

Relevant Statutes and Regulations that Set Forth Agency Requirements Concerning Employee Performance Appraisals

5 U.S.C. 4301 et seq.

§ 4301. Definitions

(3) "unacceptable performance" means performance of an employee which fails to meet established performance standards in one or more critical elements of such employee's position.

§ 4302. Establishment of performance appraisal systems

- (a) Each agency shall develop one or more performance appraisal systems which--
- (1) provide for periodic appraisals of job performance of employees;
 - (2) encourage employee participation in establishing performance standards; and
 - (3) use the results of performance appraisals as a basis for training, rewarding, reassigning, promoting, reducing in grade, retaining, and removing employees.
- (c) Under regulations which the Office of Personnel Management shall prescribe, each performance appraisal system shall provide for--
- (1) establishing performance standards which will, to the maximum extent feasible, permit the accurate evaluation of job performance on the basis of objective criteria (which may include the extent of courtesy demonstrated to the public) related to the job in question for each employee or position under the system;
 - (2) as soon as practicable, but not later than October 1, 1981, with respect to initial appraisal periods, and thereafter at the beginning of each following appraisal period, communicating to each employee the performance standards and the critical elements of the employee's position;
 - (3) evaluating each employee during the appraisal period on such standards;
 - (4) recognizing and rewarding employees whose performance so warrants;
 - (5) assisting employees in improving unacceptable performance; and
 - (6) reassigning, reducing in grade, or removing employees who continue to have unacceptable performance but only after an opportunity to demonstrate acceptable performance.

5 C.F.R. § 430.101 et seq.

§ 430.203 Definitions.

In this subpart, terms are defined as follows:

Additional performance element means 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.

Appraisal means the process under which performance is reviewed and evaluated.

Appraisal period means the established period of time for which performance will be reviewed and a rating of record will be prepared.

Appraisal program means the specific procedures and requirements established under the policies and parameters of an agency appraisal system.

Appraisal system means a framework of policies and parameters established by an agency as defined at 5 U.S.C. 4301(1) for the administration of performance appraisal programs under subchapter I of chapter 43 of title 5, United States Code, and this subpart.

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.

Non-critical element means a dimension or aspect of individual, team, or organizational performance, exclusive of a critical element, that is used in assigning a summary level. Such elements may include, but are not limited to, objectives, goals, program plans, work plans, and other means of expressing expected performance.

Performance means accomplishment of work assignments or responsibilities.

Performance appraisal system: See Appraisal system.

Performance plan means all of the written, or otherwise recorded, performance elements that set forth expected performance. A plan must include all critical and non-critical elements and their performance standards.

Performance rating means the written, or otherwise recorded, appraisal of performance compared to the performance standard(s) for each critical and non-critical element on which there has been an opportunity to perform for the minimum period. A performance rating may include the assignment of a summary level within a pattern (as specified in § 430.208(d)).

Performance standard means the management-approved expression of the performance threshold(s), requirement(s), or expectation(s) that must be met to be appraised at a particular level of performance. A performance standard may include, but is not limited to, quality, quantity, timeliness, and manner of performance.

Progress review means communicating with the employee about performance compared to the performance standards of critical and non-critical elements.

Rating of record means 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 within a pattern (as specified in § 430.208(d)), or (2) in accordance with § 531.404(a)(1) of this chapter. These constitute official ratings of record referenced in this chapter.

§ 430.204 Agency performance appraisal system(s).

(b) An agency appraisal system shall establish agency-wide policies and parameters for the application and operation of performance appraisal within the agency for the employees covered by the system. At a minimum, a agency system shall --

(1) Provide for --

- (i) Establishing employee performance plans, including, but not limited to, critical elements and performance standards;
- (ii) Communicating performance plans to employees at the beginning of an appraisal period;
- (iii) Evaluating each employee during the appraisal period on the employee's elements and standards;
- (iv) Recognizing and rewarding employees whose performance so warrants;
- (v) Assisting employees in improving unacceptable performance; and
- (vi) Reassigning, reducing in grade, or removing employees who continue to have unacceptable performance, but only after an opportunity to demonstrate acceptable performance.

§ 430.205 Agency performance appraisal program(s).

(b) An agency program shall establish criteria and procedures to address employee performance for employees who are on detail, who are transferred, and for other special circumstances as established by the agency.

§ 430.206 Planning performance.

(a) **Appraisal period.**

- (1) An appraisal program shall designate an official appraisal period for which a performance plan shall be prepared, during which performance shall be monitored, and for which a rating of record shall be prepared.
- (2) Each program shall specify a single length of time as its appraisal period. The appraisal period generally shall be 12 months so that employees are provided a rating of record on an annual basis. A program's appraisal period may be longer when work assignments and responsibilities so warrant or performance management objectives can be achieved more effectively.

(b) **Performance plan.**

- (1) Agencies shall encourage employee participation in establishing performance plans.
- (2) Performance plans shall be provided to employees at the beginning of each appraisal period (normally within 30 days).
- (3) An appraisal program shall require that each employee be covered by an appropriate written, or otherwise recorded, performance plan based on work assignments and responsibilities.
- (4) Each performance plan shall include all elements which are used in deriving and assigning a summary level, including at least one critical element and any non-critical element(s).
 - (i) At least one critical element that addresses individual performance; and
 - (ii) Any non-critical element(s).
- (5) Each performance plan may include one or more additional performance elements, which --
 - (i) Are not used in deriving and assigning a summary level, and
 - (ii) Are used to support performance management processes as described at § 430.102(b).
- (6) A performance plan established under an appraisal program that uses only two summary levels (pattern A as specified in § 430.208(d)(1)) shall not include non-critical elements.

§ 430.207 Monitoring performance.

- (a) Minimum period. An appraisal program shall establish a minimum period of performance that must be completed before a performance rating may be prepared.
- (b) Ongoing appraisal. An appraisal program shall include methods for appraising each critical and non-critical element during the appraisal period. Performance on each critical and non-critical element shall be appraised against its performance standard(s). Ongoing appraisal methods shall include, but not be limited to, conducting one or more progress reviews during each appraisal period.
- (c) Marginal performance. Appraisal programs should provide assistance whenever performance is determined to be below "Fully Successful" or equivalent but above "Unacceptable."
- (d) Unacceptable performance. An appraisal program shall provide for --
 - (1) Assisting employees in improving unacceptable performance at any time during the appraisal period that performance is determined to be unacceptable in one or more critical elements; and
 - (2) Taking action based on unacceptable performance.

§ 430.208 Rating performance.

(a) As soon as practicable after the end of the appraisal period, a written, or otherwise recorded, rating of record shall be given to each employee.

(1) A rating of record shall be based only on the evaluation of actual job performance for the designated appraisal period.

(2) An agency shall not issue a rating of record that assumes a level of performance by an employee without an actual evaluation of that employee's performance.

(3) Except as provided in § 430.208(i), a rating of record is final when it is issued to an employee with all appropriate reviews and signatures.

(c) The method for deriving and assigning a summary level may not limit or require the use of particular summary levels (i.e., establish a forced distribution of summary levels). However, methods used to make distinctions among employees or groups of employees such as comparing, categorizing, and ranking employees or groups on the basis of their performance may be used for purposes other than assigning a summary level including, but not limited to, award determinations and promotion decisions.

(e) A rating of record of "Unacceptable" (Level 1) shall be reviewed and approved by a higher level management official.

(f) The rating of record or performance rating for a disabled veteran shall not be lowered because the veteran has been absent from work to seek medical treatment as provided in Executive Order 5396.

(g) When a rating of record cannot be prepared at the time specified, the appraisal period shall be extended. Once the conditions necessary to complete a rating of record have been met, a rating of record shall be prepared as soon as practicable.

(h) Each rating of record shall cover a specified appraisal period. Agencies shall not carry over a rating of record prepared for a previous appraisal period as the rating of record for a subsequent appraisal period(s) without an actual evaluation of the employee's performance during the subsequent appraisal period.

(i) When either a regular appraisal period or an extended appraisal period ends and any agency-established deadline for providing ratings of record passes or a subsequent rating of record is issued, an agency shall not produce or change retroactively a rating of record that covers that earlier appraisal period except that a rating of record may be changed --

(1) Within 60 days of issuance based upon an informal request by the employee;

(2) As a result of a grievance, complaint, or other formal proceeding permitted by law or regulation that results in a final determination by appropriate authority that the rating of record must be changed or as part of a bona fide settlement of a formal proceeding; or

(3) Where the agency determines that a rating of record was incorrectly recorded or calculated.

(j) A performance rating may be prepared at such other times as an appraisal program may specify for special circumstances including, but not limited to, transfers and performance on details.