



**United States
Department of
Agriculture**

**Food Safety
and Inspection
Service**

**FSIS Directive
4771.1**

Revision 3

Administrative Grievance System

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UNITED STATES DEPARTMENT OF AGRICULTURE
FOOD SAFETY AND INSPECTION SERVICE
WASHINGTON, DC

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ADMINISTRATIVE GRIEVANCE SYSTEM

PART ONE—BASIC PROVISIONS

I. PURPOSE

This directive describes policy and procedures for the Administrative Grievance System (AGS). The System provides a fair, equitable, and timely forum for internal review and resolution of employment-related disputes.

II. CANCELLATION

This directive cancels FSIS Directive 4771.1, Revision 2, dated 2/18/98.

III. REASON FOR REISSUANCE

This directive is completely rewritten to:

- A. Update information for filing a grievance under the AGS.
- B. Update coverage of subject matter.
- C. Update AGS Flowchart (see Attachment 4-1).
- D. Add Frequently Asked Questions and Answers (see Attachment 4-2).

IV. REFERENCES

5 U.S.C. 2302, Prohibited Personnel Practices

FSIS Directive 4713.3, Equal Employment Opportunity

DISTRIBUTION:
All Employees

OPI:
LERD—Employee Relations Branch

V. ABBREVIATIONS AND FORMS

The following will appear in their shortened form:

AGS	Administrative Grievance System
EEO	Equal Employment Opportunity
EEOC	Equal Employment Opportunity Commission
LERD	Labor and Employee Relations Division
MSPB	Merit Systems Protection Board
OPM	Office of Personnel Management
HRD	Human Resources Division
SES	Senior Executive Service

VI. POLICY

FSIS recognizes that occasional dissatisfaction and disagreement may occur in a working environment, which might adversely affect the Agency's mission. It is the Agency's goal to resolve employee concerns quickly, fairly and informally whenever possible by:

A. Ensuring that no restraint, reprisal, coercion, intimidation, interference or discrimination is practiced against any employee filing an administrative grievance.

B. Ensuring that the filing of an administrative grievance does not adversely reflect on the employee's supervisor.

VII. DEFINITION

Administrative Grievance. A request by an employee or group of employees acting as individuals, seeking personal relief in a matter of concern or dissatisfaction on their employment, subject to the control of FSIS management officials.

VIII. EMPLOYEES COVERED BY A NEGOTIATED AGREEMENT

A. This directive applies to any employee not covered by a negotiated grievance procedure established through negotiations with a labor organization to which exclusive recognition has been granted.

B. Employees covered by such an agreement must follow the grievance provisions of the applicable contract.

PART TWO—SYSTEM COVERAGE

I. EMPLOYEE COVERAGE

A. Generally, all FSIS nonbargaining unit employees are covered.

B. Excludes:

1. Applicants for employment.
2. Bargaining unit employees covered by a negotiated grievance procedure.

II. SUBJECT MATTER COVERAGE

A. Except as excluded from coverage in Subparagraph III.C., this directive applies to matters relating to an individual's employment about which an employee expresses concern or dissatisfaction and which is subject to the control of the FSIS management, including any matter in which coercion, reprisal, or retaliation has been allegedly practiced against an employee.

B. Excludes:

1. Established FSIS policy or regulations.
2. Other grievance, appeal, complaint or other dispute resolution process, with respect to the same employee.
3. Nonselection for promotion from a group of properly ranked and certified candidates, or failure to receive a noncompetitive promotion.
4. Complaint of discrimination based on race, color, religion, sex, age, national origin, sexual orientation, marital status, or physical or mental disabling conditions.
5. A preliminary warning or notice of an action.
6. Suspension of more than 14 calendar days, reduction in grade or pay, furlough of 30 calendar days or less, and removal.
7. The termination of a time-limited promotion within a maximum period of 2 years, and the subsequent reassignment of an employee to another position at the same grade or pay, or the return of an employee to the position from which the employee was temporarily promoted.

8. Determinations on awards, suggestions, step increases, recruitment and relocation incentives, and retention incentives.
9. An action taken according to the terms of a formal agreement voluntarily entered into by an employee, including reassignment to a different geographic location.
10. The placement or return of an employee serving a supervisory or managerial probationary period to a non-supervisory or non-managerial position, which may include a reduction in force.
11. SES performance evaluation.
12. Reassignment of a SES appointee following the appointee's receipt of an unsatisfactory rating.
13. A return of a SES career appointee to the General Schedule or another pay schedule during the 1 year period of probation or for less than fully successful executive performance.
14. The termination of a SES career appointee during probation for unsatisfactory performance.
15. The substance of the critical elements and performance standards of an employee's position.
16. Unsatisfactory performance rating during a probationary or trial period.
17. Removal or separation of Schedule C, noncareer SES, and nonpreference eligible excepted service employee.
18. The termination of a probationary employee for unsatisfactory performance or conduct.

III. DECISIONS APPEALABLE OUTSIDE USDA

Do not use the AGS for disputes if an employee is entitled to file an appeal, grievance, or formal challenge as follows:

- A. **Decisions Appealable to MSPB.**
 1. Violation of employment priority rights.
 2. Reduction-in-force action.

3. Violation of reemployment or reinstatement rights.
4. Violation of restoration rights.
5. Denial of within-grade step increase.
6. Adverse action for:
 - a. Political activity, such as removal, demotion, or suspension of more than 14 calendar days.
 - b. Other reasons, such as removal, suspension of more than 14 calendar days, reduction in grade or pay, or furlough of 30 calendar days or less.
7. Termination during probationary period if employee alleges termination resulted from discrimination based on partisan political reasons or marital status.
8. OPM determinations on disability retirement or voluntary retirement where an individual's rights or interest are adversely affected.

B. Decisions Appealable to OPM.

1. Position classification decision.
2. Salary retention decision.
3. Action reviewable under the Fair Labor Standards Act.
4. Life insurance, health benefits, or retirement decision.

C. Decisions Appealable to EEOC. Complaints of discrimination based on race, color, religion, sex, age, national origin, or physical or mental disabling conditions. (See FSIS Directive 4713.1.)

IV. GENERAL PROCESSING REQUIREMENTS

A. Advisement. Administrative officials should arrange for employees to have access to discuss individual problems affecting their status and welfare. The Agency prefers to resolve employee dissatisfactions and disagreements informally. Employees should communicate with and seek advice from their immediate supervisor or other Agency management officials (human resources specialists, EEO counselors) on employee responsibilities, conduct, complaints, grievances, and appeals.

B. Informal Resolutions.

1. The Agency encourages informal resolutions at any stage of the grievance process.

2. The Agency encourages reasonable attempts from Agency managers, supervisors, and the grievant to resolve a grievance at any time.

3. To facilitate the informal and voluntary resolution of employment-related disputes before or with the AGS process, use counseling, mediation, or other processes.

C. **Representation.** An employee is entitled to have a personal representative attend, represent, or advise the employee at any stage of their grievance. A representative may be disallowed if the Agency determines that the representative creates a conflict of interest, is required to perform other priority work for the Agency, or the employee's selection would give rise to unreasonable delays in the processing of the grievance or unreasonable costs to the Agency. If the employee wants the Agency to recognize the representative and send materials to the representative, the employee must inform the Agency in writing.

D. **Official Time.** The grieving employee and the representative, if an FSIS employee, are granted a reasonable amount of official time to present the grievance, provided they are in a duty status. Official time to prepare the grievance is not allowed.

E. **Protection.** Grievant and their representatives are free from restraint, coercion, intimidation, or reprisal in presenting a grievance. If grievants believe they were subjected to any of the above actions, the grievants:

1. Should notify the Director, LERD in writing, within 7 calendar days of the occurrence.

2. Must either request to add the allegations to the grievance being presented or forward the allegations for review at the Department level.

F. **Reviewing Files.** LERD establishes an employee grievance file and maintains the file as the official record of grievance proceedings. Either the grievant or their authorized representative receives a copy of all the material and information on which the proposed dispositions are based.

G. **Cancellation or Suspension of Grievance.** The Agency may cancel or suspend a grievance or a portion of a grievance when the grievant:

1. Specifically requests such action.

2. Fails to provide sufficient detail to clearly identify the grievance or fails to specify the personal relief.

3. Requests disciplinary or other action against another employee.
4. Fails to comply with established timeframes and procedures.
5. Has previously filed or later files an appeal, EEO complaint, or other formal challenge on the same matter.

PART THREE--INFORMAL PROCESS

I. MANDATORY USE

A. Employees must complete the informal grievance procedure before filing a formal grievance, except in cases of a suspension of 14 calendar days or less, or when the Agency Ethics Officer determines a conflict of interest. (See Part Four, Subparagraph I. A. 2.)

B. Supervisors may not reject a grievance at the informal stage. Supervisors maintain an "open door" policy and attempt to informally resolve work-related problems or matters of concern to employees.

II. EMPLOYEE'S RESPONSIBILITIES

A. **Time Limit for Presentation.** An employee shall file an informal grievance within 15 calendar days of the date of the act or occurrence which is the basis for the grievance, or the date the employee learned of the act or occurrence. The informal grievance is considered whether or not it was filed within the time limit, even though it may be rejected as untimely if and when it is filed as a formal grievance.

B. **Presentation.** The employee presents the grievance to the official at the lowest level having authority to make a decision on the matter. If this person is not known to the employee, the grievance is submitted to the employee's immediate supervisor. The supervisor determines who has authority to resolve the matter.

C. **Format of Grievance.** The employee can present an informal grievance orally or in writing. The employee must identify the matter of concern and state that he or she is filing a grievance and initiating the grievance process.

III. RESPONSIBILITIES OF SUPERVISORS AND OTHER OFFICIALS

A. The immediate supervisor or other official shall attempt to resolve the grievance by correction, adjustment, or other appropriate action through reasonable and good faith efforts at the mandatory informal stage. (This requirement at the informal stage does not preclude resolution attempts at later stages of the process.)

B. If an employee presents a grievance to their supervisor which is beyond the supervisor's authority, the supervisor must promptly refer the matter to the appropriate official for action and inform the employee in writing of the referral.

C. The supervisor or appropriate official shall issue a Notice of Termination of Informal Grievance Procedures or a written confirmation of resolution to the employee. The Notice must be signed by the supervisor on completion of the informal grievance stage. The employee must receive and sign the Notice within 15 calendar days of the date the grievance is initiated, unless extended by mutual agreement, and must include the information outlined in Paragraph IV.

IV. **NOTICE OF TERMINATION OF INFORMAL GRIEVANCE**

The employee receives a termination notice when the informal grievance stage ends. The Notice clearly identifies the issues of the grievance and any attempts and decisions made to resolve them. The Notice advises the employee of the right to submit a formal grievance and states that a formal grievance must:

A. Be made within 10 calendar days of employee's receipt of the Notice of Termination of Informal Grievance Procedures.

B. Be sent to the:

USDA FSIS ADMINISTRATOR
ATTENTION: DIRECTOR LERD
1400 INDEPENDENCE AVENUE SW ROOM 3175S
WASHINGTON DC 20250-3700

C. Be in writing and contain the employee's or authorized representative's signature.

D. State clearly the matter or issue that is the subject of the grievance, including all documentation from which a decision may be based.

E. Specify facts to support the issue of disagreement, items which are unresolved and the relief requested.

PART FOUR--FORMAL PROCESS

I. PRESENTING A FORMAL GRIEVANCE

A. Filing.

1. The employee submits a formal grievance in writing to the:

USDA FSIS ADMINISTRATOR
ATTENTION: DIRECTOR LERD
1400 INDEPENDENCE AVENUE SW ROOM 3175S
WASHINGTON DC 20250-3700

2. The employee must submit the formal written grievance as follows no later than:

- a. **10 calendar days** after the employee receives the Notice of Termination of Informal Grievance. (See Part Three, Subparagraph IV.)

- b. **15 calendar days** after the effective date of a suspension of 14 calendar days or less. In such cases, an employee may file a formal grievance without first using the informal process for resolution. (See Attachment 4-1.)

3. The grievance must:

- a. Contain the employee's or authorized representative's signature.

- b. Clearly state the matter or issue that is the subject of the grievance. Include all documentation and any additional evidence to aid in decision making. An employee may **not** change or add issues except for an allegation of reprisal actions for filing the informal grievance.

- c. Specify facts to support the issue of disagreement, unresolved items, and a request for personal relief.

B. Acceptance or Rejection. The employee receives notice of the formal grievance's acceptance or rejection.

1. The grievance should be rejected when it:

- a. Concerns a matter excluded from the system.

- b. Has not been pursued informally where an attempt at informal resolution is required.

2. The grievance may be rejected for untimely filing if it does not meet a requirement for processing which may or may not be based on timeliness.

3. Any rejection at this stage of a grievance may be reviewed at the employee's request no later than 7 calendar days after receiving the rejection notice. This time limit may be extended if there is good cause shown by the employee.

C. **Cancellation.** A formal grievance may be canceled at any step of the formal process if no relief can be legally provided due to the separation of the employee or if some form of relief has already been granted removing the need or basis for any further relief. Any resolution or voluntary withdrawal of the grievance at the formal stage shall be submitted in writing to:

USDA FSIS ADMINISTRATOR
ATTENTION: DIRECTOR LERD
1400 INDEPENDENCE AVENUE SW ROOM 3175S
WASHINGTON DC 20250-3700

II. **ADMINISTRATOR'S RESPONSE**

A. The Administrator or designee issues a decision on the grievance within 90 calendar days of the receipt of the formal grievance.

B. If no decision is issued within 90 calendar days, and an extension of time is not mutually agreed upon between the employee and the Agency, the employee may elevate the grievance to the Department.

C. If the Agency's decision is not acceptable to the employee, the employee may appeal the decision.

1. The employee must submit a written appeal, within **10 calendar days of receipt of the Agency decision**, to the:

USDA FSIS ADMINISTRATOR
ATTENTION: DIRECTOR LERD
1400 INDEPENDENCE AVENUE SW ROOM 3175S
WASHINGTON DC 20250-3700

2. The appeal must clearly state the matters or issues of disagreement.

D. The Agency promptly forwards an indexed copy of the grievance file and the grievant's request to the Department and certifies that the grievant received a copy of the grievance file.

III. **FACTFINDER'S REVIEW**

The Department appoints a factfinder to consider the appeal and recommend a decision to the Administrator. Additional information supplied to the factfinder which was not previously furnished to the employee or the Agency is made available to both parties by the factfinder. The parties have 15 calendar days to review the material, comment, and offer additional evidence. The Department factfinder issues a recommended decision, and sends copies of the recommended decision to the Administrator and the grievant.

IV. **FINAL DECISION**

If the factfinder's recommended decision:

A. **Agrees** with the Administrator's decision, no further action is taken and the grievance is closed.

B. **Disagrees** with the Administrator's decision, the Administrator may:

1. Choose to implement the grievant's recommended relief.
2. Request, within 5 calendar days, that the matter be reviewed by another fact finder. The recommended decision of the second factfinder is binding on the Administrator, and the Administrator will implement the Department's recommended resolution.

V. **ADDITIONAL INFORMATION**

See Attachment 4-2 for Frequently Asked Questions and Answers.

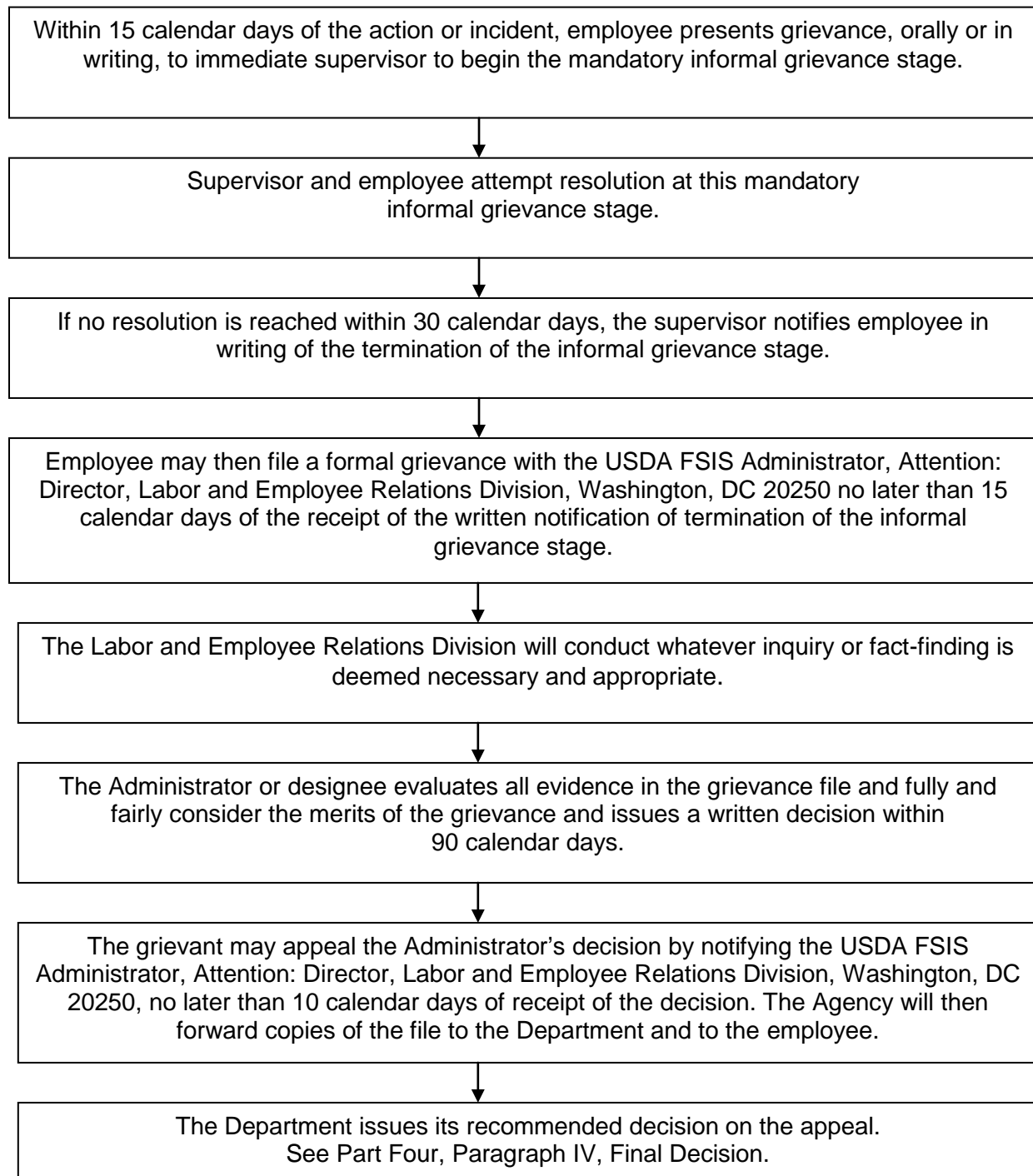


Assistant Administrator
Office of Management

Attachment

- 4-1 Administrative Grievance System Flowchart
- 4-2 Frequently Asked Questions and Answers

ADMINISTRATIVE GRIEVANCE SYSTEM FLOWCHART



FREQUENTLY ASKED QUESTIONS AND ANSWERS

Q1. Can my supervisor settle the grievance at the informal stage?

A1. Yes, informal resolutions are encouraged at any stage of the grievance process. In addition, FSIS managers, supervisors, and the grievant should attempt reasonable resolution to resolve a grievance at any time. FSIS uses counseling, mediation, or other processes to facilitate the informal and voluntary resolution of employment-related disputes before or following the AGS.

Q2. Can the AGS be used if I disagree with the critical elements and performance standards that my supervisor has set for me?

A2. No, the substance of elements and performance standards of an employee's position may not be grieved.

Q3. What happens if I do not agree with the performance rating I received? Do I file an Administrative Grievance right away?

A3. No, if the employee disagrees with the rating, the employee should initiate the informal process as described in the AGS. At the end of the informal process time period and if the appraisal and rating issue is still **not** resolved, the employee should pursue the formal grievance procedures as described in the AGS.

Q4. What if I am a member of a bargaining unit, can I choose between what types of grievance to file?

A4. No, as a bargaining unit member, you are excluded by the negotiated grievance procedures in the Labor-Management Agreement, which is the sole and exclusive procedure for addressing covered issues of dissatisfaction within the bargaining unit.

Q5. Who can I designate as my representative?

A5. An employee is entitled to be accompanied, represented, and advised at any stage of the grievance by a personally chosen representative.

Q6. Are there any restrictions regarding who I may select as my representative?

A6. Yes, a representative may be disallowed if FSIS determines that the representative creates a conflict of interest, is required to perform other priority work for the FSIS or the employee's selection would give rise to unreasonable delays in the processing of the grievance or costs to the Agency.

Q7. Will FSIS grant me official time to prepare my grievance?

A7. No, official time will not be granted to prepare the grievance. However, the grieving employee and the representative, if an employee of FSIS receives a reasonable amount of official time to **present** the informal grievance provided they are in a duty status.

Q8. What is a third-party forum and do they cover specific areas outside of the administrative grievance process?

A8. There are four distinct forums that a Federal employee can use to voice concerns or complaints. They are:

The Merit Systems Protection Board (MSPB) adjudicates employee appeals of: personnel actions over which the Board has jurisdiction, such as removals, suspensions of more than 14 calendar days, furloughs, and demotions; appeals of administrative decisions affecting an individual's rights or benefits under the Civil Service Retirement System or the Federal Employees' Retirement System; employee complaints filed under the Whistleblower Protection Act, the Uniformed Services Employment and Reemployment Rights Act, and the Veterans Employment Opportunities Act; cases brought by the Special Counsel, principally complaints of prohibited personnel practices and Hatch Act violations; and requests to review regulations of the Office of Personnel Management that are alleged to require or result in the commission of a prohibited personnel practice.

The Equal Employment Opportunity Commission (EEOC) hears and decides discrimination complaints except when allegations of discrimination are raised in appeals from agency personnel actions brought before the MSPB.

The Office of Personnel Management (OPM) provides advice on employment, examinations, staffing, retirement, classification, and benefits.

The Office of Special Counsel (OSC) investigates allegations of activities prohibited by civil service laws, rules, or regulations.