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OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 430

RIN 3206-AI57

MANAGING SENIOR EXECUTIVE PERFORMANCE

AGENCY: Office of Personnel Management.

ACTION: Final rule.

SUMMARY: The Office of Personnel Management (OPM) is amending its regulations governing performance appraisal in the Senior Executive Service (SES). The amended regulations will help agencies hold senior executives accountable by: Reinforcing the link between performance management and strategic planning; requiring agencies to use balanced measures in evaluating executive performance; and giving agencies more flexibility to tailor performance management systems to their unique mission requirements and organizational climates.

EFFECTIVE DATES: November 13, 2000.

FOR FURTHER INFORMATION CONTACT: Anne Kirby, (202) 606-1610, or email to SESmgmt@opm.gov.

SUPPLEMENTARY INFORMATION: OPM published a proposed rule in the *Federal Register* on June 21, 2000 (65 FR 38442) to amend the regulations governing SES performance appraisal. We received 15 written comments during the public comment period: 7 from Federal departments and agencies; 2 from professional organizations; and 6 from individuals. In addition, we have discussed the proposals with a number of senior executives and other stakeholders since publication of the proposed rule. There was broad support for the proposed changes, especially those that give agencies greater flexibility for tailoring their

performance management systems to their organizational and operational needs. There was also general support for the concept of balanced measurement, although some commenters said they need additional information and guidance about using balanced measures. There were a few suggested modifications to the proposals, and some commenters proposed additional requirements. We discussed the public comments and suggestions with a representative group of agency SES program managers. We have included their views in our reactions to these comments and suggestions.

Background

The members of the Senior Executive Service (SES) are dedicated, hard-working public servants. Individually and through the organizations they lead, these senior executives strive to deliver value to the American people. This results-orientation was central to the original vision for the SES, outlined in the Civil Service Reform Act (CSRA) of 1978. CSRA intended that SES performance management systems:

- “Ensure accountability for honest, economical, and efficient Government”
- “Assure that senior executives are accountable and responsible for the effectiveness and productivity of employees under them”
- “Ensure that compensation, retention, and tenure are contingent on executive success which is measured on the basis of individual and organizational performance”
- “Recognize exceptional accomplishment.”

The Government Performance and Results Act (GPRA) of 1993 and the National Partnership for Reinventing Government (NPR) validated this original vision and challenged Government to shift its focus from internal processes and outputs to results that are aligned with customer expectations.

In discussions with stakeholders that were triggered by OPM’s 1998 *Draft Framework for Improving the Senior Executive Service*, executives and others said the current regulations discourage results-oriented performance management. They also told us that agency leaders must drive the effort to strengthen their SES performance management systems. Respondents to OPM’s survey of the Senior Executive

Service in 1999 reinforced these findings:

- Only 72% believed their performance rating represents a fair and accurate picture of their performance;
- Only 48% felt that SES bonus determinations are based on merit; and
- 57% did not think poor performing executives are removed from their positions.

(The survey findings are available on OPM’s website (www.opm.gov/SES).

In response to these concerns, OPM proposed to amend the regulations governing SES performance appraisal. The amended regulations give agencies more flexibility to reinvigorate their SES performance management systems—to focus on results over process. They reinforce the agencies’ responsibility to communicate performance expectations and to use the results of the performance management process as a basis for performance awards and other personnel decisions. The regulations also require SES performance management systems to balance organizational results with the needs and perspectives of customers and employees.

Overall Approach

Our intent was to substantially deregulate in order to give agencies much more flexibility to tailor their systems and approaches for managing senior executive performance to fit their unique and changing mission and operational needs and organizational climates. We pared many of the current regulatory requirements back to the statutory requirements. We eliminated requirements that are unnecessarily constraining and burdensome to agencies or are process-bound. The changes balance the agencies’ desire for maximum flexibility with the need for a corporate approach that safeguards merit principles and contributes to a better, more diverse, results-oriented Government. In addition, we totally restructured the regulations to organize the material more logically and to use plain language, as the President directed in June 1998.

We broadened the focus from determining annual summary ratings to managing performance on an ongoing basis and shifted the emphasis from process to results. The restructured regulations establish separate sections on the key components of performance

management: planning and communicating, monitoring, appraising, and rating performance and using performance results.

As part of this expanded focus, we revised the purpose statement to stress:

- Expecting excellence in senior executive performance;
- Holding executives accountable for results;
- Communicating regularly about goals and expectations;
- Appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives; and
- Making performance the basis for pay, awards, and other personnel decisions.

This emphasis is fundamental to the key regulatory changes.

Most commenters supported this approach. One agency in particular expressed appreciation for OPM's efforts to make the regulations as open as possible, with few absolute restrictions. Four commenters specifically mentioned support for reinforcing the links between SES performance and agency strategic planning initiatives. Another agency said the changes would help agencies hold senior executives accountable.

Two commenters questioned whether regulations are needed to accomplish the goals of this initiative. One agency said that agencies can align performance management systems with GPRA goals under current regulations. A professional organization said rulemaking is not the most appropriate vehicle for establishing guidelines for managing performance, as this is an ever-evolving art. This organization preferred that we use more informal methods to provide guidance to agencies.

It is true that many of the performance management improvements included in these regulations can be implemented under the current framework of law and regulation. In fact, several agencies have already implemented innovative performance management systems which incorporate balanced measures. However, many agencies told us that the current regulations focus too much on process and inhibit results-oriented performance management. They asked for more latitude to design performance systems that better fit their organizational cultures and operational goals. By overhauling these regulations, we hope to promote a culture change—a culture change that views SES performance management as a tool for driving results, instead of an irritating, annual chore.

Key Changes in Current Requirements

We modified *system requirements* to prescribe a framework for agency systems that identifies key system components, without specifying how these components will be implemented. Within this framework, agencies can design performance management systems to meet their organizational and operational needs. No commenters opposed this modification.

We modified the *minimum appraisal period*. The current requirements provide for a minimum appraisal period of 90–120 days. Agencies can rate a senior executive's performance after he/she has completed the minimum period, provided there is enough information on which to base a rating. We proposed to keep the 90-day minimum, but remove the 120-day cap to allow agencies to establish minimum appraisal periods that are longer than 120 days. There was general support for this proposal. However, one professional organization recommended that the minimum appraisal period be lengthened from 90 days to 120 days because, in their view, 90 days does not give sufficient time to form the basis for a meaningful evaluation. The minimum appraisal period has always been 90 days, with the caveat that agencies can rate an executive's performance only if there is enough information on which to base a rating. To date, there has been no evidence of agency or senior executive difficulty with the 90-day minimum. Further, the SES program managers preferred to retain the 90-day minimum period, provided that we also retain the caveat. Therefore, we are not adopting the organization's recommendation. The final regulations reflect the minimum appraisal provisions as proposed.

We changed *performance standards to performance requirements* to reflect the term used in statute, and eliminated the requirement to use the term *non-critical element*. Agencies will establish performance requirements for critical elements and any other performance elements that will be used to appraise performance and derive the annual summary rating. There were no objections to these changes, so they are adopted as proposed.

We modified *rating level requirements* to remove the requirement to establish three rating levels for each critical element. The performance on each critical element and any other performance elements must be appraised. No commenters objected to these changes, so they are adopted as proposed.

We reduced the *summary rating level requirements* to the minimum three

summary rating levels prescribed in statute (*i.e.*, fully successful, minimally satisfactory, and unsatisfactory). We removed the current maximum of five levels (*i.e.*, no more than two levels above fully successful). There were no objections to these changes, so they are adopted as well.

We revised *rating terms* to reflect the statutory requirement for an annual summary rating. There are now only two rating terms: the *initial rating* becomes *initial summary rating* and the *final rating* becomes the *annual summary rating*. We removed references to other types of ratings. There were no comments on these changes, so they are adopted as proposed.

We modified the *method for deriving summary ratings* to remove the current requirement to give critical elements more weight than non-critical elements in determining a summary rating. There were no comments on this change, so it is adopted.

Balanced Measurement

The regulations require agencies to evaluate senior executive performance using measures that balance organizational results with customer satisfaction, employee perspectives, and any other measures agencies decide are appropriate. Introduction of the balanced scorecard concept in 1992 by Robert Kaplan and David Norton of the Harvard Business School as well as recent studies by the National Partnership for Reinventing Government and others have shown that both the public and private sectors are increasingly and successfully using balanced measurement to help create high-performing organizations. They indicate that an approach to performance planning, management, and measurement that balances the needs and perspectives of customers, stakeholders, and employees with the achievement of the organization's business or operational results is critical to successful improvement efforts.

By institutionalizing the use of balanced measures, the Government acknowledges what its best executives have always known: leading people and building customer coalitions are the foundation of organizational success. In OPM's 1999 SES survey, career executives reported that "leading people" and "building coalitions" are the most important contributors to executive success now, and they will be even more important in the future.

There is general support for the concept of balanced measurement, although some commenters requested additional information and guidance about using balanced measures. There

was consensus that the regulations should not prescribe how balanced measures are imposed and implemented. The regulations require agencies to evaluate senior executive performance using balanced measures, but they do not dictate how. Agencies can define the measures, determine the appropriate balance among the various measures, and decide an implementation method that best meets their organizational and operational needs.

In discussions with stakeholders about the proposed regulations, some have expressed anxiety about the measurement factors and what they mean. Some fear that employee perspectives means a supervisor's popularity with employees. Some said that senior executives have multiple customers and stakeholders, many of whom have conflicting views and interests. They are concerned that these considerations might not be taken into account. A few worried that senior executives would be held accountable for program results over which they have little or no control. Others were concerned that using balanced measurement would require agencies to invest in expensive surveys or sophisticated measurement tools.

These are all valid concerns, but agencies will have latitude under the regulations to weigh employee and customer concerns in whatever manner they decide is appropriate to their missions and structures. The employee perspectives factor is not a "popularity contest." Rather, this factor focuses on such things as how executives lead and motivate their employees, address job and training needs, and provide a healthy working environment.

- Having multiple stakeholders is a "given" in the Federal sector, where executives frequently have to balance the needs of a variety of customers and stakeholders. For example, in regulatory agencies, executives often make decisions that stakeholders do not endorse. The customer satisfaction factor considers how executives deal with stakeholders, balance the varying needs of customers, and build partnerships and coalitions to achieve results. The issue is not always whether customers or stakeholders agree with the decision, but how the executives reach the decision; *i.e.*, whether stakeholders have an opportunity to participate in the decision-making and share their views, whether customers are treated with interest and respect, etc.

- Regarding measurement, we believe that agencies can measure results in ways that do not require elaborate systems.

Further, agencies will have the flexibility to define measures and design systems that fit their organizational and operational needs and are aligned with their strategic and performance planning initiatives. These flexibilities should enable agencies to address their senior executives' concerns.

Two commenters suggested mandating additional measures. One was the addition of financial results to more directly reflect Kaplan and Norton's balanced scorecard approach. The other proposed adding diversity and representation.

The National Partnership for Reinventing Government's August 1999 report on *Balancing Measures* states that, although there is no such thing as a fixed and truly balanced set of measures, a balanced approach should factor in at least employee, customer, and business perspectives. Agencies may add other measures; however they must not dilute the importance of the key measures. (The report on *Balancing Measures* is available on the NPR website at: www.npr.gov.)

We discussed these recommended additions with SES program managers, who preferred that the regulations only specify the three most common factors, *i.e.*, organization results, customer satisfaction, and employee perspectives. Most believed that the three key measures are broad enough to incorporate diversity and financial measures. However, agencies have the flexibility to address them as separate factors, if they choose. Therefore, consistent with our approach to give agencies as much flexibility as possible to develop measures that reflect their overall mission strategies, we are not adopting the recommendations. OPM will issue supplemental guidance and continue ongoing discussions with stakeholders to help agencies address balanced measurement.

Additional Proposed Requirements

Evaluation Criteria. Two commenters proposed that we mandate additional evaluation criteria. One proposed to include selected leadership competencies as an element of each executive's appraisal. Another proposed a requirement that two of the executive core qualifications for entry into the Senior Executive Service (leading people and building coalitions) be made critical elements in all SES appraisals.

Strong and effective leadership is fundamental to executive success; it is manifested through the three balanced measures. All new career executives must demonstrate their leadership ability in five areas (*i.e.*, leading change, leading people, results-driven, business

acumen, and building coalitions). Some agencies have incorporated the themes of these Executive Core Qualifications into their SES performance management systems. We support this approach, but SES program managers indicated that we should not dictate it. Since the suggested changes would be inconsistent with the flexible approach taken in the regulations, we are not adopting them.

One commenter also suggested that an increased emphasis on diversity and representation as an SES performance element would serve to increase accountability for results. We agree that this is important. The appraisal criteria in the revised regulations at § 430.307(a) address an executive's progress in meeting affirmative action, equal employment opportunity, and diversity goals.

Another commenter proposed that the regulations clarify that senior executives are responsible and accountable for protecting the human and workplace assets under their control and for ensuring that these assets are used in ways that prevent pollution and use energy resources efficiently. We believe that effectively managing the work environment is inherent in both the "organizational results" and "employee perspectives" factors of balanced measurement, which agencies can describe in ways that are appropriate to their organizational needs. Accordingly, we are not adopting this proposed addition.

Supervisor Appraisals. An agency was concerned about the lack of incentive for supervisors to conduct timely performance assessments. The agency wanted the regulations to require that, before a supervisor changes jobs or leaves an agency he/she be required to appraise the performance of subordinate senior executives in writing. The proposed regulations include requirements for appraisals of senior executives who change jobs, but they are silent on departing supervisors. The current regulations do not address this, but we have issued supplemental guidance to agencies that encourages them to obtain appraisal information from departing supervisors. We sought the views of SES program managers, who felt that we should not mandate this as a governmentwide requirement, but continue to address it in supplemental guidance. We agree. Agencies have the latitude to include such a requirement in their performance management systems.

Written Progress Reviews. The same agency also felt that the requirement for periodic progress reviews needed to be strengthened by requiring that the

overall results of each progress review be documented in writing. We shared this comment with the SES program managers, who did not support the proposal. We understand the concern, but we prefer to let agencies decide how best to ensure that there is ongoing communication between supervisors and senior executives about their performance. The emphasis should be on communication, rather than process or format.

Performance Review Boards. A professional organization proposed mandating that agencies include women, minorities, and people with disabilities on Performance Review Boards (PRBs) in organizations, organizational components, and geographical locations where minorities, women, and persons with disabilities are determined to be underrepresented in the workforce. We appreciate the concerns about diversity that prompted this comment, but it might be difficult for other than large departments and agencies to comply with such a requirement. The revised regulations encourage agencies to include women, minorities, and people with disabilities on PRBs. Including this in the actual language of the regulation sends a strong message to agency leadership. Further, we want to maintain the focus on the

substance of diversity and diverse viewpoints, rather than on numbers or process.

Editorial Suggestions. One commenter suggested more precise language for clarity. For example, the commenter felt the term “strategic planning initiatives” might be misinterpreted as a process-focused item, rather than a linkage between performance accountability and an agency’s long-term and annual goals and objectives. By using this term, we intended a broad focus on strategic and annual performance planning and evaluation efforts and any related initiatives. In our view, using more precise terminology or definition could narrow that focus or limit an agency’s flexibility. Therefore, we are not adopting the suggested language changes.

System Approval

During the public comment period, we discussed with agency SES program managers options for obtaining OPM approval of revised performance management systems, in accordance with 5 U.S.C. 4312. The general consensus was agency self-certification, similar to the method used to approve performance management systems for the general workforce to comply with requirements at 5 CFR 430.209 and 210.

Under this approach, OPM would develop a checklist of key system requirements, and agencies would certify that their revised performance management systems comply with these requirements and provide supporting documentation as appropriate. OPM will provide these materials and accompanying guidance to agencies within 60 days of the publication of this final rule.

Additional Guidance

OPM will issue additional guidance in various formats to help agencies implement the changes, including examples of ways to use the various flexibilities provided under these regulations. We will also share information about how public and private sector organizations are using balanced measurement to evaluate senior executive performance.

Table of Changes

The following table lists the changes to the current regulations. The “current rule” column lists the regulations in the current subpart C affected by the final regulations. The “final rule” column shows the disposition of the current rules. The third column explains each change.

Current rule	Final rule	Explanation of change
430.301(a)	430.301(a)	Plain language edits.
430.301(b)	430.301(b)	Revises purpose to emphasize expecting excellence, holding senior executives accountable for results, communicating goals and expectations, factoring balanced measurement into performance appraisal, and making performance the basis for personnel decisions.
430.302(a)	430.302(a)	Plain language edits.
430.302(b)	430.302(b)	Plain language edits.
430.303	430.303	Revises definitions as follows: <i>Annual summary rating</i> replaces the term <i>summary rating</i> to reflect the statutory terminology and means the overall rating level the appointing authority assigns at the end of the appraisal period after considering PRB recommendations. <i>Appointing authority</i> is revised to clarify that this individual must be authorized to make SES appointments. <i>Appraisal</i> is replaced with <i>performance appraisal</i> and edited for plain language. <i>Appraisal period</i> reflects plain language edits. <i>Appraisal system</i> is replaced with the term <i>performance management system</i> to broaden the focus from the annual appraisal to managing performance on an ongoing basis. <i>Balanced measures</i> is added because the regulations require agencies to use balanced measurement to evaluate senior executive performance. <i>Critical element</i> is broadened to cover the senior executive’s work, which may include more than the duties of the position, and focus on organizational results. <i>Final rating</i> is replaced with the term used in statute, <i>annual summary rating</i> , and edited for plain language. <i>Initial rating</i> is replaced with <i>initial summary rating</i> and revised for clarity. <i>Non-critical elements</i> is replaced with the broader term, <i>other performance elements</i> , which refers to components of an executive’s work that are not critical but may be important enough to factor into the executive’s appraisal. <i>Performance</i> is broadened from the focus on critical and non-critical elements of the position to the accomplishment of work described in the senior executive’s performance plan. <i>Performance appraisal</i> is added to replace <i>appraisal</i> and edited for plain language.

Current rule	Final rule	Explanation of change
		<p><i>Performance Appraisal System</i> is replaced with the term <i>performance management system</i>, which refers to a framework of policies and practices for planning, monitoring, developing, evaluating, and rewarding individual and organizational performance and for using performance information as a basis for personnel decisions.</p> <p><i>Performance Management Plan</i> is deleted. The concepts are covered under <i>performance management system</i>.</p> <p><i>Performance plan</i> is replaced with the term <i>senior executive performance plan</i> which is expanded to address work the senior executive is expected to accomplish and the requirements against which performance will be evaluated.</p> <p><i>Performance standard</i> is replaced by the term <i>performance requirement</i> used in statute and reflects plain language edits.</p> <p><i>Progress review</i> reflects plain language edits.</p> <p><i>Rating of record</i> is deleted.</p> <p><i>Summary rating</i> is replaced with <i>annual summary rating</i>.</p> <p><i>Strategic planning initiatives</i> is added because of new requirements for aligning performance plans with strategic planning.</p>
430.304	430.304	Retitles section as SES Performance Management Systems; edits substantially and restructures it to include the key components of agency systems. Moves other requirements to other sections in the subpart.
430.304(a)	430.304(a)	Plain language edits.
430.304(b)	430.305(b)	Moves critical element requirements to Planning and Communicating Performance. Replaces reference to non-critical elements with the broader <i>other performance elements</i> .
	430.307(a)	Moves appraisal requirements to Appraising Performance; revises them to reflect deletion of term <i>non-critical elements</i> .
	430.308(d)	Moves summary rating requirements to Rating Performance.
430.304(c)	430.304(b)	Planning performance becomes a key component of performance management systems.
	430.305(a)	Moves requirements for individual senior executive performance plans to Planning and Communicating Performance.
430.304(d)(1)	430.304(b)	Replaces <i>performance standards</i> with the statutory term <i>performance requirements</i> ; some provisions are included in performance management system requirements.
	430.305	Moves establishing and communicating critical elements and requirements to Planning and Communicating Performance.
	430.307(a)	Moves annual appraisal requirements to Appraising Performance.
430.304(d)(2)	430.304(b)(1), 430.305	Includes accomplishing organizational objectives in requirements to address organizational performance and to link performance management with GPRA goals and with strategic planning initiatives.
430.304(e)	430.305(b)	Revises section to eliminate the requirement to establish three rating levels for each critical element. Replaces <i>performance standards</i> with <i>performance requirements</i> and moves it to senior executive performance plan requirements under Planning and Communicating Performance.
430.304(f)	430.304(c)(3)	Edits derivation method requirements to remove references to non-critical elements and moves it to system requirements. New section incorporates restriction on rating level distribution.
430.304(g)	430.304(c)(2)	Modifies summary rating level requirements to reflect the statutory requirement for a minimum of three levels. Removes the 5-level maximum and rating level numbers.
430.304(h)	430.306(c)	Broadens requirement for performance assistance to require agencies to help senior executives improve their performance, not just those who are rated less than fully successful, to reflect the emphasis on overall performance improvement.
430.304(i)	430.309(c)	Edits requirements for action on less than successful performance ratings and moves them to the new section, Using Performance Results. This section is added to focus on basing personnel decisions on performance.
	430.305	Adds two new sections on Planning and Communicating Performance and Monitoring Performance, which are key components of performance management systems.
		Consolidates senior executive performance plan requirements under Planning and Communicating Performance.
	430.306	Consolidates progress review and performance improvement requirements under monitoring performance.
430.305	430.307	Retitles heading as Appraising Performance, a key component of performance management systems.
430.305(a)(1)	430.304(c)(1)	Moves appraisal period requirements to System Requirements.
	430.307(b)	Moves rating performance on details and temporary assignments to Appraising Performance. Replaces summary rating requirement with requirement to appraise performance and factor appraisal into initial summary rating.
430.305(a)(2)	430.304(c)(1)(ii)	Edits provisions for terminating the appraisal period and moves them to System Requirements.
430.305(a)(3)	430.304(c)(1)(iii)	Edits restriction on appraisals and ratings during Presidential election periods and moves it to System Requirements.
430.305(b)	430.304(c)(1)(i)	Revises minimum appraisal period to eliminate the 120-day maximum and moves it to System Requirements.

Current rule	Final rule	Explanation of change
430.305(c)	430.307(a)(1)	Deletes the requirement to appraise on non-critical elements. Requires appraisal on critical elements only—appraising other elements is optional.
430.305(d)(1) & 430.305(d)(2).	430.307(b)(1), 430.307(b)(2), & 430.307(b)(3).	Substantially edits requirements for appraising performance on details and temporary assignments. Modifies the current requirement for rating on critical elements to appraising performance and factoring that appraisal into the initial summary rating.
430.305(e)	430.306(b)	Edits progress review requirements and moves them to Monitoring Performance.
430.306	430.308	Retitles heading as Rating Performance, a key component of performance management systems.
430.306(a)(1)	430.308(a)	Plain language edits.
430.306(a)(2)	430.308(a)	Plain language edits.
430.306(a)(3)	430.308(b)	Plain language edits.
430.306(a)(4)	430.308(b), 430.308(c)	Plain language edits.
430.306(a)(5)	430.308(b)	Removes specific section; provisions are inherent in higher level review requirements.
430.306(b)	430.308(b)	Adds requirement that higher level reviewer may not change initial summary rating, but can recommend a different rating to PRB and appointing authority. Plain language edits.
	430.308(c)	Adds new section in Rating Performance on PRB review for clarity.
430.306(c)	430.308(d)	Changes term <i>final rating</i> to <i>annual summary rating</i> for consistency with statutory language and edits for plain language.
430.306(d)	430.304(c)(3)	Includes requirement in derivation methods under System Requirements and edits for plain language.
430.306(e)	430.308(e)	Includes provisions under new section, Extending the appraisal period; edits for plain language.
	430.308(f)	States statutory language that appraisals and ratings are not appealable.
430.306(f)	430.307(b)	Modifies requirement for summary rating on transfer to a written appraisal which the gaining supervisor must factor into the annual summary rating. Plain language edits.
430.306(g)	430.308(a), 430.308(b), 430.311(c).	Deletes section; incorporates requirements for executive notification in relevant sections.
		Edits documentation maintenance requirements and moves them to Training and Evaluation.
430.307	430.310	Plain language edits.
430.307(a)	430.310(a)(1)	Plain language edits.
430.307(b)	430.310(a)(4)	Plain language edits.
430.307(c)	430.310(a)(2)	Plain language edits.
430.307(d)	430.310(a)(3)	Deletes reference to OPM authority to waive requirement for career majority on PRBs. Authority is stated in statute.
430.307(e)	430.310(b)(1)	Plain language edits.
430.307(f)	430.310(b)(3)	Plain language edits.
430.307(g)	430.301(b)(2)	Plain language edits.
430.308	430.311(a), 430.311(b)	Plain language edits.
430.309(a)	430.312(b)	Plain language edits.
430.309(b)	430.312(c)	Plain language edits.
430.310	430.312(a)	Moves requirement to section on OPM review of agency systems and edits for plain language.

E.O. 12866, Regulatory Review

This final rule has been reviewed by the Office of Management and Budget in accordance with Executive Order 12866.

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 pertain only to Federal employees and agencies.

List of Subjects in 5 CFR Part 430

Government employees, Performance management.

Office of Personnel Management.

Janice R. Lachance,
Director.

Accordingly, OPM is amending 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.

2. Subpart C is revised to read as follows:

Subpart C—Managing Senior Executive Performance

- Sec.
- 430.301 General.
- 430.302 Coverage.
- 430.303 Definitions.
- 430.304 SES performance management systems.
- 430.305 Planning and communicating performance.
- 430.306 Monitoring performance.
- 430.307 Appraising performance.
- 430.308 Rating performance.

- 430.309 Using performance results.
- 430.310 Performance Review Boards (PRBs).
- 430.311 Training and evaluation.
- 430.312 OPM review of agency systems.

Subpart C—Managing Senior Executive Performance

§ 430.301 General.

(a) *Statutory authority.* Chapter 43 of title 5, United States Code, provides for performance management for the Senior Executive Service (SES), the establishment of SES performance appraisal systems, and appraisal of senior executive performance. This subpart prescribes regulations for managing SES performance to implement the statutory provisions at 5 U.S.C. 4311–4315.

(b) *Purpose.* The regulations in this subpart require agencies to establish performance management systems that hold senior executives accountable for their individual and organizational performance in order to improve the overall performance of Government by—

- (1) Expecting excellence in senior executive performance;
- (2) Linking performance management with the results-oriented goals of the Government Performance and Results Act of 1993;
- (3) Setting and communicating individual and organizational goals and expectations;
- (4) Systematically appraising senior executive performance using measures that balance organizational results with customer, employee, or other perspectives; and
- (5) Using performance results as a basis for pay, awards, development, retention, removal, and other personnel decisions.

§ 430.302 Coverage.

(a) This subpart applies to all senior executives covered by subchapter II of chapter 31 of title 5, United States Code.

(b) This subpart applies to agencies identified in section 3132(a)(1) of title 5, United States Code.

§ 430.303 Definitions.

Terms used in this subpart are defined as follows:

Appointing authority means the department or agency head, or other official with authority to make appointments in the Senior Executive Service.

Appraisal period means the established period of time for which a senior executive's performance will be appraised and rated.

Balanced measures means an approach to performance measurement that balances organizational results with the perspectives of distinct groups, including customers and employees.

Critical element means a key component of an executive's work that contributes to organizational goals and results and is so important that unsatisfactory performance of the element would make the executive's overall job performance unsatisfactory.

Other performance elements means components of an executive's work that do not meet the definition of a critical element, but may be important enough to factor into the executive's performance appraisal.

Performance means the accomplishment of the work described in the senior executive's performance plan.

Performance appraisal means the review and evaluation of a senior executive's performance against performance elements and requirements.

Performance management system means the framework of policies and practices that an agency establishes under subchapter II of chapter 43 of title 5, United States Code, and this subpart, for planning, monitoring, developing, evaluating, and rewarding both individual and organizational performance and for using resulting performance information in making personnel decisions.

Performance requirement means a statement of the performance expected for a critical element.

Progress review means a review of the senior executive's progress in meeting the performance requirements. A progress review is not a performance rating.

Ratings: (1) *Initial summary rating* means an overall rating level the supervisor derives from appraising the senior executive's performance during the appraisal period and forwards to the Performance Review Board.

(2) *Annual summary rating* means the overall rating level that an appointing authority assigns at the end of the appraisal period after considering a Performance Review Board's recommendations. This is the official rating.

Senior executive performance plan means the written summary of work the senior executive is expected to accomplish during the appraisal period and the requirements against which performance will be evaluated. The plan addresses all critical elements and any other performance elements established for the senior executive.

Strategic planning initiatives means agency strategic plans, annual performance plans, organizational workplans, and other related initiatives.

§ 430.304 SES performance management systems.

(a) To encourage excellence in senior executive performance, each agency must develop and administer one or more performance management systems for its senior executives.

(b) Performance management systems must provide for:

(1) Planning and communicating performance elements and requirements that are linked with strategic planning initiatives;

(2) Consulting with senior executives on the development of performance elements and requirements;

(3) Monitoring progress in accomplishing elements and requirements;

(4) At least annually, appraising each senior executive's performance against requirements using measures that balance organizational results with customer and employee perspectives; and

(5) Using performance information to adjust pay, reward, reassign, develop, and remove senior executives or make other personnel decisions.

(c) Additional system requirements.

(1) *Appraisal period.* Each agency must establish an official performance appraisal period for which an annual summary rating must be prepared.

(i) There must be a minimum appraisal period of at least 90 days.

(ii) An agency may end the appraisal period any time after the minimum appraisal period is completed, if there is an adequate basis on which to appraise and rate the senior executive's performance.

(iii) An agency may not appraise and rate a career appointee's performance within 120 days after the beginning of a new President's term of office.

(2) *Summary performance levels.* Each performance management system must have at least three summary performance levels: one or more fully successful levels, a minimally satisfactory level, and an unsatisfactory level.

(3) *Method for deriving summary ratings.* Agencies must develop a method for deriving summary ratings from appraisals of performance against performance requirements. The method must ensure that only those employees whose performance exceeds normal expectations are rated at levels above fully successful. An agency may not prescribe a forced distribution of rating levels for senior executives.

§ 430.305 Planning and communicating performance.

(a) Each senior executive must have a performance plan that describes the individual and organizational expectations for the appraisal period and sets the requirements against which performance will be evaluated.

Supervisors must develop performance plans in consultation with senior executives and communicate the plans to them on or before the beginning of the appraisal period.

(b) Senior executive performance plan requirements:

(1) *Critical elements.* At a minimum, plans must describe the critical elements of the senior executive's work and any other relevant performance elements. Elements must reflect individual and organizational performance.

(2) *Performance requirements.* At a minimum, plans must describe the level

of performance expected for fully successful performance of the executive's work. These are the standards against which the senior executive's performance will be appraised.

(3) *Link with strategic planning initiatives.* Critical elements and performance requirements for each senior executive must be consistent with the goals and performance expectations in the agency's strategic planning initiatives.

§ 430.306 Monitoring performance.

(a) Supervisors must monitor each senior executive's performance during the appraisal period and provide feedback to the senior executive on progress in accomplishing the performance elements and requirements described in the performance plan. Supervisors must provide advice and assistance to senior executives on how to improve their performance.

(b) Supervisors must hold a progress review for each senior executive at least once during the appraisal period. At a minimum, senior executives must be informed about how well they are performing against performance requirements.

§ 430.307 Appraising performance.

(a) *Annual appraisals.* Agencies must appraise each senior executive's performance in writing and assign an annual summary rating at the end of the appraisal period.

(1) At a minimum, a senior executive must be appraised on the performance of the critical elements in the performance plan.

(2) Appraisals of senior executive performance must be based on both individual and organizational performance, taking into account such factors as—

- (i) Results achieved in accordance with the goals of the Government Performance and Results Act of 1993;
- (ii) Customer satisfaction;
- (iii) Employee perspectives;
- (iv) The effectiveness, productivity, and performance quality of the employees for whom the senior executive is responsible; and
- (v) Meeting affirmative action, equal employment opportunity, and diversity goals and complying with the merit system principles set forth under section 2301 of title 5, United States Code.

(b) *Details and job changes.* (1) When a senior executive is detailed or temporarily reassigned for 120 days or longer, the gaining organization must set performance goals and requirements for the detail or temporary assignment. The

gaining organization must appraise the senior executive's performance in writing, and this appraisal must be factored into the initial summary rating.

(2) When a senior executive changes jobs or transfers to another agency after completing the minimum appraisal period, the supervisor must appraise the executive's performance in writing before the executive leaves.

(3) The annual summary rating and any subsequent appraisals must be transferred to the gaining agency. The gaining supervisor must consider the rating and appraisals when developing the initial summary rating at the end of the appraisal period.

§ 430.308 Rating performance.

(a) *Initial summary rating.* The supervisor must develop an initial summary rating of the senior executive's performance, in writing, and share that rating with the senior executive. The senior executive may respond in writing.

(b) *Higher level review.* The senior executive may ask a higher level official to review the initial summary rating before the rating is given to the Performance Review Board (PRB). The senior executive is entitled to one higher level review, unless the agency provides for more than one review level. The higher level official cannot change the supervisor's initial summary rating, but may recommend a different rating to the PRB and the appointing authority. Copies of the reviewer's findings and recommendations must be given to the senior executive, the supervisor, and the PRB.

(c) *PRB review.* The initial summary rating, the senior executive's response to the initial rating, and the higher level official's comments must be given to the PRB. The PRB must review the rating and comments from the senior executive and the higher level official, and make recommendations to the appointing authority, as provided in § 430.310.

(d) *Annual summary rating.* The appointing authority must assign the annual summary rating of the senior executive's performance, in writing, after considering any PRB recommendations. This rating is the official rating.

(e) *Extending the appraisal period.* When an agency cannot prepare an annual summary rating at the end of the appraisal period because the senior executive has not completed the minimum appraisal period or for other reasons, the agency must extend the executive's appraisal period. The agency will then prepare the annual summary rating.

(f) *Appeals.* Senior executive performance appraisals and ratings are not appealable.

§ 430.309 Using performance results.

(a) Agencies will use the results of performance appraisals and ratings as a basis for adjusting pay, granting awards, and making other personnel decisions. Performance information will also be a factor in assessing a senior executive's continuing development needs.

(b) A career executive whose annual summary rating is at least fully successful may be given a performance award under part 534, subpart D, of this chapter.

(c) An executive may be removed from the SES for performance reasons, subject to the provisions of part 359, subpart E, of this chapter.

(1) An executive who receives an unsatisfactory annual summary rating must be reassigned or transferred within the Senior Executive Service, or removed from the Senior Executive Service;

(2) An executive who receives two unsatisfactory annual summary ratings in any 5-year period must be removed from the Senior Executive Service; and

(3) An executive who receives less than a fully successful annual summary rating twice in any 3-year period must be removed from the Senior Executive Service.

§ 430.310 Performance Review Boards (PRBs).

Each agency must establish one or more PRBs to make recommendations to the appointing authority on the performance of its senior executives.

(a) *Membership.* (1) Each PRB must have three or more members who are appointed by the agency head, or by another official or group acting on behalf of the agency head. Agency heads are encouraged to include women, minorities, and people with disabilities on PRBs.

(2) PRB members must be appointed in a way that assures consistency, stability, and objectivity in SES performance appraisal.

(3) When appraising a career appointee's performance or recommending a career appointee for a performance award, more than one-half of the PRB's members must be SES career appointees.

(4) The agency must publish notice of PRB appointments in the **Federal Register** before service begins.

(b) *Functions.* (1) Each PRB must review and evaluate the initial summary rating, the senior executive's response, and the higher level official's comments on the initial summary rating, and

conduct any further review needed to make its recommendations.

(2) The PRB must make a written recommendation to the appointing authority about each senior executive's annual summary rating.

(3) PRB members may not take part in any PRB deliberations involving their own appraisals.

§ 430.311 Training and evaluation.

(a) To assure that agency performance management systems are effectively implemented, agencies must provide appropriate information and training to supervisors and senior executives on performance management, including planning and appraising performance.

(b) Agencies must periodically evaluate the effectiveness of their performance management system(s) and implement improvements as needed.

(c) Agencies must maintain all performance-related records for no less than 5 years from the date the annual summary rating is issued, as required in § 293.404(b)(1) of this chapter.

§ 430.312 OPM review of agency systems.

(a) Agencies must submit proposed SES performance management systems to OPM for approval.

(b) OPM will review agency systems for compliance with the requirements of law, OPM regulations, and OPM performance management policy.

(c) If OPM finds that an agency system does not meet the requirements and intent of subchapter II of chapter 43 of title 5, United States Code, or of this subpart, it will direct the agency to take corrective action, and the agency must comply.

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DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 99-CE-91-AD; Amendment 39-11922; AD 2000-20-11]

RIN 2120-AA64

Airworthiness Directives; LET Aeronautical Works Model L-13 "Blanik" Sailplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that applies to all LET Aeronautical Works (LET) Model L-13 "Blanik" sailplanes.

This AD requires you to inspect the tail-fuselage hinge for strength requirements and damage, and also requires you to replace any hinge with damage or that does not meet strength requirements.

This AD is the result of mandatory continuing airworthiness information (MCAI) issued by the airworthiness authority for the Czech Republic. The actions specified by this AD are intended to detect and correct any tail-fuselage hinge that is damaged or has inadequate material characteristics. Any tail-fuselage hinge with damage or inadequate material characteristics could fail and result in loss of controlled flight.

DATES: This AD becomes effective on November 27, 2000.

The Director of the Federal Register approved the incorporation by reference of certain publications listed in the regulations as of November 27, 2000.

ADDRESSES: You may get the service information referenced in this AD from LET Aeronautical Works, Kunovice 686 04, Czech Republic; telephone: +420 632 55 44 96; facsimile: +420 632 56 41 13. You may examine this information at the Federal Aviation Administration (FAA), Central Region, Office of the Regional Counsel, Attention: Rules Docket No. 99-CE-91-AD, 901 Locust, Room 506, Kansas City, Missouri 64106; or at the Office of the **Federal Register**, 800 North Capitol Street, NW, suite 700, Washington, DC 20001.

FOR FURTHER INFORMATION CONTACT: Mike Kiesov, Aerospace Engineer, FAA, Small Airplane Directorate, 901 Locust, Room 301, Kansas City, Missouri 64106; telephone: (816) 329-4144; facsimile: (816) 329-4090.

SUPPLEMENTARY INFORMATION:

Discussion

What events have caused this AD? The Civil Aviation Authority (CAA), which is the airworthiness authority for the Czech Republic, recently notified the FAA that an unsafe condition may exist on all LET Model L-13 "Blanik" sailplanes. The CAA reports an incident involving one of the affected sailplanes where the tail-fuselage attachment fitting was damaged. Further analysis reveals that the material characteristics of the tail-fuselage attachment fitting were inadequate.

What are the consequences if the condition is not corrected? The tail-fuselage attachment fitting is a primary structural element within the empennage. Failure of this part, if not detected and corrected, could result in loss of controlled flight.

Has FAA taken any action to this point? We issued a proposal to amend

part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an AD that would apply to all LET Model L-13 "Blanik" sailplanes. This proposal was published in the **Federal Register** as a notice of proposed rulemaking (NPRM) on August 9, 2000 (65 FR 48648). The NPRM proposed to require you to inspect the tail-fuselage hinge for strength requirements and damage, and would require you to replace any hinge with damage or that does not meet strength requirements.

Was the public invited to comment? Interested persons were afforded an opportunity to participate in the making of this amendment. No comments were received on the proposed rule or the FAA's determination of the cost to the public.

The FAA's Determination

What is FAA's Final Determination on this Issue? After careful review of all available information related to the subject presented above, we have determined that air safety and the public interest require the adoption of the rule as proposed except for minor editorial corrections. We determined that these minor corrections:

- Will not change the meaning of the AD; and
- Will not add any additional burden upon the public than was already proposed.

Cost Impact

How many sailplanes does this AD impact? We estimate that this AD affects 140 sailplanes in the U.S. registry.

What is the cost impact of the inspection for the affected sailplanes on the U.S. Register? We estimate that it will take approximately 4 workhours per sailplane to accomplish the inspection, at an average labor rate of \$60 an hour. Based on the cost factors presented above, we estimate the total cost impact of the inspection on U.S. operators to be \$33,600, or \$240 per sailplane.

What is the cost impact of the replacement for the affected sailplanes on the U.S. Register? We estimate that it will take approximately 16 workhours per sailplane to accomplish the replacement (as necessary), at an average labor rate of \$60 an hour. The manufacturer will provide the replacement attachment fittings at no cost. Based on the cost factors presented above, we estimate the total labor cost impact of the replacement on U.S. operators to be \$960 per sailplane.

Regulatory Impact

Does this AD impact various entities? The regulations adopted herein will not