

National Oceanic and Atmospheric Administration	NOAA Administrative Order <u>202-715</u>	
NOAA ADMINISTRATIVE ORDER SERIES	DATE OF ISSUANCE	EFFECTIVE DATE FEB 02 2010
SUBJECT NOAA ALTERNATE DISPUTE RESOLUTION PROGRAM		
<p><u>SECTION 1. PURPOSE.</u></p> <p>.01 This Order and associated Handbook describe and implement National Oceanic and Atmospheric Administration (NOAA) responsibilities and procedures for complying with the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320. This order also supports NOAA's implementation of 29 C.F.R pt. 1614, Federal Sector Equal Employment Opportunity, and implements 5 C.F.R §1201.22, which provides for ADR after an agency issues an adverse action decision.</p> <p>.02 This order has been revised to clarify the role of bargaining units, update references and organizational nomenclature, and reflect the program's status as a permanent program rather than a pilot.</p> <p><u>SECTION 2. SCOPE.</u></p> <p>This Order and associated Handbook apply to all Alternative Dispute Resolution in NOAA.</p> <p><u>SECTION 3. DEFINITIONS.</u></p> <p>.01 <u>Alternative Dispute Resolution (ADR)</u> - ADR consists of a variety of approaches to early intervention and dispute resolution. The NOAA ADR Program uses:</p> <p>a. <u>Mediation</u> - Mediation is a voluntary process in which a trained, impartial and neutral third party helps parties in a dispute reach an informed and mutually acceptable settlement of the issues.</p> <p>b. <u>Facilitated Problem Solving</u> - This process is usually applicable to a work group or a team. A facilitator can use several processes to help a group or a work team through issues that can be barriers to effective working relationships and productivity.</p> <p>.02 <u>Good Faith</u> - All mediation participants are required to agree to mediate in "good faith." That is, they must agree to (1) listen to all sides of a dispute, (2) explore their and the opposing sides' interests, (3) not maintain a fixed negotiating position, and (4) help develop options that meet the interests of all parties.</p> <p>.03 <u>Initiator</u> - The person who requests ADR services to help resolve a dispute.</p> <p>.04 <u>Mediator</u> - a mediator serves as a trained neutral third party and impartial facilitator of the</p>		

structured process referred to as mediation. The mediator does not make decisions for the parties and does not impose a resolution to the dispute. The mediator does not serve as an arbitrator or judge of the facts of a case and does not advocate for any side in the dispute. The mediator helps the parties explore their interests and develop options towards a mutually satisfactory resolution of the issues.

.05 Interest-Based Problem Solving - A process that seeks to discover and satisfy the underlying interests of parties rather than to meet the stated positions or demands that they bring to negotiation.

.06 Respondent - The person(s) with whom the initiator wishes to negotiate in order to resolve the issues in dispute.

.07 Settlement Agreement - When all or part of the issues in dispute have been resolved to the mutual satisfaction of the parties the agreements reached are written down, reviewed by the Office of General Counsel (OGC), signed by the parties, and reviewed and ratified by OGC, Workforce Management Office (WFMO) and the Civil Rights Office (CRO) for Equal Employment Office (EEO) issues.

SECTION 4. POLICY.

The purpose of the Alternative Dispute Resolution (ADR) Program is to help employees and managers at NOAA reduce unproductive conflict as much as possible and resolve conflicts quickly so the mission of the agency can be accomplished as effectively and efficiently as possible. Early resolution of grievances is cost effective and beneficial to both employees and management. It is NOAA's policy to encourage use of Alternative Dispute Resolution whenever appropriate.

SECTION 5. RESPONSIBILITIES.

.01 Initiator shall:

- a. request mediation at the earliest possible time in the course of a dispute.
- b. make any allegations of discrimination to NOAA's EEO Officer or EEO counselor within 45 calendar days of the alleged acts of discrimination;
- c. raise issues under the negotiated or administrative grievance process within the time frames established in collective bargaining agreements or the administrative grievance procedure;
- d. upon receipt of an adverse action decision notice appealable to the Merit Systems Protection Board (MSPB), timely file with the MSPB any mutual election with the agency to resolve the dispute through ADR prior to timely filing an appeal (see Section 7.02.d.);
- e. cooperate in good faith with the terms set forth at the beginning of mediation;

f. agree, if the employee chooses mediation in lieu of EEO counseling or grievance processing, to comply with the terms of the ADR Program;

g. inform the ADR Program Office if any special accommodations, such as auxiliary aids, interpreters, etc., are needed;

h. maintain the confidentiality of the mediation process; and

i. abide by the provisions of the settlement agreement after signatures and concurrences.

.02 Respondent shall:

a. make an informed decision whether or not to participate in mediation;

b. mediate in good faith, if mediation is elected;

c. cooperate in good faith with the terms set forth at the beginning of mediation;

d. maintain the confidentiality of the mediation process;

e. have the authority to speak for management or be able to contact an upper level decision maker, as necessary, if respondent will be making decisions on behalf of management;

f. abide by the provisions of the settlement agreement after signatures and concurrences.

.03 Management shall:

a. encourage the use of ADR services to resolve workplace disputes;

b. request mediation or other dispute prevention or resolution services at the earliest possible time in a conflict;

c. authorize duty time for ADR participants;

d. seek guidance from ADR Program Office, Civil Rights Office, Office of General Counsel, and servicing Client Services Office as needed;

e. ensure that, prior to all discussions involving bargaining unit employees, the appropriate labor union representative(s) are provided with notice and the opportunity to attend and participate in mediation discussions;

f. authorize funds for mediators, co-mediators and any necessary accommodations for participants with disabilities;

- g. provide for administrative services for mediations, such as space and access to equipment;
- h. maintain the confidentiality of the mediation process.

.04 Mediator shall:

- a. serve as a neutral third party trained in dispute resolution;
- b. assist parties in reaching mutually-agreed-upon resolutions to disputes;
- c. terminate mediation when it becomes apparent that continued efforts to resolve the matter through the mediation process will be unsuccessful;
- d. advise disputants of the mediation process, rules of confidentiality, and terms;
- e. ensure disputing parties understand the mediator has no authority to make decisions nor is (s)he acting as an advocate for any party;
- f. maintain the confidentiality of the mediation process;
- g. consult with appropriate officials, as needed, for technical assistance to clarify issues or resolve concerns;
- h. assist disputants in drafting the mutually acceptable Settlement Agreement;
- i. use the EEO template developed by the NOAA Civil Rights Office and the Department of Commerce Office of General Counsel for all agreements involving EEO allegations;
- j. forward the draft Settlement Agreement to Office of General Counsel for preliminary clearance or clarification and revision if necessary;
- k. obtain signatures from disputants to cleared and/or revised Settlement Agreement;
- l. forward Settlement Agreement to ADR Program Office which will route the agreement through servicing Workforce Management Director, Office of General Counsel, and Civil Rights Office (for EEO-related agreements) for final clearance;
- m. tell parties the Settlement Agreement will be binding when all signatures are obtained;
- n. ask each participant to complete an evaluation form at the end of the mediation;
- o. issue Termination of Mediation notices to disputants if mediation concludes with a partial settlement or no settlement and, when applicable, provide the Union and the servicing Workforce Management Office a copy of the notice.

p. agree to adhere to the applicable provisions of the Model Standards of Conduct for Mediators issued jointly by the American Arbitration Association, the American Bar Association and the Society for Professionals in Dispute Resolution.

.05 NOAA ADR Program Office shall:

a. On behalf of the Director, Workforce Management Office (WFMO), oversee policy and program development, direction and evaluation, in collaboration with Office of General Counsel, WFMO staff, Civil Rights Office, the Employee Assistance Program and Unions representing NOAA employees;

b. maintain the confidentiality of all initial contacts except when there is a risk or threat of violence;

c. assist initiators and respondents in making decisions about using mediation or other ADR services;

d. fully explain the process of mediation and what is meant by confidentiality and good faith;

e. determine whether the dispute is appropriate for mediation;

f. with the initiator's permission, process all requests for mediation by:

1. contacting the initiating and responding parties, notifying the responding party of purpose of requested mediation, identifying the appropriate participants for mediation, assuring the appropriate decision makers can either participate in the mediation or be available for consultation and ratification of decisions and obtaining their voluntary agreements to mediation;

2. informing the servicing Human Resources Advisor or Manager, the OGC and, for EEO complaints, CRO;

3. scheduling the mediation;

4. notifying the appropriate union if one of the mediation participants is a member of a bargaining unit;

5. ensuring that administrative services, including place and time of mediation, adequate room set-up, access to e-mail, telephone, fax and any needed accommodations for participants with disabilities, are in place and communicated to mediators and participants;

6. arranging for mediators from a pool of trained NOAA mediators or supplemental community resources if needed, and ensuring they have all applicable NOAA forms and contact numbers prior to mediation;

7. arranging travel and associated reimbursement for mediators;

8. arranging for OGC staff coverage for draft agreement review, and Workforce Management and OCR staff for telephone consultation;

9. ensuring all mediators obtain OGC review and clearance on draft settlement agreements and that all required revisions are made before parties agree to and sign the settlement agreement and mediators sign the settlement agreement;

g. ensure settlement agreements are reviewed and signed by the servicing Client Service Office Division Director, the Office of General Counsel, and the Civil Rights Office (for EEO cases);

h. provide coaching and consultation on conflict management and prevention;

i. provide intervention and facilitation services as requested;

j. maintain confidentiality of ADR files, contacts and process.

.06 The Director, NOAA Workforce Management Office, has overall responsibility for the NOAA ADR Program including policy, program development and evaluation.

SECTION 6. AUTHORITIES.

.01 Memorandum on Agency Use of Alternate Means of Dispute Resolution and Negotiated Rulemaking, 34 Weekly Comp. Pres. Doc. 749 (May 1, 1998).

.02 Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320 (1996) (amending Pub. L. No. 101-552 and Pub. L. No. 102-354).

.03 5 U.S.C. §§ 571 - 584, Alternative Means of Dispute Resolution in the Administrative Process.

.04 MSPB Filing an appeal and responses to appeals, 5 C.F.R. § 1201.22.

.05 Federal Sector Equal Employment Opportunity, 29 C.F.R. pt. 1614.

SECTION 7. REFERENCES.

.01 NOAA Alternative Dispute Resolution Handbook (Appendix A)

.02 Department Administrative Order (DAO) 202-771, Administrative Grievance Procedure, dated November 2, 2007.

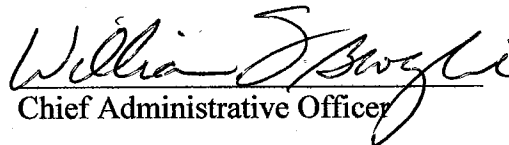
.03 DAO 215-9, Filing Discrimination Complaints, October 19, 1992.

.04 NAO 202-711, Labor-Management Relations Procedures dated November 29, 1988.

.05 NAO 215-1, NOAA's EEO/Civil Rights Program, dated May 16, 1990.

SECTION 8. EFFECT ON OTHER ISSUANCES.

This Order supersedes NOAA Administrative Order (NAO) 202-715, dated January 21, 1997. An electronic copy of this Order will be posted in place of the superseded Order on the NOAA Office of the Chief Administrative Office's website under the NOAA Administrative Issuances Section. <http://www.corporateservices.noaa.gov/~ocao/index.html>


Chief Administrative Officer

Office of Primary Interest:
Workforce Management Office
Civil Rights Office