

## PERFORMANCE MANAGEMENT

**SECTION 1. OVERVIEW:** This Article governs the administration of the National Capital Region Medical Directorate (NCR-MD) performance appraisal system for all employees within the bargaining unit. The system shall be used to appraise the employees' performance of assigned duties and responsibilities in accordance with applicable laws and regulations. The resulting performance appraisals shall be used by the Agency as a basis for training, rewarding, reassigning, promoting, reducing in grade, and removing employees when such action is warranted. Government-wide regulations and the Agency's implementing regulation are applicable to employees in the bargaining unit, except where provisions of the system are in conflict with this Article. In such cases, the Parties agree that this Article is controlling.

**SECTION 2. DEFINITIONS:** All terms used herein will be defined as set forth in 5 CFR. Part 43 *et. seq.*

**SECTION 3. PURPOSE:** The employee performance management system and its application will be fair, equitable, reasonable and related to the employee's position description.

**A. Inclusions:** This system will be a positive building block in the foundation of a relationship based on shared interests and mutual objectives. The assessment system will emphasize:

1. Overall employee contributions;
2. Employee development;
3. The supervisor's role as team leader and coach;
4. Recognition of special skills and contributions in addition to regular job duties;
5. Support of team endeavors;
6. Expectations or requirements that are realistic and attainable by an employee working under normal conditions;
7. Each employee's performance will be judged solely against his or her performance standards with no prescribed distribution of levels of ratings for employees covered by this CBA.

**B. Exclusions:** Per the Agency policy, the assessment system will not:

1. Be used as a disciplinary tool;
2. Foster individual competition;

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3. Be based on numerical goals and/or numerical performance levels not contained in the employee's own performance standards;
4. Be punitive, adversarial or overly labor-intensive;
5. Apply absolute performance standards except where they are crucial to the mission.

#### SECTION 4: RESPONSIBILITIES:

**A. Agency Responsibilities:** Agency Officials shall be responsible for:

1. Providing supervision and feedback to employees on an ongoing basis with the goal of improving employee performance.
2. Nominating deserving employees for performance awards.

**B. Employee Responsibilities:** Employees are responsible for:

1. Performing duties outlined in his or her position description and performance elements.
2. Promptly notifying supervisors about factors that interfere with his or her ability to perform his or her duties at the level of performance required by his or her performance elements.

**SECTION 5. CRITICAL ELEMENTS:** Critical elements are those work assignments or responsibilities of such importance that unacceptable performance on one or any parts of the element would result in a determination that the employee's overall performance is unacceptable.

**A. Accuracy:** The supervisor, or other appropriate management official, shall review the critical elements for completeness and accuracy of the duties assigned to the employee. The critical elements to be used for performance appraisals will be directly related to the employee's assigned Position Description (PD). These shall be communicated to the employee at the beginning of the rating period or whenever elements or expectations change.

**B. Consistency:** To the maximum extent feasible, the critical elements will be consistent for standard or like positions within the same facility. Variations from these critical elements will be based on real differences in the job.

**C. Negotiability:** The Union will be provided copies of critical job elements and standards that are new, revised or deleted where changes in standards impact a significant number of employees and are not *de minimis*. In these cases the agency agrees to provide the Union the opportunity to bargain as per the Mid-Term Bargaining Article of this CBA.

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**D. Deletions:** If deletions are made for any reason in job elements, performance standards, or the aspects that make up the job elements during the rating period, the Union will be afforded an opportunity to bargain before the deletion is effective if requested by the employee.

**SECTION 6. PERFORMANCE STANDARDS:** Under the current state of the law, the Federal Labor Relations Authority (FLRA) has determined that the substance of performance standards and critical elements are not negotiable. However, the Agency has currently established the following guidelines for performance standards, to the maximum extent possible:

1. Performance standards may include, but are not limited to, criteria such as quantity, quality and timeliness. A performance standard will, to the maximum extent feasible, permit the accurate evaluation of performance on the basis of objective criteria related to the job in question for each employee or position under the system.
2. A written performance standard will indicate the performance level which will meet or satisfy the requirements at the "Achieved" level for an element.
3. Upon request, supervisors will inform employees of what is expected in order to exceed a standard.
4. Be consistent with duties and responsibilities contained in an employee's position description (PD). This requirement shall not be interpreted to interfere with management's right to assign work.
5. Where a performance plan is inconsistent with a PD because of an inaccurate reflection of current duties, the PD or the performance plan will be revised.
6. Based on objective, reasonable, and measurable criteria, and provide a clear means of assessing whether objectives have been met.
7. Consistent for standard or like positions. Variations from these performance standards will be based on real differences in the job.
8. Application of all performance standards shall be fair and equitable, and consistent with regulatory requirements.
9. *Percentage Error Rate:* When quality is expressed in a standard as a percentage error rate or percentage error-free rate, a supervisor is encouraged to use valid statistical methods to determine that rate.
10. *Numerical Error Rate:* When quality is expressed in a standard in terms of a number of allowable errors, the sample size shall be the same for each employee performing like duties and working under the same position description. If a larger or smaller sample size is reviewed for an employee, the data should be normalized for interpretation.

**SECTION 7. PERFORMANCE PLANS:**

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**A. Rating Period:** The period for which an employee may be rated will begin when the supervisor gives the employee the approved written elements and related performance standards (with the signatures of both the rating official and the reviewing official) for his or her position.

**B. Notification:** Employees will be provided with proposed elements and standards:

1. At the beginning of every rating period, or within the first two (2) weeks of employment for new employees.
2. Whenever a new or modified performance plan is issued.
3. A change of supervisor of record.
4. Details of 90 days or more
5. Reassignment and/or relocation
6. When an employee returns from an extended absence (medical/non-medical) of 90 days or more.
7. If there is a change in work process or component, related to the position, that affects how a standard is evaluated

**C. Discussion:** The process and content of the discussion are as follows:

1. The rating official will meet in person with the employee to present the proposed performance plan.
2. During this oral discussion the rating official will explain, clarify and communicate the employee's job responsibilities to ensure that there is a clear and common understanding of the duties and responsibilities contained in the employee's position description and performance plan, the levels of performance necessary to obtain each summary rating to meet or exceed a given critical or other element and their relationship to the Agency's mission.

**D. Employee Feedback:** The employee will be given five (5) work days to review the proposed plan and submit any recommended changes, deletions or additions, as well as justification for the recommendations.

**E. Meeting:** The rating official will again meet with the employee within five (5) work days to present the employee's performance plan. During this meeting the employee shall have Union representation when requested. At this time the rating official will explain the reasons why, if any of the employee's recommendations were not incorporated.

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**F. New and Revised Elements:** The supervisor designated by the Agency will discuss the proposed new or revised elements, standards, and the Acceptable level of performance with the employee. The supervisor designated by the Agency will assure that the employee has a copy of the current position description, and the standards and elements.

**G. Inconsistency:** Where a performance plan is inconsistent with a PD because of inaccuracy, the PD will be revised to reflect current duties.

**SECTION 8. INFORMAL AND FORMAL DISCUSSIONS:** Informal discussions are a standard part of supervision and should occur throughout the annual assessment period.

**A. Initiation:** Informal discussions may be initiated by the supervisor, rating official (if not the immediate supervisor) or employee. If requested by the employee the meeting will be scheduled within 15 work days.

**B. Interactions:** Discussions may be held one-on-one or between a supervisor, rating official, and or a work team. These interactions should be candid, forthright dialogues aimed at improving the work process or product and developing the employee(s). The discussion will provide the employee(s) the opportunity to seek further guidance and understanding of his or her work performance. During team discussions no individual will be identified or singled out for derogatory information in relation to performance.

**C. Additional Guidance:** The supervisor or rating official should provide additional guidance aimed at developing the employee(s), removing obstacles and improving the work product or outcome. Additionally, discussions will provide the employee the opportunity to seek further guidance and understanding of his or her work performance and offer suggestions for self-improvement. This does not preclude subsequent formal discussion regarding performance appraisals to include the mid-term assessment.

**D. Mid-Year and Ongoing Review:** Continuous performance feedback and/or counseling is desirable for both employees and managers.

- a. *Progress Review:* At least once during each annual appraisal period, the supervisor shall provide each employee with a face-to-face mid-period Progress Review. Further progress reviews/feedback may be conducted to provide guidance on an employee's performance.
- b. *Mid-Year Review:* will indicate to the employee what the employee's rating would be at that time for each critical job element and what would be necessary for the employee's performance to improve, if necessary.
- c. At the time of any progress review, if the supervisor is aware of an instance(s) of performance deficiency, then the supervisor shall provide that information to the employee. Performance deficiencies will not be used to adversely affect the performance

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rating, unless the employee has been previously notified of the deficiency and has been given an opportunity to improve.

- d. An additional review is required if the supervisor believes the employee is not performing in a successful manner.

## SECTION 9: ANNUAL APPRAISAL:

**A. Performance rating:** All bargaining unit employees will receive an annual performance rating. The performance rating will be issued in writing to the employees within thirty (30) days of the end of the assessment period. This period will be extended where an employee is subject to a Performance Improvement Plan (PIP) and the established ending date would not afford him or her a reasonable opportunity to demonstrate improved performance.

**B. Minimum Period:** New employees must be working under a performance plan for a minimum of 90-days before a rating can be given.

**C. Performance Plan Changes:** When an employee's performance plan changes less than 90-days before the end of the rating period, the employee will be evaluated based on those parts of the performance plan that had previously been in place. In rare instances, rating periods may be extended if changes to the performance plan are changed shortly before the normal period ends.

**D. Considerations:** In evaluating an employee's performance, matters beyond his or her control which affect a standard shall be considered by the rating official.

**E. Effect Period:** An employee's performance standards must be in effect for a period of ninety (90) calendar days before an employee's performance can be rated on that standard.

**F. Annual Appraisals:** Employees will be appraised at least once a year and given a rating of record.

**G. Conclusion of Annual Appraisal:** At the conclusion of the annual appraisal period the following will occur:

1. The employee may provide a self-assessment (written or verbal), which should be given serious consideration in developing the performance rating for that employee.
2. Choosing not to provide the voluntary self-assessment will not disadvantage an employee relative to those who do provide such assessments. However, it is the performance of the employee with regard to the performance plan that should determine the rating and the rating official remains responsible for adequately and accurately observing, fostering, motivating and evaluating that performance throughout the entire rating period.
3. The supervisor will prepare a written performance appraisal.

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4. The appraisal will consist of a brief narrative on each standard, including an assessment of whether the employee meets, exceeds or fails to meet the achieved standard for each of the standards set forth in the Performance Plan.
5. Both the rating official and the employee will sign the Performance Appraisal. The employee's signature shall not be taken to mean that he or she agrees with any/all of the information or that the employee waives any rights to appeal/grieve the rating or discussions regarding performance.
6. After Higher Level Review the written performance appraisal will be provided to the employee within thirty (30) days of the completion of the appraisal period. Appeal/Grievance time limits shall not begin until the day the employee receives his or her copy of the final, signed document.

**H. Reconsideration:** Employees may request reconsideration of their approved rating of record. The request for reconsideration must be filed in writing with the reviewing official within fifteen (15) days of the date the employee has been given the rating in writing. The time limit may be extended for good cause shown. The request must include:

1. The employee's name and position;
2. Designation of the employee's Union representative, if any.
3. The date the employee was notified of his or her approved summary rating.
4. A clear and concise statement, citing specific examples and reason(s) the employee disagrees with the rating. The statement(s) should be based on his or her demonstrated work performance during the rating period to warrant a higher rating than the one they received for each critical element at issue.
5. The reviewing official will render his or her written decision to the employee no later than thirty (30) days after receipt of the request. If any or all of the request is granted, the employee will be issued an updated performance rating.

**SECTION 10. GRIEVABILITY:** Performance Appraisals are subject to the negotiated grievance procedure in accordance with and to the extent permitted by applicable law and regulation, including relevant decisions of the Federal Labor Relations Authority. An arbitrator's authority in a performance rating grievance shall be in accordance with established case law.

**A. Standards:** Performance standards are grievable only to the extent permitted by law and regulation, and are grievable only when put into effect. For a grievance of standards to be considered timely, it must be filed within fifteen (15) days of the date the standards were made final by the reviewing official and given to the employee. If performance standards are not grieved when put into effect, they may not be grieved when they are applied. However, the rating may be grieved at the time of the appraisal; as set forth in the Negotiated Grievance

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Procedure Article of this CBA, the grievance must be filed within fifteen (15) days of the employee's receipt of the final appraisal. An arbitrator's authority in a performance rating grievance shall be in accordance with established caselaw.

**B. Arbitrator's Authority:** Under current case law, an arbitrator's authority is as follows:

1. In evaluating Performance Standards, an arbitrator's authority is limited to determining whether the Standards violate law or applicable government-wide regulation. If the arbitrator finds that the standards violate law or applicable government-wide regulation, the arbitrator's only remedy is to remand the standards to the Agency for revision.
2. In evaluating an employee's performance appraisal, an arbitrator may.
  - a. determine whether management has applied the established standards in violation of law, regulation, or a provision of the parties' collective bargaining agreement on a section 7106(b) matter. *(e.g., failure to timely provide a performance plan, or failure to timely provide a mid-year review)*
  - b. the arbitrator may cancel a rating only if he finds, as a factual matter, that the violation adversely affected the rating.
  - c. The Arbitrator could alter the employee's rating only if the arbitrator could reconstruct what management's appraisal of the Grievant would have been, absent the legal violation. If arbitrator is unable to reconstruct what the Grievant's rating would have been without the violation, the arbitrator must remand the case to management for it to reevaluate the Grievant's performance. An arbitrator does not properly reconstruct what management would have rated the Grievant's performance when the arbitrator independently rates a Grievant, or determines what a fair appraisal should have been.

#### **SECTION 11. ANNUAL RATING OF RECORD:**

**A. Retention of Records:** Performance ratings of record will be retained as required by Government-wide and Agency regulations.

**B. Forwarding Documentation:** When an employee transfers to another federal organization, the Civilian Human Resources Center will forward prior ratings of record.

**C. Retention Standings:** Employees' performance ratings of record due before the issuance due date of specific RIF notices will be submitted to the servicing personnel office in sufficient time for retention standing to be determined. The due date would ordinarily be no later than 15 calendar days prior to the issuance date of specific notices.

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**SECTION 12: ADDRESSING UNACCEPTABLE PERFORMANCE:** It is the responsibility of the Agency to monitor employee performance throughout the rating period taken to improve performance.

**A. Initial Procedure:** If at any time during the rating period the rating official determines that an employee is performing at an unsuccessful level in one or more critical elements, the rating official will counsel the employee regarding his or her performance. During the counseling, the supervisor will advise the employee of the specific deficiencies in his or her performance and the corrective steps the employees may take to improve their performance.

**B. Issuance of PIP:** If, after a reasonable time period the employee's performance does not improve to the successful level, the employee will be issued a Performance Improvement Plan (PIP). Upon request, the employee may have union representation at the meeting in which the PIP is issued.

**C. Elements of PIP:** The PIP will afford the employee a reasonable opportunity to demonstrate acceptable performance and will identify:

1. The critical element(s) for which performance is unacceptable.
2. Specific instances (e.g. date, counseling) of unacceptable performance.
3. The performance requirement(s) or standard(s) that must be attained in order to demonstrate acceptable performance.
4. Which assigned tasks demonstrate the unacceptable performance and how they relate to an identified job requirement(s), element(s), and standard(s), as applicable.
5. A required minimum of bi-weekly counseling to the employee, with the identified supervisor or management official, on the progress made during the PIP period.
6. Other assistance that will be provided to the employee which may also include: formal training, on-the-job training, counseling, assignment of a mentor, or other assistance as appropriate.
7. The time period (of at least 60 days) for the employee to improve to an acceptable level of performance for the identified element(s). The PIP period may be extended through CHRC.
8. Personnel-related actions (WIGIs, awards) that may be withheld while this level of performance continues.

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9. The plan will state that unless performance in a critical element(s) improves to and is sustained at an acceptable level for a minimum period of one (1) year, the employee may be reduced in grade, reassigned or removed from Federal service.

**D. Termination of the PIP:** At any time during the performance improvement period, the rating official may conclude that assistance is no longer necessary because the employee's performance has improved to at least "Fully Successful" and the PIP can be terminated. The rating official will notify the employee of this determination in writing.

**E. Extension:** If, following the performance improvement period, the rating official is unable to make an assessment whether or not the employee is successfully performing his/her critical job duties and responsibilities, the rating official will extend the assistance period until an assessment can be made, consistent with law.

**F. Improvement:** If, following the performance improvement period, the rating official determines that the employee has improved his or her performance to an acceptable level, the employee will be notified in writing.

**G. Lack of Improvement:** If, following the performance improvement period, the rating official determines that the employee has not improved his or her performance to an acceptable level, the employee will be notified in writing of the action to be taken.

**H. Change in Supervision:** If during the PIP there is an unexpected departure of the supervisor, CHRC and the Union will meet to discuss options for moving forward.

### **SECTION 13. Performance Based Action Under 5 CFR 432:**

**A. Notice:** At the end of the Performance Improvement Plan, the supervisor will appraise the employee's performance. If the performance has not improved to an acceptable level, the Agency will give the employee a written notice of proposed action, which specifies the specific instances of unacceptable performance, the critical elements involved, the employee's right to representation, the period of time (i.e. at least fifteen (15) calendar days from receipt of the advanced notice) in which he/she may respond orally or in writing, and the name and title of the official designated to hear an oral and/or receive a written reply. Such notice of proposed action will be given to the employee at least thirty (30) days in advance of a final decision on the unacceptable performance action.

**B. Extension of Formal Action:** The advance notice period may be extended an additional thirty (30) days by the commander or other designated officials. Further extensions, not to exceed thirty (30) days, can only be made with prior approval to the Office of Personnel Management (OPM).

**C. Basis of Decision:** In no case will the final decision to take corrective action (reassignment, reduction in grade or removal) be based on a matter not specified in the notice of proposed action.

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**D. One (1) Year Limit:** A decision to remove, reduce-in-grade or reassign may be based only on those instances of unacceptable performance by the employee that occurred during the one (1) year period ending on the date of the notice of proposed action.

**E. Specification of Critical Elements:** The decision to remove or reduce-in-grade shall specify the critical elements of the employee's position involved in each instance of unacceptable performance on which the reduction-in-grade or removal is based and shall be concurred in by an official in a higher position than the official who proposed the action.

#### **SECTION 14. USE OF PERFORMANCE RATING IN MERIT STAFFING ACTIONS:**

**A. Final Rating:** Only the final version of a performance rating, as agreed to or adjudicated, shall be forwarded to the CHRC, except where there is an immediate need for a rating in connection with a merit staffing action.

**B. Union Duties:** The Agency acknowledges that bargaining unit employees who perform work as part of the Union are doing so for the benefit of the Parties as well as the public. Use of official time and excused absence for Union activities shall not adversely affect the employee's appraisal.

**SECTION 15. USES OF THE PERFORMANCE RATING:** The performance rating given to employees under this performance assessment system is used for a number of purposes, to include but not limited to:

1. An employee who has attained a rating of at least "Fully Successful," has achieved an "acceptable level of competence" and will be entitled to appropriate within-grade increases.
2. The rating of record will be used in consideration for appropriate awards, promotions, and other personnel actions.
3. This performance rating will be considered in making determinations regarding reductions-in-force (RIF) within the Agency in accordance with this CBA.
4. The rating of record may be used in evaluating candidates under the merit promotion system contained in this CBA.
5. Identifying systemic changes in operations, work processes, training, teamwork, etc.



#### **SECTION 16. IMPLEMENTATION OF AN ELECTRONIC PERFORMANCE MANAGEMENT SYSTEM**

Prior to implementing an Electronic Performance Management System for bargaining unit employees, the Agency will provide the Union with notice and an opportunity to bargain over negotiable aspects of such changes in accordance with Mid-Term Bargaining Article of this CBA. Nothing will be implemented until negotiations are completed. Subjects will include

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training, computer access, duty time allotted, self-assessment procedures, privacy requirements, employee access to data maintained on themselves, and employee's right to enter additional personal data into the system.

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