

ARTICLE 10 Performance

Section 1. Authorities

The Agency will administer the performance management program in accordance with 5 United States Code (U.S.C.) Chapter 43 and 5 Code of Federal Regulations (C.F.R.) Part 430, 5 C.F.R. 432, 531 and Agency Performance Management Policies and Procedures. The Agency will not prescribe a distribution of levels of ratings for employees covered by this master collective bargaining agreement (MCBA). Each employee's performance will be judged solely against their performance standards.

Section 2. Definitions

Acceptable Level of Competence: The performance (i.e., *Effective*) by an employee that warrants advancement of the employee's rate of basic pay to the next higher step of the grade in accordance with 5 C.F.R. §§ 531.403 and 404.

Additional Performance Element: A dimension or aspect of individual, team or organizational performance that is not a critical or non-critical element. Such elements are not used in assigning a summary level but, like critical and non-critical elements, are useful for purposes such as communicating performance expectations and serving as the basis for granting awards. Such elements may include, but are not limited to, objectives, goals, program plans, work plans and other means of expressing expected performance. The use of additional elements is optional.

Appraisal Period: The established period of time for which performance will be reviewed and for which a rating of record will be prepared.

Assumptions: Known 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.

Critical Element: is a work assignment or responsibility of such importance that unacceptable performance on the element would result in a determination that the employee's overall performance is Unacceptable. Critical elements shall be used to measure individual performance only. Critical Elements must be rated at one of the following levels:

- Distinguished
- Effective
- Unacceptable

Goal Cascading Method: The downward flow of the agency's goals established in its strategic and annual performance plans to the work unit level.

Interim Review: Required informal or formal written evaluation of the employee's performance after an employee has performed work under an approved performance plan for at least 90 calendar days when the following occurs:

- 1) The supervisor of record leaves his or her position;

- 2) The employee changes position; or
- 3) The employee completes a temporary promotion or detail.

Non-Critical Element (non-CE): A dimension or aspect of individual, team or organizational performance, exclusive of a CE, that is used in assigning a summary level except for Unacceptable. Such elements may include, but are not limited to, objectives, goals, program plans, work plans and other means of expressing expected performance. The use of non-critical elements is optional.

Measurement Source(s): The source(s) that may establish reliable and supportable bases for a rating and may be used to determine if standards are met or not met.

Minimum Period of Performance: The minimum amount of time (90 days) that must be completed before a rating of record may be given.

Not Rated: A non-rating applied to a CE/non-CE when the employee does not have an opportunity to perform work associated with the CE/non-CE. This should happen in limited circumstances.

Performance Appraisal: The assessment of the employee's performance against their individual critical elements.

Performance Improvement Plan: A plan designed to inform an employee of the CE(s) for which performance is unacceptable and of the performance requirement or standard(s) that must be reached in order to demonstrate acceptable (i.e., *Effective*) performance under the CE(s) at issue.

Performance Plan: All of the written performance elements that set forth expected performance. A plan must include all CEs, non-CEs (if any) and the performance standards for each. This is commonly known as the performance agreement.

Performance Standard: The management-approved performance threshold(s), requirement(s) or expectation(s) that must be met to be appraised at a particular level of performance as identified in Agency policy. A performance standard may include, but is not limited to, quality, quantity, timeliness and manner of performance.

Progress Review: Communicating with the employee about performance compared to the performance standards of CEs and non-CEs.

Rating: The documented appraisal of performance compared to the performance standard(s) for each CE and non-CE on which there has been an opportunity to perform for a minimum period of 90 calendar days.

Rating of Record: The performance rating prepared at the end of an appraisal period for performance of agency-assigned duties over the entire period and the assignment of a summary level.

Summary Level: A category of performance assigned to a rating of record. The three summary levels under PARS are:

- *Distinguished:* Issued to those employees who receive a rating of Distinguished on more than half of their individual CEs/non-CEs, and none of the CEs are rated Unacceptable.
- *Effective:* Issued to those employees who receive a rating of Effective on one half or more of their individual CEs/non-CEs, and none of the CEs are rated Unacceptable.
- *Unacceptable:* Issued to those employees who receive a rating of Unacceptable in one or more of their individual CEs. A rating of Unacceptable on a non-CE will not result in a summary level of Unacceptable.

Supervisor of Record: A supervisor who personally directs subordinates without the use of other, subordinate supervisors. The supervisor of record accomplishes work through the direction of others; plans the staff's day-to-day operations; evaluates and tracks performance; recommends and approves personnel actions; provides advice and counsel on technical and administrative matters; approves training; and approves timecards. The supervisor is documented by either: 1) a Standard Form 52, *Request for Personnel Action*, when detailed into the position; or 2) a Standard Form 50, *Notification of Personnel Action*, when temporarily promoted or permanently assigned to the supervisory position.

Unacceptable: Defined by law and regulation as "Performance of an employee which fails to meet established performance standards in one or more CEs in such employees' position." 5 U.S.C. 4301.

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."
- 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 shall be fair, equitable and consistent with 5 C.F.R. Part 430.

Section 4. Communicating Performance Plans

- A. Within the first 30 calendar days of every rating period or within 30 calendar days of employment or reassignment, the supervisor will discuss the performance plan with each employee. The employee will have electronic access to their draft performance plan, which contains the critical elements and performance standards.

- B. As required by 5 C.F.R. 430.206(b)(1): “Agencies should encourage employee participation in establishing performance plans.” However, the employee does not need to agree with the final plan. The employee will have access to their final performance plan and may sign and date to acknowledge receipt.
- C. 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.
- D. Performance discussions:
 - 1. A mid-year discussion, a closeout of current appraisal period and an establishment of standards for the new appraisal period discussion must take place each appraisal period.
 - 2. Performance discussions should occur throughout the performance appraisal period. Discussions may be initiated by the supervisor or employee and may be held one-on-one or in a work group. Employees are encouraged to seek feedback from their supervisor about their performance throughout the performance appraisal period.
 - 3. Performance discussions between the supervisor and the employee will be aimed at improving the work process or product and developing the employee. As appropriate, the discussion will provide the opportunity to assess accomplishments and resolve problems.

Section 5. Procedures

- A. Within 30 days of appointment or reassignment, the employee will be issued a new performance plan.
- B. Within 30 days of change in supervisor; the new supervisor will conduct an expectation discussion and review the current performance plan.
- C. Employees will receive an annual performance rating for the performance appraisal period. Performance ratings will be completed within 30 days following the end of the rating period.
- D. Employees must be working under a performance plan for a minimum of 90 days before a rating can be given.
- E. Subsequent discussions on contents of the Performance Plan shall occur when there is a change in the work situation including, but not limited to, the following:
 - 1. A change in the supervisor of record;
 - 2. When the employee is detailed;
 - 3. A change in the work unit’s goals or objectives;
 - 4. A change in assignments;
 - 5. A change in the work processes of the unit; or
 - 6. When an employee returns from an extended absence of ninety (90) calendar days or more.

Section 6. Changes to Performance Plans During the Performance Cycle

Keeping performance plans current and accurate.

- A. A critical element may be added or amended during the appraisal period.

- B. However, the supervisor shall not rate an employee on an added or substantially changed critical element until the employee completes the minimum period of performance (90 days) under the added or amended critical element.
- C. The employee is alerted to changes when there is a change to their performance plan. The employee may discuss the change(s) with their supervisor.
- D. Employees may participate in the performance management process by providing input to performance plans and preparing for and engaging in performance discussions. Employees may present concerns with regard to the performance plan to the supervisor for consideration.

Section 7. Training and Information

- A. Agency employees, supervisors and managers shall receive information on PARS to ensure they are familiar with the system.
- B. Awareness shall be provided using appropriate methods including, but not limited to, memoranda, briefing sessions, and on-line or instructor led training.
- C. Both the Agency and ESC recognize the importance of training employees, managers, supervisors, and ESC/EPA Unit officers/stewards within ESC's bargaining unit on elements of the PARS.
- D. The union will be provided reasonable time to provide comments on training materials before they are published or distributed.

Section 8. Annual Pars Information

- A. In accordance with the Federal Service Labor-Management Statute the Union may request PARS information.
- B. ESC may request, on an annual basis, summary information concerning the ratings of record issued to non-SES Region 9 employees. The following information may be requested and provided, without personal identifiers, organizational code, organizational description, pay plan/series/grade, bargaining unit status, management status.

Section 9. Appraisal Period

The fiscal year performance rating is based upon the performance of that respective performance year.

Section 10. Minimum Period of Performance

- A. Employees should be on an approved performance plan for a minimum of 90-days to be evaluated at the end of the performance cycle. If the minimum 90-day period cannot be met before the end of the performance cycle, the appraisal period must be extended until the 90 days are met.
- B. When there is a PIP issued to an employee, the employee's performance period for that year is extended through the end of the PIP. The subsequent performance period begins the day after the PIP ends.

Section 11. Developing Performance Plans

A. General Requirements:

1. Each employee will have access to their performance plan identifying critical elements and standards.
Performance elements and standards are written as specific, must be realistic, designed to achieve results, in alignment with the employee's job duties, and set standards for which the employee will be held accountable for the work assignments and responsibilities of their position.
2. Employees are encouraged to participate in establishing performance standards. In the process of establishing and identifying critical elements and performance standards, the immediate supervisor and employee should discuss what is expected of the employee, methods and resources to achieve the performance standards, and any concerns the employee may have.
3. Supervisors shall give due consideration to an employee's grade level when developing critical elements, including measures for the evaluation of performance.

B. Procedures:

1. An employee must have a minimum of two and no more than five CEs in their PARS plan that must be linked to the agency's strategic plan, regional plan or other local or program specific goals and plans, as appropriate.
2. A summary level may be calculated based on only one CE if all other individual CEs are "Not Rated." The CE is to describe the work assignments and responsibilities that are significantly influenced by an employee's work effort and within the employee's control.
3. These elements cascade down from the senior executive, to the supervisor and then to the employee.
4. Employees may add comments to the comment section when there are unresolved differences between the immediate supervisor and the employee regarding CEs, non-CEs and performance measures.

Section 12. Assumptions

- A. If an employee cannot perform work on a CE due to factors outside their control, a NOT RATED assignment will be given.
- B. If the employee can only perform a portion of the work on a CE due to factors outside their control, they will only be rated on the work they were able to perform.
- C. The supervisor and employee will work collaboratively to identify assumptions relevant to the employee's performance plan. The Supervisor will determine which assumptions are listed in the performance standard.
- D. The performance plan can be reviewed at any time to adjust or revise a CE.

Section 13. Content of the Performance Plan:

- A. Element. Name and/or description of the performance standards and critical elements or non-critical elements.

- B. Element Type. An element may be critical” (CE) or non-critical (Non-CE).
- C. Standard. Performance threshold(s), requirement(s) or expectation(s) that must be met to be appraised at a particular level of performance as identified in the Agency performance policy. A performance standard may include, but is not limited to, quality, quantity, timeliness and manner of performance.
- D. Measurement Source(s). Identification of sources that may establish reliable and supportable bases for a rating and may be used to determine if standards are met or not met, such as, but not limited to: personal observations, employee written products, or feedback from team leaders that assign work.
- E. Critical Element Rating. Each critical element must have an element rating of Distinguished, Effective or Unacceptable.

Section 14. Cascading

The employee may request the following performance standards from the Region 9 human resource office: 1) the employee’s immediate supervisor; 2) the Second Line Supervisor; and the Division Director.

Section 15. Assessing Employee Performance

- A. Progress reviews are inherently a confidential process and can only be shared as necessary.
- B. An employee must demonstrate an acceptable level of competence to be entitled to a Within Grade Increase.

Section 16. Progress Reviews

- A. In addition to the annual performance appraisal, an employee is entitled to at least one formal feedback discussion (progress review) with the supervisor, usually by mid-year.
- B. Frequent informal reviews of performance throughout the appraisal period are strongly encouraged and may be requested by either the employee or the supervisor.
- C. The Progress Reviews should be open, candid, and aimed at improving work products, and will provide an opportunity for feedback regarding schedules, accomplishments, and individual development.

Section 17. Interim Review/Ratings

- A. Interim ratings require an informal or formal written evaluation of the employee’s performance after an employee has performed work under an approved performance plan for at least 90 calendar days when the following occurs:
 1. The supervisor of record leaves their position;
 2. The employee changes position;
 3. The employee completes a temporary promotion; or
 4. The employee completes temporary detail to another position.
- B. For details of less than 90 days supervisor should provide a narrative highlight.
- C. The interim review or rating will be considered when determining the rating of record.

Section 18. Timing of the Appraisal

Performance appraisals (ratings of record) are scheduled to be done annually within 30 days after the close of the appraisal period. Under special circumstances described below, appraisals may deviate from that schedule:

1. If the employee has not completed the minimum period of performance by the end of the performance cycle, then the rating of record is given at the end of the minimum period.
2. In the event that a PIP is still active after the close of the appraisal period, the annual rating of record will not be assigned until the PIP is concluded.

Section 19. Protected Union Activities

Union activities by an employee will not be a factor in the evaluation or appraisal of an employee's performance. In addition, the amount of time spent by an employee on union activities (time not available to the employee to perform job-related duties) will also not be considered in the evaluation or appraisal of an employee's performance.

Section 20. Sources of Appraisal Input

Upon employee request the rating supervisor will inform the employee of the information considered when determining the rating. If the information may adversely affect the employee's rating, the employee will be made aware of the information in order to facilitate their ability to respond and to correct inaccurate information.

Section 21. Rating an Element

Employees are encouraged to provide their supervisor with a written self-assessment (e.g., list of accomplishments completed, etc.) at the end of the appraisal period and/or at other times throughout the year. The supervisor will consider the employee's self-assessment when assigning a rating of record.

Section 22. Annual Rating of Record

- A. Employees will be assigned a rating of record at least once an appraisal cycle. The rating will be completed no later than 30 days after the appraisal cycle ends.
- B. It is understood that employees will only be evaluated on work which they have been assigned.
- C. Raters must provide a narrative description when the element is rated "Distinguished" or "Unacceptable".
- D. Assigning the Summary Level: Once all of the performance elements have been rated, the supervisor will assign the summary level (rating) as follows:
 1. Distinguished: More than half of the individual CEs/non-CEs; and none of the CEs are rated Unacceptable.
 2. Effective: One half or more of their individual CEs/non-CEs; and none of the CEs are rated Unacceptable.

3. Unacceptable: One or more Critical Elements is rated Unacceptable. A rating of Unacceptable on a non-CE will not result in a summary level of Unacceptable.
- E. Provide a written narrative for the Summary Level.

Section 23. Approving the Rating of Record

- A. If the summary level is Distinguished or Effective, the supervisor must electronically sign and date the form to approve the rating of record.
- B. Summary ratings of Unacceptable require a higher-level management review and approval.

Section 24. Documenting the Rating

Official documentation of the rating of record consists of the completed Performance Plan located in USA Performance (the current system) or future equivalent.

Section 25. Communicating the Rating

- A. The supervisor meets with the employee in private to conduct a formal appraisal interview. During the appraisal interview, the supervisor communicates to the employee:
 1. How each performance element was rated;
 2. The rating of record;
 3. Areas that need improvement, including making suggestions and asking the employee for suggestions on how to improve performance; and
 4. The requirement of a PIP, if appropriate.
- B. At the conclusion of the appraisal interview, the employee may access USAPerformance: and electronically sign or refuse to sign the rating of record.
- C. The employee can utilize the electronic signature bypass feature to refuse to sign the PARS rating.

Section 26. Recordkeeping

- A. Once all the agency appraisals are finalized; the information will be transmitted to OPM to be maintained in the employee's Employee Performance File (EPF) in accordance with the General Records Schedules issued by the Archivist of the United States under the authority of 44 U.S.C. 3303a (d), and U.S. EPA Special Schedules.
- B. Performance related notes, records and written observations will be applicable only to that performance year.

Section 27. Employee Development

The Supervisor will provide support and training in accordance with Article 44.

Section 28. Notification of Unacceptable Performance

- A. Upon consultation with servicing LER specialist, the supervisor of record will notify the employee via the email below that their performance is Unacceptable, and a PIP may be issued to allow the employee an opportunity to demonstrate acceptable performance.
- B. The email notifying the employee of Unacceptable performance must include:
 - 1. Subj: Notification of Unacceptable Performance
 - 2. Body: this email serves as notice that your performance is unacceptable in one or more critical elements which may result in the issuance of a PIP.

Section 29. Performance Improvement Plan (PIP)

- A. At any time if the supervisor identifies that an employee's performance in one or more critical elements is at the unacceptable level, the supervisor may notify 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 in order to demonstrate acceptable performance with the issuance of a Performance Improvement Plan (PIP).
- B. The PIP must inform the employee that unless their performance in the specified critical elements improves and is sustained at an acceptable level of performance, the employee may be demoted or removed from employment.
- C. The PIP will generally afford the employee no more than 60 calendar days to demonstrate acceptable performance under the critical elements at issue, commensurate with the duties and responsibilities of the employee's position.
- D. The supervisor may, at their discretion, extend the PIP. Notice of extension shall be given the employee and if applicable the designated representative.
- E. During the PIP period, the supervisor will offer assistance to the employee, to improve the employee's unacceptable performance.
- F. A supervisor can 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 C.F.R. Part 432) will be proposed until the completion of the PIP.
- G. Once the PIP has expired or the supervisor determines that assistance is no longer needed, the supervisor will provide the employee with a written notice of this determination.

Section 30. PIP Content

The following information should be included:

- A. Identify CE(s) for which performance is unacceptable and inform the employee of the performance requirements that must be attained in order to demonstrate acceptable performance.
- B. A description of assistance the employee will receive from the supervisor.
- C. The PIP must inform the employee that unless their performance in the CE(s) at issue improves and is sustained at an *acceptable* (i.e., *Effective*) level of performance, the employee may be demoted or removed from employment.
- D. A specific description of the requirements that must be met, in terms of quality, quantity, timeliness or manner as applicable of performance, for work to perform at the Effective

Level. Numerical criteria or benchmarks used by the supervisor to interpret the performance standard must also be stated.

- E. A schedule of the performance feedback sessions to be held during the performance improvement period.
- F. A statement that the employee is expected to maintain at least Effective performance on the remainder of the CEs.

Section 31. Performance Based Actions

The Agency will follow 5 C.F.R. 430 and 5 C.F.R. 432 if an employee should not successfully complete the opportunity to perform at an acceptable level.

Section 32. Employee Appeal Rights

If an employee believes that a decision or other action taken or not taken under PARS resulted from a prohibited personnel practice as defined in 5 U.S.C. 2302 or an act of discrimination, the employee may file a grievance, complaint with the Equal Employment Opportunity Commission or the Office of Special Counsel.

Section 33. Employee Disagreement with Rating of Record

- A. An employee can provide a rebuttal within 10 workdays after receipt of the performance rating. The rebuttal should be submitted through the electronic PARS system.
- B. An employee who disagrees with their final rating of record may file a grievance under the negotiated grievance procedures.

Section 34. Performance Quotas

The employer agrees that quotas will not be used to determine the number of “Distinguished” or “Effective” for final ratings of record given to employees for each appraisal period.

Section 36. Privacy Protections

The material included in the Agency’s PARS system is confidential and is governed by the Privacy Act. This information will be disclosed, if necessary, in a manner consistent with the Privacy Act Statement on the Performance Plan Coversheet.

Section 37. Appraisal Cycle

- A. It is highly recommended, but not mandatory, that each employee prepare a self-assessment. The self-assessment will be submitted to their immediate supervisor for consideration.
- B. Performance reviews will generally be completed by October 30.

Section 38. Performance Recognition

The Agency will adhere to Article 48, Incentive Awards, when recognizing and rewarding accomplishments. An employee may assert their preference for a Time-Off award in lieu of a monetary award.

Section 39. Reduction in Force (“RIF”) Credit for Performance

In the event of a reduction-in-force at Region 9, ESC employees will receive additional years of retention service credit pursuant to 5 CFR §351.504.

FOR ESC:

FOR EPA: