



OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 430

[Docket ID: OPM-2025-0273]

RIN 3206-AP06

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

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing a proposed rule to increase the efficiency of performance management for non-Senior Executive Service (SES) employees, including General Schedule (GS) and prevailing rate employees. The proposed rule amends the approved patterns of summary levels by removing a “Level 2”; requires agencies to undergo biennial appraisal system certifications with OPM; requires a supervisory critical element for all supervisors covered under this subpart; removes the prohibition of a forced, or standardized, distribution of performance-rating levels; removes the option to grieve a performance rating; and removes the mandatory review of level 1 ratings.

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-AP06,” and title using the following method:

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

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at <https://www.regulations.gov> without change including any personal identifiers or contact information.

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

Non-SES employees are often career civil servants who fulfill the mission of their respective agencies through the performance of their job duties. Often, they occupy positions that are white-collar, recognized trades, crafts, or skilled manual labor occupations. The GS system was established by the Classification Act of 1923 and then further revised by the Classification Act of 1949. The prevailing rate system was separately established in 1972 by the Prevailing Rate Systems Act.

Congress passed the Civil Service Reform Act (CSRA) of 1978, creating a merit-based system of hiring and performance appraisals for Federal employees. Pursuant to the CSRA, OPM must prescribe regulations that establish the framework for performance management.¹ Specifically, OPM noted that it “shall prescribe regulations to carry out the purpose of the [CSRA], review agency performance appraisal systems to determine” compliance with “the [CSRA], and direct agencies to implement appropriate systems or correct operations[] should OPM determine that the system does not meet the [CSRA’s] requirements.”² Further, OPM noted its “intent to assist agencies in developing systems that contribute to agency efficiency and effectiveness, and to review operating appraisal systems in this light because improvement in the quality of public service is the intention of the [CSRA].”³

¹ 5 U.S.C. 4302.

² 44 FR 45587, 45588 (Aug. 3, 1979).

³ *Id.* at 45589.

In 1983, OPM adopted a new performance management system.⁴ The performance management system “standardize[d] performance requirements for within-grade increases, performance awards, quality step increases, career ladder promotions, and merit pay.”⁵ The system further standardized the performance appraisal process “by requiring five summary rating levels” that agencies must use when evaluating employees.⁶ While OPM determined that five summary rating levels were appropriate, it did not give much, if any, explanation to justify its position.

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.⁷ 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.

OPM also noted it previously proposed to remove the prohibition on the “use of forced distributions of summary levels for ratings of record.”⁸ However, OPM stated it was “persuaded by the arguments that criticized the use of forced distributions,” summarily concluding “that

⁴ 48 FR 49472, 49472 (Oct. 25, 1983).

⁵ *Id.*

⁶ *Id.*

⁷ 60 FR 43936, 43936 (Aug. 23, 1995).

⁸ *Id.* at 43941 (internal quotation marks omitted).

forced distributions were incompatible with effective performance management.”⁹ OPM also revised 5 CFR 430.208, introducing “a table of permissible patterns of summary levels.”¹⁰ OPM noted that the regulations only require performance to “be appraisable at a minimum of two levels.”¹¹

Aside from a few minor changes in the late 1990s, the appraisal regulations at part 430, subpart B, have remained in place and unchanged, failing to keep pace with a growing and evolving Federal workforce. Recognizing that reforms to Federal performance management are long overdue, President Trump issued Presidential Memorandums and Executive Orders that establish a high-performing Federal workplace culture where excellent performance is celebrated and rewarded, and low performance is swiftly addressed by appropriate actions.¹² Accordingly, OPM issued a memorandum titled “Performance Management for Federal Employees.”¹³ In that guidance, OPM noted that it is “reforming employee performance management across the Federal Government to ensure that it shall reward individual initiative, skills, performance and hard work.”¹⁴ OPM further stated that “performance management across the Federal workforce has fallen short,” and “has resulted in a lack of accountability and inflated performance ratings.”¹⁵

Accordingly, OPM concludes that regulatory change is needed. OPM proposes to amend 5 CFR part 430, subpart B, by amending the approved patterns of summary levels by removing any patterns utilizing a “Level 2” or that have “Level 4” as the highest rating level; requiring agencies to undergo biennial certification with OPM of its appraisal system(s); adding a new

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 43939.

¹² See, e.g., E.O. 14284, *Strengthening Probationary Periods in the Federal Service*, 90 FR 17729 (April 24, 2025); E.O. 14171, *Restoring Accountability to Policy-Influencing Positions Within the Federal Workforce*, 90 FR 8625 (Jan. 20, 2025); President Donald J. Trump, *Memorandum for the Heads of Executive Departments and Agencies, Restoring Accountability for Career Senior Executives* (Jan. 20, 2025); President Donald J. Trump, *Memorandum for the Heads of Executive Departments and Agencies, Return to In-Person Work* (Jan. 20, 2025).

¹³ OPM, *Performance Management for Federal Employees* (June 17, 2025), <https://www.opm.gov/chcoc/latest-memos/performance-management-for-federal-employees.pdf>.

¹⁴ *Id.* (internal quotation marks omitted).

¹⁵ *Id.* at 2.

supervisory critical element; enhancing accountability for poor performance by eliminating mandatory reviews of “Level 1” ratings while limiting the reasons why a rating of record may be changed; and removing the prohibition of a forced, or standardized, distribution of performance rating levels for non-SES employees.

Non-SES Employee Performance Management

Currently, subpart B of 5 CFR part 430 provides the requirements for managing the performance of non-SES Federal employees. 5 CFR part 430, subpart B also governs the performance appraisals of senior-level (SL) and scientific or professional (ST) employees. OPM is in the process of another rulemaking that will create a new subpart that specifically applies to SL and ST employees. Therefore, if the other rulemaking is adopted, then 5 CFR part 430, subpart B, and the changes made in this rulemaking by extension, will not apply to SL and ST employees. However, in the event the other rulemaking is not completed, then this rulemaking will apply to SL and ST employees.

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 GS. Over time, these regulations have become increasingly incompatible with OPM’s efforts to develop a dedicated modern performance appraisal system. Some of the current regulatory requirements present unnecessary administrative burdens, while others present barriers to implementing needed performance appraisal reform.

Historical Underperformance

Under 5 U.S.C. 4302(c), each agency’s performance appraisal system must include performance standards “permit[ting] the accurate evaluation of performance” based on objective, job-related criteria. However, the performance rating system for non-SES employees fails to meet this statutory requirement because it fails to materially differentiate between excellent, average, and poor performers. Data concerning the performance appraisals of non-SES

employees demonstrates that many of these employees receive annual summary ratings at, or above, the “Fully Successful” level. Specifically, in May 2016, the Government Accountability Office (GAO) published a study on the distribution of non-SES ratings, finding that “[ninety nine-] percent of permanent, non-SES employees received a rating at or above ‘fully successful.’”¹⁶ The report also concluded about sixty-one percent of non-SES employees received an “Outstanding” or “Exceeds Fully Successful” rating in the 2013 fiscal year.¹⁷ The 2016 GAO report also showed that, among non-SES employees, only 0.1 percent were rated at “Unacceptable” and 0.3 percent were rated at “Minimally Successful.”¹⁸

Historically, Federal agencies have confronted persistent challenges in effectively and consistently managing employee performance. For decades, oversight agencies have specifically identified performance management as an area that requires improvement and reform. GAO has noted “the government needs to do a better job in actively managing the workforce to better align employees’ skills with evolving mission needs,” and that “managing employee performance has been a long-standing government-wide challenge and the subject of numerous reforms since the beginning of the modern civil service.”¹⁹ Even though there have been many initiatives to reform the performance management of non-SES employees, agencies continue to struggle with ensuring that an employee’s performance is accurately measured and aligns with the agency’s mission.

In 2019, OPM issued a memorandum 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.²⁰

¹⁶ GAO, *Federal Workforce: Distribution of Performance Ratings Across the Federal Government, 2013* (May 9, 2016), <https://www.gao.gov/assets/680/677016.pdf>.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ GAO, *Federal Workforce, Opportunities Exist for OPM to Further Innovation in Performance Management* (Nov. 2018), <https://www.gao.gov/assets/700/695639.pdf>.

²⁰ OPM, *Applying Rigor in the Performance Management Process and Leveraging Awards Programs for a High-Performing Workforce 1-2* (July 12, 2019), https://www.opm.gov/chcoc/transmittals/2019/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing_508_0.pdf.

However, the 2024 Federal Employee Viewpoint Survey (FEVS) results showed that only 47 percent of Federal employees agreed with the statement, “In my work unit, differences in performance are recognized in a meaningful way.”²¹ This was the lowest positive response rate for any question and has consistently been the lowest over the past three years.²² Similarly, only 45 percent of respondents agreed with the same proposition in 2023.²³ Further data has also yielded similar responses. GAO reported that, from 2010 to 2017, approximately only one-third of surveyed employees agreed or strongly agreed with the statement that “differences in performance are recognized in a meaningful way.”²⁴

Accurate performance management is critical to the success of any Federal agency.²⁵ The ability to measure and assess employee performance enables agencies to reward excellence, address skill gaps, and strengthen accountability. If a Federal agency is to fulfill its mission, then it must have accurate performance measurement. Without accurate performance measures, agencies risk not only misallocating talent but also undermining the motivation of the broader Federal workforce. As GAO further emphasized, “without effective performance management, agencies risk not only losing (or failing to utilize) the skills of top talent, they also risk missing the opportunity to effectively address increasingly complex and rapidly evolving challenges.”²⁶

If relative performance is not accurately measured in an employee’s rating of record, then the entire performance management system across the government is compromised. For example, Governmentwide regulations require that programs for granting performance-based cash awards on the basis of a rating of record must make meaningful distinctions based on levels of performance (5 CFR 451.104(h)). However, the inflation of employee performance ratings

²¹ OPM, *OPM FEVS Dashboard* (last accessed Nov. 19, 2025), <https://www.opm.gov/fevs/reports/opm-fevs-dashboard/>.

²² *Id.*

²³ *Id.*

²⁴ GAO, *Innovation in Performance Management*, *supra* note 19.

²⁵ Merit Systems Protection Board, *Building Blocks for Effective Performance Management 1* (Oct. 2017), https://www.mspb.gov/studies/researchbriefs/Building_Blocks_for_Effective_Performance_Management_1453471.pdf.

²⁶ GAO, *Innovation in Performance Management*, *supra* note 19.

has made it difficult for agencies to provide such meaningful monetary recognition in accordance with regulation. OPM believes that the longstanding inflation of performance ratings thus greatly frustrates efforts to recognize, motivate, and reward high performance across the Federal workforce.

Through OPM oversight of agency non-SES/SP performance appraisal systems, OPM calculated that, for the performance cycles of the fiscal years (FY) 2022 to 2024, approximately 64.4 percent of non-SES/SP employees on a five-level summary rating system (Pattern H) received an “Outstanding” or “Exceeds Fully Successful” rating and 0.5 percent of non-SES/SP employees were rated below “Fully Successful.”²⁷ In FY 2024, 42.7 percent of non-SES/SP employees rated on a five-level summary rating system (Pattern H) were rated “Outstanding” and 21.7 percent were rated “Exceeds Fully Successful.” That year 55.4 percent of non-SES/SP employees rated on a four-level summary rating system (Pattern E) received “Outstanding” ratings and 34.2 percent received “Exceeds Fully Successful.” Just 0.1 percent of employees on Pattern E received the lowest rating in FY 2024. These results indicate that non-SES/SP employee performance ratings may be inflated, and poor performing employees are not being held accountable through a rigorous appraisal process. A properly functioning rating system that makes meaningful distinctions in performance would not give close to half of all Federal employees the highest possible rating, while rating almost no employees as underperforming.

Given the preceding data, it is not surprising that Federal employees also perceive their work unit to be performing exceptionally well. For example, recent FEVS data demonstrates that 88 percent of employees believe employees in their work unit “always” or “most of the time” “meet the needs of our customers.” Ten percent believe they do so “sometimes,” while only 2 percent believe they do so “rarely” or “never.”²⁸ Meanwhile, public trust in government

²⁷ Non-SES/SP ratings data submitted by individual agencies.

²⁸ OPM, *Federal Employee Viewpoint Survey: 2024 Governmentwide All Levels-All Index-All Items Reports*, <https://www.opm.gov/fevs/reports/governmentwide-reports/governmentwide-reports/governmentwide-all-levels-all-index-all-items-reports/2024/2024-governmentwide-all-levels-all-index-all-items-report.xlsx>.

hovers near all-time lows.²⁹ Such incongruence between ratings, perceived competence within work units, and sustained mistrust among the American public suggests that the current performance system fails to comply with the statutory mandate that all non-SES employee performance systems meaningfully distinguish between excellent, average, and poor performance and “establish[] performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance.”³⁰

Given these historical and ongoing challenges, OPM has determined that updates to the performance appraisal system for non-SES employees are necessary. Such updates will strengthen the agencies’ ability to evaluate performance accurately and fairly, ensure that high performance is recognized and rewarded, and align workforce management with mission accomplishment. In doing so, OPM aims to promote a culture of accountability and excellence across the Federal workforce—one that reflects both the government’s evolving operational demands and its longstanding commitment to merit-based service.

Regulatory Changes

Currently, an agency may not require a particular distribution of summary levels for any employee covered by 5 CFR part 430, subpart B, meaning that each non-SES employee can potentially receive any rating irrespective of how other employees perform within the agency. OPM proposes to remove this categorical prohibition on forced, or standardized, distribution for non-SES employees and provide that OPM may establish and require a standardized distribution of some or all non-SES employee rating levels for agencies to apply.³¹

²⁹ Pew Research Center, Public Trust in Government: 1958-2025 (December 4, 2025), <https://www.pewresearch.org/topic/politics-policy/trust-in-government/>.

³⁰ 5 U.S.C. 4302(c)(1).

³¹ 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 all non-senior executive employees. Among other things, OPM believes that this will ensure that employees 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 64.4% receive the highest two performance ratings, and will also help agencies identify and address poor performance, as very few employees receive the lowest performance ratings.

Section 430.202(d) currently states that “[h]eads of agencies or their designees may request the Director of OPM to exclude positions in the excepted service.” On July 17, 2025, the President issued Executive Order (E.O.) 14317, titled “Creating Schedule G in the Excepted Service.”³² E.O. 14317 formally established Schedule G to cover “[p]ositions of a policy-making or policy-advocating character normally subject to change as a result of a Presidential transition.”³³ The order also formally excepted individuals who were appointed under Schedule G from the competitive service.³⁴ In 5 CFR part 213, subpart C, employees who were appointed under Schedule C are identified as being a part of the excepted service. This rulemaking clarifies that non-SES employees appointed under Schedules C or G, as members of the excepted service, may be excluded from coverage under 5 CFR part 430, subpart B, in accordance with 5 CFR 430.202.

In another rulemaking, OPM removed the prohibition on a forced (i.e., standardized) distribution for Senior Executive Service (SES) employees.³⁵ During that process, OPM received comments that were concerned about whether noncareer SES employees might receive preferential consideration for the limited number of high ratings (i.e., Level 4 and 5) that would be available when there is a standardized distribution.³⁶ To alleviate these concerns, OPM determined that it would exclude noncareer SES employees from standardized distribution requirements.³⁷ Likewise, we are proactively taking a similar approach with respect to non-SES employees appointed under Schedules C or G, as members of the excepted service, may be excluded from any standardized distribution requirements, as determined by OPM.

This new approach would apply to all non-SES employees covered under a performance appraisal system subject to 5 CFR part 430, subpart B, including GS and prevailing rate employees. Under a separate rulemaking, OPM is proposing to create a new subpart in part 430

³² 90 FR 34753 (July 17, 2025).

³³ *Id.*

³⁴ *Id.*

³⁵ 90 FR 44291 (amending, inter alia, 5 CFR 430.305(d)).

³⁶ *Id.* at 44292 (Sept. 15, 2025).

³⁷ *Id.*

for senior professionals (SP), who would no longer be covered under 5 CFR part 430, subpart B, if made final. OPM's revised performance plan and system incorporate various changes that seek to reinvigorate the performance of non-SES employees, including the following: removing any patterns of summary levels that utilize a "Level 2" – often referred to as "Minimally Successful;" eliminating required higher-level review of a level 1 rating for an employee's performance appraisal; the ability for OPM to implement a standardized distribution of performance ratings and exclude employees appointed under Schedules C and G from such requirements; and a requirement that all agencies participate in a biennial appraisal system certification with OPM. These changes are contingent upon this proposed rule being made final.

Approved Patterns of Summary Levels

OPM proposes to amend 5 CFR part 430, subpart B, by removing any approved patterns of summary levels that include "Level 2." Conceptually, a Level 2 summary rating is inconsistent with the logic of an accurate, well-performing performance appraisal system that comports with the statutory requirements of 5 U.S.C. 4302. While not expressly defined, a Level 2 is a summary rating that is neither "Fully Successful" – a "Level 3" rating – nor is it "Unacceptable" – a "Level 1" rating.³⁸ However, a plain reading of the summary levels indicates that any summary rating that is not "Fully Successful" inherently signifies that an employee is not meeting the performance criteria of their position. Any approved patterns of summary levels that have two levels below a "Fully Successful" create unnecessary complexity without meaningful distinction. The Merit Systems Protection Board (MSPB) also noted the failings of a "Level 2" rating, noting it "is a difficult level of performance to define" because "it makes possible a situation that managers, employees, and members of the public may find intolerable:

³⁸ 5 CFR 430.208(d)(2).

an employee who is not performing the job satisfactorily, yet cannot be removed for performance and who remains in the position at a full salary.”³⁹

This proposed amendment also aligns with OPM’s statutory mandate to improve the accuracy and consistency of its performance appraisal systems. Given the above data evidencing inflated performance ratings and the minimal differentiation between any summary rating that is not “Fully Successful,” the proposed change eliminates an ineffective and logically redundant summary level rating. By simplifying the table of approved patterns of summary levels, agencies will make clear and accurate distinctions between performance that is “Fully Successful” and “Unacceptable.” In doing so, this rulemaking will increase the accountability of the Federal service to the American public and improve the integrity of Federal performance management.

Therefore, OPM seeks to simplify 5 CFR part 430, subpart B, by ensuring that there is only one level – “Unacceptable” – that represents when a non-SES employee’s performance fails to meet the fully successful standards. OPM’s oversight of agency non-SES performance appraisal systems also revealed that, for agencies using a five-level summary rating system, only 0.3 percent of non-SES employees were rated at a “Level 2” for the fiscal years 2022 to 2024.⁴⁰ The minimal use of a “Level 2” rating also suggests that agencies have not found the availability of a “Level 2” to be useful.

Enhanced Accountability for Poor Performance

OPM proposes to add a new subsection 430.208(j) that prohibits contesting performance ratings through union grievance arbitration. Agency collective bargaining agreements generally permit bargaining unit employees to grieve performance ratings and for their exclusive representatives to advance the grievances to binding arbitration. This requires agencies to defend performance ratings in an often lengthy process that can involve considerable expense.

³⁹ MSPB, *Determining an Acceptable Level of Competence for Step Increases* (Apr. 2021), https://www.mspb.gov/studies/researchbriefs/Determining_an_Acceptable_Level_of_Competence_for_Step_Increases_1823371.pdf.

⁴⁰ *Supra* note 27.

Experience has shown that arbitration of performance ratings creates duplicative processes, delays the finality of ratings of record, and diverts supervisory and agency resources from mission-critical activities, thereby undermining efficiency and timely accountability for performance outcomes. These dynamics pressure supervisors to inflate performance ratings to avoid litigation, undermining the integrity of the assessment.

Further, grievance arbitrators are in almost all cases private citizens. They do not work in the Federal Government and have little experience in agency operations. They are not well equipped to evaluate the accuracy or appropriateness of specific performance ratings. They are particularly ill-equipped to assess performance ratings assigned under a standardized distribution, as they would only see the individual before them and not the broader workforce they were evaluated with.

Eliminating grievance-based avenues for revising ratings of record will promote clearer roles and responsibilities in performance management, reinforce supervisory authority, and enhance consistency and integrity in appraisal systems. OPM also expects that requiring agencies to assign performance ratings under a standardized distribution would generally increase grievances over performance ratings as fewer employees would receive the highest marks. This proposed regulation would prevent such grievances from diverting agency resources from mission accomplishment.⁴¹

Importantly, the proposed revisions preserve appropriate due process protections by continuing to allow changes to ratings of record when a formal proceeding permitted by law or regulation results in a final determination by an appropriate authority that the rating must be changed, or when a change is effected as part of a bona fide settlement of such a formal

⁴¹ OPM's proposed regulation, if finalized, would not abrogate existing CBA articles. Performance rating grievances would be prohibited when the terms of those CBAs expire and they are renegotiated or roll over. *See U.S. Department of Defense, Defense Contract Audit Agency, Central Region and American Federation of Government Employees, Local 3529, 37 FLRA 1218 (1990).*

proceeding. They would also allow employees to request informal reconsideration of their rating.

OPM also proposes to amend 5 CFR part 430, subpart B, by removing the requirement of higher-level review for a Level 1 rating during an employee's performance appraisal. Currently, 5 CFR 430.208(e) states "[a] rating of record of "Unacceptable" (Level 1) shall be reviewed and approved by a higher-level management official." However, OPM has determined that requiring higher-level review for a Level 1 rating in all cases adds unnecessary procedural complexity. For example, in cases where the rating official is already a senior leader or where the agency structure does not support additional layers of review, mandating higher-level approval can be redundant.

OPM proposes to remove the requirement for higher-level approval for a Level 1 rating because the standards for this rating are clearly defined, Level 1 ratings are rarely used, and the performance assessment will be subject to extensive oversight if the agency subsequently takes a performance-based action. Mandating additional review adds unnecessary complexity, delays corrective action, and may be redundant in streamlined agency structures. Agencies should retain flexibility in determining when and how such reviews occur. OPM notes that nothing in this regulation prohibits higher level review of "Unacceptable" ratings; the proposed regulation would simply stipulate that such review is not required in all cases.

OPM also proposes adding limitations to the use of Summary Level Pattern A, which is a 2-level system, commonly referred to as pass/fail. Use of a pass/fail system directly works against the intention of meaningful differentiation between summary ratings. While the pass/fail system does not allow for deliberate distinctions of performance or providing a basis for promoting/rewarding high performers, it is reasonable for a limited number of populations in which comparing, categorizing, and ranking of employees is impractical or impossible. OPM seeks to limit the use of Summary Level Pattern A to only seasonal employees, teachers, General Schedule grades 1-4, and Federal Wage System (e.g., wage grade) employees (including

equivalent grade levels and types of positions in other personnel systems covered by this subpart).

Standardized Distribution

Standardized distribution, also sometimes referred to as “forced distribution” or “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.

Performance appraisals in the Federal government date back to the U.S. military’s “merit rating” system, created during World War I to identify poor performers for discharge or transfer. From the beginning of performance appraisal systems, a recurring challenge has been to ensure that supervisors use the system to distinguish good performers from bad. When performance rating systems fail to meaningfully distinguish different levels of performance, they lose much of their utility. This is especially so because supervisors in the Federal government, along with their employees, must spend a considerable amount of time engaged in performance appraisals.

The practice of requiring a standardized distribution of performance ratings dates back to just before World War II, when the military used the practice to identify officer candidates. A study conducted by Berger, Harbring, and Sliwka (2010) showed that standardized distributions can counter leniency effects;⁴² i.e., the common tendency of raters to be overly generous in their ratings. Leniency bias can occur for a number of common reasons, including so that supervisors can avoid having to deliver critical feedback to a subordinate. However, excessive leniency bias undermines the integrity of a performance rating system: undermining high performance (a frequent occurrence in entities that do not differentiate performance fairly); protecting poor performance (which inhibits poor performers from being identified and receiving performance improvement interventions); and distorting decisions as to whom to promote.

⁴² Berger, J., Harbring, C., & Sliwka, D., *Performance Appraisals and the Impact of Forced Distribution: An Experimental Investigation*, IZA Discussion Paper No. 5020 (2010).

The practice of forced ranking (that is, using a standardized distribution of performance ratings) has a well-documented history of private sector adoption over the last several decades. Wijayanti, Sholihin, Nahartyo (2024) conducted a review of the forced distribution literature.⁴³ A total of 41 research articles published from 1960 to 2022 were included in their review. These studies highlight many notable benefits of utilizing a forced, or standardized, distribution 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 a standardized distribution can quickly enhance organizational performance and promote the success of merit-based reward systems. Some studies also found that a 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, a 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 executive performance plans over the past few decades, including Oracle, Meta, Amazon, Microsoft, Uber, and Google.⁴⁴ The practice was famously championed by the late General Electric executive Jack Welch, who was concerned that supervisors failed to identify real differences in performance, depriving employees of valuable feedback that is necessary to drive improvement. In Welch's 2005 book, *Winning*,⁴⁵ he advocates a "20-70-10" performance differentiation framework coined the vitality curve," in which 20% are the organization's highest performers who should receive the greatest rewards, opportunities, and leadership investment; the middle 70% who meet expectations and for whom management

⁴³ 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).

⁴⁴ 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>.

⁴⁵ Jack Welch and Suzy Welch, *Winning* (Warner Books, 2005).

should emphasize coaching and development; and the bottom 10% who are the low performers who still fail to meet expectations after clear feedback and support. Welch consistently stressed that these numbers were illustrative, and that the vitality curve works best when paired with candor and frequent feedback, so employees always know where they stand and are not surprised by outcomes. One recent source estimates that 30 percent of Fortune 500 companies use a standardized distribution of some sort in their performance evaluations.⁴⁶ 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. But, under 5 U.S.C. 4302(c)(1), non-SES employees operate under just such a statutory mandate. In addition, the Federal Government is entrusted with many critical responsibilities from veterans' health care to law enforcement to disaster relief to fighting pandemics.⁴⁷ When employees in the Federal Government fail to perform at a high level, these crucial, life-or-death missions are compromised. Further, unlike the private sector, the Federal Government lacks a profit motive to ensure meaningful evaluations of its employees.

By ensuring differentiation in performance ratings, a standardized distribution also ensures that employees receive accurate feedback regarding how the agency has evaluated their performance. The relevant statutory authority, 5 U.S.C. 4302(c), states that a performance appraisal system shall, among other things, allow the accurate evaluation of job performance based on objective criteria; provide a basis for recognizing and rewarding outstanding performance; and assisting employees in improving unacceptable performance. A performance appraisal can only do these things if it differentiates relative levels of performance.

However, OPM believes that the current system does not optimally satisfy the requirements of 5 U.S.C. 4302 due to widespread and systemic inflation of employee

⁴⁶ “*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>.

⁴⁷ *See, e.g.*, Titles 38, 34, and 42 of the United States Code.

performance ratings that has never been curbed over many decades and many efforts. As discussed above, in FY 2024 close to half of all Federal employees received the highest possible evaluation. Surveys consistently show that Federal employees themselves believe the present performance appraisals system fails to meaningfully differentiate relative performance. The 2024 Federal Employee Viewpoint Survey (FEVS) results showed that only 47 percent of Federal employees agreed with the statement, “In my work unit, differences in performance are recognized in a meaningful way.”⁴⁸ This was the lowest positive response rate for any question and has consistently been the lowest over the past three years.⁴⁹ Similarly, only 45 percent of respondents agreed with the same proposition in 2023.⁵⁰ Further data has also yielded similar responses. GAO reported that, from 2010 to 2017, only one-third of surveyed employees agreed or strongly agreed with the statement that “differences in performance are recognized in a meaningful way.”⁵¹

OPM views a system that incorporates a standardized distribution of performance ratings as consistent with, and supportive of, the merit system principles set forth in 5 U.S.C. 2301(b). By better differentiating relative levels of performance, OPM believes that (among other things) the performance appraisal system would better ensure high standards of integrity, conduct, and concern for the public interest, would better ensure efficient and effective use of the Federal workforce (by better identifying, and therefore rewarding, truly high performance), would more fulsomely ensure that employees are retained based on adequacy of performance; would better identify low performance (and thus better allow appropriate action to be taken regarding low performance); and would better allow agencies to target education and training resources to average or low performers. *See* 5 U.S.C. 2301(b). Supervisors who assign ratings based on personal favoritism would continue to violate merit system principles regardless of the rating

⁴⁸ OPM, *OPM FEVS Dashboard* (last accessed Nov. 19, 2025), <https://www.opm.gov/fevs/reports/opm-fevs-dashboard/>.

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ *Id.*

structure, while a standardized distribution would reinforce objective, performance-based differentiation.

Thus, OPM does not believe that a standardized rating system would deny employees fair or equitable treatment, or subject them to arbitrary action. Instead, it would ensure fair and equitable treatment by ensuring that they receive transparent, accurate information about their performance, ensure that performance ratings provide a true and accurate basis for recognizing and rewarding outstanding performance, and ensure that low performance is identified and addressed. *See* 5 U.S.C. 4302(c)(4). Employee performance ratings would still be based on individual merit and individual performance—not on irrelevant factors like race, political affiliation, or religion. Thus, distinguishing employees based on relative performance does not conflict with the principle of fair and equitable treatment without regard to prohibited factors such as race, color, religion, sex, national origin, age, or political affiliation (5 U.S.C. 2301(b)(2)); rather, it reflects fair and equitable treatment by basing outcomes on job-related performance. Similarly, the prohibition on arbitrary action, personal favoritism, or coercion for partisan political purposes (5 U.S.C. 2301(b)(8)) is directed at improper motives and conduct, not at performance-based distinctions.

Indeed, a standardized distribution would ensure more accurate and rigorous performance ratings by guarding against leniency bias—ensuring that the performance appraisal system truly differentiates outstanding performance, reflects individual merit, and promotes a culture where outstanding performance is celebrated and rewarded and where poor performance is identified and address.

OPM is aware of concerns that a standardized distribution of ratings could impact teamwork among employees. However, OPM notes that, in accordance with longstanding OPM and GAO guidance, individual performance appraisals should align with achievement of

organizational and team goals.⁵² Further, OPM believes that any such concerns may be addressed by making competencies like teamwork, problem-solving, collaboration, and mentoring critical elements in individual performance plans. These concerns may also be addressed by including specific, measurable, achievable, and meaningful goals in individual performance plans, and ensuring such goals align with broader organizational and team objectives. In most cases, such meaningful goals can only be achieved by effective collaboration with others in the organization. Concerns over teamwork and collaboration may also be addressed by giving performance-based awards to teams as well as individuals. Ultimately, however, OPM believes that any potentially negative effects on employee teamwork and collaboration are outweighed by the increased accuracy and rigor that may be achieved by a standardized distribution, especially in light of persistent leniency bias and rating inflation that has occurred for many years across the Federal government. 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 disconnect between these ratings and actual non-SES employee performance, as reflected in reports throughout the past decade. Further, for the same reasons stated above, OPM proposes to add language stating that non-SES employees appointed under Schedules C or G, may be excluded from such standardized distribution requirements, as determined by OPM.

Biennial Appraisal System Certifications

Pursuant to 5 U.S.C. 4302(c)(1), performance appraisal systems must “establish[] performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria.” To meet this statutory requirement, OPM proposes a new requirement for each Federal agency that uses a performance management system covered by 5 CFR part 430, subpart B, to undergo a biennial certification of

⁵² GAO, Creating a Clear Linkage between Individual Performance and Organizational Success, GAO-03-488 (March 2003) (noting, as a key practice, “[a]lign[ing] individual performance expectations with organizational goals”).

its appraisal system with OPM. While the current language in subpart B states that OPM “may” evaluate an agency’s appraisal system, a biennial certification will ensure that each agency’s performance appraisal system continues to meet statutory and regulatory requirements and OPM guidance.

This proposed amendment reflects OPM’s conclusion that increased oversight is necessary for OPM to meet its statutory obligations in 5 U.S.C. 4302(c). Increased oversight will hold Federal agencies – and its employees – accountable to OPM’s regulatory requirements. In doing so, the biennial certification process would improve the overall rigor and consistency of the performance management systems across the Federal Government. As noted above, data suggests that fewer than 1 percent of all non-SES employees are rated below “Fully Successful,” and there are persistent surveys that show Federal employees are skeptical that current performance management systems meaningfully differentiate between different levels of performance.⁵³ These trends demonstrate the performance management systems covered by 5 CFR part 430, subpart B, are not functioning as effective instruments for performance differentiation, accountability, or workforce development.

Through the biennial certification process, OPM would be better equipped to identify weaknesses in agency systems, promote best practices, and provide targeted guidance to improve the quality of performance evaluations. The certification process would also ensure that appraisal systems align with evolving agency missions and workforce needs. In short, biennial certification would help OPM to carry out its statutory responsibility to ensure that agency performance appraisal systems permit the accurate evaluation of job performance, advance merit-based management, and strengthen public trust in government accountability.

Supervisory Critical Element

OPM’s regulations in 5 CFR 412.202 require the systematic development of individuals in supervisory, managerial and executive positions. Supervisors bear the responsibility to

⁵³ *Supra* notes 24, 27.

accurately assess employees' performance. As such, supervisors must be held accountable with respect to being appropriately trained on and executing exemplary performance management. Agencies are also accountable for providing comprehensive training and oversight of their performance management programs. Too often, new supervisors receive inadequate training on identifying and addressing poor performance. This lack of training leads to erroneous assessment of employees' performance, often resulting in inflated ratings for poor performers.

As a way to prevent this lack of training and oversight, OPM's *Performance Management for Federal Employees*⁵⁴ provided tools for supervisors to identify and address poor performance. In addition to those critical tools, OPM developed supervisory training that includes drafting effective performance goals, elements and standards. Completion of this new training is required by all individuals in supervisory, managerial and executive positions.

In the same memorandum, OPM introduced a new mandatory critical element to be included in the performance plans of all supervisory non-SES/SP employees. Titled, "Holding Employees Accountable," the critical element ensures adequate and appropriate assessment of supervisors with respect to the execution of their performance management responsibilities, including supporting and rewarding excellent work from employees supervised, as well as timely and efficiently addressing poor and mediocre performance of the same employees.

While the new critical element is required via OPM's authority established in 5 U.S.C. 4302, OPM seeks to codify the supervisory performance requirement in regulation. The proposed language to be added to 5 CFR 430.206(b)(9) supports OPM's commitment to the oversight of agency performance management systems and a high-performance, high-accountability culture in the Federal workforce.

Proposed Changes in this Rulemaking

OPM has reviewed the performance management regulations governing non-SES employees and is issuing this proposed rule in response to its regulatory authority in 5 U.S.C.

⁵⁴ *Id.*

4305. OPM proposes to amend 5 CFR 430.207. OPM proposes to remove paragraph (c) because it provides that appraisal programs should provide assistance to employees whose performance is below “Fully Successful” but above “Unacceptable.” However, because OPM has determined that it is appropriate to remove any summary level pattern that utilizes a “Level 2,” the deletion of paragraph (c) is also appropriate since it only refers to performance that would be a “Level 2” rating. OPM would remove paragraph (c) and redesignate paragraph (d) as (c).

OPM also proposes to amend 5 CFR 430.208 by adding a new paragraph (c) and redesignate the current paragraph (c) as paragraph (d). The new paragraph § 430.208(c) would state that agencies must use a standardized distribution of ratings, as established by OPM. Removing the categorical prohibition would allow OPM to require and enforce a pre-established agency-wide and government-wide distribution of performance ratings among all non-SES employees, for covered agencies and personnel. OPM anticipates implementing a standardized distribution limiting the highest rating levels (i.e., levels 4 and 5) only and would not impose any requirements with respect to the number of employees rated at levels 1 and 3. The proposed amendment also provides for the exclusion of non-SES employees appointed under Schedules C or G from any standardized distribution requirements, as determined by OPM.

In addition, OPM is proposing to expressly allow comparing, categorizing, and ranking employees on the basis of their performance, a change that would allow for a standardized distribution of performance ratings. Thus, in § 430.208(a)(1), the rating of record must be determined using the method established under § 430.208(b) and (d). In addition, OPM believes that expressly allowing agencies to compare relative employee performance—and removing the previous prohibition on this practice—will ensure that employee performance ratings better account for, and differentiate between, relative employee performance, ensuring that ratings of record provide an accurate guide to rewarding high performance and identifying and addressing low performance, in alignment with congressional intent. See 5 U.S.C. 4302(c). Any human

judgment is by nature comparative.⁵⁵ Thus, the quality of an evaluation is improved by ensuring that it is comparative in nature (that is, involving relative judgments of a target in comparison to other individuals and groups), instead of absolute (that is, involving judgments on scales that do not reference others).⁵⁶ One study, for example, concluded that “[t]he relatively few studies that have investigated the validity of comparative performance appraisal methods have tended to support their validity.”⁵⁷ It found significant evidence from “at least three important and quite different domains that comparative evaluative judgments of the self or others may be more advantageous than absolute evaluative judgments.”⁵⁸ OPM thus believes that a performance appraisal framework that permits comparative judgments among employees, by utilizing a standardized distribution of ratings, will more accurately and objectively measure individual performance than one that prohibits any comparative judgments between employees and requires that any measurement of employee performance be framed in absolute terms, in addition to correcting for leniency bias (a widespread and well-documented problem in Federal employee performance ratings).

In accordance with the above section titled “Approved Patterns of Summary Levels,” OPM proposes to amend 5 CFR 430.208(d)(1) to remove any patterns of summary levels using a “Level 2” or that have “Level 4” as the highest summary level. Accordingly, this rulemaking would do the following: removes Patterns C, D, F, G, H; retains Patterns A and B; and redesignates Pattern E as C. Additionally, OPM proposes to amend § 430.208(d)(1) by limiting the use of Pattern A (Pass/Fail) only for: seasonal employees, teachers, General Schedule grades 1-4, and Federal Wage System (e.g. wage grade) employees (including equivalent grade levels and types of positions in other personnel systems covered by this subpart). OPM also proposes to amend § 430.210(b) by adding language that states OPM *must* conduct a biennial review and

⁵⁵ Kedia G, Mussweiler T, Linden DE. *Brain mechanisms of social comparison and their influence on the reward system*. Neuroreport. 2014 Nov 12;25

⁵⁶ Goffin RD, Olson JM. *Is It All Relative? Comparative Judgments and the Possible Improvement of Self-Ratings and Ratings of Others*. Perspect. Psychol. Sci. 2011 Jan; 6(1):48-60.

⁵⁷ *Id.* at p. 50.

⁵⁸ *Id.* at 53.

certification of an agency's performance appraisal system that is covered by 5 CFR part 430, subpart B. The revised language relatedly states that OPM must issue annual evaluation criteria and policy, and that OPM may recommend that the Office of Management and Budget limit an agency's aggregate awards spending based on an unfavorable evaluation. By making these conforming changes, OPM guarantees that agencies will have an incentive to comply with the requirements of 5 CFR part 430, subpart B.

OPM also proposes to amend 5 CFR 430.206(b) by adding a new subparagraph (9). The new paragraph § 430.206(b)(9) would require a supervisory critical element to be included in the performance plan of all supervisory non-SES/SP employees. The language of the supervisory critical element and its corresponding performance standards would be established by OPM.

Conforming Amendments

In an unrelated rulemaking, OPM has proposed revisions to the reduction in force regulations found in 5 CFR part 351. 90 FR xxxxx (MM, DD, YYYY). In this rule OPM proposes to make appropriate conforming changes to part 351 following the finalization of that rule. Based on the current language, OPM would make conforming changes to proposed 5 CFR 351.503 to adjust the calculations for an employee's performance credit by removing Level 2 from the list of summary levels and removing references to summary level patterns that would be eliminated under this rulemaking.

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 for non-SES employees in subchapter I of chapter 43 of title 5, United States Code. The purpose of this rulemaking is to modernize and strengthen the performance management framework for non-SES employees under 5 CFR part 430, subpart B. The current regulatory structure has remained largely unchanged for decades. Therefore, it no longer reflects the operational realities or accountability standards necessary for today's Federal workforce. As

stated in more detail above, persistent issues—including inflated performance ratings, limited differentiation between successful and unsuccessful performance, and uneven agency compliance with statutory performance appraisal requirements—demonstrate the need for comprehensive reform.

OPM proposes to eliminate all summary level patterns that use a “Level 2” rating. We also propose to eliminate any pattern in which “Level 4” represents the highest rating level. This will preserve “Level 5” as the highest rating level except in limited cases where a pass/fail (i.e., Levels 1 and 3) pattern is used. As noted above, data shows that only approximately 0.3 percent of employees are rated at “Level 2,”⁵⁹ demonstrating that the rating level is rarely used and does not meaningfully distinguish performance. Further, any rating below “Fully Successful” already indicates that an employee is not meeting job expectations. A “Level 2” rating is illogical because “it makes possible a situation that managers, employees, and members of the public may find intolerable: an employee who is not performing the job satisfactorily, yet cannot be removed for performance and who remains in the position at a full salary.”⁶⁰ Accordingly, the “Level 2” rating adds unnecessary complexity, is not consistent with an accurate performance management system, and should be eliminated.

As mentioned in the Background, the performance rating data for non-SES employees for fiscal years 2022 to 2024 show approximately 64.4 percent of non-SES employees received an “Outstanding” or “Exceeds Fully Successful” rating and 0.5 percent of non-SES employees were rated below “Fully Successful.”⁶¹ The distribution of these ratings suggests there is inflation of non-SES employee ratings and poor performing employees are likely not being identified or held accountable through a rigorous appraisal process. Similarly, where there is a proliferation of ratings inflation, rating-based awards are also likely to be paid to undeserving employees. As

⁵⁹ *Supra* note 27.

⁶⁰ MSPB, *Determining an Acceptable Level of Competence for Step Increases*, *supra* note 39.

⁶¹ *Supra* note 27.

such, action must be taken to re-set and infuse rigor into the non-SES performance appraisal process, including the permitted use of standardized distributions.

This proposed rulemaking also aligns OPM's regulations with 5 U.S.C. 4302(c) by establishing a biennial certification requirement for performance management systems covered by 5 CFR part 430, subpart B. The biennial certification requirement with OPM ensures that each agency complies with OPM's regulations and, therefore, accurately evaluates the job performance of non-SES employees based on objective criteria. Given the evidence of inflated ratings and minimal performance differentiation across the Federal workforce,⁶² this biennial certification requirement would increase OPM's ability to provide effective oversight and compel accuracy within agency performance appraisal systems.

B. Impact

The proposed amendments to 5 CFR part 430, subpart B, will cause both the President and the American public to more confidently rely on employees that make up the biggest percentage of all Federal employees: non-SES employees. The above changes to 5 CFR part 430, subpart B, would enable agencies and non-SES employees to be held to a higher standard of accountability and ensure only the truly deserving performers are rewarded for their performance. Over time, these improvements are expected to result in higher-performing organizations, more responsive public service, and renewed public trust in the integrity and effectiveness of the Federal workforce.

By authorizing OPM to establish and maintain a standardized distribution of some or all rating levels, this proposed rulemaking would require agencies to refocus efforts on ensuring that there are meaningful distinctions in non-SES performance ratings. Establishing limits on non-SES employee ratings would result in a more normalized distribution of performance ratings. OPM expects that a standardized distribution of some or all rating levels would incentivize improved performance of non-SES employees as they no longer would expect to receive the

⁶² OPM, *Performance Management for Federal Employees*, *supra* note 13.

highest ratings without demonstrating superior performance relative to the other non-SES employees in their agency. This would ultimately improve the performance of the Government in providing services to the American public.

The proposed amendments will have a significant impact on the operation of an agency's performance management systems. The removal of any patterns that include a "Level 2" rating will simplify the appraisal system by removing a level that states an employee's job performance is not "Unacceptable" when it fails to be "Fully Successful." Further, because a very small percentage of employees are rated at "Level 2," the removal of that rating should cause minimal operational disruption but provide significant benefits.

The proposed biennial appraisal system certification requirement will strengthen non-SES employee consistency and oversight under 5 U.S.C. 4302(c). This new process will not impose significant additional administrative burden, as most agencies already maintain and periodically review their performance appraisal systems. Instead, certification will serve as a structured mechanism for agencies to demonstrate compliance, identify deficiencies, and receive OPM feedback on improving system quality. Over time, the requirement will enhance interagency comparability, promote best practices, and ensure that agency systems continue to meet statutory standards for objectivity and accuracy.

C. Costs

This proposed rule would affect most Federal agencies—ranging from cabinet-level departments to small independent agencies—that have employees covered under 5 CFR part 430, subpart B. We estimate that this rulemaking will require individuals employed by these agencies to spend time updating their performance appraisal system(s), program(s), policies, and plans during fiscal year 2026 to prepare for implementation in fiscal year 2027. Typically, an agency's human resources staff are responsible for these tasks. Therefore, for this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2026 for GS-14, step 5, in the Washington, DC, locality pay table (\$163,104 annual locality rate and

\$78.15 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 \$156.30 per hour. We estimate that, in the first year following publication of a final rule, this would require an average of 22,500 hours of work governmentwide, resulting in estimated costs of about \$23,445 per agency and about \$3,516,750 governmentwide. Additionally, USAPerformance, which is an IT tool used by many agencies to service their performance management systems, would need to be updated to reflect the removal of the Level 2 rating. This would require an estimated 400 hours of work at the rate of \$390 per hour, resulting in an estimated cost of \$156,000. There are also approximately 48 other agency-specific IT systems used for performance management that would need the same update. OPM estimates the cost to each agency would be similar to that of USAPerformance, resulting in an estimated \$7,488,000 in total costs to update these other systems.

The regulatory changes in the proposed rule would also require OPM to evaluate the operation and application of agency performance appraisal system(s) and program(s) on a biennial basis. We estimate that, in the first year following publication of the final rule, doing so will require 150 hours of work by OPM employees with an average hourly cost of \$156.30. This work would result in estimated costs in that first year of implementation of about \$23,445.

We do not believe this rulemaking will substantially increase the ongoing administrative costs to agencies (including any administrative costs associated with OPM's annual review of agency appraisal system(s) and program(s)) because the rulemaking provides cost-saving provisions. It also eliminates mandatory review of Level 1 "Unacceptable" ratings of record, thereby eliminating those associated labor costs.

D. Benefits

Since 5 CFR part 430, subpart B, covers positions that include GS and prevailing rate employees, its impact is governmentwide. Non-SES employees are the backbone of the Federal Government and are, therefore, critical to the operation of an effective and efficient government.

The application of a standardized distribution within the non-SES employee performance appraisal system would reinforce the understanding that success as a Federal employee is aligned to the appropriate rating at the fully successful level. By establishing a limit on the number of non-SES employees who can receive a rating above the fully successful level, 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 a high number of its non-SES employees at the highest performance ratings, thus encouraging employees to strive for increased levels of performance and ultimately provide better results for the Government and the American public.

The removal of summary level patterns that include a “Level 2” also simplifies and increases the rating accuracy of non-SES employees. A “Level 2” rating is rarely used and is confusing because it creates a performance rating that guarantees an employee stays in their position when their performance was not “Fully Successful.” Its removal eliminates redundancy, simplifies rating scales, and allows agencies to more clearly distinguish between satisfactory and unsatisfactory performance. This simplification will also help supervisors communicate expectations more clearly and apply performance standards more consistently across the workforce.

The new biennial certification requirement will also strengthen OPM’s oversight of non-SES employees and aid in continuous improvement. The establishment of a biennial oversight mechanism will ensure that OPM and all impacted Federal agencies are complying with the congressional requirements of 5 U.S.C. 4302. Recurring certification will aid OPM in identifying inconsistencies or deficiencies in agency appraisal systems, promote best practices across the Government, and enable OPM to provide targeted technical assistance where needed. This ongoing review process will foster greater accountability, transparency, and uniformity in the administration of performance appraisal systems, thereby improving public confidence in Federal workforce management.

E. Regulatory Alternatives

An alternative to this rulemaking is to not permit standardized distributions and instead issue further guidance encouraging agencies to be increasingly rigorous in their management of non-SES performance to promote meaningful distinctions in non-SES performance. However, previous attempts to achieve this result through guidance have not been successful in curbing inflated non-SES employee ratings. Without the ability to place limits on the ratings of non-SES employees, there will almost certainly continue to be a pervasive inflation of ratings and a lack of accountability and meaningful distinction in performance ratings.

Another alternative to this rulemaking is to keep all patterns of summary levels that include a “Level 2.” Instead, OPM could issue further guidance on the appropriate use of any ratings below a “Level 3,” and instruct agencies to hold employees in this rating level more accountable. However, the use of a summary level pattern that includes a “Level 2” has not aided agencies in meaningfully distinguishing between performers at different rating levels. Rather, a “Level 2” rating is rarely used due to its inherent contradictions. Another alternative to this rulemaking is to not create a biennial certification requirement. Instead, OPM could issue further guidance encouraging agencies to be increasingly rigorous in managing the performance of their non-SES employees. OPM could exercise its authority and include a more rigorous review of agency performance management results in its human capital oversight, conducted by OPM’s Merit Systems Accountability and Compliance team. Oversight agencies have noted for decades that there are issues with the performance management of Federal employees and guidance has proven to be ineffective at materially improving an agency’s performance management system. Rather, a biennial certification requirement will guarantee a regular, recurring review of each agency’s performance management system and require its compliance with 5 CFR part 430, subpart B. Therefore, the biennial certification requirement will better aid OPM and the Federal Government as a whole in meeting the statutory requirements for performance management systems.

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 amendment on non-SES employee performance management by Federal agencies. The type of information in which OPM is interested includes, but is not limited to, the following:

- How will a standardized distribution of some or all performance ratings drive merit, competence, and excellence across the Federal Government?
- Is there any research OPM should consider regarding what impact a standardized distribution may have on non-SES employee performance and organizational performance?
- Does the current non-SES employee performance management system accurately distinguish excellent from average from poor performance? If so, how?
- Would a standardized distribution help drive a high-performance culture across the Federal Government? Why?
- Would a standardized distribution motivate non-SES employees to work harder and produce better results for the American people? Why?
- Would a standardized distribution empower agency leadership to hold non-SES employees accountable for poor performance? Why?
- What effect, if any, would a standardized distribution have on the Government's ability to hire and retain non-SES employees?
- How has standardized distribution of employee performance rankings worked in the private sector? Has it positively or negatively impacted corporate performance?
- What effect would a standardized distribution of performance ratings have on teamwork and collaboration among Federal employees? How could any such concerns be addressed?

What measures could Federal agencies take to ensure that standardized distribution is implemented in such a way as to promote a culture that values individual performance, teamwork, collaboration, and high performance?

Severability

OPM proposes that, if any of the provisions of this proposed rule as finalized is held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, it shall be severable from its respective section(s) and shall not affect the remainder thereof or the application of the provision to other persons not similarly situated or to other dissimilar circumstances. For example, if it is determined that OPM may not establish and refine a standardized distribution of summary levels, the proposed provision eliminating summary level patterns utilizing Level 2 summary levels would remain in effect. OPM welcomes public comment on the independent operation of various provisions in this proposal.

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 E.O.s 12866 and 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 economically significant rules as defined by section 3(f)(1) of E.O. 12866. This rulemaking does not reach that threshold but has otherwise been designated a “significant regulatory action” under section 3(f) of E.O. 12866.

This rule is not expected to be a regulatory action under E.O. 14192 because it imposes no more than de minimis 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 E.O. 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 E.O. 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 in 5 CFR Part 430

Decorations, Government employees.

Signing Statement

The Director of OPM, Scott Kupor, reviewed and approved this document and has authorized the undersigned to electronically sign and submit this document to the Office of the Federal Register for publication.

Office of Personnel Management.

Jerson Matias,

Federal Register Liaison.

For the reasons stated in the preamble, OPM is proposing to amend 5 CFR part 430 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

§ 430.206 Planning performance.

2. Amend § 430.206 by adding paragraph (b)(9) to read as follows:

* * * * *

(b) * * *

(9) The performance plan of any supervisor covered under this subpart must include a supervisory critical element comprised of supervisory requirements established by OPM and agency-established criteria for protecting whistleblowers, as required by 5 U.S.C. 4302(b).

§ 430.207 – [AMENDED].

3. Amend § 430.207 by:

a. Removing paragraph (c); and

b. Redesignating paragraph (d) as (c).

4. Revise and republish § 430.208 to read as follows:

§ 430.208 Rating performance.

(a) As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record must be given to each employee.

(1) A rating of record must be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency must not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee's performance.

(3) Except as provided in § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

(b) Rating of record procedures for each appraisal program must include a method for deriving and assigning a summary level as specified in paragraph (d) of this section based on appraisal of performance on critical elements and, as applicable, non-critical elements.

(1) A Level 1 summary ("Unacceptable") must be assigned if and only if performance on one or more critical elements is appraised as "Unacceptable."

(2) Consideration of non-critical elements must not result in assigning a Level 1 summary ("Unacceptable").

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

(d) The method for deriving and assigning a summary level, as may be established by OPM as described in paragraph (c) of this section, may involve comparing, categorizing, and ranking employees or groups on the basis of their performance. Such procedures may also be used to make award determinations and promotion decisions.

(e) *Summary levels.*

(1) An appraisal program must use one of the following patterns of summary levels, but Pattern A may only be used for seasonal employees, teachers, General Schedules grades 1-4, and Federal Wage System employees:

Pattern	Summary level				
	1	2	3	4	5
A	X		X		
B	X		X		X
C	X		X	X	X

(2) Within any of the patterns shown in paragraph (e)(1) of this section, summary levels must comply with the following requirements:

(i) Level 1 through Level 5 are ordered categories, with Level 1 as the lowest and Level 5 as the highest;

(ii) Level 1 is “Unacceptable”;

(iii) Level 3 is “Fully Successful” or equivalent; and

(iv) Level 5 is “Outstanding” or equivalent.

(3) The term “Outstanding” may be used only to describe the summary level “Level 5.”

(4) The designation of a summary level and its pattern shall be used to provide consistency in describing ratings of record and as a reference point for applying other related regulations, including, but not limited to, assigning additional retention service credit under § 351.504 of this chapter.

(5) Under the provisions of § 351.504(e) of this chapter, the number of years of additional retention service credit established for a summary level of a rating of record shall be applied in a uniform and consistent manner within a competitive area in any given reduction in force, but the number of years may vary:

- (i) In different reductions in force;
- (ii) In different competitive areas; and
- (iii) In different summary level patterns within the same competitive area.

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

(f) 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.

(g) Each rating of record must cover a specified appraisal period. Agencies must not carry 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.

(h) When either a regular appraisal period or an extended appraisal period ends and any agency-established deadline for providing ratings of record passes or a subsequent rating of record is issued, an agency must not produce or change retroactively a rating of record that covers that earlier appraisal period except that a rating of record may be changed—

- (1) Within 60 days of issuance based upon an informal request by the employee;
- (2) As a result of a formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a bona fide settlement of a formal proceeding; or
- (3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

(i) A performance rating may be prepared at such other times as an appraisal program may specify for special circumstances including, but not limited to, transfers and performance on details.

(j) A rating of record may not be challenged through the grievance provisions of 5 U.S.C. 7121.

5. Amend § 430.210 by revising paragraph (b) to read as follows:

§ 430.210 OPM responsibilities.

* * * * *

(b) OPM must evaluate and certify the operation and application of an agency's performance appraisal system(s) and program(s) on a biennial basis. OPM may recommend that the Office of Management and Budget limit an agency's aggregate awards spending based on an unfavorable evaluation. OPM must issue biennial certification criteria and policy.

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