

### **2.4.3 Alternative Dispute Resolution**

The Administrative Dispute Resolution Act of 1996 (ADRA) authorizes and encourages the use of Alternative Dispute Resolution (ADR) procedures by Federal agencies. ADR refers to a variety of processes that emphasize creative, cooperative approaches to handling conflicts in lieu of adversarial procedures. Mediation is the form of ADR typically used by the U.S. Nuclear Regulatory Commission (NRC). The use of ADR in the NRC's enforcement program is available for cases involving discrimination and other wrongdoing as well as escalated nonwillful (traditional) enforcement cases, with the potential for civil penalties.

ADR may also be used for discrimination violations based solely on a finding by DOL; however, the NRC will not negotiate the DOL finding. Individuals within the Commission's jurisdiction may also be offered ADR. ADR complements, and works in conjunction with, the traditional NRC enforcement process. ADR may be offered (1) before a predecisional enforcement conference (PEC), (2) after the initial enforcement action is taken (i.e., a NOV or proposed imposition of a civil penalty), or (3) with the imposition of a civil penalty and prior to a hearing request. Use of the ADR program is voluntary for all parties, including the NRC; any participant may end the process at any time. Mediation activities are kept confidential in accordance with 5 U.S.C. § 574; however, the terms of the settlement agreement are normally formalized in a Confirmatory Order, which is published in the *Federal Register*. Normally, there is also a press release providing information about the settlement agreement.

In some circumstances, it may not be appropriate for the NRC to engage in ADR (e.g., the U.S. Department of Justice has substantial involvement in the case, cases in which the subject matter is such that a Confirmatory Order detailing the terms of a settlement agreement cannot be made public, or other particularly egregious cases in which the public interest is not served by engaging in ADR). The approval of the Director, OE, is required in those cases where the staff proposes not to offer ADR.

Additional information concerning the NRC's ADR program is available in the NRC Enforcement Manual and on the NRC Web site.

In addition, an individual and his or her employer (or former employer) can use ADR to resolve discrimination complaints (under Section 211 of the ERA) before the initiation of investigative activities by OI (i.e., pre-investigation ADR, commonly referred to as "early ADR") (see NRC Management Directive 8.8, "Management of Allegations") or a licensee-sponsored ADR program that is similar in nature to the NRC's early ADR program. If the parties reach a settlement agreement using early ADR or licensee-sponsored ADR, the NRC subsequently reviews the agreement to ensure that it does not include any provisions in violation of the NRC's "Employee Protection" regulations. If no such restrictive provisions exist, the NRC will not investigate the discrimination complaint or take enforcement action.