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NUCLEAR REGULATORY COMMISSION

DATES: Weeks of March 10, 17, 24, and 31, 1986.

PLACE: Commissioners' Conference Room, 1717 H Street, NW., Washington, DC.

STATUS: Open and Closed.

MATTERS TO BE CONSIDERED:

Week of March 10

Tuesday, March 11

9:30 a.m.
Briefing by TVA on Status, Plans and Schedules (Public Meeting)
2:00 p.m.
Briefing by DOE on R&D Results from TMI-2 Cleanup (Public Meeting)

Wednesday, March 12

2:00 p.m.
Status Briefing on Fermi (Open/Portion may be Closed—Ex. 5 & 7)

Thursday, March 13

10:00 a.m.
Briefing by Staff and Licensee on Status of Kerr-McGee Sequoyah Fuel Facility (Public Meeting)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Extension of the Comanche Peak Construction Permit
b. Review of ALAB-823 (In the Matter of Philadelphia Electric Company) (Tentative)
c. Final Rule to Modify General Design Criterion 4 of Appendix A, 10 CFR 50 (Tentative)
d. Review of ALAB-819 (In the Matter of Philadelphia Electric Company) (Tentative)

Friday, March 14

10:00 a.m.
Periodic Meeting with Advisory Committee on Reactor Safeguards (Public Meeting)

Week of March 17—Tentative

Monday, March 17

2:00 p.m.
Continuation of Briefing by TVA on Status, Plans, and Schedules (Public Meeting) (Tentative)

Tuesday, March 18

2:00 p.m.
Briefing by Southern California Edison Co. on San Onofre-1 (Public Meeting)

Wednesday, March 19

10:00 a.m.
Periodic Briefing by Regional Administrators (Public Meeting)
2:00 p.m.
Status of Pending Investigations (Closed—Ex. 5 & 7)

Thursday, March 20

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)
3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Week of March 24—Tentative

Wednesday, March 26

10:00 a.m.
Quarterly Source Term Briefing (Public Meeting)
2:00 p.m.
Periodic Briefing by Regional Administrators (Public Meeting)

Thursday, March 27

10:00 a.m.
Discussion/Possible Vote on Palo Verde-2 Full Power Operating License (Public Meeting)
2:00 p.m.
Affirmation Meeting (Public Meeting) (if needed)

Friday, March 28

10:00 a.m.
Advisory Committee on Reactor Safeguards (ACRS) Meeting on Safety Goals (Public Meeting) (Tentative)

Week of March 31—Tentative

Wednesday, April 2

2:00 p.m.
Discussion of Management-Organization and Internal Personnel Matters (Closed—Ex. 2 & 6)

Thursday, April 3

3:30 p.m.
Affirmation Meeting (Public Meeting) (if needed)

TO VERIFY THE STATUS OF MEETINGS CALL (RECORDING): (202) 634-1498.

CONTACT PERSON FOR MORE INFORMATION: Julia Corrado, (202) 634-1410.

Julia Corrado,
Office of the Secretary.
March 6, 1986.

[FR Doc. 86-5389 Filed 3-7-86; 3:40 pm]
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federal register

Tuesday
March 11, 1986

Part II

Office of Personnel Management

5 CFR Parts 293, 300, 335, 430, 431, 451, 531, 532, and 771

Performance Management System; Final Rule

5 CFR Parts 293 and 430

Performance Management System; Proposed Rule

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293, 300, 335, 430, 431, 451, 531, 532, and 771

Performance Management System

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is issuing final regulations on the Performance Management System (PMS). In response to agency requests, the regulations have been updated to make them more consistent with the final regulations recently published for the Performance Management and Recognition System (PMRS), mandated by title II of the Civil Service Retirement Spouse Equity Act of 1984, effective October 1, 1984. Additionally, the regulations modify and streamline the incentive awards program.

Proposed regulations related to some of the provisions of the PMS are being published elsewhere in today's **Federal Register**. The subjects of the proposed regulations are filing and transfer of performance records, establishment of Performance Appraisal Advisory Committees, and funding and payment of performance awards.

DATES: *Effective Date:* April 10, 1986.

Due Date: Performance Management Plans must be submitted to the Office of Personnel Management for review and approval no later than June 9, 1986.

Approval Date: Generally, OPM will review and approve each Performance Management Plan within 90 days after it is received in OPM.

Implementation Dates: Subpart A of Part 430 becomes effective 30 days from the date of publication of these regulations. Each agency's Performance Management Plan and all parts of the regulations become effective no later than 90 days from the date of OPM approval of the Plan. Performance appraisal provisions of the Plan become applicable to each employee at the beginning of the employee's next performance appraisal cycle. (See Issue 62 for clarification of dates for Plan implementation.)

ADDRESS: Send or deliver agency Performance Management Plans to John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street NW., Room 7520, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan, (202) 632-5653.

SUPPLEMENTARY INFORMATION: On August 30, 1985, at 50 FR 35505-35506 and 50 FR 35513-35530, OPM issued proposed regulations on the Performance Management System. Those regulations were essentially the same as final rules that were published on October 25, 1983 (48 FR 49472), but did not go into effect until July 3, 1985. The only changes proposed on August 30, 1985, were:

1. A revised schedule for implementing the Performance Management System, reflecting the delay in the effectiveness of the regulations;

2. Removal of the portions dealing with the Merit Pay System that were superseded by the law and regulations implementing the PMRS; and

3. Editorial changes to conform to the PMRS regulations.

The proposed rules were published for a 30-day comment period, which ended September 30, 1985. During that comment period, OPM received comments from 29 agencies, four labor organizations, two members of Congress, one professional association, and one individual commenter. Most of the comments were very detailed, with constructive suggestions for improving the regulations. OPM has carefully reviewed and analyzed the comments, and these final regulations incorporate many of the commenters' suggestions.

Some changes requested by commenters were substantially different from the proposed regulations. OPM agrees that further changes are needed in the PMS, and is proposing changes elsewhere in today's daily issue in the areas of recordkeeping, performance awards, and administration of performance appraisal systems.

Overview of Changes

The overwhelming majority of the commenters suggested, either generally or on specific provisions, that OPM revise the regulations to make them as consistent as possible with PMRS regulations. (Final PMRS regulations were published August 30, 1985, at 50 FR 35488).

OPM agrees that wherever possible the performance appraisal and award systems for employees under the General Schedule (GS), Prevailing Rate System, Senior Executive Service (SES), and PMRS should be as consistent as possible. Congressional intent for performance management has most recently and clearly been demonstrated in the history of the legislation creating the PMRS. Consistency among the systems will foster ease of administration, reduce confusion, and clearly support pay for performance under the performance management umbrella, while at the same time achieving equity among the different systems covering all employees. OPM believes that consistency and equity among these systems can be achieved while meeting all statutory requirements provided for the different groups of employees.

Therefore, except for the proposed regulations noted above, the regulations have been revised to provide as much consistency as possible in appraising and rewarding performance for all employees. Specific changes are outlined in the analyses of comments and changes to the final regulations.

Format Changes

The format of the regulations has been reorganized in several areas, for the ease of the user and to support the concept of pay for performance. Part 430, Performance Management, now contains performance appraisal regulations for all categories of Federal employees, along with performance award regulations for GS and Prevailing Rate employees.

With the placement of SES performance appraisal regulations in Part 430, OPM has removed Part 431 from Title 5, Code of Federal Regulations. With the placement of performance awards provisions in Part 430, the heading for Part 531 reverts to the heading under previous regulations: "Pay Under the General Schedule", and Subpart H in Part 532, covering performance awards for Prevailing Rate employees, is no longer necessary and has been removed.

Incentive Awards regulations, Part 451, are reorganized by separating Presidential Awards from all other incentive awards, now designated as superior accomplishment awards. Productivity Gainsharing regulations, currently under development, will be placed under Part 451, in Subpart C.

Specific Changes

Following is a detailed outline of the changes to the regulations, identifying each issue, a summary of comments, and a discussion of OPM rationale for the changes. The issues are listed in sequential order as they appeared in the proposed regulations, with each "Change" paragraph indicating the new location of the final regulation on the issue.

1. *Issue:* Filing and Transfer of Performance Records (Part 293, Subpart D).

Summary of Comments: Fifteen agencies and one professional organization commented on the proposed regulations requiring the filing and transfer of performance records with employees' Official Personnel Folders (OPF's). Twelve of the agencies suggest that performance records filing systems be the same for all employees as they currently are for PMRS employees; i.e., that agencies be given the option to file performance records for all employees in either the OPF or the Employee Performance File (EPF) system. If only one system must be used, four agencies prefer to use the EPF, while three agencies prefer to use the OPF. Two agencies object to filing duplicate records.

One professional organization objects to the mandatory transfer of performance records, and two agencies prefer not to transfer performance plans (elements and standards) for each of the three ratings of record to be transferred in the OPF. One of those agencies requests that OPM change the section in the EPF subpart on retenion of ratings of record, to require agencies to retain performance plans for only one year, rather than three.

One agency requests clarification of the term "additional performance-related documents" found in the EPF subpart, and two agencies request clarification of the terms "rating" and "rating of record" as they are used in Part 293. One agency requests guidance on implementing the changes in Part 293.

Discussion: OPM agrees that agencies should have the option of filing performance ratings of record and the performance plans on which they are based, in either the OPF or the EPF, provided that the ratings of record for 3 years and the performance plan on which the most recent rating was based are transferred in the OPF when the employee leaves his/her position. Reference to additional performance-related documents may be found in §§ 293.402(b)(1) and 293.403(b), Contents of Employee Performance Files. In response to the suggestion that agencies retain performance plans for only 1 year, the EPF regulations are not changed. They continue to require retention of performance plans for 3 years, because there are other personnel-related purposes for agency use of these performance-related documents. Agencies may file these performance plans in either the OPF or the EPF, as long as they transfer the plan on which the most recent rating was based in the OPF of a transferring employee. To clarify "rating" and "rating of record", agencies may refer to Part 430, Performance Management, in which these definitions have been revised and clarified.

OPM will provide further FPM guidance on filing and transferring performance records. However, beginning on the effective date of these regulations, agencies are required to transfer performance ratings in the OPF's of all employees who are leaving their positions.

Changes: Agencies have the option of filing performance ratings of record and the performance plans on which they are based in either the OPF or the EPF, provided that, whenever an employee changes positions, the agency transfers in the employee's OPF the three ratings of record and the performance plan on which the most recent rating was based. (See also Issue 1 of proposed PMS regulations published elsewhere in today's daily issue.)

2. *Issue:* Time-in-Grade Restrictions (§ 300.602).

Summary of Comments: One agency agrees with the proposed time-in-grade restrictions. One labor organization thinks that § 300.602 should be deleted and adjusted to show that employees can be promoted at any time to a higher grade when they demonstrate that they can perform the work.

Discussion: The 1 year time-in-grade requirement for promotion to positions at GS-6 or above is consistent with the performance requirements for career ladder promotions and the (usually) annual rating cycle for employees. Employees who are considered for career ladder promotions to positions at GS-5 or below must also receive a performance rating to be used as a basis for determining whether they are eligible for a career ladder promotion.

Change: No change.

3. *Issue:* Eligibility for Career-Ladder Promotion (§ 335.104).

Summary of Comments: Two agencies object to priority consideration for career ladder promotions to employees with the highest performance ratings. Reasons given are: the creation of an additional selection procedure, the creation of an additional administrative burden, and logistical problems that would result unless agencies have discretion as to the organizational and geographic areas of consideration to be used. One agency thinks that the section should be amended to permit an agency to give a more current rating at the time that a decision about a career-ladder promotion will be made, consistent with the procedure proposed in § 430.204(m) for within-grade increase decisions. One agency thinks that 5 U.S.C. 4301 *et. seq.* does not authorize OPM to issue regulations with regard to career or within-grade increases.

Two labor organizations object to provisions in § 335.104. Reasons given are that the provisions are contrary to the conditions under which an employee accepts a career ladder promotion, that the provisions replace seniority with competition, that employees rated "Fully Successful" should always be promoted after 1 year, that an exception to the use of merit procedures is given by FPM Chapter 335 for career ladder promotions, and that an employee should not have to compete for his or her own position.

Discussion: An agency may, at its discretion, prepare a more current rating of record at the time that the agency is deciding whether an employee should receive a career-ladder promotion. No employee should receive a career-ladder promotion based on a rating of record which is more than 12 months old. The authorities under which OPM is issuing regulations have been included in both the proposed and in these final regulations.

Change: Paragraph 335.104(b), which required that agencies give priority consideration for career ladder promotions to employees with the highest ratings, has been deleted from the regulations. However, OPM feels it is not appropriate to consider seniority as the only criterion for career ladder promotions. OPM remains committed to the concept that performance in the employee's current and/or past positions is just as significant as seniority, if not more so, in evaluating employees for career ladder and competitive promotions. OPM is studying how this may be done and may issue a regulatory proposal on the linkage between performance ratings and promotions in the future.

To be consistent with changes in terminology in Part 430, paragraph 335.104(a) has been revised by changing the phrase "most recent summary rating" to the phrase "current rating of record", and the "Fully Successful" rating level has been identified as level 3, (see Issue 14 on Names and Definitions of Rating Levels).

4. *Issue:* Purpose of performance appraisal (§ 430.201 and § 430.204(s)).

Summary of Comments: One agency suggests that the word "develop" in § 430.204(s) should be changed to "train" to cover not only enhancement training but also remedial training. One agency prefers a more concise statement of the purpose and use of performance appraisal, such as that found in the PMRS regulations at § 430.402. One labor organization notes that it did not

find methods in the proposed regulations for communicating performance standards to employees on how they will be rated on the accomplishment of organizational goals and objectives.

Discussion: OPM agrees that the word "training" is more appropriate than the word "develop" in this section. The word "training" is used in 5 U.S.C. 4302(a)(3).

Changes: Sections 430.201 and 430.204(s) have been revised to express the purpose of performance appraisal in performance management, consistent with PMRS regulations, and moved to § 430.201(b). The requirement that the results of performance appraisal be used as a basis for "awards" has been changed to "performance awards" and the word "develop" has been changed to "training".

The final regulations also provide that accomplishment of organizational objectives should, when appropriate, be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

Although examples are no longer specifically listed, the requirement to use performance ratings as a basis for adjusting base pay includes within-grade increases, Prevailing Rate employee step increases, and quality step increases. A requirement is added at § 430.204(d)(2) that provides that accomplishment of organizational objectives should, when appropriate, be included in performance plans.

5. *Issue:* Coverage (§ 430.202).

Summary of Comments: One agency thinks that § 430.202 should be modified to exclude all employees under temporary appointments which will not exceed 1 year.

Discussion: OPM does not have the legal authority to exclude positions in the competitive service from performance appraisal requirements. However, agencies may request OPM approval of exclusion of specified excepted service positions from appraisal requirements under the authority of 5 U.S.C. 4301(2)(G). But, since temporary appointments can be extended for longer than 1 year for temporary excepted service positions, exclusion of many of these positions from performance appraisal requirements would not be appropriate.

Change: This section has been revised so that it is consistent with PMRS regulations. A sentence has been added stating that employees covered by the PMRS are not covered by this subpart. The exclusion of Schedule C employees from requirements under this subpart has been deleted, consistent with the provision that Schedule C employees are covered by final performance appraisal regulations for PMRS employees.

6. *Issue:* Progress Reviews (§ 430.203).

Summary of Comments: Three agencies think that a requirement should be added to the regulations for a progress review meeting between employees and their supervisors, consistent with PMRS regulations. Three agencies recommend that "progress reviews" be defined in the regulations. Three agencies recommend that the sentence "This includes oral and written progress reviews" be deleted from the definition of "appraisal" in § 430.203.

Discussion: Since performance appraisal is a process done throughout the year, progress reviews should not be included in the definition of "appraisal". The requirement at 5 U.S.C. 4302(b)(3) for "evaluating each employee during the appraisal period on such standards" supports the concept that at least one progress review discussion should be required during an appraisal period, as is required for PMRS employees.

Changes: The second sentence in the definition of "appraisal," referring to progress reviews, is deleted. Also, a new definition of "progress review" is added, consistent with the PMRS regulations. Finally, § 430.205(e) has been added, consistent with PMRS regulations requiring that a progress review be held for each employee at least once during an appraisal period.

7. *Issue:* Other Definitions (§ 430.203).

Summary of Comments: Five agencies recommend that, wherever possible, the PMS regulations be revised to provide identical definitions in PMS and PMRS appraisal regulations. One agency recommends that all the definitions reflect the same wording as is used in the PMRS regulations. One agency recommends use of the same definitions as in PMRS regulations for the terms "rating", "rating of record", and "summary rating". One agency recommends that definitions of the following terms be added: "Performance Management Plan", "progress review", "summary rating", and "rating of record".

Four agencies ask that the definition of a "non-critical element" be revised to say that non-critical elements are optional and may be used at agency discretion. One congressional comment states that the definitions of the terms "critical element" and "Unacceptable" are vague and circular and offer insufficient guidance.

One labor organization states that in the definition of "critical element", the phrase "of assigned work" is not resistant to abuse and should not be included. One labor organization believes that a requirement for communication of organizational goals and objectives as they are related to a particular position should be included in the definition of "critical element". One labor organization recommends that the definition of "performance standard" be amended to state that standards must be adjusted to provide for full employee participation in the development of performance standards. One labor organization suggests changing the definition of "ratings" to permit negotiation of the number of descriptive levels for various ratings.

Discussion: OPM agrees that the definitions of terms for PMS performance appraisal should be as similar as possible to definitions provided in PMRS regulations. Use of the same definitions will provide greater equity, reduce confusion, and make it easier for everyone to understand and use performance appraisal regulations. (See also Issue 6: "Progress Reviews").

The term "Unacceptable" is not defined in the regulations, but is defined in 5 U.S.C. 4301(3) as performance which fails to meet established performance standards in one or more critical elements of such employee's position. The definition of "critical element" in the final regulations reflects this legal requirement and refers to performance "in the position" instead of performance "of assigned work" as was proposed. The revised language parallels the PMRS definition of "critical element". Although the definition of "critical element" does not require communication of organizational goals and objectives, the final regulations do state that accomplishment of organizational objectives should, when appropriate, be included in performance plans.

Although the definition of "Performance Standard" does not refer to employee participation in establishment of standards, the final regulations do require that each appraisal system encourage employee participation in establishing performance plans. Examples of how this may be accomplished are listed in the regulations. Although five summary rating levels are required by the final regulations, the regulations only require a minimum of three rating levels for each critical element.

Changes: Section 430.203 has been revised as follows, consistent with PMRS regulations. The following words have been deleted from the definition of "appraisal period": "and for which a performance rating will be given". The definition of "critical element" has been revised by changing the word "job" to

"position" and by changing the phrase "of assigned work" to "in the position". The definition of "non-critical element" has been revised by changing the word "job" to "position" and the phrase "appraisal and the assignment of an element rating" has been changed to "written appraisal". In addition, a sentence has been added which provides that non-critical elements are optional and may be used at agency discretion.

The definition of "performance" has been revised by changing the phrase "of assigned duties and responsibilities" to the phrase "of assigned work". A definition of "Performance Management Plan" has been added which corresponds to the same definition in the PMRS regulations. The term "rating" has been changed to "summary rating" and the definition has been revised by changing the phrase "and overall performance" to the phrase "and the assignment of a summary rating level (as specified in § 430.204(g) and (h) of this subpart)." A new definition of "rating of record" has been added, which parallels the definition of the same term in the PMRS regulations, except that it does not include the phrase "including the written notice at any time that an employee's performance is unacceptable on one or more critical elements".

8. *Issue:* Requirement to Establish Appraisal Systems (§ 430.204(a)).

Summary of Comments: One agency thinks that the statutory reference should be to 5 U.S.C. 4302, not 5 U.S.C. 4302(a).

Discussion: 5 U.S.C. 4302(a) referred to paragraph "a" of section 4302, not to § 4302a, which provides for establishment of appraisal systems for PMRS employees.

Change: This section has been revised, consistent with PMRS regulations, by eliminating the phrase "As required by 5 U.S.C. 4302(a)" and by changing the requirement to say that agencies shall "develop one or more performance appraisal systems for employees covered by this subpart" instead of saying that agencies "shall establish one or more appraisal systems for appraising the work performance of employees during an appraisal period".

9. *Issue:* Requirement for Appraisal and Rating Based on Established Performance Plans (§ 430.204(b) and § 430.204(i)).

Summary of Comments: One agency suggests revision of the second sentence of § 430.204(b) to say that an employee's performance must be appraised and rated on each critical element and in comparison to the relevant performance standard. One agency recommends that § 430.204(i) be clarified to provide that, in appraising employees, no consideration extraneous to performance as compared to standards may be given.

Discussion: OPM agrees that performance must be appraised and rated by comparison of actual performance to established performance standards. This requirement was proposed in § 430.204(i). It is also important that, to the extent feasible, individual performance plans reflect each employee's expected contribution to the accomplishment of established organizational objectives. In order for performance plans to be utilized as expected, they must be provided to employees as near to the beginning of established appraisal periods as possible.

Changes: Section 430.204(b), except for the last sentence, has been revised by adding the phrase "Under each appraisal system" and by deleting the words "and rated" from the second sentence. However, the requirement for appraisal on each element has been added under requirements for ratings in § 430.206(b). The requirement for appraisal on each element is also repeated in § 430.205(c), consistent with PMRS regulations.

Also, consistent with PMRS regulations, the first sentence of § 430.204(i) has been moved to § 430.204(d)(1), and revised slightly by adding that elements as well as standards must be based on requirements of employees' positions. Another revision states that performance plans must normally be provided to employees within 30 days after the beginning of each appraisal period. Finally, a new § 430.204(d)(2) has been added consistent with PMRS regulations providing that when appropriate, accomplishment of organizational objectives should be included in performance plans by incorporating objectives, goals, program plans, work plans, or by other similar means that account for program results.

10. *Issue:* Sub-elements (§ 430.204(b)).

Summary of Comments: Two agencies recommend deletion of the restriction on rating sub-elements, as was done in the final PMRS regulations. One agency thinks that agencies should be able to rate sub-elements. One labor organization states that MSPB decisions provide for balancing the rating on one component of an element against the ratings on other components of an element.

Discussion: The restriction on rating sub-elements was intended to discourage agencies from defining elements very narrowly and from defining numerous elements. However, in an effort to parallel PMRS regulations and provide agencies with flexibility in this area, the restriction on sub-elements was re-examined.

Change: The last sentence of § 430.204(b), prohibiting assignment of ratings to sub-elements, has been deleted.

11. *Issue:* Pass/fail Elements (§ 430.204(c)).

Summary of Comments: Two agencies cite an MSPS decision that states that pass/fail elements are properly used in cases where failure to meet the standard would result in death, injury, breach of security, or monetary loss. One agency recommends that the regulation discourage, rather than prohibit, pass/fail elements. One agency thinks that OPM should permit pass/fail non-critical elements.

Discussion: In *Callaway* v. *Department of the Army*, 23 M.S.P.B. 592 (1984), the Merit Systems Protection Board ruled that absolute performance standards may be compelled in certain circumstances. It should be noted that a pass/fail or absolute standard is not the same as a pass/fail element. It is evident that the restriction on pass/fail elements has been misinterpreted and has caused confusion.

Change: The last sentence of § 430.204(c), which prohibited use of pass/fail elements, has been deleted.

12. *Issue:* Number of Rating Levels for Individual Elements and Levels for Which Written Standards are Required (§ 430.204(c)).

Summary of Comments: One agency and two labor organizations think that the absence of performance standards for a rating level should negate a rating at that level. One labor organization believes that a rating should not be permitted unless standards are written at one contiguous rating level, citing FPM Letter 430–4, Statutory Requirement Concerning Use of Single and Multiple Performance Standards Under Non-SES Performance Appraisal Systems. One labor organization states that if there is only one critical element and three element rating levels, it is not possible to derive five summary rating levels, and recommends that there be an equal number of element and summary rating levels. One agency opposes a requirement for performance standards at the Fully Successful rating level, and states that such a requirement would be costly and would take time to implement.

Discussion: It is very time-consuming and costly for agencies to prepare performance standards at several rating levels. Most employees are likely to

meet the "Fully Successful" standards and, for them, additional standards are not useful of needed. Each employee should be told what the requirements are for "Fully Successful" performance. If they have not already been provided, performance standards which indicate minimum performance requirements for retention must be given to those few employees whose performance is determined to be "Unacceptable", to meet legal requirements. Also, agencies are encouraged to write standards at more than one level to clarify performance requirements. However, due to cost or time considerations, this may not always be possible and, therefore, is not required. To avoid unnecessary confusion, guidance will be issued to provide additional interpretation on the subject of multiple standards.

Concerning the use of one element having only three rating levels, it would be unusual to have only one performance element since this would probably not reflect all the duties of the employee's position. However, if it did occur, undoubtedly the (required) rating levels would equate to "Unacceptable", "Fully Successful" and "Outstanding", which could then equate to the same summary rating levels.

Changes: This language has been moved to § 430.204(e). The only change is that the paragraph provides that in addition to the "Fully Successful" level, performance standards for all critical and non-critical elements may be written at other levels, which had previously only been implied. In addition, consistent with the PMRS regulations, new language at § 430.204(j)(2) provides that at the time that an agency identifies critical element(s) for which performance is "Unacceptable", an employee must be informed of the performance standards that must be reached in order to be retained.

13. *Issue:* Rules or Procedures for Deriving Summary Ratings (§ 430.204(d)).

Summary of Comments: Two agencies think that the requirement to use decision tables for deriving summary ratings is unduly restrictive and might preclude use of numerical procedures or narrative rules for deriving summary ratings. One agency suggests that the requirement for deriving summary ratings should be the same as stated in the final PMRS regulations. One agency objects to the statement that an "Unacceptable" rating on one critical element must result in an "Unacceptable" summary rating, citing 5 U.S.C. 4303(a).

Discussion: Although 5 U.S.C. 4303(a) states that an employee may be reduced in grade or removed for unacceptable performance, 5 U.S.C. 4302(b)(6) states that appraisal systems shall provide for reassigning, reducing in grade, or removing employees who continue to have unacceptable performance. Unacceptable performance is defined in 5 U.S.C. 4301(3) as failure to meet performance standards in one or more critical elements of the employee's position.

The use of the phrase "decision tables" was not intended to preclude use of numerical procedures or narrative rules for deriving summary performance ratings from ratings on elements.

Changes: The language in § 430.204(d)(1) has been revised, consistent with the final PMRS regulations, and moved to § 430.204(g). Each appraisal system must describe the method to be used by the agency to derive summary ratings. The method must show that more weight will be given to critical elements than to non-critical elements.

Also, consistent with PMRS regulations, § 430.204(d)(2) has been revised and included in the definition of a "critical element" in § 430.203, indicating that a critical element is so important that unacceptable performance on the element would result in unacceptable performance in the position.

14. *Issue:* Names and Definitions of Rating Levels (§ 430.204 (d) and (h)).

Summary of Comments: Eight agencies recommend that the definitions of the rating levels be deleted, and that language be adopted which was used to describe summary rating levels in the final PMRS regulations. One agency thinks that the definitions did not appear to permit numerical procedures for deriving summary ratings from ratings on performance elements. One labor organization states that the definitions required peer comparisons and are illegal. One agency thinks that the definitions are ambiguous. Seven agencies request more flexibility in naming their rating levels. Five agencies suggest that names of rating levels should be consistent with those for PMRS employees.

Discussion: The definitions of rating levels were intended to indicate the level of difficulty of each rating level. They were not intended to be used to derive summary ratings from ratings on performance elements. They also were not intended to encourage peer comparison as opposed to comparison of an employee's actual performance to established performance standards. Each agency is encouraged to establish generic descriptions of the level of difficulty of each rating level as a guide for employees, supervisors, and approving officials for establishing performance requirements.

Change: Consistent with the final PMRS regulations, the definitions of the five rating levels have been deleted. Instead, § 430.204(h) provides for five summary rating levels and identifies them as levels 1 through 5 (with only the "Fully Successful" and "Unacceptable" levels described by adjective names).

15. *Issue:* Performance Improvement Plan (PIP) (§ 430.204(e)).

Summary of Comments: Seventeen agencies comment that the PIP provisions should be deleted from the PMS regulations. One reason given by all of these agencies is to achieve consistency with the PMRS regulations, where the PIP requirement was deleted. Other reasons for deleting the PIP included: The PIP will delay corrective actions by triggering a new appraisal period; the PIP will discourage managers from taking corrective actions; the PIP has been made unnecessary by MSPB decisions; requiring that assistance be provided to employees is a more constructive approach; the PIP is redundant with 5 CFR Part 432 procedures; and the PIP is confusing, burdensome, and requires unnecessary paperwork. One agency questions the applicability of the PIP requirements.

Discussion: It is evident from the many comments received that the PIP was viewed as redundant with the requirement to provide an opportunity to demonstrate acceptable performance. As stated above, OPM agrees that there should be parallelism with the PMRS regulations. Also the guidance provided in FPM Letter 430–4, which strongly contributed to the rationale behind the PIP, is being clarified, making the PIP unnecessary.

Change: The requirement for the PIP is removed from the regulations and its objective is met by the addition, at § 430.204(j)(2), of the requirement that an employee be informed of the performance standard necessary for retention in the position at the time that an agency identifies the critical element(s) for which performance is "Unacceptable". This change provides the same concept in a more streamlined, clearer manner, and fully takes into consideration the requirements of 5 U.S.C. 4302(b)(6). The new language is also more consistent with the PMRS regulations.

Also, consistent with the PMRS regulations, a provision has been added at § 430.204(i) that agencies must assist

employees in improving performance rated below the "Fully Successful" level.

16. *Issue:* Written Justification for an "Outstanding" Summary Rating (§ 430.204(f)).

Summary of Comments: Two agencies think that a well documented rating is sufficient justification for an Outstanding summary rating. One agency states that this requirement creates unnecessary and duplicative paperwork. One agency suggests that this requirement should be deleted, consistent with PMRS regulations. One agency states that this requirement is inconsistent with the guidance in FPM Letter 430–4.

Discussion: OPM agrees that a well-documented performance rating is sufficient justification for an "Outstanding" rating. Agencies may prepare performance standards above the "Fully Successful" level at their discretion. To avoid unnecessary confusion, the guidance provided in FPM Letter 430–4 is being clarified.

Change: Paragraph 430.204(f) is deleted, consistent with the PMRS regulations.

17. *Issue:* Pre-established Distributions of Ratings (§ 430.204(g)).

Summary of Comments: One agency suggests revising this paragraph so that it is consistent with language in the PMRS regulations. One agency suggests that this paragraph should also state that ratings cannot depend on the rating received by the employee's supervisor.

Discussion: The language of this paragraph was clarified when final PMRS regulations were prepared. OPM agrees that the same language should be used here. This prohibition may be interpreted to prohibit ratings based on the rating given to an employee's supervisor.

Change: This language has been moved to § 430.206(d) and has been revised, consistent with the PMRS regulations, to prohibit an agency from prescribing a distribution of ratings for employees.

18. *Issue:* Higher Level Review (§ 430.204(g), (n) and (o)).

Summary of Comments: Two agencies recommend that higher level review be limited to the highest local agency official. One agency suggests adding the phrase "unless there is no higher official in the agency" to the requirement for approval of performance plans. One agency thinks that higher level review of personnel decisions presents serious procedural difficulties. One agency suggests that there should be no requirement for approval of periodic (interim) ratings. One agency says that higher level review adds paperwork, adds a level to the grievance process, and conveys little faith in supervisors. One agency suggests that the language on higher level review in § 430.204(g) be revised consistent with the final PMRS regulations. One agency says that approval of a within-grade increase (WGI) decision is pointless once a performance rating has received higher level approval.

Two agencies and one labor organization object to an outright prohibition of discussion of a summary rating with an employee before it is approved. One labor organization states that restricting communication prior to approval of a rating violates the Privacy Act. Two agencies recommend that language on communication of ratings be revised consistent with the final PMRS regulations.

Discussion: Higher level approval ensures that supervisors are accurately appraising employee performance and using the results appropriately as a basis for personnel decisions. Higher level approval also ensures that higher level officials get involved with performance planning and assessment, so that organizational objectives may be achieved. Higher level approval is essential to productivity improvement, accountability, and pay-for-performance objectives. However, in the review of performance plans, OPM recognizes that certain unique situations might make it difficult or not feasible to carry out this requirement, e.g., lack of knowledge of the work by a higher level reviewer at a distant geographical location. Therefore, OPM feels that some flexibility is warranted in this situation.

Changes: Consistent with PMRS regulations, § 430.206(d) provides that agencies are to establish procedures to ensure that only employees whose performance exceeds normal expectations are rated above "Fully Successful." The procedures must be described in agency Performance Management Plans.

Section 430.204(n) has been moved to § 430.204(f). The section has been revised by using the phrase "performance plans" and by indicating that approval must occur at the beginning of the appraisal period, consistent with final PMRS regulations. To allow agencies some flexibility in accounting for unique situations which would make this provision difficult to accomplish, language has been provided to allow agencies to describe exceptions to higher level review and approval of performance plans in their Performance Management Plans, subject to OPM approval.

Section 430.204(o) has been moved to § 430.206(c). To reflect changes in terminology elsewhere in Part 430, this section has been revised to refer to ratings of record instead of periodic ratings. Consistent with final PMRS regulations, the section now states that higher level review does not preclude communication about appraisal of performance between a supervisor and an employee. Also consistent with PMRS regulations, language has been added requiring approval of ratings of record by official(s) with responsibility for managing the performance awards budget within the agency. In addition, language has been added which provides that agencies may describe exceptions to higher level approval of ratings of record and performance-based personnel actions in their Performance Management Plans, subject to approval by OPM.

19. *Issue:* Employee Participation (§ 430.204(i)).

Summary of Comments: One agency thinks that the requirement to encourage employee participation in establishing performance plans should not be changed to require joint participation. Two agencies suggest adding a sentence providing that supervisors have the final decision on the content of performance plans. A congressional comment states that the regulations should guarantee that workers have the opportunity to discuss and agree on the critical elements of a position.

Discussion: 5 U.S.C. 4302(a)(2) requires that employee participation be encouraged in establishing performance standards for GS and Prevailing Rate employees, while 5 U.S.C. 4302a(a)(2) requires the joint participation of the supervising official and the PMRS employee in developing performance standards, with authority for establishing standards resting with the supervising official.

Change: The requirement for employee participation has been moved to § 430.204(c), and has been revised to require employee participation in establishment of performance plans, not just standards, consistent with PMRS regulations. Also, consistent with PMRS regulations, language has been added to provide examples of how employee participation may be accomplished and to clarify that final authority for establishing performance plans rests with supervising officials.

20. Issue: Basis for Performance Standards (§ 430.204(j)).

Summary of Comments: Two agencies suggest that this paragraph should be revised to indicate that elements and standards should be consistent with employees' position descriptions, as well as related to their assigned work.

Discussion: Performance management systems cannot work unless performance elements and standards reflect duties and responsibilities actually performed by the employee. While position descriptions must be kept up to date and must be accurate, the overriding consideration is that performance plans and ratings reflect the employee's actual work assignments.

Change: The requirement in § 430.204(j) that performance plans be related to employees' "assigned work" has been revised, consistent with PMRS regulations, to say that performance elements and standards must be based on requirements of the employees' "positions". This requirement has been moved to § 430.204(d)(1).

21. *Issue:* Consideration of Ratings from an Entire Appraisal Period (§ 430.204(k)).

Summary of Comments: One agency recommends a modification to permit consideration of an "interim" rating, prepared when an employee transfers, when preparing an annual rating. One agency thinks that consideration should be given to all ratings prepared during an appraisal period when arriving at an annual rating, consistent with PMRS regulations. A congressional comment states that appraisals should be performed throughout the period of employment and not just once a year.

Discussion: OPM agrees that a rating should be prepared for all periods of employment equal to or exceeding the agency's minimum appraisal period, and should be considered in preparing the employee's (usually annual) rating of record.

Change: The first and second sentences of this section have been moved to § 430.205(a) where they more appropriately fit the description of an appraisal period. The third sentence, concerning the derivation of the rating of record from ratings during the year, has been incorporated into the last sentence of § 430.205(a). Consistent with PMRS regulations, the requirement now specifies that an employee must be given a summary rating when he or she changes positions during the appraisal period and that the rating must be taken into consideration in deriving the employee's next rating of record. In addition, § 430.206(a) has been added, consistent with PMRS regulations, requiring that a written rating of record be given to each employee as soon as practicable after the end of the appraisal period.

22. *Issue:* Ratings to be Used in Reduction-In-Force (RIF) Procedures (§ 430.204(l)).

Summary of Comments: Three agencies oppose giving a special rating just before a RIF. One agency suggests requiring extension of appraisal periods, consistent with § 430.407(f) of the PMRS regulations. One agency asks if a new rating must be prepared if an employee's rating of record is not an annual rating. One agency recommends that the language of this section be consistent with § 351.504(d) of the RIF regulations. One agency recommends deleting this section. One agency requests clarification of the rating to be used for RIF if the employee has not served for the minimum appraisal period.

Discussion: Requirements on providing credit for performance in reduction-in-force procedures are found in the reduction-in-force regulations, 5 CFR Part 351. It is necessary for agencies to prepare performance ratings for employees each year, so that the ratings will be available and can be used for RIF and for other performance-based determinations. This standard procedure usually precludes a need for special-purpose ratings prepared for a specific personnel action.

Change: Section 430.204(1) has been deleted from the regulations. Section 430.206(e) has been added, consistent with PMRS regulations, providing that, if a rating of record cannot be prepared at the time specified in the plan, the employee'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.

23. *Issue:* Minimum Appraisal Period and Determining the Rating of Record (§ 430.204(m)).

Summary of Comments: One agency notes that a 90-day minimum appraisal period is not consistent with the requirement in the PMRS regulations that written performance plans be provided to employees normally within 30 days after the beginning of an appraisal period. One agency recommends a minimum appraisal period of 60 to 90 days. Two agencies recommend a minimum appraisal period of 90 to 120 days.

Three agencies think that the second sentence of § 430.204(m) was not clear. One agency recommends that the sentence be deleted or revised. One agency asks how ratings for newly appointed and transferred employees are to be determined. One agency objects to permitting only annual ratings to be used, except where another type of rating is specifically permitted by law or regulation.

Discussion: Agencies commonly have either a 90-day or a 120-day minimum appraisal period. This refers to the amount of time that an employee has served under an approved performance plan which has been communicated to him or her.

It is recognized that agencies will not always be able to wait 12 months before preparing a rating of record. However, they must wait at least until after the minimum appraisal period. Also, the minimum appraisal period is intended to ensure that agencies are able to determine ratings for newly appointed and transferred employees in the same manner as for PMRS employees.

Change: The first sentence of § 430.204(m) has been revised and moved to § 430.205(b). Consistent with PMRS regulations, the paragraph now provides that agency appraisal systems establish a minimum appraisal period of at least 90 days but not more than 120 days.

The second sentence of § 430.204(m) has been deleted. In place of that sentence, language parallel to PMRS regulations has been provided at § 430.205(a) and § 430.206 (e) and (f). These paragraphs specify how a rating of record will be determined when one cannot be prepared at the (usually annual) time specified in the agency plan, when an employee is transferred, and when an employee changes positions during an appraisal period.

24. *Issue:* Performance Rating for a Within-Grade Increase (§ 430.204 (m)).

Summary of Comments: Five agencies prefer to prepare a justification or supplementary statement when a within-grade increase decision is not consistent with an employee's most recent rating of record. These agencies object to the requirement for preparing a more current rating of record which supports the decision. One agency states that the preparation of a more current rating is duplicative of the notice of determination requirement in 5 CFR 531.409(e).

Discussion: Consistent with the requirement for use of a rating of record as the basis for all performance pay decisions for PMRS employees, a rating of record is to be used as a basis for within-grade increase (WGI) determinations for GS employees. Therefore, use of a written justification, which is contrary to the employee's rating of record, as a basis for within-grade increase determinations, would be inconsistent with pay-for-performance principles.

The notice of determination requirement of § 531.409(e) is not duplicative of providing a rating of employee performance because the employee is specifically informed whether his or her performance meets

performance requirements for a within-grade increase and notifies an employee whose within-grade increase is denied of how performance must improve and of his or her right to request reconsideration of the determination.

Change: The third sentence of § 430.204(m) has been revised slightly and moved to § 531.404(a)(1), covering WGI determinations. The requirement now provides that when a within-grade increase decision is not consistent with the employee's most recent rating of record, a more current rating of record must be prepared.

25. *Issue:* Reconsideration of a Performance Rating (§ 430.204(p) and § 771.206(c)(3)).

Summary of Comments: Two agencies suggest that reconsideration and grievance language should be consistent with PMRS regulations. One agency thinks that there should be only one procedure for review of performance ratings. One agency states that the agency grievance procedure should be the only procedure available for review of ratings for both PMRS and PMS employees. One agency asked if reconsideration of ratings can be under either the administrative or negotiated grievance procedures. Two labor organizations state that ratings are subject to review under negotiated grievance procedures. One labor organization says that ratings are also subject to review by the MSPB Special Counsel. A congressional comment states that appeal of a rating should be a level above the supervisor who issued the appraisal.

Discussion: While a reconsideration procedure for an appraisal is required by 5 U.S.C. 4302a(c)(2) for PMRS employees, no parallel requirement is found in 5 U.S.C. 4302 for GS and Prevailing Rate employees. Furthermore, it is evident that this process is confusing and could easily duplicate the function of the agency grievance procedure, and/or the "additional procedures established at the discretion of the agency head" specified in the last sentence of § 430.204(p).

Change: Section 430.204(p) has been deleted. Section 771.206(c)(3), which provided agency discretion to exclude performance ratings from the agency administrative grievance procedure, has also been deleted.

26. *Issue:* Appraisals and Ratings for Details and Temporary Promotions (§ 430.204 (q) and (r)).

Summary of Comments: One agency recommends a clarification that a rating for a detail or temporary promotion must be considered in preparing an annual rating. One agency thinks that paragraph (q) should not refer to a 120-day period, but rather to a minimum appraisal period or longer established by the agency. One agency recommends a definition of "rating of record" similar to that in the PMRS regulations to help clarify the nature of ratings for details and temporary promotions. One labor organization thinks that it is unfair to rate an employee's performance in a job other than the one for which he/she was hired.

One agency states that paragraph (r) should be rewritten to conform with § 430.406(d) in the PMRS regulations. One agency states that it does not appear to be necessary to extend an employee's rating because there are no pay deadlines for GS and Prevailing Rate employees. One agency says that paragraphs 430.204 (r)(2) and (r)(3) should have broader application than to details or temporary promotions and recommends that a supervisor have discretion to extend the last rating or use a "presumptive" rating. One agency points out that a reference to § 531.409(d) should be to § 531.408(d). One agency suggests that paragraph (r) be revised to provide for extending the rating period and, if that is not feasible, to provide for extending the rating of record.

Discussion: An employee's performance throughout an entire appraisal period should be considered when preparing the employee's (usually annual) rating of record. This includes periods of time when an employee is detailed or temporarily promoted to another position. Note, however, that performance-based reductions-in-grade and removals must be based on the critical element(s) of the employee's position (5 U.S.C. 4303(b)).

Change: Section 430.206(e) now provides that an employee's appraisal period must be extended if a rating of record cannot be prepared at the time specified in the agency's Performance Management Plan. Section 430.205(d)(1) now provides the same requirements for employees detailed or temporarily promoted within the same agency as were proposed in § 430.204(q), except that the phrase "annual summary rating" has been changed to "rating of record." Section 430.205(d)(2) provides revised requirements for employees detailed outside the agency using the same language as is applicable for PMRS employees. The section revises § 430.204(r) and provides for making a reasonable effort to obtain appraisal information from an outside organization, which must be considered in deriving the employee's next rating of record.

27. *Issue:* Recommendation for Recognition of Outstanding Employees (§ 430.204(t)).

Summary of Comments: Two agencies object to requiring monetary recognition for "Outstanding" employees. One agency objects to mandatory awards for outstanding employees, stating that career ladder promotions provide adequate recognition for outstanding performance. One agency notes that it is not always appropriate to recognize "Outstanding" employees, such as when an employee has disciplinary problems. Two agencies oppose requiring a recommendation for awards, citing the extra paperwork required. They feel that performance ratings should be sufficient justification for performance awards.

One agency thinks that agencies should be required to recognize "Outstanding" employees through monetary, non-monetary or honorary awards. One agency states that cash awards should be mandated for PMS employees rated Outstanding, consistent with PMRS regulations.

Discussion: See also agency comments and final regulations on performance awards. OPM agrees that performance awards should be based on performance ratings and that additional justification is not necessary where an employee has received a properly documented "Outstanding" performance rating.

Change: Section 430.204(t), which required a recommendation for appropriate recognition of "Outstanding" employees, has been deleted.

28. *Issue:* Performance Ratings of Disabled Veterans (§ 430.204(u)).

Summary of Comments: None.

Change: Consistent with PMRS regulations, this section has been slightly revised to refer to "the performance appraisal and resulting rating" of a disabled veteran. The section has also been moved to § 430.205(i).

29. *Issue:* Training and Evaluation (§ 430.205).

Summary of Comments: None.

Change: Consistent with PMRS regulations, this section has been slightly revised to say that the purpose of training and evaluation is to "assure that the requirements of law will be effectively implemented". In addition, the results of evaluations must be used to "implement improvements as needed" instead of "to improve the systems". This section has been moved to § 430.208.

30. *Issue:* OPM Review of Appraisal Systems (§ 430.206).

Summary of Comments: One agency thinks that agencies rather than OPM should be responsible for reviewing appraisal systems for their "contribution to agency effectiveness and efficiency".

Discussion: While OPM agrees that this review cannot fully assess the contribution of an appraisal system to agency effectiveness and efficiency, the review should include an assessment of conformance of systems with FPM guidance.

Change: Consistent with PMRS regulations, this section has been revised by deleting the requirement for OPM review of appraisal systems "with respect to their contribution to agency effectiveness and efficiency". Language has been added stating that OPM will review appraisal systems to determine conformance with "OPM performance management policy". This section has been moved to § 430.209. Also, § 430.210 has been added which provides that agencies must submit performance appraisal plans to OPM for approval as part of agency Performance Management Plans in accordance with Subpart A of Part 430 and provisions of Subpart B.

31. *Issue:* OPM Review and Approval of Performance Management Plans (§§ 430.207 and 431.207).

Summary of Comments: Four agencies comment on the provisions for OPM review and approval of agency performance management plans. Two agencies suggest that, to save them time and paperwork in initial implementation, OPM should review agencies' performance management plans after the plans are in operation. One of these agencies thinks this post-implementation review would assist in defending the plan before third-party agencies. One agency thinks the provision for OPM review and approval is unnecessary, but requests final regulations and guidance as soon as possible if the provision is retained. One agency objects to submitting the results of its performance management system operations to OPM, i.e., previous years' and projected expenditures.

One labor organization comments that the demonstration projects proposed at § 430.207(d) would not include an expanded scope of bargaining and therefore provide little chance to test private sector principles in Government. The labor organization also states that some of the ideas in the proposed regulations could be tested in a demonstration project and refined before possible implementation Government-wide.

Discussion: OPM is required by statute (5 U.S.C. 4304(b)(1) to "review each performance appraisal system developed by any agency . . . and determine whether the performance appraisal system meets the requirements" of the law. Those legal requirements include the linkage of performance appraisal results to "recognizing and rewarding employees" (5 U.S.C. 4302(b)(4)) and other personnel actions. To assist agencies in managing their employees' performance to accomplish agency missions, OPM has established the Performance Management System, integrating all performance-related actions. To meet the requirement to review agency systems for legal compliance, OPM must review the plans prior to their implementation, because so many consequences result from performance appraisal results. Further, OPM will need reports of the results of performance management plan operations to evaluate accurately the operation of the performance management system.

OPM believes these performance appraisal regulations should not include requirements on demonstration projects authorized by 5 U.S.C. 4703. OPM has previously issued regulations for demonstration projects at 5 CFR Part 470.

Change: Only editorial changes have been made to the regulations on OPM review and approval of performance management plans. To support and clarify the concept of performance management, these requirements have been placed in the new Subpart A of Part 430. Subpart A also assists agencies by consolidating agency performance management responsibilities in one place in the regulations. Section 430.207(d), on demonstration projects, has been deleted.

32. *Issue:* Conversion of a Position to Another Pay System.

Summary of Comments: One agency suggests adding a provision that ratings of employees whose positions are converted from a Prevailing Rate pay system to the GS may be used as a basis for performance-related personnel decisions under the GS, provided that both positions have the same duties and responsibilities. A similar provision is recommended when positions are converted from the GS to a Prevailing Rate Pay system.

Discussion: OPM agrees that, prior to the time when a new performance rating will be prepared after the conversion of a position to a new pay system, a performance rating prepared for an employee performing the same duties and responsibilities should continue to be used.

Change: A new § 430.204(k) has been added, consistent with § 430.405(k) of the PMRS regulations, which provides that when an employee's position under any Federal pay system is converted to a pay system covered by Subpart B of 5 CFR Part 430, the employee's rating of record will be considered to have been derived under 5 U.S.C. 4302 and from the position which the employee now occupies.

33. *Issue:* Procedure When Employee's Performance is Unacceptable.

Summary of comments: Six agencies state the performance appraisal provisions of the PMRS and the PMS should be similar, wherever possible. One agency states that PMRS and PMS performance appraisal provisions on treatment of employees rated below "Fully Successful" should be consistent to the extent feasible. Also, see agency comments and regulation changes under issue 15, "Performance Improvement Plans".

Discussion: Legal requirements are somewhat different for PMRS employees than for PMS employees when performance on one or more critical elements is unacceptable. Section 4302a(b)(6) of title 5 U.S.C. provides that PMRS employees must receive a written notice of an "Unacceptable" rating before an opportunity to raise the employee's performance to the "Fully Successful" level is provided. On the other hand, 5 U.S.C. 4302(b)(6) does not require that a PMS employee receive a rating before being provided an opportunity to demonstrate acceptable performance nor, for that matter, at the end of an opportunity period.

Instead, an agency should provide a written notice to an employee at the beginning of an opportunity period which identifies critical element(s) for which performance is unacceptable and identifies performance standards which must be reached in order for the employeee to be retained in the position. Such a notice and an agency's determination about the level of an employee's performance at the end of an opportunity period are part of an agency determination that will be appealable to the Merit Systems Protection Board should the employee subsequently be reduced in grade or removed for unacceptable performance. The agency decision must be reviewed and approved as required by § 430.206(c) before the decision is final and subject to appeal.

Under PMRS regulations, if an employee's performance improves to level 2, but not to the "Fully Successful" level, an additional opportunity to demonstrate performance at the "Fully Successful" level is required. The difference in legal requirements does not

necessitate an additional opportunity period for PMS employees. However, § 430.204(i) requires that agencies assist employees in improving performance rated below the "Fully Successful" level.

Change: A new § 430.204(j) has been added which is consistent with § 430.405(j) of the PMRS regulations except where differences in legal requirements are reflected as discussed above.

34. *Issue:* General Comments on Performance Appraisal for the Senior Executive Service (Part 431).

Summary of Comments: Five agencies support revising the SES performance appraisal regulations to make them as parallel as possible with performance appraisal provisions of the PMRS. Two agencies object to making parallels with PMRS.

Discussion: As indicated above in the "Overview" section, OPM agrees that wherever possible there should be consistency among the performance appraisal provisions for the SES, PMRS, GS, and Prevailing Rate Systems. This will foster ease of administration, reduce confusion, and clearly support an equitable pay-for-performance system. OPM believes that consistency and equity can be achieved while preserving congressional intent as reflected in statutory differences between the Senior Executive Service and the other systems.

Change: The provisions for Senior Executive Performance Appraisal are moved from Part 431 to Part 430, Subpart C and revised to provide for as much consistency as possible among performance appraisal systems for employees covered by the PMRS, SES, GS and Prevailing Rate Systems.

35. *Issue:* Definitions (§ 431.203).

Summary of Comments: Two agencies think that all definitions should be consistent with those in the PMRS. Three agencies request that "appraisal" be defined, as in the PMRS regulations, deleting reference to progress reviews; one requests that OPM add a separate definition of "progress review" as defined in PMRS regulations; two agencies suggest defining "critical element" as it is in PMRS; and one agency suggests revising the definition of "non-critical element", to indicate that these elements are optional. Two agencies request clarification of "rating official"; and one agency recommends revision of the definition of "performance".

Discussion: OPM agrees that wherever possible definitions should be consistent among performance appraisal systems except where definitions specific to the SES are provided in statute.

Change: Definitions are now contained in § 430.303 and have been revised to the extent possible to be consistent with the PMRS and the PMS (see discussion of progress reviews in Issue 6).

36. *Issue:* Use of Critical Elements, Non-critical Elements, Sub-elements, and Pass/Fail Elements (§ 431.204(b) and (c)).

Summary of Comments: Four agencies commented on the prohibition against rating employee performance on sub-elements, three objecting and one requesting clarification. Those objecting point to a recent MSPB decision allowing agencies to rate on sub-elements. One agency suggests requiring the use of critical elements only. One agency suggests that pass/fail elements should be allowed, citing a recent MSPB decision.

Discussion: (See Issues 10, 11 and 13.)

Change: Provisions on use of critical and non-critical elements have been placed in § 430.304. The last sentence in § 431.204(b) on sub-elements has been deleted and language in § 431.204(c) has been revised to remove the prohibition on pass/fail elements.

37. *Issue:* Use of Five Summary Rating Levels, and Requirement for Agency Decision Table to Arrive at Summary Ratings (§ 431.204(d)).

Summary of Comments: Two agencies disagree with using five summary rating levels, preferring the option to use three or four. One agency concurs with using five levels.

Five agencies object to the specific adjective labels prescribed for each of the rating levels; three of those objecting suggest paralleling PMRS rules, which provide for numbered rating levels (i.e., level 1 through level 5).

Three agencies think OPM should remove the requirement to use a decision table to derive summary ratings, because it is mechanistic and does not allow for supervisory judgment. One agency thinks that OPM should prescribe a Government-wide decision table all agencies must use.

Discussion: (See Issues 13 and 14.)

Change: The language in § 431.204 has been revised, consistent with the PMRS regulations, and moved to § 430.304. The definitions of the five rating levels have been removed. Section 430.304(g) provides for five summary rating levels and identifies them as levels 1 through 5. Adjective names are provided for levels 1 through 3 consistent with 5 U.S.C. 4314(a), permitting agency discretion to name the two levels about "Fully Successful". Additionally, reference to using a decision table has been removed, and language added to reflect that agencies must describe the method use to derive summary ratings and that the method must show that more weight will be given to critical elements than to non-critical elements.

38. *Issue:* Unsatisfactory Performance (§ 431.204(d)(2)).

Summary of Comments: Two agencies state that OPM should remove the requirement that an executive be given an unacceptable rating if his/her performance on one critical element is unacceptable.

Discussion: OPM believes that this regulatory provision reflects the statutory intent in 5 U.S.C. 4312(a) and is equitable with a similar provision in the PMRS and PMS regulations.

Change: This requirement has not been removed, but has been incorporated into the definition of "critical element" in § 430.303.

39. *Issue:* Performance Improvement Plan (PIP) (§ 431.204(e)).

All seven agencies commenting on the provision for a Performance Improvement Plan for executives request that OPM remove the provision. Five agencies say that the regulations should parallel the PMRS, and two object to the burden imposed by the PIP, believing it contrary to the intent of the Civil Service Reform Act to facilitate the removal of poor performers.

Discussion: (See Issue 15.)

Change: Language in § 431.204(e) providing for the PIP has been removed, consistent with the PMRS and PMS regulations.

40. *Issue:* Written Justification for "Outstanding" Rating (§ 431.204(f)).

Summary of Comments: Two agencies object to the requirement to write a justification for each "Outstanding" rating because of the additional paperwork; one thinks that the nature of the justification should be optional with the agency.

Discussion: (See Issue 16.)

Change: Paragraph 431.204(f), requiring written justification for an "Outstanding" rating, has been removed.

41. *Issue:* Definitions of the Five Summary Rating Levels (§ 431.204(h)).

Summary of Comments: Four agencies object to the rating level definitions provided in the proposed regulations. Three think that the definitions place too much emphasis on quantity and timeliness, which do not appropriately reflect SES work. One agency thinks that the regulations should require numbered rating levels, rather than the adjective labels in the proposed regulations.

Discussion: (See Issue 14.)

Change: Consistent with PMRS regulations, definitions of rating levels have been removed.

42. *Issue:* Establishment of Performance Standards (§ 431.204(i)).

Summary of Comments: Two agencies suggest that OPM remove the requirement to provide executives with written performance elements and standards on or before the beginning of the appraisal period, because the process of clearing executives' standards and elements is more time-consuming that for non-SES employees. They prefer allowing agency flexibility.

Discussion: Statute requires that on or before the beginning of each rating period, performance requirements for each senior executive be established in consultation with the senior executive and communicated to the senior executive. OPM agrees that the requirement that performance plans be provided in writing on or before the beginning of the appraisal period places a burden on some agencies and that agency flexibility should be provided. However, agencies are not relieved of the statutory requirement to communicate elements and standards to each senior executive on or before the beginning of the rating period.

Change: Language in § 431.204(i) has been modified and moved to § 430.304(d)(1), and requires that elements and standards be communicated to executives on or before the beginning of the appraisal period, and that written performance plans be provided to senior executives normally within 30 days of the beginning of the appraisal period.

43. *Issue:* Higher Level Review of Executives' Performance Plans (§ 431.204(k)).

Summary of Comments: Four agencies suggest that OPM remove the requirement for higher level review of executives' performance plans allowing for the employee's option to request review, or allowing agency option to provide for higher level review. Four agencies think that this review is unnecessary. Two agencies request modification of the provision to take into account situations in which the heads of major components establish the executives' performance plans.

Discussion: OPM agrees that there are circumstances when higher level review of performance plans for senior executives is impractical. Agencies may require this higher level review if it is desirable for them to do so. Unlike other performance appraisal systems, the SES performance appraisal system includes the Performance Review Board (PRB), which is required by statute. The PRB provides an effective means to ensure equity and fairness in the SES appraisal system.

Change: The requirement for higher level review of senior executive performance plans have been removed.

44 *Issue:* Performance Ratings Before a Reduction in Force (RIF) (§ 431.204(m)).

Summary of Comments: Two agencies object to allowing for a rating just before a RIF in the case of employees who have served only a minimum appraisal period.

Discussion: (See Issue 22.)

Changes: Section 431.204(m) has been removed. Paragraph 430.306(e) has been added, consistent with PMRS regulations, and provides that, 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.

45. *Issue:* Minimum Appraisal Period (§ 431.204(n)).

Summary of Comments: Two agencies commented on the minimum appraisal period provision; one agency supports the 90-day requirement and the other prefers the flexibility provided in the PMRS regulations (a minimum appraisal period of at least 90 days but not more than 120 days).

Discussion: Agencies commonly have either a 90-day or a 120-day minimum appraisal period. OPM agrees that agencies should have the flexibility provided in the PMRS regulations.

Changes: Language in § 431.206(n) has been revised and moved to § 430.305(b). Additionally, statutory language has been added in § 430.305(a)(3) regarding the appraisal of career appointees following the beginning of a new Presidential administration.

46. *Issue:* Appraisal of Executives' Performance on Details (§ 431.204 (p) and (q)).

Summary of Comments: Two agencies suggest elimination of the requirement to appraise executives' performance on details, because it is difficult to anticipate the length of details, and because it presents a burden for agencies. Two agencies comment on obtaining appraisal information for executives on details outside their agencies; one thinks this should be optional, and one requests clarification on the distinction between "performance information" and "performance ratings" required for details within agencies.

Discussion: OPM believes that as with other employees, an executive's performance throughout the appraisal period should be considered when preparing the executive's rating of record. This includes consideration of performance for periods of time when an executive is detailed or temporarily reassigned within the same agency for the minimum appraisal period, or detailed to another agency.

Change: Language in § 431.204 (p) and (q) has been moved to § 430.305(d). Paragraph (d)(2), covering details outside of the employing agency, has been modified to require the employing agency to 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.

47. *Issue:* Opportunity for Executives to Respond to Their Ratings (§ 431.204(r)).

Summary of Comments: One agency thinks higher level review should take place after the Performance Review Board (PRB) review and the final rating take place. Two agencies think this provision should be revised to take into account the situation when the agency head is the rating official.

Discussion: Section 4312(b)(3) of title 5 U.S.C. requires that the senior executive be provided a copy of the appraisal and rating and given an opportunity to respond in writing to the initial rating and have that rating reviewed by an employee at a higher level before the rating becomes final. Additionally, 5 U.S.C. 4314(c)(2) requires that the PRB receive the initial rating, and any response to it by the senior executive. These provisions make it clear that the requirement for higher level review occurs prior to the review by the PRB. OPM agrees that this provision should take into account the situation when the head of the agency is the rating official.

Change: This provision is moved to § 430.306(a), and the language "unless there is no higher level" is added to take into account the situation when the agency head is the rating official.

48. *Issue:* **Federal Register** Notice of Appointments to a PRB (§ 431.204(s)).

Summary of Comments: One agency prefers to continue publishing in the **Federal Register** a roster from which PRB appointments may be made.

Discussion: The statute (5 U.S.C. 4314(c)(4)) provides that members of performance review boards shall be appointed in such a manner as to assure consistency, stability, and objectivity in performance appraisal. It further states that notice of the appointment of an individual to serve as a member shall be published in the **Federal Register**.

Change: No change. This provision has been moved to § 430.307(b).

49. *Issue:* Requirement for a Written Recommendation for an Award for Each Executive Rated "Outstanding" (§ 431.204(w)).

Summary of Comments: Nine agencies object to the provision requiring a written recommendation for an award for each executive rated "Outstanding". Five of those agencies object to the increased paperwork, and offer several suggestions: make the award automatic or optional; require the rating official to recommend the award when recommending the "Outstanding" rating. Four agencies think that the provision requires awards, and think mandating awards is too restrictive on agencies.

Discussion: References to awards for senior executives more appropriately belong in other parts of the Code of Federal Regulations. Provisions for SES performance awards are found in 5 U.S.C. 5384 and rank awards are covered in 5 U.S.C. 4507 (see also Issue 27).

Change: The requirement for a written recommendation for an award for a senior executive is removed.

50. *Issue:* General Comments on Special Awards and Definitions (Part 451 and § 451.204).

Summary of Comments: Four agencies think that OPM should clarify the differences between Performance Awards (Part 531, Subpart F of the proposed regulations) and Special Awards.

Two agencies think that OPM should make the regulations on cash awards consistent for all populations covered. One agency believes that the heading of Part 451 should be changed. Four agencies think that, generally, the definitions in the special awards regulations are unclear. Five agencies request clarification of "meritorious action"; four agencies question "special act or service"; five agencies express difficulty with the definitions of "non-monetary award" and "honorary award"; and two agencies request a clearer definition of "contribution". One agency suggests adding a definition of "monetary award" which would be consistent with the definiton of that term under the Performance Awards regulations proposed for Part 531, Subpart F. One agency suggests additional language to indicate the type of award to be used for work on special task forces.

Discussion: OPM agrees with agencies that clarification is needed in this part and that a great deal of the confusion exists in the terminology in the awards program can be eliminated by establishing regulatory provisions and terminology which are consistent with the statutory bases in 5 U.S.C. Chapter 45 (Incentive Awards) and in 5 U.S.C. 5407.

OPM agrees that clarification is necessary to distinguish among the forms of recognition available for overall performance based on a current rating or record and those available for superior accomplishments, either within or outside of job requirements. Further, OPM agrees that cash awards regulations should be consistent for all populations.

Changes: To bring this part in line with its statutory authority, Part 451 is titled "Incentive Awards". A new Subpart A is titled "Agency Superior Accomplishment Awards". To make a clear distinction between performance awards for overall performance based on a current rating of record and awards under this part, performance awards provisions have been moved to Part 430, Subpart E. Additionally, a new Subpart B in Part 451 incorporates Presidential Awards to support the distinction made in statute between awards made by agencies and awards made by the President. Subpart C is reserved for Productivity Gainsharing Programs regulations.

Within Subpart A, definitions have been rewritten to clarify the types of accomplishments which can be recognized with agency Superior Accomplishment Awards. Definitions for "honorary award" and "meritorious action" have been removed. "Special act or service" has been redefined to include superior contributions or accomplishments either within or outside of the scope of the employee's job. The definition of "tangible savings" has been expanded to include accomplishments which result in dollar benefits (such as increased revenues) as well as dollar savings.

51. *Issue:* Awards Scale for Tangible Savings (§ 451.204).

Summary of Comments: Thirteen of the 29 agencies commenting on the proposed PMS regulations object to the awards scale for tangible savings. Two of those agencies think that the awards scale should remain in guidance.

Twelve of the agencies object to the reduction in amounts available to reward people who have saved money for the Government. Seven agencies think that this sends a negative message to employees at a time when the Government is emphasizing pay-for-performance, productivity and cost-savings.

One agency suggests eliminating the language in § 451.204(d) to "limit the use of monetary awards", because it is inconsistent with the intent of the Special Awards regulations.

Discussion: OPM agrees that the awards scale for contributions resulting in tangible benefits more appropriately belongs in guidance. This allows agency flexibility in establishing the amounts of awards for contributions resulting in dollar savings, particularly under appropriate special circumstances.

OPM agrees with agency comments that awards scales should not be reduced. The awards scale previously contained in guidance was comparable with awards practices in the private sector. OPM agrees that a reduction in the amount an employee receives for his or her efforts which save the Government money, or any limit on the use of monetary awards, would have an adverse impact, and would be inconsistent with the program's intended purpose.

Change: The awards scales for tangible benefits, awards over $10,000 and Presidential Awards contained in § 451.205(c) have been removed. The awards scales contained in FPM Chapter 451 will be retained and serve as a guide to agencies in establishing internal awards scales for contributions resulting in tangible and/or intangible benefits.

52. *Issue:* Agency Responsibilities (§ 451.209).

Summary of Comments: One agency disagrees with using the receipt of an award as a ranking factor in making promotions. The agency believes that it may not be valid in view of the Uniform Guidelines on Employee Selection Procedures, and that the use of such a ranking factor should be left to the agency's discretion.

One agency suggests adding a provision requiring that employees be informed of the availability of awards.

Discussion: Statutory provisions (5 U.S.C. 3362) require that receipt of an award be a factor in ranking and selecting employees who otherwise meet the requirements for promotion.

OPM agrees that provision should be made to inform employees at all levels about the program and how they can earn awards. Additionally, employees should be informed why other employees receive awards.

Change: Provisions have been added in § 451.104(i) to require that appropriate training and information be provided to supervisors and employees on the award program.

53. *Issue:* Acceptable Level of Competence (ALOC) Determination for Within-Grade Increases (§§ 531.403 and 531.404).

Summary of Comments: Four agencies and one labor organization comment on the definition of ALOC used in granting

within-grade increases (WGI's). Three agencies support the requirement for a "Fully Successful" rating for an ALOC determination. Two of those agencies and one labor organization object to requiring a "Fully Successful" rating on all critical elements for performance to be determined at an ALOC. They prefer that the ALOC determination be based on the summary rating. Further, they believe agencies should have the option to rate an employee "Minimally Successful" on one element, while giving him or her a "Fully Successful" summary rating. One agency and one labor organization note that there is no comparable requirement for determining PMRS employees' merit increases. One agency points out that the definitions of ALOC were inconsistent, referring in instance to performance in the assigned position.

Discussion: OPM agrees that the definitions for ALOC should be consistent. OPM also agrees that the requirements for determining WGI's for GS employees should be parallel with the requirements for determining merit increases for PMRS employees, in that an ALOC determination should be based only on a summary rating of "Fully Successful".

Changes: To be consistent, the provisions on Acceptable Level of Competence in §§ 531.403 and 531.404 both refer to an employee's performance of the duties and responsibilities of his or her assigned position. The requirement for a "Fully Successful" rating on each critical element has been deleted; an employee can be determined to be at an Acceptable Level of Competence based on a current rating of record of at least "Fully Successful".

To reflect a change in definitions in Part 430, the term "rating of record" has been substituted for "summary rating". An additional provision on using current ratings of record for ALOC purposes has been added at § 531.404(a)(2) to parallel PMRS regulations. Also, a provision formerly included in Part 430, requiring a more current rating of record when an ALOC determination is inconsistent with the current rating of record, has been moved to § 531.404(a)(1); (see also Issue 24 "Performance Rating for a Within-Grade Increase").

54. *Issue:* Delay in ALOC Determinations for Granting Within-Grade Increases (WGI's) (Erroneously designated § 531.408).

Grade Increases (WGI's) (Erroneously designated § 531.408).

Note.—Due to a typesetting error, this material was misnumbered, and the revisions to § 531.408 were omitted. A correction notice, including the omitted material, was published October 7, 1985 at 50 FR 40865, for a 30-day comment period. OPM has received no comments on that portion of the regulations.

Summary of Comments: Four agencies object to delaying ALOC determinations and WGI's through no fault of the employees. Three of these agencies recommend that any such delayed within-grade increases be granted retroactively to the eligibility date. The fourth agency recommends that such employees be granted a within-grade increase based on a previous rating of record or a presumed "Fully Successful" rating. One agency recommends that OPM add Intergovernmental Personnel Act (IPA) assignments as a reason for waiving an ALOC determination and granting a within-grade increase. Several additional comments request clarification of the regulations and a closer linkage between these regulations and the PMRS regulations.

Discussion: It has always been the intent that, if an employee's ALOC determination is delayed because he or she has not been provided with performance requirements and also has not been rated within 90 days of the ALOC determination (both circumstances beyond his or her control), the employee would receive a WGI, if approved, retroactively to the eligibility date. It is OPM's intention that an up-to-date performance rating be used wherever possible in making an ALOC determination. This can be done in most cases by extending the appraisal period until the minimum appraisal period has been served under performance requirements, rating the employee, making the ALOC determination, and granting the WGI retroactively if warranted. An IPA assignment is currently covered for ALOC determination in § 531.406(c)(1)(v), so no change is necessary in these regulations.

Changes: Section 531.409(c)(2) has been amended to clarify that a within-grade increase based on a delayed ALOC determination will be granted retroactively to the eligibility date. Editorial changes have been made to § 531.409(d) to clarify the reasons for waiver of an ALOC determination.

55. *Issue:* Continuing Evaluation After Withholding a WGI (§ 531.411).

Summary of Comments: One agency indicates that employees who are denied a WGI should be rated again after no less than the minimum appraisal period and no more than 52 calendar weeks. This agency also recommends that an employee's right to appeal a within-grade denial should be eliminated.

Discussion: OPM believes that agencies should have flexibility to determine the time required for an employee to demonstrate sustained performance at an acceptable level of competence. However, fairness dictates that the employee's performance should be reevaluated after no more than 1 year. The right to appeal the denial of a WGI is a statutory right of all employees which cannot be denied by regulation.

Change: No change.

56. *Issue:* Level of Performance Required for Quality Step Increase (QSI) (§ 531.504).

Summary of Comments: Three agencies agree that QSI's should only be granted to employees who receive a performance rating of "Outstanding". Four agencies feel that limiting QSI's only to employees rated "Outstanding" is too restrictive, and would lead to inflated ratings, a reduction in the number of QSI's granted, and an inability to reward adequately employees rated "Exceeds Fully Successful" who substantially exceed performance standards on a continuing basis.

Discussion: Pay-for-performance dictates that the QSI should be granted only to employees with the highest quality performance because it constitutes an increase to base pay, the value of which continues over many years. Employees rated "Exceeds Fully Successful" can be rewarded through the agencies' authority to grant one-time performance awards.

Change: No change.

57. *Issue:* Effective Date of Quality Step Increases (§ 531.506).

Summary of Comments: One agency agrees with the provision to grant QSI's as soon as practicable after the performance rating to reinforce superior performance. Three agencies prefer greater flexibility in the granting of QSI's: to grant QSI's at any time during the appraisal period, as performance awards are granted; or to adjust timing of QSI's for employees in steps four and seven of the grade, so that within-grade increase waiting periods would not be prolonged; or to grant QSI's once each year in conjunction with performance awards. One agency thinks that QSI's should be granted within 60 days of the rating of record.

Discussion: OPM believes there must be a firm connection between exemplary performance and its rewards. The closer in time the reward is given for the "Outstanding" performance that triggers the reward, the more meaningful the reward. A QSI should be made as soon as practicable after a rating of record is approved. However, OPM also

believes each agency should have the flexibility to meet unusual requirements in the timing of QSI's in certain instances. The regulations provide sufficient flexibility so that an agency can ensure that the receipt of a QSI will not prolong the waiting period for a future WGI.

Changes: No change.

58. *Issue:* Agency Plans for Granting QSI's (§ 531.507).

Summary of Comments: One agency thinks that the requirements to develop a plan for QSI's and to inform all employees annually of the numbers of QSI's granted is an unwarranted administrative burden. Two other agencies disagree with the requirement that employees be informed of the number of QSI's granted each year by grade level, and think that the requirement should be eliminated or changed to require informing employees of only the total number of QSI's. One agency recommends addition of a provision requiring that guidance and training on QSI's be given to managers and supervisors.

Discussion: OPM believes that the QSI is an integral part of the pay-for-performance system for GS employees, and, therefore, a plan for awarding QSI's must be included as part of an *integral* Performance Management Plan. OPM also agrees that training on the appropriate use of the QSI should be an integral part of total training on the Performance Management System and Plan. E.O. 11721 requires that agencies report annually to employees the number of QSI's granted in the agency. To ensure employee perception of equity in the distribution of QSI's, OPM believes that it is essential that the report include not only the total number but also the distribution by grade level of QSI's in the agency.

Change: A new § 531.507(e) requires agency QSI plans to provide training and evaluation on the use of QSI's.

59. *Issue:* General Comments on Part 531, Subpart F, and Definitions (§ 531.604).

Summary of Comments: Two agencies believe that the performance awards provisions should be moved from Part 531 to another part Title 5, CFR, because awards are not additions to basic pay. These agencies think that Part 531 should only include pay-setting regulations.

Two agencies suggest that, to preclude confusion and maintain consistency for supervisors and employees, performance and cash awards programs should be as consistent and equitable as possible for both populations. One agency requests clarification of the distinction between special act or service awards as contained in this subpart, versus the same awards as contained in Part 451.

One agency suggests expanding definitions of the types of awards to make clearer distinctions between them. Two agencies ask for clarification of language in the definitions such as "monetary connotation for the agency but not for the employee", contained in the definition of "non-monetary award".

Discussion: OPM agrees that there should be consistency and equity between performance and cash awards programs for supervisors and employees. OPM further agrees that clarification in terminology is needed to clearly distinguish between awards based on overall performance (rating of record) and those based on superior accomplishments. Such a distinction will reduce existing confusion surrounding awards programs and assist agencies in administering programs. OPM concurs that performance awards provisions are inappropriately placed in Part 531 because these awards are not increases to basic pay.

Change: Part 531, Subpart F has been moved to Part 430, Subpart E and has been significantly revised to parallel, as consistently as possible, the provisions for performance awards for the PMRS. (Note: As indicated above, some of the changes to parallel the performance awards systems suggested by commenters are substantially different from the proposed rules. OPM agrees with the changes, and is proposing them at § 430.504 for comment elsewhere in today's daily issue. Therefore, § 430.504 is *reserved* in these final regulations.)

The changes in these final regulations result in the elimination of unclear or confusing definitions in the proposed regulations and facilitate a clear distinction between performance awards and superior accomplishment awards (cash awards) covered under Part 451, Subpart A (see also Issue 50). Additionally, because performance awards are moved to Part 430, the Part 532 provisions for performance awards for Prevailing Rate employees are removed as prevailing rate employees are covered under Part 430.

60. *Issue:* Agency Responsibilities (§ 531.609).

Summary of Comments: One agency objects to including a performance award component in agency Performance Management Plans, and objects to submitting the plan to OPM for review and approval. One agency agrees and one agency disagrees with the requirement that performance awards be considered as selective factors for merit promotions.

Discussion: Performance awards are an integral part of the PMS. In line with PMRS requirements for development of a comprehensive plan to administer all components of the system, plans for each component (performance appraisal, performance awards, pay, and superior accomplishment awards) must be submitted to OPM for review and approval.

Title 5, U.S.C., section 3362 requires that awards be a factor in ranking and selecting employees who otherwise meet the requirements for promotion.

Change: No change. (Agency responsibilities moved to § 430.506.)

61. *Issue:* Part 771—Agency Administrative Grievance System.

Summary of Comments: None.

Discussion: See Issue 25—"Reconsideration of a Performance Rating".

Changes: Section 771.206(c)(3) has been deleted (see change in Issue 25). Additionally, § 771.206(c)(1)(x) has been modified to make a technical correction by including the amount of an award under matters excluded.

62. *Issue:* Implementation Schedule (§§ 430.208 and 431.301).

Summary of Comments: Nineteen agencies and one labor organization object to the proposed implementation schedule for Performance Management Plans under the PMS as being too short and unrealistic. Some of the reasons include:

—Insufficient time to consult with labor organizations, make changes, and train employees;

—Limited resources;

—Logistical problems in large organizations;

—Continuing involvement with implementing the new PMRS; and

—Difficulty implementing in the middle of performance appraisal cycles.

Agencies recommend several alternatives, including:

—Implementation at the beginning of the agency's next appraisal cycle;

—Implementation by October 1, 1986;

—Submission of plans to OPM by July 1, 1986; and

—Deadlines expressed in terms of time after publication of the final regulations.

One labor organization recommends that OPM use a staggered 3-year schedule for submission and implementation of plans, as provided in the final regulations published in October 1983.

Discussion: OPM intends to implement the PMS as soon as feasible, to eliminate any unnecessary differences among SES, Prevailing Rate, GS, and PMRS employees. OPM is

aware that agencies must be given adequate time to develop sound Performance Management Plans and to train employees, and experience with implementing PMRS has shown this process to be time consuming. However, experience developing PMRS plans should assist agencies and considerably shorten the time needed to develop plans and train employees.

In order to cause as little disruption as possible in agency performance appraisal cycles, OPM agrees that revised performance appraisal requirements should be implemented at the beginning of the employees' next performance appraisal cycle, rather than in mid-cycle. Because the plan submission and implementation dates have been significantly extended in the final regulations, and because OPM intends to eliminate as much as possible any disparity among systems, implementation staggered by grade levels is no longer needed.

Changes: As indicated in the "**DATES**" section above, agencies must submit their Performance Management Plans to OPM 90 days after the date of publication of these regulations. Generally, OPM will approve the Plans within 90 days after the Plans are received by OPM.

Agencies' Performance Management Plans must be implemented no later than 90 days after the date of OPM approval. At that time, all provisions of these regulations become applicable, except the new performance appraisal provisions. The performance appraisal provisions become applicable to each employee at the beginning of his or her next appraisal cycle after OPM approval of the Performance Management Plan.

For the purposes of taking performance-based personnel actions, including reassignment, reduction in grade or removal under 5 U.S.C. 4303, the agency's current performance appraisal plans remain in effect until OPM approves the performance appraisal parts of the new PMS Performance Management Plan, and those parts are implemented on the schedule outlined below.

Agencies must implement their Plans as specified above except where provisions of an existing negotiated agreement are in explicit conflict with these PMS regullations, in which case the provisions of the negotiated agreement will remain in effect until its expiration. Agencies may request OPM approval of the following exceptions:

1. For specific provisions of OPM regulations that are not in explicit conflict with existing provisions of a labor agreement, but would cause significant inequities if implemented in combination with provisions of the labor agreement; or

2. Where apparently conflicting provisions of negotiated agreements are consistent with the intent of OPM regulations.

For the convenience of agencies in application of the new regulations, following is the schedule for application of the PMS regulations.

Part 430 Subpart A—30 days after the date of publication.

Parts 293, 300, 335, Subpart E of Part 430,* Subparts D and E of Part 531, and Part 771—90 days after plan approval.

Subparts B and C of Part 430—At the beginning of the employee's next performance appraisal cycle.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect Government employees.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 300

Administrative practice and procedure, Government employees.

5 CFR Part 335

Government employees.

5 CFR Part 430

Administrative practice and procedure, Decorations, Medals, Awards, Government employees.

5 CFR Part 451

Decorations, Medals, Awards, Government employees.

5 CFR Part 531

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

5 CFR Part 771

Administrative practice and procedure, Government employees.

*Pending final rulemaking on § 430.504, OPM may extend the implementation date for the preformance awards component of the Performance Management Plan.

U.S. Office of Personnel Management,

Constance Horner,

Director.

Accordingly, the Office of Personnel Management is amending Title 5, Code of Federal Regulations, as follows:

PART 293—Personnel Records

1. The Authority citation for Part 293 is revised to read as follows:

Authority: 5 U.S.C. 552, 4302a, and 4315; E.O. 12107 (December 28, 1978); 3 CFR 1954–1958 Comp.; 5 U.S.C. 1103, 1104 and 1302; 5 CFR 7.2; E.O. 9830; 3 CFR 1943–1948 Comp.

2. In Subpart D, § 293.402(a) and (b) are revised to read as follows:

Subpart D—Employee Performance File System Records

* * * * *

§ 293.402 Establishment of separate employee performance record system.

(a) Copies of employees' performance ratings of record, including the performance plans on which the ratings are based, must be placed in either the employee's Official Personnel Folder (OPF) or in the Employee Performance File (EPF). However, other performance-related documents may be retained in the OPF only when the agency prescribes the use of a separate envelope, temporarily located in the OPF, and removed whenever the OPF (except as required in § 293.404(b)) is transferred to another agency. Performance ratings of record, including the performance plans on which the ratings are based, shall be retained on the left (temporary) side of the OPF. No other performance-related record shall be retained on the left (temporary) or right (long term) side of the OPF or shall be transferred to the National Personnel Records Center (except as required by § 293.404(b)).

(b) Except for performance records maintained in the OPF consistent with paragraph (a) of this section, each agency having employees occupying a position described in § 293.401 shall provide for maintenance of performance-related records for such employees in this EPF system. The agency may elect to retain records in a separate file that is located in the same office with the OPF, or in an envelope kept in the OPF itself. If the agency determines that a separate EPF is cost-effective, such a file may be located in another designated agency office (as specified in the agency's performance appraisal plan) including with supervisors or managers (hereinafter referred to as rating officials) or with

Performance Review Boards. Any supporting documents that the agency may prescribe as necessary for agency officials in performance of their duties shall be kept in these files.

* * * * *

3. Sections 294.404(a)(1) and (a)(2) are revised to read as follows:

§ 293.404 Retention schedule.

(a)(1) Except as provided in § 293.405(a), performance ratings or documents supporting them are generally not permanent records and shall, except for appointees to the SES and including incumbents of executive positions not covered by the SES, be retained as prescribed below:

(i) Performance ratings of record, including the performance plans on which they are based, shall be retained for 3 years;

(ii) Supporting documents shall be retained for as long as the agency deems appropriate (up to 3 years);

(iii) Performance records superseded (e.g., through an administrative or judicial procedure) and performance-related records pertaining to a former employee (except as prescribed in § 293.405(a)) need not be retained for a minimum of 3 years. Rather, in the former case they are to be destroyed and in the latter case agencies shall determine the retention schedule; and

(iv) Except where prohibited by law, retention of automated records longer than the maximum prescribed here is permitted for purposes of statistical analysis so long as the data are not used in any action affecting the employee when the manual record has been or should have been destroyed.

(2) When an employee is reassigned within the employing agency, disposition of records in this system, including transfer with the employee who changes positions, shall be as agencies prescribe and consistent with § 293.405(a).

* * * * *

4. Section 293.405(a) is revised to read as follows:

§ 293.405 Disposition of records.

(a) When the OPF of a non-SES employee is sent to another servicing office in the employing agency, to another agency, or to the National Personnel Records Center, the "losing" servicing office shall include in the OPF all performance ratings of record that are 3 years old or less, including the performance plan on which the most recent rating was based, and the summary rating prepared when the employee changes positions, as prescribed in Part 430 of this chapter. Also, the "losing" office will purge from the OPF all performance ratings and performance plans that are more than 3 years old, and other performance-related records, according to agency policy established under § 293.404(a)(2) and in accordance with FPM Supplement 293-31.

* * * * *

PART 300—EMPLOYMENT [GENERAL]

5. The authority citation for Part 300 is revised to read as follows:

Authority: 5 U.S.C. secs. 552, 3301, 3302; E.O. 10577, 3 CFR, 1954–1958 Comp., page 218, unless otherwise noted. Secs. 300.101–300.104 also issued under 5 U.S.C. secs. 7151, 7154; E.O. 11478, 3 CFR, 1966–1970 Comp., page 803, unless otherwise noted.

6. Section 300.602 is revised to read as follows:

* * * * *

Subpart F—Time-in-Grade Restrictions

* * * * *

§ 300.602 Restrictions.

The time-in-grade restrictions in this subpart are subject to the eligibility requirements based on performance in § 335.104 of this chapter.

(a) *Advancement to positions at GS-12 and above.* An agency may advance an employee to a position at GS-12 or above only after he or she has served a minimum of 1 year in the next lower grade.

(b) *Advancement to positions at GS-6 through GS-11.* An agency may advance an employee to a position at GS-6 through GS-11 only after he or she has served a minimum of —

(1) One year in a position two grades lower, when the position to which he or she is advanced is in a line of work properly classified at two-grade intervals; or

(2) One year at the next lower grade when the position to which he or she is advanced is in a line of work properly classified at one-grade intervals.

(c) *Advancement to positions at GS-5 or below.* An agency may advance an employee to a position at GS-5 or below which is not more than two grades above the lowest grade he or she held within the preceding year under a nontemporary appointment.

* * * * *

PART 335—PROMOTION AND INTERNAL PLACEMENT

7. The authority citation for Part 335 continues to read as follows:

Authority: 5 U.S.C. 3301, 3302, E.O. 10577; 3 CFR 1954–1958 Comp. page 218.

8. Section 335.104 is revised to read as follows:

Subpart A—General Provisions

* * * * *

§ 335.104 Eligibility for career ladder promotion.

No employee shall receive a career ladder promotion unless his or her current rating of record under Part 430 of this chapter is "Fully Successsful" (level 3) or higher. In addition, no employee may receive a career ladder promotion who has a rating below "Fully Successful" on a critical element that is also critical to performance at the next higher grade of the career ladder.

PART 430—PERFORMANCE MANAGEMENT

9. The authority citation for Part 430 is revised to read as follows, and the authority for Subpart D is removed.

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

10. Subpart A is added to Part 430 to read as follows:

Subpart A—Performance Management System

Sec.
430.101 Authority.
430.102 Performance management.
430.103 Performance Management Plans.

Subpart A—Performance Management System

§ 430.101 Authority.

Chapters 43, 45, 53, and 54 of title 5, U.S. Code, provide for performance appraisal, awards, pay, and the Performance Management and Recognition System for Federal employees. This subpart supplements and implements those portions of the law as well as Parts 451, 531, and 540 of this chapter.

§ 430.102 Performance management.

Performance management is the systematic process by which an agency integrates performance, pay, and awards systems with its basic management functions for the purpose of improving individual and organizational effectiveness in the accomplishment of agency mission and goals.

§ 430.103 Performance Management Plans.

(a)(1) A Performance Management Plan is the description of an agency's system for implementing all aspects of performance management.

(2) OPM will provide checklists for Performance Management Plans or parts of plans containing all the components necessary for approval of a plan or part of a plan.

(b) Agencies must submit all parts of proposed Performance Management Plans to OPM for review and approval. If major subcomponents of an agency propose to modify an element of the agency's system that is included in the Performance Management Plan Checklist, or to develop a separate system based on agency guidelines, each such subcomponent's proposed plan must be reviewed and approved by the agency and submitted to OPM for final approval. Performance Management Plans shall include each of the following which is applicable to the agency and any additional information requested by OPM:

(1) Performance appraisal systems plans required under 5 U.S.C. 4302, 4302a, and 4312 and Subparts B, C, and D of this part.

(2) Performance Management and Recognition System (PMRS) plans required under Part 540 of this chapter.

(3) Performance awards plans required under Subpart E of this part, including the agency's method for funding and payment of performance awards and the method for determining projected expenditures.

(4) Superior Accomplishment Awards plans required under Part 451, Subpart A.

(5) Productivity Gainsharing Program plans required under Part 451, Subpart C.

(6) Plans for determining and distributing within-grade increases under Part 531, Subpart D of this chapter; and

(7) Plans for awarding quality step increases under Part 531, Subpart E of this chapter.

(c) Agencies shall submit to OPM for review and approval any changes to their Performance Management Plans that modify any element of the agency's system that is included in a Performance Management Plan Checklist.

(d) Each agency shall maintain records and submit reports required by OPM regarding the operation of an agency Performance Management System or any part of a plan.

11. Subpart B of Part 430 is revised to read as follows:

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

Sec.
430.201 General.
430.202 Coverage.
430.203 Definitions.
430.204 Agency performance appraisal systems.
430.205 Appraisal of performance.
430.206 Ratings.
430.207 Performance appraisal advisory committees. [Reserved]
430.208 Training and evaluation.
430.209 OPM review of performance appraisal systems.
430.210 Performance appraisal plans.

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

§ 430.201 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code (5 U.S.C. 4301–4305) provides for the establishment of agency performance appraisal systems and for appraisal of employees. This subpart contains regulations which the Office of Personnel Management (OPM) has prescribed for Performance Appraisal Systems for General Schedule and prevailing rate employees, and implements and supplements the provisions of 5 U.S.C. 4301–4305.

(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 agency goals and objectives;

(2) Identifying individual accountability for the accomplishment of organizational goals and objectives;

(3) Evaluating and improving individual and organizational accomplishments; and

(4) Using the results of performance appraisal as a basis for adjusting basic pay and determining performance awards, training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.

§ 430.202 Coverage.

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

(2) Section 4301(2) of title 5, United States Code, lists employees covered by statute by this subpart. However, employees covered by the PMRS are not covered by this subpart.

(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 and the Postal Rate Commission, or to employees covered by the PMRS consistent with 5 U.S.C. 4302a and 5 U.S.C. 5402.

(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 following are excluded:

(1) Positions for which employment is not reasonably expected to exceed 120 calendar days in a consecutive 12-month period.

(2) Positions filled by noncareer executive assignments under Part 305 of this chapter.

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

§ 430.203 Definitions.

In this subpart, terms are defined as follows—

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

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

"Appraisal system" means a performance appraisal system established by an agency or component of an agency under subchapter I of chapter 43 of title 5, U.S.C. and this subpart which provides for identification of critical and non-critical elements, establishment of performance standards, communication of elements and standards to employees, 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 unacceptable performance on the element would result in unacceptable performance in the position.

"Non-critical element" means a component of an employee'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 an employee's accomplishment of assigned work as specified in the critical and non-critical elements of the employee's position.

"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 agency mission and goals. The Performance Management Plan, which includes the performance appraisal plan, must be submitted to OPM for review and approval as required by Subpart A of this part.

"Performance plan" means the aggregation of all of an employee's written critical and non-critical elements and performance standards).

"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, timeliness, and manner of performance.

"Progress review" means a review of the employee's progress toward achieving the performance standards and is not in itself a rating.

"Rating": see Summary rating.

"Rating of record" means the summary rating required at the time specified in the Performance Management Plan or at such other times as the Plan specifies for special circumstances.

"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 § 430.204 (g) and (h) of this subpart).

§ 430.204 Agency performance appraisal systems.

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

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

(c) Each appraisal system shall encourage employee participation in establishing performance plans. This may be accomplished by means including, but not limited to, the following:

(1) Employee and supervisor discuss and develop performance plan together;

(2) Employee provides to supervisor a draft performance plan;

(3) Employee comments on draft performance plan prepared by supervisor; and

(4) Performance plan is prepared by a group of employees occupying similar positions, with supervisor's approval.

Final authority for establishing such plans rests with the supervising officials.

(d) (1) Each appraisal system shall provide for establishing performance elements and standards based on the requirements of the employee's positions, providing written performance plans to employees at the beginning of each appraisal period (normally within 30 days), and appraising employees based on a comparison of performance with the standards established for the appraisal period.

(2) Accomplishment of organizational objectives should, when appropriate, 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 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 appraisal system shall provide that performance plans shall be in writing and shall be reviewed and approved at the beginning of the appraisal period by a person at a higher level in the organization than that of the appraising official. Agencies may describe exceptions to higher level review and approval of performance plans in their Performance Management Plans.

(g) Each 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.

(h) Each appraisal system shall provide for five summary rating levels. The rating levels must include an "Unacceptable" level, a level between "Unacceptable" and "Fully Successful", a "Fully Successful" level, and two levels which are above "Fully Successful." For purposes of this part, "Unacceptable" is referred to as level 1, the level between "Unacceptable" and "Fully Successful" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the level two levels above "Fully Successful" is level 5.

(i) Each 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.

(j) Except with respect to employees occupying positions in Schedule C as authorized by § 231.3301 of this chapter—

(1) Each appraisal system shall provide for reassigning, reducing in grade, or removing any employee whose performance is "Unacceptable", but only after affording the employee a reasonable opportunity to demonstrate acceptable performance, as required by 5 U.S.C. 4302(b)(6).

(2) At the time that an agency identifies the critical element(s) for which performance is "Unacceptable", the employee must be informed of the performance standards that must be reached in order to be retained.

(3) If, at the conclusion of the opportunity period referred to in paragraph (j)(1) of this section, the employee's performance continues to be "Unacceptable", the agency must initiate reassignment, reduction in grade, or removal, subject to the provisions of 5 U.S.C. 4303.

(k) When an employee's position under any Federal pay system is converted to a pay system covered by this subpart, and when there is no change of duties and responsibilities, the employee's rating of record will be considered to have been derived under 5 U.S.C. 4302 and from the position which the employee now occupies.

§ 430.205 Appraisal of performance.

(a) *Appraisal period.* Each agency appraisal system shall establish an official appraisal period for which a rating of record shall be prepared. Employees shall generally be given a rating of record on an annual basis. Agencies may provide for longer appraisal periods when duties and responsibilities of a position or the tour of duty of a position so warrant. Systems shall provide for preparing a summary rating when an employee changes positions during the appraisal period, if the employee has served for the minimum appraisal period in the position from which he/she has

changed; agency Performance Management Plans must describe how these ratings and any other ratings given throughout the appraisal period will be taken into consideration in deriving the next rating of record.

(b) *Minimum appraisal period.* Agency appraisal systems shall establish a minimum appraisal period of at least 90 days but not more than 120 days.

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

(d) *Appraisal of performance on details.* (1) When employees are detailed or temporarily promoted within the same agency, and the detail or temporary promotion is expected to last 120 days or longer, agencies shall provide written critical elements and performance standards to employees as soon as possible but no later than 30 calendar days after the beginning of a detail or temporary promotion. Ratings on critical elements must be prepared for these details and temporary promotions and must be considered in deriving an employee's next rating of record.

(2) When employees 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 employee's next rating of record.

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

(ii) If an employee 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 based on a performance plan obtained from the borrowing organization.

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

(f) *Appraising disabled veterans.* The performance appraisal and resulting rating of a disabled veteran may not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

§ 430.206 Ratings.

(a) *Written rating.* A written rating of record must be given to each employee as soon as practicable after the end of the appraisal period.

(b) *Appraisal of each critical and non-critical element.* Employees must be appraised on each critical element and non-critical element of the performance plan(s) on which the employee has had a chance to perform.

(c) *Higher level review.* Ratings of record and preformance-based personnel actions shall be reviewed and approved by a person(s) at a higher level in the organization than that of the appraising official. Ratings of record may not be communicated to employees prior to approval by the final reviewer. This does not preclude communication about appraisal of performance between a supervisor and an employee prior to the determination of the rating of record. Ratings of record must be approved by the official with the responsibility for managing the performance awards budget within the agency. Agencies may describe exceptions to higher level approval of ratings of record and performance-based personnel actions in their Performance Management Plans.

(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 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 employee 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 § 293.405(a) of this chapter. A summary rating must be prepared as required by § 430.205(a) of this subpart, which must be taken into consideration by the gaining agency when deriving the next rating of record.

§ 430.207 Performance appraisal advisory committees. [Reserved]

§ 430.208 Training and evaluation.

To assure that agency performance appraisal systems will be effectively implemented, agencies must provide appropriate training and information to supervisors and employees 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.

§ 430.209 OPM review of performance appraisal systems.

(a) OPM will review performance appraisal systems to determine conformance 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 I 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.

§ 430.210 Performance appraisal plans.

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

12. Subpart C is added to Part 430 to read as follows:

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

Sec.

430.301 General.
430.302 Coverage.
430.303 Definitions.
430.304 SES performance appraisal systems.
430.305 Appraisal of performance.
430.306 Ratings.
430.307 Performance Review Boards (PRBs).
430.308 Training and evaluation.
430.309 OPM review of SES appraisal systems.
430.310 SES performance appraisal plans.

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

§ 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 and in Subpart A of this part.

"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 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).

§ 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 five summary rating levels. The rating levels must include an "Unsatisfactory" level, a "Minimally

Satisfactory" level, a "Fully Successful" level and two levels which are above "Fully Successful." For purposes of this subpart, "Unsatisfactory" is referred to as level 1, "Minimally Satisfactory" is level 2, "Fully Successful" is level 3, the level one level above "Fully Successful" is level 4, and the 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" rating of record shall be removed from the Senior Executive Service.

§ 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. The appraisal period will end no earlier than June 30 nor later than September 30 of the same year. 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 Performance Management Plans 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 provied 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 provide 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.

§ 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, 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 prescriber 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 plans.

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

13. Subpart E is added to Part 430 to read as follows:

Subpart E—Performance Awards

Sec.
430.501 Authority and coverage.
430.502 Definitions.
430.503 Policy.
430.504 Funding and payment. [Reserved.]
430.505 Responsibilities of the Office of Personnel Management.
430.506 Agency responsibilities.

Subpart E—Performance Awards

§ 430.501 Authority and coverage.

(a) This subpart contains the Office of Personnel Management's (OPM) regulatory requirements for establishing and conducting the performance awards component of the Performance Management System, under the authority of title 5, United States Code, chapters 43 and 45.

(b) This subpart applies to employees as defined under section 2105 of title 5, United States Code, but does not include employees under the Performance Management and Recognition System, nor employees in the Senior Executive Service.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

(d) Refer to Part 451, Subpart A of this chapter for the regulatory requirements for granting Superior Accomplishment Awards to employees for suggestions, inventions, and special acts or services.

§ 430.502 Definitions.

In this subpart, terms are defined as folows:

"Performance award" means a performance-based cash payment to an employee based on the employee's rating of record. A performance award does not increase base pay.

"Performance award budget" means the amount of money allocated by an agency for distribution as performance awards to covered employees.

"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 agency mission and goals. The Performance Management Plan, which includes the performance awards plan, must be submitted to OPM for review and approval as required by § 430.506 of this subpart and Subpart A of this part.

"Rating of record" means the summary rating required at the time specified in the Performance Management Plan or at such other times as the plan specifies for special circumstances.

§ 430.503 Policy.

(a) The purpose of performance awards is to motivate employees by recognizing and rewarding those who attain high levels of performance.

(b) An award under this subpart shall be based on the employee's rating of record for the current appraisal period for which performance awards are being paid.

(c) (1) Agency procedures for making performance awards determinations must include a requirement for review and approval of each determination by an official of the agency who is at a higher level than the official who made the initial decision, unless there is no official at a higher level in the agency, and also by the official(s) with responsibility for managing the performance awards budget within the agency.

(2) Higher level review and approval of performance awards determinations, as required in paragraph (c)(1) of this section must be made by the officials also responsible for making the performance appraisal decisions.

(d) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(e) A performance award shall be given due weight when rating and ranking an employee for a promotion, as provided in 5 U.S.C. 3362.

(f) OPM encourages agencies to make maximum use of their authorities under chapters 43 and 45 of title 5, United States Code, within existing appropriated funds to establish and administer performance awards programs that best support and enhance agency and national goals and meet employee recognition needs.

§ 430.504 Funding and payment. [Reserved]

§ 430.505 Responsibilities of the Office of Personnel Management.

In accordance with Subpart A of this part, OPM shall review and approve the agency performance awards component of the Performance Management Plan, and any proposed plan revisions which have an impact on how an agency meets statutory and regulatory requirements.

§ 430.506 Agency responsibilities.

(a) The head of each agency shall, within existing appropriated funds, establish a performance awards program as a component of the Performance Management System.

(b) The head of each agency shall submit to OPM—

(1) A performance awards plan, as part of the Performance Management Plan, which includes provisions for determining the agency performance awards fund, and the method for determining projected expenditures, for review and approval as provided in Subpart A of this part;

(2) Proposed plan revisions for review and approval as required in Subpart A of this part;

(3) All recommendations for performance awards in excess of $10,000 up to $25,000 for review and approval;

(4) At the beginning of each fiscal year, the estimated performance awards budget, including the funding level used; and

(5) An annual report on performance awards activities for the past fiscal year.

PART 431—[REMOVED]

14. Part 431 is removed.

PART 451—INCENTIVE AWARDS

15. The heading for Part 451 is revised as set out above and the authority citation for Part 451 is revised to read as follows:

Authority: 5 U.S.C. 4506 and 5407.

16. In Part 451, Subpart B is redesignated as Subpart A and revised to read as follows:

Subpart A—Agency Superior Accomplishment Awards

Sec.

451.101 Authority and coverage.
451.102 Purpose.
451.103 Definitions.
451.104 Policy.
451.105 Payment.
451.106 Responsibilities of the Office of Personnel Management.
451.107 Agency responsibilities.

§ 451.101 Authority and coverage.

(a) This subpart contains the regulatory requirements of the Office of Personnel Management (OPM) for establishing and conducting the Superior Accomplishment Awards component of the Performance Management System under the authority of title 5, United States Code, chapters 43, 45, and 54.

(b) This subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under chapter 54 of title 5, United States Code, are covered by the provisions of this subpart.

(c) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 451.102 Purpose.

Superior accomplishment awards are designed to improve Government efficiency, economy and effectiveness by motivating employees to increase productivity and creativity by rewarding their efforts which benefit the Government.

§ 451.103 Definitions.

"Award" or "superior accomplishment award" means a monetary or non-monetary award for a contribution resulting in tangible benefits or savings and/or intangible benefits to the Government.

"Contribution" means an accomplishment achieved through an individual or group effort in the form of a suggestion, an invention or a special act or service in the public interest connected with or related to official employment, which contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork.

"Intangible benefits" means benefits to the Government which cannot be measured in terms of dollar savings.

"Non-monetary award" means a medal, certificate, plaque, citation, badge, or other similar item that has an award or honor connotation.

"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 agency mission and goals. The Performance Management Plan, which includes the superior accomplishment awards plan, must be submitted to OPM for review and approval as required in Part 430, Subpart A and § 451.107 of this subpart.

"Special act or service" means a contribution or accomplishment in the public interest which is:

(a) A non-recurring contribution either within or outside of job responsibilities;

(b) A scientific achievement; or

(c) An act of heroism.

"Superior accomplishment award": see "Award".

"Tangible benefits" means benefits or savings to the Government that can be measured in terms of dollars.

§ 451.104 Policy.

(a) The Office of Personnel Management encourages agencies to make maximum use of their authorities under chapters 45 and 54 of title 5, United States Code to:

(1) Establish and administer superior accomplishment awards programs which best support and enhance agency and national goals, and meet employee recognition needs; and

(2) Provide for adequate funds to provide for payment of awards, and staffing and support services to assure prompt action on awards recommendations, and effective promotion and publicity of the program.

(b) Superior accomplishment awards programs shall provide for:

(1) The granting of recognition commensurate with the value of the contribution to the Government; and

(2) Obtaining maximum benefits for the Government, whenever possible, by considering the applicability of employee contributions throughout Government.

(c) An award under this subpart may be granted alone or in addition to a performance award granted under Parts 430, Subpart E, and 540 of this chapter, or a quality step increase granted under Part 531, Subpart E.

(d) An award under this part shall not be used as a substitute for other personnel actions, or as a substitute for pay.

(e) To be awarded under this subpart, a contribution must:

(1) Have been made while the contributor was a Government employee;

(2) Be supported by a written justification separate from the employee's rating of record; and

(3) Be approved at a management level higher than that of the individual who recommended use of the suggestion or invention, or recommended the award.

(f) Acceptance of a monetary award consitutes an agreement that the use by the Government of the idea, method, or device for which the award is paid does

not form the basis of a further claim against the Government.

(g) Awards under this part shall be documented in the Official Personnel Folder to reflect the nature of the award, including the amount of award.

(h) Due weight shall be given to an award under this part when rating and ranking an employee for promotion as provided in 5 U.S.C. 3362.

(i) Agencies shall assure that superior accomplishment awards programs are effectively implemented by providing appropriate training and information to supervisors and employees on the program, and establishing methods and procedures to evaluate periodically the effectiveness of the program and implement improvements as needed.

(j) Superior accomplishment awards shall not be mandatory.

§ 451.105 Payment.

(a) An award under this subpart is in addition to regular pay and does not increase an employee's base pay. The award is subject to the withholding of income taxes.

(b) When an award is approved for an employee of another agency, the benefiting agency shall make arrangements to transfer funds to the employing agency to cover the award. If the administrative costs of transferring funds would exceed the amount of the award, the employing agency shall absorb the award costs and pay the award.

(c) When an award is approved for a member of the armed forces for a suggestion, invention, or scientific achievement, arrangements shall be made to transfer funds to the agency having jurisdiction over the member in accordance with Executive Order 11438, "Prescribing Procedures Governing Interdepartmental Cash Awards to the Members of the Armed Forces".

§ 451.106 Responsibilities of the Office of Personnel Management.

(a) OPM shall review and approve the agency superior accomplishment awards component of the Performance Management Plan, and any changes to the plan that modify any element of the agency's system that is included in a Performance Management Plan Checklist, as required in Part 430, Subpart A, of this chapter.

(b) OPM shall review and approve or disapprove all recommendations for agency awards under this subpart in excess of $10,000 up to $25,000.

§ 451.107 Agency responsibilities.

(a) The head of each agency shall submit to OPM:

(1) The superior accomplishment awards component of the Performance Management Plan for review and approval as required in Part 430, Subpart A;

(2) Any changes to the plan that modify any element of the agency's system that is included in a Performance Management Plan Checklist as required in Part 430, Subpart A, for review and approval;

(3) Award recommendations in excess of $10,000 up to $25,000; and

(4) An annual report on program activities and expenditures for the past fiscal year and the amount budgeted for superior accomplishment awards for the current fiscal year.

(b) Agencies shall give consideration to accomplishment and adopted ideas for wider application both within the agency and Government-wide, and provide for prompt referral when appropriate.

17. In Part 451, a new Subpart B is added to read as follows:

Subpart B—Presidential Awards

Sec.
451.201 Authority and coverage.
451.202 Payment.
451.203 Responsibilities of the Office of Personnel Management.

§ 451.201 Authority and coverage.

(a) Under title 5, United States Code, chapters 45 and 54, the President may pay a cash award to and incur necessary expenses for the honorary recognition of an employee who:

(1) By his/her suggestion, invention or other personal effort contributes to the efficiency, economy, or other improvement of Government operations, or achieves a significant reduction in paperwork; or

(2) Performs an exceptionally meritorious special act or service in the public interest in connection with or related to official employment.

(b) During any fiscal year, the President may, subject to the provisions of 5 U.S.C. 4507, award to any Senior Executive career appointee recommended by OPM the rank of—

(1) Meritorious Executive, for sustained accomplishment, or

(2) Distinguished Executive, for sustained extraordinary accomplishment.

(c) Except as provided in paragraph (b) of this section, this subpart applies to employees as defined by section 2105 of title 5, United States Code. Employees covered by the Performance Management and Recognition System under title 5, United States Code, chapter 54 are covered by the provisions of this subpart.

(d) This subpart applies to agencies as defined in section 4501 of title 5, United States Code.

§ 451.202 Payment.

(a) A Presidential award is paid by the agency(ies) primarily benefiting from the employee contribution.

(b) A Presidential award may be in addition to an agency award under Subpart A of this part.

§ 451.203 Responsibilities of the Office of Personnel Management.

(a) The Office of Personnel Management shall review annually agency recommendations for Presidential Rank Awards for career appointees of the Senior Executive Service under section 4507 of title 5, United States Code, and recommend to the President which of those career appointees should receive awards.

(b) The Office of Personnel Management, in accordance with Executive Order 10717, as amended, shall review agency recommendations for the President's Award for Distinguished Federal Civilian Service and recommend to the President which career employees should receive this award.

(c) Under Executive Order 11228, section 2, the Office of Personnel Management has the authority to determine the activity or activities primarily benefiting from any suggestion, invention, or other contribution which forms the basis for a Presidential award under 5 U.S.C. 4504 and 5407.

18. In Part 451, Subpart C is reserved, as follows:

Subpart C—Productivity Gainsharing Programs [Reserved]

PART 531—PAY UNDER THE GENERAL SCHEDULE

19. The heading for Part 531 is revised as set forth above and the authority citation for Part 531, Subpart D, is revised to read as follows:

Authority: 5 U.S.C. 5301, 5335, and 5338 and E.O. 11721 as amended, section 402, unless otherwise noted.

20. Section 531.401 is revised to read as follows:

§ 531.401 Principal authorities.

The following are the principal authorities for the regulations in this subpart:

(a) Section 2301(b)(3) of title 5, United States Code, provides in part that "appropriate incentives and recognition should be provided for excellence in performance."

(b) Section 5301(a)(2) of title 5, United States Code, provides that "pay distinctions be maintained in keeping with work and performance distinctions."

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

21. Section 531.403 is amended by revising the terms "acceptable level of competence" and "critical element", to read as follows:

§ 531.403 Definitions.

In this subpart—

"Acceptable level of competence" means fully successful performance by an employee of the duties and responsibilities of his or her assigned position which warrants advancement of the employee's rate of basic pay to the next higher step of the grade of his or her position, subject to the requirements of § 531.404 of this subpart.

* * * * *

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

* * * * *

22. Section 531.404 is revised to read as follows:

§ 531.404 Earning within-grade increase.

An employee paid at less than step 10 of the grade of his or her position shall earn advancement in pay to the next higher step of that grade upon meeting the following three requirements established by law:

(a) The employee's performance of the duties and responsibilities of his or her assigned position must be at an acceptable level of competence, as defined in this subpart by authority of Section 402 of E.O. 11721, as amended. To be determined at an acceptable level of competence, the employee's most recent rating of record as defined in the agency Performance Management Plan, must be at least level 3 ("Fully Successful").

(1) When a within-grade increase decision is not consistent with the employee's most recent rating of record a more current rating of record must be prepared.

(2) The rating of record used as the basis for an acceptable level of competence determinatio for a within-grade increase must have been assigned no earlier than the most recently completed appraisal period.

(b) The employee must have completed the required waiting period for advancement to the next higher step of the grade of his or her position.

(c) The employee must not have received an equivalent increase during the waiting period.

23. Sections 531.408 (b) and (c) are revised to read as follows:

§ 531.408 Communication of performance requirements.

* * * * *

(b) Employees covered by an appraisal system established under Part 430, Subpart B of this chapter shall be informed of the specific performance requirements that constitute an acceptable level of competence within the time frame and by means of communication of performance standards established under Part 430, Subpart B of this chapter.

(c) Employees not covered by an appraisal system established under Part 430, Subpart B of this chapter shall be informed, under procedures established by the head of the agency, of the specific requirements for performance at an acceptable level of competence within a reasonable time after initial appointment or permanent change in position.

24. In § 531.409, paragraphs (b), (c), (d), and (e)(2)(i) are revised to read as follows:

§ 531.409 Acceptable level of competence determinations.

* * * * *

(b) *Basis for determination.* When applicable, an acceptable level of competence determination shall be based on a current rating of record made under Part 430 of this chapter. For those agencies not covered by 5 U.S.C. chapter 43 and for employees in positions excluded from 5 U.S.C. 4301, an acceptable level of competence determination shall be based on minimal performance appraisal requirements issued by OPM. If an employee has been reduced in grade because of "Unacceptable" performance and has served in one position at the lower grade for at least the minimum appraisal period established by the agency, a rating of record at the lower grade shall be used as the basis for an acceptable level of competence determination.

(c) *Delay in determination.* (1) An acceptable level of competence determination must be delayed when either of the following applies:

(i) An employee has not had the minimum period of time established by the agency to demonstrate acceptable performance because he or she has not been informed of the specific requirements for performance at an acceptable level of competence in his or her current position, and the employee has not been given a performance rating in any position within 90 days before the end of the waiting period; or

(ii) An employee is reduced in grade because of unacceptable performance to a position in which he or she is eligible for a within-grade increase or will become eligible within the minimum period of time established by the agency to demonstrate acceptable performance.

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

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

(ii) An acceptable level of competence determination shall then be made upon completion of the minimum appraisal period established by the agency performance appraisal plan and shall be based on the employee's rating of record completed at the end of the appraisal period.

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

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

(1) Because of absences that are creditable service in the computation of a waiting period or periods under § 531.406 of this subpart;

(2) Because of paid leave;

(3) Because the employee received service credit under the back pay provisions of subpart H of Part 550 of this chapter;

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

(5) Because of long-term training.

In such a situation, there shall be a presumption that the employee would have performed at an acceptable level

of competence had the employee performed the duties of his or her position of record for the minimum appraisal period under the applicable agency performance appraisal system.

* * * * *

(e) Notice of determination.

(2) * * *

(i) Set forth the reasons for any negative determination and the respects in which the employee must improve his or her performance in order to be granted a within-grade increase under § 531.411 of this subpart.

* * * * *

25. Section 531.411 is revised to read as follows:

§ 531.411 Continuing evaluation after withholding a within-grade increase.

When a within-grade increase has been withheld, an agency may, at any time thereafter, prepare a new rating of record for the employee and grant the within-grade increase when it determines that he or she has demonstrated sustained performance at an acceptable level of competence. However, the agency shall determine whether the employee's performance is at an acceptable level of competence after no more than 52 calendar weeks following the original eligibility date for the within-grade increase and, for as long as the within-grade increase continues to be denied, determinations will be made after no longer than each 52 calendar weeks.

Subpart E—Quality Step Increases

26. The authority citation for Part 531, Subpart E, is revised to read as follows: Authority: 5 U.S.C. 5336 and E.O. 11721, as amended.

27. In Subpart E, §§ 531.503 and 531.504 are revised to read as follows:

* * * * *

§ 531.503 Purpose of quality step increases.

The purpose of quality step increases is to recognize outstanding performance by granting faster than normal step increases.

§ 531.504 Level of performance required for quality step increase.

A quality step increase shall not be required but may be granted only to an employee who receives a rating of record at level 5 (Outstanding), as defined in Part 430, Subpart B, of this chapter.

28. Sections 531.505 through 531.507 are revised to read as follows:

§ 531.505 Restrictions on granting quality step increases.

As provided by 5 U.S.C. 5336, a quality step increase may not be granted to an employee who has received a quality step increase within the preceding 52 consecutive calendar weeks.

§ 531.506 Effective date of quality step increase.

A determination to grant a quality step increase should be made as soon as practicable after a rating of record is approved. The quality step increase should be made effective as soon as possible after it is approved.

§ 531.507 Agency plans for granting quality step increases.

Each agency shall include a plan for granting quality step increases in the agency's Performance Management Plan, as required by Part 430, Subpart A of this chapter. The Plan shall—

(a) Be as simple as practicable;

(b) Provide for delegation of authority to grant quality step increases to the lowest practicable level of management;

(c) Be reviewed and approved in accordance with the requirements in Part 430, Subpart A of this chapter;

(d) Provide for informing employees, at least annually, of the number of quality step increases granted in the agency by grade level; and

(e) Provide for appropriate training and information to all employees on QSI's and establish methods and procedures to evaluate periodically the effectiveness of the use of QSI's, and to implement improvements as needed.

29. In Part 531, Subpart F is removed.

30. In Part 532, Subpart H is removed.

PART 771—AGENCY ADMINISTRATIVE GRIEVANCE SYSTEM

31. The authority for Part 771 continues to read as follows:

Authority: 5 U.S.C. 1302, 3301, 3302, 7301; E.O. 9830, 3 CFR 1943–1948 Comp., pages 606–624, E.O. 11222, 3 CFR 1964–1969 Comp., page 306.

32. In § 771.206, paragraph (c)(3) is removed, and paragraph (c)(1)(x) is revised, to read as follows:

Subpart B—General

§ 771.206 Exclusions.

* * * * *

(c) Matters excluded.

(1) * * *

(x) The granting of or failure to grant or the amount of an award granted under Part 430, Subpart E; or the granting of or failure to grant or the amount of an award granted under Part 451; or the adoption of or failure to adopt an employee suggestion or invention under Part 451; or the granting of or failure to grant an award of the rank of meritorious or distinguished executive under 4507 of title 5, United States Code and Part 451, Subpart B of this chapter.

* * * * *

[FR Doc. 86–5106 Filed 3–10–86; 8:45 am]

BILLING CODE 6325-01-M

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Parts 293 and 430

Performance Management System: Performance Awards, Recordkeeping, Performance Appraisal Administration, etc.

AGENCY: Office of Personnel Management.

ACTION: Proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is issuing proposed regulations on the Performance Management System (PMS) in conjunction with the final rules published elsewhere in today's **Federal Register.** In response to agency requests, these proposed regulations contain provisions to make the PMS performance awards, recordkeeping, and performance appraisal administration more consistent with the regulations recently established for the Performance Management and Recognition System (PMRS). Because these provisions are substantially different from the proposed PMS regulations, OPM is publishing them for public comment.

DATE: To be considered, comments must be received no later than, April 10, 1986.

ADDRESS: Send or deliver written comments to: John W. Fossum, Assistant Director for Performance Management, Workforce Effectiveness and Development Group, Office of Personnel Management, 1900 E Street NW., Room 7520, Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Allen B. Levan (202) 632-5653.

SUPPLEMENTARY INFORMATION:

On August 30, 1985, at 50 FR 35505–35506 and 50 FR 35513–35530, OPM issued proposed regulations on the Performance Management System. Final regulations on most of the PMS provisions are published elsewhere in today's **Federal Register.** In response to the overwhelming majority of the commenters' suggestions, OPM has revised the regulations to make them as consistent as possible with PMRS regulations. These proposed regulations contain further provisions that would enhance consistency with PMRS, but are substantially different from the proposed regulations. OPM is providing a 30-day period for interested parties to comment on these changes, so that agencies will have ample time to prepare and implement complete Performance Management Plans for appraising and rewarding all employees' performance.

Proposed Changes

Following is a detailed outline of the proposed changes to the regulations, identifying each issue, a summary of any comments received on the issue in the proposed regulations, and a discussion of OPM rationale for the proposed changes. The comments reflected in these discussions were received from 29 agencies, four labor organizations, two members of Congress, one professional association, and one individual commenter. The issues are listed in sequential order as they appeared in the proposed regulations, with each "Proposed Change" paragraph indicating the proposed new location of the regulation on the issue.

1. *Issue:* Filing and Transfer of Performance Records (Part 293, Subpart C).

Summary of Comments: Fifteen agencies and one professional organization commented on the proposed regulations requiring the filing and transfer of performance records with employees' Official Personnel Folders (OPF's). Twelve of the agencies suggest that performance records filing systems be the same for all employees as they currently are for PMRS employees; i.e., that agencies be given the option to file performance records for all employees in either the OPF or the Employee Performance File (EPF) system. If only one system must be used, four agencies prefer to use the EPF, while three agencies prefer to use the OPF. Two agencies object to filing duplicate records.

Discussion: OPM agrees that agencies should have the option of filing performance ratings of record and the performance plans on which they are based, in either the OPF or the EPF, provided that the ratings of record for 3 years and the performance plan on which the most recent rating was based are transferred in the OPF when the employee leaves his/her position. That change is provided in the final regulations, published elsewhere in today's **Federal Register** at Subpart D of Part 293, which provides for the Employee Performance File System.

Proposed Change: The proposed regulation would revise Part 293, Subpart C, which prescribes requirements for the maintenance and content of the OPF. The proposed regulation is a technical change that would bring the OPF subpart into conformance with the EPF subpart, indicating that performance ratings of records, and the performance plans on which they are based, may be filed in either the OPF or the EPF.

Additionally, due to a change in Part 430 regulations, agencies are required to prepare and forward a summary rating when the employee changes positions. A provision would be added to Part 293 to indicate that agencies must forward the summary rating in the OPF, along with ratings of record as described in the discussion above.

2. *Issue:* Performance Appraisal Advisory Committees.

Summary of Comments: One labor organization objects to the requirements for higher level management review, and to the restriction on communicating ratings of record prior to higher level management approval, stating that these requirements would result in the clandestine establishment of bell curves. One labor organization says that employees should be informed of how their performance plans and ratings reflect employee contributions to the accomplishment of organizational objectives. One agency thinks that the PMS and PMRS regulations should not be different in appraisal procedures. One agency states that the regulations should be consistent in "process". One agency thinks that creating procedures parallel to the PMRS would contribute to ease of understanding of the regulations.

Discussion: One mechanism in the PMRS regulations that promotes the equitable application of performance standards, guards against the establishment of bell curves, and helps assure that individual performance standards reflect the goals of the organization is the Performance Standards Review Boards. These Boards, through representation by the covered employees themselves, provide an opportunity for the employees to obtain an overview of the performance standards and performance ratings and to make recommendations for improving performance appraisal in the agency.

Proposed Change: The proposed regulations provide that a similar opportunity be created for PMS employees by providing for the establishment of Performance Appraisal Advisory Committees (§ 430.407). The Committees would have advisory functions similar to those provided to Performance Standards Review Boards.

3. *Issue:* General Comments on Part 531, Subpart F.

Summary of Comments: Two agencies suggest that, to preclude confusion and maintain consistency for supervisors and employees, performance and cash awards programs should be as consistent and equitable as possible for both populations.

Discussion: OPM agrees that wherever possible the performance awards systems for employees under the General Schedule (GS), Prevailing Rate System, and PMRS should be as consistent as possible. Congressional intent for performance management has most recently and clearly been demonstrated in the history of the legislation creating the PMRS. Consistency among the systems would foster ease of administration, reduce confusion and clearly support pay for performance under the Performance Management umbrella, while at the same time achieving equity among the different systems covering all employees. OPM believes that consistency and equity among these systems can be achieved while meeting all statutory requirements provided for the different groups of employees.

Proposed Change: Because provisions for funding and payment of performance awards parallel to PMRS have not been previously proposed for public comment, OPM is requesting comments on those provisions, as outlined below.

4. *Issue:* Reduction of Performance Awards Amounts, Limiting Total Awards to 20 Percent of Base Pay (§ 531.605).

Summary of Comments: Two agencies recommend allowing higher awards, consistent with the PMRS provisions which allow for performance awards up to 20 percent of base pay for unusually outstanding performance. One agency objects to reducing award amounts because it is perceived as unfair, and an administrative burden for agencies. One agency suggests that within-grade increases be excluded when determining the 20 percent-of-base-pay limit. One agency thinks that an employee should not receive both a quality step increase and a performance award in the same 1-year period.

Discussion: OPM agrees that the "discounting" features of the performance awards program for GS and WG are inconsistent with performance awards provisions of the PMRS, and therefore, create inequity between the two systems.

Proposed Change: The language previously contained in § 531.6.5(b)(3) has been removed. New language would be added in § 430.504 (e)(1) and (e)(2) providing discretionary authority to consider recent promotions in determining the amount of a performance award. This new language would parallel the PMRS regulations.

5. *Issue:* Level of Performance Required for Performance Award (§ 531.606(a)(4)).

Summary of Comments: One agency thinks that OPM should permit performance awards for employees who receive a "Fully Successful" summary rating, as permitted for PMRS employees. One agency suggests adding the requirement that, when an employee receives a performance award for performance of "Exceeds Fully Successful" on an element, the employee's summary rating must be at least "Fully Successful". Another agency suggests clarifying that the elements for which the employee receives a performance award must be critical elements, and that the rating on which a performance award is based must be a current rating.

Discussion: OPM believes that in order to achieve an effective pay-for-performance program which is perceived by employees to be both fair and equitable, awards amounts must be commensurate with the level of performance sustained by employees as evidenced by their current rating of record. The higher the level of performance attained, the larger the reward should be. To provide for consistency and equity, employees covered by Part 430, Subpart E, should have the same opportunity for recognition of their high level performance as those who supervise them.

Proposed Change: Performance awards provisions contained in Part 430, Subpart E, would parallel the performance awards provisions of the PMRS and would not prohibit awards for performance rated "Fully Successful". Performance awards under the subpart would be granted only based on a current rating of record as is provided in PMRS.

6. *Issue:* Prohibition on Mandatory Performance Awards and Funding of Performance Awards (§ 531.606(b) and § 531.609).

Summary of Comments: One agency thinks that awards should be mandatory for General Schedule and prevailing rate employees who receive "Outstanding" ratings. One agency comments that it has a union contract requiring mandatory performance awards, and would be unable to implement this provision until the contract expires. Two agencies point out that the paragraphs cross-referenced in this provision (§§ 430.204(t) and 431.204(w) of the proposed regulations) do not mandate awards, and request that OPM clarify this language. Two labor organizations suggest that OPM delete the prohibition on mandatory awards, and one organization suggests that, on the contrary, awards should be made mandatory, to provide incentive to employees.

One agency recommends that OPM regulate funding levels for these awards, consistent with the PMRS regulations on performance awards. Three agencies request clarification of the provisions for determining funding for performance awards; one suggests using the same factors prescribed in the PMRS regulations for determining the funding level.

Discussion: OPM agrees that, within existing appropriated funds, there should be consistency with the provisions of the PMRS which provide for mandatory awards for overall outstanding performance. This would provide for equitable recognition of "Outstanding" performance by employees as is now provided for supervisors, and would support the pay-for-performance concept.

In line with agency comments to parallel the PMRS, OPM agrees that agencies should establish funding levels for performance awards for GS and WG employees within existing appropriated funds, thereby providing for consistency and equity between the two systems.

Proposed Change: Provisions in the new Part 430, Subpart E, would provide for performance awards that are consistent with those granted to employees covered by the PMRS. A new section on "Funding and Payment" (§ 430.504) would be added to provide that agencies should establish annual funding, within existing appropriated funds, and should expend these funds for performance awards. Section 430.504 would provide that agencies should pay performance awards of at least 2 percent of base pay for employees receiving a rating of record of level 5 ("Outstanding").

7. *Issue:* Payment of Performance Awards (§ 531.607).

Summary of Comments: One agency suggests that OPM add a paragraph to this provision, indicating that an employee cannot appeal non-payment of a performance award, similar to the provision on PMRS performance awards.

Discussion: Because of the provision to pay awards within the limit of existing appropriations, OPM agrees that non-payment of a performance award should not be appealable.

Proposed Change: Language has been proposed in § 430.504(g) stating that failure of an agency to pay an award may not be appealed.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because the regulations will only affect Government employees.

List of Subjects

5 CFR Part 293

Archives and records, Government employees, Privacy.

5 CFR Part 430

Administrative practice and procedure, Decorations, Medals, Awards, Government employees.

U.S. Office of Personnel Management.

Constance Horner,

Director.

Accordingly, the Office of Personnel Management proposes to amend Title 5, Code of Federal Regulations, as follows:

PART 293—PERSONNEL RECORDS

1. The authority citation for Part 293 continues to read as follows:

Authority: 5 U.S.C. 552, 4302a, and 4315; E.O. 12107 (December 28, 1978); 3 CFR 1954–1958 Comp.; 5 U.S.C. 1103, 1104 and 1302; 5 CFR 7.2; E.O. 9830; 3 CFR 1943–1948 Comp.

2. In Subparf C, § 293.304 is revised to read as follows:

Subpart C—Official Personnel Folder.

* * * * *

§ 293.304 Maintenance and content of folder.

The head of each agency shall maintain in the Official Personnel Folder the reports of selection and other personnel actions named in section 2951 of title 5, United States Code. Performance ratings of record, including the performance plans on which they were based, may also be maintained in the Official Personnel Folder. The folder shall also contain long-term records affecting the employee's status and service as required by OPM's instructions and as designated in FPM Supplement 293–31.

3. Section 293.306(b) is revised to read as follows:

§ 293.306 Use of existing folders upon transfer or reemployment.

* * * * *

(b) Before transferring the Official Personnel Folder, the losing agency shall:

(1) Remove those records of a temporary nature filed on the left side of the folder, except for performance ratings of record and the performance plan on which the most recent rating was based;

(2) Transfer performance ratings of record and the performance plan on which the most recent rating was based from the Employee Performance File of non-SES employees to their Official Personnel Folder, if the ratings and plans are not maintained by the agency in the Official Personnel Folder;

(3) Add the employee's summary rating, prepared when the employee changes positions, as provided in Part 430; and

(4) Ensure that all permanent documents of the folder are complete, correct, and present in the folder in accordance with FPM Supplement 293–31.

PART 430—PERFORMANCE MANAGEMENT

4. The authority citation for Part 430 continues to read as follows:

Authority: 5 U.S.C. chapters 43, 45, 53, and 54.

5. Section 430.207 is added, to read as follows:

§ 430.207 Performance appraisal advisory committees.

(a) Each agency shall establish one or more performance appraisal advisory committees. Each committee will consist of at least six members chosen by the agency head or his or her designee. One-half of the committee must be composed of employees covered by the PMS and in the competitive service. The chair of the committee will be chosen by the head of the agency or his or her designee.

(b) Agency Performance Management Plans shall set forth the composition and operating procedures for the committee(s). Committees shall become operational upon OPM's approval of the agency's Performance Management Plan and shall report to their respective agency heads or designees at least annually.

(c) The committee(s) shall review representative performance plans and report to the head of the agency or his or her designee at least annually on the quality of the plans including the difficulty of the performance standards. The committee shall advise the head of the agency or his or her designee on ways to improve performance plans but shall have no authority to approve or modify performance plans. Such reviews shall be conducted after performance plans have been approved and communicated to employees.

(d) Committees shall review the ratings and make recommendations to the head of the agency or his or her designee regarding improving the application of standards but shall not recommend any distribution of ratings. Committees shall have no authority to approve or modify performance ratings. Such reviews shall be conducted after ratings of record have been approved and communicated to employees.

(e) Committees are also responsible for studying the feasibility of organizational awards.

6. Section 430.504 is added, to read as follows:

§ 430.504 Funding and payment.

Each agency will, within existing appropriated funds, fund and pay performance awards as follows:

(a)(1) At the beginning of each fiscal year, each agency shall determine the amount of money available for performance awards for that fiscal year.

(i) Each agency should pay a minimum of .75 percent of the estimated aggregate amount of covered employees' basic pay for that fiscal year; and

(ii) An agency should not spend more for performance awards than 1.5 percent of the estimated aggregate amount of covered employees' basic pay for any fiscal year.

(2) Agencies having 20 or fewer covered employees, that have determined that the funding under paragraph (a)(1) of this section is insufficient to provide an effective performance awards distribution, must submit to OPM, at the beginning of each fiscal year, a higher level of funding for performance awards, which should not exceed 10 percent of the aggregate amount of basic pay for covered employees in that fiscal year. The submission shall be in writing and shall include the level of funding desired, and the reasons for and sufficient data to support funding at the higher level. Sufficient data will include, at a mimimum:

(i) Number of employees;

(ii) Distribution of ratings;

(iii) Awards distribution methodology;

(iv) Awards amounts that would be payable under paragraph (a)(1) of this section; and

(v) Award amounts that will be payable under the proposed level of funding.

(3) In determining the estimated aggregate amount of covered employees' basic pay for a fiscal year, consideration should be given to the following factors:

(i) The number of employees covered during the previous year;

(ii) The aggregate rates of basic pay for those employees;

(iii) Significant changes in the number of covered employees expected in the current fiscal year, such as by attrition,

reorganization, expansion, or reduction in force;

(iv) The distribution of performance ratings in the agency; and

(v) The amount of the general increases under 5 U.S.C. 5303 and 5 U.S.C. 5305, within-grade increases under 5 U.S.C. 5335, and quality step increases under 5 U.S.C. 5336, that will be paid to covered employees in the current fiscal year.

(4) Funds for incentive awards under Part 451 of this chapter shall not be included in the performance awards fund, inasmuch as incentive awards are sperarate from performance awards.

(b)(1) Performance awards shall be paid at least annually, on a date or within a time period established by the agency, except that agencies should pay these awards as close to the end of the employee's performance appraisal period as the agency deems practicable. This does not preclude agencies from granting Superior Accomplishment Awards under Part 451, Subpart A of this chapter at any time during the appraisal period.

(2) An employee is eligible to receive a performance award if he/she is in a position covered by this subpart on the last day of the current performance appraisal period for which performance awards determinations are being made.

(c)(1) Performance awards must be based on an employee's rating of record for the current appraisal period for which performance awards are being made. An employee with a rating of level 5 ("Outstanding") should receive a performance award of at least 2 percent of base pay, but not more than 10 percent in any given year. Based on an agency head's determination that an employee has performed at an unusually outstanding level, the agency may grant a performance award not to exceed 20 percent of base pay.

(2) An employee with a rating at level 4 should receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance awards budget, any award granted to employees in the same grade rated at level 4 must be less than any award received by employees related at level 5.

(3) An employee with a rating at level 3 may receive a performance award, not to exceed 10 percent of base pay in any given year. Within each organizational element of an agency having responsibility for managing a performance awards budget, any award granted to employees in the same grade rated at level 3 must be less than any award received by employees rated at level 4.

(d) If an agency determines the amount of performance awards using a percentage of base pay, the rate of basic pay on the last day of the performance appraisal period for which awards are being paid must be used to calculate the amount of the awards.

(e)(1) In granting performance awards as provided in paragraph (c) of this section, if an employee has been promoted within the preceding year, the agency head may take this into account in determining the amount of the employee's performance award that otherwise would have been specified in the agency's Performance Management Plan.

(2) Performance awards that have been adjusted because of promotions will not be considered in meeting the requirements of paragraphs (c)(2) and (c)(3) of this section for smaller awards at a lower rating level.

(f)(1) Except as provided in paragraph (f)(2) of this section, when an agency cannot prepare a rating of record for an employee when scheduled in the Performance Management Plan, the employee's rating period must be extended so that the minimum appraisal period is provided, after which a rating of record shall be prepared as required in § 430.206(e) and used as the basis for granting a performance award in accordance with the Performance Management Plan.

(2)(i) The agency head will determine whether an employee will be granted a performance award when an agency cannot prepare a rating of record for an employee when specified in the Performance Management Plan because the employee has not served during the agency appraisal period for the minimum appraisal period; and

(A) Is on long-term training; or

(B) Is on an approved absence that would be creditable service under § 531.406 of this chapter; or

(C) In an agency having established an annual appraisal period for all covered employees, is on leave without pay (LWOP) for a period of time such that the employee is not in a pay status during the agency's appraisal period for at least the minimum appraisal period; or

(D) Is newly appointed to the Government within 90 days of the end of the agency's appraisal period (the agency having established an annual appraisal period for all covered employees). For purposes of this paragraph:

(1) A reinstated employee is considered to be a newly appointed employee;

(2) An employee reemployed under Part 351, Subpart J, of this chapter, is not considered to be a newly appointed employee; and

(3) An employee receiving a new appointment without a break in service of one or more workdays is not considered to be a newly appointed employee.

(ii) If an award is granted, the following procedures will be used to determine the award amount:

(A) The employee's rating of record under 5 U.S.C. 4302 or 4302a is extended and the appropriate award is granted, if that rating was given no earlier than the previous rating period; or

(B) If there is no rating of record that can be extended, the employee receives a performance award equivalent to that granted for a level 3 (Fully Successful) rating, as specified in the agency's Performance Management Plan.

(g) Failure of an agency to pay a performance award under this subpart may not be appealed.

(h) Awards paid under this subpart do not increase the rate of basic pay and are subject to the withholding of income taxes.

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