

Chapter 284 of NAC

ADOPTED TEMPORARY REGULATION OF THE PERSONNEL COMMISSION

LCB File No. T006-11

Filed with the Secretary of State on March 25, 2011

REGULATION CHANGES PROPOSED FOR TEMPORARY ADOPTION

Explanation of Proposed Change: This regulation change, proposed by the Department of Personnel, adds language stating that the appointing authority has the final decision regarding reviews of contested reports on performance. This change will eliminate confusion over who has final authority for the content of reports on performance and will make the regulation consistent with NRS 284.340, which states that reports on performance are ultimately the duty of the appointing authority. The reviewing officer will make recommendations on whether to uphold or modify the report on performance and the appointing authority will have 10 working days to render a final decision on the recommendation.

Section 1:

NAC 284.470 is hereby amended to read as follows:

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]~~ *contests the content of* 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.

(c) The reviewing officer shall respond ~~[to the employee]~~ in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request *and the employee shall receive a copy. If the reviewing officer is not the appointing authority, he or she shall submit the form with recommendations to uphold or modify the report on performance to the appointing authority. The appointing authority shall review the reviewing officer's recommendations regarding the contested report on performance and shall render a final decision to the employee within 10 working days after receiving the recommendation. The appointing authority has final decision-making authority in the review process.*

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]~~ *contests the content of* 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.

(c) The reviewing officer shall respond ~~[to the employee]~~ in writing on a form prescribed by the Department of Personnel within 10 working days after the supervisor receives the request *and the employee shall receive a copy. If the reviewing officer is not the appointing authority, he or she shall submit the form with recommendations to uphold or modify the report on performance to the appointing authority. The appointing authority shall review the reviewing officer's recommendations regarding the contested report on performance and shall render a final decision to the employee within 10 working days after receiving the recommendation. The appointing authority has final decision-making authority in the review process.* 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 and, if applicable, any written response to such a report, must be provided to the employee and filed with the Department of Personnel.

9. 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 8:

(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.

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

11. 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)

Explanation of Proposed Change: The language has been changed to state that a grievance about an evaluation relates to the content of the report on performance and not the decision of the reviewing officer. This change reflects the new advisory role of the reviewing officer.

Sec. 2:

NAC 284.478 is hereby amended to read as follows:

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

[Personnel Div., Rule IX § D, eff. 8-11-73]—(NAC A by Dep't of Personnel, 10-18-89; R197-99, 1-26-2000)

Explanation of Proposed Change: Language has been added requiring that all grievances concerning reports on performance be submitted to the highest administrator of the department before being filed with the Employee-Management Committee (EMC). This will allow the agency a final opportunity to resolve the grievance or uphold the report on performance. It will also give the agency an opportunity to clarify its response to the employee and the EMC. Changes were also made to consistently use the term "reports on performance" instead of alternating it with "performance evaluation." "Reports on performance" is more consistent with the language used in statute.

Sec. 3:

NAC 284.678 is hereby amended to read as follows:

NAC 284.678 Submission, form and contents of grievance; informal discussions. (NRS 284.065, 284.155, 284.384)

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 his grievance in writing to his 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 origin of the grievance or the date the employee learns of the problem. 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 name;
- (b) His most recent date of hire;

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

3. Except as otherwise provided in NAC 284.692, if a grievance relates to ~~[a decision of a reviewing officer about a performance evaluation]~~ *a contested report on performance*, an employee must file a grievance that identifies the specific points of disagreement, if such specificity is provided, not later than 10 working days after the date the employee receives ~~[the]~~ *a decision [of the reviewing officer] regarding the review from the appointing authority*. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of a reviewing officer *or 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 ~~[performance evaluation]~~ *report on performance*, the person who is at the next appropriate level of the grievance process ~~[who did not prepare or review the performance evaluation]~~.

(c) Grievances regarding reports on performance must be filed with the highest administrator in the department for a response before being submitted to the Employee-Management Committee.

[Personnel Div., Rule XV § A part subsec. 1, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep't of Personnel, 10-26-84; 10-18-89; 3-23-94; R197-99, 1-26-2000; A by Personnel Comm'n by R023-05, 10-31-2005; R191-09, 4-20-2010)

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066
NAC 284.470, 284.478, 284.678**

The following statement is submitted for amendments to Nevada Administrative Code (NAC) 284.

1. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulation, notice of workshop, and notices of intent to act upon a regulation were sent by email to persons who were known to have an interest in the subject of proposed personnel regulation changes as well as any person who had specifically requested such notice. These documents were also made available on the website of the Department of Personnel (DOP), <http://dop.nv.gov/>, mailed to all county libraries in Nevada and posted at the following locations:

Department of Personnel
Blasdel Building
209 E. Musser St
Carson City, NV 89701

Grant Sawyer State Office Bldg.
555 E. Washington Blvd
Suite 4401
Las Vegas, NV 89101

Nevada State Library and Archives
100 Stewart St
Carson City, NV 89701

Capitol Building
Main Floor
Carson City, NV 89701

Legislative Building
401 S. Carson St
Carson City, NV 89701

Gaming Control Board
1919 College Parkway
Carson City, NV 89701

Attached are excerpts from the minutes from the workshop that apply to this regulation.

A public hearing by the Nevada Personnel Commission was held on February 18, 2011. There were no comments received from the public regarding this regulation.

2. The number of persons who:

- (a) **Attended each hearing:** February 18, 2011, Personnel Commission meeting (hearing), 26 attendees
- (b) **Testified at each hearing:** February 18, 2011, Personnel Commission meeting, 1 testified
- (c) **Submitted written comments:** None

3. A description of how comment was solicited from businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were not solicited, as the regulation does not affect businesses.

4. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

Kris Ross suggested that discussions with the employee in reference to the contested reports on performance be shared with the employee's immediate supervisor. This issue will be handled by giving a copy of the reviewing officer's form to the employee's immediate supervisor.

Karen Belleni recommended that "appointing authority" be changed to "appointing authority/designee" in case the appointing authority is unavailable. DOP believes that current regulations allow for the appointing authority to delegate the responsibility when needed.

Ton Donaldson suggested that the term "report on performance" be used consistently rather than "evaluation" or "performance evaluation"; this was done.

There were several comments and questions about the process and deadlines for filing grievances regarding contested reports on performance. It was clarified that those issues were already addressed in the proposed changes or already in the regulations' current language.

5. The estimated economic effect of the regulation on the business which it is to regulate and on the public. These must be stated separately, and each case must include:

- (a) Both adverse and beneficial effects; and
- (b) Both immediate and long-term effects.

This regulation does not have a direct economic effect on either a regulated business or the public.

6. The estimated cost to the agency for enforcement of the adopted regulation:

There is no additional cost to the agency for enforcement of this regulation.

7. A description of any regulations of other State or governmental agencies which the regulation overlaps or duplicates and a statement explaining why the duplication or overlap is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed amendment duplicates.

- 8. If the regulation includes provisions that are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.**

This regulation does not include any provisions that are more stringent than any federal regulation.

- 9. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

No fees are associated with this regulation.

- 10. Is the proposed regulation likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business? What methods did the agency use in determining the impact of the regulation on a small business?**

This regulation is specific to State government agencies and has no impact on small businesses.