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(3) There is a member of the Senior Executive Service as a mentor.

(f) Each candidate's performance in the program is evaluated periodically, and there is a written policy for discontinuing a candidate's participation in the program. A candidate can be discontinued or may withdraw from the program without prejudice to his or her ability to apply directly for SES positions.

(g) Each candidate has a documented starting and finishing date in the program.

Subpart B—Senior Executive Service Status and Nonstatus Candidate Development Programs

§ 412.201 Purpose.

Section 3393 of title 5, United States Code, requires that career appointees to the SES be recruited either from all groups of qualified individuals within the civil service, or from all groups of qualified individuals whether or not within the civil service. This subpart sets forth regulations establishing two types of SES candidate development programs, "status" and "non-status."

§ 412.202 "Status" programs.

Only employee serving under career appointments, or under career-type appointments as defined in § 317.304(a)(2) of this chapter, may participate in "status" candidate development programs.

§ 412.203 "Non-status" programs.

(a) *Eligibility.* Candidates are from outside Government and/or from among employees serving on other than career or career-type appointments within the civil service.

(b) *Requirements.* (1) Candidates must be appointed using the Schedule B authority authorized by § 213.3202(j) of this chapter. The appointment may not exceed or be extended beyond 3 years.

(2) Assignments must be to a full-time position created for developmental purposes connected with the SES candidate development program. Candidates serving under Schedule B appointment may not be used to fill an

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agency's regular positions on a continuing basis.

(3) Schedule B appointments must be made in the same manner as merit staffing requirements prescribed for the SES, except that each agency shall follow the principle of veteran preference as far as administratively feasible. Positions filled through this authority are excluded under § 302.101(c)(6) of this chapter from the appointment procedures of part 302.

PART 430—PERFORMANCE MANAGEMENT

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

Subpart A—Performance Management

SOURCE: 60 FR 43943, Aug. 23, 1995, unless otherwise noted.

§ 430.101 Authority.

Chapter 43 of title 5, United States Code, provides for the 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, team, 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.

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

SOURCE: 60 FR 43943, Aug. 23, 1995, unless otherwise noted.

§ 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 September 22, 1995 shall constitute an approved performance appraisal system under the regulations in this subpart until such time changes to the system are approved. No provision of the regulations in this subpart shall be applied in such a way as to affect any administrative proceeding related to any action taken under regulations in this chapter pending on September 22, 1995.

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

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

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

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

(iii) Identified whether the employee performed acceptably.

(3) When the performance evaluation does not include a summary level designator and pattern comparable to those established at § 430.208(d), the agency may identify a level and pattern based on information related to the appraisal process.

[60 FR 43943, Aug. 23, 1995; 60 FR 47646, Sept. 13, 1995, as amended at 62 FR 62502, Nov. 24, 1997]

§ 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). The regulations in this subpart exclude excepted service positions for which employment is not reasonably expected to exceed the minimum period established 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:

Additional performance element means a dimension or aspect of individual, team, or organizational performance that is not a critical or non-critical element. Such elements are not used in assigning a summary level but, like critical and non-critical elements, are useful for purposes such as communicating performance expectations and serving as the basis for granting awards. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

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

Appraisal period means the established period of time for which performance will be reviewed and a rating of record will be prepared.

Appraisal program means the specific procedures and requirements established under the policies and parameters of an agency appraisal system.

Appraisal system means a framework of policies and parameters established by an agency as defined at 5 U.S.C. 4301(1) for the administration of performance appraisal programs under

subchapter I of chapter 43 of title 5, United States Code, and this subpart.

Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level.

Non-critical element means a dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

Performance means accomplishment of work assignments or responsibilities.

Performance appraisal system: See *Appraisal system*.

Performance plan means all of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level within a pattern (as specified in § 430.208(d)).

Performance standard means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.

Progress review means communicating with the employee about performance compared to the performance standards of critical and non-critical elements.

Rating of record means the performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire

period and the assignment of a summary level within a pattern (as specified in § 430.208(d)), or (2) in accordance with § 531.404(a)(1) of this chapter. These constitute official ratings of record referenced in this chapter.

[60 FR 43943, Aug. 23, 1995, as amended at 62 FR 62503, Nov. 24, 1997]

§ 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) An agency appraisal system shall establish agencywide policies and parameters for the application and operation of performance appraisal within the agency for the employees covered by the system. At a minimum, a 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) Specify the flexibilities an agency program established under the system has for setting—

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

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

(iii) The number(s) of performance levels at which critical and non-critical elements may be appraised (as specified in § 430.206(b)(7) (i)(A) and (ii)(A)); and

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

(4) Include, where applicable, criteria and procedures for establishing separate appraisal programs under an appraisal system; and

(5) Require that an appraisal program shall conform to statute, the regulations of this chapter, and the requirements established by the appraisal system.

(c) Agencies are encouraged to involve employees in developing and implementing their system(s). When agencies involve employees, the method of involvement shall be in accordance with the law.

[60 FR 43943, Aug. 23, 1995; 60 FR 47646, Sept. 13, 1995]

§ 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 applicable agency appraisal system. At a minimum, each appraisal program shall specify the employees covered by the program and include the 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, and for other special circumstances as established by the agency.

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

(d) Agencies are encouraged to involve employees in developing and implementing their program(s). When agencies involve employees, the method of involvement shall be in accordance with law.

§ 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

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for which a rating of record shall be prepared.

(2) Each program shall specify a single length of time as its appraisal period. The appraisal period generally shall be 12 months so that employees are provided a rating of record on an annual basis. A program's appraisal period may be longer 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 all elements which are used in deriving and assigning a summary level, including at least one critical element and any non-critical element(s).

(5) Each performance plan may include one or more additional performance elements, which—

(i) Are not used in deriving and assigning a summary level, and

(ii) Are used to support performance management processes as described at § 430.102(b).

(6) A performance plan established under an appraisal program that uses only two summary levels (pattern A as specified in § 430.208(d)(1)) shall not include non-critical elements.

(7) An appraisal program shall establish how many and which performance levels may be used to appraise critical and non-critical elements.

(8) Elements and standards shall be established as follows—

(i) For a critical element—

(A) At least two levels for appraisal shall be used with one level being "Fully Successful" or its equivalent and another level being "Unacceptable," and

(B) A performance standard shall be established at the "Fully Successful" level and may be established at other levels.

(ii) For non-critical elements, when established,—

(A) At least two levels for appraisal shall be used, and

(B) A performance standard(s) shall be established at whatever level(s) is appropriate.

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

[60 FR 43943, Aug. 23, 1995, as amended at 62 FR 62503, Nov. 24, 1997]

§ 430.207 Monitoring performance.

(a) *Minimum period.* An appraisal program shall establish a minimum period of performance that must be completed before a performance rating may be prepared.

(b) *Ongoing appraisal.* An appraisal program shall include methods for appraising each critical and non-critical element during the appraisal period. Performance on each critical and non-critical element shall be appraised against its performance standard(s). Ongoing appraisal methods shall include, but not be limited to, conducting one or more progress reviews during each appraisal period.

(c) *Marginal performance.* Appraisal programs should provide assistance whenever performance is determined to be below "Fully Successful" or equivalent but above "Unacceptable."

(d) *Unacceptable performance.* An appraisal program shall provide for—

(1) Assisting employees in improving unacceptable performance at any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements; 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.

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

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

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

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

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

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

(c) The method for deriving and assigning a summary level may not limit or require the use of particular summary levels (i.e., establish a forced distribution of summary levels). However, methods used to make distinctions among employees or groups of employees such as comparing, categorizing, and ranking employees or groups on the basis of their performance may be used for purposes other than assigning a summary level including, but not limited to, award determinations and promotion decisions.

(d) *Summary levels.* (1) An appraisal program shall use one of the following patterns of summary levels:

| Pattern | Summary level | | | | |
|---------|---------------|-------|---|-------|-------|
| | 1 | 2 | 3 | 4 | 5 |
| A | X | ..... | X | ..... | ..... |
| B | X | ..... | X | ..... | X |
| C | X | ..... | X | X | ..... |
| D | X | X | X | ..... | ..... |
| E | X | ..... | X | X | X |
| F | X | X | X | ..... | X |
| G | X | X | X | X | ..... |
| H | X | X | X | X | X |

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

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

(ii) Level 1 is "Unacceptable";

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

(iv) Level 5 is "Outstanding" or equivalent.

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

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

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

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

(e) 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) Each rating of record shall cover a specified appraisal period. Agencies shall not carry over a rating of record prepared for a previous appraisal period as the rating of record for a subsequent appraisal period(s) without an actual evaluation of the employee's performance during the subsequent appraisal period.

(i) When either a regular appraisal period or an extended appraisal period

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ends and any agency-established deadline for providing ratings of record passes or a subsequent rating of record is issued, an agency shall not produce or change retroactively a rating of record that covers that earlier appraisal period except that a rating of record may be changed—

(1) Within 60 days of issuance based upon an informal request by the employee;

(2) As a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a *bona fide* settlement of a formal proceeding; or

(3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

(j) 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.

[60 FR 43943, Aug. 23, 1995, as amended at 62 FR 62503, Nov. 24, 1997; 63 FR 53276, Oct. 5, 1998]

§ 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 ratings of record, and any subsequent performance ratings, when an employee transfers to another agency or is assigned to another organization within the agency in compliance with part 293 of this chapter and instructions in the OPM Operating Manual, THE GUIDE TO PERSONNEL RECORDKEEPING, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(c) Communicate with supervisors and employees (e.g., through formal training) about relevant parts of its performance appraisal system(s) and program(s);

(d) Evaluate the performance appraisal system(s) and performance appraisal program(s) in operation in the agency;

(e) Report ratings of record data to the Central Personnel Data File in compliance with instructions in the OPM Operating Manual, FEDERAL WORKFORCE REPORTING SYSTEMS, for sale by the U.S. Government Printing Office, Superintendent of Documents;

(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.

Subpart C—Performance Appraisal for the Senior Executive Service (SES)

SOURCE: 51 FR 8414, Mar. 11, 1986, unless otherwise noted.

§ 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, U.S. Code (5 U.S.C. 4311-4314) provides for the establishment of Senior Executive Service (SES) performance appraisal systems, and for appraisal of the performance of senior executives (as defined in 5 U.S.C. 3132(a)). This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for performance appraisal in the SES, and supplements and implements the provisions of 5 U.S.C. 4311-4315.

(b) *Purpose.* It is the purpose of this subpart to ensure that performance appraisal systems for employees are used

as a tool for executing basic management and supervisory responsibilities by—

- (1) Communicating and clarifying organizational goals and objectives;
- (2) Identifying individual accountability for the accomplishment of agency goals and objectives;
- (3) Evaluating and improving individual and organizational accomplishments; and
- (4) Using the results of performance appraisal as a basis for adjusting base pay, training, rewarding, reassigning, retaining, and removing employees.

§ 430.302 Coverage.

(a) All senior executives covered by subchapter II of chapter 31 of title 5, United States Code, are covered by this part.

(b) Section 3132(a)(1) of title 5, United States Code identifies agencies covered by this subpart.

§ 430.303 Definitions.

In this subpart, terms are defined as follows:

Appointing authority means the agency or department head or his or her designee.

Appraisal means the act or process of reviewing and evaluating the performance of the executive against the described performance standard(s).

Appraisal period means the period of time established by an appraisal system for which the senior executive's performance will be reviewed.

Appraisal system means a performance appraisal system established by an agency or component of an agency under subchapter II of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and noncritical elements, establishment of performance standards, communication of elements and standards to senior executives, establishment of methods and procedures to appraise performance against established standards, and appropriate use of appraisal information in making personnel decisions.

Critical element means a component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which

is of such importance that unsatisfactory performance on the element would result in unsatisfactory performance in the position.

Final rating means the rating of record assigned by an appointing authority after considering the recommendations of a Performance Review Board.

Initial rating means the summary rating made by the senior executive's supervising official and provided to the Performance Review Board.

Non-critical element means a component of an executive's position which does not meet the definition of a critical element, but is of sufficient importance to warrant written appraisal. Non-critical elements are optional and may be used at agency discretion.

Performance means the senior executive's accomplishment of assigned work as specified in the critical and non-critical elements of the executive's position.

Performance Appraisal: (see Appraisal)

Performance Appraisal System: see Appraisal system.

Performance Management Plan means the description of the agency's methods which integrate performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of the agency's mission and goals. The Performance Management Plan, which includes the SES performance appraisal plan, must be submitted to OPM for review and approval as required in § 430.310 of this subpart.

Performance plan means the aggregation of all of the senior executive's written critical and non-critical elements and performance standard(s).

Performance requirement means performance standard.

Performance standard means a statement of the expectations or requirements established by management for a critical or non-critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, cost efficiency, timeliness, and manner of performance.

Progress review means a review of the executive's progress toward achieving

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the performance standards and is not in itself a rating.

Rating of record means the final rating.

Summary rating means the written record of the appraisal of each critical and non-critical element and the assignment of a summary rating level (as specified in § 430.304 (f) and (g) of this subpart).

[51 FR 8414, Mar. 11, 1986, as amended at 60 FR 43946, Aug. 23, 1995]

§ 430.304 SES performance appraisal systems.

(a) Each agency shall develop one or more performance appraisal systems for executives covered by this subpart.

(b) Under each SES appraisal system, critical elements must be included and non-critical elements may be included in individual performance plans. An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element. A summary rating level, as specified in paragraph (g) of this section, must be assigned.

(c) Each SES appraisal system shall require establishing performance plans in consultation with the senior executive. Final authority for establishing such plans rests with the supervising officials.

(d) (1) Each SES appraisal system shall provide for establishing performance elements and standards based on the requirements of senior executives' positions, communicating those elements and standards to senior executives at or before the beginning of each appraisal period, providing written performance plans normally within 30 days of the beginning of the appraisal period, and appraising senior executives at least annually based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives must be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

(e) Each SES appraisal system shall provide for a minimum of three rating

levels for each critical element. Performance standards must be written at the "Fully Successful" level for all critical and non-critical elements and may be written at other levels. The absence of a written standard at a given rating level shall not preclude the assignment of a rating at that level.

(f) Each SES appraisal system shall include a method for deriving a summary rating level from performance appraisals of critical elements and, at agency discretion, appraisals of non-critical elements. If appraisals of non-critical elements are considered in deriving summary rating levels, the derivation method must show that more weight will be given to critical elements than non-critical elements.

(g) Each SES appraisal system shall provide for at least three and not more than five summary rating levels. The rating levels must include an "Unsatisfactory" level, a "Minimally Satisfactory" level, and a "Fully Successful" level. Agencies may also establish up to two levels which are above "Fully Successful." For purposes of this subpart, "Unsatisfactory" is referred to as level 1, "Minimally Satisfactory" is level 2, and "Fully Successful" is level 3. A level one level above "Fully Successful" is level 4, and a level two levels above "Fully Successful" is level 5.

(h) Each SES appraisal system shall provide for assisting employees in improving performance rated at a level below the "Fully Successful" level. Such assistance may include but is not limited to formal training, on-the-job training, counseling, and closer supervision.

(i) Subject to the provisions of part 359, subpart E of this chapter:

(1) Any executive receiving a level 1 ("Unsatisfactory") rating of record shall be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service;

(2) Any executive who receives two level 1 ("Unsatisfactory") ratings of record in any period of 5 consecutive years shall be removed from the Senior Executive Service; and

(3) Any executive who twice in any period of 3 consecutive years receives less than a level 3 "Fully Successful"

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rating of record shall be removed from the Senior Executive Service.

[51 FR 8414, Mar. 11, 1986, as amended at 54 FR 2987, Jan. 23, 1989]

§ 430.305 Appraisal of performance.

(a) *Appraisal period.* (1) Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall be given a rating of record at least annually. Systems shall provide for preparing a summary rating when an executive changes positions during the appraisal period, if the executive has served for the minimum appraisal period in the position from which he/she has changed; agency SES Performance Management Plan(s) must describe how these ratings will be taken into consideration in deriving the next rating of record. A summary rating prepared when an executive changes positions during the appraisal period shall not be considered an initial rating.

(2) Except as provided in paragraph (b) of this section, a performance appraisal period may be terminated in any case in which the agency making an appraisal determines that an adequate basis exists on which to appraise and rate the senior executive's performance.

(3) Notwithstanding paragraphs (a)(2) and (b) of this section, in the case of a career appointee, an appraisal and rating may not be made within 120 days after the beginning of a new Presidential administration.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days and not more than 120 days, except as provided in paragraph (a)(3) of this section.

(c) *Appraisal of each element.* An executive must be appraised on each critical and non-critical element in the executive's performance plan, unless the executive has had insufficient opportunity to demonstrate performance on the element.

(d) *Appraisal of performance on details.* (1) When senior executives are detailed or temporarily reassigned within the same agency, and the detail or temporary assignment is expected to last 120 days or longer, agencies shall pro-

vide written critical elements and performance standards to the executives as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary assignment. Ratings on critical elements must be prepared for these details and temporary assignments and must be considered in deriving a senior executive's next rating of record.

(2) When senior executives are detailed outside of the agency, the employing agency must make a reasonable effort to obtain appraisal information from the outside organization, which shall be considered in deriving the executive's next rating of record.

(i) If an executive has served in the employing agency for the minimum appraisal period, the executive must be rated. The rating shall take into consideration appraisal information obtained from the borrowing organization.

(ii) If an executive has not served in the agency for the established minimum appraisal period, but has served for the minimum appraisal period outside the employing agency, the employing agency must make a reasonable effort to prepare a rating using appraisal information obtained from the borrowing organization.

(e) *Progress review.* A progress review shall be held for each executive at least once during the appraisal period. At a minimum, executives shall be informed of their level of performance by comparison with the performance elements and standards established for their positions.

[51 FR 8414, Mar. 11, 1986, as amended at 54 FR 2987, Jan. 23, 1989]

§ 430.306 Ratings.

(a) *Initial rating.* Appraisal systems shall provide for:

(1) A written initial rating of the executive's performance made by the executive's supervising official, and provided to the senior executive;

(2) An opportunity for the senior executive to respond in writing to an initial rating;

(3) An opportunity for review of the rating by an employee in a higher executive level than that of the supervisor, unless there is no one at a higher level,

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before review by the PRB as provided in § 430.307 (e) and (g);

(4) Provision of the senior executive's response to both the official making the higher level review and to the PRB; and

(5) Provision of copies of the reviewer's comments and recommendations to the senior executive, the supervising official, and the PRB.

(b) *Higher level review.* (1) Agency performance appraisal systems may provide for a mandatory second level review of all initial ratings.

(2) A senior executive is entitled to only one higher level review unless the agency provides otherwise.

(c) *Final rating.* A written rating of record of the executive's performance shall be made on an annual basis by the appointing authority only after considering the recommendations by the PRB with respect to the performance of the senior executive as provided in § 430.307.

(d) *Forced distribution.* An agency may not prescribe a distribution of levels of ratings for employees covered by this subpart. However, agencies must establish procedures, such as reviews of standards and ratings for difficulty and strictness of application, to ensure that only those employees whose performance exceeds normal expectations are rated at levels above "Fully Successful". These procedures must be described in the agency's Performance Management Plan.

(e) *Inability to rate.* When an agency cannot prepare a rating of record at the time specified in the plan, the executive's appraisal period shall be extended for the amount of time necessary to meet the minimum appraisal period at which time a rating of record shall be prepared.

(f) *Transfer of rating.* If an executive moves to a new agency or new organization in the employing agency at any time during the appraisal period, the current performance ratings of record must be transferred, as required by § 293.404(b)(2) of this chapter. A summary rating must be prepared as required in § 430.305(a) which must be taken into consideration by the gaining agency when deriving the next rating of record.

(g) *Documentation.* Agencies shall provide to each senior executive a copy of the following documents at the time they are prepared: The initial rating, along with notification of the right to respond in writing and to request a higher level review before the rating becomes final; any comments and recommended changes by a higher level executive; and the final rating. As required in § 293.404(b)(1) of this chapter, agencies are required to maintain all performance related records for no less than 5 years from the date the rating is issued.

§ 430.307 Performance Review Boards (PRBs).

As required by 5 U.S.C. 4314(c), each agency is required to establish one or more PRBs to make recommendations to the appointing authority on the performance of senior executives in the agency.

(a) Each PRB in an agency shall have three or more members appointed by the head of the agency or by another official or group acting on behalf of the head of the agency.

(b) Notice of appointment to the PRB must be published in the FEDERAL REGISTER.

(c) The members of the PRB must be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal.

(d) When appraising a career appointee, more than one-half of the membership of the PRB must be SES career appointees unless OPM determines that there exists an insufficient number of career appointees available to comply with the requirement.

(e) Each PRB will review and evaluate the initial rating, the senior executive's written response, if any, and the written comments, if any, on the initial rating by a higher level executive, and will conduct such further review as the PRB finds necessary.

(f) Individual PRB members must not take part in any PRB deliberations involving their own appraisals.

(g) The PRB must make a written recommendation concerning each senior executive's rating of record.

§ 430.308 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and senior executives on the appraisal process, and must establish methods and procedures to evaluate periodically the effectiveness of the system(s) and to implement improvements as needed.

§ 430.309 OPM review of SES appraisal systems.

(a) OPM will review performance appraisal systems to determine if they conform to requirements of law, OPM regulations, and OPM performance management policy.

(b) If OPM determines that an appraisal system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it shall direct the agency to implement an appropriate system or to correct operations under the system. The agency shall take any action so required.

§ 430.310 SES performance appraisal systems.

Agencies must submit proposed SES performance appraisal plans to OPM for approval as part of Performance Management Plans in accordance with provisions of this subpart.

[60 FR 43946, Aug. 23, 1995]

PART 432—PERFORMANCE BASED REDUCTION IN GRADE AND RE- MOVAL ACTIONS

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

SOURCE: 54 FR 26179, June 21, 1989, unless otherwise noted.

§ 432.101 Statutory authority.

This part applies to reduction in grade and removal of employees covered by the provisions of this part based solely on performance at the unacceptable level. 5 U.S.C. 4305 authorizes the Office of Personnel Management to prescribe regulations to carry out the purposes of title 5, chapter 43, United States Code, including 5 U.S.C. 4303, which covers agency actions to reduce in grade or remove employees for unacceptable performance. (The provisions of 5 U.S.C. 7501 *et seq.*, may also be used to reduce in grade or remove employees. See part 752 of this chapter.)

[58 FR 65533, Dec. 15, 1993]

§ 432.102 Coverage.

(a) *Actions covered.* This part covers reduction in grade and removal of employees based on unacceptable performance.

(b) *Actions excluded.* This part does not apply to:

(1) The reduction in grade of a supervisor or manager who has not completed the probationary period under 5 U.S.C. 3321(a)(2) if such a reduction is based on supervisory or managerial performance and the reduction is to the grade held immediately before becoming a supervisor or manager in accordance with 5 U.S.C. 3321(b);

(2) The reduction in grade or removal of an employee in the competitive service who is serving a probationary or trial period under an initial appointment;

(3) The reduction in grade or removal of an employee in the competitive service serving in an appointment that requires no probationary or trial period who has not completed 1 year of current continuous employment in the same or similar position under other than a temporary appointment limited to 1 year or less;

(4) The reduction in grade or removal of an employee in the excepted service who has not completed 1 year of current continuous employment in the same or similar positions;

(5) An action imposed by the Merit Systems Protection Board under the authority of 5 U.S.C. 1206;