



## HUMAN RESOURCES

### 3.3 Performance & Related Matters

#### PERFORMANCE MANAGEMENT PROGRAM

##### A. Policy

For USMS employees to maintain a successful level of performance they must have a clear understanding of the organization's goals and objectives, found at the Department of Justice, *Strategic Plan*, and the *USMS Strategic Plan*. Specifically, the USMS goals and objectives are aligned with the *DOJ Strategic Plan*, with emphasis on Goal #4, which is to ensure the fair and efficient operation of the Federal justice system, including providing protective services, apprehending fugitives, and ensuring the proper care of Federal prisoners.

The USMS performance management program encourages supervisors to provide feedback to employees through open communication during the formal planning, monitoring, and reviewing of performance. Specifically, the USMS's four-level performance appraisal program supports the following goals:

- Clear and honest communication between a supervisor and an employee about work performance, either individually or as a member of a work team, throughout the rating period; (Office of Personnel Management, *Performance Management*)
- Clarification of specific work responsibilities within the critical job elements and their relationship to the USMS Strategic Plan;
- Fair and efficient evaluation of employee performance and the annual determination of a specific rating of record; and
- Identification of employee development opportunities that will allow employees to acquire the skills, knowledge, and abilities to perform the work of a changing organization. The Department of Justice, *Skills Assessment Survey* web link is provided to help you assess employee skills and identify training needs. Additionally, managers need to identify their subordinates' training requirements/needs and request funds through the Training Division.

##### B. General Procedures

1. The USMS Performance Management Program is a four-level rating system of Outstanding, Excellent, Successful, and Unacceptable. Employee ratings will be entered into the automated personnel system by HRD as Pattern E Level 5 for Outstanding, Pattern E Level 4 for Excellent, Pattern E Level 3 for Successful or Pattern E Level 1 for Unacceptable. These formulas are in accordance with 5 CFR 430.208 (d).
2. The program has a Performance Plan & Rating form USM-540S for all "managers and supervisors" incorporating three mandatory mission-critical elements. The program also has a Performance Plan & Rating form, USM-540N for all "non-supervisory" employees that includes four mandatory critical elements for all non-supervisory employees plus an additional four "law enforcement" critical elements for non-supervisory law enforcement employees.
3. Critical element standards have been written at the Successful level. Additional USMS critical elements and standards are not permitted.
4. The Attorney General or the Deputy Attorney General may issue mandatory elements which components must include in employees' performance plans.

5. The appraisal period shall cover one year, from October 1 through September 30.
6. The minimum appraisal period shall cover a period of no less than 90 calendar days.
7. The Sustained Superior Performance (SSP) award is based solely on an employee's performance rating of record assigned at the end of the rating period. This award recognizes sustained levels of successful or higher performance over the course of the rating period. SSPs and other awards based on employee accomplishments are addressed in the *USMS Awards Program* directive.
8. Nothing in this program directive shall change Article 14 of the Master Agreement, which specifically addresses performance evaluation.

9. **Planning Performance**

- a. Employees will receive two specific documents which are important in performance planning:
  - (1) The employee Performance Plan & Rating USM-540S or USM-540N hereafter referred to as Performance Plan, with specific Performance Initiatives tied to higher-level goals and objectives.
  - (2) The employee's official position description.
- b. The Performance Plan is generic across either all supervisory or non-supervisory positions within the USMS with exception of the following:
  - (1) Employees for whom employment is not reasonably expected to exceed 120 calendar days in a consecutive 12 month period; and
  - (2) Employees occupying positions otherwise specifically excluded by law or regulation, including United States Marshals and members of the Senior Executive Service.
- c. Official position descriptions are currently available in district/division administrative files and are provided to employees when there is a change in the position. If necessary, copies of district standard position descriptions may be obtained through the Human Resources Division Web Site. HQ position descriptions may be obtained through HRD.
- d. If the job has changed, rating officials will normally provide a Performance Plan and position description to the employee within 30 days of these dates:
  - (1) The first day of the rating period; or
  - (2) The first day of a detail or temporary promotion expected to last 90 days or longer; or
  - (3) The first day of an employee's entrance on duty.
- e. In the context of the employee's current position, the rating official and the employee will discuss specific work requirements for the rating period as outlined at the Successful level. The discussion will focus on the specific requirements and the expected level of performance for these requirements.

Additionally, the rating official will attach relevant district/division performance initiatives and any additionally performance initiatives that will further define the employee's job responsibilities to be focused on during the rating year. The rating official and employee will discuss how these, along with the critical elements, relate to achieving USMS goals and objectives.

- f. Critical elements 1 through 4 on the USM-540N *Performance Plan* are for non-supervisory law enforcement employees. Indicate, by checking the appropriate box(es), if they apply to the employee's law enforcement position. A minimum of one must be checked.
- g. All Performance Plans require review and approval at the next higher level of supervision above the immediate supervisor before issuance to the employee.
- h. The rating official and the employee will sign the Performance Plan. The employee's signature on the Performance Plan does not necessarily indicate concurrence. Signature indicates that the Performance Plan has been given to the employee and specific work requirements and performance initiatives have been discussed.

### 10. **Monitoring Performance**

- a. Monitoring performance is a continuous process. Rating officials and employees are encouraged to communicate on a regular basis about work expectations, successes, problems, and solutions.
- b. In order to ensure continuation of successful performance or to assist an employee who is not consistently performing at a successful level, rating officials and employees must meet at least once during the rating cycle, preferably at the midpoint, for an official progress review. Progress reviews may be held at any time during the rating period as requested or as necessary. **NOTE: Supervisory notes should not be attached to the appraisal form.**
  - (1) The discussion at a progress review focuses on strengths and deficiencies. Rating officials and employees should discuss recommendations for improving problem areas, assistance that may be provided from the supervisor or coworkers, opportunities for formal or informal training, etc.
  - (2) If the employee's performance in one or more of the critical elements is deficient, the rating official should be prepared to discuss possible corrective actions as well as the ramifications of unimproved performance.
  - (3) If the employee has questions or concerns about his/her responsibilities or performance to date, he/she should be prepared to discuss these issues with the rating official and seek clarification.
- c. Both the rating official and the employee sign and date the Performance Plan upon completion of the progress review. The signatures indicate that the progress review was held.
- d. If, at any time during the rating period, an employee's performance is seriously deficient, i.e., Unacceptable, the rating official should act immediately by contacting the Employee Relations Branch (ERB) within the Human Resources Division for guidance. (See Section 13 of this directive)

### 11. **Performance Rating**

- a. The official rating of performance is a natural result of the ongoing communication between an employee and the rating official about performance throughout the rating period.
- b. For most employees, the rating official will normally assign a rating of record within 30 days of the conclusion of the rating period.
  - (1) A rating of record will be prepared by the rating official up to 90 days before the conclusion of the rating period under the following circumstances:

- The rating official departs within 90 days of the end of the rating period; or
  - The employee changes positions or departs within 90 days of the end of the rating period.
- (2) A rating of record will be delayed until the employee has met the minimum 90-day appraisal period.
- c. The rating official will review the employee's performance on the critical elements in light of the performance standards for the entire rating period. For each critical element, the rating official will check an element rating of Outstanding, Excellent, Successful, or Unacceptable. The rating official may seek employee input in order to assure performance in all aspects of the job is considered.
  - d. Written justification supporting performance in any Critical Element that has been assigned an "Outstanding" rating should be documented on the Performance Plan in the space provided at the end of Part V.
  - e. The rating official will obtain the reviewing official's signature before discussing the annual rating of record with the employee. The employee will sign and date the annual rating of record. Employee signature does not necessarily mean the employee agrees with the rating of record. Signature on the rating of record indicates the rating official discussed the rating with the employee.
  - f. The rating official will meet with the employee and discuss his/her annual rating. The discussion should focus on the strengths evident in the employee's performance as well as those areas in which he/she needs to improve.
12. **Appraising the Performance of an Employee who is Detailed, Temporarily Promoted or Reassigned**
- a. An employee who is **detailed or temporarily promoted** for a period of 120 days or longer will have an **interim rating** for the period of the detail or temporary promotion. The interim rating will be a factor and considered in preparation of the rating of record. The supervisor of the detail or temporary promotion will serve as the rating official for the interim rating. He/she will ensure that the critical elements and performance standards and position description of the position to which the employee is detailed or temporarily promoted are provided to and discussed with the employee, normally within 30 days of the beginning of the detail or temporary promotion. If the employee is detailed to an unclassified set of duties, the rating official must clearly indicate to the employee the specific expectations while on the detail. He/she will prepare the interim rating documenting the employee's performance while detailed or temporarily promoted and then forward that interim rating to the employee's rating official within 30 days of the conclusion of the detail or temporary promotion. Outstanding ratings must include a written justification.
  - b. An employee who **transfers to** the USMS from another agency will have his/her performance rating from that organization (for the position held immediately prior to departure) considered by the rating official in the preparation of the rating of record.
  - c. When an employee is **reassigned to** another USMS position in the same line of work outside of his/her immediate organization, the rating official will **prepare an interim** rating indicating the employee's performance to date. The interim rating must be considered by the new rating official when preparing the rating of record. When an employee changes positions within the same organization and there is no substantive change in duties, an interim rating is not required except when there is a change in rating officials.
13. **Appraising Employee Performance which is Unacceptable**
- a. Whenever a rating official observes that an employee's performance on a critical element is beginning to decline, the rating official will discuss the specific shortcomings

with the employee and encourage a discussion of the employee's views on his/her performance.

- b. In the event that the employee's performance in one or more critical elements appears to be Unacceptable, the rating official will contact the ERB within the Human Resources Division for advice and guidance on taking appropriate corrective action. If it is determined that there is insufficient documentation or instances of job failures to support an Unacceptable performance rating, ERB will discuss other corrective measures with the rating official. If it is determined that there is sufficient documentation or instances of job failures to support an Unacceptable rating, the rating official will provide this documentation or information to ERB for inclusion in the Performance Improvement Plan (PIP). ERB will work with the rating official in preparing a Notice of Unacceptable Performance and Performance Improvement Plan (NUP/PIP). The NUP/PIP will be reviewed and approved by the ERB and the reviewing official before it is communicated to the employee.
- c. The rating official will prepare a NUP/PIP for the employee wherein:
  - (1) The deficient critical element(s) will be identified and the employee will be informed of the performance requirements or standards that must be attained in order to demonstrate successful performance.
  - (2) An employee will have a reasonable opportunity to demonstrate performance improvement. The opportunity-to-improve period must be no less than 30 days in duration. This period may be extended by the rating official if circumstances warrant such an extension.
  - (3) The NUP/PIP will be reviewed, approved, and signed by the rating official and the reviewing official before it is put into place for the employee.
  - (4) If, after an opportunity to improve, the employee demonstrates acceptable performance on the NUP/PIP, the rating official will notify the employee that his/her performance has improved to the Successful level or higher. Additionally, the employee will be notified that should their performance decline in any of the NUP/PIP related elements within 12 months after issuance of the NUP/PIP, they will be deemed to be Unacceptable.
  - (5) If, after an opportunity to improve, the employee demonstrates Unacceptable performance, then adverse action proceedings based on Unacceptable performance may begin. These adverse actions are reduction in grade or removal.
  - (6) Any administrative or adverse action initiated under a previous performance appraisal program shall continue to be processed in accordance with the law and policy of that program until the action is resolved.

**14. Performance Rating Documentation**

- a. Completed original ratings of record will be maintained in the district/division's individual Employee Performance File (EPF) for four years and then destroyed.
- b. Employees will receive a copy of their completed rating of record.
- c. Rating officials will submit to their supervisor a summary list of the ratings of record assigned to their employees. The summary list will be reviewed and signed by the reviewing official and forwarded to the United States Marshal or the Division Assistant Director. The summary list(s) will then be certified as correct by the United States Marshal or the Division Assistant Director and forwarded to the Human Resources Division.

**15. Performance-Based Grievances or Complaints**

- a. The administrative grievance procedure as set forth in USMS *Grievance Procedures* di, or if applicable, the negotiated grievance procedure (for bargaining unit members) as set forth in the Master Agreement, are the formal methods available to employees to contest the rating of record.
- b. An employee may file a complaint through the Office of Equal Employment Opportunity (EEO) within 45 days of being notified of the rating if the employee believes the rating given is based on race, color, age, religion, sex, national origin, physical or mental disability, sexual orientation, marital status, parental status, or previous participation in the EEO process.
- c. An employee may choose the Alternative Dispute Resolution process in lieu of filing a grievance.

16. **Within-Grade Increase**

- a. An employee must perform at an acceptable level of competence in order to receive a Within-Grade Increase (WIGI). An employee whose current rating of record is Successful or higher is determined to be performing at an acceptable level of competence.
- b. If an employee's performance declines to an Unacceptable level, the supervisor should disapprove the WIGI (5 CFR 531.409) by completing and returning the AD-658, "*WITHIN-GRADE INCREASE RECORD*" certification form to their assigned Human Resources Specialist in Staffing/HRD.
- c. In addition to the above, the employee must also be issued a letter of notification of "Denial of Within Grade." This notice shall also inform the employee of his/her right to request reconsideration. The rating official should seek advice from the ERB within the Human Resources Division.

17. **Program Evaluation:** As part of the Human Resources Division's Program Evaluation process, the USMS will review the performance management program on a periodic basis to ensure compliance with applicable statutes, Department of Justice *Performance Management System* and USMS policy on performance management.

**C. Responsibilities**

1. **Director**

- a. Ensure that the goals and objectives of the Service are communicated to all employees; and
- b. Serve as both rating official and reviewing official for those who report directly to him/her.

2. **Rating Officials (First-level Supervisor)**

- a. Inform employees of the specific work responsibilities and performance initiatives within the critical elements and performance standards using the employee's Position Description;
- b. Communicate to their employees the organization goals and objectives and how the employee's position contributes to the USMS goals and objectives;
- c. Evaluate employee performance and assign the appropriate annual rating of record;
- d. Ensure that the reviewing official signs and dates employee ratings of record before discussing with employee;
- e. Discuss developmental opportunities with the employee to further enhance his/her

performance of assigned work responsibilities;

- f. Recognize and reward employees for their accomplishments;
- g. Issue a NUP/PIP when an employee's performance is determined to be Unacceptable in one or more critical elements of the position. A NUP/PIP may be established at any time during the rating period. The NUP/PIP must be reviewed and approved by the ERB as well as the reviewing official before it is given to the employee.

3. **Reviewing Officials (Supervisor of the Rating Official)**

- a. Communicate the organization goals and objectives to subordinate employees;
- b. Advise and assist rating officials in the completion of their performance management responsibilities;
- c. Evaluate rating officials regarding the quality of ratings given to their employees to ensure that the rating official applies ratings uniformly and fairly;
- d. Insure review of NUP/PIP and/or Unacceptable rating of record has been obtained by ERB;
- e. Review and approve all rating official's employees' final ratings of record;
- f. Review and approve a NUP/PIP and/or Unacceptable rating of record before an employee is informed;
- g. Review and sign each subordinate rating official's summary list (Certification List) indicating compliance with their performance management responsibilities; and
- h. Forward summary list(s) to the United States Marshal or Division Assistant Director for certification.

4. **Administrative Officers**

- a. Maintain locally in the Employee Performance File, for four years, the signed original of each employee's completed rating of record (Performance Plan); and
- b. Transmit to Human Resources Division the certified lists signed by the United States Marshal or Assistant Director summarizing the ratings of record for all district/division employees.

5. **Employees**

- a. Obtain clarification, as required, on performance standards, performance initiatives, work responsibilities and the requirements for their completion;
- b. Complete work responsibilities to the best of their ability;
- c. Seek information about developmental opportunities and discuss with the rating official;
- d. Retain a completed copy of the rating of record.

6. **Human Resources Division**

- a. Provide guidance to all rating officials and members of the management team on all performance appraisal related questions, issues and concerns;
- b. Provide guidance to employees on all performance appraisal related questions, issues, and concerns;

- c. Enter into the automated personnel system the rating of record for each employee of the USMS;
- d. Provide training and supplementary guidance on the performance appraisal program to all employees.

### D. DEFINITIONS

1. **Appraisal:** The act or process of reviewing and evaluating the performance of an employee against described work requirements, performance standards, and performance initiatives.
2. **Appraisal Period:** The period of time for which an employee's performance will be appraised. For all USMS employees, the appraisal period begins on October 1 of each year and ends on September 30 of following year.
3. **Critical Element:** A component of a position consisting of one or more duties and responsibilities which contributes toward accomplishing organizational goals and objectives and which is of such importance that unacceptable performance of the element would result in unacceptable performance in the position.
4. **Employee Performance Plan & Rating:** The aggregation of an employee's written critical elements and performance standards.
5. **Grievance:** A written and signed request by an employee for personal relief concerning a particular act or occurrence which arises during the employment of the employee and is subject to the control of agency management.
6. **Interim Rating:** An interim rating is issued to appraise employee performance during details, temporary promotions, or during assignment to any position in which the employee served for at least 120 days during the annual appraisal cycle. In deriving the employee's rating of record, the weight given to interim ratings should be proportionate to the amount of time spent on the temporary assignment in relation to the entire appraisal period.
7. **Minimum Appraisal Period:** The minimum amount of time in which an employee must have served in a position under written performance elements and standards in order for an appraisal to be rendered concerning such performance. The USMS's minimum appraisal period is 90 days.
8. **Performance Initiative:** Initiatives are not critical elements. They are specific task(s) incorporated under a critical element to further define an employee's duties and job responsibilities that should be focused on during the rating year. The task(s) (aka performance initiative) does not eliminate the requirement to perform all other duties and responsibilities assigned to the employee, but merely indicates its important status.
9. **Performance Standard:** A statement of the expectations or requirements established by management for a critical element at a particular rating level. A performance standard may include, but is not limited to, factors such as quality, quantity, timeliness, and manner of performance.
10. **Progress Review:** The review of an employee's progress toward achieving the performance standards which is not, itself, a rating. The USMS requires at least one progress review, preferably midway through the appraisal period.
11. **Rating Levels:** The USMS uses four rating levels: Outstanding, Excellent, Successful, and Unacceptable.
12. **Rating of Record:** The written record of the appraisal of performance elements and the assignment of a summary rating level which is required annually or at such other times as this program specifies for special circumstances.
13. **Rating Official:** The individual who is responsible for informing the employee of the critical elements of his or her position, establishing performance requirements and performance

initiatives for those elements, appraising performance, and assigning the performance rating. Normally, this is the employee's immediate supervisor.

14. **Reviewing Official:** The supervisor who assigns, controls, and is responsible for the work of the rating official, normally the rating official's immediate supervisor (unless there is no higher-level official in the office, board, division, or bureau). In the event the position of reviewing official is vacant or for other appropriate reasons, a higher-level official in the organization may serve in this capacity if the individual is in a position to evaluate the employee's performance.
15. **Summary Rating:** The written record of the appraisal of the critical elements of an employee's position and the assignment of a summary rating level. Under this Plan, a summary rating can be either an interim rating or a rating of record.