

LCB File No. R198-05

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

**NOTICE OF INTENT TO ACT UPON A REGULATION
Notice of Hearing for The (Adoption/Amendment/Repeal) of Regulations of The
Nevada Board of Wildlife Commissioners**

The Board of Wildlife Commissioners will hold a public hearing on February 3-4, 2006 at _____ p.m., at the Nevada Department of Wildlife, Clark County Government Center, 500 S. Grand Central Parkway, Las Vegas, 89155. The purpose of the hearing is to receive comments from all interested persons regarding the adoption of regulation CGR 339 (LCB File No. R198-05) pertaining to Chapter 501 of the Nevada Administrative Code.

1. The need for and purpose of the proposed regulation: (Description of regulation)

NAC 501.140 through 501.195, Practice and Procedure before the Board of Wildlife Commissioners, requires review and updating according to NRS 233B.050 1(d). The proposed rules of practice adds new language to define “appellant”; dismisses a case with prejudice for failing to appear at a hearing without good cause; and requires an individual to submit a pre-hearing statement when appealing a decision. The regulation revises the definition of “petitioner”; clarifies the term “procedural error” in a hearing; clarifies continuances for hearings; clarifies the procedure for hearings; and clarifies the petition process for permanent regulations. The proposed regulation repeals 501.180 for default judgment and reconsideration.

2. Text of the proposed regulation:

Please see attached.

3A. The estimated economic effect of the regulation on the business which it is to regulate:

- (a) Adverse effect - N/A
- (b) Beneficial effect – N/A
- (c) Immediate effect – N/A
- (d) Long-term effect – N/A

3B. The estimated economic effect of the regulation on the public which it is to regulate:

- (a) Adverse effect – N/A
- (b) Beneficial effect – N/A
- (c) Immediate effect – N/A
- (d) Long-term effect – N/A

4. Estimated cost to the Department of Wildlife for enforcement of the proposed regulation:
- None.
5. A description of and citation to any regulations of other state or local government agencies which the proposed regulation overlaps or duplicates, N/A The duplication or overlapping is necessary because N/A. If the proposed regulation overlaps or duplicates a federal regulation, the notice must include the name of the regulating federal agency: N/A.
6. If the regulation is required pursuant to federal law, a citation and description of the federal law
- N/A
7. If the regulation includes provisions which are more stringent than a federal regulation that regulates the same activity, a summary of such provisions:
- N/A
8. The proposed regulation establishes a new fee or increases an existing fee: X No ___ Yes

Persons wishing to comment upon the proposed action of the Board of Wildlife Commissioners may appear at the scheduled public hearing or may address their comments, data, views or arguments, in written form, to the Secretary, Board of Wildlife Commissioners, 1100 Valley Road, Reno, Nevada 89512. Written submissions must be received by the Secretary, Board of Wildlife Commissioners, at least five days before the scheduled public hearing. If no person who is directly affected by the proposed action appears to request time to make an oral presentation, the Board of Wildlife Commissioners may proceed immediately to act upon any written submissions.

A copy of this notice and the proposed regulation will be on file at the State Library and Archives, 100 Stewart Street, Carson City, Nevada, for inspection by members of the public during business hours. Additional copies of the regulations to be adopted will be available for inspection and may be copied at the following locations:

Nevada Division of Wildlife
1100 Valley Road
Reno, Nevada
(775) 688-1500

Western Region
380 W. "B" Street
Fallon, NV 89406
(775) 423-3171

Eastern Region
60 Youth Center Road
Elko, NV 89801
(775) 777-2300

Southern Region
4747 Vegas Drive
Las Vegas, NV 89108
(702) 486-5127

The regulations will be available for inspection at all county main public libraries. This notice and the text of the proposed regulation are also available in the State of Nevada Register of Administrative Regulations are prepared and published monthly by the Legislative Council Bureau pursuant to NRS 233B.0653 and on the Internet at <http://www.leg.state.nv.us>. Copies will also be mailed to members of the public upon request. A reasonable fee may be charged for copies if it is deemed necessary.

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.

This notice of hearing has been posted at the above locations.

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

COMMISSION GENERAL REGULATION 339

Authority: NRS 233B.050, 501.181

Notice of Intent:

Workshop Date:

Adoption Date:

Explanation: The proposed regulation adds new sections to define “appellant”; dismisses a case with prejudice for failing to appear at a hearing without good cause; and requires an individual to submit a pre-hearing statement when appealing a decision. Revises the definition of “petitioner”; clarifies the Commission’s authority for hearings; clarifies the term “procedural error” in a hearing; clarifies continuances for hearings; clarifies the procedure for hearings; and clarifies the petition process for permanent regulations. The proposed regulation repeals 501.180 for default judgment and reconsideration.

Note: Matter in *Italics* is new; matter in brackets is to be omitted.

Section 1. Chapter 501 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 through 5 inclusive of this regulation.

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

Sec. 3. *If an appellant requesting a hearing fails to appear after due notice has been given and good cause is not shown for the failure to appear, the Commission may dismiss the case with prejudice. Dismissal with prejudice means that the dismissal is a final adjudication of the matter, and that it may not be re-filed at a later time.*

Sec. 4. *(Evidence exchange and pre-hearing statement for a hearing)*

1. *Within the times prescribed in subsection 3, all parties shall:*

a. File with the Commission and serve upon all other parties all documents to be introduced as evidence at the hearing;

2. *File a written pre-hearing statement which includes:*

a. Name and address of the appellant.

b. Reason license or permit was denied, revoked or suspended.

c. Brief statement supporting the position of the appellant.

d. A list of witnesses with a brief summary of proposed testimony.

3. *The materials required under subsection 1 and 2 must be filed by the Department and the appellant at least 14 days before the scheduled hearing.*

Sec. 5. NAC 501.040 is hereby amended to read as follows:

501.040. "Petitioner" means a person who:

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

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

Sec. 6. NAC 501.140 is hereby amended to read as follows:

501.140. NAC 501.140 to 501.190, inclusive, 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 within the jurisdiction of the Commission.*

Sec. 7. NAC 501.150 is hereby amended to read as follows:

501.150. 1. A person *aggrieved by a decision of the Department* must request a hearing *in writing* before the Commission within 30 days after ~~[he receives]~~ *receiving* 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]~~ *be placed on the agenda of the next regularly scheduled commission meeting* 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]~~ *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 (4), 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. 8. 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 *which affects the substantive rights of the appellant.*

Sec. 9. NAC 501.170 is hereby amended to read as follows:

501.170. ~~{1.}~~ 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. 10. NAC 501.175 is hereby amended to read as follows:

501.175. 1. The date of a hearing may be continued *once* by ~~{:~~

~~—{(a) A} a~~ written stipulation from the ~~{petitioner}~~ *appellant* and the ~~{Department}~~ *the Secretary to the Commission* ~~{; 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;} Continuances beyond the first must be requested by motion in writing to the Commission and will be granted only if:~~

(a) There is good cause to continue the hearing; and

(b) A continuance will not prejudice the nonmoving party.

Sec. 11. NAC 501.180 is hereby repealed.

Sec. 12. 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), 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 and any regulations adopted pursuant to those chapters;} regarding demerits in NRS 501.1812 to 501.1818, inclusive, and any regulations adopted pursuant to those 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,} request for hearing~~ and notice ~~{and answer},~~ if any, will be entered into ~~{evidence} the record.~~

~~{(d)} The Commission {will determine if any of the witnesses that a party has requested be excluded from the hearing will be excluded.}~~ *may exclude witnesses of its own accord or upon motion of a party.*

- (e) 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.
- (f) The Department will present its evidence and then be cross-examined by the ~~[petitioner]~~ *appellant* and questioned by the Commission.
- (g) The ~~[petitioner]~~ *appellant* will present its evidence and then be cross-examined by the Department and questioned by the Commission.
- (h) 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.
- (i) Closing arguments will be presented by the Department and then by the ~~[petitioner]~~ *appellant*.

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

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

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:]~~ *When the appellant's application for a license or permit has been denied:*

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 appellant and the Department 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 regarding a denial of a license or permit.

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.]~~

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

Sec. 13. 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 regulation.
 - (c) The language of the regulation to be adopted, filed, amended or repealed or a description of the subjects and issues involved in the regulation.
 - (d) An estimate made by the petitioner of the economic effect that the regulation to be adopted, filed, amended or repealed will have on the general public and on any business which the 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 regulation is requested, an estimate made by the petitioner of the estimated cost to the Department for enforcement of the 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 regulation to be adopted, filed, amended or repealed.
 - (g) If the adoption, filing or amendment of a regulation is requested, a statement indicating whether the 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 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 233B of NRS, if the petition requests the adoption, filing, amendment or repeal of a *permanent* regulation, except 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 ~~}; 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].~~

TEXT OF REPEALED SECTION

501.180 Default judgment; reconsideration.

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.