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MEMO PERD #21-08

April 14, 2008

TO: Personnel Commission Members
Department Directors
Division Administrators
Agency Personnel Liaisons
Agency Personnel Representatives
Designees for Rules Distribution
Employee Representatives
Interested Parties

FROM: Todd Rich, Director *T.R.R.*
Department of Personnel

SUBJECT: NOTICE OF WORKSHOP - Amendments to NAC 284

The regulation changes included with this memorandum are being proposed for adoption at the September Personnel Commission meeting. In order to review the proposed changes in the regulations and solicit comments from interested persons, a workshop will be held at 9:00 a.m. on May 2, 2008 at the Legislative Building, 401 S. Carson Street, Room 2134 in Carson City, Nevada and by video conference at the Grant Sawyer Building, 555 East Washington Avenue, Suite 4406 in Las Vegas, Nevada. An informational note precedes the regulations, which explains the nature and purpose of the proposed change to the regulations.

Please circulate or post the enclosed *Notice of Workshop to Solicit Comments on Proposed Regulations* along with the text of the proposed regulations, or otherwise notify your employees.

TR:hg

Enclosures

**NOTICE OF WORKSHOP
TO SOLICIT COMMENTS ON PROPOSED REGULATIONS**

The Department of Personnel, 209 East Musser Street, Carson City, Nevada, telephone number (775) 684-0119, is proposing the amendment of regulations pertaining to Chapter 284 of Nevada Administrative Code. A workshop has been set for 9:00 AM, May 2, 2008 at the Legislative Building, 401 S. Carson Street, Room 2134, in Carson City, Nevada, and via videoconference at the Grant Sawyer Building, 555 East Washington Avenue, Suite 4406 in Las Vegas, Nevada. The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

<u>Regulation Leadline:</u>	<u>NAC #</u>
“Reviewing Officer” defined.	NAC 284.097
Restoration of promoted employee to former position.	NAC 284.462
Preparation, filing, contents, discussion and distribution of reports; power and duties of employees; review; adjustment of grievances.	NAC 284.470

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the Department of Personnel offices at 209 E. Musser Street, Room 300, Carson City, Nevada, telephone number (775) 684-0119, or 555 East Washington Avenue, Suite 1400, Las Vegas, Nevada, telephone number (702) 486-2900. A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency’s mailing list for administrative regulations and posted at the following locations.

CARSON CITY

Bladel Building, 209 East Musser Street
Nevada State Library and Archives, 100 Stewart St.
Legislative Building, 401 S. Carson Street

LAS VEGAS

Grant Sawyer State Office
Building
555 East Washington Avenue

ALL STATE AGENCIES

ALL NEVADA COUNTY PUBLIC LIBRARIES

NOTE: We are pleased to make reasonable accommodations for individuals with disabilities who wish to attend the meeting. If special arrangements for the meeting are necessary, please notify the Department of Personnel, in writing, at 209 East Musser Street, Room 101, Carson City, Nevada 89701-4204 or call Honey Garibaldi at (775) 684-0119, no later than five working days before the meeting.

Date: April 14, 2008

Sec. 1. NAC 284.097 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, corrects the reference cited in defining a reviewing officer. The correct reference is to paragraph (b) of subsection 6 of NAC 284.470. The reference to subsection 5 was formerly correct, but the numerical sequence should have been changed when a new subsection was added before it.

NAC 284.097 “Reviewing officer” defined. (NRS 284.065) “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 [5] 6 of NAC 284.470.

Sec 2. NAC 284.462 is hereby amended to read as follows:

Explanation of Proposed change: This amendment, proposed by the Department of Personnel, relates to the restoration of a promoted employee when he is unsuccessful in passing his trial period. It addresses the rare occasion when the requirements of NRS 284.300 cannot be met because the employee’s former position no longer exists or the position has been reclassified to another class and grade. It allows the employee to be placed in a vacant position in the same class and grade from which he was promoted, or if that is not an option because no vacancy exists, it allows for the lay off of the employee with full reemployment rights in accordance with NAC 284.630.

NAC 284.462 Restoration of promoted employee to former position. (NRS 284.065, 284.155, 284.290)

1. For the purposes of this section only, “promotion” means any movement into a vacant position which has a higher grade than the position previously occupied by a classified employee who has served 6 months of continuous (full-time equivalent) service.
2. An employee promoted pursuant to subsection 1 who fails to attain permanent status in the position to which he was promoted or who is dismissed for a cause other than misconduct or delinquency on his part from the position to which he was promoted, either during the probationary period or at its conclusion, must be restored to the position from which he was promoted.
3. If an employee fails to attain permanent status and is restored to his former position, the appointing authority which is effecting the restoration must give written notice to the agency from which the employee was promoted at least 30 calendar days before the effective date. The agency which is taking action to restore the employee to his former position is liable for the payment of the employee during this 30-day period unless the agency to which the employee is being restored agrees to accept the employee before the expiration of that period. An employee does not gain permanent status if a report of separation or notice of intent to restore an employee to his former position has been provided to the employee and filed with the Department of Personnel on or before the last day of his probationary period, even though the separation or restoration takes place after the last day of the probationary period.
4. *If the position from which the employee was promoted no longer exists or the position has been reclassified, the employee shall be:*
 - (a) *Placed in a vacant position in the same class and grade from which he was promoted; or, if no vacant position exists;*

(b) Laid off from the department from which he was promoted with 30-days notice. This notice may run concurrently with the 30-day notice provided for in subsection 3. Seniority for the purposes of placement on the layoff list will be determined in accordance with NAC 284.632, but the employee has no displacement rights.

5. A demotion from probationary status in a higher class to the former lower level class may not be appealed.

[Personnel Div., Rule VIII § C subsec. 4, eff. 8-11-73; A 4-14-76]—(NAC A by Dep't of Personnel, 10-26-84; 7-21-89)

Sec. 3. NAC 284.470 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Department of Personnel, specifies that in responding to a request for a review of a report on performance the reviewing officer's written response will be on the form prescribed by the Department of Personnel. A specific form for use by the reviewing officer was developed after input from several State agencies. The agencies' suggestion for the form was based on the small amount of space previously allotted for the reviewing officer's comments on the performance evaluation form itself, and on the desirability of providing a complete response to the employee.

NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; power and duties of employees; review; adjustment of grievances. (NRS 284.065, 284.155, 284.340, 284.384)

1. A person shall not complete a report on performance unless he has completed the training provided or approved by the Director concerning the preparation of a report on performance.

2. A report on performance must be prepared on the form prescribed by the Department of Personnel.

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

4. 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.

5. 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 both merit pay increases and the employee's eligibility for longevity pay; 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.

6. Except as otherwise provided in subsection 7, the preparation of each report on performance must include a discussion between the employee and his immediate supervisor. Within 10 working days after the discussion takes place:

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

(b) If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing, identify the specific points of disagreement, if such specificity is

provided, and return the response to his supervisor. The reviewing officer shall respond to the employee in writing ***on the form prescribed by the Department of Personnel*** within 10 working days after the supervisor receives the request.

7. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 6 because of an extended absence, the immediate supervisor of the employee shall cause the report to be mailed to the employee. Within 10 working days after the date on which the employee receives the report:

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

(b) If the employee disagrees with the report on performance and requests a review, he must respond to the report in writing, identify any specific point of disagreement, if the report provides such specificity, and mail his response to his supervisor. The reviewing officer shall respond to the employee in writing ***on the form prescribed by the Department of Personnel*** within 10 working days after the supervisor receives the request for review from the employee. 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.

8. A copy of each report on performance must be provided to the employee and filed with the Department of Personnel, ***along with the reviewing officer's response, if applicable***. 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 this subsection:

(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 he receives a copy of the revised report and submit the response to the Department of Personnel for inclusion in his file of employment.

9. An employee and his appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 6 or 7.

10. If a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

[Personnel Div., Rule IX § A, eff. 8-11-73; A 12-28-75]—(NAC A by Dep't of Personnel, 10-26-84; 9-17-87; 10-18-89; 11-16-95; R031-98, 4-17-98; A by Personnel Comm'n by R065-98, 7-24-98; A by Dep't of Personnel by R197-99, 1-26-2000; R147-01, 1-22-2002; A by Personnel Comm'n by R069-02, 8-14-2002; R096-03, 10-30-2003; R144-05, 12-29-2005)