

# Rules and Regulations

Federal Register

Vol. 80, No. 186

Friday, September 25, 2015

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

## 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:** Final rule.

**SUMMARY:** The Office of Personnel Management (OPM) is amending 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 current OPM policies, and reorganize information for ease of reading. We are also amending part 534 to make technical corrections to the regulation on pay for senior level and scientific and professional positions.

**DATES:** Effective October 26, 2015.

**FOR FURTHER INFORMATION CONTACT:**

Nikki Johnson by telephone at (202) 606-8046 or by email at [nikki.johnson@opm.gov](mailto:nikki.johnson@opm.gov).

**SUPPLEMENTARY INFORMATION:** The U.S. Office of Personnel Management (OPM) issued proposed regulations and requested comments on December 10, 2014 (79 FR 73239). OPM received comments from one Federal agency, a private association for career federal executives (“the Association”), and one individual. We reviewed the public comments, considered them, and decided upon any revisions we concluded were appropriate in light of that consideration. We have summarized the comments below and also indicate how we disposed of them in the final regulations.

In addition to specific substantive comments, we received general

comments about the proposed regulations as well as information contained in the supplementary information. For example, the Association supports the concept of a consistent appraisal approach and recognizes the additional clarification provided for the definitions of performance standards and performance requirements as being particularly helpful.

Furthermore, the Association recommends ensuring a consistent framework to promote transparency for SES performance management by limiting agency flexibility. The Association suggests OPM direct agencies to leverage and tailor the critical elements, based on the executive core qualifications (ECQ), to secure the desired flexibility instead of permitting flexibility regarding the implementation of a Governmentwide system. In response, OPM notes that 5 U.S.C. 4312(a), one of the statutory provisions governing performance appraisals for the SES, specifically states: “Each agency shall, in accordance with standards established by OPM, develop one or more performance appraisal systems. . . .” Therefore, we are regulating concepts of good performance management by providing system standards for agencies to use in designing their SES performance management systems. In addition, the basic SES performance management system incorporates these system standards and is available for agencies to adopt and adapt, still allowing agencies limited flexibility in system design.

The Association also recommends OPM codify the SES and Performance Management Office to ensure that office can provide oversight and guidance on SES performance management, as well as serve as a resource for agencies. OPM already has sufficient statutory (5 U.S.C. 4312(c)(1) and (3) and 4315) and regulatory authority (5 CFR subpart C being finalized here and including § 430.314) to fulfill its obligations, with or without a separate office bearing this title, and OPM does not believe it is prudent to bind future directors to any particular organizational scheme. In addition, it is already clear that OPM is committed to providing agencies guidance and support in designing and implementing their performance management systems.

An agency has concerns that the use of the word “rare” in the example of a performance standard in the supplementary information describing Level 5 performance might be interpreted as imposing a quota or limitation on the number of executives who can receive a Level 5 rating. OPM did not intend “rare, high quality performance” to be a quantitative descriptor, as a quota would be proscribed under 5 U.S.C. 4312(b)(2). Nor did OPM intend to imply that Level 5 performance was merely “high level” as all standards for executives should anticipate high level work and be designed to encourage excellence in performance. Rather, OPM intended to convey that, qualitatively, the standards for a Level 5 (“An outstanding level”) rating should be clearly differentiated from and exceed the standards set for Level 4 performance (“An exceeds fully successful level”).

We received four comments on planning and appraising performance. First, the Association suggests the proposed regulations would be strengthened by a discussion of how Technical Qualifications (TQs) could be incorporated, when applicable, in appraising performance. OPM believes that the use of OPM-validated executive competencies can provide the proper balance between leadership qualifications and actual executive results, are the most appropriate basis for appraising executive performance, and would allow for incorporating TQs. We have removed specific reference to the ECQs, and clarified that standards for performance management systems should use critical elements based on OPM-validated executive competencies accordingly.

Also, the Association recommends the regulations establish appropriate timelines for communicating performance plans and ratings. It also recommends the communication of appraisals, including ratings that have been increased, sustained, or lowered, be provided in writing. OPM agrees with making this an explicit requirement and we have revised § 430.308 to ensure agencies establish timelines for communicating performance plans, conducting appraisals, and assigning and communicating annual summary ratings. In addition, we have revised § 430.306(b) regarding performance

plans and § 430.309(e)(4) regarding the annual summary rating to ensure they are communicated to the executive in writing in a timely manner.

In addition, the Association expresses concerns over the manner in which customer and employee perspectives will be collected and assessed and how those assessments will affect the performance appraisal of executives. The Association wants senior executives to be made aware of the assessment methods, and believes those methods must ensure a senior executive is assessed on things within the individual's control. OPM has included Governmentwide performance requirements for employee perspective into the Leading People critical element of the basic SES appraisal system executive performance plan template and for customer perspective in the Building Coalitions critical element. Beyond that, agencies are responsible for developing additional agency-specific requirements. In doing so, agencies should be clear on how the requirements will be measured and make executives aware of those assessment methods. They must make sure that such requirements are within the area of responsibility and control of the executive. We have clarified the language in several places in the regulation to include this concept.

Finally, an individual recommends OPM should consider providing a broader authority to develop alternative review procedures to cover other cases where it might be difficult or impossible to accommodate higher level review within the agency. For example, what would happen when the only person who can provide higher level review is also the final rater. The individual also questions the meaning of agency head in the proposed § 430.309(e)(2)(iii) and suggests OPM should provide a definition of agency for clarity and consistency. We have revised § 430.309(e)(2) to provide a broader authority for agencies to develop alternative review procedures when it is difficult or impossible to accommodate higher level review within the agency. We have also clarified that the review should be made by an official at a higher level who did not participate in determining the executive's initial summary rating. In other words, someone at a higher level who can provide an objective review who was not directly involved in the initial summary rating may serve as a higher-level official for this purpose. For example, a reviewing official may not provide a higher-level review because of their involvement in the process. It is not OPM's intention for agencies to

exclude individuals with knowledge of the executive's performance from providing input. We also have revised § 430.303 to add a definition for agency.

Lastly, we received two comments on the oversight official. An agency suggests clarification of the responsibilities of the oversight official. It questions whether the responsibilities of the oversight official could be shared between two positions, such as one individual issuing performance appraisal guidelines and overseeing the performance management system and another individual issuing the organizational assessments. These regulations address the responsibilities of the oversight official with regard to providing oversight of the performance management system and issuing performance appraisal guidelines and do not make the oversight official responsible for organizational assessments. Therefore, it is up to the agency whether two separate positions have the responsibilities of these two functions.

The Association recommends the oversight official also oversee adherence to timelines for communicating performance plans and ratings, as well as ensure agency leaders and political appointees are meeting their responsibilities and obligations in support of implementation of the SES performance management system. We have revised § 430.308 to ensure agencies establish timelines for completing and communicating performance plans and ratings, and are continuing to provide agencies the flexibility to determine which official(s) will oversee adherence to these timelines and the proper exercise of upper management responsibilities regarding performance management.

In the interest of clarifying the regulatory content, OPM is making a few additional changes. Wherever we refer to written communications, we include the ability to accomplish these through the use of automated systems. In § 430.305(a)(7), we have revised the order of the wording to conform with the other entries in paragraph (a). In § 430.308(d)(3), we include language to clarify that guidelines must be issued before completion of the initial summary ratings. In § 430.310(b), we clarify that appraisal information from details and such must be provided to the executive.

#### **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. We also are revising the salary rates used in the example to reflect the most current rates at the time of publication of this correction.

#### **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 not been reviewed by the Office of Management and Budget in accordance with E.O. 12866.

#### **List of Subjects in 5 CFR Parts 430**

Government employees.

U.S. Office of Personnel Management.

**Beth F. Cobert,**  
*Acting Director.*

Accordingly, OPM is amending 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.* In order to improve the overall performance of Government, agencies must establish performance management systems that hold senior executives accountable (within their assigned areas of responsibility and control) for their individual performance and for organizational performance 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 Modernization Act of 2010 (GPRAMA) or other strategic planning initiatives;

(3) Setting and communicating individual and organizational goals and expectations that clearly fall within the executive's area of responsibility and control;

(4) Reporting on the success of meeting organizational goals (including any factors that may have impacted success);

(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 provision.* 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 to the requirements of this subpart no later than one year after October 26, 2015. No provision of this subpart will affect any administrative proceedings related to any action initiated under a provision of this chapter before October 26, 2015.

#### **§ 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 as defined in § 430.303.

#### **§ 430.303 Definitions.**

In this subpart—

*Agency* means an agency as that term is defined in 5 U.S.C. 3132(a)(1) and an Office of Inspector General, which is a separate agency for all provisions of the Senior Executive Service under the

Inspector General Act of 1978 (5 U.S.C. App 6(d)).

*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 final 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.

*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) Use critical elements based on OPM-validated executive competencies to evaluate executive leadership and results, including the quality of the executive's performance;

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

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

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

(5) Derive 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) Establish 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;

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

(8) Use 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 clearly fall within the senior executive's area of responsibility and control.

(b) Supervisors must develop performance plans in consultation with senior executives and communicate the plans to them in writing, including through the use of automated systems, on or before the beginning of the appraisal period.

(c) A senior executive performance plan must include—

(1) *Critical elements.* Critical elements must reflect individual performance results or competencies as well as organizational performance priorities within each executive's respective area of responsibility and control, and be based on OPM-validated executive competencies.

(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) Agencies must establish appropriate timelines for communicating performance plans, conducting appraisals, and assigning and communicating annual summary ratings.

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

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

(d) 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 and control, taking into account factors such as—

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

(2) Overall quality of performance rendered by the 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 and before completion of the initial summary ratings;

(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, including through the use of automated systems, and share that rating with the senior executive. The senior executive may respond in writing.

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

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

(ii) When an agency cannot provide review by a higher-level official for an executive who receives an initial

summary rating from the agency head because no such official exists in the agency, the agency must offer an alternative review as it determines appropriate, except that the review may not be provided by a member of the PRB or an official who participated in determining the initial summary rating.

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

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

(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 findings and recommendations of any HLR or any alternative review under paragraph (e)(2) of this section before making 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 after considering the applicable PRB's recommendations. This rating is the official final rating for the appraisal period and must be communicated to the executive in writing, including through the use of automated systems, in accordance with the timelines developed under § 430.308(a).

(5) *Shortened appraisal periods.* The procedures of this section apply whenever an agency terminates an appraisal period under § 430.304(b)(5).

**§ 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, including through the use of automated systems, 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, including through the use of automated systems, before the executive

leaves and provide this information to the executive.

(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 or the results of an alternative review. 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, including through the use of automated systems.

(2) The PRB must make a written recommendation, including through the use of automated systems, 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 paragraph (c)(1) to read as follows:

**§ 534.505 Written Procedures.**

\* \* \* \* \*

(c) \* \* \*

(1) Any pay-setting action under § 534.506 or any pay increase under § 534.507 that results in a rate of basic pay that is within the highest 10 percent of the applicable rate range under § 534.504. A rate of basic pay equal to or above the amount derived using the following rules is considered to be within the highest 10 percent of the applicable pay range (in 2015, \$177,166 or above if the applicable system is certified, or \$164,026 or above if the applicable system is not certified or performance appraisal does not apply):

(i) Subtract the minimum rate of basic pay from the maximum rate of basic pay for the applicable rate range under § 534.504 (in 2015, \$183,300 – \$121,956 = \$61,344 if the applicable system is certified, or \$168,700 – \$121,956 = \$46,744 if the applicable system is not certified or performance appraisal does not apply);

(ii) Multiply the amount derived in paragraph (c)(1)(i) of this section by 0.10 (in 2015, \$61,344 × 0.10 = \$6,134 if the applicable system is certified, or \$46,744 × 0.10 = \$4,674 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 2015, \$183,300 – \$6,134 = \$177,166 if the applicable system is certified, or \$168,700 – \$4,674 = \$164,026 if the applicable system is not certified or performance appraisal does not apply);

\* \* \* \* \*

[FR Doc. 2015-24405 Filed 9-24-15; 8:45 am]

**BILLING CODE 6325-39-P**

**DEPARTMENT OF AGRICULTURE****Agricultural Marketing Service****7 CFR Part 1221**

[AMS-LPS-15-0055]

**Sorghum Promotion, Research, and Information Program**

**AGENCY:** Agricultural Marketing Service; USDA.

**ACTION:** Announcement of the continuation of the sorghum promotion.

**SUMMARY:** The Agricultural Marketing Service (AMS) is announcing that sorghum producers voting in a national referendum from March 23, 2015, through April 21, 2015, have approved the continuation of the Sorghum Promotion, Research, and Information Order (Order).

**DATES:** Effective September 25, 2015.

**FOR FURTHER INFORMATION CONTACT:** Kenneth R. Payne, Director, Research and Promotion Division; Livestock, Poultry, and Seed Program, AMS, USDA, Room 2608-S; 1400 Independence Avenue SW., Washington, DC 20250-0251; Telephone 202/720-5705; Fax 202/720-1125; or email to [Kenneth.Payne@ams.usda.gov](mailto:Kenneth.Payne@ams.usda.gov), or Craig Shackelford, Marketing Specialist; Research and Promotion Division; Livestock, Poultry, and Seed Program, AMS, USDA; 22 Jamesport Lane; White, GA 30184; Telephone: (470) 315-4246; or email to [craig.shackelford@ams.usda.gov](mailto:craig.shackelford@ams.usda.gov).

**SUPPLEMENTARY INFORMATION:** Pursuant to the Commodity Promotion, Research, and Information Act of 1996 (Act)(7 U.S.C. 7411-7425), the Department of Agriculture conducted a referendum from March 23, 2015, through April 21, 2015, among eligible sorghum producers and importers to determine if the Order would continue to be effective. A final rule was published in the November 18, 2010, **Federal Register** (75 FR 70573) outlining the procedures for conducting the referendum.

Of the 1,202 valid ballots cast, 1,160 or 96.5 percent favored the program and 42 or 3.5 percent opposed continuing the program. For the program to continue, it must have been approved by at least a majority of those eligible persons voting for approval who were engaged in the production or importation of sorghum during the period January 1, 2011, through December 31, 2014.

Therefore, based on the referendum results, the Secretary of Agriculture has determined that the required majority of eligible voters who voted in the