

NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for the Permanent Amendment and Repeal
of Regulations of the
Personnel Commission

The Personnel Commission will hold a public hearing at 9:00 a.m. on March 15, 2019, at the State Library and Archives, Room 110, 100 North Stewart Street, Carson City, Nevada with videoconferencing to the Grant Sawyer Building, Room 1400, 555 East Washington Avenue, Las Vegas, Nevada. The purpose of the hearing is to receive comments from all interested persons regarding the amendment and repeal of regulations that pertain to Chapter 284 of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

- These regulations do not have a direct economic effect on any business or the public.
- Enforcement of these regulations will not result in an increased cost.
- To our knowledge, these regulations do not overlap or duplicate the regulations of other State or local governmental agencies.
- These regulations do not establish any new fee or increase an existing fee.

<u>LCB File:</u>	<u>Section:</u>	<u>NAC:</u>	<u>Leadline or Description</u>
R057-18	Sec. 1	284.470	Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances.
	Sec. 2	284.678	Submission, form and contents of grievance; informal discussions.
	Sec. 3	284.690	Filing of grievance with highest administrator of department; action by highest administrator.
	Sec. 4	284.693	Removal of ineligible request for adjustment of grievance or complaint from procedure; notice; appeal.
	Sec. 5		NAC 284.097, 284.474 and 284.478 are hereby repealed.

Persons wishing to comment upon the proposed action of the Personnel Commission may appear at the scheduled public hearing or may address their comments, data, views, or arguments, in written form, to the Department of Administration, Division of Human Resource Management, 209 East Musser Street, Suite 101, Carson City, Nevada 89701, Attention: Frank Richardson. Written submissions must be received by the Division of Human Resource Management on or before March 15, 2019. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Personnel Commission may proceed immediately to act upon any written submissions.

A copy of this notice and the regulations to be adopted and amended will be on file at the Nevada State Library, Archives and Public Records, 100 North Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additionally, copies of this notice and the regulations to be adopted and amended will be available at the Division of Human Resource Management, 100 North Stewart Street, Suite 200, Carson City, Nevada, and 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada; and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during

business hours. This notice and the text of the proposed regulations are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653, and on the internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulations will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

Upon adoption and amendment of any regulation, the agency, if requested to do so by an interested person, either before adoption and amendment, or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and amendment, and incorporate therein its reason for overruling the consideration urged against its adoption and amendment.

This notice of hearing has been posted at the following locations:

Carson City

Bladel Building, 209 East Musser Street

Nevada State Library & Archives Building, 100 North Stewart Street

Legislative Counsel Bureau, 401 South Carson Street

Las Vegas

Grant Sawyer Building, 555 East Washington Avenue

Websites

Legislative Counsel Bureau website: www.leg.state.nv.us

Nevada Public Notice website: <http://notice.nv.gov>

Division of Human Resource Management website: www.hr.nv.gov

EXPLANATIONS OF PROPOSED CHANGES
LCB File No. R057-18

Section 1: NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances.

This amendment is intended to clarify the procedure related to employee reports on performance. The most significant amendment removes “reviewing officer” from the regulation. It is intended that an appointing authority could complete the review process or delegate the process to an appropriate staff member. Regardless of how the appointing authority chooses to handle a request for review of a report on performance, he or she must render a decision, sign, send and file a copy of the report on performance within 20 working days. The amendment also expands the methods for transmittal of a report on performance to include any reasonable means of delivery, except for social media, that provides a written or electronic record of the date which the report is received. Additionally, several housekeeping changes are also proposed to clarify the procedure.

Section 2: NAC 284.678 Submission, form and contents of grievance; informal discussions.

This amendment makes several conforming changes based on the amendments proposed in other sections of this LCB File.

Section 3: NAC 284.690 Filing of grievance with highest administrator of department; action by highest administrator.

This amendment makes several conforming changes based on the amendments proposed in other sections of this LCB File.

Section 4: NAC 284.693 Removal of ineligible request for adjustment of grievance or complaint from procedure; notice; appeal.

This amendment will require the Division of Human Resource Management to remove a grievance from the grievance process if it is determined to be related to an issue between coworkers or because of a rejection from a trial period.

Section 5: NAC 284.097, 284.474 and 284.478 are repealed.

This section repeals three regulations. NAC 284.097 and 284.478 are proposed to be repealed because “reviewing officer” will no longer exist in regulation per the amendment to NAC 284.470. NAC 284.474 is proposed to be repealed because the requirement that an employee must be given a copy of his or her report on performance is proposed to be included in NAC 284.470.

**REVISED PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R057-18

November 7, 2018

EXPLANATION – Matter in *italics* is new; matter in brackets ~~omitted material~~ is material to be omitted.

AUTHORITY: §§1-5, NRS 284.065, 284.155, 284.340 and 284.384.

A REGULATION relating to state employees; revising provisions concerning reports on performance; revises provisions relating to adjustment of grievances; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law requires each appointing authority to periodically file a report with the Administrator of the Division of Human Resource Management of the Department of Administration on the performance of certain employees. (NRS 284.340) Existing regulations prescribe the procedure for the preparation, discussion and filing of a report on performance. (NRS 284.470, 284.474, 284.478) Existing regulation requires the immediate supervisor of an employee to discuss the report on performance with the employee or to mail such a report to the employee if the employee is unavailable to discuss the report because of an extended absence. Existing regulation also requires such an employee who contests the report on performance and requests a review to respond to the report in writing and return the response to the supervisor. (NAC 284.470) **Section 1** of this regulation requires that the discussion of the report on performance occur between the employee and the person who prepared the report, which may not be the employee's immediate supervisor. **Section 1** also clarifies the manner in which an employee completes his or her portion of the report, including a request for a review of the report by the appointing authority. **Section 1** also expands the methods by which the person who prepared a report may transmit such a report to an unavailable employee and by which the unavailable employee may transmit a report from only mail to other reasonable methods of delivery that provide a written or electronic record of the date on which the report is received, except for social media.

Section 1 additionally: (1) removes the requirement that a reviewing officer review a contested report on performance and submit a recommendation to the appointing authority regarding the report and instead only requires the appointing authority to review such a report; and (2) changes the number of days in which the appointing authority must render a final decision regarding such a report from 10 working days to 20 working days. **Sections 2, 3 and 5** of this regulation make conforming changes.

Existing regulations define “rating of performance” to mean the overall rating of an employee’s performance which is included in the report on performance of an employee. (NAC 284.0915) **Section 1** removes redundant references to “overall” with respect to a rating of performance without altering any substantive requirements.

Existing regulation prescribes the actions that the Division is required to take if a request for the adjustment of a grievance is not eligible for the procedures for adjusting grievances. (NAC 284.693) **Section 4** of this regulation clarifies that the procedures for adjusting grievances do not apply to situations involving coworkers and to persons who were rejected during their trial periods.

Section 1. NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not ~~complete~~ *prepare* a report on performance unless he or she has completed the training provided or approved by the Administrator concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the Division of Human Resource Management.

3. A report on performance must be filed *with the Administrator* at the times prescribed by NRS 284.340, but may be filed more frequently at the discretion of the supervisor of the employee.

4. If a report on performance is filed on or before the times specified in NRS 284.340, the ~~overall~~ rating of performance of the employee will be reflected in the employee’s file of employment and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194.

5. If a report on performance is not filed on or before the times specified in NRS 284.340, the performance of the employee shall be deemed to be standard for the purpose of determining the salary of the employee and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194. If an untimely report on performance:

(a) Is filed thereafter, the employee's file of employment will be updated to reflect the ~~{overall}~~ rating of performance of the employee as reported, but that rating will not affect any merit pay increase to which the employee is otherwise entitled.

(b) Is not filed thereafter, the employee's file of employment will not include ~~{an overall}~~ a rating of performance of the employee for that period of evaluation.

6. If the performance of an employee falls below standard, his or her supervisor shall inform the employee promptly and specifically of the deficiencies in the performance of the employee regardless of whether a report on performance of the employee is ~~{completed}~~ *prepared* or filed.

7. If any information that would have affected the rating of performance of an employee during a period of evaluation becomes available after the date on which the report on performance of the employee is filed for that period, the information may be included in the report on performance for the current period of evaluation and taken into consideration in determining the rating of performance for the current period of evaluation.

8. When a report on performance is given which reports the ~~{overall}~~ rating of performance of an employee as substandard:

(a) The report must contain a written notice that such reports affect merit pay increases; and

(b) An additional report on the performance of the employee must, in accordance with subsection 4 of NRS 284.340, be filed at least once every 90 days after the initial report that includes the substandard rating until the performance of the employee improves to standard or disciplinary action is taken against the employee.

9. Except as otherwise provided in subsection 10, the preparation of each report on performance must include a discussion between the employee and ~~{his or her immediate~~

~~supervisor.]~~ *the person who prepared the report.* Within 10 working days after the discussion takes place ~~;~~

~~—(a) The]~~ *and the employee receives the report on performance signed by the person who prepared the report, the* employee must ~~[complete and sign the appropriate section on the report on performance and return the report to the supervisor for forwarding to the reviewing officer or appointing authority.~~

~~—(b)] :~~

(a) Indicate in the appropriate section of the report whether the employee agrees or disagrees with the report and, if he or she disagrees, whether the employee requests a review of the report by the appointing authority. If the employee ~~[contests]~~ *requests a review of* the report on performance, ~~[and requests a review,]~~ he or she must ~~[respond to the report in writing, identify the specific points]~~ *specify each point* of ~~[contention, if such specificity is provided, and return the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance. The appointing authority shall review the recommendation of the reviewing officer regarding the contested report on performance and render a final decision to the employee within 10 working days after receiving the recommendation.]~~ *disagreement with the report, in writing, in the appropriate section of the report or in a document attached to the report.*

(b) Return the report to the person who prepared the report for forwarding to the appointing authority for its agreement or revision and signature.

10. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 9 because of an extended absence, the ~~immediate supervisor of the employee~~ *person who prepared the report* shall *sign the report and* cause the report to be ~~mailed~~ *sent* to the employee ~~by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media.~~ Within 10 working days after the date on which the employee receives the ~~report:~~

~~—(a) The report on performance, the~~ employee must ~~complete and sign the appropriate section on the report on performance and mail the report to the supervisor for forwarding to the appointing authority or reviewing officer.~~

~~—(b) :~~

(a) Indicate in the appropriate section of the report whether the employee agrees or disagrees with the report and, if he or she disagrees, whether the employee requests a review of the report by the appointing authority. If the employee ~~contests~~ *requests a review of* the report on performance, ~~and requests a review,~~ he or she must ~~respond to the report in writing, identify any specific~~ *specify each* point of ~~contention, if the report provides such specificity, and mail the response to the supervisor. Except as otherwise provided in this paragraph, the reviewing officer shall respond in writing on a form prescribed by the Division of Human Resource Management within 10 working days after the supervisor receives the request for review. If the reviewing officer is not the appointing authority, the reviewing officer must submit to the appointing authority a recommendation to uphold or modify the report on performance.~~ ~~The~~ *disagreement with the report, in writing, in the appropriate section of the report or in a document attached to the report.*

(b) Send the report by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media, to the person who prepared the report for forwarding to the appointing authority for its agreement or revision and signature.

11. If the employee requested a review of the report on performance pursuant to subsection 9 or 10, the appointing authority shall ~~[review the recommendation of the reviewing officer regarding the report on performance and render]~~, within 20 working days after the date on which the person who prepared the report on performance received the report from the employee:

(a) Render a ~~[final]~~ decision ~~[to the employee within 10 working days after receiving the recommendation. For the purposes of this paragraph, a report on performance or request for review is deemed to have been received on the third day after the date on which the report or request is postmarked.~~

~~—11.— A]~~ regarding the report on performance and indicate that decision in the appropriate section of the report or in a document attached to the report;

(b) Sign the report on performance;

(c) Send a copy of the report on performance, including any attachment, to the employee and the person who prepared the report; and

(d) File a copy of the report on performance with the Administrator.

12. If an employee did not request a review of a report on performance pursuant to subsection 9 or 10, a copy of ~~[each]~~ the report on performance ~~[and, if applicable, any written response to such a report requested by an employee pursuant to subsection 9 or 10,]~~ signed by

the appointing authority must be provided to the employee and filed with the ~~Division of Human Resource Management.~~

~~12.]~~ *Administrator.*

13. If any written comments are added to a report on performance after a copy of the report has been provided to the employee pursuant to subsection 11 ~~[.]~~ *or 12:*

(a) A copy of the revised report which includes the written comments must be provided to the employee; and

(b) The employee may respond, in writing, to the additional comments in the revised report not later than 10 working days after receiving a copy of the revised report and submit the response to the ~~Division of Human Resource Management]~~ *Administrator* for inclusion in his or her file of employment.

~~[13.]~~ **14.** An employee and his or her appointing authority or the designee of the appointing authority may agree in writing to extend one or more of the periods prescribed in ~~subsection 9 or 10.~~

~~—14.— If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the]~~ *this section.*

15. *An* employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive ~~[.]~~, *if:*

(a) *The appointing authority failed to respond to a request for review of the report on performance from the employee within the time required by this section; or*

(b) *The employee disagrees with the report on performance after receiving a copy of the report from the appointing authority pursuant to subsection 11 or 12.*

16. For the purposes of subsections 10 and 11, a report on performance that is sent by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media, is deemed to have been received on:

- (a) The third day after the date on which the report is postmarked;*
- (b) The date on which the report is sent by an electronic mail program or service; or*
- (c) The third day after the report is sent by any other delivery service.*

17. As used in this section, “social media” :

(a) Includes, without limitation, any electronic service or account or electronic content, including, without limitation, any video, photograph, blog, podcast, instant message or text message.

(b) Does not include an electronic mail program or service.

Sec. 2. NAC 284.678 is hereby amended to read as follows:

284.678 1. Except as otherwise provided in subsections 3 and 4 and NAC 284.692, an employee who feels aggrieved and wishes to file a formal grievance must submit the grievance in writing to his or her immediate supervisor on the official form, or in a letter if the official form is not available, within 20 working days after the date of the event leading to the grievance or the date the employee learns of the event leading to the grievance. The parties should make every effort to resolve the grievance through informal discussions within these 20 working days.

2. If the employee submits a letter, it must include:

- (a) His or her name;
- (b) His or her most recent date of hire;
- (c) His or her position;
- (d) His or her department, division and section;

- (e) His or her mailing address;
- (f) His or her business telephone number;
- (g) A statement that he or she is filing a formal grievance;
- (h) The date, time and place of the event leading to the grievance or the date the employee learns of the event leading to the grievance;
- (i) A concise statement of the grievance;
- (j) A detailed description of the grievance, including the names of other persons involved in the event, if any;
- (k) A proposed solution of the grievance;
- (l) His or her signature; and
- (m) The date he or she signed the statement.

3. Except as otherwise provided in *this subsection and* NAC 284.692, if a grievance relates to a contested report on performance, an employee must file a grievance that identifies ~~the~~ *any* specific ~~points~~ *point* of ~~contention, if such specificity is provided,~~ *disagreement with the report* not later than 10 working days after the date the employee receives a ~~decision regarding the review conducted by~~ *copy of the report from* the appointing authority pursuant to NAC 284.470. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of ~~a reviewing officer or~~ *an* appointing authority to respond to a request for a review within the time required by NAC 284.470, an employee must file a grievance not later than 10 working days after the date on which the time for such a response expired.

4. A grievance filed pursuant to subsection 3 must be filed with:

- (a) The person who is at the next appropriate level of the grievance process; or

(b) If the person who is at the next appropriate level of the grievance process is the ~~reviewing officer or other~~ person who prepared or reviewed the report on performance, the person who is at the next appropriate level of the grievance process above ~~such reviewing officer or other~~ *the* person who prepared or reviewed the report on performance.

5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.

Sec. 3. NAC 284.690 is hereby amended to read as follows:

284.690 1. Except as otherwise provided in NAC 284.692:

(a) If the employee has not received satisfactory relief within 10 working days after his or her grievance is deemed to have been received by the head of the division, he or she may file the grievance with the highest administrator of the department; and

(b) Within 10 working days after the employee's grievance is deemed to have been received by the highest administrator of the department, the highest administrator or the designee of the highest administrator shall:

(1) Gather information regarding the grievance;

(2) Render a decision resolving the grievance, including, without limitation, denying the grievance; and

(3) Notify the employee of the resolution.

2. In rendering a decision concerning a *contested* report on performance, an administrator shall address the findings of fact to the specific points of ~~contention~~ *disagreement* referred to in the grievance of the employee.

3. Within the established time limitations, including any extensions to those time limitations obtained pursuant to NAC 284.692, the highest administrator may appoint a person or committee composed of managers and employees to assist in the finding of facts and recommending a course of action.

Sec. 4. NAC 284.693 is hereby amended to read as follows:

284.693 1. ~~[If the]~~ *The* Division of Human Resource Management *must take the actions described in subsection 2 if the Division* determines that a request for the adjustment of:

(a) A grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because ~~[the]~~ :

(1) *The* person who submitted the request is not a person described in subsection 2 of NAC 284.658 , *including, without limitation, because the act, omission or occurrence only involves a coworker;*

(2) *The person who submitted the request was rejected during his or her trial period pursuant to NAC 284.458;* or ~~[because a]~~

(3) *A* hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 . ~~[; or]~~

(b) A complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in paragraph (a) of subsection 4 of NRS 281.755 . ~~[;~~

~~→ the Division must take the actions described in subsection 2.]~~

2. Upon making a determination pursuant to subsection 1 that a request for the adjustment of a grievance or complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance or complaint arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person's concern; and

(4) Information relating to the person's right to appeal the determination to the Committee.

3. If the Division of Human Resource Management determines that a request for the adjustment of a grievance or complaint is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

Sec. 5. NAC 284.097, 284.474 and 284.478 are hereby repealed.

TEXT OF REPEALED SECTIONS

284.097 “Reviewing officer” defined. (NRS 284.065, 284.335, 284.340) “Reviewing officer” means:

1. The supervisor of the person who prepared a report on performance of an employee; or
2. Such other person designated by the appointing authority,

↳ who reviews the report on performance upon the request of the employee pursuant to paragraph (b) of subsection 9 of NAC 284.470.

284.474 Employee entitled to copy of report. (NRS 284.065, 284.155, 284.340) Each employee must be given a copy of the report prepared by the supervisor measuring the employee’s performance and development on the job. The report will not become official until signed by the rater. If requested, a copy must be provided to the employee at the time of the discussion between the supervisor and the employee. After the processing has been completed, a copy with all appropriate signatures will be provided the employee.

284.478 Appeal of decision of reviewing officer. (NRS 284.065, 284.155, 284.340, 284.384) Upon completion of the review process conducted pursuant to NAC 284.470, a permanent employee may appeal a contested report on performance through the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

Steve Sisolak
Governor



Patrick Cates
Director

Peter Long
Administrator

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January 24, 2019

Regulation Small Business Impact Statement

Section 15 of Article 15 of the Nevada Constitution requires the Legislature to provide for a State merit system governing the employment of employees in the Executive Branch of State government and in 1969 the Legislature provided for such in NRS 284. Additionally, NRS 284.013 provides limitations to which employees of the Executive Branch are covered by NRS 284. NRS 284.065 authorizes the Personnel Commission to adopt regulations to carry out the provisions of this chapter.

Due to the limitations of the Nevada State Constitution and NRS 284, the Division of Human Resource Management staff has determined that the adoption of these proposed regulations does not affect small businesses, impose a significant economic burden on small businesses, nor will the regulations restrict the formation, operation or expansion of small businesses. These regulations only impact employees of the Executive Branch.

I certify that to the best of my knowledge or belief, a concerted effort was made to determine the impact of the proposed regulations on small businesses and that the information contained in this statement was prepared properly and is accurate.

Peter Long

Peter Long, Administrator

January 24, 2019

Date