Occupational Safety and Health Review Board

*Nevada Revised Statutes (NRS) 618.565 through 618.605:*

**Board members (NRS 618.565):** The Occupational Safety and Health Review Board, Division of Industrial Relations (DIR), Department of Business and Industry (DBI), consists of five members appointed by the Governor, as follows:

- Two members who represent management;
- Two members who represent labor; and
- One member who represents the general public.

An alternate for the member who represents the general public must be appointed. At least one member appointed to represent either management or labor must be knowledgeable regarding occupational safety or health.

No person employed by the DIR may be appointed as a member of the Board.

**Operations of the Board (NRS 618.575 and 618.585):**

- The Board shall elect a Chair and Secretary from among its members;
- The Board shall enact rules and regulations governing the conduct of review hearings;
- The Board shall meet as often as necessary to hold review hearings as provided in NRS 618.605; and
- A quorum must be present to conduct its business; a quorum consists of three members provided that at least one of whom must represent labor and one must represent management.

**Administrative review (NRS 618.605):**

- Upon the receipt of notice of an appeal or contest, pursuant to NRS 618.475, the Board shall hold a formal fact-finding hearing and render its decision based on the evidence presented;
- The Board shall notify the family of a deceased employee prior to the hearing; and
• Any employee of an employer or representative of an employee may participate or give evidence.

_Nevada Revised Statutes_ 618.465 provides for the issuance of citations for violations of Chapter 618 (“Occupational Safety and Health”) of NRS. An employer may contest the citation and receive a hearing as provided in NRS 618.475.

**Background:**

**Legislation:** Senate Bill 629 (Chapter 591, _Statutes of Nevada 1973_) established the Occupational Safety and Health Review Board. The Occupational Safety and Health Act of 1970, Public Law 91-596, was enacted “to assure safe and healthful working conditions.” The Act permitted states to adopt their own occupational safety and health plans that were at least as effective as the federal Act.

A record of debate as recorded in the Journal of the Senate, April 14, 1973, indicates that the Nevada Occupational Safety and Health Review Board was proposed to provide local enforcement, rather than enforcement by the federal government.

**Legislative history:** A legislative history of S.B. 629 has been compiled and is available here: [http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1973/SB629,1973.pdf](http://www.leg.state.nv.us/Division/Research/Library/LegHistory/LHs/1973/SB629,1973.pdf).


**Members:** The members are listed on the review form.

**Reports to the Legislature:** No reports to the Legislature from the Occupational Safety and Health Review Board are required pursuant to NRS 618.

**Records:**

- Research Library holdings:
  - Occupational Safety Bulletin No. 11-12 (2011)
  - Review of the Nevada Occupational Safety and Health Program, United States Department of Labor (2009)
• State Library holdings:
  
  o *Rules 60-69 Adopted Pursuant to the Nevada Administrative Procedure Act and Chapter 591 of the Statutes of Nevada* (1980 and 1981 editions)
  

• State Archives holdings:
  
  o Records, public hearings, and legal files (various years)

**Current contact:** Joe Adams, Chair
Fred Scarpello, Independent Contract Legal Counsel

**Website:** none
NRS 618.565 Creation; number, appointment, qualifications and terms of members.
1. The Occupational Safety and Health Review Board, consisting of five members appointed by the Governor, is hereby created under the Division.
2. The Governor shall appoint:
   (a) Two members who are representatives of management.
   (b) Two members who are representatives of labor.
   (c) One member who is a representative of the general public.
   (d) One person to serve as an alternate for the representative of the general public when that member is unable to attend a meeting of the Board.
   At least one of the members appointed pursuant to paragraph (a) or (b) must be knowledgeable regarding occupational safety or health.
3. After the initial terms, members shall serve terms of 4 years. No member may serve more than two terms.
4. No person employed by the Division may serve as a member of the Board.
(Added to NRS by 1973, 1020; A 1977, 1247; 1981, 69, 1515; 1993, 1885; 1995, 335)

NRS CROSS REFERENCES.
Residency requirements, qualifications of representative of general public, NRS 232A.020
Vacancies in office, NRS 232A.020

NRS 618.575 Officers. The members of the Board shall annually select a Chair and Secretary from among themselves.
(Added to NRS by 1973, 1020; A 1975, 773)

NRS 618.585 Duties; legal counsel; quorum; decisions; records; duties, rights and responsibilities of alternate.
1. The Board shall:
   (a) Meet as often as necessary to hold review hearings, as provided in NRS 618.605, at such times and places as the Chair may determine;
   (b) Enact rules and regulations governing the conduct of review hearings; and
   (c) Perform such other duties as the Division may prescribe.
2. The Board may employ legal counsel to advise it concerning matters which come before it.
3. A quorum of the Board must be present in order for the conduct of review hearings or other business.
4. A quorum consists of at least three members of the Board, at least one of whom must represent labor and one of whom must represent management.
5. All decisions of the Board must be determined by a majority decision.
6. A complete record of every review hearing must be made.
7. If the alternate for the regular member representing the general public attends a meeting of the Board in the place of the regular member, the alternate fully assumes the duties, rights and responsibilities for the duration of that meeting and is entitled to the compensation, allowances and expenses otherwise payable for members who attend that meeting.
(Added to NRS by 1973, 1021; A 1975, 774; 1981, 588, 1515; 1993, 1885; 1995, 335)

NRS CROSS REFERENCES.
Meetings of public agencies, NRS ch. 241
Records open and public, NRS 239.001-239.030

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NRS 618.595 Compensation of members and employees.
1. Each member of the Board is entitled to receive a salary of not more than $80, as fixed by the Board, for each day or portion thereof for attendance at meetings of the Board.
2. While engaged in the business of the Board, each member and employee of the Board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.

NRS 618.605 Administrative review: Notice; hearing; notification of family members of deceased employees; participation of employees.
1. Upon the receipt of any written appeal or notice of contest under NRS 618.475, the Division shall within 15 working days notify the Board of such an appeal or contest.
2. The Board shall hold a formal fact-finding hearing and render its decision based on the evidence presented at the hearing.
3. Prior to any formal fact-finding hearing involving a citation for an accident occurring in the course of employment which is fatal to one or more employees, the Board shall notify the immediate family of each deceased employee of:
   (a) The time and place of the hearing; and
   (b) The fact that the hearing is open to the public.
4. Any employee of an employer or representative of the employee may participate in and give evidence at the hearing, subject to rules and regulations of the Board governing the conduct of such hearings.
(Added to NRS by 1973, 1020; A 1975, 774; 1981, 1516; 2009, 816)
February 12, 2016

via email and U.S. Mail

Carol Stonefield
Chief Principal Research Analyst
Legislative Counsel Bureau
401 S. Carson Street
Carson City NV 89701-4747

Re: Sunset Subcommittee Review/Nevada Occupational Safety & Health Review Board (NRS 618.565, et seq.)

Dear Ms. Stonefield:

Please find enclosed responsive materials provided by the Nevada Occupational Safety & Health Review Board (Board) in furtherance of the correspondence and request of Senator James A. Settelmeyer directed to Board Chairman Joe Adams.

The Board respectfully requests the Sunset Subcommittee note the demonstrated need for continuance of the Review Board as constituted. This is and has been a very active Board since created by the Nevada Legislature, and continues to process and adjudicate administrative appeals under the Nevada Occupational Safety and Health Plan. Please note the extensive Board activity by way of example from just the past three years (2013-2015) operations: 1) The Board processed approximately 215 formal complaints filed against Nevada employers by the state OSHA Enforcement Section alleging workplace safety violations. 2) Approximately 152 of these contested cases were scheduled for appellate hearings before the Board. 3) Approximately 51 contested cases were subject of formal Board hearings resulting in written decisions which included findings of fact and conclusions of law. 4) Approximately 100 negotiated case resolutions/settlements were reviewed by the Board for approval and issuance of Final Orders to assure fairness and compliance with NRS Chapter 618, NAC Chapter 618, and the spirit and intent of the Nevada Occupational Safety and Health Act.

As independent contract legal counsel for the Board with many years experience in the occupational safety and health law field and operations, I urge this Board remain as constituted and not considered for either elimination or consolidation. Unlike many other boards or commissions in Nevada, it is unique in composition and membership. The statutory purpose of the Board is to
serve as the quasi-judicial hearing tribunal for adjudication of all contested citations subject of formal complaints issued by the State OSHA Enforcement Section (OSHES) against Nevada employers for alleged safety violations in Nevada workplaces under the Code of Federal Regulations (CFR) as incorporated into Nevada law (NRS 618.295(8)).

The referenced and ongoing Board activity (see example Hearing Calendar and Status Report of pending matters as Attachment C) demonstrates the necessity for continuance of the specialized Nevada State Occupational Safety & Health Review Board. The contested case hearing review process provided under NRS and NAC 618 which resulted from implementation of the Nevada State Plan in place of a Federal OSHA presence in Nevada, is very important for all Nevadans. Membership composition of Governor appointees is limited to two fixed terms and requires separate designated backgrounds in management, labor and public interests, independent of the state enforcement arms of government. The Review Board is the first administrative appellate level remedy providing Nevadans an expedient and cost effective hearing process with a balanced membership to address the interests of Nevada employers, employees and the public at large.

Should you have any further requirements with regard to this matter, I would be pleased to coordinate with all members for responses to you accordingly.

Thanks to the chairman, committee and you for your assistance and guidance.

Yours truly,

Fred Scarpello
Legal Counsel
Nevada Occupational Safety & Health Review Board

FS:kae
Enclosures: Information Concerning Board or Commission
Attachment A (1-6)
Attachment B - NRS, NAC statutes and rule references
Attachment C - Monthly Status Report and Contested Hearing Calendar

cc: Nevada Occupational Safety & Health Review Board Members
Information Concerning Board or Commission
Subject to Review by the
Sunset Subcommittee of the Legislative Commission
as required by Nevada Revised Statutes 232B.230

Board or commission name: Nevada Occupational Safety and Health Review Board

Members' names with expiration date of term, and indicate the number of vacancies:
- Joe Adams - Term Exp. 6/30/16
- Jim Barnes - Term Exp. 6/30/18
- Nicole Baker - Term Exp. 6/30/17
- Steve Ingersoll - Term Exp. 6/30/17
- Sandra Olson - Term Exp. 6/30/19
- Frank Milligan - Term Exp. 9/30/19
- NO VACANCIES

Physical address: 600 E. William St., Suite 300, Carson City, NV 89701

Mailing address: 600 E. William St., Suite 300, Carson City, NV 89701

Web site address (if any): None

Web site developer (if not EITS, please indicate if EITS approved the web site): N/A

Executive director's name and contact information:
- Joe Adams, Chairman
  2299 Gorget Ct.
  Sparks, NV 89441
  (920) 539-2256
- Fred Scarpello, Independent Contract Legal Counsel
  600 E. William St., Ste. 300
  Carson City NV 89701
  (775) 882-4577

Staff members' names including titles and status as full-time or part-time (attach additional pages as necessary):
See NRS 618.585 and attachment A #1.

Days and hours of operation:
See attachment A #2.

Created by what authority:
NRS 618.565, 618.605 (see attachment B)

Authority to adopt regulations (NRS) and citation to regulations (NAC), if applicable:
See attachment A #3.
Information Concerning Board or Commission
Subject to Review by the
Sunset Subcommittee of the Legislative Commission

List by LCB File No. and date of adoption the five regulations most recently adopted by the board or commission, with any applicable deadline for the adoption of any such regulation:

<table>
<thead>
<tr>
<th>Regulations Adopted</th>
<th>Date of Adoption</th>
<th>Deadline for Adoption</th>
</tr>
</thead>
</table>

List any required regulations that have not been adopted, with any applicable deadlines for the adoption of any such regulation. Please identify each such regulation by LCB File No. if available, or by reference to the provision of NRS or Statutes of Nevada requiring adoption of the regulation:

No new regulations have been proposed or adopted (see above). During various legislative sessions (see above) the NAC regulations applicable to NV state OSHA plan have been revised based upon additions or changes to NRS, although with few directly applicable to Board operations. The Board is modeled on the Federal Review Commission under Federal OSHA and governed under NAC 618, NRS 233B, NRS 241 and NRCP.

Governing structure of the board or commission pursuant to statute:

The Board is comprised of five members under specialized quorum requirements for experience in the field of occupational safety and health law with backgrounds in management (2 members), labor (2 members), public (1) and public alternate (1). (See attached NRS 565-605 et seq on structure, composition and operations)

Duties of the board or commission:

See NRS 618.585 at attachment B. The Nevada Occupational Safety and Health Review Board acts as an independent hearing tribunal for all contested cases emanating from the Occupational Safety and Health Enforcement Section. Citations are issued to Nevada employers for violations of the Code of Federal Regulations (CFR) adopted into Nevada legislation (NRS 618.295(8)). See attachment B statutory duties of Board members and governing structure under NRS 618.565, 618.575, 618.585, 618.605 and NAC 618.

Statement of the objectives and programs of the board or commission:

Chapter 618.565 et seq. of NRS and Chapter 618 of NAC provide the statutory mandate and procedures for the Nevada Occupational Safety and Health Review Board to independently hear all contested matters under Board jurisdiction as a result of Nevada employers appeals of citations for violations of work place safety standards. The statutory appellate process designates the Board as the first “Administrative Remedy” for adjudication of contested cases in a quasi judicial forum in accordance with the specific rules applicable under NAC Chapter 618, as governed by NRS Chapter 618, NRS 233.B and NRS 241 (Nevada Open Meeting Law).
### Information Concerning Board or Commission

**Subject to Review by the Sunset Subcommittee of the Legislative Commission**

| Itemized list of services offered by the board or commission: | See attachment A #4.  
See attachment C. |
<table>
<thead>
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<tbody>
<tr>
<td>Dates of the immediately preceding six meetings:</td>
<td>August 12, 2015; September 9, 2015; October 14, 2015; November 9, 2015; December 9, 2015; February 10, 2016</td>
</tr>
<tr>
<td>Statutory tax exemptions, abatements, or money set aside for the board or commission:</td>
<td>Reference to the Department of Industrial Relations and Division of Occupational Safety and Health Administrator, Mr. Steven George, 400 W. King Street, Carson City, NV 89703</td>
</tr>
<tr>
<td>Description of the manner in which the board or commission is funded, including all funding sources:</td>
<td>Reference to the Department of Industrial Relations and Division of Occupational Safety and Health Administrator, Mr. Steven George, 400 W. King Street, Carson City, NV 89703</td>
</tr>
<tr>
<td>Please identify any forms required by the board or commission to be used by members of the public which are not available for downloading from the website of the board or commission:</td>
<td>Proscribed specifically in NAC 618 and where absent under NRS 233B and NRCP. See also governing legislation under NRS 618 for the Nevada OSHA State Plan.</td>
</tr>
</tbody>
</table>
No. The Board recommends no consolidation is appropriate nor possible as it would conflict with the specific legislative intent and existent legislation under NRS Chapter 618. See attachment A #5.

Yes. The Board is accomplishing the legislative objectives on an active ongoing basis. See attachment A #6 and attachment C.

No recommendations for any Nevada statutory changes are recommended. The independent Review Board as created by the Nevada legislature in 1973 should remain as the first administrative remedy for Nevada employers and employees to appeal workplace safety violation citations in an expeditious, cost effective and fair hearing forum.
1. The Board is authorized independent contract legal counsel in accordance with NRS 618.585. There is no permanent nor part-time state employee staff. All Board legal, support and administrative operations are provided under the independent legal services contract.

2. The Nevada Occupational Safety & Health Review Board meets on a regular basis designated as the second Wednesday and Thursday of each month. The Review Board adjudicates appeals of safety citations in contested hearings based upon formal complaints filed against Nevada employers by the Nevada OSHA Enforcement Section (OSHES). All hearings and meetings are open to the public. The proceedings are conducted in neutral public hearing room facilities in Las Vegas or Reno. The agenda is published and the hearings conducted under strict compliance with NRS Chapter 241 commonly known as the Nevada Open Meeting Law. All decisions are rendered in the public forum and issued in a final written form which include formal findings of fact, conclusions of law and final orders in furtherance of Chapter 618 of NRS, Chapter 618 of NAC and NRS Chapter 233B, et seq (the Nevada Administrative Procedure Act). Decisions are served on the litigating parties. Unless the Board administrative decision is appealed to the district court within 30 days, the hearing files and documentation are closed and delivered to the state archive offices. Written minutes of all Board meetings are distributed monthly to Board members and the Administrator of the Department of Industrial Relations (DIR).

3. NRS 618.585(1)(b), et seq. adopted in accordance with and modeled from the Federal OSHA Review Commission. Board membership requires experience in the occupational safety and health field to qualify for appointment. (See NRS 618.565.) NRS also requires the Nevada Board adhere to special quorum requirements. Appointed members must have separate background affiliations in management, labor, and public interests. The legal quorum majority for all Board meetings requires at least 1 member representative of management and 1 of labor, then any additional members to satisfy the special statutory quorum requirements.

4. The creating authority and duties of the Board are set forth at 618.565 through 618.605 and NRS 618.585, 618.575, and NAC 618. The statutory mandate directs the Board function as the independent appellate administrative hearing tribunal to adjudicate all contested cases subject of formal complaints filed from citations for workplace safety violations issued by the Occupational Safety and Health Enforcement Section (OSHES). The Board provides the specific administrative remedy by independent (non-state employee) board members with backgrounds and experience in the Occupational Safety and Health (OSHA) field. See NAC 618.650-848 for special rules on board operations, conduct of hearings, and general procedures. All adjudications are conducted in a quasi-judicial forum and transcribed by a certified court reporter. See NAC 618.842. In addition the NRCP (rules of evidence), the Nevada Administrative Procedure Act at NRS 233B, et seq and NRS Chapter 618 and NAC Chapter 618 provide the rules and procedures under the statutory mandate for the specialized Nevada OSHA Review Board as the independent hearing body. The statutory scheme intended a "grass roots" administrative appellate remedy for Nevada employers and employees to bring cases before independent Nevada citizens with
experience in the specialized field of OSHA workplace safety and without any conflict (or appearance of conflict) of interest if appeals were heard by a state employee hearing body or a federal hearing officer under the Federal OSHA system.

5. The Review Board does not recommend consolidation with other departments or certainly elimination of this Board. The Nevada Review Board is a specialized tribunal adjudicating appeals from citations issued for violation of workplace safety standards by employers at Nevada worksites relying upon the Code of Federal Regulations incorporated into Nevada Revised Statutes and extensive case law developed through the federal court system. Further, the Board is comprised of members required to have experience and background in the Occupational Safety and Health Act (OSHA); and independent of state control e.g. non-state employees. The Board composition and special quorum requirements provide there be at least 2 members with a background affiliation to be "representative" of labor, 2 members with a background affiliation to be "representative" of management, 1 member from the "public at large", and 1 alternate public member to serve only in place of the public at large member. Development of the State Plan through Nevada legislation was designated in accordance with the permissive grant under the Federal Act (OSHA) to assure that states electing a State Plan option independent of a federal controlled system adjudicate the rights and liabilities of its own citizens through an independent and balanced hearing process. Accordingly it would be impossible to consolidate this Board into another state agency or state employed hearing officer given the independence requirements, the statutory composition, the special quorum requirements of background affiliations, and the specialized knowledge required in the unique field of occupational safety and health law and practice. Very particular OSHA legislation at the Federal level authorizing states to elect an option for a State Plan was extensively negotiated in the legislative processes to assure labor, management, and the public at large of a fair and independent hearing tribunal. The legislation requiring state employees of the Department of Industrial Relations (DIR) enforcement section investigate, cite and prosecute employers, similarly requires a technically qualified and independent Review Board. Accordingly, the Nevada legislature under the State Plan authorized independent legal counsel to remove the element of conflict of interest and partiality, actual or by appearance, if state employees both prosecuted the actions against employers and advised the independent Review Board on procedure, law and final decisions during the appellate hearings. The unique legislation, independence of Board and counsel, and separation of prosecutorial and judgment rendering agencies are critical aspects to assure Nevada citizens of a fair first level administrative hearing process which is far more expeditious and cost effective than to force Nevada employers to initially appeal OSHA citations to district court. Cited employers, or employees who elect to participate, are not required to be represented by an attorney. All Board hearings, deliberations, and decisions are public; the proceedings transcribed by a certified court reporter. Final decisions of the Board include findings of fact and conclusions of law which are then subject to an appellate right to the district court within 30 days of issuance.

6. The need and continued requirement of the Nevada Review Board can be readily demonstrated by reference to the contested case filings, hearings, and administrative processes over the past three calendar years (2013-2015). 1) The Board processed approximately 215
formal complaints filed against Nevada employers by the state OSHA Enforcement Section alleging workplace safety violations. 2) Approximately 152 of these contested cases were scheduled for appellate hearings before the Board. 3) Approximately 51 contested cases were subject of formal Board hearings resulting in written decisions which included findings of fact and conclusions of law. 4) Approximately 100 negotiated case resolutions/settlements were reviewed by the Board for approval and issuance of Final Orders to assure fairness and compliance with NRS Chapter 618, NAC Chapter 618, and the spirit and intent of the Nevada Occupational Safety and Health Act. 5) Numerous written orders were issued from procedural or substantive motions filed with the Board. The prompt direct responsive action from this administrative tribunal assures fair, cost effective, and impartial first level adjudication remedy for Nevada employers and employees rights and liabilities in the workplace resulting in assurance of equal protection under the law implemented by independent board members experienced in the very specialized field of Occupational Safety and Health legislation as codified in NRS from the CFR.

Particular importance of the Review Board should be noted from the legislative intent and resultant benefits to the public by recognition given to the sometimes competing positions of Nevada employers and employees in the citation and hearing process. Further, particular reference is made to provisions added by recent Nevada legislative action which require that in any case involving an employee workplace fatality resulting in a citation for safety violation, the Review Board is required to assure formal notification of hearings to family members. The Board issues certified mail informational correspondence and formal notice of the time and place for hearing of the case. This permits, under specific procedural rules, participation by a family representative. Further, the statutory scheme permits labor representatives to appear on behalf of members. There is no requirement that any employer or party be represented by an attorney, however often times attorneys represent clients before the Board in these matters which requires an informed experienced board and legal counsel to assure NRS and NAC provisions are fulfilled. Adherence to the Nevada Administrative Code (NAC) for procedure is supplemented by the Nevada Rules of Civil Procedure (NRCP), NRS 233B, et seq and applicable governing law.
OCCUPATIONAL SAFETY AND HEALTH REVIEW BOARD

NRS 618.565 Creation; number, appointment, qualifications and terms of members.

1. The Occupational Safety and Health Review Board, consisting of five members appointed by the Governor, is hereby created under the Division.

2. The Governor shall appoint:
   (a) Two members who are representatives of management.
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   (c) One member who is a representative of the general public.
   (d) One person to serve as an alternate for the representative of the general public when that member is unable to attend a meeting of the Board.

3. At least one of the members appointed pursuant to paragraph (a) or (b) must be knowledgeable regarding occupational safety or health.

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(Added to NRS by 1973, 1020; A 1975, 773)

NRS 618.585 Duties; legal counsel; quorum; decisions; records; duties, rights and responsibilities of alternate.

1. The Board shall:
   (a) Meet as often as necessary to hold review hearings, as provided in NRS 618.605, at such times and places as the Chair may determine;
   (b) Enact rules and regulations governing the conduct of review hearings; and
   (c) Perform such other duties as the Division may prescribe.

2. The Board may employ legal counsel to advise it concerning matters which come before it.

3. A quorum of the Board must be present in order for the conduct of review hearings or other business.

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represent labor and one of whom must represent management.

5. All decisions of the Board must be determined by a majority decision.

6. A complete record of every review hearing must be made.

7. If the alternate for the regular member representing the general public attends a meeting of the Board in the place of the regular member, the alternate fully assumes the duties, rights and responsibilities for the duration of that meeting and is entitled to the compensation, allowances and expenses otherwise payable for members who attend that meeting.

(Added to NRS by 1973, 1021; A 1975, 774; 1981, 588, 1515; 1993, 1885; 1995, 335)

NRS 618.595 Compensation of members and employees.

1. Each member of the Board is entitled to receive a salary of not more than $80, as fixed by the Board, for each day or portion thereof for attendance at meetings of the Board.

2. While engaged in the business of the Board, each member and employee of the Board is entitled to receive the per diem allowance and travel expenses provided for state officers and employees generally.


NRS 618.605 Administrative review: Notice; hearing; notification of family members of deceased employees; participation of employees.

1. Upon the receipt of any written appeal or notice of contest under NRS 618.475, the Division shall within 15 working days notify the Board of such an appeal or contest.

2. The Board shall hold a formal fact-finding hearing and render its decision based on the evidence presented at the hearing.

3. Prior to any formal fact-finding hearing involving a citation for an accident occurring in the course of employment which is fatal to one or more employees, the Board shall notify the immediate family of each deceased employee of:

   (a) The time and place of the hearing; and

   (b) The fact that the hearing is open to the public.

4. Any employee of an employer or representative of the employee may participate in and give evidence at the hearing, subject to rules and regulations of the Board governing the conduct of such hearings.

(Added to NRS by 1973, 1020; A 1975, 774; 1981, 1516; 2009, 816)
NAC 618.650 Definitions. (NRS 618.585) As used in NAC 618.650 to 618.848, inclusive, unless the context otherwise requires:

1. The words and terms defined in NAC 618.653 to 618.677, inclusive, have the meanings ascribed to them in those sections.

2. The words and terms defined in NRS 618.029 to 618.165, inclusive, have the meanings ascribed to them in those sections.

(Supplied in codification; A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.653 “Affected employee” defined. (NRS 618.295) “Affected employee” means an employee of an employer who has been cited, who is exposed to the hazard described in the citation as a result of his or her assigned duties.

[Dep’t of Occupational Safety & Health, Rule No. 1 part subsec. 2, eff. 11-9-73]

NAC 618.656 “Authorized employee representative” defined. (NRS 618.295) “Authorized employee representative” means a labor organization which has a collective bargaining relationship with the employer and which represents affected employees.

[Dep’t of Occupational Safety & Health, Rule No. 1 part subsec. 2, eff. 11-9-73]

NAC 618.659 “Board” defined. (NRS 618.295) “Board” means the Occupational Safety and Health Review Board.

[Dep’t of Occupational Safety & Health, Rule No. 1 part subsec. 2, eff. 11-9-73]

NAC 618.662 “Citation” defined. (NRS 618.295) “Citation” means a written communication issued by the Chief to an employer pursuant to NRS 618.465.

[Dep’t of Occupational Safety & Health, Rule No. 1 part subsec. 2, eff. 11-9-73]

NAC 618.665 “Day” defined. (NRS 618.295) “Day” means a calendar day.

[Dep’t of Occupational Safety & Health, Rule No. 1 part subsec. 2, eff. 11-9-73]

NAC 618.668 “Notification of proposed penalty” defined. (NRS 618.295) “Notification of proposed penalty” means a written communication issued by the Chief to an employer pursuant to NRS 618.475.

[Dep’t of Occupational Safety & Health, Rule No. 1 part subsec. 2, eff. 11-9-73]

NAC 618.671 “Proceeding” defined. (NRS 618.295) “Proceeding” means any proceeding before the Board.
NAC 618.674 "Representative" defined. (NRS 618.295) "Representative" means any person, including an authorized employee representative, authorized by a party or intervener to represent him or her in a proceeding.

NAC 618.677 "Working day" defined. (NRS 618.295) "Working day" means all days except Saturdays, Sundays or state holidays.

NAC 618.680 Scope. (NRS 618.295)

1. The provisions of NAC 618.650 to 618.848, inclusive, govern all proceedings before the Board.

2. In the absence of a specific provision, all procedures must be in accordance with the Nevada Rules of Civil Procedure.

NAC 618.683 Computation of time. (NRS 618.295)

1. In computing any period of time prescribed or allowed in NAC 618.650 to 618.848, inclusive, the day from which the designated period begins to run is not included. The last day of the period so computed is included unless it is a Saturday, Sunday or state holiday. If the period prescribed or allowed is less than 7 days, intermediate Saturdays, Sundays and state holidays are excluded in the computation.

2. If service of a document is made by mail pursuant to NAC 618.707, 3 days must be added to the time allowed for the filing of a responsive pleading.

NAC 618.686 Extensions of time. (NRS 618.295, 618.585) A request for an extension of time for the filing of any document required to be filed by NAC 618.650 to 618.848, inclusive, must be received at least 3 days before the date on which the document is due.

NAC 618.692 Penalties. (NRS 618.295) All penalties assessed by the Enforcement Section are civil penalties.

NAC 618.695 Filing. (NRS 618.295, 618.585)
1. Before the Board is notified of an appeal or contest, all papers required to be filed must be filed with the Chief at 400 West King Street, Suite 200, Carson City, Nevada 89703. After the Board is notified of an appeal or contest, all papers required to be filed must be filed with the Board at the address given in the notice of the appeal or contest.

2. Except as otherwise ordered by the Chief or the Board, all papers required to be filed must be filed by first-class certified mail, return receipt requested, or by personal delivery, with an affidavit of service.

3. The filing is effective at the time of mailing.

[NAC 618.698 Participation by affected employee. (NRS 618.295, 618.585)]

1. An affected employee may participate as a party in the hearing before the Board if:

(a) The affected employee notifies the Board and all parties in writing at least 30 days before the beginning of the hearing, of his or her desire to participate; or

(b) For good cause shown, the Board allows the affected employee to participate as a party without notice.

2. If a notice of a contest is filed by an employee or by an authorized employee representative concerning the reasonableness of the period for abatement of a violation, the employer charged with the responsibility of abating the violation may participate as a party in the hearing before the Board if he or she notifies the Board and all parties at least 30 days before the beginning of the hearing of his or her desire to participate.

[NAC 618.701 Representation of parties and interveners; qualifications of representatives. (NRS 618.295, 618.585)]

1. Any party to or intervener in a hearing before the Board may appear in person or through a representative.

2. A representative of a party or intervener controls all matters respecting the interest of the party or intervener in the proceeding.

3. Affected employees who are represented by an authorized employee representative may appear only through the authorized employee representative.

4. A representative of a party, an intervener or a representative of employees is not required to be an attorney at law.
5. Unless 1 year has elapsed since the termination of his or her employment, a former employee of the Division, the Enforcement Section or the Chief may not appear before the Board as an attorney or other representative for any party in any proceeding or other matter, formal or informal, for which he or she was personally responsible during the period of his or her employment.

[Dep’t of Occupational Safety & Health, part Rule No. 22 & Rule No. 106, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87; A by Div. of Industrial Relations by R142-98, 2-28-2000)

NAC 618.704 Withdrawal of representative. (NRS 618.295, 618.585) Any representative may withdraw from representation by filing a written notice of withdrawal and by serving a copy of the notice on all parties and interveners.

[Dep’t of Occupational Safety & Health, part Rule No. 22, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.707 Service of process: General requirements. (NRS 618.295, 618.585)

1. When a pleading or other document is filed, a copy of the document must be served by the party or intervener filing the document on every other party or intervener.

2. Service upon a party or intervener who is appearing through a representative must be made only upon the representative.

3. Unless otherwise ordered by the Board or the Chief, service must be made by first-class certified mail, return receipt requested, or by personal delivery.

4. Service is completed when the document is mailed or delivered.

[Dep’t of Occupational Safety & Health, Rule No. 7 subsecs. 1-3, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.710 Service of process: Authorized employee representatives; unrepresented employees. (NRS 618.295, 618.585)

1. If an affected employee is not represented by an authorized employee representative, the employer shall, immediately upon receipt of the notice sent by the Enforcement Section to the Board, post, where the citation is required to be posted, a copy of the statement informing affected employees of their right to participate as a party and of the availability of all pleadings for inspection and copying at reasonable times. The notice may be in the following form:

(Your employer) has been cited by the Chief of the Occupational Safety and Health Enforcement Section of the Division of Industrial Relations of the Department of Business and Industry for violation of the Nevada Occupational Safety and Health Act, chapter 618 of NRS. The citation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Board. Affected employees are entitled to participate in this hearing as parties under
terms and conditions established by the Occupational Safety and Health Review Board in NAC 618.650 to 618.848, inclusive. Notice of intent to participate must be sent, at least 30 days before the date of the hearing, to:

Occupational Safety and Health Review Board

400 West King Street, Suite 200
Carson City, Nevada 89703

All papers relevant to this matter may be inspected at:

(Place reasonably convenient to employees, preferably at or near workplace).

If appropriate, the second sentence of this notice may be deleted and the following sentence may be substituted:

The reasonableness of the period prescribed by the Chief for abatement of the violation has been contested and will be the subject of a hearing before the Occupational Safety and Health Review Board.

2. The authorized employee representative must be served with the notice in subsection 1 and with a copy of the notice of the appeal or contest.

3. A copy of the notice of the hearing to be held before the Board must be served by the employer on affected employees who are not represented by an authorized employee representative by posting a copy of the notice of the hearing at or near the place where the citation is required to be posted.

4. A copy of the notice of the hearing to be held before the Board must be served by the employer on the authorized representative of any employee who has entered an appearance as of the date the notice is received by the employer.

5. If a notice of contest is filed by an affected employee who is not represented by an authorized employee representative and there are other affected employees who are represented by an authorized employee representative, the unrepresented employee shall serve a copy on the authorized representative as prescribed in subsection 3 of NAC 618.707 and file proof of the service.

6. If a notice of contest is filed by an affected employee or an authorized employee representative, a copy of the notice of contest and the response filed in support of the contest must be provided to the employer for posting as prescribed in subsection 1.

7. An authorized employee representative who files a notice of contest shall serve a copy of the notice on any other authorized employee representative whose members are affected employees.

8. Where posting is required by this section, the posting must be maintained until the commencement of the hearing or until an earlier disposition of the contest or appeal.

[Dep’t of Occupational Safety & Health, Rule No. 7 subsecs. 6-14, eff. 11-9-73]—(NAC A by
NAC 618.713 Proof of service. (NRS 618.295, 618.585)

1. Proof of service must be made by a written affidavit which gives the date and manner of service. The affidavit must be filed with the pleading or document.

2. If service is accomplished by posting, proof of posting must be made by written affidavit filed not later than the first working day after the document is posted.

[Dep’t of Occupational Safety & Health, Rule No. 7 subsecs. 4 & 5, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

Pleadings, Motions and Other Papers

NAC 618.716 Contents of initial pleading. (NRS 618.295) An initial pleading filed by any person must contain the person’s name, address and telephone number. Any change in this information must be communicated promptly in writing to the Board and to all other parties and interveners. A party or intervener who fails to furnish this information shall be deemed to have waived the right to notice and service.

[Dep’t of Occupational Safety & Health, Rule No. 6, eff. 11-9-73]

NAC 618.719 All relevant documents to be submitted to Board with notice of appeal or contest. (NRS 618.295, 618.585) All relevant documents must be sent to the Board with the notice of appeal or contest.

[Dep’t of Occupational Safety & Health, Rule No. 32, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.720 Notice of appeal or contest to be sent to all interested parties. (NRS 618.295) A copy of the notice of an appeal or contest sent by the Enforcement Section to the Board must also be sent to all interested parties.

(Added to NAC by Occupational Safety & Health Review Bd., eff. 2-19-87)

NAC 618.722 Captions; titles of cases. (NRS 618.295, 618.585)

1. A hearing before the Board initiated by a notice of contest must be titled “Chief of the Occupational Safety and Health Enforcement Section of the Division of Industrial Relations of the Department of Business and Industry, Complainant vs. Respondent.”

2. A hearing before the Board initiated by an appeal must be titled “(Name of employer), Petitioner vs. Chief of the Occupational Safety and Health Enforcement Section of the Division of Industrial Relations of the Department of Business and Industry, Respondent.”

3. The titles must appear at the left upper portion of the first page of any pleading or document, other than exhibits.
4. The first page of any pleading or document, other than exhibits, must show, at the upper right of the page opposite the title, the docket number, if known, assigned by the Board.

[Dep’t of Occupational Safety & Health, Rule No. 31, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.725 Form of pleadings. (NRS 618.295)

1. Except as otherwise provided in this section, there are no specific requirements for the form of any pleading. A pleading must contain a caption sufficient to identify the parties in accordance with NAC 618.722, which must include the Board’s docket number, if assigned, and a clear and plain statement of the relief that is sought, and the grounds for that relief.

2. Pleadings and other documents, other than exhibits, must be typewritten, double spaced, on letter size opaque paper, approximately 8 1/2 by 11 inches. The left margin must be 1 1/2 inches and the right margin 1 inch. Pleadings and other documents must be fastened at the upper left corner.

3. Pleadings must be signed by the party filing or by his or her representative. This signature constitutes a representation by the signer that he or she has read the document or pleading, that to the best of his or her knowledge, information and belief the statements made therein are true, and that the pleading is not interposed for delay.

4. The Board may refuse for filing any pleading or document which does not comply with the requirements of this section.

[Dep’t of Occupational Safety & Health, Rule No. 30, eff. 11-9-73]

NAC 618.734 Response to motions. (NRS 618.295) Any party or intervener upon whom a motion is served has 10 days from the service of the motion to file a response.

[Dep’t of Occupational Safety & Health, Rule No. 37, eff. 11-9-73]

NAC 618.737 Statement of position. (NRS 618.295) At any time before the commencement of the hearing before the Board, any person entitled to appear as a party, or any person who has been granted leave to intervene, may file a statement of position with respect to any or all issues to be heard.

[Dep’t of Occupational Safety & Health, Rule No. 36, eff. 11-9-73]

NAC 618.740 Petition for leave to intervene. (NRS 618.295, 618.585)

1. A petition for leave to intervene in a hearing before the Board must be filed at least 30 days before the date of the hearing.

2. The petition must describe the interest of the petitioner in the proceeding, show that the participation of the petitioner will assist in the determination of the issues in question, and that the intervention will not unnecessarily delay the proceeding.
3. The Board will grant a petition for intervention to such an extent and upon such terms as the Board determines to be proper.

[Dep’t of Occupational Safety & Health, Rule No. 21, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.743 Failure to file pleadings. (NRS 618.295) Failure to file any pleading when due may constitute a waiver of the right to further participation in the proceedings.

[Dep’t of Occupational Safety & Health, Rule No. 38, eff. 11-9-73]

Complaints

NAC 618.746 Filing by Chief; allegations; amendment of citation or proposed penalty. (NRS 618.295, 618.585)

1. The Chief shall file a complaint with the Board no later than 20 days after his or her receipt of a notice of contest.

2. The complaint must allege all violations and proposed penalties which are contested, stating with particularity:
   
   (a) The basis for jurisdiction;

   (b) The time, location, place and circumstances of each alleged violation; and

   (c) The considerations upon which the citation and the proposed penalty for each alleged violation are based.

3. If the Chief seeks in the complaint to amend his or her citation or proposed penalty, the Chief shall give the reasons for amendment and state with particularity the change sought.

[Dep’t of Occupational Safety & Health, part Rule No. 33, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.749 Answer. (NRS 618.295, 618.585)

1. Within 15 days after service of a complaint, the party against whom the complaint was issued shall file an answer with the Board and serve the opposing parties with a copy of the answer.

2. The answer must contain a short and plain statement denying those allegations in the complaint which the party intends to contest. Any allegation not denied shall be deemed admitted.

[Dep’t of Occupational Safety & Health, part Rule No. 33, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

Hearings

NAC 618.752 Conduct of hearings by Board. (NRS 618.295, 618.585) The Board will conduct
a fair and impartial hearing to assure that the facts are fully elicited to adjudicate all issues and avoid delay. The Board will, between the time it is notified of an appeal or contest and the time it issues a decision:

1. Rule upon offers of proof and receive relevant evidence;

2. Take or cause depositions to be taken whenever the needs of justice would be served;

3. Regulate the course of the hearing and, if appropriate or necessary, exclude persons from the hearing for contemptuous conduct and strike all related testimony of witnesses refusing to answer any proper questions;

4. Hold conferences for the settlement or simplification of the issues;

5. Dispose of procedural requests or similar matters, including motions referred to the Board by the Chief and motions to amend pleadings, to dismiss complaints or portions of them and to order hearings reopened or, upon motion, consolidated before the issuance of the Chair’s report;

6. Make decisions in conformity with the act;

7. Call and examine witnesses and introduce into the record documentary or other evidence;

8. Request the parties at any time during the hearing to state their respective positions concerning any issue in the case or theory in support of the case;

9. Adjourn the hearing as the needs of justice and good administration require; and

10. Take any other action necessary and authorized by the regulations of the Board or the Division.

[Dep’t of Occupational Safety & Health, Rule No. 66, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87; A by Div. of Industrial Relations by R142-98, 2-28-2000)

NAC 618.755 Disqualification of member of Board. (NRS 618.295, 618.585)

1. A member of the Board may withdraw from a proceeding whenever the member of the Board considers himself or herself to be disqualified.

2. Any party may request a member of the Board, at any time before the filing of the Board’s decision, to withdraw on the grounds of personal bias or other disqualification, by filing with the Board promptly upon the discovery of the alleged facts an affidavit setting forth in detail the matters alleged to constitute grounds for disqualification.

3. If, in the opinion of the member of the Board, the affidavit is filed with due diligence and is sufficient on its face, the member of the Board shall disqualify himself or herself and withdraw from the proceeding.

4. If a member of the Board withdraws from the proceeding, the member of the Board shall state the reason for the disqualification upon the record, stating the grounds for his or her decision. If the member of the Board does not believe the affidavit is sufficient on its face, the member of the
Board shall state his or her decision on the record. The Board shall proceed with the hearing, or, if the hearing has closed, proceed with issuing its decision.

[Dep’t of Occupational Safety & Health, Rule No. 67, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.758 Chief’s participation in hearing. (NRS 618.295) In any proceeding noticed pursuant to NAC 618.650 to 618.848, inclusive, the Chief will not participate in or give advice regarding the report of the Board’s decision.

[Dep’t of Occupational Safety & Health, Rule No. 104, eff. 11-9-73]

NAC 618.761 Ex parte communication. (NRS 618.295)

1. There may be no ex parte communication, with respect to the merits of any case not decided, between the Board, including any member, officer, employee or agent of the Board who is employed in the decision process, and any of the parties or interveners.

2. If an ex parte communication occurs, the Board may make any orders or take any action fairness requires. Upon notice and hearing, the Board may take any disciplinary action appropriate in the circumstances against any person who knowingly and willfully makes or solicits the making of a prohibited ex parte communication.

[Dep’t of Occupational Safety & Health, Rule No. 103, eff. 11-9-73]

NAC 618.764 Confidential information. (NRS 618.295)

1. Upon application by any person, in a proceeding where trade secrets or other matters may be divulged, the confidentiality of which is protected by the act, the Board will issue such orders as may be appropriate to protect the confidentiality of these matters.

2. An interlocutory appeal from an adverse ruling under this section will be granted as a right.

[Dep’t of Occupational Safety & Health, Rule No. 11, eff. 11-9-73]

NAC 618.767 Prehearing conference. (NRS 618.295)

1. At any time before a hearing, the Board, on its own motion or on the motion of a party, may direct the parties or their representatives to exchange information or to participate in a prehearing conference to consider matters which will simplify the issues or expedite the proceedings.

2. The Board may issue a prehearing order which includes the agreements reached by the parties. The order will be served on all parties and is a part of the record.

[Dep’t of Occupational Safety & Health, Rule No. 51, eff. 11-9-73]

NAC 618.770 Notice of hearing. (NRS 618.295, 618.585) Except as otherwise provided in NAC 618.650 to 618.848, inclusive, the Board will send a notice of the time, place and nature of a hearing to the parties and interveners of record at least 10 days before the hearing.
NAC 618.773 Withdrawal of notice of contest. (NRS 618.295) At any stage of a proceeding, a party may withdraw his or her notice of contest, subject to the approval of the Board.

NAC 618.776 Postponement of hearing. (NRS 618.295)

1. The postponement of a hearing ordinarily will not be allowed.

2. Except in the case of an extreme emergency or in unusual circumstances, no request will be considered unless received in writing at least 3 days in advance of the time set for the hearing.

3. No postponement in excess of 30 days will be allowed without the Board’s approval.

NAC 618.779 Expedited proceeding. (NRS 618.295, 618.585)

1. Upon application of any party or intervener, or upon the motion of any member of the Board, the Chair of the Board may order an expedited proceeding.

2. If an expedited proceeding is ordered:

   (a) The Chief shall notify all parties and interveners.

   (b) The Chair of the Board shall make necessary rulings for the time for the filing of pleadings and all other matters, order daily transcripts of the hearing, and do all other things necessary to complete the proceeding in the minimum time consistent with fairness.

NAC 618.782 Failure of party to appear. (NRS 618.295)

1. Subject to the provisions of subsection 3, the failure of a party to appear at a hearing is a waiver of all rights except the rights to be served with a copy of the decision of the Board.

2. Requests for reinstatement must be made, in the absence of extraordinary circumstances, within 5 days after the scheduled date for the hearing.

3. The Board, upon a showing of good cause, may excuse a failure to appear. In this event, the hearing will be rescheduled.

NAC 618.785 Conduct at hearings. (NRS 618.295) All persons appearing in any proceeding shall conform to the standards of ethical conduct required in the courts of the State of Nevada.
NAC 618.788 Burden of proof. (NRS 618.295, 618.585) In all proceedings commenced by the filing of a notice of contest, the burden of proof rests with the Chief.

NAC 618.791 Subpoenas. (NRS 618.295, 618.585)

1. The Chair of the Board or any member of the Board shall, on the application of any party directed to the Board, request the Chief to issue subpoenas requiring the attendance and testimony of witnesses and the production of any evidence, including relevant books, records, correspondence or documents. An application, if filed after the notice of appeal or contest is sent to the Board, must be filed with the Board. An application for a subpoena may be made ex parte. The subpoena must show on its face the name and address of the party at whose request the subpoena was issued.

2. If the person served with a subpoena does not intend to comply with the subpoena, the person shall, within 5 days after the date of service, move in writing to revoke or modify the subpoena. All motions to revoke or modify a subpoena must be served on the party at whose request the subpoena was issued.

3. The Chair of the Board may revoke or modify the subpoena if:

   (a) The evidence whose production is required does not relate to any matter under investigation or in question in the proceedings;

   (b) The subpoena does not describe with sufficient particularity the evidence whose production is required; or

   (c) For any other reason sufficient in law, the subpoena is otherwise invalid.

The Chair shall state his or her reasons for the ruling on the motion to revoke or modify. The motion to revoke or modify, any answer filed to the motion, and any ruling on the motion are a part of the record.

4. Persons compelled to submit data or evidence at a public proceeding are entitled to retain, or on payment of lawfully prescribed costs, to procure, copies of transcripts of the data or evidence submitted by them.

5. Upon the failure of any person to comply with a subpoena issued upon the request of a party, the Board will request that the Chief initiate proceedings in the appropriate district court for the enforcement of the subpoena.

NAC 618.794 Failure to comply with order for discovery. (NRS 618.295) If any party or
intervener fails to comply with an order of the Board to permit discovery in accordance with the provisions of **NAC 618.650** to **618.848**, inclusive, the Board may issue appropriate orders.

[Dep't of Occupational Safety & Health, Rule No. 54, eff. 11-9-73]

**NAC 618.797** Depositions; interrogatories. (NRS 618.295)

1. Except by special order of the Board, discovery depositions of parties, interveners or witnesses are not allowed.

2. If the Board grants an application for discovery proceedings, the order granting the proceedings must give appropriate time limits governing the discovery.

[Dep't of Occupational Safety & Health, Rule No. 53, eff. 11-9-73]

**NAC 618.800** Requests for admissions. (NRS 618.295)

1. At any time after the filing of a responsive pleading, any party may request of any other party admissions of facts to be made under oath. Each admission requested must be listed separately. The matter shall be deemed admitted unless, within 15 days after service of the request, or within such shorter or longer time as the Board may prescribe, the party to whom the request is directed serves upon the party requesting the admission a specific written response.

2. Copies of all requests and responses must be served on all parties in accordance with the provisions of **NAC 618.707**, **618.710** and **618.713** and filed with the Board within the time allotted. Such requests are a part of the record.

[Dep’t of Occupational Safety & Health, Rule No. 52, eff. 11-9-73]

**NAC 618.803** Rules of evidence. (NRS 618.295) Hearings before the Board must be in accordance with the Nevada Administrative Procedure Act, Chapter 233B of NRS, and, if practicable, must be governed by the rules of evidence applicable in the district courts of this State.

[Dep’t of Occupational Safety & Health, Rule No. 72, eff. 11-9-73]

**NAC 618.806** Exhibits. (NRS 618.295)

1. All exhibits offered in evidence must be numbered and marked with a designation identifying the party or intervener by whom the exhibit is offered.

2. In the absence of objection by another party or intervener, exhibits must be admitted into evidence as a part of the record, unless excluded by the Board pursuant to **NAC 618.803**.

3. Unless the Chair of the Board finds it impractical, a copy of each exhibit must be given to the other parties and interveners.

4. All exhibits offered, but denied admission into evidence, must be identified and placed in a separate file designated for rejected exhibits.
NAC 618.809 Examination of witnesses; affidavits. (NRS 618.295)

1. Witnesses may be examined orally under oath. Opposing parties have the right to cross-
examine any witness whose testimony is introduced by an adverse party.

2. An affidavit may be admitted as evidence in lieu of oral testimony if the matters contained
therein are otherwise admissible and the parties agree to its admission.

NAC 618.812 Inspection and reproduction of documents. (NRS 618.295)

1. Subject to the provisions of the law restricting public disclosure of information, any person
may, at the offices of the Enforcement Section, inspect and copy any document filed in any
proceeding.

2. The costs of the copies must be paid by the person inspecting the documents.

NAC 618.815 Objections. (NRS 618.295)

1. Any objection with respect to the conduct of the hearing, including any objection to the
introduction of evidence or a ruling by the Chair of the Board, may be stated orally or in writing,
accompanied by a short statement of the grounds for the objection, and is included in the record.
No objection is waived by further participation in the hearing.

2. Whenever evidence is excluded from the record, the party offering the evidence may make an
offer of proof, which must be included in the record of the proceeding.

NAC 618.818 Depositions. (NRS 618.295, 618.585)

1. An application to take the deposition of a witness in lieu of oral testimony must be in writing
and must set forth the reasons the deposition must be taken, the name and address of the witness,
the matters to which the witness will testify and the time and place proposed for the taking of the
deposition. The application must be filed with the Board and served on all other parties and
interveners not less than 7 days, if the deposition is to be taken within the continental United
States, or not less than 15 days, if the deposition is to be taken elsewhere, before the time the
deposition is to be taken. Where good cause has been shown, the Board will make and serve on
the parties and interveners an order which specifies the name of the witness whose deposition is
to be taken and the time, place and designation of the officer before whom the witness is to
testify.

2. The deposition may be taken before any officer authorized to administer oaths by the laws of
the State of Nevada or of the place where the examination is held. If the examination is held in a
foreign country, it may be taken before any secretary of embassy or legation, consul general, consul, vice consul or consular agent of the United States.

3. At the time and place specified in the order, the officer designated to take the deposition shall permit the witness to be examined and cross-examined under oath by all parties appearing. The testimony of the witness must be typewritten by the officer or under the officer’s direction. All objections to questions or evidence are waived unless made at the examination. The officer may not rule upon any objection, but shall note them upon the deposition. The testimony must be subscribed by the witness in the presence of the officer who shall attach his or her certificate stating that the witness was sworn by the officer, that the deposition is a true record of the testimony and exhibits given by the witness, and that the officer is not of counsel or attorney to any of the parties nor interested in the proceeding. If the deposition is not signed by the witness because the witness is ill, dead, cannot be found or refuses to sign it, this fact must be included in the certificate of the officer and the deposition may be used as though signed. The officer shall immediately deliver an original and four copies of the transcript, together with the officer’s certificate, in person or by registered mail to the Chief.

4. The Board will rule upon the admissibility of the deposition or any part of the deposition.

5. All errors or irregularities in compliance with the provisions of this section are waived unless a motion to suppress the deposition or a part of it is made with reasonable promptness after the defect is, or with due diligence might have been, discovered.

6. If the parties stipulate in writing, depositions may be taken before any person at any time or place, upon any notice and in any manner, and when so taken, may be used as other depositions are used.

[Dep’t of Occupational Safety & Health, Rule No. 70, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.821 Oral arguments. (NRS 618.295, 618.585) Oral arguments on motions or other preliminary matters before the Board will not be allowed unless the Board advises all parties to the proceeding of the date, hour, place, time allotted and scope of the argument at least 10 days before the date set for the argument.

[Dep’t of Occupational Safety & Health, Rule No. 92, eff. 11-9-73]—(NAC A by Occupational Safety & Health Review Bd., 2-19-87)

NAC 618.824 Severance. (NRS 618.295) Upon its own motion, or upon a motion of any party or intervener, the Board may, for good cause, order any proceeding severed with respect to some or all issues or parties.

[Dep’t of Occupational Safety & Health, Rule No. 10, eff. 11-9-73]

NAC 618.827 Consolidation. (NRS 618.295) Cases may be consolidated on the motion of any party or on the Board’s own motion if there exist common parties, common questions of law or fact, or both, or in any other circumstances as justice and the administration of the act require.
NAC 618.830 Time for filing briefs or proposed findings of fact or conclusions of law. (NRS 618.295, 618.585) The Chair of the Board may fix a reasonable period for the filing of any briefs ordered by the Board or proposed findings of fact and conclusions of law.

NAC 618.833 Settlement. (NRS 618.295, 618.585)

1. A settlement will be approved by the Board at any stage of the proceedings if the settlement is consistent with the provisions and objectives of chapter 618 of NRS.

2. An agreement for a settlement submitted by the parties must be accompanied by an appropriate proposed order.

3. If parties agree to a settlement, a copy of the agreement must be served upon all affected employees who have given notice. Proof of service must accompany the proposed settlement when submitted to the Board.

NAC 618.836 Decision of Board. (NRS 618.295, 618.585)

1. The decision of the Board will include findings of fact, conclusions of law and an order.

2. All motions, petitions and other pleadings filed after the issuance of the decision must be addressed to the Board.

NAC 618.839 Stay of final order. (NRS 618.295)

1. Any party aggrieved by a final order of the Board may, while the matter is within the jurisdiction of the Board, file a motion for a stay.

2. The motion must list the reasons for which a stay is sought and the length of the stay requested.

3. The Board may order a stay for the period requested or for a longer or shorter period as appropriate.

NAC 618.842 Transcript. (NRS 618.295) Hearings must be transcribed verbatim. A copy of the transcript of testimony taken at the hearing, fully certified by the reporter, must be filed with the Board before whom the matter was heard. The Board will promptly serve notice upon each of the
parties and interveners of the filing of the transcript.
[Dep’t of Occupational Safety & Health, Rule No. 65, eff. 11-9-73]

NAC 618.845 Reporter’s fees. (NRS 618.295) Except as otherwise provided in NAC 618.848, reporter’s fees must be paid by the Enforcement Section.

[Dep’t of Occupational Safety & Health, Rule No. 64, eff. 11-9-73]

NAC 618.848 Witness fees; fees to persons taking depositions. (NRS 618.295)

1. Witnesses summoned before the Board are entitled to be paid the same fees and mileage that are paid to witnesses in the courts of the State of Nevada.

2. Witnesses whose depositions are taken and the persons taking the depositions are entitled to the same fees as are paid for similar services in the courts of the State of Nevada.

3. Witness fees and mileage must be paid by the party at whose instance the witness appears. The party at whose instance the deposition is taken shall pay the person taking the deposition.

[Dep’t of Occupational Safety & Health, Rule No. 63, eff. 11-9-73]