

**ADOPTED REGULATION OF THE
PERSONNEL COMMISSION**

LCB File No. R041-15

Effective December 21, 2015

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

AUTHORITY: §§1 and 2, NRS 284.065, 284.335 and 284.340.

A REGULATION relating to personnel; revising provisions concerning the filing of certain reports on the performance of employees in the classified service; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law requires the appointing authorities of the various state departments, agencies and institutions to file with the Administrator of the Division of Human Resource Management of the Department of Administration periodic reports on the performance of each employee in the classified service. (NRS 284.340) If an appointing authority fails to file such a report with respect to an employee within the time required, the employee’s performance is deemed to be standard. (NRS 284.340; NAC 284.470) This regulation revises the provisions relating to the filing of such reports to clarify the consequences of a report that is filed timely, untimely or not at all.

Existing regulations authorize an employee and an appointing authority to agree in writing to extend certain periods governing the employee’s response to a report on performance and subsequent action if the employee contests the report and requests a review. (NAC 284.470) This regulation authorizes a person designated by an appointing authority to enter into such an agreement on behalf of the appointing authority.

Section 1. NAC 284.097 is hereby amended to read as follows:

284.097 “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~~ 9 of NAC 284.470.

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

284.470 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 †

~~—4.†~~ *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.

~~15.1~~ 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.

~~16.1~~ 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 ~~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.

~~17.1~~ 9. Except as otherwise provided in subsection ~~18.1~~ 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. 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.

~~18.1~~ **10.** If an employee is unavailable for a discussion of the report on performance pursuant to subsection ~~17~~ **9** 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.

~~19.1~~ **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 ~~17.1~~ **9** or ~~18.1~~ **10** must be provided to the employee and filed with the Division of Human Resource Management.

~~110.1~~ **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 ~~19.1~~ **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.

~~11.1~~ **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 ~~17.1~~ **9** or ~~18.1~~

~~12.1~~ **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 employee may institute the procedure for the adjustment of a grievance pursuant to NAC 284.658 to 284.6957, inclusive.

LEGISLATIVE REVIEW OF ADOPTED REGULATIONS--NRS 233B.066
Informational Statement

LCB File No. R041-15

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

The amendments included in this LCB file will promote the submission of a report on performance for employees, even if the times specified in statute have not been met. It is important for employees and supervisors to understand the effect of a report on performance that is filed timely, untimely or not at all for purposes of both pay and performance rating.

In order to keep the evaluation process moving forward in a timely manner, it is necessary to give an appointing authority the ability to assign a designee for the purposes of extending certain timeframes, in the event the appointing authority is unavailable.

The first amendment to this regulation is necessary due to the adoption of the amendments to the regulation related to reports on performance.

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 November 4, 2015, 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, e-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

Gaming Control Board
1919 College Parkway
Carson City, NV

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

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

A regulation workshop was conducted by the Division of Human Resource Management on June 25, 2015, and a public hearing was held by the Nevada Personnel Commission on December 4, 2015.

During the workshop, comment was received in support of the proposed change, specifically because the regulation now makes the consequences of missing an evaluation due date very clear. There were no comments related to these regulation amendments at the public hearing.

Written minutes 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 calling (775) 684-0105.

3. **The number of persons who:**
 - (a) **Attended each hearing:** December 4, 2015 – 35
 - (b) **Testified at each hearing:** December 4, 2015 – 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):**

Michelle Garton, Supervisory Personnel Analyst
State of Nevada
Department of Administration
Division of Human Resource Management
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Carson City, NV 89701
(775) 684-0136
mgarton@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 from the workshop and public hearing can be obtained as instructed in the response to question #2. No written comments were received.

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.**

No opposition to the regulation was received at the workshop or 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 these regulations.

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.**

The regulations do 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 regulations do 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 these regulations.