

4313. Criteria for performance appraisals.
 4314. Ratings for performance appraisals.
 4315. Regulations.

AMENDMENTS

1993—Pub. L. 103-89, §3(b)(1)(B)(ii), Sept. 30, 1993, 107 Stat. 981, struck out item 4302a “Establishment of performance appraisal systems for performance management and recognition system employees”.

1984—Pub. L. 98-615, title II, §202(b), Nov. 8, 1984, 98 Stat. 3216, added item 4302a.

1978—Pub. L. 95-454, title II, §203(a), title IV, §405(b), Oct. 13, 1978, 92 Stat. 1131, 1170, in chapter heading substituted “APPRAISAL” for “RATING”, added heading for subchapter I, in item 4302 substituted “Establishment of performance appraisal systems” for “Performance-rating plans; establishment of”, in item 4303 substituted “Actions based on unacceptable performance” for “Performance-rating plans; requirements for”, in item 4304 substituted “Responsibilities of Office of Personnel Management” for “Ratings for performance”, in item 4305 substituted “Regulations” for “Review of ratings”, struck out items 4306 to 4308 “Performance-rating plans; inspection of”, “Other rating procedures prohibited”, and “Regulations”, respectively, and added item for subchapter II and items 4311 to 4315.

SUBCHAPTER I—GENERAL PROVISIONS

AMENDMENTS

1979—Pub. L. 96-54, §2(a)(20), Aug. 14, 1979, 93 Stat. 382, added heading for subchapter I.

§ 4301. Definitions

Except as otherwise expressly provided, for the purpose of this subchapter—

- (1) “agency” means—
 (A) an Executive agency; and
 (B) the Government Publishing Office;

but does not include—

- (i) a Government corporation;
 (ii) the Central Intelligence Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, the National Security Agency, or any Executive agency or unit thereof which is designated by the President and the principal function of which is the conduct of foreign intelligence or counterintelligence activities; or
 (iii) the Government Accountability Office;

(2) “employee” means an individual employed in or under an agency, but does not include—

- (A) an employee outside the United States who is paid in accordance with local native prevailing wage rates for the area in which employed;
 (B) an individual in the Foreign Service of the United States;
 (C) a physician, dentist, nurse, or other employee in the Veterans Health Administration 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; Pub. L. 113-235, div. H, title I, §1301(b), Dec. 16, 2014, 128 Stat. 2537; Pub. L. 115-91, div. A, title X, §1097(d)(4), Dec. 12, 2017, 131 Stat. 1621.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	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 Co-