

Office of Enforcement

Post-Investigation ADR

Frequently Asked Questions

1. What is the post-investigation ADR program?

Post-investigation ADR refers to the use of mediation anytime after an OI investigation is complete and an enforcement panel concludes that pursuit of an enforcement action appears warranted. The two types of enforcement cases eligible for ADR after an investigation is complete are discrimination and other wrongdoing cases.

2. Is participation in the program voluntary?

Participation in the program is entirely voluntary. Either party may withdraw from negotiations at any time for any reason.

3. When is post-investigation ADR available?

ADR will normally be considered at three stages of the enforcement process after OI has completed an investigation. The three stages are: (1) prior to a pre-decisional enforcement conference, (2) after issuance of a NOV and proposed civil penalty and (3) after the imposition of a civil penalty but prior to a hearing request.

4. What is mediation?

Mediation is an informal process in which a trained neutral (the “mediator”) works with parties to help them reach a resolution. The mediator, who has no stake in the outcome and no power to make decisions, uses consensus-building skills and knowledge of negotiation to help parties find solutions. The mediator focuses the attention of the parties upon their needs and interests rather than on their stated positions. Mediation gives parties an opportunity to discuss issues, clear up misunderstandings, be creative, find areas of agreement, and reach a final resolution of the issues.

5. Who administers the pre-investigation ADR program?

NRC has a contract with Cornell University's Scheinman Institute on Conflict Resolution (“Cornell”) to serve as the neutral program administrator for the post-investigation ADR program. Cornell manages the program's day-to-day operations, including handling mediation process logistical matters and working with parties to select a mediator from Cornell's roster of mediators. Cornell certifies a network of independent mediators who help the parties find ways to reach a common understanding and settle their disputes.

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6. Who are the parties to post-investigation ADR?

The parties to mediation are the NRC and, depending on the case, a licensee, an employee of the licensee or the licensee's contractor.

7. Who pays the fees and expenses of the mediator?

The parties normally equally share the fees and expenses of the mediator and any meeting room fees. The parties are responsible for their own expenses such as travel, lodging, and legal fees, if any.

8. Who serves as the lead negotiator for the NRC in mediation sessions?

For discrimination cases, the Director, Office of Enforcement, serves as the lead negotiator for the NRC. For other wrongdoing cases, the regional administrator will normally serve as the lead negotiator for the NRC.

9. Will the OI report associated with the underlying violation or potential violation be provided to the other party for mediation?

The redacted OI report (not including exhibits) will normally be provided to the licensee when the choice of ADR or PEC is offered. In other wrongdoing cases, the OI report will not routinely be offered to the licensee prior to ADR. However, the OI report may be provided, as necessary, during the negotiations with the licensee.

10. What happens if the parties reach a settlement agreement?

The terms of a settlement agreement are normally confirmed by order i.e. issuance of a confirmatory order. The confirmatory order will describe the terms of the settlement agreement and the events leading up to the issuance of the confirmatory order.

11. What happens if the parties do not reach a settlement agreement?

The next step in the enforcement process would follow as though the parties had not engaged in mediation. For example, if the parties do not reach a settlement agreement prior to a pre-decisional enforcement conference, the next step would be for the licensee, in response to the NRC's finding of apparent violation, to elect to respond in writing to the apparent violation or participate in a pre-decisional enforcement conference.

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12. Are confirmatory orders public documents?

Confirmatory orders are public documents and are available in ADAMS.

13. Is the process confidential?

With limited exception (e.g. intent to commit violence or court order) and except for the issuance of the confirmatory order which describes the events leading up to the issuance of the confirmatory order and the terms of the settlement, the mediation process is confidential. The mediator is prohibited from discussing the mediation proceedings or testifying on anyone's behalf concerning the mediation.

14. Does the NRC issue a press release after the issuance of a confirmatory order?

The NRC normally issues a press release shortly after the issuance of a confirmatory order.