

U.S. EPA-AFGE Master Collective Bargaining Agreement
ARTICLE 34
EMPLOYEE PERFORMANCE EVALUATION

This Agreement is entered into, by and between the United States Environmental Protection Agency (U.S. EPA) (A“U.S. EPA” or “employer@) and the American Federation of Government Employees (AFGE) National Council of EPA Locals #238 (the AUnion@ or AAFGE”). This Article sets forth the parties agreement with respect to the procedures and appropriate arrangements for the implementation of the Performance Appraisal and Recognition System (PARS). In the event (present or future) that any provision of this Agreement is found to be contrary to any requirement of the Master Collective Bargaining Agreement (“MCBA”) applicable to Employee Performance Evaluation, the MCBA will supersede this Agreement for that specific requirement(s) only.

PREAMBLE

Both parties to this agreement endorse these principles:

1. In its entirety and application, the Performance Appraisal and Recognition System (PARS) must be fair, equitable, and solely related to job performance.
2. The parties agree that management will establish and communicate to employees performance elements, critical elements, non-critical elements, and performance standards subject to law and regulations, and this Article. Employee participation or input into the establishment of performance standards will be made in collaborative manner.
3. Performance elements, critical elements, non-critical elements, and performance standards that assess an employee’s performance must be job-related, documented and measurable. There must be a nexus between the expected manner of performance and the expected job results.
4. Supervisors have the responsibility for helping employees maximize their performance, which can best be accomplished through constructive and positive performance management. Performance management is an inherent and significant element of supervision.

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SECTION 1. INTRODUCTION

The Agency-wide performance management system is PARS; Performance Appraisal and Recognition System. This employee performance evaluation program will emphasize:

1. Linking employee performance elements and standards directly to the Agency's mission, strategic goals, programs and policy objectives, and/or annual performance plans and budget priorities.
2. Providing employees with a clear understanding of what is expected of them in a result-oriented performance plan which is applied to their respective areas of responsibility and stated in terms of observable, measurable, and demonstrable performance.
3. Creating a framework for managers and employees to have an ongoing dialogue about the employee's job performance and developmental needs.
4. Differentiating between levels of performance to provide an equitable basis for personnel actions.
5. Providing managers with the mechanisms to recognize and reward excellent performers.
6. Providing a process to assist employees to improve and enhance their performance; and correct less than fully successful performance.
7. Providing a process for employee input into improving organizational effectiveness.

PARS supersedes the current performance management system set forth in EPA Order 3151.1 and the Master Agreement.

SECTION 2. COVERAGE

This performance management program will cover all EPA bargaining unit employees represented by AFGE.

SECTION 3. AUTHORITIES

In the administration of all matters covered by this Article, the parties agree that Article 3, "Governing Laws and Regulations" of the Master Collective Bargaining Agreement ("MCBA") will be controlling.

SECTION 4. DEFINITIONS

A. Fully Successful Level of Performance: The performance of an employee is at the "fully successful" level which warrants advancement of the employee's rate of basic pay to the next higher step of the grade in accordance with 5 CFR Part 531. Successful Performance is also defined as performance that substantially meets an employee's performance requirement(s) or standard(s) at a level of performance above the "Minimally Satisfactory" and "Unacceptable" levels; also known as "Acceptable Level of Competence."

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

C. 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. It is understood that employees cannot be held accountable on critical elements for factors outside their control.

D. CFR: Code of Federal Regulations

E. Critical Element: 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.

F. Levels of Performance: There are five levels of performance: Outstanding (O); Exceeds Expectations (EE); Fully Successful (FS); Minimally Satisfactory (MS); and Unacceptable (U).

G. Within Grade Increase: A periodic increase in an employee's rate of basic pay from one step of the grade of her or his position to the next higher step of that grade.

H. Interim Rating: A written rating prepared as input to the rating of record by the former supervisor when a change of supervisor occurs during the appraisal period. An employee must have completed the minimum period of performance to receive an interim rating.

I. Management: The Employer or U.S. EPA

J. MCBA: Master Collective Bargaining Agreement.

K. Measurement Source(s): Identification of sources that may establish reliable and supportable basis 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.

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

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

N. PARS: Performance Appraisal and Recognition System.

O. Performance: Accomplishment or failure to accomplish work assignments or responsibilities.

P. Performance Agreement: See Performance Plan.

Q. Performance Plan: All of the written, or otherwise recorded, performance elements, critical elements, non-critical elements, and performance standards that set forth expected performance. A plan must include all critical (and additional elements, if applicable) and their performance standards. This is commonly known as the performance agreement. To the extent any portion of the plan is contrary to the requirements of this Article 34, the plan will not be considered to be a valid plan. To the extent that the plan includes requirements or provisions that are contrary to any other requirement or agreement in the MCBA, the MCBA takes precedence over the contents of the plan.

R. Performance Assistance Plan (PAP): A written plan that is developed collaboratively between the immediate supervisor, the employee, and the Union (upon request of the employee and agreement by the supervisor) for the purpose of providing assistance to the employee to improve performance to the Fully Successful level.

S. Performance Improvement Plan (PIP): A written document from the immediate supervisor that is developed collaboratively between the immediate supervisor, the employee, and the Union (if requested by the employee) to help an employee improve performance that is Unacceptable to the Fully Successful level.

T. Performance Standard: The management-approved expression of the performance 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, cost effectiveness, and manner of performance. Each Critical Element must have a Fully Successful performance standard.

U. Progress Review: A review with the employee about performance progress in critical or additional elements. The progress review is required, but not limited to, at least one per performance cycle. The review also includes assessing the need for adjusting the Performance Plan; developing a plan of action for improving performance, where appropriate; and to discuss individual development.

V. Rating: The written appraisal of performance compared to the performance standard(s) for each critical element on which there has been an opportunity to perform for the minimum period.

W. Rating of Record: The performance rating prepared at the end of the appraisal period for performance over the entire period and the assignment of a summary level. This constitutes the official rating of record as defined in 5 CFR Part 430.

X. Unacceptable Performance: Performance that fails to meet established performance standards in one or more of an employee's critical job elements.

Y. U.S.C.: United States Code.

SECTION 5. ADVISORY BOARD

A. Union Management Advisory Board:

1. The parties agree that the Agency will form a joint Union Management Advisory Board ("Advisory Board") to review, evaluate and make recommendations for changes in the development and operation of PARS, including but not limited to training programs to address areas of concerns (e.g., consideration of problems identified in grievances), surveys and work studies, and implementation issues for PARS. The Union representatives shall serve as participating members of the Advisory Board.
2. The Advisory Board will be comprised of up to ten (10) members, with an equal number of labor and management representatives.
3. The recommendation(s) of this Advisory Board will be submitted to the Assistant Administrator or her or his designee, of the Office of Administration and Resource Management, or its successor should the Agency change its organizational structure, who will seriously consider the recommendations.
4. The parties to this Agreement understand that the Advisory Board is not the forum for the negotiations of any proposed changes to PARS.
5. The Advisory Board will meet at least annually.

B. Annual Evaluation of PARS:

1. Because the program set forth in this Article is intended to be innovative and evolutionary in nature, and because its fairness and effectiveness is critical to the Agency achieving its mission, the Advisory Board will jointly evaluate the fairness and effectiveness of this multi-level performance management system annually.

2. A written report summarizing the findings and recommendations for the PARS system will be authored by the Advisory Board and will be submitted to the Assistant Administrator of the Office of Administration and Resource Management or its successor should the Agency change its organizational structure.
3. When labor and management cannot reach consensus on findings and recommendations, they may issue separate documents.
4. The Unions represented on the Board shall have the right to conduct independent studies.

SECTION 6. APPRAISAL PERIOD

For the calendar year 2007, the performance evaluation year will begin on January 1st and end on December 31st. For calendar year 2008, the performance appraisal period will begin on January 1, 2008, and end on September 30, 2008. For Federal fiscal year 2009 and thereafter, the performance appraisal period will begin on October 1st and end on September 30th.

Performance during the previous rating period or extended rating period will not be taken in to consideration in the subsequent rating period.

SECTION 7. MINIMUM PERIOD OF PERFORMANCE

Only those employees who have completed a minimum 90-day appraisal period under an approved performance plan will be evaluated at the end of the performance cycle. The appraisal period begins when the employee signs (or chooses not to sign) the performance plan. If the minimum 90-day period cannot be met before the end of the performance cycle (calendar year), the appraisal period must be extended until the 90 days are met.

SECTION 8: SUMMARY-LEVEL RATINGS

- A. There are five summary rating levels for critical job elements only. Each critical element must have an element rating of (O) Outstanding, (E) Exceeds Expectations, (FS) Fully Successful, (MS) Minimally Satisfactory and (U) Unacceptable.
- B. No further distinctions may be documented or recorded.
- C. Non-critical elements and other performance standards that are not critical elements are not evaluated.

SECTION 9: PERFORMANCE EVALUATION RESPONSIBILITIES

Supervisors, by position, are responsible for preparing and reviewing performance plans, performance ratings, award nominations, and performance related personnel actions. A supervisor is an individual employed by the agency having authority in the interest of agency to hire, direct, assign, promote, reward, transfer, furlough, layoff, recall, suspend, discipline, or remove employees, to adjust their grievances, or to effectively recommend such action if the exercise of the authority is not merely routine or clerical in nature but requires the consistent exercise of independent judgment, except that, with respect to any unit which includes firefighters or nurses, the term supervisor includes only those individuals who devote a preponderance of their employment time to exercising such authority. The Agency acknowledges its responsibilities and obligations under 5 CFR Part 410 and 5 CFR 430.

SECTION 10: DEVELOPING PERFORMANCE PLANS

A. General Requirements

1. Each employee will be given a copy of her or his draft Performance Plan for their position, no more than thirty (30) days after the beginning of the appraisal period. In order to facilitate collaboration, a meeting shall be scheduled at least one week in advance of finalization of the Performance Plan, in order to allow the employee to provide input on their performance plan.
2. Supervisors, in collaboration with the employee, are responsible for writing performance measures for each critical element, non-critical element and performance measure in a way which will permit, to the maximum extent feasible, the accurate evaluation of job performance on the basis of objective criteria.
3. To the maximum extent feasible, performance measures will include expectations of quantity, quality, and/or timeliness, and expectations concerning the manner of performance, where manner of performance is actually related to job duties and responsibilities. For example, manner of performance is related to the actual duties of an employee who regularly provides information to the public through direct contact.
4. Employees are encouraged to be responsible for taking action, to the extent possible, to remove barriers that impede their work and for informing their supervisors of those barriers.
5. Barring exigent circumstances, the phrase “other duties as assigned,” or its equivalent, shall not be used in Performance Plans to regularly assign work for a preponderance of duty hours. This does not preclude the employer from detailing employees to other assignments in accordance with applicable laws. Management will assign “other duties” in a manner consistent with safe and lawful work practices.

B. Grade Controlling Factors

Supervisors shall give due consideration to an employee's grade level when developing Critical Elements, including measures for the evaluation of performance.

C. Collaborative Development of Critical and Non-Critical Elements and Performance Measures

1. Critical elements, non-critical elements and performance measures will be established by the supervisor in collaboration with the employee.
2. Employees are entitled to an explanation of the rationale for their critical elements, non-critical elements and performance measures placed in their performance plan. Furthermore, the immediate supervisor and employee will discuss, face-to-face, if practicable, what is expected of the employee, methods and resources to achieve the critical elements, non-critical elements and performance measures, and any concerns the employee may have.
3. Each supervisor will, after meeting and conferring with each employee, identify in writing those critical elements, non-critical elements and performance measures for each employee under her or his supervision. Critical elements, non-critical elements and performance measures so identified must be consistent with the duties and responsibilities contained in the employee's properly classified position description, and applied in a fair, consistent, and reasonable manner.

D. Steps to Writing a Performance Plan

The steps to writing a performance plan include:

1. Identify two to five critical elements, taking into account the organizational strategic goals, functions, responsibilities, priorities, and the employee's Position Description. Non-critical elements are optional. The plan must use the Agency Benchmark Standards including any measures for each element and if appropriate, document assumptions. Identify two to five critical elements which can be rated O, EE, FS, MS, or U. Critical elements are for individual performance only and affect the employee's summary rating. Non-critical elements may be used for group performance and do not affect an employee's summary rating.
2. Supervisors must ensure that feedback relates to the employee's elements and standards, and that it establishes a reliable and supportable basis for issuing a rating. The supervisor is responsible for informing the employee of all feedback the supervisor was provided including feedback the supervisor did not use when assessing the employee's performance. To the extent one or more measurement sources were not factored into the supervisor's assessment, the supervisor must explain why it was not included and the efforts made to obtain the information. The

employee must be allowed an opportunity to independently obtain the missing or unavailable information.

3. It is understood that employees cannot be held accountable on Critical Elements for factors outside their control.
4. The measures, metrics and critical elements in the plan must be consistent with the employee's Position Description (PD). Critical elements and standards that are outside of the employee's PD are inappropriate. To the extent that, during the appraisal period, it becomes clear that the employee's performance plan is being interpreted to require work outside of the employee's PD, it is the responsibility of the supervisor to initiate a revision to the employee's PD, in accordance with applicable law and the MCBA, or to change the employee's standards and/or assignments to bring them into line with the employee's PD.
5. No job function can be designated a Critical Element unless unacceptable performance on the Critical Element would result in a determination that an employee's overall performance is unacceptable (5 CFR 430.203).
6. In establishing Critical Elements, non-critical elements, and performance measures, due consideration will be given to:
 1. The resources available and the authority delegated necessary to meet the identified critical elements, non-critical elements, and performance measures;
 2. Employee input; and
 3. Performance Measures for comparable positions at the same grade.

E. Unresolved Differences

When there are unresolved differences between the immediate supervisor and the employee regarding Critical elements, non-critical elements and performance measures, the employee may add written comments for consideration and final determination by the second-level supervisor. The title of the second-level supervisor must be on the cover sheet of the Performance Plan.

F. Supervisor Responsibilities

1. Critical elements, non-critical elements and performance measures must be achievable and clear. Performance will be assessed against the Agency Benchmark Standards and any measures.
2. Supervisors are encouraged to respond to barrier issues raised by employees in the performance of their duties.
3. Supervisors are responsible for using appropriate means to keep performance agreements current and accurate and to obtain the performance data required to accurately assess the employee's performance.

SECTION 11: ASSUMPTIONS

A. 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.

B. The supervisor shall work collaboratively with the employee to identify all assumptions relevant to that employee's Performance Plan. The supervisor shall then make the determination of the applicable assumptions and list them in the standard. The employee may attach her or his comments on assumptions to the Performance Plan. Assumptions may include, but are not limited to, travel and training funds, availability of "high visibility" assignments, and budget constraints. Care should be taken that overtime is not a pre-requisite for a rating of "Fully Successful."

SECTION 12. CONTENT OF PERFORMANCE PLAN

Performance elements, Critical Elements, non-critical elements, and performance standards must be in writing and given to employees at the beginning of the appraisal year. To the extent the Critical Element is solely dependent on an assumption that is not met, the Critical Element will not be rated and the supervisor will note the fact on the Performance Plan.

The plan must contain the following objective components:

A. Title. "Performance Plan."

B. Element. Name and/or description of the performance elements, critical elements, non-critical elements, and performance standards element type.

C. Element Type (Critical or Additional). A performance plan shall contain a minimum of two critical elements and maximum of five critical elements. Non-critical elements are optional.

D. Standard. The performance requirement(s) or expectation(s) for appraisal at a particular level of performance. A standard includes such factors as quality, quantity, timeliness, cost effectiveness, and manner of performance, as applicable. See Appendix A for the Agency's Benchmark Standards.

E. Measurement Source(s). Identification of sources that may establish reliable and supportable basis 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.

F. Critical Element Rating. Each critical element must have an element rating of (O) Outstanding, (E) Exceeds Expectations, (FS) Fully Successful, (MS) Minimally Satisfactory or (U) Unacceptable.

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.

G. Employee Signature/Date. The employee's acknowledgment of the performance plan and the date.

H. Supervisor(s)'s Signature/Date. Identification of the supervisor(s), her or his approval of the performance plan, and the date of the approval.

SECTION 13. FORMAT OF PERFORMANCE PLAN (SEE APPENDIX A)

SECTION 14. COMMUNICATING PERFORMANCE PLANS

A. Communication and counseling during the work planning and the appraisal period will help ensure that work activity will be consistent with organizational goals. The supervisor will assure that the employee has an up-to-date position description, up-to-date copy of the Agency's mission and goals and, if applicable, the career ladder plan. The supervisor will initiate a dialogue with the employee to discuss the employee's duties and responsibilities in relation to the organizational unit's goals and the Employer's mission.

B. Discussions should be candid, forthright dialogues between the supervisor and employee(s) aimed at improving the work product. Discussions will provide the opportunity to assess accomplishments and progress and identify and resolve any problems in the employee's or work team's work product. Where indicated, the supervisor should provide additional guidance aimed at developing the employee(s) and improving the work product or outcome. Discussions will provide the employee the opportunity to seek further guidance and understanding of her or his work performance.

C. It is the supervisor's responsibility to communicate the written performance expectations to employees within thirty (30) days from the start of the appraisal period, or within 30 days of the employee's arrival in a new position. This will be accomplished by an oral discussion between the supervisor and the employee to explain, clarify, and communicate the employee's job responsibilities as articulated in the employee's position description and/or performance plan and how those duties relate to the organizational unit's goals and the Employer's mission.

D. The individual employee and supervisor should discuss the plan and make any changes that are needed. The supervisor and employee may signify joint agreement with the plan by both signing and dating the plan. However, if the parties cannot agree, the plan is established. The date the employee signs the plan, or refuses to sign, is the

beginning date of the minimum period of performance. If the employee refuses to sign the plan, then the supervisor annotates the disagreement and date in the employee signature block

E. If the employee disagrees with the plan, the employee may attach her or his statement of concern to the performance plan and that statement of concern becomes a part of the plan which must be considered by the supervisor of record at all times when interim and final ratings are prepared. The supervisor keeps the original plan, including any attachments submitted by the employee, and the employee receives a copy within three (3) working days of the signature date.

F. Employer cannot take a performance-based adverse action against an employee who does not have a valid Performance Plan issued by the supervisor.

G. Subsequent discussions on the 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.

H. Upon request, electronic or hard copies of performance plans shall be provided to the Union.

Progress Reviews

I. In addition to the annual performance appraisal, an employee shall have one formal feedback discussion (a "mid-year progress review") with the supervisor, six months into the appraisal year. This review will include a discussion on any proposed training (which may be on-the-job training) and development of the employee. At this time, employees in career ladder positions may ask their supervisors to advise them of their progress towards promotion to the next grade level. However, frequent informal reviews of performance throughout the appraisal period are required and may be requested by the employee or supervisor at any time.

For calendar year 2008, the performance appraisal period will be from January 1, 2008, through September 30, 2008. The mid-year progress review during this performance period (2008) will occur during the month of May. For Federal fiscal year 2009 and thereafter, the performance appraisal period will begin on October 1st, and end on September 30th. The mid-year performance review will occur during the month of April.

J. The Progress Review(s) should be open, candid, and aimed at improving work products, and will provide an opportunity for feedback regarding accomplishments and individual development.

K. Progress reviews shall be scheduled at least one week or more in advance in order to allow the employee to provide advance input at the option of the employee. If, during or after a progress review, an employee is in disagreement with the review or feels the supervisor has failed to note accomplishments, the employee may request a follow-up progress review and request that the supervisor correct or amend the original progress review.

L. Progress reviews shall be conducted in a manner that protects the privacy and dignity of the employee. With the supervisor's permission, the employee may request that a Union representative be present at a progress review.

SECTION 15. ASSESSING EMPLOYEE PERFORMANCE

Interim Ratings

A. Interim ratings must be prepared for employees who have been under a performance plan for the minimum period of performance, when the employee completes a detail of ninety (90) days or more is reassigned to another EPA organization, transfers to another agency, or when the employee's supervisor departs from that supervisory position.

B. 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.

C. The supervisor must indicate all measurement sources and any individual's input that were considered in preparing the interim rating.

D. Employees whose primary language is not English, or whose supervisor's primary language is not English, or who have disabilities with respect to hearing or speaking, will not be disadvantaged in their performance appraisal by their less frequent use of direct verbal contact.

Timing of the Appraisal

E. Performance appraisals (ratings of record) are scheduled to be done annually within one month 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. Whenever the employee has a change of supervisor, either by the employee leaving the organization or by the supervisor's departure, the supervisor prepares an interim appraisal, which will be input to the employee's annual appraisal. (This would not occur if the employee has not completed the minimum period of performance or if the employee leaves EPA. For periods less than the 90 days, the supervisor should provide narrative performance highlights only).
3. Whenever the employee concludes a detail of 90 days or more to another position or a temporary promotion of 90 days or more, the supervisor for the detail prepares an interim appraisal which the supervisor for the employee's permanent position factors into the employee's annual appraisal. (This would not occur if the employee has not completed the minimum period of performance. For periods less than the 90 days, the supervisor should provide narrative performance highlights only.)

F. When there is a PAP or a PIP issued to an employee, the employee's performance period for that year is extended through the end of that PAP or PIP. The subsequent performance period begins the day after the PAP or PIP ends.

Assessing Employee Performance

G. The rating process requires the supervisor to assess the employee's actual performance accomplishments against the standards contained in the approved Performance Plan. The supervisor will review the standard(s) established for each performance element to determine whether or not the employee met the standard(s).

H. To the extent that an employee was assigned no work or very little work, or the employee was not given a chance to demonstrate her or his performance under a particular Critical Job Element, the supervisor shall not find that the employee's work was unsuccessful. For a Critical Job Element for which the employee has not had a legitimate opportunity to perform assigned work under a performance element or very little work was assigned, that Critical Job Element shall not be considered when preparing a summary level rating.

I. In the application of standards to individual employees, the Employer will consider assumptions listed in the Performance Plan.

J. The use of properly requested and approved leave shall not be a negative factor in an employee's performance rating.

K. The performance appraisal system is used as the basis for Within-Grade Increases. An employee who is deemed to be "Fully Successful" and has achieved an "acceptable level of competency" will be entitled to an appropriate within-grade increase.

L. Eligibility for a Quality Step Increase (QSI) is predicated upon receipt of an "Outstanding" rating, but does not guarantee a Quality Step Increase.

Rating of Record Grievable

M. If an employee does not agree with the action taken as a result of a Performance Appraisal, including but not limited to: a demotion; within grade increase; or removal; he or she may grieve or appeal that action in accordance with the MCBA. An employee's rating of record is grievable under the MCBA.

SECTION 16. REDUCTION IN FORCE (RIF)

A. In the event of a Reduction-In-Force (RIF), employees in the competitive area affected by the RIF who received rating of "satisfactory" under PERFORMS shall have their ratings evaluated for retention credit purposes.

B. For the purposes of RIFs, union representatives on 100% official time will be accorded a rating of record of Fully Successful for years they were not rated because of full time Union work.

SECTION 17: APPRAISING DISABLED VETERANS

A supervisor's appraisal of an employee who is a disabled veteran, shall not be adversely impacted or affected in any way, due to the employee's absence from work to seek or receive medical treatment or assistance.

SECTION 18: APPRAISING EMPLOYEES CALLED TO ACTIVE DUTY/VOLUNTEERING FOR EMERGENCY WORK

A. 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.

B. 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 U.S. EPA, shall not be impacted due to the employee's absence from work.

SECTION 19. PROTECTED UNION ACTIVITIES

A. Union activities by an employee will not be a factor in the evaluation or appraisal of an employee's performance.

B. Supervisors shall make every reasonable effort to accommodate Union representatives in the exercise of their official union duties. Should mission critical work preclude the Union representative's immediate release, the supervisor will advise the Union representative of when he or she will be released from duties.

C. A supervisor may, at the Union representative's request, reassign that Union representative's work (without prejudice to the Union representative's Performance Evaluation), to other qualified employees if the employer determines that the work cannot be timely performed due to the Union Officer's, Representative's or Steward's representational duties.

SECTION 20. SOURCES OF APPRAISAL INPUT

A. Written performance standards and sources of appraisal input will be applied in a consistent manner in determining the rating of each assigned element. The supervisor will ensure that feedback (input) used in the appraisal process are related to the employee's assigned elements and standards. The feedback used will be factual and relevant.

B. If the information may adversely affect the employee's rating, the employee will be made aware of the information in order to facilitate her or his ability to respond and to correct inaccurate information. The sources of such information will be annotated in the performance evaluation.

C. Supervisors will not withhold pertinent and objective information necessary to the appraisal of the employee's performance. In the interest of full and fair communication, supervisors will communicate areas of improvement, performance issues and other potential negative feedback as soon as practicable.

SECTION 21. RATING AN ELEMENT

Employees are encouraged to provide their supervisor with a written self-assessment (e.g., list of accomplishments completed) at the end of the appraisal period and/or at other times throughout the year. After considering the employee's self-assessment and other appraisal input against the assigned standards, the supervisor will assign a rating to each performance element.

SECTION 22: ANNUAL PARS INFORMATION

By no later than 120 calendar days from the close of the performance appraisal period, management shall make available to the AFGE Council 238, summary information concerning the ratings of record issued to the bargaining unit represented by AFGE Council 238. The following information shall be provided and made available in Excel format, without personal identifiers: organization code (ORG CODE); organization description (e.g., Immediate Office, Regional Administrator, etc.); Pay Plan/Series/Grade (PP-SERS-GRD); geographical location (GEOLOC); bargaining unit code; PARS rating; and a key for the data fields.

SECTION 23. ANNUAL RATING OF RECORD

- A. Employees will be appraised at least once a year and given a rating of record. The due date of the employee's annual rating of record will be specified on the cover sheet of the Performance Plan. The rating must be completed no later than 30 days after the due date.
- 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 "Outstanding," "Minimally Satisfactory" or "Unacceptable".

Assigning the Summary Level

- D. Once all of the performance elements (except for those where little or no work has been assigned as explained above) have been rated, the supervisor will assign the summary level (rating) as follows:
1. **Outstanding:** One-half or more Critical Elements are rated Outstanding, none lower than Exceeds Expectations.
 2. **Exceeds Expectations:** One-half or more Critical Elements are rated Exceeds Expectations or higher, none lower than Fully Successful.
 3. **Fully Successful:** One-half or more Critical Elements are rated Fully Successful or higher, none rated Minimally Satisfactory or lower.
 4. **Minimally Satisfactory:** One or more Critical Element is rated Minimally Satisfactory.
 5. **Unacceptable:** One or more Critical Element is rated Unacceptable.

Approving the Rating of Record:

- E. If the summary level is Outstanding, Exceeds Expectations, Fully Successful, the supervisor must sign and date the form to approve the rating of record.
- F. Summary ratings of Minimally Satisfactory and 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, which shows the rating of each assigned element, and the completed Appraisal Cover, signatures, any performance highlights, supervisor's comments, and employee comments. Additional pages may be used if needed. The Performance Plan and the

Appraisal Cover Sheet are combined to form one annual appraisal document (package). See Appendix A.

SECTION 25. COMMUNICATING THE RATING

A. Upon approval of the rating of record, the supervisor meets with the employee to conduct a formal appraisal discussion. During the appraisal discussion, he or she communicates to the employee:

1. How each performance element was rated, and the measurement sources and measurements used in preparing the rating;
2. The rating of record;
3. If appropriate, areas that may need to be changed in the next year's performance plan; and
4. The supervisor and the employee will hold the appraisal discussion in private.

B. The supervisor will discuss the rating of record with the employee to avoid misunderstandings and possible inaccuracies. The discussion will be face-to-face to the extent practicable, but may be by telephone. Any rating which has a summary rating of Minimally Satisfactory or Unacceptable must be approved by the second level supervisor before the proposed rating of record is discussed with the employee. There is no requirement for a second level supervisor to approve a summary rating of Outstanding, Exceeds Expectations or Fully Successful.

C. At the conclusion of the appraisal discussion, the employee may sign the Appraisal Cover Sheet signifying that the appraisal discussion was held, not necessarily that the employee agrees with the rating of record. The date the employee signs or refuses to sign the appraisal cover sheet will be considered the date the rating of record was communicated to the employee. However, the employee is entitled to attach her or his disagreement or concerns to the rating of record. The employee is not required to prepare her or his written disagreement or concerns with the rating of record at the actual discussion.

D. The employee will ordinarily receive her or his copy of the rating during the appraisal discussion, but in any case no later than three (3) work days from the appraisal discussion.

SECTION 26. RECORD KEEPING

A. The supervisor must submit the completed, original annual Performance Standards and completed evaluation, along with any other applicable attached documents including but not limited to the employee's self-evaluation, and response to the supervisor's evaluation, to the appropriate Human Resources Office. The Agency will

maintain this submitted material 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, and will be expunged from the employee's and supervisor's files upon entering a new appraisal cycle. Any notes, records and written observations retained beyond the performance year will be those related to ongoing arbitrations, grievances, PAPs, PIPs, unfair labor practice charges, etc.

SECTION 27. EMPLOYEE DEVELOPMENT

The supervisor shall have at least one formal discussion concerning career goals and individual development needs with her or his employees per year and utilize opportunities for employee development. The Individual Development Plan (IDP) identifies developmental needs and career objectives and is a useful tool for career development that benefits both the employee and the organization. The IDP is required if requested by the employee. The IDP process may include conducting a self-assessment; obtaining assessments from peers, superiors and customers; and identifying opportunities and other options for career growth. If a supervisor identifies required training, he or she will notify the employee and, if applicable, annotate the IDP.

SECTION 28. PERFORMANCE ASSISTANCE PLAN (PAP)

A. Continuous, informal feedback between the supervisor and the employee is essential to ensure an atmosphere that maintains successful performance.

B. However, if at any time during the appraisal year, the supervisor identifies a significant performance-related problem with an employee, or the employee's performance has fallen to Minimally Satisfactory in one or more CE, he or she will meet with the employee in an informal meeting to identify the specific performance requirement that is not being met, to work with the employee to identify the cause of the problem, and to work collaboratively to develop a plan to correct the problem.

C. At this point, with the employee's and supervisor's approval, the union will be notified of this meeting and allowed to be present to participate in part or all of the collaborative process to develop a plan to correct the problem. The employee, at her or his own volition, may also contact and work with the union outside the PAP meeting.

D. This counseling session will be documented in writing detailing the exact nature of the performance requirements not being met, and a copy provided to the employee.

E. When there is a PAP or a PIP issued to an employee, the employee's performance period for that year is extended through the end of that PAP or PIP. The subsequent performance period begins the day after the PAP or PIP ends.

- F. The PAP that is developed should include the following:
1. The plan will afford the employee an opportunity of at least 45 days to resolve the identified performance-related problem.
 2. The plan will be tailored to the specific needs of the employee and may include formal training, on the job training, counseling, assignment of a journeyman mentor, or other assistance as appropriate.
 3. The purpose of the period of assistance is to help the employee improve her or his performance.
 4. At any time during the assistance period the supervisor may conclude that assistance is no longer necessary. The supervisor will notify the employee of this determination, which will be in writing.
 5. If at any time during the performance assistance period, the employee's performance is determined to be Unacceptable in one or more CEs, a formal opportunity to demonstrate Fully Successful performance (i.e., a Performance Improvement Plan or PIP) will be initiated in accordance with Section 29.
 6. Notwithstanding the existence of an ongoing PAP, an employee may request a transfer to another position as a means of resolving the performance issue. An employee shall not be forced to successfully complete the PAP before moving on to another position.

Part-Time Employees

G. The Supervisor will give due consideration to the achievability of a PAP for a part-time employee. Assignments and deliverables should be commensurate with a part-time schedule.

SECTION 29. PERFORMANCE IMPROVEMENT PLAN (PIP)

If the supervisor determines under Section 28 that the employee is performing her or his assigned job duties the unacceptable level, the supervisor shall develop in consultation with the employee and, if requested, her or his union representative, a written Performance Improvement Plan or PIP. The goal of this PIP is to return the employee to Fully Successful performance as soon as possible.

A. Purpose of a PIP

A PIP is a document intended to identify an employee's performance deficiencies, the actions that must be taken by the employee to improve performance, along with provisions for counseling, training, or other assistance to bring performance up to Fully

Successful. Placement on a PIP for unacceptable performance triggers a formal opportunity period as required by 5 U.S.C. 4302(b) (6).

B. Timing of a PIP

- a. The employee's performance rating must be based on at least 90 days under the assigned critical elements (CE). A PIP must be presented to the employee within 15 working days after the employee is formally informed in writing of performance that is unacceptable.
- b. It is in the party's best interest to address performance issues as soon as they are discovered. Therefore, although an employee may be immediately placed on a PIP, corrective action should be taken as soon as performance is seen to drop below the Fully Successful level. Ordinarily, this should result in a PAP being issued to the employee before the issuance of a PIP.

C. Format of a PIP

A PIP should be in the form of a memorandum from the immediate supervisor to the employee. A specified beginning and ending date should designate the length of time the PIP will be in effect (not less than a 60-calendar-day period). However, the length of the period will depend on the nature of the position, the performance deficiencies involved, and how long it will take to demonstrate Fully Successful performance.

D. Content of a PIP

Each PIP should be geared to the needs and circumstances of the situation. The PIP will be factual, constructive, reasonable and attainable. The following information should be included:

1. The employee's name, position title, series, grade, and organization location;
2. The basis for the PIP, e.g., a specific description of the CEs that were not met;
3. Restatement of the assigned Critical Element(s) the employee is failing to perform acceptably and a description of how performance was determined to be deficient in relation to performance standards;
4. References to previous counseling sessions during the appraisal period;
5. A specific description of the requirements that must be met, in terms of quality, quantity, timeliness, cost effectiveness or manner of performance, for work to be judged Fully Successful. Numerical criteria or bench marks in the Performance Plan that were used by the supervisor to interpret the performance standard must also be stated and clearly explained;

6. A similar explanation of what will be considered Fully Successful performance;
7. Examples of ways the employee can improve performance and a description of the assistance the employee will receive from the supervisor;
8. A schedule of periodic performance reviews that will be held during the performance improvement period;
9. A list of assignments with due dates, or completion dates, if appropriate;
10. A statement that the employee is expected to maintain Fully Successful performance on the remainder of the CEs; and
11. Notification that failure to improve performance to Fully Successful may result in a change to a lower grade, reassignment, or removal.
12. With the employee's approval, the union will be notified of the PIP meeting and allowed to be present to participate in part or all of the collaborative process to develop a plan to correct the problem. The employee, at her or his own volition, may also contact and work with the Union outside the PIP meeting.

E. Implementation of a PIP

1. The supervisor signs and dates the PIP.
2. The employee's supervisor will meet and discuss the approved PIP with the employee. The employee may invite the Union representative to be present at the PIP meeting.
3. The employee may sign the PIP and is given a copy. The employee's signature on the PIP indicates that he or she received a copy, and does not signify concurrence. If the employee refuses to sign, the supervisor will annotate the PIP and date the annotation.
4. The supervisor sends a copy of the PIP to the servicing Human Resources Office along with the original performance agreement and rating package. The PIP will be filed in the Employee Performance File (EPF), and will be removed if the employee's performance improves to Fully Successful and remains at that level for one year from the beginning of an opportunity to demonstrate Fully Successful performance in accordance with 5 CFR 432.107(b), then destroyed (e.g., shredded).

F. Terminating or Extending a PIP

A PIP may be terminated or extended in situations such as those described below. In each case, the action will be documented by a memorandum to the employee or the employee's representative (designated in writing) and a copy sent to the servicing Human Resources Office for inclusion in the EPF. If the PIP is terminated because of

demonstrated Fully Successful performance, the PIP and memorandum will be removed from the EPF and destroyed after the employee's performance has continued to be Fully Successful for one year.

1. 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.
2. A PIP may be terminated if the employee's performance improves to Fully Successful prior to the expiration of the PIP.
3. A PIP will be removed from the employee's EPF if the employee leaves the Agency.
4. A PIP may be extended at any time by the supervisor with notice to the bargaining unit employee and her or his designated representative.
5. Notwithstanding the existence of an ongoing PIP, an employee may request a transfer to another position as a means of resolving the performance issue. An employee shall not be forced to successfully complete the PIP before moving on to another position.

G. Expiration of a PIP

If a PIP is not extended or terminated by the designated expiration date, the supervisor must notify the employee and her or his designated representative in writing of the status of her or his performance. If the employee's performance has improved to Fully Successful, 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 sent to the appropriate Human Resources Office. The supervisor and the employee each keep a copy. The servicing Human Resources Office will substitute the new appraisal for the previous rating of record. Once the employee has been deemed to be performing at the Fully Successful Level, all performance-related personnel actions will be made effective.

When there is a PAP or a PIP issued to an employee, the employee's performance period for that year is extended through the end of that PAP or PIP. The subsequent performance period begins the day after the PAP or PIP ends.

H. Change of Supervisors while on a PIP

In the event that the employee's supervisor leaves the unit either temporarily or permanently, the PIP shall not be extended because of the departure of the supervisor. The employee and new supervisor, along with the employee's designated representative, shall meet within 15 days of the new supervisor's arrival to discuss the PIP and the employee's progress in meeting the PIP's requirements.

I. 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 30. PERFORMANCE-BASED ACTIONS

A. Should an employee's performance continue to be Unacceptable and the employee's performance is determined to be Unacceptable after the reasonable opportunity to improve said performance to an acceptable level through a PIP, the supervisor will consider the following possible personnel actions:

1. Deny the employee's within grade increase in accordance with 5 CFR 531;
2. When the employee is capable of performing in a different position of the same grade, the supervisor may propose to reassign the employee to such a position in accordance with 5 CFR 430;
3. When the employee is not capable of performing in a position at the same grade but is capable of performing in a position at a lower grade, the supervisor may propose a demotion to a position at a lower grade in accordance with 5 CFR 432;
4. The supervisor may propose to remove the employee from Federal Service in accordance with 5 CFR 432. The supervisor must consult with the Human Resources Office before taking any action based on Unacceptable performance.

B. An employee whose reduction-in-grade or removal is proposed for such performance is entitled to:

1. A 30-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 her or his representative(s);
3. A reasonable time, but not less than 20 calendar days, to answer orally and/or in writing;
4. Use a reasonable amount of administrative time to prepare an answer;
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 within 30

calendar days after expiration of the advance notice period. Unless proposed by the head of the Agency, the deciding official 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.

C. The employee and her or his designated representative have a right to material relied upon in formulating the proposed adverse action (5 CFR Part 432).

SECTION 31. EMPLOYEE OBJECTIONS TO PERFORMANCE PLANS OR RECOGNITION DECISIONS

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.

SECTION 32. EMPLOYEE OBJECTION TO RATING OF RECORD

A. An employee who disagrees with her or his final rating of record may file a grievance under the provisions of the negotiated grievance process.

B. A rating of record may not be appealed to the Merit Systems Protection Board.

C. However, 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 33. RECOGNITION

A performance based award is a method for recognizing employees' accomplishments. Excellence in performance will be the basis for cash award determinations and quality step increase pay decisions. The parties recognize that the use of both monetary and non-monetary awards have a significant impact on employees' morale, motivation, and performance of assigned duties. It is agreed that recognition for employee contributions will be handled in accordance with the **Awards** article in the MCBA.

SECTION 34. REOPENER

A. The Parties agree that the Agency has the right to modify the substance of the Performance Evaluation plan in accordance with 5 USC 7106. Should that occur, the

Union will have the right to negotiate Impact and Implementation issues attendant to such changes.

B. The Parties agree that issues identified by the Advisory Board may trigger a reopener of this agreement and additional Impact and Implementation bargaining.

C. Any changes to this Article to address problems identified by the Advisory Board will be made by mutual consent of the parties, in accordance with Article 45 or its equivalent in the Master Collective Bargaining Agreement, regarding Supplemental Agreements and Other Negotiations during the Life and Term of the MCBA.

D. Nothing in this Article shall serve to waive either party's rights under the law or MCBA.

SECTION 35. DURATION

A. During any subsequent negotiations over this Article (or its equivalent or successor agreements in a new MCBA), the procedures and appropriate arrangements portions of this agreement shall remain in full-force and effect until such time that a new agreement is signed and has become effective. For example, procedures for PAPs, PIPs, etc., would remain unchanged.

B. With respect to negotiable procedures and appropriate arrangements, both parties agree to abide by the *status quo* as required by the Statute (5 U.S.C. Chapter 71) in any subsequent negotiations of the Employee Performance Evaluation Article or its successor article(s) in any new or subsequent MCBA.

SECTION 36. EFFECTIVE DATE

A. This agreement will be effective on the date it is signed, subject to Agency Head Review.

B. However, if, as a result of Agency Head Review, a proposal or section of a proposal is disapproved, the parties will exchange proposals and negotiate the affected proposal or section of this Article within thirty (30) calendar days of the Agency's notification.

C. An item returned by Agency-head review shall permit the parties, at the request of either party, to renegotiate that item and all related items and provisions that are directly affected, to the extent negotiations of that item are permitted by law. These may include those items, sections, paragraphs or provisions that, in whole or in part have been negotiated at the table in exchange for, or in consideration of the returned item.

SECTION 37. SIGNATURE/DATE

The parties agree to the Supplement as written above.

FOR AFGE Council 238 :

FOR Management:

John J. O=Grady Date
Chief Negotiator,
AFGE Council 238

Melissa Hatfield Date
Chief Negotiator,
U.S. EPA