

**SUBJECT: GRIEVANCE POLICY AND PROCEDURES**

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1. OBJECTIVES.

- a. To provide general requirements, instructions, and responsibilities for administering the Department of Energy (DOE) administrative grievance system.
- b. To provide a fair, equitable, and timely forum for internal review and resolution of disputes on employment-related matters arising within the Department.
- c. To address matters of employee concern or dissatisfaction relating to employment that are subject to the control of management and for which employees seek personal relief that is not otherwise excluded in paragraph 3d.
- d. To provide a process for dispute resolution in which all grievants will be free from restraint, interference, coercion, discrimination, or reprisal.

2. CANCELLATION. DOE 3771.1, *Grievance Policy and Procedures*, dated 7-2-81.

3. APPLICABILITY.

- a. All Departmental Elements. Except for the exclusions in paragraph 3d, this Order applies to all Departmental elements. (See Attachment 1 for a complete list of Departmental elements. This Order automatically applies to Departmental elements created after it is issued.)

The NNSA Administrator will assure that NNSA employees comply with their respective responsibilities under this Order.

- b. All Employees, including the following.
  - (1) Career Senior Executive Service (SES), Senior-Level (SL), Scientific or Professional (ST), and Excepted Service Pay Band IV (when the employee's basic pay exceeds GS-15 Step 10) and Pay Band V employees.
  - (2) Former DOE employees who meet the time limits for presenting a grievance and for whom a remedy can be granted.
- c. DOE Contractors. This Order does not apply to contractors.

d. Exclusions.

- (1) The following individuals are excluded from coverage of this Order.
  - (a) Noncitizens appointed under Title 5 CFR, Part 8.3, Appointment of persons not citizens of the United States.
  - (b) Aliens appointed under Title 22 U.S.C., section 1471(5).
  - (c) Noncareer SES, including limited term and limited emergency appointments.
  - (d) Schedule C employees.
  - (e) Employees who are members of a bargaining unit represented by a union which is recognized as the exclusive representative and who are covered by a negotiated grievance procedure.
  - (f) Experts and consultants.
  - (g) Applicants for employment with DOE.
- (2) Specific matters excluded by DOE are listed in Attachment 2.
- (3) Departmental elements requesting exclusion from this Order must direct their requests to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components. Each request must be accompanied by the current local directive being used, which must conform to this Order and all applicable laws, rules, and regulations in effect at the time the request is being made.
- (4) The Bonneville Power Administration is exempt from the requirements of this Order. However, it will be subject to internal and external oversight of its grievance procedures regarding compliance with Federal regulations.

4. REQUIREMENTS.

- a. The requirements set forth in this Order (see Chapters I and II) will be administered in a manner which will ensure the orderly, expeditious, and equitable handling of grievances.
- b. Supervisors will fully cooperate in this process and will be held accountable for their participation in this process.
- c. This Order will not be supplemented without prior approval from the Secretary or designee. (This does not apply to re delegating responsibility except as noted in this Order.)

5. RESPONSIBILITIES.

a. Heads of Departmental Elements, including the NNSA Administrator.

- (1) Comply with all requirements of this Order and ensure that their subordinates are in compliance with this Order when administering grievance procedures. This includes all time limits and steps associated with the informal and formal grievance processes.
- (2) Ensure that employees under their jurisdiction are informed of the provisions of this Order.
- (3) Designate deciding officials to receive and attempt to resolve formal grievances and supervisory officials to render final decisions on formal grievances referred by the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components. Exceptions involving these designations are outlined below at 5d(6).
- (4) Encourage mediation, consult with the Office of Dispute Resolution, and, if necessary, procure the services of mediators.
- (5) Procure the services of fact-finders through the servicing human resources offices.
- (6) Receive copies of allegations involving violations or breaches of mediated agreements reached under the provisions described in this Order, and resolve such matters in accordance with the agreements initially reached.
  - (a) Forward copies of these agreements to the director of the Office of Human Capital Management for non-NNSA components, or the director of Human Resources Management (NNSA) for NNSA components.
  - (b) Review subsequent breaches of these agreements. This authority may be delegated to their principal deputies; however, this authority may not, under any circumstances, be redelegated below the principal Deputy Assistant Secretary or equivalent level. The NNSA Administrator and/or his/her designee will review subsequent breaches for NNSA components.

b. Director, Office of Human Capital Management/Deputy Associate Administrator for Management and Administration (NNSA). Ensures that the DOE grievance system overall is administered in accordance with the requirements of this Order.

c. Director, Office of Human Capital Management/Director, Human Resources Management (NNSA).

- (1) Provides recommendations, comments, and suggestions to the appropriate supervisory official when the deciding official does not accept the recommendations contained in the report of fact-finding.
- (2) Encourages mediation to resolve differences between fact-finders' recommendations and deciding officials' views.
- (3) Renders a final decision on the appropriateness of a rejection or cancellation of a grievance by the deciding official. Directs, if appropriate, that a decision be rendered on the merits of the grievance.
- (4) Recommends, in writing, to a deciding official that a grievance be reopened and reconsidered at any time, notwithstanding any other provision of this Order.
- (5) Provides technical advice and options for the resolution grievances filed by members of the career SES, Excepted Service Pay Band IV (when the employee's basic pay exceeds GS-15 Step 10) and Pay Band V employees, and SL and ST employees. Following a final decision, ensures that appropriate pay and/or human resources actions are effected in a timely manner.
- (6) In situations where it is inappropriate for the Head of a Departmental Element, including the NNSA Administrator, to designate a deciding official, as in 5b(3) above, the Director, Office of Human Capital Management/Director, Human Resources Management (NNSA) will designate the appropriate deciding official to resolve the matter. These situations may include, but are not limited to, prior personal involvement of the Head of Departmental Element in the matter being grieved; the grade or organizational level of the grievant's position; or the issue being grieved.

d. Deciding Officials.

- (1) Receive and attempt to resolve formal grievances, encouraging mediation when appropriate.
- (2) If the formal grievance is not resolved to the employee's satisfaction, request the servicing human resources office to obtain a person or persons to carry out fact-finding.
- (3) Make decisions regarding the allowance or disallowance of a representative under Chapter I of this Order.

- (4) Issue final decisions on formal grievances when they accept the recommendations in the findings and recommendations report.
- (5) Consult with the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components, as appropriate, on all grievances involving members of the career SES, Excepted Service Pay Band IV (when the employee's basic pay exceeds GS-15 Step-10) and Pay Band V employees, and SL or ST employees.

e. Supervisors.

- (1) Promptly discuss matters of concern with employees under their immediate supervision when grievances are presented informally, and try to clarify misunderstandings and make reasonable adjustments to resolve the matters, encouraging mediation when appropriate.
- (2) Promptly refer performance appraisal grievances and/or disciplinary grievances (above reprimands) to the deciding official for discussions and/or resolutions with the employees.
- (3) Promptly obtain answers from appropriate sources when employees under their supervision present informal grievances that are not within the supervisors' authority to resolve.
- (4) Make decisions regarding the allowance or disallowance of a representative under Chapter I of this Order.
- (5) At their discretion, request mediation at the informal stage, should discussions with employees not resolve issues.
- (6) Participate if mediation is requested by the employee, unless there is a compelling reason why it would not be appropriate, following discussions with the local alternative dispute resolution (ADR) contact, if one is available, or the Office of Dispute Resolution.

f. Employees. Comply with all requirements of this Order when engaging in grievance actions including all time limits and steps associated with the informal and formal grievance processes.

g. Servicing Human Resource Directors.

- (1) Provide advice to management, individual employees, employee representatives, and other interested parties as to the application and details of the grievance provisions, including mediation.

- (2) If mediation is requested, notify the local ADR contact, if one is available, or the Office of Dispute Resolution within 5 calendar days after receipt of the grievance.
  - (3) Maintain necessary records, arrange for fact-finding, follow up at all stages to ensure timely processing, and prepare necessary reports.
  - (4) Provide recommendations, comments, and suggestions to the appropriate supervisory official when the deciding official does not accept the recommendations contained in the report of fact-finding.
  - (5) If, after the above, the deciding official still does not accept the recommendations of the fact-finding report or the appropriate supervisory official is the manager, refer the matter to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components, as appropriate, for further action.
- h. Office of Dispute Resolution.
- (1) Provides professional mediators to resolve all types of Headquarters workplace disputes at no cost to the organization. Works with all mediation participants to prepare them for mediation. Mediations are strictly confidential and information is shared only with those within the Department who need to know to implement settlements. Serves as a resource for mediators for all field offices.
  - (2) Offers training in conflict management skills.
- i. Local Alternative Dispute Resolution Contact, if available, will assist in obtaining qualified mediators. If unavailable, contact the Office of Dispute Resolution.

## 6. DEFINITIONS.

- a. Administrative Grievance. See Formal Grievance and Informal Grievance.
- b. Administrative Grievance System. The formal system for addressing employee concerns and disputes on employment-related matters established by DOE through DOE O 342.1, *Grievance Policy and Procedures*, dated 2-2-06.
- c. Deciding Official. Except in the case of the Secretary, an official at a higher organizational level (not necessarily higher grade) than any other individual directly involved in the grievance who has been delegated the authority to make final decisions on formal grievances. The deciding official is normally the supervisor or manager immediately above the supervisor to whom the informal grievance was submitted unless that individual was directly involved in the grievance. Involvement means more than mere knowledge of the matter. To have been “involved,” the deciding official must have made or influenced a

decision regarding the matter or must have a personal interest in the matter. In the latter event, the deciding official must be the next higher level supervisor in the management chain who was not directly involved in the grievance. Only the Secretary may be involved in a grievance, be the supervisor with whom an informal grievance is filed, and be the deciding official.

- d. Days. Calendar days.
- e. Fact-Finding. An inquiry suitable to ascertain the relevant circumstances surrounding a grievance and to provide the basis for a written report that contains appropriate recommendations on the matter being examined and reasons for the recommendations.
- f. Formal Grievance. A written request by an employee, a former employee, or a group of employees acting as an individual for personal relief in a matter of concern or dissatisfaction relating to the conditions of employment of the employee that is subject to the control of DOE management.
- g. Grievance File. A separate file that contains all documents related to a grievance (see Chapter I, paragraph 7).
- h. Informal Grievance. A written grievance related to matters/conditions of employment under the control of DOE management presented by an employee or group of employees acting as an individual to his/her/their immediate supervisor for discussion and informal resolution. Participation in the informal grievance process is a requirement for, and precursor to, submitting a formal grievance.
- i. Personal Relief. A specific remedy within the control of management directly benefiting the grievant. Personal relief may not include a request for disciplinary or other action affecting another employee. Relief cannot constitute a violation of laws, regulations, or DOE policy.
- j. Mediation (a form of Alternative Dispute Resolution). A confidential and speedy process whereby a trained professional mediator assists the parties in reaching a voluntary solution to their dispute. The mediator is not a judge and does not make any decisions about fault. If the parties reach resolution, a binding settlement agreement is signed with a copy forwarded to the servicing human resources director, who will forward a copy of the agreement to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components. Mediation may be used at any stage of the grievance process. Once mediation is elected, the time limits of the grievance process are held in abeyance pending the completion and/or termination of the mediation.

7. REFERENCES.

- a. Title 5 Code of Federal Regulations, Part 771, Agency administrative grievance system.
- b. Title XXXII of P.L. 106-65, National Nuclear Security Administration Act, dated October 5, 1999, as amended.

8. CONTACT. Questions concerning this Order should be addressed to the Human Capital Management Strategic Planning and Vision Office (Headquarters), Office of Human Capital Management, at 202-586-3380.

BY ORDER OF THE SECRETARY OF ENERGY:



CLAY SELL  
Deputy Secretary

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## CHAPTER I. FEATURES OF THE ADMINISTRATIVE GRIEVANCE PROCESS

### 1. REPRESENTATION.

a. An employee has the right to be accompanied, represented, and advised by a representative of his or her choice at any stage of the proceeding; however, this right does not accord the grievant or the representative the right to appear personally before the director of the Office of Human Capital Management for non-National Nuclear Security Administration (non-NNSA) components or the director of Human Resources Management (NNSA components).

(1) The designation of a representative must be in writing and provided to the employee's supervisor or the deciding official.

(a) If the grievant chooses another Department of Energy (DOE) employee as a representative and that person is willing to serve, the representative's supervisor, acting independently or in concert with the grievant's supervisor, may disallow the employee's choice of a representative in a grievance on the basis of one of the following.

1 Priority needs of the DOE mission. It is not intended that any one employee serve as a representative when doing so repeatedly would interfere with the priority needs of the DOE mission. Should this condition arise, the employee concerned will be advised by his/her supervisor to curtail representation activities.

2 Unreasonable cost to DOE.

3 Conflict of interest or conflict of position.

Note: The disallowance of the employee's representative by the representative's supervisor must be made a part of the official file (see paragraph 7 of this chapter).

(b) The grievant may challenge a decision to disallow the choice of representative to the deciding official and obtain a decision before proceeding with the grievance.

1 If the grievance is presented under the provisions in Chapter II of this Order, the challenge will be submitted to the servicing human resources officer who will forward the challenge to the representative's supervisor at the next higher level in the management chain who was not involved in the original decision to disallow the representative.

2 The deciding official or supervisor will make a decision regarding the disallowance of a representative no later than 10 days after receipt of the challenge.

(2) DOE will not designate representatives for grievants nor will DOE require any employee or individual to serve as a representative of another. All arrangements for a representative must be made by the grievant.

b. In the event the grievant wishes to change representatives, the provisions described in paragraphs 1a (1) and 1a (2) apply.

2. COMMUNICATION. An employee has a right to communicate with the servicing human resources office and mediation advisor or any DOE counselor (e.g., employee assistance counselor or worker concerns counselor) at any stage of the grievance process.

3. USE OF OFFICIAL TIME.

a. An employee and the employee's representative (if employed by DOE) are entitled to a reasonable amount of "official time" (8 duty hours, excluding official travel) to present a grievance; they are not entitled to official time to prepare the grievance except to the extent necessary to obtain information and interview witnesses not otherwise available during nonwork hours.

(1) "Presenting" includes discussions with supervisors and attendance at any hearing, inquiry, or meeting in the formal stage.

(2) Employees must obtain approval from their supervisors before use of official time.

b. When the deciding official hearing the formal grievance deems it necessary to the presentation of the grievance, the employee and the representative (if employed by DOE) will be permitted "official travel," and travel time will not be charged to leave.

4. GRIEVANCE FOLLOWUP.

a. Servicing human resources offices and supervisors will follow up on grievances to ensure the relief granted the employee and any recommendations contained in the report of findings and recommendations accepted by the deciding official have been implemented.

b. In all cases where a decision is favorable to an employee, the specific actions to be taken will be set forth in the written decision. In cases resolved through mediation, the settlement agreement will specify the actions to be taken. The directed actions will be taken promptly, with followup in accordance with paragraph 4a.

5. MEDIATION.

- a. Mediation communications are confidential and may not be disclosed either by the parties or by the mediator.
- b. Mediators will be trained and experienced neutral third parties, either from the Federal Mediation and Conciliation Service or under contract with the DOE Office of Dispute Resolution.
  - (1) The mediator's role is to help the parties discuss the issues in a nonthreatening environment and suggest possible options to reach resolution of the issues.
  - (2) The mediator is not a judge and will not decide who is right or wrong.
- c. An employee who files a grievance may request mediation concerning a continuing practice or condition or a particular act or occurrence at any time during the grievance process.
  - (1) The employee's request for mediation must be in writing. (Note: See Chapter II paragraph 3 for the informal grievance process and paragraph 4 for the formal grievance process.)
  - (2) When an employee requests mediation in an attempt to resolve the grievance at the informal stage, it is strongly suggested that the immediate supervisor agree to participate unless there is a compelling reason why it is not appropriate. The immediate supervisor should discuss participation in mediation with the local alternative dispute resolution (ADR) contact (if one is available) or the Office of Dispute Resolution. Heads of Departmental elements will make the determination as to whether participation of the immediate supervisor is appropriate. Such determinations involving NNSA employees will be made by the NNSA Administrator and/or his/her designee.
- d. Once the employee elects to use mediation, the servicing human resources office will contact the local ADR contact (if one is available) or the Office of Dispute Resolution within 5 days of the employee's written request.
- e. The mediator selected will attempt to complete the mediation in 15 to 30 days from the date the mediation begins.
- f. Time limits may be extended if both parties agree and actual resolution is near. (Extensions will be considered by the heads of Departmental elements or their equivalents, site office managers, and the NNSA Administrator on a case-by-case basis.)
- g. Employees and supervisors cannot be forced to reach agreement.

- (1) Either party may terminate the mediation at any time during the process.
  - (2) If an agreement is not reached, the employee may proceed with the administrative grievance process. (The 21-day response period of the informal grievance will begin the day after receipt of the mediator's written termination of the mediation by the servicing human resources office.)
- h. If the mediation is successful, the mediator will prepare a binding written agreement for the parties, obtain signatures of all involved parties, and provide a copy to the servicing human resources office. The servicing human resources office will forward a copy of the agreement to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components.

Regardless of the outcome of the grievance process, the deciding official can suggest mediation to enhance the parties' ability to work together in the future.

6. CANCELLATION OF GRIEVANCES. Grievances may be cancelled under the following circumstances.
- a. At the employee's written request to the servicing human resources office.
  - b. Upon termination of the employee's employment with DOE, unless the personal relief sought by the employee may be granted after termination of employment.
    - (1) When an employee is reassigned from one DOE organization to another DOE organization and the personal relief sought by the employee may be granted after reassignment, the grievance will continue to be processed in the same manner as though the employee had remained on the rolls of the organization from which reassigned.
    - (2) Any expenses required for official travel for the grievant and the grievant's representative will be paid by the grievant's former organization.
  - c. Because of lack of timely action by an employee (see Chapter II, paragraph 2 and paragraph 4b). (Management has a responsibility to exercise due diligence in ensuring that the employee understands that unless he/she furnishes the required information and duly proceeds with advancement of the grievance, the grievance will be cancelled and the employee will be so notified in writing.)
  - d. Upon death of the employee unless the grievance involves the question of compensation.

7. GRIEVANCE FILES.

- a. A grievance file will be established and maintained by the servicing human resources office for each grievance that becomes formal. The following items, as applicable, will be included in the grievance file:
  - (1) the written formal grievance;
  - (2) a written summary of actions and results during the informal procedure;
  - (3) copies of the proposed notice, replies, and final decision notice where a suspension of 14 days or less is involved;
  - (4) copies of letters of reprimand or warning where such matters are at issue;
  - (5) copies of personnel action documents associated with the grievance;
  - (6) statements of witnesses and statements made by the parties to the grievance;
  - (7) final grievance decision or mediation settlement agreement; and
  - (8) all other documents pertinent to the case.
- b. Grievance records will be maintained in individual grievance folders.
  - (1) Access to these records will be on a need-to-know basis and in accordance with the provisions of 5 CFR 294, Availability of Official Information.
  - (2) Information that cannot be disclosed to grievants or their representatives cannot be included in the files.
  - (3) Particular information relevant to the grievance that has been gained through fact-finding procedures or mediation, which cannot be disclosed, cannot be used in adjudicating grievances.
- c. Grievance files will be disposed of in accordance with, DOE G 1324.5B, *Implementation Guide for Use with 36 CFR Chapter XII—Subchapter B, Records Management*, dated 7-19-96.

## CHAPTER II. THE ADMINISTRATIVE GRIEVANCE PROCESS

1. PROCESS SUMMARY. The employee initiates the administrative grievance process by presenting a written informal grievance for discussion with his/her immediate supervisor. Mediation should always be considered as an option by a supervisor to resolve an informal grievance and by the servicing human resources office for formal grievances. The Office of Dispute Resolution will assist in assessing suitability. If the matter is not resolved in the informal stage, the employee may submit a written formal grievance to the servicing human resources office, which will either accept, reject, or return the grievance on behalf of the deciding official. If the grievance is accepted, the human resources office will inform the employee in writing of the acceptance and forward the grievance to the deciding official.

The deciding official may grant the personal relief originally requested as long as it is consistent with policy, regulations, or other administrative or statutory requirements.

If personal relief is not granted, the deciding official will initiate fact-finding procedures. The deciding official will then either accept the recommendations of the fact-finder or determine that the recommendations of the fact-finder are unacceptable and return the case to the servicing human resources office.

If the deciding official decides to reject the fact-finder's recommendations, he/she must include the reasons for the rejection in his/her response to the employee. The servicing human resources office will provide recommendations, comments, and suggestions to the appropriate higher level supervisory official. Following these communications, if the deciding official still does not accept the recommendations of the fact-finding report or the appropriate supervisory official is the site office manager, the matter must be submitted to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components. The director of the Office of Human Capital Management or the director of Human Resources Management (NNSA), as appropriate, will provide recommendations, comments, or suggestions to the appropriate higher level supervisor who will make the final decision concerning the grievance and forward the decision to the grievant and a copy to the appropriate servicing human resources office.

The procedures contained herein are applicable only to current employees. Former employees who meet the time limits (see paragraph 2 below) must submit grievances directly to the director of the Office of Human Capital Management if they were part of non-NNSA components when employed or the director of Human Resources Management (NNSA) if they were part of NNSA components when employed. The appropriate director will, upon receipt of the grievance, determine appropriate processing.

2. TIME LIMITS. An employee may present a grievance concerning a continuing practice or condition at any time. A grievance concerning a particular act or occurrence must be presented in writing within 15 days of the date of that act or occurrence or within 15 days of the date the employee became aware of the act or occurrence. The following is a

schedule designed to permit reasonable time limits for processing a grievance. If mediation is elected at any point in the grievance process, the following time limits will be held in abeyance until completion and/or termination of the mediation process.

- a. Completion of the Informal Process—within 21 days from the date the grievance is first brought to the attention of the immediate supervisor.
  - b. Filing of the Formal Grievance—within 7 days of completion of the informal process, but not later than 28 days after initiation of the informal process if no reply has been received in the informal process.
  - c. Adjustment or Referral of Formal Grievance to Servicing Human Resources Office for Assignment of Fact-Finder—within 7 days of the date the formal grievance is filed.
  - d. Completion of Fact-Finding Procedures and Submission of the Report of Findings and Recommendations—within 45 days of assignment of the fact-finder.
  - e. Issuance of Decision by Deciding Official—within 7 days of receipt of report of findings and recommendations.
  - f. Issuance of Decision by Appropriate Higher Level Official if Deciding Official Does Not Accept Report of Findings and Recommendations—within 15 days after receipt of recommendations, comments, or suggestions from the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components.
3. INFORMAL GRIEVANCE PROCESS. An employee must complete the informal grievance process before the Department may accept a grievance under the formal process. Following are the required steps in the informal grievance process.
- a. Discussion with Immediate Supervisor. The written grievance must first be discussed with an employee's immediate supervisor.
    - (1) The employee will specify that an informal grievance is being presented and inform the supervisor whether he/she will be requesting mediation through the servicing human resources office, which will contact the local ADR contact (if one is available) or the Office of Dispute Resolution to arrange the mediation.
    - (2) The immediate supervisor may not refuse to consider a grievance in the informal stage for any reason. If the grievance consists of matters not covered under the grievance system (Attachment 2), the employee will be so advised, but the employee must be allowed to invoke under the informal process if he/she so desires (i.e., the employee must be allowed to set forth his/her concerns or dissatisfactions to the immediate

supervisor, who must listen and respond within the context of the grievance process).

- b. Resolution by Immediate Supervisor. The supervisor to whom a written grievance has been presented for informal resolution will attempt to resolve it as expeditiously as possible, seeking the advice and assistance of others where necessary, and will give the employee a written decision on the matter not later than 21 days after the date it was received. If the relief sought is not granted, the written decision will include an explanation of the reasons and the employee's right to request consideration under the formal grievance process.
- c. Grievances Involving Matters Not Under the Supervisor's Cognizance. When the grievance involves a decision or matter under the cognizance of an official outside the employee's normal supervisory line or not within the immediate supervisor's authority, the informal procedure will be administered by the employee's immediate supervisor who will confer with the appropriate official before providing the employee a response to the grievance.
- d. Exceptions. The informal grievance procedure involving appeals of performance appraisals and disciplinary actions above a reprimand will begin with the appropriate higher level supervisory official's level.
  - (1) Performance Appraisal Appeals. Performance appraisal ratings are not formal or appealable until the reviewing official signs the appraisal for release to the employee. Because rating officials (the immediate supervisors) do not have the authority to override their supervisors (the reviewing officials), performance appraisal appeals will be initiated with reviewing officials, not the rating officials (immediate supervisors).
  - (2) Disciplinary Actions Above a Reprimand. The immediate supervisor proposes the disciplinary action, and the deciding official signs the action for release to the employee. The proposal is not a formal action until the deciding official signs it. Therefore, the appeal of the employee would be initiated with the deciding official, not the immediate supervisor who proposed the action.

#### 4. FORMAL GRIEVANCE PROCESS.

##### a. Submission of Grievances.

NOTE: If allegations of discrimination related to the grievance are raised in the formal grievance procedure, processing of the grievance will be discontinued and the employee will be referred to the local equal employment opportunity office and/or the Office of Economic Impact and Diversity.

- (1) When an employee receives a decision under the informal process or when the time limit for management to respond has expired without a decision,

the employee may, within 7 days, submit the grievance to the director of his or her servicing human resources office for formal consideration.

- (2) The grievance must be in writing, be signed and dated by the employee, and include—
  - (a) sufficient information to identify and clarify the basis of the grievance,
  - (b) an explanation of the efforts made to resolve the grievance informally, and
  - (c) a description of the relief sought by the employee.
- (3) If the employee has a representative, the representative's name, address, and phone number must also be included in the grievance.

Note: Mediation may also be requested by either party as outlined in the informal grievance process.

- b. Acceptance or Rejection of Grievances. Promptly on receipt of a grievance filed under the formal process, the servicing human resources office will request from the supervisor a written summary of the matter grieved and the action taken or the results under the informal process and, acting for the appropriate deciding official, take one of the following actions.

- (1) Reject the Grievance.
  - (a) Grievances may be rejected if any of the following apply:
    - 1 the grievance was not filed within the time limits specified for filing under the informal or formal process,
    - 2 the grievance consists wholly of a matter or matters excluded from coverage of the grievance system, or
    - 3 there is no personal relief to grant the employee.
  - (b) The notice of rejection will be in writing, give reasons for the rejection, and inform the grievant of the right to request the director of the Office of Human Capital Management for non-NNSA components, or the director of Human Resources Management (NNSA) for NNSA components, to review the decision to reject the grievance (see paragraph 5 below).

Note: Where it is determined that a formal grievance was not filed within the time limits, the deciding official may, nevertheless, accept the grievance, provided

the employee furnishes, and the deciding official approves, a written explanation showing that the delay was caused by uncontrollable circumstances.

(2) Return the Grievance to the Employee.

(a) The formal grievance may be returned to the employee if—

- 1 the employee has not completed the informal process,
- 2 the grievance consists of issues or relief not raised under the informal process, or
- 3 the issues in the grievance and the relief sought are not clearly described.

(b) If the grievance must be returned because (i) the informal grievance process was not used or was not used appropriately, (ii) insufficient or unclear information was provided, or (iii) the relief sought cannot be properly addressed or investigated, the servicing human resources office should return the grievance and ensure the employee understands the process.

- 1 If the grievance must be returned because of insufficient or unclear information, the grievant will be given the opportunity to provide additional information or clarification within a specified time limit.
- 2 If necessary, the servicing human resources office will assist the employee in identifying and clarifying the basis for the grievance (issues) and the personal relief sought.

(3) Accept the Grievance and forward it and the grievance file (established in accordance with Chapter I, paragraph 7, of this Order) to the appropriate deciding official.

c. Adjustment or Referral for Fact-Finding.

(1) The deciding official will give the grievance fair and impartial consideration. If only a negative decision is indicated by available information, the deciding official will initiate fact-finding procedures.

(a) Fact-finding procedures are initiated by sending a memorandum to the servicing human resources office, with a copy to the employee, requesting that a fact-finder be selected to inquire into the grievance.

(b) The deciding official will not request a fact-finder by name.

- (2) The deciding official may issue a written decision to the grievant without initiating fact-finding procedures if it appears likely that the decision will be acceptable to the grievant.
  - (a) The written decisions in such cases will contain notice to the grievant that he or she may respond in writing within 7 days and request further consideration of the grievance if the decision is unacceptable.
  - (b) If the grievant does not request further consideration in a timely written response, the decision is implemented and the grievance is closed.
  - (c) If the grievant requests further consideration in a timely written response, the deciding official will initiate fact-finding procedures.

d. Fact-Finding.

- (1) At the discretion of the person selected by the servicing human resources office to inquire into the grievance (the fact-finder), fact-finding procedures used may consist of—
  - (a) obtaining documentary evidence,
  - (b) personal interviews,
  - (c) group meetings,
  - (d) hearings, or
  - (e) any combination of paragraphs 4d(1)(a) through (d).
- (2) Fact-finding procedures will be carried out by a person who has not been involved in the matter being grieved and who does not occupy a position subordinate to any official who recommended, advised, or made a decision on or who otherwise is or was involved in the matter being grieved. Reports of findings and recommendations established through fact-finding must be provided to the deciding official within 45 days of receipt of the case.
- (3) Persons selected to carry out fact-finding procedures must meet one of the following criteria.
  - (a) Experience as a grievance examiner, arbitrator, administrative law judge, or investigator; or
  - (b) Satisfactory completion of a course for grievance examiners, arbitrators, or investigators and good working knowledge of the

relationship between personnel administration and overall management concerns; good working knowledge of the principles, systems, methods, and administrative machinery for accomplishing DOE work; and high degree of ability to—

- 1 identify and select appropriate sources of information;
  - 2 collect, organize, analyze, and evaluate information and arrive at sound conclusions on the basis of that information;
  - 3 analyze situations, make objective and logical determinations of the pertinent facts, evaluate the facts, and develop practical recommendations or decisions on the basis of the facts;
  - 4 recognize the causes of complex problems and apply mature judgment in assessing the practical implications of alternative solutions to those problems;
  - 5 interpret and apply regulations and other complex written material;
  - 6 communicate effectively, orally and in writing, including the ability to prepare clear and concise written reports; and
  - 7 deal effectively with individuals and groups, including the ability to gain the cooperation and confidence of others.
- (4) If the fact-finder determines that a hearing is required to establish the facts pertinent to the grievance, the parties involved must identify, in writing, all witnesses they would like called and the purpose of each witness's testimony.
- (a) When determining which witnesses should be called, the fact-finder will give due consideration, in terms of cost and use of official time, to the numbers requested by the parties and the potential for duplication of evidence.
  - (b) Any witness requested by the employee or by management who is under DOE jurisdiction (employees and contractors) and whose testimony, in the judgment of the fact-finder, is necessary for development of the facts, must participate if called.
  - (c) DOE employees participating in a grievance proceeding as witnesses will be considered to be in a duty and pay status during such participation.

- (d) If the fact-finder determines that the presence of witnesses who are not DOE employees and not under DOE jurisdiction is relevant and in the interest of the Department, their transportation costs and per diems will be paid in accordance with existing travel regulations. (Note: Such witnesses may not be compelled to appear to testify.)
  - (e) Each witness will be advised that full and complete testimony is expected and that the witness will not be subject to any restraint, coercion, discrimination, or reprisal as a result of such testimony.
- (5) Normally, if a hearing is held, a written summary will suffice. A hearing transcript will be made only when both parties request it or when the fact-finder determines that a verbatim transcript is necessary and so documents the grievance file.
  - (6) The deciding official will furnish appropriate physical facilities, clerical support (including preparation of summaries of hearing transcripts), and other resources, as necessary, to meet the requirements for fact-finding procedures.
  - (7) Upon completion of the inquiry, the fact-finder will ensure that a designated member of the servicing human resources office, the employee, and the employee's designated representative, if any, have an opportunity to review and comment on all documents in the grievance file. Any comments submitted must be included in the grievance file.
  - (8) The fact-finder will submit the original copy of the grievance file with a report of findings and recommendations to the deciding official with a copy to the servicing human resources office.

e. Grievance Decisions.

- (1) Upon receipt of the report of findings and recommendations, the deciding official must ensure that the employee's point of view has received fair consideration. It is essential that all decisions at any level be based upon facts; be fully responsive to the employee's allegations, questions, or expressions of dissatisfaction; and where the recommendation is adverse to the employee, contain a detailed explanation.
- (2) Within 7 days of receipt of the report of findings and recommendations, the deciding official will do one of the following.
  - (a) Accept the recommendations in the report and notify the employee of the decision, with a copy to the servicing human resources office. This written decision will be final and contain findings on

all issues covered by the fact-finding process. The employee may not request a further review of the same grievance within DOE.

- (b) Make a final decision to grant the personal relief sought by the employee, without regard to the recommendations contained in the report, provided such relief is consistent with policy, regulations, or other administrative or statutory requirements.
- (3) If the deciding official does not comply with the requirements outlined in 4e(2)(a) and (b) above, the employee may file an appeal with the servicing human resources office, which will provide recommendations, comments, and suggestions to the appropriate higher level supervisory official. Following these communications, if the deciding official still does not accept the recommendations of the fact-finding report or the appropriate higher level supervisory official is the manager, the matter must be submitted by the servicing human resources office to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components within 7 days of receipt of the deciding official's final decision.
  - (4) The director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components will review the grievance file submitted by the servicing human resources office and forward the complete file, with appropriate comments, suggestions, and recommendations, to the next higher level supervisor in the management chain who has not been involved in the grievance.
  - (5) The final decision of the next higher level supervisor in the management chain, as referenced in paragraph 4e(4), will be rendered to the employee within 15 days after the receipt of the grievance file and a copy furnished concurrently to the servicing human resources office.
    - (a) This final decision will be in writing, contain findings on all issues covered by the fact-finding procedures, and direct what relief, if any, is to be provided.
    - (b) The employee may not obtain a further review of the same grievance within DOE.

5. REVIEW OF GRIEVANCE DECISIONS THAT REJECT OR OTHERWISE TERMINATE THE GRIEVANCE SHORT OF A FINAL DECISION ON ITS MERITS.

- a. An employee may request that the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components review a decision made by the

servicing human resources office when the decision rejects, cancels for failure to prosecute, or otherwise terminates the grievance without a final decision on its merits.

- (1) The request for review must be in writing, explain fully and clearly the basis for disagreeing with the contested decision, and be submitted to the servicing human resources office within 15 days after the date of receipt of the decision.
  - (2) The servicing human resources office will transmit the employee's request for review; a copy of the decision that rejected, cancelled, or terminated the grievance; and the complete grievance file to the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components.
  - (3) The director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components will render a decision on the appropriateness of the decision to reject, cancel for failure to prosecute, or otherwise terminate a grievance without a final decision and may direct that a decision be rendered on the merits of the grievance.
- b. Should the director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components sustain the decision to reject or terminate the grievance, the employee may not obtain a further review of the same matter within DOE.

The director of the Office of Human Capital Management for non-NNSA components or the director of Human Resources Management (NNSA) for NNSA components may recommend in writing to a deciding official or the appropriate supervisory official that a grievance be reopened and reconsidered at any time notwithstanding any other provision of this Order.

**DEPARTMENTAL ELEMENTS TO WHICH DOE O 342.1 IS APPLICABLE**

Office of the Secretary  
Office of the Chief Financial Officer  
Office of the Chief Information Officer  
Office of Civilian Radioactive Waste Management  
Office of Congressional and Intergovernmental Affairs  
Office of Counterintelligence  
Departmental Representative to the Defense Nuclear Facilities Safety Board  
Office of Economic Impact and Diversity  
Office of Electricity Delivery and Energy Reliability  
Office of Energy Efficiency and Renewable Energy  
Energy Information Administration  
Office of Environment, Safety and Health  
Office of Environmental Management  
Office of Fossil Energy  
Office of General Counsel  
Office of Hearings and Appeals  
Office of Human Capital Management  
Office of the Inspector General  
Office of Intelligence  
Office of Legacy Management  
Office of Management  
National Nuclear Security Administration  
Office of Nuclear Energy, Science and Technology  
Office of Policy and International Affairs  
Office of Public Affairs  
Office of Science  
Secretary of Energy Advisory Board  
Office of Security and Safety Performance Assurance  
Southeastern Power Administration  
Southwestern Power Administration  
Western Area Power Administration

## **NONGRIEVABLE MATTERS**

The following matters are excluded from DOE O 342.1, *Grievance Policy and Procedures*, dated 2-2-06.

1. The content of published DOE regulations and policy.
2. A decision which is appealable to the Merit Systems Protection Board.
3. A decision subject to final administrative review by the Office of Personnel Management under applicable laws or regulations.
4. A decision subject to final administrative review by the Equal Employment Opportunity Commission under applicable laws or regulations.
5. Matters administered by the General Accountability Office and the Office of Workers Compensation Programs, Department of Labor.
6. Grievances with issues included in a complaint filed with the U.S. Office of Special Counsel (OSC) will not be processed until the allegation filed with the OSC is resolved. This avoids dual consideration. However, under 5 CFR 1800.1(b)(5), OSC can investigate if discrimination has occurred in any personnel action unless it would be more appropriately resolved under an administrative appeals procedure. In addition, under 5 CFR 1810.1, OSC will normally avoid duplicating Equal Employment Opportunity Commission procedures.
7. Nonparticipation in the mediation process.
8. Nonselection for promotion from a group of properly ranked and certified candidates.
9. A preliminary warning notice of an action which if effected would be covered under the grievance system or excluded from coverage by paragraph 2 above.
10. A return of an officer or employee from the Senior Executive Service (SES) to the General Schedule during the 1-year period of probation or for less than fully successful executive performance under Title 5 U.S.C., section 3592.
11. A performance evaluation under Title 5 U.S.C., Chapter 43, Subchapter II (performance appraisal of the SES).
12. Reassignment of a career SES appointee to another SES position or a position outside the SES following receipt of an unsatisfactory rating.
13. Failure to grant an SES pay rate increase.

14. The payment of, failure to pay, or amount of critical position pay under Title 5 U.S.C., section 5377.
15. The granting of or failure to grant an employee performance award or the adopting of or failure to adopt an employee suggestion or invention under Title 5 U.S.C., sections 4503 through 4505, or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under Title 5 U.S.C., section 4507, or the failure to grant a performance award (bonus) approved by the Secretary or his/her designee.
16. An action that terminates a temporary promotion within a maximum period of 5 years and returns the employee to the position from which the employee was temporarily promoted.
17. An action that terminates a term promotion at the completion of a specified period, in excess of 2 years but not more than 5 years, and returns the employee to the position from which promoted or to a different position of equivalent grade and pay in accordance with Title 5 CFR, Part 335.
18. The receipt of or failure to receive a quality step increase under Title 5 U.S.C., section 5336.
19. Failure to receive a noncompetitive promotion.
20. The payment of, failure to pay, or amount of a recruitment bonus, relocation bonus, retention allowance, or voluntary separation incentive pay (buyout).
21. The substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of Title 5 U.S.C., Chapter 43, Subchapter I, and 5 CFR, Part 430 (including SES).
22. The termination under Title 5 CFR, Part 315, Subpart H, of a probationer for unsatisfactory performance or conduct.
23. Return of an employee from an initial appointment as a supervisor or manager to a nonsupervisory or nonmanagerial position for failure to satisfactorily complete the probationary period under Title 5 U.S.C., Section 3321(a)(2), and 5 CFR, part 315, subpart I.
24. A request for personal relief that, if granted through the grievance procedure, would result in violation of specific provisions of laws or Government-wide regulations.
25. An action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which assigns the employee from one geographical location to another.
26. Any other separation action not excluded above by this attachment.