

3 FAM 4420 GENERAL PROVISIONS

(TL:PER-394; 02-07-2001)

3 FAM 4421 STATEMENT OF PURPOSE

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

These regulations establish procedures to provide U.S. citizen members and former members of the Service (and their survivors) a fair and effective system for the resolution of individual grievances that will ensure the fullest measure of due process. No regulation promulgated in this section shall be interpreted or applied in any manner which would alter or abridge the provision of due process as intended by the Congress in section 101(b) of the Act.

3 FAM 4422 GRIEVANCE CONCERNING FORMER MEMBERS

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

Within the time limitations of 3 FAM 4427a., a former member of the Service or the surviving spouse (or, if none, another member of the family) of a deceased member or former member of the Service may file a grievance under this subchapter only with respect to alleged denial of an allowance, premium pay, or other financial benefit to which a member claims entitlement under applicable laws or regulations.

3 FAM 4423 DISCUSSION OF COMPLAINTS

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

a. Every effort should be made to settle any member's complaint informally, promptly, and satisfactorily.

b. Supervisors and other responsible officers should encourage members to discuss complaints with them and should respond in a timely manner to resolve the complaints.

c. A member, initially, should discuss a complaint with the member's current supervisor or with the responsible officer who has immediate jurisdiction over the complaint to give that person an opportunity to resolve the matter before further steps are taken under these procedures.

d. Nothing in these procedures prevents a grievant from seeking guidance from any official who might be helpful in respecting the submission of a grievance or its resolution.

3 FAM 4424 FREEDOM OF ACTION

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

a. Anyone filing a grievance (herein after referred to as the "grievant") and any witness, labor organization, or other person involved in a proceeding hereunder shall be free from any restraint, interference, coercion, harassment, discrimination, or reprisal by virtue of participation in those proceedings. The foreign affairs agencies recognize their obligation to ensure compliance with this section. Any person subject to or having immediate knowledge of any alleged breach of this section should call it to the attention, through appropriate channels, of the pertinent foreign affairs agency. The foreign affairs agency, upon receipt of this complaint, will identify the case and make its substance known to the exclusive representative, if any, without disclosing the identity of the source of the complaint or the other individuals involved. Normally, such allegation should be brought to the attention of the senior agency official at post; in Washington to:

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| State | Director, Grievance Staff |
| USAID | Chief, Labor Relations Staff |
| BBG | <i>Chief, Labor and Employee Relations Division</i> |
| Commerce | Chief, Office of Foreign Service Personnel |

USDA

FAS: Chief, Employee & Labor Relations Branch
Farm Service Agency

APHIS: Director, Resource Management Support,
International Services,
Animal & Plant Health Inspection Services

b. The grievant has the right to a representative(s) of his or her own choosing (not more than one of whom at any one time shall be granted administrative leave if an employee of a foreign affairs agency) at every stage of the proceedings under this subchapter.

c. The grievant and any representative of the grievant who is a member of the Service or employee of a foreign affairs agency shall be granted reasonable periods of administrative leave to prepare and present the grievance and to attend proceedings under 3 FAM 4400. In order to prepare the grievance for agency review, the member shall be granted a reasonable amount of administrative leave to research pertinent laws or regulations, secure documentation in support of the grievance, and interview witnesses. Scheduling and use of administrative leave shall be arranged with the employee's supervisor.

d. Each party (including an exclusive representative appearing in the proceedings) shall be entitled to examine and cross-examine witnesses at the hearing or by deposition and to serve interrogatories upon another party and have such interrogatories answered by the other party unless the Board finds such interrogatory irrelevant, immaterial, or unduly repetitive.

e. No record of:

(1) A determination by the head of the foreign affairs agency to reject a recommendation of the Foreign Service Grievance Board;

(2) A finding by the Grievance Board against the grievant; or

(3) The fact that a grievance proceeding is pending or has been held, shall be entered in the personnel records of the grievant (except by order of the Grievance Board as a remedy for the grievance) or those of any other individual employee connected with the grievance.

f. Nothing in this subsection shall prevent a grievant from placing a rebuttal to accompany a record of disciplinary action in such grievant's personnel records, nor prevent the foreign affairs agency from including in such file a response to such rebuttal, including documenting those cases in which the Board has reviewed and upheld the discipline. The agency shall make available to the grievant a copy of its response prior to placing it in the grievant's file.

g. The agencies and the exclusive representatives shall have access to the grievance records under appropriate safeguards to preserve confidentiality.

h. The Board may enforce compliance with paragraphs d and e above.

3 FAM 4425 RESTRICTED COMMUNICATION CHANNELS

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

There are hereby established communications channels restricted for use in grievance matters. The channels shall be safeguarded as specified.

3 FAM 4425.1 Between Employee and Exclusive Representative

3 FAM 4425.1-1 At Post

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

An employee may use the post's communications facilities to seek the advice of the exclusive representative regarding the filing or processing of that employee's grievance, or to designate the exclusive representative as the employee's representative to process the grievance.

3 FAM 4425.1-2 At Washington

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

The exclusive representative may use the agency's communications facilities to respond to messages from an employee at post regarding matters referred to in 3 FAM 4425.1-1.

3 FAM 4425.2 Between Employee and Agency Grievance Staff

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

The employee and the agency grievance staff may use the appropriate communications facilities to communicate on matters of a grievance filed with the agency. These facilities may not be used to file, amend, or supplement a grievance against specific authorization.

3 FAM 4425.3 Between Employee and the Foreign Service Grievance Board

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

After an employee has filed a grievance with the Foreign Service Grievance Board, communications may be directed to the Board. The representative and the agency may use the grievance channel.

3 FAM 4425.4 Captions

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

The following captions should be used:

(1) ERG Channel—For communications between the employee and the exclusive representative;

(2) AGS Channel—For communications between the employee and the agency grievance staff; and

(3) Grievance Channel—For communications between the Channel employee and the Foreign Service Grievance Board.

3 FAM 4425.5 Communications Safeguards

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

In the exercise of the right to communications outlined in 3 FAM 4425.1 through 3 FAM 4425.3, the parties must be assured the maximum confidentiality consistent with 3 FAM 4424 and 5 FAM. Telegrams shall be approved by the authorizing official designated by the appropriate agency or post. The authorizing official shall not retain a copy of the communication after approving it for transmission, nor provide copies to any other person or office. The communications center shall distribute copies of the telegram only to the addressee.

3 FAM 4425.6 Preparation of Restricted Communications Channels

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

a. Parties preparing and submitting telegrams for transmission by the restricted communications channels under these regulations shall observe the requirements of 5 FAM and 5 FAH-1H, the Correspondence Handbook. The sending party shall:

(1) Properly caption the telegram;

(2) Clearly identify the sender; and

(3) Designate the precedence as routine and the classification as "Unclassified" unless otherwise authorized.

b. These communications shall normally be subordinate in priority to traffic involving the agency mission.

3 FAM 4426 ACCESS TO RECORDS AND WITNESSES

3 FAM 4426.1 Agency Records (Agency Level)

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

a. A grievant or grievant's representative shall be given access to the grievant's own grievance file within 15 calendar days of a written request to the appropriate agency grievance staff.

b. Other records normally available shall be supplied by the agency, with copies on request within 15 days. Such records include all records collected in the course of a disciplinary investigation, whether or not relied upon to effect a disciplinary or security action. The agency may deny such records under the exemption provisions of the Freedom of Information Act (FOIA) or Privacy Act. Those relevant and material to the grievance but not in immediate possession of the agency shall be supplied normally within 21 calendar days. If the records cannot be produced within that time period, the grievant will be informed immediately of the delay and advised as to when access to copies may be expected but in no case will access be granted later than 42 days after the date of the initial request. This would also apply in obtaining records from non-foreign affairs agencies.

c. A grievant who has formally requested records of another foreign affairs agency for use in a grievance may notify the agency grievance staff of the request. The appropriate grievance staff shall assist the grievant in obtaining an expeditious response by notifying the requested office that the records are required for administrative purposes.

d. All requests for assistance in obtaining records under 3 FAM 4426.1 paragraphs b. and c. shall specify the date of the request and the office to which the request was addressed as well as the identity of the records being requested.

3 FAM 4426.2 Agency Records (Board Level)

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

a. If a grievant is denied access to any agency record before or during the consideration of the grievance by the agency, the grievant may raise such denial before the Board in connection with the grievance.

b. In considering a grievance, the Board shall have access to any agency record as follows:

(1) The Board shall request access to agency records which the grievant requests to substantiate the grievance if the Board determines that such record may be relevant and material to the grievance; and

(2) The Board may request access to other records of that agency, or the records of any other foreign affairs agency, which the Board determines may be relevant and material to the grievance. The Board shall be given access to records of the foreign affairs agencies involved subject to the provisions of 3 FAM 4426.2 paragraph c.

c. An agency shall make available to the Board an agency record requested under 3 FAM 4426.2 paragraph b.(1) unless the head or deputy head of such agency personally certifies in writing to the Board that such disclosure of the record to the Board and the grievant would adversely affect the foreign policy or the national security of the United States, or that such disclosure is prohibited by law. In addition, if the agency has denied a request for records under the Freedom of Information Act (FOIA) or Privacy Act, the agency representative shall specify the legal grounds of denying the request. If such a certification is made or exemption invoked about any record, the agency shall supply to the Board a summary or extract of such record unless the reasons specified in the preceding sentences preclude such summary or extract.

d. If the Board determines that an agency record, or summary or extract of a record, made available to the Board under 3 FAM 4426.2 paragraph b. is relevant and material to the grievance, the agency concerned shall make such record, summary, or extract (as the case may be) available to the grievant.

e. In considering a grievance, the Board may take into account the fact that the grievant or the Board was denied access to an agency record which the Board determines is or may be relevant to the grievance.

3 FAM 4426.3 Access to Witnesses (Agency Level)

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

The agency shall make available on administrative leave to meet or respond, as appropriate, for questioning by the grievant or grievant's representative, any individual under the agency's control having knowledge of facts giving rise to the grievance.

3 FAM 4426.4 Board Records

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

The parties and the grievant's representative shall have access to the record of proceedings, including the decision of the Board.

3 FAM 4427 TIME LIMITS FOR GRIEVANCE FILING

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

a. *A grievance under these regulations is forever barred unless it is presented to the grievant's agency within two years of the occurrence(s) giving rise to it, except that:*

(1) In the case of a grievance which challenges portions of a performance appraisal prepared by an employee's rater, and only insofar as those portions are concerned, the two-year period may be extended by up to one year from the date on which the rater ceased to supervise the employee;

(2) In the case of a grievance which challenges portions of a performance appraisal prepared by an employee's reviewer, and only insofar as those portions are concerned, the two-year period may be extended by up to one year from the date on which the reviewer ceased to review the work of the employee;

(3) In the case of a grievance which challenges portions of a performance appraisal by both an employee's rater and reviewer, the two-year period may be extended by up to one year from the date on which the rater ceased to supervise, or from the date on which the reviewer ceased to review the work of, the employee; and

(4) The maximum time for filing a grievance of a type described in 3 FAM 4427 paragraph a., subparagraphs (1), (2) or (3) above may not exceed three years from the date of the issuance of the appraisal.

b. Notwithstanding 3 FAM 4427 paragraph a. above, a grievance concerning a performance appraisal or other document in an employee's performance file may be filed beyond the applicable two - or three-year limit, provided:

(1) In the case of material of any age in an employee's performance file, the material is cited by a Performance Standards Board as a basis for a determination that the employee should be separated for having failed to meet the standards of performance for the employee's class; or

(2) In the case of material no more than five years old in an employee's performance file, the material is cited by a Selection Board as a basis for low-ranking the employee, and is alleged to be false and prejudicial.

c. In applying 3 FAM 4427 paragraphs a. and b. above to a grievance which alleges discrimination in violation of any law, rule, regulations, or policy directive referred to in 3 FAM 4412 paragraph c. (9), the references to "2 years", shall be deemed to read "180 days", subject to paragraph d. below.

d. If the occurrence(s) giving rise to a grievance occurred while the grievant was assigned to a post abroad, the 180-day period provided under paragraph c. shall not commence until the date on which the assignment ends and the grievant departs post, or 18 months after the last alleged violation, whichever is earlier.

e. There shall be excluded from the time limits mentioned above any time during which the grievant was unaware of the grounds of the grievance and could not have discovered such grounds through reasonable diligence.

f. A grievance transmitted by a means which indicates the date of transmission shall be deemed presented to the responsible official (3 FAM 4432), transmitted to a post or bureau (3 FAM 4433), or submitted for agency review (3 FAM 4434), on the date of its transmission; any other grievance shall be deemed as filed on the date of its receipt.

g. If a grievance is not resolved under agency procedures within 90 days after receipt by the agency, the grievant or the exclusive representative (on behalf of the grievant) shall be entitled to file it with the Foreign Service Grievance Board.

3 FAM 4428 RELATIONSHIP TO OTHER REMEDIES

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

a. A grievant may not file a grievance with the Board if the grievant has formally requested, before filing a grievance, that the matter or matters which are the basis of the grievance be considered or resolved and relief be provided, under another provision of law, regulation, or Executive Order, and the matter has been carried to final decision under such provision on its merits or is still under consideration. This provision shall not apply to grievants who have filed a prohibited personnel practice charge before the Special Counsel for the Merit Systems Protection Board.

b. If a grievant is not prohibited from filing a grievance under paragraph a, the grievant may file with the Board a grievance which is also eligible for consideration, resolution, and relief as a prohibited personnel practice complaint under the provisions of law relating to the Merit Systems Protection Board or Special Counsel, or under a regulation or Executive Order. An election of remedies under this section shall be final upon the acceptance of jurisdiction by the Board.

c. Paragraphs 3 FAM 4428a. and b. shall not apply to any grievance with respect to which 3 FAM 4428d. and e. apply.

d. With respect to a grievance based on an alleged violation of a law, rule, regulation or policy directive referred to in 3 FAM 4412 paragraph c.(9), a grievant may either:

(1) File a grievance under this subchapter; or

(2) Initiate in writing a proceeding under another provision of law, regulation, or Executive Order that authorizes relief, but not both.

e. A grievant shall be considered to have exercised the option under 3 FAM 4428d. as soon as the grievant timely either:

(1) Files a grievance under this subchapter; or

(2) Initiates in writing a proceeding under such other provision of law, regulation, or Executive Order.

3 FAM 4429 SECURITY CLEARANCES

(TL:PER-394; 02-07-2001)

(Uniform State/USAID/BBG/Commerce/Foreign Service Corps - USDA)

(Applies to Foreign Service Employees Only)

The agency will use its best endeavors to expedite security clearance procedures whenever necessary to assure a fair and prompt resolution of a grievance.