

PROPOSED REGULATION OF THE PERSONNEL COMMISSION

LCB File No. R041-15

Proposed Amendments to Permanent Regulations

NAC 284.470 is hereby amended to read as follows:

Explanation of Proposed Change: The first amendment to this regulation, proposed by the Division of Human Resource Management (Division or DHRM) clarifies the effect of a report on performance that is filed timely, untimely or not at all for purposes of both pay and performance rating. The second amendment to this regulation, also proposed by the Division, will allow an appointing authority to designate an individual to act on his or her behalf when agreeing to an extension of a time period as provided in subsection 12 of this regulation.

Through this proposed change, DHRM intends to encourage that a report of performance be submitted for all employees, even if the times specified in statute have not been met and the employee has received his or her merit salary increase (MSI). A report of performance serves as a summary of an employee's performance during a certain period, recognizing good performance, noting deficiencies when necessary, and documenting employee development plans. When a report on performance is not submitted for an employee, the employee's positive or negative performance typically is undocumented. Additionally, if a report on performance is not submitted for an employee who has applied for a transfer or a promotion to another agency, a current summary of his or her performance will not be available to an agency when making its hiring decision. Currently, the Nevada Employee Action and Timekeeping System (NEATS) is undergoing an upgrade to electronically handle performance evaluations and related documents, which will support a supervisor's ability to submit timely performance evaluations. Creating and moving a performance evaluation through NEATS will simplify the process of documenting an employee's performance, providing feedback to an employee regarding his or her performance, and will reduce untimely evaluations.

The Consultation & Accountability Unit of the Division receives many inquiries surrounding this regulation as it is currently written, and it is important for supervisors and employees to understand the effect each scenario has both on the employer and employees in terms of pay and performance rating.

When a report on performance is filed with DHRM on or before the times prescribed by NRS 284.340, and the employee has achieved an overall rating of meets or exceeds standards, he or she is eligible for an MSI, unless the top step of his or her grade has been attained. Also under these circumstances, the employee's file of employment will reflect the rating received on the report on performance that has been timely filed.

If a report of performance is not filed on or before the time as specified in NRS 284.340, the employee will receive his or her MSI, unless the top step of his or her grade has been attained. If

a report on performance is filed after the time as specified, the new rating will be reflected in the employee's file of employment at the time the report on performance is submitted to DHRM

If a report of performance is not filed on or before the times as specified in NRS 284.340 and a subsequent report on performance for the rating period is not filed, the employee will be considered standard for pay purposes only and will receive his or her MSI, unless the top step of the grade has been attained. In this situation, the employee's file of employment will display no actual performance rating for that period.

The amendment to subsection 12 authorizes an appointing authority to appoint a designee to extend the date related to 90 day follow-up evaluations for a substandard rating on a report on performance or to extend the timelines for either a request for review by a reviewing officer, or the period of time for the reviewing officer to respond to such a request. Allowing a designee will keep the process moving forward in a prompt fashion.

NAC 284.470 Preparation, filing, contents, discussion and distribution of reports; powers and duties of employees; review; adjustment of grievances. (NRS 284.065, 284.155, 284.340, 284.383, 284.384)

1. A person shall not complete 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 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:

(a) Is filed on or before the times specified in NRS 284.340, the employee will be eligible for his or her merit pay increase, as appropriate, and the overall rating on the report of performance will be reflected in his or her file of employment; or

(b) ~~Is~~ 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 pay purposes only and the employee will be eligible for his or her merit pay increase, pursuant to NAC 284.194. If a report on performance is submitted at any other time, the overall rating will be updated with the rating of the most recent evaluation.

~~4+~~ 5. 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 or filed.

~~5+~~ 6. 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.

~~6+~~ 7. 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.

~~7~~ **8**. Except as otherwise provided in subsection ~~8~~ **9**, the preparation of each report on performance must include a discussion between the employee and his or her 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 the supervisor for forwarding to the reviewing officer or appointing authority.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify the specific points 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.

~~8~~ **9**. If an employee is unavailable for a discussion of the report on performance pursuant to subsection ~~7~~ **8** 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 the supervisor for forwarding to the appointing authority or reviewing officer.

(b) If the employee contests the report on performance and requests a review, he or she must respond to the report in writing, identify any specific 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 appointing authority shall review the recommendation of the reviewing officer regarding the report on performance and 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.

~~9~~ **10**. A copy of each report on performance and, if applicable, any written response to such a report requested by an employee pursuant to subsection ~~7 or 8~~ **8 or 9** must be provided to the employee and filed with the Division of Human Resource Management.

~~10~~ **11**. 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 ~~9~~ **10**:

(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 for inclusion in his or her file of employment.

~~11~~ 12. An employee and his or her appointing authority *or his or her designee* may agree in writing to extend one or more of the periods prescribed in subsection ~~7 or 8~~ 8 or 9.

~~12~~ 13. 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; R174-08, 9-29-2008; R056-10, 10-26-2011; R007-11, 10-26-2011)

NAC 284.097 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, is contingent upon the adoption of the amendments to NAC 284.470. Subsection 2 of NAC 284.097 refers to paragraph (b) of subsection 7 of NAC 284.470. A new subsection was added to NAC 284.470, which resulted in the necessity to renumber subsections 4 through 12 to NAC 284.470. As such, the reference to paragraph (b) of subsection 7 of NAC 284.470, will now be paragraph (b) of subsection 8 of NAC 284.470.

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 ~~7~~ 8 of NAC 284.470.

(Added to NAC by Personnel Comm'n by R038-03, eff. 10-30-2003; A by R144-05, 12-29-2005; R056-10, 10-26-2011)