

General Counsel

29 December 1950

Personnel Director

Performance Rating Act of 1950

1. Public Law 873, 81st Congress, "Performance Rating Act of 1950", which was enacted 30 September 1950 becomes effective this date. This Act abolishes the present Civil Service efficiency rating system and establishes in lieu thereof a firm requirement on each department to develop for its own use one or more performance rating plans for evaluating the work performance of its officers and employees. By specific stipulation, this Act does not apply to certain Governmental activities such as the Tennessee Valley Authority, the Foreign Service of the United States under the Department of State, and the Atomic Energy Commission. However, the Central Intelligence Agency, since it is not included in the list of expressly exempted activities, must consider itself subject to all provisions of this Act.

2. This legislation has been examined to determine whether the CIA should properly be exempted or should endeavor to comply with the requirements of the Act. Certain salient features of the Act, summarized below, present aspects which appear to be highly prejudicial to this Agency in the successful accomplishment of its mission. It is to be noted that, in the main, these negative factors are incompatible with current Agency policies and practices governing security of information and protection of sources of information as well as operating methods peculiar to this Agency.

a. Requirement: No employee of any department shall be given a performance rating and no such rating shall be used as a basis for any action except under a performance rating plan approved by the U. S. Civil Service Commission.

Comment: Accepting the fact that CIA is covered by the Act, it follows that the Agency is covered in toto. There seems to be no alternative whereby certain departmental workers are subject to the Act and, at the same time, persons engaged in sensitive operations are excluded from particular provisions of the Act. In addition, as will be pointed out below, both the Act and implementing regulations issued by the Commission state that performance standards for positions be established and that they be made available to employees concerned as well as to the Commission in certain instances.

b. Requirement: There shall be established in each department one or more boards of review, the chairman of which shall be designated by the Commission. Further, any employee receiving a performance rating of "unsatisfactory" or "satisfactory" is entitled, as a matter of right, to have his case considered by a board of review.

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Comment: If precedent is followed, it is to be anticipated that the chairman of each statutory board of review, regardless of the Agency concerned, will be an official of the Commission. In such event, appeals from employees operating in covert capacities cannot be reviewed by such a board without jeopardizing the security of the activity.

c. Requirement: In an appeal to a statutory board of review, the appellant or his designated representative shall be afforded an opportunity to submit pertinent information and to hear or examine, and reply to, information submitted by others.

Comment: An appellant is in no way restricted as to his choice in selecting his representative. Since there is no stipulation that such representative must be an employee of the same Agency as employs the appellant, the law must be construed as authorizing the appellant to be represented by any individual of his own preference, such as an attorney or union representative. From a practical standpoint, without regard for the serious hazard to security requirements, it is unlikely that any procedure can be devised to comply with this particular clause in handling appeals from covert employees outside the continental limits of the United States.

d. Requirement: The Commission is authorized to issue such regulations as may be necessary for the administration of the Act and shall inspect the administration of performance rating plans to determine compliance with the requirements of the Act.

Comment: Regulations issued under this authority require that any rating plan proposed by an agency must be set forth in complete detail and include full descriptions of forms, records, and procedures proposed. It is further required that such plans cannot be placed in effect until the Commission's approval has been obtained. Proposals submitted to the Commission must include a rating procedure insuring fair appraisal of performance in relation to job requirements and indicating the manner whereby performance requirements (written or oral) are to be made known to employees. This difficulty is not insurmountable in the case of many departmental and field positions but appears virtually so with regard to positions in covert operations.

e. Requirement: Whenever the Commission, upon inspection, shall determine that a performance rating plan does not meet the requirements of the Act and the regulations issued thereunder, the Commission may revoke its earlier approval of such plan and the department concerned shall thereupon be required to use a performance rating plan prescribed by the Commission.

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Comment: This inspection authority appears irreconcilable with the obligations imposed on the Director of Central Intelligence as well as the authorities granted him by Public Law 110 since the most sensitive operations of this Agency would be disclosed should an inspection system by an outside agency involve anything more than a spot check of selected cases.

3. The purpose of Public Law 873 is to provide a plan whereby an agency can recognize the merits of its employees and their contributions to efficiency and economy in its operations and under which those who deserve recognition may be rewarded. There is, of course, no disagreement with the spirit and intent of the law; but for the reasons outlined above it is strongly recommended that appropriate action be initiated without delay to have CIA exempted from the requirements of the Act. Such action might be accomplished by amendment to PL 873 including CIA on the list of exempted activities or by a ruling that the provisions of PL 110 take precedence insofar as this Agency is concerned.

WILLIAM J. KELLY

CENTRAL INTELLIGENCE AGENCY
 OFFICIAL ROUTING SLIP

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REMARKS: It is also requested that you advise whether or not CIA is on firm legal ground in continuing to grant periodic pay increases using the last efficiency rating under the old system pending some action on attached memo.