

**PROPOSED REGULATION OF THE
BOARD OF WILDLIFE COMMISSIONERS**

LCB File No. R198-05

January 12, 2005

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

AUTHORITY: §§1-16, NRS 501.181.

A REGULATION relating to wildlife; authorizing the Board of Wildlife Commissioners to dismiss an appeal with prejudice under certain circumstances; requiring each party to an appeal before the Commission to file certain documents with the Commission; revising the scope of practice and procedure before the Commission; revising the order of procedure for certain hearings conducted by the Commission; authorizing the Commission to deviate from the order of procedure; repealing certain provisions governing default judgments and requests for reconsideration by the Commission; and providing other matters properly relating thereto.

Section 1. Chapter 501 of NAC is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this regulation.

Sec. 2. *“Appellant” means any person who requests a hearing before the Commission pursuant to chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters.*

Sec. 3. *If an appellant fails to appear at a hearing after receiving adequate notice of the hearing and the appellant does not show good cause for the failure to appear at the hearing, the Commission may dismiss the appeal with prejudice. An appeal that is dismissed pursuant to this section may not be reconsidered by the Commission. The dismissal of an appeal pursuant to this section is a final decision for purposes of judicial review.*

Sec. 4. *At least 14 days before the date set for a hearing for an appeal, each party to the appeal must file with the Commission and serve upon all other parties to the appeal:*

1. All documents that the party intends to introduce as evidence at the hearing; and

2. A written statement setting forth:

(a) The name and address of the party;

(b) The reason for the appeal, if the party is the appellant;

(c) A brief statement supporting the position of the party; and

(d) If the party intends to introduce witnesses, a list setting forth the name of each witness together with a brief summary of the proposed testimony of the witness.

Sec. 5. NAC 501.010 is hereby amended to read as follows:

501.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 501.015 to 501.040, inclusive, *and section 2 of this regulation* have the meanings ascribed to them in those sections.

Sec. 6. NAC 501.040 is hereby amended to read as follows:

501.040 “Petitioner” means a person who ~~f:~~

~~—1.— Requests a hearing before the Commission pursuant to NAC 501.140 to 501.190, inclusive; or~~

~~—2.— Submits]~~ *submits* to the Commission a petition requesting the adoption, filing, amendment or repeal of a *permanent* regulation pursuant to *NRS 233B.100 and* NAC 501.195.

Sec. 7. NAC 501.140 is hereby amended to read as follows:

501.140 *The provisions of* NAC 501.140 to 501.190, inclusive, *and sections 3 and 4 of this regulation* apply to ~~[all hearings before the Commission regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506,~~

~~inclusive, of NRS and any regulations adopted pursuant to those chapters.]~~ *any matter that is within the jurisdiction of the Commission.*

Sec. 8. NAC 501.150 is hereby amended to read as follows:

501.150 1. A person *who is aggrieved by a decision of the Department* must *submit a written* request *for* a hearing before the Commission within 30 days after he receives a notice from the Department pursuant to subsection 3 of NRS 233B.127 that his license or permit will be denied, revoked or suspended. Otherwise, his right to the hearing shall be deemed waived. The date of receipt of the notice from the Department that the license or permit will be denied, revoked or suspended shall be deemed to be:

(a) The date that is indicated on the signed certified mail receipt; or

(b) If the person refuses to accept delivery of the notice, 3 days after the date the certified mail has been refused by the person.

2. The hearing must be requested on a form provided by the Department.

3. The ~~hearing will commence no later than 60 days]~~ *Commission will include the hearing on the agenda for the next regularly scheduled meeting of the Commission that is conducted* after the Department receives the request for a hearing , unless the ~~petitioner]~~ *appellant* and Department *agree* otherwise ~~stipulate]~~ in writing.

4. The Department shall mail a notice of hearing that complies with the provisions of NRS 233B.121 not less than 20 days before the date of the hearing. There is a rebuttable presumption that the notice of hearing has been received by ~~a petitioner]~~ *an appellant* 10 days after the date the notice was deposited in the United States mail.

5. Any contention that improper notice was given by the Department shall be deemed waived unless the contention is raised at the hearing.

6. ~~[The]~~ *Except as otherwise provided in NRS 501.1816, the* Department may grant a stay of its decision to deny, revoke or suspend the license or permit pending the hearing before the Commission if the Department determines that:

- (a) There is good cause to stay its decision; and
- (b) A stay will not have a detrimental impact on wildlife.

Sec. 9. NAC 501.155 is hereby amended to read as follows:

501.155 ~~[A]~~ *An appellant or a* petitioner may be represented by an attorney who is licensed to practice law in this State.

Sec. 10. NAC 501.160 is hereby amended to read as follows:

501.160 1. A person appearing before the Commission shall act in a courteous manner that is conducive to the proper functioning of the Commission.

2. The Commission may take any action that it determines is necessary to maintain order during a hearing, including, without limitation:

- (a) Excluding the *appellant or* petitioner or ~~[his]~~ *the* attorney *for the appellant or petitioner* from the hearing;
- (b) Excluding a witness from the hearing; and
- (c) Limiting the taking of testimony and presentation of evidence during the hearing.

Sec. 11. NAC 501.165 is hereby amended to read as follows:

501.165 1. Except as otherwise provided in subsection 2, a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters will be conducted by the Commission as a hearing de novo.

2. At a hearing conducted pursuant to NRS 501.1816, the Commission will:

(a) Allow to be presented only evidence that is in the record regarding the suspension or revocation of the license, permit or privilege that is on file with the Department; and

(b) Consider only allegations of procedural error committed by the Department ~~[.]~~ *that affect the substantive rights of the appellant.*

Sec. 12. NAC 501.170 is hereby amended to read as follows:

501.170 ~~[.]~~ The Commission will limit discovery for a hearing regarding a denial, revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters to evidence that is relevant and admissible pursuant to NAC 501.165.

~~[2.— The petitioner and the Department may request, in writing, relevant information from the other party, including, without limitation:~~

~~—(a) The name and address of each witness;~~

~~—(b) Copies of all documents that will be offered as evidence at the hearing; and~~

~~—(c) A description of any testimony and other evidence that will be offered at the hearing.~~

~~—3.— A party shall not request information pursuant to subsection 2 with the intent to harass the other party or to delay the proceedings.]~~

Sec. 13. NAC 501.175 is hereby amended to read as follows:

501.175 1. ~~[The]~~ *Except as otherwise provided in subsection 2, the* date of a hearing may be continued *once* by ~~[:]~~:

~~—(a) A] a~~ written stipulation from the ~~[petitioner]~~ *appellant* and the ~~[Department; or~~

~~—(b) A ruling by the Commission on a motion to continue made by the petitioner or the Department.~~

~~—2. The Commission will not grant a motion to continue a hearing unless the Commission determines:~~

~~—(a) There is good] Secretary of the Commission.~~

2. The date of a hearing may be continued more than once if the moving party submits a written motion for a continuance to the Commission. The Commission will grant the motion only if:

- (a) Good cause exists to continue the hearing; and*
- (b) A continuance will not prejudice the nonmoving party.*

Sec. 14. NAC 501.185 is hereby amended to read as follows:

501.185 1. ~~[Except as otherwise provided in subsection 2, the]~~ *The* Commission will use the following procedure, in the order set forth in paragraphs (a) to ~~[(j);]~~ *(i)*, inclusive, for a hearing regarding a ~~[denial,]~~ revocation or suspension of a license or permit ordered pursuant to the provisions of ~~[chapters 501 to 506, inclusive, of]~~ NRS *501.1812 to 501.1818, inclusive*, and any regulations adopted pursuant to those ~~[chapters:]~~ *sections:*

(a) The hearing will be called to order by the Chairman of the Commission.

(b) The ~~[parties and their attorneys will enter their appearances on the record.~~

~~—(c) The petition, notice and answer, if any,]~~ *request for a hearing and notice of hearing* will be entered into ~~[evidence.~~

~~—(d)]~~ *the record.*

(c) The Commission ~~[will determine if any of the witnesses that a party has requested be excluded]~~ may, on its own motion or that of a party, exclude witnesses from the hearing . ~~[will be excluded.~~

~~—(e)]~~ *(d) The Commission will consider any:*

- (1) Preliminary motions;
- (2) Stipulations; and
- (3) Proposed orders that the Department and the ~~petitioner~~ *appellant* have agreed to pursuant to a settlement.

~~(e)~~ (e) The Department will present its evidence and then be cross-examined by the ~~petitioner~~ *appellant* and questioned by the Commission.

~~(g) The petitioner~~

(f) *The appellant* will present its evidence and then be cross-examined by the Department and questioned by the Commission.

~~(g)~~ (g) The Department and ~~petitioner~~ *appellant* will present any rebuttal evidence and then be cross-examined by the other party and questioned by the Commission on issues limited to the rebuttal evidence.

~~(h)~~ (h) Closing arguments will be presented by the Department and then by the ~~petitioner~~ *appellant*.

(i) The Commission will deliberate and then render orally its order with separately stated findings of fact and conclusions of law.

~~[2.—The Commission may deviate from the order set forth in subsection 1 and allow or limit questioning to elicit all relevant, nonrepetitive testimony and evidence.~~

~~—3.]~~

↪ The Department has the burden of proof in a hearing regarding a ~~denial~~ revocation or suspension of a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulations adopted pursuant to those chapters.

2. The Commission will use the following procedure, in the order set forth in paragraphs (a) to (e), inclusive, for a hearing regarding a denial of an appellant's application for a license or permit ordered pursuant to the provisions of chapters 501 to 506, inclusive, of NRS and any regulation adopted pursuant to those chapters:

(a) The appellant will present its evidence and then be cross-examined by the Department and questioned by the Commission.

(b) The Department will present its evidence and then be cross-examined by the appellant and questioned by the Commission.

(c) The Department and the appellant will present any rebuttal evidence and then be cross-examined by the other party and questioned by the Commission on issues limited to the rebuttal evidence.

(d) Closing arguments will be presented by the appellant and then by the Department.

(e) The Commission will deliberate and then render orally its order with separately stated findings of fact and conclusions of law.

↪ The appellant has the burden of proof in a hearing specified in this subsection.

3. The Commission may deviate from the order of procedure set forth in subsections 1 and 2 and allow or limit questioning to elicit all relevant, nonrepetitive testimony and evidence.

Sec. 15. NAC 501.195 is hereby amended to read as follows:

501.195 1. A person who wishes to request that the Commission adopt, file, amend or repeal a *permanent* regulation must submit a written petition to the Commission on a form provided by the Department . ~~[or in a format which is substantially similar to that form.]~~ The petition must include:

- (a) The name and mailing address of the petitioner.
 - (b) A statement of the reason for the adoption, filing, amendment or repeal of the *permanent* regulation.
 - (c) The language of the *permanent* regulation to be adopted, filed, amended or repealed or a description of the subjects and issues involved in the *permanent* regulation.
 - (d) An estimate made by the petitioner of the economic effect that the *permanent* regulation to be adopted, filed, amended or repealed will have on the general public and on any business which the *permanent* regulation regulates or will regulate. Those effects must be stated separately and in each case must include:
 - (1) The adverse and beneficial effects; and
 - (2) The immediate and long-term effects.
 - (e) If the adoption, filing or amendment of a *permanent* regulation is requested, an estimate made by the petitioner of the estimated cost to the Department for enforcement of the *permanent* regulation.
 - (f) A statement indicating whether the petitioner is aware of any federal regulations or regulations of other state or local governmental agencies that overlap or duplicate the *permanent* regulation to be adopted, filed, amended or repealed.
 - (g) If the adoption, filing or amendment of a *permanent* regulation is requested, a statement indicating whether the *permanent* regulation establishes a new fee or increases an existing fee.
 - (h) The signature of the petitioner and the date the petition was signed.
2. A petition requesting the adoption, filing, amendment or repeal of a *permanent* regulation shall be deemed to be submitted to the Commission on the date of the next regularly scheduled meeting of the Commission that occurs after the petition is received by the Commission.

3. Within 30 days after a petition is submitted, the Commission will:

(a) Notify the petitioner in writing of its decision to deny the petition, including the reasons for the denial; or

(b) Initiate the regulation-making procedures set forth in ~~§~~

~~—(1) Chapter]~~ *chapter* 233B of NRS, if the petition requests the adoption, filing, amendment or repeal of a *permanent* regulation, except a *permanent* regulation relating to the classification of wildlife or the designation of seasons for hunting, fishing or trapping by the Commission pursuant to the provisions of title 45 of NRS . ~~§; or~~

~~—(2) Title 45 of NRS, if the petition requests the adoption, amendment or repeal of a regulation relating to the classification of wildlife or the designation of seasons for hunting, fishing or trapping by the Commission pursuant to the provisions of title 45 of NRS.]~~

Sec. 16. NAC 501.180 is hereby repealed.

TEXT OF REPEALED SECTION

501.180 Default judgment; reconsideration. (NRS 501.181)

1. The failure of a party to appear at a hearing will result in a default judgment in favor of the party who appeared at the hearing.

2. The party against whom a default judgment was entered pursuant to this section may file a written request for reconsideration with the Commission not later than 10 days after the date of the hearing.

3. The written request must set forth the reasons by which the party alleges there is good cause for a new hearing.

4. The Commission may withdraw its default judgment and schedule a new hearing.