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**UNITED STATES DEPARTMENT OF AGRICULTURE
WASHINGTON**

DEPARTMENT PERSONNEL MANUAL

**BASIC DEPARTMENT
PERSONNEL MANUAL
CHAPTER 771**

AMENDMENT NO. 225

SUBJECT: Administrative Grievance Procedure

This is a revised Chapter setting forth the policy and procedures of the Department's Administrative Grievance Procedure. These changes are predicated upon changes to Chapter 771 of the Federal Personnel Manual issued on December 31, 1992.

These pages should be placed in the Department of Agriculture Personnel Manual Chapter 771 and the previous version (Amendment 203 dated February 12, 1988) should be discarded in its entirety.

Larry B. Slagle
Director of Personnel

CHAPTER 771 – ADMINISTRATIVE GRIEVANCE SYSTEM

PURPOSE AND SCOPE

THIS CHAPTER DESCRIBES USDA-SPECIFIC POLICIES AND PROCEDURES ESTABLISHED BY THE OFFICE OF THE SECRETARY, OFFICE OF PERSONNEL (OP) - THIS CHAPTER MUST BE READ IN CONJUNCTION WITH, AND IN THE CONTEXT OF, THE OFFICE OF PERSONNEL MANAGEMENT'S (OPM) REGULATIONS AND GUIDANCE FOUND IN CHAPTER 771 OF THE FEDERAL PERSONNEL MANUAL (FPM) ; IN TITLE 5, PART 771, CODE OF FEDERAL REGULATIONS (CFR), AND IN OTHER RELATED ISSUANCES. TO AVOID REDUNDANCY, THIS CHAPTER DOES NOT RESTATE INFORMATION THAT CAN BE FOUND IN THE FPM, THE CFR, OR IN OTHER PERTINENT OPM SOURCE DOCUMENTS.

POLICY ON REPRISAL

Use of the grievance system is a protected activity. As such, there must not be any restraint, interference, coercion, discrimination, or reprisal against the employee or against the employee's designated representative because a grievance was filed. Employees who provide information concerning matters related to a grievance are similarly protected. An individual engaging in such prohibited activity may be committing a Prohibited Personnel Practice which can warrant serious disciplinary action.

Allegations of such improper conduct may be made a part of a pending grievance or a separate allegation may be filed with the Director, Appeals and Grievances Staff (AGS), OP.

DEFINITIONS

As used in this chapter, "Agency" means a major organizational subdivision below Departmental level (i.e., a bureau such as the Forest Service or the Agricultural Research Service; a staff office such as the Office of Operations; or equivalent organizations). The term "Agency" as used here is synonymous with the term "agency activity" as utilized in the FPM.

"Employee" does not include reinstatement and transfer eligibles applying for positions under a merit promotion plan. Also excluded are employees of the Cooperative Extension Service who hold Schedule A appointments under 5 C.F.R. 213.3113(a)(1) and serve without federal compensation.

"Completion of Processing" means that the agency has either rejected the grievance, cancelled the grievance, resolved the matter to the satisfaction of the employee or has issued a written proposed disposition of the formal grievance.

"Days" means calendar days.

"EEO Complaint" as used in Chapter 771 includes not only the formal stage of a complaint but informal contacts with an EEO Counselor as well.

SUBJECT MATTER COVERAGE

Coverage of the grievance system is extended to include reconsiderations of Performance Management Recognition System (PMRS) performance appraisals.

Actions taken in accordance with the terms of a formal agreement voluntarily entered into by an employee are not grievable.

Removals of Schedule C, noncareer SES and nonpreference eligible excepted service employees are not grievable.

ESTABLISHMENT AND PUBLICATION

Agencies may supplement the FPM and this Chapter to meet their particular organization's needs. Agencies are encouraged to consider adoption of alternative means of dispute resolution when developing their supplements. Deviations from this chapter must be approved by the Director, AGS, OP in advance of publication by agencies.

Copies of this Chapter and FPM Chapter 771, along with any agency supplements, must be made available to employees. Means of availability may include all-employee distribution, inclusion in orientation packets, and posting in work site areas commonly visited by employees. Agencies must provide personal copies to employees upon request.

INFORMAL RESOLUTION

Employees must seek informal resolution of a grievance except in those instances where the head of an agency has been substantively involved in the matter leading to the grievance or where the matter being grieved is a disciplinary action (suspension of 14 days or less) and the employee has been afforded an opportunity to reply to an agency proposal letter.

Informal grievances must be presented to the lowest level official (usually the supervisor) who can make a decision on the matter being grieved. If the individual who receives an informal grievance does not have the authority to decide the matter, that individual shall forward the grievance to the official who has the authority and shall so inform the employee.

Informal grievances may be presented orally or in writing, however, the employee must clearly state that a grievance is being filed.

Reasonable and good faith efforts to resolve a grievance may be undertaken at any time, regardless of where the grievance stands in the process.

TIME FRAMES

An employee must present an informal grievance within 15 days of the act or occurrence that is the basis for the grievance or within 15 days of the date the employee learned of the act or occurrence.

Agencies have a total of 90 days to complete processing of a grievance (see definition). This time is recorded from the date the employee definitively indicates to the agency that an informal grievance is being initiated. If the 90 day period is exceeded, the employee may request that the grievance be elevated to the AGS, OP, for assignment to a grievance examiner (GE). The GE will conduct necessary inquiry and issue a recommended decision.

REPRESENTATION

An employee is entitled to be accompanied, represented and advised at any stage by a personally chosen representative. A representative may be disallowed if the agency determines the representative would:

1. be in a conflict of interest or position;
2. be required to perform other priority work for the agency; or
3. give rise to unreasonable delays in the processing of the grievance and/or unreasonable costs to the agency.

Disallowance of a representative must be communicated to the employee in writing along with notification that the Director, AGS will review the decision if a written request is filed within 10 days.

If the employee wants the agency to recognize the representative and to send material to the representative, the employee must inform the agency in writing.

OFFICIAL TIME

The employee and a representative designated in writing shall be granted a reasonable amount of official time to PRESENT the grievance provided they are otherwise in a duty status. An

agency may provide in its regulations for a reasonable amount of official time for PREPARATION of a grievance.

GRIEVANCE PROCEDURES

Informal Stage:

1. The employee presents a timely, informal grievance to supervisor.
2. The supervisor either forwards the grievance to the official who has authority to adjust the grievance or retains control of the case and determines whether it is possible to resolve the grievance through corrective action, clarification or other adjustments.
3. If the grievance is not resolved, the supervisor or other appropriate official issues a memorandum to the employee which:
 - a. outlines the issues in the grievance and the attempts which were made to resolve them;
 - b. informs the employee that the informal grievance has been terminated;
 - c. advises the employee that a formal grievance may be filed, identifies the official with whom it may be filed and specifies the time limit (no less than 10 days) for filing; and
 - d. advises the employee that if the agency has not completed action within 90 days of the initiation of the informal grievance, the employee may elevate the grievance to the Director, AGS, OP.

Formal Stage:

1. Filing - The employee who wishes to proceed with a formal grievance must file it with the designated official and within the time limit set forth in the memorandum closing out the informal grievance. The time limits may be extended by the designated official for good cause shown by the employee.

The grievance must be in writing, must be signed by the employee or a designated representative, must identify the matters at issue and specify the corrective action being sought. The grievance may not concern any matter which was not presented as part of the informal grievance except for an allegation that reprisal actions for filing the informal grievance have been taken (see policy on reprisal above).

2. Acceptance - The designated official will either accept the grievance for processing or reject the grievance because it:
 - a. is untimely;
 - b. concerns a matter excluded from coverage by the system;
 - c. was filed by an employee excluded from coverage by the system; or
 - d. does not meet a processing requirement, e.g., the grievant did not first raise the matter as an informal grievance.

NOTE: Any rejection of a grievance must contain notification that the rejection may be appealed to the Director, AGS, OP within 10 days of receipt.

3. Proposed Disposition - If the grievance is not rejected, the designated official will make necessary inquiries to obtain sufficient facts to adjudicate the matter. If the grievance is not resolved, the designated official will issue a proposed disposition which advises the employee of:
 - a. the agency's position on the grievance issues in detail and whether any adjustments or corrective actions will be implemented.
 - b. the right to request a final decision by the head of the agency, with or without review by a GE, if the matter has not been resolved to the employee's satisfaction.
 - c. the time limit within which to request a final decision (not less than 10 days).
 - d. the agency's intention to close the grievance with no further action if the employee does not submit a request for further review within the allotted time frame. In such a situation, the proposed disposition will become the Department's final decision on the grievance.

NOTE: A copy of the grievance file must be given to the employee or to the employee's designated representative with the proposed disposition. There is no requirement that both the employee and the representative be given the file.

REVIEW BY GRIEVANCE EXAMINER

If requested by the employee, the agency will promptly forward the grievance file and the employee's request to the Director, AGS, OP. The transmittal will address the merits of any additional arguments and evidence presented by the employee and will certify that the employee has been given a copy of the complete grievance file.

A GE will be assigned to the case by the Director, AGS. The GE will conduct appropriate inquiries and prepare a written recommended decision. This decision will record findings of fact, an analysis of the issues and a recommendation as to the appropriate disposition of the grievance including any corrective action which may be necessary.

The recommended decision will be sent to the employee and/or representative and to the deciding official.

At the GE's discretion, mediation of the differences between the parties may be initiated in appropriate cases prior to preparation of a recommended decision.

FINAL DECISION

The deciding official on a formal grievance will be the head of the agency except where that individual has had prior substantive involvement with any aspect of the grievance. In such a situation, the final decision must be made by a higher level official. In a case where a recommended decision has been issued by a GE, the deciding official may:

1. Adopt the recommendation of the GE as the final decision on the grievance or grant more relief to the employee than recommended by the GE.
2. Within 20 days of the date of the recommended decision, appeal the recommendation to the Department's Director of Personnel when the recommendation can be shown to be contrary to law, rule, regulation or published policy; to be supported by less than substantial evidence or to be setting a precedent of such wide and detrimental impact on the Agency that further review is warranted.

PAYMENT OF ATTORNEY FEES

Employees may request payment of attorney fees in cases where back pay is awarded and the employee's representative otherwise meets the requirements for attorney fees as provided in part 550 of Title 5 of the Code of Federal Regulations. Fees are not payable under any other circumstances.