

**PROPOSED REGULATION OF THE
BOARD FOR THE REGULATION
OF LIQUEFIED PETROLEUM GAS**

LCB File No. R168-18

October 3, 2018

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

AUTHORITY: §1, NRS 590.505, 590.535, 590.537 and 590.605; §2, 590.505, 590.515, 590.535; §§3 and 5-15, NRS 590.505 and 590.515; §4, NRS 590.505, 590.515 and 590.575; §§16-18, NRS 590.505, 590.515 and 590.605; §19, NRS 590.505, 590.515, 590.519, 590.521 and 590.610.

A REGULATION relating to liquefied petroleum gas; authorizing the staff of the Board for the Regulation of Liquefied Petroleum Gas to issue a citation and impose an administrative fine for certain violations relating to the regulation of liquefied petroleum gas; revising provisions relating to the availability of emergency personnel in case of an emergency relating to a licensee's petroleum business; revising provisions relating to certain regulations adopted by reference by the Board; revising provisions relating to the handling of complaints filed with the Board; revising provisions relating to administrative proceedings before the Board; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law sets forth the Nevada Liquefied Petroleum Gas Act. (NRS 590.465-590.645) Existing law also: (1) requires the Board for the Regulation of Liquefied Petroleum Gas to adopt regulations that it deems necessary to protect the health, welfare and safety of the public and persons using liquefied petroleum gases; and (2) adopt any other regulation that it deems necessary. (NRS 590.505, 590.515) **Section 1** of this regulation authorizes the staff of the Board to issue a citation and impose an administrative fine on a licensee or other person or business found to be in violation of a provision of the Nevada Liquefied Petroleum Gas Act or a regulation adopted by the Board. **Section 1** also provides a recipient of such a citation and administrative fine the opportunity for a hearing before the Board relating to the citation and administrative fine. **Sections 2 and 16-18** of this regulation make conforming changes related to the authorization of the staff of the Board to issue a citation and impose an administrative fine pursuant to **section 1**.

Existing regulations require a person licensed under the Nevada Liquefied Petroleum Gas Act, or the manager or agent of a business licensed under the Act, to: (1) maintain an actual

residence within the immediate area of his or her petroleum business; (2) be qualified to handle an emergency related to the business; and (3) have qualified personnel available to address any such emergency. (NAC 590.260) **Section 3** of this regulation removes the requirement that the person responsible for the petroleum business maintain a residence within the immediate area of the business, and instead requires the person to have available emergency personnel who maintain an actual residence within the immediate area of the business.

Existing regulations adopt by reference certain codes and standards issued by the National Fire Protection Association. (NAC 590.600-590.640) **Sections 5-9** of this regulation set forth that the Board will adopt the most recent edition of the various codes and standards issued by the National Fire Protection Association that it deems suitable for adoption and will post which edition is the most currently adopted on its Internet website.

Existing regulations allow a person who files a complaint against a licensee with the Board the option to have his or her complaint settled through mediation by an agency other than the Board. (NAC 590.650) **Section 11** of this regulation removes the option and instead authorizes the staff of the Board to determine whether or not a complaint filed with the Board involves an issue of public safety. If it does not involve an issue of public safety, the complaint is appropriate for a mediated resolution. **Section 11** sets forth the procedures by which a proposed mediated resolution is presented to the Board for approval. If a complaint cannot be resolved through a mediated resolution approved by the Board or if the staff of the Board receives independent information regarding an alleged violation by a licensee, **section 11** requires the staff of the Board to investigate the complaint. **Sections 10 and 16** of this regulation make conforming changes relating to mediated resolutions before the Board.

Existing regulations establish the procedures by which informal and formal complaints are filed with the Board. (NAC 590.657) **Section 12** of this regulation removes the option to file an informal complaint and revises the procedures by which a formal complaint is filed. **Section 14** of this regulation eliminates the authority of the presiding officer of the Board to allow posthearing briefs. **Section 15** of this regulation revises provisions relating to attorneys retained for representation before the Board. **Sections 13, 16 and 18** of this regulation make conforming changes relating to formal complaint procedures. **Section 19** of this regulation removes provisions relating to: (1) certain conditions and limitations placed on the transfer of liquefied petroleum gas; and (2) administrative practice before the Board.

Section 1. Chapter 590 of NAC is hereby amended by adding thereto a new section to read as follows:

1. In lieu of the preparation of a formal complaint pursuant to NAC 590.657, the staff of the Board may issue a citation to and impose an administrative fine in an amount set forth in subsection 2 on a licensee or other person or business for a violation of a provision listed in subsection 2.

2. *The Board adopts the following schedule of administrative fines for any citation issued pursuant to subsection 1:*

	<i>First</i>	<i>Second</i>	<i>Third or</i> <i>Subsequent</i>
<i>Violation</i>	<i>Violation</i>	<i>Violation</i>	<i>Violation</i>
<i>NRS 590.525</i>	<i>\$500</i>	<i>\$1,000</i>	<i>\$1,500</i>
<i>Subsection 1 of NRS 590.537</i>	<i>500</i>	<i>500</i>	<i>500</i>
<i>Subsection 2 of NRS 590.537</i>	<i>500</i>	<i>500</i>	<i>500</i>
<i>Subsection 3 of NRS 590.537</i>	<i>500</i>	<i>500</i>	<i>500</i>
<i>NAC 590.250</i>	<i>2,500</i>	<i>2,500</i>	<i>2,500</i>
<i>Subsection 2 of NAC 590.253</i>	<i>500</i>	<i>1,000</i>	<i>2,000</i>
<i>Subsection 1 of NAC 590.260</i>	<i>1,000</i>	<i>1,000</i>	<i>1,000</i>
<i>Subsection 2 of NAC 590.260</i>	<i>100</i>	<i>200</i>	<i>400</i>
<i>NAC 590.270</i>	<i>250</i>	<i>500</i>	<i>1,000</i>
<i>NAC 590.280</i>	<i>100</i>	<i>200</i>	<i>400</i>
<i>Subsection 1 of NAC 590.290</i>	<i>100</i>	<i>200</i>	<i>400</i>
<i>Subsection 2 of NAC 590.290</i>	<i>500</i>	<i>1,000</i>	<i>2,000</i>
<i>Subsection 3 of NRS 590.290</i>	<i>100</i>	<i>200</i>	<i>400</i>
<i>NAC 590.450</i>	<i>250</i>	<i>500</i>	<i>1,000</i>
<i>NAC 590.452</i>	<i>250</i>	<i>500</i>	<i>1,000</i>
<i>NAC 590.454</i>	<i>250</i>	<i>500</i>	<i>1,000</i>
<i>NAC 590.456</i>	<i>100</i>	<i>200</i>	<i>400</i>

	<i>First</i>	<i>Second</i>	<i>Third or</i> <i>Subsequent</i>
<i>Violation</i>	<i>Violation</i>	<i>Violation</i>	<i>Violation</i>
<i>NAC 590.460.....</i>	<i>1,000</i>	<i>2,000</i>	<i>4,000</i>
<i>NAC 590.480.....</i>	<i>100</i>	<i>200</i>	<i>400</i>
<i>NAC 590.520.....</i>	<i>1,000</i>	<i>1,000</i>	<i>1,000</i>
<i>Subsection 1 of NAC 590.560</i>	<i>250</i>	<i>250</i>	<i>250</i>
<i>Subsection 2 of NAC 590.560</i>	<i>500</i>	<i>500</i>	<i>500</i>
<i>Subsection 4 of NAC 590.560</i>	<i>500</i>	<i>500</i>	<i>500</i>

3. In lieu of the preparation of a formal complaint pursuant to NAC 590.657, the staff of the Board may issue a citation to and impose an administrative fine in an amount set forth in NAC 590.235 on a person or business for a violation of NAC 590.235.

4. Within 30 days after the date of the issuance of a citation pursuant to subsection 1 or 3, the licensee, person or business to which the citation was issued may file a written request with the Board for a hearing. Such a hearing will be held pursuant to NAC 590.677, 590.680 and 590.687 within 45 days after the date on which the request for the hearing was filed.

Sec. 2. NAC 590.235 is hereby amended to read as follows:

590.235 1. It is unlawful for a person or business to operate or supply an unlicensed installation, facility or service that is required to be licensed pursuant to NRS 590.535.

2. The Board may ~~+~~, *as an administrative fine imposed pursuant to section 1 of this regulation:*

(a) Recover license fees and investigative costs from, and impose penalty fees on, unlicensed dealers, sellers, installations and facilities.

(b) Recover investigative costs from and impose penalty fees on a person or business that supplies an unlicensed dealer, seller, installation or facility.

3. The license fee recovery is the sum of the current license fee multiplied by the number of years of unlicensed operation. The amount of the penalty fee is the license fee recovery multiplied by five.

4. For the purposes of calculating the license fee recovery and penalty fees pursuant to this section, a minimum of 1 day of unlicensed operation is necessary to establish 1 year of unlicensed operation.

Sec. 3. NAC 590.260 is hereby amended to read as follows:

590.260 1. Every person licensed under the Nevada Liquefied Petroleum Gas Act, NRS 590.465 to 590.645, inclusive, or in the case of a licensed company or corporation, its authorized manager or agent, shall ~~+~~

~~(a) Maintain~~ *have emergency personnel with* an actual bona fide residence within the immediate area or territory of his or her petroleum business ~~and~~ *who are* personally ~~be~~ qualified and available to cope with any emergency connected with the business. ~~;~~ ~~or~~

~~—(b) Have available personnel who are qualified for any emergency within the meaning of the Act.~~

2. Any transfer or change in the residence of the ~~licensee, or the manager or agent of a licensed company or corporation, outside the immediate area of the business~~ *emergency personnel described in subsection 1* must be reported to the Board no later than 10 days ~~after~~

~~actual removal or~~ *before such* transfer ~~{from the location}~~ or ~~{address filed with the Board}~~
change.

Sec. 4. NAC 590.280 is hereby amended to read as follows:

590.280 1. Each person who holds a class 1A, 1B or 2A license shall disclose the following information to his or her customers and prospective customers:

(a) The prices per unit of sales of LP gas, the effective dates of those prices and any figures required to convert those prices to prices per gallon, cubic feet or therms.

(b) Any charges for services, including, without limitation:

(1) The amount and description of all charges for deliveries, including, without limitation:

(I) Charges for deliveries which are not on a scheduled route.

(II) Charges for minimum deliveries.

(III) Charges for deliveries made on weekends or after hours.

(2) Initial charges and conditions for beginning service.

(3) Charges for labor.

(c) The annual fee for leasing a container for the storage of LP gas.

2. Each time LP gas is delivered to a customer, a person who holds a class 1A, 1B or 2A license shall disclose upon the delivery ticket or sales receipt:

(a) The volume of LP gas delivered;

(b) The price per gallon, cubic foot or therm of LP gas delivered; and

(c) The total amount of the sale.

3. The information required to be disclosed pursuant to subsection 1 must be:

(a) Disclosed by telephone request.

(b) Printed in a standard format established by the licensee and displayed conspicuously in the licensee's place of business not later than the beginning of the business day on which the prices and charges become effective. The licensee may include any additional information if he or she so desires.

4. A licensee shall notify each new customer that the Board has published a "Consumer Bill of Rights" and that a copy may be obtained from the Board at the Internet address ~~http://www.lpg.nv.gov~~ <http://www.nvlpgasboard.com> or by calling the Board at (775) 687-4890.

Sec. 5. NAC 590.600 is hereby amended to read as follows:

590.600 The Board adopts by reference the regulations contained in *the most current edition of NFPA 58: Liquefied Petroleum Gas Code* ~~2008 edition, and any subsequent edition~~ issued by the National Fire Protection Association which has been approved by the Board for use in Nevada. ~~Each new edition shall be deemed approved by the Board unless the edition is disapproved by the Board within 120 days after the date on which the Board receives the printed publication from the National Fire Protection Association.~~ The Board will review each edition ~~issued after the 2008 edition~~ to ensure its suitability for Nevada ~~and post on its Internet website which edition is currently adopted by reference by the Board.~~ The most current edition that has been approved by the Board is available for purchase from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts ~~02269~~ **02169**, by telephone at (800) 344-3555 or on the Internet at <http://www.nfpa.org>, for the price of ~~\$42.75~~ **\$57.15** for members and ~~\$47.50~~ **\$63.50** for nonmembers.

Sec. 6. NAC 590.610 is hereby amended to read as follows:

590.610 The Board adopts by reference the regulations contained in *the most current edition of NFPA 54: National Fuel Gas Code* ~~[-, 2009 edition, and any subsequent edition]~~ issued by the National Fire Protection Association which has been approved by the Board for use in Nevada. ~~[Each new edition shall be deemed approved by the Board unless the edition is disapproved by the Board within 120 days after the date on which the Board receives the printed publication from the National Fire Protection Association.]~~ The Board will review each edition ~~[issued after the 2009 edition]~~ to ensure its suitability for Nevada ~~[-]~~ *and post on its Internet website which edition is currently adopted by reference by the Board.* The most current edition that has been approved by the Board is available for purchase from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts ~~[02269,]~~ *02169*, by telephone at (800) 344-3555 or on the Internet at <http://www.nfpa.org>, for the price of ~~[\$42.75]~~ *\$57.15* for members and ~~[\$47.50]~~ *\$63.50* for nonmembers.

Sec. 7. NAC 590.615 is hereby amended to read as follows:

590.615 The Board adopts by reference the regulations contained in *the most current edition of NFPA 160: Standard for the Use of Flame Effects Before an Audience* ~~[-, 2006 edition, and any subsequent edition]~~ issued by the National Fire Protection Association which has been approved by the Board for use in Nevada. ~~[Each new edition shall be deemed approved by the Board unless the edition is disapproved by the Board within 120 days after the date on which the Board receives the printed publication from the National Fire Protection Association.]~~ The Board will review each edition ~~[issued after the 2006 edition]~~ to ensure its suitability for Nevada ~~[-]~~ *and post on its Internet website which edition is currently adopted by reference by the Board.* The most current edition that has been approved by the Board is available for purchase from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts ~~[02269,]~~

02169, by telephone at (800) 344-3555 or on the Internet at <http://www.nfpa.org>, for the price of ~~[\$33.30]~~ **\$44.10** for members and ~~[\$37.00]~~ **\$49.00** for nonmembers.

Sec. 8. NAC 590.620 is hereby amended to read as follows:

590.620 The Board adopts by reference the regulations contained in *the most current edition of NFPA 501A: Standard for Fire Safety Criteria for Manufactured Home Installations, Sites, and Communities* ~~[, 2005 edition, and any subsequent edition]~~ issued by the National Fire Protection Association which has been approved by the Board for use in Nevada. ~~[Each new edition shall be deemed approved by the Board unless the edition is disapproved by the Board within 120 days after the date on which the Board receives the printed publication from the National Fire Protection Association.]~~ The Board will review each edition ~~[issued after the 2005 edition]~~ to ensure its suitability for Nevada ~~[]~~ **and post on its Internet website which edition is currently adopted by reference by the Board.** The most current edition that has been approved by the Board is available for purchase from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts ~~[02269,]~~ **02169**, by telephone at (800) 344-3555 or on the Internet at <http://www.nfpa.org>, for the price of ~~[\$28.35]~~ **\$44.10** for members and ~~[\$31.50]~~ **\$49.00** for nonmembers.

Sec. 9. NAC 590.640 is hereby amended to read as follows:

590.640 The Board adopts by reference the regulations contained in *the most current edition of NFPA 1192: Standard on Recreational Vehicles* ~~[, 2008 edition, and any subsequent edition]~~ issued by the National Fire Protection Association which has been approved by the Board for use in Nevada. ~~[Each new edition shall be deemed approved by the Board unless the edition is disapproved by the Board within 120 days after the date on which the Board receives the printed publication from the National Fire Protection Association.]~~ The Board will review

each edition ~~issued after the 2008 edition~~ to ensure its suitability for Nevada ~~and~~ *and post on its Internet website which edition is currently adopted by reference by the Board.* The most current edition that has been approved by the Board is available for purchase from the National Fire Protection Association, 1 Batterymarch Park, Quincy, Massachusetts ~~02269,~~ *02169*, by telephone at (800) 344-3555 or on the Internet at <http://www.nfpa.org>, for the price of ~~(\$33.30)~~ *\$48.60* for members and ~~(\$37.00)~~ *\$54.00* for nonmembers.

Sec. 10. NAC 590.647 is hereby amended to read as follows:

590.647 The staff shall log and record all records relating to inquiries ~~requests for mediation~~ and written complaints, including, without limitation, memos of relevant conversations, all correspondence relating to a ~~request for mediation or a~~ complaint, the minutes of any hearing and a copy of the ~~resolution of the request for mediation or the~~ complaint.

Sec. 11. NAC 590.650 is hereby amended to read as follows:

590.650 1. A person may file ~~an accusation~~ *a complaint with the Board* against a licensee concerning ~~the prices, rates, services or other acts of the licensee. An accusation filed with a member of the staff against a licensee will be referred to the licensee if that member deems it necessary for possible resolution. An accusation filed against a licensee will be processed as a request for mediation unless the person filing the accusation specifically requests that disciplinary action be taken against the licensee.~~

~~2. If a person wishes to file an accusation against a licensee which does not specifically request that disciplinary action be taken against the licensee, a member of the staff shall send to the person a request for mediation and a referral list. The referral list will include the names of~~

~~agencies to which the accusation may be referred. The person must complete the request for mediation and return it to the Board.~~

~~—3.— Upon the receipt of a completed request for mediation, a member of the staff shall send copies of the request for mediation to the licensee and, if applicable, the management of the licensee.~~

~~—4.— Within 15 days after receipt of the request for mediation, the licensee shall notify the staff as to whether the licensee and the person who filed the request for mediation were able to resolve the matter raised in the request for mediation.~~

~~—5.— If the licensee and the person who filed the request for mediation were not able to resolve the matter raised in the request for mediation, the Board will hold a hearing to mediate the accusation. The mediation hearing will be held in conjunction with a regularly scheduled meeting of the Board.~~

~~—6.— If the matter raised in the request for mediation cannot be resolved at the mediation hearing, the Board will advise the licensee and the person who filed the request for mediation of that fact and inform the person who filed the request for mediation of the option to file a disciplinary complaint against the licensee pursuant to NAC 590.654.] *an alleged violation of NRS 590.465 to 590.645, inclusive, or NAC 590.100 to 590.690, inclusive, and section 1 of this regulation by the licensee. Such a complaint must be filed within 1 year after the date of the alleged violation.*~~

2. The staff shall review the complaint to determine whether the complaint:

(a) Involves a matter of public safety and must be investigated pursuant to NAC 590.657;

or

(b) Does not involve an issue of public safety and is acceptable for a mediated resolution.

3. *If the staff determines that a complaint is acceptable for a mediated resolution, the staff shall contact the complainant in writing to determine whether the complainant agrees to mediate the issues in the complaint with the licensee.*

4. *If the complainant agrees to mediate the issues in the complaint with the licensee, the staff shall send to the licensee and, if applicable, the management of the licensee, by United State mail or electronic mail:*

(a) A copy of the complaint; and

(b) Notice to submit a written response to the staff within 15 days after receipt by the licensee of the notice and complaint regarding whether the licensee agrees to mediate the issues in the complaint with the complainant.

5. *If the licensee does not submit a written response pursuant to subsection 4 or does not agree to mediate the issues in the complaint with the complainant, the complaint must be investigated pursuant to NAC 590.657.*

6. *If a proposed mediated resolution of a complaint has been reached:*

(a) The proposed mediated resolution must be in writing and signed by the complainant and the licensee or, if applicable, the management of the licensee.

(b) A member of the staff shall present the proposed mediated resolution to the Board at the next regularly scheduled meeting of the Board. The Board may approve, modify or deny the proposed mediated resolution.

7. *If a matter raised in a complaint that is mediated pursuant to this section is not resolved through a mediated resolution pursuant to this section, the staff shall:*

(a) Notify the complainant and the licensee of that fact; and

(b) Conduct an investigation of the complaint pursuant to NAC 590.657.

Sec. 12. NAC 590.657 is hereby amended to read as follows:

590.657 1. *If a complaint is required to be investigated pursuant to NAC 590.650 or if the staff receives information independently that a licensee committed an alleged violation of NRS 590.465 to 590.645, inclusive, or NAC 590.100 to 590.690, inclusive, and section 1 of this regulation, the staff shall conduct an investigation regarding the complaint or information.*

2. When the investigation ~~{of an informal complaint}~~ *conducted pursuant to subsection 1* is complete, the staff ~~{and, if applicable, the investigator for the Board}~~ *who conducted the investigation* shall determine whether substantial evidence exists to sustain the alleged violation of a statute or regulation set forth in the ~~{informal}~~ complaint ~~{}~~ *or in the information received by the staff*. If the staff ~~{and investigator determine}~~ *determines* that no such allegation set forth in the complaint can be sustained, the staff shall notify, in writing, the complainant and licensee of that determination.

~~{2. -H}~~ *If the staff determines that no such allegation in the information received by the staff can be sustained, the staff shall notify the Board.*

3. *Except as otherwise provided in section 1 of this regulation, if* the staff ~~{and investigator determine}~~ *determines after an investigation conducted pursuant to subsection 1* that a violation of a statute or regulation as alleged in the complaint *or information received by the staff* can be sustained, the legal counsel for the Board shall ~~{}~~:

~~—(a) Offer to the complainant and licensee mediation, a settlement agreement, a stipulation of facts and liability, or an informal hearing; or~~

~~—(b) Prepare}~~ *prepare* a notice of hearing and a formal complaint.

~~{3. — If any mediation, settlement agreement, stipulation of facts and liability, or informal hearing offered by the legal counsel for the Board pursuant to paragraph (a) of subsection 2 fails~~

~~to resolve the matter, the legal counsel for the Board shall prepare a notice of hearing and a formal complaint pursuant to paragraph (b) of subsection 2.~~

4. In addition to the requirements set forth in NRS 233B.121, a notice of hearing and a formal complaint must be signed by the legal counsel for the Board and ~~if~~ a member of the ~~Board~~ *staff who* was active in the investigation. ~~by that member.~~

5. The staff shall send a notice of hearing and a formal complaint prepared pursuant to this section to the licensee named in the notice by certified mail ~~or~~ *or personally serve the licensee with the notice of hearing and formal complaint.*

6. A licensee who receives a notice of hearing and a formal complaint shall file an answer to the notice of hearing and the formal complaint with the Board:

(a) Not later than 15 days after the date on which the notice of hearing and the formal complaint are personally served on the licensee; or

(b) If the notice of hearing and the formal complaint are not personally served on the licensee, not later than 15 days after the date on which the notice of hearing and the formal complaint are deposited in the United States mail as certified mail addressed to the licensee at his or her address of record.

7. An answer to a notice of hearing and a formal complaint must include a response to each allegation and statement made in the notice of hearing and the formal complaint by either admitting to or denying the allegation or statement.

8. If a licensee fails to file an answer as required by this section, the licensee shall be deemed to have admitted each allegation and statement contained in the notice of hearing and the formal complaint. Based on these admissions, the Board may enter a finding and impose

appropriate discipline on the licensee in the same manner as if the allegations had been proven by substantial evidence at a hearing held on the formal complaint.

Sec. 13. NAC 590.660 is hereby amended to read as follows:

590.660 The Board may join two or more formal complaints into one formal complaint if:

1. The ~~causes of action of~~ *allegations contained in* each formal complaint are against the same person and deal with substantially the same or similar violations of statutes or regulations; and
2. The Board determines that the joining of the formal complaints will serve the best interests of the Board and the parties involved.

Sec. 14. NAC 590.677 is hereby amended to read as follows:

590.677 For any hearing before the Board:

1. The presiding officer shall call the hearing to order and take the appearances . ~~on behalf of the Board and the licensee.~~
2. The notice of hearing, any *citation*, petition, answer, response or written stipulation, and if the hearing concerns a disciplinary matter, the notice of hearing and the formal complaint and any other responsive pleading relating thereto, become a part of the record without being read into the record unless a party requests that such a document be read into the record.
3. The legal counsel for the Board shall present the evidence for the Board first and, if the Board allows closing arguments, shall present the closing argument for the Board last.
4. Unless otherwise ordered by the presiding officer, and except as otherwise provided in this section, the order of presentation is as follows:
 - (a) Opening statement by the legal counsel for the Board.

(b) Opening statement by the respondent or the attorney for the respondent, who may choose to make the opening statement at the beginning of the respondent's case.

(c) Testimony of witnesses offered by the legal counsel for the Board as follows:

- (1) Direct examination by the legal counsel for the Board;
- (2) Cross-examination by the respondent or the attorney for the respondent;
- (3) Redirect examination by the legal counsel for the Board; and
- (4) Recross-examination by the respondent or the attorney for the respondent.

(d) Testimony of witnesses offered by the respondent, as follows:

- (1) Direct examination by the respondent or the attorney for the respondent;
- (2) Cross-examination by the legal counsel for the Board;
- (3) Redirect examination by the respondent or the attorney for the respondent; and
- (4) Recross-examination by the legal counsel for the Board.

(e) If applicable, closing arguments by the respondent or the attorney for the respondent.

(f) If applicable, closing arguments by the legal counsel for the Board.

5. A member of the Board may, at any time during the hearing:

- (a) Question a witness; and
- (b) Request or allow additional evidence, including additional or documentary evidence.

6. If the hearing is a consolidated hearing, the hearing must proceed in the same manner as described in this section with the order of the parties and the presentation of evidence to be determined by the presiding officer.

~~{7. Posthearing briefs may be allowed by the presiding officer or upon a majority vote of the members of the Board. If such briefs are allowed, the Board will establish the time by which the briefs must be submitted.}~~

Sec. 15. NAC 590.680 is hereby amended to read as follows:

590.680 1. Except as otherwise provided in subsection 2, a party may appear at a hearing in person or by an attorney.

2. A party to a formal complaint *or citation* shall attend the ~~[evidentiary]~~ hearing ~~[on the merits]~~ of the formal complaint *or citation* in person unless the presiding officer waives the requirement of the attendance of the party.

3. If a party who is required to attend a hearing in person fails to do so without having obtained a waiver of the requirement of his or her attendance pursuant to subsection 2, the Board may:

(a) Determine that the party's failure to attend the ~~[evidentiary]~~ hearing in person shall be deemed:

(1) An admission of all matters and facts contained in the record with respect to the party;
and

(2) A waiver of the right to ~~[an evidentiary]~~ a hearing; and

(b) Take action based upon such admission or upon any other evidence, including affidavits, without any further notice or a hearing.

4. If a party retains an attorney to represent the party before the Board, the attorney shall so notify the Board not later than 10 days after he or she is retained. ~~[Thereafter:~~

~~—(a) The attorney shall sign all motions, oppositions, notices, requests and other papers, including requests for subpoenas; and~~

~~—(b) The Board will serve all notices, motions, orders, decisions, and other papers or pleadings upon the attorney.]~~

5. An attorney appearing as counsel in any proceeding 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, the attorney must be associated with an attorney so admitted and entitled to practice.

Sec. 16. NAC 590.684 is hereby amended to read as follows:

590.684 The following acts and omissions by a licensee are grounds for discipline:

1. Violating any provision of NRS 590.465 to 590.645, inclusive, or NAC 590.100 to 590.690, inclusive ~~{}~~, *and section 1 of this regulation.*
2. Failing to cooperate with the Board in *relation to a citation or complaint, including, without limitation, in* the investigation of a ~~{request for mediation, an informal complaint or a formal}~~ complaint ~~{, including, without limitation, failing to file a written response as required by NAC 590.654 and}~~ *or* failing to file an answer as required by NAC 590.657.
3. ~~{Failing to respond to a request for mediation.~~
- ~~—4.}~~ Failing to attend a ~~{disciplinary}~~ hearing without having obtained a waiver of the requirement of the licensee's attendance.
- ~~{5.}~~ 4. Conducting business after his or her license or certificate of competency has lapsed if the license or certificate has not been renewed.
- ~~{6.}~~ 5. Conducting business after the insurance required by NAC 590.270 has lapsed if the insurance has not been renewed.
- ~~{7.}~~ 6. Willfully making a false report, record or claim in his or her business.
- ~~{8.}~~ 7. Failing to comply with a settlement agreement, an order of the Board or any other disposition of a prior disciplinary action or ~~{mediation.}~~ *mediated resolution.*
- ~~{9.}~~ 8. Advertising the licensee's business in a manner that is:

- (a) False; or
- (b) Intended or has a tendency to:
 - (1) Deceive or mislead the public; or
 - (2) Create unrealistic expectations in any particular case.

~~9.0.~~ **9.** Engaging in any other conduct that the Board determines constitutes unfitness or incompetence to engage in activities that are authorized by his or her license.

~~9.1.~~ **10.** Acting or conducting the licensee’s operations in any manner which the Board deems to be inimical to and not in the best interests of the health, safety or welfare of the people of this State.

~~9.2.~~ **11.** Being subject to disciplinary action in which a board or any other similar entity in this State or in *the District of Columbia or another state or territory of the United States* which has issued a license, certificate, registration or other credential in a related field to the licensee revokes or suspends the license, certificate, registration or other credential or takes any other disciplinary action against the licensee. As used in this subsection, a “license, certificate, registration or other credential in a related field” includes, without limitation, a general contractor’s license and a steam fitter’s license.

~~9.3.~~ **12.** Delivering a lesser quantity of gas than the amount for which the licensee bills a customer with the intent to defraud the customer.

Sec. 17. NAC 590.687 is hereby amended to read as follows:

590.687 1. After ~~an evidentiary~~ *a* hearing on ~~the merits in a disciplinary proceeding,~~ *a citation or formal complaint*, if the Board finds that the licensee *or other person or business* is:

(a) Not guilty as charged in the *citation or* formal complaint, the Board will issue a final order or decision dismissing the charges and notify the licensee ~~and the complainant~~ *or other person or business* that the charges have been dismissed.

(b) Guilty as charged in the *citation or* formal complaint, the Board will:

(1) Before agreeing on a punishment, consider all relevant factors, including, without limitation:

(I) The danger to the health or safety of the public created by the violation;

(II) The economic benefit received by the licensee *or other person or business* from the violation;

(III) Any mitigation or aggravation by the licensee *or other person or business* of the effects of the violation;

(IV) The extent to which the licensee *or other person or business* demonstrates ~~his or her~~ good faith;

(V) Any previous history of violations by the licensee ~~he~~ *or other person or business*;

(VI) Whether the licensee *or other person or business* knew or, as a competent person, should have known that the action complained of was a violation of a statute, a regulation or , *if applicable*, a condition of his or her license;

(VII) Whether the licensee *or other person or business* has initiated remedial measures to prevent similar violations;

(VIII) The magnitude of penalties imposed on other licensees *or other persons or businesses* for similar violations;

(IX) The proportionality of the penalty in relation to the misconduct; and

(X) If the licensee *or other person or business* offered evidence of mitigating factors, all such evidence;

(2) Agree upon punishment that may, in addition to any other sanction authorized pursuant to NRS 590.465 to 590.645, inclusive, and NAC 590.100 to 590.690, inclusive, *and section 1 of this regulation*, require the licensee *or other person or business* to:

(I) Fulfill certain training or educational requirements; and

(II) Pay all costs incurred by the Board relating to the ~~disciplinary proceedings;~~ *hearing;* and

(3) Issue and serve the final order or decision of the Board on the licensee ~~or~~ *or other person or business.*

2. A final order or decision by the Board that is adverse to the licensee *or other person or business* must:

(a) Be in writing;

(b) Except as otherwise provided in subsection 5 of NRS 233B.121, include findings of fact and conclusions of law; and

(c) Specifically set forth the punishment imposed on the licensee ~~or~~ *or other person or business.*

3. A final order or decision of the Board ~~in a disciplinary proceeding~~ is effective on the earliest of:

(a) The date on which the final order or decision is personally served on the licensee ~~or~~ *or other person or business;*

(b) The date on which the final order or decision is posted at the premises of the licensee ~~or~~ *or other person or business;* or

(c) The third day after the date on which the final order or decision is deposited in the United States mail as certified mail addressed to the licensee *or other person or business* at ~~his or her~~ *the* address of record ~~of~~ *of the licensee or other person or business.*

Sec. 18. NAC 590.690 is hereby amended to read as follows:

590.690 ~~The~~ *At a hearing, the* Board may recover investigative costs from and impose penalty fees on any person, firm or corporation that ~~violates any provision~~ *is found guilty* of ~~NRS 590.535~~ *a violation alleged in a citation or formal complaint.*

Sec. 19. NAC 590.500, 590.646, 590.654, 590.667, 590.670 and 574.674 are hereby repealed.

TEXT OF REPEALED SECTIONS

590.500 Transfer of gas. (NRS 590.505, 590.515, 590.519, 590.521, 590.610)

1. Except as may be authorized by variance granted by the Board upon a written application, no container of LP gas larger in capacity than 1 gallon may be filled for resale by gravity flow.

2. Any cylinder not equipped with an outage valve must be filled by weight.

590.646 Limitation on time for filing complaint against licensee or request for mediation. (NRS 590.505, 590.515) Any complaint against a licensee or request for mediation must be filed with the Board within 1 year after the date of the alleged violation.

590.654 Informal complaint: Filing and processing; notification of licensee; response; review and investigation; production and copying of records and other evidence. (NRS 590.505, 590.515)

1. A person may file a complaint with the Board concerning the acts of or services provided by a licensee if:

(a) The person wishes to file an accusation against the licensee and specifically requests that disciplinary action be taken against the licensee; or

(b) The person filed a request for mediation pursuant to NAC 590.650 and the Board, the licensee and the person who filed the request for mediation were unable to resolve the matter raised in the request for mediation.

2. The Board will process:

(a) A citation issued by the Board pursuant to subsection 2 of NRS 590.605; and

(b) If the circumstances so warrant, a petition under NRS 233B.120,

↳ as a complaint filed pursuant to this section.

3. The Board will initially consider any complaint filed against a licensee pursuant to this section as an informal complaint. The informal complaint must be verified by the affidavit of the complainant and be filed with the Board on a form provided by the Board. The complainant shall include with his or her informal complaint information that is sufficiently detailed so as to enable the licensee to prepare a response.

4. Upon receipt of an informal complaint, the staff shall examine the informal complaint to determine whether it:

(a) Has been properly verified; and

(b) Alleges sufficient facts to warrant further proceedings.

5. If the staff determines that an informal complaint has been properly verified and alleges sufficient facts, the staff shall notify the licensee of the informal complaint by sending a copy or summary of the informal complaint to the licensee by certified mail. The notification must set forth the potential violations of NRS 590.465 to 590.645, inclusive, or NAC 590.100 to 590.690, inclusive, raised in the informal complaint and request a written response from the licensee for review by the staff. The licensee shall submit a written response to the informal complaint or summary to the Board:

(a) Not later than 15 days after the date on which the informal complaint or summary is personally served on the licensee; or

(b) If the informal complaint or summary is not personally served on the licensee, not later than 15 days after the date on which the informal complaint or summary is deposited in the United States mail as certified mail addressed to the licensee at his or her address of record.

6. A written response to an informal complaint or a summary must respond to the allegations made in the informal complaint or summary and be accompanied by all documentation that would be useful to the staff in its review of the allegations made in the informal complaint or summary and the responses of the licensee to those allegations. If a licensee fails to respond as required by this section, the licensee shall be deemed to have admitted the allegations in the informal complaint or summary. Based on these admissions, the Board may impose appropriate discipline on the licensee in the same manner as if the allegations had been proven by substantial evidence at a hearing on a formal complaint.

7. Upon the filing of a written response pursuant to this section, the staff shall review the informal complaint and the responses made thereto, may enlist the aid of any member of the Board or other qualified person in conducting the review and may take any other reasonable

action necessary to further the review. After its review of the informal complaint and the responses made thereto, the staff may:

- (a) Investigate the allegations and employ such persons as the staff deems necessary to further the investigation;
- (b) Consult persons with expertise in the appropriate field and employ those persons for the purposes of an investigation or a hearing;
- (c) Investigate new leads and allegations that the staff learns of in the course of the investigation;
- (d) Enlist the aid of any member of the Board or other qualified person in conducting the investigation; and
- (e) Take any other reasonable action necessary to further the investigation.

8. During an investigation of an informal complaint, the staff or an investigator for the Board may demand that a licensee produce any record or other evidence for inspection or copying, with or without prior notice to the licensee and with or without a subpoena. A licensee shall not deny a request for a record or other evidence if the record or other evidence is not otherwise declared to be confidential by a specific statute. If a licensee refuses or fails to cooperate with a request for a record or other evidence in violation of this section, the Board may immediately suspend his or her license or certificate until the licensee complies with the request. If the licensee continues to refuse or to fail to cooperate with such a request in violation of this section, the Board may take such further disciplinary action against the licensee as the Board determines necessary.

9. If the staff or investigator determines that a specific record or other specific evidence that the licensee is required to produce is material to or necessary for an investigation, the staff or

investigator may remove the record or evidence and provide a copy of the record or evidence to the licensee. If a record or other evidence can be readily copied at the location where the record or evidence is located, the staff or investigator shall make a copy of the record or evidence at that location. If the record or other evidence cannot be readily copied at that location, the staff or investigator may remove the record or evidence from that location for copying.

10. Upon the removal of a record or other evidence pursuant to this section, the staff or investigator shall provide the person to whom the record or evidence belongs with a receipt for the record or evidence and, not later than 5 business days after the record or evidence is removed, provide a copy of the record or evidence to that person.

590.667 Discovery. (NRS 590.505, 590.515) Discovery may only be undertaken in accordance with NAC 590.644 to 590.690, inclusive. The Board will not allow the taking of depositions.

590.670 Prehearing conference; orders and rulings on preliminary matters. (NRS 590.505, 590.515)

1. The presiding officer may order a prehearing conference on a formal complaint and may enter such prehearing orders and rulings on preliminary matters as he or she determines are appropriate for the efficient conduct of the hearing on the formal complaint. Such orders and rulings may include, without limitation, orders and rulings concerning:

- (a) The exchange of written direct testimony of witnesses.
- (b) The exclusion of particular testimony or evidence.
- (c) The admission of particular testimony and other exhibits by agreement of the parties.
- (d) The marking in advance of all exhibits.

(e) The exchange by the parties of written prehearing statements or briefs similar to pretrial statements or briefs filed in district court.

(f) Settlement negotiations. Settlement negotiations, and the statements of the parties relating thereto, made at a prehearing conference are not admissible in evidence at the hearing unless the parties agree and the agreement is incorporated in a prehearing order.

(g) Scheduling matters.

(h) Protective orders.

(i) The admissibility of evidence.

(j) Any other procedural or prehearing matter.

2. A ruling on a preliminary matter is subject to reconsideration by the entire Board upon the request of a member of the Board or upon the motion of a party.

3. The failure of a party who is adversely affected by a ruling on a preliminary matter to move for reconsideration of the ruling does not constitute:

(a) Consent to the ruling; or

(b) A waiver of any objection previously made to the ruling.

4. For the purposes of this section, a matter is a preliminary matter if it is not dispositive of a contested case or a substantive issue in a contested case.

590.674 Motions. (NRS 590.505, 590.515)

1. A motion concerning any matter before the Board must be made in writing, unless the motion is made during a hearing on that matter. The presiding officer may deny as untimely:

(a) Any motion made during a hearing if the motion could have reasonably been made before the hearing; and

(b) Any motion that is filed on a date that does not provide the opposing parties a reasonable time to respond.

2. A written motion must set forth the nature of the relief sought by and the grounds for the motion.

3. A party may oppose a written motion by filing a written response to the motion with the Board and serving a copy of the response on all other parties to the proceeding to which the motion relates within 10 days after the written motion is filed.

4. If a written response to a written motion is filed, the party who made the written motion may file and serve a written reply to the response.

5. Except as otherwise provided in this section, the presiding officer shall rule on all written motions on a matter at or before the hearing scheduled on the matter. The presiding officer may rule on any motion without oral argument or may allow oral arguments to be made before ruling on the motion. If the presiding officer allows oral arguments on a written motion to be made, the presiding officer shall set a time and date for hearing the oral arguments.

6. The presiding officer may require the Board to vote to decide a motion.