

lumbia. 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

2017—Pub. L. 115-91, in introductory provisions, substituted “Except as otherwise expressly provided, for the purpose of” for “For the purpose of”.

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 L. 91-375 repealed cl.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”.

CHANGE OF NAME

“Government Publishing Office” substituted for “Government Printing Office” in par. (1)(B) on authority of section 1301(b) of Pub. L. 113-235, set out as a note preceding section 301 of Title 44, Public Printing and Documents.

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)(1) The head of each agency, in consultation with the Director of the Office of Personnel Management and the Special Counsel, shall develop criteria that—

(A) the head of the agency shall use as a critical element for establishing the job requirements of a supervisory employee; and

(B) promote the protection of whistleblowers.

(2) The criteria required under paragraph (1) shall include—

(A) principles for the protection of whistleblowers, such as the degree to which supervisory employees—

(i) respond constructively when employees of the agency make disclosures described in subparagraph (A) or (B) of section 2302(b)(8);

(ii) take responsible actions to resolve the disclosures described in clause (i); and

(iii) foster an environment in which employees of the agency feel comfortable making disclosures described in clause (i) to supervisory employees or other appropriate authorities; and

(B) for each supervisory employee—

(i) whether the agency entered into an agreement with an individual who alleged that the supervisory employee committed a prohibited personnel practice; and

(ii) if the agency entered into an agreement described in clause (i), the number of instances in which the agency entered into such an agreement with respect to the supervisory employee.

(3) In this subsection—

(A) the term “agency” means any entity the employees of which are covered under paragraphs (8) and (9) of section 2302(b), without regard to whether any other provision of this section is applicable to the entity;

(B) the term “prohibited personnel practice” has the meaning given the term in section 2302(a)(1);

(C) the term “supervisory employee” means an employee who would be a supervisor, as defined in section 7103(a), if the agency employing the employee was an agency for purposes of chapter 71; and

(D) the term “whistleblower” means an employee who makes a disclosure described in section 2302(b)(8).

(c) 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.

(d) 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; Pub. L. 115-91, div. A, title X, §1097(d)(1), Dec. 12, 2017, 131 Stat. 1619.)

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

2017—Subsecs. (b) to (d). Pub. L. 115-91 added subsec. (b) and redesignated former subsecs. (b) and (c) as (c) and (d), respectively.

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.

ANNUAL REPORT TO CONGRESS ON UNACCEPTABLE PERFORMANCE IN WHISTLEBLOWER PROTECTION

Pub. L. 115-91, div. A, title X, §1097(d)(3), Dec. 12, 2017, 131 Stat. 1620, provided that:

“(A) DEFINITIONS.—In this paragraph, the terms ‘agency’ and ‘whistleblower’ have the meanings given the terms in section 4302(b)(3) of title 5, United States Code, as amended by paragraph (1).

“(B) REPORT.—Each agency shall annually submit to the Committee on Homeland Security and Governmental Affairs of the Senate, the Committee on Oversight and Government Reform of the House of Representatives, and each committee of Congress with jurisdiction over the agency a report that details—

“(i) the number of performance appraisals, for the year covered by the report, that determined that an employee of the agency failed to meet the standards for protecting whistleblowers that were established under section 4302(b) of title 5, United States Code, as amended by paragraph (1);

“(ii) the reasons for the determinations described in clause (i); and

“(iii) each performance-based or corrective action taken by the agency in response to a determination under clause (i).”

[§ 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