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Editorial Notes

AMENDMENTS

1993—Pub. L. 103–89, §3(b)(1)(B)(i), 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

Editorial Notes

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

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

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.

Editorial Notes

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".

Statutory Notes and Related Subsidiaries

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 de-