

DEPARTMENT OF TRANSPORTATION  
OFFICE OF THE SECRETARY

DEPARTMENTAL PERSONNEL MANUAL SYSTEM

Published in advance of incorporation in DPM Chapter <u>771</u> Retain until superseded
--

DPM LETTER: 771- 1

SUBJECT: Handbook - Agency Administrative  
Grievance System

DATE: MAY 18 1988

This Departmental Personnel Manual Letter forwards the attached handbook which provides the Department of Transportation (DOT) policies and procedures governing the agency administrative grievance system. DOT Order 3770.2, Subject: Agency Administrative Grievance System, dated September 1, 1980, is cancelled.

  
Director of Personnel

Attachment

---

Filing Instructions: File after FPM Chapter 771 Letters

Distribution: All FPM Subscribers, Field & Headquarters

OPI: M-17, 366-9440



U.S. Department of  
Transportation  
Office of the Secretary  
of Transportation

# Agency Administrative Grievance System Handbook

---

---

Labor and Employee Relations Division (M-17)

May 1988

## TABLE OF CONTENTS

Chapter		Page
1.	Purpose.....	1
2.	Cancellation.....	1
3.	Scope.....	1
4.	Exceptions.....	1
5.	Reference.....	1
6.	Definitions.....	1
7.	Delegations of Authority.....	1
8.	General Policy.....	2
9.	Executive Responsibilities.	
	A. Managers and Supervisors.....	2
	B. Administrators.....	2
	C. Asst. Secretary for Administration.....	3
	D. Director, Office of Personnel.....	3
	E. General Counsel.....	4
	F. Deputy Secretary.....	4
	G. Director, Office of Civil Rights.....	4
10.	Coverage.	
	A. Employees Covered.....	4
	B. Employees Excluded.....	5
	C. Matters Covered.....	5
	D. Matters Excluded.....	5
	E. Optional Exclusion.....	7
11.	Technical Assistance and Counseling on Grievances.	
	A. Supervisors/Managers.....	8
	B. Employees.....	8
12.	Time Frame for Resolving Grievances.	
	A. Time Limits.....	8
	B. Time Limit Extensions.....	9
13.	Official Time.	
	A. Presentation of a Grievance.....	9
	B. Preparation Time.....	9
14.	Representation and Presentation.	
	A. Representation Rights.....	9
	B. Presentation Rights.....	9
15.	Allegations of Discrimination.....	9
16.	Inter-Administration/OST Grievance Procedure.	10
17.	Liability for Expenses.....	10
18.	Canceling a Grievance.	
	A. By the Employee.....	10
	B. Termination of Employment.....	10
	C. Death.....	11
	D. By the Agency.....	11
19.	Grievance Procedures.	
	A. Background.....	11
	B. Initial Step Consideration.....	12
	C. Final Grievance Step.....	13
	D. Final Written Decision.....	14
20.	Grievance File.....	14

1. PURPOSE. This handbook provides Department of Transportation (DOT) policies and procedures governing the agency administrative grievance system.
2. CANCELLATION. DOT Order 3770.2, Agency Administrative Grievance System, is canceled.
3. SCOPE. These policies and procedures are applicable throughout the Department for covered employees. Operating administrations may supplement this system for their own use or they may issue their own procedures not in conflict with this system. One copy of any supplementing or implementing instructions will be forwarded to M-10, Attn: M-17. Clarification of these policies and procedures can be obtained from the Labor and Employee Relations Division, M-17.
4. EXCEPTIONS. This system has been designed to provide one procedure which can be applied uniformly to all grievance matters and to all covered employees. When an operating administration determines that one or more of the required provisions of this system does not meet their specific needs, an exception may be requested. Specific requests for exceptions to these policies and procedures, including a copy of the policies and procedures proposed in lieu of this system, must be forwarded to M-10, Attn: M-17, for review and approval prior to issuance.
5. REFERENCE. Title 5, Code of Federal Regulations, Part 771.
6. DEFINITIONS. Words and phrases as used in this handbook have the same meaning and applications that they have in law and in implementing rules and regulations. Days means calendar days.
7. DELEGATIONS OF AUTHORITY. The authority of the Secretary, over and with respect to personnel in DOT, has been delegated to Administrators for the personnel of their administrations (49 CFR §1.45). The Assistant Secretary for Administration has been delegated authority to administer and conduct personnel management activities for the Office of the Secretary (OST) (49 CFR §1.59). In exercising powers and performing duties delegated or redelegated pursuant to 49 CFR §1.45 and 1.59, officials of the DOT are governed by applicable laws, executive orders and regulations, policies, objectives, plans, standard procedures, and limitations issued from time to time by or on behalf of the Secretary (49 CFR §1.42).

## 8. GENERAL POLICY.

- A. Employees' dissatisfactions with their work or work situation will, to the extent possible, be settled through day-to-day work relationships with their immediate supervisors, avoiding the requirement to resort to grievance procedures.
- B. Managers and supervisors in their day-to-day activities will emphasize the prevention and correction of work situations which interfere with the efficiency and effectiveness of the operations of the agency and lead to a necessity for corrective action.
- C. There will be no interference, restraint, coercion, discrimination, or reprisal against any employee for exercising rights under this system.
- D. Actions taken under this system shall be designed to promote and maintain a proper state of discipline and morale in the work environment.

## 9. EXECUTIVE RESPONSIBILITIES.

### A. Managers and Supervisors.

- 1. Represent management in the administration of the policies and other requirements of this system in their dealing with employees and their representatives;
- 2. Assure that rights granted to employees are observed and that this system is equitably administered;
- 3. Promptly inform management at higher levels of significant problems which affect their administration of matters within the scope of this system; and
- 4. Seek advice and procedural guidance from agency personnel offices.

### B. Administrators.

- 1. Administer the program within their jurisdictions in keeping with law, regulations of outside authority, and this handbook;

2. Keep the Assistant Secretary for Administration advised of significant problems and the progress of the program;
3. Periodically evaluate the operation of their programs; and
4. Act as, designate or provide for the designation of grievance officials as required for the implementation of this system.

C. Assistant Secretary for Administration.

1. Administers the program within OST in keeping with law, regulations of outside authority, and this handbook;
2. Periodically evaluates the operation of the program, both within OST and within the Department, and directs such corrective actions and changes in policies and procedures, as deemed necessary; and
3. Acts as, designates or provides for the designation of grievance officials in OST as required for the implementation of this system.

D. Director, Office of Personnel.

1. Conducts program reviews and evaluations, identifies problem areas and makes recommendations for improvements, and provides overall program advice and assistance;
2. Conducts staff reviews and analyses of matters referred to the Secretary, the Deputy Secretary or the Assistant Secretary for Administration for coordination or review and makes appropriate recommendations;
3. Coordinates with the Office of the General Counsel, as necessary, and seeks advice on legal aspects of the program; grants exceptions to the requirements of this handbook as deemed necessary in the interests of the agency; and
4. With appropriate coordination within the agency, is the sole contact with the Office of Personnel Management (OPM) on policy matters within their

jurisdiction and the purview of this handbook, except as otherwise provided herein.

E. General Counsel.

1. Is the chief legal advisor within the DOT;
2. For grievances arising in OST, upon request by the Assistant Secretary for Administration or his/her designee, provides for legal representation and judicial review; and
3. Coordinates legal representation, as necessary, for particular grievances arising outside of OST, and matters subject to judicial review.

F. Deputy Secretary.

Acts as or designates the Deciding Official for grievances against Administrators, Assistant Secretaries, the General Counsel, and employees or special staff officers reporting directly to the Deputy Secretary.

G. Director, Office of Civil Rights.

1. Conducts civil rights reviews to determine disparate impact or treatment in actions subject to this handbook; and
2. Submits reports and analyses of reviews to M-10 with suggested program modifications when policies and procedures conflict with applicable Equal Employment Opportunity and Civil Rights Laws.

10. COVERAGE.

- A. Employees Covered. Except as provided in paragraph B. below, this system applies to nonbargaining unit employees in the agency; it also applies to bargaining unit employees for matters which are outside the scope of a negotiated grievance procedure, either because management and the union have not negotiated a grievance procedure or because they have agreed to exclude the matters from coverage under the negotiated grievance procedure.

- B. Employees Excluded. This Order does not apply to:
1. a noncitizen appointed under Civil Service Rule VIII, Section 8.3, Title 5, Code of Federal Regulations (CFR);
  2. an alien appointed under section 1471(5) of Title 22, United States Code (U.S.C.);
  3. a nonappropriated fund employee as defined in section 2105(c) of Title 5 or section 4202(5), Title 38, U.S.C.;
  4. an employee excluded from coverage by OPM on the recommendation of the Head of the agency; or
  5. members of recognized bargaining units where the issue/matter grieved is subject to a grievance procedure negotiated under 5 U.S.C. 7121.
- C. Matters Covered. Except as provided in paragraph D. below, this system covers any matter of concern or dissatisfaction relating to the employment of an employee which is subject to the control of agency management.
- D. Matters Excluded. This grievance system does not apply to:
1. the content of published agency regulations and policy;
  2. a decision which is appealable to the Merit Systems Protection Board or subject to final administrative review by OPM or the Equal Employment Opportunity Commission (EEOC) under law or regulations of OPM or EEOC;
  3. nonselection for promotion from a group of properly ranked and certified candidates or failure to receive a noncompetitive promotion;
  4. a preliminary warning or notice of an action which, if effected, would be covered under the grievance system or excluded from coverage by subparagraph D.2. above;

5. a return of a Senior Executive Service (SES) career appointee to the General Schedule or another pay system during the 1 year period of probation or for less than fully successful executive performance under 5 U.S.C. 3592, Removal from the Senior Executive Service;
6. a reassignment of an SES appointee following the appointee's receipt of an unsatisfactory rating under 5 U.S.C. 4314;
7. an action which terminates a temporary promotion within a maximum period of 2 years and returns the employee to the position from which the employee was temporarily promoted, or reassigns, or demotes the employee to a different position that is not at a lower grade or pay than the position from which the employee was temporarily promoted;
8. an action which terminates a term promotion at the completion of the project or specified period, or at the end of a rotational assignment 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 5 CFR 335.102(g);
9. the substance of the critical elements and performance standards of an employee's position which have been established in accordance with the requirements of subchapter I of 5 U.S.C. Chapter 43, and 5 CFR Part 430;
10. the granting of or failure to grant or the amount of an award granted under 5 CFR Part 430, Subpart E; or the granting of or failure to grant or the amount of an award granted under 5 CFR Part 451; or the adoption of or failure to adopt an employee suggestion or invention under 5 CFR Part 451; or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under 5 U.S.C. 4507;
11. the receipt of or failure to receive a performance award under 5 U.S.C. 5384 or a quality salary increase under 5 U.S.C. 5336;

12. a decision to grant or not to grant a general increase, merit increase, or performance award under the Performance Management and Recognition System (PMRS), or a decision on the granting of or failure to grant cash awards or honorary recognition under 5 U.S.C. Chapter 54 and 5 CFR Part 540;
  13. the termination under 5 CFR Part 315, Subpart H, of a probationer for unsatisfactory performance;
  14. the termination under 5 CFR Part 359, Subpart D, of an SES career appointee during probation for unsatisfactory performance;
  15. an SES Performance Appraisal;
  16. an action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee which: (A) assigns the employee from one geographical location to another, or (B) returns an employee from an overseas assignment;
  17. a 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 5 U.S.C. 3321(a)(2) and 5 CFR Part 315, Subpart I;
  18. a separation action not excluded elsewhere (e.g., termination of a probationer for other than performance);
  19. any matter which is grievable under procedures established by an agreement negotiated under the provisions of 5 U.S.C. 7121; or
  20. a matter which could be, has been, or is being processed under another procedure.
- E. Optional Exclusion. Operating administrations may opt to exclude the review of ratings under the PMRS from coverage under this system. Such exclusion must be pursuant to written administration policy and may be made only when another procedure meeting the requirements of 5 CFR Part 771 is available for the review of such ratings.

11. TECHNICAL ASSISTANCE AND COUNSELING ON GRIEVANCES.

- A. Supervisors/Managers. Personnel officers or their designees will counsel and assist agency officials responsible for considering and resolving grievances. The personnel officer acts in an advisory capacity and in no way assumes another official's responsibility for resolving a grievance. However, personnel officers may serve as Deciding Officials for employees over whom they have line supervision.
- B. Employees. An employee in processing a grievance is entitled to communicate with and seek advice from the servicing personnel office. Personnel officers or their designees may counsel and advise employees on procedural aspects and employee rights with respect to submitting and processing grievances.

12. TIME FRAME FOR RESOLVING GRIEVANCES.

- A. Time Limits. An employee entitled to grieve a matter covered by this system is entitled to prompt, fair, and impartial consideration of a timely filed grievance. Such employee must initiate a grievance within 15 days of the date of the occurrence of the act or event being grieved, or the date on which the employee could reasonably have been expected to have first become aware of its occurrence. If the matter grieved is a continuing practice or condition, the employee must initiate the grievance within 15 days of becoming aware of the condition or practical effects for which he/she seeks personal relief. A grievance is initiated when the employee's supervisor receives a written grievance filed by an employee stating his or her concern or dissatisfaction and requesting remedial action.

The final decision on a grievance shall normally be issued not more than 90 days from the date the employee initiates the grievance. This 90-day time period is measured from the date the supervisor receives the written grievance from the employee. It includes the time for consideration by the Deciding Official, any inquiry, fact-finding, or hearing and the writing of the final decision. Any delays in the processing of a grievance caused by the grievant's actions or failure to act, or extensions of time requested by or on behalf of a grievant, shall extend the 90-day time limit for processing the number of days equal to the delays and extensions.

- B. Time Limit Extensions. The time limit for initiating a grievance may be extended up to a maximum of an additional 90 days, only in those cases where the employee can show that circumstances beyond the control of the employee prevented timely initiation of the grievance.

13. OFFICIAL TIME.

- A. Presentation of a Grievance. An employee and an employee's representative, if otherwise in an active duty status, are entitled to a reasonable amount of official time to present the grievance. The amount of time to be allowed must depend upon the facts and circumstances of each individual grievance, such as the nature of the grievance and the volume of pertinent supporting evidence. The amount of official time granted to the employee and the representative shall be determined by the person responsible for authorizing leave for the employees, after consultation with the official to whom the grievance is to be presented.
- B. Preparation Time. An employee is not entitled by law or regulation to official time to prepare a grievance to be presented under the provisions of this system. However, this does not preclude administrations from adopting a policy of granting such official time.

14. REPRESENTATION AND PRESENTATION.

- A. Representation Rights. An employee in presenting a grievance is entitled to be accompanied, represented, and advised by a representative of his/her own choosing. However, an agency may disallow (i.e., refuse to recognize) an employee's choice of representative which would result in a conflict of interest or position, or would conflict with the priority needs of the agency, or would give rise to unreasonable costs to the Government. An employee chosen to represent a grievant must be willing and available to do so.
- B. Presentation Rights. An employee and an employee's representative in presenting a grievance shall be assured freedom from restraint, interference, coercion, discrimination, or reprisal.

15. ALLEGATIONS OF DISCRIMINATION. Appeals involving allegations of discrimination on the basis of race, color, religion, national origin, sex, handicapping condition, or age are subject to review by the EEOC and, therefore, are

excluded from coverage by this grievance system (see section 10.D.2.). When an employee includes an allegation of such discrimination as a part of a grievance, the grievance shall be forwarded to the appropriate Civil Rights Office for review and processing through the discrimination complaint procedure as required by 29 CFR 1613.219.

16. INTER-ADMINISTRATION/OST GRIEVANCE PROCEDURE.

- A. An employee wishing to grieve a matter which is under the control of another operating administration or OST shall follow the regular procedure for filing and processing grievances within his or her own management channels.
- B. Management of the employee's organization will process the grievance through the various steps, as appropriate, but only after full consultation with the operating administration/OST having control over the matter about which the employee is complaining.
- C. The operating administration/OST having control over the matter will make the determinations at the various steps as to how the grievance will be settled, and these determinations will be the basis for the decisions of the Deciding Official in the operating administration/OST where the grievance was filed.
- D. The organization in which the employee works is responsible for initiating and maintaining full coordination with the operating administration/OST having control over the matter being grieved.

17. LIABILITY FOR EXPENSES. The agency is not liable for expenses incurred by employees in the exercise of rights under this system except as required by law or regulation (i.e., Back Pay Act) or where the agency consents to specific expenses.

18. CANCELING A GRIEVANCE.

- A. By the Employee. An employee may cancel a grievance at any stage of its consideration by submitting a written request for cancellation. Once canceled, the grievance may not be reactivated.
- B. Termination of Employment. The grievance shall be canceled upon termination of an employee's employment with the agency, unless the remedy requested by the employee would result in personal relief after termination of employment.

- C. Death. Death of the employee automatically terminates a grievance unless the adjustment sought involves a matter of the deceased employee's pay which may be due to the beneficiaries of the deceased.
- D. By the Agency. The agency shall cancel a grievance if the employee fails to progress the grievance, or does not furnish required information or duly proceed with the advancement of the grievance in a timely manner.

19. GRIEVANCE PROCEDURES.

A. Background.

1. Agency administrative grievance systems must be established and administered under the provisions of the criteria in 5 CFR 771.302. A key provision provides that anytime an employee places a grievance in writing, that employee shall receive a decision in writing. Such a written decision shall be made by:
  - (a) An official at a higher level than any employee involved in any phase of the grievance, except when the Head of the agency has been involved; or
  - (b) the official(s) designated to determine the facts.
2. This provision permits a possible first or initial grievance consideration by officials who have been involved in some phase of the matter being grieved. While these officials cannot issue a final decision on a grievance, nothing prevents or prohibits them from giving first or initial consideration to any grievance or from attempting to arrive at an agreed settlement with a grievant. Such an agreed settlement shall be finalized by a confirming written decision from the appropriate official for issuing the decision. (See section 19. B.)
3. An official at a higher management level than those involved in any phase of the matter grieved, who is in the line of authority over the grievant, must serve as the Deciding Official, or otherwise designate an appropriate official to be the Deciding Official (see paragraph C. below). Depending on the circumstances and issues involved, the Deciding Official may be the level of supervision next above

the grievant's immediate supervisor, or one or more supervisory levels above that, so long as the Deciding Official has not been involved in any phase of the grievance.

B. Initial Step Consideration.

1. Initiating the Grievance. The grievance shall be submitted to the employee's immediate supervisor. Operating administrations may issue a written policy that grievances may be raised orally with the employee's immediate supervisor. Absent such a policy, all grievances must be submitted in writing. The grievance, whether oral or written, must be identified as a grievance under the administrative grievance system. It should also contain a description of the matter being grieved, the facts which the grievant believes are relevant to the grievance, and the personal relief being sought.
2. Objective. The objective of initial step consideration is to resolve an accepted grievance at the lowest possible administrative level, as equitably as possible to both the agency and the grievant, in the shortest possible time frame.
3. Grievability. Upon initial receipt of a grievance, the immediate supervisor receiving the grievance shall first make a determination as to whether the grievance meets the requirements of this handbook and 5 CFR Part 771 for acceptance for processing. This consists of determining that the employee meets the timeliness and eligibility requirements for filing a grievance and that the matter(s) grieved are not excluded from coverage. In making this determination, it may be necessary or advisable to make the grievability decision with the assistance of the servicing personnel office. An employee whose grievance may not be accepted will be so advised in writing together with the reasons for the decision. The employee will also be notified that in the event of disagreement with the grievability decision, the employee may, within 5 days of receipt of the decision, make a written request to the next higher supervisory level which meets the requirements of 5 CFR 771.302 for reconsideration (see section 19.A.).
4. Initial Step Decision. If a grievance is accepted, the immediate supervisor shall respond in writing within 15 days of receipt of the grievance as follows. If a decision is made to grant the

requested resolution, the grievant shall be so notified. If no resolution can be offered at this step, the grievant shall be so notified and advised of the right to progress the grievance to the final step. If a resolution other than that requested is deemed appropriate, the grievant shall be notified of the proposed resolution and given 5 days to accept or reject it in writing. As a part of this notification, the grievant shall be advised that if the proposed resolution is rejected, he/she has the right to progress the grievance to the final step within five days of the date of the written rejection. Failure by the grievant to either accept or reject a proposed resolution may be considered failure to progress and serve as a basis for cancellation of the grievance.

If the immediate supervisor does not respond to the initial step grievance within the 15 day time limit, the grievant may progress the grievance to the final grievance step as described below. In this case, the final step grievance will be filed with the immediate supervisor, who will immediately forward it to the appropriate Deciding Official with an explanation as to why a timely response to the initial step grievance was not made. While the initial step processing and consideration is given by the immediate supervisor, if the grievant's requested resolution is to be granted or if the grievant accepts some other resolution offered at this step, a written final grievance decision (see section 19.D.) shall be issued by an official meeting the criteria in 5 CFR 771.302.

#### C. Final Grievance Step.

A grievant must file in writing with the designated Grievance Official within 5 days of the receipt of the notice of the right to proceed to the final step grievance. If no initial step decision is issued, the grievant must file the final step grievance with the immediate supervisor within 5 days of the expiration of the 15-day time limit for the initial step decision (see section 19.B.). The Deciding Official must be an official of the agency at a higher level than any official involved in any phase of the grievance, except when the Head of the agency has been involved. The Deciding Official may personally study the matter and issue the decision. The Deciding Official may also elect to use a fact-finder. In the latter situation, the fact-finder shall not be involved in the matter being grieved and shall not occupy a position subordinate to any official

involved in the matter being grieved. The fact-finder shall be designated in writing by the Deciding Official. The designation shall direct the fact-finder to determine the validity of disputed facts and issue either: (1) a final decision to the grievant; or (2) a report to the Deciding Official containing findings, conclusions, and a recommended grievance decision. When the fact-finder issues a report as provided in (2), the Deciding Official shall consider the report and recommendation and issue the final decision to the grievant.

D. Final Written Decision. The final written decision to the employee shall include a report of the findings and reasons for the determinations of the decision maker with respect to the matter(s) grieved. Any remedy granted to an employee must conform to applicable laws and regulations, and agency policies and procedures. A decision shall, to the extent possible, be issued timely as provided by paragraph 12 of this system. The final written decision is not subject to further review.

20. GRIEVANCE FILE. Whenever a grievance is filed, a grievance file shall be established and shall be made available to the grievant and the grievant's representative for review and comment.