

tration of the Department of Veterans Affairs whose pay is fixed under chapter 73 of title 38;

(D) an administrative law judge appointed under section 3105 of this title;

(E) an individual in the Senior Executive Service or the Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service;

(F) an individual appointed by the President;

(G) an individual occupying a position not in the competitive service excluded from coverage of this subchapter by regulations of the Office of Personnel Management; or

(H) an individual who (i) is serving in a position under a temporary appointment for less than one year, (ii) agrees to serve without a performance evaluation, and (iii) will not be considered for a reappointment or for an increase in pay based in whole or in part on performance; and

(3) “unacceptable performance” means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee’s position.

(Pub. L. 89–554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 91–375, §6(c)(8), Aug. 12, 1970, 84 Stat. 776; Pub. L. 95–251, §2(a)(1), Mar. 27, 1978, 92 Stat. 183; Pub. L. 95–454, title II, §203(a), Oct. 13, 1978, 92 Stat. 1131; Pub. L. 100–325, §2(f), May 30, 1988, 102 Stat. 581; Pub. L. 101–474, §5(e), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 101–510, div. A, title XII, §1206(e), Nov. 5, 1990, 104 Stat. 1661; Pub. L. 102–54, §13(b)(2), June 13, 1991, 105 Stat. 274; Pub. L. 103–359, title V, §501(e), Oct. 14, 1994, 108 Stat. 3429; Pub. L. 104–201, div. A, title XI, §1122(a)(1), Sept. 23, 1996, 110 Stat. 2687; Pub. L. 108–271, §8(b), July 7, 2004, 118 Stat. 814; Pub. L. 110–417, [div. A], title IX, §931(a)(1), Oct. 14, 2008, 122 Stat. 4575.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2001.	Sept. 30, 1950, ch. 1123, §2, 64 Stat. 1098. Sept. 1, 1954, ch. 1208, §601(a), 68 Stat. 1115. June 17, 1957, Pub. L. 85–56, §2201(21), 71 Stat. 159. July 11, 1957, Pub. L. 85–101, 71 Stat. 293. Sept. 2, 1958, Pub. L. 85–857, §13(p), 72 Stat. 1266. Mar. 26, 1964, Pub. L. 88–290, “Sec. 306(b)”, 78 Stat. 170.

In paragraph (1), the term “Executive agency” is substituted for the reference to “executive departments, the independent establishments and agencies in the executive branch, including corporations wholly owned by the United States” and “the General Accounting Office”. The exception of “a Government controlled corporation” is added in subparagraph (vii) to preserve the application of this chapter to “corporations wholly owned by the United States”. The exceptions for Production credit corporations and Federal intermediate credit banks in former section 2001(b)(5), (6) are omitted as they are no longer “corporations wholly owned by the United States”. Under the Farm Credit Act of 1956, 70 Stat. 659, the production credit corporations were merged in the Federal intermediate credit banks, and pursuant to that Act the Federal intermediate credit

banks have ceased to be corporations owned by the United States. The exceptions for Federal land banks and banks for cooperatives in former section 2001(b)(7), (8) are omitted as included within the exception of “a Government controlled corporation” in subparagraph (vii).

Paragraph (2) is supplied because the definition of “employee” in section 2105 does not encompass individuals employed by the government of the District of Columbia. The definition in paragraph (2) does not encompass members of the uniformed services as they are not “employed” in or under an agency.

Paragraph (2)(E) is based on the third and fifth sentences, respectively, of former sections 1010 and 1011, which are carried into sections 5362 and 559, respectively, and section 1106(a) of the Act of Oct. 28, 1949, ch. 782, 63 Stat. 972.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2008—Par. (1)(ii) Pub. L. 110–417 substituted “National Geospatial-Intelligence Agency” for “National Imagery and Mapping Agency”.

2004—Par. (1)(iii). Pub. L. 108–271 substituted “Government Accountability Office” for “General Accounting Office”.

1996—Par. (1)(ii). Pub. L. 104–201 substituted “National Imagery and Mapping Agency” for “Central Imagery Office”.

1994—Par. (1)(ii). Pub. L. 103–359 inserted “the Central Imagery Office,” after “Defense Intelligence Agency.”.

1991—Par. (2)(C). Pub. L. 102–54 substituted “Veterans Health Administration of the Department of Veterans Affairs” for “Department of Medicine and Surgery, Veterans’ Administration”.

1990—Par. (1). Pub. L. 101–474 redesignated subpar. (C) as (B) and struck out former subpar. (B) which included Administrative Office of United States Courts within definition of “agency”.

Par. (2)(H). Pub. L. 101–510 added subpar. (H).
1988—Par. (2)(E). Pub. L. 100–325 inserted reference to Federal Bureau of Investigation and Drug Enforcement Administration Senior Executive Service.

1978—Pub. L. 95–454 substituted provisions defining “agency”, “employee”, and “unacceptable performance” for provisions defining “agency” and “employee”.

Par. (2)(E). Pub. L. 95–251 substituted “administrative law judge” for “hearing examiner”.

1970—Par. (1)(ii). Pub. L. 91–375 repealed cl. (ii) which excluded postal field service from definition of “agency”.

EFFECTIVE DATE OF 1996 AMENDMENT

Amendment by Pub. L. 104–201 effective Oct. 1, 1996, see section 1124 of Pub. L. 104–201, set out as a note under section 193 of Title 10, Armed Forces.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95–454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95–454, set out as a note under section 1101 of this title.

EFFECTIVE DATE OF 1970 AMENDMENT

Amendment by Pub. L. 91–375 effective within 1 year after Aug. 12, 1970, on date established therefor by Board of Governors of United States Postal Service and published by it in Federal Register, see section 15(a) of Pub. L. 91–375, set out as an Effective Date note preceding section 101 of Title 39, Postal Service.

§ 4302. Establishment of performance appraisal systems

(a) Each agency shall develop one or more performance appraisal systems which—

(1) provide for periodic appraisals of job performance of employees;

- (2) encourage employee participation in establishing performance standards; and
- (3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

(b) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for—

- (1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system;
- (2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;
- (3) evaluating each employee during the appraisal period on such standards;
- (4) recognizing and rewarding employees whose performance so warrants;
- (5) assisting employees in improving unacceptable performance; and
- (6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

(c) In accordance with regulations which the Office shall prescribe, the head of an agency may administer and maintain a performance appraisal system electronically.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 95-454, title II, §203(a), Oct. 13, 1978, 92 Stat. 1132; Pub. L. 102-378, §2(18), Oct. 2, 1992, 106 Stat. 1347; Pub. L. 106-398, §1 [[div. A], title XI, §1104], Oct. 30, 2000, 114 Stat. 1654, 1654A-311.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2002.	Sept. 30, 1950, ch. 1123, §3, 64 Stat. 1098.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

- 2000—Subsec. (c). Pub. L. 106-398 added subsec. (c).
- 1992—Subsec. (a)(3). Pub. L. 102-378 substituted a period for semicolon at end.
- 1978—Pub. L. 95-454 substituted "Establishment of performance appraisal systems" for "Performance-rating plans; establishment of" in section catchline and in text substituted provisions relating to the establishment of a performance appraisal system, for provisions relating to the establishment of performance-rating plans.

EFFECTIVE DATE OF 1978 AMENDMENT

Amendment by Pub. L. 95-454 effective 90 days after Oct. 13, 1978, see section 907 of Pub. L. 95-454, set out as a note under section 1101 of this title.

[§ 4302a. Repealed. Pub. L. 103-89, §3(b)(1)(B)(i), Sept. 30, 1993, 107 Stat. 981]

Section, added Pub. L. 98-615, title II, §202(a), Nov. 8, 1984, 98 Stat. 3214; amended Pub. L. 101-103, §5(a), Sept. 30, 1989, 103 Stat. 671; Pub. L. 102-22, §2(a), Mar. 28, 1991, 105 Stat. 71, related to the establishment of performance appraisal systems for performance management and recognition system employees.

EFFECTIVE DATE OF REPEAL

Repeal effective Nov. 1, 1993, see section 3(c) of Pub. L. 103-89, set out as an Effective Date of 1993 Amendment note under section 3372 of this title.

§ 4303. Actions based on unacceptable performance

(a) Subject to the provisions of this section, an agency may reduce in grade or remove an employee for unacceptable performance.

(b)(1) An employee whose reduction in grade or removal is proposed under this section is entitled to—

- (A) 30 days' advance written notice of the proposed action which identifies—
 - (i) specific instances of unacceptable performance by the employee on which the proposed action is based; and
 - (ii) the critical elements of the employee's position involved in each instance of unacceptable performance;

(B) be represented by an attorney or other representative;

(C) a reasonable time to answer orally and in writing; and

- (D) a written decision which—
 - (i) in the case of a reduction in grade or removal under this section, specifies the instances of unacceptable performance by the employee on which the reduction in grade or removal is based, and
 - (ii) unless proposed by the head of the agency, has been concurred in by an employee who is in a higher position than the employee who proposed the action.

(2) An agency may, under regulations prescribed by the head of such agency, extend the notice period under subsection (b)(1)(A) of this section for not more than 30 days. An agency may extend the notice period for more than 30 days only in accordance with regulations issued by the Office of Personnel Management.

(c) The decision to retain, reduce in grade, or remove an employee—

(1) shall be made within 30 days after the date of expiration of the notice period, and

(2) in the case of a reduction in grade or removal, may be based only on those instances of unacceptable performance by the employee—

(A) which occurred during the 1-year period ending on the date of the notice under subsection (b)(1)(A) of this section in connection with the decision; and

(B) for which the notice and other requirements of this section are complied with.

(d) If, because of performance improvement by the employee during the notice period, the employee is not reduced in grade or removed, and the employee's performance continues to be acceptable for 1 year from the date of the advance