

Register Federal

TUESDAY, JANUARY 16, 1979

PART X



OFFICE OF PERSONNEL MANAGEMENT

■

CIVIL SERVICE REFORM ACT

Implementation

[6325-01-M]

Title 5—Administrative Personnel

CHAPTER I—OFFICE OF PERSONNEL
MANAGEMENTPROCEDURES FOR ISSUING REGULA-
TIONS TO IMPLEMENT THE CIVIL
SERVICE REFORM ACT OF 1978

Special Transitional Regulation No. 1

AGENCY: Office of Personnel Man-
agement.ACTION: Procedures for issuing inter-
im authorities to implement the Civil
Service Reform Act of 1978, Pub. L.
95-454.SUMMARY: The Civil Service Reform
Act of 1978 makes many significant
changes to the Federal personnel
system. Some provisions of the Act
cannot be fully utilized until OPM
issues additional implementing regula-
tions. Wherever the full public notice
and comment period required for issu-
ing final regulations cannot be com-
pleted before the effective date of a
provision of the Act, proposed OPM
regulations published for public review
and comment will be specifically desig-
nated to serve as interim authorities.EFFECTIVE DATE: January 11, 1979.
FOR FURTHER INFORMATION
CONTACT:Joseph W. Howe, Office of Person-
nel Management, 1900 E Street NW.,
Washington, D.C. 20415, (202) 632-
4628.SUPPLEMENTARY INFORMATION:
Pursuant to section 553(d)(3) of title 5,
U.S.C., the Director finds that good
cause exists for making this amend-
ment effective in less than 30 days, in
order to provide continuity of opera-
tions and to give immediate and
timely effect to the appropriate provi-
sions of the Civil Service Reform Act
of 1978.SPECIAL TRANSITIONAL REGULATION NO.
1—PROCEDURES FOR DESIGNATING
INTERIM AUTHORITIES(a) The Civil Service Reform Act of
1978 will require the Office of Person-
nel Management to issue a significant
number of new or additional regula-
tions. Some provisions of the Act will
become effective before the full public
notice and comment procedures re-
quired for issuance of final OPM regu-
lations can be completed. In these
cases, OPM will designate its proposed
regulations as interim authorities
during the comment and consultation
period and until their issuance in final
form. Interim authorities will be desig-
nated by the following statement
which will appear in the SUPPLE-MENTARY INFORMATION section
at the beginning of the proposed regu-
lation:PURSUANT TO SECTION 553
(d)(3) OF TITLE 5 U.S.C., THE DI-
RECTOR FINDS THAT GOOD
CAUSE EXISTS FOR MAKING
THIS AMENDMENT EFFECTIVE IN
LESS THAN 30 DAYS, IN ORDER
TO PROVIDE CONTINUITY OF OP-
ERATIONS AND TO GIVE IMMEDI-
ATE AND TIMELY EFFECT TO
THE APPROPRIATE PROVISIONS
OF THE CIVIL SERVICE REFORM
ACT OF 1978.(b) No proposed regulation will serve
as an authority before the effective
date of the provision in the Act which
it implements.(c) Proposed regulations designated
as interim authorities will be pub-
lished as Federal Personnel Manual
Bulletins in addition to being pub-
lished in the FEDERAL REGISTER.(d) Each FPM Bulletin will transmit
a copy of the FEDERAL REGISTER notice
and a fact sheet containing the follow-
ing information:(1) Title and citation of the proposed
regulation;(2) A brief description of its topic
and purpose;(3) It's effective date if it is designat-
ed as an interim authority;(4) A statement that the material is
available for review in the agency
office maintaining the Federal Person-
nel Manual; and(5) The name and mailing address of
the OPM official to whom comments
should be submitted.(e) Agencies will identify on the face
of the fact sheet the office where the
proposed regulations are available for
review and post the fact sheet in a
prominent place. These notice proce-
dures satisfy the requirement for post-
ing proposed regulations in Federal
agencies established by 5 U.S.C.
1103(b)(2)(A).(f) OPM will consider all comments
received on its proposed regulations.
Proposed regulations designated as in-
terim authorities are final while they
are in effect, but are subject to change
when the final rulemaking procedures
are completed.

(Pub. L. 95-454.)

OFFICE OF PERSONNEL
MANAGEMENT.JAMES C. SPRY,
Special Assistant
to the Director.

[FR Doc. 79-1255 Filed 1-11-79; 4:45 pm]

[6325-01-M]

PART 210—BASIC CONCEPTS AND
DEFINITIONS

Interim Regulations

AGENCY: Office of Personnel Man-
agement.ACTION: Interim regulations with
comments invited for consideration in
final rulemaking.SUMMARY: New paragraphs (c), (d),
and (e) are added to § 210.101, *Applica-
bility of various parts of regulations*,
to provide coded lists of agencies, ac-
tions, and employees and positions ex-
cluded from one or more parts of the
regulations. These paragraphs would
provide lists of exclusions in one place
to be referred to by the coded number
where applicable in a part or parts.
This change would eliminate repeti-
tion and make it easier to update
when necessary.DATE: Effective Date: January 11,
1979, and until final regulations are
issued. Comment Date: Written com-
ments on both format and content will
be considered if received no later than
March 12, 1979.ADDRESS: Send written comments to
the Office of Personnel Management,
Workforce Effectiveness and Develop-
ment, Room 3A07, 1900 E Street NW.,
Washington, D.C. 20415FOR FURTHER INFORMATION
CONTACT:

Cynthia Field, 202-632-5623.

SUPPLEMENTARY INFORMATION:
Pursuant to section 553(d)(3) of title 5,
U.S.C., the Director finds that good
cause exists for making this amend-
ment effective in less than 30 days, in
order to provide continuity of opera-
tions and to give immediate and
timely effect to the appropriate provi-
sions of the Civil Service Reform Act
of 1978.Accordingly, 5 CFR 210.101 is
amended by adding paragraph (c), (d)
and (e) as set out below:§ 210.101 Applicability of various parts of
regulations.

* * * * *

(c) *Federal agencies.* Identification
codes for Federal agencies for pur-
poses of exclusion from the coverage
of the parts are as follows:001. U.S. Postal Service
002. Postal Rate Commission(d) *Actions.* Identification codes for
actions for purposes of exclusion from
the coverage of the parts are as fol-
lows:100. Action initiated under the au-
thorities in 5 U.S.C. 1206.

101. Action taken under 5 U.S.C. 7521 against an administrative law judge.

102. Action taken under 5 U.S.C. 7532 in the interest of national security.

103. Action taken under provision of statute, other than one codified in 5 U.S.C., which excepts the action from provisions of 5 U.S.C.

104. Removal from the senior Executive Service to a civil service position outside the Senior Executive Service.

105. Reduction-in-force action governed by Part 351.

106. Action under Part 536 resulting from downgrading decision which entitles employee to retained grade for two years.

107. Voluntary action initiated by employee.

108. Adverse action for cause taken under Part 752.

109. Action taken by agency when directed by OPM under part 754.

110. Involuntary retirement because of disability under Part 831.

111. Termination of appointment in accordance with terms specified as a condition of employment at the time the appointment was made.

112. Adverse action by the Office.

113. Reduction of an employee's rate of pay from a rate which is contrary to law or regulation to a rate which is required or permitted by law or regulation.

114. Suspension for 14 days or less of an individual in the Senior Executive Service.

115. Action against reemployed annuitant.

116. Action against a National Guard Technician.

(e) *Employees and positions.* Identification codes for employees and positions for purposes of exclusion from the coverage of the parts are as follows:

200. Employee whose appointment is required by Congress to be confirmed by, or made with the advice and consent of the United States Senate.

201. Presidential appointee.

202. Employee in the excepted service who is not a preference eligible except an employee with competitive status occupying a position in Schedule B of Part 213.

203. Physician, dentist, or nurse in the Department of Medicine and Surgery of the Veterans Administration

employed under chapter 73 of 38 U.S.C. (5 U.S.C. 1302, 3301, 3302; EO 10577, 3 CFR 1954-1958 Comp., p. 218)

OFFICE OF PERSONNEL MANAGEMENT.

JAMES C. SPRY,
*Special Assistant
to the Director.*

[FR Doc. 79-1532 Filed 1-11-79; 4:58 pm]

[6325-01-M]

PART 315—CAREER AND CAREER CONDITIONAL EMPLOYMENT

Probationary Periods for New Managers and Supervisors

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with comments invited for consideration in final rulemaking.

SUMMARY: In accordance with 5 U.S.C. 3321, as amended by Pub. L. 95-454, and Section 2-103 of Executive Order No. 12107, this regulation provides for the establishment of a probationary period for new appointees to supervisory or managerial positions and authorizes return rights for employees who fail to satisfactorily complete the probationary period.

DATES: Effective Date: Upon implementation by individual agencies, but no later than August 11, 1979. Comment Date: Written comments will be considered if received no later than March 12, 1979.

ADDRESS: Send written comments to Office of Personnel Management, Room 6524, 1900 E Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Raleigh M. Neville, 202-632-6817.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provision of the Civil Service Reform Act of 1978.

The definitions of "supervisory position" and "management position" referred to in §315.901 appear in the Federal Personnel Manual which is available in the personnel offices of all Federal agencies and in Federal Depository Libraries.

Accordingly, the headnote of Subpart H of Part 315 of 5 CFR is amended and a new Subpart I is added as follows:

Subpart H—Probation on Initial Appointment to a Competitive Position

* * * * *

Subpart I—Probation on Initial Appointment to a Supervisory or Managerial Position

Sec.

- 315.901 Definitions.
- 315.902 Basic Requirement.
- 315.903 Length of the Probationary Period.
- 315.904 Crediting Service Toward Completion of the Probationary Period.
- 315.905 Failure to Complete the Probationary Period.
- 315.906 Appeal Rights.
- 315.907 Relationship to probationary period for competitive appointment.

315.901 Definitions.

In this subpart:

"Supervisory position" and "Managerial position" have the meaning given then by Chapter 315, subchapter 9, of the Federal Personnel Manual.

§ 315.902 Basic Requirement.

(a) An employee is required to serve a probationary period prescribed by the agency upon initial appointment to a supervisory and/or managerial position.

(b) An employee is required to complete a single probationary period in a supervisory position and a single probationary period in a managerial position, regardless of the number of agencies, occupations, or positions in which the employee serves. However, an agency may by regulation provide for exceptions to the probationary period for managers who have satisfactorily completed a probationary period for supervisors when justified on the basis of performance and experience.

(c) Employees who are serving or have served in supervisory or managerial positions in the Federal Government as of the date this requirement is effective are exempt from its provisions, except that supervisors who are assigned to managerial positions may, according to agency regulations, be required to serve a probationary period for managers.

§ 315.903 Length of the Probationary Period.

The authority to determine the length of the probationary period is delegated to the head of each agency, provided that it be of reasonable fixed duration, appropriate to the position, and uniformly applied. An agency may establish different probationary periods for different occupations or a single one for all agency employees.

§ 315.904 Crediting Service Toward Completion of the Probationary Period.

(a) An employee who is reassigned, transferred, or promoted to another supervisory or managerial position while serving a probationary period under this subpart is subject to the probationary period prescribed for the new position. Service in the former po-

sition counts toward completion of the probationary period in the new position. If the former position was supervisory and the new position managerial, service counts in the manner prescribed by agency regulation.

(b) The conditions under which prior service is otherwise counted toward completion of the probationary period will be published in the Federal Personnel Manual.

§ 315.905 Failure to Complete the Probationary Period.

(a) Satisfactory completion of the prescribed probationary period is a prerequisite to continued service in the position. An employee who does not complete the probationary period is entitled to be returned to a position in the agency of no lower grade and pay than the employee left to accept the supervisory or managerial position.

(b) The agency must notify the employee that he or she is being accorded return rights in accordance with this section and that he or she has a right to appeal an agency action that he or she believes does not conform to the requirements of this section.

(c) Nothing in this subpart prohibits an agency from taking action against an employee for reasons unrelated to supervisory or managerial performance.

§ 315.906 Appeal Rights.

(a) *Return to former position or equivalent.* An employee who is returned under this subpart to a non-supervisory or nonmanagerial position of no lower grade and pay than the one he or she left to accept the supervisory or managerial position, may appeal the agency's decision only for reasons of alleged improper discrimination because of race, color, religion, sex, national origin, partisan political reasons, marital status, physical handicap; or age, provided that at the time of the alleged discriminatory action, the employee was at least 40 years of age. Appeals based on partisan political affiliation and marital status are to be submitted to the Merit Systems Protection Board (MSPB). Appeals based on race, color, religion, national origin, sex, physical handicap, or age are to be submitted to the Equal Employment Opportunity Commission (EEOC).

(b) *Adverse action.* An action against an employee serving a probationary period under this subpart, for reasons other than supervisory or managerial performance, is an adverse action and is appealable to MSPB. If the employee alleges that the adverse action was in any way due to improper discrimination because of race, color, religion, sex, national origin, partisan political reasons, marital status, physical

handicap, or age, provided that at the time of the alleged discriminatory action, the employee was at least 40 years of age, he or she may appeal to MSPB.

§ 315.907 Relationship to probationary period for competitive appointment.

Nothing in this subpart prohibits an agency from taking an action against an individual serving a probationary period under subpart H of this Part. (Pub. L. 95-454 and E.O. 12107.)

OFFICE OF PERSONNEL MANAGEMENT

JAMES C. SPRY,
Special Assistant to the Director.

(FR Doc. 79-1533 Filed 1-11-79; 5:03 pm)

[6325-01-M]

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNAC- CEPTABLE PERFORMANCE

Interim Regulations

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: This new Part 432 has been developed to implement subchapter I of chapter 43 of the Civil Service Reform Act of 1978. It covers reduction in grade and removal based on unacceptable performance.

DATES: Effective Date: January 11, 1979, and until final regulations are issued. Comment Date: Written comments will be considered if received no later than March 12, 1979.

ADDRESS: Send written comments to the Workforce Effectiveness and Development Group, Office of Personnel Management, Room 3A07, 1900 E St., NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Wilma Lehman, (202) 632-5623.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

Accordingly, the Office of Personnel Management is adding interim regulation, Part 432, to 5 CFR as follows:

PART 432—REDUCTION IN GRADE AND REMOVAL BASED ON UNAC- CEPTABLE PERFORMANCE

Subpart A—Principal Statutory Requirements

Sec.
432.101 Principal Statutory Requirements

Subpart B—Regulatory Requirements of the Office of Personnel Management

432.201 Regulatory requirements.
432.202 Coverage.
432.203 Definitions.
432.204 Timing of actions.
432.205 Procedures.
432.206 Interim procedures.
432.207 Appeal and grievance rights.
432.208 Agency records.

AUTHORITY: 5 U.S.C. 4305

Subpart A—Principal Statutory Requirements

§ 432.101 Principal Statutory Requirements.

This subpart sets forth for the benefit of the user the principal statutory requirements governing reductions in grade and removals based on unacceptable performance.

(a) *Opportunity to demonstrate acceptable performance.* 5 U.S.C. 4302(b)(6) requires that, under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

(b) *Actions based on unacceptable performance.* 5 U.S.C. 4303 provides:

"(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 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.

"(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, or

"(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.

(c) *Regulations.* 5 U.S.C. 4305 provides that the Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter.

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 432.201 Regulatory requirements.

This subpart contains the regulations of the Office of Personnel Management which implement the above sections of chapter 43 and are prescribed by the Office under authority of 5 U.S.C. 4305.

§ 432.202 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of an employee based solely on unacceptable performance.

(b) *Employees and agencies covered.* The employee and agency coverage of this part is identical with that of section 430.202 of Part 430.

(c) *Exclusions.* (1) This part does not apply to actions excluded by 5 U.S.C. 4303(f).

(2) This part does not apply to employees and agencies excluded by section 430.202 of Part 430.

(3) This part does not apply to the following actions coded in section 210.101(d) of Part 210: Numbers 100 through 113, 115, and 116.

§ 432.203 Definitions.

(a) *Unacceptable performance* is defined in 5 U.S.C. 4301(3).

(b) *Reduction in grade* means the involuntary assignment of an employee to a position at a lower classification or job grading level.

(c) *Removal* means the involuntary separation of an employee from employment with an agency except when taken as a reduction-in-force action.

§ 432.204 Timing of actions.

(a) *At any time.* An employee may be reduced in grade or removed at any time during the performance appraisal cycle that performance in one or more critical elements of the job becomes unacceptable.

(b) *One-year limitation.* 5 U.S.C. 4303(c) places a time restriction on the use of instances of unacceptable performance by an employee.

(c) *Decision.* 5 U.S.C. 4303(c)(1) specifies the time within which a decision to retain or take action under this part must be made.

§ 432.205 Procedures.

(a) *Statutory requirements.* An employee under this part whose reduction in grade or removal is proposed under this part is entitled to the procedures specified in 5 U.S.C. 4303(b)(1).

(b) *Extension of notice period.* 5 U.S.C. 4303(b)(2) provides that the agency may extend the notice period for a reduction in grade or removal under this part for a period not to exceed 30 days. The agency may further extend the notice period with prior approval of the Office of Personnel Management.

(c) *Representation.* 5 U.S.C. 4303(b)(1)(B) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position; an employee who cannot be released from his or her official duties because of priority needs of the Government; or an employee whose release would give rise to unreasonable costs to the Government. 5

U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

§ 432.206 Interim procedures.

Until the date, but no later than October 1, 1981, that an agency has established its performance appraisal system(s) and communicated to each employee the performance standards and critical elements of the employee's position, an action under this part may only be initiated 30 days after:

(a) the critical elements of the employee's position and

(b) the performance standards for the one or more critical elements for which the employee's performance is unacceptable have been communicated to the employee against whom an action is contemplated.

§ 432.207 Appeal and grievance rights.

(a) *Appeal rights.* 5 U.S.C. 4303(e) provides for an appeal of an action under this part to the Merit Systems Protection Board.

(b) *Grievance rights.* 5 U.S.C. 7121(e)(1) requires an aggrieved employee to elect to appeal under this part or, where applicable, to file a grievance under the negotiated grievance procedure, but not both.

§ 432.208 Agency records.

(a) *When the action is effected.* The agency shall preserve all relevant documentation concerning a reduction in grade or a removal which is based on unacceptable performance and furnish the records to the Merit Systems Protection Board upon its request and make them available for review by the affected employee or his or her representative upon request. As a minimum, the agency's records shall consist of a copy of the notice of proposed action, the answer of the employee when it is in writing, a summary thereof when the employee makes an oral reply, the notice of decision and the reasons therefor, and any supporting material including documentation regarding the opportunity afforded the employee to demonstrate acceptable performance.

(b) *When the action is not effected.* 5 U.S.C. 4303(d) governs agency records when an action under this part is not effected.

OFFICE OF PERSONNEL
MANAGEMENT,
JAMES C. SPRY,
SPECIAL ASSISTANT
to the Director.

[FR Doc. 79-1530 Filed 1-11-79; 5:06 pm]

[6325-01-M]

PART 752—ADVERSE ACTIONS**Interim Regulations**

AGENCY: Office of Personnel Management.

ACTION: Interim regulations with comments invited for consideration in final rulemaking.

SUMMARY: Part 752, Adverse Actions, have been completely reorganized and revised to implement subchapters I and II of chapter 75 of the Civil Service Reform Act of 1978.

DATES: Effective Date: January 11, and until final regulations are issued. Comment Date: Written comments will be considered if received no later than March 12, 1979.

ADDRESS: Send written comments to the Office of Personnel Management, Workforce Effectiveness and Development, Room 3A07, 1900 E. Street, N.W., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Wilma Lehman, (202) 632-5623.

SUPPLEMENTARY INFORMATION: Requirements Governing an Action in Process on January 11, 1979: The requirements for an adverse action in process on January 11, 1979, will be determined by the date on which the employee received the notice of proposed adverse action. If the notice is received by the employee before January 11, 1979, the entire action will be governed by the law and regulation in effect on that date. If the notice is received by the employee on or after January 11, 1979, the requirements of this interim regulation will apply.

Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

Accordingly, the Office of Personnel Management is revising 5 CFR Part 752, as set forth below:

PART 752—ADVERSE ACTIONS**Subpart A—Principal Statutory Requirements for Suspension for 14 Days or Less**

Sec.

752.101 Principal Statutory Requirements.

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

752.201 Coverage.

752.202 Standard for action.

752.203 Procedures.

Subpart C—Principal Statutory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

752.301 Principal Statutory Requirements.

Subpart D—Regulatory Requirements Implementing Subpart C

752.401 Coverage.

752.402 Definitions.

752.403 Standards for action.

752.404 Procedures.

752.405 Appeal and grievance rights.

752.406 Agency records.

AUTHORITY: 5 U.S.C. 7504, 7514.

Subpart A—Principal Statutory Requirements for Suspension for 14 Days or Less

§ 752.101 Principal Statutory Requirements.

This subpart sets forth for the benefit of the user the principal statutory requirements for suspensions for 14 days or less found in subchapter I of chapter 75. (5 U.S.C. 7501-7504)

“CHAPTER 75—ADVERSE ACTIONS**“SUBCHAPTER I—SUSPENSION FOR 14 DAYS OR LESS**

“§ 7501. Definitions

“For the purpose of this subchapter—

“(1) ‘employee’ means an individual in the competitive service who is not serving a probationary or trial period under an initial appointment or who has completed 1 year of current continuous employment in the same or similar positions under other than a temporary appointment limited to 1 year or less; and

“(2) ‘suspension’ means the placing of an employee, for disciplinary reasons, in a temporary status without duties and pay.

“§ 7502. Actions covered

“This subchapter applies to a suspension for 14 days or less, but does not apply to a suspension under section 7521 or 7532 of this title or any action initiated under section 1206 of this title.

“§ 7503. Cause and procedure

“(a) Under regulations prescribed by the Office of Personnel Management, an employee may be suspended for 14 days or less for such cause as will promote the efficiency of the service (including discourteous conduct to the public confirmed by an immediate supervisor’s report of four such instances within any one-year period or any other pattern of discourteous conduct).

“(b) An employee against whom a suspension for 14 days or less is proposed is entitled to—

“(1) an advance written notice stating the specific reasons for the proposed action;

“(2) a reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

“(3) be represented by an attorney or other representative; and

“(4) a written decision and the specific reasons therefor at the earliest practicable date.

“(c) Copies of the notice of proposed action, the answer of the employee if written, a summary thereof if made orally, the notice of decision and reasons therefor, and any order effecting the suspension, together with any supporting material, shall be maintained by the agency and shall be furnished to the Merit Systems Protection Board upon its request and to the employee affected upon the employee’s request.

“§ 7504. Regulations

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

Subpart B—Regulatory Requirements for Suspension for 14 Days or Less

NOTE.—This subpart contains regulations of the Office of Personnel Management prescribed under 5 U.S.C. 7504 of chapter 75 of title 5, United States Code.

§ 752.201 Coverage.

(a) *Actions covered.* This subpart covers suspension for 14 days or less.

(b) *Employees covered.* The following employees are covered by this subpart:

(1) An employee covered by the definition in 5 U.S.C. 7501(1);

(2) An employee with competitive status who occupies a position under Schedule B of Part 213 under a non-temporary appointment.

(c) *Definitions.* In this subpart,

(1) *Day* means calendar day.

(2) *Suspension* has the meaning given in 5 U.S.C. 7501(2).

(d) *Exclusions.* This subpart does not apply to actions excluded by 5 U.S.C. 7502 and the following numbered items in the Master List of Exclusions in subsections 210.101(d), and (e) of Part 210: 103, 114 through 116, and 200 through 203.

§ 752.202 Standard for action.

An agency may take action under this subpart only as set forth in 5 U.S.C. 7503(a).

§ 752.203 Procedures.

(a) *Employee entitlements.* An employee under this subpart whose suspension is proposed under this subpart

is entitled to the procedures provided in 5 U.S.C. 7503(b).

(b) *Time for reply.* The time allowed for an employee's reply shall be sufficient to afford the employee an opportunity to respond to the notice and to supply any material under 5 U.S.C. 7502(b)(2). In no case may it be less than 24 hours.

(c) *Disallowance of representative.* 5 U.S.C. 7503(b)(3) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position; an employee who cannot be released from his or her official duties because of the priority needs of the Government; or an employee whose release would give rise to unreasonable costs to the Government. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(d) *Agency Decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any reply of the employee or his or her representative made to a designated official. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective.

(e) *Agency records.* The agency shall maintain copies of the items specified in 5 U.S.C. 7503(c) and shall furnish them upon request as required by that subsection.

Subpart C—Principal Statutory Requirements for Removal, Suspension for More Than 14 Days, Reduction in Grade or Pay, or Furlough for 30 Days or Less

§ 752.301 Principal Statutory Requirements.

This subpart sets forth for the benefit of the user the statutory requirements of subchapter II of Chapter 75. (5 U.S.C. 7511-7514)

"CHAPTER 75—ADVERSE ACTIONS

"SUBCHAPTER II—REMOVAL, SUSPENSION FOR MORE THAN 14 DAYS, REDUCTION IN GRADE OR PAY, OR FURLOUGH FOR 30 DAYS OR LESS

"§ 7511. Definitions; application

"(a) For the purpose of this subchapter—

"(1) 'employee' means—

"(A) an individual in the competitive service who is not serving a probation-

ary or trial period under an initial appointment or who has completed 1 year of current continuous employment under other than a temporary appointment limited to 1 year or less; and

"(B) a preference eligible in an Executive agency in the excepted service, and a preference eligible in the United States Postal Service or the Postal Rate Commission, who has completed 1 year of current continuous service in the same or similar positions;

"(2) 'suspension' has the meaning as set forth in section 7501(2) of this title;

"(3) 'grade' means a level of classification under a position classification system;

"(4) 'pay' means the rate of basic pay fixed by law or administrative action for the position held by an employee; and

"(5) 'furlough' means the placing of an employee in a temporary status without duties and pay because of lack of work or funds or other nondisciplinary reasons.

"(b) This subchapter does not apply to an employee—

"(1) whose appointment is made by and with the advice and consent of the Senate;

"(2) whose position has been determined to be of a confidential, policy-determining, policy-making or policy-advocating character by—

"(A) the Office of Personnel Management for a position that it has accepted from the competitive service; or

"(B) the President or the head of an agency for a position which is excepted from the competitive service by statute.

"(c) The Office may provide for the application of this subchapter to any position or group of positions excepted from the competitive service by regulation of the Office.

"§ 7512. Actions covered

"This subchapter applies to—

"(1) a removal;

"(2) a suspension for more than 14 days;

"(3) a reduction in grade;

"(4) a reduction in pay; and

"(5) a furlough of 30 days or less;

but does not apply to—

"(A) a suspension or removal under section 7532 of this title,

"(B) a reduction-in-force action under section 3502 of this title,

"(C) the reduction in grade of a supervisor or manager who has not completed the probationary period under section 3321(a)(2) of this title if such reduction is to the grade held immediately before becoming such a supervisor or manager,

"(D) a reduction in grade or removal under section 4303 of this title, or

"(E) an action initiated under section 1206 or 7521 of this title.

"§ 7513. Cause and procedure

"(a) Under regulations prescribed by the Office of Personnel Management, an agency may take an action covered by this subchapter against an employee only for such cause as will promote the efficiency of the service.

"(b) An employee against whom an action is proposed is entitled to—

"(1) at least 30 days' advance written notice, unless there is reasonable cause to believe the employee has committed a crime for which a sentence of imprisonment may be imposed, stating the specific reasons for the proposed action;

"(2) a reasonable time, but not less than 7 days, to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

"(3) be represented by an attorney or other representative; and

"(4) a written decision and the specific reasons therefor at the earliest practicable date.

"(c) An agency may provide, by regulation, for a hearing which may be in lieu of or in addition to the opportunity to answer provided under subsection (b)(2) of this section.

"(d) An employee against whom an action is taken under this section is entitled to appeal to the Merit Systems Protection Board under section 7701 of this title.

"(e) Copies of the notice of proposed action, the answer of the employee when written, a summary thereof when made orally, the notice of decision and reasons therefor, and any order effecting an action covered by this subchapter, together with any supporting material, shall be maintained by the agency and shall be furnished to the Board upon its request and to the employee affected upon the employee's request.

"§ 7514. Regulations

"The Office of Personnel Management may prescribe regulations to carry out the purpose of this subchapter, except as it concerns any matter with respect to which the Merit Systems Protection Board may prescribe regulations."

Subpart D—Regulatory Requirements Implementing Subpart C

NOTE.—This subpart contains the regulations of the Office of Personnel Management prescribed under authority of 5 U.S.C. 7514.

§ 752.401 Coverage.

(a) *Adverse Actions Covered.* This subpart applies to an action set forth in 5 U.S.C. 7512.

(b) *Employees Covered.* The following employees are covered by this subpart:

(1) An employee covered by the definition in 5 U.S.C. 7511(a)(1), including an employee of the Government Printing Office.

(2) An employee with competitive status who occupies a position in Schedule B of Part 213 under a non-temporary appointment.

(c) *Exclusions.* This subpart does not apply to actions, employees, and agencies excluded by: 5 U.S.C. 7511(b); 5 U.S.C. 7512; and the following numbered items in the Master Lists of Exclusions in Subsections 210.101(d) and (e) of Part 210: 103, 106, 107, 109 through 116, and 200 through 203.

§ 752.402 Definitions.

In this subpart,

(a) *Day* means calendar day.

(b) *Suspension* has the meaning given in 5 U.S.C. 7501(2).

(c) *Grade* has the meaning given in 5 U.S.C. 7511(3).

(d) *Pay* has the meaning as given in 5 U.S.C. 7511(4).

(e) *Furlough* has the meaning as given in 5 U.S.C. 7511(5).

§ 752.403 Standard for Action.

An agency may take adverse action under this subpart only as set forth in 5 U.S.C. 7513(a).

§ 752.404 Procedures

(a) *Statutory entitlements.* An employee against whom action is proposed under this subpart is entitled to the procedures provided in 5 U.S.C. 7513(b).

(b) *Right to review material.* An employee against whom action under this subpart is proposed shall be informed of his or her right to review the material on which the proposal was based and which is relied on to support the reasons in the notice of proposal. The agency may not use material which cannot be disclosed to the employee or his or her representative or designated physician under section 294.401 of Part 294 to support the reasons in the notice.

(c) *Official to hear reply.* The agency shall designate an official to hear the employee's answer who has authority either to make or recommend a final decision on the proposed adverse action.

(d) *Exceptions.* (1) 5 U.S.C. 7513(b)(1) authorizes an exception to the 30 days advance written notice when the crime provision is invoked.

(2) The advance written notice and opportunity to answer are not necessary for furlough without pay due to unforeseeable circumstances, such as sudden breakdowns in equipment, acts of God, or emergencies requiring immediate curtailment of activities.

(3) The 30 days advance written notice is not required for a suspension during the notice period of a removal or an indefinite suspension when the circumstances are such that retention of the employee in an active duty status may be injurious to the employee, his or her fellow workers, or the general public; may result in damage to government property; or may be detrimental to the interests of the Government. The agency shall include in the notice of suspension the reasons for not retaining the employee in an active duty status during the notice period. The agency may require the employee to answer the proposed action and furnish affidavits and other documentary evidence in support of the answer within such time as under the circumstances would be reasonable, but not less than 7 days. When the circumstances require immediate action, the agency may place the employee in a nonduty status with pay for such time, not to exceed 10 days, as is necessary to effect the suspension.

(e) *Disallowance of representative.* 5 U.S.C. 7513(b)(3) provides that an employee covered by this part is entitled to be represented by an attorney or other representative. An agency may disallow as an employee's representative an individual whose activities as a representative would cause a conflict of interest or position; an employee who cannot be released from his or her official duties because of the priority needs of the Government; or an employee whose release would give rise to unreasonable costs to the Government. 5 U.S.C. 7114(a)(5) and the terms of any applicable collective bargaining agreement govern representation for employees in an exclusive bargaining unit.

(f) *Agency decision.* In arriving at its written decision, the agency shall consider only the reasons specified in the notice of proposed action and shall consider any reply of the employee or his or her representative made to a designated official. The agency shall deliver the notice of decision to the employee at or before the time the action will be effective.

(g) *Hearing.* Under 5 U.S.C. 7513(c), the agency may in its regulations provide a hearing in place of or in addition to the opportunity for written and oral reply.

§ 752.405 Appeal and Grievance Rights.

(a) *Appeal rights.* Under the provisions of 5 U.S.C. 7513(d), an employee against whom an action is taken under this subpart is entitled to appeal to the Merit Systems Protection Board.

(b) *Grievance rights.* 5 U.S.C. 7121(e)(1) requires an aggrieved employee to elect to appeal under this subpart or, where applicable, to file a

grievance under the negotiated grievance procedure, but not both.

§ 752.406 Agency Records.

The agency shall maintain copies of the items specified in 5 U.S.C. 7513(e) and shall furnish them upon request as required by that subsection.

OFFICE OF PERSONNEL
MANAGEMENT
JAMES C. SPRY,
Special Assistant
to the Director.

[FR Doc. 79-1531 Filed 1-11-79; 4:53 pm]

[6325-01-M]

PART 308—VOLUNTEER SERVICE

Acceptance of Volunteer Service

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with comments invited for consideration in final rulemaking.

SUMMARY: The Office of Personnel Management is issuing interim regulations on Federal agency acceptance of uncompensated volunteer service. This action reflects definitions of section 301 of the Civil Service Reform Act of 1978 (Pub. L. 95-454) and in addition, reminds Federal agencies to observe Federal, State, and local laws and standards on using the services of minors.

DATES: Effective Date: January 11, 1979, and until final regulation is issued. Comment Date: Written comments will be considered if received no later than March 12, 1979.

ADDRESS: Send written comments to James R. Poole, Student Employment Programs, Office of Personnel Management, Room 6508, 1900 E Street NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

James R. Poole, 202-632-5678.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

Section 301 of the Civil Service Reform Act authorizes heads of agencies to accept volunteer services for the United States, subject to regulations issued by the Office of Personnel Management. Specific instructions and guidance for agency use in the development of volunteer service programs will be published by the Office of Per-

sonnel Management in subchapter 7, chapter 308 of the Federal Personnel Manual.

Accordingly, the Office of Personnel Management is adding Part 308 to Title 5 of the Code of Federal Regulations as set forth below:

PART 308—VOLUNTEER SERVICE

Secs.

- 308.101 Definitions.
- 308.102 Eligibility and status.
- 308.103 Authority.

AUTHORITY: 5 U.S.C. 3301, 3302; Pub. L. 95-454, 3 CFR 1979 Comp., p. 113.

§ 308.101 Definitions.

In this part: (a) "Volunteer service" under the Act is limited to services performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experience for the student. Such service is to be uncompensated and will not be used to displace any employee.

(b) "Student" is an individual who is enrolled not less than half-time in a high school, trade school, technical or vocational institute, junior college, college, university or comparable recognized educational institution. An individual who is a student is deemed not to have ceased to be a student during an interim between school years if the interim is not more than 5 months and if such individual shows to the satisfaction of the Office of Personnel Management that the individual has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the interim.

§ 308.102 Eligibility and status.

(a) *Age.* Volunteer service should be in accordance with appropriate Federal, State, and local laws and standards on using the services of minors.

(b) *Status.* A student participating under an agency volunteer program is not considered to be a Federal employee for any purposes other than injury compensation or laws related to the Tort Claims Act. Service is not creditable for leave accrual or any other employee benefits.

§ 308.103 Authority.

Section 301 of the Civil Service Reform Act of 1978, Pub. L. 95-454, authorized Federal departments and agencies to establish programs designed to provide educationally related

work assignments for students in nonpay status.

(5 U.S.C. 3301, 3302; Pub. L. 95-454, 3 CFR 1979 Comp., p. 113.)

OFFICE OF PERSONNEL
MANAGEMENT.

JAMES C. SPRY,
*Special Assistant
to the Director.*

[FR Doc. 79-1564 Filed 1-12-79; 1:16 pm]

[6325-01-M]

**PART 430—PERFORMANCE
APPRAISAL**

Establishment; Interim Regulation

AGENCY: Office of Personnel Management.

ACTION: Interim regulation with comments invited for consideration in final rulemaking.

SUMMARY: This interim regulation implements subchapter I of Chapter 43 of the Civil Service Reform Act of 1978. It covers the establishment of performance appraisal systems.

DATES: Effective Date: January 11, 1979, and until final regulations are issued. Comment Date: Written comments will be considered if received no later than March 12, 1979.

ADDRESS: Send written comments to the Workforce Effectiveness and Development Group, Office of Personnel Management, Room 3A07, 1900 E St., NW., Washington, D.C. 20415.

FOR FURTHER INFORMATION CONTACT:

Mary Sugar, (202) 632-5623.

SUPPLEMENTARY INFORMATION: Pursuant to section 553(d)(3) of title 5, U.S.C., the Director finds that good cause exists for making this amendment effective in less than 30 days, in order to provide continuity of operations and to give immediate and timely effect to the appropriate provisions of the Civil Service Reform Act of 1978.

Accordingly, the Office of Personnel Management is revising Part 430 as set out below:

**PART 430—PERFORMANCE
APPRAISAL**

Subpart A—Statutory Provisions

Sec.

- 430.101 Statutory provisions.

**Subpart B—Regulatory Requirements of the
Office of Personnel Management**

- 430.201 Regulatory requirements.
- 430.202 Coverage.
- 430.203 Definitions.
- 430.204 The performance appraisal process.
- 430.205 Appraisal system documentation.
- 430.206 OPM review of appraisal systems.

**Subpart C—Implementation and Interim
Procedures**

- 430.301 Implementation of this part.
- 430.302 Interim assignment of performance ratings.

AUTHORITY: 5 U.S.C. 4305.

Subpart A—Statutory Provisions

§ 430.101 Statutory provisions.

This subpart sets forth for the benefit of the user the provisions of Subchapter I of Chapter 43 of title 5, United States Code, relating to establishment of performance appraisal systems and appraisals of employees' performance.

(a) *Definitions.* 5 U.S.C. 4301 contains the following definitions:

"For the purpose of this subchapter—

- "(1) 'agency' means—
 - "(A) an Executive agency;
 - "(B) the Administrative Office of the United States Courts; and
 - "(C) the Government Printing Office; but does not include—
 - "(i) a Government corporation;
 - "(ii) the Central Intelligence Agency, the Defense 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 General Accounting 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 Department of Medicine and Surgery, Veterans' Administration 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;
 - "(F) an individual appointed by the President; or
 - "(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; 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.

(b) *Establishment of performance appraisal systems.* 5 U.S.C. 4302 provides:

- "(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, reward-

ing, reassigning, promoting, reducing in grade, retaining, and removing employees;

"(b) 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".

(c) *Responsibilities of the Office of Personnel Management.* 5 U.S.C. 4304 provides:

"(a) The Office of Personnel Management shall take 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 to 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."

(d) *Regulations.* 5 U.S.C. 4305 provides:

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

(b) The item relating to chapter 43 in the chapter analysis for part III of title 5, United States Code, is amended by striking out "Performance Rating" and inserting in lieu thereof "Performance Appraisal".

Subpart B—Regulatory Requirements of the Office of Personnel Management

§ 430.201 Regulatory requirements.

This subpart sets forth regulations of the Office of Personnel Management which supplement subchapter I of chapter 43 and are prescribed by the Office under authority of 5 U.S.C. 4305.

§ 430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) 5 U.S.C. 4301(1) lists agencies covered by this part. (2) 5 U.S.C. 4301(2) lists employees covered by statute by this part.

(b) *Authority of the Office to exclude positions.* The Office may exclude any position or group of positions in the excepted service upon a determination by the Director that an exception is warranted in the interest of good administration. A request for an exception must be submitted in writing by the agency head or a designee and must explain how the application of this part would not be in the interest of good administration.

(c) *Exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301 (1) and (2) and the following numbered items in the Master List of Exclusions in Part 210 of the Office's regulations: 001 and 002.

§ 430.203 Definitions.

In this part—

(a) "Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 title 5, U.S.C. and Subpart B of this part which provides for establishment of performance standards, identification of critical elements, communication of standards and critical elements to employees, establishment of performance appraisal methods and procedures based on previously established standards and critical elements, and appropriate use of appraisal information in making personnel decisions;

(b) "Performance" means an employee's accomplishment of assigned duties and responsibilities;

(c) "Appraisal" means comparison under an appraisal system of an employee's performance of duties and responsibilities with performance standards;

(d) "Performance standards" are the expressed measure of level of achievement, including quantity, quality, and timeliness, established by management for the duties and responsibilities of a position or group of positions;

(e) "Critical element" means any requirement of the job which is sufficiently important that inadequate per-

formance of it outweighs acceptable or better performance in other aspects of the job.

(f) "Appraisal period" means the period of time established by an appraisal system for which an employee's performance will be reviewed in order to appraise that performance for the purposes enumerated in paragraph (c) of this section; and

(g) "Unacceptable performance" is defined in 5 U.S.C. 4301(3).

§ 430.204 The performance appraisal process.

(a) As required by 5 U.S.C. 4302(a), each agency shall establish one or more appraisal systems for appraising the work performance of employees during an appraisal period. Any appraisal of work performance used in a personnel decision is subject to the provisions of this part.

(b) 5 U.S.C. 4302(a) requires that each appraisal system shall provide for establishing performance standards based on the requirements of employees' positions, communicating the expected standards of performance and the critical elements of the position at the beginning of each appraisal period, and appraising employees based on a comparison of performance with the previously established standards. An agency shall encourage participation of employees in establishing performance standards.

(c) Performance standards and critical elements must be consistent with the duties and responsibilities contained in employees' position descriptions.

(d) An appraisal system shall not include any controls, such as a requirement to rate on a bell curve, that prevent fair appraisal of performance in relation to performance standards.

(e) 5 U.S.C. 4302 requires that each appraisal system shall provide for periodic appraisals of performance. Except as provided below, employees shall be appraised on at least an annual basis. A system may provide for longer appraisal periods for employees not covered by merit pay provisions when a longer period is warranted by the duties and responsibilities of a position or group of positions.

(f) Periodic appraisals shall be in writing.

(g) A system shall provide for appraisals of performance of employees detailed to different positions when assignments are of sufficient duration to permit accurate appraisals of performance, and for giving appropriate consideration to this performance in making personnel decisions.

(h) Performance appraisals shall be used:

(1) To provide employees with information on their performance and how it may be improved, and

(2) As a basis for decisions to grant awards and grant or withhold pay increases, i.e., within-grade increases, step increases, quality step increases, and merit pay; to reassign, promote, and train employees; to retain employees in reduction in force; and to reduce in grade or remove employees.

§ 430.205 Appraisal system documentation.

(a) Each appraisal system must include statements of:

- (1) The employees it covers;
- (2) The method or procedure by which performance standards and critical elements are established and employees are appraised;
- (3) The ways in which employees are advised of performance standards and critical elements, are kept informed of their performance, and are notified of their appraisals;
- (4) The supervisory officials, by definition or category, who are responsible for appraising performance and, if applicable, reviewing or approving appraisals;
- (5) The records to be kept and the uses of those records; and
- (6) The manner in which appraisals are used as a basis for personnel decisions, or references to where this information may be found.

(b) An agency must provide appropriate training and information to supervisors and employees on the appraisal process.

(c) An agency must establish methods and procedures to conduct periodic evaluations of the effectiveness of its appraisal system or systems and use the evaluation data to refine, alter, or improve the system(s).

§ 430.206 OPM review of appraisal systems.

(a) As required by 5 U.S.C. 4304(b) agencies must submit proposed systems to the Office of Personnel Management for review as conforming to the requirements of this part. Depending on the approach to performance appraisal chosen by the agency, this may be accomplished by an agency's headquarters in either of two ways. First, it may submit an appraisal system or systems to be used agency-wide. Second it may submit criteria governing systems developed by subordinate organizations. The Office will normally review submissions within 30 days.

(b) The Office will review the operation of appraisal systems and sup-

porting documentation to determine their compliance with the requirements of this part, contributions to organizational productivity, the quality of the appraisal process, evidence of appropriate use of performance information in personnel decisions, and agency utilization of evaluation data to refine or improve appraisal systems. As provided by 5 U.S.C. 4304(b)(3), if the Office determines that an agency system does not meet the requirements of this part, it may direct the agency to implement an appropriate system or to correct operations under the system and the agency shall take any action so required.

Subpart C—Implementation and Interim Procedures

§ 430.301 Implementation of this part.

Each agency covered by Subparts A and B of this part shall submit proposed appraisal systems to the Office for review on or by July 31, 1981. Each agency must implement an approved system or systems and inform all employees covered by this part of the performance standards and critical elements of their positions on or before October 1, 1981.

§ 430.302 Interim assignment of performance ratings.

(a) The requirement for and the system of assigning summary adjective performance ratings which were in effect on January 10, 1979, shall continue in effect until (1) modified by the agency; or (2) the agency implements an appraisal system which conforms to the provisions of this part.

(b) A performance appraisal or a summary adjective rating assigned on or after January 11, 1979, under paragraph (a) of this section are grievable under Part 771, *Agency Grievance System*, of this title unless a modified grievance procedure is established on an interim basis, or grievable under a negotiated grievance procedure covering such complaints.

(c) Interim modifications to performance rating plans in effect on January 10, 1979, shall be approved by the agency head or a designee.

OFFICE OF PERSONNEL
MANAGEMENT.

JAMES C. SPRY,
*Special Assistant
to the Director.*

[FR Doc. 79-1563 Filed 1-12-79; 1:16 pm]



Department	Billing Code	Department	Billing Code
Federal Trade Commission	6750-01	Legal Services Corporation	6820-35
Fine Arts Commission	6330-01	Libraries and Information Science, National Commission	7527-01
Foreign Claims Settlement Commission	6770-01	Library of Congress:	
General Accounting Office	1610-01	Copyright Office	1410-03
General Services Administration:		Copyright Royalty Tribunal	1410-01
Automated Data and Telecommunications Service	6820-25	Management and Budget Office	3110-01
Federal Preparedness Agency, Executive Director	6820-29	Manpower Policy, National Commission	4510-30
Federal Property Resources Service	6820-96	Marine Mammal Commission	6820-31
Federal Supply Service	6820-24	Merit Systems Protection Board	6325-01
General Counsel	6820-38	Metric Board	6820-94
National Archives and Records Service	6820-27	National Aeronautics and Space Administration	7510-01
OAD	6820-34	National Capital Planning Commission	7520-01
Office of Data Systems	6820-37	National Credit Union Administration	7535-01
Office of Finance	6820-39	National Labor Relations Board	7545-01
Office of Personnel	6820-30	National Mediation Board	7550-01
Office of Stockpile Disposal, Federal Preparedness Agency	6820-28	National Science Foundation	7555-01
Public Buildings Service	6820-23	National Security Council	3150-01
Government Printing Office	1505-01	National Transportation Policy Safety Commission	6820-36
Health, Education and Welfare Department:		National Transportation Safety Board	4910-58
Alcohol, Drug Abuse and Mental Health Administration	4110-88	Navajo and Hopi Indian Relocation Commission	4310-HB
Center for Disease Control	4110-86	Neighborhoods, National Commission	7532-01
Center for Disease Control/National Institute for Occupational Safety and Health	4110-87	Nuclear Regulatory Commission	7590-01
Federal Council on Aging	4110-92	Occupational Safety and Health Review Commission	7600-01
Food and Drug Administration	4110-03	Ohio River Basin Commission	3410-01
Health Care Financing Administration	4110-35	Overseas Private Investment Corporation	3210-01
Health Resources Administration	4110-83	Panama Canal Company	3640-01
Health Services Administration	4110-84	Pennsylvania Avenue Development Corporation	7630-01
Human Development Services Office	4110-92	Pension Benefit Guaranty Corporation	7708-01
Institute of Museum Services	4110-24	Personnel Management Office	6325-01
National Institute of Education	4110-39	Postal Rate Commission	7715-01
National Institutes of Health	4110-08	Postal Service	7710-12
Office of Assistant Secretary for Health	4110-85	President's Commission on Pension Policy	6820-29
Office of Education (EA)	4110-89	President's Commission on World Hunger	6820-97
Office of Education (EECS)	4110-02	Railroad Retirement Board	7905-01
Office of the Secretary	4110-12	Railway Association, U.S.	8240-01
Social Security Administration	4110-07	Renegotiation Board	7910-01
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