

## SUBCHAPTER C—JOINT REGULATIONS WITH THE OFFICE OF PERSONNEL MANAGEMENT

### PART 1330—HUMAN RESOURCES MANAGEMENT

#### Subparts A–C [Reserved]

#### Subpart D—Performance Appraisal Certification for Pay Purposes

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AUTHORITY: 5 U.S.C. 5307(d).

SOURCE: 69 FR 45550, 45551, July 29, 2004, unless otherwise noted.

#### Subparts A–C [Reserved]

#### Subpart D—Performance Appraisal Certification for Pay Purposes

NOTE TO SUBPART D: Regulations identical to this subpart appear at 5 CFR part 430, subpart D.

##### § 1330.401 Purpose.

(a) This subpart implements 5 U.S.C. 5307(d), as added by section 1322 of the Chief Human Capital Officers Act of 2002 (Title XIII of Public Law 107–296, the Homeland Security Act of 2002; November 25, 2002), which provides a higher aggregate limitation on pay for certain members of the Senior Executive Service (SES) under 5 U.S.C. 5382 and 5383 and employees in senior-level (SL) and scientific or professional (ST) positions paid under 5 U.S.C. 5376. In addition, this subpart is necessary to administer rates of basic pay for members of the SES under 5 U.S.C. 5382, as amended by section 1125 of the National Defense Authorization Act for Fiscal Year 2004. The regulations in this subpart strengthen the application of pay-for-performance principles to senior executives and senior professionals. Specifically, the statutory provisions authorize an agency to apply a higher maximum rate of basic pay for senior executives (consistent with 5

CFR part 534, subpart D, when effective) and apply a higher aggregate limitation on pay (consistent with 5 CFR part 530, subpart B) to its senior employees, but only after OPM, with OMB concurrence, has certified that the design and application of the agency's appraisal systems for these employees make meaningful distinctions based on relative performance. This subpart establishes the certification criteria and procedures that OPM will apply in considering agency requests for such certification.

(b) Senior executives generally may receive an annual rate of basic pay up to the rate for level III of the Executive Schedule under 5 U.S.C. 5382 and 5 CFR part 534, subpart D, when effective. Senior employees generally may receive total compensation in a calendar year up to the rate for level I of the Executive Schedule under 5 U.S.C. 5307(a) and 5 CFR 530.203(a). Only employees covered by an appraisal system that OPM, with OMB concurrence, certifies under this subpart are eligible for a maximum annual rate of basic pay for senior executives up to the rate for level II of the Executive Schedule (consistent with 5 U.S.C. 5382 and 5 CFR part 534, subpart D, when effective) and a higher aggregate pay limitation equivalent to the total annual compensation payable to the Vice President (consistent with 5 U.S.C. 5307(d) and 5 CFR 530.203(b)).

##### § 1330.402 Definitions.

In this subpart—

*Appraisal system* means the policies, practices, and procedures an agency establishes under 5 U.S.C. chapter 43 and 5 CFR part 430, subparts B and C, or other applicable legal authority, for planning, monitoring, developing, evaluating, and rewarding employee performance. This includes appraisal systems and appraisal programs as defined at § 430.203 and performance management systems as defined at § 430.303.

*GPR* means the Government Performance and Results Act of 1993.

*OMB* means the Office of Management and Budget.

*OPM* means the Office of Personnel Management.

*Outstanding performance* means performance that substantially exceeds the normally high performance expected of any senior employee, as evidenced by exceptional accomplishments or contributions to the agency's performance.

*Performance evaluation* means the comparison of the actual performance of senior employees against their performance expectations and may take into account their contribution to agency performance, where appropriate.

*Performance expectations* means critical and other performance elements and performance requirements that constitute the senior executive performance plans (as defined in § 430.303) established for senior executives, the performance elements and standards that constitute the performance plans (as defined in § 430.203) established for senior professionals, or other appropriate means authorized under performance appraisal systems not covered by 5 U.S.C. chapter 43 for communicating what a senior employee is expected to do and the manner in which he/she is expected to do it, and may include contribution to agency performance, where appropriate.

*Program performance measures* means results-oriented measures of performance, whether at the agency, component, or function level, which include, for example, measures under the Government Performance and Results Act.

*PRB* means Performance Review Board, as described at § 430.310.

*Relative performance* means the performance of a senior employee with respect to the performance of other senior employees, including their contribution to agency performance, where appropriate, as determined by the application of a certified appraisal system.

*Senior employee* means a senior executive or a senior professional.

*Senior executive* means a member of the Senior Executive Service (SES) paid under 5 U.S.C. 5383.

*Senior professional* means an employee in a senior-level (SL) or scientific or

professional position (ST) paid under 5 U.S.C. 5376.

**§ 1330.403 System certification.**

(a) The performance appraisal system(s) covering senior employees must be certified by OPM, with OMB concurrence, as making meaningful distinctions based on relative performance before an agency may apply a maximum annual rate of basic pay for senior executives equal to the rate for level II of the Executive Schedule or apply an annual aggregate limitation on payments to senior employees equal to the salary of the Vice President under 5 U.S.C. 5307(d)). OPM, with OMB concurrence, will certify an agency's appraisal system(s) only when a review of that system's design, application, and administration reveals that the agency meets the certification criteria established in § 1330.404 and has followed the procedures for certifying agency appraisal systems in § 1330.405.

(b) Except as provided in paragraph (c) of this section, agencies subject to 5 U.S.C. chapter 43 and 5 CFR part 430 seeking certification of their appraisal systems must submit systems that have been approved by OPM under § 430.312 or § 430.210, as applicable. In some agencies, the performance appraisal system(s) covers employees in many organizations and/or components, and their ability to meet the certification criteria in § 1330.404 may vary significantly. In such cases, an agency may establish and/or submit separate performance appraisal systems for each of these distinct organizations and/or components to ensure timely certification of those performance appraisal system(s) that meet the criteria. New appraisal systems established under 5 CFR part 430, subpart B or C, as applicable based on the employees covered, must be approved by OPM.

(c) When an agency establishes a new appraisal system for the purpose of seeking certification under this subpart, the agency may submit that system for certification even if it has not yet been approved by OPM under § 430.312 or § 430.210, as applicable. OPM will certify, with OMB concurrence, only those systems that OPM determines meet the approval requirements