

in, and through Government facilities and non-Government facilities” are omitted as unnecessary.

In subsection (b)(2) and (3), the words “by, in, or through a non-Government facility” are omitted as unnecessary in view of the previous reference in the subsection.

In subsection (c), the words “From time to time” are omitted as unnecessary.

In subsection (d), the prohibition is restated in positive form.

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

1994—Subsec. (a)(7). Pub. L. 103–226, §2(a)(9)(A), struck out before semicolon at end “by, in, and through non-Government facilities”.

Subsecs. (b) to (d). Pub. L. 103–226, §2(a)(9)(B), (C), redesignated subsecs. (c) and (d) as (b) and (c), respectively, and struck out former subsec. (b) which read as follows: “In addition to the matters set forth by subsection (a) of this section, the regulations, concerning training of employees by, in, or through non-Government facilities, shall—

“(1) prescribe general policies governing the selection of a non-Government facility to provide training;

“(2) authorize training of employees only after the head of the agency concerned determines that adequate training for employees by, in, or through a Government facility is not reasonably available, and that consideration has been given to the existing or reasonably foreseeable availability and use of fully trained employees; and

“(3) prohibit training an employee for the purpose of filling a position by promotion if there is in the agency concerned another employee, of equal ability and suitability, fully qualified to fill the position and available at, or within a reasonable distance from, the place where the duties of the position are to be performed.”

1978—Subsecs. (a), (c), (d). Pub. L. 95–454 substituted “Office of Personnel Management” and “Office” for “Civil Service Commission” and “Commission”, respectively, wherever appearing.

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.

DEPARTMENT OF HOMELAND SECURITY

Exception from provisions of this section of those elements of the Department of Homeland Security that are supervised by the Under Secretary of Homeland Security for Information Analysis and Infrastructure Protection through the Department’s Assistant Secretary for Information Analysis, see Ex. Ord. No. 13286, §86, Feb. 28, 2003, 68 F.R. 10632, set out as a note under section 111 of Title 6, Domestic Security.

CENTRAL INTELLIGENCE AGENCY

Exception of Central Intelligence Agency from provisions of this section, see Ex. Ord. No. 10805, Feb. 18, 1959, 24 F.R. 1301, set out as a note under section 4102 of this title.

§ 4119. Training for employees under the Office of the Architect of the Capitol and the Botanic Garden

(a) The Architect of the Capitol may, by regulation, make applicable such provisions of this chapter as the Architect determines necessary to provide for training of (1) individuals employed under the Office of the Architect of the Capitol and the Botanic Garden and (2) other

congressional employees who are subject to the administrative control of the Architect. The regulations shall provide for training which, in the determination of the Architect, is consistent with the training provided by agencies under the preceding sections of this chapter.

(b) The Office of Personnel Management shall provide the Architect of the Capitol with such advice and assistance as the Architect may request in order to enable the Architect to carry out the purposes of this section.

(Added Pub. L. 97–346, §1(a), Oct. 15, 1982, 96 Stat. 1647.)

§ 4120. Training for employees of the Capitol Police

(a) The Chief of the Capitol Police may, by regulation, make applicable such provisions of this chapter as the Chief determines necessary to provide for training of employees of the Capitol Police. The regulations shall provide for training which, in the determination of the Chief, is consistent with the training provided by agencies under the preceding sections of this chapter.

(b) The Office of Personnel Management shall provide the Chief of the Capitol Police with such advice and assistance as the Chief may request in order to enable the Chief to carry out the purposes of this section.

(Added Pub. L. 108–7, div. H, title I, §1010(a), Feb. 20, 2003, 117 Stat. 360.)

§ 4121. Specific training programs

In consultation with the Office of Personnel Management, the head of each agency shall establish—

(1) a comprehensive management succession program to provide training to employees to develop managers for the agency; and

(2) a program to provide training to managers on actions, options, and strategies a manager may use in—

(A) relating to employees with unacceptable performance;

(B) mentoring employees and improving employee performance and productivity; and

(C) conducting employee performance appraisals.

(Added Pub. L. 108–411, title II, §201(b)(1), Oct. 30, 2004, 118 Stat. 2311.)

CHAPTER 43—PERFORMANCE APPRAISAL

SUBCHAPTER I—GENERAL PROVISIONS

Sec.	
4301.	Definitions.
4302.	Establishment of performance appraisal systems.
[4302a.	Repealed.]
4303.	Actions based on unacceptable performance.
4304.	Responsibilities of ¹ Office of Personnel Management.
4305.	Regulations.

SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

4311.	Definitions.
4312.	Senior Executive Service performance appraisal systems.

¹ So in original. Does not conform to section catchline.

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

<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 Co-

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 whistle-blowers.

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

(A) principles for the protection of whistle-blowers, 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

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 written notice provided under subsection (b)(1)(A) of this section, any entry or other notation of the unacceptable performance for which the action was proposed under this section shall be removed from any agency record relating to the employee.

(e) Any employee who is—

- (1) a preference eligible;
- (2) in the competitive service; or
- (3) in the excepted service and covered by subchapter II of chapter 75,

and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701.

(f) This section does not apply to—

- (1) the reduction to the grade previously held of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title,
- (2) the reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment or who has not completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less,
- (3) the reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions, or
- (4) any removal or demotion under section 714 of title 38.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 95-454, title II, §203(a), Oct. 13, 1978, 92 Stat. 1133; Pub. L. 101-376, §2(b), Aug. 17, 1990, 104 Stat. 462; Pub. L. 115-41, title II, §202(b)(2), June 23, 2017, 131 Stat. 873.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2004.	Sept. 30, 1950, ch. 1123, §5, 64 Stat. 1098.

The words "required by this chapter" are omitted as unnecessary.

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—Subsec. (f)(4). Pub. L. 115-41 added par. (4).
1990—Subsec. (e). Pub. L. 101-376 amended subsec. (e) generally. Prior to amendment, subsec. (e) read as follows: "Any employee who is a preference eligible or is in the competitive service and who has been reduced in grade or removed under this section is entitled to appeal the action to the Merit Systems Protection Board under section 7701 of this title."

1978—Pub. L. 95-454 substituted "Actions based on unacceptable performance" for "Performance-rating

plans; requirements for" in section catchline and in text substituted provisions relating to actions based on unacceptable performance, for provisions relating to requirements for performance-rating plans.

EFFECTIVE DATE OF 1990 AMENDMENT

Pub. L. 101-376, §2(c), Aug. 17, 1990, 104 Stat. 462, provided that: "The amendments made by this section [amending this section and section 7511 of this title] shall apply with respect to any personnel action taking effect on or after the effective date of this Act [see below]."

Pub. L. 101-376, §4, Aug. 17, 1990, 104 Stat. 463, provided that: "This Act and the amendments made by this Act [amending this section, sections 7511 and 7701 of this title, and enacting provisions set out as notes under this section and section 7501 of this title] shall become effective on the date of the enactment of this Act [Aug. 17, 1990], and, except as provided in section 2(c) [set out above], shall apply with respect to any appeal or other proceeding brought on or after such date."

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.

§ 4304. Responsibilities of the Office of Personnel Management

(a) The Office of Personnel Management shall make technical assistance available to agencies in the development of performance appraisal systems.

(b)(1) The Office shall review each performance appraisal system developed by any agency under this section and determine whether the performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review on a selected basis performance appraisal systems established under this subchapter to determine the extent to which any such system meets the requirements of this subchapter and shall periodically report its findings to the Office and to the Congress.

(3) If the Office determines that a system does not meet the requirements of this subchapter (including regulations prescribed under section 4305), the Office shall direct the agency to implement an appropriate system or to correct operations under the system, and any such agency shall take any action so required.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 440; Pub. L. 95-454, title II, §203(a), Oct. 13, 1978, 92 Stat. 1134.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2005.	Sept. 30, 1950, ch. 1123, §6, 64 Stat. 1099.

In subsection (a)(1), the words "corresponding to an efficiency rating of 'good' under the Veterans' Preference Act of 1944, as amended, and under laws superseded by this chapter" in clause (1) of former section 2005 are omitted, but are carried into section 3502.

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

1978—Pub. L. 95-454 substituted "Responsibilities of the Office of Personnel Management" for "Ratings for

performance” in section catchline and in text substituted provisions relating to the responsibilities of the Office of Personnel Management under this subchapter, for provisions relating to ratings for performance.

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.

§ 4305. Regulations

The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 441; Pub. L. 95-454, title II, § 203(a), Oct. 13, 1978, 92 Stat. 1134.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2006.	Sept. 30, 1950, ch. 1123, § 7, 64 Stat. 1099.

In subsection (c), the words “as a matter of right” are omitted as unnecessary.

In subsection (d), the words “are entitled” are substituted for “shall be afforded an opportunity”. The word “considers” is substituted for “deems to be”.

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

1978—Pub. L. 95-454 substituted “Regulations” for “Review of ratings” in section catchline and in text substituted provisions relating to regulations to carry out this subchapter, for provisions relating to review of ratings.

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.

[§§ 4306 to 4308. Omitted]

CODIFICATION

Sections 4306 to 4308, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 441, 442, were omitted in the general revision of this chapter by the Civil Service Reform Act of 1978, Pub. L. 95-454, § 203(a), Oct. 13, 1978, 92 Stat. 1131.

Section 4306 related to inspection of performance-rating plans.

Section 4307 related to prohibition of other rating procedures.

Section 4308 related to regulations for administration of the chapter, and is covered by revised section 4305.

SUBCHAPTER II—PERFORMANCE APPRAISAL IN THE SENIOR EXECUTIVE SERVICE

§ 4311. Definitions

For the purpose of this subchapter, “agency”, “senior executive”, and “career appointee” have the meanings set forth in section 3132(a) of this title.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167.)

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through

412 of Pub. L. 95-454, see section 415(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

§ 4312. Senior Executive Service performance appraisal systems

(a) Each agency shall, in accordance with standards established by the Office of Personnel Management, develop one or more performance appraisal systems designed to—

(1) permit the accurate evaluation of performance in any position on the basis of criteria which are related to the position and which specify the critical elements of the position;

(2) provide for systematic appraisals of performance of senior executives;

(3) encourage excellence in performance by senior executives; and

(4) provide a basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.

(b) Each performance appraisal system established by an agency under subsection (a) of this section shall provide—

(1) that, on or before the beginning of each rating period, performance requirements for each senior executive in the agency are established in consultation with the senior executive and communicated to the senior executive;

(2) that written appraisals of performance are based on the individual and organizational performance requirements established for the rating period involved; and

(3) that each senior executive in the agency is provided a copy of the appraisal and rating under section 4314 of this title and is given an opportunity to respond in writing and have the rating reviewed by an employee, or (with the consent of the senior executive) a commissioned officer in the uniformed services serving on active duty, in a higher level in the agency before the rating becomes final.

(c)(1) The Office shall review each agency’s performance appraisal system under this section, and determine whether the agency performance appraisal system meets the requirements of this subchapter.

(2) The Comptroller General shall from time to time review performance appraisal systems under this section to determine the extent to which any such system meets the requirements under this subchapter and shall periodically report its findings to the Office and to each House of the Congress.

(3) If the Office determines that an agency performance appraisal system does not meet the requirements under this subchapter (including regulations prescribed under section 4315), the agency shall take such corrective action as may be required by the Office.

(d) A senior executive may not appeal any appraisal and rating under any performance appraisal system under this section.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1167; amended Pub. L. 98-615, title III, § 306(b)(2), Nov. 8, 1984, 98 Stat. 3220.)

AMENDMENTS

1984—Subsec. (b)(3). Pub. L. 98-615 inserted “, or (with the consent of the senior executive) a commissioned of-

ficer in the uniformed services serving on active duty,” and directed that “executive” be struck out which was executed by striking “executive” only where it appeared before “level in the agency”.

EFFECTIVE DATE OF 1984 AMENDMENT

Amendment by Pub. L. 98-615 effective following expiration of 90-day period beginning on Nov. 8, 1984, see section 307 of Pub. L. 98-615, set out as a note under section 3393 of this title.

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

§ 4313. Criteria for performance appraisals

Appraisals of performance in the Senior Executive Service shall be based on both individual and organizational performance, taking into account such factors as—

- (1) improvements in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;
- (2) cost efficiency;
- (3) timeliness of performance;
- (4) other indications of the effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible;
- (5) meeting affirmative action goals, achievement of equal employment opportunity requirements, and compliance with the merit systems principles set forth under section 2301 of this title; and
- (6) protecting whistleblowers, as described in section 4302(b)(2).

(Added Pub. L. 95-454, title IV, §405(a), Oct. 13, 1978, 92 Stat. 1168; amended Pub. L. 103-424, §6, Oct. 29, 1994, 108 Stat. 4364; Pub. L. 115-91, div. A, title X, §1097(d)(2), Dec. 12, 2017, 131 Stat. 1620.)

AMENDMENTS

2017—Par. (6). Pub. L. 115-91 added par. (6).
1994—Par. (5). Pub. L. 103-424 amended par. (5) generally. Prior to amendment, par. (5) read as follows: “meeting affirmative action goals and achievement of equal employment opportunity requirements.”

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

§ 4314. Ratings for performance appraisals

(a) Each performance appraisal system shall provide for annual summary ratings of levels of performance as follows:

- (1) one or more fully successful levels,
- (2) a minimally satisfactory level, and
- (3) an unsatisfactory level.

(b) Each performance appraisal system shall provide that—

- (1) any appraisal and any rating under such system—
 - (A) are made only after review and evaluation by a performance review board established under subsection (c) of this section;
 - (B) are conducted at least annually, subject to the limitation of subsection (c)(3) of this section;

(C) in the case of a career appointee, may not be made within 120 days after the beginning of a new Presidential administration; and

(D) are based on performance during a performance appraisal period the duration of which shall be determined under guidelines established by the Office of Personnel Management, but which may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive’s performance;

(2) any career appointee receiving a rating at any of the fully successful levels under subsection (a)(1) of this section may be given a performance award under section 5384 of this title;

(3) any senior executive receiving an unsatisfactory rating under subsection (a)(3) of this section shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service, but any senior executive who receives 2 unsatisfactory ratings in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(4) any senior executive who twice in any period of 3 consecutive years receives less than fully successful ratings shall be removed from the Senior Executive Service.

(c)(1) Each agency shall establish, in accordance with regulations prescribed by the Office, one or more performance review boards, as appropriate. It is the function of the boards to make recommendations to the appropriate appointing authority of the agency relating to the performance of senior executives in the agency.

(2) The supervising official of the senior executive shall provide to the performance review board, an initial appraisal of the senior executive’s performance. Before making any recommendation with respect to the senior executive, the board shall review any response by the senior executive to the initial appraisal and conduct such further review as the board finds necessary.

(3) Performance appraisals under this subchapter with respect to any senior executive shall be made by the appointing authority only after considering the recommendations by the performance review board with respect to such senior executive under paragraph (1) of this subsection.

(4) Members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. Notice of the appointment of an individual to serve as a member shall be published in the Federal Register.

(5) In the case of an appraisal of a career appointee, more than one-half of the members of the performance review board shall consist of career appointees. The requirement of the preceding sentence shall not apply in any case in which the Office determines that there exists an insufficient number of career appointees available to comply with the requirement.

(Added Pub. L. 95-454, title IV, §405(a), Oct. 13, 1978, 92 Stat. 1169; amended Pub. L. 104-66, title II, §2181(b), Dec. 21, 1995, 109 Stat. 732.)

AMENDMENTS

1995—Subsec. (d). Pub. L. 104-66 struck out subsec. (d) which related to reports to Congress.

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

§ 4315. Regulations

The Office of Personnel Management shall prescribe regulations to carry out the purpose of this subchapter.

(Added Pub. L. 95-454, title IV, § 405(a), Oct. 13, 1978, 92 Stat. 1170.)

EFFECTIVE DATE

Section effective 9 months after Oct. 13, 1978, and congressional review of provisions of sections 401 through 412 of Pub. L. 95-454, see section 415(a)(1), (b), of Pub. L. 95-454, set out as a note under section 3131 of this title.

CHAPTER 45—INCENTIVE AWARDS

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

- Sec.
4501. Definitions.
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4503. Agency awards.
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4505. Awards to former employees.
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4506. Regulations.
4507. Awarding of Ranks¹ in the Senior Executive Service.
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4509. Prohibition of cash award to Executive Schedule officers.

SUBCHAPTER II—AWARDS FOR COST SAVINGS DISCLOSURES

4511. Definition and general provisions.
4512. Agency awards for cost savings disclosures.
4513. Presidential awards for cost savings disclosures.
- [4514. Repealed.]

SUBCHAPTER III—AWARDS TO LAW ENFORCEMENT OFFICERS FOR FOREIGN LANGUAGE CAPABILITIES²

4521. Definition.
4522. General provision.
4523. Award authority.

AMENDMENTS

2001—Pub. L. 107-67, title VI, § 641(c), Nov. 12, 2001, 115 Stat. 555, added item 4507a.

1994—Pub. L. 103-425, § 2(b), Oct. 31, 1994, 108 Stat. 4370, added items 4508 and 4509.

1992—Pub. L. 102-487, § 1(b), Oct. 24, 1992, 106 Stat. 3134, struck out item 4514 “Expiration of authority”.

1990—Pub. L. 101-509, title V, § 529 [title II, § 207(b), title IV, § 408(b)], Nov. 5, 1990, 104 Stat. 1427, 1458, 1468, added item 4505a and heading for subchapter III and items 4521 to 4523.

1988—Pub. L. 100-611, § 1(b), Nov. 5, 1988, 102 Stat. 3179, struck out “; reporting requirement” after “authority” in item 4514.

¹ So in original. Probably should not be capitalized.

² So in original. Does not conform to subchapter heading.

1985—Pub. L. 99-145, title XII, § 1225(b)(1)(B), Nov. 8, 1985, 99 Stat. 730, inserted “; reporting requirement” in item 4514.

1981—Pub. L. 97-35, title XVII, § 1703(b)(3), Aug. 13, 1981, 95 Stat. 756, added heading for subchapter I and subchapter II and items 4511 to 4514.

1978—Pub. L. 95-454, title IV, § 406(b), Oct. 13, 1978, 92 Stat. 1171, added item 4507.

SUBCHAPTER I—AWARDS FOR SUPERIOR ACCOMPLISHMENTS

AMENDMENTS

1981—Pub. L. 97-35, title XVII, § 1703(b)(1), Aug. 13, 1981, 95 Stat. 756, added heading for subchapter I.

§ 4501. Definitions

For the purpose of this subchapter—

(1) “agency” means—

- (A) an Executive agency;
- (B) the Library of Congress;
- (C) the Office of the Architect of the Capitol;
- (D) the Botanic Garden;
- (E) the Government Publishing Office;
- (F) the government of the District of Columbia; and
- (G) the United States Sentencing Commission;

but does not include—

- (i) the Tennessee Valley Authority; or
- (ii) the Central Bank for Cooperatives;

(2) “employee” means—

- (A) an employee as defined by section 2105; and
- (B) an individual employed by the government of the District of Columbia; and

(3) “Government” means the Government of the United States and the government of the District of Columbia.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 442; Pub. L. 95-454, title V, § 503(a), Oct. 13, 1978, 92 Stat. 1183; Pub. L. 97-35, title XVII, § 1703(b)(2), Aug. 13, 1981, 95 Stat. 756; Pub. L. 98-615, title II, § 204(a)(1), Nov. 8, 1984, 98 Stat. 3216; Pub. L. 100-690, title VII, § 7106(a), Nov. 18, 1988, 102 Stat. 4418; Pub. L. 101-474, § 5(f), Oct. 30, 1990, 104 Stat. 1100; Pub. L. 103-89, § 3(b)(1)(C), Sept. 30, 1993, 107 Stat. 981; Pub. L. 113-235, div. H, title I, § 1301(b), Dec. 16, 2014, 128 Stat. 2537.)

HISTORICAL AND REVISION NOTES

<i>Derivation</i>	<i>U.S. Code</i>	<i>Revised Statutes and Statutes at Large</i>
.....	5 U.S.C. 2122.	Sept. 1, 1954, ch. 1208, § 303, 68 Stat. 1113. Aug. 18, 1959, Pub. L. 86-168, § 202(d), 73 Stat. 389.

In paragraph (1), the term “Executive agency” is co-extensive with and substituted for “executive department or independent agency in the executive branch of the Government including a Government-owned or controlled corporation” in view of the definition of “Executive agency” in section 105. Application to the General Accounting Office (included in the term “Executive agency”) is based on former section 933a.

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.

Paragraph (3) is supplied for clarity and convenience.