

Approved: 7-9-2018

SUBJECT: AGENCY ADMINISTRATIVE GRIEVANCE POLICY AND PROCEDURES

1. PURPOSE. To provide requirements 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. These include matters not otherwise excluded within the Order.
2. CANCELLATION. DOE O 342.1, *Grievance Policy and Procedures*, dated 2-2-06.
3. APPLICABILITY.
  - a. Departmental Applicability. This Order applies to all Departmental elements, including the Bonneville Power Administration.

The Administrator of National Nuclear Security Administration (NNSA) must ensure that NNSA employees comply with their responsibilities under this directive. Nothing in this directive will be construed to interfere with the NNSA Administrator's authority under section 3212(d) of Public Law (P.L.) 106-65, *National Nuclear Security Administration Act*, to establish Administration specific policies, unless disapproved by the Secretary.
  - b. DOE Contractors. This Order does not apply to contractors.
  - c. Exemptions/Exclusions/Equivalencies. Requests for exemption to this Order must be submitted in memorandum form to the Office of the Chief Human Capital Officer (OCHCO), Office of Human Capital Policy and Accountability, for routing to the Chief Human Capital Officer for final approval. The memorandum must include the basis for the exemption, identify the requirement for which the exemption is sought, and request a timeframe, as applicable.
    - (1) Exemptions. Persons exempt from this Order are those specifically excluded by law or Executive Order, such as employees excluded from procedural protections under Title 5 United States Code (U.S.C.) § 7511 or 5 U.S.C. § 71, to include the following types of appointments and employees:
      - (a) Presidential;

- (b) Non-Career Senior Executive Service (SES);
  - (c) Schedule C;
  - (d) Re-employed annuitants;
  - (e) Former employees, or applicants for employment;
  - (f) 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 (unless the condition falls under section 4 a(3) of this order).
- (2) Exclusions. Matters of concern, which may not be grieved, and therefore are excluded from coverage under the Administrative Grievance process are:
- (a) Statute, Regulation or the content of higher agency (i.e. OPM/OMB) and/or DOE regulations and policy.
  - (b) A matter of concern or dissatisfaction relating to the employment of an employee where the relief sought is not within the control of the Department.
  - (c) A matter, which the employee is, or was, entitled to grieve under a negotiated grievance procedure established under 5 U.S.C. 7121; or a matter in which an employee is entitled to file or has filed an appeal, complaint, or other formal challenge to a third party. This may include, but not limited to: the Merit Systems Protection Board (MSPB), Office of Personnel Management (OPM), the Equal Employment Opportunity Commission (EEOC), the Federal Labor Relations Authority (FLRA), the Occupational Safety and Health Administration (OSHA), Federal Court of Claims, U.S. Office of Special Counsel (OSC), or other third party appealable body's.
  - (d) Matters administered by the General Accountability Office (GAO) and the Office of Workers Compensation Programs (OWCP), Department of Labor (DOL).
  - (e) Any claimed violation of 5 U.S.C. Ch. 73, Sub Ch. III (relating to Prohibited Political Activities).
  - (f) Agency nonparticipation in the mediation process.
  - (g) Non-selection for promotion from a group of properly ranked and certified candidates.

- (h) The receipt of or failure to receive a quality step increase under Title 5 U.S.C. § 5336.
- (i) The failure to receive a noncompetitive promotion.
- (j) Notices of proposed disciplinary or adverse action.
- (k) Decision of a supervisor/manager to not remove a disciplinary action early from employee's electronic Official Personnel File (eOPF); or not to purge a supervisory file other than as required by law, regulation, policy or other properly executed agreement.
- (l) A return of an officer or employee from the Senior Executive Service (SES) to the General Schedule during the SES probationary period for less than fully successful executive performance or for failure to be recertified or conditionally recertified as an SES career appointee; termination of an SES for misconduct or other legally permissible reasons or reassignment of a career SES appointee to another SES position or a position outside the SES following receipt of an unsatisfactory rating.
- (m) A performance rating for members of the SES, Senior Level (SL) or Scientific and Technical (ST); failure to grant an SES, SL or ST performance-based pay increase or award.
- (n) 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. 43, Sub. Ch. I, and Title 5 Code of Federal Regulations (C.F.R.) Part 430 (including SES performance standards).
- (o) Mid-term performance reviews, performance counseling sessions, or the issuance of performance demonstration period notices.
- (p) The assignment of rating of records (i.e., performance appraisals, performance reviews, performance ratings, summary ratings, and the like thereof);
- (q) The granting of or failure to grant an employee a performance award or other monetary or non-monetary award, or the failure to grant a performance award (bonus) approved by the Secretary or his/her designee.
- (r) The adopting of, or failure to adopt an employee suggestion or invention under Title 5 U.S.C. §§ 4503 through 4505.
- (s) The granting of, or failure to grant an award of the rank of meritorious or distinguished executive under Title 5 U.S.C. § 4507.

- (t) The termination of a probationer in accordance with 5 C.F.R. Part 315, Subpart H; or a return of an employee serving supervisory or managerial probation to a nonsupervisory or non-managerial position in accordance with 5 C.F.R. Part 315, Subpart I; or a separation or termination of an employee during a trial period.
- (u) An action that terminates a temporary promotion within a maximum period of five years and returns the employee to the position from which the employee was temporarily promoted, or to a different position of equivalent grade and pay in accordance with Title 5 C.F.R. Part 335.
- (v) The payment of, failure to pay, or amount of critical position pay under Title 5 U.S.C. § 5377.
- (w) Any examination, certification, or appointment.
- (x) The payment of, failure to pay, or amount of a recruitment bonus, relocation bonus, retention allowance, supervisory differential, or voluntary separation incentive pay (buyout); or the failure to request or grant an exception to the dual compensation restrictions under 5 C.F.R. Part 553.
- (y) A decision to include or exclude an employee's position on or from the eligibility lists for Voluntary Separation Incentive Payment (VSIP) and/or Voluntary Early Retirement Authority (VERA).
- (z) A request for personal relief that, if granted through the grievance procedure, would result in a violation of specific provision(s) of law, government-wide regulations and/or Departmental policy.
- (aa) The use or non-use of Alternative Discipline procedures, or the substance or action taken in accordance with the terms of a formal agreement voluntarily entered into by an employee, to include assignment from one geographical location to another.
- (bb) Matters regarding employee benefits such as retirement, life insurance, or health insurance benefits or contributions.
- (cc) The classification of any position, which does not result in the reduction in grade or pay of an employee.
- (dd) Personnel actions resulting from a Reduction-In-Force (RIF).
- (ee) Decisions to remove an employee for misconduct.
- (ff) Decision to remove an employee for unacceptable performance.

(gg) Any other separation action not included above.

- (3) Equivalency. In accordance with the responsibilities and authorities assigned by Executive Order 12344, codified at 50 U.S.C. §§ 2406 and 2511 and to ensure consistency through the joint Navy/DOE Naval Nuclear Propulsion Program, the Deputy Administrator for Naval Reactors (Director) will implement and oversee requirements and practices pertaining to this directive for activities under the Director's cognizance, as deemed appropriate.

#### 4. REQUIREMENTS.

##### a. GENERAL.

- (1) All covered employees shall be entitled to present disputes under the Department's Administrative Grievance System and have them considered expeditiously, fairly, and impartially, and resolved as quickly as possible. Participants in the dispute resolution process shall be free from restraint, interference, coercion, discrimination, or reprisal.
- (2) Any current employee covered by this Order has the right to present an administrative grievance for personnel matters effecting the conditions of employment, as long as the matter is not excluded from coverage in the Exclusions section.
- (3) Bargaining unit employees may file an administrative grievance as covered by this order, when a matter covered by the Administrative Grievance System cannot be grieved under a negotiated grievance procedure; either, because a negotiated grievance procedure is not in effect at the relevant time, or because it does not cover the matter being grieved. As such, when a bargaining unit employee files a grievance for a matter that cannot be grieved under negotiated grievance procedures, the filing must be in accordance to the procedures identified in this order.
- (4) The appropriate organization shall accept and process a properly presented grievance in accordance with relevant grievance procedures.
- (5) Allegations of discrimination. If an employee raises allegations of discrimination related to the grievance, the reviewing office (organization) must discontinue processing the grievance and refer the employee to the local equal employment opportunity office and/or the Office of Civil Rights.

Once referred for an allegation of discrimination, the employee will have no further avenue of redress under the administrative grievance procedure.

- (6) Non-representative advocates. An employee has a right to communicate with non-representative advocates (i.e. Ombudsman, Alternative Dispute Resolution (ADR) Specialists, Employee Assistance Program (EAP), etc.), however, these individuals may not advise the grievant in advocating the grievance.
- (7) Mediation/ADR. May be requested by either party at any stage in the process. Requests for mediation/ADR must be made in writing to the grievance deciding official and time limits will be placed in abeyance until completion and/or termination of the mediation process.
- (8) Pending decision. An employee may not file a grievance based on an administrative decision that is pending but has not been made (i.e. proposal stage), the right to file a grievance will not be available to the employee until the effective date of the action on which the grievance is based. The grievance procedure itself will not delay the implementation of an administrative decision. Progressive actions (i.e. verbal or written admonishments are not considered pending actions but are considered progressive notices taken).
- (9) Jurisdiction of grievance. The issue(s) and remedy identified in the initial grievance must be personal to the grievant and may not be changed, modified, or altered at later stages of the grievance procedure, unless directly related to the processing of the grievance.

The responsible organization and/or related party must document any change, modification or alteration of the original grievance issue or remedy along with the reason for the change/modification/alteration, and will identify what if any part of the original issue or remedy is still pending and what part of the initial issue or remedy is now obsolete.

- (10) Continuing practice or conditions grievance. An employee may present a grievance concerning a continuing practice or condition at any time.  
  
Situations caused by actions which were taken or were identified as of a given date, (i.e. admonishments, reprimands, reassignments, shift or duty assignments), are not considered continuing conditions for these purposes despite any continuing effects they may have.
- (11) Group grievance. When a group of employees has an identical grievance, the reviewing and deciding official must consider the grievance in the same manner as an individual complaint and the decision will be binding on all members of the group. The group will select one individual case for processing under the provisions of the informal and formal grievance procedure.

(12) Informal grievance (non-performance). Will normally be filed with the employee's first line supervisor or the official who has the authority to grant the relief requested, (this is the deciding official for disciplinary actions higher than a reprimand). *Formal grievances* are normally filed with the next supervisory level up from the deciding official, unless that supervisor lacks authority to provide the requested relief. When determined appropriate by management in consultation with their Servicing Human Resources Office (SHRO) or Shared Service Center (SSC), management may delegate authority to deciding officials to make a decision on an informal or formal grievance. Delegations will be made to someone with the same supervisory authority/level as the original deciding official.

(13) Informal grievance procedure.

(a) An employee desiring consideration of a grievance must first seek informal adjustment of the matter through supervisory channels.

Despite seeking informal adjustment, an informal grievance should be made as soon as possible, but not later than 15 calendar days after the date of the incident or action upon which the grievance is based, or the date upon which the employee became aware of, or should have become aware of, the incident or action upon which the grievance is based.

(b) The informal grievance will be in the format provided in [Appendix A](#).

(c) The informal grievance deciding official will address all requests for representative or mediation/ADR.

(d) The informal deciding official will attempt to resolve the informal grievance as expeditiously as possible, seeking the advice and assistance of others where necessary, and will give the employee a written decision on the matter within 20 calendar days from the date of receipt of the informal grievance or within 20 calendar days of completion of the mediation/ADR process, if applicable.

Deciding officials are responsible for coordinating with their SHRO/SSC and other appropriate offices to ensure the relief granted to the employee is implemented.

(e) If the relief sought is not granted, the informal grievance decision will advise the employee of his/her right to present the grievance under the formal procedure and will provide the contact information for the formal deciding official as well as a SHRO/SSC point of contact (POC) for procedural questions.

- (14) Formal grievance. The employee must complete the informal grievance procedure before submitting a formal grievance. A formal grievance should be made as soon as possible, but not later than 10 calendar days after receipt of the informal grievance decision.
- (15) Formal grievance procedure (non-performance).
- (a) Must be in writing and contain:
- 1 The date of the grievance;
  - 2 The procedural history of the informal grievance;
  - 3 The name of the individual the grievance is submitted to;
  - 4 The description of the issue to ensure that the formal deciding official can understand the complaint to include information such as the name of the policy violated, the date of the incident, the names of any witnesses, any supporting documentation etc.;
  - 5 The name of the employee's representative (if any):  
  
Employee and employee's representative will be granted duty time for presentation of the grievance.
  - 6 Written request for mediation/ADR, (if desired);
  - 7 The relief requested;
  - 8 The name(s) of the grievant(s). If submitted via memorandum, the signature of the grievant(s) should be included. Grievances can be submitted electronically (i.e. via email).
- (b) In making the formal decision, the deciding official may consult with the grievant and/or any other individuals whom the official believes will assist in resolving the grievance. Any such consultation (with the exception of technical employee relation and/or legal advice), will be reflected in the final written decision.
- (c) All formal decisions will be based upon facts and be fully responsive to the employee's allegations, questions, or expressions of dissatisfaction; and will include a SHRO/SSC POC for procedural questions. The decision shall include previous/historical and/or past record of events, including any past and/or similar past misconduct(s) or disciplinary action.



- (d) The formal deciding official will attempt to resolve the formal grievance as expeditiously as possible, seeking the advice and assistance of others where necessary, and will give the employee a written decision on the matter within 30 calendar days from the date of receipt of the formal grievance or within 30 calendar days of completion of the mediation/ADR process, if applicable.

Deciding officials are responsible for coordinating with their SHRO/SSC and other appropriate offices to ensure the relief granted to the employee is implemented.

- (16) Non-conformity of formal or informal grievance procedure. When an employee timely submits a grievance but fails to: a) furnish sufficient detail to clearly identify the matter being grieved or b) fails to specify a remedy; the deciding official must inform the employee of the Department requirements in the interest of prompt, orderly, and systematic handling of grievances. Absent extraordinary circumstances, the deciding official will grant the employee a reasonable amount of time (no more than five calendar days), to submit a corrected grievance.

Failure of the employee to timely provide a corrected grievance for the above conformity reasons will result in rejection of the grievance and the employee will have no further avenue of redress under the administrative grievance procedure.

- (17) Rejection of a grievance. The informal or formal deciding official may in writing, reject a grievance for any of the following reasons:
- (a) The grievant does not furnish sufficient detail to clearly identify the matter being grieved and the employee did not provide a corrected grievance within the specified conformity period;
  - (b) The grievant fails to specify the personal relief sought and the employee did not provide corrected grievance within the specified conformity period;
  - (c) The specific relief is not personal to the grievant or within the control of the Department;
  - (d) The request involves matter(s) that are not covered by the Department's administrative grievance procedures (see [Exclusions](#) section of the Applicability paragraph of this Order).
  - (e) The grievance is not timely (see [Appendix B](#) of this Order for timelines).

The deciding official may, accept the grievance, provided the employee furnishes, and the deciding official approves, a written explanation showing that the delay was for good cause.

- (f) Once rejected, the employee will have no further avenue of redress for this matter under the administrative grievance procedure.
- (18) Cancellation of grievance. An informal or formal deciding official, may in writing, cancel a grievance, under any of the following conditions:
- (a) At the grievant's request;
  - (b) Upon termination of the grievant's employment with DOE, unless the personal relief sought by the employee can be granted after termination of employment (i.e. return of leave time inappropriately charged);
  - (c) Upon the death of the employee, unless the grievance involves a question of pay (duty to provide just compensation);
  - (d) Upon grievant transfer from one DOE Organization to another,  
  
Except when the personal relief sought by the employee may be granted after reassignment. In that case, 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.
  - (e) Once cancelled, the employee will have no further avenue of redress for this matter under the administrative grievance procedure.
- (19) Denial of grievance.
- (a) Denial of informal grievance. If the informal deciding official is unable to resolve the grievance by providing the requested remedy or an alternate acceptable remedy, the grievance will be denied per the informal grievance procedures.
  - (b) Denial of formal grievance. If the formal deciding official is unable to resolve the grievance by providing the requested remedy or an alternate acceptable remedy, the grievance will be denied per the formal grievance procedures as well as the below requirements:
    - 1 Formal grievances should be denied in accordance with identifiable law, rule, regulation, policy and/or procedure and/or the best interest and efficiency of the Department.

- a      Management requested grievance reconsideration.  
The formal deciding official may request a grievance reconsideration for interpretation of law, rule, regulation, policy and/or procedure, from the OCHCO. Solicitation of such reviews and determinations whether OCHCO recommendations were followed, should be included in the formal decision.

Formal decisions under grievance reconsiderations by the OCHCO are final and cannot be appealed.

- b      Employee requested grievance reconsiderations.  
The OCHCO must conduct a grievance reconsideration review, when an employee alleges a formal decision violated law, rule, regulation, policy and/or procedure, **and** employee can identify the law, rule, regulation, policy and/or procedure that in his/her opinion should have been considered.

- i      An employee requests the grievance reconsideration in writing within 10-days of receipt of the formal decision to his/her respective Employee Relations Specialist (or other designated POC) in the SHRO/SSC. The SHRO/SSC must then submit the employee's request to OCHCO no later than two days in receipt of the initial request.
- ii.     Formal grievance format shall be used when submitting an employee's requested for grievance reconsideration, to include procedural history up to the present time.
- iii.    Failure to timely submit the employee's request will result in the formal decision standing and no further avenue of redress for this matter will be available under the administrative grievance procedure.
- iv.     OCHOC may consult and collaborate with DOE Offices such as but not limited to General Counsel (GC).

- (20)    Grievance Reconsideration Review. When requested by management, formal grievance decisions timelines will be held in abeyance until the

OCHCO, completes the reconsideration review. Otherwise, the OCHCO must complete the review in 30-days from the day of receipt.

Where interpretation of law is required, the OCHCO will consult with the Office of General Counsel (OGC).

(21) Grievance File. A grievance file shall be established and maintained by the SHRO/SSC. When grievances are filed by Career SES employees, the Office of Corporate Executive Management (OCEM), will advise on and maintain those files. The following items, as applicable, will be included in the grievance file:

(a) Copies of letters of reprimand or warning, and related evidence files, where such matters are at issue;

(b) Copies of the proposed notice, replies, and evidence used to support administrative action (e.g., if the grievance is based on a disciplinary or other administrative order);

(c) Final decision notices (if applicable);

Include copies of personnel action documents associated with the grievance;

(d) Copies of the informal/formal grievance, grievance decisions and any related documentation and/or meeting transcripts or notes;

(e) Relevant law, rule, regulation or polices and/or procedures;

(f) Statements of witnesses and statements made by the parties to the grievance and any other information considered appropriate for review in making a decision on the grievance;

(g) Grievance Reconsideration review findings and recommendations, mediation settlement agreement(s), etc. as appropriate;

Confidential information gained through mediation cannot be used in adjudicating grievances.

(h) The grievance file must not contain any documentation that is not readily available to the employee or the employee's representative for review;

1 When records of other employees (other than the grievant) are applicable to the grievance, they will be sanitized and remain confidential;

2 Information made available to the grievance examiner which cannot be provided to the employee in the same form in which it was received, must be included in the file in a form which the employee can review (redacted) or must not be used;

3 Relevant medical records will only be disclosed to the employee's representative in accordance with 5 C.F.R. Part 297.204;

(i) Access to grievance files will be on a need-to-know basis and in accordance with the provisions of 5 C.F.R. Part 294, Availability of Official Information.

(j) Grievance files will be properly destroyed in accordance with appropriate retention schedules.

## 5. RESPONSIBILITIES.

### a. Secretary/Under Secretary, or their Designee(s).

(1) Encourage compliance with all requirements of this Order by all Department subordinates;

(2) When appropriate, designate a deciding official authority for grievances coming directly under Secretarial/Under Secretary purview, such as in instances when there is unavailability or a conflict between duties, responsibilities and so forth. However, this shall not preclude the Secretary/Under Secretary/or other leadership from serving as the deciding official for any grievance.

### b. Office of Chief Human Capital Officer (OCHCO) /NNSA Office of Human Capital Management (OHCM).

(1) OCHCO shall:

(a) Administers the provisions of this order in accordance with law, rule and regulation;

(b) Develop and disseminate human capital policy initiated by the OCHCO to all SHROs and Shared Service Centers (SSCs) for compliance;

(c) Ensure all employee relations staff and other consulting staff are appropriately trained on the requirements of this Order;

(d) Encourage the use of mediation;

- (e) Administer grievance reconsiderations;
- (f) Advise and provide guidance when appropriate or called for by this Order. This may include policy guidance on options for resolution of grievances;
- (g) Consult with the Department office of General Counsel (GC) when necessary;
- (h) Ensure Office of Corporate Executive Management provides technical advice and options for the resolution of 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;
- (i) Provide oversight of all SSCs and SHROs on the administration of the requirements of this Order.

(2) NNSA OHCM:

- (a) Develop NNSA specific policy and guidance for administration and compliance of this Order within NNSA;
- (b) Distribute NNSA human capital policy that complies with this Order;
- (c) Encourage the use of mediation and ensure appropriate requests for mediation are forwarded by the deciding official within five work days or receipt of the employee's written request;
- (d) When necessary, seek assistance from the OCHCO on general non-performance grievances as required by the Order;
- (e) Provide oversight and technical guidance on options for the resolution of grievances, when appropriate;
- (f) Consult with the NNSA General Counsel for legal advice prior to settlement of any grievance [also consult the minimum settlement agreement requirements found in the Department's Administering Work Force Discipline Order (DOE O 333.1)];
- (g) Consult with the OCHCO, Office of Corporate Executive Management when providing technical advice and options for the resolution of 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. The OCHCO should be consulted on grievance reconsideration reviews;

- (h) Ensure all NNSA employee relations staff and other consulting staff are appropriately trained on the requirements of this Order;
- (i) Respond to questions from managers/supervisors/deciding officials, employees and their representatives regarding the administrative grievance process and employee rights and responsibilities and serve as a technical representative to management in such actions;
- (j) Retain records of actions in accordance with applicable federal law and Departmental requirements;
- (k) Respond to all NNSA reporting requirements;
- (l) Ensure that documented workplace policies and procedures and other conditions of employment can be made readily available upon request by an employees and their representative.

c. Shared Service Center (SSC)/ Servicing Human Resources Offices

- (1) Ensure all employee relations staff and other consulting staff are appropriately trained on the requirements of this Order;
- (2) Respond to questions from managers/supervisors/deciding officials, employees and employee representatives, regarding the administrative grievance process and employee rights and responsibilities, and serve as a technical representative to management in such actions;
- (3) Encourage the use of mediation and ensure appropriate requests for mediation are forwarded by the deciding official within 5 work days or receipt of the employee's written request;
- (4) When necessary, seek assistance from the OCHCO, for grievance reconsideration reviews as required by the Order;
- (5) Consult with the local general counsel for legal advice prior to settlement of any grievance [also consult the minimum settlement agreement requirements found in the Department's Administering Work Force Discipline Order (DOE O 333.1)];
- (6) Refer matters grievances matters filed by members of the career SES, Excepted Service Pay Band (EJ/EK/EWQ) to the Office of Corporate Executive Management (OCEM).
- (7) Retain records of actions in accordance with applicable federal law and Departmental requirements;
- (8) Respond to all reporting requirements;

- (9) Ensure that documented workplace policies and procedures and other conditions of employment are readily available upon request.

d. Office of General Counsel (GC)/NNSA General Counsel.

(1) DOE OGC:

- (a) Provide legal advice and assistance to the OCHCO, other legal staffs, and to managers regarding appropriate settlement agreement language and review agreements that arise from mediation for legal sufficiency;
- (b) Keep the OCHCO and other legal staffs informed of relevant decisions of interest and/or relevant grievance settlements decisions that have been raised.

(2) NNSA OGC (applies exclusively to NNSA):

- (a) Provide legal advice and assistance to the NNSA OHCM, and to NNSA management officials and to managers regarding appropriate settlement agreement language and review agreements that arise from mediation for legal sufficiency;
- (b) Keep the NNSA OHCM and other legal staffs informed of relevant decisions of interest and/or relevant grievance settlements decisions that have been raised.

e. Field General Counsels and Legal Offices falling under the purview of DOE OGC.

- (1) Provide legal advice and assistance to the local SHRO/SSCs, Element Head or Administrator and to local management on the settlement of grievances;
- (2) When necessary, solicit legal advice from DOE OGC and/or request policy advice from the OCHCO
- (3) Keep local management as well as DOE OGC informed of relevant decisions of interest and/or relevant grievance settlements decisions that have been raised.

f. DOE Headquarters Office of Conflict Prevention and Resolution.

- (1) For purposes of mediation related to the administrative grievance process, adhere to all requirements regarding mediation as agreed to by the parties.
- (2) Provides mediators when available at no cost to the organization.



- (3) Work with all mediation participants to prepare them for mediation.
- (4) Mediations are strictly confidential and information is shared only with those within DOE who have a need to know to implement settlement agreements.
- (5) Serve as a resource for mediators for all field offices.
- (6) Offer training in conflict management skills.

g. Local Alternative Dispute Resolution Office or Equivalent.

If available, will assist in obtaining qualified mediators. If unavailable, contact the Office of Conflict Prevention and Resolution.

h. Heads of Departmental Elements/Heads of Organizations/Administrators.

- (1) Ensure all managers and employees are aware and comply with this Order and its requirements. Adhere to timeframes and procedures associated with the administrative grievance process;
- (2) Encourage mediation and consult with the Office of Conflict Prevention and Resolution in procuring the services of mediators.
- (3) Consult with OCHCO and Civil Rights if appropriate.
- (4) Consult with and obtain concurrence from legal counsel on all settlements agreements resulting from mediation;
- (5) Receive and review copies of settlement breach allegations of mediated agreements reached under the provisions described in this Order, and resolve such matters in accordance with the agreements initially reached. Resolution of these matters should be reached in consultation with the local SSC/SHRO and legal office.
- (6) When appropriate, administer equitable, impartial, and regulatory, and policy compliant corrective actions to meet the terms of a settlement agreement and/or remedy a breach of a settlement agreement, in consultation with the local SSC/SHRO and legal office, when appropriate.

i. Supervisors/Managers/Deciding Officials.

- (1) Before grievances are filed, officials should mitigate issues by promptly discussing matters of concern with employees under their immediate supervision. When employees raise issues of concern, try to clarify misunderstandings and make reasonable adjustments to resolve matters, encouraging, requesting, and/or participating in mediation when

appropriate (i.e. a grievance does not have to be filed in order to request/propose mediation);

- (2) Informal grievance deciding officials are normally the first line supervisor, and formal grievance deciding officials are normally the second line supervisor; however, there may be occasions when a delegation to a new deciding official is necessary. Delegations will be made to someone with same supervisory authority/level as the original deciding official;
- (3) Deciding officials for performance rating grievances and disciplinary actions requiring a proposal notice, will be filed at the Reviewing Official/Action Deciding Official level for the informal grievance; and will be elevated to the next higher supervisor or designee for the formal grievance;
- (4) Deciding officials will immediately consult with their SHRO/SSC and if necessary, their local legal counsel, when an administrative grievance is filed against him or her;
- (5) Deciding officials will receive and attempt to resolve grievances, encouraging mediation when appropriate.
- (6) Deciding officials will make decisions regarding the allowance or disallowance of a representative no later than five calendar days after receipt of the designation of representative and where the representative is not approved due to conflict of interest or the efficiency of the service, communicate their decision to the employee in writing within that timeframe (electronic communication is deemed sufficient for this purpose) and allow the employee the opportunity to designate another representative within five calendar days.
- (7) Deciding Officials will issue final decisions on grievances (informal and formal), in consultation with the SHRO/SSC staff, and local legal office, where appropriate.
- (8) Deciding officials will consult with the SHRO/SSC and local legal office before, if needed, responding to a grievance and or request for settlement to a grievance;

j. Employees.

- (1) Comply with all requirements of this Order when engaging in grievance actions including all time limits and procedures.
- (2) Employees should review matters excluded from the administrative grievance process, before filing a grievance.

- (3) Employee may not expand the scope of the original informal grievance absent limited circumstances.

6. REFERENCES.

- a. Title 5, Code of Federal Regulations (CFR), Part 771, *Agency Administrative Grievance System*: <http://www.gpo.gov/fdsys/pkg/plaw-112publ194/pdf/plaw-112publ194.pdf>.
- b. *Title VII of the Civil Rights Act of 1964*, as amended: <http://www.eeoc.gov/laws/statutes/titlevii.cfm>; 29 Code of Federal Regulation Part 1614, *Federal Sector Equal Employment Opportunity*: [http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr1614\\_main\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title29/29cfr1614_main_02.tpl); and Executive Order 11478, *Equal Employment Opportunity in the Federal Government*: <http://www.archives.gov/federal-register/codification/executive-order/11478.html>.
- c. *Title II Genetic Information Non Discrimination Act (GINA) of 2008*: <http://www.eeoc.gov/laws/statutes/gina.cfm>.
- d. *Whistleblower Protection Act of 1989* (Public Law 101-12 ): <http://www.gpo.gov/fdsys/pkg/STATUTE-103/pdf/STATUTE-103-Pg16.pdf>; *Whistle blower Protection Act expansion of 1994* (Public Law 103-424): <http://www.gpo.gov/fdsys/pkg/STATUTE-108/pdf/STATUTE-108-Pg4361.pdf>; 5 U.S.C. Section 1201: <http://uscode.house.gov/search/criteria.shtml>; and *Whistleblower Protection Enhancement Act*, (Public Law 112-199): <http://www.gpo.gov/fdsys/pkg/PLAW-112publ199/content-detail.html>.
- e. *Office of Personnel Management (OPM) Guide to Personnel Recordkeeping*: <http://www.opm.gov/feddata/recguide2011.pdf>.
- f. DOE O 333.1, *Administering Work Force Discipline*, dated May 14, 2015 <https://www.directives.doe.gov/directives-documents/300-series/0333.1-BOrder>.
- g. Secretarial Memorandum/Secretarial Statement for All Department of Energy Employees Regarding Alternative Dispute Resolution (ADR) dated December 29, 2014: <http://www.energy.gov/oha/downloads/alternative-dispute-resolution-adr-seretarial-statement>.
- h. Executive Order (E.O.) 13837: Ensuring Transparency, Accountability, and Efficiency in Taxpayer Funded Union Time
- i. E.O. 13836: Developing Efficient, Effective, and Cost-Reducing Approaches to Federal Sector Collective Bargaining.

- j. E.O. 13839: Promoting Accountability & Streamlining Removal Procedures Consistent With Merit System Principles:  
<https://www.whitehouse.gov/presidential-actions/executive-order-promoting-accountability-streamlining-removal-procedures-consistent-merit-system-principles>.

7. DEFINITIONS.

- a. Alternative Dispute Resolution. Includes a variety of dispute resolution processes (including, but not limited to, conciliation, facilitation, mediation, fact finding, mini-trials, arbitration, use of the Ombudsman or any combination thereof), that assists people in avoiding a more costly forum such as litigation.
- b. Conflict of Interest. As defined for purposes of this Order, a conflict of interest may exist for grievance examiners with a personal interest in the investigation or outcome of the action, or a representative whose position creates the appearance of actual or perceived conflict of interest; conflict of interest also applies to an employee of the Department whose release from his/her official position to act as a representative would give rise to unreasonable costs or whose priority work assignments preclude his/her release.
- c. Day. Calendar day unless otherwise noted.
- d. Formal Deciding Official. An official, at a management level above the informal deciding official, designated to (1) receive and attempt to adjust the formal grievances; (2) refer formal grievances for a technical policy review, when appropriate; and (3) decide formal grievances based on the results of technical policy reviews and/or recommendations.
- e. Grievance. A request by an employee, or by a group of employees acting as individuals, for personal relief in a matter of concern or dissatisfaction relating to employment which is subject to the control of management and is not excluded under this Order.
- f. Grievance File. A separate file subject to the Privacy Act which contains all documents related to the grievance. This file will include, but is not limited to, the grievance(s); requests for representative and related documents, requests for mediation/ADR and settlement agreements if reached, statements of witnesses, if any, the report and recommendations of any technical policy review, if applicable, etc.
- g. Heads of Departmental Elements/Heads of Organizations/Administrators. For purposes of this order, this person is the Senior Management Official for a departmental element/organization/administration.
- h. Informal Deciding Official. The person at the lowest management level, including the employee's immediate supervisor, who can remedy the employee's specific

concern or dissatisfaction. The informal deciding official is usually the employee's first level manager/supervisor. He/she may be directly involved in the matter being grieved, and is the official to whom the informal grievance is presented.

- i. Mediation. A type of alternative dispute resolution (ADR) commonly used at DOE to resolve workplace disputes. In mediation, a neutral third party (the mediator) assists the parties in discussing their concerns in a productive manner. The mediator does not take sides, but assists the parties express their concerns, and identify options that are workable for all involved. Although participation in ADR is always voluntary for employees, if an employee requests ADR, managers and supervisors are expected to participate, absent extenuating circumstances. 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.
  - j. Personal Relief. A specific remedy directly benefiting the grievant, which may not violate law, rule, regulations or policy or include a request for disciplinary or other action affecting another employee.
8. CONTACT. Questions concerning this order should be addressed to the OCHCO, HC-10.

BY ORDER OF THE SECRETARY OF ENERGY:



DAN BROUILLETTE  
Deputy Secretary



**APPENDIX A. AGENCY ADMINISTRATIVE GRIEVANCE PROCEDURE**

This Appendix provides the U.S. Department of Energy (DOE) sample grievance format for administrative grievances.





**APPENDIX A. SAMPLE GRIEVANCE FORMAT**

TO: (Name, grade, title, telephone, email and mailing address)

FROM: (Name, grade, title, telephone, email and mailing address)

SUBJ: Grievance

1. This is a (formal or informal) grievance under the DOE administrative grievance procedure, DOE O XXX.X.

2. (If applicable) I have elected to be represented. My representative's information is as follows: (name, telephone, email and mailing address). I authorize my representative to act in full representational capacity, examine any appropriate official document, personnel record, and/or request and receive medical documentation which may be related to the grievance.

3. The matter on which this grievance is based occurred on/or was discovered on (give date) and is described in detail as follows: (Provide procedural history and furnish sufficient detail to clearly identify the matter being grieved. Appropriate documents related to your grievance should be attached.) Absent very specific circumstances, you will not be able to expand beyond the scope of the informal grievance, so make sure you identify all timely filed aspects of this grievance in the informal stage.

4. The personal relief (i.e., corrective action) I seek is: (specify clearly.)

NOTE: "Personal relief" means a specific remedy directly benefiting the grievant and may not include a request for disciplinary or other action affecting another employee. Failure on the part of the grievant to provide sufficient information relating to the grievance or to clearly specify the personal relief requested will result in rejection of the grievance. It is preferable that the grievant personally deliver the grievance when practicable. When mailing is used, the postmark usually determines the filing date of the grievance.

5. I (am/am not) requesting mediation at this time.

Signature

Date

Attachments: (All attachments should be identified)



## **APPENDIX B. GRIEVANCE TIMELINES**

This Appendix provides grievance timelines as established by the U.S. Department of Energy (DOE) Administrative Grievance Order.



### APPENDIX B. GRIEVANCE TIMELINES

Delays in processing grievances. Deciding officials should ensure that grievances are processed promptly. Delays at any stage of the administrative grievance procedure beyond the prescribed time limits must be explained to the employee and their representative, and must be documented for the record. Such delays should be rare and held to a minimum. If the employee delays in any stage of the grievance procedure, the deciding official will determine whether there was good cause for the delay and whether the grievance should continue to be processed. Such delays and explanations will be documented for the record. This includes any delay created by the employee's representative. Absent good cause, untimely delays will result in rejection of the grievance

Time limits. A decision on an administrative grievance will be issued within the shortest timeframe possible. To ensure timely and orderly processing, the following time limits are established for each stage of the grievance procedure, however, there may be occasions where timelines are amended due to operational needs/requirements of the Department and/or mutual agreement:

<u><b>Informal grievance.</b> 15 calendar days</u> from the date of the incident or when the employee should have become aware of the action on which the grievance is based. (Designation for Representative should be provided at this time).	
<u>Decision on disallowance of representative.</u> Within <u>five calendar days</u> from date of receipt of grievance/request for representative. Otherwise assume Representative is allowed. If representative is disallowed, management will provide an additional five days for employee to provide an alternative representative.	
<u>Request for mediation/ADR.</u> Can be made at any time, however is ideally requested at the inception of the grievance process.	Management should contact Mediation/ADR, within 5 days of the request with the assistance of their SHRO/SSC.
<u>Issuance of decision under the informal grievance procedure.</u> Within <u>20 calendar days</u> after receipt of the informal grievance, or within <u>20 calendar days</u> within completion of ADR, if applicable.*	
<u><b>Timeframe for employee to file a written formal grievance.</b></u> Within <u>10 calendar days</u> after receipt of the informal grievance or within 10 calendar days of the expiration of the informal procedure decision timeframe where no decision has been received and no explanation for extension has been provided.	
<u>Timeframe for deciding official to issue a formal grievance decision.</u> Within <u>30 calendar days</u> after an employee files a formal grievance. **	
<u>Timeframe for issuance of the formal decision after the formal deciding official receives the management requested technical policy review from OCHCO HC-10.</u> <u>10 calendar days.</u> **	
<u>Timeframe for completion of employee requested technical policy review.</u> <u>30 calendar days from date of receipt.</u> **	

\*Completion timelines freeze during designation of representative after initial disallowances/ADR requests, and other considerations (i.e. SL/FMLA/etc.)

\*\*There may be occasions for extensions of grievance decisions and/or technical policy review timeframes. These extensions will be for good cause only and minimized to the greatest extent possible and will be communicated to the employee and their representative.



### **APPENDIX C: GRIEVANCE RECONSIDERATION REVIEW FORMAT**

This Appendix provides a sample of items that need to be contained in a grievance reconsideration review which may be triggered by certain circumstances as established by the U.S. Department of Energy (DOE) Administrative Grievance Order.





## APPENDIX C. GRIEVANCE RECONSIDERATION REVIEW REPORT

Grievance Reconsideration Reviewers (hereinafter reviewers) should consider the following factors in preparing a Report of Findings and Recommendations to respond to a request for a reconsideration:

1. After completion of the review, the reviewer should prepare and provide the formal deciding official with a Report of Findings and Recommendations. The report must show a determination of facts, based on analysis of evidence secured through the inquiry and review of the grievance file. This review should be limited to the scope of the informal grievance absent approved jurisdictional deviation. For each relevant and timely issue, the reviewer must analyze and weigh the evidence related to that issue.
2. If the reviewer finds that the employee has a reasonable basis for the grievance, the reviewer must then consider whether the adjustment is reasonable or alternatively what else might be reasonable or recommended.
3. The reviewer's findings for each relevant and timely issue may be organized along the following lines:
  - a. Identification of the issue,
  - b. Analysis and weighing of evidence pertinent to the issue (preponderance of evidence standard),
  - c. Statement of whether the employee's grievance is valid, and
  - d. Whether the requested adjustment is appropriate, and if not what the deciding official might consider as a recommended adjustment.
  - e. Reasons should be provided in regard to determinations made by the reviewer pertaining to adoption of the employees requested remedy or any other recommended adjustments.
4. If the reviewer excludes any matter raised in the grievance because the matter is not covered under the grievance system, the report should contain an explanation to that effect.
5. In the case of a management requested grievance reconsideration review, the report is due as soon as possible. For an employee to request a valid reconsideration, the report is due within 30 days from receipt of the valid written employee request. The reviewer should make the grievance file and their findings available to the employee and the employee's representative upon request.
6. For management requested reviews, the reviewer will indicate in the report that the deciding official must notify the grievant of their formal decision within 10 calendar days after receipt of the report and must make them aware that a OCHCO review was requested and whether or not HC recommendations were followed, along with rationale for following or deviating from HC findings and recommendations.