

PERFORMANCE

Section 1. Overview

The Agency will administer the performance management program to comply with 5 U.S.C. Chapter 43, 5 U.S.C. Chapter 75, 5 CFR Part 430, 5 CFR Part 432 and 5 CFR Part 752, In compliance with 5 CFR 430.208(c) the Agency will not establish a forced distribution of summary levels. Each employee's performance appraisal will be based on the supervisor's evaluation of the employee's performance measured against the employee's performance standards (including critical elements and, as applicable, non-critical elements).

Section 2. Definitions

The definitions contained in 5 CFR Part 430 will apply to terms used in this Article.

Section 3. Critical Elements and Performance Standards

- A. Per 5 C.F.R. 430.203: "Critical element means a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that an employee's overall performance is unacceptable. Such elements shall be used to measure performance only at the individual level."
- B. The Agency will comply with 5 CFR Part 430 when making its decision as to the number of rating levels for each critical element, when determining individual employees' performance ratings, and when determining whether a rating level will have a written performance standard.
- C. Application of all performance standards must comply with 5 CFR Part 430.

Section 4. Communications

- A. Within the first 30 calendar days of every rating period or within 30 calendar days of employment or reassignment, the supervisor will verbally discuss the performance plan with each employee. The supervisor will notify the employee when and where a draft performance plan is available for review.
- B. As required by 5 CFR 430.206(b)(1): "Agencies shall encourage employee participation in establishing performance plans." However, the employee does not need to agree with the final plan. The supervisor will give the employee the final performance plan and ask the employee to sign and date to acknowledge receipt. Though the rating cycle begins October 1, the date the employee signs the plan, or declines to sign, is the beginning date of the minimum period of performance. If the employee declines to sign the plan,

then the supervisor notes the disagreement and the date in the Agency's performance management system. Employees and supervisors may add additional comments and concerns to the notes sections of the Agency's performance management system.

1. Once a performance plan is final, during the rating period, the supervisor will discuss with the employee any changes in the employee's critical elements or performance standards and annotate them in the performance plan. Such changes initiating a discussion will include but are not limited to:
 - a. change in the work unit's goals or objectives;
 - b. change in assignments;
 - c. change in the work processes of the unit; or
 - d. an employee is detailed for more than 90 days.

C. Performance discussions:

1. For each appraisal period there will be a progress review (also called a "midyear review"), generally occurring in April of the appraisal year.
2. Frequent informal reviews and discussion of performance throughout the appraisal period may be requested by the employee or supervisor at any time.
3. Progress reviews shall be scheduled at least one week or more in advance of the review in order to allow the employee to provide advance input (self-assessment) at the option of the employee.
4. Progress reviews shall be conducted in a manner that protects the privacy of the employee. The employee may request that a Union representative be present at a progress review.
5. The purpose of any performance review and discussion between the supervisor and the employee is to:
 - a. evaluate the employee against established critical elements and standards;
 - b. improve work processes or products;
 - c. discuss employee development including training opportunities which may include on the job training;
 - d. assess accomplishments; and resolve problems.

D. Interim Ratings

1. Interim ratings must be prepared for employees in the Agency's performance management system who have been under a performance plan for the minimum period of performance (90 days) when the employee:
 - a. completes a detail of ninety (90) days or more;

- b. is reassigned to another EPA organization;
 - c. transfers to another Agency; or
 - d. has a supervisor who departs from that supervisory position.
2. In preparing the rating of record, interim ratings must be given consideration proportional to the amount of the appraisal period the employee and departing supervisor occupied each position. If the appraisal period is less than the minimum period of performance, only performance highlights will be provided. Performance highlights will be similar in scope as the progress reviews described above.
3. The supervisor must indicate all sources of input considered in preparing the interim rating.

E. Timing of the Appraisal

1. Annual performance appraisals (ratings of record) will be scheduled within 30 days after the close of the appraisal period.
2. Appraisals may deviate from the schedule above in the following circumstances:
 - a. The employee was on leave for an extended period during the performance cycle inhibiting a complete and accurate performance appraisal;
 - b. The employee's PARS is issued with fewer than 90 days prior to the completion of the rating period; or
 - c. The employee receives notice of Unacceptable performance (either through the issuance of a PIP or other notification). In that case, the rating period is extended, if needed, until the PIP period has ended.
 - d. In the event the supervisor leaves the position without providing an evaluation and the employee has otherwise met the requirements to receive a rating of record, then the Agency will rate the employee based on appropriate sources of input. In such situations, appropriate sources of input for the rating typically include current and past members of the employee's supervisory chain.

F. Reduction in Force (RIF)

1. In the event of a Reduction-In-Force (RIF), employee performance ratings will be evaluated in accordance with applicable law, rule, and regulation.
2. For employees with no rating (such as 100% official time, active-duty leave, etc.) 5 C.F.R. § 351.504 shall apply for the period of service.

G. Appraising Disabled Veterans.

The Agency will comply with Executive Order 5396 from July 17, 1930, regarding a disabled veteran's efficiency rating who properly requested leave.

H. Appraising Employees Called to Active Duty or Volunteering for Emergency Work

1. A supervisor's appraisal of the performance of an employee in the Armed Forces Reserve or National Guard who is called to active duty, shall not be adversely impacted due to the employee's absence from work. These employees will not receive a rating from the Agency based on the time period of their service.
2. A supervisor's appraisal of the performance of an employee who has volunteered to assist in an emergency declared by a local, state or federal governmental Agency, department or entity, and sanctioned by the Federal government or the Agency, shall not be adversely impacted due to the employee's absence from work. These employees will not receive a rating from the Agency based on the time period of their work on that emergency.
3. Appraisal periods may be extended in accordance with the "timing of the appraisal" provision above.

I. Protected Union Activities

1. There is no performance rating for union activities. Performance evaluations will be based only on Agency work performed.
2. A union representative's work on authorized official time will not negatively impact their performance evaluation. These employees will not receive a rating from the Agency based on the time period of their authorized official time.
3. There will be no negative impact on employee performance evaluations because of participation in union functions.

J. Sources of Appraisal Input

1. The supervisor will ensure that input used in the appraisal process is related to the employee's critical elements. The input used will be factual and relevant.
2. Employees and Supervisors will discuss during performance appraisal meetings the sources of input considered in formulating performance evaluations. Employees are encouraged to raise any concerns regarding their performance rating, including any information overlooked or concerns regarding the sources of input.

3. Nothing in this agreement prohibits supervisors from adjusting employees' ratings based on performance discussions with employees. Nothing in the agreement prohibits employees from adding notes to the Agency's performance management system.
4. Supervisors will communicate areas of improvement and performance issues as soon as practicable in an effort to allow the employee sufficient time to improve their performance prior to the performance evaluation.
5. Standards of performance will make allowances for factors over which an employee has little, if any, control, but which might exert a significant impact on the employee's performance or ability to achieve an objective. It is understood that employees cannot be held accountable on critical elements for factors outside their control. If a supervisor determines, in consultation with an employee, that an employee cannot be held accountable on a certain critical element (for instance, if no work was assigned under that CE), the supervisor shall remove that critical element from the employee's performance plan.

K. Employee Self-Assessment

1. Employees are encouraged but not required to provide their supervisor with a written self-assessment (e.g., list of accomplishments) at the middle and end of the appraisal period. The supervisor will consider an employee's self-assessment(s) (if they are provided) and other appraisal input when assigning a rating to each critical element at the end of the performance cycle.

L. Annual Rating of Record

1. Employees will be appraised at least once a year and given a rating of record. The rating period will be indicated in USA Performance. The rating will normally be completed within 30 days after the end of the rating period, unless the rating period is extended or the employee is otherwise not rated.
2. It is understood that employees will only be evaluated on work they were assigned and for which they have been provided EPA-specific training necessary to perform their job functions (e.g., national data systems, required OJT). Employees may be evaluated based on knowledge, skills, and abilities they were required to possess to obtain their position. The supervisor must provide a narrative description for the summary rating.
3. Assigning the Summary Rating. Once all of the critical elements (except for those which have been removed as explained above) have been rated, the supervisor will assign the summary level (rating) as follows:

- a. Distinguished: more than one half of the critical elements are rated Distinguished, and none of the critical elements are rated Unacceptable.
 - b. Effective: one half or more of the critical elements are rated Effective and none of the critical elements are rated Unacceptable;
 - c. Unacceptable: one or more critical element is rated Unacceptable.
4. Approving the Rating of Record:
- a. If the summary level is Effective, or Distinguished, the supervisor must sign and date the form to approve the rating of the record.
 - b. Summary ratings of Unacceptable require a higher-level management review and approval.

Section 7. Performance Improvement Plan (PIP)

- A. At any time during the rating period, if the supervisor identifies an employee's (as defined by 5 U.S.C. § 7511(a)(1)) performance as Unacceptable, as referred to above in one or more critical elements, the supervisor may notify the employee of their Unacceptable performance as described below. It is in the parties' best interests to address performance issues as soon as they are discovered. Prior to the issuance of a PIP, the supervisor will meet with the employee to communicate areas of potential improvement. This meeting will provide an opportunity for the employee and the supervisor to discuss the specific performance requirement(s) not being met, disclose the need for a Reasonable Accommodation, if applicable, and to raise potential causes of the problem. Nothing in this Article prevents an employee and their supervisor from having conversations regarding the employee's performance at any time during the rating period.
- B. The employee may request a union representative at any time during the process.
- C. When the supervisor determines based upon documentation that the employee's performance is unacceptable in one or more critical elements, the supervisor shall develop a draft written PIP, which will include a description of the basis for the PIP and provide it to the employee. Upon request of the employee or the employee's representative, the Agency will provide a copy of any supporting documentation referred to in the draft PIP.
- D. The draft PIP will inform the employee of the critical elements for which performance is unacceptable and inform the employee of the performance requirement(s) or standard(s) that must be attained to demonstrate acceptable performance under the PIP.
- E. The employee and their union representative (if the employee requests one) may submit written feedback on the draft PIP within 2 days of receipt of the draft PIP.

- F. After the expiration of the 2-day period, the supervisor may issue the PIP. Once the supervisor issues the PIP, the supervisor will meet with the employee and discuss the approved PIP. The employee may invite a Union representative to be present at this PIP meeting. The goal of the PIP is to afford the employee a reasonable opportunity to demonstrate acceptable performance, commensurate with the duties and responsibilities of the employee's position.
1. Timing. The employee's performance rating must be based on at least 90 days under the assigned critical elements.
- G. A supervisor may issue an unacceptable rating prior to issuing a PIP when a rating is required to be issued under the employee's performance plan; however, no performance-based action (5 CFR Part 432) will be proposed until the completion of the PIP.
- H. A PIP will be in writing from the employee's supervisor to the employee. The time period for a PIP will generally last 90 calendar days but will be no less than 60 days. The PIP will afford the employee sufficient time to demonstrate acceptable performance under the critical elements at issue, commensurate with the duties and responsibilities of the employee's position. The time period for the PIP may be shortened from 90 calendar days by mutual agreement of the parties or written justification from the supervisor. Under no circumstances shall the PIP time period be less than 60 calendar days. A specified beginning and ending date should be included, though extensions may be necessary. At any time during the PIP period the supervisor may conclude that improvement is no longer necessary based on the employee's improved performance. The supervisor will notify the employee in writing of this determination.
- J. Each PIP should be geared to the needs and circumstances of the situation. The following information should be included:
1. The employee's name, position title, series, grade, and organization location;
 2. A description of the requirements that must be met, in terms of quality, quantity, timeliness, or manner of performance, for work to be rated "Effective".
 3. A written narrative explanation of what will be considered Effective performance;
 4. A description of the assistance the employee will receive from the supervisor;
 5. Provision for regular meetings with the employee to discuss progress and deficiencies.
 6. A list of assignments with due dates, or completion dates, if appropriate;
 7. A statement that the employee is expected to maintain Effective performance on the remainder of the critical elements;
 8. Examples of ways the employee can improve performance;
 9. A description of the assistance the employee will receive from the supervisor/Agency, such as a schedule of periodic performance reviews that will be

- held during the performance improvement period and appropriate training opportunities that are available; and
10. Notification that failure to improve performance to Effective may result in a change to a lower grade, reassignment, or removal.
- K. If the employee's performance improves to Effective and remains at that level for one year from the beginning of the PIP period in accordance with 5 CFR 432.107 (b) it will not be used as the basis for a Chapter 43 removal action and the PIP will be removed from USA Performance (or any successor system).
- L. The Agency will not place any PIP documentation (including the PIP itself) in the EOPF. This does not include any SF-50 (or successor form) that may result from the failure of a PIP.
- M. A PIP may be terminated or extended in situations such as those described below. If the PIP is terminated because of demonstrated Effective performance, the PIP memorandum will be removed from the USA Performance system (or any successor system) after the employee's performance has continued to be Effective for one year.
- N. A PIP will be terminated if the employee moves to a different position at the same or different grade. The PIP is not continued in effect in the new position.
- O. A PIP may be terminated if the employee's performance improves to Effective prior to the expiration of the PIP.
- P. A PIP may be extended at any time by the supervisor with notice to the employee and their representative. The reason for the extension will be set forth in writing to the employee and their representative.
- Q. Notwithstanding the existence of an ongoing PIP, an employee may request a reassignment to another position as a means of resolving the performance issue, if agreed to by the Agency. An employee shall not be forced to successfully complete the PIP before moving on to another position.
- R. Expiration of a PIP. If a PIP is not extended or terminated by the designated expiration date, the supervisor must notify the employee and their designated representative in writing of the status of their performance. If the employee's performance has improved to Effective, the supervisor must prepare a new rating of record if the opportunity period was triggered by an annual performance rating of unacceptable. The new rating will be updated in the Agency's performance management system. Once the employee has been rated Effective, all relevant performance-related personnel actions will be processed accordingly.

- S. When there is a PIP issued to an employee, the employee's performance period for that year is extended through the duration of the PIP if necessary.
- T. Change of Supervisors while on a PIP. In the event that the employee's supervisor leaves the unit either temporarily or permanently, the employee and new supervisor, along with the employee's representative, shall meet within 7 days of the new supervisor's arrival to discuss the PIP and the employee's progress in meeting the PIP's requirements. If the meeting does not occur within 7 days, the PIP may be extended by the number of days beyond 7 that the meeting occurs.
- U. Part-Time Employees. The Supervisor will give due consideration to the achievability of a PIP for a part-time employee. Assignments and deliverables should be commensurate with a part-time schedule.

Section 8. Documentation for Performance Based Adverse Action

Before taking an adverse action based on an employee's failure to demonstrate acceptable performance, the Agency shall provide to the employee and their representative (if one has been selected) in writing:

- A. the results of the PIP; and
- B. any other material relied upon in formulating the adverse action.

Section 9. Performance Based Actions

- A. Should an employee's performance be determined to be unacceptable based on the results of the PIP, the Agency will consider the following possible personnel actions:
 - 1. reassignment of the employee;
 - 2. demotion to a position at a lower grade in accordance with 5 CFR 432; and
 - 3. removal of the employee from Federal service in accordance with 5 CFR 432.
- B. An employee whose reduction-in-grade or removal is proposed for unacceptable performance is-entitled to:
 - 1. A 30-calendar day advance notice of the proposed action that identifies both the specific instances of unacceptable performance by the employee on which the proposed action is based and the critical element(s) of the employee's position involved in each instance of that performance;
 - 2. A representative. The employee may file a written statement with the deciding official indicating the name, title (if any) and address of their representative(s);
 - 3. A reasonable time, but not less than 7 calendar days, to answer orally and/or in writing;

4. Use a reasonable amount of duty time to prepare an answer; and
5. A written decision which specifies the instances of unacceptable performance on which the reduction in grade or removal is based. The decision shall be issued within 30 calendar days after expiration of the advance notice period. The deciding official generally shall be at a higher level than the proposing official. The written decision shall be issued to the employee at or before the time the action will be effective. The decision shall inform the employee of any applicable appeal and/or grievance rights.
6. By written agreement in advance of the deadlines, the parties may mutually agree to an extension of these time frames.

Section 10. Employee Objections

- A. Performance Plans. The final determination of an employee's critical elements and standards are not grievable under the negotiated grievance procedure. If an employee believes that a decision or other action taken or not taken under this performance management program resulted from a prohibited personnel practice as defined in 5 U.S.C. 2302 or an act of discrimination, the employee may: (1) file a grievance under the negotiated grievance procedure or file a charge of discrimination with the Equal Employment Opportunity Commission and/or (2) file a complaint with the Office of Special Counsel.
- B. Rating of Record. An employee who disagrees with their final rating of record may file a grievance under the provisions of the Negotiated Grievance Procedures Article of this MCBA. An employee may file an allegation with the Office of Special Counsel if the employee believes the rating decision or other action taken or not taken based on the rating of record, constitutes a prohibited personnel practice as defined in 5 U.S.C. 2302 or file an equal employment opportunity (EEO) complaint.

Section 11. Reopener

- A. The Parties agree that the Agency has the right to modify the substance of the Performance Appraisal and Recognition System in accordance with 5 USC 7106. Should that occur, the Union will have the right to negotiate subject to this Agreement's Midterm Article.

PARS
Tentative Agreement
12-04-2023

FOR THE AGENCY

FOR THE UNION

Name: Robert Coomber

Lead Negotiator US EPA

Name: Joyce Howell

Chief Negotiator AFGC Council 238