

partnerships (e.g., with two- and four-year higher education institutions, business, research labs, and local, state, and federal agencies). LSAMP projects fund students, offer a range of student support services, and undertake systemic reform of undergraduate education in STEM (particularly curricular improvement and faculty professional development). This mixed-methods study will gather data through telephone interviews with project staff, a survey questionnaire of program graduates, and in person interviews with faculty, staff, and students at three selected case study sites. The process evaluation component of this study will identify strategies that accelerate or inhibit the attainment of project goals, strategies employed to promote linkages among Alliance partners, and the manner in which the LSAMP model has evolved since its inception. The impact evaluation component of this study will examine program impact on institutions of higher education in promoting diversity in STEM, and participant career outcomes.

## 2. Expected Respondents

The expected respondents are project directors and/or managers of all 27 projects; LSAMP graduates who received program funding and who earned STEM baccalaureate degrees between 1992 and 1997; ad, faculty, staff, and student participants at the three selected case study sites.

## 3. Burden on the Public

The total elements for this collection are 308 burden hours for a maximum of 795 participants annually, assuming a 90–100% response rate. The average annual reporting burden is under 1 hour per respondent. The burden on the public is negligible because the study is limited to project participants that have received funding from the LSAMP Program.

Dated: December 10, 2001.

**Suzanne H. Plimpton,**

*NSF Reports Clearance Officer.*

[FR Doc. 01–30893 Filed 12–13–01; 8:45 am]

BILLING CODE 7555–01–M

## NUCLEAR REGULATORY COMMISSION

### Enforcement Program and Alternative Dispute Resolution Request for Comments

**AGENCY:** Nuclear Regulatory Commission.

**ACTION:** Request for comments.

**SUMMARY:** The Nuclear Regulatory Commission (NRC) is announcing its intent to evaluate the use of Alternative Dispute Resolution (ADR) in the NRC's enforcement program, which is governed by the NUREG–1600, "General Statement of Policy and Procedure for NRC Enforcement Actions" (Enforcement Policy). The NRC is undertaking this evaluation because ADR techniques have proven to be efficient and effective in resolving a wide range of disputes government-wide. The Commission is seeking public comment in the form of answers to questions presented in the **SUPPLEMENTARY INFORMATION** section of this notice.

**DATES:** The comment period expires January 28, 2002.

**ADDRESSES:** Submit written responses to the questions presented in the Supplementary Information section of this notice to Michael Lesar, Chief, Rules and Directives Branch, Division of Administrative Services, Office of Administration, Mail Stop T–6 D59, 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. on Federal workdays. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD 20852. Comments may also be sent electronically to Mr. Lesar, E-mail [mtl@nrc.gov](mailto:mtl@nrc.gov).

#### FOR FURTHER INFORMATION CONTACT:

Terrence Reis, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555–0001 (301) 415–3281, E-mail [txr@nrc.gov](mailto:txr@nrc.gov), or Francis X. Cameron, NRC ADR Specialist, Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington DC 20555–0001, (301) 415–1642, E-mail [fxc@nrc.gov](mailto:fxc@nrc.gov).

**SUPPLEMENTARY INFORMATION:** "ADR" is a term that refers to a number of voluntary processes, such as mediation and facilitated dialogues, that can be used to assist parties in resolving disputes and potential conflicts. The Administrative Dispute Resolution Act of 1996 (ADR Act) encourages the use of ADR by Federal agencies, and defines ADR as "any procedure that is used to resolve issues in controversy, including but not limited to, conciliation, facilitation, mediation, fact finding, minitrials, arbitration, and use of an ombudsman, or any combination thereof" (5 U.S.C. 571(3)). These techniques involve the use of a neutral third party, either from within the agency or from outside the agency, and

are typically voluntary processes in terms of the decision to participate, the type of process used, and the content of the final agreement. Federal agency experience with ADR has demonstrated that the use of these techniques can result in more efficient resolution of issues, more effective outcomes, and improved relationships between the agency and the other party.

The NRC has a general ADR policy (57 FR 36678; August 14, 1992) that supports and encourages the use of ADR in NRC activities. In addition, the NRC has used ADR effectively in a variety of circumstances, including rulemaking and policy development, and EEO disputes. Section 2.203 of the Commission's regulations provides for the use of "settlement and compromise" in proceedings dealing with enforcement issues. In addition, § 2.337 of the Commission's proposed revisions to the NRC hearing process provides for ADR in NRC proceedings (see, 66 FR 19610, 19645; April 16, 2001). In at least one instance, an NRC enforcement case has been resolved through the use of a "settlement judge" from the Atomic Safety and Licensing Board Panel pursuant to 10 CFR 2.203 of the Commission's regulations, but there has been no systematic evaluation of the need for ADR in the enforcement process. The NRC's participation in a 1998 interagency initiative to encourage the use of ADR by Federal agencies, and the NRC's receipt of a request to use ADR in a recent enforcement case, have prompted the agency to consider whether a new, specific ADR policy would be beneficial in the enforcement area.

*Use of ADR by the NRC and other Federal Agencies.* In order to encourage Federal agencies to take advantage of the benefits of ADR, Congress enacted the ADR Act. The Act requires each agency to do the following:

1. Adopt a policy that addresses the use of ADR;
2. Designate a senior official to be the dispute resolution specialist for the agency;
3. Provide ADR training on a regular basis; and
4. Review each standard agency agreement for contracts, grants, and other assistance with an eye towards encouraging the use of ADR.

As noted above, "ADR" is a term that describes a set of processes which assist parties in resolving their disputes quickly and efficiently. Mediation, early neutral evaluation, facilitated dialogues, and arbitration are examples of these ADR processes. Central to each ADR process is the use of an objective third party or neutral, for example, a

facilitator or mediator, to assist the parties in resolving their dispute. Experience has shown that ADR can resolve disputes in a manner that is quicker, cheaper, and less adversarial than the traditional litigation process. In ADR, parties meet with each other directly, under the guidance of a neutral professional who is trained and experienced in handling disputes. The parties talk about the problems that led to the dispute and discuss possible resolution strategies. With the assistance of the neutral professional, the parties are able to retain control over their own disputes and work collaboratively to find creative, effective solutions that are agreeable to all sides. ADR commonly involves mediation and facilitation, in which a third party neutral assists the parties in coming to agreement. The neutral in these cases does not impose any decision on the parties.

Many Federal agencies have established or are considering the use of ADR in civil enforcement actions. For example, the Environmental Protection Agency has used ADR to assist in the resolution of numerous disputes related to the enforcement of Superfund and other environmental statutes that EPA administers. Mediated negotiations have ranged from two-party Clean Water Act cases to Superfund disputes involving upwards of 1200 parties. The U.S. Navy has entered into an innovative partnering agreement with the State of Florida to address compliance with environmental regulations at naval installations. The Federal Energy Regulatory Commission has established an alternative licensing process that provides for a facilitated dialogue to assist parties in negotiating licensing agreements. The Federal Mine Safety and Health Review Commission has proposed the use of settlement judges serving as mediators to assist parties in reaching settlement prior to an administrative hearing on contested compliance cases arising under the Federal Mine Safety and Health Act of 1997. The NRC staff has consulted several of these agencies that are experienced in the application of ADR to enforcement cases. These discussions have highlighted a number of important points for the NRC to consider in the course of its evaluation:

*The use of ADR should be understood broadly.* ADR encompasses many different techniques that might be employed at various points in the enforcement process. For example, although mediation is the most commonly used ADR technique in the enforcement arena, techniques such as neutral fact-finding or facilitated negotiation can also assist in resolving

disputes and avoiding potential conflicts. In addition, ADR can be used at any point in the enforcement process where a discussion or negotiation between the parties takes place.

*ADR should not be viewed as an alternative to settlement.* Agencies, including the NRC, have traditionally attempted to settle disputes in the enforcement area. ADR is simply a set of additional tools that an agency can use to more effectively address potential settlement issues, whether in the enforcement area or elsewhere. A key distinguishing feature of ADR-assisted settlement discussions is the presence of a neutral third party (i.e., a mediator, a facilitator) with expertise in conflict resolution techniques. "Effectiveness" in this context may include a faster and more systematic settlement process, as well as better and more enduring outcomes, reduced transaction costs, and improved relationships between the parties. However, the potential effectiveness of ADR must be evaluated within the context of an agency's mission, process, and procedures.

*The use of ADR is not appropriate in all circumstances.* There will always be cases that should go to litigation, rather than be settled, for example, because of an important policy objective or in cases of first impression.

Although there are many potential beneficial uses of ADR, the ADR Act also identifies several situations where an agency should consider not using ADR:

1. A definitive or authoritative resolution of the matter is required for precedential value;
2. The matter involves significant questions of government policy that require additional procedures before a final resolution is made;
3. Maintaining established policies is of special importance so that variations among individual decisions are not increased;
4. The matter significantly affects persons or organizations that are not parties to the proceeding;
5. A full public record of the proceeding is important and a dispute resolution proceeding cannot provide such a record; and
6. The agency must maintain continuing jurisdiction over the matter with authority to alter the disposition of the matter in light of changed circumstances.

The NRC intends to consider these factors, along with the public comments on this notice, in evaluating whether, and to what extent, a specific ADR policy in the enforcement area is needed.

*The NRC Enforcement Process.* The NRC's Enforcement Process is generally based on open, fact-finding and evaluative processes that rely on the principles of transparency to the public and early and full discourse to the party responsible for the apparent violation.<sup>1</sup>

In brief, the agency's enforcement process, as governed by the Enforcement Policy (NUREG-1600, General Statement of Policy and Procedure for NRC Enforcement Actions, February 16, 2001), can be summarized as follows:

Agency enforcement actions arise from the results of inspections and investigations. Following identification of potentially escalated enforcement actions the issue is brought to a multi-disciplinary NRC staff panel to achieve consensus that a violation of NRC requirements has occurred and that the violation warrants escalated enforcement action. Enforcement actions also include the issuance of orders to modify, suspend or revoke a license which may be based on a violation or noncompliance with a requirement or other public health and safety issue. If consensus is reached, the licensee or individual is then formally notified that the NRC considers an issue an apparent violation and is told the basis for the apparent violation. The licensee or individual is then offered an opportunity to have a conference with the NRC or provide its position in writing. The licensee or individual subject to the action is always asked to state whether it agrees or disagrees with apparent violations as stated. After the licensee or individual presents its case, the multi-disciplinary panel meets again to determine what enforcement action, if any, is appropriate. If it is determined that a civil penalty is warranted in accordance with the enforcement policy, that decision and the basis for it are formally transmitted to the licensee or individual in the form of a Notice of Violation and Proposed Civil Penalty. At this stage the licensee or individual has the opportunity to restate its case in writing. If after reviewing the response, the NRC continues to maintain the action is appropriate, the civil penalty is imposed by order. After imposition, the licensee or individual then has the opportunity to request a hearing and proceed with adjudication. After a hearing has been requested, settlement is subject to the provisions in 10 CFR 2.203.

If only a Notice of Violation is proposed, such is normally the case for issues dispositioned under the Reactor

<sup>1</sup> Investigations, however, are confidential, and enforcement conferences involving wrongdoing are closed.

Oversight Process, the licensee is required to respond to the violation and may contest it. However, in such cases there are no hearing rights as there are in cases where an Order is issued or a civil penalty is imposed.

Data on enforcement cases suggest that the agency's current enforcement process offers ample opportunity for settlement and avoids costly litigation without specifically employing ADR techniques. Since 1988, out of approximately 1300 civil penalties proposed, there have been 222 Orders imposing civil monetary penalties, and 29 related requests for hearings (out of a total of 79 enforcement related hearing requests). The majority of those requests were settled prior to hearing. However, these statistics do not provide insights as to whether there might be additional opportunities to use ADR at various points in the enforcement process or whether existing settlement discussions might be improved by the use of ADR.

*Specific Issues.* The NRC has identified a number of issues that it believes must be evaluated in order to determine whether an enforcement specific ADR policy is needed. Two of the more notable issues are:

*At what point in the enforcement process should ADR be used?* If the agency is to pursue implementing ADR in its enforcement processes, it must decide what types of disputes would be appropriate for resolution through ADR. Enforcement is intended to act as a deterrence and to ensure appropriate and lasting corrective action to prevent the recurrence of a non-compliance; in this sense, it is one means by which the agency ensures compliance with its regulations and license requirements, which, in turn, supports the "adequate protection" standard of the Atomic Energy Act. Enforcement sanctions are a function of the significance of violations. Viewing ADR from a narrow perspective, one could argue that, in terms of the enforcement program, only disputes pertinent to the existence and significance of a violation need be considered. The NRC's rules of practice for enforcement, as set forth in Subpart B of 10 CFR Part 2, provide the right to request a hearing in connection with orders imposing civil penalties, orders modifying, suspending, or revoking a license, or orders restricting an individual's right to engage in a licensed activity. There are no hearing rights for notices of violation issued without a corresponding civil penalty. Given the limited scope of issues in dispute in the enforcement arena—existence and significance of violations, and in the case of civil penalties, the appropriate amount—should the use of ADR

techniques be reserved only for those issues that are eligible to be adjudicated?

*What are the implications of ADR for the confidentiality of settlement discussions in the enforcement area?* The ADR Act (5 U.S.C. 571–584) provides for confidentiality of "dispute resolution communications" in "dispute resolution proceedings" involving a Federal agency "administrative program." A Federal agency "administrative program" includes any Federal function which involves the protection of the public interest and the determination of the rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing or investigation. NRC enforcement processes and proceedings would fall under this definition. A "dispute resolution proceeding" is any process in which an alternative means of dispute resolution is used to resolve an issue in controversy in which a neutral is appointed and specified parties participate. The ADR Act provides for a broad reading of the term "dispute resolution proceeding" and incorporates all ADR forms and techniques, including convening, facilitation, mediation, and fact-finding. The neutral may be a private person or a Federal government employee who is acceptable to the parties. The ADR Act supports the use of neutrals to assist parties during all stages of the resolution of a disagreement, from the convening of the participants and design of an effective process to the conduct of settlement discussions. "Confidential Information," in the context of a dispute resolution proceeding, means information that a neutral or a party cannot, by law or agreement, voluntarily disclose to anyone, or if disclosed, cannot be admitted into evidence in any future legal proceeding. Note that a key distinction between "dispute resolution proceedings" under the ADR Act and traditional settlement discussions conducted by the NRC and other agencies is the presence of a neutral who functions specifically to aid the parties in resolving the controversy.

Settlement discussions between NRC staff and licensees or other parties have traditionally been closed and the information kept confidential. Like the practice under the ADR Act, the settlement agreement itself must be disclosed. Unlike the ADR Act, oral and written communications by the parties during joint sessions may be kept confidential. No discovery has been allowed on the issues in settlement discussions in NRC enforcement cases.

Confidentiality can be a critical component of a successful ADR process. Guarantees of confidentiality, whether in joint session of all the parties with the neutral, or in a caucus involving the neutral and one party, allow parties to freely engage in candid, informal discussions of their interests in order to reach the best possible settlement of their claims. A promise of confidentiality allows parties to speak openly without fear that statements made during an ADR process will be used against them later. Confidentiality can reduce "posturing" and destructive dialogue among parties during the settlement process. Neutrals try to promote a candid and informal exchange regarding events of concern, as well as about the parties' perceptions of and attitudes toward these events, and encourage parties to think constructively and creatively about ways in which their differences might be resolved. This frank exchange may be achieved only if the participants know that what is said in the ADR process will not be used to their detriment in some later proceeding or in some other manner. These considerations would seem to apply regardless of whether a neutral was involved in the settlement discussions.

However, some ADR practitioners believe that mediation and other forms of ADR will work without confidentiality and that there is no need to preserve confidentiality in an ADR process. As noted above, the ADR Act does not provide confidentiality to statements or written comments by the parties made during joint session. Therefore, it may be possible to limit confidentiality to the caucuses involving the neutral and one of the parties, and still open the information provided in the joint sessions to public scrutiny, if not public observation. In addition, public policies that place an emphasis on access rather than confidentiality may lead to disclosure of information in joint ADR sessions. In fact, to the extent that settlement discussions on enforcement issues are public, there may be a value in having these sessions assisted by a neutral.

The policy choice may not be between ADR-assisted settlement discussions and traditional settlement discussions without the assistance of a neutral. Rather, the choice seems to be whether or not to engage in any confidential settlement discussions on enforcement issues, particularly certain types of enforcement issues, such as when wrongdoing is involved.

*Questions for Public Comment.* In order for the NRC to evaluate whether, and to what extent, ADR should be used

in the enforcement arena, the NRC has identified a number of issues for public comment. The NRC is seeking public comment on the following specific questions and also invites general comments on the questions, and also invites general comments on the use of ADR in NRC enforcement cases.

It should be noted that the NRC's Discrimination Task Group already addressed and initially rejected the use of ADR in employment discrimination cases in its draft report which has been released for public comment (66 FR 32966 dated June 19, 2001 and <http://www.nrc.gov>; Electronic Reading Room, ADAMS Accession No. ML011200244). The Commission, however, desires to more thoroughly examine the use of ADR in enforcement proceedings, including discrimination cases. Accordingly, the Discrimination Task Group will await evaluation of comments received as a result of this **Federal Register** Notice before finalizing its recommendation on the use of ADR.

The specific questions are as follows.

1. Is there a need to provide additional avenues, beyond the encouragement of settlement in 10 CFR 2.203, for the use of ADR in NRC enforcement activities?

2. What are the potential benefits of using ADR in the NRC enforcement process?

3. What are the potential disadvantages of using ADR in the NRC enforcement process?

4. What should be the scope of disputes in which ADR techniques could be utilized?

5. At what points in the existing enforcement process might ADR be used?

6. What types of ADR techniques might be used most effectively in the NRC enforcement process?

7. Does the nature of the existing enforcement process for either reactor or materials licensees limit the effectiveness of ADR?

8. Would any need for confidentiality in the ADR process be perceived negatively by the public?

9. For policy reasons, are there any enforcement areas where ADR should not be used, e.g., wrongdoing, employment discrimination, or precedent-setting areas?

10. What factors should be considered in instituting an ADR process for the enforcement area?

11. What should serve as the source of neutrals for use in the ADR process for enforcement?

Dated at Rockville, Maryland, this 10th day of December 2001.

For the Nuclear Regulatory Commission.

**Frank J. Congel,**

*Director, Office of Enforcement.*

[FR Doc. 01-30926 Filed 12-13-01; 8:45 am]

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## NUCLEAR REGULATORY COMMISSION

### Draft Regulatory Guide; Issuance, Availability

The Nuclear Regulatory Commission has issued for public comment a draft of a new guide in its Regulatory Guide Series. This series has been developed to describe and make available to the public such information as methods acceptable to the NRC staff for implementing specific parts of the NRC's regulations, techniques used by the staff in evaluating specific problems or postulated accidents, and data needed by the staff in its review of applications for permits and licenses.

The draft guide, temporarily identified by its task number, DG-1111 (which should be mentioned in all correspondence concerning this draft guide), is "Atmospheric Relative Concentrations for Control Room Radiological Habitability Assessments at Nuclear Power Plants." This draft guide is being developed to provide guidance on determining atmospheric relative concentration (X/Q) values in support of design basis control room radiological habitability assessments at nuclear power plants. This guide describes methods acceptable to the NRC staff for determining X/Q values that will be used in control room radiological habitability assessments performed in support of applications for licenses and license amendment requests.

This draft guide has not received complete staff approval and does not represent an official NRC staff position.

Comments may be accompanied by relevant information or supporting data. Written comments may be submitted to the Rules and Directives Branch, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of comments received may be examined at the NRC Public Document Room, 11555 Rockville Pike, Rockville, MD. Comments will be most helpful if received by March 15, 2002.

You may also provide comments via the NRC's interactive rulemaking web site through the NRC home page (<http://www.nrc.gov>). This site provides the ability to upload comments as files (any format) if your web browser supports that function. For information about the interactive rulemaking web site, contact Ms. Carol Gallagher, (301) 415-5905; e-

mail [CAG@NRC.GOV](mailto:CAG@NRC.GOV). For information about the draft guide and the related documents, contact Mr. S.F. LaVie at (301) 415-1081; e-mail [SFL@NRC.GOV](mailto:SFL@NRC.GOV).

Although a time limit is given for comments on this draft guide, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the NRC's Public Document Room, 11555 Rockville Pike, Rockville, MD; the PDR's mailing address is USNRC PDR, Washington, DC 20555; telephone (301) 415-4737 or (800) 397-4205; fax (301) 415-3548; email [PDR@NRC.GOV](mailto:PDR@NRC.GOV). Requests for single copies of draft or final guides (which may be reproduced) or for placement on an automatic distribution list for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Reproduction and Distribution Services Section; or by e-mail to [DISTRIBUTION@NRC.GOV](mailto:DISTRIBUTION@NRC.GOV); or by fax to (301) 415-2289. Telephone requests cannot be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them. (5 U.S.C. 552(a))

Dated at Rockville, Maryland, this 29th day of November 2001.

For the Nuclear Regulatory Commission.

**Gina F. Thompson,**

*Senior Budget Analyst, Program Management, Policy Development and Analysis Staff, Office of Nuclear Regulatory Research.*

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## PENSION BENEFIT GUARANTY CORPORATION

### Required Interest Rate Assumption for Determining Variable-Rate Premium; Interest Assumptions for Multiemployer Plan Valuations Following Mass Withdrawal

**AGENCY:** Pension Benefit Guaranty Corporation.

**ACTION:** Notice of interest rates and assumptions.

**SUMMARY:** This notice informs the public of the interest rates and assumptions to be used under certain Pension Benefit Guaranty Corporation regulations. These rates and assumptions are published elsewhere (or can be derived from rates published elsewhere), but are collected and published in this notice for the convenience of the public. Interest rates