



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 351, 430, 451, 534, 537, 630, and 894

[Docket ID: OPM-2025-0011]

RIN 3206-AO88

OFFICE OF MANAGEMENT AND BUDGET

5 CFR Part 1330

RIN 0348-AB92

Managing Senior Professional Performance

AGENCY: Office of Personnel Management and the Office of Management and Budget.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) and the Office of Management and Budget (OMB) are proposing to revise the rules governing the performance appraisal of senior-level (SL) and scientific or professional (ST) employees, collectively referred to as “senior professionals.” This rulemaking would establish a new subpart specifically dedicated to senior professional performance appraisal. The new subpart would align more closely with the SES performance appraisal regulations, eliminate senior professional appraisal programs, remove the prohibition of a forced distribution of performance rating levels, and enhance oversight.

DATES: Comments must be received on or before [INSERT DATE 30 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by RIN number “3206-AO88,” or docket number using the following method:

- *Federal eRulemaking Portal:* <https://www.regulations.gov>. Follow the instructions for submitting comments.

Privacy Act Statement: OPM and OMB propose this rule to elicit public views pursuant to the statutory authorities cited herein. Submission of comments is voluntary. The information will be used to inform sound decision-making. All comments and other submissions received may be

posted on the internet at <https://regulations.gov> as they are received, without change, including any personal information provided. As such, do not include any information you would not like to be made publicly available. The OMB System of Records Notice, OMB Public Input System of Records, OMB/INPUT/01, 88 FR 20913 (available at www.federalregister.gov/documents/2023/04/07/2023-07452/privacy-act-of-1974-system-of-records), includes a list of routine uses associated with the collection of this information. The OPM System of Records Notice, Federal Register Comments, OPM/Internal-29, 90 FR 6030 (available at <https://www.federalregister.gov/documents/2025/01/17/2025-01125/privacy-act-of-1974-system-of-records>), includes a list of routine uses associated with the collection of this information.

All submissions must include the agency name and docket number or RIN for this *Federal Register* document. Please arrange and identify your comments about the regulatory text by subpart and section number. If your comments relate to the supplementary information, please reference the heading and page number in the supplementary section. All comments must be received by the end of the comment period for them to be considered.

As required by 5 U.S.C. 553(b)(4), a summary of this rule may be found in the docket for this rulemaking at www.regulations.gov.

FOR FURTHER INFORMATION CONTACT: Noah Peters, Senior Advisor to the Director, 202-606-8046 or by email at SESpolicy@opm.gov.

SUPPLEMENTARY INFORMATION:

Background

Senior-level (SL) and scientific or professional (ST) employees, collectively referred to as “senior professionals,” are high-ranking experts who serve in positions classified above GS-15 and just below the Senior Executive Service (SES). These positions are filled with renowned scientists, engineers, and technical/program experts and require top talent in specialized fields

critical to Federal operations. SL employees generally provide subject matter expertise to support agency leaders in driving successful organizational programs, while ST employees carry out research and development functions in the physical, biological, medical, or engineering sciences, or a closely related field.

The past several decades of legislation, regulation, and policy have seen increased alignment between senior professional and SES compensation. The Federal Employees Pay Comparability Act of 1990¹ (FEPCA) established a pay system for certain senior-level positions to replace grades 16, 17, and 18 of the General Schedule (GS), which were abolished. Under FEPCA, positions allocated by the Director of OPM under 5 U.S.C. 3104 and 5108 were placed in the new pay system under 5 U.S.C. 5376. FEPCA authorized OPM to establish pay rules for these positions with a rate range from 120 percent of the rate payable for GS-15 step 1 to the rate payable for level IV of the Executive Schedule (EX-IV), supplemented by locality pay subject to a cap of EX-III.

The Senior Professional Performance Act of 2008, Pub. L. 110-372 (October 8, 2008) introduced significant changes to the SL/ST pay system. The legislative history stated the principal purpose of the underlying bill was to bring the pay system for SL and ST personnel into line with that for SES members by eliminating locality pay and authorizing an agency to use a level III or level II pay ceiling, depending upon whether the agency appraisal system is certified. S. Rep. No. 110-328, 110th Cong., 2nd Sess. (April 22, 2008). This made the senior professional rate range equivalent to the SES rate range. Additionally, agencies were authorized to establish pay-for-performance systems for their senior professionals, meaning that pay increases would be based on individual performance, rather than tenure or automatic progression through a step-based system. In 2014 OPM issued senior professional pay regulations to implement the provisions of the 2008 Senior Professional Performance Act. *See* 5 CFR part 534, subpart E.

¹ Enacted as Section 529 of the Treasury, Postal Service and General Government Appropriations Act, 1991 (Pub. L. 101-509, 104 Stat. 1427).

These regulations primarily established the framework for performance-based pay for senior professionals, which is similar to the framework that applies to the SES, requiring that pay determinations be based on individual performance, contributions to the agency's performance, or both, as determined through administration of the agency's performance management system.

In addition to having the same applicable pay range as the SES, there are several other important senior professional provisions under current law and regulation that mirror the SES, including the aggregate compensation limit, leave accrual rate, leave carryover limit, the requirement for OPM to approve position allocations, and performance appraisal system certification requirements. These provisions reflect the similarity between senior professional and SES positions in terms of their scope and complexity. However, the parity between senior professionals and the SES has not been accompanied by changes to the regulations governing senior professional performance appraisal. Instead, senior professionals have remained subject to the same general performance appraisal regulations that apply to most federal employees, including rank-and-file GS and prevailing rate employees. As the senior-most technical advisors on issues that have wide-scale impact and application, senior professionals should be subject to performance appraisal rules commensurate with their important roles and high level of compensation.

Senior Professional Performance Management

Currently, subpart B of 5 CFR part 430 provides the requirements for managing the performance of non-SES federal employees, including senior professionals. These regulations have not been updated since the mid-1990s and were designed to meet the needs of a broad population of federal employees such as prevailing rate employees, seasonal employees, and employees across all grades and steps of the General Schedule. Over time, these regulations have become increasingly incompatible with OPM's efforts to develop a dedicated modern senior professional performance appraisal system. Some of the current regulatory requirements

present unnecessary administrative burdens, while others present barriers to implementing needed performance appraisal reform.

Appraisal Systems and Programs

Agencies must establish one or more appraisal systems, and OPM must review and approve an agency's systems. 5 U.S.C. 4304(b)(1). When developing the non-SES performance appraisal regulations at part 430, subpart B, in 1995, OPM adopted recommendations by the National Performance Review for flexible, decentralized performance management. OPM decentralized performance management and increased agency flexibility, in part through definitions. OPM defined an "appraisal system" as the agency's framework of policies and parameters (i.e., guidelines, boundaries, limits) for the administration of performance appraisal programs, and OPM defined "appraisal program" as the specific procedures and requirements established under the policies and parameters of an agency appraisal system. By creating these separate terms, OPM was able to limit its approval role to just the content of an agency appraisal system, as required by law, and leave agencies free to establish and adapt one or more appraisal programs of specific procedures and requirements, which OPM would not review. This move towards agency flexibility and decentralization was a stark contrast to the highly detailed regulatory requirements of the mid-1980s—a time when there was a strong policy interest in achieving Governmentwide uniformity. Aside from a few minor changes in the late 1990s, the part 430, subpart B, appraisal regulations have remained in place and unchanged, failing to keep pace with a growing and evolving federal workforce. While allowing agencies to create their own appraisal programs under an OPM-approved performance appraisal system is a flexibility that has worked well for most positions, for high-level positions where accountability and alignment with organizational and Administration priorities is critical, such as SES and senior professional positions, increased uniformity of appraisal practices and standards that apply Governmentwide is desirable. For example, SES have dedicated performance appraisal

regulations at 5 CFR part 430, subpart C, that apply to all SES members and do not require the establishment of separate SES appraisal programs.

In 2016, OPM issued a model SL/ST performance appraisal system and program referred to as the “Basic SL/ST System/Program.”² The Basic SL/ST System/Program was designed to comply with requirements for performance appraisal system approval and certification requirements and to provide a uniform framework to communicate expectations and evaluate the performance of senior professionals. OPM’s intention was to bring consistency to the Basic SL/ST System/Program similar to what was provided for senior executives when OPM issued the Basic SES Performance Appraisal System in 2012.³ However, the development of the Basic SL/ST System/Program was constrained by an underlying regulatory framework that was not created with senior professionals in mind, and therefore certain ill-fitting requirements, procedures, and definitions had to remain in the Basic SL/ST System/Program simply to comply with antiquated appraisal regulations.

Recognizing that reforms to federal performance management are long overdue, on January 20, 2025, President Trump issued the Presidential Memorandum titled “Restoring Accountability for Career Senior Executives” (90 FR 8481, January 30, 2025) to “reinvigorate the SES system and prioritize accountability.” Specifically, he sought to “ensure[] that SES officials are properly accountable to the President and the American people.” President Trump directed OPM, in coordination with the Office of Management and Budget (OMB), to “issue SES Performance Plans that agencies must adopt.” In accordance with that direction, on February 25, 2025, OPM issued a revised SES performance appraisal system and plan.⁴

² OPM, “*Senior-Level and Scientific and Professional Performance Appraisal System/Program and Streamlined Certification Process*” (August 9, 2016) available at <https://www.opm.gov/chcoc/historical-memos/senior-level-and-scientific-and-professional-performance-appraisal-systemprogram-and-streamlined-certification-process-8-9-16-memo/>.

³ OPM, *Senior Executive Service Performance Appraisal System* available (January 4, 2012) available at https://www.opm.gov/chcoc/transmittals/2012/senior-executive-service-performance-appraisal-system_508.pdf.

⁴ OPM, “*New Senior Executive Service Performance Appraisal System and Performance Plan, and Guidance on Next Steps for Agencies to Implement Restoring Accountability for Career Senior Executives*” (February 25, 2025), available at <https://www.opm.gov/policy-data-oversight/latest-memos/new-senior-executive-service-performance-appraisal-system-and-performance-plan-and-guidance-on-next-steps-for-agencies-to-implement-restoring-accountability-for-career-senior-executives.pdf>.

Given that senior professionals also occupy important roles that demand accountability to the President and the American people, on April 3, 2025, in a continued effort to maintain established parity with the SES, OPM issued a new senior professional performance appraisal system and plan⁵ to be used by all senior professionals beginning October 1, 2025. Like the new SES system, the new senior professional performance appraisal system requires all senior professionals to be appraised on the same standardized critical elements, be rated on the same fiscal-year cycle, and utilize the same rating levels that are used for SES appraisal.

While the issuance of the new senior professional performance appraisal system represents a good first step to deliver meaningful reforms that will enhance accountability and ensure senior professionals' performance is of the highest quality, OPM has concluded that regulatory change is needed. OPM proposes to remove senior professionals from their current performance appraisal regulation coverage and establish a new subpart in part 430 specifically dedicated to senior professional performance appraisal. The new subpart would codify practices established in the new senior professional performance appraisal system and plan, eliminate unnecessary requirements currently imposed on senior professional performance appraisal, and more closely mirror the structure and provisions of the SES performance appraisal regulations.

Standardized Distribution of Performance Ratings

Currently, an agency may not require a particular distribution of summary levels for any employee covered by subpart B of part 430, Code of Federal Regulations, meaning that each senior professional can potentially receive any rating irrespective of how other senior professionals perform within the agency. In a 1979 rulemaking - the first rulemaking implementing Chapter 43 of the CSRA - OPM adopted a provision stating: "An appraisal system shall not permit any preestablished distributions of expected levels of performance (such as a requirement to rate on a bell curve) that interfere with appraisal of actual performance against

⁵ OPM, "New Senior Professional Performance Appraisal System and Plan" (April 3, 2025) available at <https://www.opm.gov/chcoc/latest-memos/new-senior-professional-performance-appraisal-system-and-plan.pdf>.

standards.” 44 FR 45587, 45590 (August 3, 1979). As is common in rulemakings from that time, there is virtually no accompanying preamble explaining the rationale for the provision. In a 1995 rulemaking, OPM proposed to eliminate the prohibition on forced distributions. 60 FR 5542 (January 27, 1995). OPM did not adopt that proposal in the final rule. 60 FR 43936 (August 23, 1995). In response to commenters, OPM said it was persuaded by the arguments that “forced distributions were incompatible with effective performance management,” but there are no further details provided. *Id.* at 43941.

OPM proposes to remove this categorical prohibition on forced, or standardized, distribution for senior professionals and provide that OPM may establish a standardized distribution of some or all rating levels for agencies to apply with respect to their senior professional cohorts.⁶ This would further increase parity with SES performance appraisal regulations since, in the final rule, Assuring Responsive and Accountable Federal Executive Management, published on September 15, 2025 (90 FR 44299), OPM eliminated the prohibition of a forced distribution within the SES.

For this rulemaking, “standardized distribution” refers to a method of evaluating employees in which the rating official first assesses each employee based on certain pre-determined parameters and thereafter must develop for each employee a rating based on a pre-determined number or percentage of ratings allowable. This new approach would apply to senior professionals covered under a performance appraisal system subject to the proposed subpart, except that senior professionals appointed under Schedules C and G in the excepted service may be excluded from such standardized distribution requirements, as determined by OPM. This

⁶ OPM uses the term “standardized distribution” interchangeably with the term “forced distribution.” OPM believes the term “standardized distribution” better describes its intent than “forced distribution,” which has appeared in other recent OPM issuances. That is, OPM proposes to authorize consistent, normalized standards for the distribution of some or all rating levels across the agency’s senior professional cohort. Among other things, OPM believes that this will ensure that senior professionals can be compared across government, without regard to the particular practices of performance ratings within specific agencies or the particular practices of specific managers. It will also help agencies to better identify, and reward, truly outstanding performers than under the current system, under which nearly 90% of senior professionals receive the highest two performance ratings, and will also help agencies identify and address poor performance, as very few senior professionals receive the lowest performance ratings. OPM also proposes to revise the terminology it used in 5 CFR 430.305 from “forced distribution” to “standardized distribution” to ensure consistent terms are used to describe the same concept.

exclusion would provide flexibility for standardized distribution requirements to be established, consistent with OPM guidance, in a manner that best supports rigor and senior professional accountability. In advance of rulemaking, OPM’s new senior professional performance appraisal system and plan incorporated the implementation of a standardized distribution of Level 4 and 5 ratings contingent upon this proposed rule being made final. Standardized distribution, also sometimes referred to as “stack ranking,” can be executed by assigning individual ranks to employees or by categorizing them into groups, such as top performers, average performers, and low performers. The practice has a well-documented history of private sector adoption over the last several decades. Wijayanti, A., Sholihin, M., Nahartyo, E. et al. (2024) conducted a review of the standardized distribution literature.⁷ A total of 41 research articles published from 1960 to 2022 were included in their review. These studies highlight many notable benefits of utilizing standardized distributions as well as areas for caution. For example, several studies indicated that standardized distributions can increase rating accuracy by eliminating leniency bias, which is the tendency for raters to provide lenient ratings to avoid conflicts that arise from granting unfavorable ratings. Findings also show that standardized distribution can quickly enhance organizational performance and promote the success of merit-based reward systems. Some studies also found that standardized distribution can have negative consequences such as discrimination, perceptions of unfairness, and reduced organizational citizenship behavior and knowledge sharing. Nonetheless, the authors concluded that, when implemented carefully, standardized distribution has been shown to increase employee satisfaction and reduce turnover.

Indeed, while not the norm, a standardized distribution has been used by many major private sector companies in senior level performance plans over the past few decades, including Oracle, Meta, Amazon, Microsoft, Uber, and Google.⁸ One recent source estimates that 30% of

⁷ Wijayanti, A., Sholihin, M., Nahartyo, E., & Supriyadi, S., *What do we know about the forced distribution system: A systematic literature review and opportunities for future research*, Management Quarterly Review (2024).

⁸ See, e.g., “Should a company rate its staff? A former Amazon exec says ‘stack ranking’ is useful when done right,” CNBC, December 5, 2023, available at <https://www.cnbc.com/2023/12/05/stack-ranking-ex-amazon-exec-explains-the-performance-review-system.html>.

Fortune 500 companies use a standardized distribution of some sort in their performance evaluations.⁹ Even more pertinent, standardized distributions have been used to evaluate the performance of civil service employees in many other countries, most notably Germany, Portugal, Italy, Latvia, Indonesia, and the United Kingdom.¹⁰ After moving away from a standardized distribution in 2019, the United Kingdom civil service returned to a system with an “expected distribution” of performance ratings in 2025.¹¹

There is even more reason to implement a standardized distribution in the Federal Government than in the private sector. Private sector companies typically do not operate under a statutory mandate requiring that they have performance appraisal systems that “permit the accurate evaluation of performance.” *See* 5 U.S.C. 4302(c)(1). In addition, the Federal Government is entrusted with many critical responsibilities from veterans’ health care to law enforcement to disaster relief to fighting pandemics.¹² When senior professionals in the Federal Government fail to perform at a high level, these crucial missions are not sufficiently supported. Further, unlike the private sector, the Federal Government lacks a profit motive to ensure meaningful evaluations of its employees.

Recent governmentwide ratings data have shown that virtually all senior professionals receive the highest rating levels (i.e., Levels 4 and 5). Governmentwide senior professional performance rating data for fiscal years 2023 and 2024¹³ show that approximately 90 percent of senior professionals received an “Outstanding” (Level 5) or “Exceeds Fully Successful” (Level

⁹ “*Stack Ranking — All You Need to Know*,” *Medium* (April 3, 2020) available at <https://medium.com/@corvisio/stack-ranking-all-you-need-to-know-a5339c27ad83>.

¹⁰ “*Performance Appraisal in the EU Member States and the European Commission*,” ÚRAD VLÁDY SLOVENSKEJ REPUBLIKY (2017) available at https://www.eupan.eu/wp-content/uploads/2019/02/2016_2_SK_Performance_Appraisal_in_the_EU_Member_States_and_the_European_Commission.pdf.

¹¹ “*SCS performance management system to include new ‘minimum standards’ in 2025*,” *Civil Service World* (December 12, 2024) available at <https://www.civilserviceworld.com/professions/article/senior-civil-service-performance-management-minimum-standards-expected-distribution-2025>. *See also* GOV.UK Civil Service Guidance, “*Performance management framework for the Senior Civil Service (2025 to 2026 performance year)*” (February 6, 2025), available at <https://www.gov.uk/government/publications/senior-civil-service-performance-management/performance-management-framework-for-the-senior-civil-service-2025-to-2026-performance-year>.

¹² *See, e.g.*, Titles 38, 34, and 42 of the United States Code.

¹³ SL and ST Governmentwide ratings data for fiscal years 2023 and 2024 obtained from OPM’s Enterprise Human Resources Integration-Statistical Data Mart.

4) rating and less than a half of one percent of senior professionals were rated below “Fully Successful” (Level 3). These results suggest that senior professional ratings are inflated, and poor-performing employees are likely not being identified or held accountable through a rigorous appraisal process. In 2019, OPM issued a memorandum¹⁴ to agencies on how to increase rigor in performance management through well-developed performance standards that make clear distinctions among what is required to achieve performance at the various performance levels. However, the 2024 Federal Employee Viewpoint Survey (FEVS) results showed that only 47% of federal employees agreed with the statement, “In my work unit, differences in performance are recognized in a meaningful way.” This was the lowest positive response rate for any question and has consistently been the lowest over the past three years.¹⁵

Removing the prohibition on forced distribution would allow OPM to establish and enforce limits on the highest senior professional rating levels, thereby increasing rigor in the senior professional appraisal process and leading to a more normalized distribution of senior professional ratings across the Federal Government. The ability to limit the highest rating levels for senior professionals is increasingly vital given not only the inflated performance ratings but also the rise in the number of senior professional positions. In September of 2008, OPM had authorized a total of 659 SL position allocations and 345 ST position allocations governmentwide. However, by September of 2024, those numbers rose to 1,703 SL position allocations and 768 ST position allocations governmentwide.¹⁶ Because the number of senior professional positions has increased so dramatically, the consequences of inadequate performance appraisal regulations are only exacerbated. Although the 1995 amendments to the part 430, subpart B, regulations were intended to curb rating inflation and alleviate overall dissatisfaction with the one-size-fits-all approach to appraisal of the mid-1980s, the recent

¹⁴ OPM, “*Applying Rigor in the Performance Management Process and Leveraging Awards Programs for a High-Performing Workforce*,” (July 12, 2019) available at https://www.opm.gov/chcoc/transmittals/2019/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing_508_0.pdf.

¹⁵ FEVS Results for 2022 to 2024, available at <https://www.opm.gov/fevs/reports/governmentwide-reports/>.

¹⁶ OPM’s Executive and Schedule C System (ESCS), Summary Allocation and Filled Report with Executive Levels (September 30, 2008, and September 30, 2024).

governmentwide data suggest the problem of rating inflation remains. In sum, it is particularly important that the executive branch have the option to implement a standardized distribution of at least some ratings given the systemic and pervasive use of Level 4 and 5 ratings and the increased number of senior professional positions.

Feedback and Oversight

Good performance management requires ongoing feedback in which an employee is not only kept informed about how he or she is doing but is also given guidance and assistance to do even better in the future.¹⁷ This starts with developing clear performance expectations and rigorous performance standards against which performance is assessed and then continues through frequent communications between the rating official and employee. The proposed rule would require that progress reviews be conducted for senior professionals quarterly as opposed to one or more times per appraisal period. This will provide more opportunities for rating officials to clarify expectations for the senior professional, evaluate how their performance compares to their performance requirements, and take action based on unacceptable performance.

To provide oversight over senior professional ratings similar to the oversight provided for SES members' ratings, OPM proposes not to include the requirement for mandatory review of Level 1 ratings found at 5 CFR 430.208(e) in the proposed rule and instead establish a formal higher-level review process similar to the process provided to SES members. For senior professionals, current regulations require mandatory review of Level 1 ("Unacceptable") ratings of record only. However, the proposed rule requires that all senior professionals be provided an opportunity for higher-level review of their initial summary rating by an employee at a higher level in the agency.

¹⁷ U.S. Merit Systems Protection Board, Office of Policy and Evaluation, *Performance Management is More than an Appraisal*, (Washington, D.C.: December 2015), *available at* https://www.mspb.gov/studies/publications/Performance_Management_is_More_than_an_Appraisal.pdf.

Existing senior professional pay regulations provide for oversight by requiring agencies with ten or more senior professionals to conduct a centralized review of proposed ratings and pay actions by a panel designated by the agency head. *See* 5 CFR 534.505(a)(5). This single panel provides advice from an agency-wide perspective for authorized agency officials to consider before approving pay adjustments. The panel advises on whether ratings of record proposed for senior professionals accurately reflect their individual performance, contributions to agency performance, or both, and take into account, as appropriate, assessment of the agency's performance against program performance measures and other relevant considerations, and whether proposed pay adjustments for senior professionals conform to regulatory requirements and appropriately correspond to proposed ratings of record. OPM proposes to retain the requirement of centralized review, but under the proposed regulations the agency-level Performance Review Board (PRB), required by § 430.311, will be responsible for conducting the centralized review. Agencies not subject to the SES and thus have no PRB but do employ ten or more senior professionals would be required to establish a body equivalent to the PRB, which would be responsible for satisfying the requirements of centralized review in accordance with 5 CFR part 534, subpart E.

Section-by-Section Summary of the Proposed Subpart

OPM has reviewed the non-SES and SES performance appraisal regulations and is issuing this proposed rule pursuant to its regulatory authority in 5 U.S.C. 4302(c). OPM proposes to amend 5 CFR part 430 by adding a new subpart dedicated to senior professional performance appraisal. The new subpart generally would mirror the provisions and structure of the SES appraisal regulations at 5 CFR part 430, subpart C, but certain elements of the non-SES appraisal regulations at 5 CFR part 430, subpart B, would be retained due to the different statutory authorities and requirements that apply to the SES and senior professionals. The following summarizes key provisions of each section of the proposed subpart:

Section 430.501 General.

The applicable authority remains chapter 43 of title 5, United States Code, which provides for the establishment of agency performance appraisal systems and requires OPM to prescribe regulations governing such systems.

§ 430.502 Coverage.

The proposed subpart would apply only to senior professionals paid under 5 U.S.C. 5376, which includes all SL positions that are classified above GS-15 pursuant to 5 U.S.C. 5108 and all ST positions established under 5 U.S.C. 3104.

Section 430.503 Definitions.

The proposed definition of “agency” reflects that, under 5 U.S.C. 5108, OPM determines the maximum number of SL positions that may be established in an Executive agency and, under 5 U.S.C. 3104, OPM determines the maximum number of ST positions in any agency, except for the Library of Congress, which also may establish eight ST positions under 5 U.S.C. 3104. The proposed definition of “senior professional” would be the same as that term is defined at 5 CFR 430.402.

This section would retain certain defined terms from the current non-SES performance appraisal regulations at 5 CFR part 430, subpart B, and adopt certain defined terms from the SES performance appraisal regulations at 5 CFR part 430, subpart C.

The terms “performance rating” and “rating of record” would be retained from the current non-SES regulations due to those terms being widely used in other statutes and regulations that remain applicable to senior professionals such as reduction in force regulations. Certain other defined terms would not be carried over from the non-SES regulations including “additional performance element,” “appraisal program,” and “non-critical element” because, in the proposed subpart, agencies would no longer be required to develop appraisal programs and all elements in a senior professional’s performance plan would be critical elements.

Defined terms that would be adopted from the SES appraisal regulations include “initial summary rating,” “oversight official,” “performance requirement,” “PRB,” and “strategic

planning initiatives.” Also, instead of utilizing the term “appointing authority” from the SES appraisal regulations, the term “approving official” would be used and mean the agency designated official who assigns the rating of record because the term “appointing authority” is used in the SES appraisal regulations to refer to the department or agency head, or other official with authority to make appointments in the SES.

The term “rating official” is a new term that would be defined in the proposed subpart and mean the official, generally the supervisor of the senior professional, who develops the initial summary rating and forwards it to the PRB as the recommended rating of record.

Section 430.504 Senior professional performance appraisal systems.

This section would require agencies to establish performance appraisal systems specifically covering senior professionals and would eliminate the requirement to develop appraisal programs for those systems. Under this rulemaking, agencies would instead establish senior professional performance appraisal systems that contain all the policies, parameters, procedures, and requirements necessary for OPM approval and be consistent with the criteria for performance appraisal system certification. Since senior professionals are afforded access to a higher maximum rate of pay and a higher aggregate pay limit if covered by a certified performance appraisal system, agencies are consistently motivated to obtain and maintain a certified performance appraisal system. However, because senior professionals are currently covered under the non-SES performance appraisal regulations, they have been required to develop both a performance appraisal system and an appraisal program. OPM is authorized by law to certify only performance appraisal systems, not appraisal programs. *See* 5 U.S.C. 5307(d). This led to cumbersome OPM guidance on implementing the Basic Senior Professional System/Program.¹⁸ However, consistent with OPM’s new senior professional performance appraisal system and plan,¹⁹ the proposed subpart would streamline senior professional

¹⁸ *See, supra*, footnote 2.

¹⁹ *See, supra*, footnote 5.

performance appraisal system development by eliminating senior professional appraisal programs and thus create better alignment between 5 U.S.C. 5307(d) and OPM's practice of certifying senior professional performance appraisal systems.

This section would also require that agencies develop and administer one or more performance appraisal systems for its senior professionals in accordance with the system standards as described in this subpart, which mirror the system standards that apply to SES appraisal systems. This section would also increase the frequency of progress reviews from at least once during the appraisal period to quarterly.

Under this section, the minimum period of performance established for senior professionals would be 90 days, consistent with the minimum period under SES appraisal regulations. However, unlike the SES performance appraisal regulations, there would be no provision for ending a senior professional's appraisal period early after the minimum period is completed; instead, appraisals at times other than the end of the appraisal period are addressed in § 430.510. The SES was designed with mobility in mind and ending an appraisal period early for an SES member can support SES mobility and promote effectiveness by enabling the agency to provide an annual summary rating at a time other than the end of the established rating cycle. Senior professional positions do not have the same expectation for mobility or rotational assignments. Therefore, providing a similar regulatory flexibility to end an appraisal period early for senior professionals is not necessary.

Section 430.505 System standards for senior professional performance appraisal systems.

Under this section, an agency would be required to develop and implement a performance appraisal system for its senior professionals in accordance with the system standards specified in this section and applicable OPM guidance. Senior professionals provide subject matter expertise and strategic advice that directly supports SES members and other key leaders in carrying out important agency functions. It follows that senior professionals should be held to similarly high-performance standards as the SES. Therefore, these standards mirror those in the SES

performance appraisal regulations but, because senior professionals are neither executives nor supervisors, do not require critical elements to be based on OPM-validated executive competencies. Senior professionals would be evaluated using five summary performance levels, consistent with the SES.

This section would also eliminate the prohibition on the use of a forced distribution of ratings for senior professionals and would allow OPM to require and enforce a pre-established agencywide and governmentwide distribution of performance ratings for senior professionals. Additionally, OPM would be authorized to exclude senior professionals appointed under Schedules C and G in the excepted service from such standardized distribution requirements. This would provide flexibility for standardized distribution requirements to be established, consistent with OPM guidance, in a manner that best supports rigor and accountability in senior professional performance appraisal. As discussed in the Background, recent governmentwide senior professional ratings data show that the vast majority of ratings for senior professionals are above the “Fully Successful” level, with less than one percent rated below “Fully Successful.” By providing for the establishment of a standardized distribution of rating levels, OPM expects that the highest ratings will be received only by the highest performing senior professionals.

Consistent with the new senior professional performance appraisal system and plan issued on April 3, 2025, OPM intends that the standardized distribution of senior professional ratings will only be applied to limit the number of Level 4 and Level 5 ratings and would not impose any requirements with respect to the number of senior professionals rated at Levels 1 through 3. Establishing governmentwide limits on rating levels will promote a high-performance culture where only truly deserving performers receive the highest ratings. And, although such a limit on the top rating levels would not directly require a greater number of ratings indicating unacceptable work or poor performance, a high-performance culture would encourage rating officials to provide poor performers with ratings commensurate with their performance.

Section 430.506 Planning and communicating performance.

The provisions of this section would mirror the section on planning and communicating performance in the SES appraisal regulations at 5 CFR 430.306. Rating officials would need to consult with senior professionals on the development of their performance plan and issue the plan in writing on or before the beginning of the appraisal period, or upon appointment to a new SL or ST position. The plan would need to describe individual and organizational expectations and include the critical elements, performance standards, and performance requirements. This section would also authorize an agency to require a review by the PRB to review senior professional performance plans at the beginning of the appraisal period to ensure consistency of agency-specific performance requirements.

Section 430.507 Monitoring performance.

As discussed in the Background, good performance management requires ongoing feedback in which an employee is kept informed about how he or she is doing and also given guidance on how to improve. Therefore, this section of the proposed subpart would increase the frequency of progress reviews required for senior professionals from at least once per appraisal period to quarterly. The rating official would be required to inform them of how they are performing against their performance plans, provide advice and assistance on how to improve performance, and may use the progress review as an opportunity to discuss development opportunities for senior professionals.

Section 430.508 Appraising performance.

The provisions of this section would generally mirror the Appraising Performance section of the SES appraisal regulations at 5 CFR 430.308. Agencies would be required to have senior professional performance appraisal systems that establish appropriate timelines for communicating performance plans, conducting appraisals, and assigning and communicating ratings of record. Agencies would have to appraise each senior professional's performance on both individual and organizational performance, taking into account factors such as results achieved in accordance with agency mission and strategic planning initiatives; overall quality of

the performance rendered by the senior professional; performance appraisal guidelines that are based upon assessments of the agency's performance provided by the oversight official; customer perspectives; and compliance with merit system principles. However, unlike in the SES appraisal regulations, senior professionals would not have "employee perspectives" included as a performance factor. This is because senior professionals' unique roles do not require the type of engagement with employees that is required of SES members. Senior professionals are precluded from supervising employees other than personal assistants. In accordance with 5 U.S.C. 3132(a)(2), a position classified above GS-15 with the authority to supervise employees who are not personal assistants is to be placed in the SES and may not be established as SL or ST, if it is within an agency covered by the SES.

Section 430.509 Rating performance.

This section would incorporate certain provisions from the SES appraisal regulations as well as retain certain provisions from the non-SES appraisal regulations. For instance, in this section an agency would be required to utilize its agency-level PRB, as described in proposed 5 CFR 430.511, to fulfill the requirements of centralized review under 5 CFR part 534, subpart E.

Other provisions adopted from the SES appraisal regulations include the requirement for the rating official (normally the supervisor of the senior professional) to develop an initial summary rating in writing, share it with the senior professional, and provide the senior professional an opportunity to respond in writing. Additionally, under this section the higher-level review process that applies to SES members would be available to senior professionals. Whereas the non-SES appraisal regulations mandate that an "Unacceptable" (Level 1) rating be reviewed by a higher-level official, this section would replace that requirement with the option for a senior professional to request higher-level review of any initial summary rating before the rating is given to the PRB to conduct centralized review, as applicable. Given the enhanced oversight by the agency's PRB and expanded opportunity to have ratings reviewed by a higher-level official, this section would not provide for a senior professional to appeal a performance

appraisal or rating, beyond what is otherwise provided under applicable law or regulation.²⁰ This would further establish consistency with the SES appraisal rules.

This section would also contain provisions retained from the non-SES appraisal regulations including the requirement that each rating of record cover a specified appraisal period and the prohibition against agencies carrying over a rating of record from a previous appraisal period for a subsequent appraisal period(s) without an actual evaluation of performance during the subsequent appraisal period. This section would also provide that the rating of record assigned at the end of an appraisal period (or a performance rating assigned at a time other than the end of an appraisal period) for a disabled veteran must not be lowered because the veteran has been absent from work to seek medical treatment (see Executive Order 5396 (July 17, 1930), available at <https://babel.hathitrust.org/cgi/pt?id=miaa.4731703.proc.001&seq=632>).

Section 430.510 Details and job changes.

This section would address how senior professional performance appraisal systems are to handle employees who experience job changes during the appraisal period. This section would closely mirror the SES provisions at 5 CFR 430.310 and require that, when a senior professional is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The gaining organization must also appraise the senior professional's performance in writing before the senior professional leaves and provide the appraisal information to the senior professional. This section would also require that, when a senior professional is reassigned or transferred to another agency after completing the minimum period, the rating official must appraise the senior professional's performance in writing before the senior professional leaves and provide the appraisal information to the senior professional. The most recent rating of record and any subsequent appraisals would be transferred to the gaining agency or organization and the gaining

²⁰ Senior professional performance appraisals and ratings are not directly appealable to the Merit Systems Protection Board but may be subject to challenge through an individual agency and/or union grievance process.

rating official would be required to consider the rating and appraisals when deriving the initial summary rating at the end of the appraisal period.

Section 430.511 Performance review boards.

As discussed in the Background, current senior professional pay regulations at 5 CFR part 534, subpart E, require agencies with ten or more senior professionals to conduct a centralized review of proposed ratings and pay actions by a panel designated by the agency head. This single panel provides advice from an agency-wide perspective for the approving official to consider before approving pay adjustments. To ensure the integrity of an agency's centralized review panel, this section would require agencies subject to the SES to use their established agency-level PRB to conduct the centralized review, including providing written recommendations to the approving official on senior professional ratings of record, performance awards, and pay adjustments. If the agency employs ten or more senior professionals but is not subject to the SES, this section would require the agency to establish a body equivalent to the PRB for the purpose of fulfilling the requirements of centralized review. OPM expects that, in accordance with the Presidential Memorandum titled "Restoring Accountability for Career Senior Executives" (90 FR 8481; Jan. 30, 2025), re-constituted PRBs made up of individuals committed to full enforcement of the SES performance standards are best suited to carry out the responsibilities of conducting the centralized review.

Section 430.512 Using performance results.

This section would establish the requirements for using performance results and would contain the same provisions that apply to the SES at 5 CFR 430.312 in terms of requiring agencies to use performance appraisals as a basis for adjusting pay, granting awards, retaining employees, and making other personnel decisions. It would also require that appraisal be a factor in assessing a senior professional's continuing development needs and require that agencies provide appropriate incentives and recognition for excellence in performance. However, this section would not include the performance-based removal requirements that apply

to SES in 5 CFR 430.312(c)(1)-(3) since those requirements originate from 5 U.S.C. 4314(b)(3), which does not apply to non-SES employees. Instead, this section would reiterate that senior professionals may be suspended, demoted, or removed from the civil service for unacceptable performance, subject to the provisions of 5 U.S.C. 4303, 7503, and 7513.

Section 430.513 Training and evaluation.

This section would establish training and performance appraisal system evaluation requirements identical to those found in the SES regulations at 5 CFR 430.313, including the requirement that agencies must periodically evaluate the effectiveness of their performance appraisal system(s) and implement improvements as needed. These evaluations would assess both effectiveness of the performance appraisal system and compliance with relevant laws, OPM regulations, and OPM performance management policy. Unlike the SES regulations, agencies would be required to retain performance-related records for a minimum of 4 years as required by 5 CFR 293.404(a), as opposed to the 5 years as is required for SES performance records under 5 CFR 293.404(b).

Section 430.514 OPM review of agency systems.

Under this section, agencies would be required to submit proposed senior professional performance appraisal systems to OPM that are separate from performance appraisal systems covering SES or other non-SES employees. A senior professional system would need to address the system standards and requirements specified in this proposed subpart and OPM would review the system for compliance with the requirements of law, OPM regulations, and OPM performance management policy. If OPM were to find that an agency's senior professional performance appraisal system does not meet the requirements and intent of subchapter I of chapter 43 of title 5, U.S. Code, or this proposed subpart, OPM would identify the requirements that were not met and would direct the agency to take corrective action, and the agency would be required to comply.

Conforming Amendments

This rulemaking would also make conforming changes to parts 351, 430, 451, 534, 537, 630, and 894, as described below to account for the new proposed subpart that would be added to part 430.

Part 351

In an unrelated rulemaking, OPM plans to propose revisions to the reduction in force regulations found in 5 CFR part 351. RIN 3206-AO86. In this rule OPM proposes to make appropriate conforming changes to part 351, the specifics of which could vary depending on any amendments finalized in the reduction in force rulemaking. For example, based on the current language, OPM would make conforming changes to the definition of “rating of record” at 5 CFR 351.203 and language pertaining to a “single rating pattern” at 5 CFR 351.504(d) to incorporate references to the new proposed subpart as well as to clarify that the summary levels established for senior professionals in the proposed subpart are not considered to be a pattern of summary levels as set forth in 5 CFR 430.208(d).

Part 430

The coverage statement at 5 CFR 430.202 would be amended to exclude senior professionals from being covered under subpart B of part 430.

OPM proposes to amend 5 CFR 430.305 (in subpart C of part 430, governing the SES) to replace the term “forced distribution” with the term “standardized distribution.” As noted in footnote 6, OPM believes the term “standardized distribution” better captures its intent than “forced distribution.” That is, OPM proposes to authorize consistent, normalized standards for the distribution of some or all rating levels across the agency’s SES cohort, along with its senior professional cohort. Further, revising the terminology in this section to “standardized distribution” would ensure the consistent usage of terms that describe the same concept.

Subpart D of part 430 and the parallel regulations at subpart D of part 1330 would also be amended. The definitions of “appraisal system” and “performance expectations” at 5 CFR 430.402 and 1330.402 would be updated to remove the reference to appraisal programs and

make other minor adjustments to terminology. At 5 CFR 430.403 and 1330.403, references to the proposed subpart would replace the 5 CFR 430, subpart B references, and the provision allowing an agency to include system features in its senior professional appraisal system(s) that are the same as, or similar to, features of its SES appraisal system would be removed, since under the proposed rule agencies would already have such system features incorporated into their senior professional appraisal system(s). At 5 CFR 430.404 and 1330.404, references to the proposed subpart would replace 5 CFR part 430, subpart B references. Also, the language that prohibits the guidance described in 5 CFR 430.404(a)(5) from taking the form of quantitative limitations on ratings at any given rating level would be removed along with the language that prohibits ranking senior employees “against each other” for the purpose of determining performance ratings at 5 CFR 430.404(a)(8), and characterizing “such ranking” as “prohibited.” Those provisions would be removed because they conflict with one purpose of the proposed rule, which is to remove the prohibition of a forced distribution of senior professional rating levels. At 5 CFR 430.405 and 1330.405, references to the proposed subpart would replace 5 CFR part 430, subpart B references, and language pertaining to the summary level requirements would be modified so that only five summary levels may be utilized, consistent with the proposed subpart.

Part 451

References to the new subpart would be added to 5 CFR 451.103 and 451.104.

Part 534

At 5 CFR 534.402, an erroneous citation would be fixed.

At 5 CFR 534.503, the definition of “performance appraisal system” would be amended to replace the 5 CFR part 430, subpart B reference with the reference to the proposed subpart, remove the reference to appraisal programs, and make other minor adjustments to terminology consistent with the new proposed subpart. The definition of “performance rating” would be amended to remove the reference to non-critical elements since only critical elements are utilized for senior professionals under the new proposed subpart, and language would be removed to

clarify that a summary level assigned to a senior professional is not from a pattern of summary levels as specified in 5 CFR 430.208(d). The definition of “rating of record” would also be amended to replace the 5 CFR part 430, subpart B reference with the reference to the proposed subpart and to make other adjustments to terminology consistent with the new proposed subpart. Sections 534.505 and 534.507 would be amended to replace the 5 CFR part 430, subpart B references with the references to the proposed subpart. Section 534.507 would also be amended to remove language that applies to rating levels under summary level patterns described in 5 CFR 430.208.

Part 537

At 5 CFR 537.108, a reference to the new proposed subpart would be added.

Part 630

At 5 CFR 630.301, a reference to the new proposed subpart would be added.

Part 1330

The regulations at 5 CFR part 1330, subpart D, are parallel regulations to 5 CFR part 430 subpart D, which govern the performance appraisal system certification requirements for the SES and senior professionals. Performance appraisal system certification is co-regulated by OPM and OMB and, therefore, conforming amendments to 5 CFR part 1330, subpart D, would be made identical to the changes to 5 CFR part 430, subpart D, described above.

Editorial Corrections

As a part of this rulemaking, OPM is proposing to make an editorial correction at 5 CFR 894.302 to fix an erroneous citation. OPM is also proposing to revise the authority citations for parts 534, 537, and 894 to comply with 1 CFR part 21, subpart B, without substantive change.

Expected Impact of This Rulemaking

A. Statement of Need

OPM is issuing this proposed rule pursuant to its authority to issue regulations governing performance appraisals under subchapter I of chapter 43 of title 5, United States Code. The purpose of this rulemaking is to establish separate regulations that will be better suited to the performance appraisal needs of senior professionals. While many provisions applicable to senior professionals such as pay, aggregate limit on compensation, leave accrual, and leave carryover limit have evolved over the years to match what the SES receive, senior professionals have remained subject to the same general performance appraisal regulations that apply to most non-SES federal employees, including rank-and-file GS and prevailing rate employees. The lack of appraisal rules specifically tailored to senior professionals' important roles and high level of compensation hinders agencies' ability to fully leverage the strategic potential of these positions.

OPM found that, despite its previous efforts to promote rigor in senior professional performance appraisal by encouraging agencies to develop more stringent performance requirements,²¹ senior professional ratings distributions come nowhere close to resembling a normal bell curve. As mentioned in the Background, governmentwide senior professional performance rating data for fiscal years 2023 and 2024²² show that approximately 90 percent of senior professionals received a Level 5 ("Outstanding") or Level 4 ("Exceeds Fully Successful") rating and less than a half of one percent of senior professionals were rated below Level 3 ("Fully Successful"). The distribution of these ratings suggests there is inflation of senior professional ratings and poor performing employees are likely not being identified or held accountable through a rigorous appraisal process. As such, action must be taken to re-set and infuse rigor into the senior professional performance appraisal process.

B. Impact

²¹ See, e.g., OPM, "Applying Rigor in the Performance Management Process and Leveraging Awards Programs for a High-Performing Workforce," (July 12, 2019) available at https://www.opm.gov/chcoc/transmittals/2019/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing_508_0.pdf.

²² See, *supra*, footnote 12.

Establishing a new subpart that is specifically dedicated to the performance appraisal of senior professionals and that more closely resembles the SES appraisal system—including proposed changes to allow OPM to establish and enforce a standardized distribution of performance ratings—would enable agencies and senior professionals to be held to a higher standard of accountability and ensure only the truly deserving performers are rewarded for their performance.

Allowing for the establishment of limits on senior professional ratings would result in a more normalized distribution of performance ratings. OPM expects that a standardized distribution would incentivize improved performance of senior professionals as they no longer would expect to receive high ratings without demonstrating superior performance relative to the other senior professionals in their agency. This would ultimately improve the performance of the Federal Government in providing services to the American public.

Establishing senior professional performance appraisal regulations that more closely align with SES appraisal regulations would also result in greater opportunities for oversight and review of senior professional ratings. Under the proposed subpart, agencies employing 10 or more senior professionals would utilize their agency-level PRB to conduct the centralized review required in subpart E of 5 CFR part 534. Additionally, all senior professionals would be able to request higher-level review of their initial summary rating, regardless of the rating level, providing enhanced credibility, transparency, and accountability to the rating process.

C. Costs

This proposed rule would affect the operations of more than 60 Federal agencies—ranging from cabinet-level departments to small independent agencies—that have SL or ST employees. We estimate that this rule would require individuals employed by these agencies to spend time updating agency senior professional performance appraisal policies and procedures. For this cost analysis, the assumed average salary rate of federal employees performing this work will be the rate in 2025 for GS-14, step 5, in the Washington, DC, locality pay table (\$161,486

annual locality rate and \$77.38 hourly locality rate). We assume the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$154.76 per hour.

To comply with the regulatory changes in the proposed rule, affected agencies would need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of a final rule, this would require an average of 80 hours of work by employees with an average hourly cost of \$154.76 per hour. This would result in estimated one-time costs of about \$12,400 per agency and about \$744,000 Governmentwide.

Senior professionals revise their performance requirements each year as they develop their performance plans. OPM anticipates that adjusting their specific performance requirements to reflect the updated critical elements may take each senior professional slightly longer than usual in the first year. We estimate that this would require approximately 15 additional minutes in the first year of implementation compared to the time usually spent to develop specific performance requirements for the annual performance plan. Based on the average salary of the SL and ST pay plans in September 2024 (most recent available data), we assume an overall average SL/ST salary rate of \$204,735, or \$98.43 per hour.²³ We assume the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of \$196.86 per hour. There are approximately 1,420 employees with an SL or ST pay plan in the executive branch. This would result in a one-year, transitional increase in costs of about \$70,000 Governmentwide.

OPM anticipates that the overall implementation costs would be limited in duration and would total about \$814,000.

D. Benefits

²³ Average senior professional pay drawn from Office of Personnel Management FedScope data, available at <https://www.fedscope.opm.gov/>.

Senior professionals are critical to the effective operation and strategic direction of the Federal Government. These positions are classified above the GS-15 level and receive compensation similar to SES members; however, these employees are not covered by their own dedicated performance appraisal regulations like the SES are. In keeping with established parity between senior professionals and the SES, the proposed subpart would provide for senior professional appraisal rules that align more closely with the SES and would relieve agencies of superfluous provisions found in subpart B of part 430 that are not well-suited to senior professionals, such as the requirement to establish one or more performance appraisal programs.

Providing senior professionals coverage under their own subpart for performance appraisal allows for removing the prohibition of a forced distribution of performance ratings without impacting that prohibition for the employees who remain covered under subpart B of part 430. By allowing OPM to establish a limit on the number of senior professionals who can receive the highest ratings, there would be a clear distinction of the highest performers across an agency and the Federal Government. Agencies would no longer be able to rate virtually all their senior professionals at the highest performance ratings, thus encouraging senior professionals to strive for increased levels of performance and ultimately provide better results for the Federal Government and the American public.

Senior professionals will benefit from increased feedback and oversight under the new subpart. It requires more frequent progress reviews; the opportunity for a higher-level review of any proposed ratings instead of a mandatory review of an “Unacceptable” (Level 1) rating of record; agency-level PRB oversight over recommended ratings of record, pay adjustments, and performance awards; and overall provides increased governmentwide consistency for senior professional performance appraisal.

E. Regulatory Alternatives

An alternative to this rulemaking is to not establish a new subpart in part 430 dedicated to senior professional performance appraisal and instead OPM could issue further guidance

encouraging agencies to be increasingly rigorous in managing the performance of their senior professionals. However, without the provisions in this proposed subpart, agencies would continue to be prevented from applying a standardized distribution of senior professional ratings by 5 CFR 430.208(c). As mentioned in the Statement of Need, previous attempts to curb rating inflation through guidance have not been successful; instead, it appears that the percentage of senior professionals receiving Level 4 or 5 performance ratings has reached a point where almost all senior professionals (i.e., approximately 90%) are receiving a Level 4 or 5 rating.²⁴ Without the ability to place limits on senior professional ratings, the pervasive inflation of senior professional ratings will likely continue, resulting in a lack of meaningful rating distinction and thus, lack of accountability.

Another alternative to this rulemaking is for OPM to pursue a different rulemaking that would amend subpart B of part 430 by excluding senior professionals from the forced distribution prohibition contained in that subpart. While this approach would achieve some of the intended purpose of the proposed rule, it would lack the meaningful reforms to senior professional performance appraisal that increase parity with the SES appraisal rules, such as providing for higher-level review of initial summary ratings and the PRB providing centralized review. Failing to establish a separate subpart in part 430 dedicated to senior professional performance appraisal would result in senior professionals continuing to be subject to the cumbersome provisions of subpart B of part 430, which require agencies to establish both appraisal systems and appraisal programs, which is burdensome and not aligned with OPM's vision of centralized, effective senior professional performance management.

Request for Comments

OPM requests comments on the implementation and potential impacts of this proposed rule. Such information will be useful for better understanding the effect of this new proposed

²⁴ *Supra*, footnote 12.

subpart on senior professional performance appraisal by Federal agencies. The type of information in which OPM is interested includes, but is not limited to, the following:

- Are there any beneficial provisions from part 430, subparts B or C, that OPM did not incorporate into the proposed subpart but should have? If so, what are they?
- Does the current senior professional performance management system accurately distinguish excellent from satisfactory from poor performance?
- Would having agencies utilize their agency-level PRB to conduct centralized review and providing the opportunity for senior professionals to request higher-level review of their initial summary rating increase credibility or accountability in the senior professional rating process?
- In what other ways could credibility and accountability be increased?
- Are there any additional conforming amendments that should be made but that OPM failed to identify?

Regulatory Compliance

A. Regulatory Flexibility Act

The Director of OPM certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because it will apply only to Federal agencies and employees.

B. Regulatory Review

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of \$100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated a “significant

regulatory action” under section 3(f) of Executive Order 12866. This rule is not an E.O. 14192 regulatory action because it does not impose any more than de minimis regulatory costs.

C. Federalism

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Civil Justice Reform

This rulemaking meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of \$100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately \$206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

F. Paperwork Reduction Act

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects

5 CFR Parts 430 and 451

Decorations, Government employees.

5 CFR Part 534

Government employees, Hospitals, Students, Wages.

5 CFR Part 537

Administrative practice and procedure, Government employees, Students, Wages.

5 CFR Part 630

Emergency preparedness, Government employees, Reporting and recordkeeping requirements, Wages, Weather.

5 CFR Part 894

Administrative practice and procedure, Government employees, Health facilities, Health insurance, Health professions, Hostages, Iraq, Kuwait, Lebanon, Military personnel, Reporting and recordkeeping requirements, Retirement.

5 CFR Part 1330

Government employees.

For the reasons stated in the preamble, OPM proposes to amend 5 CFR parts 430, 451, 534, 537, 630, and 894, and OMB proposes to amend 5 CFR part 1330 as follows:

PART 430—PERFORMANCE MANAGEMENT

1. The authority citation for part 430 continues to read as follows:

Authority: 5 U.S.C. chapter 43 and 5307(d).

Subpart B—Performance Appraisal for General Schedule, Prevailing Rate, and Certain Other Employees

2. Amend § 430.202 by revising paragraph (a)(2) to read as follows:

§ 430.202 Coverage.

(a) * * *

(2) Section 4301(2) of title 5, United States Code, defines employees covered by statute by this subpart. In addition to General Schedule (GS/GM) employees, coverage includes, but is not limited to prevailing rate employees, and excludes senior-level and scientific and professional employees paid under 5 U.S.C. 5376.

* * * * *

Subpart C—Managing Senior Executive Performance

3. Amend § 430.305 by revising paragraph (d) as follows:

(d) OPM may establish, and refine as needed, a standardized distribution of some or all SES rating levels which agencies must apply when rating SES members, except that noncareer SES members may be excluded from such standardized distribution requirements, as determined by OPM.

Subpart D—Performance Appraisal Certification for Pay Purposes

4. Amend § 430.402 by revising the definition of “Appraisal system” and “Performance expectations” to read as follows:

§ 430.402 Definitions.

* * * * *

Appraisal system means the policies, practices, and procedures an agency establishes under 5 U.S.C. chapter 43 and subparts C and E of this part, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance. This includes performance management systems as defined at § 430.303 and performance appraisal systems as defined at § 430.503.

Performance expectations means critical and other performance elements and performance requirements that constitute the senior executive performance plans (as defined in § 430.303) established for senior executives, the critical and other performance elements and performance requirements that constitute the senior professional performance plans (as defined

in § 430.503) established for senior professionals, or other appropriate means authorized under performance appraisal systems not covered by 5 U.S.C. chapter 43 for communicating what a senior employee is expected to do and the manner in which he/she is expected to do it, and may include contribution to agency performance, where appropriate.

* * * * *

5. Amend § 430.403 by revising paragraphs (b) through (d) to read as follows:

§ 430.403 System certification.

* * * * *

(b) Except as provided in paragraph (c) of this section, agencies subject to 5 U.S.C. chapter 43 and this part seeking certification of their appraisal systems must submit systems that have been approved by OPM under § 430.312 or § 430.514 as applicable. In some agencies, the performance appraisal system(s) covers employees in many organizations and/or components, and their ability to meet the certification criteria in § 430.404 may vary significantly. In such cases, an agency may establish and/or submit separate performance appraisal systems for each of these distinct organizations and/or components to ensure timely certification of those performance appraisal system(s) that meet the criteria. New appraisal systems established under subpart C or E of this part, as applicable based on the employees covered, must be approved by OPM.

(c) When an agency establishes a new appraisal system for the purpose of seeking certification under this subpart, the agency may submit that system for certification even if it has not yet been approved by OPM under § 430.312 or § 430.514, as applicable. OPM will certify, with OMB concurrence, only those systems that OPM determines meet the approval requirements of subpart C or E of this part, as applicable.

(d) An agency must establish an appraisal system(s), as defined in § 430.402, for its senior professionals that meets the requirements of subpart E of this part, and is separate from the system(s) established to cover its SES members under subpart C of this part. For the purpose

of certification under this subpart, such senior professional appraisal system(s) must meet the certification criteria set forth in § 430.404.

* * * * *

6. Amend § 430.404 by revising paragraphs (a)(2), (5), (7), and (8) to read as follows:

§ 430.404 Certification criteria.

(a) ***

(2) Consultation, so that the performance expectations for senior employees meet the requirements of subparts C and E of this part, as applicable, and/or other applicable legal authority; are developed with the input and involvement of the individual senior employees who are covered thereby; and are communicated to them at the beginning of the applicable appraisal period, and/or at appropriate times thereafter;

* * * * *

(5) Appropriate assessments of the agency's performance—overall and with respect to each of its particular missions, components, programs, policy areas, and support functions—such as reports of the agency's Government Performance and Results Act (GPRA) goals, annual performance plans and targets, program performance measures, and other appropriate indicators, as well as evaluation guidelines based, in part, upon those assessments, that are communicated by the agency head, or an individual specifically designated by the agency head for such purpose, to senior employees, appropriate senior employee rating and reviewing officials, and PRB members. These assessments and guidelines are to be provided at the conclusion of the appraisal period but before individual senior employee performance ratings are recommended, so that they may serve as a basis for individual performance evaluations, as appropriate. The guidance provided must conform to subpart C or E of this part, as applicable;

* * * * *

(7) Accountability, so that final agency head decisions and any PRB recommendations regarding senior employee ratings consistent with subparts C and E of this part, individually and

overall, appropriately reflect the employee's performance expectations, relevant program performance measures, and such other relevant factors as the PRB may find appropriate; in the case of supervisory senior employees, ratings must reflect the degree to which performance standards, requirements, or expectations for individual subordinate employees clearly link to organizational mission, GPRA strategic goals, or other program or policy objectives and take into account the degree of rigor in the appraisal of their subordinate employees;

(8) Performance differentiation, so that the system(s) includes at least one summary level of performance above fully successful, including a summary level that reflects outstanding performance, as defined in § 430.402, and so that its annual administration results in meaningful distinctions based on relative performance that take into account the assessment of the agency's performance against relevant program performance measures, as described in paragraph (a)(6) of this section, employee performance expectations, and such other relevant factors as may be appropriate. For equivalent systems that do not use summary ratings, the performance appraisal system must provide for clear differentiation of performance at the outstanding level; and

* * * * *

7. Amend § 430.405 by revising paragraphs (b)(1)(iii)(B) and (C) and (h)(2) to read as follows:

§ 430.405 Procedures for certifying agency appraisal systems.

* * * * *

(b) ***

(1) ***

(iii) ***

(B) For the agency's senior professionals covered by subpart E of this part, five summary levels—an outstanding level, a fully successful level, a level between outstanding and fully successful, an unacceptable level, and a level between fully successful and unacceptable; and

(C) For agencies not subject to subparts C and E of this part, a summary rating level that reflects outstanding performance or a methodology that clearly differentiates outstanding performance, as defined in § 430.402;

* * * * *

(h) ***

(2) An agency's system certification is automatically suspended when OPM withdraws performance appraisal system approval or mandates corrective action because of misapplication of the system as authorized under §§ 430.312(c), 430.403(e), and 430.514(c).

* * * * *

8. Add subpart E to read as follows:

Subpart E—Managing Senior Professional Performance

Sec.

430.501 General.

430.502 Coverage.

430.503 Definitions.

430.504 Senior professional performance appraisal systems.

430.505 System standards for senior professional performance appraisal systems.

430.506 Planning and communicating performance.

430.507 Monitoring performance.

430.508 Appraising performance.

430.509 Rating performance.

430.510 Details and job changes.

430.511 Performance Review Boards (PRBs).

430.512 Using performance results.

430.513 Training and evaluation.

430.514 OPM review of agency systems.

§ 430.501 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for the establishment of agency performance appraisal systems and requires the Office of Personnel Management (OPM) to prescribe regulations governing such systems. The regulations in this subpart in combination with statute set forth the requirements for managing the performance for senior-level (SL) positions classified above GS-15 pursuant to 5 U.S.C. 5108 and scientific or professional (ST) positions established under 5 U.S.C. 3104, and which are compensated under 5 U.S.C. 5376.

(b) *Equivalent ratings of record.* (1) If an agency has administratively adopted and applied the procedures of this subpart to evaluate the performance of its employees, the ratings of record resulting from that evaluation are considered ratings of record for reduction in force purposes.

(2) Other performance evaluations given while an employee is not covered by the provisions of this subpart are considered ratings of record for reduction in force purposes when the performance evaluation—

(i) Was issued as an officially designated evaluation under the employing agency's performance evaluation system;

(ii) Was derived from the appraisal of performance against expectations that are established and communicated in advance and are work related; and

(iii) Identified whether the employee performed acceptably.

(3) When the performance evaluation does not include five summary levels comparable to those established at § 430.505(a)(6), the agency may identify a level based on information related to the appraisal process.

§ 430.502 Coverage.

(a) *Covered positions.* This subpart applies to the following types of positions:

(1) Senior-level (SL) positions classified above GS-15 pursuant to 5 U.S.C. 5108 and paid under 5 U.S.C. 5376; and

(2) Scientific or professional (ST) positions established under 5 U.S.C. 3104 and paid under 5 U.S.C. 5376.

(b) *Administrative exclusions.* OPM may exclude any position or group of positions in the excepted service under the authority of 5 U.S.C. 4301(2)(G). Excepted service positions for which employment is not reasonably expected to exceed the minimum period established under § 430.504(b)(4) in a consecutive 12-month period are not subject to this subpart.

§ 430.503 Definitions.

In this subpart—

Agency means—

(1) An Executive agency as defined in 5 U.S.C. 105;

(2) Any other entity that is not part of an Executive agency and for which OPM has approved establishment of one or more scientific or professional positions under 5 U.S.C. 3104.

Appraisal period means the established period of time for which a senior professional's performance will be appraised and rated.

Approving official means an agency designated official with authority to make SL or ST appointments and who assigns the rating of record.

Critical element means a key component of a senior professional's work that contributes to organizational goals and results and is so important that unacceptable performance on the element would make the senior professional's overall job performance unacceptable.

Initial summary rating means an overall rating level the rating official derives, from appraising the senior professional's performance during the appraisal period in relation to the critical elements and performance standards and requirements, and forwards to the Performance Review Board as the recommended rating of record.

Oversight official means the agency head or the individual specifically designated by the agency head who provides oversight of the performance management system and issues performance appraisal guidelines.

Performance means the accomplishment of the work described in the senior professional's performance plan.

Performance appraisal means the review and evaluation of a senior professional's performance against critical elements and performance standards and requirements.

Performance appraisal system means the policies, practices, and procedures an agency establishes under 5 U.S.C. chapter 43 and this subpart, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a numerical summary performance level.

Performance requirement means a description of what a senior professional must accomplish, or the competencies demonstrated, for a critical element. A performance requirement establishes the criteria to be met to be rated at a specific level of performance and generally includes quality, quantity, timeliness, cost savings, manner of performance, or other factors.

Performance standard means a normative description of a single level of performance within five such described levels of performance ranging from unacceptable performance to outstanding performance. Performance standards provide the benchmarks for developing performance requirements against which actual performance will be assessed.

PRB means Performance Review Board, which for the purposes of this subpart includes a PRB established under § 430.311 or an equivalent body, as described in § 430.511.

Progress review means a review of the senior professional's progress in meeting the performance requirements. A progress review is not a performance rating.

Rating official means the official, generally the supervisor of the senior professional, who develops the initial summary rating and forwards it to the Performance Review Board, as the recommended rating of record.

Rating of record means the final official performance rating at the end of an appraisal period for performance of agency-assigned duties over the entire period after the initial summary rating has been reviewed and approved by the approving official.

Senior professional means an employee in a senior-level (SL) or scientific or professional position (ST) paid under 5 U.S.C. 5376.

Senior professional performance plan means the written critical elements and performance requirements against which performance will be evaluated during the appraisal period by applying the established performance standards. The plan includes all critical elements, performance standards, and performance requirements, including any specific goals, targets, competencies, objectives, or other measures established for the senior professional.

Strategic planning initiatives means agency strategic plans as required by the GPRA Modernization Act of 2010, annual performance plans, organizational work plans, and other related initiatives.

§ 430.504 Senior professional performance appraisal systems.

(a) Each agency must develop and administer one or more performance appraisal systems for its senior professionals in accordance with the system standards established in § 430.505.

(b) Performance appraisal systems must provide for—

(1) Identifying employees covered by the system;

(2) Monitoring progress in accomplishing critical elements and performance requirements and conducting progress reviews at least quarterly during the appraisal period, including informing senior professionals on how well they are performing;

(3) Establishing an official performance appraisal period for which a rating of record must be prepared;

(4) Establishing a minimum appraisal period of at least 90 days;

(5) Establishing criteria and procedures to address performance of senior professionals who are on detail, temporarily reassigned, or transferred as described at § 430.510, and for other special circumstances established by the agency.

§ 430.505 System standards for senior professional performance appraisal systems.

(a) Each agency performance appraisal system must incorporate the following system standards:

(1) Use critical elements to evaluate the quality of the senior professional's job performance for the designated appraisal period;

(2) Align performance requirements with agency mission and strategic planning initiatives;

(3) Define performance standards for each of the summary rating performance levels, which also may be used for the individual elements or performance requirements being appraised;

(4) Appraise each senior professional's performance at least annually against performance requirements based on established performance standards and other measures;

(5) Derive a rating of record through a mathematical method that ensures the senior professional's performance aligns with level descriptors contained in performance standards that clearly differentiate levels above fully successful;

(6) Establish five summary performance levels. Level 1 through Level 5 are ordered categories, with Level 1 as the lowest and Level 5 as the highest, as follows:

- (i) An outstanding level (Level 5);
- (ii) An exceeds fully successful level (Level 4);
- (iii) A fully successful level (Level 3);
- (iv) A minimally satisfactory level (Level 2); and
- (v) An unacceptable level (Level 1);

(7) Include equivalency statements in the system description for agency-specific terms for the five summary performance levels aligning them with the five performance levels required in paragraph (a)(6) of this section; and

(8) Use performance appraisals as a basis to adjust pay, reward, retain, and develop senior professionals or make other personnel decisions, including removals as described in § 430.512.

(b) An agency must develop and implement a performance appraisal system for its senior professionals in accordance with the requirements of this section and applicable OPM guidance.

(c) OPM may establish, and refine as needed, a governmentwide performance management system incorporating all requirements of this section for agencies to adopt, with limited adaptation, for performance appraisal of its senior professionals.

(d) OPM may establish, and refine as needed, a standardized distribution of some or all rating levels for senior professionals which agencies must apply when rating senior professionals, except that senior professionals appointed under Schedules C or G in the excepted service may be excluded from such standardized distribution requirements, as determined by OPM.

§ 430.506 Planning and communicating performance.

(a) Each senior professional must have a performance plan that describes the individual and organizational expectations for the appraisal period that clearly fall within the senior professional's area of responsibility and control.

(b) Rating officials must develop performance plans in consultation with senior professionals and communicate the plans to them in writing, including through the use of automated systems, on or before the beginning of the appraisal period, or upon appointment to a new SL or ST position.

(c) A senior professional performance plan must include—

(1) *Critical elements.* Critical elements must reflect individual performance results or competencies as well as organizational performance priorities within each senior professional's respective area of responsibility and control.

(2) *Performance standards.* Performance plans must include the performance standards describing each level of performance at which a senior professional's performance can be appraised. Performance standards describe the general expectations that must be met to be rated at each level of performance and provide the benchmarks for developing performance requirements.

(3) *Performance requirements.* At a minimum, performance requirements must describe expected accomplishments or demonstrated competencies for fully successful performance by the senior professional. An agency may establish performance requirements associated with other levels of performance as well. These performance requirements must align with agency mission and strategic planning initiatives. Performance requirements must contain measures of the quality, quantity, timeliness, cost savings, or manner of performance, as appropriate, expected for the applicable level of performance.

(d) Agencies may require a review of senior professional performance plans at the beginning of the appraisal period to ensure consistency of agency-specific performance requirements. Such reviews may be performed by the PRB or another body of the agency's choosing.

§ 430.507 Monitoring performance.

Rating officials must monitor each senior professional's performance throughout the appraisal period and hold at least quarterly progress reviews. At a minimum, rating officials must inform senior professionals during the progress review about how well they are performing with regard to their performance plan. Rating officials must provide advice and assistance to senior professionals on how to improve their performance. Rating officials and senior professionals may also discuss available development opportunities for the senior professional.

§ 430.508 Appraising performance.

(a) Agencies must establish appropriate timelines for communicating performance plans, conducting appraisals, and assigning and communicating ratings of record.

(b) At least annually, agencies must appraise each senior professional's performance in writing, including through the use of automated systems, and assign a rating of record at the end of the appraisal period.

(c) Agencies must appraise a senior professional's performance on the critical elements and performance requirements in the senior professional's performance plan.

(d) Agencies must base appraisals of senior professional performance on both individual and organizational performance as it applies to the senior professional's area of responsibility and control, taking into account factors such as—

(1) Results achieved in accordance with agency mission and strategic planning initiatives;

(2) Overall quality of performance rendered by the senior professional;

(3) Performance appraisal guidelines that must be based upon assessments of the agency's performance and are provided by the oversight official to senior professionals, rating and reviewing officials, PRB members, and approving officials at the conclusion of the appraisal period and before completion of the initial summary ratings;

(4) Customer perspectives;

(5) Compliance with the merit system principles set forth under 5 U.S.C. 2301.

§ 430.509 Rating performance.

(a) When rating senior professional performance, each agency must use its agency-level PRB, as described at § 430.511 to fulfill the requirements of centralized review under part 534, subpart E, of this chapter.

(b) The rating of record or performance rating for a disabled veteran shall not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

(c) Each rating of record shall cover a specified appraisal period. Agencies are prohibited from carrying over a rating of record prepared for a previous appraisal period as the rating of record for a subsequent appraisal period(s) without an actual evaluation of the employee's performance during the subsequent appraisal period.

(d) When a rating of record cannot be prepared at the time specified, the appraisal period must be extended. Once the conditions necessary to complete a rating of record have been met, a rating of record must be prepared as soon as practicable.

(e) Senior professional performance appraisals and ratings are not appealable, beyond what is otherwise provided under applicable law or regulation.

(f) Procedures for rating senior professionals must provide for the following:

(1) *Initial summary rating*. The rating official must develop an initial summary rating of the senior professional's performance, in writing, including through the use of automated systems, and share that rating with the senior professional. The senior professional may respond in writing.

(2) *Higher-level review (HLR)*. A senior professional may ask for a higher-level official to review the initial summary rating before the rating is given to the PRB. The agency must provide each senior professional an opportunity for review of the initial summary rating by an employee, or (with the consent of the senior professional) a commissioned officer in the uniformed services on active duty in the agency, in a higher level in the agency than the rating official who issued the initial summary rating.

(i) A single review by an official at a higher level who did not participate in determining the senior professional's initial summary rating will satisfy this requirement. An official providing HLR may not change the initial summary rating but may recommend a different rating to the PRB. HLR may be provided by an official who is at a higher level in the agency than the approving official who will approve the final rating under paragraph (f)(4) of this section.

(ii) When an agency cannot provide review by a higher-level official for a senior professional who receives an initial summary rating from the agency head because no such official exists in the agency, the agency must offer an alternative review as it determines appropriate, except that the review may not be provided by a member of the PRB or an official who participated in determining the initial summary rating.

(iii) If a senior professional declines review by agency-designated higher-level officials, the agency may offer an alternative review but is not obligated to do so. The agency must document the senior professional's declination of the HLR opportunity provided by the agency before offering an alternative review.

(iv) Copies of findings and recommendations of the HLR official or the official performing an alternative review under paragraph (f)(2)(ii) through (iii) of this section must be given to the senior professional, the rating official, and the PRB.

(3) *PRB review.* For agencies with ten or more senior professionals, the agency-level PRB must receive and review the initial summary rating, the senior professional's response to the initial rating if made, and findings and recommendations of any HLR or any alternative review under paragraph (f)(2) of this section before making recommendations to the approving official, as provided in § 430.511 and consistent with the requirements in part 534, subpart E, of this chapter pertaining to centralized review. Centralized review is not required for agencies employing fewer than ten senior professionals.

(4) *Rating of record.* The approving official must assign the rating of record of the senior professional's performance after considering the applicable PRB's recommendations. This

rating is the official final rating for the appraisal period and must be communicated to the senior professional in writing, including through the use of automated systems, in accordance with the timelines developed under § 430.508(a).

(g) A performance rating may be prepared at such other times as may be necessary, such as for special circumstances including, but not limited to, transfers and performance on details.

§ 430.510 Details and job changes.

(a) When a senior professional is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The gaining organization must appraise the senior professional's performance in writing, including through the use of automated systems, and the rating official must consider this appraisal when deriving the initial summary rating.

(b) When a senior professional is reassigned or transferred to another agency after completing the minimum appraisal period, the rating official must appraise the senior professional's performance in writing, including through the use of automated systems, before the senior professional leaves and provide this information to the senior professional.

(c) The most recent rating of record and any subsequent appraisals must be transferred to the gaining agency or organization. The gaining rating official must consider the rating and appraisals when deriving the initial summary rating at the end of the appraisal period.

§ 430.511 Performance Review Boards (PRBs).

Each agency that employs ten or more senior professionals must use its agency-level PRB established under § 430.311, or an equivalent body if the agency is not subject to the SES, to make written recommendations to the approving official on ratings of record, performance awards, and pay adjustments regarding senior professionals. The agency-level PRB or equivalent body will be responsible for fulfilling all requirements of centralized review found in part 534, subpart E, of this chapter.

§ 430.512 Using performance results.

(a) Agencies must use performance appraisals as a basis for adjusting pay, granting awards, retaining senior professionals, and making other personnel decisions. Performance appraisals must be a factor in assessing a senior professional's continuing development needs.

(b) Agencies must provide appropriate incentives and recognition (including pay adjustments under subpart E of part 534 of this chapter and performance awards under part 451, subpart A, of this chapter) for excellence in performance.

(c) A senior professional may be suspended, demoted, or removed from the civil service for unacceptable performance, subject to the provisions of 5 U.S.C. 4303, 7503, and 7513.

§ 430.513 Training and evaluation.

(a) To assure effective implementation of agency performance appraisal systems, agencies must provide appropriate information and training to agency leadership, rating officials, and senior professionals on performance management, including planning and appraising performance.

(b) Agencies must periodically evaluate the effectiveness of their performance appraisal system(s) and implement improvements as needed. Evaluations must provide for both assessment of effectiveness and compliance with relevant laws, OPM regulations, and OPM performance management policy.

(c) Agencies must maintain all performance-related records for no fewer than 4 years from the date the rating of record is issued, as required in § 293.404(a)(1) of this chapter.

§ 430.514 OPM review of agency systems.

(a) Agencies must submit proposed senior professional performance appraisal systems to OPM for approval. Agency systems must address the system standards and requirements specified in this subpart.

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy, including the system standards specified at § 430.505.

(c) If OPM finds that an agency system does not meet the requirements and intent of subchapter I of chapter 43 of title 5, United States Code, or of this subpart, OPM will identify the requirements that were not met and direct the agency to take corrective action, and the agency must comply.

PART 451—AWARDS

9. The authority citation for part 451 continues to read as follows:

Authority: 5 U.S.C. 4302, 4501-4509; E.O. 11438, 33 FR 18085, 3 CFR, 1966-1970 Comp., p. 755; E.O. 12828, 58 FR 2965, 3 CFR, 1993 Comp., p. 569.

Subpart A—Agency Awards

10. Amend § 451.103 by revising paragraph (c)(2) to read as follows:

§ 451.103 Agency award program(s).

* * * * *

(c) * * *

(2) Documenting justification for awards that are not based on a rating of record (as defined in §§ 430.203 and 430.503 of this chapter).

* * * * *

11. Amend § 451.104 by revising paragraph (a)(3) to read as follows:

§ 451.104 Awards.

(a) * * *

(3) Performance as reflected in the employee's most recent rating of record (as defined in §§ 430.203 and 430.503 of this chapter), provided that the rating of record is at the fully successful level (or equivalent) or above, except that performance awards may be paid to SES members only under § 534.405 of this chapter and not on the basis of this subpart.

* * * * *

PART 534—PAY UNDER OTHER SYSTEMS

12. The authority citation for part 534 is revised to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5304, 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, 7302; 18 U.S.C. 207.

Subpart D—Pay and Performance Awards Under the Senior Executive Service

13. Amend § 534.402 by revising the definition for “PRB” to read as follows:

§ 534.402 Definitions.

* * * * *

PRB means Performance Review Board, as described in § 430.311 of this chapter.

* * * * *

Subpart E—Pay for Senior-Level and Scientific or Professional Positions

14. Amend § 534.503 by revising the definitions for “Performance appraisal system,” “Performance rating,” and “Rating of record” to read as follows:

§ 534.503 Definitions.

* * * * *

Performance appraisal system means the framework of policies, practices, and procedures an agency establishes under subchapter I of chapter 43 of title 5, United States Code, subpart A of this part, and this subpart for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the SL or ST employee's performance standard(s) for each critical element on which there has been an opportunity to perform for a minimum of 90 days. A performance rating may include the assignment of a summary level.

Rating of record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level that has been reviewed and approved in accordance with § 534.505(a).

* * * * *

15. Amend § 534.505 by revising and republishing paragraph (a)(5) introductory text to read as follows:

§ 534.505 Written procedures.

(a) * * *

(5) The administrative and management controls that will be applied to assure compliance with applicable statutes, OPM regulations, the agency's written procedures established under this section, the applicable maximum rate of basic pay in § 534.504(a), and, where applicable, the certification requirements set forth in part 430, subpart D, of this chapter. In an agency that employs ten or more senior professionals, these controls must include centralized review of ratings proposed under § 430.509 of this chapter and pay actions proposed under § 534.507 by a panel of individuals designated by the agency head to provide advice from an agency-wide perspective for authorized agency officials to consider before approving pay adjustments on whether—

* * * * *

16. Amend § 534.507 by revising paragraphs (c)(2), (f), and (h) to read as follows:

§ 534.507 Annual increases in basic pay.

* * * * *

(c) ***

(2) A performance rating that covers a period of at least 90 days and is assigned in accordance with subpart E of part 430 of this chapter and the centralized review required by § 534.505(a)(5), but only if a rating of record is not available or does not reflect current performance.

* * * * *

(f) Except as required by paragraph (g) of this section, a pay increase under this section may not be provided to an employee—

(1) Who has a current rating of record below Level 3 (Fully Successful or equivalent), as described in § 430.509 of this chapter; or

(2) Who, after receiving a rating of record at Level 3 or above, receives a more recent performance rating as defined at § 430.503 of this chapter that rates performance in a critical element at a level below Fully Successful.

* * * * *

(h)(1) If the rates of basic pay under the General Schedule are increased under 5 U.S.C. 5303 on the date specified in paragraph (a)(1) of this section and the agency head decides upon a zero adjustment for an SL or ST employee who has a current rating of record or applicable performance rating at Level 3 or above, the agency must communicate the reasons for that decision to the employee in writing.

(2) Paragraph (h)(1) of this section does not apply to a senior professional with a rate of basic pay described in § 534.505(c)(1) unless—

(i) The rates of basic pay for the Executive Schedule are also increased on the date specified in paragraph (a)(1) of this section; and

(ii) The senior professional has a current rating of record or applicable performance rating at Level 5.

(3) Paragraphs (h)(1) and (2) of this section may not be construed to require a pay increase for any senior professional employee.

PART 537—REPAYMENT OF STUDENT LOANS

17. The authority citation for part 537 is revised to read as follows:

Authority: 5 U.S.C. 2301, 2302, and 5379(g). E.O. 11478, 3 CFR 1966-1970 Comp., p. 803, unless otherwise noted; E.O. 13087, 63 FR 30097, 3 CFR 1998 Comp., p. 191; and E.O. 13152, 65 FR 26115, 3 CFR 2000 Comp., p. 264.

18. Amend § 537.108 by revising paragraph (b) to read as follows:

§ 537.108 Loss of eligibility for student loan repayment benefits.

* * * * *

(b) For the purpose of applying paragraph (a)(2) of this section, an acceptable level of performance is one that is equivalent to level 3 (“Fully Successful” or equivalent) or higher, as described in § 430.208(d) or § 430.505 of this chapter, as applicable. An employee loses eligibility for student loan repayment benefits if his or her most recent official performance evaluation does not meet this requirement.

PART 630—ABSENCE AND LEAVE

19. The authority citation for part 630 continues to read as follows:

Authority: Subparts A through E issued under 5 U.S.C. 6133(a) (read with 5 U.S.C. 6129), 6303(e) and (f), 6304(d)(2), 6306(b), 6308(a) and 6311; subpart F issued under 5 U.S.C. 6305(a) and 6311 and E.O. 11228, 30 FR 7739, 3 CFR, 1974 Comp., p. 163; subpart G issued under 5 U.S.C. 6305(c) and 6311; subpart H issued under 5 U.S.C. 6133(a) (read with 5 U.S.C. 6129) and 6326(b); subpart I issued under 5 U.S.C. 6332, 6334(c), 6336(a)(1) and (d), and 6340; subpart J issued under 5 U.S.C. 6340, 6363, 6365(d), 6367(e), 6373(a); subpart K issued under 5 U.S.C. 6391(g); subpart L issued under 5 U.S.C. 6383(f) and 6387; subpart M issued under Sec. 2(d), Pub. L. 114-75, 129 Stat. 641 (5 U.S.C. 6329 note); subpart N issued under 5 U.S.C. 6329a(c); subpart O issued under 5 U.S.C. 6329b(h); and subpart P issued under 5 U.S.C. 6329c(d).

Subpart C—Annual Leave

20. Amend § 630.301 by revising paragraph (b)(3) to read as follows:

§ 630.301 Annual leave accrual and accumulation—Senior Executive Service, Senior-Level, and Scientific and Professional Employees.

* * * * *

(b) ***

(3) Covered positions are subject to a performance appraisal system established under 5 U.S.C. chapter 43 and 5 CFR part 430, subpart B, C, or E or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance.

* * * * *

PART 894—FEDERAL EMPLOYEES DENTAL AND VISION INSURANCE PROGRAM

21. The authority citation for part 894 is revised to read as follows:

Authority: 5 U.S.C. 8962; 5 U.S.C. 8992. Subpart C also issued under 2 U.S.C. 2051. Sec. 894.601(b) also issued under sec. 1111, Pub. L. 116-92, 133 Stat. 1600 (5 U.S.C. 8956 note).

Subpart C—Eligibility

22. Amend § 894.302 by revising paragraph (k)(1) to read as follows:

§ 894.302 What is an excluded position?

* * * * *

(k) ***

(1) An *employee* appointed to perform “part-time career employment,” as defined in section 3401 (2) of title 5, U.S.C., and 5 CFR part 340, subpart B; or

* * * * *

PART 1330—HUMAN RESOURCES MANAGEMENT

23. The authority citation for part 1330 continues to read as follows:

Authority: 5 U.S.C. 5307(d).

Subpart D—Performance Appraisal Certification for Pay Purposes

24. Amend § 1330.402 by revising the definitions of “Appraisal system” and “Performance expectations” to read as follows:

§ 1330.402 Definitions.

* * * * *

Appraisal system means the policies, practices, and procedures an agency establishes under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts C and E, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance. This includes performance management systems as defined at § 430.303 and performance appraisal systems as defined at § 430.503.

* * * * *

Performance expectations means critical and other performance elements and performance requirements that constitute the senior executive performance plans (as defined in 5 CFR 430.303) established for senior executives, the critical and other performance elements and performance requirements that constitute the senior professional performance plans (as defined in 5 CFR 430.503) established for senior professionals, or other appropriate means authorized under performance appraisal systems not covered by 5 U.S.C. chapter 43 for communicating what a senior employee is expected to do and the manner in which he/she is expected to do it, and may include contribution to agency performance, where

* * * * *

25. Amend § 1330.403 by revising paragraphs (b) through (d) to read as follows:

§ 1330.403 System certification.

* * * * *

(b) Except as provided in paragraph (c) of this section, agencies subject to 5 U.S.C. chapter 43 and 5 CFR part 430 seeking certification of their appraisal systems must submit systems that have been approved by OPM under 5 CFR 430.312 or 430.514, as applicable. In some agencies, the performance appraisal system(s) covers employees in many organizations

and/or components, and their ability to meet the certification criteria in § 1330.404 may vary significantly. In such cases, an agency may establish and/or submit separate performance appraisal systems for each of these distinct organizations and/or components to ensure timely certification of those performance appraisal system(s) that meet the criteria. New appraisal systems established under 5 CFR part 430, subpart C or E, as applicable based on the employees covered, must be approved by OPM.

(c) When an agency establishes a new performance appraisal system for the purpose of seeking certification under this subpart, the agency may submit that system for certification even if it has not yet been approved by OPM under 5 CFR 430.312 or 430.514, as applicable. OPM will certify, with OMB concurrence, only those systems that OPM determines meet the approval requirements of 5 CFR part 430, subpart C or E, as applicable.

(d) An agency must establish an appraisal system(s), as defined in § 1330.402, for its senior professionals that meets the requirements of 5 CFR part 430, subpart E, and is separate from the system(s) established to cover its SES members under 5 CFR part 430, subpart C. For the purpose of certification under this subpart, such senior professional appraisal system(s) must meet the certification criteria set forth in § 1330.404.

* * * * *

26. Amend § 1330.404 by revising paragraphs (a)(2), (5), (7), and (8) to read as follows:

§ 1330.404 Certification criteria.

(a) ***

(2) Consultation, so that the performance expectations for senior employees meet the requirements of 5 CFR part 430, subparts C and E, as applicable, and/or other applicable legal authority; are developed with the input and involvement of the individual senior employees who are covered thereby; and are communicated to them at the beginning of the applicable appraisal period, and/or at appropriate times thereafter;

* * * * *

(5) Appropriate assessments of the agency's performance—overall and with respect to each of its particular missions, components, programs, policy areas, and support functions—such as reports of the agency's GPRA goals, annual performance plans and targets, program performance measures, and other appropriate indicators, as well as evaluation guidelines based, in part, upon those assessments, that are communicated by the agency head, or an individual specifically designated by the agency head for such purpose, to senior employees, appropriate senior employee rating and reviewing officials, and PRB members. These assessments and guidelines are to be provided at the conclusion of the appraisal period but before individual senior employee performance ratings are recommended, so that they may serve as a basis for individual performance evaluations, as appropriate. The guidance provided must conform to 5 CFR part 430, subpart C or E, as applicable;

* * * * *

(7) Accountability, so that final agency head decisions and any PRB recommendations regarding senior employee ratings consistent with 5 CFR part 430, subparts C and E, individually and overall, appropriately reflect the employee's performance expectations, relevant program performance measures, and such other relevant factors as the PRB may find appropriate; in the case of supervisory senior employees, ratings must reflect the degree to which performance standards, requirements, or expectations for individual subordinate employees clearly link to organizational mission, GPRA strategic goals, or other program or policy objectives and take into account the degree of rigor in the appraisal of their subordinate employees;

(8) Performance differentiation, so that the system(s) includes at least one summary level of performance above fully successful, including a summary level that reflects outstanding performance, as defined in § 1330.402, and so that its annual administration results in meaningful distinctions based on relative performance that take into account the assessment of the agency's performance against relevant program performance measures, as described in paragraph (a)(6) of this section, employee performance expectations, and such other relevant

factors as may be appropriate. For equivalent systems that do not use summary ratings, the appraisal system must provide for clear differentiation of performance at the outstanding level; and

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27. Amend § 1330.405 by revising paragraphs (b)(1)(iii)(B) and (C) and (h)(2) to read as follows:

§ 1330.405 Procedures for certifying agency appraisal systems.

* * * * *

(b) ***

(1) ***

(iii) ***

(B) For the agency's senior professionals covered by 5 CFR part 430, subpart E, five summary levels—an outstanding level, a fully successful level, a level between outstanding and fully successful, an unacceptable level, and a level between fully successful and unacceptable; and

(C) For agencies not subject to 5 CFR part 430, subparts C and E, a summary rating level that reflects outstanding performance or a methodology that clearly differentiates outstanding performance, as defined in § 1330.402;

* * * * *

(h) ***

(2) An agency's system certification is automatically suspended when OPM withdraws performance appraisal system approval or mandates corrective action because of misapplication of the system as authorized under 5 CFR 430.312(c), 430.514(c), and 1330.403(e).

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Scott A. Kupor,
Director.

Office of Management and Budget.

Russell T. Vought,
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