

Administrative Rulemaking for the Electronic Health Information Advisory Group

Office of Attorney General CLE

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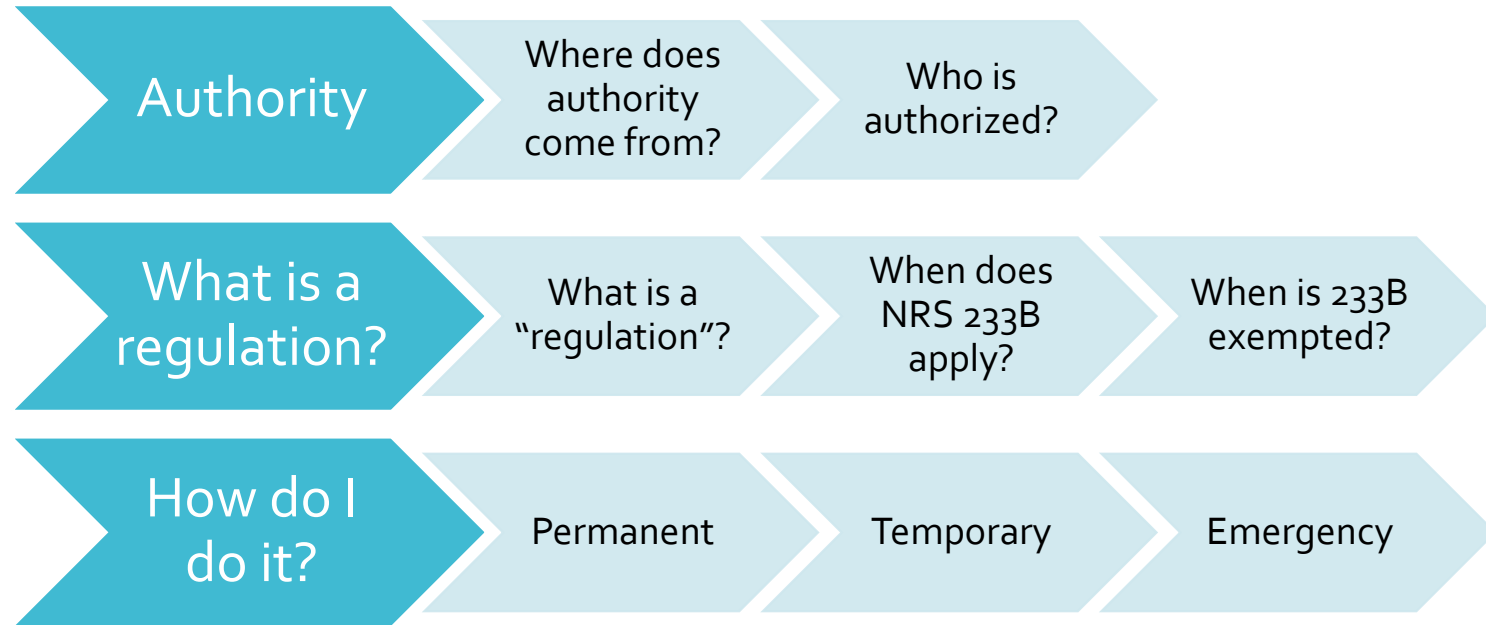
AOG Trainings

- All trainings available on:
https://ag.nv.gov/Hot_Topics/Training_Materials/
- Includes slides and training videos

The screenshot displays the website for the Nevada Attorney General, Aaron D. Ford. The header includes the state logo, the text "NV.gov Nevada Attorney General Aaron D. Ford", and navigation links for "State Agencies", "State Jobs", and "ADA Assistance". A secondary navigation bar contains "Home", "About", "AG Topics", "Complaints & FAQs", "Grants", "Jobs", "News", "NVPAC", and "Contact". The main content area is titled "Boards and Commissions Training Materials" and features a sub-section for "2023 Boards and Commissions Training" with a list of links: "2023 Boards and Commissions Training Notice", "Ethics Law Basics - Powerpoint", "Nevada Commission on Ethics Quick Reference Guide", "Administrative Hearings Procedure", "Admin Rulemaking 2023", "State Contracting Policies and Procedures 2023", "Public Records NPRRA Training Slides 2023", and "Nevada's Open Meeting Law 2023 Boards and Commissions Training". Below this is a "Training Videos" section with links for "State Contracting Basics", "Legislative Auditing", "State Contracts", "Open Meeting Law - 2023", "Nevada Public Records Act", "Ethics Law", "Administrative Hearings", and "Administrative Rule Making".

Road Map:

Overview of administrative rulemaking under NRS Chapter 233B



A Few of My Favorite Things

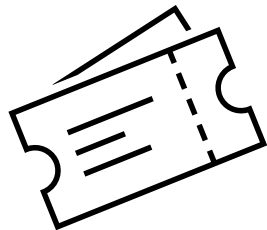
Resources



- AGO Administrative Rulemaking Manual, Tenth Edition (2023)
<https://ag.nv.gov/Publications/Manuals/>
- State of Nevada Register of Administrative Regulations
<https://www.leg.state.nv.us/register/>
- Legislative Council's Preface to the NRS
<https://www.leg.state.nv.us/Division/Research/Documents/LegislativeCounselsPreface.pdf>
- *Killebrew v. State of Nevada*, 139 Nev. Adv. Op. 43 (2023)
https://nvcourts.gov/supreme/decisions/advance_opinions

Authority

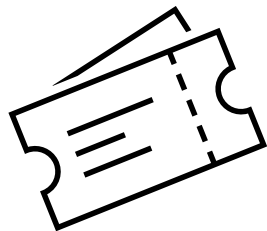
Ticket to Ride



- An agency must be specifically authorized to pass regulations
- The enabling statute will set forth the agency's scope of authority relating to regulations

What is the authorizing statute for EHIAG?

Ticket to ADVISE!



- Assembly Bill 7 (2023) and NRS 439.589 – to ADVISE
- Assembly Bill 7 (2023), Section 2.7(1):
 - “. . . The Director of the Department shall convene an advisory group ***to advise*** the Director of the Department in the adoption of regulations pursuant to NRS 439.589, as amended by section 1.08 of this act.”
- NRS 439.589 authorizes the Director to adopt regulations: “The Director shall by regulation...”
- Assembly Bill 7 (2023), Section 1.08 sets forth what those regulations should include.
 - See this section for specific charges

What is a “regulation”?

Let's start with the basics.

- The Legislature passes laws (“statutes”), which are codified in the Nevada Revised Statutes (NRS).
- Regulations (also referred to as rules) are created by the Executive Branch agencies, boards and commissions, and explain how that body intends on carrying out or administering the statutes.
- Regulations are codified into the Nevada Administrative Code (NAC), and carry with them the “force of law and must be enforced by all peace officers.” *See NRS 233B.040.*
- NRS Chapter 233B, passed by the Legislature, sets forth the process for state agencies to create regulations.

What is a “regulation”?

NRS 233B.038 “Regulation” defined.


1. “Regulation” means:

(a) An agency rule, standard, directive or statement of general applicability which effectuates or interprets law or policy, or describes the organization, procedure or practice requirements of any agency;

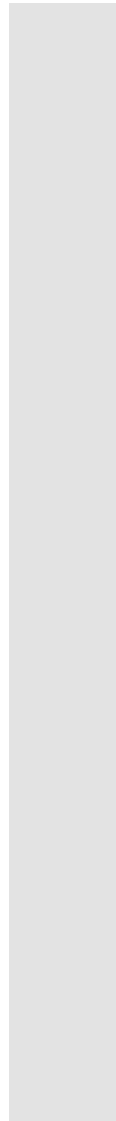
(b) A proposed regulation;

(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.



“General Applicability”

- Applies to the public in general or to all licensees.
 - Contains a mandatory requirement or standard that the agency will use.
 - Affects private rights or procedures available to the public.
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Permanent vs.
Temporary:
What day is it??

Permanent Regs

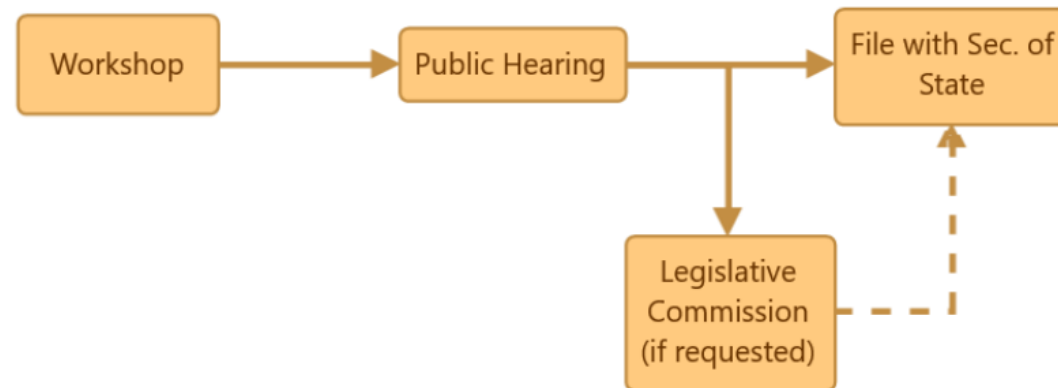
(Must submit between July 2 of an odd-numbered year and June 30 the following even-numbered year)



**Order of Workshop and LCB Review can be reversed, based on agency discretion

Temporary Regs

(May submit from August 1 of an even-numbered year to July 1 the following odd-numbered year. Valid through Nov. 1 of the odd-numbered year)



Permanent Regs

*pages 7-9 AGO Administrative
Rule Making Manual*

- Conduct survey of impact on small business
- Draft Small Business Impact Statement (NRS 233B.0609) and post at least 15 days before public workshop is held
- Post Notice of Workshop at least 15 days before workshop is held.
- Hold Workshop (comply with Open Meeting Law)
- Send agency draft to LCB
 - Email to regulations@lcb.state.nv.us
 - This is the trigger that officially starts the rulemaking. NRS 233B.060
 - Regulation will be assigned an R#
- Post Notice of Intent to Act upon Regulation 30 days prior to public hearing
- Hold Public Hearing (comply with Open Meeting Law)
- Submit to LCB: agency approved regulations, an informational statement, the Form for Filing Administrative Regulations, and Notice of Adoption of Regulation
- Approval by Legislative Commission. If approved, LCB will file automatically with Secretary of State

Temporary Regs

*pages 7-9 AGO Administrative
Rule Making Manual*

- Conduct survey of impact on small business
- Draft Small Business Impact Statement (NRS 233B.0609) and post at least 15 days before public workshop is held
- Post Notice of Workshop at least 15 days before workshop is held.
- Hold Workshop (comply with Open Meeting Law)
- Post Notice of Intent to Act upon Regulation 30 days prior to public hearing
- Hold Public Hearing (comply with Open Meeting Law)
- No Legislative Commission, unless requested by a Legislator.
- File with Secretary of State, no sooner than 35 days after the date the temporary regulation was adopted.
- Within 10 days after filing with the Secretary of State, deliver stamped copy to the State Library, Archives and Public Records Administrator.
- Within 10 days after filing with the Secretary of State, deliver stamped copy with Joint Interim Standing Committee on Health and Human Services if agency is a licensing board and regulation is regarding issuance or renewal of licenses, permits, or certificates.
- Expires on November 1 of the odd year, permanent regulation must be adopted to continue.

Small Business Impact Statements

NRS 233B.0608

"Show your work!"



- **Required!**
 - Agency must make a concerted effort to determine whether the regulation is likely to “[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).
- **Small business defined**
 - A business conducted for profit which employs fewer than 150 full-time or part-time employees.” NRS 233B.0382
- The agency must **prepare a statement** identifying the method used by the agency to determine small business impact. NRS 233B.0608(3).
- SBIS must contain information as outlined in NRS 233B.0609. See *Appendix H of AGO Rulemaking Manual*

Legislative Commission

Who are they?

What do they review?



- The body that supervises LCB, and consists of 12 legislators, six from each house.
- **Final approval:**
 - Permanent regulation does not become effective until the Commission or Subcommittee approves the regulation and the LCB files the regulation with the Secretary of State. NRS 233B.0675.
 - **Legislator may request to review temporary regulations. NRS 233B.0633.
- May object to regulation on one of the following grounds (NRS 233B.067(5)):
 - In the case of a regulation purportedly required by federal law, the regulation is not required by federal law;
 - The regulation does not conform to statutory authority;
 - The regulation does not carry out legislative intent; or
 - The agency did not provide a satisfactory explanation for the need for the regulation or the informational statement is insufficient or incomplete.
- If there is an objection, the agency must revise the regulation and return it to the LCB within 60 days.

Emergency Regs

- Valid for 120 days only (no extensions)



- What constitutes an “emergency”?
 - ***“If an agency determines that an emergency exists, it shall submit to the Governor a written statement of the emergency which sets forth the reasons for the determination. If the Governor endorses the statement of the emergency by written endorsement at the end of the full text of the statement of emergency on the original copy of a proposed regulation, the regulation may be adopted and become effective immediately upon its being filed in the Office of the Secretary of State. . .”*** NRS 233B.0618



Update: A.B. 219 (2023)



- Section 3 of AB 219 (2023) amends NRS 241.023 to include the following language:

4. Notwithstanding the provisions of subsections 1, 2 and 3, a public body may not hold a meeting to consider a contested case, as defined in NRS 233B.032 or a regulation as defined in NRS 233B.038 by means of a remote technology system unless there is a physical location for the meeting where members of the general public are permitted to attend and participate.



Questions?