



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 02-03-008

EFFECTIVE DATE: 02/04/2019

SUBJECT: Alternative Dispute Resolution (ADR) Processes for Whistleblower Protection Programs

ABSTRACT

- Purpose:** The purpose of this Instruction is to establish policies and procedures for OSHA's regional Alternative Dispute Resolution (ADR) Program to resolve whistleblower retaliation complaints.
- Scope:** OSHA-Wide. Implementation of the ADR Program is at the discretion of Regional Administrators (RAs).
- References:** OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual (WIM); the Occupational Safety and Health Act (OSH Act), 29 U.S.C. § 660(c); the Surface Transportation Assistance Act, 49 U.S.C. § 31105; the Asbestos Hazard Emergency Response Act, 15 U.S.C. § 2651; the International Safe Container Act, 46 U.S.C. § 80507; the Safe Drinking Water Act, 42 U.S.C. § 300j-9(i); Federal Water Pollution Control Act, 33 U.S.C. § 1367; the Toxic Substances Control Act, 15 U.S.C. § 2622; the Solid Waste Disposal Act, 42 U.S.C. § 6971; the Clean Air Act, 42 U.S.C. § 7622; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610; the Energy Reorganization Act, 42 U.S.C. § 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121; the Sarbanes-Oxley Act, 18 U.S.C. § 1514A; the Pipeline Safety Improvement Act, 49 U.S.C. § 60129; the Federal Railroad Safety Act, 49 U.S.C. § 20109; the National Transit Systems Security Act, 6 U.S.C. § 1142; the Consumer Product Safety Improvement Act, 15 U.S.C. § 2087; the Affordable Care Act, 29 U.S.C. § 218C; the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5567; the Seaman's Protection Act, 46 U.S.C. § 2114; the FDA Food Safety Modernization Act, 21 U.S.C. § 399d; and the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. § 30171.
- Cancellations:** This Instruction amends CPL 02-03-006, dated August 18, 2015.

State Plan Impact: Federal Program Change, Notice of Intent Required, Adoption Encouraged.

This Instruction describes a Federal Program Change that updates policies and procedures for OSHA’s ADR Program and may be used in conjunction with the State Plans’ investigation of whistleblower complaints under the State Plan equivalent to section 11(c) of the OSH Act. References to whistleblower provisions other than section 11(c) of the OSH Act are not applicable to State Plans. State Plans may, but are not required to, adopt this Instruction and State Plans that adopt this Instruction should implement it in an “at least as effective” manner.

State Plans are required to notify OSHA within 60 days whether they already have a similar policy in place, intend to adopt new policies and procedures, or do not intend to adopt this Instruction. If the State Plan does not adopt at first, but at some later point decides to adopt this Instruction, or an ALAE version of this Instruction, the State Plan must notify OSHA of this change in intent. Within 60 days of adoption, the State Plan must provide an electronic copy of the policy or link to where their policy is posted on the State Plan’s website. The State Plan must also provide the date of adoption and identify differences, if any, between their policy and OSHA’s.

Action Offices: Directorate of Whistleblower Protection Programs (DWPP);
OSHA Regional Offices.

Originating Office: DWPP, Washington, D.C.

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By and Under the Authority of

Loren Sweatt
Acting Assistant Secretary

Executive Summary

From October 1, 2012, to September 30, 2013, OSHA piloted a program to offer Alternative Dispute Resolution (ADR) in Regions V (Chicago) and IX (San Francisco), OSHA Direction: DIR 12-01 (CPL 02), October 1, 2012 – Whistleblower Alternative Dispute Resolution (ADR) Program.

The ADR pilot program offered whistleblower parties two new avenues for exploring resolution of their disputes through a voluntary settlement agreement: (1) the “early resolution” process offered parties the opportunity to negotiate a settlement with the assistance of a neutral OSHA whistleblower expert who would not be involved in making decisions about the outcome of an OSHA whistleblower investigation, and (2) the “mediation” process offered parties the opportunity to participate in a one-day, in-person mediation session with a professional third-party mediator.

The “early resolution” process proved to be an effective and viable alternative to the investigative process and an invaluable asset to OSHA’s whistleblower protection programs. The ADR pilot program demonstrated that adding staff dedicated to the coordination and facilitation of settlement negotiations provides valuable support to OSHA’s whistleblower enforcement resources, and furnishes a highly desired service to the program’s customers. In light of these results, in 2015, OSHA issued an Instruction to expand the availability of the ADR “early resolution process” to permit all regions to offer this process as OSHA’s ADR Program, at the discretion of the OSHA Regional Administrator.

Based on feedback received from regional whistleblower program managers, DWPP learned that OSHA managers and other DOL officials occasionally need limited access to confidential communications for supervision and program evaluation purposes. This Instruction updates the 2015 Instruction to clarify that the neutral OSHA facilitator may share ADR communications with DOL officials when it is necessary for administrative and supervisory purposes, or to seek legal or policy guidance on novel or complex questions that arise during the ADR proceeding, so long as the DOL official(s) receiving the communications will not be involved in any further investigations or proceedings related to the whistleblower complaint if a settlement is not reached through ADR.

This Instruction sets forth the policies and procedures that apply to OSHA’s ADR Program. This Instruction does not preclude OSHA’s regional offices from offering additional ADR processes (*e.g.*, third-party mediations) to parties.

Significant Changes

This Instruction amends CPL 02-03-006, which became effective on August 18, 2015, to:

1. Revise the confidentiality section to explain the circumstances in which a Neutral may share information from ADR with other OSHA officials;
2. Make minor changes in the terminology used to describe the ADR Program and the OSHA personnel involved in the ADR Program; and
3. Update the Request for Alternative Resolution Form (Attachment A) to reflect current terminology and procedures.

Table of Contents

I.	Purpose.....	1
II.	Scope.....	1
III.	References.....	1
IV.	Cancellations.....	1
V.	Significant Changes.....	1
VI.	Action Offices.....	2
	A. Responsible Offices.....	2
	B. Action Offices.....	2
	C. Information Offices.....	2
VII.	Federal Program Change.....	2
VIII.	Background.....	2
IX.	Definitions.....	3
X.	Roles and Responsibilities.....	4
	A. Regional Administrator (RA).....	4
	B. Directorate of Whistleblower Protection Programs (DWPP).....	4
XI.	OSHA’s ADR Program.....	5
	A. Overview.....	5
	B. Process.....	6
XII.	Core ADR Principles and Concepts.....	8
	A. Voluntary.....	8
	B. Good Faith.....	8
	C. Neutrality.....	8
	D. Confidentiality.....	9
	E. Conflict of Interest.....	10
XIII.	Parties’ Ability to Settle during the OSHA Investigation.....	10
	Attachment A.....	A-1
	Attachment B.....	B-1

I. Purpose

The purpose of this Instruction is to establish policies and procedures for OSHA's regional Alternative Dispute Resolution (ADR) Program to resolve whistleblower complaints.

II. Scope

OSHA-Wide. Implementation of OSHA's ADR Program is at the discretion of Regional Administrators.

III. References

OSHA Instruction: CPL 02-03-007, January 28, 2016 – Whistleblower Investigations Manual (WIM); the Occupational Safety and Health Act (OSH Act), 29 U.S.C. § 660(c); the Surface Transportation Assistance Act, 49 U.S.C. § 31105; the Asbestos Hazard Emergency Response Act, 15 U.S.C. § 2651; the International Safe Container Act, 46 U.S.C. § 80507; the Safe Drinking Water Act, 42 U.S.C. § 300j-9(i); Federal Water Pollution Control Act, 33 U.S.C. § 1367; the Toxic Substances Control Act, 15 U.S.C. § 2622; the Solid Waste Disposal Act, 42 U.S.C. § 6971; the Clean Air Act, 42 U.S.C. § 7622; the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9610; the Energy Reorganization Act, 42 U.S.C. § 5851; the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century, 49 U.S.C. § 42121; the Sarbanes-Oxley Act, 18 U.S.C. § 1514A; the Pipeline Safety Improvement Act, 49 U.S.C. § 60129; the Federal Railroad Safety Act, 49 U.S.C. § 20109; the National Transit Systems Security Act, 6 U.S.C. § 1142; the Consumer Product Safety Improvement Act, 15 U.S.C. § 2087; the Affordable Care Act, 29 U.S.C. § 218C; the Consumer Financial Protection Act of 2010, 12 U.S.C. § 5567; the Seaman's Protection Act, 46 U.S.C. § 2114; the FDA Food Safety Modernization Act, 21 U.S.C. § 399d; and the Moving Ahead for Progress in the 21st Century Act, 49 U.S.C. § 30171.

IV. Cancellations

This Instruction amends CPL 02-03-006, dated August 18, 2015.

V. Significant Changes

This Instruction amends CPL 02-03-006, which became effective on August 18, 2015, to:

1. Revise the confidentiality section to explain the circumstances in which a Neutral may share information from ADR with other OSHA personnel;
2. Make minor changes in the terminology used to describe the ADR Program and the OSHA personnel involved in the ADR Program; and
3. Update the Request for Alternative Resolution Form (Attachment A) to reflect current terminology and procedures.

VI. Action Offices

A. Responsible Offices

Directorate of Whistleblower Protection Programs (DWPP); OSHA Regional Offices. See “Roles and Responsibilities” for further information.

B. Action Offices

Directorate of Whistleblower Protection Programs (DWPP); OSHA Regional Offices. See “Roles and Responsibilities” for further information.

C. Information Offices

Directorate of Cooperative and State Programs

VII. Federal Program Change

Federal Program Change, Notice of Intent Required, Adoption Encouraged.

This Instruction describes a Federal Program Change that updates policies and procedures for OSHA’s ADR Program and may be used in conjunction with the State Plans’ investigation of whistleblower complaints under the State Plan equivalent to section 11(c) of the OSH Act. References to whistleblower provisions other than section 11(c) of the OSH Act are not applicable to State Plans. State Plans may, but are not required, to adopt this Instruction and State Plans that adopt this Instruction should implement it in an “at least as effective” manner.

State Plans are required to notify OSHA within 60 days whether they already have a similar policy in place, intend to adopt new policies and procedures, or do not intend to adopt this Instruction. If the State Plan does not adopt at first, but at some later point decides to adopt this Instruction, or an ALAE version of this Instruction, the State Plan must notify OSHA of this change in intent. Within 60 days of adoption, the State Plan must provide an electronic copy of the policy or link to where their policy is posted on the State Plan’s website. The State Plan must also provide the date of adoption and identify differences, if any, between their policy and OSHA’s.

VIII. Background

This Instruction articulates the policies and procedures that OSHA will use when administering the ADR Program to attempt to resolve complaints filed under the whistleblower provisions of the OSH Act and 21 other federal statutes. The whistleblower protection laws enforced by OSHA cover millions of employees in healthcare, food, finance, air travel, pipeline, transit, rail, and other industries. Each year, OSHA receives and docket several thousand whistleblower complaints for

investigation. OSHA's ADR Program can assist complainants and respondents to resolve their whistleblower complaints in a cooperative and voluntary manner. When ADR is successful, it can provide timely relief and finality to both parties.

Federal ADR processes are authorized by the Administrative Dispute Resolution Act (ADRA), 5 U.S.C. § 571 *et seq.* An agency may use an alternative dispute resolution procedure to resolve an issue in controversy that relates to an administrative program, if the parties agree to such proceeding, 5 § U.S.C. 572(a). The ADRA defines an "administrative program" to include a "Federal function which involves protection of the public interest and the determination of rights, privileges, and obligations of private persons through rulemaking, adjudication, licensing, or investigation" 5 U.S.C. § 571(2).

Offered as an alternative to the investigative process, the ADR Program provides parties with the opportunity to resolve their dispute with the assistance of a neutral, confidential OSHA representative (the Neutral) who has subject-matter expertise in whistleblower investigations. The purpose of this Instruction is to articulate the principles and procedures that apply to the ADR Program. This Instruction does not preclude OSHA's regional offices from offering additional ADR processes (*e.g.*, third-party mediations) to parties.

IX. Definitions

The following terms are defined for the purposes of this Instruction:

Alternative Dispute Resolution (ADR) – is an approach to the resolution of whistleblower complaints by means other than litigation. As a general matter, ADR is broadly understood to involve the use of negotiation, mediation, conciliation, or arbitration. These techniques are not mutually exclusive in any particular conflict, but can be used sequentially or in combination with other methods for resolving whistleblower complaints. ADR is a consensual process that involves the intervention of a third-party Neutral to assist parties in resolving their conflict.

ADR Communication – is any oral or written communication made for the purposes of an ADR proceeding by a party, a non-party participant, or the Neutral. However, a written agreement to enter into ADR or a final written settlement agreement is *not* an ADR communication.

ADR Program – is a voluntary program in which the parties to an OSHA whistleblower complaint agree to attempt to resolve the whistleblower complaint with the assistance of a Neutral. ADR can take place once a case has been docketed but before an investigation begins, or at any point while an investigation is ongoing. The focus of OSHA's ADR Program is to achieve a quick and voluntary resolution of the whistleblower complaint instead of an investigation to determine the validity of the charge and potential statutory violations. Should the parties elect to pursue ADR but fail to enter into a settlement agreement within a reasonable time frame, the case will be transferred to an OSHA Whistleblower Investigator to start or resume investigation of the complaint.

Investigation – is a process in which an OSHA official (the Investigator) investigates the whistleblower complaint and provides a written recommendation to the Supervisor based on the evidence and the law. The Supervisor then reviews the file and, in consultation with the Assistant Regional Administrator for Whistleblower Programs (ARA) and/or Office of the Regional Solicitor (RSOL), as warranted, recommends a determination or referral for litigation to the Regional Administrator or his or her designee.

Neutral – is a qualified, impartial OSHA representative designated to facilitate ADR, who will not be involved in making decisions regarding the outcome of any investigation into the whistleblower complaint.

Settlement – is a written agreement between parties to resolve a whistleblower complaint.

X. Roles and Responsibilities

A. Regional Administrator (RA)

The RA or his/her designee is responsible for:

1. Ensuring that the ADR Program is staffed with appropriately trained and qualified staff members to serve as Neutral(s);
2. Ensuring that information about the ADR Program and processes is provided to interested parties;
3. Ensuring that OSHA's ADR Program is carried out consistently with the policies and procedures articulated in this Instruction, including ensuring that the ADR Program is separate from the investigative process in accordance with the ADRA;
4. Ensuring that ADR Program activity is appropriately tracked, and that ADR Program activity data and information are shared with DWPP for reporting purposes;
5. Ensuring that settlement agreements reached under the ADR Program are properly reviewed and approved consistently with OSHA's Whistleblower Investigations Manual (WIM).

B. Directorate of Whistleblower Protection Programs (DWPP)

DWPP is responsible for:

1. Providing technical assistance on ADR processes to OSHA's staff, including Neutrals;

2. Coordinating the delivery of appropriate training and guidance materials (*e.g.*, FAQs) to OSHA staff about OSHA's ADR Program, OSHA statutes, and applicable policies, which may include coordination with OSHA's Training Institute and the Neutrals;
3. Collecting and evaluating feedback on the ADR Program for reporting purposes;
4. Tracking, monitoring, and reporting on the overall outcomes of the ADR Program.

XI. OSHA's ADR Program

A. Overview

1. OSHA's ADR Program is a valuable alternative to the expensive and time-consuming process of an investigation and litigation.
2. OSHA's ADR Program is a voluntary process in which the parties agree to use a neutral, confidential OSHA representative (the Neutral) to assist them in resolving a whistleblower complaint by mutual agreement. Neutrals have no authority to impose settlements on the parties.
3. OSHA encourages parties to use the ADR Program, where available, as early as possible, but parties may request ADR at any point during an investigation. In the OSHA Regions that implement the ADR Program, once a case is docketed but before an investigation begins, OSHA will offer the parties the option of submitting their dispute to ADR. However, if parties choose not to engage in ADR before an investigation begins, they may still seek ADR at any point while OSHA's investigation is ongoing. OSHA will stay the investigation while ADR is taking place.
4. OSHA's ADR Program is separate from the investigative process. Information obtained by the Neutral during ADR is confidential and will not be disclosed to OSHA's investigative staff, except in limited circumstances as provided below (see Section XII.D. "Confidentiality").
5. During ADR, the Neutral may not offer a determination on whether a complaint has merit or the amount of damages that a complainant should seek. The Neutral may suggest how the parties might reach an agreement, and may give the parties an objective perspective on the strengths and weaknesses of their positions, but the Neutral may not offer judgment on the merits of the complaint.

6. The Neutral may share documents between the parties during ADR at the parties' request, but the Neutral must not share those documents or otherwise discuss their contents with OSHA's investigative staff or any other individual not involved in ADR, except in limited circumstances as provided below (see Section XII.D. "Confidentiality"). Documents collected during ADR should be retained by the Regional Office in accordance with applicable file retention requirements, which include ensuring that ADR files are kept separate from the whistleblower investigative files.
7. If the complaint is not resolved during ADR, a party is free to provide documents and evidence that it submitted during ADR to the assigned Investigator for consideration in the investigation. In addition, the assigned Investigator may request documents and information from a party as part of the investigation even though the party submitted this same information during ADR.

B. Process

1. In those OSHA Regions that implement the ADR Program, upon receiving a timely complaint that contains a *prima facie* allegation of retaliation, OSHA will send opening letters to both the respondent(s) and the complainant(s) informing the parties about OSHA's ADR Program and the option to submit their dispute to ADR. The opening letter will include a copy of the "ADR Request Form" (see Attachment A).
2. If both parties request ADR at any point during the investigation, any investigative work will be stayed and the case will be submitted to a Neutral. Both parties will be required to complete an ADR Request Form (see Attachment A) to acknowledge their agreement to pursue ADR.
3. If only one party agrees to ADR prior to the commencement of an investigation, both parties will be notified that the investigation will proceed according to the procedures identified in the WIM.
4. Even if both parties request ADR, the Neutral may recommend to the RA, or his/her designee, that the case is not suitable for ADR. For example, OSHA may decline to accept a case for ADR if it believes that one or both of the parties do not intend to participate in good faith.
5. If OSHA accepts the case for ADR, OSHA will assign the case to a Neutral. The Neutral will inform the parties of the ground rules for participating in the process, including the Neutral's role in the process, the applicable confidentiality rules, and OSHA's requirements for the approval of settlement agreements, as set forth in the WIM.

6. During ADR, the Neutral will work with the parties to explore whether there is common ground for settlement. The Neutral may provide general information about the whistleblower law and procedures to the parties, and may give the parties an objective perspective on the strengths and weaknesses of their respective positions, but the Neutral will not offer judgment on the merits of the complaint.
7. OSHA may terminate ADR under certain circumstances and/or at the discretion of the RA or his/her designee. For example, OSHA may terminate the process if either party violates the ground rules for participation, including engaging in abusive behavior and/or failing to participate in good faith. OSHA may also terminate the process if the parties reach an impasse and cannot come to an agreement within a reasonable amount of time. Because ADR is a voluntary process, OSHA must terminate the process if one or both of the parties decide to end the process for any reason.
8. If the process ends without an agreement, the Neutral will transfer the case to the ARA, or other appropriate manager, for investigation. The Neutral will use the ADR Outcome Form (see Attachment B) for this purpose. When transferring the case for investigation, the Neutral will not comment on the positions of the parties or the communications that occurred during ADR. OSHA will then resume the investigation following the appropriate procedures outlined in the WIM.
9. If the parties can agree upon a framework for settlement, the Neutral may draft a proposed settlement agreement following the procedures outlined in the WIM. Alternatively, the parties may draft and submit an agreement for OSHA's approval following the procedures outlined in the WIM. Whenever possible, the parties should be encouraged to use OSHA's standard settlement agreement. If OSHA—through the RA or his/her designee no lower than the ARA—approves the settlement agreement, the Neutral will return the agreement to the parties for signature.
10. If both parties sign an OSHA-approved settlement agreement, the Neutral will notify the ARA, or other appropriate manager, that the case has settled. The Neutral will use the ADR Outcome Form (see Attachment B) for this purpose. The Neutral will also provide the ARA/Manager with the original, signed copy of the settlement agreement for preservation in the investigative case file. When notifying the ARA/Manager of the settlement, the Neutral will not comment on the positions of the parties or the communications that occurred during ADR.
11. Regardless of the outcome of ADR, the Regional Office will retain documents collected during ADR in accord with applicable file retention requirements. ADR documents will be maintained separately

from whistleblower investigation case files and their contents will not be shared or discussed with OSHA's investigative staff or any other individual who was not involved in the ADR process, except in limited circumstances as discussed below in Section XII.D. ADR communications may also be disclosed if both parties consent to disclosure in writing or if disclosure is otherwise required by law. However, note that final settlement agreements approved by OSHA are not confidential ADR communications and must be included in the investigation case file. See Section XII.D.2. below

12. OSHA will not reimburse the parties for any travel expenses. ADR conferences can take place by telephone or video conference if travel would be costly or create a hardship for any party.

XII. Core ADR Principles and Concepts

A. Voluntary

ADR is a voluntary process. The parties must mutually agree to pursue ADR as an alternative to an investigation, and either party may choose to terminate the process at any time and return the case to investigation for any reason. Participating in ADR will not affect the parties' right to receive a full and fair investigation of the complaint if ADR does not resolve their dispute.

B. Good Faith

The ADR process is only effective when the parties participate in good faith. "Good faith" participation means that the parties engage in the process with openness to resolving the whistleblower complaint and treat each other, the process, and the Neutral with respect. Parties should come to the process fully prepared to discuss resolution of the whistleblower complaint and must have full authority to settle the dispute. The Neutral may decide to end the ADR process if the parties are not participating in good faith.

C. Neutrality

1. The Neutral has no decision-making authority over the outcome of any investigation into the complaint, and does not represent either party.
2. While the Neutral may give the parties an objective perspective on the strengths and weaknesses of their positions, he/she may not offer judgment on the merits of the case.

D. Confidentiality

1. Preserving the confidentiality of party statements and submissions during ADR, to the extent permitted under the law, allows parties to explore settlement without fear that their discussions will be used against them.
2. ADR case files generally consist of communications between the parties and the Neutral. These files must be segregated from whistleblower investigative case files. ADR case files are generally exempt from disclosure under Freedom of Information Act (FOIA) Exemption 3 and should not be released in response to a FOIA request, in compliance with the ADRA. However, approved settlement agreements reached in ADR must be placed in the investigative case file because they are not dispute resolution communications that are confidential under the ADRA. Settlement agreements are subject to FOIA, including possible protection from disclosure under FOIA Exemption 4 and the Executive Order 12600 process.
3. The Neutral will keep confidential any communications made and/or documents submitted during ADR, including any settlement offers made, to the extent permitted by law, except that such communications and/or documents may be shared with other DOL officials when it is necessary for administrative and supervisory purposes, or to seek legal or policy guidance on novel or complex questions that arise during the ADR proceeding.
4. However, the Neutral will not share ADR communications, including any settlement offers made or documents submitted during ADR, or discuss the merits of the complaint, with any DOL official who will be involved in any further investigations or proceedings related to the whistleblower complaint if a settlement is not reached through ADR. The Neutral may only communicate the outcome of the ADR process to such persons. If a settlement is not reached through ADR, the parties may share any of their own communications made during ADR with the OSHA Investigator.
5. At the conclusion of ADR, all information or materials provided to, or created by, the Neutral—including all notes, records, or documents generated during the course of ADR—will be maintained in accord with applicable file retention requirements, which includes keeping these records separate from the OSHA investigation case file and inaccessible to OSHA's investigative staff. Parties and/or their representatives are permitted to retain their own notes.
6. All parties to a dispute resolution proceeding, including the Neutral, are not permitted to disclose and cannot be required to disclose through discovery or compulsory process any communication that is

part of ADR, unless an exception listed under 5 U.S.C. § 574 applies, or if required by another law.¹

7. Any settlement agreement reached must be approved by the RA or his/her designee, as defined in the WIM. OSHA will maintain a copy of the approved settlement agreement in the investigative case file.
8. The parties may waive confidentiality or agree to confidentiality requirements that are less restrictive than those in 5 U.S.C. § 574(a), but they must inform the Neutral of such an agreement before the ADR begins.
9. OSHA will follow all applicable rules and procedures under the FOIA and the Privacy Act if it receives a FOIA or Privacy Act request that covers the settlement agreement or ADR case file.

E. Conflict of Interest

1. In general, the Neutral should avoid conducting ADR where there is an actual or potential conflict of interest between the Neutral and one or more parties.
2. However, the parties may waive a conflict after the Neutral fully discloses it to them. If the parties wish to waive a conflict, the Neutral must note the conflict and both parties must waive it in writing.
3. Otherwise, where a conflict exists, the Neutral will recuse him/herself and an alternative, neutral OSHA representative will be appointed to carry out ADR.

XIII. Parties' Ability to Settle during the OSHA Investigation

Nothing in OSHA's ADR Program precludes or restricts the parties' ability to settle their whistleblower complaint independently or with the assistance of an Investigator, the Regional Supervisory Investigator (RSI), or other ADR service, such as mediation with a third party, during an OSHA investigation. However, a settlement agreement in a whistleblower case that the parties reach prior to the close of OSHA's investigation must be submitted to OSHA for approval as provided in the WIM.

¹ For example, 5 U.S.C. § 574(f) states: "Nothing in this section shall prevent the discovery or admissibility of any evidence that is otherwise discoverable, merely because the evidence was presented in the course of a dispute resolution proceeding."

Attachment A

**REQUEST FOR
ALTERNATIVE DISPUTE RESOLUTION (ADR)**

Re: [Respondent/Complainant/case number]

OSHA's ADR Program is a voluntary program that allows the parties to resolve a whistleblower retaliation complaint outside of the investigative process. In ADR, the parties attempt to negotiate a settlement with the help of a neutral OSHA facilitator who is not involved in the investigation of the complaint. While ADR is ongoing, the investigation will be put on hold.

Communications during ADR are kept confidential, to the extent permitted by law, except that the neutral OSHA facilitator may share ADR communications with Department of Labor (DOL) officials when it is necessary for administrative and supervisory purposes, or to seek legal or policy guidance on novel or complex questions that arise during the ADR proceeding. However, the neutral OSHA facilitator will not share ADR communications with any DOL official who will be involved in any further investigations or proceedings related to the whistleblower complaint if a settlement is not reached through ADR. Additionally, if a settlement is not reached through ADR, the parties may share any of their own communications made during the ADR proceeding with the OSHA Investigator.

If the parties decline to pursue ADR, or if they pursue ADR but fail to reach a settlement, the Investigator identified in the opening letter will proceed with an investigation. However, the parties, with or without the assistance of the Investigator, may still enter into a settlement agreement at any time during OSHA's investigation. Settlement agreements of whistleblower retaliation complaints reached through ADR or during OSHA's investigation must be submitted to OSHA for its review and approval.

If you are interested in participating in ADR, please complete and return this form as soon as possible. You may email the form to **[email address]** or fax it to **[fax number]**.

_____ I am interested in pursuing ADR as an alternative to OSHA's investigation.

Signature

Date

Print Full Name

Daytime Phone Number

Email address

Attachment B

ADR OUTCOME FORM

Case Name and Number:

Date Complaint Filed:

Neutral:

Date submitted to ADR: _____

Date ADR concluded: _____

Total Days: _____

CASE DISPOSITION

_____ **Agreement**

_____ **No Agreement, return to investigation.**

Print Name (Neutral)

Signature

Date