

fined 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.

#### Editorial Notes

##### 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.

#### Statutory Notes and Related Subsidiaries

##### 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 [now Committee on Oversight and Accountability] 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.

#### Statutory Notes and Related Subsidiaries

##### 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—