

**PROPOSED REGULATION OF THE
DEPARTMENT OF PERSONNEL**

LCB FILE NO. R057-18I

**The following document is the initial draft regulation proposed
by the agency submitted on 03/26/2018**

Section 1. Section 1 of LCB File No. R076-15 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will allow for the removal of a grievance that is filed on a “meets standards” or “exceeds standards.” The intent of the three amendments directly above, an employee will be allowed to file a grievance on a performance evaluation only if the rating remains “does not meet standards” after the decision by the appointing authority after a request for review.

Section 1 of LCB File No. R076-15

1. If the Division of Human Resource Management determines that a request for the adjustment of:

(a) A grievance is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in subsection 2 of NAC 284.658 ~~for~~, because a hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 , *or the grievance filed is related to a performance evaluation with a rating other than substandard* ; or

(b) A complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, because the person who submitted the request is not a person described in paragraph (a) of subsection 4 of section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427,

↳ the Division must take the actions described in subsection 2.

2. Upon making a determination pursuant to subsection 1 that a request for the adjustment of a grievance or complaint is not eligible for the procedure set forth in NAC 284.658 to 284.6957, inclusive, the Division must, as soon as practicable:

(a) Remove the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive; and

(b) Provide to the person who submitted the request and the agency in which the grievance or complaint arose:

(1) Notice that the Division has determined that the request is not eligible for the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive, and an explanation for that determination;

(2) Notice that the Division has removed the request from the procedure for the adjustment of grievances or complaints set forth in NAC 284.658 to 284.6957, inclusive;

(3) If applicable, information relating to the appropriate procedure for resolving the person’s concern; and

(4) Information relating to the person’s right to appeal the determination to the Committee.

3. If the Division of Human Resource Management determines that a request for the adjustment of a grievance or complaint is not eligible for the procedure for the adjustment of grievances or complaints set forth in NRS 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

(Added to NAC by Personnel Comm’n by R076-15, eff. 4-4-2016; R033-17, 10-31-2017)

Sec. 2. NAC 284.470 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, requires an employee to return a report on performance to his or her supervisor for forwarding to the appointing authority, if the employee is not requesting review. If the employee does request a review, he or she will return the report on performance to his or her supervisor, who will forward it to the appointing authority or the designated reviewing officer.

The amendment to subsection 14 will allow a permanent classified employee to file a grievance regarding a contested report on performance, only if the overall rating on the report is approved as substandard by an appointing authority after review, which is reflected on the report on performance document as “Does Not Meet Standards.” An employee would be unable to file a grievance regarding a contested report on performance that “Meets Standards” or “Exceeds Standards.” If an employee is rated “Does Not Meet Standards” in one or more job elements, but the overall rating remains “Meets Standards” or “Exceeds Standards,” the employee would be unable to file a grievance related to the report on performance.

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 is filed on or before the times specified in NRS 284.340, the overall rating of performance of the employee will be reflected in the employee’s file of employment and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194.

5. 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 for the purpose of determining the salary of the employee and the employee will receive a merit pay increase if he or she is otherwise eligible for the increase pursuant to NAC 284.194. If an untimely report on performance:

(a) Is filed thereafter, the employee’s file of employment will be updated to reflect the overall rating of performance of the employee as reported, but that rating will not affect any merit pay increase to which the employee is otherwise entitled.

(b) Is not filed thereafter, the employee’s file of employment will not include an overall rating of performance of the employee for that period of evaluation.

6. 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.

7. 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.

8. 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 merit pay increases; 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.

9. Except as otherwise provided in subsection 10, 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 *for forwarding to the appointing authority or his or her designated reviewing officer*. 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.

10. If an employee is unavailable for a discussion of the report on performance pursuant to subsection 9 because of an extended absence, the immediate supervisor of the employee shall cause the report to be ~~mailed~~ *delivered* 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 *for forwarding to the appointing authority or his or her designated reviewing officer*. 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.

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

12. 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 11:

(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.

13. An employee and his or her appointing authority or the designee of the appointing authority may agree in writing to extend one or more of the periods prescribed in subsection 9 or 10.

14. If ~~the reviewing officer~~ *an appointing authority* fails to respond to a request for review from an employee *whose overall rating of performance was substandard*, 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; R041-15, 12-21-2015; R043-15, 12-21-2015)

Sec. 3. NAC 284.478 is hereby amended to read as follows:

<p>Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will allow a permanent classified employee to file a grievance regarding a contested report on performance, only if the <u>overall</u> rating on the report was approved as substandard by an appointing authority after review, which is reflected on the evaluation document as “Does Not Meet Standards.” An employee would be unable to file a grievance regarding a contested report on performance that “Meets Standards” or “Exceeds Standards.” If an employee is rated “Does Not Meet Standards” in one or more job elements, but the overall rating remains “Meets Standards” or “Exceeds Standards,” the employee would be unable to file a grievance related to the report on performance. If an employee requests review by a reviewing officer pursuant to NAC 284.470, the employee may file a grievance only if the overall rating was approved by the appointing authority as substandard after such review.</p>
--

NAC 284.478 Appeal of decision of reviewing officer. (NRS 284.065, 284.155, 284.340, 284.384) Upon completion of the review process conducted pursuant to NAC 284.470, a permanent employee *whose appointing authority has approved, after review, an overall rating of performance that was substandard* may appeal 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; A by Personnel Comm’n by R007-11, 10-26-2011)

Sec. 4. NAC 284.658 is hereby amended to read as follows:

Explanation of Proposed Change: This amendment, proposed by the Division of Human Resource Management, will allow a permanent classified employee to file a grievance regarding a contested report on performance, only if the overall rating on the report was approved as substandard by an appointing authority after review, which is reflected on the evaluation document as “Does Not Meet Standards.” An employee would be unable to file a grievance regarding a contested report on performance that “Meets Standards” or “Exceeds Standards.” If an employee is rated “Does Not Meet Standards” in one or more job elements, but the overall rating remains “Meets Standards” or “Exceeds Standards,” the employee would be unable to file a grievance related to the report on performance. If an employee requests review by a reviewing officer pursuant to NAC 284.470, the employee may file a grievance only if the overall rating was approved by the appointing authority as substandard after such review.

NAC 284.658 “Complaint” and “grievance” defined. (NRS 284.065, 284.155, 284.340, 284.384) As used in NAC 284.341 and 284.658 to 284.697, inclusive, section 1 of LCB File No. R076-15 and sections 3 and 4 of LCB File No. R033-17, unless the context otherwise requires:

1. “Complaint” means a written complaint filed by an employee pursuant to section 2 of Assembly Bill No. 113, chapter 271, Statutes of Nevada 2017, at page 1427. The term does not include a complaint filed pursuant to paragraph (c) of subsection 1 of NAC 284.696.

2. “Grievance” means an act, omission or occurrence which a permanent classified employee feels constitutes an injustice relating to any condition arising out of the relationship between an employer and an employee, including, but not limited to, compensation, working hours, working conditions, membership in an organization of employees or the interpretation of any law, regulation or disagreement or a *substandard* contested report on performance. The act, omission or occurrence must be established with factual information including, but not limited to, the date, time and place of the act, omission or occurrence and the names of other persons involved. For the purposes of NAC 284.341 and 284.658 to 284.697, inclusive, section 1 of LCB File No. R076-15 and sections 3 and 4 of LCB File No. R033-17, the term “grievance” does not include any grievance for which a hearing is provided by federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390.

[Personnel Div., Rule XV part § A, eff. 8-11-73; A 6-9-74; 2-5-82]—(NAC A by Dep’t of Personnel, 8-28-85; 10-18-89; 8-1-91; 3-27-92; R082-00, 8-2-2000; A by Personnel Comm’n by R023-05, 10-31-2005; R007-11, 10-26-2011; R026-11, 12-30-2011, eff. 1-1-2012; R076-15, 4-4-2016; R033-17, 10-31-2017)