

**ADOPTED REGULATION OF
THE STATE BOARD OF FIRE SERVICES**

LCB File No. R124-13

Effective June 26, 2015

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

AUTHORITY: §§1-3, 24, 25, 27-30 and 33-36, NRS 477.030; §§4-23, 31 and 32, NRS 233B.050 and 477.030; §26, NRS 477.030 and 477.240.

A REGULATION relating to fire protection; establishing procedures for the conduct of administrative hearings by the State Fire Marshal Division of the Department of Public Safety and appeals therefrom; establishing procedures for the issuance of administrative citations and orders for administrative fines and corrective actions; establishing procedures for review of actions by the Division; establishing procedures for requesting declaratory orders and advisory opinions from the Division; revising provisions relating to grounds for disciplinary action by the State Fire Marshal and the State Board of Fire Services; revising procedures relating to investigations and hearings thereon conducted by the State Fire Marshal and investigators of the Division; providing for the imposition of administrative fines; and providing other matters properly relating thereto.

Legislative Counsel's Digest

Existing law authorizes the State Fire Marshal or the State Board of Fire Services to issue administrative citations and impose administrative fines for violations of chapter 477 of NRS and any regulations of the State Fire Marshal. (NRS 477.240) **Sections 24-32** of this regulation establish: (1) procedures for the issuance of administrative citations and orders for corrective action; and (2) certain administrative fines for violations of certain provisions of chapter 477 of NRS and chapter 477 of NAC.

Existing law requires the Board to hear appeals of orders, decisions or determinations made by the State Fire Marshal pursuant to his or her statutory authority. (NRS 477.080) **Sections 34 and 35** of this regulation revise provisions relating to grounds for disciplinary actions and procedures for conducting investigations and hearings to incorporate the appellate role of the Board. **Section 34** also revises the grounds for disciplinary actions as they relate to certain acts of dishonesty, malpractice or incompetence, violations of regulations that constitute gross negligence or reckless disregard for public safety, and refusal to cooperate in an investigation.

Sections 5-23 of this regulation establish certain procedures for the conduct of administrative hearings.

Section 1. Chapter 477 of NAC is hereby amended by adding thereto the provisions set forth as sections 2 to 32, inclusive, of this regulation.

Sec. 2. *“Board” means the State Board of Fire Services.*

Sec. 3. *“Division” and “State Fire Marshal Division” mean the State Fire Marshal Division of the Department of Public Safety.*

Sec. 4. *“Person” means:*

- 1. A natural person.*
- 2. Any form of business or social organization and any other nongovernmental legal entity, including, without limitation, a corporation, partnership, sole proprietorship, association, trust or unincorporated organization.*
- 3. A government, a political subdivision of a government, or an agency or instrumentality of a government or of a political subdivision of a government.*

Sec. 5. *As used in NAC 477.315 and 477.320 and sections 5 to 23, inclusive, of this regulation, unless the context otherwise requires, the words and terms defined in sections 6, 7 and 8 of this regulation have the meanings ascribed to them in those sections.*

Sec. 6. *“Hearing officer” means the State Fire Marshal or any person designated by the State Fire Marshal to conduct a hearing.*

Sec. 7. *“Party” means the petitioner or the Division.*

Sec. 8. *“Petitioner” means a person who requests a hearing.*

Sec. 9. *NAC 477.315, 477.320 and sections 5 to 23, inclusive, of this regulation provide procedures for any hearing authorized by statute to be conducted by the Division.*

Sec. 10. *1. Appearances and representation of parties must be as follows:*

(a) A party is entitled to appear in person or be represented by his or her attorney.

(b) One of the partners may appear for a partnership.

(c) A corporate officer or an authorized regular employee of the corporation may appear for a corporation.

(d) An authorized officer, agent or employee of a municipal corporation may appear for the municipal corporation.

(e) A bona fide officer or an authorized officer or employee of an association may appear for the association.

2. An attorney appearing as counsel in any proceedings must be an attorney at law, admitted to practice and in good standing before the highest court of any state. If the attorney is not admitted and entitled to practice before the Supreme Court of Nevada, he or she must be associated with an attorney licensed in Nevada in a manner consistent with the procedure established for such attorneys to appear as counsel in the courts of this State.

Sec. 11. Unless otherwise required by NAC 477.315, 477.320 and sections 5 to 23, inclusive, of this regulation, formal written pleadings are not required, but a party may file with the hearing officer written points and authorities supporting his or her position.

Sec. 12. 1. All correspondence regarding a hearing must be addressed to the Office of the State Fire Marshal Division at 107 Jacobsen Way, Carson City, Nevada 89701.

2. All documents shall be deemed served on:

(a) The State Fire Marshal when received by the Office at the address in subsection 1;

(b) A petitioner when they are mailed to the petitioner at the address specified in the request for a hearing or, if one is not specified, to his or her last known address as shown on the records of the Division; and

(c) The State Fire Marshal when received by the legal office of the Division in the matter of an appeal of a decision by a hearing officer to a district court of this State.

3. A petitioner may inspect, before the hearing, all documents which may be considered by the hearing officer as part of the case presented by the Division. The petitioner may have a copy made of a document originating from the Division upon payment of a fee to reimburse the Division for the cost of providing the copy.

Sec. 13. *1. A party may request a change of the date for the hearing. If the hearing officer grants a postponement of the hearing, a new date will be set which is not more than 30 days after the date scheduled for the first hearing except for good cause.*

2. Except for good cause, the request for a postponement of the hearing must:

(a) Be in writing;

(b) State the reason for the postponement; and

(c) Be received by the hearing officer not later than 5 days before the scheduled hearing.

Sec. 14. *1. Where the State Fire Marshal has served the petitioner with a notice of the time and place of the hearing and neither the petitioner nor the petitioner's attorney appears and that failure to attend is without good cause, the failure to attend constitutes a default.*

2. A default taken pursuant to subsection 1 will have the effect of a finding of guilt and result in the imposition of administrative penalties as determined by the State Fire Marshal or the hearing officer.

3. The State Fire Marshal or the hearing officer may conduct a hearing in the absence of the petitioner at the time a default is taken to establish findings of fact or for other purposes, including, without limitation, to assess appropriate penalties, punitive action and other administrative actions.

4. If the failure to appear was for good cause, the party may, within 10 business days, make a new request for a hearing. The State Fire Marshal or the hearing officer will determine whether the failure to appear was for good cause and, if so, grant a new hearing.

Sec. 15. *1. A prehearing conference may be held, upon the motion of the hearing officer or upon the motion of any party, to formulate or simplify the issues, obtain admissions of fact and of documents which will avoid unnecessary proof, arrange for the exchange of proposed exhibits or prepared expert testimony, limit the number of witnesses, and consider any other matters which may expedite orderly conduct and disposition of the proceedings or a settlement of the matter.*

2. Notice of the prehearing conference will be served on each party at least 7 days before the date set for the conference.

3. The action taken at the conference and the agreements made there by the parties will be made a part of the record and must be approved by the parties. When approved, the action controls the course of subsequent proceedings, unless otherwise stipulated by each party with the consent of the hearing officer.

Sec. 16. *Every hearing will be conducted before a hearing officer and the oral proceedings recorded by equipment for recording sound. The record will be retained for a period of 90 days after the date of the decision. A certified copy of the taped record will be made available to a party upon written request to the State Fire Marshal. The requesting party shall pay the cost of producing the copy.*

Sec. 17. *If any person behaves in such a manner as to interfere with the orderly conduct of the hearing, the hearing officer will warn the person to cease the improper behavior. The*

warning will be part of the record. If the improper behavior continues or resumes, the hearing officer will exclude that person from the hearing.

Sec. 18. *Notwithstanding any specific statute to the contrary, with regard to any hearing required to be conducted by the Division pursuant to this chapter:*

1. The testimony of any party or witness may be taken by telephone, videoconference or other electronic means; and

2. The hearing may be conducted at any location so long as the hearing officer allows each party and witness to testify by telephone, videoconference or other electronic means.

Sec. 19. *1. In all hearings, unless otherwise ordered by the hearing officer, the Division will present its evidence first and has the right of rebuttal.*

2. When an objection is made to the admissibility of evidence, the evidence will be received subject to a ruling by the hearing officer.

3. The affidavit of any person may be admitted into evidence. All parties have the right to present evidence to rebut the contents of any affidavit.

4. Witnesses may be questioned by the hearing officer. The hearing may be recessed by the hearing officer when necessary.

5. The hearing officer will adjourn the hearing for the submittal of further evidence or to hear further testimony when justice would not be served otherwise, and will adjourn the hearing at the request of any party for good cause shown, but for not more than 30 days after the date scheduled for the first hearing, except for cause.

Sec. 20. *1. Any witness appearing on behalf of the Division or testifying on behalf of the Division, except a party or an officer or employee of this State testifying during his or her*

regular hours for work, is entitled to receive the same fees and expenses as are provided for witnesses in NRS 50.225.

2. A party other than the Division requesting the appearance of a witness shall pay the fees and expenses of the witness as are provided for witnesses in NRS 50.225.

Sec. 21. The State Fire Marshal may consolidate two or more proceedings in one hearing when it appears that the issues are substantially the same and the rights of the parties will not be prejudiced by the consolidation.

Sec. 22. 1. Briefs which have been ordered by the hearing officer must be filed within the time allowed by the hearing officer and must be accompanied by an acknowledgment or affidavit showing service of the brief on the other parties.

2. Oral argument may be allowed in support of written briefs or presentation of the case.

Sec. 23. 1. If a petition for judicial review of the decision has not been filed, upon written application by a party within 20 days after service of a copy of the decision, a rehearing may be ordered upon such terms and conditions as the hearing officer considers just and proper. The application will not be granted except upon a showing that:

(a) A party was not properly served with a notice to appear; or

(b) There is additional evidence which is material and good cause existed for the failure to present that evidence at the hearing.

2. The application must be supported by an affidavit of the party or his or her counsel showing cause for failing to appear or failing to present the evidence at the hearing.

Sec. 24. A written administrative citation issued pursuant to NRS 477.240 may be served by personal service on the person named in the administrative citation, or a designated

representative thereof, or by certified mail to the address of record of the person and must include, to the extent applicable:

- 1. The name and last known business or residential address of the person;*
- 2. A numbered identification of the person, if applicable;*
- 3. The date on which the citation is issued;*
- 4. The number of the citation;*
- 5. A list of the sections of this chapter or any applicable chapter of NRS which the person is alleged to have violated and a description of the alleged violation;*
- 6. Corrective actions, if any, ordered against the person;*
- 7. Administrative fines, if any, to be assessed against the person;*
- 8. The reimbursement costs, if any, which the person is ordered to pay to cover the costs of any investigation;*
- 9. The date by which the person must complete any corrective actions ordered;*
- 10. The date by which the person must pay any administrative fines or reimbursement of investigative costs;*
- 11. A description of the manner in which the person may contest the citation, including, without limitation, the period during which the person may contest the citation and the consequences of failing to contest the citation timely;*
- 12. The signature of the State Fire Marshal or his or her designee or the Chair of the Board; and*
- 13. Any other information required by the State Fire Marshal or the Board.*

Sec. 25. A written administrative citation issued pursuant to NRS 477.240 may be withdrawn:

1. *By the Board at any time.*

2. *By the State Fire Marshal:*

(a) *Before the citation is deemed a final order of the Board pursuant to NRS 477.245; or*

(b) *If the cited person contests the citation, before the commencement of the hearing on the contest of the citation.*

Sec. 26. 1. *If the State Fire Marshal or his or her designee or the Board issues an administrative citation pursuant to NRS 477.240 which includes an administrative fine, each such fine assessed by the State Fire Marshal or his or her designee or the Board must:*

(a) *Specify the violation for which the person is being cited; and*

(b) *Be based on the number of occurrences in which the person has been found to have committed the same violation within the most recent 24-month period preceding the last occurrence.*

2. *In addition to the requirements set forth in subsection 1, if an administrative fine is assessed:*

(a) *Against a person who holds, or is required to hold, a certificate of registration pursuant to this chapter and chapter 477 of NRS, subject to the provisions of subsection 3, the fine must be in an amount which is not less than the amount specified for a first offense or more than the amount specified for a third or subsequent offense, as follows:*

	<i>First</i>	<i>Second</i>	<i>Third or</i>
<i>Violation</i>	<i>Offense</i>	<i>Offense</i>	<i>Subsequent</i>
			<i>Offense</i>
<i>NRS 477.223</i>	<i>\$55</i>	<i>\$250</i>	<i>\$500</i>

<i>Violation</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third or Subsequent Offense</i>
<i>NRS 477.224</i>	<i>100</i>	<i>500</i>	<i>1,000</i>
<i>Any section of chapter 477 of NRS not otherwise specified</i>	<i>100</i>	<i>5,000</i>	<i>50,000</i>
<i>Subsections 1 to 7, inclusive, of NAC 477.300</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>Subsection 8 of NAC 477.300</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>Subsection 9 of NAC 477.300</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>Subsection 10 or 11 of NAC 477.300</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.313</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>Subsection 1 of NAC 477.315</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>Subsection 2 of NAC 477.315</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.405</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.420</i>	<i>1,000</i>	<i>5,000</i>	<i>50,000</i>
<i>NAC 477.422</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.425</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.470</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.483</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.606</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.620</i>	<i>100</i>	<i>500</i>	<i>1,000</i>
<i>NAC 477.622</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477. 624</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>

<i>Violation</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third or Subsequent Offense</i>
<i>NAC 477.626</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.631</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.633</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.646</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.651</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.710</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.720</i>	<i>20,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.730</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.770</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.780</i>	<i>1,000</i>	<i>5,000</i>	<i>50,000</i>
<i>NAC 477.810</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.850</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>Any section of chapter 477 of NAC not otherwise specified</i>	<i>100</i>	<i>5,000</i>	<i>50,000</i>

(b) Against a person who is licensed, or is required to be licensed, as a licensed company pursuant to this chapter and chapter 477 of NRS, subject to the provisions of subsection 3, the fine must be in an amount which is not less than the amount specified for a first offense or more than the amount specified for a third or subsequent offense, as follows:

<i>Violation</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third or Subsequent Offense</i>
<i>NRS 477.223</i>	<i>\$55</i>	<i>\$250</i>	<i>\$500</i>
<i>NRS 477.224</i>	<i>100</i>	<i>500</i>	<i>1,000</i>
<i>Any section of chapter 477 of NRS not otherwise specified</i>	<i>100</i>	<i>5,000</i>	<i>50,000</i>
<i>Subsections 1 to 7, inclusive, of NAC 477.300</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>Subsections 8 to 11, inclusive, of NAC 477.300</i>	<i>25,000</i>	<i>40,000</i>	<i>50,000</i>
<i>NAC 477.313</i>	<i>30,000</i>	<i>40,000</i>	<i>50,000</i>
<i>Subsection 1 of NAC 477.315</i>	<i>40,000</i>	<i>45,000</i>	<i>50,000</i>
<i>Subsection 2 of NAC 477.315</i>	<i>30,000</i>	<i>40,000</i>	<i>50,000</i>
<i>NAC 477.405</i>	<i>10,000</i>	<i>25,000</i>	<i>50,000</i>
<i>NAC 477.420</i>	<i>1,000</i>	<i>5,000</i>	<i>50,000</i>
<i>NAC 477.422</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.425</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.470</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.483</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.606</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.620</i>	<i>100</i>	<i>500</i>	<i>1,000</i>
<i>NAC 477.622</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477. 624</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>

<i>Violation</i>	<i>First Offense</i>	<i>Second Offense</i>	<i>Third or Subsequent Offense</i>
<i>NAC 477.626</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.631</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.633</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.646</i>	<i>20,000</i>	<i>40,000</i>	<i>50,000</i>
<i>NAC 477.651</i>	<i>20,000</i>	<i>40,000</i>	<i>50,000</i>
<i>NAC 477.710</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.720</i>	<i>20,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.730</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.770</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.780</i>	<i>5,000</i>	<i>15,000</i>	<i>50,000</i>
<i>NAC 477.810</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>NAC 477.850</i>	<i>10,000</i>	<i>30,000</i>	<i>50,000</i>
<i>Any section of chapter 477 of NAC not otherwise specified</i>	<i>100</i>	<i>5,000</i>	<i>50,000</i>

3. The State Fire Marshal or his or her designee or the Board will increase the number of offenses by one and assess a fine applicable to that number of offenses as listed in subsection 2 only if the violation or violations have caused injury or death to other persons.

Sec. 27. In addition to any other factors that the State Fire Marshal or the Board uses to determine whether an administrative citation issued pursuant to NRS 477.240 should include an order for corrective action, the State Fire Marshal or the Board will consider:

1. The willingness of the owner of the affected property to allow such corrective action; and

2. A determination by the State Fire Marshal or his or her designee that the person to whom the administrative citation was issued is able to perform the corrective action.

Sec. 28. In determining the time permitted for compliance with an order for corrective action, as required to be stated in a written citation pursuant to NRS 477.240, the State Fire Marshal or the Board will determine the time for compliance with the order by considering, without limitation:

1. The accepted industry practice regarding the performance of the work necessary to comply with the order for corrective action, in the climate or weather conditions of the area in which the affected property is located.

2. The number of days during which the owner of the affected property will make the property available for the person to whom the administrative citation was issued to comply with the order for corrective action.

3. The time necessary to obtain materials required for the person to whom the administrative citation was issued to comply with the order for corrective action.

Sec. 29. 1. A person who is issued an administrative citation pursuant to NRS 477.240 which includes an order for corrective action may request an extension of time to comply with the order.

2. A request for an extension made pursuant to this section must:

(a) Be submitted in writing to the State Fire Marshal;

(b) Set forth an explanation of the efforts made by the person to comply with the order for corrective action; and

(c) Be received by the State Fire Marshal or his or her designee before the expiration of the time allowed for compliance with the order set forth in the citation.

3. The State Fire Marshal or his or her designee may, upon a showing of good cause, grant a request for an extension made pursuant to this section. The State Fire Marshal shall report to the Board at its next regularly scheduled meeting all requests for an extension of time that were made and granted under this section.

Sec. 30. If a person who is issued an administrative citation pursuant to NRS 477.240 which includes an order for corrective action hires and pays a licensee to perform the corrective action, the cited person is responsible for any failure of the hired licensee to comply with the order for corrective action included in the citation.

Sec. 31. Any person who has reason to believe that an action by the Division or one or more staff members has been incorrect, or based on inadequate knowledge, may seek relief by the following procedures:

1. First, reliance must be placed on informal discussion with the staff member and the chief of the bureau which is concerned with the program in question.

2. If this discussion does not resolve the problem, an informal conference may be requested by letter to the Chief of the Division. The conference must be held at a place and time mutually agreed upon. The Chief of the Division and the chief of another bureau, to be designated by the State Fire Marshal, will be present. A written summary of the conference

will be prepared. This summary will include a brief resume of the matters discussed, and the conclusions and recommendations which resulted from the conference.

3. This section does not apply if there are statutes or regulations of the State Fire Marshal providing appellate procedures for a particular issue.

Sec. 32. *1. Any person with a direct and tangible interest who desires a declaratory order or advisory opinion regarding the applicability of any statutory provision or of a regulation or decision of the Division may petition by letter to the State Fire Marshal. Four copies of the petition must be submitted.*

2. The State Fire Marshal will issue a declaratory order or an advisory opinion and mail it to the petitioner within 30 days after the petition is received.

Sec. 33. NAC 477.010 is hereby amended to read as follows:

477.010 As used in this chapter, unless the context otherwise requires, the words and terms defined in NAC 477.020 to 477.270, inclusive, *and sections 2, 3 and 4 of this regulation* have the meanings ascribed to them in those sections.

Sec. 34. NAC 477.315 is hereby amended to read as follows:

477.315 1. The State Fire Marshal *, or the Board upon appeal of a decision of the State Fire Marshal,* may refuse to issue or renew, or may suspend or revoke, any certificate of registration or license if he or she determines that an applicant, licensee or registrant has:

(a) Obtained or attempted to obtain a license or certificate of registration by fraud, misrepresentation or falsifying information required on an application form.

(b) *Engaged in any act of dishonesty in connection with any test administered by or on behalf of the State Fire Marshal or any local fire agency or department of any jurisdiction of any state.*

(c) Been found ~~guilty of~~ *by a court of law or an administrative agency of any state to have committed* malpractice or incompetence †

~~(e)~~ *in the practice of the applicant's, licensee's or registrant's trade, craft or profession.*

(d) Failed to obtain the necessary tools or materials required by the State Fire Marshal for performing the work for which the license was issued.

~~(d)~~ (e) Failed to pay the annual fees for renewal of a license or certificate of registration.

~~(e)~~ (f) Violated any provision of this chapter three or more times within a 12-month period †

~~(f)~~ *, except that a single violation of any provision of this chapter that is determined to constitute gross negligence or reckless disregard for public safety constitutes grounds for the refusal to issue or renew, or the suspension or revocation of, any certificate of registration or license.*

(g) Submitted payment for a license or certificate upon an account which has insufficient funds.

~~(g)~~ (h) Been convicted of a felony.

~~(h)~~ (i) Refused to cooperate with the State Fire Marshal *or the Board* in an investigation.

~~(i)~~ (j) Created an imminent hazard to life. For the purposes of this paragraph, an “imminent hazard to life” exists when:

(1) A system to detect, suppress or protect against fire is reduced to less than 80 percent of its design standard by an action, whether malicious or not, of a licensee or holder of a certificate of registration; or

(2) A fire appliance or device is made nonfunctional because more than 20 percent of the appliances or devices provided to a building or area become nonfunctional because of the improper service of a licensee or the holder of a certificate of registration.

~~(H)~~ (k) Agents or principals who have violated the provisions of this subsection.

2. The State Fire Marshal , *or the Board upon appeal of a decision of the State Fire Marshal*, may revoke or suspend any certificate of registration or license if he or she determines that:

- (a) It has been used by a person other than the person to whom it was issued.
- (b) It has been used for a location other than that for which it was issued.
- (c) It has been used for work other than that for which it was issued.
- (d) Any of the conditions or limitations set forth in the license have been violated.
- (e) The person to whom the certificate or license was issued did not have the certificate or license on-site where work was being performed under the certificate or license, or failed to present the certificate or license upon the request of an authority having jurisdiction.

3. The State Fire Marshal , *or the Board upon appeal of a decision of the State Fire Marshal*, may require any licensee or registrant who violates the provisions of this section to:

- (a) Attend additional training courses approved by the State Fire Marshal; or
- (b) Serve a period of probation.

4. All licenses and certificates of registration remain the property of the State Fire Marshal and may not be suspended or revoked by any other person.

5. For the purposes of this section:

- (a) A period of probation may not exceed 24 months.

(b) A revocation is permanent and applies to any person who is found to be an accomplice to a violation, whether directly or indirectly.

(c) A suspension may not exceed 24 months.

Sec. 35. NAC 477.320 is hereby amended to read as follows:

477.320 1. When the State Fire Marshal ~~receives~~, *the Division or its investigators receive* written notice alleging fraud, misrepresentation, malpractice, ~~or~~ *gross negligence or reckless disregard of public safety* on the part of any person licensed or certified under this chapter, the State Fire Marshal *or the investigators of the Division* will conduct an investigation of the allegations. The investigation will concentrate on violations of this chapter, deceptive trade practices as set forth in chapter 598 of NRS and other pertinent criminal and civil violations set forth in NRS. The use of any unauthorized, faulty or otherwise unacceptable equipment discovered during an investigation may be prohibited pending a final determination. A license or certificate will be suspended during an investigation if the investigation reveals conditions which the State Fire Marshal considers an imminent threat to public safety.

2. *Pursuant to an investigation conducted pursuant to subsection 1, an investigator of the Division may issue a notice of alleged violations against a respondent for such issues. The notice of alleged violations must include:*

(a) A statement of the time, place and nature of the administrative hearing to address the notice of alleged violations.

(b) A short and plain statement of the type of administrative action that might be taken upon an adverse finding against the respondent at the administrative hearing, including, without limitation, the refusal to issue or renew, or the suspension or revocation of, a certificate of registration or license by the State Fire Marshal.

(c) A short and plain statement of the legal authority and jurisdiction under which the administrative hearing is to be held.

(d) A reference to the particular sections of the statutes and regulations involved and upon which the notice of alleged violations is based.

(e) A short and plain statement of the matters asserted.

~~3. A person [or company that has had an original or renewal license or certificate of registration denied, suspended or revoked by the State Fire Marshal may request an administrative hearing within 10 calendar days after notice of the denial, suspension or revocation. A written request must be sent to the State Fire Marshal. The written request must be received by the State Fire Marshal, or postmarked if mailed, within 10 calendar days after the date on which the notice of denial, suspension or revocation of the license or certificate of registration is received by the person or company. The State Fire Marshal, upon receipt of a request for an administrative hearing, will take necessary action to schedule an administrative hearing.~~

~~—3.} who has been issued a notice of alleged violations may appear at the administrative hearing and defend against the alleged violations, including by the presentation of evidence and argument on all issues involved.~~

4. The hearing officer shall preside over the administrative hearing, pursuant to which the hearing officer shall issue a final decision.

5. Decisions of the hearing officer may be appealed to the Board if written notice of such an appeal is received within 10 days after receipt of the decision.

6. The failure on the part of an applicant to pass tests required in this chapter does not constitute grounds to request ~~{an administrative}~~ a hearing ~~{}~~ *and may not be appealed to the Board.*

~~{4.}~~ 7. If ~~{an administrative hearing officer}~~, *upon appeal, the Board* finds that the ~~{State Fire Marshal has acted correctly, he or she}~~ *hearing officer reached a correct decision, the Board* may require restitution to the ~~{State Fire Marshal}~~ *Division* for the costs of the administrative hearing ~~{}~~ *and the appeal.* If ~~{the administrative hearing officer}~~, *upon appeal, the Board* finds that the ~~{applicant, licensee or registrant}~~ *respondent* is guilty of a lesser offense, the State Fire Marshal, *the hearing officer or the Board* may require the ~~{applicant, licensee or registrant, as appropriate,}~~ *respondent* to receive further training ~~{or}~~, *to* be retested ~~{, or both,}~~ and to pay *restitution to the Division for* the costs of the administrative hearing ~~{}~~ *—5.—An administrative} and the appeal, or any combination thereof.*

8. *The scheduling or holding of a hearing, or appeal before the Board,* does not preclude the State Fire Marshal from proceeding with a criminal investigation. Any conviction resulting from a criminal investigation may be used as prima facie evidence in ~~{an administrative}~~ *any hearing {} or appeal.*

Sec. 36. NAC 477.425 is hereby amended to read as follows:

477.425 1. The tags used as records of service performed on fire extinguishers must be at least 4 inches long and 2 inches wide and must be in the following form:

Extinguishing Systems / Extinguisher Tag

5 1/4"

2 3/4"

RECHARGED	RECHARGED	DRY CHEMICAL	HALON	CLEAN AGENT
RECHARGED	SERVICED	DRY CHEMICAL	C 02	
HYDROTESTED	NEW EXT.			
INSPECTED				

DO NOT REMOVE
BY ORDER OF STATE FIRE MARSHAL

STATE FIRE MARSHAL
NEVADA

License Number Here

CofR # _____

Signature _____

Company Name _____
Address _____
City, State ZIP _____
(Area Code) + Number _____

Jan	Feb	Mar	Apr	1	2	3	4	5	6	7	8	9	10	
May	Jun	Jul	Aug	11	12	13	14	15	16	17	18	19	20	
Sep	Oct	Nov	Dec	21	22	23	24	25	26	27	28	29	30	31

2010
2011
2012
2013
2014
2015

TAG MUST BE PUNCHED NOT MARKED

2. The tag must be punched to indicate the type of service which was performed on the system and the date on which the service was performed. Each tag must be signed with a legible signature by the holder of a certificate of registration and must be:

- (a) Attached to the extinguisher by wire, string or a plastic tie; or
- (b) A self-adhesive tag approved by the State Fire Marshal which is so attached as to be readily visible for inspection,

↪ and such information must remain permanently on the tag. A number stamp or date stamp must not be used on the tag.

3. A label of suitable Mylar or equally durable material must be affixed by a heatless method to each shell of an extinguisher which is not listed by the United States Department of Transportation and which has passed a hydrostatic test. The label must show:

- (a) The date on which the hydrostatic test was performed;
- (b) The test pressure used; and
- (c) The name of the person ~~for agency~~ licensed or certified by the State Fire Marshal which performed the test.

4. A sample of the tag and the label must be on file with the State Fire Marshal before they are used in the field.

5. The tag must be printed by a printing company and include the following information:

- (a) The date when the system was last serviced.
- (b) The name, address and telephone number of the company;
- (c) The number of the license issued by the State Fire Marshal; and
- (d) The name and certificate number of the person who last serviced the system.

**LEGISLATIVE REVIEW OF ADOPTED REGULATIONS AS REQUIRED BY
NRS 233B.066**

LCB FILE R124-13

The following statement is submitted for adopted amendments to Nevada Administrative Code (NAC) Chapter 477.

1. A clear and concise explanation of the need for the adopted regulation.

This regulation is necessary to update the regulations to comply with existing statutory requirements due to legislative changes in the 2011 and 2013 general sessions. The proposed regulation provides for administrative citations, establishes a formal administrative hearing process, provides a process for appeals of decisions, orders or determinations of the State Fire Marshal to the State Board of Fire Services, provides for administrative fines by either the State Fire Marshal or the State Board of Fire Services, provides for formal conflict resolution process for persons who seek relief by an action the Division or one of its staff members has taken, requires written decisions of the State Fire Marshal be provided within a set time frame and posted as a public record following receipt from the public and outlines the due process procedure that the State Fire Marshal Division is required to follow.

2. A description of how public comment was solicited, a summary of public response, and an explanation how other interested persons may obtain a copy of the summary.

Copies of the proposed regulations, notices of workshop and notices of intent to act upon the regulation were sent by U.S. mail and email to persons who were known to have an interest in the regulations of the State Fire Marshal as well as any persons who had specifically requested such notice. These documents were also made available at the website of the Nevada State Fire Marshal Division (NSFM), http://fire.nv.gov/Boards/Board_FS/, mailed to all county libraries in Nevada and posted at the following locations:

Board of Architecture Interior Design and Residential Design, 2080 E. Flamingo Rd., #120, Las Vegas, NV 89119

Board of Professional Engineers and Land Surveyors, 1755 East Plumb Lane, Reno, NV 89502

Carson City Fire Department, 777 South Stewart Street, Carson City, NV 89701

Central Lyon County Fire Department, 231 Corral Drive, Dayton, NV 89403

Clark County Fire Department, 575 East Flamingo Road, Las Vegas, NV 89119

Clark County Fire Department Training Center, 4425 West Tropicana Avenue, Las Vegas, NV 89103

Department of Public Safety, 500 Wright Way, Carson City, NV

East Fork Fire & Paramedic District, 1694 County Road, Minden, NV 89423

Elko Fire Department, 911 West Idaho Street, Elko, NV 89801

Ely Fire Department, 1780 Great Basin Blvd., Ely, NV 89301

Henderson Fire Department, 223 Lead Street, #141, Henderson, NV 89826

Las Vegas Fire and Rescue, 500 North Casino Center Blvd., Las Vegas, NV 89101

Nevada State Library, 100 South Stewart Street, Carson City, NV

Reno Fire Department, 1 East First Street, Reno, NV 89501

Sparks Fire Department, 1605 Victorian Avenue, Sparks, NV 89431

State Fire Marshal Division, 107 Jacobsen Way, Carson City, NV
State Fire Marshal Division, 215 E. Bonanza, Las Vegas, NV
State Fire Marshal Division, 3920 E. Idaho Street, Elko, NV

A public workshop was held on June 3, 2014, and the minutes of that workshop are attached hereto. During the course of the public workshop, the State Board of Fire Services received input from the public and local government representatives as follows. Note that all private business owners and representatives noted below are from “small businesses” as defined by Nevada law.

During the public workshop, the Board went through the initial draft of the regulation as published by the Legislative Counsel Bureau (LCB). The basis of the draft was pointed out by the Board staff as being derived from existing regulations of the State Contractor’s Board and the Department of Motor Vehicles. The Board discussed and accepted input from attendees to make numerous revisions to the language throughout the draft regulation. The administrative fine schedule was reviewed line by line with input provided by all attendees with the Board accepting the general consensus for each fine amount that surfaced during the discussions.

No written comments were received in advance of the public workshop.

Thereafter, on or about February 20, 2015, the State Board of Fire Services issued a Notice of Intent to Act Upon a Regulation which incorporated the proposed amendments from the June 3, 2014 workshop.

A public hearing was held on March 27, 2015, and the minutes of that hearing are attached hereto. At that hearing Mr. Doug Sartain, president of Certified Fire Protection, Inc., a Las Vegas based small business fire protection contractor and president of a fire protection contractor’s association based in southern Nevada. Mr. Sartain asked for clarification on the citation and fine procedure. The process in the Nevada Administrative Act in NRS Chapter 233B was outlined for those in attendance in answer to the question. Mr. Sartain stated his support for the proposed regulations with no recommended changes.

Mr. Lee Marx of American Fire & Electric, a Nevada small business fire protection contractor asked questions of staff regarding the checks and balances provided over the State Fire Marshal should a future official abuse the violation and citation process. The role of an administrative hearing officer independent of the State Fire Marshal investigation, the appeal process to the State Board of Fire Services and judicial review of any proceedings, all of which this regulation implements, were outlined. It was also pointed out that the process being adopted does not require the assessment of an administrative fine, but other actions such as corrective orders, probationary periods, continuing education requirements and letters of caution, all dependent on the severity of the violation were open to the administrative hearing officer and the Board of Fire Services on appeal. A motion was made and the Board approved to keep the regulation wording unchanged based on this wide ranging discussion.

Lynn Nielson representing the City of Henderson spoke in support of the regulation making no suggestions for changes in the document.

Ken Young of A1 National Fire in Las Vegas asked for clarification of the effect on NAC section 477.470 in applying the proposed regulation. Response from the staff was that each investigation is treated on a case-by-case basis with past experience being to determine whether the infraction was the result of a systemic problem with a company or an issue with an individual employee. If the company discovers a problem and takes corrective action, the State Fire Marshal has not, and does not ever intend to, punish a company for fixing problems and making their customer whole. Mr. Young also raised a concern regarding that a reporting requirement may have been left out of the existing NAC chapter 477 that is not part of this rulemaking process. Mr. Young was informed that at the time of the next code update and review of NAC chapter 477 that issue could be brought up and corrected, if necessary, and he would be very welcome to participate in the process. As there were no changes suggested, the Board took no further action on this comment.

Two written comments were received in advance of the public hearing and two written comments were submitted to the Board during the public hearing. (See Exhibit C attached.) The two written comments were received during the hearing. One was from Mr. Mark Silverman of Allstate Fire Equipment, Las Vegas, NV, a Nevada based small business. Mr. Silverman supported the regulation citing that the proposal would hold individuals and companies accountable.

The second written comment received during the public hearing was from Mr. Frank Cook of Countrywide Fire Services, Inc., also a Nevada based small business. Mr. Cook wrote that his company fully supports the regulation in LCB File #R124-13.

Prior to the public hearing, the Board staff received two written correspondences by way of email. The first was received March 16, 2015, from Mr. Tad Halcomb, from American Fire Equipment Sales and Service Corporation, Reno, NV. Mr. Halcomb expressed concern regarding expanding his company into other cities across the I-80 corridor and how his cost of business might increase by the imposition of fines for violations of state law. He did state that his business type did need regulation “to ensure properly trained technicians are in the field performing the life safety work in a manner that satisfies Nevada State Fire Marshal’s responsibilities.”

A second email correspondence was also received March 16, 2015, from Mr. Ray Lafaver, also of American Fire Equipment Sales and Service Corporation, location unknown. Mr. Lafaver complimented Mr. Halcomb on his letter to the Board. The Board considered the comments from both Mr. Halcomb and Mr. Lafaver and asked if Mr. Halcomb or anyone else from American Fire Equipment was present to further comment on the subject. With no response, the Board discussed the matter raised by Mr. Halcomb’s letter and Mr. Lafaver’s email and approved a motion not to change the regulation as it provided adequate new safeguards as written to address Mr. Halcomb’s concerns and Mr. Lafaver’s email correspondence.

Upon completing their review of the written comments received, the Board passed a motion to approve the regulation in LCB File #124-13, as revised in the LCB draft dated October 16, 2014, with unanimous approval from the voting members of the Board present.

A copy of this summary of the public response to the proposed regulation may be obtained from the State Fire Marshal Division, 107 Jacobsen Way, Carson City, Nevada 89701, 775-684-7525, or email to djohnston@dps.state.nv.us.

3. The number persons who:

(a) Attended each hearing: June 3, 2014 – 51; March 27, 2015: 31

(b) Testified at each hearing: June 3, 2014 – 34; March 27, 2015: 8

(c) Submitted to the agency written comments: No written comments were submitted for the public workshop and five written comments were received for the public hearing.

4. A list of names and contact information, including telephone number, business address, business telephone number, electronic mail address, and name of entity or organization represented, for each person identified above in #3, as provided to the agency:

Attendees are listed in the attachment marked as Exhibits A (public workshop attendance) and B (public hearing attendance). The written comments received prior to or during the public hearing are attached as Exhibit C. Those testifying are identified in the certified minutes of both the public workshop (Exhibit D) and the public hearing (Exhibit E).

5. A description of how comment was solicited from affected businesses, a summary of their response, and an explanation how other interested persons may obtain a copy of the summary.

Comments were solicited from affected businesses in the same manner as they were solicited from the public. In addition, a mailing (by post or by electronic if email addresses were available) was made to all fire protection license holders of record with the Division with notice of the public workshop and the public hearing. The summary may be obtained as instructed in the response to question #2.

6. If the regulation was adopted without changing any part of the proposed regulation, a summary of the reasons for adopting the regulation without change.

The permanent regulation was adopted on March 27, 2015 and included the changes made by the Board based on input noted at the public workshop held on June 3, 2014. No other changes were made by the Board at the public hearing on March 27, 2015.

7. The estimated economic effect of the adopted regulation on the businesses which it is to regulate and on the public. These must be stated separately, and each case must include:

(a) Both adverse and beneficial effects; and

(b) Both immediate and long-term effects.

(a) Both adverse and beneficial effects:

Adverse effect: No adverse effects are anticipated as no new requirements or restrictions are proposed by the regulation.

Beneficial effect: The proposed regulation provides for due process for all fire protection contractors and their employees; provides a formal process when a person disagrees with a decision of the State Fire Marshal, including the ability to appeal to the State Board of Fire

Services; and provides a written record of all decisions and opinions of the State Fire Marshal and posts such records for public inspection. Establishing such processes will provide consistency, predictability and certainty to the fire protection industry as to the practices and operation of the Nevada State Fire Marshal Division.

(b) Both immediate and long-term effects:

Immediate effect: The effect of the new processes noted above will become effective immediately upon approval of this regulation.

Long-term effect: A consistent approach to fire protection industry issues, documentation of State Fire Marshal decisions, and provision of a formal due process with an avenue to appeal decisions, determinations and orders, will provide a predictable and consistent method of applying the fire protection codes for business operations statewide.

8. The estimated cost to the agency for enforcement of the adopted regulation.

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

9. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.

There are no other state or government agency regulations that the proposed regulation duplicates.

10. If the regulation includes provisions that are more stringent than a federal regulation which regulates the same activity, a summary of such provisions.

There are no federal regulations that apply.

11. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.

This regulation does not provide a new fee or change an existing fee.

SEE COPY FILED WITH THE SECRETARY OF STATE FOR EXHIBITS A-E.