

Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 430 and 534

RIN 3206-AM48

Managing Senior Executive Performance

AGENCY: U.S. Office of Personnel Management.

ACTION: Proposed rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) proposes to amend subpart C of part 430 of title 5, Code of Federal Regulations, to help agencies design performance appraisal systems for senior executives that support a consistent approach for managing senior executive performance, incorporate OPM policies, and reorganize information for ease of reading. We are also amending part 534 to make technical corrections to the recently published final regulation on pay for senior level and scientific and professional positions.

DATES: Comments must be received on or before February 9, 2015.

ADDRESSES: You may submit comments, identified by "RIN 3206-AM48," using any of the following methods:

Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments. All submissions received through the Portal must include the agency name and docket number or Regulation Identifier Number (RIN) for this rulemaking.

Email: Send to sespolicy@opm.gov. Include "RIN 3206-AM48" in the subject line of the message.

Fax: Send to (202) 606-4264.

Mail, Hand Deliver/Courier comments: Address to Mr. Stephen T. Shih, Deputy Associate Director, Senior Executive Services and Performance Management, Suite 7412, 1900 E Street NW., Washington, DC 20415-9700.

FOR FURTHER INFORMATION, CONTACT: Nikki Johnson by telephone at (202)

606-8046, by FAX at (202) 606-4264, or by email at nikki.johnson@opm.gov.

SUPPLEMENTARY INFORMATION: On January 4, 2012, OPM and the U.S. Office of Management and Budget (OMB) announced the design and issuance of a basic Senior Executive Service (SES) performance appraisal system. Drawing from leading practices in Federal agencies and the private sector, a working group of agency representatives—including SES members—provided input to OPM on the system development to meet the SES performance management needs of Executive Branch agencies and their SES members. The system was designed to improve Governmentwide performance management of the SES by providing a consistent and uniform framework for agencies to communicate expectations and evaluate the performance of SES members, particularly centering on the role and responsibility of SES members to achieve results through effective executive leadership. The system also provides the necessary flexibility and capability for appropriate customization to better meet the needs of agencies. In addition to promoting greater consistency, the system will promote greater clarity, transferability, and equity in the development of performance plans, the delivery of feedback, the derivation of ratings, and the link to compensation. The proposed regulations are primarily revised to include the requirements of the basic SES performance appraisal system.

Approach

The proposed regulations provide an updated framework and system standards for agencies to use in designing their SES performance management systems. Section 4312 of title 5, United States Code, provides authority for OPM to establish system standards. As proposed, these standards balance the need for a Governmentwide approach to SES performance management with agency flexibility. Agencies maintain the ability to tailor their SES performance management systems to meet their mission needs and organizational climates.

The proposed regulations require critical elements in each executive's performance plan to be based on the OPM-defined executive core qualifications (ECQs). ECQ-based

critical elements provide a balanced emphasis on strategic leadership and results and enhance the consistency and equity of SES performance management systems within and across agencies.

Furthermore, the proposed regulations define and identify the difference between performance standards and performance requirements. These terms are often misunderstood. A performance standard is a description of performance that must be met to be rated at a given level of performance. A performance requirement is a statement of performance expected for a critical element. These requirements should be measurable, understandable, verifiable, equitable, and achievable. Performance standards are associated with performance rating levels and performance requirements are associated with critical elements. When planning, monitoring, and appraising performance of SES members, supervisors must develop performance requirements using performance standards as a benchmark.

- The following is an example of a performance standard describing performance at Level 5: This is a level of rare, high-quality performance. The employee's mastery of technical skills and thorough understanding of the mission have been fundamental to the completion of program objectives. Preparing for the unexpected, the employee has planned and used alternate ways of reaching goals. The employee has produced an exceptional quantity of work, often ahead of established schedules. In writing and speaking, the employee presents complex ideas clearly in a wide range of difficult communications situations.

- The following is an example of a performance requirement: 90% of cost-recovery cases are addressed within statutory deadlines, including prudently-incurred expenses to safeguard and enhance the reliability, security and safety of the energy infrastructure.

The proposed regulations also reinforce the importance of agency Performance Review Boards (PRB) by expanding their functions. Each PRB is required to consider agency performance during the review process and make recommendations on pay adjustments.

Structure

The subpart is restructured to establish two new sections and to logically organize the material. “Details and job changes” currently addressed in “Appraising Performance” are removed and established as a new section. “Performance Management Systems” is also established as a new section to outline the system standards that must be incorporated into an agency’s SES performance management system.

Key Changes

A savings provision is added to authorize continued agency operation of appraisal systems approved prior to the issuance of the requirements of this new subpart. Within two years of the effective date of this subpart, agencies that have not implemented the basic SES appraisal system will be required to have designed, obtained OPM approval for, and implemented systems conforming to the requirements of this subpart.

An oversight official is added to ensure each agency has designated an official to oversee the performance management system and issue performance appraisal guidelines.

Performance appraisal guidelines are added to ensure the consideration of agency organizational performance

assessments when appraising and rating executives.

Evaluation of performance management systems is expanded to ensure agency evaluations address both effectiveness and compliance with relevant laws, regulations, and OPM policies.

OPM review of agency systems is modified to clarify OPM will review agency systems for compliance with the requirements in the subpart, including those relating to system standards.

Summary performance level requirements are modified to require the following five rating levels:

Outstanding; exceeds fully successful; fully successful; minimally satisfactory; and unsatisfactory. The current requirement of a three-level minimum (*i.e.*, one or more fully successful, minimally satisfactory, and unsatisfactory) is removed.

Performance Review Board functions are expanded to ensure PRBs consider agency performance during the review process and make written recommendations on pay adjustments. Additionally, as required in 5 CFR 534.405, recommendations on performance awards is now included as a PRB function.

The requirements for “critical elements” are expanded so critical

elements will be based on OPM’s ECQs and reflect individual and organizational performance applicable to each executive’s respective area of responsibility.

A definition of “performance standard” is added as the description of performance that must be met to be rated at a given level of performance.

The definition of “performance requirements” is expanded to clarify that performance requirements must be described at the fully successful level and may be described at other performance levels.

A definition for “System standards” is added as the OPM-established requirements for performance management systems. The standards are identified in a new section of the proposed regulations.

Table of Changes

The following table lists all the proposed changes to the current regulations. The “current rule” column lists the regulations in the current subpart C. The “proposed rule” column indicates where matters addressed in the current regulation are addressed in the proposed regulation and where new material is being added. The third column explains each change.

| Current rule | Proposed rule | Explanation of change |
|-------------------------|---------------------|---|
| 430.301(a) | 430.301(a) | Edits authority to streamline language. |
| 430.301(b) | 430.301(b) | Remains unchanged. |
| 430.301(b)(1) | 430.301(b)(1) | Edits section to better conform to 5-level rating system. |
| 430.301(b)(2) | 430.301(b)(2) | Edits section to update the items pertaining to alignment of executive performance plans. |
| 430.301(b)(3) | 430.301(b)(3) | Remains unchanged. |
| 430.301(b)(4) | 430.301(b)(5) | Moves and edits paragraph. |
| | 430.301(b)(4) | Adds new paragraph addressing reporting on meeting organizational goals. |
| 430.301(b)(5) | 430.301(b)(6) | Moves and edits paragraph. |
| | 430.301(c) | Adds new paragraph addressing savings provision for system approvals. |
| 430.302 | 430.302 | Revises format of “Coverage” section. |
| 430.303 | 430.303 | Adds new definitions for <i>Executive Core Qualifications</i> , <i>Oversight official</i> , <i>Performance standards</i> , and <i>System standards</i> . Deletes the definition of <i>Balanced measures</i> and <i>Other performance elements</i> . Revises the definitions of <i>Annual summary rating</i> , <i>Initial summary rating</i> , <i>Performance appraisal</i> , <i>Performance management system</i> , <i>Performance requirement</i> , <i>Senior executive performance plan</i> , and <i>Strategic planning initiatives</i> . |
| 430.304(a) | 430.304(a) | Adds new requirement that agency performance management systems must be in accordance with the system standards. |
| 430.304(b)(1) | 430.305(a)(2) | Moves requirement for linkage to new section on “System standards for SES performance management systems” and edits the requirement. |
| 430.304(b)(2) | 430.306(b) | Moves requirement for consultation to “Planning and communicating performance” and edits the requirement. |
| | 430.304(b)(1) | Adds new requirement that agency performance management systems must identify the executives covered by the system. |
| 430.304(b)(3) | 430.304(b)(2) | Moves and edits the requirement for monitoring performance and broadens to include progress reviews. |
| 430.304(b)(4) | 430.305(a)(4) | Moves requirement to appraise annually to “System standards for SES performance management systems” and “Appraising performance” and edits the requirement. |
| | 430.308(c) | |
| 430.304(b)(5) | 430.305(a)(8) | Moves requirement for using performance results to “System standards for SES performance management systems” and edits the requirement. |
| 430.304(c)(1) | 430.304(b)(3) | Moves requirement to establish an official appraisal period. |
| 430.304(c)(1)(i) | 430.304(b)(4) | Moves requirement for a minimum appraisal period. |
| 430.304(c)(1)(ii) | 430.304(b)(5) | Moves requirement for ending the appraisal period and broadens the requirement to address effectiveness. |
| | 430.304(b)(6) | Adds new requirement to address criteria and procedures for executives who are on detail, temporarily reassigned, or transferred. |

| Current rule | Proposed rule | Explanation of change |
|-------------------------------|--------------------------------|--|
| 430.304(c)(1)(iii) | 430.309(b) | Moves restriction for appraising a career appointee within 120 days after the beginning of a new President's term of office to "Rating performance." |
| 430.304(c)(2) | 430.305(a)(6) | Moves requirement for summary levels to "System standards for SES performance management systems" and broadens it to increase the number of levels. |
| 430.304(c)(3) | 430.305(a)(7) | Adds new requirement to include equivalency statements in system description. |
| | 430.305(a)(5) | Moves requirement for deriving annual summary ratings to "System standards for SES performance management systems" and edits the requirement. |
| | 430.305 | Adds new section on "System standards for SES performance management systems." |
| | 430.305(a)(1) | Adds new requirement that critical elements must be based on the executive core qualifications and includes quality of executive performance as basis for evaluation. |
| | 430.305(a)(3) | Adds new requirement addressing performance standards. |
| | 430.305(b) | Adds new paragraph addressing development of agency performance management system. |
| 430.305(c) | 430.305(c) | Adds new paragraph addressing establishment of a basic performance management system for agency use. |
| | | Moves "Planning and communicating performance" to another section. |
| 430.305 | 430.306 | Moves requirements for a performance plan, consultation, and communication of the plan. |
| 430.305(a) | 430.306(a) | 430.306(b) |
| 430.305(b)(1) | 430.306(c)(1) | |
| 430.305(b)(2) | 430.306(c)(2) | Moves requirement for critical elements and broadens the requirement to include competencies and clarify the scope of organizational performance. |
| 430.305(b)(3) | 430.306(c)(3) | Moves requirements for performance requirements and standards and broadens the requirement to address performance requirements for levels other than Fully Successful and performance standards for each level at which an executive may be appraised and includes requirement for general measures. |
| | 430.306(d) | Moves requirement for linking to strategic planning initiatives and edits the requirement. |
| 430.306 | 430.307 | Adds new paragraph addressing the option for agencies to require review of plans at the beginning of the appraisal period. |
| 430.306(a) | 430.307 | Moves "Monitoring performance" to another section. |
| 430.306(b) | 430.307 | Moves requirement to monitor performance and edits the requirement. |
| 430.307 | 430.307 | Moves requirement for progress reviews and broadens it to include discussion of available developmental opportunities. |
| | | Moves "Appraising performance" to another section. |
| 430.307(a) | 430.308(a) | Moves requirement for assigning an annual summary rating and broadens it to require assigning a summary rating at least annually. |
| 430.307(a)(1) | 430.308(b) | Moves requirement for appraisal of critical elements and edits the requirement. |
| 430.307(a)(2) | 430.308(c) | Moves requirement for basing appraisals on organizational performance and broadens it to include the scope of organizational performance. |
| 430.307(a)(2)(i) | 430.308(c)(1) | Moves taking results into account when appraising performance and edits it. |
| | 430.308(c)(2)-(3) | Adds new paragraph addressing performance appraisal guidelines and quality of executive performance as factors that are taken into account when appraising performance. |
| 430.307(a)(2)(ii) | 430.308(c)(4) | Moves taking customer satisfaction into account when appraising performance and replaces customer satisfaction with customer perspectives. |
| 430.307(a)(2)(iii)-(iv) | 430.308(c)(5)-(6) | Moves taking remaining factors into account when appraising performance and updates language. |
| 430.307(a)(2)(v) | 430.308(c)(7)-(8) | Moves and updates language. |
| 430.307(b) | 430.310 | Moves "Details and job changes" to another section. |
| 430.307(b)(1) | 430.310(a) | Moves requirement for appraising executives on a detail or temporarily reassigned and edits the requirement. |
| 430.307(b)(2) | 430.310(b) | Moves requirement for appraising executives who are changing jobs or transferring and edits the requirement. |
| 430.307(b)(3) | 430.310(c) | Moves requirement for providing appraisals and annual summary rating and clarifies the requirement. |
| 430.308 | 430.309 | Moves "Rating performance" to another section. |
| 430.308(a) | 430.309(e)(1) | Moves requirement for initial summary rating. |
| 430.308(b) | 430.309(e)(2) | Moves item pertaining to higher level review and expands the item. |
| 430.308(c) | 430.309(e)(3) | Moves requirement for PRB review and edits the requirement. |
| 430.308(d) | 430.309(e)(4) | Moves requirement for annual summary rating and edits the requirement. |
| 430.308(e) | 430.309(c) | Moves requirement for extending the appraisal period. |
| 430.308(f) | 430.309(d) | Moves item pertaining to appeals. |
| 430.309 | 430.309(a)(1) and (a)(2) | Adds new paragraphs addressing the criteria for rating performance. |
| | 430.312 | Moves "Using performance results" to another section. |
| 430.309(a) | 430.312(a) | Moves requirement for using the results of performance appraisals and edits the requirement. |
| 430.309(b) | 430.312(b) | Moves and edits language to include pay. |
| 430.309(c) | 430.312(c) | Moves item pertaining to removal from the SES and edits the item. |
| 430.310 | 430.311 | Moves "Performance Review Boards (PRBs)" to another section. |
| 430.310(a)(1) | 430.311(a)(1) | Moves requirement for PRB membership and edits the requirement. |
| 430.310(a)(2) | 430.311(a)(2) | Moves requirement for PRB membership. |
| 430.310(a)(3) | 430.311(a)(3) | Moves and broadens the requirement to address membership when recommending performance-based pay adjustments for career appointees. |
| 430.310(a)(4) | 430.311(a)(4) | Moves requirement for publication of PRB appointments. |
| 430.310(b)(1) | 430.311(b)(1) | Moves and broadens the requirement to address agency performance and adds a condition for review of the initial summary rating. |

| Current rule | Proposed rule | Explanation of change |
|---------------------|---------------------|---|
| 430.310(b)(2) | 430.311(b)(2) | Moves and broadens the requirement for PRB recommendations to include pay adjustments and performance awards. |
| 430.310(b)(3) | 430.311(b)(3) | Moves and broadens requirement pertaining to PRB deliberations for PRB members to include pay adjustments and performance awards. |
| 430.311 | 430.313 | Moves "Training and evaluation" to another section. |
| 430.311(a) | 430.313(a) | Moves requirement for providing information and training and edits the requirement. |
| 430.311(b) | 430.313(b) | Moves requirement for evaluating performance management systems and expands item addressing evaluation. |
| 430.311(c) | 430.313(c) | Moves requirement for maintaining performance-related records and edits the requirement. |
| 430.312 | 430.314 | Moves OPM review of agency systems to another section. |
| 430.312(a) | 430.314(a) | Moves requirement for system approval and adds item addressing system standards and requirements. |
| 430.312(b) | 430.314(b) | Moves item on OPM review of agency systems and edits the item. |
| 430.312(c) | 430.314(c) | Moves requirement for corrective action and edits the requirement. |

Pay for Senior Level and Scientific and Professional Positions

On March 5, 2014, OPM published final regulations (79 FR 12353) on pay for senior level and scientific and professional positions to implement Section 2 of the Senior Professional Performance Act of 2008 (Pub. L. 110–372, October 8, 2008). We find that paragraphs (c)(1)(ii) and (c)(1)(iii) of 5 CFR 534.505 of these regulations contain erroneous cross-references that we are correcting.

Regulatory Flexibility Act

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

E.O. 12866, Regulatory Review

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

List of Subjects in 5 CFR Parts 430 and 534

Government employees.

U.S. Office of Personnel Management

Katherine Archuleta,
Director.

Accordingly, OPM is proposing to amend 5 CFR parts 430 and 534 as follows:

PART 430—PERFORMANCE MANAGEMENT

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

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

■ 2. Revise subpart C to read as follows:

Subpart C—Managing Senior Executive Performance

- Sec.
- 430.301 General.
- 430.302 Coverage.
- 430.303 Definitions.
- 430.304 SES performance management systems.

- 430.305 System standards for SES performance management systems.
- 430.306 Planning and communicating performance.
- 430.307 Monitoring performance.
- 430.308 Appraising performance.
- 430.309 Rating performance.
- 430.310 Details and job changes.
- 430.311 Performance Review Boards (PRBs).
- 430.312 Using performance results.
- 430.313 Training and evaluation.
- 430.314 OPM review of agency systems.

Subpart C — Managing Senior Executive Performance

§ 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for the establishment of Senior Executive Service (SES) performance appraisal systems and appraisal of senior executive performance. This subpart prescribes regulations for managing SES performance to implement the statutory provisions at 5 U.S.C. 4311–4315.

(b) *Purpose.* This subpart requires agencies to establish performance management systems that hold senior executives accountable for their individual and organizational performance in order to improve the overall performance of Government by—

- (1) Encouraging excellence in senior executive performance;
- (2) Aligning executive performance plans with the results-oriented goals required by the Government Performance and Results Act (GPRA) Modernization Act of 2010 or other strategic planning initiatives;
- (3) Setting and communicating individual and organizational goals and expectations;
- (4) Reporting on the success of meeting organizational goals;
- (5) Systematically appraising senior executive performance using measures that balance organizational results with customer and employee perspectives, and other perspectives as appropriate; and

(6) Using performance appraisals as a basis for pay, awards, development, retention, removal, and other personnel decisions.

(c) *Savings provisions.* Agencies without OPM approval to use the basic SES appraisal system issued by U.S. Office of Personnel Management (OPM) and the Office of Management and Budget on January 4, 2012, must design, obtain OPM approval for, and implement systems conforming with the requirements of this subpart no later than one year after [INSERT EFFECTIVE DATE OF THE REGULATION]. No provision of this subpart will affect any administrative proceedings related to any action initiated under a provision of this chapter before [INSERT EFFECTIVE DATE OF THE REGULATION].

§ 430.302 Coverage.

This subpart applies to—
(a) All senior executives covered by subchapter II of chapter 31 of title 5, United States Code; and
(b) Agencies identified in section 3132(a)(1) of title 5, United States Code.

§ 430.303 Definitions.

In this subpart—
Annual summary rating means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering (1) the initial summary rating, (2) any input from the executive or a higher level review, and (3) the applicable Performance Review Board’s recommendations. This is the official rating for the appraisal period.
Appointing authority means the department or agency head, or other official with authority to make appointments in the Senior Executive Service (SES).
Appraisal period means the established period of time for which a senior executive’s performance will be appraised and rated.
Critical element means a key component of an executive’s work that

contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.

Executive Core Qualifications (ECQs) means the overarching qualities, identified and validated by OPM, required of an individual to succeed in the SES.

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

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

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

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

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

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

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

Progress review means a review of the senior executive's progress in meeting the performance requirements. A

progress review is not a performance rating.

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

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

System standards means the OPM-established requirements for performance management systems.

§ 430.304 SES performance management systems.

(a) To encourage excellence in senior executive performance, each agency must develop and administer one or more performance management systems for its senior executives in accordance with the system standards established in § 430.305.

(b) Performance management systems must provide for—

(1) Identifying executives covered by the system;

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

(3) Establishing an official performance appraisal period for which an annual summary rating must be prepared;

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

(5) Ending the appraisal period at any time after the minimum appraisal period is completed, but only if the agency determines there is an adequate basis on which to appraise and rate the senior executive's performance and the shortened appraisal period promotes effectiveness; and

(6) Establishing criteria and procedures to address performance of senior executives who are on detail, temporarily reassigned, or transferred as described at § 430.312(c)(1), and for other special circumstances established by the agency.

§ 430.305 System standards for SES performance management systems.

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

(1) Evaluation of executive leadership and results, including quality of performance, using critical elements based on the ECQs;

(2) Performance requirements aligned with agency mission and strategic planning initiatives;

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

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

(5) Deriving an annual summary rating through a mathematical method that ensures executives' performance aligns with level descriptors contained in performance standards that clearly differentiate levels above fully successful, while prohibiting a forced distribution of rating levels for senior executives;

(6) Five summary performance levels as follows:

- (i) An outstanding level;
- (ii) An exceeds fully successful level;
- (iii) A fully successful level;
- (iv) A minimally satisfactory level;

and

- (v) An unsatisfactory level; and

(7) Agencies using agency-specific terms for the five summary performance levels must include equivalency statements in the system description aligning them with the five performance levels required in § 430.305(a)(6); and

(8) Using performance appraisals as a basis to adjust pay, reward, retain, and develop senior executives or make other personnel decisions, including removals as specified in § 430.312.

(b) An agency may develop its own performance management system for senior executives in accordance with the requirements of this section.

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

§ 430.306 Planning and communicating performance.

(a) Each senior executive must have a performance plan that describes the individual and organizational expectations for the appraisal period that apply to the senior executive's area of responsibility.

(b) Supervisors must develop performance plans in consultation with senior executives and communicate the plans to them on or before the beginning of the appraisal period.

(c) A senior executive performance plan must include—

(1) *Critical elements.* ECQ-based critical elements must reflect individual performance results or competencies as well as organizational performance priorities within each executive's respective area of responsibility.

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

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

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

§ 430.307 Monitoring performance.

Supervisors must monitor each senior executive's performance throughout the appraisal period and hold at least one progress review. At a minimum, supervisors must inform senior executives during the progress review about how well they are performing with regard to their performance plan. Supervisors must provide advice and assistance to senior executives on how to improve their performance. Supervisors and senior executives may also discuss available development opportunities for the senior executive.

§ 430.308 Appraising performance.

(a) At least annually, agencies must appraise each senior executive's

performance in writing and assign an annual summary rating at the end of the appraisal period.

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

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

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

(2) Overall quality of performance rendered by the executive,

(3) Performance appraisal guidelines that must be based upon assessments of the agency's performance and are provided by the oversight official to senior executives, rating and reviewing officials, PRB members, and appointing authorities at the conclusion of the appraisal period;

(4) Customer perspectives;

(5) Employee perspectives;

(6) The effectiveness, productivity, and performance results of the employees for whom the senior executive is responsible;

(7) Leadership effectiveness in promoting diversity, inclusion and engagement as set forth, in part, under section 7201 of title 5, United States Code; and

(8) Compliance with the merit system principles set forth under section 2301 of title 5, United States Code.

§ 430.309 Rating performance.

(a) When rating senior executive performance, each agency must—

(1) Comply with the requirements of this section, and

(2) Establish a PRB as described at § 430.311.

(b) Each performance management system must provide that an appraisal and rating for a career appointee's performance may not be made within 120 days after the beginning of a new President's term.

(c) When an agency cannot prepare an annual summary rating at the end of the appraisal period because the senior executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's appraisal period. Once the appropriate conditions are met, the agency will then prepare the annual summary rating.

(d) Senior executive performance appraisals and ratings are not appealable.

(e) Procedures for rating senior executives must provide for the following:

(1) *Initial summary rating.* The supervisor must develop an initial summary rating of the senior executive's performance, in writing, and share that rating with the senior executive. The senior executive may respond in writing.

(2) *Higher-level review.* The senior executive may ask for a higher-level official to review the initial summary rating before the rating is given to the PRB.

(i) The senior executive is entitled to one higher-level review, unless the agency provides for more than one review level. The higher-level official cannot change the supervisor's initial summary rating, but may recommend a different rating to the PRB.

(ii) Copies of the reviewer's findings and recommendations must be given to the senior executive, the supervisor, and the PRB.

(iii) When an agency cannot provide a higher-level review for an executive who reports directly to the agency head, the agency may provide for an alternative review process of the executive's initial summary rating.

(3) *PRB review.* The PRB must receive and review the initial summary rating, the senior executive's response to the initial rating if made, and the higher-level official's findings and recommendations if conducted, and make recommendations to the appointing authority, as provided in § 430.311.

(4) *Annual summary rating.* The appointing authority must assign the annual summary rating of the senior executive's performance, in writing, after considering the applicable PRB's recommendations. This rating is the official rating for the appraisal period.

§ 430.310 Details and job changes.

(a) When a senior executive is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The gaining organization must appraise the senior executive's performance in writing, and this appraisal must be considered when deriving the initial summary rating.

(b) When a senior executive is reassigned or transferred to another agency after completing the minimum appraisal period, the supervisor must appraise the executive's performance in writing before the executive leaves.

(c) The most recent annual summary rating and any subsequent appraisals must be transferred to the gaining

agency or organization. The gaining supervisor must consider the rating and appraisals when deriving the initial summary rating at the end of the appraisal period.

§ 430.311 Performance Review Boards (PRBs).

Each agency must establish one or more PRBs to make recommendations to the appointing authority on the performance of its senior executives.

(a) *Membership.* (1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to consider diversity and inclusion in establishing their PRBs.

(2) PRB members must be appointed in a way that assures consistency, stability, and objectivity in SES performance appraisal.

(3) When appraising a career appointee's performance or recommending a career appointee for a performance-based pay adjustment or performance award, more than one-half of the PRB's members must be SES career appointees.

(4) The agency must publish notice of PRB appointments in the **Federal Register** before service begins.

(b) *Functions.* (1) Each PRB must consider agency performance as communicated by the oversight official through the performance appraisal guidelines when reviewing and evaluating the initial summary rating, any senior executive's response, and any higher-level official's findings and recommendations on the initial summary rating. The PRB may conduct any further review needed to make its recommendations. The PRB may not review an initial summary rating to which the executive has not been given the opportunity to respond in writing.

(2) The PRB must make a written recommendation to the appointing authority about each senior executive's annual summary rating, performance-based pay adjustment, and performance award.

(3) PRB members may not take part in any PRB deliberations involving their own appraisals, performance-based pay adjustments, and performance awards.

§ 430.312 Using performance results.

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

(b) Agencies are required to provide appropriate incentives and recognition

(including pay adjustments and performance awards under part 534, subpart D) for excellence in performance.

(c) A career executive may be removed from the SES for performance reasons, subject to the provisions of part 359, subpart E, as follows:

(1) An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the SES, or removed from the SES;

(2) An executive who receives two unsatisfactory annual summary ratings in any 5-year period must be removed from the SES; and

(3) An executive who receives less than a fully successful annual summary rating twice in any 3-year period must be removed from the SES.

§ 430.313 Training and evaluation.

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

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

(c) Agencies must maintain all performance-related records for no fewer than 5 years from the date the annual summary rating is issued, as required in 5 CFR 293.404(b)(1).

§ 430.314 OPM review of agency systems.

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

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy, including the system standards specified at § 430.305.

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

PART 534—PAY UNDER OTHER SYSTEMS

■ 3. The authority citation for part 534 continues to read as follows:

Authority: 5 U.S.C. 1104, 3161(d), 5307, 5351, 5352, 5353, 5376, 5382, 5383, 5384, 5385, 5541, 5550a, sec. 1125 of the National Defense Authorization Act for FY 2004, Pub. L. 108–136, 117 Stat. 1638 (5 U.S.C. 5304, 5382, 5383, 7302; 18 U.S.C. 207); and sec. 2 of Pub. L. 110–372, 122 Stat. 4043 (5 U.S.C. 5304, 5307, 5376).

■ 4. In § 534.505, revise paragraphs (c)(1)(ii) and (c)(1)(iii) to read as follows:

§ 534.505 Written Procedures.

* * * * *

(c) * * *

(1) * * *

(ii) Multiply the amount derived in paragraph (c)(1)(i) of this section by 0.10 (in 2013, \$60,146 × 0.10 = \$6,015 if the applicable system is certified, or \$45,746 × 0.10 = \$4,575 if the applicable system is not certified or performance appraisal does not apply); and

(iii) Subtract the amount derived in paragraph (c)(1)(ii) of this section from the maximum rate of basic pay applicable under § 534.504 (in 2013, \$179,700 – \$6,015 = \$173,685 if the applicable system is certified, or \$165,300 – \$4,575 = \$160,725 if the applicable system is not certified or performance appraisal does not apply);

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DEPARTMENT OF AGRICULTURE

7 CFR Part 15c

RIN 0503–AA57

Nondiscrimination on the Basis of Age in Programs or Activities Receiving Federal Financial Assistance From the U.S. Department of Agriculture

AGENCY: U.S. Department of Agriculture.

ACTION: Proposed rule.

SUMMARY: The U.S. Department of Agriculture (USDA) seeks to issue a Department-wide regulation to implement the Age Discrimination Act of 1975, as amended (“Age Act”), and the Government-wide age discrimination regulation promulgated by the U.S. Department of Health and Human Services (HHS). The Age Act and HHS regulations prohibit age discrimination in programs and activities receiving Federal financial assistance. The proposed rule intends to ensure compliance with the Age Act and HHS regulations and provide