

## NUCLEAR REGULATORY COMMISSION

[NUREG - 1600]

### NRC Enforcement Policy

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Policy statement: revision.

**SUMMARY:** The U.S. Nuclear Regulatory Commission (NRC or Commission) is publishing a revision to its Enforcement Policy (NUREG-1600, "General Statement of Policy and Procedures for NRC Enforcement Action) to include an interim enforcement policy regarding the use of Alternative Dispute Resolution (ADR) in the enforcement program for discrimination and other wrongdoing cases.

The Commission published a proposed pilot program to address the use of ADR in the enforcement program in the *Federal Register* (69 FR 21166) on April 20, 2004. The Commission received input from the public, in response to 69 FR 21166, expressing their support for the pilot program and providing comments.

**DATES:** The ADR process will be implemented in a phased approach. Because only the licensee and the NRC are involved in ADR after an OI investigation is complete, the staff will begin offering the opportunity to engage in ADR during the post investigation enforcement process upon issuance in the *Federal Register*. The staff will begin offering early ADR to whistleblowers who have established a *prima facie* case of discrimination approximately 30 days after the issuance of the *Federal Register* notice. The additional delay will allow the staff to complete the development of a brochure providing additional information regarding ADR in general and the NRC's program in particular. Comments on this revision to the Enforcement Policy may be submitted on or before (30 days after publication in the *Federal Register*).

**ADDRESSES:** Submit written comments to: Michael T. Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop: T6D59, U. S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Hand deliver comments to: 11555 Rockville Pike, Rockville, Maryland, between 7:30 a.m. and 4:15 p.m., Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, Room O1F21, 11555 Rockville Pike, Rockville, MD. You may also e-mail comments to [nrcprep@nrc.gov](mailto:nrcprep@nrc.gov).

**FOR FURTHER INFORMATION CONTACT:** Nick Hilton, Senior Enforcement Specialist, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, (301) 415-3055, e-mail [ndh@nrc.gov](mailto:ndh@nrc.gov).

## SUPPLEMENTARY INFORMATION

The NRC received 11 sets of comments in response to the proposed pilot program published in the *Federal Register* on April 20, 2004. All of the commentors were either power reactor licensees or representatives of power reactor licensees. All commentors supported the pilot program with most offering that the comments provided either clarification opportunities or thoughts for future consideration after the pilot has operated for a period of time. The comments are available in their entirety on the Office of Enforcement's ADR web page at <http://www.nrc.gov/what-we-do/regulatory/enforcement/adr.html#comments>.

The following is a synopsis of stakeholder comments received regarding the proposed ADR pilot program and the NRC response to the suggested changes.

Comment: The NRC should reconsider the treatment of an ADR settlement occurring after a formal enforcement action is taken (e.g., a notice of violation (NOV) is issued) as a factor in determining a future escalated enforcement (civil penalty) amount. The proposed Interim Enforcement Policy on the use of ADR stated that settlements occurring after a formal enforcement action is taken will count as an enforcement case for purposes of determining whether identification credit is considered when assessing the amount of a civil penalty.

Response: The NRC would allow the status of a particular case being mediated to be negotiated during the dispute resolution session. Therefore, to allow greater flexibility, the NRC revised Section IV.A of the interim policy to state that, "settlements under the enforcement ADR program occurring after a formal enforcement action is taken (e.g. an NOV

is issued) *may* count as an enforcement case for purposes of determining whether identification credit is considered” (emphasis added).

Comment: A press release should not be issued for those cases where an agreed upon settlement is reached through ADR after the Office of Investigations (OI) completes its investigation given that a confirmatory order is made public for such cases.

Response: A press release is standard agency practice when issuing an order. In many cases, the public may be aware of the issue through previous news articles for cases that had a proposed civil penalty, documents contained in ADAMS, the *Federal Register*, or OE web page. The press release will serve to publically close out the issue, and increase the acceptance and public confidence in the ADR process.

Comment: The policy should be flexible enough to allow for a cooling off period prior to attempting to resolve the dispute through ADR without impacting the 90-day time frame for Early ADR.

Response: The process of notifying the NRC, establishing a *prima facie* case, agreeing to mediate, choosing a mediator, and scheduling the mediation session should be of sufficient duration to allow both parties an ample cooling off period. One purpose of the NRC program is to achieve a timely resolution. A delay in the implementation of the process may also put undue pressure on the employee due to the Department of Labor (DOL) timeliness requirements, lengthen potential unemployment time, etc.

Comment: An OI investigation or enforcement action should not be initiated if a settlement between the parties has been reached in principle.

Response: In Early ADR, the case is not referred to OI until after the neutral returns the case back to the NRC. However, a settlement is expected to be reached and signed within 90 days from when the parties agree to attempt ADR. The NRC may allow a small extension to the 90-day limit to allow for completion of a settlement agreement.

Comment: The NRC should monitor the ADR process to ensure it is not abused by employees since the process could create an artificial incentive for employee's to seek ADR for a claim of discrimination during the pilot program.

Response: Prior to entering into ADR, an employee must articulate, and an Allegation Review Board must then determine that, a *prima facie* case exists. In addition, a licensee's involvement in ADR is voluntary. If a licensee believes that the other party is attempting to abuse the ADR process, they do not have to agree to participate. The NRC will also periodically assess the program in order to correct any problems such as abuse.

Comment: The policy should be explicit in that a settlement reached among the parties without the aid of a neutral will have the same effect as a settlement reached with the help of a neutral. Further, no OI investigation or enforcement should occur in any cases where a settlement or resolution has been reached through ADR.

Response: A minor change was made to the interim policy to reflect that notification to the NRC that a settlement has been reached must be made prior to initiation of an investigation. This was implicit in the proposed policy. Section III.A states that "If notified of the settlement, the NRC will review the settlement for restrictive agreements . . . assuming no such restrictive agreements exist, the NRC will not investigate or take enforcement action."

However, for those cases where a settlement agreement between the whistleblower and the licensee or contractor is reached after the initiation of an OI investigation or late in the DOL process enforcement action will be considered. If the NRC believes enforcement is appropriate, the licensee or contractor would be able to request ADR with the NRC to discuss the appropriate enforcement sanctions and corrective actions.

Comment: Settlement documents submitted to the NRC for review need not include names of individuals, numerical financial terms, or other information that would reveal specific personnel information and actions. Further, an unsigned, proposed settlement agreement constitutes a draft document, and should be withheld from public disclosure under the same confidentiality provisions that govern the ADR process in general.

Response: As part of the Early ADR portion of the program, signed and completed settlement documents are to be submitted to the NRC in their final form for review. As noted in the proposed interim policy, these documents are treated consistent with the allegation program procedures. As such, the settlement agreements will not routinely be made public. If requested under the Freedom of Information Act, a settlement agreement would be redacted as appropriate. The program does not contemplate that draft agreements will be submitted to the NRC in early ADR.

Comment: OI reports should be provided to licensees in other wrongdoing cases in addition to discrimination cases.

Response: This issue is outside of the ADR pilot program. The staff requirements memorandum (SRM) for SECY 02-0166, dated March 26, 2003, directed the NRC staff (staff) to release OI reports prior to a predecisional enforcement conference (PEC) for cases

involving discrimination. This SRM does not apply to other wrongdoing cases. However, as the NRC gains experience with the release of OI reports for discrimination cases, the staff may consider recommending to the Commission that OI reports be released for other wrongdoing cases.

Comment: DOL should inform complainants of NRC's Early ADR process to ensure that such individuals, who may not have contacted the NRC, are made aware of the Early ADR process.

Response: The NRC has no authority over the DOL process. Requesting the DOL to discuss the NRC's ADR program could suggest that the NRC does not support employee's use of the DOL process. Also, experience indicates that individuals are more likely to come to the NRC and DOL, or the NRC alone, than they are to go to the DOL alone.

The staff has had informal discussions with the Occupational Safety and Health Administration (OSHA), and plans to have additional discussions with OSHA management regarding the NRC's Enforcement Policy in more detail. This will include discussions regarding the option for whistleblowers to enter into the NRC's Early ADR process.

In addition, individuals will be made aware of the availability of the ADR process through various means including the *Federal Register* and the NRC public web site. Other means of publicizing the process are also being considered. In addition, licensees are free to settle with individuals using licensee sponsored programs to resolve NRC or DOL issues.

Staff comment: While preparing to implement the pilot program, the NRC staff identified that additional flexibility is needed regarding who performs administrative or intake neutral functions.

Response: Section II.A of the interim policy was revised to allow flexibility for the staff to use Office Allegation Coordinators or a third party organization to serve as intake neutrals who would assist the parties in resolving the dispute. As a result of this revision, conforming changes were also made to Sections II.A, II.B.5, and II.B.6.

### **Paperwork Reduction Act**

This policy statement does not contain new or amended information collection requirements subject to the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.) Existing requirements were approved by the Office of Management and Budget (OMB), approval number 3150-0136. The approved information collection requirements contained in this policy statement appear in Section VII.C.

### **Public Protection Notification**

The NRC may not conduct or sponsor, and a person is not required to respond to, collection of information unless it displays a currently valid OMB control number.

### **Small Business Regulatory Enforcement Fairness Act**



In accordance with the Small Business Regulatory Enforcement Fairness Act of 1996, the NRC had determined that this action is not a major rule and has verified this determination with the Office of Information and Regulatory Affairs of OMB.

Accordingly, the NRC Enforcement Policy amended by including the Interim Enforcement Policy Regarding the use of Alternate Dispute Resolution in the Enforcement Program reads as follows:

**GENERAL STATEMENT OF POLICY AND PROCEDURE FOR NRC ENFORCEMENT  
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**INTERIM ENFORCEMENT POLICIES**

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**Interim Enforcement Policy Regarding Enforcement Discretion for Certain Fire Protection Issues (10 CFR 50.48)**

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**Interim Enforcement Policy Regarding the use of Alternative Dispute Resolution**

**I. Introduction**

**A. Background**

This section sets forth the interim enforcement policy that the NRC will follow to undertake a pilot program testing the use of Alternative Dispute Resolution (ADR) in the enforcement program.

**B. Scope**

The pilot program scope consists of the trial use of ADR for cases involving: (1) alleged discrimination for engaging in protected activity prior to an NRC investigation; and (2) both discrimination and other wrongdoing cases after the Office of Investigations has completed an investigation. Specific points in the enforcement process where ADR may be requested are specified below. Mediation will be the form of ADR typically utilized. Certain cases may only require facilitation, a process where the neutral's function is primarily to support the communication process rather than focusing on the parties reaching a settlement.

**Note:** Although the NRC's ADR program may cause the parties to negotiate issues which may also form the basis for a claim under Section 211 of the Energy Reorganization Act of 1974, as amended, the Department of Labor's (DOL) timeliness requirements for filing a claim are in no way altered by the NRC's program.

In cases involving an allegation of discrimination, any underlying technical issue will be treated as a separate issue, or concern, within the allegation program. The allegation program will be used to resolve concerns (typically safety concerns) and issues other than the discrimination complaint.

## **II. General**

### **A. Responsibilities and Program Administration**

The Director, OE, is responsible for the overall program. In addition, the Director, OE, will serve as the lead NRC negotiator for cases involving discrimination after OI completes an investigation. The Director, OE, may also designate the Deputy Director, OE, to act as the lead negotiator.

Regional Administrators are designated as the lead NRC negotiator for cases involving wrongdoing other than discrimination. The Regional Administrator may designate the Deputy Regional Administrator to act as the lead negotiator or the Director or Deputy Director, OE, may also serve as the lead negotiator for other wrongdoing cases.

The Program Administrator will provide program oversight and support for each region and headquarters program offices. Program and neutral evaluations will be provided to the Program Administrator. The Program Administrator may serve as the intake neutral for post investigation ADR. An "intake neutral" develops information and processes information for mediation. As an intake neutral, the confidentiality provisions discussed below will apply.

The Office Allegation Coordinators (OACs) are normally a complainant's first substantive contact when a concern regarding discrimination is raised. As such, the OACs may serve as an intake neutral who develops information and processes the necessary information for mediation under Early ADR. The OAC has the option to refer the whistleblower to the third party neutral to process the necessary information for mediation under Early ADR. The confidentiality

provisions in Section II.B.7 will apply to the OAC, third party intake neutral, and Program Administrator. The OAC will also process documentation necessary to operate the program.

## B. General Rules/Principles

Unless specifically addressed in a subsequent section, the rules described in this section apply generally throughout the ADR program, regardless of where in the overall enforcement process the ADR sessions occur.

1. *Voluntary.* Use of the NRC ADR program is voluntary, and any participant may end the mediation at any time. The goal is to obtain an agreement satisfactory to all participants on issues in controversy.
2. *Neutral qualification.* Generally, a neutral should be knowledgeable and experienced with nuclear matters or labor and employment law. However, any neutral that is satisfactory to the parties is acceptable.
3. *Roster of neutrals.* OE will maintain a list of organizations from which services of neutrals could be obtained. The parties may select a mediator from any of these organizations; however, the parties are not required to use the organizations provided and any neutral mutually agreeable to the parties is acceptable.

4. *Mediator selection.* If the parties have not selected a mediator within fourteen days, the Program Administrator or OAC may propose a mediator for the parties' consideration.
  
5. *Neutrality.* Mediators are neutral. The role of the mediator is to provide an environment where all participants will have an opportunity to resolve their differences. The parties should each consult an attorney or other professional if any question of law, content of a proposed agreement on issues in controversy, or other issues exists.

For Early ADR, the OAC or third party neutral will serve as an intake neutral. Should any party seek to discuss the NRC's enforcement ADR process in detail, the party should be referred to the OAC or third party neutral. The OAC will initiate discussion of the option to mediate and process the necessary documentation. Subsequently, for post investigation ADR, the program administrator or third party neutral will serve as the intake neutral. Due to the nature of conversations that typically occur between an intake neutral and the parties, these conversations will also be considered confidential.

6. *Mediation sessions.* Once selected by the parties and contracted by the OAC or third party intake neutral, the mediator will promptly contact each of the parties to discuss the mediation process under the Program, reconfirm party interest in proceeding, establish a date and location for

the mediation session and obtain any other information s/he believes likely to be useful. The mediator will preside over all mediation sessions, and will be expected to complete the mediation within 90 days after referral unless the parties, and the NRC if not a party, agree otherwise. At the conclusion of the mediation, parties will be asked to fill out and submit an evaluation form for the mediator that will be sent to the Program Administrator.

Normally, a settlement is expected to be reached and signed within 90 days from when the parties agree to attempt ADR. A principal reason for Early ADR is the quick resolution of the claim, thereby improving the safety conscious work environment (SCWE). If the parties cannot agree to a settlement within 90 days, the NRC must assume a settlement will not be reached and continue with the investigation and enforcement process. Where good cause is shown and all parties agree, the NRC may allow a small extension to the 90 day limit to allow for completion of a settlement agreement.

Settlement agreements in Early ADR will not be final until 3 days after the agreement has been signed. Either party may reconsider the settlement agreement during the 3 day period. Subsequent concerns regarding implementation of the settlement agreement should be directed to the neutral, or if necessary, the OAC.

7. *Confidentiality.* The mediator will specifically inform all parties and other attendees that all mediation activities under the Program are subject to the confidentiality provisions of the Administrative Dispute Resolution Act, 5 U.S.C. Section 574; the Federal ADR Council's guidance document entitled "Confidentiality in Federal ADR Programs;" and the explicit confidentiality terms set forth in the Agreement to Begin Voluntary Mediation signed by the parties. The mediator will explain these confidentiality terms and offer to answer questions regarding them.
8. *Good Faith.* All participants will participate in good faith in the mediation process and explore potentially feasible options that could lead to the management or resolution of issues in controversy.
9. *Not legal representation.* A mediator is not a legal representative or legal counsel. The mediator will not represent any party in the instant case or any future proceeding or matter relating to the issues in controversy in this case. The mediator is not either party's lawyer and no party should rely on the mediator for legal advice.
10. *Mediator Fees.* If Early ADR (defined below) is utilized, the NRC, subject to the availability of funds, will pay the mediator's entire fee. For cases where a licensee requests ADR subsequent to the completion of an OI report, the licensee requesting ADR will pay half of the mediator's fee and the NRC, subject to the availability of funds, will pay half. The NRC



will recover the mediator fees it pays through annual fees assessed to licensees under 10 CFR Part 171.

11. *Exceptions.* The only exception to the offering of Early ADR by the NRC will be abuse of the program, e.g., a large number of repetitive requests for ADR by a particular facility, contractor, or whistleblower. Should the NRC believe the ADR program has been abused in some manner by one of the parties potentially involved, the Director, OE will be notified.

To maximize the potential use of the ADR pilot program, for cases after an OI investigation is completed, the NRC will at least consider negotiating a settlement with a licensee for any wrongdoing case if requested. However, there may be certain circumstances where it may not be appropriate for the NRC to engage in ADR.

12. *Number of settlement attempts.* Each case will be afforded a maximum of two attempts to reach a settlement on the same underlying issue through the use of ADR. An "attempt" is defined as one or more mediated sessions conducted at a specific point in the NRC's enforcement process (generally within a 90 day period). However, in general, settlement at any time without the use of a neutral is not precluded by the ADR program.

13. *Finality.* Cases that reach a settlement (and are acceptable to the NRC), either in Early ADR or after an OI investigation is complete, constitute a final enforcement decision on the case by the NRC.

### III. ADR Opportunities

#### A. Licensee Sponsored Programs

Licensees are encouraged to develop ADR programs of their own for use in conjunction with an employee concerns type program. If an employee who alleges retaliation for engaging in protected activity utilizes a licensee's program to settle the discrimination concern, either before or after contacting the NRC, the licensee may voluntarily report the settlement to the NRC as a settlement within the NRC's jurisdiction. If notified of the settlement prior to initiation of an investigation, the NRC will review the settlement for restrictive agreements potentially in violation of 10 CFR 50.7(f), or other, similar regulations. Assuming no such restrictive agreements exist, the NRC will not investigate or take enforcement action.

#### B. Early ADR

The term "Early ADR" refers to the use of ADR prior to an OI investigation. The parties to Early ADR will normally be the complainant and the licensee. If the complainant is an employee of a licensee contractor, the parties will be the complainant and the contractor. Generally, the Early ADR process will parallel and work in conjunction with the NRC allegation program.

The allegation process will be used through the determination of a prima facie case. If an Allegation Review Board (ARB) determines a prima facie case exists, the ARB will normally recommend the parties be offered the opportunity to use Early ADR. Exceptions to such a recommendation should be rare and be based solely on an identified and articulated abuse of the ADR process by a party who would be involved in the case under consideration. Exceptions will be approved by the Director, OE, prior to initiating an investigation based on denial of ADR.

Early ADR cases will be tracked in the Allegation Management System (AMS). However, the allegation process timeliness measurement will be stayed once the ARB determines that ADR should be offered until the point in time ADR is declined by either party or the case is settled.

When an agreement is reached, the mediator will record the terms of that agreement. The parties may sign the agreement at the mediation session, or any party may review the agreement with his/her attorney before the document is placed in final form and signed. However, as noted above, settlement agreements in Early ADR will not be final until at least 3 days after the agreement has been signed. No participant will hold the NRC liable for the results of the mediation, whether or not a resolution is reached.

A settlement agreement between the parties will be reviewed by the NRC. OE will coordinate the review with the Office of the General Counsel (OGC). The

review will ensure that no restrictive agreements in violation of 10 CFR 50.7(f) or other NRC regulations are contained in the settlement and will normally be completed within 5 working days of receipt. Given an acceptable settlement, the NRC will not investigate or take enforcement action.

The NRC expects that parties to Early ADR will agree to some form of confidentiality. However, that agreement cannot extend to the reporting of any safety concerns potentially discussed during the ADR sessions if one of the parties desires to report the concern. Either party may report safety concerns discussed during ADR sessions to the NRC without regard to confidentiality agreements. Safety concerns and their disposition may be discussed between the parties if desired. In cases where an Early ADR negotiation is between a licensee contractor and the contractor's employee, the NRC expects the contractor to ensure the licensee is aware of any safety issues discussed during the negotiations.

In addition to the settlement agreement, the licensee should provide the NRC with any planned or completed actions relevant to the safety conscious work environment that the licensee has determined to be appropriate.

Generally no press release or other public announcement will be made by the NRC for cases settled by early ADR. However, all documents, including the proposed settlement agreement, submitted to the NRC will be official agency

records, and while not generally publicly available, still subject to the Freedom of Information Act (FOIA).

Documents associated with processing an Early ADR case will not generally be publicly available, consistent with the allegation program. However, documents may be subject to the FOIA and may be released, subject to redaction, pursuant to a FOIA request.

Some negotiations may fail to settle the case. When a settlement is not reached, the appropriate intake neutral will be notified, typically by the mediator, and an ARB will determine the appropriate action in accordance with the allegation program.

#### C. Post-Investigation ADR

Post-investigation ADR refers to the use of ADR anytime after an OI investigation is complete and an enforcement panel concludes that pursuit of an enforcement action appears warranted. Generally, post- investigation ADR processes will parallel and work in conjunction with the NRC enforcement program.

After an investigation is complete, there are generally three issues that can be resolved using ADR; whether a violation occurred, the appropriate enforcement

action, and the appropriate corrective actions for the violation(s). If the parties agree, any or all three may be considered in an ADR session.

Two different types of enforcement cases will be eligible for ADR after an investigation is complete, discrimination and other wrongdoing cases. ADR will normally be considered at three places in the enforcement process after OI has completed an investigation: (1) after an enforcement panel has concluded there is the need to continue pursuing potential enforcement action based on an OI case and prior to the conduct of a predecisional enforcement conference (PEC); (2) after the initial enforcement action is taken, typically a Notice of Violation (NOV) and potentially a proposed civil penalty; and (3) after imposition of a civil penalty and prior to a hearing request.

The parties to an ADR session after an OI investigation is complete will be the licensee and the NRC. Fees associated with the neutral will typically be divided between the NRC and the licensee, with each paying half of the total cost.

Settlement discussions are expected to be complete within 90 days of initiating ADR prior to a PEC. The NRC may withdraw from settlement discussions if negotiations have not completed in a timely manner.

The terms of a settlement agreement will normally be confirmed by order.

Typically, the specific terms of settlement will be agreed to during the

negotiation. The staff will then incorporate appropriate terms into a confirmatory order, a draft of which will then be agreed to by the licensee prior to issuance.

If an attempt to resolve a case using ADR prior to the conduct of a PEC fails, a predecisional enforcement conference will normally be offered to the licensee. The PEC will be conducted as described in the Enforcement Policy.

For cases within the scope of the pilot program, after a panel concludes that a case warrants continuation of the enforcement process, the responsible region or office will contact the licensee and offer either a PEC or ADR. Consistent with the Enforcement Policy, a written response could be offered at the staff's discretion.

Public notification of the settlement will normally be a press release and the confirmatory order will be published in the *Federal Register*.

Confidentiality with the NRC as a party will be determined by the parties as allowed by the ADR Act.

1. Discrimination cases

Consistent with centralization of the discrimination enforcement process, the Director, Office of Enforcement, will normally negotiate for the NRC.



Normally the NRC will coordinate participation of the complainant. While the complainant will not be a party to the ADR process after OI issues an investigation report, the NRC will typically seek the complainant's input to the process. Normally, the NRC will at least seek input from the complainant regarding suggested corrective actions aimed at improving the safety conscious work environment.

OI reports (not including exhibits) will normally be provided to the licensee when the choice of ADR or a PEC is offered.

A licensee may request ADR for discrimination violations based solely on a finding by DOL. However, the staff will not negotiate the finding by DOL. The appropriate enforcement sanction and corrective actions will be the typical focus of settlement discussions.

## 2. Other than discrimination wrongdoing

The regional administrator will normally be the principal negotiator for the NRC in ADR sessions on other wrongdoing cases. After imposition of a civil penalty or other order, the Director, Office of Enforcement and applicable regional administrator may determine that the Director would be the appropriate negotiator.

Typically, an enforcement panel will be conducted to discuss the NRC's specific interests in the case prior to the regional administrator attending the settlement discussions. A limited review of the settlement terms may be conducted in conjunction with the preparation of the confirmatory order.

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.

#### **IV. Integration with Traditional Enforcement Policy**

##### **A. Potential Future Enforcement Actions Civil Penalty Assessments**

Section VI.C.2 of the Enforcement Policy provides the method for determination of a civil penalty amount. One aspect of the determination uses enforcement history as a factor. If the staff considers a civil penalty for a future escalated enforcement action, settlements under the enforcement ADR program occurring after a formal enforcement action is taken (e.g. an NOV is issued) may count as an enforcement case for purposes of determining whether identification credit is considered. Settlements occurring prior to an OI investigation will not count as previous enforcement. The status of settlement agreements occurring after an

