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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 430

RIN 3206–AO81

Assuring Responsive and Accountable Federal Executive Management

AGENCY: Office of Personnel Management.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Personnel Management (OPM) is proposing to remove the prohibition of a forced distribution of performance rating levels within the Senior Executive Service (SES) as well as eliminate diversity, equity, and inclusion (DEI) language within SES performance management regulations. Currently, agencies are prohibited from establishing quotas or limits on the number or proportion of the various rating levels assigned, meaning that each senior executive potentially can receive any rating based on their performance, irrespective of how other senior executives perform within the agency. However, governmentwide SES ratings data have consistently shown that virtually all SES receive the highest rating levels (*i.e.,* levels 4 and 5) despite documented reports of SES failings. Removing the prohibition on forced distribution would allow agencies to establish and enforce limits on the highest SES rating levels, thereby increasing rigor in the SES appraisal process and leading to a more normalized distribution of SES ratings across the Federal Government.

DATES: Comments must be received on or before June 2, 2025.

ADDRESSES: You may submit comments, identified by RIN number ''3206–AO81,'' and title using the following method:

- *Federal eRulemaking Portal: https://www.regulations.gov.* Follow the instructions for submitting comments.

The general policy for comments and other submissions from members of the public is to make these submissions available for public viewing at *https://www.regulations.gov* without change, including any personal identifiers or contact information.

As required by 5 U.S.C. 553(b)(4), a summary of this rule may be found in the docket for this rulemaking at *https://www.regulations.gov.*

FOR FURTHER INFORMATION CONTACT: Noah Peters, Senior Advisor to the Director, 202–606–8046 or by email at *SESpolicy@opm.gov.*

SUPPLEMENTARY INFORMATION:

Background

The Senior Executive Service (SES) is a corps of top-level Federal executives who provide leadership and oversee government operations, bridging the gap between political appointees and career civil servants. The SES was established by the Civil Service Reform Act (CSRA) of 1978 and became effective in July 1979. CSRA envisioned a senior executive corps with solid executive expertise, public service values, and a broad perspective of Government. The CSRA established the SES as a distinct personnel system that applies the same executive qualifications requirements to all members. The system was designed to provide greater authority to agencies to manage their executive resources, including the flexibility for selecting and developing Federal executives within a framework that preserves the larger interests of the Government.

In 2004, the SES adopted a pay-for-performance system established under Section 1125 of Public Law 108–136 (November 24, 2003), which amended 5 U.S.C. 5382. The new pay-for-performance system replaced the six-level SES pay structure previously used with an open-range system tied to individual performance. Automatic pay increases were eliminated, and salaries, raises, and bonuses became contingent on rigorous performance evaluations. Agencies also had to obtain performance appraisal system certification from OPM and the Office of Management and Budget (OMB) in order to exceed the standard SES pay cap of level III of the Executive Schedule, allowing top salaries to reach level II. The reforms aimed to increase accountability, attract top talent, and reward high performers.

In 2012, OPM issued a model SES performance appraisal system referred to as the ''Basic SES Performance Appraisal System,'' [1] which created a consistent and uniform framework to communicate expectations and evaluate the performance of SES members across agencies. The Basic SES system was refined in 2016 following a 2015 Government Accountability Office (GAO) report and OPM updates to SES performance management regulations.

SES Performance Management

SES performance is managed through a structured performance appraisal system that includes annual appraisals of senior executives based on individual and organizational performance as they apply to the senior executive's area of responsibility and control. Subpart C of 5 CFR part 430 provides the requirements for managing the performance of senior executives. Each agency is required to have a performance management system that incorporates standards specified in 5 CFR 430.305. Senior executives are appraised at least annually and are assigned a numerical rating ranging from Level 1 ''Unsatisfactory'' to Level 5 ''Outstanding.'' OPM does not anticipate that the appraisal process for an individual employee will change under this proposed rule. Nothing is changing in terms of how a rating official issues an initial summary rating and agencies will still be required to provide training to SES members on the appraisal system. All SES within an agency will be fairly evaluated against the SES appraisal system performance requirements and performance standards. SES initial summary ratings will continue to be derived through a ''point score'' calculation and agency-level Performance Review Boards (PRB) will likely rank SES based on their appraisal point scores to delineate those SES who will be recommended for the highest ratings. It will be up to the agency-level PRB to make recommendations to the appointing authority on SES annual summary ratings consistent with the forced distribution rating limit. OPM expects that, in accordance with the Presidential Memorandum titled ''Restoring Accountability for Career Senior Executives'' (90 FR 8481; Jan. 30, 2025)

[1] OPM, ''*Senior Executive Service Performance Appraisal System,*'' (January 4, 2012) available at *https://chcoc.gov/sites/default/files/senior-executive-service-performance-appraisal-system_508.pdf.*

(''Restoring Accountability Memo''), re-constituted PRBs made up of individuals committed to full enforcement of the SES performance standards will make fair recommendations on SES annual summary ratings.

Good performance management requires ongoing feedback in which an employee is not only kept informed about how he or she is doing but is also given guidance and assistance to do even better in the future.[2] This starts with developing clear performance expectations and rigorous performance standards against which performance is assessed.

The agency should then ensure only employees who have demonstrated the highest levels of performance receive the highest ratings and rewards. Indeed, a key part of effective performance management is ensuring that meaningful distinctions are made based on relative performance.

Agencies are required by statute to develop performance appraisal systems that allow for the accurate evaluation of performance based on criteria related to the position, that identify the critical elements of that position, that provide for systematic appraisals of performance by senior executives, that encourage excellence in performance, and that provide a basis for making retention determinations and SES performance awards. *See* 5 U.S.C. 4312(a).

Congress designed the SES to ''ensure that the executive management of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality.'' 5 U.S.C. 3131. Specifically, the statute directs OPM to administer the SES to achieve fourteen goals, four of which are of particular relevance to this rulemaking. Of these four, the first requires OPM to ''ensure that compensation, retention, and tenure are contingent on executive success,'' while specifying that success should be based on individual and organizational performance. 5 U.S.C. 3131(2). Second, members of the SES must be held accountable and responsible for the effectiveness and productivity of their subordinate employees. 5 U.S.C. 3131(3). Third, OPM's administration of the SES is intended to ''recognize exceptional accomplishment'' by senior executives. 5 U.S.C. 3131(4). Finally, OPM must ensure accountability for an ''honest, economical, and efficient Government.'' 5 U.S.C. 3131(10).

Historical Underperformance

Unfortunately, the current SES performance rating system falls short of these statutory requirements, in particular in failing to meaningfully differentiate among excellent, mediocre, and poor performance. SES data have consistently shown that the vast majority of executives' annual summary ratings are above the ''Fully Successful'' level. In January 2015, the Government Accountability Office (GAO) published a study on SES ratings and performance awards concluding that most of the federal agencies studied were not making meaningful distinctions in performance ratings for senior executives.[3] In that report, about 85 percent of career executives received an ''Outstanding'' or ''Exceeds Fully Successful'' rating between fiscal years 2010 and 2013. The 2015 GAO report also showed that only 0.1 percent of senior executives in Chief Financial Officers Act agencies (31 U.S.C. 901) were rated at the lowest rating level.

Performance accountability for senior executives has a critical impact on the provision of services to the public. To illustrate, in 2014, the Department of Veterans Affairs (VA) Office of Inspector General (OIG) issued a report on the Department's manipulations of wait-times in a VA medical facility in Phoenix, Arizona resulting in investigations at 93 other sites of VA health care across the country.[4] During that same time period, 80 percent of VA SES members received an ''Outstanding'' or ''Exceeds Fully Successful'' rating.[5] This kind of disconnect between individual performance ratings and organizational performance is inconsistent with the statutory requirements regarding SES performance appraisal systems and unacceptable as a matter of government administration.

In 2019, OPM issued a memorandum[6] to agencies on how to increase rigor in performance management through well-developed performance standards that make clear distinctions among what is required to achieve performance at the various performance levels. However, the 2024 Federal Employee Viewpoint Survey (FEVS) results showed that only 47% of federal employees agreed with the statement, ''In my work unit, differences in performance are recognized in a meaningful way.'' This was the lowest positive response rate for any question and has consistently been the lowest over the past three years.[7]

Through OPM oversight of agency SES performance appraisal systems, OPM calculated that, for the fiscal year 2023 performance cycle, approximately 96 percent of executives received an ''Outstanding'' or ''Exceeds Fully Successful'' rating and less than a half of a percent of executives were rated below ''Fully Successful.''[8] These results indicate that senior executive ratings may be inflated, and poor performing executives are not being held accountable through a rigorous appraisal process.

Ratings distributions like this have led to GAO recommendations that OPM take enhanced actions to better ensure that agencies are making meaningful distinctions in SES performance in support of more effective executive performance management and accountability.[9] Despite the recommendations of the 2015 GAO report, and OPM's resulting modifications to the SES performance management regulations and Basic SES Appraisal System, there continues to be a pervasive pattern of misalignment between poor agency performance and executive performance ratings. For example, in just the past two years, at least 12 VA OIG reports have identified failings directly related to widespread failures and deficiencies of VA senior leaders.[10] The identified failings

[2] U.S. Merit Systems Protection Board, Office of Policy and Evaluation, Performance Management is More than an Appraisal, (Washington, DC: December 2015), available at *https://www.mspb.gov/studies/publications/Performance_Management_is_More_than_an_Appraisal.pdf.*

[3] Government Accountability Office, ''*OPM Needs to Do More to Ensure Meaningful Distinctions Are Made in SES Ratings and Performance Awards, GAO Report to Congressional Requesters*'' (January 2015), available at *https://www.gao.gov/assets/gao-15-189.pdf.*

[4] Department of Veterans Affairs Office of Inspector General, ''*Review of Alleged Patient Deaths, Patient Wait Times, and Scheduling Practices at the Phoenix VA Health Care System,*'' Report #14–02603–267, available at *https://www.vaoig.gov/sites/default/files/reports/2014-08/VAOIG-14-02603-267.pdf.*

[5] *See, supra,* footnote 3.

[6] OPM, ''*Applying Rigor in the Performance Management Process and Leveraging Awards Programs for a High-Performing Workforce,*'' *available at https://chcoc.gov/sites/default/files/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing_508_0.pdf.*

[7] FEVS Results for 2022 to 2024 available at *https://www.opm.gov/fevs/reports/governmentwide-reports/.*

[8] SES ratings data submitted by individual agencies for SES performance appraisal system certification purposes. OPM manually compiled individual agency data to produce the fiscal year 23 SES ratings distribution data.

[9] *Supra,* footnote 3.

[10] *See, e.g.,* the following reports from the Department of Veterans Affairs, Office of Inspector General, available at *https://www.vaoig.gov/reports/all:* ''*Lapse in Fiduciary Program Oversight Puts Some Vulnerable Beneficiaries at Risk,*'' Report #24–01219–12; ''*Leaders Failed to Ensure a Dermatologist Provided Quality Care at the Carl T. Hayden VA Medical Center in Phoenix, Arizona,*'' Report #24–00194–42; ''*Leaders Failed to Address Community Care Consult Delays Despite Staff's*

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include repeated patient safety risks, financial hardship, morale issues among VA employees, and lack of trust in senior leaders. More than ten years after the 2015 GAO report, the examples provided demonstrate the same over-inflation of performance ratings still exists. Such a performance system fails to comply with the statutory mandate that the SES performance system meaningfully distinguish between excellent, mediocre, and poor performance and provide for an accurate, systematic appraisal of SES performance to serve as the ''basis for making eligibility determinations for retention in the Senior Executive Service and for Senior Executive Service performance awards.'' 5 U.S.C. 4312(a).

Forced Distribution

Currently, an agency may not require a particular distribution of rating levels for senior executives. OPM is proposing to remove the categorical prohibition against a forced distribution of any performance rating levels for senior executives found in 5 CFR 430.305(a)(5). For this proposed rule, ''forced distribution'' refers to a method of evaluating employees in which a supervisor first assesses each employee based on certain pre-determined parameters and thereafter must assign each employee a rating based on a pre-determined number or percentage of ratings allowable for each performance rating.

This new approach would apply to all senior executive service members covered under an appraisal system subject to subpart C of part 430, Code of Federal Regulations, including SES career, noncareer, and limited appointees. In parallel with this rulemaking, OPM has issued a revised SES performance plan and appraisal system [11] in accordance with the Restoring Accountability Memo. This Presidential Memorandum requires the Director of OPM, in coordination with the Director of OMB, to issue SES performance plans that agencies must adopt. OPM's revised performance plan and system incorporate various changes aimed at reinvigorating the SES corps, including implementation of a forced distribution of level 4 and 5 ratings contingent upon this proposed rule being made final. Other changes include revised performance requirements and more frequent performance feedback.

Forced distribution, also sometimes referred to as ''stack ranking,'' can be executed by assigning individual ranks to employees or by categorizing them into groups, such as top performers, average performers, and low performers. The practice has a well-documented history of private sector adoption over the last several decades. Wijayanti, A., Sholihin, M., Nahartyo, E. et al. (2024) conducted a review of the forced distribution literature.[12] A total of 41 research articles published from 1960 to 2022 were included in their review. These studies highlight many notable benefits of utilizing forced distribution as well as areas for caution. For example, several studies indicated that forced distribution can increase rating accuracy by eliminating leniency bias, which is the tendency for raters to provide lenient ratings to avoid conflicts that arise from granting unfavorable ratings. Findings also show that forced distribution can quickly enhance organizational performance and promote the success of merit-based reward systems. Some studies also found that forced distribution can have negative consequences such as discrimination, perceptions of unfairness, and reduced organizational citizenship behavior and knowledge sharing. Nonetheless, the authors concluded that, when implemented carefully, forced distribution has been shown to increase employee satisfaction and reduce turnover.

Indeed, while not the norm, a forced distribution has been used by many major private sector companies in executive performance plans over the past few decades, including Oracle, Meta, Amazon, Microsoft, Uber, and Google.[13] One recent source estimates that 30% of Fortune 500 companies use a forced distribution of some sort in their performance evaluations.[14] Even more pertinent, forced distributions have been used to evaluate the performance of civil service executives in many other countries, most notably Germany, Portugal, Italy, Latvia, Indonesia, and the United Kingdom.[15] After moving away from a forced distribution in 2019, the United Kingdom civil service returned to a system with an ''expected distribution'' of senior-level performance ratings in 2025.[16]

There is even more reason to implement a forced distribution in the Federal Government than in the private sector. Private sector companies typically do not operate under a statutory mandate requiring that they have performance appraisal systems that permit the accurate evaluation of performance. But the SES operates under just such a statutory mandate. *See* 5 U.S.C. 4312(a)(1). In addition, the Federal Government is entrusted with many critical responsibilities from veterans' health care to law enforcement to disaster relief to fighting pandemics.[17] When senior executives in the federal government fail to perform at

Advocacy Efforts at VA Western New York Healthcare System in Buffalo,'' Report #23–03679–262; ''*Deficiencies in Facility Leaders' Summary Suspension of a Provider and Patient Safety Reporting Concerns at the VA Black Hills Health Care System in Fort Meade, South Dakota,*'' Report #23–01502–234; ''*Care Concerns and Deficiencies in Facility Leaders' and Staff's Responses Following a Medical Emergency at the Carl T. Hayden VA Medical Center in Phoenix, Arizona,*'' Report #23–02958–203; ''*Mismanaged Surgical Privileging Actions and Deficient Surgical Service Quality Management Processes at the Hampton VA Medical Center in Virginia,*'' Report #23–00995–211; ''*Leaders at the VA Eastern Colorado Health Care System in Aurora Created An Environment That Undermined the Culture of Safety,*'' Report #23–02179–188; ''*Deficiencies in Oversight and Leadership Response to Optometry Concerns at the Cheyenne VA Medical Center in Wyoming,*'' Report #23–00460–185; ''*VA Improperly Awarded $10.8 Million in Incentives to Central Office Senior Executives,*'' Report #23–03773–169; ''*Delays Occurred in Some Veterans' Benefits Claims While Awaiting Decision,*'' Report #22–03463–60; ''*Sterile Processing Service Deficiencies and Leaders' Response at the Carl Vinson Medical Center in Dublin, Georgia,*'' Report #22–01315–90; ''*Chief of Staff's Provision of Care Without Privileges, Quality of Care Deficiencies, and Leaders' Failures at the Montana VA Health Care System in Helena,*'' Report #22–02975–70.

[11] OPM, ''*New Senior Executive Service Performance Appraisal System and Performance Plan, and Guidance on Next Steps for Agencies to Implement Restoring Accountability for Career Senior Executives*'' (February 25, 2025), *available at https://chcoc.gov/content/new-senior-executive-service-performance-appraisal-system-and-performance-plan-and-guidance.*

[12] Wijayanti, A., Sholihin, M., Nahartyo, E., & Supriyadi, S., *What do we know about the forced distribution system: A systematic literature review and opportunities for future research,* Management Quarterly Review (2024).

[13] *See, e.g.,* ''*Should a company rate its staff? A former Amazon exec says 'stack ranking' is useful when done right,*'' *CNBC,* December 5, 2023, available at *https://www.cnbc.com/2023/12/05/stack-ranking-ex-amazon-exec-explains-the-performance-review-system.html.*

[14] ''*Stack Ranking—All You Need to Know,*'' *Medium* (April 3, 2020) available at *https://medium.com/@corvisio/stack-ranking-all-you-need-to-know-a5339c27ad83.*

[15] ''*Performance Appraisal in the EU Member States and the European Commission,*'' ÚRAD VLÁDY SLOVENSKEJ REPUBLIKY (2017) available at *https://www.eupan.eu/wp-content/uploads/2019/02/2016_2_SK_Performance_Appraisal_in_the_EU_Member_States_and_the_European_Commission.pdf.*

[16] ''*SCS performance management system to include new 'minimum standards' in 2025,*'' Civil Service World (December 12, 2024) available at *https://www.civilserviceworld.com/professions/article/senior-civil-service-performance-management-minimum-standards-expected-distribution-2025. See also* GOV.UK Civil Service Guidance, ''*Performance management framework for the Senior Civil Service (2025 to 2026 performance year)*'' (February 6, 2025), available at *https://www.gov.uk/government/publications/senior-civil-service-performance-management/performance-management-framework-for-the-senior-civil-service-2025-to-2026-performance-year.*

[17] *See, e.g.,* Titles 38, 34, and 42 of the United States Code.

a high level, these crucial, life-or-death missions are compromised. Further, unlike the private sector, the Federal Government lacks a profit motive to ensure meaningful evaluations of its executives.

In sum, it is particularly important that the Executive Branch have the option to implement a forced distribution of at least some ratings given the systemic and pervasive use of Level 4 and 5 ratings, and the disconnect between these ratings and actual senior executive performance, as reflected in reports and critical incidents throughout the past decade.

Restoring Accountability for Career Senior Executives

On January 20, 2025, President Trump issued a Presidential Memorandum titled ''Restoring Accountability for Career Senior Executives.'' 90 FR 8481 (''Restoring Accountability Memo''). With this Presidential Memorandum, President Trump intended to ''reinvigorate the SES system and prioritize accountability.'' Specifically, he sought to ''ensure[ ] that SES officials are properly accountable to the President and the American people.'' President Trump directed OPM, in coordination with OMB, to ''issue SES Performance Plans that agencies must adopt.''

As described in the Background, to ensure that SES officials are properly accountable to the President and the American people, the Presidential Memorandum directed the Director of OPM, in coordination with the Director of OMB to issue SES performance plans for agencies to adopt for their SES workforces. OPM's review and proposed revision of current governmentwide SES performance plans place special attention on updating the plans, and the accompanying performance appraisal system, with tools for managers and supervisors to ensure that the executive management and performance of the Government of the United States is responsive to the needs, policies, and goals of the Nation and otherwise is of the highest quality. *See* 5 U.S.C. 3131.

As discussed in the Background, governmentwide SES performance appraisal data consistently show the vast majority of ratings for senior executives are above average (*i.e.,* above the ''Fully Successful'' level), with less than one percent rated at the lowest rating level. By removing the categorical prohibition on forced distributions, OPM expects that the highest ratings will be awarded only to the highest performing executives. Consistent with the SES performance plan it issued earlier this year,[18] OPM intends that the forced distribution of SES ratings will only be applied to limit the number of level 4 and 5 ratings. Establishing governmentwide limits on rating levels will promote a high-performance culture where only truly deserving performers receive the highest ratings. And although such a limit on the top rating levels would not directly require a greater number of ratings indicating unsatisfactory work or poor performance, a high-performance culture would encourage supervisors to provide poor performers ratings commensurate with their performance.

Ending Radical and Wasteful Government DEI Programs and Preferencing

On January 20, 2025, President Trump issued an Executive Order titled, ''Ending Radical and Wasteful Government DEI Programs and Preferencing.'' E.O. 14151, 90 FR 8339 (Jan. 29, 2025). This order directs the termination of all DEI policies, programs, and preferences in the Federal Government, under whatever name they appear. Section 430.308 of title 5, Code of Federal Regulations, ''Appraising performance,'' states that SES performance appraisals should take into account ''leadership effectiveness in promoting diversity, inclusion, and engagement'' as one of several factors.

OPM proposes to remove paragraph (d)(7) of this section to eliminate this vague language that is not in fact set forth by the text of 5 U.S.C. 7201 as the current rule suggests. This change is consistent with E.O. 14151 because paragraph (d)(7) conveys to both the senior executive and to the public that executives are expected (1) to promote a particular, controversial ideology throughout the government and (2) to promote ''policies, programs, and preferences'' throughout the federal government that the President has identified as wasteful and divisive.

Additionally, 5 CFR 430.311(a), which defines the membership of an agency's SES Performance Review Board (PRB), states that agency heads ''are encouraged to consider diversity and inclusion in establishing their PRBs.'' Consistent with both E.O. 14151 and the Restoring Accountability Memo, OPM proposes to replace this language with language to emphasize that agency heads should consider choosing individuals committed to the full enforcement of SES performance evaluations and promoting and assuring an SES of the highest caliber. This amendment would thus remove language that is inconsistent with E.O. 14151 and that suggests an agency could impermissibly base decisions on whom to appoint to PRBs on protected characteristics and thus risk discrimination. In addition, the replacement language proposed by OPM also aligns criteria for PRB membership with the requirements specified in the Restoring Accountability Memo—that PRB members be chosen based on their commitment to the full enforcement of SES performance evaluations and promoting and assuring an SES of the highest caliber.

Proposed Changes in This Rulemaking

OPM has reviewed the performance management regulations governing the SES and is issuing this proposed rule in response to both of the President's January 2025 directives and pursuant to its regulatory authority in 5 U.S.C. 4315. OPM proposes to amend 5 CFR 430.305(a)(5) by removing the prohibition on the use of a forced distribution of ratings. Removing the categorical prohibition will allow OPM to require and enforce a pre-established agency-wide and governmentwide distribution of performance ratings among all SES members, for covered agencies and personnel. OPM anticipates that agencies would implement a forced distribution limiting the highest rating levels (*i.e.,* levels 4 and 5) only, and would not impose any requirements with respect to the number of executives rated at levels 1 through 3. To be clear, the proposed rule would only eliminate a prohibition on pre-established distribution of performance ratings. Whether and how to implement such a pre-established distribution would be a task for agencies to implement, consistent with applicable OPM guidance.

As discussed in the section titled Ending Radical and Wasteful Government DEI Programs and Preferencing, OPM proposes to revise additional language consistent with E.O. 14151. Accordingly, this rulemaking proposes to remove the language in 5 CFR 430.308(d) to eliminate the non-statutory performance factor of ''promoting diversity, inclusion, and engagement.'' Additionally, this rulemaking proposes to revise the language in 5 CFR 430.311(a) by removing the text that encourages agencies to consider diversity and inclusion when appointing PRB

[18] OPM, ''*New Senior Executive Service Performance Appraisal System and Performance Plan, and Guidance on Next Steps for Agencies to Implement Restoring Accountability for Career Senior Executives*'' (February 25, 2025), *available at https://chcoc.gov/content/new-senior-executive-service-performance-appraisal-system-and-performance-plan-and-guidance.*

members. In line with the Restoring Accountability Memo, the rulemaking also proposes to add text that encourages agencies to consider individuals committed to applying the SES performance appraisal system and performance plans.

Expected Impact of This Rulemaking

A. Statement of Need

OPM is issuing this proposed rule pursuant to its authority to issue regulations governing performance appraisals in the SES in subchapter II of chapter 43 of title 5, United States Code. The purpose of this rulemaking is to provide a means by which only the highest performing SES members receive the highest performance ratings. Previous efforts [19] to promote rigor in SES performance appraisal by encouraging agencies to develop more stringent performance requirements have not resulted in significant changes to SES ratings distributions.

During the FY23 performance appraisal cycle, across 91 federal agencies, the distribution of SES members' performance ratings was as follows: 64.3% (4,608 members) were rated ''Outstanding'' at level 5, 31.7% (2,273 members) were rated ''Exceeds Fully Successful'' at level 4, 3.6% (261 members) were rated ''Fully Successful'' at level 3, 0.2% (15 members) were rated ''Minimally Satisfactory'' at level 2, and 0.1% (10 members) were rated ''Unsatisfactory'' at level 1.[20] The distribution of these ratings demonstrates that there continues to be inflation of SES performance ratings and that action must be taken in order to re-set and infuse rigor into the SES performance appraisal process. As such, the removal of the prior prohibition of forced distribution of SES ratings is necessary to enable the establishment and enforcement of limits on SES rating levels.

B. Impact

The President must be able to trust that the Executive Branch will work together in service of the Nation. By applying a forced distribution of SES performance ratings, agencies and individual SES members could be held to a higher standard of accountability because there would be a pre-established limited number of higher performance ratings, thereby ensuring only the truly deserving performers are rewarded for their performance.

Removing the regulatory prohibition on forced distribution would be an important first step towards recalibrating agencies' focus and efforts on ensuring meaningful distinctions in SES performance ratings. Allowing for the establishment of limits on SES ratings would result in a more normalized distribution of performance ratings and potentially fewer performance awards and pay adjustments for SES members, creating an opportunity for agencies to reduce overall spending on pay adjustments and performance awards. OPM expects that forced distribution would incentivize improved performance of SES members as they no longer would expect to receive the highest ratings without demonstrating superior performance relative to the other senior executives in their agency. This would ultimately improve the performance of the government in providing services to the American public.

C. Costs

This proposed rule would affect the operations of more than 90 Federal agencies—ranging from cabinet-level departments to small independent agencies—that have employees in the SES. We estimate that this rule would require individuals employed by these agencies to spend time updating agency SES performance appraisal policies and procedures during fiscal year 2025 to prepare for implementation in the fiscal year 2026 performance appraisal period. Typically, an agency's Executive Resources staff handles tasks associated with updating SES performance plans and refining policy documents. Therefore, for this cost analysis, the assumed average salary rate of Federal employees performing this work will be the rate in 2025 for GS–14, step 5, in the Washington, DC, locality pay table ($161,486 annual locality rate and $77.38 hourly locality rate). We assume the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $154.76 per hour.

To comply with the regulatory changes in the proposed rule, affected agencies would need to review the rule and update their policies and procedures. We estimate that, in the first year following publication of a final rule, this would require an average of 80 hours of work by employees with an average hourly cost of $154.76 per hour. This would result in estimated costs of about $12,400 per agency and about $1.1 million Governmentwide.

SES members revise their performance requirements each year as they develop their performance plans. OPM anticipates that adjusting their performance requirements to reflect the updated critical elements may take each executive slightly longer than usual in the first year. We estimate that this would require approximately 15 additional minutes in the first year of implementation compared to the time usually spent to develop performance requirements for the annual performance plan. Based on the average salary for the ES pay plan in September 2024 (most recent available data), we assume an average salary rate of $207,313, or $99.67 per hour.[21] We assume the total dollar value of labor, which includes wages, benefits, and overhead, is equal to 200 percent of the wage rate, resulting in an assumed labor cost of $199.34 per hour. There are approximately 8,430 members of the SES corps in the executive branch. This would result in a one-year, transitional increase in costs of about $420,000 Governmentwide.

OPM anticipates that the overall implementation costs would be limited in duration and would total about $1.5 million.

D. Benefits

A 2016 *Government Executive* article expressed that a cultural shift might be needed among agencies and employees to acknowledge that a rating of ''Fully Successful'' is already a high bar and should be valued and that ''Outstanding'' is a difficult level to achieve.[22] The application of a forced distribution within the SES performance appraisal system would reinforce the understanding that success as a senior executive is aligned to the appropriate rating at the fully successful level. By establishing a limit on the number of SES members who can receive a rating above the fully successful level, there would be a clear distinction of the highest performers across an agency and the Federal Government. Agencies would no longer be able to rate virtually all of their senior executives at the highest performance ratings, thus encouraging SES members to strive for increased levels of performance and ultimately provide better results for the government and the American public. Consistent with the letter and intent of 5 U.S.C. 3131 and 4312(a), only truly

[19] *See, e.g.,* OPM, ''*Applying Rigor in the Performance Management Process and Leveraging Awards Programs for a High-Performing Workforce,*'' (July 12, 2019) available at *https://chcoc.gov/sites/default/files/applying-rigor-performance-management-process-and-leveraging-awards-programs-high-performing_508_0.pdf.*

[20] *See, supra,* footnote 8.

[21] Average SES pay drawn from Office of Personnel Management FedScope data, available at *https://www.fedscope.opm.gov/.*

[22] ''*Are So Many Feds Really That Exceptional? Government Executive,*'' (June 9, 2016) available at *https://www.govexec.com/management/2016/06/are-so-many-feds-really-exceptional/128963/.*

deserving senior executives would be rewarded and recognized for outstanding performance.

E. Regulatory Alternatives

An alternative to this rulemaking is to not remove the prohibition on forced distribution and instead issue further guidance encouraging agencies to be increasingly rigorous in their management of SES performance to promote meaningful distinctions in SES performance. However, previous attempts to achieve this result through guidance have not been successful in curbing inflated SES ratings; instead, it appears that the percentage of SES receiving Level 4 or 5 performance ratings has only increased. Without the ability to place limits on SES ratings, there will almost certainly continue to be a pervasive inflation of ratings and a lack of accountability and meaningful distinction in performance ratings throughout the SES.

Another alternative to this rulemaking is to reinstate the review of SES performance plans by OPM as part of the SES performance appraisal system certification review process. Prior to the issuance of OPM's further streamlined performance appraisal system certification process in 2018, referred to as Certification 2.0, agencies were required to submit a sample of performance plans to OPM for review. OPM could revert to requiring agencies to submit SES performance plans for review to ensure that performance requirements are properly calibrated to established SES performance standards. OPM's practice of reviewing individual SES performance plans was abandoned under Certification 2.0 primarily due to the administrative burden that it placed on agencies and OPM. While the aim of this proposed rule is to increase the performance of SES, OPM also must consider the mandate to deliver a government to the American people that is lean and efficient. Returning to the practice of OPM reviewing individual SES performance plans is not a practical alternative given the additional time required by OPM to review, and for agencies to make corrections to, SES performance requirements. In addition, it is unlikely that requiring OPM to individually certify agency SES performance plans would meaningfully shift the distribution of SES performance ratings in the absence of a repeal of the rule against forced distribution.

Request for Comments

OPM requests comments on the implementation and potential impacts of this proposed rule. Such information will be useful for better understanding the effect of this amendment on SES performance management by Federal agencies. The type of information in which OPM is interested includes, but is not limited to, the following:

- How will forced distribution reward merit, competence, and excellence across the federal government?
- Is there any research OPM should consider regarding what impact forced distribution may have on senior executive performance and organizational performance?
- Does the current SES performance management system accurately distinguish excellent from mediocre from poor performance? If so, how?
- Would a forced distribution help drive a high-performance culture across the federal government? Why?
- Would a forced distribution motivate senior executives to work harder and produce better results for the American people? Why?
- Would a forced distribution empower agency leadership to hold senior executives accountable for poor performance? Why?
- What effect, if any, would a forced distribution have on the Government's ability to hire and retain top-level senior executive talent?
- Would a forced distribution have a positive or negative impact on knowledge management, programs, and mission delivery? Why?
- How has forced distribution of executive performance rankings worked in the private sector? Has it positively or negatively impacted corporate performance?

Regulatory Compliance

A. Regulatory Flexibility Act

The Acting Director of OPM certifies that this rulemaking will not have a significant economic impact on a substantial number of small entities because it will apply only to Federal agencies and employees.

B. Regulatory Review

OPM has examined the impact of this rule as required by Executive Order 12866 and Executive Order 13563, which direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public, health, and safety effects, distributive impacts, and equity). A regulatory impact analysis must be prepared for major rules with economically significant effects of $100 million or more in any one year. This rulemaking does not reach that threshold but has otherwise been designated a ''significant regulatory action'' under section 3(f) of Executive Order 12866. This proposed rule is not expected to be an Executive Order 14192 regulatory action because it does not impose any more than de minimis regulatory costs.

C. Federalism

This rulemaking will not have substantial direct effects on the States, on the relationship between the National Government and the States, or on distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 13132, it is determined that this proposed rule does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

D. Civil Justice Reform

This rulemaking meets the applicable standards set forth in section 3(a) and (b)(2) of Executive Order 12988.

E. Unfunded Mandates Reform Act of 1995

Section 202 of the Unfunded Mandates Reform Act of 1995 (UMRA) requires that agencies assess anticipated costs and benefits before issuing any rule that would impose spending costs on State, local, or tribal governments in the aggregate, or on the private sector, in any 1 year of $100 million in 1995 dollars, updated annually for inflation. That threshold is currently approximately $206 million. This rulemaking will not result in the expenditure by State, local, or tribal governments, in the aggregate, or by the private sector, in excess of the threshold. Thus, no written assessment of unfunded mandates is required.

F. Paperwork Reduction Act

This regulatory action will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act.

List of Subjects in 5 CFR Part 430

Decorations, Government employees.

Office of Personnel Management.

Jerson Matias,

Regulations Liaision.

Accordingly, for the reasons stated in the preamble, OPM is proposing to amend 5 CFR part 430 as follows:

PART 430—PERFORMANCE MANAGEMENT

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

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

Subpart C—Managing Senior Executive Performance

■ 2. Amend § 430.305 by revising paragraph (a)(5) to read as follows:

§ 430.305 System standards for SES performance management systems.

(a) * * *

(5) Derive an annual summary rating through a mathematical method that ensures executives' performance aligns with level descriptors contained in performance standards that clearly differentiate levels above fully successful;

* * * * *

■ 3. Amend § 430.308 by:

■ a. Revising paragraph (d)(6);

■ b. Removing paragraph (d)(7); and

■ c. Redesignating paragraph (d)(8) as (d)(7).

The revision reads as follows:

§ 430.308 Appraising performance.

* * * * *

(d) * * *

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

* * * * *

■ 4. Amend § 430.311 by revising paragraph (a)(1) to read as follows:

§ 430.311 Performance Review Boards (PRBs).

(a) * * *

(1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to choose individuals for each PRB committed to applying the SES Performance Appraisal System and Performance Plan and the requirements therein and promoting and assuring an SES of the highest caliber.

* * * * *

[FR Doc. 2025–07575 Filed 5–1–25; 8:45 am]

BILLING CODE 6325–39–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA–2025–0769; Airspace Docket No. 25–ASO–5]

RIN 2120–AA66

Amendment of Class D and Class E2, Amendment of Class E4, and Amendment of Class E5 Airspace Over New Bern, NC

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This action proposes to amend Class D and Class E2 airspace at Coastal Carolina Regional Airport (EWN) due to the current designated airspace not properly containing instrument flight rule operations. Additionally, this action proposes to amend Class E4 airspace at Coastal Carolina Regional Airport, New Bern, NC due to portions no longer meeting the requirements of its designation. Lastly, this action proposes to amend the Class E5 airspace that no longer meets the requirements for its specific designation due to the amendment or cancellation of Standard Instrument Approach Procedures at Coastal Carolina Regional Airport, New Bern, NC.

DATES: Comments must be received on or before June 16, 2025.

ADDRESSES: Send comments identified by FAA Docket No. FAA–2025–0769 and Airspace Docket No. 25–ASO–5 using any of the following methods:

* *Federal eRulemaking Portal:* Go to *www.regulations.gov* and follow the online instructions for sending your comments electronically.

* *Mail:* Docket Operations, M–30; U.S. Department of Transportation, 1200 New Jersey Avenue SE, Room W12–140, West Building Ground Floor, Washington, DC 20590–0001.

* *Hand Delivery or Courier:* Take comments to Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

* *Fax:* Fax comments to Docket Operations at (202) 493–2251.

Docket: Background documents or comments received may be read at *www.regulations.gov* at any time. Follow the online instructions for accessing the docket or go to the Docket Operations in Room W12–140 of the West Building Ground Floor at 1200 New Jersey Avenue SE, Washington, DC, between 9 a.m. and 5 p.m., Monday through Friday, except for Federal holidays.

FAA Order JO 7400.11J, Airspace Designations and Reporting Points, and subsequent amendments can be viewed online at *www.faa.gov/air_traffic/publications/*. You may also contact the Rules and Regulations Group, Policy Directorate, Federal Aviation Administration, 600 Independence Avenue SW, Washington, DC 20597; Telephone: (202) 267–8783.

FOR FURTHER INFORMATION CONTACT: Christopher Stocking, Operations Support Group, Eastern Service Center, Federal Aviation Administration, 1701 Columbia Avenue, College Park, GA 30337; Telephone: (404) 305–5887.

SUPPLEMENTARY INFORMATION:

Authority for This Rulemaking

The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the United States Code. Subtitle I, Section 106, describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority, as it would amend Class D, amend Class E2, amend Class E4, and amend Class E5 airspace in New Bern, NC.

Comments Invited

The FAA invites interested persons to participate in this rulemaking by submitting written comments, data, or views. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. The most helpful comments reference a specific portion of the proposal, explain the reason for any recommended change, and include supporting data. To ensure the docket does not contain duplicate comments, commenters should submit only one time if comments are filed electronically, or commenters should send only one copy of written comments if comments are filed in writing.

The FAA will file in the docket all comments it receives, as well as a report summarizing each substantive public