CHAPTER 1

GENERAL

1-1. PURPOSE AND COVERAGE: The purpose of this regulation is to provide non-bargaining unit technicians a fair, equitable, and timely forum for internal review and resolution of disputes on employment-related matters arising in the New Mexico National Guard. Bargaining unit technicians must utilize the grievance procedures outlined in the Negotiated Labor Agreement.

1-2. POLICY: It is the policy of the New Mexico National Guard that every non-bargaining unit technician feel free to use the grievance system outlined in this regulation without restraint, interference, coercion, discrimination, or reprisal.

1-3. DEFINITIONS:

a. Grievance occurs when a technician, or a group of technicians acting as individuals, requests personal relief in a matter of concern or dissatisfaction relating to the employment of the technician(s), that is subject to the control of agency management. In addition, a grievance will not involve those matters excluded from coverage in Section 1-4b of this regulation.

b. Technicians means all non-bargaining unit personnel employed under 32 U.S.C. 709.

c. Days means calendar days.

d. Grievance File is a separate file established by the Support Personnel Management Office (SPMO) in connection with a grievance which contains all documents (or copies of documents) related to the grievance including, but not limited to, any written grievance, records, the reports of a factfinder, etc., and the NMNG decision pertaining to the grievance.

e. Personal Relief is a specific remedy requested by a grievant on an employment related dispute. Such requests must benefit the grievant(s) personally and may not include a request for a disciplinary action, or some other action affecting another technician of the NMNG.

f. Deciding Officials are the following:

(1) Army: Chief of the activity, i.e. USPFO, AASF Commander, CSMS, MATES, BN AO's, etc.

(2) Air: Deputy Commander for Logistics
Deputy Commander for Operations
Deputy Commander for Support

g. Senior Technician Officials are the following:

(1) Army: Command Administrative Officer (Chief of Staff)

(2) Air: Air Commander

1-4. GRIEVANCE COVERAGE:

a. Matters covered: Except as provided in paragraphs b and c of this section, the grievance system covers any matter of concern or dissatisfaction to a technician, if the matter is subject to the control of Management.

b. Matters not covered: The following actions are not covered by the grievance system but have other rights of appeal:

(1) Reemployment or reinstatement rights;

(2) Reduction-in-Force;

(3) Military restoration rights;

(4) Performance rating;

(5) Position classification decision;

(6) Level of competence decision;

(7) Salary retention decision;

(8) Job-grading decision;

(9) Allegations or complaint of discrimination;

(10) Adverse action for political activity;

(11) Any action taken pursuant to Title 32 U.S.C. 709(e) (1 through 4);

(12) Fitness-for-duty examination;

(13) Retirement, Life or Health Insurance decisions;

(14) Content of published agency policy or regulations;

(15) Nonselection for promotion from a group of properly ranked and certified candidates;

(16) Terminations of temporary promotion (regardless of length or basis for the action), appointment, and/or reassignment to a different position from which promoted;

(17) Non-adoption of a suggestion or disapproval of a quality salary increase, performanace awards, or other kind of honorary or discretionary award;

(18) A preliminary warning or notice of an action which, if effected, would be covered under the grievance system or excluded from coverage under 3-2a of this section;

(19) Content of the job elements , standards, and work objectives.

c. Separation actions.

1-5. RIGHT TO SEEK ADVICE: A Technician has the right to communicate with and seek advice from:

a. The immediate supervisor;

b. The Support Personnel Management Office;

c. The State Equal Employment Officer, and/or an Equal Employment Counselor;

d. A supervisory or management official of higher rank than the technician's immediate supervisor.

1-6. REPRESENTATION: A technician has the right to present a grievance without representation. He/she also has the right to be accompanied, represented and advised by a representative of his/her choice at any stage in the proceedings. A technician may change his/her representative but to do so he/she will notify, in writing, the Support Personnel Management Office of the change. A person selected by the technician as his/her representative must be willing to represent him/her and must be assured freedom from restraint, interference, coercion, discrimination or reprisal.

1-7. OFFICIAL TIME FOR REPRESENTATION:

a. A technician shall be given a reasonable amount of time to present his/her grievance.

b. Official time for a technician's representative shall be in accordance with item a, above.

c. Official time for presentation does not include time for investigation or preparation, nor does it include travel expense or per diem travel allowance.

1-8. ROLE OF THE SUPPORT PERSONNEL MANAGEMENT OFFICER (SPMO):

a. Management officials will forward a copy of all grievances to the SPMO as soon as they are received.

b. In order to insure legal and regulatory accuracy, responses will NOT be issued until they have been reviewed by the SPMO.

CHAPTER 2

GRIEVANCE SYSTEMS

2-1. INFORMAL GRIEVANCE PROCEDURES:

a. A technician's grievance may or may not be objectively justified. What is important is that the grievance is real to the technician. When the grievance is well founded, management has both the duty and a need to eliminate the cause. When the grievance is not well founded, it is equally important to reach an understanding based on the full facts, since a dissatisfied technician often is an unproductive technician. Therefore, the informal procedure provides a method to settle grievances as soon as possible and within good management practices and regulations, which will convince the technician that he/she has been treated fairly.

b. Informal Procedures:

Step One: The informal grievance shall be taken up by the grievant (and the representative, if he/she elects to have one) with his/her immediate supervisor within fifteen (15) days after the techhnician has knowledge of the original incident or action that gave rise to the grievance. If the grievance involves the supervisor, the grievant may go to the second level supervisor with his/her grievance. At this point the grievance may be verbal or written. If verbal, and resolved by agreement at this point, the grievance is considered concluded. If verbal, and not resolved at this point, the grievance must be reduced to writing by the grievant within seven (7) days. SPMO Form 771-1 will be used.

Step Two: A decision will be given to the grievant within fifteen (15) days after presentation of the written informal grievance. Such a decision will be in writing on SPMO Form 771-2, and there shall be discussion with the grievant and the representative to insure that it is clearly communicated and understood.

2-2. FORMAL GRIEVANCE PROCEDURES:

a. A technician is entitled to present a grievance under the formal procedure if he/she (1) has completed action under the informal procedure, and (2) presents the grievance within established time limits. The grievance must be (1) in writing, (2) contain sufficient detail to identify and clarify the basis for the grievance and (3) specify the personal relief requested by the technician.

b. Formal Procedures:

Step One: Within fifteen (15) days after the receipt of the written decision on the informal grievance, the formal grievance will be presented by the aggrieved or his/her representative to the Deciding Official with an information copy to the Support Personnel Management Office, on SPMO Form 771-3, with Forms 771-1 and 771-2 previously completed. Additional issues may not be presented at this step unless first considered in the informal grievance step.

Step Two: Upon receipt of the formal grievance, on SPMO Form 771-3, the Deciding Official may meet with the technician concerned, his/her representative, any management official, and/or SPMO personnel prior to rendering a decision. After full consideration, the deciding official will render a decision in writing on SPMO Form 771-4 within fifteen (15) days.

Step Three: If the grievant is dissatisfied with the decision rendered by the deciding official, he/she may request a review with the Senior Technician Official on SPMO Form 771-5 within fifteen (15) days. The Senior Technician Official will attempt to resolve the grievance. He/she may meet with the technician concerned, his/her representative and/or concerned supervisors and officials. He/she will render a decision within thirty (30) days, on SPMO Form 771-6.

Step Four: If the technician is dissatisfied with the decision rendered by the Senior Technician Official, the entire grievance file will be forwarded to the Adjutant General for his review and decision. The decision of the Adjutant General, to reject or concur with the decision of the Senior Technician Official is final and will be rendered on SPMO Form 771-7.

2-3. REJECTION OF GRIEVANCE: The deciding official may reject a grievance if is was not filed within the time limits specified or because it consists wholly of a matter or matters excluded from coverage from the grievance system. The rejection must be in writing and give reasons for the rejection. If the technician has not completed the informal procedure, the deciding official must return the grievance to the technician for completion of the informal procedure.

2-4. CANCELLATION OF THE GRIEVANCE: A grievance shall be cancelled:

a. At the technician's request;

b. Upon termination of the technician's employment unless the personal relief sought by the technician may be granted after termination of his employment;

c. Upon the death of the technician unless the grievance involved a question of pay; or

d. When the technician does not furnish the required information and duly proceeds with the advancement of his grievance.

2-5. GRIEVANCE FILE: The official record of the appeal or grievance is open to review by the technician and his representative and must not contain any document that is not available to the technician. Material which cannot be disclosed to the technician or his designated representative in

accordance with the provisions of FPM chapter 294, cannot be included in the file. Information to which the Senior Technician Official is exposed and which cannot be made available to the technician in the form which it was received must be included in the file in a form which the technician can review or it cannot be used.

FOR THE ADJUTANT GENERAL:

RUDY F. GONZALES, GM-13
PERSONNEL OFFICER

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Sections 1-7

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