DEPARTMENTAL MANUAL

TRANSMITTAL SHEET

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370 DM 771	PERSONNEL MANAGEMENT	3756
FOR FURTHER INFORMATION, CONTACT		DATE
Office of Human Resources	Departmental Personnel Program Administrative Grievance Procedures	SEP 5 2007

EXPLANATION OF MATERIAL TRANSMITTED:

This new Departmental Manual Release 370 DM 771 provides Departmental policy and the informal and formal Administrative Grievance Procedures (AGP). DOI is moving away from a "win-lose" process towards a more collaborative process, which encourages the use of Alternative Dispute Resolution (ADR). Covered employees are free to use the administrative grievance procedures without restraint, interference, coercion, discrimination, or reprisal.

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Associate Deputy Secretary

FILING INSTRUCTIONS:

Remove:	Insert:
370 DM 771 (11 sheets)	370 DM 771 (6 sheets)

Department of the Interior
Departmental Manual

Effective Date: 9/5/07
Series: Personnel Management
Part 370: Departmental Personnel Program
Chapter 771: Administrative Grievance Procedures

Originating Office: Office of Human Resources

370 DM 771

1.1 **Purpose.** This chapter provides Departmental policy and the informal and formal Administrative Grievance Procedures (AGP). The Department of the Interior (DOI) AGP provides a fair, efficient, and orderly process for addressing the unavoidable instances of dissatisfaction and disagreement which may arise among employees in any work situation.

1.2 **Authority.** The authority for AGP is in 5 CFR 771.101.

1.3 **Policy.** DOI encourages the prompt and informal resolution of any dissatisfaction and disagreements among employees at the earliest opportunity and at the lowest level possible. To that end, DOI is moving away from a "win-lose" process towards a more collaborative process, which encourages the use of Alternative Dispute Resolution (ADR). Covered employees are free to use the administrative grievance procedure without restraint, interference, coercion, discrimination, or reprisal.

1.4 **Definitions.**

A. Grievance. Unless excluded by this chapter, a request by an employee or group of employees for personal relief in a matter of concern or dissatisfaction which relates to the employment or a condition of employment of the employee(s) and which is subject to the control of management.

B. Grievance File. A separate file subject to the Privacy Act which contains all documents related to the grievance, including but not limited to the grievance, any statements of witnesses, records or copies thereof, statements made by the parties to the grievance, and the decision.

C. Employee. An employee of DOI unless excluded under paragraph 1.6. The term also includes a former employee who was covered by these procedures while employed and who filed a timely grievance prior to his or her separation, if personal relief can still be provided.

D. Bargaining Unit Employee. Any employee included in a bargaining unit with an exclusive representative (union) as certified by the Federal Labor Relations Authority.

E. Personal Relief. Any remedy directly benefiting the grievant(s). To qualify as personal relief, a requested remedy must be specific and clear and may not include a request for disciplinary action against another employee.

F. Deciding Official. A management official designated to receive and attempt to adjust a formal grievance. Generally, this is an individual at a higher administrative level than anyone who could have adjusted the grievance under the informal grievance process. However, determinations as to the appropriate deciding official are made by bureau or office management in consultation with the Servicing Human Resources Office (SHRO).

G. Days. Calendar days, unless otherwise stated. Time limits expire at the normal close of business on the day specified. If, however, a time limit expires on a weekend, holiday, or other non-workday (including a grievant's scheduled non-workday), the time limit is extended to close of business on the next workday.

H. Alternative Dispute Resolution (ADR). As used in this chapter, a process for seeking consensual resolution of the issues and concerns underlying a grievance. ADR is generally a more flexible and cooperative approach to problem-solving than other methods.

I. Servicing Human Resources Office (SHRO). The human resources or administrative office which provides human resources services to the grievant.

J. Administrative Grievance Form (AGF). Form DI 7600 must be used when the grievant files a formal grievance. The AGF may also be used for filing an informal grievance. The AGF appears as an attachment to this policy and may also be obtained from the SHRO.

1.5 **Responsibilities.**

A. Management. The heads of bureaus and offices are responsible for administering this policy, issuing implementing instructions in conformance with this chapter as appropriate, complying with appropriate time limits as established herein, and ensuring that employees and supervisors are advised of their rights and responsibilities under this chapter, including the employee's option of electing an ADR process at the informal grievance stage. These responsibilities may be delegated to the bureau or SHRO as appropriate.

B. Supervisors. Supervisors are responsible for hearing any employee complaints, handling grievances in a fair and equitable manner, and complying with appropriate time limits as established herein. Supervisors shall try to clarify misunderstandings, engage in collaborative problem solving as appropriate, and make reasonable adjustments to address issues and problems that arise in day-to-day relationships with and among employees. Supervisors are also responsible for encouraging effective communication about such issues and problems and seeking informal resolution at the earliest opportunity through ADR or other appropriate methods.

C. Director, Office of Human Resources (OHR). The Director, OHR, is responsible for overseeing the Department's administrative grievance procedure and ensuring that this policy is

administered properly. The Director has the discretion to assume jurisdiction of a grievance or the grievance process at any stage in the proceedings as he or she deems necessary.

D. Director, Office of Collaborative Action and Dispute Resolution (CADR). Oversees the Department's workplace ADR program, CORE PLUS, and coordinates efforts with the Director, OHR. (See 370 DM 770.)

E. Servicing Human Resources Office (SHRO). The SHRO provides advice, assistance and guidance to employees, supervisors, and managers on the procedures described herein. The SHRO also may refer employees and/or managers to other offices for additional assistance as appropriate.

F. Grievants. Employees who file grievances are responsible for complying with appropriate time limits as established herein, furnishing sufficient detail to identify the matter being grieved, and specifying the personal relief requested.

1.6 **Coverage**. The policy in this chapter applies to all employees in the Department (including former employees as defined in paragraph 1.4C) except employees appointed under Schedule C hiring authority, non-career SES employees, and bargaining unit employees covered by a collective bargaining agreement. Bureaus/offices will not issue supplemental administrative grievance procedure policy but may issue supplemental implementing guidance as needed.

1.7 **Matters Excluded**. The grievance procedure described herein applies to any matter of concern or dissatisfaction relating to the employment of an employee or employees where the personal relief sought is specific and subject to the control of management officials of the Department; except that the following matters are excluded from coverage:

A. The content of published regulation and policy, including provisions of the Code of Federal Regulations and the Departmental Manual.

B. Any matter covered by a negotiated grievance procedure or which is appealable to or under the jurisdiction of the U.S. Merit Systems Protection Board (MSPB), the Office of Personnel Management (OPM), the Federal Labor Relations Authority (FLRA), the Office of Special Counsel (OSC), or the Equal Employment Opportunity Commission (EEOC) under applicable law or regulation.

C. Non-selection from a group of properly ranked and certified candidates, failure to receive a noncompetitive promotion, or any other grievance related to a selection process.

D. A preliminary warning or notice of an action which, if effected, would be covered under the grievance system or excluded from coverage by paragraph 1.7B. Such matters include, for example, notices of proposed discipline or adverse action and oral or written warnings of action that might be taken and which would be grievable if taken.

E. The performance evaluation of a Senior Executive Service (SES) appointee under 5 U.S.C. chapter 43, subchapter II; the reassignment of an SES appointee following the appointee's

receipt of an unsatisfactory rating under 5 U.S.C. 4314; the return of an SES career appointee to the General Schedule or another pay system during the one-year period of probation or for less than fully successful executive performance under 5 U.S.C. 3592; or the termination of an SES career appointee during probation for unacceptable performance under 5 CFR Part 359, Subpart D.

F. The termination of a probationer in accordance with 5 CFR Part 315, Subpart H; the return of an employee serving supervisory or managerial probationary period to a nonsupervisory or nonmanagerial position in accordance with 5 CFR Part 315, Subpart I; or the separation or termination of an employee during a trial period.

G. The substance of Critical Elements and Performance Standards in an employee's performance plan; communications regarding performance (feedback concerning performance, progress reviews, performance improvement plans, etc.); or any performance rating. (Refer to 370 DM 430 and the Departmental Performance Appraisal Handbook for information on the reconsideration process for performance ratings).

H. The granting of, failure to grant, or the amount of an award under 5 CFR Part 451; the adoption of, or failure to adopt, an employee suggestion or invention under 5 CFR Part 451; the granting of, or failure to grant, an award of the rank of meritorious or distinguished executive to an SES career appointee under 5 U.S.C. 4507 and 5 CFR Part 451, Subpart B; the granting of, failure to grant, or the amount of a performance award for an SES career appointee under 5 U.S.C. 5384 and 5 CFR Part 534, Subpart D; or the receipt of or failure to receive an additional step increase under 5 U.S.C. 5336.

I. A decision to grant, or not to grant, an SES pay rate increase; a decision to grant, or not to grant, a pay rate increase under 5 U.S.C. 5376 and 5 CFR Part 534, Subpart E; or a decision to grant, or not to grant, a pay adjustment under an administratively determined pay system.

J. The payment of, failure to pay, or the amount of a recruitment bonus, a relocation bonus, a retention allowance, or a supervisory differential under 5 CFR Part 575; the payment of, failure to pay, or the amount of critical position pay under 5 U.S.C. 5377; the failure to request or grant an exception to the dual compensation restrictions under 5 CFR Part 553, and the failure to receive an agreement under the Student Loan Repayment Benefit program.

K. Any discretionary payment not specifically excluded elsewhere in this policy.

L. The termination or expiration of a time-limited excepted appointment, a temporary or term appointment or promotion, or an SES limited emergency or limited term appointment on the date specified as a condition of employment at the time the appointment or promotion was made; or the termination of a temporary or term promotion at any other time, provided the employee was informed in advance of the temporary nature of the promotion and the employee was returned to his or her former position from which temporarily promoted, or to a different position of equivalent grade and pay.

M. Any position classification action.

N. Matters covered under other internal Departmental review methods, including but not limited to Performance Appraisal, Government Housing and Utilities, Divestiture Orders, Merit Pay Coverage, Property Boards of Survey, findings and recommendations of Law Enforcement Boards of Review, decisions to temporarily or permanently revoke a law enforcement commission, Boards of Inquiry, debt collection, and disapprovals of waivers of overpayment.

O. Any policy or directive issued by the Secretary of the Interior or his or her designee.

P. Any employee complaint alleging discrimination on the basis of race, color, religion, sex, national origin, age, physical or mental disability, reprisal or retaliation (for participation in EEO complaints).

Q. A matter involving allegations of discrimination based on sexual orientation.

R. Suitability determinations.

S. Audit, investigation or fact-finding of an employee by the Office of Inspector General, Office of Special Counsel, Department of Justice, Department of Labor, or other fact-finding entity.

T. Or any other matter covered by statute which vests jurisdiction in Federal court.

1.8 **Employee Rights.**

A. DOI employees are entitled under these procedures to present grievances to their supervisors or managers. Employees also have the right to consult with their SHRO or a representative from the OCR or CADR for procedural guidance. Employees shall be free from restraint, interference, coercion, discrimination, or reprisal in presenting a grievance.

B. An employee may proceed directly to the formal procedures (paragraph 1.10B) if the grievance concerns a letter of reprimand or a disciplinary matter where there has been a proposed action, an opportunity to respond, and a decision on the discipline. In such cases, the formal grievance must be filed in writing with the SHRO using the Administrative Grievance Form (AGF) (DI 7600) within 15 days of the date the decision or reprimand was issued. The filing of such a grievance will not delay the effective date of the action. The SHRO will designate a deciding official and notify the grievant in writing within 7 days. As stated elsewhere in the chapter, the parties are strongly encouraged to utilize an ADR process to resolve the dispute prior to the final grievance decision.

C. Employees may represent themselves, or be represented by someone of their choice. However, the choice of representative, if a DOI employee, may be denied if it would result in a conflict of interest or position, a conflict with mission priorities, or unreasonable costs. With the concurrence of the SHRO, bureaus have the authority to deny the choice of representative for the

reasons stated, and such determinations are not subject to review or appeal. Requests for attorney or representative fees will not be considered under these procedures.

D. Upon request, employees and their representatives shall have access to information directly related to the issues raised in the grievance. Grievants shall be given copies of such information, unless doing so would be unduly burdensome or contrary to law or regulation, as determined by the SHRO.

E. Employees, and their representatives if employees of the Department, shall be permitted a reasonable amount of official duty time (generally a matter of hours, not days) subject to workload, if otherwise in a duty status, to prepare and present grievances and to communicate with management and human resources officials about such grievances. Such official time must be requested by the employee and approved in advance of its use by the immediate supervisor or his/her designee. Requests may be denied if the amount requested is determined by management, in consultation with the SHRO, to be unreasonable.

1.9 **Dual Processing**. The filing of a formal complaint of employment discrimination under Equal Employment Opportunity (EEO) procedures forecloses advancement of the same matters under this grievance procedure. If the matter being grieved becomes the subject of a formal EEO complaint by the grievant which alleges discrimination as described in paragraphs 1.7P and/or 1.7Q, the official considering the grievance must terminate its processing and dismiss the grievance, in writing.

1.10 **Grievance Process**. Management and employees are encouraged to resolve grievances at the earliest opportunity and the lowest possible management level without unnecessary delays. Before initiating the informal grievance process described below, employees are encouraged to attempt to informally resolve any grievance and underlying concerns by initially discussing the problem with their immediate supervisor. This meeting can be facilitated upon request. Such requests should be made to the SHRO, which will coordinate with the CADR office for assistance through CORE PLUS. A grievance submitted to a supervisor or other appropriate official under the informal procedures must be considered and acted upon in a timely manner as described below.

A. Informal Procedure/ADR. Prior to engaging in the formal grievance process, the grievant (and/or the grievant's representative) and the grievance official (normally, the first-line supervisor or the official at the lowest level with authority to grant relief) are strongly encouraged to engage in ADR where appropriate in an attempt to seek a mutually acceptable resolution of the issues giving rise to the grievance. An employee must present a grievance in writing within 15 days of the date of the challenged action or inaction, or the date he/she became aware of it. The deadline for this initial filing may be extended by the grievance official with concurrence of the SHRO (generally, such extensions will not exceed seven days), if such an extension is requested in writing by the grievant. The failure to grant an extension may not be appealed or grieved.

(1) An informal grievance must be submitted to the grievance official in writing with a copy to the SHRO. The grievant will be notified by the SHRO if it is determined that the

informal grievance was not filed with the appropriate individual. If ADR is not specifically requested in the grievance, the SHRO will provide the grievant with information about the ADR option so the grievant can decide whether he/she wants to elect ADR. If so, the SHRO will refer the parties to an appropriate ADR contact from CORE PLUS. Employees or supervisors may contact CADR for ADR information at any time via telephone (202-327-5383) or fax (202-327-5390), by sending an email to: CADR@ios.doi.gov, or through the website: www.doi.gov/cadr. CADR will refer a request for ADR to an ADR contact in a bureau or office. The appropriate bureau/office will be responsible for ensuring that an appropriate management official is made available to participate in the ADR process and that an Agreement to Mediate form is signed by both parties.

(2) If the parties agree to participate in the ADR process, they agree to do so in good faith. In that context, they will try to resolve the grievance in a reasonable period of time, not to exceed 45 days unless the SHRO and the parties to the grievance jointly agree to an extension. The ADR process may not be used to unnecessarily delay the grievance process; however, participation in the ADR process will extend the timeframes, up to 45 days (unless the parties jointly agree to an extension), for filing a grievance under the formal procedures. Either party may terminate the process at any time. The ADR specialist will discuss the reasons for termination or document the decision to terminate the process in writing, a copy of which will be provided to the grievant and grievance official. Within 10 days of termination of the ADR process, the grievance official will provide the grievant with a written decision on the informal grievance. For further information on the Department's workplace ADR program, CORE PLUS, see 370 DM 770.

(3) If ADR is successful and the parties are able to resolve the informal grievance, the ADR specialist will document their agreement in writing and, after review and concurrence by the SHRO, provide a copy of the signed agreement to the grievant, the grievance official, and the SHRO. The agreement will outline the nature of the resolution reached and will be considered confidential, subject to disclosure only on a need-to-know basis. At that point, the informal grievance will be considered resolved.

(4) If the grievant does not request or agree to enter into an ADR process, the grievance official must provide the grievant with a written decision within 10 days of receipt of the grievance or 10 days from the date the grievant declines the use of ADR after discussion with the SHRO, whichever comes later, unless a request for an extension has been approved in writing by the SHRO with the concurrence of the grievant. If the relief sought is not granted, the written decision must advise the grievant of such, of the time limit within which to request further consideration under the formal procedure, and that the formal grievance must be directed to the SHRO for referral to the appropriate deciding official.

B. Formal Procedure. If the grievance is not resolved at the informal level through ADR or otherwise, the employee may file a formal grievance. The formal grievance must be presented in writing, using the AGF (DI 7600), to the SHRO and must include the informal decision or ADR termination document, unless the formal grievance is being filed in accordance with paragraph 1.8B. **Employees must fill out the AGF in its entirety, with assistance from the SHRO as necessary. Failure to complete the form may result in it being returned to the**

employee and, in some cases, termination of the grievance. If the grievance is accepted, bureau or office management will designate an appropriate deciding official, in consultation with the SHRO. The SHRO will notify the grievant of this determination. (Generally, for grievances within the bureaus, grievance decisions are made no higher than the bureau director.) At management's discretion, ADR may be offered during the formal stage of the grievance procedure. If the grievant accepts management's offer of ADR at this stage, the deadline for the final grievance decision may be extended for up to 45 days or as otherwise jointly agreed by the parties and the SHRO.

(1) If the parties did not participate in ADR at the informal level, an employee must file a formal grievance (a) within 7 days of the date of receipt of the decision on the informal grievance, or (b) if the grievant does not receive a decision on the informal grievance and no request for an extension was made in writing to the SHRO and concurred with by the grievant, within 7 days of the date the informal grievance decision was due. Failure on the part of the grievant to meet these timeframes, unless a request for an extension has been approved in writing by the SHRO, will result in cancellation of the grievance by the SHRO.

(2) If the parties participated in ADR at the informal level but were unable to reach resolution, an employee must file a formal grievance (a) within 7 days of the date of receipt of the decision on the informal grievance, or (b) if the grievant does not receive a decision on the informal grievance and no request for an extension was made in writing to the SHRO and concurred with by the grievant, within 7 days of the date the informal grievance decision was due. Failure on the part of the grievant to meet these timeframes, unless a request for an extension has been approved in writing by the SHRO, will result in cancellation of the grievance by the SHRO.

(3) All formal grievances must be in writing using the AGF (DI 7600). An employee also may make an oral presentation if one is so requested on the AGF (DI 7600). The SHRO will review the grievance, make a procedural determination of acceptability (see paragraph 1.11), and notify the parties in writing of this determination within 7 days. If the grievance is deemed acceptable, the SHRO will create a Grievance File (see paragraph 1.13). If an oral presentation is requested, the grievant is responsible for scheduling a meeting with the deciding official, with SHRO assistance as necessary.

(4) Within 20 days from the date the deciding official receives the formal grievance and grievance file from the SHRO, or from the date of an oral presentation if one is made, whichever is later, the deciding official will provide a written decision to the grievant, including a summary of the grievance, the consideration given to it, and the course of action decided on or conclusions reached. The decision of the deciding official will be final with no further right of appeal. ***If the grievant does not receive a response from the deciding official within the established timeframes, and no request for an extension was made in writing to the SHRO and concurred with by the grievant, the grievant will notify the SHRO, which will work with the deciding official, bureau human resources office, or OHR as necessary to ensure a response is provided as soon as possible.***

1.11 **Rejection of a Formal Grievance on Procedural Grounds**. A decision by the SHRO to reject a grievance is final and not subject to further review. A grievance may be rejected at the formal level without consideration of the merits if:

A. It was not filed within the specified time limits and a request for an extension of the time limits was not approved; or, if an extension of the time limit was approved, the grievance was not filed within the time limit as extended.

B. The grievance wholly involves a matter or matters that are excluded from coverage of the grievance procedure under paragraph 1.7. (Where one or more matters are rejected but others are not, those matters not rejected will continue to be considered. The grievant will be advised in writing by the SHRO of the specifics of this determination).

C. No specific personal relief is requested (see paragraph 1.4E).

D. The grievance does not contain sufficient detail to identify and clarify the basis for the grievance.

1.12 **Cancellation of Grievance**. A grievance will be canceled by the SHRO and not subject to further review:

A. At the request of the grievant.

B. Upon termination of the grievant's employment with DOI, unless the personal relief sought may be granted after termination.

C. Upon the death of the grievant, unless the grievance involved a question of pay.

D. For failure to act, including the failure of the grievant to meet deadlines if an extension has not been approved, failure to furnish required information, or other failure to cooperate in the processing of the grievance.

E. If it becomes evident that the matter is excluded under paragraph 1.7.

1.13 **Grievance File.** The SHRO will establish a grievance file for each grievance accepted under the formal procedure. The file will be maintained and disclosed consistent with the Privacy Act and Freedom of Information Act. The grievance file is available to the grievant and his/her representative and will not contain any document that is not available to the grievant and his/her representative. The file should contain:

A. The informal grievance, formal grievance (AGF), and any additional materials provided by the grievant. Copies of regulations or policies in question should also be included.

B. A written summary prepared by the ADR representative of actions and results, or lack of action, during the informal and/or ADR procedure, including if applicable an Agreement to Mediate form signed by all participating parties, a copy of the written agreement, or a

Memorandum of No Agreement. These documents are to be included consistent with confidentiality guidelines.

C. Copies of the advance notice, replies, and final decision where a disciplinary action is involved.

D. Copies of letters of reprimand, warning, etc., where such matters are at issue.

E. Copies of personnel action documents, where appropriate.

DI-7600
Rev. 10/2006

United States Department of the Interior: Administrative Grievance Form

Name of Employee: _____

Employee's Job Title: _____ Employee's Work Email: _____

Employee's Bureau/Office: _____ Employee's Work Phone: _____

Name of Employee's Rep.: _____

Representative's Office: _____ Rep's Work Phone: _____

Name of Management
Official receiving this Grievance*: _____

Are you a Member of a Bargaining Unit that is
Covered by a Collective Bargaining Agreement?* (___) Yes (___) No

Is this an Informal Grievance or Formal Grievance? _____

If a Formal Grievance, are You Requesting an Oral Presentation to Discuss this Grievance? (___) Yes (___) No

Are You Interested in Participating in Alternative Dispute Resolution to Resolve this Grievance?**
(___) Yes (___) No

Date of Action Giving Rise to Grievance: _____

Date Employee Became Aware of Action: _____

Detailed description of the Grievance (attach additional pages as necessary):

_____

_____

_____

Personal Relief Requested: To qualify as personal relief, a requested remedy must directly benefit the grievant, be specific and clear, and may not include a request for disciplinary action against another employee:

_____

_____

_____

Has a complaint or appeal on this issue been filed with the Office of Civil Rights, Bureau EEO Office, the Equal Employment Opportunity Commission, Merit Systems Protection Board, the Office of Special Counsel, Federal Labor Relations Authority, Union or other offices?

(___) Yes If Yes, with whom? _____ (___) No

Employee Signature: _____ Date: _____

Date Received by Supervisor or SHRO: _____

**May be filled in or changed, as appropriate, by the Servicing Human Resources Office*
***ADR may be offered at Management's discretion at the Formal Grievance stage*
A copy of this form MUST be provided to the Servicing Human Resources Office by the grievant

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