JIM GIBBONS
Governor

STATE OF NEVADA

TERESA J. THIENHAUS
Director

DEPARTMENT OF PERSONNEL
209 East Musser Street, Room 101
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MEMO PERD # 06/09
January 15, 2009

TO: Nevada County Libraries
State Library and Archives

FROM: Teresa J. Thienhaus, Director
Department of Personnel

SUBJECT: NOTICE OF PUBLIC HEARING – NAC 284 Regulation Changes

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The regulation changes included with this memorandum are being proposed for adoption at the February 27, 2009, Personnel Commission meeting. This meeting will be held at 9:00 a.m. at the Gaming Control Board Conference Room, 1919 College Parkway, Carson City, Nevada and by video conference at the Grant Sawyer Building, Gaming Control Board, Room 2450, 555 East Washington Avenue, Las Vegas, Nevada.

Please circulate or post the enclosed *Notice of Public Hearing* along with the *text of the proposed regulation.*

TJT:sb

Enclosures

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NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the Temporary Amendment or Adoption of Regulations of the Department of Personnel

The Personnel Commission will hold a public hearing at 9:00 a.m., on February 27, 2009, at the Gaming Control Board Conference Room, 1919 College Parkway in Carson City and in Las Vegas at the Grant Sawyer Building, Gaming Control Board, Room 2450, 555 East Washington Avenue via videoconferencing. The purpose of the hearing is to receive comments from all interested persons regarding the amendment 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.
- A statement of the need for and the purpose of the proposed regulations precedes the text of each regulation included in the attached document. The following regulation amendments will be considered at this meeting:

Regulation Lead Line:	**NAC #**
Return to work of employees who have tested positive for alcohol and/or drugs while on duty	New Temporary Reg
"Continuing treatment" defined	NAC 284.5232
"Eligible employee" defined	NAC 284.5233
"Family and medical leave" defined	NAC 284.5234
"Immediate family" defined	NAC 284.5235
"Serious health condition" defined	NAC 284. 5239
Leave of absence without pay	NAC 284.578
Family and medical leave: Maximum amount in 12 month period; eligibility; use	NAC 284.5811
Layoffs: Procedure	NAC 284.614
Layoffs: Voluntary demotions	NAC 284.618
Layoffs: Notice	NAC 284.626
Administration of screening tests	NAC 284.882
Request for employee to submit to screening test: Interpretation of grounds; completion of required form	NAC 284.888

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 Department of Personnel, 209 E. Musser Street, Suite 101, Carson City, Nevada 89701, Attention Shelley Blotter. Written submissions must be received by the Department of Personnel on or before February 5, 2009. 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 amended will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be amended will be available at the Department of Personnel, 209 E. Musser Street, Room 300, Carson City, 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 regulation 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 regulation 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 of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption and incorporate therein its reason for overruling the consideration urged against its adoption.

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

CARSON CITY

Blasdel Building, 209 East Musser Street

Nevada State Library and Archives, 100 Stewart St.

Capitol Building, Main Floor

Legislative Building, 401 South Carson Street

Department of Personnel Web Site www.dop.nv.gov

Main branch of Nevada County Public Libraries

Gaming Control Board, 1919 College Parkway

LAS VEGAS

Grant Sawyer State Office Building

555 East Washington Avenue

Additionally, this notice has been sent to all State agencies.

REGULATIONS PROPOSED FOR TEMPORARY ADOPTION

Section 1. Chapter 284 of NAC is hereby amended by adding thereto a new section to read as follows:

Explanation of Proposed Change: This new section, proposed by the Department of Transportation in collaboration with the Department of Personnel, provides Appointing Authorities with an objective way to determine if it is appropriate for an employee to return to work after testing positive while on duty for drugs and/or alcohol. Currently, unless the employee is covered under a federally mandated program for drug testing or if the offense warranted termination, an employee who tests positive for drugs and/or alcohol is returned to duty with no requirement to provide documentation that they are able to safely perform their job. This regulation would require the employee to provide a release to return to work from their Licensed Substance Abuse Treatment Provider or other provider of health care with training and experience in substance abuse treatment, stating that the employee is able to return to duty and to pass a return to duty drug and/or alcohol test. This will help ensure that employees do not return to work under the influence of drugs and/or alcohol. An employee who is using drugs and/or alcohol or has them in their system poses a safety risk to themselves, other employees and the public and could also make mistakes that can have far reaching effects. Employees working for the State of Nevada are providing a service to the citizens of Nevada; as such, we should ensure that an employee is substance free and able to perform the essential functions of their job before returning them to duty.

NEW. Return to work of employees who have tested positive for alcohol and/or drugs while on duty.

1. An employee who tests positive for drugs and/or alcohol while on duty, and whose offense does not result in termination pursuant to NAC 284.646 or NAC 284.650, may be required to:

(a) Provide his appointing authority with documentation from his Licensed Substance Abuse Treatment Provider or other provider of health care with training and experience in substance abuse treatment, which verifies that the employee is able to return to duty and perform the essential functions of his job; and/or

(b) Submit to and pass a return to duty drug and/or alcohol test as determined by the appointing authority.

2. The employee is responsible for the cost of any return to duty testing.

3. An employee who fails to pass a return to duty test is subject to disciplinary action up to and including termination at the discretion of the appointing authority.

Sec. 2. NAC 284.5232 is hereby repealed:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, deletes a definition of "continuing treatment" which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

NAC 284.5232 "Continuing treatment" defined. (NRS 284.065, 284.155, 284.345)
[~~"Continuing treatment" means:~~

~~1. Two or more treatments received from a provider of health care if the treatment normally requires a visit to the office of the provider of health care or a nurse or physician assistant who is under the direct supervision of the provider of health care;~~

~~2. Two or more treatments received from a provider of health care services, such as a physical therapist, under the orders of, or referred by, a provider of health care;~~

~~3. At least one treatment received from a provider of health care which results in a regimen of continuing treatment under the supervision of a provider of health care;~~

~~4. The continuing supervision of, but not necessarily active treatment by, a provider of health care because of a long-term or permanent condition for which treatment may not be effective; or~~

~~5. Any combination of treatments described in subsections 1 to 4, inclusive.~~]

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95)

Sec. 3. NAC 284.5233 is hereby repealed:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, deletes a definition of "eligible employee" which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581. Additionally, "eligible employee" is used in a different context in other sections of the Nevada Administrative Code, and such a definition may be confusing.

NAC 284.5233 "Eligible employee" defined. (NRS 284.065, 284.155, 284.345)

[~~Eligible employee" means an employee who is eligible for family and medical leave.~~]

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A by R082-00, 8-2-2000)

Sec. 4. NAC 284.5234 is hereby repealed:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, deletes a definition of "family and medical leave" which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

NAC 284.5234 "Family and medical leave" defined. (NRS 284.065, 284.155, 284.345)

[~~"Family and medical leave" means any paid leave or leave of absence without pay which is granted to an eligible employee:~~

~~1. For the birth of a child of the employee and the care of that child if the leave is taken during the 12 months immediately following the date of the birth of that child;~~

~~2. For the placement of a child through adoption or foster care with the employee if the leave is taken during the 12 months immediately following the date of placement of that child;~~

~~3. To care for his spouse, child or parent who has a serious health condition; or~~

~~4. Because of a serious health condition of the employee which makes him unable to perform one or more of the essential functions of his position.~~]

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95)

Sec. 5. NAC 284.5235 is amended as follows:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, adds "next of kin" to the definition of immediate family in cases where an employee is approved to care for a covered servicemember under the Family and Medical Leave Act.

NAC 284.5235 "Immediate family" defined. (NRS 284.065, 284.155, 284.345)

"Immediate family" means:

1. The employee's parents, spouse, children, regardless of age, brothers, sisters, grandparents, great-grandparents, uncles, aunts, nephews, grandchildren, nieces, great-grandchildren and stepparents; and

2. If they are living in the employee's household, the employee's father-in-law, mother-in-law, son-in-law, daughter-in-law, grandfather-in-law, grandmother-in-law, great-grandfather-in-law, great-grandmother-in-law, uncle-in-law, aunt-in-law, brother-in-law, sister-in-law, grandson-in-law, granddaughter-in-law, nephew-in-law, niece-in-law, great-grandson-in-law and great-granddaughter-in-law.

3. Next of kin as provided for by the Family and Medical Leave Act when an employee is approved for family and medical leave to care for a covered servicemember.

(Added to NAC by Dep't of Personnel, eff. 3-23-94)

Sec. 6. NAC 284.5239 is hereby repealed:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, deletes a definition of "serious health condition" which duplicates a section of the federal Family and Medical Leave Act (FMLA). The FMLA is adopted by reference in NAC 284.581.

NAC 284.5239 "Serious health condition" defined. (NRS 284.065, 284.155, 284.345)

[~~1. "Serious health condition" means an illness, an injury or a physical or mental condition which involves:~~

~~(a) Inpatient care in a hospital, hospice or residential medical care facility, including any period of incapacity or any subsequent treatment in connection with such inpatient care; or~~

~~(b) Continuing treatment by or under the supervision of a provider of health care for one or more periods of:~~

~~(1) Incapacity of more than 3 consecutive calendar days, and any subsequent treatment or period of incapacity related to the same condition that also involves continuing treatment.~~

~~(2) Incapacity because of pregnancy or for prenatal care.~~

~~(3) Incapacity because of a chronic serious health condition, or treatment for such incapacity. A chronic serious health condition is one that continues over an extended period of time, requires periodic visits for treatment by or under the direct supervision of a health care provider, and which may cause episodic periods of incapacity.~~

~~(4) Incapacity which is permanent or long-term because of a condition for which treatment may not be effective, but for which the person is under the continuing supervision of a health care provider.~~

~~(5) Absence to receive multiple treatments by or under the direction of a health care provider for restorative surgery after an accident or other injury.~~

~~(6) Absence to receive multiple treatments by or under the direction of a health care provider for a condition that would likely result in a period of incapacity of more than 3 consecutive calendar days in the absence of medical intervention or treatment.~~

~~2. The term "serious health condition" does not include:~~

~~(a) Cosmetic treatments which do not require inpatient care and which do not result in medical complications; or~~

~~(b) Minor conditions such as the common cold, flu or an ear ache which do not result in medical complications.~~

~~3. As used in this section, "incapacity" means the inability to work, attend school or perform other regular daily activities because of a serious health condition, including any treatment or recovery period.~~]

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95)

Sec. 7. NAC 284.578 is hereby amended as follows:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, requires an employee to exhaust all leave, including compensatory time, before using leave without pay for family and medical leave. New federal regulations now allow compensatory time to be used for family and medical leave.

NAC 284.578 Leave of absence without pay. (NRS 284.065, 284.155, 284.345)

1. Except as otherwise provided in NRS 284.360, an appointing authority may grant a leave of absence without pay to an employee for not more than 1 year for any satisfactory reason.

2. The Commission may grant leaves of absence without pay in excess of 1 year for purposes deemed beneficial to the public service.

3. An appointing authority may require an employee on leave of absence without pay to submit every 2 weeks a statement of his intent to return to work.

4. If the reason for granting the leave no longer exists, the appointing authority may revoke the leave after notifying the employee in writing and allowing, so far as is practicable, not less than 5 working days after the date of notification for the employee to return to work.

5. An employee shall request leave without pay at least 30 days in advance of when the need for the leave is foreseeable, if practicable.

6. An employee may not use leave without pay in lieu of sick leave or annual leave without approval of the appointing authority.

7. An employee who is using leave pursuant to the Family and Medical Leave Act may not use leave without pay until he has exhausted his accrued sick leave, ***compensatory time,*** annual leave and catastrophic leave as required by NAC 284.5811.

[Personnel Div., Rule VII § E subsecs. 1-4, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-26-84; 3-23-94; 10-27-97; A by Personnel Comm'n by R145-05, 12-29-2005)

Sec. 8. NAC 284.5811 is hereby amended as follows:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel, adds provisions that make the regulation consistent with new federal Family and Medical Leave Act (FMLA) regulations. It allows for the use of 26 weeks in a single 12-month period to care for a covered service member, incorporates the use of compensatory time for use with the FMLA, and expands the type of documentation accepted for qualifying FMLA events.

NAC 284.5811 Family and medical leave: Maximum amount in 12-month period; eligibility; use. (NRS 284.065, 284.155, 284.345, 284.350, 284.355, 284.3626)

1. ***Except as provided for in subsection 2,*** [~~An~~]***an*** employee who is entitled to take leave pursuant to the Family and Medical Leave Act is limited to a total of 12 weeks of such leave during a rolling 12-month period. The rolling 12 -month period is measured backward from the date an employee uses any leave pursuant to the Family and Medical Leave Act.

2. An employee who is entitled to take leave to care for a covered servicemember may be approved for up to a total of 26 weeks of leave during a single 12-month period as provided for in the Family and Medical Leave Act.

[~~2.~~] ***3.*** To calculate eligibility for leave pursuant to the Family and Medical Leave Act, each hour that an employee is in paid status in the 12-month period immediately preceding the leave must be considered as time worked.

[~~3.~~] ***4.*** Except as otherwise provided in subsection [4] ***5***, an employee who meets the requirements for eligibility for and who is taking leave pursuant to the Family and Medical Leave Act must exhaust his accrued sick leave, ***accrued compensatory time,*** accrued annual leave and catastrophic leave before he may use leave without pay. Any accrued sick leave, ***accrued compensatory time,*** accrued annual leave, catastrophic leave and holiday pay to which the employee is entitled pursuant to NAC 284.255 runs concurrently with the leave granted pursuant to the Family and Medical Leave Act if the employee is otherwise eligible for that sick leave, ***accrued compensatory time,*** annual leave, catastrophic leave or holiday pay.

[~~4.~~] ***5.*** If an employee is absent from work as the result of a work-related injury or illness and he meets the requirements for eligibility for leave due to a serious health condition pursuant to the Family and Medical Leave Act:

(a) Any amount of time that the employee is absent from work during that period will be designated as leave pursuant to the Family and Medical Leave Act; and

(b) The employee may elect to use paid leave or leave without pay for the portion of time that he is not being compensated for the work-related injury or illness.

[~~5.~~] ***6.*** An appointing authority may require an employee to provide medical documentation ***or other appropriate documentation*** to support his need for leave pursuant to the Family and Medical Leave Act [~~due to a serious health condition of the employee or of a spouse, parent or child of the employee~~].

(Added to NAC by Dep't of Personnel, eff. 3-23-94; A 11-16-95; R082-00, 8-2-2000; A by Personnel Comm'n by R096-03, 10-30-2003; R145-05, 12-29-2005)

Sec. 9. NAC 284.614 is hereby amended to read as follows:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel in collaboration with the Department of Motor Vehicles, is to insure compliance with the Federal Real ID Act of 2005. The Act requires that certain employees of the Department of Motor Vehicles involved in the processing and issuing of drivers' licenses and identification cards be qualified to do so by a specified background investigation. The proposal will allow the disqualified employees to receive certain lay-off rights as opposed to being terminated.

NAC 284.614 Layoffs: Procedure. (NRS 284.065, 284.155, 284.380)

1. Except as otherwise provided in NAC 284.425, if it becomes necessary for a classified employee to be laid off because of a shortage of work or money, the abolition of a position, or some other material change in duties or organization:

(a) The director of the department shall determine in what geographical location, class series, class and option the reductions in staff will have the least detrimental effect on the operations of the department and shall specify layoffs accordingly. In the Department of Health and Human Services and the Nevada System of Higher Education, the administrator of a division may be designated to make these determinations with the approval of the director of the department.

(b) Within the department, geographical location, class series, class and option selected, all employees of the department who are not permanent must be separated from service before any permanent employees in the following order:

(1) Emergency employees.
(2) Temporary employees.
(3) Provisional employees.
(4) Probationary employees.

(c) If additional reductions are necessary, permanent employees must be laid off on the basis of seniority pursuant to NAC 284.632.

(d) In the department, geographical location, class series, class and option where layoffs are to take place, those employees with the least seniority must be laid off, transferred as set forth in subsection 2 or voluntarily demoted as set forth in NAC 284.618.

(e) An appointing authority may consider limiting layoffs to employees in full-time or part-time positions. Similar considerations may be given to and limitations placed on positions requiring selective certification pursuant to NAC 284.361.

2. If a permanent employee must be laid off for one of the reasons set forth in subsection 1, the appointing authority shall notify the employee that he may choose to:

(a) Transfer within his department, class and option into the position of the employee in his department, class and option with the least seniority;

(b) Be voluntarily demoted as set forth in NAC 284.618; or

(c) Exercise his reemployment rights as set forth in NAC 284.630.

3. Within 3 working days after an employee has been notified of his choices pursuant to subsection 2, he must designate in writing to the appointing authority the choice he will exercise.

4. For the purposes of this section, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

5. Subsections 1 through 4 do not apply if an employee of the Department of Motor Vehicles involved in the processing and issuing of Drivers' Licenses is laid off as a result of receiving a disqualifying background investigation that is required by the Federal Real ID Act of 2005. A permanent employee who is laid off as a result of a background investigation for the Real ID Act has all rights provided in NAC 284.630.

[Personnel Div., Rule XIII § B subsec. 1, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 8-28-85; 8-22-86; 7-21-89; 8-1-91; 3-27-92; 9-16-92; 11-16-95; 10-27-97; R031-98, 4-17-98; R043-99, 9-27-99; R146-01, 1-18-2002; R147-01, 1-22-2002; A by Personnel Comm'n by R096-03, 10-30-2003; R143-05, 12-29-2005)

Sec. 10. NAC 284.618 is hereby amended to read as follows:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel in collaboration with the Department of Motor Vehicles, is to insure compliance with the Federal Real ID Act of 2005. The Act requires that certain employees of the Department of Motor Vehicles involved in the processing and issuing of drivers' licenses and identification cards be qualified to do so by a specified background investigation. The proposal will allow the disqualified employees to receive certain lay-off rights as opposed to being terminated.

NAC 284.618 Layoffs: Voluntary demotions. (NRS 284.065, 284.155, 284.175, 284.380)

1. In lieu of being laid off, a permanent employee may choose to be voluntarily demoted to a vacant position or displace an employee within the department and geographical location where employed to one of the next lower classes:

(a) Within his current class series and option; or

(b) Within the class series and option from which he was appointed to his current position during current continuous service if he cannot be demoted pursuant to paragraph (a).

➥ For the purposes of this subsection, divisions of the Department of Health and Human Services and the Nevada System of Higher Education shall be deemed to be departments.

2. No employee in a higher class may displace an employee in a lower class who has more seniority. If an employee chooses to displace another, he must displace the member of the next lower class who has the least seniority. If that member has more seniority, the displacing employee must descend further in the class series.

3. The employees displaced reestablish the layoff class.

4. An employee may choose to displace another only if he meets the minimum qualifications for the class, option and position. For the purposes of this subsection, qualifications for a position may be different from those of the class and option only when selective certification is required pursuant to subsection 2 of NAC 284.361.

5. Full-time, part-time and seasonal employees must be treated separately and can only displace like employees.

6. Displacement is always a movement to a class at a lower grade.

7. A current employee who elects to displace another employee has priority over former employees already on reemployment lists.

8. The pay of the employee who is taking a voluntary demotion cannot exceed the highest step for the class to which the employee is being demoted. If the current pay falls within the lower rate range, no reduction in pay may occur unless money is not available as certified by the Chief of the Budget Division of the Department of Administration or, in the case of an agency which is not supported from the State General Fund, as certified by the administrator of that agency.

9. Subsections 1 through 8 do not apply if an employee of the Department of Motor Vehicles involved in the processing and issuing of Drivers' Licenses is laid off as a result of receiving a disqualifying background investigation that is required by the Federal Real ID Act of 2005.

[Personnel Div., Rule XIII § B subsec. 2, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 10-26-84; 7-21-89; 8-1-91; R146-01, 1-18-2002; A by Personnel Comm'n by R096-03, 10-30-2003; R143-05, 12-29-1005)

Sec. 11. NAC 284.626 is hereby amended to read as follows:

Explanation of Proposed Change: This temporary amendment, proposed by the Department of Personnel in collaboration with the Department of Motor Vehicles, is to insure compliance with the Federal Real ID Act of 2005. The Act requires that certain employees of the Department of Motor Vehicles involved in the processing and issuing of drivers' licenses and identification cards be qualified to do so by a specified background investigation. The proposal will allow the disqualified employees to receive certain lay-off rights as opposed to being terminated.

NAC 284.626 Layoffs: Notice. (NRS 284.065, 284.155, 284.380) All permanent employees to be laid off must be given written notice of the layoff at least 30 calendar days before the effective date of the layoff. A copy of the seniority calculations and layoff notice must be sent to the Department of Personnel. The notice must specifically list the positions and locations where the employee has a current right to displace another employee, if those positions and locations are known at the time of notification. ***If an employee of the Department of Motor Vehicles is being laid off as a result of receiving a disqualifying background investigation that is required by the Federal Real ID Act the notice must specifically state that the employee has no right to displace another employee.***

[Personnel Div., Rule XIII § B subsec. 5, eff. 8-11-73]—(NAC A by Dep't of Personnel, 8-26-83; 8-1-91; A by Personnel Comm'n by R143-05, 12-29-2005)

Sec. 12. NAC 284.882 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, is intended to create more consistency with breath alcohol testing in State government. Currently a preliminary breath alcohol test is done by a Nevada Highway Patrol (NHP) officer typically at the agency and then, if positive, the employee is transported to a designated law enforcement facility for an evidentiary breath test (essentially required by subsection 2 of this regulation). With this change, an agency will have the ability to send an employee for breath alcohol testing by using a designated subcontractor under the statewide drug testing contract. This procedure is consistent with other breath alcohol testing that is done for CDL positions in State government. Further if the agency suspects that the employee may be under the influence of more than one substance (i.e., alcohol and drugs) they can run both tests at one location rather than making two separate trips for comprehensive testing. We propose adoption of the Federal standard for equipment used for this testing which is commonly recognized as the gold standard in reasonable suspicion alcohol testing nationwide. Finally, this regulation change will better uphold the intent of NRS 284.4067 which states in part, testing to detect the general presence of alcohol or of a controlled substance, must be administered in such a manner as to protect the person tested from any unnecessary embarrassment. While there may still be times when NHP is needed, always bringing them into a State agency when an employee is suspected of impairment does not lend itself to protecting the employee's privacy. This change does not remove the ability to use NHP for breath alcohol testing or the ability to conduct a blood alcohol test where testing via breath is not feasible.

NAC 284.882 Administration of screening tests. (NRS 284.065, 284.155, 284.407) A screening test to detect the general presence of:

1. A controlled substance must comply with the standards and procedures established by the ***United States*** Department of Health and Human Services which are hereby adopted by reference. A copy of the standards and procedures is available, without charge, from the Department of Health and Human Services, Substance Abuse and Mental Health Services Administration, Center for Substance Abuse Prevention, Division of Workplace[~~, 5600 Fishers Lane, Parklawn Building, 13A-54, Rockville, Maryland 20857~~].

2. Alcohol by testing a person's breath must be conducted [~~by an operator certified in accordance with NAC 484.640~~] using a breath-testing device certified in accordance with ***the conforming products list of evidential breath measurement devices as outlined in the Federal Register for the National Highway Traffic Safety Administration.*** [~~NRS 484.3882 and NAC 484.660~~.]

(Added to NAC by Dep't of Personnel, eff. 12-26-91; A 10-27-97; R082-00, 8-2-2000)

Sec. 13. NAC 284.888 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, is intended to bring this regulation in line with NRS 284.4062 as well as the State's position on having a drug and alcohol free workplace. NRS 284.4062 states that an employee who consumes or is under the influence of alcohol while on duty is subject to disciplinary action. This language will better uphold the intent of the law.

NAC 284.888 Request for employee to submit to screening test: Interpretation of grounds; completion of required form. (NRS 284.065**,** 284.155**,** 284.407**)**

1. Objective facts upon which an appointing authority may base a reasonable belief that an employee is under the influence of alcohol or drugs which impair the ability of the employee to perform his duties safely and efficiently include, but are not limited to:

(a) The operation of a motor vehicle by the employee in any manner that causes bodily harm;

(b) Abnormal conduct or erratic behavior by the employee that is not otherwise normally explainable;

(c) The odor of ***alcohol or other controlled substance on*** the breath of the employee [~~and a decline in job performance that is not otherwise normally explainable~~];

(d) Observation of the employee consuming alcohol [~~and a resulting decline in job performance that is not otherwise normally explainable~~]; or

(e) Observation of the employee possessing a controlled substance or using a controlled substance that is reported by a credible source.

2. Pursuant to subsection 2 of NRS 284.4065, "substantial damage to property" includes, but is not limited to:

(a) The operation of a motor vehicle in such a manner as to cause more than $2,500 worth of property damage; or

(b) The operation of a motor vehicle in such a manner as to cause two property accidents within a 1-year period.

3. Before requiring an employee to submit to a screening test, a supervisor must complete a form provided by the Department of Personnel.

(Added to NAC by Dep't of Personnel, eff. 12-26-91)