[7590-01-P]

NUCLEAR REGULATORY COMMISSION

[NRC-2013-0046]

Scope Expansion of the Post-Investigation Alternative Dispute Resolution Program

AGENCY: Nuclear Regulatory Commission.

ACTION: Policy revision; issuance.

SUMMARY: The U.S. Nuclear Regulatory Commission (NRC) is issuing a revision to its Enforcement Policy (Enforcement Policy or Policy) to incorporate Commission direction to add escalated non-willful (traditional) enforcement cases with the potential for civil penalties within the scope of the Commission's Alternative Dispute Resolution Program and to make other conforming edits.

DATES: This revision to the Enforcement Policy is effective **[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Please refer to Docket ID NRC-2013-0046 when contacting the NRC about the availability of information for this action. You may obtain publicly-available information related to this action by any of the following methods:

- **Federal Rulemaking Web Site:** Go to http://www.regulations.gov and search for Docket ID NRC-2013-0046. Address questions about NRC dockets to Carol Gallagher; telephone: 301-415-3463; e-mail: Carol.Gallagher@nrc.gov. For technical questions, contact the individuals listed in the FOR FURTHER INFORMATION CONTACT section of this document.

- **NRC's Agencywide Documents Access and Management System (ADAMS):** You may obtain publicly-available documents online in the ADAMS Public Documents collection at http://www.nrc.gov/reading-rm/adams.html. To begin the search, select "ADAMS Public Documents" and then select "Begin Web-based ADAMS Search." For problems with ADAMS, please contact the NRC's Public Document Room (PDR) reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to pdr.resource@nrc.gov. The ADAMS accession number for each document referenced (if it is available in ADAMS) is provided the first time that it is mentioned in the SUPPLEMENTARY INFORMATION section.

- **NRC's PDR:** You may examine and purchase copies of public documents at the NRC's PDR, Room O1-F21, One White Flint North, 11555 Rockville Pike, Rockville, Maryland 20852.

FOR FURTHER INFORMATION CONTACT: Daniel Lenehan, telephone: 301-415-3501, e-mail: Daniel.Lenehan@nrc.gov, or Shahram Ghasemian, telephone: 301-415-3591, e-mail: Shahram.Ghasemian@nrc.gov; both of the Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

SUPPLEMENTARY INFORMATION:

Background.

The Administrative Dispute Resolution Act of 1996 authorizes and encourages the use of Alternative Dispute Resolution (ADR) procedures by Federal agencies. The term “ADR" 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. These techniques involve the use of a neutral third party, either from within the agency or from outside the agency, and are voluntary processes in terms of the decision to participate and the content of the final agreement. The NRC’s 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 other parties. The NRC established the ADR Program in its Office of Enforcement in 2004.

Since the implementation of the ADR Program, the NRC has reached settlement agreements with licensees (or contractors) and individuals, and has issued subsequent ADR confirmatory orders in more than 90 enforcement cases. The parties to ADR in the NRC’s enforcement program are the NRC staff and, in most cases, a licensee. The proceedings are conducted using the facilitation skills of a trained independent mediator. Mediation allows the NRC staff and the licensee to communicate openly and directly and enables the parties to reach effective and workable agreements that meet the NRC’s regulatory interests. Historically, the ADR Program has resulted in broader and more comprehensive corrective actions than would be expected using traditional enforcement means.

On December 16, 2010, then NRC Chairman, Gregory Jaczko, issued a memorandum, “ADR Implementation and Assessment" (ADAMS Accession No. ML12030A228) tasking the NRC staff to conduct a comprehensive review of the ADR Program, including determining if it

should be expanded. At the time the ADR Program was limited to cases involving discrimination and other wrong doing. On September 6, 2011, the NRC issued a notice in the *Federal Register* that solicited nominations of individuals to participate on a panel to discuss ADR Program implementation and whether changes could be made to make it more effective, transparent, and efficient (76 FR 55136). On October 17, 2011, the NRC issued another *Federal Register* notice that announced its intention to hold a public meeting to solicit feedback from its stakeholders on the ADR Program (76 FR 64124). During the public meeting, which was held on November 8, 2011, external NRC stakeholders expressed support for the expansion of the ADR Program to the extent possible.

In Commission Paper SECY-12-0161, "Status Update, Tasks Related to Alternative Dispute Resolution in the Allegation and Enforcement Programs," dated November 28, 2012 (ADAMS Accession No. ML12321A145), the NRC staff notified the Commission of its intent to pilot the expansion of the ADR Program to include escalated non-willful (traditional) enforcement cases with proposed civil penalties for a 1-year period. The expansion of the program did not include violations associated with findings assessed through the Reactor Oversight Process.

During the pilot period, the NRC staff made ADR available for seven escalated non-willful (traditional) enforcement cases with proposed civil penalties however, none of the licensees chose ADR. The licensees included a waste disposal facility, two radiographers, a gauge user, two hospitals, and one non-operating (decommissioned) reactor. However, shortly after the 1-year period, a power reactor licensee chose to engage in ADR for an escalated non-willful (traditional) enforcement case with the potential for a civil penalty. The subsequent mediation resulted in a settlement, specified in the Confirmatory Order, under which the licensee agreed to fleet-wide actions as opposed to plant-specific actions that would have typically been expected from using the traditional enforcement process.

In Commission Paper SECY-14-0077, "Status Update and Proposed Policy Revision: Tasks Related to Alternative Dispute Resolution in the Enforcement Program," dated July 30, 2014 (ADAMS Accession No. ML14143A363), the NRC staff recommended that the Commission approve expanding the scope of the ADR Program to include non-willful (traditional) enforcement cases with the potential for civil penalties (not including violations associated with findings assessed through the Reactor Oversight Process).

In the Staff Requirements Memorandum to SECY-14-007, the Commission approved the expansion of the ADR Program. Accordingly, the NRC is revising Section 2.4.3, "Alternate Dispute Resolution," of the Enforcement Policy to add escalated non-willful (traditional) enforcement cases with the potential for civil penalties within the scope of the program and to make other conforming edits.

Revisions to Enforcement Policy.

The text of revised section 2.4.3, in its entirety, follows. A marked copy of the Enforcement Policy is available in ADAMS under Accession No. ML15028A422.

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 (not including violations associated with findings assessed through the Reactor Oversight Process).

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., an 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.

Congressional Review Act.

This policy revision is a rule as defined in the Congressional Review Act (5 U.S.C. 801-808). However, the Office of Management and Budget has not found it to be a major rule as defined in the Congressional Review Act.

Dated at Rockville, Maryland, this 26th day of February, 2015.

For the Nuclear Regulatory Commission.

Annette L. Vietti-Cook,
Secretary of the Commission.

[FR Doc. 2015-04490 Filed 03/03/2015 at 8:45 am; Publication Date: 03/04/2015]