

# Proposed Rule Amendments

## 2-3 Ratings

### 2-3.1 Rating System

- (a) **Regulations.** The director shall issue regulations to establish a system of performance and interim ratings for appointing authorities to evaluate and report employee performance and behavior. Probationary ratings are addressed in rule 3-6.
- (b) **Ratings.**
  - (1) **Types.** A rating issued under this rule is a single overall evaluation of the employee's performance and behavior for the relevant rating period:
    - (A) **Performance.** A performance rating rates the employee's overall performance and behavior as high performing, meets expectations, or needs improvement. High-performing and meets-expectations ratings are satisfactory.
    - (B) **Interim.** An interim rating rates the employee's overall performance and behavior as satisfactory or unsatisfactory.
  - (2) **Methods.** Unless the regulations provide otherwise, an appointing authority may use any appropriate rating method approved by the director to evaluate and rate employees. If a method yields overall evaluation categories different from those in subsection (b)(1), the categories must equate to those overall performance categories. An appointing authority may also develop systems to provide ongoing feedback to employees on performance that are not ratings, but may form a basis for ratings under this rule.
  - (3) **Component parts.** If an overall rating is satisfactory, a non-satisfactory evaluation on a subpart of the rating, such as an objective, a competency, or a factor, is not grievable or reviewable in the agency review procedure.
- (c) **Review.** A supervisor or designee shall review each performance or interim rating with the employee. Both shall sign each rating as evidence of the review. The employee's signature does not indicate agreement. An employee may file an explanatory statement with a rating.
- (d) **Use.** A performance or interim rating may be considered in making employment decisions, including appointment, promotion, retention, assignment, and training.
- (e) **Report.** Each appointing authority shall report or certify performance and interim ratings to civil service staff.

### 2-3.2 Performance Ratings

- (a) **General.** An appointing authority shall evaluate each non-probationary employee's performance and issue a performance rating as the rules and regulations require.
  - (1) **Timing.** An appointing authority shall issue a performance rating at least once annually, but may issue performance ratings anytime. An appointing authority need not issue a performance rating for any period covered by an interim rating.
  - (2) **Performance-improvement plan.** If an employee receives a needs-improvement rating, the appointing authority shall establish a performance-improvement plan to monitor the employee's

performance. The plan must establish a date by which the appointing authority will issue another rating evaluating the employee's performance under the plan. If performance has not improved, the appointing authority may issue an interim rating based on performance under the plan.

- (3) **Agency review procedure.** Each appointing authority shall establish a procedure for employees to obtain a review of a needs-improvement rating by the appointing authority or a designee. If a rating is not grievable, the appointing authority's review is also not appealable.

(b) **Compensation plans with fixed steps.**

- (1) **Satisfactory rating.** A satisfactory rating is not discipline and is not grievable or reviewable.

- (2) **Needs-improvement rating.**

- (A) **Complaints.** A needs-improvement rating is not discipline and cannot be grieved, unless it violated rule 1-8 or rule 2-10. An employee may request review of the rating in the agency review procedure.

- (B) **Effects.** An employee who receives a needs-improvement rating is eligible for a step increase, but is ineligible for reclassification until a later satisfactory rating is issued. A reclassification cannot be retroactive to a date before a new satisfactory rating is issued.

(c) **Performance-pay programs.**

- (1) **Salary review.** An appointing authority shall complete a salary review for each employee in a performance-pay program after completing a performance rating. The appointing authority shall use the rating as one factor in determining the employee's eligibility for a base-salary increase or lump-sum award authorized in rule 5-3.4.

- (2) **Satisfactory rating.** A satisfactory rating is not discipline and is not grievable or reviewable.

- (3) **Needs-improvement rating.**

- (A) **Complaints.** A needs-improvement rating is not discipline and cannot be grieved, unless it violated rule 1-8 or rule 2-10. An employee may request review of the rating in the agency review procedure.

- (B) **Effects.** An employee who receives a needs-improvement rating is ineligible for a performance-pay award or reclassification until a later satisfactory rating is issued. Neither can be made retroactive to a date before a new satisfactory rating is issued.

- (4) **Grievances.** Performance-pay awards are discretionary. An employee cannot grieve or appeal a performance-pay action, unless specifically permitted in this rule or regulations.

- (A) **Permitted.** An employee aggrieved by the following performance-pay actions may file a grievance:

- (1) The employee's base salary is reduced.

- (2) The appointing authority does not rate the employee's performance at least once annually.

- (3) The performance-pay action violates rule 1-8 or rule 2-10.

- (B) **Prohibited.** Non-grievable performance-pay actions include:

- (1) The amount of a performance-pay award.
- (2) The failure to receive an award.
- (3) The distribution of an award between base-salary increase and lump-sum award.
- (4) Another employee's performance rating or award.
- (5) The decision to include a position in or exclude a position from a performance-pay program.
- (6) The performance-pay program itself, including performance standards, agency evaluation methods, rating categories, and agency salary-range subdivisions.

### **2-3.3 Interim Ratings**

- (a) **Interim ratings.** An appointing authority may evaluate the performance and behavior of an employee, including a probationary employee, and issue an interim rating anytime.
- (b) **Rating period.** If an appointing authority issues an unsatisfactory interim rating but does not dismiss the employee, the appointing authority shall establish in writing a follow-up rating period. If an employee is suspended, on an unpaid leave of absence, or on extended sick leave, the period is automatically extended by a period equal to the absence. Within 28 days after its end, an appointing authority may extend in writing the period's length to a total of up to 12 months. An extension cannot be grieved.
- (c) **Follow-up interim rating.** The appointing authority shall evaluate the employee's performance and behavior during the follow-up rating period and issue another interim rating. The appointing authority shall issue the rating or extend the rating period by 28 days after the period ends. If the appointing authority fails to timely issue the rating or an extension, the employee may request its issuance in writing to the appointing authority's human resources director. If the appointing authority fails to issue a rating or an extension within 14 days in writing after receiving a valid written request, the employee is returned to satisfactory standing, effective the end of the rating period.
- (d) **Discipline.** Unsatisfactory interim ratings are discipline and may be the basis for additional discipline, up to and including dismissal.
- (e) **Grievances.**
  - (1) **Non-probationary.** A non-probationary employee who receives an unsatisfactory interim rating may grieve the rating.
  - (2) **Probationary.** A probationary employee who receives an unsatisfactory interim rating may grieve the rating only as provided in rule 3-6.4.
- (f) **Effects.** An employee who receives an unsatisfactory interim rating is ineligible for a step increase, performance-pay award, or reclassification until a later satisfactory rating is issued. Any such action cannot be retroactive to a date before a new satisfactory rating is issued. The period under an unsatisfactory rating is not qualifying time for a step increase or reclassification.

## 2-6 Discipline

### 2-6.1 Discipline

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(c) **Forms of discipline.** Permissible discipline includes the following:

(1) An unsatisfactory probationary rating or interim rating.

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## 3-6 Probation and Status

### 3-6.1 Probationary Period

(a) **Employee without status.** A newly appointed employee who lacks status in the classified service when appointed must satisfactorily complete a working test period called a probationary period and receive a satisfactory probationary rating at its end as a condition of continued employment.

(b) **Employee with status.** An employee with status who is appointed to a classification where the employee does not have status must satisfactorily complete a working test period called a probationary period and receive a satisfactory probationary rating at its end as a condition of continued appointment in that position, unless otherwise provided in the regulations.

(c) **SES and SEMAS.** This rule does not apply to appointees to positions in the senior executive service and senior executive management assistant service.

### 3-6.2 Probationary Period Length

(a) **Minimum length.** Unless a probationary appointment is terminated or rescinded, an appointing authority shall evaluate each probationary employee's performance and behavior and issue a probationary rating. The minimum probationary period is 12 months of full-time employment or 18 months of less-than-full-time employment. An appointing authority may, however, issue an interim rating to a probationary employee anytime during a probationary period.

(1) **Full-time.** An appointing authority shall rate a full-time probationary employee after 6 and 12 months of employment. The appointing authority shall also rate a probationary new hire after 3 months.

(2) **Not full-time.** An appointing authority shall rate a probationary employee not working full-time after 9 and 18 months of employment. The appointing authority shall also rate a probationary new hire after 3 months.

(b) **Extension.** If the appointing authority determines that (1) the probationary period has been insufficient to adequately test a probationary employee or (2) a probationary employee's performance and behavior have been unsatisfactory, the appointing authority may extend the probationary period. Any extension beyond a total of six months requires the director's approval. The appointing authority shall give written notice of any extension to the employee. An extension cannot be grieved.

(c) **Automatic extension.** If an employee is suspended, on an unpaid leave of absence, or on extended sick leave, the probationary period is automatically extended by a period equal to the absence.

- (d) **Review.** A supervisor or designee shall review each probationary rating with the employee. Both shall sign each rating as evidence of the review. An employee's signature does not indicate agreement. An employee may file an explanatory statement with a rating.
- (e) **Satisfactory rating.** A satisfactory probationary rating is not discipline and is not grievable or reviewable.
- (f) **Unsatisfactory rating.**
  - (1) **Discipline.** An unsatisfactory probationary rating is discipline and may be the basis for additional discipline, up to and including dismissal.
  - (2) **Grievance.** An employee may grieve a probationary rating only as provided in rule 3-6.4.
  - (3) **Effects.** An employee who receives an unsatisfactory rating is not eligible for a step increase, performance-pay award, or reclassification until a later satisfactory rating is issued. Any such action cannot be retroactive to a date before a new satisfactory rating is issued. The period under an unsatisfactory rating is not qualifying time for a step increase or reclassification.
  - (4) **Record.** The employee's employment record must reflect any unsatisfactory rating.
- (g) **Failure to issue.** An appointing authority shall issue a probationary rating or extend the probationary period by 28 days after a rating period ends. If an appointing authority fails to timely issue a rating or an extension, the employee may request its issuance in writing to the appointing authority's human resources director. If the appointing authority fails to issue a rating or extend the probationary period within 28 days after receiving a valid written request, the employee is deemed to have received a satisfactory rating for the period.

### 3-6.3 Unsatisfactory Service

- (a) **Employee without status.** If an employee without status does not perform satisfactorily during a probationary period, the appointing authority may issue an unsatisfactory rating and dismiss or otherwise discipline the employee anytime.
- (b) **Employee with status.** If an employee with status is appointed to a new classification and does not perform satisfactorily during the probationary period, the appointing authority may, issue an unsatisfactory rating anytime and (1) dismiss or otherwise discipline the employee or (2) rescind the appointment and demote the employee.

### 3-6.4 Grievance of Probationary Rating or Discipline

- (a) **Probationary employee without status.** A probationary employee without status who is dismissed or otherwise disciplined can only grieve within the agency steps of the civil service grievance procedure. The employee cannot appeal the appointing authority's final determination to civil service staff, unless the discipline violated rule 1-8 or rule 2-10.
- (b) **Probationary employee with status.**
  - (1) **Rescission and demotion.** If an appointing authority demotes a probationary employee with status to a classification level not less than that occupied immediately before the probationary appointment, the employee can only grieve the rescission and demotion as provided in rule 8-1. The employee cannot appeal the appointing authority's final determination, unless the discipline violated rule 1-8 or rule 2-10.

- (2) **Other discipline.** A probationary employee with status who is dismissed or disciplined other than as provided in subsection (b)(1) may grieve the discipline. The appointing authority must demonstrate just cause for the discipline in any appeal.

### 3-6.5 Status

An employee who is appraised, qualified, and properly appointed and satisfactorily completes the probationary period for a career appointment has status while continuously employed in the classified service. An employee who attained status and later accepts an appointment to a position at a different classification level continues to have status at the former classification level while continuously employed in the classified service. An employee separated with a break in continuous service loses previous status in all classes upon rehire and is treated as newly appointed. An employee whose appointment is revoked under rule 3-7 cannot earn status at that classification and classification level or credit for qualification purposes during the period before revocation.

## 5-3 Compensation Schedules

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### 5-3.4 Operation of Compensation Schedules

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- (b) **Schedules with steps.** If the compensation plan creates steps in the pay range, an employee receives pay increases in the amounts and at the intervals provided in the compensation schedule for the employee's classification level. An employee under an unsatisfactory probationary or interim rating is ineligible for a step increase.

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- (c) **Performance-pay programs.**

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- (2) **Performance-pay awards.**

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- (B) **Performance ratings.**

- (1) An employee who receives a needs-improvement performance rating or an unsatisfactory interim rating is ineligible for a base-salary increase or lump-sum award.
- (2) The base salary of an employee who receives an unsatisfactory interim rating may be reduced in accordance with the compensation plan.

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## 8-1 Grievances

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### 8-1.3 Types of Grievances

(a) **Types of grievances permitted.** A grievance must allege that the employee is aggrieved by one or more of the following actions of the appointing authority:

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(4) A written reprimand issued without just cause.

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## 8-2 Appeals of Grievance Decisions

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### 8-2.2 Limitation on Grievance Appeals

A grievant is not authorized to file a grievance appeal unless the grievance alleges one or more of the following:

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(c) One of the following types of discipline imposed without just cause:

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(6) Unsatisfactory interim rating, as provided in rule 2-3.3 and rule 3-6.4.

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### 8-2.3 Further Limitations on Grievance Appeals

The following additional limitations apply to a grievance appeal, unless the grievant alleges that a tangible adverse employment action resulted from an appointing authority's action that violated rule 1-8 or rule 2-10:

(a) **Probationary employee without status.** A probationary employee without status cannot appeal the appointing authority's final grievance decision over the following:

(1) A probationary rating or an interim rating.

(2) A decision by the appointing authority to discipline the employee, including dismissal, when issuing an unsatisfactory probationary rating.

(b) **Reprimand.** An employee cannot appeal the appointing authority's final grievance decision over a written reprimand.