

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430, 432, 451 and 531

RIN 3206-AG34

Performance Management

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations to deregulate performance management and incentive awards, including provisions allowing agencies to use as few as two levels for critical element appraisals and summary ratings for non-SES employees, and to make conforming changes to related regulations. These changes are proposed to provide agencies additional flexibility as called for by the National Performance Review.

DATES: Comments must be submitted on or before March 28, 1995.

ADDRESSES: Comments may be sent or delivered to: Allan D. Heuerman, Assistant Director for Labor Relations and Workforce Performance, U.S. Office of Personnel Management, Room 7412, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Barbara Colchao, (202) 606-2720.

SUPPLEMENTARY INFORMATION: To pursue the flexibility and decentralization called for by the National Performance Review (NPR), OPM proposes amending its regulations to remove many of the current regulatory requirements and permit agencies to implement performance management systems and programs for non-SES employees that better fit their organizational climate and needs. (OPM is conducting a separate review of SES performance appraisal regulations.) These proposed changes are intended to increase system flexibility and not to suggest the superiority of the newly available options. OPM advises agencies to examine their individual circumstances carefully before making any major changes to their performance management systems and programs.

Partnership and Successful Performance Management

Agencies are strongly urged to develop their performance management systems and programs in partnership with their employees and union representatives in accordance with law. Many studies have shown that the success of a performance management system in achieving its goals is

dependent upon acceptance by the management and employees who use it. There is no better way to garner support for a system than by giving all stakeholders a role in developing it. Further, the National Performance Review stated in its accompanying report, *Reinventing Human Resource Management*, that under the ideal performance management system "Employees and their representatives will be involved in design and implementation of performance management programs and in development of performance expectations." Consequently, OPM advises agencies that these regulatory changes in performance management should be implemented through full partnership with employees and their union representatives.

Performance Management Systems and Programs

The recommendations of the National Performance Review for reforming the Government's performance management system contemplated a policy environment that would permit "complete decentralization of performance management within a framework of broad, governmentwide principles." OPM is establishing that framework in these proposed regulations for appraisal and awards, which would remove many previous regulatory constraints and implement flexible Governmentwide systems for appraisal and awards. This approach will permit the implementation of the NPR recommendation for the development of agency-based performance management and incentive award programs tailored to meet each agency's unique needs.

The law governing performance appraisal provides that agencies must establish one or more appraisal systems, and that OPM must review and approve an agency's system(s). OPM is proposing to define an agency appraisal system as the agency's framework of policies and parameters (i.e., guidelines, boundaries, limits) for the administration of performance appraisal. (See § 430.204.) Although an agency would be authorized to establish more than one system, OPM anticipates that most agencies will not find it necessary to do so. OPM goes on to propose that within that OPM-approved framework, an agency would be free to establish and adapt one or more appraisal programs of specific procedures and requirements. (See § 430.205.)

Consequently, when an agency has determined it can more effectively meet the objectives for performance management to improve individual and

organizational performance by establishing different specific performance appraisal procedures and requirements tailored to the mission, work technology, and/or employees of its organizational subcomponents or for subsets of positions, the proposed regulations would authorize the agency to develop appropriate, separate appraisal programs under the framework of its appraisal system.

Deregulating Performance Management

OPM is proposing implementation of NPR recommendations for flexible, decentralized performance management through deregulation of appraisal and awards. That deregulation would be achieved in at least three ways.

First, the regulations have been reviewed to eliminate unnecessary or redundant requirements. A number of requirements had been set forth in regulation, but were not required by statute. Many of these that have come to be unnecessarily constraining or burdensome (e.g., specifying required procedures for employees on details, requiring an SF-50 for a time-off award) would be eliminated. On the other hand, several regulations that merely repeat requirements that are already clearly stated in statute would also be eliminated. In these instances, of course, the statutory requirements will still be in effect.

Second, a number of regulatory requirements would be removed, not because they were necessarily ineffective or redundant, but because agencies should be free to use them without being required to use them. For example, the proposal to eliminate the requirement for second-level review of performance plans should not be taken as an indication that OPM has concluded that second-level review is a bad idea. In many instances, the reverse is true. However, OPM is proposing to achieve a shift in policy perspective under which an agency's use of second-level review in its performance management programs would reflect the agency's program design choice rather than compliance with a Governmentwide regulatory requirement. A similar situation can be found in OPM's proposal to eliminate most restrictions on the use of time-off awards. Many agencies may choose to retain some limits, and they would be free to do so.

Another example of this form of deregulation that would implement an authority without establishing a requirement is OPM's proposal to delete subpart E (Performance Awards) of part 430 and integrate provisions for rating-based cash awards into part 451

(Awards). This would consolidate the regulatory structure and clarify that rating-based cash performance award programs are an option that agencies are authorized—but not required—to use.

Finally, deregulation would result from modifying OPM's review of agency systems. An agency's appraisal system, or overall policy framework, would still be reviewed and approved, as required by law, for compliance with regulatory requirements. However, the scope of that review would be limited to that required by law, and there would be fewer regulatory requirements to review. The proposed regulation returns the Governmentwide regulatory scheme for performance management to the decentralized approach initially taken in implementing the Civil Service Reform Act of 1978. The highly detailed regulatory requirements that OPM is proposing to modify date to the mid-1980's, a time when there was a strong policy interest in achieving Governmentwide uniformity. Experience has provided substantial evidence that the "one size fits all" approach does not support effective performance management and needs to be changed.

Reinventing Performance Management

In addition to reducing the amount of regulation, OPM is proposing regulatory revisions to facilitate applying performance management regulations to improving individual and organizational performance. The language and context of existing regulation is centered strongly in a model of individual performance and recognition. The language, context, and focus of effective performance management practice have altered substantially in recent years. Many organizations have benefitted from a shift to focusing on the group or team performance level. Such a shift can greatly improve the credibility and utility of appraisal and award processes and outcomes for achieving the objective of improving organizational performance and mission accomplishment.

The current regulations stem from a model of appraisal based more on process inputs and the duties and responsibilities in an employee's individual position description and less on the results and accomplishments for which that employee is accountable. Experience has shown that those results and accomplishments are often more reasonably and meaningfully described, and certainly measured, at the group or team level. One objective in OPM's revision of appraisal and award regulations is to ensure that they could

be applied to managing group performance. Consequently, many proposed revisions would remove language (e.g., "employee" and "position") that narrowed the regulation's focus to individual performance. Several appraisal-related terms would be retained (e.g., appraisal, critical element, performance), but their definitions modified to accommodate this broader context.

OPM's goal is to establish a regulatory scheme that would operate effectively at the individual and the team or group level. An agency would still be able to design and operate its programs entirely at the individual level. Establishing and maintaining individual accountability and taking appropriate actions to deal with poor performers must remain significant aspects of the Government's performance management system. Therefore, the regulations would continue to require that each employee have a performance plan, and OPM is proposing to require that each plan must include at least one critical element that addresses individual performance. (See § 430.206(b)(4).)

In addition to making changes to accommodate group performance, OPM is proposing some revisions to the regulatory structure that are intended to refocus attention away from the once-a-year summary rating aspects of performance appraisal procedures and back toward the processes involved in communicating performance expectations and providing ongoing feedback. To that end, OPM is proposing to establish separate sections within the appraisal subpart of part 430 that focus on:

- Planning performance. (See § 430.206.)
- Monitoring performance. (See § 430.207.)
- and
- Rating performance at the end of an appraisal period or cycle. (See § 430.208.)

The definition and requirements for a performance plan would be broad enough to accommodate including other expressions of performance expectations in addition to establishing elements and standards. (See § 430.203 and § 430.206(b)(5).) This would facilitate agencies integrating other performance planning processes with their appraisal programs (for example, by including factors from performance contracts, performance goals and targets, published customer service standards, organization-level performance plans established under the Government Performance and Results Act of 1993, etc.). The proposed regulations seek

only to establish clearly that agencies would be free to integrate such planning tools and products and do not establish specific requirements or procedures for doing so. Such factors could be considered, for example, in designing incentive award schemes and distributing rewards and recognition. However, such factors could not be used as the basis for initiating a performance-based action, which requires a determination that performance on a critical element is "Unacceptable."

Another area where OPM is proposing a broader context is the process for deriving a summary rating. Although OPM is proposing to permit as few as two summary rating levels (see below), it is also anticipated that agencies will continue to have an interest in making and recording further distinctions among the vast majority of employees who meet basic performance expectations. OPM is proposing regulations that would give agencies more flexibility in deriving and assigning summary rating levels. For example, agencies would be able to—but not required to—consider other performance-related factors beyond appraisal of employee or group performance on critical elements. (See § 430.208(b).) Examples of such other factors include:

- Components from a performance plan such as meeting work plan objectives or group performance goals that had not been specifically framed as critical elements,
- A record of receiving awards for superior performance,
- A record of documented productivity gains,
- A non-critical element included in the performance plan to communicate an expectation and standards that, if met, could raise a summary rating above Level 3 ("Fully Successful" or equivalent).

In addition, OPM is proposing to give agencies the flexibility to use forced distributions of summary ratings above Level 3 ("Fully Successful" or equivalent), but only where those summary ratings above that level are not derived solely based on a comparison of performance against predetermined standards. An example of such a scheme would be to use performance-related criteria to rank the employees whose critical elements are all appraised as at least "Fully Successful" and assign the highest rating level to a limited number of employees. It should be noted that the effectiveness and acceptance of such a scheme would rest largely on the credibility and equity of the processes and criteria used to rank the employees.

Nevertheless, OPM is proposing to offer agencies this flexibility. If performance standards defining the higher levels had been established, an agency would be prohibited from prescribing a distribution of ratings. (See § 430.208(c).)

Within the awards arena of performance management, reinventing the system of Governmentwide policies for recognition and reward programs would be achieved by integrating rating-based cash performance award provisions into the same regulatory part as other awards and by simplifying those regulatory provisions. This would have the effect of giving agencies a framework of broad, flexible principles

for designing and administering decentralized award programs, consistent with NPR recommendations. Within those broad principles, agencies would be free to design and operate a wide variety of tailor-made incentive and recognition programs at the individual and group level, including most of the alternative reward, variable pay, and pay-for-performance schemes that can contribute to improving individual and organizational performance.

Number of Summary Rating Levels

OPM is proposing to permit agencies to use as few as two levels for summary performance ratings. Among summary

rating levels, agencies would be required to include a Level 1 ("Unacceptable") and a Level 3 ("Fully Successful" or equivalent). If more than two summary rating levels were used, the agency could choose any combination from the remaining three levels (i.e., Level 2, Level 4, and Level 5). Agencies also would continue to be permitted to use equivalent terms for "Fully Successful" and/or "Outstanding." (See § 430.208(d).)

Using the five possible summary rating-level designators established at § 430.208(d), the following table illustrates the various patterns of levels available.

Number of summary rating levels in program	Summary rating level designator from new § 430.208(d)				
	Level 1 ("un-acceptable")	Level 2	Level 3 ("fully successful")	Level 4	Level 5 ("out-standing")
Two	X	.....	X	.....	.....
Three:					
Option 1	X	.....	X	.....	X
Option 2	X	.....	X	X	.....
Option 3	X	X	X	.....	.....
Four:					
Option 1	X	.....	X	X	X
Option 2	X	X	X	.....	X
Option 3	X	X	X	X	.....
Five	X	X	X	X	X

Permitting the use of only two summary rating levels would not require a change in the rules governing additional service credit for performance in determining an employee's retention standing for RIF purposes since an appraisal program with only two summary rating levels would be required to use Level 3 ("Fully Successful" or equivalent) to summarize acceptable performance. As set forth in 5 CFR 351.504(d)(3), an employee would receive "Twelve additional years of service credit for each performance rating of fully successful (Level 3) or equivalent."

Number of Levels for Appraising Elements

OPM is proposing to permit agencies to use as few as two levels at which to appraise performance on the elements in employee performance plans. At a minimum, it must be determined whether performance is "Fully Successful" (or equivalent) or "Unacceptable" when appraised against established performance standards. Agencies would still be required to establish performance standards at the

"Fully Successful" (or equivalent) level for critical and non-critical elements. Also, agencies would continue to be permitted to determine performance to be at a level that has no established performance standard but which has been provided for by the applicable performance appraisal program. (See § 430.206(b)(6).)

Regulatory Changes in Awards

OPM is also proposing to revise regulations so that the requirements governing all types of awards for non-SES employees would be in part 451 of chapter 5 of the Code of Federal Regulations. The proposed regulations provide for a few basic requirements within which agencies can design award programs to meet their individual cultures and needs.

The language throughout these regulations has been reviewed for its use of the term "incentive award(s)." For many years since the inception of the consolidated awards authority for Federal employees in 1954, the term "incentive" was used broadly to cover all types of awards including those that are granted retrospectively at

management discretion to recognize past contributions, such as special acts or suggestions. As awards theory and practice have developed in recent years, however, "incentive" typically is applied somewhat more restrictively to award programs, such as productivity gainsharing and performance goalsharing schemes, that are designed to specify clearly in advance what recognition and reward will be granted based on a given contribution. Programs such as these have demonstrated their effectiveness for improving performance. At the same time, awards that recognize past contributions not specified in advance beyond some general criteria remain an appropriate and effective use of the authority to grant awards.

There is no strict definition or distinction for the term "incentive" that can be established or applied. Nevertheless, to recognize trends in awards theory and practice, OPM is proposing to use only the term "award(s)" in the broad regulations that cover both the prespecified and the retrospective uses of the awards authority and limit use of the term

“incentive” in the regulations to situations where the relationship between contribution and award is clearly specified in advance.

OPM is proposing to remove the separate subpart (subpart E) within part 430 governing the use of rating-based cash performance awards and to integrate a minimum number of essential provisions into subpart A of part 451. (See §§ 451.104(a)(3), 451.104(b) & (g), and 451.106(b), (f) & (g).) OPM is also proposing to delete the separate subpart (subpart C) within part 451 governing the use of time-off awards and to integrate time-off awards within the more general award provisions. (See §§ 451.104(a) and 451.104(e).)

OPM is proposing new regulations to implement new statutory provisions at 5 U.S.C. 4508 and 4509 concerning restrictions on awards for senior political appointees. (See § 451.105.) In addition, OPM is proposing a new regulation that alerts agencies that when designing award programs under this authority, they must ensure that award schemes, especially those based on achievements other than those directly related to an employee's performance plan, will not violate any other statute or Governmentwide regulation. (See § 451.106(a).)

Within-Grade Increase Flexibilities

OPM is proposing an agency-requested flexibility to permit the delay of the acceptable level of competence (ALOC) determination required for granting a within-grade increase when an employee has begun an opportunity period or has been given a notice of a proposed performance-based action. This option to delay an ALOC in no way restrains an agency from establishing a policy to deny a within-grade increase to an employee whose performance or rating of record supports such a denial. Furthermore, in those agencies that choose to continue using a Level 2 (“Minimally Successful” or equivalent) summary rating level, exercising the delay option would create an inequity between the minimally acceptable and unacceptable employee in that the unacceptable employee would be given additional time to achieve ALOC. (See § 531.409(c)(2).)

Another proposed flexibility would cover situations where agencies have employees who are authorized to perform activities of official interest to the agency (e.g., labor-management partnership activities under section 2 of Executive Order 12871, serving as a representative of a labor organization, etc.), but are not able to perform under elements and standards (and, therefore, the agency is unable to provide a rating

of record). OPM is proposing to permit the agency to waive the requirement for an ALOC determination and grant within-grade increases upon completion of the applicable waiting period. This waiver option recognizes that such employees have not had a sufficient opportunity to perform under their assigned elements and standards due to the other authorized activities and supposes that such performance would have been at least “Fully Successful” had it occurred. (See § 531.409(d)(5).)

Eligibility for Quality Step Increases

Agencies are required by Executive Order 11721 to establish plans for granting additional step increases to employees on the basis of high quality performance. Current regulation at § 531.504 establishes that a Level 5 (“Outstanding” or equivalent) rating is required for granting such a quality step increase (QSI). OPM recognizes that agencies that choose to adopt two summary rating levels or to not include a Level 5 summary rating level would not be able to grant a QSI under current regulation, and thereby satisfy the requirements of Executive Order 11721. Consequently, OPM proposes to amend its pay regulations to permit an employee under an appraisal program without a Level 5 summary rating level to be eligible for a QSI based on demonstrating sustained performance that is significantly higher than that expected at the “Fully Successful” level. Agencies would be required to establish performance-related criteria for QSI eligibility consistent with this requirement. (See § 531.504.)

Appraisal System Transition

OPM is proposing a regulatory provision that would assist agencies as they develop and implement new appraisal systems and programs under new regulatory flexibilities. At the time that new regulatory requirements and provisions become effective, it is essential to support a smooth transition especially for agencies that might be pursuing a pending administrative action initiated under the systems that exist now. The regulatory provision would clarify that any appraisal system that had been reviewed and officially approved by OPM as of the effective date of the revised regulations would be considered an approved system under the revised regulations until such time as changes to the system are approved. This will permit agencies to pursue pending actions and to continue to operate their existing appraisal systems and initiate other actions based on appraisal results. (See § 430.201(b).)

Agencies should note that these regulatory changes establish no requirements or deadlines to make appraisal system changes. The flexibility the proposed regulations would achieve includes the flexibility to continue agency appraisal policies, procedures, and requirements that are already in use. OPM is proposing no regulatory provision that would create a regulatory conflict for any appraisal system already approved under current regulation.

OPM would provide guidance to agencies on requirements and procedures for submitting system descriptions to OPM for review and approval.

Major Proposed Changes to Performance Management Regulations

OPM also is proposing to amend its regulations in other ways to provide additional flexibilities, eliminate burdensome requirements, establish new provisions, and make conforming and editorial changes. The following list summarizes the substantive changes, including those discussed above.

Added Flexibilities and Reduced Requirements

1. Permits agencies to use as few as two performance levels for appraising elements.
2. Permits agencies to use as few as two levels for summary performance ratings.
3. Removes the requirement for OPM approval of plans for awards, quality step increases, and within-grade increases, but retains statutory requirement that OPM approve performance appraisal systems.
4. Permits recording of performance plans, ratings, etc., in formats other than paper.
5. Deletes the requirement for higher-level review of performance plans.
6. Replaces the requirement that agencies assist employees with performance below Fully Successful with the statutory requirement to assist with performance that is Unacceptable.
7. Replaces the total prohibition on forced distributions of summary ratings with prohibitions limited to summary ratings below Level 3 or situations where summary ratings are based solely on appraisal against pre-established performance standards.
8. Deletes the requirement that a rating of record under one pay system be used as the rating of record under a new system when there is no change in duties or responsibilities.
9. Deletes the requirement for agencies to prepare a summary rating when an employee changes position and

to specify how such a rating is to be taken into account when preparing a rating of record.

10. Deletes fixed limits (90 to 120 days) on the length of the minimum appraisal period, and replaces them with a requirement that a minimum period be established.

11. Deletes specific requirements for rating employee performance while on detail and replaces them with a requirement that an agency appraisal program address appraisal while on detail.

12. Deletes the general requirement for higher-level approval of a rating of record and replaces it with a requirement that only "Unacceptable" summary ratings be approved at a higher level.

13. Replaces the requirement for training supervisors and employees on the appraisal process with a requirement to communicate about relevant parts of the system and programs.

14. Deletes subpart E (Performance Awards) of part 430 and incorporates some performance awards provisions into part 451 (Awards).

15. Deletes the recommendation to make maximum use of awards authority.

16. Replaces the requirement to document awards in the OPF with a provision for agencies to establish criteria to determine which awards to document in the OPF.

17. Replaces the requirement for higher-level review of awards with a requirement to follow agency financial management control procedures.

18. Deletes the requirements for an SF-50 for a time-off award and for annual reports on performance awards and awards program activity, and

replaces them with a requirement to report data on all cash and time-off awards to the CPDF.

19. Deletes the provision that awards cannot be used as substitutes for pay or other personnel actions.

20. Deletes most regulatory provisions and requirements regarding time-off awards, but retains the provision that prohibits converting a time-off award to cash.

New Provisions

1. A distinction is made between an agency system (agencywide policy and parameters) and an agency program (specific procedures, forms, standards, etc.).

2. Agencies are encouraged to involve employees and their representatives in the development of award and appraisal systems and programs.

3. Key definitions and provisions have been broadened to explicitly include teams.

4. Provision to maintain applicability of appraisal systems already reviewed and approved by OPM is added.

5. At least one element in a performance plan must address individual performance.

6. Agencies are to ensure that any award program they develop does not conflict with any other applicable law or regulation.

7. OPM is authorized to grant agency requests to extend 5 U.S.C. 4505a to non-General Schedule employees as provided by Executive Order 12828.

8. The provision that a rating-based cash performance award cannot be appealed is clarified to include all awards.

9. The statutory restrictions on granting awards to senior political officials is added.

10. Agencies are to use the OPM Guide to Federal Workforce Reporting Systems when reporting data.

11. OPM is authorized to evaluate agency award programs.

12. A provision permitting an agency to delay an ALOC determination if the employee is in an opportunity period or notice period is added.

13. A provision permitting an agency to waive the ALOC determination for employees who have been unable to perform under elements and standards because they spent 100% of their time on activities of official interest to the agency is added.

14. An agency that does not use the "Outstanding" (Level 5) summary rating level will be permitted to establish performance-related criteria and grant a quality step increase to an employee who demonstrates significantly high quality performance.

Table of Changes

The following table lists all the proposed changes to the current regulation, including those discussed above.

—In the left column, the table lists all current regulations in parts 430 and 451 and current regulations in parts 432 and 531 that are impacted by the proposed regulations.

—In the middle column, the table lists the proposed regulations that track the provisions of the current regulations in the left column.

—In the right column, the table explains the changes in provisions from the current regulation in the left column to the proposed regulation in the middle column.

Current rule	Proposed rule	Description of change
§ 430.101	§ 430.101	Proposed rule removes citation of incentive award and pay statutes because they no longer apply.
§ 430.102	§ 430.102(a)	Proposed rule redefines performance management to reorient the definition to team settings and goals of the National Performance Review (NPR).
§ 430.103	§ 430.102(c)	Proposed rule redescribes the Performance Management Plan; removes the requirement for OPM approval of plans for awards, quality step increases, and within-grade increases; the requirement for final approval of component plans by OPM; and reference to the Performance Management Plan Checklist to provide greater agency flexibility and to reflect OPM's scope of review.
	§ 430.209 (a) & (f)	Proposed rule revises and redesignates the provision requiring submission of appraisal system(s), system changes, and records to OPM to reflect OPM's scope of review.
§ 430.201(a)	§ 430.201(a)	Proposed rule makes editorial changes to section addressing statutory authority to eliminate nonessential information.
	§ 430.201(b)	Proposed rule adds provision to maintain applicability of performance appraisal systems already reviewed and approved by OPM.
§ 430.201(b)	§ 430.102(b)	Proposed rule revises language that specifies objectives of performance appraisal systems to specify objectives of performance management and to add references to teams.
§ 430.202(a)	§ 430.202(a)	Proposed rule attaches to "General Schedule" a parenthetical reference to "GS/GM" to accommodate termination of the Performance Management and Recognition System.
§ 430.202(b)	§ 430.202(b)	Proposed rule deletes requirements regarding the statutory authority under which agencies may exclude temporary employees to increase agency flexibility.

Current rule	Proposed rule	Description of change
§ 430.202(c)	§ 430.202(c)	Proposed rule substitutes a "minimum period established by the agency" for the fixed "120 calendar days" as the minimum period of time a position is not reasonably expected to exceed to be excluded from coverage for the purpose of increasing agency flexibility.
§ 430.202(d)	§ 430.202(d)	No change.
§ 430.203	§ 430.203	<p><i>Appraisal</i> is broadened to allow more flexibility.</p> <p><i>Appraisal period</i> is revised to reinforce the expectation that appraisal periods generally last one year and to establish them as the basis for ratings of record.</p> <p><i>Appraisal program</i> is added to distinguish specific appraisal procedures and requirements from agencywide appraisal policies and parameters established for the administration of performance appraisal within the agency.</p> <p><i>Appraisal system</i> is revised to clarify that it refers only to an agencywide framework for appraisal policy and to remove references to various system requirements that would no longer apply.</p> <p><i>Critical element</i> is broadened to facilitate using performance planning to communicate expectations, especially in team settings, by removing classification-centered references to duties and responsibilities of the position.</p> <p><i>Non-critical element</i> is deleted because it is not needed.</p> <p><i>Performance</i> is revised to broaden the definition, to reference work responsibilities as well as assignments, and to remove the classification-centered reference to a position to better accommodate team settings.</p> <p><i>Performance Appraisal System</i> is retained without change.</p> <p><i>Performance Management Plan</i> is deleted because it is described in subpart A already.</p> <p><i>Performance plan</i> is revised to reorient the definition to team settings and NPR goals and to permit the performance plan to be recorded in formats other than paper.</p> <p><i>Performance rating</i> is added to replace the definition of "summary rating" which is no longer needed, to permit the performance rating to be recorded in formats other than paper, and to acknowledge that non-critical elements are optional.</p> <p><i>Performance standard</i> is revised to remove language that implies that management should develop standards without employee input and to improve clarity.</p> <p><i>Progress review</i> is revised to emphasize communication and the legitimacy of team elements and standards.</p> <p><i>Rating</i> is deleted because it is not needed.</p> <p><i>Rating of record</i> is revised to refer to "performance rating" instead of "summary rating," to include the assignment of a summary rating level, to remove reference to the Performance Management Plan, to specify that the rating of record generally applies to performance over the entire appraisal period, and to specify that all references to official ratings, performance ratings, and ratings of record in title 5 of the Code of Federal Regulations refer to this definition. The purpose of these changes is to clarify the rating process and provide greater flexibility.</p> <p><i>Summary rating</i> is deleted and replaced by a new term, "performance rating," and language in the "rating of record" definition (see above) to clarify the rating process and provide greater flexibility.</p>
§ 430.204(a)	§ 430.204(a) § 430.204(b)	No change. Proposed rule adds new provision to require agencies to establish agencywide policies and parameters and sets forth minimum requirements for a system to reflect OPM's scope of review.
	§ 430.204(c)	Proposed rule adds new provision to encourage employee involvement in system and program development to reflect team settings and NPR goals.
	§ 430.204(d)	Proposed rule adds new provision that requires agencies to develop at least one appraisal program within the scope of agency systems to specify procedures and requirements to operate the performance appraisal system.
	§ 430.205(a)	Proposed rule adds new provision that permits the development of separate appraisal programs to implement decentralized performance appraisal.
	§ 430.205(c)	Proposed rule adds new provision that permits the development of separate appraisal programs to implement decentralized performance appraisal.
§ 430.204(b)	§ 430.206(b)(3), § 430.207(b), § 430.208(a)	Proposed rule revises and redesignates provisions requiring performance plans, appraisals, and summary ratings; and permits formats other than paper for recording performance plans to clarify the rating process and provide greater flexibility.
§ 430.204(c)	§ 430.206(b)(1)	Proposed rule retains provision for employee participation in establishing performance plans, deletes reference to examples of employee participation in establishing performance plans to eliminate nonessential information, and deletes the provision that supervisory officials have ultimate authority to establish such plans to accommodate team settings and support NPR goals.
§ 430.204(d)(1)	§ 430.206(b)(2)&(3)	Proposed rule revises and redesignates the provisions for job-related performance plans provided at the beginning of the appraisal period to clarify the rating process.
	(b)(4)	Proposed rule adds new provision to ensure that at least one element addresses individual performance.
§ 430.204(d)(2)	§ 430.206(b)(5)	Proposed rule revises and redesignates the provision for the inclusion of organizational objectives in performance plans to provide for team setting and support NPR goals.
§ 430.204(e)	§ 430.206(b)(6)	Proposed rule permits agencies to use as few as two levels to appraise elements to provide greater flexibility (see section in supplementary information above), and continues requirement for Fully Successful standard and ability to appraise at levels without explicit standards.
§ 430.204(f)	§ 430.206(b)(6)(ii)	Proposed rule revises and redesignates requirement for written performance standard and deletes requirement for higher-level review of performance plans to provide greater flexibility.

Current rule	Proposed rule	Description of change
§ 430.204(g)	§ 430.208(b)	Proposed rule revises and redesignates the requirement for a summary rating method and provides added flexibility in deriving summary rating levels.
§ 430.204(h)	§ 430.208(d)	Proposed rule permits agencies to use as few as two summary rating levels (Unacceptable and Fully Successful) (see section in supplementary information above) and permits use of other levels to provide greater flexibility.
§ 430.204(i)	§ 430.208(d) § 430.209(3).	Proposed rule simplifies regulatory text and replaces the outdated reference to the Federal Personnel Manual with a reference to the current OPM Guide to Federal Workforce Reporting Systems.
§ 430.204(j)	§ 430.207(c)(1)	Proposed rule clarifies that agencies are required to assist employees with "Unacceptable" performance and deletes examples of assistance to remove nonessential information.
§ 430.204(k)	§ 430.207(c)(1)	Proposed rule simplifies language addressing unacceptable performance to delete information stated elsewhere in regulation (performance-based action can be taken either under procedures established in part 432 or part 752, subpart D).
§ 430.204(l) .....	.....	Proposed rule deletes provision requiring ratings of record under one pay system to be used as ratings of record under a new pay system when there is no change in the duties and responsibilities of the position to provide greater flexibility.
§ 430.204(a)	§ 430.206(a)	Proposed rule revises and redesignates the requirement for appraisal period and removes the requirement for agencies to prepare a summary rating when an employee changes position and to specify how these are taken into account when preparing ratings of record to clarify the rating process and provide greater flexibility.
§ 430.205(b)	§ 430.207(a)	Proposed rule deletes fixed limits on the length of minimum appraisal periods to provide greater flexibility.
§ 430.205(c)	§ 430.207(b)	Proposed rule makes editorial changes to provisions regarding appraising performance on each element and progress reviews to increase emphasis on communication.
§ 430.205(d)	§ 430.205(b)	Proposed rule replaces requirement to rate employee performance while on detail with requirement that programs address the issue to provide greater flexibility.
§ 430.205(e)	§ 430.207(b)	Proposed rule revises and redesignates the requirement for a progress review to increase emphasis on communication.
§ 430.205(f)	§ 430.208(f)	Proposed rule revises the redesignates and provision regarding rating disabled veterans to clarify rating process.
§ 430.206(a)	§ 430.208(a)	Proposed rule revises and redesignates requirement for rating of record to eliminate repeating information in the definition and permits agencies to use formats other than paper to give ratings of record to employees.
§ 430.206(b) .....	.....	Proposed rule deletes a provision repeated in current § 430.205(c) and proposed § 430.207(b) (see above).
§ 430.206(c)	§ 430.208(e)	Proposed rule limits requirement for higher-level approval to "Unacceptable" ratings of record to provide greater flexibility.
§ 430.206(d)	§ 430.208(c)	Proposed rule revises and redesignates the prohibition of forced distribution, but limits it to ratings below Level 3 or to situations where employees are rated only against pre-established standards, and removes the requirement that agencies establish procedures to ensure that only those employees who exceed normal expectations receive ratings above Fully Successful. These changes are made to provide greater flexibility.
§ 430.206(e)	§ 430.208(g)	Proposed rule makes editorial changes to provision regarding extension of appraisal period to clarify the rating process and provide greater flexibility.
§ 430.206(f)	§ 430.209(b)	Proposed rule revises and redesignates the requirements to transfer ratings of record when employees go to a new agency or organization to clarify the rating process.
§ 430.207 .....	.....	Proposed rule deletes reserved section for performance appraisal advisory committees that is not needed.
§ 430.208	§ 430.209 (c) & (d)	Proposed rule replaces the requirement for training supervisors and employees on the appraisal process with requirement to communicate about the relevant parts of the system(s) and programs to reflect emphasis on communication and provide greater flexibility, and retains the requirement to evaluate system(s) and programs.
§ 430.209	§ 430.209(g)	Proposed rule moves the requirement for agencies to take corrective actions to clarify responsibilities.
§ 430.210	§ 430.210	Proposed rule revises and redesignates OPM role to reflect OPM's authority to review, evaluate, and direct corrective action.
§ 430.210	§ 430.209(a)	Proposed rule clarifies that each agency must submit its performance appraisal system(s) for OPM approval.
Subpart E Performance Awards.	.....	Proposed rule deletes this subpart and combines the provision for performance awards into other sections of part 451 to integrate awards policy and support NPR goals.
§ 430.501(a)	§ 451.101	Proposed rule revises and redesignates the reference to chapter 43, United States Code to accommodate relocation of information.
§ 430.501(b)	§ 451.101(c)	Proposed rule makes editorial changes to provision regarding definition of employees to accommodate relocation of information.
§ 430.501(c)	§ 451.101(c)	Proposed rule makes editorial changes to provision regarding definition of agencies to accommodate relocation of information.
§ 430.501(d) .....	.....	Proposed rule deletes reference to part 451 for regulatory requirements for granting superior accomplishment awards that is no longer needed.
§ 430.502 .....	.....	Proposed rule deletes definitions for performance award, performance award budget, Performance Management Plan, and rating of record that are no longer needed.
§ 430.503(a) .....	.....	Proposed rule deletes purpose section for performance awards that is no longer needed.
§ 430.503(b)	§ 451.104(a)(3)	Proposed rule revises and redesignates the provision to permit use of a rating of record as the basis for granting an award to accommodate relocation of information.

Current rule	Proposed rule	Description of change
§ 430.503(c)	§ 451.106(g)	Proposed rule replaces requirement to document awards in OPF with provision for agencies to establish criteria to determine which awards to document in OPF to provide greater flexibility.
§ 430.503(d)	§ 451.106(h)	Proposed rule redesignates provision for giving due weight to awards in promotions without change.
§ 430.503(e) .....	.....	Proposed rule deletes recommendation to make maximum use of awards authority to remove nonessential information.
§ 430.504(a) .....	.....	Proposed rule deletes repetition of the statutory percentage limits for performance-based cash awards at 5 U.S.C. 4505a(a)(2)(A).
§ 430.504(b)	§ 451.104(b)	Proposed rule revises and redesignates the provision that cash awards are paid as lump sums to accommodate relocation of information.
§ 430.504(c)	§ 451.104(g)	Proposed rule makes editorial changes regarding application of locality pay to clarify language.
§ 430.504(d)	§ 451.103(c)	Proposed rule replaces higher level review of awards based on a rating of record with requirement to follow agency financial management control procedures to give flexibility while maintaining necessary levels of control.
§ 430.504(e)	§ 451.104(h)	Proposed rule moves the provision that a performance-based cash award and its amount cannot be appealed (5 U.S.C. 4505a (b)(2)). Resulting rule covers all awards under this subpart. This change is made to accommodate relocation of information and to reflect that appeal rights are granted specifically by statute.
§ 430.505 .....	.....	Proposed rule deletes this section requiring OPM approval of award plans to ease administrative burden.
§ 430.506(a)	§ 451.103(a)	Proposed rule revises and redesignates the provision to establish award programs to support NPR goals.
§ 430.506(b)(1) & (2) .....	.....	Proposed rule deletes requirement for OPM approval of agency award plans and changes to them to ease administrative burden.
§ 430.506(b)(3)	§ 451.106(b)	Proposed rule revises and redesignates the requirement for submitting awards in excess of \$10,000 to OPM to clarify the approval process.
§ 430.506(b)(4)	§ 451.106(e)	Proposed rule replaces required reports with requirement to report cash and time off awards to CPDF to reduce reporting requirements.
§ 432.103(b)	§ 432.103(b)	<i>Critical element</i> is revised to conform with its new definition in § 430.203.
§ 451.101	§ 451.101(a)	Proposed rule makes editorial changes to section addressing statutory authority to accommodate relocated rating-based award information.
	§ 451.101(b)	Proposed rule adds existing requirement for OPM to prescribe procedures governing payment of certain types of awards recommended by more than one agency for a member of the armed forces as provided by Executive Order 11438, and existing authority for OPM approval of requests to extend 5 U.S.C. 4505a to non-General Schedule employees as provided by Executive Order 12828.
	§ 451.101(c)	Proposed rule combines location of statutory definitions currently in § 451.101(b) & (c).
	§ 451.101(d)	Proposed rule deletes reference to Part 430, subpart E (performance awards) that no longer applies.
§ 451.102 .....	.....	Proposed rule deletes description of superior accomplishment awards because it is not needed.
§ 451.103	§ 451.102	<i>Award or superior accomplishment award</i> is replaced and revised by <i>Award</i> to accommodate team settings; <i>Contribution</i> , <i>Intangible benefits</i> , <i>Non-monetary award</i> , <i>Performance Management Plan</i> , <i>Special act or service</i> (including requirement that contribution be non-recurring), <i>Superior accomplishment award</i> , and <i>Tangible benefits</i> are deleted to increase flexibility and because they are not needed to give meaning to the provisions of part 451; and a definition for award program is added to support NPR goals.
§ 451.104(a)	§ 451.103(a)	Proposed rule revises and redesignates reference to agency developed program(s) to provide greater flexibility.
	§ 451.103(b)	Proposed rule adds new provision to encourage employee involvement in system and program development to support NPR goals.
	§ 451.104(a)	Proposed rule combines the various bases for granting awards into one section to reflect relocated information and support NPR goals.
§ 451.104(b) .....	.....	Proposed rule deletes an emphasis on determining a contribution's value to the Government instead of to the agency to increase flexibility.
§ 451.104(c) .....	.....	Proposed rule deletes explicit permission to grant different awards and/or quality step increases simultaneously for the same contribution(s) because it is not needed.
§ 451.104(d) .....	.....	Proposed rule deletes provision that awards cannot be used as substitutes for pay or other personnel actions because it is not needed.
§ 451.104(e)(1) .....	.....	Proposed rule deletes repetition of statutory requirement regarding contributions made while a Government employee (5 U.S.C. 4505).
§ 451.104(e)(2)	§ 451.103(c)(2)	Proposed rule revises and redesignates the provision for justification of awards to protect integrity of award programs.
§ 451.104(e)(3)	§ 451.103(c)(1)	Proposed rule replaces requirement for higher-level review of awards with requirement to follow agency financial management control procedures to give flexibility while maintaining necessary levels of control.
§ 451.104(f)	§ 451.104(e)	Proposed rule redesignates provision for granting awards to heirs or estates, and deletes the repetition of a statutory requirement (5 U.S.C. 4502 (c)) that acceptance of an award releases the Government from further claim.
	§ 451.105	Proposed rule adds new section regarding statutory restrictions on granting awards to senior political officials (5 U.S.C. 4508 and 4509) to clarify coverage.

Current rule	Proposed rule	Description of change
	§ 451.106(a)	Proposed rule adds new provision that requires agencies to ensure that an award program does not conflict with any other applicable law or Governmentwide regulation to protect the integrity of award programs.
§ 451.104(g)	§ 451.106(i)	Proposed rule revises and redesignates the provision permitting agencies to determine which awards are to be documented in the OPF to provide greater flexibility.
§ 451.104(h)	§ 451.106(h)	Proposed rule revises and redesignates the provision for giving due weight to awards in promotions to reflect more accurately the statutory provision.
§ 451.104(i)	§ 451.106(c)	Proposed rule replaces the requirement for agencies to provide training to supervisors and employees on its award program(s) with requirement to provide for communicating about award program(s) to reflect emphasis on communication and provide greater flexibility.
	§ 451.106(d)	Proposed rule revises and redesignates the provision requiring agencies to evaluate award programs to provide greater flexibility.
§ 451.104(j)	§ 451.103(c)(1)	Proposed rule replaces requirement for higher-level approval of awards with requirement to follow agency financial management control procedures to give flexibility while maintaining necessary levels of control.
§ 451.105(a)	§ 451.104 (b)&(c)	Proposed rule revises and redesignates the provisions regarding award payments and taxation to accommodate relocation of information and to clarify requirements.
§ 451.105(b)	§ 451.104(d)(1)	Proposed rule makes editorial changes to paragraph addressing agency responsibility for award payment when the award is approved for an employee of another agency to streamline regulatory text.
§ 451.105(c)	§ 451.104(d)(2)	Proposed rule makes editorial changes to paragraph regarding payment of an award approved for a member of the armed forces for a suggestion, invention, or scientific achievement to streamline regulatory text.
§ 451.106(a) .....	.....	Proposed rule deletes OPM approval of superior accomplishment awards component of Performance Management Plans to ease administrative burden.
§ 451.106(b)	§ 451.107(a)	Proposed rule clarifies that the limits established for award payments apply to individuals only to provide greater flexibility.
	§ 451.107(b)	Proposed rule establishes explicitly that Presidential approval is required for award payments over \$25,000 that OPM has approved to clarify the award approval process.
§ 451.107(a) .....	.....	Proposed rule deletes the requirement to submit a superior accomplishment awards component of a Performance Management Plan to OPM for approval to ease administrative burden.
§ 451.107(a)(3)	§ 451.106(b)	Proposed rule makes editorial changes to provision that agencies shall submit to OPM for approval all award recommendations that would grant an individual more than \$10,000 to clarify the award approval process.
§ 451.107(a)(4)	§ 451.106(e)	Proposed rule replaces requirement for an annual report on the program's activities and expenditures with a requirement to report all cash and time off awards to the CPDF to reduce reporting requirements.
	§ 451.106(f)	Proposed rule adds provision for agencies to use OPM Guide to Federal Workforce Reporting Systems when reporting award data to ensure proper reporting.
	§ 451.106(g)	Proposed rule permits OPM to define the records it requires to meet the information needs of agencies and other stakeholders.
	§ 451.106(j)	Proposed rule adds provision requiring agencies to take corrective actions prescribed by OPM to ensure compliance with law and regulation.
§ 451.107(b) .....	.....	Proposed rule deletes requirement that agencies consider adopted ideas for wider application both within the agency and Governmentwide to provide greater flexibility.
	§ 451.107(c)	Proposed rule adds requirement for OPM to review and determine whether to approve requests to extend the provisions of 5 U.S.C. 4505a to non-General Schedule employees to implement Executive Order 12828.
	§ 451.107(d)	Proposed rule adds new provision that permits OPM to evaluate the application and operation of agency award program(s) to support OPM's oversight responsibilities.
§ 451.201	§ 451.201	Proposed rule adds new sentence to end of paragraph (a) that cautions that Presidential awards under this paragraph are subject to the restrictions as specified in § 451.105 (the statutory restrictions at 5 U.S.C. 4508 and 4509) to implement statute.
Subpart C Time Off Awards.	.....	Proposed rule deletes this subpart and combines the provisions for time-off awards into other sections of part 451 to integrate awards policy and support NPR goals.
§ 451.306(d)	§ 451.104(f)	Proposed rule redesignates the provision prohibiting the conversion of time off to cash with no change.
§ 531.401(c)&(d)	§ 531.401(c)&(d)	Proposed rule includes the title of Executive Order 11721 and Public Law 103-89 for easier reference.
§ 531.402(a)	§ 531.402(a)	Proposed rule replaces reference to maximum step with maximum rate to accommodate GM employees.
§ 531.403	§ 531.403	<i>Acceptable level of competence</i> is revised to remove reference to duties of the position to conform with definition of critical element at § 430.203 and to include agency head in setting requirements to provide greater flexibility. <i>Critical element</i> is revised to update reference to the redesignated definition section in performance appraisal regulation. <i>Equivalent increase</i> is revised to include reference to higher rate of the grade to accommodate GM employees.
§ 531.404	§ 531.404	Proposed rule replaces step 10 with maximum rate of the grade to accommodate GM employees.

Current rule	Proposed rule	Description of change
§ 531.404(a)	§ 531.404(a)	Proposed rule deletes reference to duties of the position to conform with definition of critical element at § 430.203 and replaces reference to the locus of the rating of record definition from the agency Performance Management Plan to the regulation at § 430.204 to accommodate regulatory changes.
§ 531.408	§ 531.409(b)	Proposed rule revises and redesignates provisions for communicating performance requirements by including a reference to subpart B, replacing appraisal requirements by OPM for systems not under part 430 with agency-established requirements, and making other editorial changes to conform with revised terms in part 430 to provide greater flexibility.
	§ 531.409(c)(2)	Proposed rule adds new provision to permit opportunity period and notice period as reasons for delay of an ALOC (acceptable level of competence) determination to provide greater flexibility.
§ 531.409(c)(2) (i) & (iii)	§ 531.409(c)(3) (i) & (iii)	Proposed rule redesignates provisions regarding within-grade increase delays with no change.
§ 531.409(c)(2)(ii)	§ 531.409(c)(3)(ii)	Proposed rule makes editorial changes to conform with the revised terms in part 430 and to reference opportunity period.
	§ 531.409(c)(3)(iv)	Proposed rule adds requirement that within-grade increase is not granted if performance is not at an acceptable level of competence and references follow-up procedures to clarify the within-grade increase process.
§ 531.409(d)	§ 531.409(d)	Proposed rule makes editorial changes to conform with the revised terms in part 430.
	§ 531.409(d)(5)	Proposed rule adds new provision that includes 100% time spent on authorized activities of official interest to the agency as a reason to waive an ALOC determination to grant greater flexibility.
§ 531.409(d)(5)	§ 531.409(d)(6)	Proposed rule redesignates provision regarding long-term training with no change.
§ 531.501	§ 531.501	Proposed rule includes the title of Executive Order 11721 for easier reference and removes partial content of the Executive Order from regulation because it is not needed.
§ 531.503	§ 531.503	Proposed rule establishes a merit system principle rather than referencing recognition of outstanding performance as the context for granting QSI's to accommodate regulatory change at § 531.504.
§ 531.504	§ 531.504	Proposed rule revises the provision to permit agencies that choose not to have a Level 5 rating in their appraisal programs to establish performance-related criteria to grant QSI's to provide greater flexibility.
§ 531.506	§ 531.506	Proposed rule removes reference to completion of rating of record and ties effective date to approval of QSI to provide greater flexibility.
§ 531.507 .....	.....	Proposed rule removes requirement to include QSI plan as part of Performance Management Plan to ease administrative burden.
§ 531.507(a)-(e)	§ 531.507(a)	Proposed rule references rather than repeats the requirements of Executive Order 11721 because they are not needed.
§ 531.508(a)	§ 531.507(b)	Proposed rule revises and redesignates requirement for reporting QSI usage to clarify responsibility.
	§ 531.507(c)	Proposed rule requires use of OPM's Guide to Federal Workforce Reporting Systems for CPDF reporting to ensure proper reporting.
§ 531.508(b)	§ 531.508	Proposed rule redesignates the provision for OPM evaluation with no change in text.

E.O. 12866, Regulatory Review

This rule has been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they apply only to Federal agencies and employees.

List of Subjects

5 CFR Parts 430 and 451

Decorations, medals, awards,
Government employees.

5 CFR Part 432

Administrative practice and
procedure, Government employees.

5 CFR Part 531

Government employees, Law
enforcement officers, Wages.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM is proposing to amend parts 430, 432, 451 and 531 of title 5, Code of Federal Regulations, as follows:

PART 430—PERFORMANCE MANAGEMENT

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

Authority: 5 U.S.C. chapter 43.

2. Subpart A is revised to read as follows:

Subpart A—Performance Management

Sec.

430.101 Authority.

430.102 Performance management.

Subpart A—Performance Management

§ 430.101 Authority.

Chapter 43 of title 5, United States Code, provides for performance

appraisal of Federal employees. This subpart supplements and implements this portion of the law.

§ 430.102 Performance management.

(a) Performance management is the systematic process by which an agency involves its employees, as individuals and members of a group, in improving organizational effectiveness in the accomplishment of agency mission and goals.

(b) Performance management integrates the processes an agency uses to—

(1) Communicate and clarify organizational goals to employees;

(2) Identify individual and, where applicable, team accountability for accomplishing organizational goals;

(3) Identify and address developmental needs for individuals and, where applicable, teams;

(4) Assess and improve individual and organizational performance;

(5) Use appropriate measures of performance as the basis for recognizing and rewarding accomplishments; and

(6) Use the results of performance appraisal as a basis for appropriate personnel actions.

(c) A Performance Management Plan is the description of an agency's framework for implementing all aspects of performance management and shall include, but not be limited to, the agency performance appraisal system(s) (as defined in §§ 430.203 and 430.303) and the agency award program(s) (as defined in § 451.102).

3. Subpart B, consisting of §§ 430.201 through 430.210, is revised to read as follows:

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

Sec.

430.201	General.
430.202	Coverage.
430.203	Definitions.
430.204	Agency performance appraisal system(s).
430.205	Agency performance appraisal program(s).
430.206	Planning performance.
430.207	Monitoring performance.
430.208	Rating performance.
430.209	Agency responsibilities.
430.210	OPM responsibilities.

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

§ 430.201 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 agency performance appraisal system(s) and program(s) for employees covered by subchapter I of chapter 43.

(b) *Savings provision.* The performance appraisal system portion of an agency's performance management plan approved by OPM as of the effective date of these regulations shall constitute an approved performance appraisal system under these regulations until such time changes to the system are approved. No provision of these regulations shall be applied in such a way as to affect any administrative proceeding related to any action taken under regulations in this chapter pending at the effective date of the regulations in this subpart.

§ 430.202 Coverage.

(a) *Employees and agencies covered by statute.* (1) Section 4301(1) of title 5, United States Code, defines agencies covered by this subpart.

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

(b) *Statutory exclusions.* This subpart does not apply to agencies or employees excluded by 5 U.S.C. 4301(1) and (2), the United States Postal Service, or the Postal Rate Commission.

(c) *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). This regulation excludes excepted service positions for which employment is not reasonably expected to exceed the minimum period established by the agency under § 430.207(a) in a consecutive 12-month period.

(d) *Agency requests for exclusions.* Heads of agencies or their designees may request the Director of OPM to exclude positions in the excepted service. The request must be in writing, explaining why the exclusion would be in the interest of good administration.

§ 430.203 Definitions.

In this subpart, terms are defined as follows:

Appraisal means the process under which performance is reviewed and evaluated.

Appraisal period means the period of time (generally 1 year) established by an agency for which performance will be reviewed and a rating of record will be prepared.

Appraisal program means the specific procedures and requirements established by an agency or the components of an agency within the policies and parameters covered by the agency appraisal system(s).

Appraisal system means the framework of agencywide policies and parameters for the administration of performance appraisal programs established under subchapter I of chapter 43 of title 5, United States Code, and this subpart within an agency as defined at 5 U.S.C. 4301(1).

Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that overall performance is unacceptable.

Performance means accomplishment of work assignments or responsibilities.

Performance appraisal system: see Appraisal system.

Performance plan means all of the written, or otherwise recorded, individual, team, or organizational performance factors that lead to the assignment of an employee's summary rating level. A plan contains the critical elements based on employee assignments and responsibilities, and their related performance standard(s), and may contain other performance-related factors including, but not limited to, non-critical elements.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical element (and non-critical element, where applicable) on which there has been an opportunity to perform for the minimum period.

Performance standard means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) for an element that must be met to be appraised at a particular level of performance (as specified in § 430.206(b)(6)(i) of this subpart). A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.

Progress review means communicating with the employee about performance on individual and, where applicable, team elements and standard(s).

Rating of record means the performance rating prepared at the end of an appraisal period (under provisions specified by the agency) for performance over the entire period and the assignment of a summary rating level (as specified in § 430.208(d)). This constitutes the official rating of record referenced in this chapter.

§ 430.204 Agency performance appraisal system(s).

(a) Each agency as defined at section 4301(1) of title 5, United States Code, shall develop one or more performance appraisal systems for employees covered by this subpart.

(b) The agency system(s) shall establish agencywide policies and parameters for the application and operation of performance appraisal within the agency. At a minimum, an agency system shall—

(1) Provide for—

(i) Establishing employee performance plans, including, but not limited to, critical elements and performance standards;

(ii) Communicating performance plans to employees at the beginning of an appraisal period;

(iii) Evaluating each employee during the appraisal period on the employee's elements and standards;

(iv) Recognizing and rewarding employees whose performance so warrants;

(v) Assisting employees in improving unacceptable performance; and

(vi) Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

(2) Identify employees covered by the system;

(3) Establish the permissible values (including, but not limited to, number of days and number of levels) that an agency program may use for—

(i) The appraisal period (as specified in § 430.206(a));

(ii) The minimum period (as specified in § 430.207(a));

(iii) The number(s) of performance levels at which elements shall be appraised (as specified in § 430.206(b)(6)); and

(iv) The number of summary rating levels that may be assigned in a rating of record (as specified in § 430.208(d)); and

(4) Include, where applicable, criteria and procedures for establishing separate appraisal programs within the agency; and

(5) Require that an agency appraisal program shall conform to statute and the regulations of this chapter.

(c) Agencies are encouraged to involve employees and their representatives in developing and implementing their system(s).

§ 430.205 Agency performance appraisal program(s).

(a) Each agency shall establish at least one appraisal program of specific procedures and requirements to be implemented in accordance with the agency's appraisal system(s). At a minimum, each appraisal program shall include procedures and requirements for planning performance as specified in § 430.206, monitoring performance as specified in § 430.207, and rating performance as specified in § 430.208.

(b) An agency program shall establish criteria and procedures to address employee performance for employees who are on detail, who are transferred, or for other special circumstances as established by the agency.

(c) An agency may permit the development of separate appraisal programs under the framework of its appraisal system(s).

(d) Agencies are encouraged to involve employees and their representatives in developing and implementing their program(s).

§ 430.206 Planning performance.

(a) *Appraisal period.* (1) An appraisal program shall designate an official appraisal period for which a performance plan shall be prepared, during which performance shall be monitored, and for which a rating of record shall be prepared.

(2) The appraisal period shall generally be designated so that employees shall be provided a rating of record on an annual basis. An appraisal program may provide that longer appraisal periods may be designated when work assignments and responsibilities so warrant or performance management objectives can be achieved more effectively.

(b) *Performance plan.* (1) Agencies shall encourage employee participation in establishing performance plans.

(2) Performance plans shall be provided to employees at the beginning of each appraisal period (normally within 30 days).

(3) An appraisal program shall require that each employee be covered by an appropriate written, or otherwise recorded, performance plan based on work assignments and responsibilities.

(4) Each performance plan shall include at least one critical element that addresses individual performance.

(5) When appropriate, performance plans may also include accomplishment of team, group, or organizational objectives by incorporating elements, objectives, goals, program plans, work plans, or by other similar means that account for program results.

(6) (i) An appraisal program shall provide for establishing the number of levels at which performance on an element may be appraised. At a minimum, two levels shall be used, with one level being "Fully Successful" or its equivalent and another level being "Unacceptable."

(ii) A performance standard shall be established at the "Fully Successful" level for each element and may be established at other levels.

(iii) The absence of an established standard at a level specified in the program shall not preclude a determination that performance is at that level.

§ 430.207 Monitoring performance.

(a) *Minimum period.* An appraisal program shall establish a minimum period before any performance determination can be made.

(b) *Ongoing appraisal.* An appraisal program shall include methods for

appraising each element in the performance plan during the appraisal period, unless there has been insufficient opportunity to demonstrate performance on the element. Such methods shall include, but not be limited to, conducting one or more progress reviews during each appraisal period.

(c) *Unacceptable performance.* At any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements, an appraisal program shall provide for—

(1) Assisting employees in improving unacceptable performance; and

(2) Taking action based on unacceptable performance.

§ 430.208 Rating performance.

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

(b) Rating of record procedures for each appraisal program shall include a method for deriving a summary rating and assigning a summary rating level as specified in paragraph (d) of this section based at a minimum on appraisal of performance on critical elements, and, at agency discretion, consideration of other performance-related factors including, but not limited to, appraisal of performance on non-critical elements.

(1) A summary rating above Level 1 ("Unacceptable") shall not be assigned if performance on any critical element has been appraised as "Unacceptable."

(2) Consideration of other performance-related factors shall not result in assigning a summary rating of Level 1 ("Unacceptable") if each critical element has been appraised at least "Fully Successful" (or equivalent).

(c) An appraisal program shall not establish a forced distribution of summary ratings—

(1) Below Level 3 ("Fully Successful" or equivalent); or

(2) If those summary ratings are derived solely from an appraisal of performance against pre-established standards.

(d) Summary rating levels. (1) An appraisal program shall provide for—

(i) At least two and not more than five summary rating levels;

(ii) A Level 1 ("Unacceptable") summary rating level; and

(iii) A Level 3 ("Fully Successful" or equivalent) summary rating level.

(2) If more than two summary rating levels are used, agencies may provide for any combination of additional summary rating levels (Level 2, Level 4, and Level 5) provided that—

(i) Level 2, if used, is a rating level above Level 1 and below Level 3; and

(ii) Level 4, if used, is a rating level above Level 3 and below Level 5 ("Outstanding" or equivalent), if used.

(3) The term "Outstanding" shall be used only to describe a Level 5 summary rating level.

(4) The summary rating level designator (Level 1 through Level 5) shall be used to provide consistency in describing ratings of record and in referencing other related regulations (including, but not limited to, § 351.504 of this chapter).

(e) A rating of record of "Unacceptable" (Level 1) shall be reviewed and approved by a higher level management official.

(f) 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.

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

(h) 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.

§ 430.209 Agency responsibilities.

An agency shall—

(a) Submit to OPM for approval a description of its appraisal system(s) as specified in § 430.204(b) of this subpart, and any subsequent changes that modify any element of the agency's system(s) that is subject to a regulatory requirement in this part;

(b) Transfer the employee's most recent rating of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another organization within the agency;

(c) Require communication with supervisors and employees about relevant parts of its performance appraisal system(s) and program(s);

(d) Evaluate the performance appraisal system(s) contained in its Performance Management Plan and performance appraisal program(s) in operation in the agency;

(e) Use OPM's Guide to Federal Workforce Reporting Systems to report ratings of record data to the CPDF;

(f) Maintain and submit such records as OPM may require; and

(g) Take any action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

§ 430.210 OPM responsibilities.

(a) OPM shall review and approve an agency's performance appraisal system(s).

(b) OPM may evaluate the operation and application of an agency's performance appraisal system(s) and program(s).

(c) If OPM determines that an appraisal system or program does not meet the requirements of applicable law, regulation, or OPM policy, it shall direct the agency to implement an appropriate system or program or to take other corrective action.

4. Subpart D [Reserved] and Subpart E, consisting of §§ 430.501 through 430.506, are removed.

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND REMOVAL ACTIONS

5. The authority citation for part 432 continues to read as follows:

Authority: 5 U.S.C. 4303, 4305.

6. In § 432.103, paragraph (b) is revised to read as follows:

§ 432.103 Definitions.

* * * * *

(b) *Critical element* means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that overall performance is unacceptable.

* * * * *

PART 451—AWARDS

7. The heading of part 451 is revised to read as follows:

PART 451—AWARDS

8. The authority citation for part 451 is revised to read as follows:

Authority: 5 U.S.C. 4302, 4501–4507; E.O. 11438, 12828.

9. Subpart A, consisting of §§ 451.101 through 451.107, is revised to read as follows:

Subpart A—Agency Awards

Sec.

- 451.101 Authority and Coverage.
- 451.102 Definitions.
- 451.103 Agency award program(s).
- 451.104 Awards.
- 451.105 Award restrictions.
- 451.106 Agency responsibilities.
- 451.107 OPM responsibilities.

Subpart A—Agency Awards

§ 451.101 Authority and coverage.

(a) Chapter 45 of title 5, United States Code authorizes agencies to pay a cash award to, grant time-off to, and incur necessary expense for the honorary

recognition of, an employee (individually or as a member of a group) and requires the Office of Personnel Management to prescribe regulations governing such authority. Chapter 43 of title 5, United States Code provides for recognizing and rewarding employees whose performance so warrants. The regulations in this subpart, in combination with the chapters 43 and 45, United States Code, and any other applicable law, establish the requirements for agency award programs.

(b) Section 4 of E.O. 11438 (Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces, December 3, 1968) requires the Office of Personnel Management to prescribe procedures for covering the cost of a cash award recommended by more than one agency for a member of the armed forces for the adoption or use of a suggestion, invention, or scientific achievement. Section 1 of E.O. 12828 (Delegation of Certain Personnel Management Authorities, January 5, 1993) delegates to the Office of Personnel Management the authority of the President to permit performance-based cash awards under 5 U.S.C. 4505a to be paid to categories of employees who would not be eligible otherwise.

(c) This subpart applies to employees as defined by section 2105 and agencies as defined by section 4501 of title 5, United States Code, except as provided in §§ 451.105 and 451.201(a).

(d) For the regulatory requirements for granting performance awards to Senior Executive Service (SES) employees based on an employee's performance appraisal and rating of record, refer to § 534.403 of this chapter.

§ 451.102 Definitions.

Award means something bestowed or an action taken to recognize and reward individual or team achievement that contributes to meeting organizational goals or improving the efficiency, effectiveness, and economy of the Government or is otherwise in the public interest. Such awards include, but are not limited to, employee incentives (e.g., agency productivity gainshares), which are based on predetermined criteria such as productivity standards, performance goals, measurement systems, award formulas, or payout schedules.

Award program means the specific procedures and requirements established by an agency or a component of an agency for granting awards under subchapter I of chapter 43 and of chapter 45 of title 5, United States Code, and this subpart.

§ 451.103 Agency award program(s).

(a) Agencies shall develop one or more award programs for employees covered by this subpart.

(b) Agencies are encouraged to include employees and their representatives in developing such programs.

(c) An agency award program shall provide for—

(1) Obligating funds consistent with applicable agency financial management controls and delegations of authority; and

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

§ 451.104 Awards.

(a) An agency may grant a cash, honorary, or informal recognition award, or grant time-off without charge to leave or loss of pay consistent with chapter 45 of title 5, United States Code, and this part to an employee, as an individual or member of a group, on the basis of—

(1) A suggestion, invention, superior accomplishment, or other personal effort that contributes to the efficiency, economy, or other improvement of Government operations or achieves a significant reduction in paperwork;

(2) A special act or service in the public interest in connection with or related to official employment; or

(3) Performance as reflected in the employee's most recent rating of record (as defined in § 430.203 of this chapter), except that such awards may be paid to SES employees only under § 534.403 of this chapter and not on the basis of this subpart.

(b) A cash award under this subpart is a lump sum in addition to regular pay and does not increase an employee's rate of basic pay.

(c) An award is subject to the withholding of taxes.

(d) When an award is approved for—

(1) An employee of another agency, the benefiting agency shall make arrangements to transfer funds to the employing agency to cover the award. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs and pay the award; and

(2) A member of the armed forces for a suggestion, invention, or scientific achievement, arrangements shall be made to transfer funds to the agency having jurisdiction over the member in accordance with E.O. 11438, "Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces".

(e) An award may be granted to the legal heirs or estates of deceased employees.

(f) A time-off award granted under this subpart shall not be converted to a cash payment under any circumstances.

(g) When granting an award on the basis of a rating of record that is paid as a percentage of basic pay under 5 U.S.C. 4505a(a)(2)(A), the rate of basic pay used shall be determined without taking into account any locality-based comparability payment under 5 U.S.C. 5304 or an interim geographic adjustment or special law enforcement adjustment under section 302 or 404 of the Federal Employees Pay Comparability Act of 1990, respectively.

(h) Employees may not appeal an agency's decision not to grant an award or the amount of such an award. This does not affect any right or remedy under subchapter II of chapter 12, chapter 71, or section 2302(d) of title 5, United States Code.

§ 451.105 Award restrictions.

(a) Agencies shall not grant awards under this subpart during a Presidential election period (as defined at 5 U.S.C. 4508) to employees who are—

(1) In the Senior Executive Service and not career appointees (i.e., non-career or limited appointees), or

(2) In an excepted service position of a confidential or policy-determining character (schedule C).

(b) Agencies shall not grant cash awards under this subpart to employees appointed by the President with Senate confirmation who serve in—

(1) An Executive Schedule position, or

(2) A position for which pay is set in statute by reference to a section or level of the Executive Schedule.

§ 451.106 Agency responsibilities.

(a) In establishing and operating its award program(s), an agency shall assure that a program does not conflict with or violate any other law or Governmentwide regulation.

(b) When a recommended award would grant over \$10,000 to an individual employee, the agency shall submit the recommendation to OPM for approval.

(c) Agencies shall provide for communicating with employees and supervisors about the relevant parts of their award program(s).

(d) Agencies shall evaluate their award program(s).

(e) Agencies shall report all cash and time off awards to the CPDF.

(f) Agencies shall use OPM's Guide to Federal Workforce Reporting Systems to report award data to the CPDF.

(g) Agencies shall maintain and submit such records as OPM may require.

(h) Agencies shall give due weight to an award granted under this part in qualifying and selecting an employee for promotion as provided in 5 U.S.C. 3362.

(i) Agencies shall establish criteria for identifying which awards to document in the Official Personnel Folder in conformance with OPM's Guide to Personnel Recordkeeping.

(j) Agencies shall take any corrective action required by OPM to ensure conformance with applicable law, regulation, and OPM policy.

§ 451.107 OPM responsibilities.

(a) OPM shall review and approve or disapprove each agency recommendation for an award that would grant over \$10,000 to an individual employee.

(b) When a recommended award would grant over \$25,000 to an individual employee, OPM shall review the recommendation and submit it (if approved) to the President for final approval.

(c) OPM shall review and approve or disapprove a request from the head of an Executive agency to extend the provisions of 5 U.S.C. 4505a to any category of employees within that agency that would not be covered otherwise.

(d) OPM may evaluate the operation and application of an agency's award program(s).

10. In § 451.201, the second introductory paragraph (a) is removed, paragraph (b), (c), and (d) are redesignated as paragraphs (c), (d), and (e) respectively, and a new paragraph (b) is added to read as follows:

§ 451.201 Authority and coverage.

* * * * *

(b) Awards granted under paragraph (a) are subject to the restrictions as specified in § 451.105.

* * * * *

11. Subpart C, consisting of §§ 451.301 through 451.307, is removed.

PART 531—PAY UNDER THE GENERAL SCHEDULE

12. The authority citation for part 531 is revised to read as follows:

Authority: 5 U.S.C. 5115, 5307, and 5338; sec. 4 of Pub. L. 103-89, 107 Stat. 981; and E.O. 12748, 56 FR 4521, February 4, 1991, 3 CFR 1991 Comp., p. 316;

Subpart A also issued under 5 U.S.C. 5304, 5305, and 5553; section 302 of the Federal Employees Pay Comparability Act of 1990 (FEPCA), Pub. L. 101-509, 104 Stat. 1462; and E.O. 12786, 56 FR

67453, December 30, 1991, 3 CFR 1991 Comp., p. 376;

Subpart B also issued under 5 U.S.C. 5303(g), 5333, 5334(a), and 7701(b)(2);

Subpart C also issued under 5 U.S.C. 5304, 5305, and 5553; sections 302 and 404 of FEPCA, Pub. L. 101-509, 104 Stat. 1462 and 1466; and section 3(7) of Pub. L. 102-378, 106 Stat. 1356;

Subpart D also issued under 5 U.S.C. 5335(g) and 7701(b)(2);

Subpart E also issued under 5 U.S.C. 5336;

Subpart F also issued under 5 U.S.C. 5304, 5305(g)(1), and 5553; and E.O. 12883, 58 FR 63281, November 29, 1993, 3 CFR 1993 Comp., p. 682.

13. In § 531.401, paragraphs (c) and (d) are revised to read as follows:

§ 531.401 Principal authorities.

* * * * *

(c) Section 402 of E.O. 11721 (Providing for Federal Pay Administration, May 23, 1973), as amended, provides that "The Civil Service Commission (Office of Personnel Management) shall issue such regulations and standards as may be necessary to ensure that only those employees whose work is of an acceptable level of competence receive periodic step-increases under the provisions of section 5335 of title 5, United States Code."

(d) Section 4 of Public Law 103-89 (Performance Management and Recognition System Termination Act of 1993) provides that "the Office of Personnel Management shall prescribe regulations necessary for the administration of this section."

14. In § 531.402, paragraph (a) is revised to read as follows:

§ 531.402 Employee coverage.

(a) Except as provided in paragraph (b) of this section, this subpart applies to employees who occupy permanent positions classified and paid under the General Schedule and who are paid at less than the maximum rate of their grades.

* * * * *

15. In § 531.403, the definitions of *acceptable level of competence*, *critical element*, and *equivalent increase* are revised to read as follows:

§ 531.403 Definitions.

* * * * *

Acceptable level of competence means performance by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade (or, in the case of a GM employee, the next higher rate within the grade) of his or her position, subject to the requirements of § 531.404

of this subpart, as determined by the head of the agency.

* * * * *

Critical element has the meaning given that term in § 430.203 of this chapter.

* * * * *

Equivalent increase means an increase or increases in an employee's rate of basic pay equal to or greater than the difference between the employee's rate of basic pay and the rate of pay for the next higher step of that grade (or, in the case of a GM employee, the next higher rate within the grade).

* * * * *

16. In § 531.404, the introductory text, and the introductory text of paragraph (a) are revised to read as follows:

§ 531.404 Earning within-grade increase.

An employee paid at less than the maximum rate of the grade of his or her position shall earn advancement in pay to the next higher step of the grade or the next higher rate within the grade (as defined in § 531.403) upon meeting the following three requirements established by law:

(a) The employee's performance must be at an acceptable level of competence, as defined in this subpart by authority of section 402 of E.O. 11721, as amended. To be determined at an acceptable level of competence, the employee's most recent rating of record (as defined in § 430.203 of this chapter) shall be at least Level 3 ("Fully Successful" or equivalent).

* * * * *

17. Section 531.408 is removed and reserved.

§ 531.408 [Reserved].

18. In § 531.409, paragraph (b) is revised, paragraph (c)(2) is redesignated as paragraph (c)(3) and revised, a new paragraph (c)(2) is added, the introductory text to paragraph (d) is revised, paragraph (d)(4) is revised, paragraph (d)(5) is redesignated as paragraph (d)(6), a new paragraph (d)(5) is added, and the concluding text at the end of paragraph (d) is revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current rating of record made under part 430, subpart B, of this chapter. For those agencies not covered by chapter 43 of title 5, United States Code, and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence

determination shall be based on performance appraisal requirements established by the agency. If an employee has been reduced in grade because of unacceptable performance and has served in one position at the lower grade for at least the minimum period established by the agency, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) * * *

(2) An acceptable level of competence determination may be delayed during an employee's opportunity to demonstrate acceptable performance (as defined at § 432.103(d) of this chapter or during a notice period for a proposed performance-based action under part 432 or 752 of this chapter.

(3) When an acceptable level of competence determination has been delayed under this subpart:

(i) The employee shall be informed that his or her determination is postponed and, where applicable, the rating period extended and shall be told of the specific requirements for performance at an acceptable level of competence.

(ii) An acceptable level of competence determination shall then be made upon completion of either the minimum period established by the agency or the opportunity to demonstrate acceptable performance.

(iii) If, following the delay, the employee's performance is determined to be at an acceptable level of competence, the within-grade increase shall be granted retroactively to the beginning of the pay period following completion of the applicable waiting period.

(iv) If, following the delay, the employee's performance is determined not to be at an acceptable level of competence, the within-grade increase shall not be granted. The provisions of § 531.411 govern the determination of an employee's acceptable level of competence following the withholding of a within-grade increase.

(d) *Waiver of requirement for determination.* An acceptable level of competence determination shall be waived and a within-grade increase granted when an employee has not served in any position for the minimum period under an applicable agency performance appraisal program during the final 52 calendar weeks of the waiting period for one or more of the following reasons:

* * * * *

(4) Because of details to another agency or employer for which no rating has been prepared;

(5) Because the employee has had insufficient time to demonstrate an acceptable level of competence due to authorized activities of official interest to the agency not subject to appraisal under part 430 of this chapter (including, but not limited to, labor-management partnership activities under section 2 of Executive Order 12871 and serving as a representative of a labor organization); or

* * * * *

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level of competence had the employee performed the duties of his or her position of record for the minimum period under the applicable agency performance appraisal program.

19. Section 531.501 is revised to read as follows:

§ 531.501 Applicability.

This subpart contains regulations of the Office of Personnel Management to carry out section 5336 of title 5, United States Code, which authorizes the head of an agency, or another official to whom such authority is delegated, to grant quality step increases, and to carry out section 403 of Executive Order 11721 (Providing for Federal Pay

Administration, May 23, 1973), as amended.

20. Section 531.503 is revised to read as follows:

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to provide appropriate incentives and recognition for excellence in performance by granting faster than normal step increases.

21. Section 531.504 is revised to read as follows:

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to—

(a) An employee who receives a rating of record at Level 5 (“Outstanding” or equivalent), as defined in part 430, subpart B, of this chapter; or

(b) An employee who is covered by a performance appraisal program that does not have a Level 5 rating and who demonstrates sustained performance of high quality significantly above that expected at the “Fully Successful” level in the type of position concerned, as determined under performance-related criteria established by the agency.

22. Section 531.506 is revised to read as follows:

§ 531.506 Effective date of a quality step increase.

The quality step increase should be made effective as soon as practicable after it is approved.

23. Section 531.507 is revised to read as follows:

§ 531.507 Agency responsibilities.

(a) Agencies shall develop and implement a plan(s) for granting quality step increases in accordance with Executive Order 11721.

(b) Agencies shall maintain and report such records as the Office may require.

(c) Agencies shall use OPM’s Guide to Federal Workforce Reporting Systems to report quality step increases to the CPDF.

24. Section 531.508 is revised to read as follows:

§ 531.508 Evaluation of quality step increase authority.

The Office of Personnel Management may evaluate an agency’s use of the authority to grant quality step increases. The agency shall take any corrective action required by the Office.

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