



U.S. Chemical Safety and Hazard Investigation Board

SUBJECT: EEO Alternative Dispute Resolution Program

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1. **PURPOSE.** This Order establishes an Alternative Dispute Resolution (ADR) Program to aid in the resolution of Equal Employment Opportunity (EEO) complaints filed by current and former employees of, and applicants for employment with, the Chemical Safety and Hazard Investigation Board (CSB). This Order also establishes policies and procedures for the operation of the CSB EEO ADR Program. The ADR Program is designed to resolve EEO complaints filed against the CSB in a faster and less expensive fashion than traditional litigation.
2. **EFFECTIVE DATE.** This Order is effective upon passage by the Board.
3. **SCOPE.** The CSB ADR Program covers all current and former employees of, as well as applicants for employment with, the CSB. Any employee who files an informal or formal complaint of discrimination based on a violation of any of the following statutes will be eligible to participate in the ADR Program: Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e, et seq.; the Age Discrimination in Employment Act, 29 U.S.C. § 633a; the Equal Pay Act, 29 U.S.C. § 206; and the Rehabilitation Act of 1973, 29 U.S.C. § 791, et seq.
4. **REFERENCES.** This Order implements relevant provisions of the Administrative Dispute Resolution Act of 1996, Part 1614 of Title 29 of the Code of Federal Regulations, and the Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110).
5. **POLICY.** It is the policy of the Board to make available an ADR Program and encourage its constructive and good faith use by all eligible aggrieved persons/complainants. It is further the policy of the Board to require that CSB officials participate constructively and in good faith in the ADR Program, when the CSB has elected to engage in ADR. The Board believes that use of the ADR Program can be mutually beneficial to both aggrieved persons/complainants and the CSB by allowing for the early and informal resolution of EEO complaints in a manner satisfactory to all parties, and by allowing for the resolution of complaints with less expense and greater efficiency than are possible in traditional hearings and litigation.

It is further the policy of the Board that the CSB ADR Program should be conducted in a fair manner, and that Aggrieved Parties/Complainants will have the right to be represented during the ADR process.

6. **POTENTIAL ADVANTAGES OF ADR.** Aggrieved persons/complainants should consider the following potential advantages in deciding whether or not to participate in the ADR Program:
 - **Likelihood of resolution:** Experience indicates that over 50% of the discrimination complaints submitted for mediation are resolved. Even when a complaint is not resolved, mediation may be helpful in clarifying the issues.

- **Protection of relationships:** Mediation generally results in a settlement that both parties can accept and support, promotes better communications between them, and encourages a respectful and cooperative relationship between the CSB and its employees.
- **Time savings:** Mediation is generally quicker and is available on short notice. The speed and schedule of mediation are entirely dependent on the parties' willingness to address and reach agreement on the issues.
- **Cost savings:** Mediation is less costly and involves direct negotiations between the parties.
- **Greater flexibility in possible settlements:** Mediation, because of its more flexible format and lack of structural constraints, allows the parties to address relationship, procedural, and substantive issues. It allows people to get to the "root of the problem" without having to "force-fit" a problem into an inappropriate process.
- **Retention of decision-making authority by parties:** Procedures such as litigation, administrative hearings, and binding arbitration rely on third party decision makers to break deadlocks and render a decision. These procedures remove decision-making authority and responsibility from the parties, who often are the most informed about the issues and options. Mediation keeps the decision-making authority with the people who best know the problems and it preserves both individual and organizational authority. While legal advisors are present and offer assistance, the resolving official is the decision maker for the agency.
- **Preservation of rights:** An Aggrieved Person DOES NOT give up his/her right to pursue the dispute formally under the EEOC complaint processing regulations.

7. DEFINITIONS.

- a. **Agency Representative** – an attorney for the CSB who provides legal counsel to the Resolving Official.
- b. **Aggrieved Person/Complainant** – the person bringing an EEO complaint. If the person's complaint is in the informal process, the person is referred to as the Aggrieved Person. If the person's complaint is in the formal process, the person is referred to as the Complainant.
- c. **Aggrieved Person/Complainant's Representative** – an individual who the Aggrieved Person or Complainant chooses to accompany or represent him/her, and who may speak in an advisory or representative capacity.

- d. **Co-Mediator** – a neutral third party who assists the Mediator and is often in the process of final certification as a Mediator. A Co-Mediator is not required and will not be present at every mediation.
- e. **EEO Office Representative** – a member of the CSB EEO Office staff or another appropriate individual designated by the CSB EEO Director. The EEO Office Representative should be present during mediation sessions to observe the proceedings and to provide any necessary technical advice and assistance. The EEO Office Representative should not serve as either the Resolving Official or the Agency’s Representative. The EEO Office Representative is not required to attend mediation sessions, but attendance of the representative helps to ensure that the process runs smoothly.
- f. **Mediation** – the form of Alternative Dispute Resolution (ADR) that is offered by the CSB as an alternative to the conventional administrative processing of an EEO complaint. Mediation is an informal process in which a neutral third party assists the opposing parties in reaching a voluntary, negotiated resolution of a complaint of discrimination. The decision to mediate is completely voluntary for the aggrieved person/complainant. The mediator does not resolve the complaint or impose a decision on either party, but instead helps the parties to agree on a mutually acceptable resolution.
- g. **Mediator** – a trained neutral third party who facilitates communication between the Aggrieved Person/Complainant and management officials, and also assists each side in gaining a clearer perspective on the issues in dispute. The Mediator makes all of the primary procedural suggestions regarding how the parties can reach an agreement and resolve the dispute. The Mediator will also suggest substantive options as a means of encouraging the parties to expand the range of possible solutions under consideration. The Mediator IS NOT an advocate for the Aggrieved Person/Complainant or for management officials, nor is he/she a decision maker. The Mediator cannot impose a solution on the parties. Under the CSB ADR Program, Mediators are provided through a contract entered into by the CSB EEO Office.
- h. **Resolving Official** – the CSB official with the authority to provide relief or resolve matters during mediation. The CSB Resolving Official is the Chairperson or in the absence or recusal of the Chairperson, the Board member designated personnel authority. The Resolving Official must not be directly involved with the complaint at issue (i.e., the Resolving Official must not be the official against whom the complaint at issue was filed). A Resolving Official must be present, or at least immediately available, during every mediation session held as part of the ADR Program.
- i. **Responding Official(s)** – the CSB employee(s) and/or official(s) who is/are responsible, in whole or in part, for the actions or conditions under dispute.

- j. **Responding Official's Representative** – a person who the Responding Official chooses to accompany and/or represent him/her personally, and who may speak in an advisory or a representative capacity.
8. **ELIGIBILITY TO PARTICIPATE IN ADR.** Individuals who believe they have been discriminated against must seek EEO counseling within 45 calendar days of the alleged discriminatory act in accordance with 29 C.F.R. part 1614. Any current or former employee of the CSB, and any applicant for employment with the CSB, who is eligible to file an EEO complaint, is eligible to participate in the CSB ADR Program. ADR is available at all stages of the EEO complaint process.
9. **NOTIFICATION OF ADR PROGRAM.** When an aggrieved person/complainant contacts an EEO counselor to file an informal or formal complaint, the EEO counselor shall explain the process of filing an EEO complaint, and shall explain to the aggrieved person/complainant that the CSB has an ADR Program which the individual may elect to use as an alternative to conventional processing of an EEO complaint. In addition to describing the processes to the aggrieved person/complainant, the EEO counselor shall provide the individual with copies of the following documents:
- Notice of Right to Request Mediation (Appendix A)
 - Alternative Dispute Resolution Program Fact Sheet (Appendix B)
 - Agreement to Use Alternative Dispute Resolution Program (Appendix C)
10. **ELECTION TO PROCEED UNDER ADR PROGRAM.**
- a. In accordance with the instructions given to the aggrieved person/complainant in the above-referenced documents, the aggrieved person/complainant is granted a seven (7) day period of time in which to elect to participate in the ADR Program. If an aggrieved person contacts an EEO counselor and files an informal complaint, the EEO counselor should wait the allotted seven days to see if the aggrieved person elects to participate in the ADR Program. If the aggrieved person does elect to participate in the ADR Program, the EEO counselor should stop the conventional counseling process upon receipt of the aggrieved person's signed Agreement to Use Alternative Dispute Resolution Program. Upon receipt of the Agreement, the EEO counselor shall refer the matter to the CSB EEO Director for initiation of the ADR process in accordance with this Order.
- b. If, after seven days have passed, the aggrieved person has not elected to participate in the ADR Program, or if the aggrieved person specifically declines to participate in the ADR Program, the EEO counselor shall continue with the conventional processing of the aggrieved person's complaint in accordance with 29 C.F.R. Part 1614.

- c. The CSB is required to provide an aggrieved person/complainant the opportunity to participate in the ADR Program throughout both the informal and formal portions of the processing of the individual's EEO complaint. Therefore, if at any point during either the informal or the formal processing of the aggrieved person/complainant's complaint, the individual requests to be allowed to participate in the ADR Program, the EEO counselor shall refer the matter to the CSB EEO Director for initiation of the ADR process in accordance with this Order.
- d. Upon receipt of the ADR Election form and the EEO Counselor's Report, the CSB EEO Office will acknowledge the request and provide written notification to the Aggrieved Person/Complainant of acceptance or rejection of the request for ADR.
- e. Whenever an aggrieved person/complainant requests to participate in the CSB ADR Program, such request shall be forwarded to the CSB EEO Director. A final determination of whether the CSB will participate in the ADR Program with the aggrieved person/complainant is made by the Chairperson or another Board member, where that member has been designated EEO authority by the Board. The decision by the Chairperson or designated Board member shall be made in consultation with the EEO Director and the General Counsel. The CSB should participate in the ADR Program unless the case falls into one of those categories listed in section 13 of this Order. The CSB EEO Director may contact other CSB officials, including the alleged responsible management official, to gather information necessary to make the determination of whether the CSB should participate in the ADR Program with the particular aggrieved person/complainant.
- f. Once the CSB Chairperson or Board member designated EEO authority has determined whether or not the CSB will participate in the ADR Program with the aggrieved person/complainant, the aggrieved person/complainant will be notified in writing of the decision. If the Chairperson or Board member designated EEO authority decides that the CSB will participate in the ADR Program, the aggrieved person/complainant shall be sent a letter outlining the process (see Appendix D).
- g. Participation in the ADR Program by an aggrieved party/complainant is voluntary. Even after electing to participate in ADR, an aggrieved person/complainant is free to withdraw from the ADR process and return to the conventional processing of his/her EEO complaint.

11. **THE MEDIATION PROCESS.**

- a. **Who should attend the mediation.** Concurrently with notifying the aggrieved person/complainant that the CSB has decided to participate in the ADR Program, the EEO Director shall contact the organization that the agency has contracted with to provide mediation services in order to arrange a date and time for a

mediation session. The EEO Director selects and obtains the services for the mediator. Additionally, the EEO Director shall make a determination concerning which CSB employees will be required to participate in the mediation. A CSB official with settlement authority must at least be accessible throughout the entire mediation.

While the decision as to who shall attend the mediation is left up to the EEO Director's discretion, the following people shall ordinarily be present during mediation:

- Resolving Official
- EEO Office Representative
- Agency Representative
- Aggrieved person/complainant and his or her representative
- Responding Official, and his or her representative

In no event may the EEO Director exclude the Agency Representative or the aggrieved person/complainant's representative.

If one of the mediation participants has someone appear at the mediation who has not been identified in writing to the other participants at least 24 hours prior to the mediation, the previously unidentified person may participate only if those not aware of his/her participation agree. Such notification should be sent or faxed to the CSB EEO Office so that it is received at least 24 hours ahead of the mediation conference.

The aggrieved person/complainant is allowed to be accompanied to the mediation by a representative of his or her choice. The CSB will not try to dissuade the aggrieved person/complainant from seeking representation during the mediation, nor will the CSB try to influence the aggrieved person/complainant's choice of a representative.

- b. **Time limits for the ADR Program.** EEOC regulations provide that when an aggrieved person elects to participate in an Alternative Dispute Resolution Program during the informal processing phase, the EEO counseling period is extended from 30 days to a maximum of 90 days. The time for conducting EEO counseling and mediation during the pre-complaint stage of an EEO complaint shall not exceed a total of 90 days. Therefore, regardless of whether the complaint has been resolved, the EEO Office must issue a Notice of Right to File a Discrimination Complaint within 90 days of the date that the aggrieved person filed an informal complaint. Thus, it is necessary to set up the mediation at the earliest possible time in order to make sure that all necessary participants in the

mediation are available, and to make sure that the mediation is completed prior to the 90-day deadline.

If the ADR Program is utilized after a formal complaint has been filed, the time for conducting mediation will not exceed 90 days (from the time participation in the ADR Program is elected). However, given that the 180-day period for completing an investigation of the complaint will not automatically be tolled by participating in the ADR Program, the EEO Director shall ask the complainant to sign an agreement to extend the period for completing the CSB investigation of the complaint if the mediation is not successful (see Appendix C).

- c. **Notification of mediation participants.** When the EEO Director contacts the mediator, the EEO Director should provide the mediator with the names and contact information for the aggrieved person/complainant, the aggrieved person/complainant's representative, the Resolving Official, the Agency's Representative, the EEO Office Representative, and any other individuals who will attend the mediation. The EEO Director is responsible for scheduling the mediation, and for providing each individual who will be attending the mediation with notice of the time, date, and place of the mediation.

The notification of the time, date, and place of the mediation provided to CSB employees should include a statement that attendance at the mediation is mandatory. Moreover, the notification should also explain to CSB employees, including the aggrieved person/complainant, who are participating in the mediation, that time spent at the mediation will be treated as regular duty status. No CSB employee will be required to take leave in order to participate in the mediation.

- d. **Format of mediation.** Once the mediation is scheduled, the Mediator will be in charge of the format of the mediation. However, the standard format for mediation is as follows:

- (1) The mediation process generally begins with a joint session involving the aggrieved person/complainant, the aggrieved person/complainant's representative, the CSB resolving official(s), the alleged responsible management official, the CSB representative, and the Mediator. The initial joint session is opened by the Mediator who delivers an opening statement discussing his or her role as a neutral, describing the mediation process, and explaining that the process is confidential (see section 14 of this Order). After the opening statement, each party will be asked to talk about the matter(s) at issue and the type of remedy that is being sought. After each party has had a chance to present its concerns, the Mediator may ask questions to clarify or elaborate on a particular topic, and discuss potential solutions.

- (2) At this point in the mediation, each party (and his or her representative) may be asked to meet privately with the Mediator (to "caucus"), or the Mediator

may decide to continue meeting with the parties jointly. The private caucus allows each party to discuss the issues in greater detail and with greater candor, and allows the Mediator to get a better idea of how the parties would like to resolve the issues. Information discussed with the Mediator during caucus may be given to the Mediator in confidence, not to be shared with the other party. Following the caucuses, the Mediator may decide to meet with the parties jointly to discuss areas of agreement and disagreement. The process of caucusing and meeting jointly may continue until it is clear that an agreement will or will not be reached.

- (3) The Mediator can serve in a number of roles in these joint and private sessions. The Mediator can carry offers from one party to another. The Mediator can translate a party's concerns to the other party. The Mediator can suggest possible solutions. The Mediator can provide a candid assessment of the apparent strength or weakness of a party's case. The goal of the mediation is to reach a mutually agreeable resolution of the issues.

12. **SETTLEMENT AGREEMENTS.**

- a. The agency and the complainant are free to consult with their respective representatives and/or counsel to apprise them of their legal rights and/or authority to agree to certain terms in the proposed settlement agreement.
- b. If the parties reach a settlement, the Mediator will draft a Mediated Settlement Agreement to memorialize the terms agreed to by the parties. Either party is free to propose revisions to the Settlement Agreement drafted by the Mediator, and neither party is required to sign the Settlement Agreement until it is finalized. The Settlement Agreement should represent the terms to which the parties have agreed. If at all possible, the parties should sign the Settlement Agreement drafted by the Mediator during the mediation session.
- c. If the parties reach a settlement agreement during the course of the mediation, the agreement should be reduced to writing and signed by both parties during the course of the mediation. Where it is not possible or appropriate to sign a settlement agreement during the mediation, it is acceptable to schedule an additional mediation session or a follow-up teleconference. The EEO Director should notify all employees who will be attending the follow-up session of the time, date, and place of the follow-up session.
- d. Any signed settlement agreement reached during mediation as part of the CSB EEO ADR Program is enforceable against both parties to the agreement. If an aggrieved party/complainant believes that the CSB is not in compliance with an agreement reached during mediation as part of the CSB ADR Program, the aggrieved person/complainant should be instructed to notify the CSB EEO Director, in accordance with 29 C.F.R. § 1614.504.

- e. If no settlement agreement is reached during the mediation, the parties can agree to schedule another mediation session or the aggrieved person/complainant can return to the conventional EEO complaint process. If at any point the EEO Director believes that further mediation would prove fruitless, the EEO Director may end the mediation. Additionally, the aggrieved person/complainant may withdraw from the mediation at any time. The resolving official may also withdraw from the mediation at any time. If the mediation ends without an agreement, the processing of the aggrieved person/complainant's complaint will begin again at the point at which it was suspended.
- f. If the aggrieved person/complainant elects to participate in mediation during the informal process and 90 days have passed from the date on which the aggrieved person/complainant filed his/her complaint, the EEO Director shall issue a Notice of Right to File a Discrimination Complaint. However, the CSB may continue to participate in the mediation if it is ongoing.

13. **INAPPROPRIATE CASES FOR THE ADR PROGRAM.** Consistent with the Administrative Dispute Resolution Act of 1996, ADR may not be appropriate when:

- A definitive and authoritative decision is needed as a precedent;
- The matter involves significant issues of government policy that require procedural development and ADR will not assist policy development;
- Maintaining an established policy and/or avoiding variations in decision is of special importance;
- The matter significantly affects non-parties;
- A full public record of the proceeding or resolution is important;
- The agency must maintain continuing jurisdiction over the matter with the right to alter the resolution as circumstances demand;
- A party to a proposed ADR attempt is under criminal investigation for conduct related to the dispute to be submitted to ADR; or
- One of the parties insists that another party be enjoined from engaging in certain conduct.

14. **CONFIDENTIALITY.**

- a. Mediation is a confidential process. The Mediator will keep all information discussed during mediation confidential. No written or recorded record will be made of the mediation proceedings. Tape recording is not allowed.
- b. Statements made by either party during mediation are considered statements made in the course of settlement negotiations and are thus privileged. Therefore, neither party will be bound by statements made during the course of the mediation proceedings. The Mediator will not willingly testify for or against either party, even if one or both of the parties desires such testimony, in judicial or administrative proceedings based on information garnered during mediation.
- c. Statements evidencing an intent to violate a local, state, or federal law are not privileged. Additionally, confidentiality shall not extend to fraud, waste or abuse, or threats of imminent physical harm.

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD

May 20, 2002

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
EQUAL EMPLOYMENT OPPORTUNITY
ALTERNATIVE DISPUTE RESOLUTION PROGRAM

NOTICE OF RIGHT TO REQUEST MEDIATION

The purpose of this notice is to inform you of your option to utilize the Chemical Safety and Hazard Investigation Board's (CSB) Equal Employment Opportunity Alternative Dispute Resolution Program ("ADR Program"), in an effort to resolve your equal employment opportunity (EEO) complaint of discrimination.

The CSB Equal Employment Opportunity Office ("EEO Office") runs the CSB ADR Program, which employs mediation as an informal method of attempting to resolve EEO complaints. The CSB ADR Program is designed to attempt to resolve EEO complaints at the earliest possible time, and thus a complainant can elect to participate in the ADR Program both during the informal and the formal stages of the complaint process.

For a full description of the CSB ADR Program, please see the memorandum entitled "Alternative Dispute Resolution Program Fact Sheet" ("Fact Sheet"). You are strongly encouraged to read the entire Fact Sheet before deciding whether to elect to participate in the CSB ADR Program. When deciding whether to elect to participate in the CSB ADR Program please consider the following:

- Mediation is a voluntary method of attempting to resolve EEO complaints. The goal of mediation is to reach a voluntary settlement of the issues raised in the complainant's EEO complaint. The mediation is not an evidentiary hearing or adjudication, and the mediator is not authorized to bind the parties to any agreement. The mediator's sole purpose is to help the parties to reach a voluntary settlement of the complainant's EEO complaint.
- If the mediation is unsuccessful, your EEO counseling will continue from the point at which it left off. Therefore, you do not forfeit any rights or benefits by entering mediation during the informal or formal stage of the processing of your EEO complaint. Moreover, you may choose to end mediation at any time and restart the conventional processing of your EEO complaint.
- According to EEOC regulations, if a complainant ultimately prevails in his/her complaint of discrimination, he/she is entitled to have his/her reasonable attorney's fees reimbursed by the agency. However, the EEOC has determined that a complainant may not recover more than two hours worth of attorney's fees on services expended prior to filing a formal complaint of discrimination. Therefore, if you elect to participate in the CSB ADR Program at the informal stage of the EEO process, and your complaint is not settled during the mediation session, you may not be allowed to recover these attorney's fees in any further proceedings.

- You have the right to anonymity during the informal stage of your EEO complaint. However, if you elect to participate in the CSB ADR Program during the informal stage of the processing of your complaint, you must waive your right to anonymity and your name will be revealed as part of the mediation process. Therefore, due to the fact that mediation requires the participation of management officials in the mediation, maintaining anonymity during participation in the ADR Program is not possible.
- Whatever either party tells the mediator during a mediation held as part of the CSB ADR Program is confidential. The mediator will not keep any permanent record of the mediation session, and will not voluntarily disclose any information provided by either party during the mediation unless authorized to do so.
- You may bring a representative to the mediation, including an attorney.
- If a resolution of your complaint is reached during the mediation, the agreement will be placed in writing, signed by both you and the CSB, and will be binding on both parties.

The CSB strongly urges you to consider participating in the ADR Program. Attached to this form are several other related forms, including the Fact Sheet which describes the ADR Program in detail. Please review this information and if you decide to participate in the ADR Program, please return the form entitled “Agreement to Use Alternative Dispute Resolution Program” within seven (7) days to:

Elizabeth Robinson, Director
 Equal Employment Opportunity Office
 U.S. Chemical Safety and Hazard Investigation Board
 2175 K Street, N.W.
 Suite C-100
 Washington, DC 20037
 (202) 261-7627
 Fax: (202) 785-2362

If you have any additional questions about the CSB ADR Program please contact Ms. Robinson at the above address and/or telephone number. By signing this document, you are merely acknowledging receipt, rather than agreeing to participate in the ADR Program.

 Complainant’s signature

 Date

U.S. CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
EQUAL EMPLOYMENT OPPORTUNITY
ALTERNATIVE DISPUTE RESOLUTION PROGRAM

FACT SHEET

The United States Chemical Safety and Hazard Investigation Board (CSB) has created an Alternative Dispute Resolution Program (“ADR Program”) designed to employ mediation in order to resolve disagreements without extensive administrative processing or the need for civil litigation. The CSB Equal Employment Opportunity Office (“EEO Office”) is responsible for operating the CSB ADR Program.

AUTHORITY

The authority for the CSB ADR Program comes from the Administrative Dispute Resolution Act of 1996, Part 1614 of Title 29 of the Code of Federal Regulations, and the Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110).

MEDIATION

Mediation is an informal process, which provides a forum to discuss the complaint and the opportunity to enter an agreement that satisfies both parties. Participating in this alternative process are a trained Mediator, the Aggrieved Person/Complainant, and the Responding and Resolving Officials.

While consenting Aggrieved Persons/Complainants and Management Officials are required to appear at a scheduled mediation session and engage in good faith attempts to resolve the matter, parties may withdraw from the mediation session and will not be forced into an agreement.

THE ADR PROGRAM

- The CSB ADR Program utilizes mediation as its method of dispute resolution.
- All employees (including applicants for employment) of the CSB who wish to file informal or formal EEO complaints of discrimination will have the opportunity to elect to participate in the ADR Program.
- Selection of the ADR Program by an Aggrieved Person or a Complainant is strictly voluntary.
- The participation of management officials in the process is mandatory, once the CSB has agreed to participate in ADR.

- Final authority to agree to have the CSB participate in ADR rests with the Chairperson or another Board member, where that member has been designated EEO authority by the Board. However, the CSB should only decline to participate in those situations described herein in the section entitled: “Inappropriate Cases for the ADR Program.”
- The objective of mediation is to assist the parties to voluntarily reach an acceptable resolution of the issues in dispute.
- Mediation techniques have been found to be most useful in highly polarized disputes where the parties have either been unable to initiate a productive dialogue, or in cases where the parties have been talking and reached a seemingly insurmountable impasse.
- It is expected that the mediation process will be relatively fast and inexpensive.
- The mediation process will be conducted by an impartial third party, the Mediator.

PARTICIPANTS IN THE MEDIATION PROCESS

- a. **Agency Representative** -- an attorney for the CSB who provides legal counsel to the Resolving Official.
- b. **Aggrieved Person/Complainant** -- the person bringing an EEO complaint. If the person’s complaint is in the informal process, the person is referred to as the Aggrieved Person. If the person’s complaint is in the formal process, the person is referred to as the Complainant.
- c. **Aggrieved Person/Complainant’s Representative** -- an individual who the Aggrieved Person or Complainant chooses to accompany or represent him/her, and who may speak in an advisory or representative capacity.
- d. **Co-Mediator** -- a neutral third party who assists the Mediator and is often in the process of final certification as a Mediator. A Co-Mediator is not required and will not be present at every mediation.
- e. **EEO Office Representative** -- a member of the CSB EEO Office staff or another appropriate individual designated by the CSB EEO Director. The EEO Office Representative should be present during mediation sessions to observe the proceedings and to provide any necessary technical advice and/or assistance. The EEO Office Representative should not serve as either the Resolving Official or the Agency’s Representative. The EEO Office Representative is not required to attend mediation sessions, but attendance of the representative helps to ensure that the process runs smoothly.
- f. **Mediator** -- a trained neutral third party who facilitates communication between the Aggrieved Person/Complainant and management officials, and also assists each side in

gaining a clearer perspective on the issues in dispute. The Mediator makes all of the primary procedural suggestions regarding how the parties can reach an agreement and resolve the dispute. The Mediator will also suggest substantive options as a means of encouraging the parties to expand the range of possible resolutions under consideration. The Mediator IS NOT an advocate for the Aggrieved Person/Complainant or for management officials, nor is he/she a decision maker. The Mediator cannot impose a solution on the parties. Under the CSB ADR Program, Mediators are provided through a contract entered into by the CSB EEO Office.

- g. **Resolving Official** -- the CSB official with the authority to provide relief or resolve matters during mediation. The CSB Resolving Official is the Chairperson or in the absence or recusal of the Chairperson, the Board member designated personnel authority. The Resolving Official must not be directly involved with the complaint at issue (i.e., the Resolving Official must not be the official against whom the complaint at issue was filed). A Resolving Official must be present, or at least immediately available, during every mediation session held as part of the ADR Program.
- h. **Responding Official(s)** -- the CSB employee(s) and/or official(s) who is/are responsible, in whole or in part, for the actions or conditions under dispute.
- i. **Responding Official's Representative** -- a person who the Responding Official chooses to accompany and/or represent him/her personally, and who may speak in an advisory or a representative capacity.

HOW MEDIATION WORKS

The mediation process generally begins with a joint session involving the Aggrieved Person/Complainant, the Aggrieved Person/Complainant's representative, the CSB resolving official(s), the alleged responsible management official, the CSB representative, and the Mediator. The initial joint session is opened by the Mediator who delivers an opening statement discussing his or her role as a neutral, describing the mediation process, and explaining that the process is confidential (as described herein in the section entitled: "Confidentiality"). After the opening statement, each party will be asked to talk about the matter(s) at issue and the type of remedy that is being sought. After each party has had a chance to present their concerns, the mediator may ask questions to clarify or elaborate on a particular topic, and discuss potential solutions.

At this point in the mediation, each party (and his or her representative) may be asked to meet privately with the Mediator (to "caucus"), or the Mediator may decide to continue meeting with the parties jointly. The private caucus allows each party to discuss the issues in greater detail and with greater candor, and allows the Mediator to get a better idea of how the parties would like to resolve the issues. Information discussed with the Mediator during caucus may be given to the Mediator in confidence, not to be shared with the other party. Following the caucuses, the Mediator may decide to meet with the parties jointly to discuss areas of agreement and disagreement. The process of caucusing and meeting jointly may continue until it is clear that an agreement will or will not be reached.

The Mediator can serve in a number of roles in these joint and private sessions. The Mediator can carry offers from one party to another. The Mediator can translate a party's concerns to the other party. The Mediator can suggest possible solutions. The Mediator can provide a candid assessment of the apparent strength or weakness of a party's case. The goal of the mediation is to reach a mutually agreeable resolution of the issues.

The parties are free to consult with their respective representative and/or counsel to apprise them of their legal rights and/or authority to agree to certain terms in the proposed settlement agreement.

If a settlement is reached by the parties, the Mediator will draft a Mediated Settlement Agreement in accordance with the terms agreed to by the parties. Either party is free to propose revisions to the Settlement Agreement drafted by the Mediator, and neither party is required to sign the Settlement Agreement until it is finalized. The Settlement Agreement should represent the terms to which the parties have agreed. If at all possible, the Settlement Agreement drafted by the Mediator should be signed by the parties during the mediation session.

STEPS IN THE ADR PROGRAM

1. An Aggrieved Person must seek EEO counseling within 45 calendar days of an alleged discriminatory act in accordance with 29 C.F.R. 1614.105. At that time, the EEO Counselor should inform the Aggrieved person of his/her option to utilize the ADR Program. The EEO Counselor should emphasize that the ADR Program is available in the informal and formal stages of the complaint.
2. If the Aggrieved Person chooses to use the ADR Program, he/she must inform their EEO Counselor and submit an ADR Election form to the CSB EEO Office, attention:

Elizabeth Robinson, Director
Equal Employment Opportunity Office
U.S. Chemical Safety and Hazard Investigation Board
2175 K Street, N.W.
Suite C-100
Washington, DC 20037
Fax: (202) 785-2362

3. Upon receipt of the ADR Election form and the EEO Counselor's file, the CSB EEO Office will acknowledge the request and provide written notification to the Aggrieved Person or Complainant of acceptance or dismissal for the ADR Program processing.

If the complaint is NOT accepted for the ADR Program, the Aggrieved Person or Complainant will be notified and returned to conventional pre-complaint counseling (or returned to the point the formal process ceased).

If, however, the Complaint IS accepted for the ADR Program, the parties and their

representatives will be notified and a Mediator will be identified and a mediation conference will be scheduled to mediate the case.

4. The CSB EEO Office will notify all parties involved of the date, place, and time of the mediation conference.
5. If the mediation IS successful and an agreement is reached:

The Aggrieved Person/Complainant, the Aggrieved Person/Complainant's representative, the CSB Officials, the CSB Official's representative, and the Mediator will sign a Mediated Settlement Agreement.

The Mediator will specifically state in the Agreement what both parties have agreed to during the mediation.

Any signed settlement agreement reached during mediation as part of the CSB EEO ADR Program is enforceable against both parties to the agreement. If an aggrieved party/complainant believes that the CSB is not in compliance with an agreement reached during mediation as part of the CSB ADR Program, the aggrieved person/complainant should be instructed to notify the CSB EEO Director, in accordance with 29 C.F.R. § 1614.504.

6. If the mediation IS NOT successful:

The Aggrieved Person will be given the opportunity to continue to pursue the informal complaint process under the provisions of 29 C.F.R. § 1614, and a Complainant will be given the opportunity to continue in the formal complaint process from the point the formal process ceased.

The CSB EEO Director will issue the Aggrieved Person the Notice of Right to File a Discrimination Complaint within no more than 90 days from the initial contact.

INAPPROPRIATE CASES FOR THE ADR PROGRAM

Consistent with the Administrative Dispute Resolution Act of 1996, ADR may not be appropriate when:

1. A definitive and authoritative decision is needed as a precedent;
2. The matter involves significant issues of government policy that require procedural development and ADR will not assist policy development;
3. Maintaining an established policy and/or avoiding variations in decision is of special importance;
4. The matter significantly affects non-parties;

5. A full public record of the proceeding or resolution is important;
6. The agency must maintain continuing jurisdiction over the matter with the right to alter the resolution as circumstances demand;
7. A party to a proposed ADR attempt is under criminal investigation for conduct related to the dispute to be submitted to ADR; or
8. One of the parties insists that another party be enjoined from engaging in certain conduct.

TIME LIMITS FOR THE ADR PROGRAM

EEOC regulations provide that when an aggrieved person elects to participate in an Alternative Dispute Resolution Program during the informal processing phase, the EEO counseling period is extended from 30 days to a maximum of 90 days.

Based on the provisions of 29 C.F.R. § 1614.105(f), the time for conducting EEO counseling and mediation during the pre-complaint stage of an EEO complaint shall not exceed a total of 90 days.

If the ADR Program is utilized after a formal complaint has been filed, the time for conducting mediation will not exceed 90 days (from the time participation in the ADR Program is elected).

WHY MEDIATION

- Experience has shown that over 50% of the discrimination complaints submitted for mediation are resolved. Even when a case is not resolved, mediation may be helpful in clarifying issues.
- Protection of the Relationship: Mediation generally results in a settlement that both parties can accept and support, promotes better communications between them, and encourages a respectful and cooperative relationship.
- Time Savings: Mediation is generally quicker and available on short notice. The speed and schedule of mediation is entirely dependent on the parties' willingness to address and reach agreement on the issues.
- Cost Savings: Mediation is less costly and involves direct negotiations between the parties.
- Greater Flexibility in Possible Settlements: Mediation, because of its more flexible format and lack of structural constraints, allows the parties to address relationship, procedural and substantive issues. It allows people to get to the "root of the problem" without having to "force-fit" a problem into an inappropriate process.
- Keeps the Decision-Making Authority in the Hands of the Parties: Procedures such as litigation, administrative hearings, and binding arbitration rely on third party decision makers

to break deadlocks and render a decision. These procedures remove decision-making authority and responsibility from the parties who often are the most informed about the issues and options. Mediation keeps the decision-making authority with the people who best know the problems and it preserves both individual and organizational authority. While legal advisors will ordinarily be present and offer assistance, key managers are the decision makers.

- An Aggrieved Person DOES NOT give up their rights to pursue the dispute formally under the EEOC complaint processing regulations.

CONFIDENTIALITY

Mediation is a confidential process. The Mediator will keep all information confidential. No written or recorded record will be made of the mediation proceedings.

Statements made by either party during a mediation are considered statements made in the course of settlement negotiations and are thus privileged. Therefore, neither party will be bound by statements made during the course of the mediation proceedings. The Mediator will not willingly testify for or against either party in judicial or administrative proceedings based on information garnered during a mediation.

However, statements evidencing an intent to violate a local, state, or federal law are not privileged. Additionally, confidentiality does not extend to fraud, waste, or abuse, or threats of imminent physical harm.

QUESTIONS CONCERNING THE ADR PROGRAM SHOULD BE ADDRESSED TO:

Elizabeth Robinson, Director
Equal Employment Opportunity Office
U.S. Chemical Safety and Hazard Investigation Board
2175 K Street, N.W., Suite C-100
Washington, DC 20037
(202) 261-7627
Fax: (202) 785-2362

UNITED STATES CHEMICAL SAFETY AND HAZARD INVESTIGATION BOARD
EQUAL EMPLOYMENT OPPORTUNITY
ALTERNATIVE DISPUTE RESOLUTION PROGRAM

AGREEMENT TO USE ALTERNATIVE DISPUTE RESOLUTION PROGRAM

I, _____, voluntarily agree to have my discrimination claim processed under the Chemical Safety and Hazard Investigation Board’s (CSB) Equal Employment Opportunity Alternative Dispute Resolution Program (“ADR Program”).

I acknowledge that _____, of the CSB Equal Employment Opportunity Office, has provided me with a copy of the procedures that will be used in the processing of the following claim:

I further agree and acknowledge the following:

A. The procedures for processing complaints under 29 C.F.R. § 1614, and the ADR Program have been explained to me and a copy of the CSB ADR Program Fact Sheet has been provided to me as Enclosure #1. I understand that I have seven (7) calendar days from today’s date to notify the CSB EEO Director of my election to pursue the conventional process (as set forth at 29 C.F.R. § 1614), or the ADR Program.

_____ (Sign and date).

B. I understand that by entering into this agreement I agree that the claim identified above will be processed under the CSB ADR Program, but that I have the right to opt out of the ADR Program and return to the conventional process (set forth at 29 C.F.R. § 1614) at any time.

C. I understand that mediation is a confidential process. I agree that I will not disclose information discussed during the process, including settlement terms, to third parties, unless the participants otherwise agree in writing or as required by law. Confidentiality, however, shall not extend to fraud, waste, or abuse, or threats of imminent physical harm. I agree not to subpoena the mediator(s) in any further administrative or judicial proceeding and further agree that the mediator will be held harmless of any claim of damages arising from the mediation process. I understand that the mediation process

shall be treated as a compromise negotiation for purposes of the Federal Rules of Evidence (Rule 408 and any other applicable rules) and state rules of evidence. The mediator will be disqualified as a witness, consultant, or expert in any pending or future action relating to the subject matter of the mediation, including those between persons not parties to the mediation. Failure to meet the confidentiality requirements of this Agreement is a basis for exclusion from mediation sessions.

- D. I waive my right to anonymity in the processing of the dispute identified above.

- E. [IF APPLICABLE] I agree to grant the CSB a 90-day extension of the 180-day period allotted for the investigation of my complaint of discrimination so that my complaint may be processed under the CSB ADR Program. I understand that if my complaint is not resolved through the ADR Program, it will be returned to the investigative process at the same point where it left off.

Complainant's signature

Director, Equal Employment Opportunity Office,
Chemical Safety and Hazard Investigation Board

Date

Date

Addressee

Re: , Board Case No:
ADR Program Mediation - Date of mediation

Dear Addressee:

The U.S. Chemical Safety and Hazard Investigation Board's (CSB) Office of Equal Employment Opportunity has accepted (**complainant's name**) request to have (**his/her**) complaint of discrimination processed through the Alternative Dispute Resolution Program (ADR Program).

Pursuant to 29 C.F.R. 1614.108, a mediation conference for (**complainant's name**) has been scheduled to convene on (**date of mediation**) at (**time of mediation**), at (**place of mediation**). Your attendance at the mediation session is required. The purpose of the mediation is to attempt to resolve the enclosed allegations of discrimination in (**complainant's name**) EEO complaint. Please note that it is not unusual for the mediation session in cases of this type to last the whole business day. If you have any time constraints, please advise the Mediator as soon as possible. It is also important to note that the mediation conference is scheduled for one day; therefore, the Mediator will try to most effectively use the time available. However, occasionally a mediation will last more than one day. If there is a need or desire to reconvene the mediation on another day, that decision will be jointly made by the participants and the Mediator at the end of the day. Usually, participant(s) take a "lunch break" while the mediator is caucusing with another participant(s).

The objective of this mediation session is to assist the parties to voluntarily reach an acceptable resolution of the issues in dispute. A neutral contract mediator will conduct the mediation conference. The mediator's responsibility is to manage the process and make all of the primary procedural suggestions regarding how parties can reach an agreement and resolve the dispute. The mediator's task is to keep the parties talking, working, and exploring all aspects of the dispute, including a variety of possible solutions. The mediation process is designed to enhance this type of communication and problem solving.

I want to emphasize that each participant should come to the mediation prepared to present and discuss a variety of ways to resolve the issues raised. It is unrealistic to expect that simply restating each participant's views of the issues is somehow going to resolve the dispute. The participants' tasks are to focus on the substantive aspects of the conflict and the possible solutions. You may present documentation, if you feel it is necessary to support your position. However, this is not an adjudicatory proceeding and the mediator will not make a determination of any of the contested issues. The mediator's purpose is to try to aid the parties in their attempts to reach a mutually agreeable settlement of this matter. Before and during the mediation conference, I urge each participant to think of as many potential ways that these matters might be resolved to the mutual satisfaction of all parties. The more fixed each participant becomes on there being only one solution to any dispute, the less likely a resolution will occur. It is

important to underscore that while representatives may have an important role in mediation, the primary parties to the conflict have the major role in explaining their own view of the issues.

If one of the participants has someone appear at the mediation who has not been identified in writing to the other participants at least 24 hours prior to the mediation, that person may participate only if those not aware of his/her participation agree. Such notification should be sent or faxed to this office so that it is received at least 24 hours ahead of the mediation conference. I want to emphasize, however, that the fewer persons attending the conference, the better.

Confidentiality is a critical part of the process and will not be compromised by the Mediator, even if both parties desire for the Mediator to testify in the future. As further protection of confidentiality, tape recording is not allowed. The Mediator will destroy his/her notes before leaving the mediation conference. It is important that the parties understand and agree to the fact that if the dispute is not settled and ultimately goes to an administrative or judicial proceeding, the parties will not subpoena the Mediator or any documents associated with this mediation conference. Further, the mediator will not willingly testify about anything he/she hears or observes about any issue, any offer, or the behavior of any participant in the mediation conference, per Federal Rule of Evidence (FRE) 408. The exceptions to the mediator's confidentiality are discussions concerning waste, fraud, abuse, criminal activity, violence, and threats of violence.

Prior to the beginning of the mediation conference, all parties should read and understand the CSB Alternative Dispute Resolution Program Fact Sheet which explains the mediation process and the necessary prerequisites for meaningful mediation participation. Additionally, all participants will be asked to sign a document agreeing not to breach confidentiality of the mediation conference, including anything they hear or observe about any issue, any offer, or of the behavior of any participant in the mediation conference (with the exceptions noted above). However, the ability of the parties to keep evidence shared in a mediation conference confidential is narrowed to those that are unique to the mediation conference discussion and not otherwise discoverable. In other words, by simply sharing a document or presenting evidence that is, under the rules, discoverable outside of the conference, an opposing party would not, we believe, be able to successfully bar the admission of that otherwise discoverable evidence in a judicial forum.

All CSB employees will be considered to be on official duty status while participating in a mediation held as part of the Alternative Dispute Resolution Program. No CSB employee is required to use leave in order to participate in the ADR Program.

THE MEDIATION CONFERENCE

A. Opening Statements

The mediation conference will begin with an opening statement from the Mediator regarding his/her role, which is as a neutral, and not as an advocate for or against any

party. Moreover, the Mediator will discuss the confidentiality requirements of the mediation.

After this opening statement, the Mediator will ask each participant to explain in an uninterrupted opening statement, in his/her own words, what issues/concerns are important to that person and how these issues might be resolved.

B. Joint Discussion

After the opening statements, the parties may enter into a joint discussion where clarifying questions can be asked, and potential solutions, if any, can be discussed.

C. Caucus

Following the joint discussions, the Mediator may caucus or meet privately at least once with each participant and groups of participants.

Individual private meetings are also confidential, and information shared during these meetings that the participant indicates is to be kept confidential will not be shared in the other caucus or when the parties reconvene.

D. Reconvene Joint Session

Following the caucuses, the Mediator will reconvene a joint session and determine if there is any area of agreement on any issue.

E. Re-caucusing

If not, the parties will continue to discuss the issues, possibly re-caucusing with the Mediator until it is clear that a settlement is or is not going to emerge at this session.

F. If Settlement Is Reached

If the mediation is successful and an agreement is reached, the Mediator will ask the participants to help draft the terms of an agreement that are acceptable to all parties and that can be signed at the end of the session. **It is imperative that individuals coming to the table have authority to enter into a settlement or have access to such authority during the mediation.**

If there is an alleged breach in an EEO based agreement, the alleged breach must be reported within 30 days of when the alleging party knew or should have known of the alleged breach. The report of the alleged breach must be in writing to:

Elizabeth Robinson, Director
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U.S. Chemical Safety and Hazard Investigation Board
2175 K Street, N.W.

Suite C-100
Washington, DC 20037
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G. If Settlement Is NOT Reached

If the mediation is unsuccessful and an agreement is not reached, the complainant will be given the opportunity to continue in the administrative process from the point the processing of the complainant's complaint ceased under the provisions of 29 C.F.R. § 1614.

Parties should not be penalized in any way for their participation in mediation or for not reaching an agreement.

If you have any questions about your complaint or this letter, please contact me at the address and/or phone number listed above.

Sincerely,

Director
Equal Employment Opportunity Office
U.S. Chemical Safety and Hazard Investigation Board