

UNITED STATES DEPARTMENT OF AGRICULTURE
AGRICULTURAL MARKETING SERVICE

DIRECTIVE

4710.1

06/06/08

ALTERNATIVE DISPUTE RESOLUTION

I. PURPOSE

This Directive:

- A. Establishes AMS policy and outlines responsibility for Alternative Dispute Resolution (ADR). The workplace program is known as Alternative Resolution (AR) in AMS.
- B. Describes most frequently used techniques used in ADR designed to work toward preventing and resolving workplace conflicts within AMS.

II. AUTHORITIES

- A. Administrative Dispute Resolution Act of 1996 (ADR Act).
- B. USDA Regulation 4710-0001, Alternative Dispute Resolution, dated 5/05/06.
- C. AMS Administrator's Memorandum dated 4/17/2008.
- D. Equal Employment Opportunity Commission's (EEOC) regulations on Federal sector equal employment opportunity (EEO) complaint processing, 29 CFR 1614.
- E. EEOC's Federal Sector Complaint Processing Manual, Management Directive (MD)-110.
- F. USDA's Processing EEO Complaints of Discrimination, USDA Departmental Regulation (DR)-4300-7.
- G. USDA's EEO Complaint Processing Procedures, USDA DM 4300-001.

Distribution: AMS

Originating Office: C&A/CR

III. DEFINITIONS

- A. Alternative Dispute Resolution (ADR) – Any of a number of conflict resolution techniques that use a neutral third party to assist employees, managers, contractors, and AMS customers in resolving disputes.
- B. Conflict – Any disagreement, discord, argument, complaint, or legal action, as well as the circumstances leading up to it.
- C. Conflict Management Coaching – A confidential one-on-one service designed to support long-term conflict resolution.
- D. Customer – Individuals, organizations, or businesses external to AMS that provide services to or receive services from AMS or that have contact with any AMS office or employee.
- E. Equal Employment Opportunity (EEO) Complaint process stages and ADR:
1. Informal Process – The counseling stage of an EEO complaint and during which ADR *is* offered and conducted.
 2. Formal Process – The stage of an EEO complaint initiated by the filing of a written complaint with the Office of Civil Rights and during which ADR *is* offered and conducted.
- F. Facilitation – The use of techniques to improve the flow of information in a meeting between parties to a conflict. The techniques may also be applied to decision-making meetings where a specific outcome is desired (e.g., resolution of a conflict or dispute).
- G. Good Faith – An effort to honestly, sincerely, and fully discuss problems and matters in conflict, and to explore solutions to those problems or matters.
- H. Mediation – An ADR technique that involves a confidential discussion among two or more parties in conflict, with one or more mediators present to facilitate the discussion in an attempt to reach a resolution that is acceptable to all parties.
- I. Multiple Intervention Approach – The use of a combination of ADR techniques to assist the parties in achieving long-term conflict resolution through a variety of methods, including developing the tools and skills necessary for long-term conflict resolution.
- J. Neutral – The person who is authorized to conduct, lead, or facilitate an ADR session. The neutral has no personal interest in the outcome of the conflict, and acts impartially and without bias. Neutrals include mediators, facilitators, and others.

- K. Parties – The agencies, employees, managers, or customers who are in conflict.
- L. Resolution – A decision reached by the parties which results in the total or partial end or closure of a conflict, complaint, grievance, appeal, or litigation.
- M. Resolving Official – In an EEO complaint, the ADR session official who the responding Agency has designated, and to whom the Agency has assigned the authority, to make, change, accept, and approve proposals for resolution during an ADR session. The Resolving Official binds a responding Agency by signing an EEO settlement.
- N. Responsible Management Official (RMO) – The EEO ADR session official(s) who, according to the complainant’s allegations, is (are) responsible for the action or made the decision that harmed the complainant. An RMO may not be the designated Resolving Official in an ADR session. The RMO is sometimes identified as the “Responding Management Official.”

IV. POLICY

It is the policy of AMS to:

- A. Prevent conflicts whenever possible and, when conflicts do occur, to make every effort to reach the earliest possible, consensual resolution of conflicts and issues, using ADR as an essential tool towards achieving that goal.
- B. Foster a culture of respect and trust among AMS employees and customers through the use of ADR to achieve effective and mutually satisfactory conflict resolutions.

V. ADR GENERAL PROVISIONS

- A. AMS shall utilize ADR as a standard tool for resolving workplace conflicts and conflicts between AMS and its customers whenever practical and possible, as managed by the respective program offices.
- B. AMS, its representatives, employees, customers, and contractors shall seek to resolve conflicts at the earliest stage possible consistent with laws and regulations.
- C. In any ADR proceeding involving a workplace or EEO conflict within AMS, an individual with authority to fully resolve the matter on behalf of the agency must be in attendance or readily accessible to the parties during the proceeding.

- D. All parties participating in ADR are expected to participate in good faith. Participation in ADR is voluntary for employees. Supervisors and managers are required to participate in ADR when requested to do so, absent any compelling reasons.
- E. Agreement to resolve a conflict shall be voluntary for all parties participating in ADR.
- F. Parties are entitled to be accompanied, represented, and advised by a personally chosen representative in ADR proceedings consistent with laws and regulations, and if applicable, contractual agreements.
- G. The use of ADR shall not adversely affect the rights of AMS employees to seek resolution of their issues through other administrative processes; including complaints, grievances, and appeal systems, provided established time frames in each system are otherwise met. Grievance time frames may be extended to allow the parties to try ADR. The statutory time frames of the EEO process are not flexible and must be met.
- H. No employee shall commit, authorize, or condone any retaliation against any employee or customer because of the pursuit of, or participation in, ADR.
- I. AMS shall maintain an ADR Awareness Program and provide training and educational services designed to promote effective conflict management. These shall include explanations of available ADR services and employees' responsibilities in relation to ADR participation.
- J. Consistent with its legal and regulatory obligations, AMS shall provide reasonable accommodations to persons with disabilities or special needs, and persons who require alternative means of communication at any ADR session or activity.
- K. All parties are entitled to and shall receive a copy of any settlement agreement or resolution which they signed.
- L. AMS shall fulfill its notice and any bargaining obligations under the Federal Labor Management Relations Act, and applicable collective bargaining agreements prior to implementation of any new ADR procedures or programs affecting bargaining unit employees.
- M. Management and labor organizations are encouraged to work cooperatively to include or enhance ADR provisions in future negotiated agreements, partnership agreements, separate addenda, or memorandums of understanding. Management and bargaining units are encouraged to consider suspending timeframes for a mutually agreed upon period in order to use ADR before and during the grievance process (not applicable to statutory EEO timeframes).

N. All ADR information shall be maintained in files separate from official personnel, EEO, and other administrative files.

O. AMS shall offer ADR to all employees except when the Agency documents an incident that involves workplace violence, sexual assault/battery, or other criminal activity. AMS employees are encouraged to review Directive 4790.1, "Prevention of Workplace Violence."

P. Whenever AMS decides to offer ADR in cases where there are concerns about the safety of participants in the ADR process, the Agency is obliged to take appropriate safety precautions; e.g., local law enforcement, Federal Protective Service, U.S. Marshalls, etc.

Q. AMS need not offer ADR if to do so would conflict with any law or Government-wide or Departmental regulation that limits its use.

VI. ADR IN WORKPLACE DISPUTES (EARLY INTERVENTION PROGRAMS, NON-EEO)

A. ADR shall be available for the resolution of workplace conflicts before, during, and after the grievance process, unless otherwise stated in a collective bargaining agreement.

B. Within the administrative grievance system, either the grievant or management may request or propose the use of ADR to facilitate the informal and voluntary resolution of workplace disputes. The parties may mutually agree to suspend the timeframes for completing the grievance process for the purpose of participating in ADR.

C. All employees, e.g., GS, WG, supervisory, SES, volunteers, contract, Stay-in-School, Summer Interns, etc., are strongly encouraged to use ADR services to resolve workplace conflicts at the earliest stage possible. Employees may request the use of ADR at any point they believe assistance is needed.

D. In a workplace conflict that is not an EEO complaint, managers and supervisors are required to participate in ADR when requested to do so, absent compelling reasons. Declining to participate in ADR requires concurrence of the appropriate Deputy Administrator.

E. ADR may not be appropriate for, and need not be used in every non-EEO workplace dispute. If an employee requests ADR and management decides that ADR is not appropriate, it shall be discussed with the Alternative Resolution Manager and have the concurrence of the appropriate Deputy Administrator.

VII. ADR IN WORKPLACE DISPUTES (EEO ONLY)

A. Consistent with USDA policy, AMS representatives, employees, customers, and contractors shall seek to resolve conflicts at the earliest stage possible. ADR should be used as early as possible in the EEO complaint process.

B. EEO Counselors shall make both written and oral ADR offers to informal complainants as soon as possible during the counseling process consistent with their responsibilities.

1. As part of the ADR offer to the complainant and so that the complainant may make an informed decision, the EEO Counselor shall identify on the ADR Offer Form (Attachment 1 to this Directive) and describe in detail the specific ADR technique chosen to offer the complainant.

2. The complainant shall either elect ADR or traditional counseling.

3. Once a complainant elects ADR, arrangements will be made to conduct ADR expeditiously.

4. The counseling process will continue if the complainant has not accepted the ADR offer within a reasonable period of time after it was made.

C. AMS shall strongly consider offering ADR to all aggrieved employees/complainants at the **formal** stage even when ADR was provided during the informal stage, except in those situations involving workplace violence, sexual assault/battery, or other criminal activity.

1. If AMS decides not to offer ADR for other reasons, at the formal stage, the Agency shall document the decision.

2. The completed documentation must cite merit-based reasons, be signed and dated by the AMS Civil Rights Director and placed in the agency ADR file. The documentation shall not be placed in the EEO complaint file.

3. Having offered and/or conducted ADR at the informal stage is not considered, by itself, to be a merit-based reason for not offering ADR at the formal complaint stage.

4. The completed documentation shall be forwarded to the USDA Conflict Prevention and Resolution Center (CPRC) within one week of the final decision.

5. The completed documentation shall be available to CPRC for review as needed and during internally or externally conducted compliance reviews.

D. ADR is voluntary for the aggrieved party or complainant. Once AMS offers ADR to a complainant and the complainant elects ADR, management is required to participate in ADR in good faith. The final decision regarding whether to offer mediation and who will participate shall be made by the AMS Civil Rights Director.

E. The Agency may determine which ADR technique(s) is offered in each case. Complainants' preferences may be considered.

VIII. ADR IN PROGRAM DISPUTES

AMS encourages the use of ADR as a tool to prevent or minimize escalation of conflicts with its customers and to resolve such conflicts at the earliest possible stage. Program areas have discretion to use ADR, which management shall decide on a case-by-case basis. AMS shall use appropriate forms of ADR in resolving program disputes including, but not limited to, direct negotiations in the interest of reducing litigation costs.

IX. MEDIATOR REQUIREMENTS

Mediator requirements are consistent with Department requirements/regulations, including training, experience, ethics, and on-going professional development.

X. EVALUATION

AMS shall design and implement an evaluation methodology to assess the usage and benefits of ADR to ensure quality services are provided to all parties.

XI. CONFIDENTIALITY

A. Confidentiality in ADR sessions is intended to allow parties to candidly discuss their interests in order to reach the best possible resolution, without fear that statements made during ADR will later be used against them.

B. Confidentiality provides protection from disclosure by an ADR neutral to individuals outside of an ADR session of information discussed or presented during an ADR session.

C. Confidentiality also provides the assurance that an ADR neutral will not disclose to one party of an ADR session, information shared with the neutral in confidence by another party.

D. Information, including resolution options, discussed during or specifically prepared for ADR may not be introduced as evidence in subsequent hearings or other legal proceedings, except as permitted under the ADR Act.

E. Exceptions to confidentiality are waste, fraud, abuse, violence, threats of violence, and criminal activity.

XII. RESPONSIBILITIES

A. AMS Administrator.

1. Ensures that all employees are aware of, have access to, and are encouraged to use ADR programs consistent with this Directive.
2. Endorses and actively supports educational programs, conflict prevention initiatives, as well as the earliest possible use of ADR to resolve workplace complaints.
3. Reports to the Assistant Secretary for Civil Rights (ASCR) at least annually on Agency ADR programs and usage.
4. Ensures that Agency officials who participate in EEO ADR are appropriately informed of the specifics of the EEO matters involved in advance, and fulfill their EEO ADR responsibilities while participating.

B. AMS Civil Rights Director.

1. Promotes and encourages the use of ADR in the EEO process.
2. Assists the Agency Administrator in determining which ADR technique(s) is(are) selected to fulfill the EEO ADR requirements found within this Directive.
3. Issues to all Agency officials who may serve as either a Responsible Management Official (RMO) or a Resolving Official written copies of their rights and responsibilities in the EEO ADR process.
4. Monitors AMS EEO delivery of ADR, tracks usage, ensures compliance with Departmental requirements, and reports at least annually to CPRC on ADR activities.
5. Ensures that all neutrals performing EEO ADR within AMS have received the required training or are deemed qualified per this Directive prior to mediating complaints.

C. AMS Alternative Resolution Manager.

1. Develops and issues standards for qualifications and evaluation of neutrals with AMS consistent with the USDA ADR Regulation.
2. Provides workplace ADR activities throughout AMS.
3. Promotes and encourages the use of workplace ADR.
4. Monitors workplace ADR in AMS, tracks usage, ensures compliance with Departmental requirements, and reports at least annually to CPRC on ADR activities.
5. Maintains information on neutrals.

D. Supervisors and Managers.

1. Ensures that all employees are aware of, have access to, and are encouraged to use ADR programs consistent with this Directive.
2. Endorses and actively supports educational programs, conflict prevention initiatives, as well as the earliest possible use of ADR to resolve workplace complaints.
3. Promotes and encourages the use of ADR in workplace and EEO disputes/complaints.
4. Takes advantage of ADR, conflict management training, and educational opportunities offered by USDA and AMS.
5. Engages in ADR in good faith for long-term conflict management resolutions.

E. Employees.

1. Considers ADR to resolve conflicts/disputes at the earliest possible opportunity.
2. Takes advantage of conflict management training, and other educational opportunities offered by USDA and AMS with supervisory approval.
3. Engages in ADR in good faith for long-term conflict management resolutions.

XIII. CONTACTS

A. Alternative Resolution (AR) - Early Intervention Program

Alternative Resolution, room 3510-S
Hotline: 866-227-0328 or 202-690-3017

Mailing Address:
Agricultural Marketing Service, USDA
1400 Independence Avenue, SW
Mail Stop 0203
Washington, DC 20250

B. EEO Alternative Dispute Resolution (ADR).

AMS Civil Rights Program, room 1095-South Building
Phone: 202-720-0583

Mailing Address:
Agricultural Marketing Service, USDA
1400 Independence Avenue, SW
Mail Stop 0206
Washington, DC 20250

/s/

Lloyd C. Day
Administrator

Attachment 1

Election Form

Alternative Dispute Resolution (ADR) or EEO Counseling

In accordance with Title 29 of the Code of Federal Regulations, Section 1614.105 (b)(2), the Equal Employment Opportunity (EEO) Counselor advised me that I must elect to participate in either the Alternative Dispute Resolution program (ADR) or the Traditional EEO Counseling process. I have been provided a written explanation of ADR as well as the AMS complaint process and both processes have been discussed with me. It has been explained that the election of counseling or ADR is final. I am not allowed to move back and forth between the two processes.

If I have any questions, I know I may contact the EEO Counselor at 202-720-2702, (888) 454-7914 or TDD (202) 690-4168.

I hereby elect to participate in (circle the applicable one):

Alternative Dispute Resolution

Traditional EEO Counseling

Signature of Complainant

Date

The USDA is an equal opportunity provider and employer.