

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY  
NRS 233B.066  
LCB FILE R080-11**

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 76.

1) Public comments were solicited at the December 16, 2011 public workshop to solicit comments on proposed regulations and the December 23, 2011 hearing for the adoption of regulations. Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulations were sent via fax and email to persons known to have an interest in the subject of annual State Business License. These documents were also made available on the Secretary of State website, [www.NVSOS.gov](http://www.NVSOS.gov) and posted at the following locations:

- The Capitol Building, 101 North Carson Street, Carson City, Nevada 89701
- The State Library, 100 North Stewart Street, Carson City, Nevada 89701
- The Secretary of State-Reno, 500 Damonte Ranch Pkwy, Suite 657-A, Reno, Nevada 89521
- The Grant Sawyer Building, 555 East Washington Avenue, Las Vegas, Nevada 89101
- Nevada State Legislative Building, 401 South Carson Street, Carson City, Nevada 89701

The minutes of the December 16, 2011 public workshop to solicit comments on proposed regulations and the December 23, 2011 hearing for the adoption of regulations are attached hereto and contain a summary of the brief discussion held regarding the proposed amendments. A copy of the workshop and hearing minutes may be obtained from the office of the Secretary of State, 101 N. Carson Street, Suite 3, Carson City, Nevada 89701, 775-684-5720 or via email sent to [scotta@sos.nv.gov](mailto:scotta@sos.nv.gov).

2) The number persons who:

- (a) **Attended the December 16, 2011 public workshop: 3**
- (b) **Testified at the December 16, 2011 public workshop: 1**
- (c) **Submitted to the agency written comments: 4**
- (d) **Attended the December 23, 2011 hearing for the adoption of regulations: 5**

3) Comments were solicited from affected businesses in the same manner as they were solicited from the public.

4) The permanent regulation was adopted on December 23, 2011 and included changes to sections 2, 8 and 9 in consideration of public comment offered at the December 16, 2011 public workshop to solicit comments on proposed regulations and those received after the workshop and submitted to the office by 5:00 p.m. on December 21, 2011.

5) There is no estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public.

6) There is no additional cost to the agency for enforcement of this regulation.

7) There are no other state or government agency regulations that the proposed amendments duplicate.

8) The proposed regulation does not include provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

9) The proposed regulation does not involve a new fee or increase an existing fee.

10) The proposed regulation is not likely to impose a direct and significant economic burden upon a small business or directly restrict the formation, operation or expansion of a small business.

**ROSS MILLER**  
*Secretary of State*

STATE OF NEVADA

**SCOTT W. ANDERSON**  
*Deputy Secretary  
for Commercial Recordings*

**NICOLE J. LAMBOLEY**  
*Chief Deputy Secretary of State*



**SCOTT F. GILLES**  
*Deputy Secretary for Elections*

**ROBERT E. WALSH**  
*Deputy Secretary  
for Southern Nevada*

**RYAN M. HIGH**  
*Deputy Secretary  
for Operations*

OFFICE OF THE  
SECRETARY OF STATE

**MEETING MINUTES**  
**Public Workshop for**  
**LCB File Nos. R-068-11, R069-11, R071-11, R073-11, & R080-11**  
**Regulations Relating to Commercial Recordings and the annual State Business License**

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Date of meeting: December 16, 2011 public workshop to solicit comments on proposed regulations R068-11, R069 -11, R071-11, R073-11 and R080-11.

Location(s): Nevada State Legislative Building, 401 South Carson Street, Room 2125, Carson City, Nevada and live videoconference - Room 4412E of the Grant Sawyer Building, 555 East Washington Avenue, Suite 4400, Las Vegas, Nevada

Staff in attendance: Nicole Lamboley, Chief Deputy Secretary of State; Scott Anderson, Deputy Secretary of State for Commercial Recordings; Delaina Marzullo, Administrative Assistant 4 (Las Vegas CR Supervisor)); Kevin Benson, Deputy Attorney General; Jeff Landerfelt, Management Analyst 4, Jason Hataway, Administrative Assistant 3 (Carson City CR)

Members of the public in attendance: 3 Total: 2 in Carson City, Matthew Taylor and Nancy Gaches, representing the Nevada Registered Agents' Association; and 1 in Las Vegas, Dorothy Bunker representing Acorn Corporate Services.

The workshop was called to order at 8:00 a.m. by Scott Anderson.

Mr. Anderson began the workshop and stated that today we are conducting a workshop on the following proposed regulations:

- R068-11: Provisions governing electronic filing of records with the Secretary of State; reasons for rejection of an electronically filed document
- R069-11: Addition of limited-liability limited partnership to those entities covered by the "distinguishable on the record" name standard; addition of the word "organization" to the list of words that are considered part of the entity name and not an entity ending
- R071-11: Provisions relating to registered agent listing of those willing to serve as registered agent; publication and updating of registered agent listing; provisions for exclusion or removal of registered agent from listing

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- R073-11: Determination as to when a document is in care, custody or control of the Secretary of State; receipt of electronic submissions; circumstances for refusal to accept record
- R080-11: State Business License exemption; home-based business, governmental, motion picture and insurance exemptions

He explained the purpose of this workshop is to solicit comment and information for consideration when adopting regulation.

He stated how the workshop would be conducted: that we would present each proposed regulation separately and at the end of each presentation, ask for public comment. Public comment would be limited to 3 minutes if necessary and should be related to the proposed regulation being discussed at that time. Public comment would be closed before moving to the next regulation. A copy of the regulations in their entirety was provided to workshop attendees and the draft as produced by Legislative Counsel Bureau was submitted into the record.

Mr. Anderson further indicated that for some of the regulations there are changes to these regulations from those posted for the meeting. The proposed regulations and revisions are available on the back table.

It was requested that anyone offering public comment, sign in on the sign in sheet located at the table and then called to speak, giving your full name and spelling of your last name. It was also noted that written comments would be accepted for the record.

Mr. Anderson indicated that he had received and will be asking that written comments to be given to Mr. Hataway after speaking.

Mr. Anderson opened the workshop on the first regulation; R068-11.

**R068-11** is a regulation relating to electronic filings of records; adopting provisions governing the electronic filing of records with the Secretary of State; and providing other matters properly relating thereto. This regulation will make permanent temporary regulations adopted in 2005 but never made permanent, but have become a matter of policy and procedure.

While the regulation appears lengthy, it is because the same provisions are repeated for all Commercial Recording related chapters in Title 7 of the Nevada Revised Statutes.

The regulation authorizes the Secretary of State to develop or approve electronic processes for the filing of records and authorizes a person to use said processes. It also provides for the rejection of electronic filings if the requirements or fees provided in statute are not present.

Mr. Anderson asked for public comment.

Matthew Taylor, representing the Nevada Registered Agents Association submitted written comments for consideration from an NRAA member who is an attorney. He stated the association was neutral on this regulation but wanted to highlight the concerns of his member. Mr. Anderson

asked if this was an anonymous submission and Mr. Taylor responded that he could provide the name of the member if we desired to get additional information or ask questions. Mr. Anderson stated that the written comments would be entered into the record for consideration.

Hearing no additional comments the workshop on R068-11 was closed.

Mr. Anderson opened the workshop on R069-11.

**R069-11** is a regulation relating to business entities; revising provisions governing the determination of whether a proposed name of a business is distinguishable from the name of an existing business entity; and providing for other matters properly relating thereto.

This regulation simply adds the entity endings of Limited Liability Limited Partnership, L.L.L.P. and LLLP that are not considered part of a proposed entity names, and adds the distinguishable name guidelines to Chapters 87A and 88 of NAC. It also adds the word "organization" to the list of words that are not considered entity name endings.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Hearing no additional comments the workshop on R069-11 was closed.

Next, the workshop on R071-11 was opened.

**R071-11** is a regulation relating to registered agents; adopting provisions governing the process by which a natural person or corporation may register a willingness to serve as the registered agent of an entity; adopting provisions governing the publication and updating of the list of natural persons and (that) have registered their willingness to serve as a registered agent of an entity; Authorizing the Secretary of State to charge a fee to cover the cost of providing a printed version of the list; and providing other matters properly related thereto.

This regulation includes provisions of temporary regulations adopted in 2005, but were never made permanent, but have become policy and procedure. It provides the process by which a registered agent may register its willingness to serve as a registered agent or to amend or withdraw its registration. It also provides guidance to the Secretary of State as to the presentation of the list and allows the Secretary of State to refuse listing, or to remove from the listing, any registered agent not in good-standing with the Secretary of State, that has not corrected the deficiency.

The submission from the NRAA member was noted for the record that comments on this regulation were provided.

Any comments from Las Vegas?

Hearing no additional comments the workshop on R071-11 was closed.

Next, the workshop on R073-11 was opened.

**R073-11** Is a regulation relating to records; establishing provisions governing the determination of whether a record has been timely filed with the Secretary of State; adopting provisions governing the imposition of penalties for the failure to timely file a record with the Secretary of State; establishing provisions governing the circumstances under which the Secretary of State will refuse to accept a record filed with him or her; and providing other matters properly relating thereto.

This contains the provisions of the Care, Custody and Control temporary regulation adopted in 2005 that was made not made permanent. Its purpose, to determine when a document is considered received by the Secretary of State, in proper order for filing and for the purposes of determining if late fees or other penalties apply.

There is an amendment to the version provided by LCB as R073-11. The provisions of Section 2 will be replaced with the language that has been provided here today. The LCB language as posted was incorrect in that an electronic filing with a due date will be accepted if received before midnight on the day it is due, regardless of when the due date falls. The Secretary of State's electronic services are generally available 24/7/365 days a year. If the due date falls on a weekend or legal holiday pursuant to 236.015, the Secretary of State will accept non-electronic filings as meeting the due date as long as the filing meets the statutory requirements. This is the current process being put into regulation.

The submission from the NRAA member was noted for the record that comments on this regulation were provided.

Matthew Taylor representing the Nevada Registered Agents' Association commented that the NRAA has no official position on this regulation; that the association is neutral.

Hearing no additional comments the workshop on R073-11 was closed.

Next, the workshop on R080-11 was opened.

**R080-11** is a regulation relating to business licenses; adopting provisions relating to state business licenses issued by the Secretary of State; and providing other matters properly relating thereto.

This regulation clarifies what businesses are eligible for the home-based business deduction and the criteria for the exemption including that no portion of the residence be held open to the public and that no real property be owned, leased, rented or licensed in furtherance of the business and clarifies the 66 2/3 of the average annual wage provisions.

The regulation also clarifies the term "governmental agency" as it relates to the governmental entity exemption, contains provisions relating to requirements for the motion picture exemption and relating to requirements for the insurance company exemption.

The regulation also clarifies pass through provisions of revenue reported on IRS forms 1040 C and F and to partners and LLC members.

There is an amendment to section 9, subsection 2 of R080-11. The draft from the Legislative Counsel Bureau included language that could require the submission of confidential information to the office of the Secretary of State. The amended language requires that the net earnings reported on the federal tax return be reported, rather than the submission of a copy of the federal income tax return to evidence the net earnings by a person operating a business from their home.

Matthew Taylor, representing the Nevada Registered Agents' Association spoke in opposition to the proposed regulation on behalf of the NRAA. He also provided written comments similar to his public comment.

Mr. Taylor commented that Taxation had taken a similar view, or similar regulations, however they believe it was outside the authority granted to the Department of Taxation to define or narrow exemption.

The submission from the NRAA member was noted for the record that comments on this regulation were provided.

Hearing no additional comments the workshop on R068-11 was closed.

Mr. Anderson thanked those who participated in this workshop. He reminded the audience to submit any written comments you might have with you today before you leave and that the Office of the Secretary of State would be accepting additional written comments until close of business (5:00 pm) on Wednesday December 21, 2011. He noted the adoption hearing for these regulations will be held at 11:30 am, on December 23, 2011.

Mr. Anderson asked for additional public comment.

Hearing none, the regulation workshop concluded at approximately 8:25am.

R080-11 Amendment  
December 16, 2011  
Public workshop

Secretary of State proposes to amend Section 9 subsection 2 with the following:

Section 9

2. For the purposes of this section, the Secretary of State, on a form prescribed by the office, will request the natural person to provide annually the net earnings reported on the federal income tax return filed with the Internal Revenue Service for a business which a person operates from his home for the preceding year as satisfactory evidence of the net earnings of the person from the business.

Reason: the language in the draft regulation could require submission of confidential information to the office of the Secretary of State.

On behalf of the Nevada Registered Agents' Association, I wanted to express our concerns with regard to Proposed Regulation R080-11.

Our primary concerns are with regard to the definition of "Person who operates a business from his home" and the section entitled "Home-based businesses: Applicability of exemption from licensing; requirement to obtain license."

First, we believe that the definition of "Person who operates a business from his home" is contrary to the statute and, therefore, exceeds the authority granted by the statute.

In particular, nothing in the statute requires a "Person who operates a business from his home" to be a natural person. "Person" is defined generally in the Nevada Revised Statutes to include business entities. In addition, NRS 76.020(2) makes a clear distinction between "persons" and "natural persons."

As you know, Assembly Bill 78 proposed to change NRS 76.020 during the 2011 Legislative Session by limiting a "Person who operates a business from his home" to only natural persons. That change was not enacted. Attempting to change the statute by regulation, when the proposed amendment was not enacted by the Legislature is a clear violation of Separation of Powers.

Moreover, changing the definition of "business" changes the computational base for a fee. Pursuant to Article 4, Sections 18 and 35 of the Nevada Constitution, such a change requires either a two-thirds vote of each house of the Legislature and approval by the Governor, or a vote of the people. It cannot be accomplished by regulation.

The addition of a requirement that no part of the personal residence be held open to the general public for use in furtherance of the business is not consistent with the statute. NRS 76.020 simply requires that the business be operated from a person's home. It does not place other restrictions on how that home may be used. If a home is being used in violation of local zoning or planning restrictions, that issue can and should be addressed by the local government.

Nothing in the statute prohibits a home-based business from owning, leasing, renting or licensing other real property in connection with the business. Adding such a prohibition in the regulation would mean that a person could not even rent a storage unit to keep inventory or supplies for the business even though the business is in fact operated from the person's home.

Where the Legislature wanted to impose additional requirements, it did so. For example, it placed limitations on the net earnings of a "home-based" business. None of the additional requirements imposed by the draft regulation are in the statute and the Secretary does not have authority to add limitations to the statute.

Second, with regard to the section entitled "Home-based businesses: Applicability of exemption from licensing; requirement to obtain license," we start with the fact that the entire premise of the section is incorrect. A home-based business as defined in NRS 76.020(2)(c) is not granted an "exemption" from the business license requirement. Rather, it is not a "business" to which the business license requirement applies in the first place.

NRS 76.020 defines "business." That definition excludes home-based and other businesses. They are not defined as businesses in the first place and then granted an exemption from the business license requirement.

Respectfully,

*Matthew A. Taylor*

President

Nevada Registered Agents Association, Inc.

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[mtaylor@americanmq.com](mailto:mtaylor@americanmq.com)

To: Matthew Taylor – mtaylor@americanmg.com  
From: NRAA Member  
Re: 2011 Proposed SoS regulations  
Legislative delegation and the scope of administrative rulemaking power  
Date: December 9, 2011

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The power of administrative agencies of the State of Nevada to promulgate regulations is bestowed by Nevada's Administrative Procedures Act in NRS 233B. Indeed, despite their institutional inertia, all regulations are limited to statutory authority by Articles 3 and 5 of the Nevada Constitution. Evaluation of the Secretary of State's proposed regulations start with a reading of their authorizing statutes for, as stated in the 1975 *Cashman* decision, "[a]n administrative body may within prescribed limits and when authorized by the law-making power make rules and regulations calculated to carry into effect the expressed legislative intention."

It is canonical in administrative law that courts defer to the presumed expertise of administrative agencies when there is statutory ambiguity and the agency has been delegated authority over the matter. (*Chevron/Mead* deference.) Where there has not been a delegation, the *Skidmore* rule is followed. Overreaching regulations should never be enacted, but if they are they are only enforceable to the extent of the *Skidmore* factors (1) the thoroughness of the agency's investigation; (2) the validity of its reasoning; (3) the consistency of its interpretation over time; and (4) whether the regulation otherwise carries the indications of persuasiveness.

The business license statute, NRS 76, and the registered agent statute, NRS 77, both make explicit delegations to the Secretary of State to enact regulations "necessary" to carryout the provisions of the respective statute. That language should and must be taken quite literally. Elsewhere (specifically NRS 225.440) the SoS is given powers both "necessary" and "advisable," thus the SoS's rulemaking authority here must be limited to what is explicitly "necessary" to achieve the legislature's intent. Thus, if the SoS attempts to take power to itself to discipline registered agents in a way that exceeds the requirement of NRS 77.430(2) to make application through District Court would fail *Chevron*, the Nevada APA, Article 5 of the Nevada Constitution, and the Fifth Amendment of the U.S. Constitution.

- R067-11
  - I reject the construction of the "acceptance" of service of process. The statutory language is "receiving" service. The construction of acceptance is a fiction of process servers and no RA is required to perform any affirmative act to "accept" any document. Said another way, an RA's duties are not to a plaintiff but to its customer. Reassertion of the correct idea of *receiving* service of process casts the idea of office hours into their correct light. When 77.430(1) allows rulemaking for other laws that governs the "conduct of registered agents" they cannot use NRS 14 as a rationale because that does not legislate the duties of RAs.
  - All enforcement action whereby the SoS purports to exercise power against a the customers of an RA are ultra vires. They are not reasonably necessary to NRS 77.430. The placement of an entity into default is already defined (such as in NRS 86.246) and the SoS is not entitled to create a new basis for triggering default.

- NRS 78.090 is an example of authority given to the AG. This action for failure to appoint an effective RA is already the purview of the AG and cannot be usurped by the SoS
  - It is not clear that the idea that an entity not in good standing may not act as RA has any basis in statute.
  - Given the fall backs in NRS 14, no additional qualification of RAs based on hours of operation is “necessary” or has basis in the statute. Such attempts to create an untailed and unnecessary regulatory structure is contrary to the scheme created by the legislature.
  - Sec 11 is shocking overreach in defining who must be present at an RA office and whether a mail forwarder may be an RA. In light of the provisions of NRS 14 describing the procedure for the service of process, these rules are illegal by virtue of their being so clearly unnecessary. They override rather than “construct” legislation.
  - The advertising restriction are not related to the authority of the SoS. These powers are giving to the Commissioner of Consumer Affairs and the Attorney General. SoS is usurping their authority and creating a parallel enforcement track without the due process protections of AG evidentiary standards. NRS 598.0967
  - The SoS *does* have power to prevent fraudulent filings. It’s regulations must be reasonably targeted to preventing untrue or improperly authorized filings.
  - As has been observed, as drafted the regs would prevent current RA from providing documents to clients; they may also be forced to engage in the practice of law to send renewals.
- R068-11
    - NRS 719.340 provides that agencies may provide a mechanism for receiving electronic signatures and seems to be the more relevant authority than the provisions listed.
    - Nevertheless, sec. 7 provides that the SoS “may” accept a document without providing anything that gives regulatees something to rely on. If filers follow the procedure the filing “must” or “shall” or “will” be accepted. If a regulation reserves absolute discretion to the agency the action is arbitrary and capricious on its face.
    - Sec. 8 is farcical-- it is a regulation granting an agency the power to regulate. If the Agency develops rules, they are subject to APA rulemaking law, if they are not rules, then no authority is required to develop them.
    - Sec 11. The use of “viruses” is sloppy drafting. I don’t think the term is as inclusive as the drafter thinks it is.
  - R069-11-- no comment

- R070-11

- Significantly, this regulation does not cite NRS 76 as authority. It only cites the articles section of the entity statutes. Thus attempts to regulate based on business license, expiration or default, or annual lists is illegal. The fact that the email address is “blcompliance” makes the power grab transparent.
- The subpoena power is a carefully guarded power in light of the 4th and 5th Amendments. The SoS has no subpoena or investigative power and cannot acquire this power ipse dixit.
- Sec 13 purports to allow the SoS the power to investigate and “demand.” These are well outside the statutes’ reach. The Statutes provide that when the SoS is “advised” that there is a violation, it “may” refer the violation to the AG. This should be narrowly construed because the subpoena power raises so many constitutional issues.
- There is an issue in Sec 13(6) with the dissemination of the results of the SoS (illegal) “findings”: NRS 239 probably restricts the ability of SoS to share confidential information with third parties. This sloppiness emphasizes the danger of allowing a power grab. Who is going to complain about someone doing business without following legal forms? If it is a competitor, media, or disgruntled customer, then what cause of action arises once the SoS discloses irregularities outside of provisions such as NRS 86.246?

- R071-11

- Sec 12: It is not clear that the idea that an entity not in good standing may not act as RA has any basis in statute.
- Sec 19: the prohibition of “foreign” characters is sloppy drafting. Foreign means outside of Nevada right? Instead of being xenophobic, the regulation should be tailored to a legitimate interest like the SoS’s ability to publish the names, so “roman type” is the usual description.

- R073-11

- Regulatees have a right to due process which is violated when regulators assert absolute discretion. Sec 6 and Sec 12, for example, provide only that the SoS “may” accept a document properly and timely sent but not received at the SoS. This rule is chimera unless it prescribes a treatment or states a basis for the SoS’s discretion.

- R074-11--no comment

- R080-11

- Administrative rules have no force when they contradict or overreach legislative intent expressed in statute. The *Chevron* rule deals with *construction* and NRS 233B.038 provides that regulations “effectuate” or even “interpret” legislation. The current statute distinguishes between natural persons and persons, and the SoS is not entitled

so reassign those labels. The restriction to individual or husband-and-wife teams makes things simple for the SoS, but administrative convenience is not a basis for wielding the powers of the state especially where statute constructs an alternate scheme.

- There is a history in Nevada for passthru and holding companies being exempt from legislative goal of licensing businesses (because they are not engaged in any business activity). The statute preserves this opportunity. The SoS simply lacks law-making authority to expand the reach of statute.
- Restrictions on ownership of other real property have no basis in law and are illegal. It is an overreach and not reasonably calculated to effectuate any intention expressed in the statute.
- The idea that the SoS has investigatory and evaluative power such that it makes any sense to say that a person might establish facts “to the reasonable satisfaction of the Secretary of State” is alien to the statutory scheme. A person makes a statement under penalty of perjury whereupon the issue of investigation is one for the AG.
- It betrays ignorance of sole proprietorships let alone other “persons” to whom the statute applies to assume that a business’ “net earnings” appear on any *business’* federal income tax return. Not every business must file a return and net earnings for state law purposes may not appear as an easily copied number in one box. An S-corp’s net earnings, for example is probably the number at the top of the fourth page but it represents the net of various items of income that may or may not be consistent with the net earnings calculation for a partnership.

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**OFFICE OF THE  
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**MEETING MINUTES**  
**Public Hearing for the Adoption of**  
**LCB File Nos. R-068-11, R069-11, R071-11, R073-11, & R080-11**  
**Regulations Relating to Commercial Recordings and the annual State Business License**

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Date of Hearing: December 23, 2011 public hearing for the adoption of proposed regulations R068-11, R069-11, R071-11, R073-11 and R080-11.

Location(s): Nevada State Legislative Building, 401 South Carson Street, Room 2135, Carson City, Nevada and live videoconference - Room 4412 of the Grant Sawyer Building, 555 East Washington Avenue, Suite 4400, Las Vegas, Nevada

Staff in attendance: Nicole Lamboley, Chief Deputy Secretary of State; Scott Anderson, Deputy Secretary of State for Commercial Recordings; Delaina Marzullo, Administrative Assistant 4 (Las Vegas CR Supervisor); Kevin Benson, Deputy Attorney General; Jason Hataway, Administrative Assistant 3 (Carson City CR)

Members of the public in attendance: 5 Total: 4 in Carson City, Matthew Taylor, representing the Nevada Registered Agents' Association; Nancy Gaches, representing Paracorp; Shawnda Purdy, representing Registered Agent, Inc.; Trevor Rowley, Representing Corporate Service Center; and 1 in Las Vegas, Dorothy Bunker representing Acorn Corporate Services.

The hearing was opened at approximately 11:50 a.m. by Scott Anderson.

Began the hearing and explained the purpose of this hearing is to solicit comment and information for consideration when adopting the following proposed regulations:

Mr. Anderson began the hearing and stated that the purpose of the hearing we are conducting today is for the adoption of the following proposed regulations:

- **R068-11:** Provisions governing electronic filing of records with the Secretary of State; reasons for rejection of an electronically filed document
- **R069-11:** Addition of limited-liability limited partnership to those entities covered by the "distinguishable on the record" name standard; addition of the word "organization" to the list of words that are considered part of the entity name and not an entity ending

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- R071-11: Provisions relating to registered agent listing of those willing to serve as registered agent; publication and updating of registered agent listing; provisions for exclusion or removal of registered agent from listing
- R073-11: Determination as to when a document is in care, custody or control of the Secretary of State; receipt of electronic submissions; circumstances for refusal to accept record
- R080-11: State Business License exemption; home-based business, governmental, motion picture and insurance exemptions

Mr. Anderson explained that we had taken into consideration the comments made at the December 16, 2011 workshop.

He stated how the hearing would be conducted: that we would present each proposed regulation separately and at the end of each presentation, ask for public comment. Public comment would be limited to 3 minutes if necessary and should be related to the proposed regulation being discussed at that time. Public comment would be closed before moving to the next regulation. A copy of the regulations in their entirety was provided to hearing attendees and the draft as produced by Legislative Counsel Bureau and as appropriate, as amended, was submitted into the record.

Mr. Anderson further indicated that the proposed regulations as amended are available on the back table.

It was requested that anyone offering public comment, sign in on the sign in sheet located at the table and then called to speak, giving your full name and spelling of your last name. It was also noted that written comments would be accepted for the record.

Mr. Anderson asked that written comments to be given to Mr. Hataway after speaking.

Mr. Anderson opened the hearing on the first regulation; R068-11.

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While the regulation appears lengthy, it is because the same provisions are repeated for all Commercial Recording related chapters in Title 7 of the Nevada Revised Statutes.

The regulation authorizes the Secretary of State to develop or approve electronic processes for the filing of records and authorizes a person to use said processes. It also provides for the rejection of electronic filings if the requirements or fees provided in statute are not present.

Mr. Anderson explained that the comments submitted at or subsequent to the workshop were reviewed and found to be related to the agency version of the regulations and were mooted by the LCB version of the regulation, which is the version that was workshopped and that we are hearing today.

Mr. Anderson asked for public comment in Carson City and in Las Vegas.

Hearing no public comment, the hearing on R068-11 was closed and the regulation adopted.

Mr. Anderson opened the hearing on R069-11.

**R069-11** is a regulation relating to business entities; revising provisions governing the determination of whether a proposed name of a business is distinguishable from the name of an existing business entity; and providing for other matters properly relating thereto.

This regulation simply adds the entity endings of Limited Liability Limited Partnership, L.L.L.P. and LLLP that are not considered part of a proposed entity names, and adds the distinguishable name guidelines to Chapters 87A and 88 of NAC. It also adds the word "organization" to the list of words that are not considered entity name endings.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Are there any comments from Las Vegas?

Hearing no comments, the hearing on R069-11 was closed and regulation adopted.

Next, the hearing on R071-11 was opened.

**R071-11** is a regulation relating to registered agents; adopting provisions governing the process by which a natural person or corporation may register a willingness to serve as the registered agent of an entity; adopting provisions governing the publication and updating of the list of natural persons and (that) have registered their willingness to serve as a registered agent of an entity; Authorizing the Secretary of State to charge a fee to cover the cost of providing a printed version of the list; and providing other matters properly related thereto.

This regulation provides the process by which a registered agent may register its willingness to serve as a registered agent or to amend or withdraw its registration. It also provides guidance to the Secretary of State as to the presentation of the list and allows the Secretary of State to refuse listing, or to remove from the listing, any registered agent not in good-standing with the Secretary of State, that has not corrected the deficiency.

Mr. Anderson explained that the comments submitted at or subsequent to the workshop have been reviewed and found to be related to the agency version of the regulations and were mooted by the LCB version of the regulation, which is the version that was workshopped and that we are hearing today.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Any comments from Las Vegas?

Hearing no further comments, the hearing on R071-11 was closed and the regulation adopted.

Next, the hearing on R073-11 was opened.

**R073-11** is a regulation relating to records; establishing provisions governing the determination of whether a record has been timely filed with the Secretary of State; adopting provisions governing the imposition of penalties for the failure to timely file a record with the Secretary of State; establishing provisions governing the circumstances under which the Secretary of State will refuse to accept a record filed with him or her; and providing other matters properly relating thereto.

Its purpose, to determine when a document is considered received by the Secretary of State, in proper order for filing and for the purposes of determining if late fees or other penalties apply.

There was an amendment offered at the December 16, 2011 workshop to the version provided by LCB as R073-11. The provisions of Section 2 were replaced with the language that has been provided here today in amended R073-11. The original LCB language as workshopped was incorrect in that an electronic filing with a due date will be accepted if received before midnight on the day it is due, regardless of when the due date falls. This is the current process being put into regulation.

Mr. Anderson explained that the comments submitted at or subsequent to the workshop have been reviewed and found to be related to the agency version of the regulations and motted by the LCB version of the regulation, which is the version that was workshopped and that we are hearing today.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Are there any comments from Las Vegas?

Hearing no further comments, the hearing on R073-11 was closed and the regulation adopted.

Next, the hearing on R080-11 was opened.

**R080-11** is a regulation relating to business licenses; adopting provisions relating to state business licenses issued by the Secretary of State; and providing other matters properly relating thereto.

This regulation clarifies what businesses are eligible for the home-based business deduction and the criteria for the exemption including that no portion of the residence be held open to the public and that no real property be owned, leased, rented or licensed in furtherance of the business and clarifies the 66 2/3 of the average annual wage provisions.

The regulation also clarifies the term "governmental agency" as it relates to the governmental entity exemption, contains provisions relating to requirements for the motion picture exemption and relating to requirements for the insurance company exemption.

The regulation also clarifies pass through provisions of revenue reported on IRS forms 1040 C and F and to partners and LLC members.

There was an amendment offered to section 9, subsection 2 of R080-11 during the December 16, 2011 workshop. The draft from the Legislative Counsel Bureau included language that could require the submission of confidential information to the office of the Secretary of State. The amended

language requires that the net earnings reported on the federal tax return be reported, rather than the submission of a copy of the federal income tax return to evidence the net earnings by a person operating a business from their home. The amended version of R080-11 has been provided to you here today.

The comments submitted at the workshop or received in our office by 5:00 p.m. on December 21, 2011 have been considered by the Secretary of State. The office also met with Matt Taylor of the Registered Agents Association on December 21, 2011. We have made changes to the R080-11 as a result of those comments and that meeting.

Section 5(2)(a) has been changed to clarify the no part of the personal residence be open to the public for use in furtherance of the business that would require the posting of a business license in accordance with municipal/and or county ordinances, with 5(2)(b), relating to real property be owned, leased, rented or licensed in furtherance of the business being stricken in its entirety.

Additionally, we have changed the years in Section 8 subs 1 and 2 from 2010 to 2011.

I would like to note that the motion picture exemption applies only to those entities that are registered with the film office pursuant to NRS Chapter 231.

Is there any public comment relating to any section of this regulation or to the regulation as a whole?

Matthew Taylor of the Nevada Registered Agents' Association testified that his main concern was Section 5(2), as defining person as a natural person; that this interpretation was incorrect and contrary to the definition in other proposed regulations. Stated that the regulation violated the notice of intent to act; that there would be significant economic impact on due to the increase in fees to \$200. Wanted to know if there was an economic study of the impact on small business. Also feels that there is an increase in fees as entities that were exempt will now have to pay the business license fees. That the regulation changes the computation of the fee and that is for the legislature to increase.

There were no more comments from Carson City?

Are there any comments from Las Vegas?

Hearing no additional comments the hearing on R080-11 was closed and the regulation adopted.

Mr. Anderson asked for additional public comment.

Mr. Anderson thanked those who participated in this hearing. He reminded the audience to submit any written comments you might have with you today before you leave.

The hearing was concluded at approximately 12:10 pm.