

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R100-16

Effective November 2, 2016

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

AUTHORITY: §1, NRS 284.065, 284.155 and 284.245; §2, NRS 284.065 and 284.155.

A REGULATION relating to the State Personnel System; setting forth the procedure for an appeal to the Personnel Commission relating to a refusal by the Administrator of the Division of Human Resource Management of the Department of Administration to examine an applicant or certify an eligible person; revising provisions concerning appeals to the Commission relating to state employee classifications; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides that an employee who is aggrieved by a decision of the Administrator of the Division of Human Resource Management of the Department of Administration concerning an allocation or change in classification is entitled to have the decision reviewed by the Personnel Commission if the employee submits a written request to the Commission for such a review not later than 30 days after the Administrator’s decision. (NRS 284.165)

Under existing law and regulations, a state employee is authorized to appeal such a decision first to the Administrator and then to the Commission. (NRS 284.165; NAC 284.152) **Section 2** of this regulation changes the specified time frames in existing regulations for: (1) a state employee to file an appeal of such a decision with the Administrator; and (2) the Administrator or his or her designated representative, if any, to issue a decision on the appeal.

Existing law authorizes an applicant or eligible person to appeal to the Commission if the Administrator refuses to examine the applicant or refuses to certify the eligible person. (NRS 284.245) **Section 1** of this regulation sets forth a procedure for an applicant or eligible person to appeal such an action by the Administrator which is similar to the procedure set forth in existing regulations for a state employee to appeal an allocation of position or change in classification.

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

1. An applicant affected by the refusal of the Administrator to examine the applicant or an eligible person affected by the refusal of the Administrator to certify the eligible person may file a written appeal of the action with the Administrator not later than 30 days after the applicant or eligible person receives from the Administrator, in accordance with subsection 1 of NRS 284.245, a statement of the reasons for the refusal to examine or the refusal to certify, as applicable. The appeal must:

(a) Address the points outlined in the statement; and

(b) Indicate the points in the statement with which the applicant or eligible person disagrees and express the reasons for the disagreement.

2. The Administrator will issue a decision on the appeal within 30 working days after receiving the appeal unless:

(a) He or she is prohibited from doing so because of the number of appeals resulting from other determinations regarding his or her refusal to examine or certify;

(b) There is an agreement with the applicant or eligible person to extend the limitation of time for the issuance of the decision; or

(c) The Administrator delegates the duty to decide the appeal to a designated representative pursuant to subsection 3.

3. The Administrator may delegate the duty to decide the appeal to a designated representative if the Administrator is unavailable or reasonably believes he or she has a conflict of interest. If the Administrator makes such a delegation, the designated representative shall issue a decision on the appeal within 30 working days after the Administrator received the appeal.

4. An applicant or eligible person may, within 30 working days after receipt of written notice issued pursuant to subsection 2 or 3 of the decision of the Administrator or his or her designated representative, appeal the decision to the Commission. The appeal must:

(a) Be in writing;

(b) Be addressed to the Administrator;

(c) Address the points outlined in the decision issued pursuant to subsection 2 or 3 regarding the refusal to examine or certify the applicant or eligible person; and

(d) Indicate the points in the decision with which the applicant or eligible person disagrees and express the reasons for the disagreement.

Sec. 2. NAC 284.152 is hereby amended to read as follows:

284.152 1. An employee affected by the allocation of a position to a grade or class or by a change in classification as a result of a study regarding classifications, or the agency where such actions have occurred, may, within ~~{20-working}~~ 30 days after the date of receipt of written notice of the action, file a written appeal of the action with the Administrator. The appeal must:

(a) Address the points outlined in the Division of Human Resource Management's recommendation regarding the proper classification for the position in question; and

(b) Indicate the points with which the appellant disagrees and express the reasons for the disagreement.

2. The Administrator will issue a decision on the appeal within ~~{20-working}~~ 30 days after receiving the appeal unless:

(a) He or she is prohibited from doing so because of the number of appeals resulting from a study regarding classifications;

(b) There is an agreement with the appellant to extend the limitation of time for the issuance of the decision; or

(c) The Administrator delegates the duty to decide the appeal to a designated representative pursuant to subsection 3.

3. The Administrator may delegate the duty to decide the appeal to a designated representative if the Administrator is unavailable or reasonably believes he or she has a conflict of interest. If the Administrator makes such a delegation, the designated representative shall issue a decision on the appeal within ~~20 working~~ 30 days after the Administrator received the appeal.

4. The appellant or the agency affected by the decision may, within 30 days after receipt of written notice of the decision of the Administrator or his or her designated representative, appeal the decision to the Commission. The appeal must:

(a) Be in writing;

(b) Be addressed to the Administrator;

(c) Address the points outlined in the decision regarding the proper classification for the position in question; and

(d) Indicate the points with which the appellant or the agency disagrees and express the reasons for the disagreement.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement
LCB File No. R100-16

1. A clear and concise explanation of the need for the adopted regulation.

Existing law authorizes an applicant or eligible person to appeal to the Commission if the Administrator refuses to examine the applicant or refuses to certify the eligible person. (NRS 284.245) **Section 1** of this regulation sets forth a procedure for an applicant or eligible person to appeal such an action by the Administrator which is similar to the procedure set forth in existing regulations for a state employee to appeal an allocation of position or change in classification. While the refusal to examine or certify a person are rare, there have been a few occasions in which they have occurred and in those situations a process for handling them was extemporized. This regulation is necessary to codify a process so that the public is aware of their rights and staff have a consistent process to follow.

Section 2 of this regulation changes the specified time frames in existing regulations for: (1) a state employee to file an appeal of a classification decision with the Administrator; and (2) the Administrator or his or her designated representative, if any, to issue a decision on the appeal, from 20 working days to 30 days. This change is necessitated to reduce confusion and make the regulation consistent with appeals to the Personnel Commission as provided for in NRS 284.165.

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

On August 31, 2016, copies of the proposed regulation amendments 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 via Listserv. These documents were also made available on the Division of Human Resource Management's website, the Nevada Public Notice website, the Legislative Counsel Bureau's website, and mailed to all county libraries in Nevada, and posted at the following locations:

Blasdel Building
209 E. Musser Street
Carson City, NV

Legislative Counsel Bureau
401 S. Carson Street
Carson City, NV

Nevada State Library and Archives
100 N. Stewart Street
Carson City, NV

Grant Sawyer Office Building
555 E. Washington Avenue
Las Vegas, NV

Nevada State Capitol Building
101 N. Carson Street
Carson City, NV

A regulation workshop was conducted by the Division of Human Resource Management on May 26, 2016. Comment was received from the Personnel Officer, Department of Motor Vehicles. The commenter asked whether the initial appeal needed to be on a specific form or if an email was sufficient. The Administrator responded that an email or other written documentation would be sufficient to provide the intent to appeal and establish a filing date. Comment was also received from the Personnel Officer, Department of Transportation, requesting clarification on whether this regulation is also intended for use when an eligible applicant is removed from a list for making a false statement. The Administrator explained that the regulation is not intended for that purpose.

A public hearing was held by the Nevada Personnel Commission on September 30, 2016. At the public hearing, staff provided information regarding the intent and need for the regulation.

Written minutes and comments from the regulation workshop and public hearing can be obtained from the Division of Human Resource Management by contacting Shelley Blotter at sblotter@admin.nv.gov or by calling (775) 684-0105.

3. The number of persons who:

- (a) Attended each hearing: - 37**
- (b) Testified at each hearing: - 1**
- (c) Submitted written comments: - 0**

4. Following is a list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3(b):

Beverly Ghan, Supervisory Personnel Analyst
State of Nevada
Department of Administration
Division of Human Resource Management
209 East Musser Street
Carson City, NV 89701
(775) 684-0133
bghan@admin.nv.gov

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

Comments were not solicited from businesses, as the regulation does not affect businesses. Comments were solicited from effected parties including employees and employee

associations. Written minutes and comments from the workshop and public hearing can be obtained as instructed in the response to question #2.

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

There was no opposition to the regulation at the Personnel Commission hearing.

- 7. 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.

- 8. The estimated cost to the agency for enforcement of the proposed regulation:**

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

- 9. A description of any regulations of other State or governmental agencies which the proposed 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.**

This regulation does not overlap or duplicate any State or federal regulations.

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

The regulation does not include any provisions that are covered by any federal regulations.

- 11. 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.