOE Order;
 - (c) The extent to which an employee may be identified with the Employee Concern (e.g., the employee has previously voiced the Employee Concern, in whole or part, to a supervisor or co-workers; the uniqueness of the Employee Concern); and
 - (d) The extent to which Confidentiality may impact the DOE ECP's ability to thoroughly investigate an Employee Concern.
2. Documentation; Records. The DOE ECP Manager must document an Employee Concern in an ECP case file (hard copy and/or electronic) in sufficient detail to permit processing.
 - a. The DOE ECP Manager must maintain any supporting documentation and/or evidence provided by the Concerned Individual, or obtained or prepared by the DOE ECP Manager, in the Concerned Individual's ECP case file.
 - b. DOE ECP case files and other relevant records must be maintained in accordance with DOE O 243.1B, *Records Management Program*, and other applicable laws, regulations, Departmental directives and direction.
 - c. The DOE ECP Manager must also maintain necessary records to track the following information:
 - (1) Number of Employee Concerns,
 - (2) Categories of Employee Concerns,
 - (3) Disposition of Employee Concerns,
 - (4) Timeframes for resolving Employee Concerns, and
 - (5) Other measures that may be requested by the ECP Director.
 - d. As directed by the ECP Director, the DOE ECP Manager must enter information described above in paragraph 2.c. of this Attachment into the ECP agency-wide system for tracking and trending the types and numbers of Employee Concerns.
3. Screening of Employee Concerns.
 - a. **Duty to Act.** When an Employee Concern is received, the DOE ECP Manager must perform an initial screening of the Employee Concern to evaluate whether there is a Duty-to-Act. If the DOE ECP Manager determines there is a Duty-to-Act, required notifications and any other appropriate action must be taken

immediately. The DOE ECP Manager must notify the Concerned Individual, if the identity of the Concerned Individual is known, of a Duty-to-Act situation. The DOE ECP Manager may suspend the processing of an Employee Concern until after a Duty-to-Act notification or other related action, and must resume the processing of the Employee Concern in a timely manner.

- b. The intent of the ECP screening process is to provide a consistent method by which each Employee Concern is reviewed and evaluated, and a path for resolution is identified. The screening must be performed in a time period consistent with the nature and severity of the Employee Concern.
- c. During the screening process, the DOE ECP Manager must:
 - (1) Identify any required notifications to other organizations.
 - (2) Identify any potential or perceived Conflict-of-Interest in the processing of the Employee Concern. In the event such conflicts are identified, mitigation measures must be documented.
 - (3) Consider appropriate methods by which to process the Employee Concern, consistent with paragraph 4 of this Attachment.
4. Methods for Processing Employee Concerns. In processing an Employee Concern, the DOE ECP Manager must use one or more of the following methods as appropriate:
 - a. Dismissal. The DOE ECP Manager may dismiss an Employee Concern when appropriate (e.g., when the Employee Concern is outside the scope of the ECP, and transfer of the Employee Concern to another organization is not appropriate; or when the DOE ECP Manager determines that the Employee Concern is too general to investigate or has not been made in good faith).
 - b. Informal Resolution. In those instances when a Concerned Individual has raised an issue that does not meet the definition of “Employee Concern,” the DOE ECP Manager may determine if there are informal means to close the issue, and the DOE ECP Manager may decide to pursue such informal means.
 - c. Withdrawal. Upon written or verbal request, the Concerned Individual may withdraw an Employee Concern at any time.
 - d. ADR. ADR may be used as a mechanism for resolving an Employee Concern. ADR involves the use of a neutral third party and may take the form of mediation or other techniques. To resolve an Employee Concern through ADR, all parties must voluntarily agree to utilize the ADR process.
 - e. Transfer of an Employee Concern to Another Organization. The DOE ECP Manager may transfer an Employee Concern in writing to another organization with subject matter expertise, or when another established resolution process exists to address the Employee Concern raised (e.g., the Differing Professional

Opinions process under DOE O 442.2, *Differing Professional Opinions for Technical Issues Involving Environment, Safety and Health Technical Concerns*). If an Employee Concern is transferred to another organization:

- (1) The DOE ECP Manager must inform the Concerned Individual of the transfer of the Employee Concern if the identity of the Concerned Individual is known.
- (2) The office that accepts the transfer will have responsibility and jurisdiction to address the Employee Concern and is responsible for communicating the results to the Concerned Individual if the identity of the Concerned Individual is known.
- (3) Once transferred, the DOE ECP has no further responsibility to the Concerned Individual regarding the Employee Concern.
- (4) Note: The DOE ECP Manager may transfer an Employee Concern raised by a contractor employee to the Contractor ECP for action only in cases where, after consultation, the contractor employee and the DOE ECP Manager agree that such transfer is appropriate.

f. Referral of an Employee Concern to Another Organization. The DOE ECP Manager may refer an Employee Concern in writing to another office or program for evaluation. Such referral does not transfer ultimate decision making authority over the Employee Concern to the office or program providing such evaluation.

- (1) If an Employee Concern is referred to another organization, the DOE ECP Manager must inform the Concerned Individual of the referral if the identity of the Concerned Individual is known.
- (2) Upon accepting the concern, the receiving office is responsible for investigating the Employee Concern and documenting its findings to the DOE ECP Manager.
- (3) The DOE ECP Manager must evaluate the response to verify it addresses the Employee Concern. The DOE ECP Manager may investigate further if the response does not fully address the Employee Concern.
- (4) Note: The DOE ECP Manager may refer an Employee Concern raised by a contractor employee to the Contractor ECP for action in cases where, after consultation, the contractor employee and the DOE ECP Manager agree that such referral is appropriate. As in the case of other referrals, the DOE ECP Manager must evaluate the response from the Contractor ECP to verify it addresses the Employee Concern. The DOE ECP Manager may investigate further if the response does not fully address the Employee Concern.

- g. Investigation. The DOE ECP Manager may initiate an investigation to examine an Employee Concern. The investigation may involve interviews, inspection of relevant documents, sites, or equipment, and an evaluation of practices being followed. The DOE ECP Manager may bring in outside subject matter experts to help conduct investigations. ECP investigations should provide sufficient evidence to allow the DOE ECP Manager to determine if the Employee Concern is Substantiated, Partially Substantiated or Unsubstantiated.
5. Closure of Employee Concerns. An Employee Concern must be tracked until closure. The goal of the ECP is to close Employee Concerns within 90 calendar days from date of receipt of the Employee Concern. However, closure of the Employee Concern will depend on the supporting information and circumstances of the Employee Concern. An Employee Concern is considered closed when one of the following has occurred and been documented by the DOE ECP Manager in the ECP case file:
 - a. The Employee Concern has been dismissed by the DOE ECP Manager or resolved informally.
 - b. The Concerned Individual has withdrawn the Employee Concern and the nature of the Employee Concern does not require further evaluation or action.
 - c. The Employee Concern has been resolved through ADR.
 - d. The Employee Concern has been transferred to another organization.
 - e. The Employee Concern has been investigated and/or otherwise addressed by the organization to whom the concern was referred, and the following steps have been taken:
 - (1) The organization to whom the concern was referred has documented its findings to the DOE ECP Manager, and the DOE ECP Manager has evaluated the response to verify it addresses the Employee Concern.
 - (2) The DOE ECP Manager has communicated the results to the Concerned Individual if the identity of the Concerned Individual is known.
 - (3) The DOE ECP Manager has briefed management on any issues for management attention.
 - f. The Employee Concern has been investigated by the DOE ECP Manager to determine if the Employee Concern is Substantiated, Partially Substantiated or Unsubstantiated, and the following steps have been taken:
 - (1) The DOE ECP Manager has prepared a written report describing the DOE ECP Manager's findings.
 - (2) If the Employee Concern has been Substantiated or Partially Substantiated by the DOE ECP Manager:

- (a) If the Concerned Individual is a federal employee, the report must include the DOE ECP Manager's recommendations for resolution of the Employee Concern, and the DOE ECP Manager must provide a copy of such report to the Field Office Manager (or, for headquarters matters, the appropriate Head of Departmental Element).
 - (b) If a Concerned Individual is a contractor employee, the report must include the DOE ECP Manager's recommendations for resolution of the Employee Concern, and the DOE ECP Manager must provide a copies of such report to the appropriate Contracting Officer and Field Office Manager (or, for headquarters matters, the appropriate Head of Departmental Element).
 - (c) The DOE ECP Manager must document the response of DOE management and/or the contractor (as applicable) to the Employee Concern in the ECP file.
 - (d) Any Corrective Actions approved by the Field Office Manager (or, for headquarters matters, the appropriate Head of Departmental Element) must be identified and captured in a tracking system, and their completion documented. The DOE ECP Manager must inform appropriate levels of DOE management when actions are either ineffective or not timely in resolving Employee Concerns or correcting identified issues.
- (3) The Concerned Individual, if the Concerned Individual's identity is known, has been notified regarding the disposition of the Employee Concern (e.g., whether the Employee Concern was Substantiated, Partially Substantiated, or Unsubstantiated, and any Corrective Actions taken).
Note: to protect the Confidentiality of those who provided information or other input to an investigation, the specifics of the investigation must not be provided in the closure summary provided to the Concerned Individual.

6. Reports; Assessments.

- a. Reports. DOE ECP Managers must prepare reports at least every six months for their respective DOE ECPs, including the information in paragraph 2.c. of this Appendix, and provide a copy of such reports to the ECP Director. The DOE ECP Manager must review the reports with the Head of Departmental Element, or Field Office Manager, as appropriate, for lessons learned and possible trends.
- b. Assessments.
 - (1) The DOE ECP Manager must conduct a compliance and performance-based Self-Assessment of its ECP program within one year of program approval, and then at least once every two years afterwards. The DOE ECP Manager must document the results in a Self-Assessment report, and

provide a copy of the report to the ECP Director. The DOE ECP Manager must review the Self-Assessment reports with the Head of Departmental Element, or Field Office Manager, as appropriate, for lessons learned and possible trends. Problems that hinder the ECP from achieving its objectives must be identified and corrected.

- (2) The DOE ECP Manager must perform Assessments of each new Contractor ECP within one year of program plan approval, and at least once every two years thereafter.
 - (3) The DOE ECP Manager may conduct additional Assessments of federal Field Office and contractor organizations, as appropriate, in support of a positive Safety Culture and a Safety Conscious Work Environment.
7. Promoting Awareness of the ECP. The process and methods (e.g., website, brochures, posters, emails, and continuing training) by which the DOE ECP Manager will publicize the role and availability of both the Contractor's ECP and the DOE ECP, including how and where Employee Concerns can be raised and information on employee rights and responsibilities to report Employee Concerns.
 - a. New Employees. Employees must be notified of the ECP upon being hired (e.g., new employee orientation, brochures, emails).
 - b. Existing Employees. On at least an annual basis, existing employees must be notified of the availability of the ECP. For Field Offices, the DOE ECP Manager shall coordinate with the Field Office Manager to provide the content of the annual notice regarding the DOE ECP. The ECP Director provides support to the Deputy Secretary in preparing the annual notice to federal and contractor employees regarding the ECP.
8. Organization/Structure/Interface. The process that the DOE ECP Manager will use to disposition Employee Concerns in an independent and objective manner, and how the DOE ECP Manager will coordinate with appropriate organizations in the resolution of Employee Concerns. This includes a description of the way in which:
 - a. The DOE ECP Manager can operate independently from line management and actions which require line management involvement;
 - b. The DOE ECP Manager will have direct access to the head of the organization or his or her designee; and
 - c. The DOE ECP Manager will interface with other organizations (e.g., legal counsel; human resources; health, safety, security, environment and quality assurance) to evaluate Employee Concerns in an independent and objective manner.

9. Training and Qualification. The process by which personnel responsible for implementing the ECP or investigating Employee Concerns must be sufficiently trained to properly carry out their responsibilities.