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5 U.S. Code § 4303 - Actions based on unacceptable performance

U.S. Code Notes Authorities (CFR)

(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.)