

**NRC Public Meeting on ADR
October 18, 2002**

**Legal Bases for
NRC Implementation of an
Alternative Dispute Resolution
Program**

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Overview

- ▶ **Under the Administrative Dispute Resolution Act of 1996 the NRC has *authority* to implement an ADR program**
- ▶ **Since 1992, NRC has had a *Policy* supporting and encouraging the incorporation of ADR in NRC activities**
- ▶ **ADR is legally permissible as a part of an agency's *enforcement* process**
- ▶ **The Act provides agencies with fairly wide *latitude* in developing ADR appropriate processes**



The Administrative Dispute Resolution Act of 1996

- ▶ Permits use of ADR in *enforcement* cases — 5 U.S.C. 572
 - ▶ (“An agency may use a dispute resolution proceeding for the resolution of an issue in controversy that relates to an administrative program, if the parties agree to such a proceeding.”)
- ▶ “Administrative Program” — 5 U.S.C. 571(2)
 - ▶ (“A Federal function which *involves protection of the public interest and the determination of rights, privileges and obligations of private persons* through rule making, adjudication, licensing, or investigation”)



The Administrative Dispute Resolution Act of 1996

- ▶ Important Statutory Features
 - ▶ Confidential communications between the parties and the neutral are *exempt from FOIA*
 - ▶ “*Neutral*” is broadly defined
 - ▶ The government *cannot unilaterally withdraw* from a binding arbitration award
 - ▶ Previously, agency heads had *unilateral* authority to *vacate* any award within 30 days



Confidentiality

- ▶ **General intent of Act is to *maintain confidentiality***
 - ▶ “dispute resolution communication”
 - ▶ “communication provided in confidence to the neutral”
- ▶ **The Act provides *exceptions***
- ▶ **Parties may agree to confidentiality procedures other than what is contained in the Act**
 - ▶ Parties can, execute a *confidentiality agreement* to ensure confidentiality of joint sessions
- ▶ **APA “*Open Meeting*” rules apply only at Commission level (see 5 U.S.C. 552b)**



Neutrals

- ▶ **Under the Act, parties may choose “a permanent or temporary officer or employee of the federal government *or any other individual who is acceptable to the parties to a dispute resolution proceedings...*”**
 - ▶ **Choice of mutually agreeable neutral is likely to promote parties’ *confidence in process* and willingness to more fully *support neutral’s mediation efforts***



Role of the Agency

- ▶ **The Act does not require an agency to be a party to an ADR proceeding**
- ▶ ***NRC can define its role based on the goal of the ADR proceeding; flexibility required***
 - ▶ *Reconciliation between licensee and worker (private remedy) v. Enforcement (NRC interest in work environment)*
- ▶ **NRC protects public interest**
 - ▶ *Agency observes process or is a disputant*
 - ▶ *Agency reviews proposed resolution to ensure the regulatory interests are addressed*

