

**REVISED PROPOSED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R057-18

November 7, 2018

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

AUTHORITY: §§1-5, NRS 284.065, 284.155, 284.340 and 284.384.

A REGULATION relating to state employees; revising provisions concerning reports on performance; revises provisions relating to adjustment of grievances; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires each appointing authority to periodically file a report with the Administrator of the Division of Human Resource Management of the Department of Administration on the performance of certain employees. (NRS 284.340) Existing regulations prescribe the procedure for the preparation, discussion and filing of a report on performance. (NRS 284.470, 284.474, 284.478) Existing regulation requires the immediate supervisor of an employee to discuss the report on performance with the employee or to mail such a report to the employee if the employee is unavailable to discuss the report because of an extended absence. Existing regulation also requires such an employee who contests the report on performance and requests a review to respond to the report in writing and return the response to the supervisor. (NAC 284.470) **Section 1** of this regulation requires that the discussion of the report on performance occur between the employee and the person who prepared the report, which may not be the employee’s immediate supervisor. **Section 1** also clarifies the manner in which an employee completes his or her portion of the report, including a request for a review of the report by the appointing authority. **Section 1** also expands the methods by which the person who prepared a report may transmit such a report to an unavailable employee and by which the unavailable employee may transmit a report from only mail to other reasonable methods of delivery that provide a written or electronic record of the date on which the report is received, except for social media.

Section 1 additionally: (1) removes the requirement that a reviewing officer review a contested report on performance and submit a recommendation to the appointing authority regarding the report and instead only requires the appointing authority to review such a report; and (2) changes the number of days in which the appointing authority must render a final decision regarding such a report from 10 working days to 20 working days. **Sections 2, 3 and 5** of this regulation make conforming changes.

Existing regulations define “rating of performance” to mean the overall rating of an employee’s performance which is included in the report on performance of an employee. (NAC 284.0915) **Section 1** removes redundant references to “overall” with respect to a rating of performance without altering any substantive requirements.

Existing regulation prescribes the actions that the Division is required to take if a request for the adjustment of a grievance is not eligible for the procedures for adjusting grievances. (NAC 284.693) **Section 4** of this regulation clarifies that the procedures for adjusting grievances do not apply to situations involving coworkers and to persons who were rejected during their trial periods.

Section 1. NAC 284.470 is hereby amended to read as follows:

284.470 1. A person shall not ~~complete~~ *prepare* 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 *with the Administrator* 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~~ a 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~~ prepared 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 ~~this or her immediate~~

~~supervisor.} the person who prepared the report.~~ Within 10 working days after the discussion takes place ~~};~~

~~—(a) The} and the employee receives the report on performance signed by the person who prepared the report, 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)} :~~

(a) Indicate in the appropriate section of the report whether the employee agrees or disagrees with the report and, if he or she disagrees, whether the employee requests a review of the report by the appointing authority. If the employee ~~{contests}~~ *requests a review of* the report on performance , ~~{and requests a review,}~~ he or she must ~~{respond to the report in writing, identify the specific points}~~ *specify each point* 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.}~~ *disagreement with the report, in writing, in the appropriate section of the report or in a document attached to the report.*

(b) Return the report to the person who prepared the report for forwarding to the appointing authority for its agreement or revision and signature.

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~~ *person who prepared the report* shall *sign the report and* cause the report to be ~~mailed~~ *sent* to the employee ~~+~~ *by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media.* Within 10 working days after the date on which the employee receives the ~~report:~~

~~—(a) The~~ *report on performance, 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)~~ :

(a) Indicate in the appropriate section of the report whether the employee agrees or disagrees with the report and, if he or she disagrees, whether the employee requests a review of the report by the appointing authority. If the employee ~~contests~~ *requests a review of* the report on performance , ~~and requests a review,~~ he or she must ~~respond to the report in writing, identify any specific~~ *specify each* 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~~ *disagreement with the report, in writing, in the appropriate section of the report or in a document attached to the report.*

(b) Send the report by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media, to the person who prepared the report for forwarding to the appointing authority for its agreement or revision and signature.

11. If the employee requested a review of the report on performance pursuant to subsection 9 or 10, the appointing authority shall ~~review the recommendation of the reviewing officer regarding the report on performance and render~~, within 20 working days after the date on which the person who prepared the report on performance received the report from the employee:

(a) 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~~ regarding the report on performance and indicate that decision in the appropriate section of the report or in a document attached to the report;

(b) Sign the report on performance;

(c) Send a copy of the report on performance, including any attachment, to the employee and the person who prepared the report; and

(d) File a copy of the report on performance with the Administrator.

12. If an employee did not request a review of a report on performance pursuant to subsection 9 or 10, a copy of ~~each~~ the report on performance ~~and, if applicable, any written response to such a report requested by an employee pursuant to subsection 9 or 10,~~ signed by

the appointing authority must be provided to the employee and filed with the ~~Division of Human Resource Management.~~

~~12.~~ *Administrator.*

13. 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 ~~11~~ *or 12:*

(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~~ *Administrator* for inclusion in his or her file of employment.

~~13.~~ **14.** 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 a reviewing officer fails to respond to a request for review from an employee within the time required by this section, the~~ *this section.*

15. *An* employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive ~~11~~, *if:*

(a) *The appointing authority failed to respond to a request for review of the report on performance from the employee within the time required by this section; or*

(b) *The employee disagrees with the report on performance after receiving a copy of the report from the appointing authority pursuant to subsection 11 or 12.*

16. For the purposes of subsections 10 and 11, a report on performance that is sent by any reasonable means of delivery that provides a written or electronic record of the date on which the report is received, except for social media, is deemed to have been received on:

- (a) The third day after the date on which the report is postmarked;*
- (b) The date on which the report is sent by an electronic mail program or service; or*
- (c) The third day after the report is sent by any other delivery service.*

17. As used in this section, “social media” :

(a) Includes, without limitation, any electronic service or account or electronic content, including, without limitation, any video, photograph, blog, podcast, instant message or text message.

(b) Does not include an electronic mail program or service.

Sec. 2. NAC 284.678 is hereby amended to read as follows:

284.678 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 the grievance in writing to his or her 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 event leading to the grievance or the date the employee learns of the event leading to the grievance. 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 or her name;
- (b) His or her most recent date of hire;
- (c) His or her position;
- (d) His or her department, division and section;

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

3. Except as otherwise provided in *this subsection and* NAC 284.692, if a grievance relates to a contested report on performance, an employee must file a grievance that identifies ~~the~~ *any* specific ~~points~~ *point* of ~~contention, if such specificity is provided,~~ *disagreement with the report* not later than 10 working days after the date the employee receives a ~~decision regarding the review conducted by~~ *copy of the report from* the appointing authority pursuant to NAC 284.470. Except as otherwise provided in NAC 284.692, if the grievance relates to the failure of ~~a reviewing officer or~~ *an* 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 report on performance, the person who is at the next appropriate level of the grievance process above ~~such reviewing officer or other~~ *the* person who prepared or reviewed the report on performance.

5. A grievance regarding a report on performance must be filed with the highest administrator in the department pursuant to NAC 284.690 before being submitted to the Committee pursuant to NAC 284.695.

Sec. 3. NAC 284.690 is hereby amended to read as follows:

284.690 1. Except as otherwise provided in NAC 284.692:

(a) If the employee has not received satisfactory relief within 10 working days after his or her grievance is deemed to have been received by the head of the division, he or she may file the grievance with the highest administrator of the department; and

(b) Within 10 working days after the employee's grievance is deemed to have been received by the highest administrator of the department, the highest administrator or the designee of the highest administrator shall:

(1) Gather information regarding the grievance;

(2) Render a decision resolving the grievance, including, without limitation, denying the grievance; and

(3) Notify the employee of the resolution.

2. In rendering a decision concerning a *contested* report on performance, an administrator shall address the findings of fact to the specific points of ~~contention~~ *disagreement* referred to in the grievance of the employee.

3. Within the established time limitations, including any extensions to those time limitations obtained pursuant to NAC 284.692, the highest administrator may appoint a person or committee composed of managers and employees to assist in the finding of facts and recommending a course of action.

Sec. 4. NAC 284.693 is hereby amended to read as follows:

284.693 1. ~~If the~~ *The* Division of Human Resource Management *must take the actions described in subsection 2 if the Division* 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~~ :

(1) *The* person who submitted the request is not a person described in subsection 2 of NAC 284.658 , *including, without limitation, because the act, omission or occurrence only involves a coworker;*

(2) *The person who submitted the request was rejected during his or her trial period pursuant to NAC 284.458;* or ~~because a~~

(3) *A* hearing is provided for the grievance pursuant to federal law or NRS 284.165, 284.245, 284.3629, 284.376 or 284.390 . ~~is 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 NRS 281.755 . ~~is~~

~~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 NAC 284.658 to 284.6957, inclusive, the person who submitted the request may appeal the determination to the Committee.

Sec. 5. NAC 284.097, 284.474 and 284.478 are hereby repealed.

TEXT OF REPEALED SECTIONS

284.097 “Reviewing officer” defined. (NRS 284.065, 284.335, 284.340) “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 9 of NAC 284.470.

284.474 Employee entitled to copy of report. (NRS 284.065, 284.155, 284.340) Each employee must be given a copy of the report prepared by the supervisor measuring the employee’s performance and development on the job. The report will not become official until signed by the rater. If requested, a copy must be provided to the employee at the time of the discussion between the supervisor and the employee. After the processing has been completed, a copy with all appropriate signatures will be provided the employee.

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 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.