



UNITED STATES DEPARTMENT OF AGRICULTURE  
 Agricultural Marketing Service  
 Washington, D.C. 20250

FBIS 4752.2  
 AMS INSTRUCTION 366-3  
 Rev. 1

INFORMATION FOR: All Employees

Employee Rights in Agency Adverse Personnel Actions of  
 Removal, Suspension, Reduction in Rank or Pay, or  
 Furlough Without Pay

I PURPOSE

This Instruction summarizes employee rights under the U.S. Civil Service Commission Appeals System and U.S. Department of Agriculture Grievance System when:

A It is proposed by the Agricultural Marketing Service (AMS) to take adverse action against an employee, and

B It is the decision of AMS that the proposed adverse action is sustained.

II ADVERSE ACTIONS

The adverse actions covered by this Instruction are:

A Suspension for 30 days or less - see Exhibit A for a summary of employee rights.

B Removal, suspension for more than 30 days, reduction in rank or pay, and furlough without pay - see Exhibit B for a summary of employee rights.

III DISCRIMINATION CHARGES DURING ADVERSE ACTION PROCESS

Exhibit C is a summary of actions to be taken if a charge of discrimination is raised during the adverse action process.

IV FURTHER INFORMATION

For further information, see Appendix II, USDA Employee Handbook, Equal Opportunity and Employee Grievances and Appeals (Chapter 771), or consult with the Employee Relations and Services Branch, Personnel Division, AMS.

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 Richard P. Bartlett, Jr.  
 Deputy Administrator, Management

Attachments

DISTRIBUTION: A,M,O,S All Employees	MANUAL MAINTENANCE INSTRUCTIONS: Revised to conform with standardized Government-wide adverse actions appeals system. Remove AMS Instr. 366-3, dated 6-15-72. File this revised Instruction.	March 27, 1975
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Suspension of 30 Days or Less

Employee Rights

WHEN ACTION IS PROPOSED - The employee has the right to:

Review the evidence upon which the charges are based.

Reply in writing within 10 calendar days of receipt of the notice of proposed adverse action.

Reply orally at an oral conference before an official appointed by the Personnel Division.

Be represented, accompanied, and advised by a representative of his choice at any stage of the proceeding.

Present at the oral conference any witnesses who have direct knowledge of the charges.

Use a reasonable amount of official time to present his answer. The employee's representative and witnesses also are allowed official time, if they are employed by AMS and are in active duty status.

Receive a copy of the report of the oral conference, if one is held.

Receive a notice of the decision, citing those charges sustained and those not sustained and stating appeal rights. This notice must be delivered to the employee before the effective date of the action.

WHEN PROPOSAL IS SUSTAINED - The employee has the right, within 15 calendar days after the effective date of the adverse action, to:

File a written grievance on the merits of the decision to the Administrator, AMS, who is the Deciding Official. Exception: Employees covered under a negotiated agreement shall file in accordance with the procedures contained in the agreement, which is the exclusive procedure available to employees in the unit.

Be represented, accompanied, and advised by a representative of his choice at any stage of the proceeding.

Use a reasonable amount of official time to present the grievance. The employee's representative also is allowed official time, if he is an employee of AMS and is in active duty status.

Receive a decision in writing.

AND (within same 15 calendar days):

Appeal in writing to the appropriate Federal Employee Appeals Office, U.S. Civil Service Commission, for review of (1) the procedures used in effecting the suspension, or (2) discrimination of the kind prohibited by Chapter 713 of the Federal Personnel Manual (race, color, religion, sex, age, national origin, partisan political reasons not required by statute, marital status, or physical handicap).

Receive a written decision on his appeal, which is final.

Removal, Suspension of More Than 30 Days, Reduction in Rank or Pay,  
or Furlough Without Pay

Employee Rights

WHEN ACTION IS PROPOSED - The employee has the right to:

Receive at least 30 full days advance written notice of the proposed adverse action and remain in duty status during the notice period, except when:

Furlough without pay is due to sudden breakdown in equipment, acts of God, or emergencies requiring immediate curtailment of activities; or when there is reasonable cause to believe the employee is guilty of a crime for which a sentence of imprisonment can be imposed.

Review the evidence upon which the charges are based.

Be represented, accompanied, and advised by a representative of his choice at any stage of the proceeding.

Use a reasonable amount of official time to review the evidence on which the charges are based, and to prepare his reply. The employee's written reply and/or his request for an oral reply must be received within 10 days of his receipt of the notice of proposed adverse action.

Reply orally at an oral conference before an official appointed by the Personnel Division.

Use a reasonable amount of official time to present his oral reply. The employee's representative is also allowed official time if he is an employee of AMS and is in an active duty status.

Receive a copy of the report of the oral conference, if one is held.

WHEN PROPOSAL IS SUSTAINED - The employee has the right, within 15 calendar days after the effective date of the action, to:

Appeal in writing to the appropriate Federal Employee Appeals Office, U.S. Civil Service Commission, stating reasons why he believes the action is unwarranted.

Ask for a hearing before an Appeals Officer.

Be represented, accompanied, and advised by a representative of his choice at any stage of the proceeding.

See the entire appeals file.

Use a reasonable amount of official time to prepare and present his appeal if he is otherwise in an active duty status. The employee's representative is also allowed official time if he is an employee of AMS and is in active duty status.

Receive a copy of the transcript of the hearing and the Appeals Officer's written decision, which is final.

Action Taken When Charge of Discrimination  
Is Raised During the Adverse Action Process

Point at Which Charge  
Is First Raised

Action

In replying orally or in writing to a notice of proposed action of suspension of 30 days or less. (Exhibit A)

AMS gives full consideration to the allegation in making its decision on the proposed adverse action.

OR

In replying orally or in writing to a notice of proposed action of removal, suspension of more than 30 days, furlough without pay, or reduction in rank or pay. (Exhibit B)

If the decision is not to take adverse action no further action is taken on the discrimination issue unless the employee contends that the proposed adverse action was motivated by discrimination. In that case the employee may file a formal complaint to the Equal Employment Opportunity Officer, AMS. See Chapter 713 in Appendix II of the Employee Handbook.

When the employee files a grievance to the Administrator, AMS, from a decision to suspend for 30 days or less. (Exhibit A)

The allegation is referred by the Administrator to the Office of Investigation for investigation. See Chapter 713 in Appendix II of the Employee Handbook.

When the employee files an appeal to the Federal Employee Appeals Authority (FEAA). (Exhibit B)

The Appeals Authority determines whether the appellant has been informed by AMS of his rights to proceed under either of the following procedures:

EEO Complaint Procedure (See Chapter 713 in Appendix II of the Employee Handbook).

OR

CSC's appeals procedure.

If he elects EEO Complaint Procedure he may not concurrently pursue an appeal to the Commission. However, on appeal of the decision of the Agency and the CSC, the Commission will review all issues in connection with the action taken against the employee.

If he elects the Commission's Appeal System, the FEAA refers the allegations to the Director, EEO, USDA, who requests the Office of Investigation to investigate.

The investigation file and report are sent to the CSC to be incorporated and become a part of the appeal file.

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EXHIBIT C

Point At Which Charge  
Is First Raised (Con.)

During the hearing. (Exhibit B)

Action (Con.)

The Appeals Officer determines whether the employee had good reason for not raising the allegation when he filed the appeal.

If the Appeals Officer determines that the employee did not have good reason, the hearing is broadened to include evidence and testimony on the issue of discrimination. No investigation is required.

If the Appeals Officer determines that the employee did have good reason, the hearing is suspended and the allegation is referred to the Office of Investigation for investigation.

The decision on the allegation of discrimination is incorporated in and becomes part of the decision on the appeal.