



SEPTEMBER 2013

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RESEARCH BRIEF ON

THE *NEVADA* ADMINISTRATIVE CODE: A BRIEF EXPLANATION AND FREQUENTLY ASKED QUESTIONS

Due to the complexities of Nevada law, it is difficult for the Nevada Legislature to anticipate and address every issue in a particular policy area. As a result, the Legislature may set policy and either require or authorize an Executive Branch agency to establish necessary rules/regulations that will implement that policy (rules and regulations are interchangeable terms in this Research Brief). The Nevada Administrative Procedure Act (Chapter 233B of the *Nevada Revised Statutes* [NRS], <http://www.leg.state.nv.us/NRS/NRS-233B.html>) outlines the process Executive Branch agencies use to develop rules/regulations.

It is important to note that pursuant to NRS 233B.039, certain agencies including the Governor, Department of Corrections, Nevada System of Higher Education, Silver State Health Insurance Exchange, State Gaming Control Board, and others are exempt from the rulemaking provisions in Chapter 233B of the NRS, and instead they have authority to write their own regulations. See NRS 233B.039 for a complete list of exempt agencies.

The policies and procedures governing the internal operations of Executive Branch agencies, as approved by the State Board of Examiners, are contained in the *State Administrative Manual* (SAM). Chapter 232 of the NRS sets forth the statutes applicable to additions or amendments to the SAM.

Rulemaking may come about in one of three ways:

- The Legislature may mandate an agency to adopt regulations;
- The agency may exercise discretion to adopt a regulation within its statutory authority; or
- A member of the public may petition the agency to adopt, amend, or repeal a regulation.

There are three types of regulations:

- Permanent regulations adopted in accordance with the Nevada Administrative Procedure Act;
- Temporary regulations adopted in lieu of permanent regulations immediately prior to and during a legislative session because Legislative Counsel Bureau (LCB) staff is focused on drafting legislation; and
- Emergency regulations drafted under certain circumstances that do not require public hearings or other procedural formalities; however, copies of emergency regulations are made available to the public if practicable before filing and before any related hearings.

Only permanent regulations become part of the *Nevada Administrative Code* (NAC). Temporary regulations expire by limitation and emergency regulations are limited to 120 days.

This Research Brief addresses the questions most frequently asked by the public and Executive Branch agencies engaged in rulemaking through either legislative mandate or authorization. A more detailed handbook, *Administrative Rulemaking:*

A Procedural Guide, is available online from the Office of the Attorney General at: <http://ag.nv.gov/uploadedFiles/agnv.gov/Content/Publications/RulemakingManualComplete.pdf>.

WHAT IS THE BASIC RULEMAKING PROCESS?

The process begins with an analysis by the agency of the need for a proposed rule or regulatory change. Once a decision to proceed is made, a workshop is held to solicit comments from interested persons on general topics addressed in the proposed regulation. Prior to any meeting, the agency must submit a notice of a meeting or workshop relating to the adoption of a regulation to the Director of the LCB for posting on the LCB's website. Following a complete analysis of the regulation's impact on stakeholders, including small businesses, the agency then proposes a draft rule and submits it to the LCB.

Once the agency receives the approved or revised draft regulation from the LCB, it must issue a 30-day "notice of intent" to act upon the regulation and hold a public hearing on the draft rule. The workshop and the hearing are subject to Nevada's Open Meeting Law (<http://leg.state.nv.us/nrs/nrs-241.html>).

After considering all comments, the draft rule may be modified as needed (if the meaning of the regulation is changed, an additional hearing is required). The agency is also required to provide an informational statement, which provides a clear and concise explanation of need for the regulation, describes the process undertaken, the estimated economic benefit of the regulation, and an analysis of any impact to other agencies or regulations. The informational statement is submitted to the LCB when the draft rule is finalized.

The Legislative Commission or its Subcommittee to Review Regulations must either affirmatively approve or object to an administrative regulation. Once approved, it is filed with the Secretary of State and codified into the NAC by the LCB. The codification process takes 6 months to 24 months, depending on when the regulation is adopted. If an agency does not adopt a proposed regulation within 2 years, the director of the agency must appear before the Legislative Commission and explain why the proposed regulation has not been adopted.

The *Procedural Guide* from the Office of the Attorney General describes in detail the process, drafting style and guidelines and types of regulations, and it contains necessary forms and checklists. It should be consulted by anyone engaged in administrative rulemaking.

ARE LEGISLATIVE HISTORIES AVAILABLE FOR REGULATIONS?

Legislative histories are compiled only for legislative measures. Additions or changes to the NAC are State agency driven, and the agency keeps associated records.

WHAT RECORDS MUST AN AGENCY KEEP AND HOW LONG?

Records associated with the rulemaking process include agency development records, adoption records, reports and surveys, related correspondence, and other relevant materials. In accordance with the *General Records Retention and Disposition Schedule No. 2000047* (http://nsla.nv.gov/uploadedFiles/nslanvgov/content/Records/State/1_General_Schedule/General%20Schedule.PDF), these records must be retained for a period of six calendar years and then transferred to

the Division of State Library and Archives, Department of Administration.

WHAT IS THE NEVADA REGISTER?

The *State of Nevada Register of Administrative Regulations* is published monthly by the LCB's Legal Division and is available on the Internet at: <http://www.leg.state.nv.us/Register/>.

It contains the agency's request, the proposed and adopted text of the regulations and any revisions, and the notice of intent to act upon the regulation. Once adopted, it also includes the written notice of adoption, the informational statement, and the effective date.

Regulations in the *Register* are numbered in the order received by the LCB. For example, the first regulation received in 2013 would be R001-13. Each *Register* index is cumulative and each regulation is followed by the name of the adopting agency, the NAC chapter or chapters amended, a summary of the regulation, and the *Register* volume and part in which it appears.

With each phase of the rulemaking process, a notation is added in the *Register* to the regulation number. For example, the initial agency draft would be R001-13I, the proposed draft from the LCB would be R001-13P, the adopted regulation would be R001-13A, and so on.

HOW AND WHEN DOES A REGULATION IN THE REGISTER BECOME OFFICIALLY ADDED TO THE NAC?

Permanent regulations are added to the NAC upon approval by the Legislative Commission or its Subcommittee to Review Regulations. The regulation is posted to the NAC on the

LCB's website, and the new or revised regulation is sent to the agency. The chapter will be added to the print edition of the NAC when the NAC is next updated.

Regardless of its inclusion in the printed NAC, a regulation becomes effective upon filing with the Secretary of State unless a different date is specified in the regulation.

WHY AREN'T ALL AGENCY REGULATIONS IN THE NAC?

Temporary and emergency regulations do not become part of the NAC, but temporary and emergency regulations are in the *Register*. Temporary regulations are permitted between August 1 of an even-numbered year and July 1 of the next odd-numbered year. They expire by limitation on November 1 of odd-numbered years.

For a temporary regulation to become permanent, the agency should anticipate the expiration date and submit a permanent regulation under normal procedural guidelines.

Emergency regulations must be endorsed by the Governor, become effective upon filing with the Secretary of State, and are effective for 120 days or less. A regulation may be adopted by this emergency procedure only once.

As previously mentioned, certain agencies are exempt from the rulemaking process outlined in Chapter 233B of the NRS, and their regulations are not contained in the NAC unless the Legislative Commission authorizes their inclusion.

HOW DO I GET COPIES OF PREVIOUS NAC SECTIONS?

The Nevada Supreme Court Law Library maintains copies of previous regulations.

The Law Library is located on the lower level of the Supreme Court Building at 201 South Carson Street in Carson City, and can be reached by telephone at (775) 684-1640 or by e-mailing reference@nvcourts.nv.gov.

IS HELP AVAILABLE FOR AGENCIES IN WRITING REGULATIONS?

When drafting regulations, Executive Branch agencies should work with the Deputy Attorney General or other legal counsel assigned to them. The *Procedural Guide* from the Office of the Attorney General should be consulted throughout the process.

HOW CAN I GET INVOLVED IN THE RULEMAKING PROCESS OR FIND OUT ABOUT PUBLIC MEETINGS?

Anyone interested in a particular regulation is encouraged to contact the agency directly to express their interest and request placement on the agency's mailing list, or visit the LCB's website at: <http://www.leg.state.nv.us/App/Notice/A/> for a complete listing of all administrative regulation notices.

