



DEPARTMENT OF THE AIR FORCE  
WASHINGTON, DC

OFFICE OF THE GENERAL COUNSEL

15 March 2005

SAF/GCD  
1740 Air Force Pentagon  
Washington DC 20330-1740

Program Executive Office  
National Security Personnel System  
Attn: Bradley B. Bunn  
1400 Key Boulevard  
Suite B-200  
Arlington, VA 22209-5144

Re: Comments on Proposed NSPS Regulations: Docket Number 2005-001 and  
Regulatory Information Number 3206 – AK76 (Recommended Changes  
to Alternative Dispute Resolution Provision (§9901.806))

Dear Mr. Bunn:

The Dispute Resolution Division of the Air Force General Counsel's Office is responsible for the promulgation and implementation of Air Force Alternative Dispute Resolution (ADR) Policy. We applaud the Department of Defense (DoD) and the Office of Personnel Management (OPM) for encouraging the use of ADR in its proposed National Security Personnel System (NSPS) regulations published in the Federal Register on 14 February 2005 (hereinafter the "proposed regulations"). However, the language used in the proposed regulations does not adequately convey existing DoD ADR policy. Therefore, we recommend the text of the proposed regulations be changed to explicitly reference existing DoD policy.

DoD's current ADR policy is that "[a]ll DoD Components shall use ADR techniques as an alternative to litigation or formal administrative proceedings whenever appropriate. See DoDD 5145.5 ¶4.2. The proposed regulations, in contrast, state that "[t]he use of alternative dispute resolution is encouraged." See 70 Fed. Reg. 7552, 7592 (14 Feb 2005) (§9901.806). The DoD policy statement is much stronger than the mere encouragement found in the proposed regulations. We recommend that §9901.806 of the proposed regulations be amended to read:

The Department recognizes the value of using alternative dispute resolution . . . . The use of alternative dispute resolution is **consistent with existing DoD policy** and is encouraged.. (Emphasis added.)

This amendment will make it clear to DoD employees that implementation of NSPS should not be interpreted as diminishing DoD's commitment to:

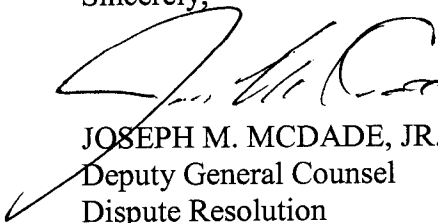
- Implement the Administrative Dispute Resolution Act of 1996, Pub. L. No. 104-320, 110 Stat. 3870 (1996) (Congress found, among other things, that ADR “will enhance the operation of Government and better serve the public.”)
- Promote the use of tested methods for resolving workplace disputes in days versus years (the average ADR resolution time for workplace disputes in the Air Force is less than 30 days which explains why the Air Force attempted to use ADR in 42% of its civilian workplace disputes in FY 2004).

This change will also ensure that award winning DoD component ADR programs are not adversely affected by a perceived change in DoD ADR policy. In this regard it is worth noting that the Air Force, Navy and Defense Logistics Agency have all received awards from the Director of OPM for excellence in workplace ADR.

Finally, senior Administration officials, speaking at Office of Management and Budget (OMB) ADR award ceremonies, are on record as recognizing that promoting ADR is consistent with the President’s Management Agenda because it makes government more citizen-centered and results-oriented (see, e.g., Remarks of Associate Attorney General Robert D. McCallum, Jr., OMB ADR Award Ceremony, 3 December 2003; Remarks of Associate Attorney General Jay B. Stephens, OMB ADR Award Ceremony, 16 April 2002).

The voluntary use of ADR has helped DoD create an efficient, effective and, most of all, fair system for resolving workplace disputes. For the reasons stated above, we strongly encourage DoD to adopt our recommended change. If you or your staff have any questions, or need more information, please contact Mr. Marc Van Nuys at (703) 697-0379 or email him at [marc.van.nuys@pentagon.af.mil](mailto:marc.van.nuys@pentagon.af.mil).

Sincerely,



JOSEPH M. MCDADE, JR., SES  
Deputy General Counsel  
Dispute Resolution

cc: Sharon Seymour, AF/DPX-NS