

# Administrative Rulemaking

A PROCEDURAL GUIDE



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CAPITOL COMPLEX  
CARSON CITY, NEVADA

Fourth Edition  
2002

## **A MESSAGE FROM THE ATTORNEY GENERAL**

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Frankie Sue Del Papa  
Attorney General  
March 2002

## REVISER'S NOTES

### 1995

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Assembly Bill 286 (Act of July 1, 1995, ch. 160, 1995 Nev. Stat. 239) became effective on July 1, 1995 and creates additional requirements for a notice of intent to act upon a proposed regulation. The notice must now include, among other things, a statement of the estimated economic effect of the regulation on the business that it is to regulate and on the public, a description of both adverse and beneficial effects, both immediate and long-term, and the estimated cost to the agency to enforce the proposed regulation.

### 1997

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include “[t]he general application by an agency of a written policy, interpretation, process or procedure to determine whether a person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest.” AB 12 also expands the list of things that do not constitute a regulation. Among other things, the revised definition: (1) applies only to “the general application” of a written policy, interpretation, process, or procedure; (2) applies only to a *written* policy, interpretation, process, or procedure; (3) applies only where the agency is attempting to assess a fine, monetary penalty, or monetary interest; (4) does not apply to a declaratory ruling or advisory opinion issued in a specific case; (5) does not apply to a finding or decision in a contested case; (6) does not apply to a published opinion of the Attorney General; and (7) does not apply where a person had “sufficient prior actual notice” of the agency’s policy, interpretation, process, or procedure.

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# Introduction

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## ➤ The Purpose of Rulemaking

Because of the increasingly complex nature of our society, the legislature cannot be expected to anticipate and address every issue that may arise in a particular area. It may therefore properly delegate to an executive agency part of its legislative authority to implement the policy it announces.<sup>1</sup> Although such policy may, as a general rule, be broadly defined, a specific statute must delegate rulemaking authority.<sup>2</sup> An agency has no inherent authority to adopt regulations. "Agency" means an agency, bureau, board, commission, department, division, officer, or employee of the executive department of the state government authorized by law to make regulations or to determine contested cases. (NRS 233B.031)

*Rules implement legislative policy and therefore must be consistent with that policy.*

The legislature may delegate rulemaking authority in general terms, such as where it provides that the agency "may . . . [a]dopt such regulations as are reasonable and necessary for the administration of this chapter." NRS 645C.210(2)(a). The use of the word "may" in the statutory grant of authority usually indicates that the rulemaking authority is discretionary. Discretionary rules are those that an agency may adopt, although it is not required to do so. Mandatory rules are those that the agency is required by statute to

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1 See, *Mistretta v. United States*, 488 U.S. 361, 109 S. Ct. 647, 102 L.Ed.2d 714 (1989).

2 *Clark Co. v. State, Equal Rights Comm'n*, 107 Nev. 489, 813 P.2d 1006 (1991).

adopt.<sup>3</sup> The legislature usually uses the word "shall" in defining such mandatory rules. Whether mandatory or discretionary, administrative regulations cannot contradict or conflict with the statute they are intended to implement.<sup>4</sup>

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3 The Commission of Real Estate Appraisers, for example, is required to adopt regulations "[e]stablishing standards of professional conduct." NRS 645C.210(1)(d)(3).

4 *Roberts v. State of Nevada*, 104 Nev. 33, 752 P.2d 221 (1988).

Administrative regulations must be:

- ▶ within the statutory rulemaking authority of the agency, consistent with the legislative policy in delegating that authority, and not arbitrary or capricious;
- ▶ consistent with rights guaranteed by the Nevada and U.S. Constitutions;
- ▶ adopted in compliance with statutory rulemaking procedures.

This Manual is intended to assist those charged with adopting regulations by briefly describing the purpose and limitations of administrative rulemaking and the statutory requirements for adopting them. Since there may be requirements applicable to specific agencies, the agency should consult its attorney whenever it adopts regulations.

# An Overview

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## ➤ Definition of Regulation

A regulation is defined by NRS 233B.038(1) as:

1. "Regulation" means:
  - (a) An agency rule, standard, directive or statement of general applicability that effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency;
  - (b) A proposed regulation;
  - (c) The amendment or repeal of a prior regulation; and
  - (d) The general application by an agency of a written policy, interpretation, process or procedure to determine whether a person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest.
2. The term does not include:

- (a) A statement concerning only the internal management of an agency and not affecting private rights or procedures available to the public;
- (b) A declaratory ruling;
- (c) An intraagency memorandum;
- (d) A manual of internal policies and procedures or audit procedures of an agency which is used solely to train or provide guidance to employees of the agency and which is not used as authority in a contested case to determine whether a person is in compliance with a federal or state statute or regulation;
- (e) An agency decision or finding in a contested case;
- (f) An advisory opinion issued by an agency that is not of general applicability;
- (g) A published opinion of the attorney general;
- (h) An interpretation of an agency that has statutory authority to issue interpretations;
- (i) Letters of approval, concurrence or disapproval issued in relation to a permit for a specific project or activity;
- (j) A contract or agreement into which an agency has entered;
- (k) The provisions of a federal law, regulation or guideline;
- (l) An emergency action taken by an agency that is necessary to protect public health and safety;
- (m) The application by an agency of a policy, interpretation, process or procedure to a person who has sufficient prior actual notice of the policy, interpretation, process or procedure to determine whether the person is in compliance with a federal or state statute or regulation in order to assess a fine, monetary penalty or monetary interest;
- (n) A regulation concerning the use of public roads or facilities which is indicated to the public by means of signs, signals and other traffic-control devices that conform with the manual and specifications for a uniform system of official traffic-control devices adopted pursuant to [NRS 484.781](#); or
- (o) The classification of wildlife or the designation of seasons for hunting, fishing or trapping by regulation of the board of wildlife commissioners pursuant to the provisions of Title 45 of NRS.

*A regulation has the force and effect of law.*

``A properly adopted substantive rule

establishes a standard of conduct which has the force of law." *State ex rel. Tax Comm'n v. Safeway*, 99 Nev. 626, 668 P.2d 291 (1983).

## ➤ **Scope of the Administrative Procedure Act**

The procedures described in this Manual govern rulemaking by agencies subject to the rulemaking provisions of the Administrative Procedure Act, NRS chapter 233B. Pursuant to NRS 233B.039, certain agencies are entirely exempt from the contested case and rulemaking provisions of NRS chapter 233B. They are:

1. The Governor;
2. The Department of Prisons;
3. The University and Community College System of Nevada;
4. The Office of the Military;
5. The State Gaming Control Board;
6. The Nevada Gaming Commission;
7. The State Board of Parole Commissioners;
8. The Welfare Division of the Department of Human Resources;
9. The State Board of Examiners acting pursuant to NRS chapter 217;
10. Except as provided in NRS 533.365, the Office of the State Engineer;
11. The Division of Industrial Relations of the Department of Business and Industry acting to enforce the provisions of NRS 618.375; and
12. The board to review claims in adopting resolutions to carry out its duties pursuant to NRS 590.830.

NRS 233B.039(1). The statute should be examined for additional exceptions and special situations.

## ➤ **Rulemaking vs. Adjudication**

NRS chapter 233B contains separate sections for "Administrative Regulations" and

``Adjudication of Contested Cases.'' It is important to understand the distinction between rulemaking and adjudication in order to determine whether a particular agency action requires the observance of rulemaking procedural formalities.

Adjudication is a determination of individual rights or duties. Legal institutions tend to make such decisions through an adversarial process, usually a trial, and hence lawyers tend to think of adjudication as synonymous with a trial.

\* \* \* Rulemaking is a determination of general applicability, by nature prospective, although it may have some incidental retroactive effect.

\* \* \* It is usually said that rulemaking is like the activity of legislators.

Charles H. Koch, Jr., *Administrative Law and Practice*, § 2.3, pp. 57-58 (1985). It is in this activity that administrative agencies exercise their quasi-legislative authority, just as their function is quasi-judicial when deciding contested cases.

Since agency actions may be later invalidated if determined that the formalities of rulemaking should have been observed, the agency must be careful to consider the nature of its actions regardless of their form. If the substance of the agency's action is to define or establish a term or standard of conduct of general applicability, it may be deemed to have engaged in rulemaking even if the action takes place in the context of a proceeding more akin to adjudication.

In the case of *Coury v. Whittlesea-Bell*, 102 Nev. 302, 721 P.2d 375 (1986), the Public Service Commission was conducting a proceeding to determine whether an applicant should be granted a certificate of public convenience and necessity to operate a limousine service. The Commission granted the application but limited its effect to the operation of ``stretch'' limousines of the type owned by the applicant,

*If the substance of an agency's action is to establish a term or standard of general applicability, the procedural formalities of rulemaking will be required, regardless of the form or context of the agency's action.*

defining the term in a footnote of the decision. Because it found the term stretch limousine to be one of general applicability to effectuate commission policy, the district court reversed the Commission's decision on appeal, holding that the Commission engaged in ad hoc rulemaking without observing the procedural rulemaking requirements of NRS chapter 233B. See also, *Las Vegas Transit v. Las Vegas Strip Trolley*, 105 Nev. 575, 780 P.2d 1145 (1989). The formalities of rulemaking are not required, however, when an agency merely attempts to enforce or implement the requirements of an existing statute. *K-Mart Corporation v. SIIS*, 101 Nev. 12, 693 P.2d. 562 (1985).

## ➤ Benefits of Rulemaking - Public Participation

The decision to engage in rulemaking may come about in one of three ways:

- ▶ The legislature may mandate that an agency adopt regulations addressing a particular subject;
- ▶ The agency may exercise its discretion to adopt a regulation within the permissible scope of its statutory authority; or
- ▶ A member of the public may petition the agency to adopt, amend, or repeal a regulation. See, NRS 233B.100.

Even where a member of the public has not initiated a particular regulation, participation in the rulemaking process by interested members of the public is a central theme of the procedural requirements of the Administrative Procedure Act. See, NRS 233B.061.

Rulemaking may be used as a tool for fostering better understanding of legal requirements between an agency and those subject to the law administered by the agency. By the adoption of interpretive rules, agencies may attempt to remove uncertainty or ambiguity in the law. In some cases, regulations may be used to cure constitutionally defective statutes.

*See, Universal Electric, Inc. v. Labor Comm'r*, 109 Nev. 847 P.2d 1372 (1993). Rulemaking proceedings offer an opportunity for the regulators and those regulated to cooperate on issues of mutual concern. Although subject to some degree of formality, it is generally less difficult to amend a regulation than it is to amend a statute.

## ➤ Rules of Practice

Pursuant to NRS 233B.050(1)(a), every agency must adopt rules of practice, setting forth the nature and requirements of all formal and informal procedures available, including a description of all forms and instructions used by the agency. The agency must review its rules of practice at least once every three years and file with the Secretary of State a statement setting forth the date on which the review was completed and describing any revisions made to the rules as a result of the review. NRS 233B.050(1)(d). Rules of practice must be available for public inspection. NRS 233B.050(1)(b).

A form used by the agency need not be adopted by regulation or described explicitly in the regulation. A general description such as “. . . on a form provided by the agency” is sufficient. If adopted in this manner, the form may then be changed by the agency without complying with the rulemaking requirements of NRS chapter 233B. If an agency elects to adopt a form as part of a regulation, it must be amended by regulation but may not be included as part of the Nevada Administrative Code (NAC). NRS 233B.062.

## ➤ Declaratory Rulings and Petitions for Rulemaking

Every agency is required to adopt regulations that provide for the filing and disposition of petitions for declaratory orders

and advisory opinions as to the applicability of any statutory provision, agency regulation, or decision of the agency. NRS 233B.120. In addition, every agency must provide by regulation for the form and procedure for submission by which interested persons may request the adoption, amendment, or repeal of regulations. NRS 233B.100(1). Upon submission of such a petition, the agency has 30 days within which to deny the petition or initiate rulemaking proceedings. *Id.*

Administrative procedures for declaratory rulings should facilitate, not complicate, the process of obtaining such relief as such rulings have the beneficial effect of preventing confusion and misunderstanding regarding an agency's position in a particular matter. The procedures may be as simple as writing a letter to the head of the agency or as formal as conducting an evidentiary hearing followed by the filing of briefs by the parties, depending on the circumstances or wishes of the parties. For an example of rules of this type, see, Nevada Administrative Code 232.020 to 232.060, inclusive.

# Rulemaking Procedure

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## ➤ Summary



In general, the following steps must be completed when adopting regulations:

- ▶ Discuss the content or purpose of the proposed rule with the board, commission, or

agency head with rulemaking authority.<sup>5</sup> Draft the language.

- ▶ In the case of a permanent regulation, send a draft of the rule to the legislative counsel and the State Librarian. Keep a copy available for public inspection.
- ▶ Consider the impact of the regulation on small businesses and, if necessary, consult with small business owners and prepare a small business impact statement.
- ▶ Conduct at least one workshop with interested persons to discuss the general topics addressed in the rule.
- ▶ Set a hearing for public comment, draft a notice of the hearing, and post it.
- ▶ Conduct the public hearing.
- ▶ Evaluate and consider written and oral public comment on the rule and any revisions of form and style made by the legislative counsel. Discuss the comments made with the board, commission, or agency head, if necessary. Amend the draft rule to reflect any changes resulting from public comment.<sup>6</sup>
- ▶ Draft an informational statement describing the rule and rulemaking proceeding. Prepare the Form for Filing of Administrative Regulations, a copy of which is included in Appendix E of this Manual. File the form and informational statement together with the final rule with the Legislative Counsel Bureau. Upon completion of its review, the Legislative Counsel Bureau will file the rule with the Secretary of State. File a copy of the rule bearing the seal of the Secretary of State with the State Librarian.

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<sup>5</sup> In the case of boards or commissions, the proposed regulation should be discussed at a public meeting conducted in compliance with the Open Meeting Law.

<sup>6</sup> If any substantive changes were made to the rule after its initial revision by the legislative counsel, submit the changes to the legislative counsel for further review. See, NRS 233B.063(2).

- ▶ In the case of a temporary or emergency regulation, file a copy of the regulation as adopted and the informational statement with the legislative counsel.

## ➤ Types of Regulations

The three types of regulations are:

1. Permanent;
2. Temporary; and
3. Emergency.

There are three types of regulations, each with different procedural requirements. Permanent regulations are adopted using all the procedural formalities required by NRS chapter 233B. Temporary regulations are adopted in lieu of permanent regulations during the period immediately before and during legislative sessions when the staff of the legislative counsel is busy drafting legislation. Emergency regulations may, under emergency circumstances, be drafted without holding public hearings or observing other procedural formalities. Only permanent regulations become part of the Nevada Administrative Code.

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## Temporary Regulations

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*Except for the requirement that the legislative counsel review the proposed regulation before its adoption, a temporary regulation must be adopted in accordance with the same requirements applicable to the adoption of permanent regulations.*

If the agency wishes to adopt a regulation, amend, or suspend<sup>7</sup> a permanent regulation between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, it must adopt a temporary regulation. A regulation proposed during this time period may be adopted without first submitting it to the legislative counsel for review pursuant to NRS 233B.063 and 233B.064. NRS 233B.063(3)(4). Such a regulation expires by limitation on November 1st of the odd-numbered year. The term also includes any other regulation that is effective for 120 days or less and is not an emergency regulation. NRS 233B.0385.

If the agency wishes to continue the

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<sup>7</sup> The term "suspend" is used instead of "repeal" because a temporary regulation automatically expires unless a permanent regulation is subsequently adopted.

temporary regulation as a permanent one, it should anticipate its expiration date and submit a permanent regulation to the legislative counsel in time enough to permit his review.<sup>8</sup> With the exception that they may be adopted before review by the legislative counsel, the procedural requirements for adoption of a temporary regulation are the same as those required for a permanent regulation. With one exception,<sup>9</sup> an agency adopting a permanent regulation to coincide with the expiration of a temporary regulation must provide a second notice and public hearing. NRS 233B.060(2). It must also conduct a second workshop. A temporary regulation becomes effective when the final version and a copy of the informational statement required by NRS 233B.066 is filed with the Secretary of State. A copy of the final version and informational statement must also be filed with the legislative counsel.

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## Emergency Regulations - NRS 233B.0613

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*Emergency regulations may be adopted quickly with few procedural requirements, but are effective only 120 days.*

Emergency regulations may be adopted and become effective immediately upon their filing with the Secretary of State. They are effective for a period of not longer than 120 days. An emergency regulation may be adopted only under the following circumstances:

1. The agency must submit to the governor a written statement of the emergency and the reasons for that determination;<sup>10</sup>

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<sup>8</sup> The legislative counsel is required to complete his review of the proposed regulation within 30 days after it is submitted to him. NRS 233B.063(2). To allow for unanticipated delays, submit the rule for review at least 60 days before the expiration date of the temporary regulation.

<sup>9</sup> The Public Service Commission may adopt a substantively equivalent permanent regulation without further notice or hearing, but the language of the permanent regulation must first be approved or revised by the legislative counsel and the adopted regulation is subject to review by the legislative commission.

<sup>10</sup> Although the term "emergency" is not defined for purposes of this section, the legislature has defined the term for purposes of waiving the

2. The governor must endorse the statement of the emergency at the end of the full text of the statement on the original copy of the proposed regulation; and
3. A copy of the regulation that includes the statement of emergency endorsed by the governor, together with the informational statement required by NRS 233B.066<sup>11</sup> and the Form for Filing Administrative Regulations, must be filed with the Secretary of State and the Legislative Counsel Bureau. The statement of emergency must be included in the emergency regulation for all purposes.

A regulation may be adopted by this emergency procedure only once. If an agency adopts a temporary or permanent regulation that becomes effective and is substantively identical to its effective emergency regulation, the emergency regulation expires automatically on the effective date of the temporary or permanent regulation. NRS 233B.0613.

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## **Permanent Regulations**

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A permanent regulation is "a regulation which is not an emergency regulation or a temporary regulation." NRS 233B.036. As can be seen by this definition, emergency and temporary regulations are exceptions to the general rules governing the adoption of permanent regulations. Since most emergency and temporary regulations become permanent regulations, anyone involved in the rulemaking process should be familiar with these rules.

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three-day notice requirement for meetings of public bodies as "an unforeseen circumstance which requires immediate action and includes, but is not limited to: (a) disasters caused by fire flood, earthquake or other natural causes; or (b) any impairment of the health and safety of the public." NRS 241.020(5).

<sup>11</sup> The informational statement submitted with an emergency regulation need not include items relating to the conduct of a public hearing. NRS 233B.066(2).

## ➤ The Drafting Process

### Step One: *Draft the Regulation.*

Every regulation adopted by an agency must include a citation of the authority pursuant to which it, or any part of it, was adopted, the address of the agency, and an explanation of any procedures for obtaining clarification of the regulation or relief from the strict application of its terms if the agency is authorized by specific statute to grant such relief. NRS 233B.040(2).

The basic criteria for the mechanics of form and style for administrative regulations are those set forth in NRS 233B.062: accessibility, clarity, and conciseness. Beyond this, since the Legislature has prescribed a single administrative code, it seems appropriate to attempt reasonable harmony of style within it. Thus, while there may well be two or more ways of expressing a particular thought which are equally clear and concise, one should be chosen and followed throughout the code. In making these choices, the NRS form is usually followed, not only because its style has been carefully considered over many years but also because there is an advantage to the user inherent in consistency between the regulations and the statutes.

Every permanent regulation must be submitted to the legislative counsel who shall examine and, if appropriate, revise the language submitted so that it meets these criteria. NRS 233B.063(1). Those charged with the responsibility of initially drafting the language for the proposed regulation should, however, follow these general guidelines.

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## Sections

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1. All regulations are divided into sections numbered consecutively from 1. For the first section, "Section 1." is written out. The abbreviation "Sec." is used for

succeeding sections.

2. Sections should be short. Several sections can be related by numbering or by subheads outside the body of the sections.
3. The internal arrangement of a section is the same as used in NRS.
  1. Subsection
    - (a) Paragraph.
      - (1) Subparagraph.
        - (I) Sub subparagraph. (Designated by Roman numerals)
4. Do not assign numbers for codification to new sections or renumber sections already codified in the Nevada Administrative Code. The legislative counsel assigns the section numbers when the regulation is incorporated into the Nevada Administrative Code. It is appropriate, however, to make suggestions regarding placement of sections.
5. A new section to be added to a chapter in the Nevada Administrative Code should have the following prefatory language:

**Chapter \_\_\_ of NAC is hereby amended by adding thereto a new section to read as follows:**

If two or three new sections are added:

**Chapter \_\_\_ of NAC is hereby amended by adding thereto the provisions set forth as sections \_\_\_ and \_\_\_ of this regulation.**

**Chapter \_\_\_ of NAC is hereby amended by adding thereto the provisions set forth as sections \_\_\_, \_\_\_ and \_\_\_ of this regulation.**

If four or more new sections are added:

**Chapter \_\_\_ of NAC is hereby amended by adding thereto the provisions set forth as sections \_\_\_ to \_\_\_, inclusive, of this regulation.**

The language of a new section being added to the Nevada Administrative Code should be underscored (or italicized). Do not underscore the number of the section. Example:

Sec. 3. A contractor may . . .

Sec. 3. *A contractor may . . .*

6. If a section in the Nevada Administrative Code is being amended, the prefatory language is:

**NAC \_\_\_ is hereby amended to read as follows:**

7. If a section is being repealed, the prefatory language is:

**NAC \_\_\_ is hereby repealed.**

If more than one section is repealed, all the repealed sections should be listed in numerical order in one section. Always make sure, particularly in a large regulation, that you do not repeal a section you are also amending in the same regulation.

8. To amend a section from the Nevada Administrative Code, material to be deleted should be placed in brackets and new material underscored. New material should follow a set of brackets. For example:

The board's [standards] procedural regulations shall control the conduct of [disciplinary hearings] all formal proceedings.

Generally, punctuation should be added after the closing bracket. The exceptions are that an added period should precede the brackets and that when punctuation alone is being added, such a change should also be placed before the brackets. Examples:

. . . Fine [or] , revocation or probation.  
. . . issuance of a license. [or renewal.]

For clarity, if there are only one or two words between two sets of brackets, all the language should be included in one set of brackets. The following example is what *not* to do:

[Such] These contracts [shall] must include [provision] provisions for the . . . .

Instead, do the following:

[Such contracts shall include provision for] These contracts must include provisions for . . . .

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## Definitions

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1. A definition should be used only for a word that is used in a sense different from its natural meaning or whose meaning is extended or limited for the purposes of the regulation or chapter in which it occurs (do not define a word that does not occur in the regulation or chapter).
2. A definition must only define the word or term and must not contain any substantive provisions.
3. If a word is defined in NRS, it should be used in the same sense in any related regulations and defined by saying, for example: "Controlled substance" has the meaning ascribed to it in NRS 0.031.

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## Common Terms of Art

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1. A command is expressed by "shall;" a prohibition by "shall not." "No person shall" is not acceptable usage. Use "shall" when a duty to act is imposed. Remember that only persons and other legal entities can perform a duty.
2. Use "must" to express a requirement when:
  - (a) The subject is a thing. For example: "The application must be accompanied by a fee of . . ."
  - (b) The verb is in the passive voice. For example: "A licensee whose bond has expired must be . . ."
  - (c) Only a condition precedent and not a duty is imposed. For example: "A person who desires to be licensed must file an application . . ."
3. Permissive conduct is expressed by "may." The negative expression "No person may . . ." is appropriate.
4. A regulating authority cannot command itself. If the agency intends to promise that it will act in a certain way, the appropriate phrase is, for example, "The board will . . ."
5. The following is a partial list of words and phrases that should be avoided:
  - "individual" as a noun
  - "prior to." Instead use "before"
  - "such" unless it means "of this kind" or is followed by "as" or "that"
  - "due to." Instead use "because of"
  - "duly"
  - "herein"
  - "professional" as a noun
  - "implement" as a verb. Instead use "carry out"
  - "utilize." Instead use "use"
6. Use verbs in their simplest and most active

form. For example: Instead of "give consideration to" use "consider," instead of "have knowledge of" use "know," and instead of "make payment" use "pay."

7. Do not use jargon. Words used in a regulation should be found in the dictionary. A common fault of contemporary speech and writing is the stringing together of nouns when all but the last are being used as adjectives as in "health care delivery system." Use prepositions to avoid this ("System for delivery of health care").
8. As in NRS, the masculine gender should be used unless the regulation is limited to female or artificial persons.
9. Always use the singular number unless only the plural applies.
10. Do not use redundant language. A provision of a regulation that repeats the provisions of a statute, verbatim or in substance, is not void, but it is redundant. Therefore, a regulation should contain no text covered by a statute.

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## **Material Incorporated by Reference**

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NRS 233B.040 authorizes the adoption by reference of material published by another authority. A regulation that incorporates such material must state where a copy of the material may be obtained and how much it costs. The agency is required to file a copy of the material incorporated by reference with the Secretary of State and the State Librarian. In addition, a copy of the material should accompany the adopted regulation filed with the legislative counsel. The legislative counsel will file the regulation with the Secretary of State. When the agency files a copy of the adopted regulation with the State Librarian, a copy of the material incorporated by reference must accompany the regulation.

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## Typical Order of Sections in a Regulation

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Chapters and sections should be amended in numerical order. New sections added to a chapter are placed before amended sections for that chapter. If definitions are added with other new sections, the definitions appear before the substantive provisions. The following is an outline of the typical order of sections in a regulation:

1. New sections for a particular chapter.
  - (a) Definitions.
  - (b) Substantive provisions.
2. Amended sections in that same chapter in numerical order.
3. If applicable, new sections for another chapter in numerical order.
4. Amended sections for that chapter in numerical order.
5. Repealed sections in numerical order.
6. Effective date. (This is rarely used in a regulation. Normally, the regulations become effective upon filing.)

### ➤ Legislative Review

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## Pre-Adoption Review

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**Step Two:**  
*Submit the text of the proposed regulation to the legislative counsel and the State Librarian.*

At or before the time of giving notice of its intention to adopt, amend, or repeal a permanent regulation, the agency must deliver a copy of the proposed rule to the legislative counsel.<sup>12</sup> The legislative counsel, pursuant to NRS 233B.063, must review the regulation to determine if the language is clear, concise, and suitable for incorporation in the Nevada

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<sup>12</sup> If the regulation is submitted to the legislative counsel for review, either initially or as the result of substantive changes made to it after its initial review, between July 1 of an even-numbered year and July 1 of an off-numbered year, it must be adopted as a temporary regulation. NRS 233B.063(2).

Administrative Code. That same section prohibits the legislative counsel from altering the meaning or effect of the regulation without the consent of the adopting agency. This may occur inadvertently because some regulations are very technical and the person reviewing the regulation is not an expert in that field. If this occurs, the Legislative Counsel Bureau should be notified and the problem discussed and resolved.

If the regulation is changed after this initial review and approval by the legislative counsel, such as in the case of changes made as the result of public comment, it must be submitted to the legislative counsel again for review. NRS 233B.064(2). The legislative counsel must return the regulation with appropriate revisions within 30 days.<sup>13</sup> Agencies whose budgets are not supported entirely from the State general fund will be required to pay the cost of review and revision.

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## Post-Adoption Review

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*Submit the rule to the legislative counsel a week or two before noticing the hearing to receive public comment so that the rule as revised by the legislative counsel is available for review at the time of the hearing.*

After a regulation has been adopted, the agency must deliver a copy, together with the informational statement required by NRS 233B.066 and the Form for Filing Administrative Regulations, to the Director of the Legislative Counsel Bureau (Director). If the agency submits an adopted regulation which it is required to adopt pursuant to a federal statute or regulation and the regulation exceeds the agency's specific statutory authority or sets forth requirements that are more stringent than a statute of this State, the agency must include a statement that adoption of the regulation is required by federal statute or regulation and include a citation to the federal statute or regulation involved.

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<sup>13</sup> In most cases, the agency may comply with this requirement by simply noting any substantive changes when it submits the final, adopted regulation with the Legislative Counsel Bureau.

Although pursuant to NRS 233B.067 the Legislative Commission may review the regulation for conformity with legislative authority and intent *after* it has been adopted, in practice, the Commission has directed the legislative counsel to select from the many regulations adopted those few where conformity seems lacking for further consideration by the Commission. To avoid any difficulty after adoption, the regulation is examined for this conformity before the mechanics of form and style are considered and *before* the regulation is adopted. If the legislative counsel believes there is a question whether the substance of a regulation conforms to legislative authority and intent, this question is discussed and resolved with the agency as soon as possible.

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## **Legislative Suspension of Regulations**

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Although in the majority of cases any questions regarding an agency's statutory authority to adopt a regulation are resolved informally with the legislative counsel before adoption of the regulation, the Legislative Commission may suspend the filing of a permanent regulation after its adoption if it determines that:

1. In the case of a regulation purportedly required by federal law, the regulation is not required by federal law;
2. The regulation does not conform to statutory authority; or
3. The regulation does not conform to legislative intent.

NRS 233B.067(4).<sup>14</sup> If the Legislative Commission objects to a regulation on one of these grounds,

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<sup>14</sup> Legislative suspension of regulations is the result of voter approval of Ballot Question 5, an amendment to the Nevada Constitution approved by the voters in 1996.

the agency may revise the regulation until the Commission withdraws its objection and the Director files the regulation with the Secretary of State and notifies the agency of the filing. NRS 233B.0675. If the agency refuses to revise the regulation, the Commission may suspend the filing of the regulation until the 30th day of the next regular session of the Legislature and notify the agency that the rule is not effective and may not be enforced. Before that date the Legislature may, by concurrent resolution, declare that the regulation will not become effective and the agency may not enforce it. If the Legislature has not so declared by the 30th day of the session, the Director will file the regulation with the Secretary of State and notify the agency of the filing. NRS 233B.067(3).

## ➤ Impact On Small Businesses

### Step 3:

*Consider the impact of the proposed regulation on small businesses and, if necessary, prepare a small business impact statement.*

Before conducting a workshop on a proposed regulation, the agency must consider whether the regulation will "[i]mpose a direct and significant economic burden upon a small business" or "[d]irectly restrict the formation, operation or expansion of a small business." NRS 233B.0608(1). A small business is a business operated for profit that employs fewer than 150 full-time or part-time employees. NRS 233B.0382. If the agency concludes that the proposed regulation will have such an impact, it must: (1) "Insofar as practicable, consult with owners and officers of small businesses that are likely to be affected by the proposed regulation," (2) "Consider methods to reduce the impact of the proposed regulation on small businesses,"<sup>15</sup> and (3) "Prepare a small business impact statement and make copies of the statement available to the public at the

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<sup>15</sup> To reduce the impact of the proposed regulation on small businesses, an agency may: (1) simplify the proposed regulation, (2) establish different standards of compliance for small businesses, and (3) allow a small business to pay a lower fee or fine. Act of May 31, 1999, ch. 443, § 3, 1999 Nev. Stat. 2071.

workshop conducted and the public hearing held pursuant to NRS 233B.061." NRS 233B.0608(2).

If a small business impact statement is required, it must include the following information:

1. A description of the manner in which comment was solicited from affected small businesses, a summary of their response, and an explanation of the manner in which other interested persons may obtain a copy of the summary.
2. The estimated economic effect of the proposed regulation on the small businesses which it is to regulate including, without limitation:
  - (a) Both adverse and beneficial effects;  
and
  - (b) Both direct and indirect effects.
3. A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.
4. The estimated cost to the agency for enforcement of the proposed regulation.
5. If the proposed 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.
6. If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

NRS 233B.0609.

A small business that is adversely affected by a regulation may object to all or a part of the regulation by filing a petition with the agency within 90 days after the date on which the regulation was adopted. Grounds for the

petition may include: (1) the agency failed to prepare a required small business impact statement; or (2) the small business impact statement prepared by the agency did not consider or significantly underestimated the economic effect of the regulation on small businesses. If the agency determines that the petition has merit, it may take action to amend the regulation. NRS 233B.105.

## ➤ Workshops

**Step 4:**  
*Conduct at least one workshop to discuss the general topic or topics covered by the proposed regulation.*

Before conducting public hearings on the proposed regulation, the agency must conduct at least one workshop to solicit comments from interested persons on one or more general topics to be addressed in the proposed regulation. NRS 233B.061(2). At least 15 days in advance of the workshop, the agency must provide written notice to every person on the agency's mailing list for receipt of notice of proposed regulations and such additional notice as will inform the general public and any business that may be affected by the proposed regulation.<sup>16</sup> The notice must describe the general topics to be discussed at the workshop.

The statute specifies neither the form of the notice nor the procedure to be used in conducting the workshop. It is clear, however, the Legislature intended the workshop to provide interested persons with an opportunity to meet informally with agency staff to discuss the general subject matter of the regulation proposed to be adopted.

An agency may conduct a workshop at the earliest stages of its consideration of a proposed regulation. The statute does not require the agency to have drafted language for the proposal at the time it conducts a workshop. It is therefore permissible for an agency to conduct a workshop to discuss the general

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<sup>16</sup> For example, an agency proposing a regulation that will affect a regulated industry should probably provide some means of written notice to all persons in the industry licensed by the agency.

subjects to be addressed in a regulation to be drafted in the future.

It is also permissible for an agency to conduct the workshop after it has drafted the language of a proposed regulation. To simplify the procedure in this situation, the agency may plan for the workshop at the same time it plans for the public hearing. That way, the agency may provide the formal notice of public hearing at the same time and in the same manner as the notice of workshop. Notice of the workshop could consist of a letter or statement describing the purpose of the meeting and the general topics to be discussed. An example of such a notice is included in Appendix C. To further simplify things, the agency may conduct the workshop immediately before the public hearing on the proposed regulation. Although the statute is silent on the issue, agencies should maintain a record of the workshop in the same manner as that of the public hearing and should include in its informational statement a section describing each workshop conducted.

## ➤ Notice of Intent to Adopt Regulations

**Step 5:**  
*Prepare and post the notice of intent to act upon regulations.*

Except in the case of emergency regulations, before adopting, amending, or repealing any permanent or temporary regulation and before adopting a temporary regulation as a permanent regulation, the agency must give at least 30 days' notice of its intended action unless a shorter period of time is specifically permitted by statute. NRS 233B.060(1).

The notice of intent to act upon a regulation must include the following:

1. A statement of the need for and the purpose of the proposed regulation;
2. Either the text of the proposed rule or a description of the substance of the rule and the subjects and issues involved;

3. The estimated economic effect of the regulation on the business that it is to regulate and on the public. These must be stated separately and in each case must include both adverse and beneficial effects and both immediate and long-term effects;
4. The estimated cost to the agency for enforcement of the proposed regulation;
5. Any regulations of other state or local governmental agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary;
6. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency. If the regulation is required pursuant to federal law, a citation and description of the federal law. If the regulation includes provisions that are more stringent than a federal law that regulates the same activity, a summary of those provisions;
7. The date, time, and place where, and the manner in which, interested persons may present their views on the proposed rule;
8. All addresses where the text of the rule may be inspected and copied;
9. The exact language of the subsection 2 of NRS 233B.064;<sup>17</sup> and
10. A statement indicating whether the regulation establishes any new fee or increases an existing fee.

Pursuant to NRS 233B.0603(2), the Attorney General has adopted a regulation (NAC 233B.010) that specifies the form of notice to be used in

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<sup>17</sup> NRS 233B.064(2) provides: "Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, shall issue a concise statement of the principal reasons for and against its adoption, and incorporate therein its reason for overruling the consideration urged against its adoption."

rulemaking. A copy of this rule is included in Appendix B of this Manual and should be used in all cases to provide the required notice of rulemaking.

At the time of giving the notice, the agency must deposit one copy of the notice and text of the proposed regulation with the State Librarian and keep at least one copy in each of its offices from the date of the notice to the date of the hearing for inspection and copying by the public. The agency must also deposit one copy of the notice and text of the proposed regulation with the librarian of the main public library in any county where the agency does not maintain an office. NRS 233B.0607(1). The text of the proposed regulation must include the entire text of any section of the Nevada Administrative Code that is proposed for amendment or repeal. NRS 233B.0607(2). A copy of the notice must also be provided to the Legislative Counsel Bureau. NRS 233B.0603(1)(f).

Agencies have an affirmative duty to solicit comment on their proposed regulations. NRS 233B.0603 requires the agency to "solicit comment generally from the public and from businesses to be affected by the proposed regulation." In addition, agencies must maintain mailing lists of persons who have requested in writing that they be informed of proposed regulations and mail the notice of intent to act upon the regulation to all persons on the list. As a general rule, the more notice, the better. At a minimum, the notice should be posted at all of the agency's office locations. Notices may also be posted at other public or private places such as courthouses or the offices of business associations or groups that will be affected by the regulation.

## ➤ The Public Hearing

At the time and place set for hearing on

**Step 6:**  
*Receive oral  
comments about the  
proposed regulation at  
a public hearing.*

the proposed regulation, the agency must afford "all interested parties . . . a reasonable opportunity to submit data, views or arguments upon a proposed regulation." Alternatively, parties may submit their views in writing. The agency must set a deadline in the notice of hearing for the submission of written comments. In the case of regulations expected to be adopted at the same time as the hearing, that deadline should be set a reasonable time before the hearing to permit those acting on the rule to consider the comments. If the rule will not be adopted at a public hearing, such as the case where a single agency administrator is authorized to adopt the rule, there is no reason to impose an early deadline on the submission of written comments, nor is the agency prohibited from extending the time for receipt of written comments. The person conducting the hearing could, for example, permit the submission of written testimony at the hearing itself or within a time frame set by the agency beyond the date of the hearing. This would be especially appropriate if the agency does not intend to consider all public comments and act on the regulation on the same day as that scheduled for receipt of oral comments.

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## **Record of the Hearing**

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The agency must keep, maintain, and make available for public inspection the minutes of the public hearing. NRS 233B.061(2). The minutes must include:

1. The date, time, and place of the meeting;
2. The members of the body who were present and those who were absent;
3. The substance of all matters discussed, proposed, or decided and, at the request of any member, a record of each member's vote on any matter decided by vote;
4. The substance of remarks made by any member of the general public who addresses the body if he requests that the minutes

reflect his remarks or, if he has prepared written remarks, a copy of his written remarks if he submits a copy for inclusion; and

5. Any other information that any member of the body requests to be included or reflected in the minutes.

See, NRS 241.035(1). The minutes of the meeting are a public record. The minutes or audio tape recording of the meeting must be available within 30 working days after adjournment of the meeting. The minutes must be retained for at least five years.

The agency may also make an audio recording of the public meeting. If the meeting is recorded, the tape must be retained for at least 1 year after the meeting and, like the minutes, is a public record that must be available for inspection by the public. See, NRS 241.035(4). The agency may impose a reasonable fee to cover the cost of providing copies of the minutes to a party requesting them.

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## **Conduct of the Hearing**

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The person conducting the hearing to receive public comments on a proposed regulation should consider the following guidelines:

1. Identify yourself and the agency proposing the rule;
2. Explain the substance of the rule and the subjects and issues involved. Make extra copies of the proposed rule available for inspection;
3. Explain the procedure by which attendees may inspect the record relating to the rulemaking proceeding or obtain a copy of the rule as finally adopted;

4. Explain that the purpose of the hearing is to receive comments on the proposed regulation;
5. Inform attendees of any extensions granted and the deadline for submission of additional written comments; and
6. Request that all persons desiring to speak provide their name and affiliation, if any, on a written sign-up sheet and again when speaking.

## ➤ Consideration of Public Comments

### Step 7:

*Consider the comments received from the public and businesses affected by the proposed regulation.*

The person or body with the authority to adopt it must "consider fully" all oral and written comments received. NRS 233B.061(1). In some cases, it may be possible to conduct the hearing on the regulation contemporaneously with the public meeting of the board called to consider and take action on the rule. Since the members of the board will have been present for the taking of public comments and may review any written comments previously submitted, this would appear to be an efficient means of complying with this requirement. Provided the meeting of the board has been noticed in accordance with the Open Meeting Law, the board may act immediately on any suggested changes to the rule offered by a member of the public, the industry affected, or a member of the board although any substantive changes made to the regulation in this manner must be submitted to the legislative counsel pursuant to NRS 233B.063(2).

A board or commission with rulemaking authority may delegate the process of soliciting and obtaining public comment on the rule. It may be necessary in these cases for the person to whom that process has been delegated to report to the board on the public comments

received. Written comments may simply be provided to the board to review at or before a public meeting called for the purpose of discussing the public comment and considering adoption of the rule. The board may be provided with a copy of the minutes or tape recording of the hearing held to receive oral comments. Alternatively, the board may be provided with a report, in oral or written form, of the substance of the comments received at the hearing.

Boards or commissions considering the public comments on proposed regulations should retain in the minutes a record of their discussion regarding the public comment and their reasons for either amending the proposed rule in response to the comments or adopting the rule without change. Persons with rulemaking authority who are not subject to the Open Meeting Law may consider the public comment in private.

## ➤ Final Adoption

**Step 8:**  
*Adopt the regulation and file the original with the Legislative Counsel. Upon its filing with the Secretary of State by the Legislative Counsel, file a conformed copy with the State Librarian.*

The final step in the rulemaking process is the adoption of the regulation. At this point the regulation will have been reviewed and revised, if necessary, by the legislative counsel and perhaps changed as the result of public comment. The original, final copy of the regulation must now be filed with the legislative counsel together with the informational statement required by NRS 233B.066, the form for filing administrative regulations, and the form *Notice of Adoption of Regulation*, a copy of which is attached as Appendix F.

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## Informational Statement

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The informational statement must contain the following:

1. 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;
2. A statement indicating the number of persons who attended each meeting or workshop, testified at each hearing, and submitted written statements regarding the proposed regulation;
  3. 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;
  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. The statement should also explain the reasons for making any changes to the regulation as proposed;
  5. The estimated economic effect of the regulation on the business that it is to regulate and on the public. These must be stated separately and in each case must include:
    - (a) Both adverse and beneficial effects; and
    - (b) Both immediate and long-term effects;
  6. The estimated cost to the agency for enforcement of the proposed regulation;
  7. A description of any regulations of other state or government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency;
  8. If the regulation includes provisions that are more stringent than a federal

regulation that regulates the same activity, a summary of those provisions; and

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

NRS 233B.066. A sample informational statement is included in Appendix G of this Manual.

The informational statement is essential. If it is not included with the final regulation, the Director will return the regulation to the agency with a note that the statement is missing. Unless the statement is supplied, the Director will not submit the regulation to the Commission and the regulation will not become effective.

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## Effective Date

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*A regulation usually becomes effective upon filing with the Secretary of State.*

Assuming there is no question as to conformity of the regulation to legislative authority and intent,<sup>18</sup> the Director of the Legislative Counsel Bureau will file the final, adopted regulation with the Secretary of State within the time limitations described in NRS 233B.067. If there is no question regarding legislative authority and intent, this will usually be within 35 days after it is filed with the Commission. A permanent regulation becomes effective upon its filing with the Secretary of State unless a statute prescribes a specific time when the regulation becomes effective or a

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<sup>18</sup> See the section on Legislative Suspension of Regulations, page 20.

later date is specified in the regulation. A temporary regulation becomes effective when the final version is filed with the Secretary of State. A copy of the final version of a temporary regulation must also be filed with the legislative counsel.

Immediately after each permanent or temporary regulation is filed, the agency must deliver one copy of the final draft or revision bearing the stamp of the Secretary of State indicating that it has been filed, including material adopted by reference which is not already filed with the State Librarian, to the State Librarian for use by the public. NRS 233B.070(5).

## ➤ Maintenance of Regulations

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### Availability

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Each agency must maintain a copy of its regulations and must furnish a copy of its regulations to any person who requests a copy. The agency may charge a reasonable fee for the copy based on the cost of reproduction if it does not have money appropriated or authorized for that purpose.

If the agency publishes any regulations included in the Nevada Administrative Code, it must use the exact text of the regulation as it appears in the NAC, including the lead lines and numbers of the sections. Any other material that an agency includes in a publication with its regulations must be presented in a form that clearly distinguishes that material from the regulations.

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### Periodic Review

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NRS 233B.050(1)(d) requires every agency subject to its terms to review its rules of practice at least once every three years and file with the Secretary of State a statement setting forth the date on which the most recent review of those rules was completed and describing any revisions made as a result of the review.

Every agency must also review *all* its regulations at least once every ten years to determine whether it should amend or repeal any of the regulations. NRS 233B.050(1)(e). Within 30 days after completion of its review, the agency must submit a report to the Director of the Legislative Counsel Bureau for distribution to the next regular session of the Legislature. The report must include the date on which the agency completed its review and describe any regulations that must be amended or repealed as a result of the review. The legislative counsel will include the date of the last review in the Nevada Administrative Code. NRS 233B.065(2).

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## **Register of Regulations**

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The legislative counsel maintains a register of administrative regulations containing the following information regarding each permanent regulation adopted by an agency:

1. The proposed and adopted text of the regulation and any revised version of the regulation;
2. The Notice of Intent to Act upon a proposed regulation required by NRS 233B.0603;
3. The written notice of adoption of the regulation required by NRS 233B.064;
4. The Informational Statement required by NRS 233B.066; and
5. The effective date of the regulation.

The register is distributed to and maintained by:

1. The Secretary of State;
2. The Attorney General;

3. The Supreme Court law library;
4. The state library and archives;
5. Each county clerk;
6. Each county library; and
7. The Legislative Counsel Bureau.

The register is also published and available on the Internet at <http://www.leg.state.nv.us>.

## **Appendix** (see attachments)

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- A - Rulemaking Checklist
- B - Notice of Intent to Adopt Regulations (NAC 233B.010)
- C - Sample Notice of Workshop
- D - List of Public Libraries
- E - Form for Filing Administrative Regulations
- F - Notice of Adoption of Regulation
- G - Sample Informational Statement





## Rulemaking Checklist

Note: This checklist is intended as a general guide and should not be relied on exclusively for requirements governing the adoption of administrative regulations. If in doubt, consult your attorney.

**In Re:** \_\_\_\_\_

**Date:** \_\_\_\_\_

### Step 1: Draft the rule

\_\_\_\_\_ **Purpose of rule:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ **Statutory Authority:** \_\_\_\_\_

\_\_\_\_\_ **Discussed with board, commission, or other persons?**  
(Check compliance with Open Meeting Law.)

\_\_\_\_\_ **Comments:** \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ **Draft of proposed rule completed on:** \_\_\_\_\_

\_\_\_\_\_ **Type of Rule:** \_\_\_\_\_ Permanent; \_\_\_\_\_ Temporary; \_\_\_\_\_ Emergency.

### Step 2: Submit proposed rule to legislative counsel (Permanent regulations only) (This step may be accomplished at the same time as the Notice of Intent to Adopt, Amend or Repeal Regulation is given.)

\_\_\_\_\_ **Date submitted:** \_\_\_\_\_  
(If regulation will be submitted to legislative counsel between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the regulation must be adopted as a temporary regulation and Step 2 should be skipped until adopting the temporary regulation as a permanent regulation. See Step 8.)

\_\_\_\_\_ **Deadline for consideration by legislative counsel:**  
(30 days after submission - permanent regulations only.)

\_\_\_\_\_ Date returned by legislative counsel: \_\_\_\_\_

\_\_\_\_\_ Regulation as revised by legislative counsel reviewed by  
\_\_\_\_\_ on \_\_\_\_\_.

\_\_\_\_\_ Any issue regarding changes to substance of rule by legislative counsel or questions regarding agency's statutory authority to adopt the rule by Legislative Commission?

Comments: \_\_\_\_\_

**Step 3: Consider impact on small businesses and, if necessary, consult with small businesses, consider ways to reduce impact, and prepare small business impact statement**

\_\_\_\_\_ Does proposed regulation impose a direct and significant economic burden upon a small business (fewer than 150 full-time or part-time employees) or directly restrict the formation, operation, or expansion of a small business? If NO, go to step 4, if YES:

Efforts to consult with small businesses:

\_\_\_\_\_  
\_\_\_\_\_

Consideration of methods to reduce impact on small businesses:

\_\_\_\_\_  
\_\_\_\_\_

Small Business Impact Statement prepared on \_\_\_\_\_ and includes:

\_\_\_\_\_ A description of the manner in which comment was solicited from affected small businesses, a summary of their response, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

\_\_\_\_\_ The estimated economic effect of the proposed regulation on the small businesses that it is to regulate including, without limitation:  
(a) Both adverse and beneficial effects; and  
(b) Both direct and indirect effects.

\_\_\_\_\_ A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

\_\_\_\_\_ The estimated cost to the agency for enforcement of the proposed regulation.

\_\_\_\_\_ If the proposed 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.

\_\_\_\_\_ If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

**Step 4: Draft, deliver, and post Notice of Workshop(s), conduct workshop(s)** (This step may be accomplished at the same time as the Notice of Intent to Adopt, Amend or Repeal Regulation is given.)

\_\_\_\_\_ Notice contains date, time, place of meeting and describes general subjects to be discussed.

\_\_\_\_\_ Notice sent on \_\_\_\_\_ to all persons on agency's rulemaking mailing list.

\_\_\_\_\_ Notice posted on \_\_\_\_\_ (at least 15 days before the hearing) at the following locations:

\_\_\_\_\_  
\_\_\_\_\_

**Step 5: Draft and post Notice of Intent to Adopt, Amend or Repeal Regulation; deposit copy of proposed regulation and notice with State Librarian**

\_\_\_\_\_ Notice complies with Attorney General's form of notice (NAC 233B.010)

\_\_\_\_\_ Deadline for receipt of written comments: \_\_\_\_\_

\_\_\_\_\_ Deposited with State Librarian on: \_\_\_\_\_

\_\_\_\_\_ Notice sent on \_\_\_\_\_ to all persons on agency's rulemaking mailing list.

\_\_\_\_\_ **Notice posted on** \_\_\_\_\_ (at least 30 days before the hearing) **at the following locations:**

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\_\_\_\_\_ **Notice mailed to the following persons or organizations:**  
(The agency must mail a copy of the notice and text of the proposed regulation to the librarian of the main public library in each county in which the agency does not maintain an office. NRS 233B.0607(1)(c))

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\_\_\_\_\_ **Describe any other attempts to provide notice:** \_\_\_\_\_

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\_\_\_\_\_ **Hearing date(s), time(s), and location(s):** \_\_\_\_\_

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\_\_\_\_\_ **Describe arrangements made for recording the hearing and/or taking minutes:**

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**Step 6: Conduct the hearing**

\_\_\_\_\_ **Name of person(s) conducting hearing:** \_\_\_\_\_

\_\_\_\_\_ **Introduction and explanation of proposed rule, where it may inspected, purpose of hearing, and procedure for taking oral comments. Make extra copies of rule available for inspection.**

\_\_\_\_\_ **Date of any extension for submission of written comments:**

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**Summary of comments from the public or affected businesses:**

(The agency must indicate in its informational statement the number of persons who attended each hearing, testified at each hearing, and submitted written comments regarding the proposed regulation. NRS 233B.066(2))

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**Step 7: Consider public comment**

**Hearing with board or commission to discuss public comment on proposed rule conducted on \_\_\_\_\_ (check compliance with Open Meeting Law.)**

**Describe comments of board or commission and any changes made to rule resulting from public comment:**

(If any substantive changes are made to the rule as the result of public or other comment, the rule must be re-submitted to the legislative counsel to review and revise the language as appropriate for incorporation in the Nevada Administrative Code. If the regulation is submitted for this review between July 1 of an even-numbered year and July 1 an odd-numbered year, it must be adopted as a temporary regulation. See Step 9.)

**Comments:** \_\_\_\_\_

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**Step 8: Adopt the rule**

**Prepare Notice of Adoption of Regulation**

**Informational statement:**

\_\_\_\_\_ **Description of how comment from public and affected businesses was solicited.**

\_\_\_\_\_ **A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.**

\_\_\_\_\_ **Summary of response from public and affected businesses.**

\_\_\_\_\_ **Explanation of how interested persons may obtain a copy of summary.**

\_\_\_\_\_ **If regulation was adopted without change, summary of reasons for adopting without change.**

\_\_\_\_\_ **Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term.**

\_\_\_\_\_ **Cost of enforcing the regulation.**

\_\_\_\_\_ **Explanation of any other regulations that this regulation duplicates or overlaps and why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency.**

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

\_\_\_\_\_ **If the regulation establishes a new fee or increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used.**

\_\_\_\_\_ **If Legislative Commission objected to rule based on lack of conformity with statutory authority and legislative intent:**

**Rule revised and resubmitted on: \_\_\_\_\_**

**Decision not to revise rule made on: \_\_\_\_\_**

**Comments: \_\_\_\_\_**

\_\_\_\_\_ **Regulation adopted on: \_\_\_\_\_**

\_\_\_\_\_ **Statement, if any, to interested person explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption. NRS 233B.064(2).**

\_\_\_\_\_ **Copy of regulation, Informational Statement, Form for Filing Administrative Regulations, and Notice of Adoption of Regulation sent to legislative counsel on: \_\_\_\_\_**

\_\_\_\_\_ **Filed with Secretary of State on: \_\_\_\_\_**

\_\_\_\_\_ **Copy bearing Secretary of State's seal filed with State Librarian on:**

\_\_\_\_\_

\_\_\_\_\_ **Regulation effective on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation expires on: (by its own terms or because it is a temporary or emergency regulation)** \_\_\_\_\_

\_\_\_\_\_ **Copy of adopted regulation sent to legislative counsel (temporary regulation) on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation scheduled for review on:** \_\_\_\_\_

**Step 9: Convert temporary regulation to permanent regulation**

\_\_\_\_\_ **Temporary regulations expire on November 1st of the odd-numbered year following the legislative session during which they were adopted. Allow approximately 60 days or to the expiration date to submit the temporary regulation as a permanent one to the legislative counsel.**

\_\_\_\_\_ **Submit temporary rule to legislative counsel (Complete Step 2 )**

\_\_\_\_\_ **Adopt temporary rule as a permanent rule:**

\_\_\_\_\_ **Provide notice of workshop(s), notice of intended action, and hold a public hearing. (Complete steps 3, 4, and 5)**

\_\_\_\_\_ **Informational statement:**

\_\_\_\_\_ **Description of how comment from public and affected businesses was solicited.**

\_\_\_\_\_ **A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.**

\_\_\_\_\_ **Summary of responses from public and affected businesses.**

\_\_\_\_\_ **Explanation of how interested persons may obtain a copy of summary.**

\_\_\_\_\_ **If regulation was adopted without change, summary of reasons for adopting without change.**

\_\_\_\_\_ **Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term.**

\_\_\_\_\_ **Cost of enforcing the regulation.**

\_\_\_\_\_ **Explanation of any other regulations that this regulation duplicates or overlaps and why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency.**

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

\_\_\_\_\_ **If the regulation establishes a new fee or increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used.**

\_\_\_\_\_ **Regulation adopted on:** \_\_\_\_\_  
*(Prepare Notice of Adoption of Regulation)*

\_\_\_\_\_ **Statement, if any, to interested person explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption. NRS 233B.064(2).**

\_\_\_\_\_ **Copy of regulation, Informational Statement, Form for Filing Administrative Regulations, and Notice of Adoption of Regulation sent to legislative counsel on:** \_\_\_\_\_

\_\_\_\_\_ **Filed with Secretary of State on:** \_\_\_\_\_

\_\_\_\_\_ **Copy bearing Secretary of State's seal filed with State Librarian on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation effective on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation expires on: (by its own terms or because it is a temporary or emergency regulation)** \_\_\_\_\_

\_\_\_\_\_ **Copy of adopted regulation sent to legislative counsel (temporary and emergency regulation) on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation scheduled for review on:** \_\_\_\_\_

## NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the .....(Adoption) (Amendment)

(Repeal).... of Regulations of the

.....(Name of Agency).....

The .....(Name of Agency)..... will hold a public hearing at .....(time)..... .....m., on .....(date)..... 20..., at .....(Address of Hearing Room)..... The purpose of the hearing is to receive comments from all interested persons regarding the ...(Adoption) (Amendment) (Repeal).... of regulations that pertain to chapter ...(Number of Chapter) ..... of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

(In this space, state:

1. The need for and the purpose of the proposed regulation or amendment.
2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.
3. The estimated economic effect of the regulation on the business that it is to regulate and on the public. These must be stated separately and in each case must include:
  - (a) Both adverse and beneficial effects; and
  - (b) Both immediate and long-term effects.
4. The estimated cost to the agency for enforcement of the proposed regulation.
5. A description of and citation to any regulations of other state or local governmental agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.
6. If the regulation is required pursuant to federal law, a citation and description of the federal law.
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.
8. Whether the proposed regulation establishes a new fee or increases an existing fee.)

Persons wishing to comment upon the proposed action of .....(Name of Agency)..... may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to .....(Name and Address of Agency)..... Written submissions must be received by the .....(Name of Agency)..... on or before .....(Date)..... If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the .....(Name of Agency).....may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be ...(Adopted) (Amended) (Repealed)... will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be ...(Adopted) (Amended) (Repealed)... will be available at .....(Name and Address of each Office of the Agency)..... and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. This does not apply to a public body subject to the Open Meeting Law.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption or incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

(Include in this space the locations at which the notice was posted pursuant to the provisions of chapters 233B and 241 of Nevada Revised Statutes.)

## Notice of Workshop to Solicit Comments on Proposed Regulation

The .....(Name, Address, and Telephone Number of Agency)..... is proposing the ....(Adoption) (Amendment) (Repeal).... of regulations pertaining to chapter .....(chapter number)..... of Nevada Administrative Code. A workshop has been set for ....(time).... .....m., on ....(date).... 20..., at .....(Address of Meeting Room)..... The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

(Describe here the general topics to be discussed.)

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the .....(Name, Address, and Telephone Number of Agency)..... A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

(Include in this space the locations at which the notice was posted)

Date: \_\_\_\_\_

## NEVADA COUNTY PUBLIC LIBRARIES

Carson City Library  
900 North Roop Street  
Carson City, Nevada 89701

Churchill County Library  
553 South Maine Street  
Fallon, Nevada 89406

Las Vegas Library  
833 Las Vegas Boulevard North  
Las Vegas, Nevada 89101

Douglas County Library  
Post Office Box 337  
1625 Library Lane  
Minden, Nevada 89423

Elko County Library  
720 Court Street  
Elko, Nevada 89801

Goldfield Public Library  
Post Office Box 430  
(Fourth & Crook Street)  
Goldfield, Nevada 89013

Eureka Branch Library  
Post Office Box 293  
10190 Monroe Street  
Eureka, Nevada 89316

Humboldt County Library  
85 East 5<sup>th</sup> Street  
Winnemucca, Nevada 89445

Lincoln County Library  
Post Office Box 330  
93 Main Street  
Pioche, Nevada 89043

Lyon County Library  
20 Nevin Way  
Yerington, Nevada 89447

Mineral County Library  
Post Office Box 1390  
(First & A Street)  
Hawthorne, Nevada 89415

Tonopah Public Library  
Post Office Box 449  
171 Central Street  
Tonopah, Nevada 89049

Pershing County Library  
Post Office Box 781  
1125 Central Avenue  
Lovelock, Nevada 89419

Storey County Library  
Post Office Box 14  
95 South R Street  
Virginia City, Nevada 89440

Washoe County Library  
Post Office Box 2151  
301 South Center  
Reno, Nevada 89505

White Pine County Library  
950 Campton Street  
Ely, Nevada 89301

Battle Mountain Branch Library  
Post Office Box 141  
Battle Mountain, Nevada 89820



SECRETARY OF STATE  
FILING DATA

**Form For Filing  
Administrative Regulations**

FOR EMERGENCY  
REGULATIONS ONLY

Effective date \_\_\_\_\_

Expiration date \_\_\_\_\_

Agency \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
Governor's signature

Classification:    **PROPOSED**    **ADOPTED BY AGENCY**    **EMERGENCY**

**Brief description of action** \_\_\_\_\_

\_\_\_\_\_

**Authority citation other than 233B** \_\_\_\_\_

**Notice date** \_\_\_\_\_

**Date of Adoption by Agency**

**Hearing date** \_\_\_\_\_

\_\_\_\_\_

## **NOTICE OF ADOPTION OF REGULATION**

The ..... (Name of Agency)..... adopted regulations assigned LCB File No. .... that pertain to chapter .....(chapter number)..... of the Nevada Administrative Code on .....(Date)..... A copy of the regulations as adopted is attached hereto.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
PETITION 96003  
LCB FILE R-127-95**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445A.

**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.**

Petition 96003 (R-127-95) was noticed three (3) times: October 6, October 12, and October 24, 1995 in the Las Vegas Review Journal, the Reno Gazette-Journal newspapers, the Humboldt Sun, and the Elko Daily Free Press as a permanent regulation. Public response focused on the temperature portion of the regulation. The comments dealt with methods of taking water and ambient air temperature, the possible effect of wide swings of temperature upon fish and aquatic species, and the impact of mixing zone provisions of temperature. The comments also focused on the applicability of temperature standards in no flow conditions and the application of temperature standards to ephemeral streams. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission at (702) 687-4670 or by writing to the Commission at 333 West Nye Lane, Room 128, Carson City, Nevada 89710.

**2. The number persons who:**

- |     |  |    |
|-----|--|----|
| (a) | <b>Attended each hearing:</b>  | 36 |
| (b) | <b>Testified at each hearing:</b>  | 7  |
| (c) | <b>Submitted to the agency written comments:</b> Comments were submitted by the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nevada Mining Association, Commissioner Fred Gifford, Barrick Goldstrike Mine, Independence Mining Company, and the Sierra Club. |    |

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

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1, and by direct mail to interested persons subscribing to the Commission's mailing list. Comments from interested businesses included the Nevada Mining Association, Barrick Goldstrike Mine, and Independence Mining Co. The comments focused on opposition to the beneficial use standard for the chemical pollutant sulfate and the applicability of absolute values in water temperature to conditions of no flow in the Humboldt River. Other concerns regarding water temperature focused on limits to the Imlay Segment and the protection of the walleye fish. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission at (702) 687-4670 or by writing to the Commission at 333 West Nye Lane, Room 128, Carson City, Nevada 89710.

**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.**

The permanent regulation was adopted at the State Environmental Commission hearing on November 7, 1995 with changes to proposed amendments to temperature being deferred by the Commission. The petition was adopted without changes to the temperature standards for various reaches of the Humboldt River.

**5. The estimated economic effect of the adopted regulation on the businesses that 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.**

- a. The proposed revisions are expected to have an immediate or long-term beneficial economic effect upon the regulated community.
- b. There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term.

**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 government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping 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 amendments duplicate.

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

Code of Federal Regulations in sections 40 C.F.R. 131.10, 40 C.F.R. 131.11, and 40 C.F.R. 131.12 require the State to designate beneficial uses, to adopt criteria to protect the uses, and to adopt an antidegradation policy. There are no federally promulgated water quality standards for Nevada with the exception of toxic materials contained in 40 C.F.R. 131.36(d)(11), which is not a duplication of proposed action. Therefore, the proposed regulations are in compliance with federal regulations and are not more stringent than federal requirements and regulations.

**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.**

This regulation does not provide or involve a new fee, and hence since no fee is involved, there is not a total amount expected to be collected or used.



## Rulemaking Checklist

Note: This checklist is intended as a general guide and should not be relied on exclusively for requirements governing the adoption of administrative regulations. If in doubt, consult your attorney.

**In Re:** \_\_\_\_\_

**Date:** \_\_\_\_\_

### Step 1: Draft the rule

\_\_\_\_\_ **Purpose of rule:** \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ **Statutory Authority:** \_\_\_\_\_

\_\_\_\_\_ **Discussed with board, commission, or other persons?**  
(Check compliance with Open Meeting Law.)

\_\_\_\_\_ **Comments:** \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_ **Draft of proposed rule completed on:** \_\_\_\_\_

\_\_\_\_\_ **Type of Rule:** \_\_\_\_\_ Permanent; \_\_\_\_\_ Temporary; \_\_\_\_\_ Emergency.

### Step 2: Submit proposed rule to legislative counsel (Permanent regulations only) (This step may be accomplished at the same time as the Notice of Intent to Adopt, Amend or Repeal Regulation is given.)

\_\_\_\_\_ **Date submitted:** \_\_\_\_\_  
(If regulation will be submitted to legislative counsel between July 1 of an even-numbered year and July 1 of the succeeding odd-numbered year, the regulation must be adopted as a temporary regulation and Step 2 should be skipped until adopting the temporary regulation as a permanent regulation. See Step 8.)

\_\_\_\_\_ **Deadline for consideration by legislative counsel:**  
(30 days after submission - permanent regulations only.)

\_\_\_\_\_ Date returned by legislative counsel: \_\_\_\_\_

\_\_\_\_\_ Regulation as revised by legislative counsel reviewed by  
\_\_\_\_\_ on \_\_\_\_\_.

\_\_\_\_\_ Any issue regarding changes to substance of rule by legislative counsel or questions regarding agency's statutory authority to adopt the rule by Legislative Commission?

Comments: \_\_\_\_\_

**Step 3: Consider impact on small businesses and, if necessary, consult with small businesses, consider ways to reduce impact, and prepare small business impact statement**

\_\_\_\_\_ Does proposed regulation impose a direct and significant economic burden upon a small business (fewer than 150 full-time or part-time employees) or directly restrict the formation, operation, or expansion of a small business? If NO, go to step 4, if YES:

Efforts to consult with small businesses:

\_\_\_\_\_  
\_\_\_\_\_

Consideration of methods to reduce impact on small businesses:

\_\_\_\_\_  
\_\_\_\_\_

Small Business Impact Statement prepared on \_\_\_\_\_ and includes:

\_\_\_\_\_ A description of the manner in which comment was solicited from affected small businesses, a summary of their response, and an explanation of the manner in which other interested persons may obtain a copy of the summary.

\_\_\_\_\_ The estimated economic effect of the proposed regulation on the small businesses that it is to regulate including, without limitation:  
(a) Both adverse and beneficial effects; and  
(b) Both direct and indirect effects.

\_\_\_\_\_ A description of the methods that the agency considered to reduce the impact of the proposed regulation on small businesses and a statement regarding whether the agency actually used any of those methods.

\_\_\_\_\_ The estimated cost to the agency for enforcement of the proposed regulation.

\_\_\_\_\_ If the proposed 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.

\_\_\_\_\_ If the proposed regulation includes provisions which duplicate or are more stringent than federal, state, or local standards regulating the same activity, an explanation of why such duplicative or more stringent provisions are necessary.

**Step 4: Draft, deliver, and post Notice of Workshop(s), conduct workshop(s)** (This step may be accomplished at the same time as the Notice of Intent to Adopt, Amend or Repeal Regulation is given.)

\_\_\_\_\_ Notice contains date, time, place of meeting and describes general subjects to be discussed.

\_\_\_\_\_ Notice sent on \_\_\_\_\_ to all persons on agency's rulemaking mailing list.

\_\_\_\_\_ Notice posted on \_\_\_\_\_ (at least 15 days before the hearing) at the following locations:

\_\_\_\_\_  
\_\_\_\_\_

**Step 5: Draft and post Notice of Intent to Adopt, Amend or Repeal Regulation; deposit copy of proposed regulation and notice with State Librarian**

\_\_\_\_\_ Notice complies with Attorney General's form of notice (NAC 233B.010)

\_\_\_\_\_ Deadline for receipt of written comments: \_\_\_\_\_

\_\_\_\_\_ Deposited with State Librarian on: \_\_\_\_\_

\_\_\_\_\_ Notice sent on \_\_\_\_\_ to all persons on agency's rulemaking mailing list.

\_\_\_\_\_ **Notice posted on** \_\_\_\_\_ (at least 30 days before the hearing) **at the following locations:**

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\_\_\_\_\_ **Notice mailed to the following persons or organizations:**  
(The agency must mail a copy of the notice and text of the proposed regulation to the librarian of the main public library in each county in which the agency does not maintain an office. NRS 233B.0607(1)(c))

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\_\_\_\_\_ **Describe any other attempts to provide notice:** \_\_\_\_\_

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\_\_\_\_\_ **Hearing date(s), time(s), and location(s):** \_\_\_\_\_

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\_\_\_\_\_ **Describe arrangements made for recording the hearing and/or taking minutes:**

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**Step 6: Conduct the hearing**

\_\_\_\_\_ **Name of person(s) conducting hearing:** \_\_\_\_\_

\_\_\_\_\_ **Introduction and explanation of proposed rule, where it may inspected, purpose of hearing, and procedure for taking oral comments. Make extra copies of rule available for inspection.**

\_\_\_\_\_ **Date of any extension for submission of written comments:**

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**Summary of comments from the public or affected businesses:**

(The agency must indicate in its informational statement the number of persons who attended each hearing, testified at each hearing, and submitted written comments regarding the proposed regulation. NRS 233B.066(2))

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**Step 7: Consider public comment**

**Hearing with board or commission to discuss public comment on proposed rule conducted on \_\_\_\_\_ (check compliance with Open Meeting Law.)**

**Describe comments of board or commission and any changes made to rule resulting from public comment:**

(If any substantive changes are made to the rule as the result of public or other comment, the rule must be re-submitted to the legislative counsel to review and revise the language as appropriate for incorporation in the Nevada Administrative Code. If the regulation is submitted for this review between July 1 of an even-numbered year and July 1 an odd-numbered year, it must be adopted as a temporary regulation. See Step 9.)

**Comments:** \_\_\_\_\_

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**Step 8: Adopt the rule**

**Prepare Notice of Adoption of Regulation**

**Informational statement:**

\_\_\_\_\_ **Description of how comment from public and affected businesses was solicited.**

\_\_\_\_\_ **A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.**

\_\_\_\_\_ **Summary of response from public and affected businesses.**

\_\_\_\_\_ **Explanation of how interested persons may obtain a copy of summary.**

\_\_\_\_\_ **If regulation was adopted without change, summary of reasons for adopting without change.**

\_\_\_\_\_ **Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term.**

\_\_\_\_\_ **Cost of enforcing the regulation.**

\_\_\_\_\_ **Explanation of any other regulations that this regulation duplicates or overlaps and why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency.**

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

\_\_\_\_\_ **If the regulation establishes a new fee or increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used.**

\_\_\_\_\_ **If Legislative Commission objected to rule based on lack of conformity with statutory authority and legislative intent:**

**Rule revised and resubmitted on: \_\_\_\_\_**

**Decision not to revise rule made on: \_\_\_\_\_**

**Comments: \_\_\_\_\_**

\_\_\_\_\_ **Regulation adopted on: \_\_\_\_\_**

\_\_\_\_\_ **Statement, if any, to interested person explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption. NRS 233B.064(2).**

\_\_\_\_\_ **Copy of regulation, Informational Statement, Form for Filing Administrative Regulations, and Notice of Adoption of Regulation sent to legislative counsel on: \_\_\_\_\_**

\_\_\_\_\_ **Filed with Secretary of State on: \_\_\_\_\_**

\_\_\_\_\_ **Copy bearing Secretary of State's seal filed with State Librarian on:**

\_\_\_\_\_

\_\_\_\_\_ **Regulation effective on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation expires on: (by its own terms or because it is a temporary or emergency regulation)** \_\_\_\_\_

\_\_\_\_\_ **Copy of adopted regulation sent to legislative counsel (temporary regulation) on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation scheduled for review on:** \_\_\_\_\_

**Step 9: Convert temporary regulation to permanent regulation**

\_\_\_\_\_ **Temporary regulations expire on November 1st of the odd-numbered year following the legislative session during which they were adopted. Allow approximately 60 days or to the expiration date to submit the temporary regulation as a permanent one to the legislative counsel.**

\_\_\_\_\_ **Submit temporary rule to legislative counsel (Complete Step 2 )**

\_\_\_\_\_ **Adopt temporary rule as a permanent rule:**

\_\_\_\_\_ **Provide notice of workshop(s), notice of intended action, and hold a public hearing. (Complete steps 3, 4, and 5)**

\_\_\_\_\_ **Informational statement:**

\_\_\_\_\_ **Description of how comment from public and affected businesses was solicited.**

\_\_\_\_\_ **A statement indicating the number of persons who attended each meeting, testified at each meeting, and submitted written statements regarding the proposed regulation.**

\_\_\_\_\_ **Summary of responses from public and affected businesses.**

\_\_\_\_\_ **Explanation of how interested persons may obtain a copy of summary.**

\_\_\_\_\_ **If regulation was adopted without change, summary of reasons for adopting without change.**

\_\_\_\_\_ **Estimated economic effect on public and businesses affected: adverse and beneficial, immediate and long-term.**

\_\_\_\_\_ **Cost of enforcing the regulation.**

\_\_\_\_\_ **Explanation of any other regulations that this regulation duplicates or overlaps and why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, a statement of the name of the federal agency.**

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

\_\_\_\_\_ **If the regulation establishes a new fee or increases an existing fee, a statement indicating the total amount the agency expects to collect and the manner in which the money will be used.**

\_\_\_\_\_ **Regulation adopted on:** \_\_\_\_\_  
*(Prepare Notice of Adoption of Regulation)*

\_\_\_\_\_ **Statement, if any, to interested person explaining principal reasons for and against adopting regulation and reason(s) for overruling the consideration urged against its adoption. NRS 233B.064(2).**

\_\_\_\_\_ **Copy of regulation, Informational Statement, Form for Filing Administrative Regulations, and Notice of Adoption of Regulation sent to legislative counsel on:** \_\_\_\_\_

\_\_\_\_\_ **Filed with Secretary of State on:** \_\_\_\_\_

\_\_\_\_\_ **Copy bearing Secretary of State's seal filed with State Librarian on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation effective on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation expires on: (by its own terms or because it is a temporary or emergency regulation)** \_\_\_\_\_

\_\_\_\_\_ **Copy of adopted regulation sent to legislative counsel (temporary and emergency regulation) on:** \_\_\_\_\_

\_\_\_\_\_ **Regulation scheduled for review on:** \_\_\_\_\_

## NOTICE OF INTENT TO ACT UPON A REGULATION

Notice of Hearing for the .....(Adoption) (Amendment)

(Repeal).... of Regulations of the

.....(Name of Agency).....

The .....(Name of Agency)..... will hold a public hearing at .....(time)..... .....m., on .....(date)..... 20..., at .....(Address of Hearing Room)..... The purpose of the hearing is to receive comments from all interested persons regarding the ...(Adoption) (Amendment) (Repeal).... of regulations that pertain to chapter ...(Number of Chapter) ..... of the Nevada Administrative Code.

The following information is provided pursuant to the requirements of NRS 233B.0603:

(In this space, state:

1. The need for and the purpose of the proposed regulation or amendment.
2. Either the terms or the substance of the regulations to be adopted, amended, or repealed, or a description of the subjects and issues involved.
3. The estimated economic effect of the regulation on the business that it is to regulate and on the public. These must be stated separately and in each case must include:
  - (a) Both adverse and beneficial effects; and
  - (b) Both immediate and long-term effects.
4. The estimated cost to the agency for enforcement of the proposed regulation.
5. A description of and citation to any regulations of other state or local governmental agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping is necessary. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency.
6. If the regulation is required pursuant to federal law, a citation and description of the federal law.
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions.
8. Whether the proposed regulation establishes a new fee or increases an existing fee.)

Persons wishing to comment upon the proposed action of .....(Name of Agency)..... may appear at the scheduled public hearing or may address their comments, data, views, or arguments in written form to .....(Name and Address of Agency)..... Written submissions must be received by the .....(Name of Agency)..... on or before .....(Date)..... If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the .....(Name of Agency).....may proceed immediately to act upon any written submissions.

A copy of this notice and the regulation to be ...(Adopted) (Amended) (Repealed)... will be on file at the State Library, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the notice and the regulation to be ...(Adopted) (Amended) (Repealed)... will be available at .....(Name and Address of each Office of the Agency)..... and in all counties in which an office of the agency is not maintained, at the main public library, for inspection and copying by members of the public during business hours. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations, which is prepared and published monthly by the Legislative Counsel Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies of this notice and the proposed regulation will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary. This does not apply to a public body subject to the Open Meeting Law.

Upon adoption of any regulation, the agency, if requested to do so by an interested person, either before adoption or within 30 days thereafter, will issue a concise statement of the principal reasons for and against its adoption or incorporate therein its reason for overruling the consideration urged against its adoption.

This notice of hearing has been posted at the following locations:

(Include in this space the locations at which the notice was posted pursuant to the provisions of chapters 233B and 241 of Nevada Revised Statutes.)

## Notice of Workshop to Solicit Comments on Proposed Regulation

The .....(Name, Address, and Telephone Number of Agency)..... is proposing the ....(Adoption) (Amendment) (Repeal).... of regulations pertaining to chapter .....(chapter number)..... of Nevada Administrative Code. A workshop has been set for ....(time).... .....m., on ....(date).... 20..., at .....(Address of Meeting Room)..... The purpose of the workshop is to solicit comments from interested persons on the following general topics that may be addressed in the proposed regulations:

(Describe here the general topics to be discussed.)

A copy of all materials relating to the proposal may be obtained at the workshop or by contacting the .....(Name, Address, and Telephone Number of Agency)..... A reasonable fee for copying may be charged.

This Notice of Workshop to Solicit Comments on Proposed Regulation has been sent to all persons on the agency's mailing list for administrative regulations and posted at the following locations:

(Include in this space the locations at which the notice was posted)

Date: \_\_\_\_\_

## NEVADA COUNTY PUBLIC LIBRARIES

Carson City Library  
900 North Roop Street  
Carson City, Nevada 89701

Churchill County Library  
553 South Maine Street  
Fallon, Nevada 89406

Las Vegas Library  
833 Las Vegas Boulevard North  
Las Vegas, Nevada 89101

Douglas County Library  
Post Office Box 337  
1625 Library Lane  
Minden, Nevada 89423

Elko County Library  
720 Court Street  
Elko, Nevada 89801

Goldfield Public Library  
Post Office Box 430  
(Fourth & Crook Street)  
Goldfield, Nevada 89013

Eureka Branch Library  
Post Office Box 293  
10190 Monroe Street  
Eureka, Nevada 89316

Humboldt County Library  
85 East 5<sup>th</sup> Street  
Winnemucca, Nevada 89445

Lincoln County Library  
Post Office Box 330  
93 Main Street  
Pioche, Nevada 89043

Lyon County Library  
20 Nevin Way  
Yerington, Nevada 89447

Mineral County Library  
Post Office Box 1390  
(First & A Street)  
Hawthorne, Nevada 89415

Tonopah Public Library  
Post Office Box 449  
171 Central Street  
Tonopah, Nevada 89049

Pershing County Library  
Post Office Box 781  
1125 Central Avenue  
Lovelock, Nevada 89419

Storey County Library  
Post Office Box 14  
95 South R Street  
Virginia City, Nevada 89440

Washoe County Library  
Post Office Box 2151  
301 South Center  
Reno, Nevada 89505

White Pine County Library  
950 Campton Street  
Ely, Nevada 89301

Battle Mountain Branch Library  
Post Office Box 141  
Battle Mountain, Nevada 89820



SECRETARY OF STATE  
FILING DATA

**Form For Filing  
Administrative Regulations**

FOR EMERGENCY  
REGULATIONS ONLY

Effective date \_\_\_\_\_

Expiration date \_\_\_\_\_

Agency \_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Governor's signature

Classification:    **PROPOSED**        **ADOPTED BY AGENCY**        **EMERGENCY**

**Brief description of action** \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Authority citation other than 233B** \_\_\_\_\_

**Notice date** \_\_\_\_\_

**Date of Adoption by Agency**

**Hearing date** \_\_\_\_\_

\_\_\_\_\_

## **NOTICE OF ADOPTION OF REGULATION**

The ..... (Name of Agency)..... adopted regulations assigned LCB File No. .... that pertain to chapter .....(chapter number)..... of the Nevada Administrative Code on .....(Date)..... A copy of the regulations as adopted is attached hereto.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
ADMINISTRATIVE PROCEDURES ACT, NRS 233B.066  
PETITION 96003  
LCB FILE R-127-95**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) 445A.

**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.**

Petition 96003 (R-127-95) was noticed three (3) times: October 6, October 12, and October 24, 1995 in the Las Vegas Review Journal, the Reno Gazette-Journal newspapers, the Humboldt Sun, and the Elko Daily Free Press as a permanent regulation. Public response focused on the temperature portion of the regulation. The comments dealt with methods of taking water and ambient air temperature, the possible effect of wide swings of temperature upon fish and aquatic species, and the impact of mixing zone provisions of temperature. The comments also focused on the applicability of temperature standards in no flow conditions and the application of temperature standards to ephemeral streams. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission at (702) 687-4670 or by writing to the Commission at 333 West Nye Lane, Room 128, Carson City, Nevada 89710.

**2. The number persons who:**

- |     |  |    |
|-----|--|----|
| (a) | <b>Attended each hearing:</b>  | 36 |
| (b) | <b>Testified at each hearing:</b>  | 7  |
| (c) | <b>Submitted to the agency written comments:</b> Comments were submitted by the U.S. Fish and Wildlife Service, U.S. Environmental Protection Agency, Nevada Mining Association, Commissioner Fred Gifford, Barrick Goldstrike Mine, Independence Mining Company, and the Sierra Club. |    |

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

Comments were solicited from affected businesses by the notices in the newspapers, as outlined in #1, and by direct mail to interested persons subscribing to the Commission's mailing list. Comments from interested businesses included the Nevada Mining Association, Barrick Goldstrike Mine, and Independence Mining Co. The comments focused on opposition to the beneficial use standard for the chemical pollutant sulfate and the applicability of absolute values in water temperature to conditions of no flow in the Humboldt River. Other concerns regarding water temperature focused on limits to the Imlay Segment and the protection of the walleye fish. A copy of the written comments may be obtained by calling the Nevada State Environmental Commission at (702) 687-4670 or by writing to the Commission at 333 West Nye Lane, Room 128, Carson City, Nevada 89710.

**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.**

The permanent regulation was adopted at the State Environmental Commission hearing on November 7, 1995 with changes to proposed amendments to temperature being deferred by the Commission. The petition was adopted without changes to the temperature standards for various reaches of the Humboldt River.

**5. The estimated economic effect of the adopted regulation on the businesses that 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.**

- a. The proposed revisions are expected to have an immediate or long-term beneficial economic effect upon the regulated community.
- b. There is no estimated economic effect on the public, either adverse or beneficial, nor immediate or long-term.

**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 government agencies that the proposed regulation overlaps or duplicates, and a statement explaining why the duplication or overlapping 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 amendments duplicate.

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

Code of Federal Regulations in sections 40 C.F.R. 131.10, 40 C.F.R. 131.11, and 40 C.F.R. 131.12 require the State to designate beneficial uses, to adopt criteria to protect the uses, and to adopt an antidegradation policy. There are no federally promulgated water quality standards for Nevada with the exception of toxic materials contained in 40 C.F.R. 131.36(d)(11), which is not a duplication of proposed action. Therefore, the proposed regulations are in compliance with federal regulations and are not more stringent than federal requirements and regulations.

**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.**

This regulation does not provide or involve a new fee, and hence since no fee is involved, there is not a total amount expected to be collected or used.