HRDG 4771 - Administrative Grievance System - Section A

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Subchapter 4771
Administrative Grievance System
Section A - General Provisions

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Purpose	The purpose of the administrative grievance system is to provide a fair, equitable, and timely forum for internal review and resolution of disputes on employment-related matters. An efficient and effective administrative grievance system is in the best interest of both the agency and the employee in that, it provides a means for the agency to identify, track and address employee concerns. This HRDG Chapter will set forth the procedures for the filing, reviewing, and disposition of administrative grievances.
Policy	The Agency recognizes that disputes will occur in the workplace from time to time and that it is to the benefit of all concerned to resolve these disagreements as promptly and equitably as possible. Accordingly, it is MRP policy to address and resolve grievances at the lowest agency level possible and within established timeframes.
Coverage	The Marketing and Regulatory Program (MRP) AGS applies to all MRP agencies regarding any concern, complaint, disagreement or dissatisfaction of an employee that is within the control of management and has not been resolved through other methods. These provisions apply to both the informal and formal administrative grievance procedures.

Related Regulations

This HR Desk Guide supplements the following laws, rules, and regulations:

- Title 5 U.S. Code of Federal Regulations, Chapter 771.101;
- Departmental Regulation 4710-001, Alternative Dispute Resolution, dated 04/05/06;
- Departmental Regulation 4070-771, Administrative Grievance System, dated 10/06/10;
- Title 5 United States Code, Part 2302(b)(9); and,
- 3 Foreign Affairs Manual (FAM), Section 660.

Employees Covered

Except as provided below, the AGS applies to all non-bargaining unit employees of the Agency, regardless of the type of appointment held. Coverage also applies to former employees of the agency for whom a remedy can be legally provided.

Employees Excluded

- Non-citizens;
- Aliens;
- Employees covered by a collective bargaining agreement;
- Employees covered by the Foreign Service Grievance System;
- Individuals who hold a Federal appointment but serve without Federal compensation; and,
- Reinstatement and transfer-eligible employees applying for positions under a merit promotion program.

Issues Covered

The MRP AGS covers almost all workplace issues, except for those excluded below. A grievance may also include issues pertaining to coercion, reprisal, or retaliation for filing or considering filing a grievance.

Examples of covered issues:

- Working conditions,
- Improper application of or failure to follow rules and regulations,
- Unfair treatment,
- Prohibited personnel practices,
- Performance appraisals,
- Pay-setting decisions,
- Suspension from duty without pay for 14 calendar days or less,
- Letters of reprimand, and
- Reassignments.

Issues Excluded

Grievants and supervisors must contact the servicing Employee Relations Branch at the informal grievance stage prior to discussing or attempting to resolve the following issues which are excluded from the AGS:

- Issues appealable to or reviewable by a third party or other established appeal procedures, such as those used for classification appeals. Examples include:
  - Equal Employment Opportunity Commission (EEOC) (see EEO Complaints);
  - Office of Workers Compensation Program (OWCP) injury claims that fall under the jurisdiction of the Department of Labor (DOL);
  - Office of Personnel Management (OPM) (such as pay matters);
  - Merit Systems Protection Board (MSPB) (such as suspensions of more than 14 calendar days to removal, reductions in force, demotions, and within-grade step increase withholding);
  - Comptroller General;
  - Federal Labor Relations Authority; or,
- Federal Mediation Conciliation Service.
- Issues covered under a negotiated grievance procedure;
- Content of established agency regulations and policy. (Note: the application and interpretation are grievable);
- Non selection for a position from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion;
- A proposed notice or warning such as notices of proposed disciplinary action, a letter of caution, or performance improvement plan notice;
- The return of a supervisor or manager in a probationary period to a non supervisory or non managerial position;
- The substance of performance standards or elements, and/or statements of work objectives;
- The granting of or failure to grant an award, rank, pay rate increase, performance bonus, quality step increase, or employee suggestion;
- The granting of or failure to grant recruitment, relocation, or retention bonuses, repayment of student loans, supervisory differentials, critical position pay;

Remedy	The concept of remedy refers to the “personal relief” by which the violation of a right is prevented, redressed, or compensated. Personal relief: a specific remedy that directly benefits the Grievant regarding the matter(s) giving rise to the grievance, is within the authority and control of management officials of the Department, and complies with controlling laws, rules, and regulations. A request for any action affecting another employee, such as reassignment, discipline, or requiring a specific action from another employee such as an apology or change in behavior is not personal relief under this Order.
Freedom From Reprisal	Use of the grievance system is a protected activity. As such, restraint, interference, coercion, or reprisal against a grievant, a grievant's representative, or employees who cooperate in a grievance inquiry, is a prohibited personnel practice and will not be tolerated. If a grievant raises allegations of prohibited discrimination in a grievance, the agency must notify the grievant that such allegations may only be raised in an EEO complaint. The agency must further advise the grievant of the procedures for filing an EEO complaint.
EEO Complaints	It is USDA's policy that duplicate reviews of the same issue(s) in different forums will not occur. Accordingly, when a grievant files an EEO complaint that encompasses the issues in a pending grievance, the Agency or other office reviewing the grievance, will notify the grievant, in writing, that the grievance will not be reviewed further and that it is being cancelled.

Cancellation Or Rejection Of Grievance

A grievance may be cancelled, in whole or in part, at any step of the process, and without review of the merits of the grievance when:

- The grievant specifically requests such action;
- The grievant or matter at issue is not covered by the AGS;
- The grievant fails to specify the personal relief requested;
- The person considering the grievance finds that no relief can be provided due to circumstances resulting in “no legal means” for relief, or no means for a retroactive monetary award;
- The grievant or designated representative fails to comply with appropriate time frames and procedures;
- The grievant does not cooperate in the review of the grievance;
- The grievant files an EEO complaint that encompasses the issues in a pending grievance.

When a grievance is cancelled, the grievant will be notified in writing, and will be advised of the right to ask the Director, Office of Human Resources Management (OHRM) to review the decision within 10 calendar days of receipt of the notice of cancellation, except where the grievance is canceled by OHRM.

The Agency encourages the use of the Alternative Dispute Resolution (ADR) program to bring about resolution of workplace conflicts. ADR includes an array of techniques used to achieve consensual resolution of disputes, generally with the assistance of a neutral third party. ADR techniques include mediation, facilitation, and conciliation. The use of ADR can benefit agency management and employees by:

- Achieving effective and mutually satisfactory resolutions of disputes;
- Decreasing time, cost, and other resources expended in resolving disputes;
- Fostering a culture of respect and trust between supervision and employees; and
- Increasing employee morale.

Alternative Dispute Resolution

A request for the use of the ADR process can be made at any point in the grievance process. Upon a request for ADR (Employees Only), the Collaborative Resolution Program will be contacted and they will arrange for the services of a mediation professional to aid the parties in discussing the issue brought forward. (**Note: AMS/GIPSA employees should contact their respective Civil Rights office to request ADR.)**

When ADR is requested, grievance processing timeframes will be suspended until the ADR process is complete. Grievance processing will resume upon notification to the Employee Relations Branch by the assigned mediation professional that the ADR process is complete.

- If the issue **is resolved** at the conclusion of the ADR process;
- If the issue **is not resolved** at the conclusion of the ADR process;
- the grievance will be closed as resolved.
- the AGS procedure will continue.

Representation

A grievant may choose a personal representative. The grievant must identify the representative in writing. See Part III of the Grievance Transmittal. A representative may be disapproved if the Agency determines that the representative:

- Poses a conflict of interest or position.
- Has other priority work to perform.
- Causes unreasonable delay or cost in the processing of the grievance.

The appropriate Employee Relations Branch will notify the grievant in writing if the representative is disapproved. The grievant may appeal this decision to the Director, OHRM, within 10 calendar days of the disallowance (**See Section D**).

Official Time

With advance supervisory approval, grievants and approved representatives who are employees shall be granted reasonable official time to **present** grievances in person or via telephone provided that they are otherwise in a duty status. Official time is not granted to prepare grievances.

Attorney Fees

A grievant may request payment of attorney fees in cases where back pay is awarded and the grievant's representative otherwise meets the requirements for attorney fees as provided in Part 550 of Title 5, Code of Federal Regulations. The agency will provide a written decision in response to the request and will advise the grievant that a request for OHRM review of the decision must be filed within 10 calendar days of receipt of the decision.

Time Limits

The expeditious and orderly resolution of problems is beneficial to management and the employee. **The agency has a total of 90 calendar days from the date the grievance was initially filed with an agency official to resolve it (less any time spent during the ADR process).** Therefore, grievances should receive prompt consideration. If the agency fails to meet this time frame the grievant may elevate the grievance to the Director, OHRM, for assignment to a Departmental Grievance Examiner (GE) (**See Section D**). Grievance time limits, reflected **in calendar days,** are as follows:

- **15 days -** The time limit for filing the initial grievance, whether informal or formal (calculated from the date the grievant learned or reasonably should have learned of an incident/issue, whichever occurs first).
- **10 days -** The time limit for appealing a grievance to the next level, 1) after receiving a written decision; or, 2) when no decision was issued within the prescribed time limit.
- **90 days -** The overall time limit the agency has to complete processing of a grievance.

Other than participation in ADR, prescribed time limits may be suspended or extended based on mutual agreement under the following conditions:

- Complicated issues in the grievance; and,
- Other reasonable, extenuating circumstances.

When changes in time limits occur, the appropriate Employee Relations Branch will keep the grievant informed of the reasons for any delay and the status of the grievance. Additional time limits are also included in Sections B, C and D of this Desk Guide.

Administrative Grievance System Overview

INFORMAL

- Employee must submit **informal** grievance to first line supervisor within ***15 calendar days*** *of when* employee first learned or reasonably should have learned of a problem.

- Employee may select a representative. (If the representative is disapproved, the employee may appeal through the appropriate Employee & Management Relations Branch to USDA, Director, OHRM.

- Supervisor and employee attempt resolution in person (VTC acceptable) or by phone.

- Employee has option to participate in Alternative Dispute Resolution (ADR).

- Supervisor issues ***written*** informal grievance summary to employee, with a copy to the appropriate ER Office, within ***90 calendar days*** of receipt of grievance.

FORMAL

- Employee may submit a **formal** grievance:
  - within ***15 calendar days*** *of when* employee first learned or reasonably should have learned of the issuance of a disciplinary letter of reprimand to a 14-day suspension; or,
  - within ***10 calendar days*** *of receipt of an informal grievance summary,* if dissatisfied with an informal grievance response; or,
  - within ***10 calendar days*** *if the agency* has not completed overall processing within 90 days of the initial filing of the informal grievance.
  - A formal grievance must be filed through the appropriate ER Branch.
  - The Deciding Official issues decision on the grievance within ***90 calendar days*** of initial filing (**Note: Foreign Service Officers in APHIS are excluded from the AGS, and must follow State Department procedures when filing formal grievances.**)

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