



Change Notice

OPI: HRM/PER
DIRECTIVE AFFECTED: P3000.02
CHANGE NOTICE NUMBER: 41
DATE: 11/24/2004

1. PURPOSE AND SCOPE. To update the Human Resource Management Manual, PS 3000.02, Section 430.2, Performance Evaluation Program for Non-Bargaining Unit Employees.

2. SUMMARY OF CHANGES. The Office of Personnel Management issued new regulations and the Department of Justice (DOJ) has issued a new Human Resources Order pertaining to performance management. This Change Notice implements the regulations and the Order, updates references, and provides some clarifying guidance.

- Bureau performance policy reflects that performance standards must be results oriented and reflect Bureau strategic planning objectives, as well as human capital objectives.
- The program excludes coverage for employees serving under excepted appointments of less than 120 calendar days. Previously, **all** employees serving on appointments of less than 120 calendar days were excluded from coverage.
- The new program is effective October 31, 2004. Guidance is provided about any administrative actions initiated under the previous non-bargaining unit appraisal program.
- The descriptor for rating level 3 has been changed from "fully successful" to "successful."
- The Incentive Awards Program Statement (P.S. 3451.04) previously deleted the requirement for rating officials to recommend awards for employees rated "outstanding." The performance program policy is being updated to reflect this prior change.

- An interim rating is required when an employee is transferred or reassigned to the same type of work after having completed the minimum rating period. The interim rating is to be considered in deriving the rating of record.
- Performance standards will be provided when an employee is detailed or temporarily promoted to another position in the Bureau of Prisons for at least 120 days. Previously, 90 days was the specified time frame.

3. TABLE OF CHANGES

<u>Remove</u>	<u>Insert</u>
Chapter 4, Pages 19 - 40	Chapter 4, Pages 19 - 38

4. ACTION. The effective date of this performance evaluation program policy is October 31, 2004. See Section 5 for additional effective date information.

File this Change Notice in front of PS 3000.02, the Human Resource Management Manual.

/s/
Harley G. Lappin
Director

430.2 PERFORMANCE EVALUATION PROGRAM FOR NON-BARGAINING UNIT
EMPLOYEES

1. PURPOSE AND SCOPE. The objectives of the performance evaluation program are to help improve performance, strengthen supervisor-employee relationships and communications, identify and inform employees of organizational objectives, work requirements and standards, recognize employee accomplishments and good work, identify and correct work deficiencies, and guide personnel actions such as within-grade and quality step increases, promotions, demotions, removals, reassignments, performance awards, and training.

2. DIRECTIVES AFFECTED

Directives Referenced

- a. P.S. 3451.04 Awards Program, Incentive Awards, Bureau of Prisons (07/10/01)
- b. DOJ Human Capital Objectives and Strategic Plan.
- c. 5 CFR 293, 430, 451, 531, 532 and 771.
- d. 5 U.S.C., Chapters 43 and 45

3. TOPICS COVERED

- Purpose - Paragraph 1
- References - Paragraph 2
- Coverage - Paragraph 4
- Effective Date - Paragraph 5
- Responsibilities - Paragraph 6
- Basic Program Requirements - Paragraph 7
- Rating Period - Paragraph 8
- Job Elements and Performance Standards - Paragraph 9
- Issuing Performance Standards - Paragraph 10
- Monitoring Performance - Performance Log - Paragraph 11
- Progress Review - Paragraph 12
- Final Rating - Paragraph 13
- Final Discussion - Paragraph 14
- Filing and Disposition of Performance Logs and Rating Forms - Paragraph 15
- Probationary Employees - Paragraph 16
- Informing Supervisors and Employees - Paragraph 17
- Performance Rating appeals - Paragraph 18

Relationship to Within-Grade-Increases - Paragraph 19
Quality Step Increases and Performance Awards - Paragraph 20
Addressing Deficient Performance - Paragraph 21
Minimally Satisfactory Performance - Paragraph 22
Unacceptable Performance - Paragraph 23
Proposing and Taking Action Based on Unacceptable
Performance - Paragraph 24

4. COVERAGE. This section applies to all, non-bargaining unit employees, except the following:

- * a. Employees serving under excepted appointments of less than 120 calendar days, *
- b. Persons providing services on a contract basis,
- c. Attorneys classified in the GS-905 series and Law Clerks classified in the GS-904 series,
- d. Employees in the Senior Executive Service, and
- * e. Any other employees specifically excluded by statute.

5. EFFECTIVE DATE. The effective date is October 31, 2004. Any administrative action initiated prior to this Change Notice (e.g., an action taken against an employee for unacceptable performance under 5 U.S.C. 4303) and any ratings deferred under the previous appraisal program shall continue to be processed in accordance with the regulations contained in that program. *

6. RESPONSIBILITIES

- a. The Assistant Director, Human Resource Management Division, is responsible for the overall administration of this program.
- b. The Federal Bureau of Prisons Personnel Director is responsible for ensuring that the performance evaluation program is carried out throughout the system in compliance with current laws and regulations.
- c. Chief Executive Officers are responsible for ensuring that there is an effective performance evaluation program at their level of the organization.

d. The Approving Official for outstanding performance ratings varies with the organizational level of the employee being rated.

- (1) Institution Chief Executive Officers are the approving officials for Bureau of Prisons and UNICOR employees at and below the assistant department head level.
- (2) Regional Directors are the approving officials for institution employees above the assistant department head level and regional office employees below the Deputy Regional Director. This does not preclude input by the appropriate Assistant Director.
- (3) Assistant Directors are the approving officials for Central Office employees except for those employees for whom the Director is the reviewing official. Assistant Directors are the approving officials for managerial employees for whom the Regional Directors are the reviewing officials.

e. The Reviewing Official is the next supervisor above the rating official and is responsible for assigning an overall rating and approving or adjusting individual element ratings. Reviewing officials also approve elements and standards for their subordinate staff and are responsible for monitoring the performance appraisal practices of subordinate supervisors and providing advice or instruction as needed. Reviewing officials ensure that recommendations for incentive awards based on performance ratings are consistent with policy and determine whether recommendations for outstanding performance ratings will be forwarded to the approving official.

Regional Directors are the reviewing officials for Associate Wardens (Industries, Education and Training) and Superintendents of Industries, with input from the Assistant Director, Industries, Education and Training Division.

f. The Rating Official is the first level of management having the full range of supervisory responsibilities, including recommending performance awards. Rating officials are responsible for maintaining the employee's performance log, conducting progress reviews and completing the annual performance rating in accordance with the procedures in this section.

Regional Administrators may suggest to rating officials significant incidents for inclusion in the performance log that relate to the quality of professional services provided. These suggestions may be particularly useful for departments in specialized program areas.

Institution Chief Executive Officers are the rating officials for Associate Wardens (I&E) and Superintendents of UNICOR. UNICOR Division Managers may suggest to the CEO significant incidents for inclusion in the performance log that relate to UNICOR corporate goals and policies.

g. Employees are responsible for becoming familiar with the objectives and procedures of the performance evaluation program and for understanding the elements and performance standards for their positions. The employee is responsible for seeking clarification from the supervisor on any performance standard or any other aspect of this program which is not clear. The employee should inform the supervisor of any factors or circumstances which the employee believes should be considered in evaluating his/her performance.

h. Human Resource Managers are responsible for providing training, advice, and assistance to employees and supervisors on this program. They are also responsible for maintaining adequate supplies of the rating forms and performance standards for distribution to supervisors.

i. Local Procedures. Specific procedures and responsibilities for initiating the issuance of performance standards, monitoring changes in performance standards and rating periods, maintaining rating forms during the rating period, recommending training and incentive awards based on performance ratings, and other aspects of this program not described in this section are left to the discretion of the local Chief Executive Officer. Institutions and offices should develop written procedures to ensure that the requirements of this program are fully implemented.

7. BASIC PROGRAM REQUIREMENTS. The basic structure of the performance evaluation program is outlined below and is described in detail in subsequent sections.

a. At the beginning of the rating period, the rating official gives the employee a copy of the performance standards for their position and discusses them. Both the employee and rating official sign the rating form, indicating that the discussion has taken place.

b. Throughout the rating period, the rating official makes entries in the employee's performance log. Each element of the performance standards must be addressed at least once each quarter. The rating official discusses each entry in the performance log with the employee as it is made. Entries in the performance log serve as the basis for the progress review and final rating.

c. Halfway through the rating period, the rating official completes a written progress review and discusses it with the employee. Both the employee and rating official sign the progress review section of the rating form.

d. At the end of the rating period, the rating official evaluates each element of the performance standards, assigns an adjective rating to each element and forwards the rating to the reviewing official. The reviewing official approves or adjusts the individual element ratings, assigns an overall rating (and forwards the rating to the approving official in the case of outstanding ratings), and returns the rating to the rating official for discussion with and signature by the employee. Except in unusual circumstances, employees must receive their performance rating within three weeks after the end of the rating period.

* e. The performance appraisal program allows for rating individual elements, as well as overall performance, at one of five levels, utilizing pattern H (5 CFR 430.208) which reflects ratings at level 5 (outstanding), level 4 (excellent), level 3 (successful), level 2 (minimally satisfactory), and level 1 (unacceptable). *

f. An employee must have worked under a set of performance standards for a minimum of 90 days before receiving a rating based on those standards. A rating official must have supervised an employee for a minimum of 90 days before he or she can rate the employee. These 90-day requirements apply only to final ratings, not to progress reviews. There is no minimum time requirement before a reviewing official can review a rating.

* 8. RATING PERIOD. The rating period for employees begins on April 1 each year and ends March 31 the following year. Except as specified in Paragraph 10b, the rating period may be adjusted* as follows:

a. If an employee changes positions which results in a change of performance standards, the rating period begins on the date of the change and ends on March 31, or 90 days after the date of the change, whichever is later.

b. If an employee changes supervisors, the rating period does not end until he/she has been under the same supervisor for at least 90 days.

c. If a rating period is extended past March 31 in order to meet one or both of the conditions described above, then the employee's next rating period starts on the day after the above conditions are met and ends on March 31 the following year.

9. JOB ELEMENTS AND PERFORMANCE STANDARDS

a. Common job elements and performance standards have been developed for all occupations within the Bureau of Prisons.

* These clearly state Bureau Human Capital Objectives and tie in with organizational goals and desired results. Central Office will reissue elements and standards when necessary, to reflect changes in organizational objectives. Elements and standards * are issued on pre-printed forms, making it unnecessary to type the elements and standards on the rating form. Rating officials must review these standards and delete any element which is clearly not applicable to a particular position. Rating officials may also develop one additional element with standards and tasks to meet unique or unusual responsibilities for a particular position; however, since all job elements are critical, these responsibilities must be substantial and highly important to the position. If such an element or standard is developed, it must be reviewed and approved for use by the Bureau Personnel Director. Once an element and standard are approved for use, they will be typed on the

* preprinted elements and standards which apply to that position. The Attorney General or the Deputy Attorney General may issue mandatory elements which components must include in employee's performance elements and standards. *

b. A job element is an aspect of the position consisting of one or more duties or responsibilities which is sufficiently important that inadequate performance of the element would result in unacceptable performance in the position. All job elements are critical.

c. A performance standard is a statement of the expectations or requirements established by management for an element at a particular rating level. A performance standard may include factors such as quality, quantity, timeliness, and manner of performance.

d. Tasks are examples of job duties that are representative of a job element under the performance standards. Not all tasks described under an element are applicable to all occupations covered by that performance standard. The tasks described in the performance standards are examples of typical duties which would be performed in that job element.

e. The performance appraisal program allows for rating individual elements, as well as overall performance, at one of five levels. The performance standards and tasks are described at only three levels. Rating officials may infer performance at one of the levels not described by comparing the employee's actual performance to the levels which are described. For example, if an employee's performance is better than the examples *given for the "successful" level, but does not meet the* examples given for the "outstanding" level, the employee's performance should be rated at the "excellent" level.

10. ISSUING PERFORMANCE STANDARDS.

a. At the beginning of the rating period, the rating official will discuss the elements, standards, and tasks for the position with the employee. This discussion should take place as soon as possible after the start of the rating period, normally within 30 days. The rating official and employee will sign and date the rating form, certifying that the elements and standards are understood. If a new element and standards are added during the rating period (or if an element is deleted), the rating official and employee will again discuss them and sign and date the rating form. If the rating official changes during the rating period but there is no change in performance elements and standards, it is not necessary for the new rating official to review the standards with the employee or sign the rating form; however, rating officials are always responsible for discussing performance standards and responding to employees' requests for clarification of the standards.

* b. An interim rating is required when an employee is transferred or reassigned to the same type of work after having completed the minimum rating period. The interim rating is to be considered in deriving the rating of record. *

* c. If an employee is **detailed** or **temporarily promoted** to another position in the Bureau of Prisons and the assignment is expected to last at least 120 days, the employee will be given* the performance standards for the temporary assignment within 30 days of beginning the detail or temporary promotion. An interim rating will be prepared at the end of the detail or temporary promotion and the weight given to this interim rating will be proportional to its share of the total appraisal period.

If an employee is **detailed outside the Bureau**, reasonable efforts will be made to obtain appraisal information from the outside organization which shall be considered in arriving at the employee's rating of record. If the employee has served in the

Bureau for the minimum time period (90 days) during the rating period, the employee must be rated. The rating will take into account appraisal information obtained from the borrowing organization. If the employee has not served in the Bureau for the minimum time period, but has served the minimum time period in the outside organization: (1) reasonable efforts will be made to prepare a rating based on the appraisal information from the borrowing organization or (2) the rating will be deferred until the employee is able to serve the minimum time period in the Bureau or the borrowing organization is able to provide appraisal information.

If an employee transfers to the Bureau from another agency, any summary ratings which are forwarded from the former agency and which cover the same time period as the Bureau's rating period will be considered in arriving at the employee's rating of record. The weight given to a rating from a former agency will be proportional to the share of the rating cycle covered by it.

d. The final rating most recently rendered by the former agency will be the employee's current rating of record until it is superseded by a final rating issued by the Bureau.

11. MONITORING PERFORMANCE - PERFORMANCE LOG. The performance appraisal process requires that rating officials observe and note employee performance continuously throughout the rating period. Rating officials must record examples of employee performance to ensure that the rating at the end of the rating period is an accurate and fair appraisal of the employee's performance during the whole rating period. The performance log is used to document and substantiate the final rating.

a. Format. Attachment 4-2 is a sample performance log, however, any form the rating official finds useful, including 5 x 8 cards, is acceptable.

b. Time Requirements. The rating official must record performance incidents in the log so that each element is addressed at least once each quarter. If no significantly positive or negative performance is noted for a particular element during a quarter, the rating official will make an entry describing typical performance over the course of the quarter.

Rather than waiting until the end of the quarter, rating officials must make entries in the log as the performance is noted in order to meet the following time requirements.

Rating officials must record specific incidents in the performance log within fifteen working days of becoming aware of the incident.

After an entry has been made in the performance log, the employee will be given an opportunity to see the entry as soon as practicable and before the entry is used officially, but no later than fifteen working days after the entry is made. The employee will be asked to initial the entry, indicating only that the entry was discussed, not necessarily that they agree with it.

These time requirements may be adjusted, if necessary, because of the rating official's or employee's absence.

c. Content of Performance Log Entries. Performance log entries will document instances of important or significant job-related performance, both positive and negative. Log entries must document the actual behavior of the employee, not personality traits or judgmental conclusions drawn by the supervisor. Instances of performance recorded in the log must be related to one or more elements of the employee's performance standards and include, at a minimum:

- (1) the date of the performance incident,
- (2) what the employee did that was particularly effective or ineffective,
- (3) circumstances surrounding or contributing to the performance incident such as the consequences of the performance, whether the employee had sufficient time and resources or whether circumstances outside the employee's control contributed to the performance,
- (4) level of performance assigned.

d. Multiple Supervision. If an employee is supervised by more than one supervisor during the rating period, those supervisors are responsible for providing the rating official with any comments or incidents for consideration for inclusion in the performance log. This provision does not apply to employees who receive an interim rating in accordance with paragraph 10 of this section. *

e. Documenting Unacceptable Performance. Instances of unacceptable performance recorded in the performance log require additional actions by the supervisor. Refer to Paragraph 23 of this section for information on addressing unacceptable performance.

12. PROGRESS REVIEW. In addition to the frequent informal discussions of performance resulting from performance log entries, the rating official will conduct at least one formal progress review during the rating period.

a. One progress review is required for non-probationary employees and it will be conducted at the halfway point of the rating period.

b. Three progress reviews are required for probationary employees and they will be conducted at the end of the third, sixth and ninth months of the probationary year.

c. The rating official will make narrative comments for each job element in the progress review section of the performance appraisal form. No adjective rating is assigned to the elements at this time. The rating official will discuss the progress review with the employee and both will sign the form at the bottom of the progress review section. There is no provision or requirement for the reviewing official to review or comment on the progress review, however, reviewing officials may examine the progress reviews prepared by their subordinate supervisors.

d. Progress reviews and the annual rating for probationary employees require two performance appraisal forms. One form is used to record the 3-month and 6-month progress reviews and a second form is used for the 9-month progress review and annual rating. Rating officials must ensure that a probationary employee signs the top of both forms, indicating their understanding of their performance standards and that they sign the bottom of the form upon completion of each of the progress reviews and the annual rating. The rating official does not assign adjective ratings for any of the probationer's progress reviews; adjective ratings are assigned to the elements only for the final rating at the end of the probationary period. Likewise, there is no provision or requirement for the reviewing official to review or comment on the 3-month, 6-month or 9-month progress reviews of probationary employees, however, rating officials may examine the progress reviews prepared by their subordinate supervisors. The reviewing official assigns the overall rating and makes narrative comments on the final annual rating of a probationary employee.

13. FINAL RATING

a. Determining Element Ratings

- (1) The rating of an employee's performance in each job element is based upon the incidents recorded in the performance log.
- (2) Each element will be rated at one of five levels: Unacceptable, Minimally Satisfactory, Successful, Excellent or Outstanding. *
- (3) Each element will be rated at the level which reflects the level assigned to the majority of performance log entries for that element. If there are an equal number of performance log entries at two different levels, the rating official may assign either of the two levels unless there is an intermediate level or levels. For *example, if two log entries are "successful" and two* are "excellent," the rater may assign either *"successful" or "excellent" as the element rating. If two log entries are "successful" and two are* "outstanding," the rater must assign "excellent" as the element rating.
- (4) Special provisions apply when rating an element as unacceptable. Refer to Paragraph 23 of this section for the procedures for documenting unacceptable performance.
- (5) The rating official will mark the block on the rating form which reflects the adjective rating for each element, write narrative comments in the space provided for each element and write narrative comments on the employee's overall performance in the "rater's comments" section of the form. Rating officials are also encouraged to complete the training and career development section of the form with recommendations for training or other developmental activities.
- (6) For dual or multiple supervision, all supervisors of 90 days or more should provide input into the rating process and initial the rating form as rating officials. Reviewing officials may also seek input from supervisors of lesser periods of time.

b. Overall Rating

- (1) The overall rating is assigned by the reviewing official, based on the individual element ratings. Reviewing officials assign the overall rating by marking the appropriate block and writing narrative comments in the "reviewer's comments" section of the form.
- (2) Except in the case of outstanding ratings, the rating assigned by the reviewing official is the final rating. If the proposed rating is outstanding, the Chief Executive Officer or Assistant Director is the approving official. Reviewing officials must adjust individual element ratings to be consistent with the overall rating, however, any such changes by the reviewer must be substantiated by the comments in the reviewing official's block on the rating form.
- (3) Unacceptable performance in one or more elements mandates an overall rating of unacceptable.
- (4) An overall rating of minimally satisfactory is demonstrated by minimally satisfactory performance in more than one element and no element rated as unacceptable.
- * (5) An overall rating of successful is demonstrated by a rating of successful or higher in a majority of the* elements, no more than one minimally satisfactory element, and no unacceptable element.
- * (6) An overall rating of excellent is demonstrated by a rating of excellent or higher in a majority of the elements and no element rated less than successful.*
- (7) An overall rating of outstanding is demonstrated by a rating of outstanding in a majority of the elements and
* no element rated less than excellent.*
- (8) In the event of an equal number of element ratings, the reviewing official has full discretion in approving the overall rating that best reflects the employee's performance.

14. FINAL DISCUSSION. After the reviewing official has approved the final rating (and the approving official has approved an outstanding rating), the rating form is returned to the rating official for discussion with the employee. No rating will be discussed with the employee until after the reviewing official (and, if necessary, the approving official) has approved the final rating. The rating official should give adequate time and attention to this part of the evaluation process. Rating officials are strongly encouraged to specify areas in which their employees should seek out training, education, or other developmental activities to improve skills and/or knowledge or enhance career advancement and promotion potential (using Section H on the appraisal form for this purpose). The employee will sign the bottom of the form, indicating that the performance rating has been discussed, and a copy of the rating will be given to the employee. The original copy of the rating, with signatures, will be returned to the HRM office for recording and filing. This is also an appropriate opportunity to review the performance standards for the next rating period and obtain the rater's and employee's signatures on the blank form which will be used for the next rating period.

15. FILING AND DISPOSITION OF PERFORMANCE LOGS AND RATING FORMS

a. Distribution instructions for the rating form are printed on the form.

b. The original, signed copy of a completed rating form, including continuation sheets, will be filed in the HRM office, either in the employee's individual Employee Performance File or on the left side of the employee's Official Personnel Folder. A copy of the employee's performance standards may be filed with the rating form or may be maintained in a separate master file of performance standards.

c. Completed performance ratings will be retained for four years and will be forwarded to a gaining agency in the event of the employee's transfer.

d. Rating officials will retain the performance log for one year after the performance rating is approved.

e. If a rating is increased or changed as a result of a successfully pursued grievance or other proceeding, the amended rating will be filed and the contested rating removed and destroyed.

f. The final adjective rating will be keyed into the NFC system, in accordance with instructions in the Payroll/Personnel Processing Manual.

16. PROBATIONARY EMPLOYEES

a. The probationary period is an extension of the examination and selection process and provides an opportunity for management to assess the total suitability of new employees. It is the policy of the Federal Bureau of Prisons to provide probationary employees with an intensive program to ensure that they are provided with direction in their jobs and are capable of performing effectively.

b. Probationary employees receive formal progress reviews immediately following the third, sixth and ninth months of employment, as described in paragraph 12 of this section.

c. The supervisor of a probationary employee must, no earlier than the beginning of the fourth month and no later than the end of the tenth month of probation, submit a signed certification that the employee's performance and conduct have been found satisfactory or that the employee's performance and conduct have been found unsatisfactory. The certification must include a recommendation as to whether the employee should be retained beyond the probationary period. The earlier progress reviews form the basis for this certification and recommendation as to retention. A probationary employee may be separated after the tenth month following a positive certification and recommendation if performance or conduct deteriorate.

d. Failure to meet the standards of performance and satisfactorily complete training will be a basis for disqualifying an employee during the probationary period. No part of this section is to be interpreted as discouraging or preventing the initiation of removal action at any time during the probationary year if it is determined, after a full and fair trial, that the employee's performance or conduct is not satisfactory. Employees in the competitive service who are serving a probationary period are excluded from the provisions of 5 C.F.R. Part 432 governing performance-based reduction in grade and removal actions.

17. INFORMING SUPERVISORS AND EMPLOYEES. In recognition of the importance of the performance appraisal Program and its significance to both supervisors and employees, a copy of this

section of the manual will be provided to all non-bargaining unit employees upon its issuance and to new non-bargaining unit employees when they enter on duty. In addition, the Human Resource Manager will ensure that all current rating and reviewing officials receive a copy of this section and will give new rating and reviewing officials a copy when they assume such a position.

Human Resource Managers are responsible for providing advice and assistance to supervisors on all aspects of this program and are encouraged to conduct periodic formal training to review the purposes and procedures of performance appraisal.

Supervisors are responsible for discussing the performance evaluation program with their subordinates, including explaining the purpose of the program, rating procedures and how the process furthers employee and management goals.

18. PERFORMANCE RATING GRIEVANCES. Non-bargaining unit employees may seek to change their performance ratings, or Performance log entries by using the agency grievance procedure contained in Section 771.1 of this Manual.

19. RELATIONSHIP TO WITHIN-GRADE INCREASES. To be eligible for a within-grade step increase, an employee must meet the requirements described in 5 CFR 531.404 (General Schedule) or 5 CFR 532.417 (Prevailing Rate System). One of these requirements is that the employee must demonstrate an acceptable level of competence in the duties and responsibilities of their position. Acceptable level of competence is determined by the employee's most current rating of record being an overall rating *of successful or higher. The rating of record used as the * basis of a within-grade increase determination must have been assigned no earlier than the most recently completed appraisal period. If a decision to grant or deny the within-grade increase is inconsistent with the most recent rating of record, a more current rating of record must be prepared. If the employee's *most recent rating of record is successful or higher and the* performance has deteriorated below an acceptable level of competence, a new rating of record must be prepared on which to base the decision to deny the increase. Similarly, if the most *recent rating of record was below successful and the * performance has improved to an acceptable level of competence, a new rating of record must be prepared on which to base the decision to grant the increase.

A supervisor who determines that an employee does not or may not demonstrate an acceptable level of competence will notify the employee in writing at least 60 days before the date on which the employee will complete the required waiting period for a within-grade increase. At least 15 days prior to the end of the waiting period, the supervisor will tentatively determine whether withholding the increase is warranted. If the employee fails to demonstrate an acceptable level of competence, the next higher supervisory level will review the supervisor's tentative determination. If both supervisors agree to withhold the increase, the immediate supervisor will so advise the employee in writing, stating the reasons for withholding the increase and referring to the advance notice given to the employee.

General Schedule employees are entitled to request reconsideration of a decision to withhold a within-grade increase and to present orally and in writing the reasons he/she believes the decision should be reversed. If the decision is to grant the increase, the employee will be certified as meeting the acceptable level of competence and the increase will be granted retroactively as of the end of the waiting period.

General Schedule and Federal Wage System employees may contest a performance rating on which a negative determination is based under the agency grievance procedure contained in Section 771.1.

20. QUALITY STEP INCREASES AND PERFORMANCE AWARDS. Refer to the Incentive Awards Manual for eligibility criteria for Quality Step Increases and performance awards.

21. ADDRESSING DEFICIENT PERFORMANCE. Addressing performance deficiencies and taking performance-based actions appropriately are important aspects of a sound performance management system. Procedures and requirements for addressing performance which falls below the acceptable level are discussed in the following paragraphs.

Acceptable performance is performance that meets the performance standard or requirement at the level above unacceptable. Under the Bureau of Prisons performance appraisal program, this level is the minimally satisfactory level.

22. MINIMALLY SATISFACTORY PERFORMANCE. When instances of performance or overall performance are deemed to be minimally satisfactory, the supervisor should determine what action is best

suited to the particular circumstances after discussion with the employee. Counseling, training, and closer supervision are the most commonly practiced options available. These efforts should be thoroughly documented. If minimally satisfactory performance continues, the supervisor has the option of continuing counseling, training, or closer supervision or finding that the employee's performance has become unacceptable.

23. UNACCEPTABLE PERFORMANCE. These procedures will be followed at any time during the rating cycle when a supervisor records an instance of performance below the acceptable level in one or more elements of the performance standards in the employee's performance log. Again, employee performance below the minimally satisfactory level is considered unacceptable.

a. Unacceptable Performance Warning. When a supervisor records an instance of unacceptable performance, he/she will issue the employee a written warning of a potentially unacceptable performance rating. This warning letter must include:

- (1) Notification of the element or elements in which performance is unacceptable.
- (2) Specific examples of the unacceptable performance.
- (3) The performance requirements or standards which must be attained in order to demonstrate acceptable performance. The acceptable level of performance for purposes of retention in the position under the Bureau's five-level performance appraisal system is the level between the "unacceptable" level and the *"successful" level, specifically performance which is * "minimally satisfactory."
- (4) A reasonable opportunity period to demonstrate acceptable performance on the elements at issue. This opportunity period will normally not be less than 30 days nor more than 90 days following the issuance of the warning letter and will be determined under the circumstances of the particular case. The initially established period may be extended at the agency's discretion for extenuating circumstances such as extended periods of absence during the opportunity period.
- (5) Notice that the employee must improve to the acceptable level by the conclusion of the opportunity period and must sustain that level of performance for at least one year from the start of the opportunity period.

(6) A structured performance improvement plan (PIP) to provide the employee opportunities to demonstrate acceptable performance. The PIP may include such activities as developmental assignments, structured employee assistance or counseling, formal training, on-the-job training, mentoring or any other activity which the supervisor believes will afford the employee an opportunity to demonstrate acceptable performance.

Careful records must be kept of assistance offered and results achieved under the PIP.

(7) Explanation of actions which may be initiated if the unacceptable performance continues or if acceptable performance is not demonstrated.

Human Resource Managers will assist supervisors in preparing performance warning letters. Warning letters must be approved by the Regional HRM Office and the LMR Section before being issued to the employee.

b. Improved Performance During the Opportunity Period. If, at the conclusion of the opportunity period, the rating official determines that the employee has improved to an acceptable level in the element which formed the basis for the opportunity period, no further action will be taken. When it is time for the annual rating, the rating official will consider the instance of unacceptable performance along with other recorded instances of performance for that element and give it appropriate weight in assigning the rating for that element.

c. Additional Unacceptable Performance During the Opportunity Period. If, at the conclusion of the opportunity period, the rating official determines that the employee has not improved to an acceptable level in the element which formed the basis for the opportunity period, then the rating official will prepare a performance rating, whether or not it is time for the annual rating. The element will be rated unacceptable and the proposed overall rating will be unacceptable.

- (1) If it is not time for the annual rating and the reviewing official does not concur with the proposed unacceptable rating, then no rating will be issued. However, if at any time during the remainder of the rating period the supervisor notes another instance of unacceptable performance in the same element, he/she will again propose an unacceptable rating.

- (2) If it is time for the annual rating and the reviewing official does not concur with the proposed unacceptable rating, then the reviewing official's rating is the final rating. The reviewing official must adjust the individual element ratings to support the overall rating given and substantiate these changes in the reviewing official's comments on the rating form.
- (3) Whether or not it is time for the annual rating, if the reviewing official concurs with the proposed unacceptable rating, then an unacceptable rating will be issued together with a notice of proposed action in accordance with Paragraph 24 of this section.

d. Additional Unacceptable Performance During the Twelve Months Following the Beginning of the Opportunity Period. In order to demonstrate acceptable performance following a performance warning letter, employees are required to improve their performance to an acceptable level and sustain that level of performance for twelve months following the beginning of the opportunity period. Therefore, if a supervisor notes unacceptable performance in the same element which formed the basis for the warning letter at any time during the twelve months following the beginning of the opportunity period, he/she will prepare a proposed unacceptable rating as described in Paragraph 23c above. This is the case even if the employee did demonstrate acceptable performance during the opportunity period and/or received a performance rating at or above the acceptable level since the issuance of the warning letter.

24. PROPOSING AND TAKING ACTION BASED ON UNACCEPTABLE PERFORMANCE. When the reviewing official approves and issues an unacceptable performance rating, the reviewing official will also issue a notice of proposed action in accordance with the following procedures:

- a. An employee who receives an unacceptable rating may be reassigned.
- b. An employee who is serving a one-year probationary period as a newly appointed supervisor or manager and who does not satisfactorily perform their supervisory (or managerial) duties, may be returned to their former (or comparable) position and pay without right of appeal.

c. A non-probationary employee whose reduction in grade or removal is proposed is entitled to:

- (1) Thirty calendar days advance written notice which specifies the action proposed, the specific instances of unacceptable performance on which the proposed action is based and the elements involved in each instance of unacceptable performance. These instances must have occurred within one year prior to the notice of proposed action;
- (2) The right to be represented by an attorney or other representative;
- (3) Fifteen calendar days to respond orally and/or in writing to the deciding official. The response time may be extended for a specified time as determined by the deciding official, but not for more than an additional thirty days; and
- (4) A final written decision within 30 days after the expiration of the 30-day advance notice period. The written decision must specify the instances of unacceptable performance upon which the action is based and may include any instances of unacceptable performance which occurred during the one-year period prior to the issuance of the advance notice. An action may be based solely on instances of unacceptable performance occurring during the opportunity period or may be based on instances of unacceptable performance occurring before, during and after the opportunity period, as long as the instances took place during the one-year period preceding the issuance of the notice of proposed action. Although the agency is allowed to use instances of pre-opportunity period performance to support an action (though not exclusively), there is no incentive to do so unless the agency wishes to cite such instances as support for its overall performance determination. The final decision must also include notice of the employee's right to appeal the action to the Merit Systems Protection Board or to file a grievance under the agency grievance procedure (but not both), the time limits for filing an appeal or grievance, a copy of the MSPB appeal form and a copy (or access to a copy) of the MSPB regulations.