



**STATE OF NEVADA**  
**Department of Business and Industry**  
**Division of Industrial Relations**  
**OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION**

# **Nevada Operations Manual** **(NOM)**

**January 2017**

## Executive Summary

This Manual, revised January, 2017 cancels and replaces the Nevada Operations Manual (NOM) revision February 2013 and this document constitutes Nevada OSHA's (NVOSHA) general enforcement policies and procedures manual for use by the NVOSHA District Offices in conducting inspections, issuing citations, and proposing penalties.

The State of Nevada, under an agreement with Federal OSHA, operates an occupational safety and health program in accordance with Section 18 of the Occupational Safety and Health Act of 1970. Initial approval of the Nevada State Plan was published on January 4, 1974, and Final approval was published on April 18, 2000.

The Nevada State Plan applies to all public and private sector employers in the State, with some exceptions, including, but not limited to Federal employees, the United States Postal Service (USPS), private sector maritime, employment on Indian lands, and areas of exclusive Federal jurisdiction. See NRS 618.315; 29 CFR 1952.295.

The Administrator of the Division of Industrial Relations (the Administrator) is charged with enforcing the Nevada Occupational Safety and Health Act (the Act), NRS 618.005 *et seq.* He is also the Nevada State Plan designee.

Under the Act, the Division of Industrial Relations is administered by the Department of Business and Industry and a decision on any question under the Act must be a decision of the Administrator, subject to review by the Department. Thus, either the Administrator of the Division of Industrial Relations or the Director of the Department of Business and Industry may, as they deem appropriate, participate in any activity authorized by the Act or set forth in this Operations Manual.

## Significant Changes

- Removed references to IMIS/NCR procedures and replaced with appropriate OIS references throughout the document.
- Removed references to CPL 02-00-149 Severe Violator Enforcement Program, replaced with references to the Nevada OSHA Severe Violator Enforcement Program.
- Added internet links to referenced documents throughout.
- Chapter 2 – Updated cooperative programs overview to reference the Nevada VPP Policies and Procedures Manual
- Chapter 2 – Updated language to add justification for conducting an inspection at an exempt employer in the inspection narrative (2.4.d.2)
- Chapter 3 – Added requirement to forward referrals for SHARP participant sites to SCATS for handling (3.2.b.1)
- Chapter 3 – Added language requiring CSHOs to maintain physical possession of their credentials during inspections. (3.4.b.1)
- Added language concerning confidentiality of interview statements released to non-management employees at the employee’s request. (3.7.i.5.C)
- Updated violation worksheet requirements to comply with OIS procedures (4.5.c)
- Updated language to mandate interviews with management officials related to the inspection (5.7.c)
- Deleted references to “N” codes when performing inspection activities related to appropriations act rider provisions (6.2.b)
- Updated language in Chapter 6 Appendix A to reflect changes to probability assessment factor language in OIS (Ch. 6 App. A)
- Added language referring users to the OIS Enforcement User Manual for detailed and current debt collection processing procedures. (6.15.b)
- Removed reference to CPL 02-00-090, Guidelines for Administration of Corporate-Wide Settlement Agreements. (Ch 7&8)
- Removed “including a past employee” from definition of non-formal complaint (9.1.a.1.B)
- Added “Former Employee of Referred Employer” and associated information to definition of Referral (9.1.a.6.H)
- Added “The supervisor shall provide a detailed explanation of his reasons for ordering an inspection in the applicable comments fields in the complaint or referral report” to the requirements for inspections ordered based on supervisory discretion (9.1.f.10)

- Deleted “working” as related to the number of days to initiate an inspection. Note, no differentiation is made in the NOM regarding inspection initiation timeframes between complaints and referrals. (9.1.k.4)
- Modified discrimination complaint procedures to conform to current agency practices (9.3)
- Changed references to agriculture inspection SIC codes to current NAICS codes as found in the BLS NAICS Crosswalk (10.1.b.3)
- Amended procedures regarding Recording and Tracking for Fatality/Catastrophe Investigations to conform to current OIS procedures (11.2.k)
- Added requirement for CSHOs to be accompanied by sworn law enforcement when serving a warrant (previous language stated local or county officials). New language allows for state law enforcement personnel (15.3.g)
- Added basic language to Chapter 16 (previously reserved) regarding disclosure of agency records pursuant to the Nevada Open Records Law (Ch 16).

## Disclaimer

**This manual is intended to provide instruction regarding some of the internal operations of the Nevada Occupational Safety and Health Administration (NVOSHA), and is solely for the benefit of the State of Nevada Government. No duties, rights, or benefits, substantive or procedural, are created or implied by this manual. The contents of this manual are not enforceable by any person or entity against the Division of Industrial Relations or the State of Nevada. Statements, which reflect current Nevada Occupational Safety and Health Review Board or court precedents, do not necessarily indicate acquiescence with those precedents.**

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# Chapter 1

## INTRODUCTION

1. **PURPOSE** - This Revision of the Nevada Operations Manual (NOM) replaces the NOM of February 2013 and it serves as a reference document for Nevada OSHA (NVOSHA) District Offices and the Compliance Safety and Health Officers. It provides NVOSHA's enforcement policies and procedures for identifying the responsibilities associated with the majority of their inspection duties. This NOM is adopted from the Federal OSHA's Field Operations Manual. However, material and references were added or deleted, as needed, to meet NVOSHA requirements.

2. **SCOPE** - This Instruction applies to NVOSHA only.

3. **REFERENCES** -

- a. NEVADA REVISED STATUTE (NRS) 618
- b. NEVADA ADMINISTRATIVE CODE (NAC) 618

4. **DEFINITIONS AND TERMINOLOGY** -

- a. **THE NVOSH ACT** - This term refers to the Nevada Occupational Safety and Health Act of 1974.
- b. **COMPLIANCE SAFETY AND HEALTH OFFICER (CSHO)** - This term refers to, Compliance Safety Officers, and Industrial Hygienists.
- c. **HE/SHE AND HIS/HERS** - The terms *he* and *she*, as well as *his* or *her*, when used throughout this manual, is interchangeable. That is, male(s) applies to female(s), and vice versa.
- d. **PROFESSIONAL JUDGMENT** - All NVOSHA employees are expected to exercise their best judgment as safety and health professionals and as representatives of the Nevada Department of Business and Industry, Division of Industrial Relations, in every aspect of carrying out their duties.
- e. **WORKPLACE AND WORKSITE** - The terms *workplace* and *worksites* are interchangeable. *Workplace* is used more frequently in general industry, while *worksites* is more commonly used in the construction industry.
- f. **SCATS** - The term refers to Safety Consultation and Training Section, State of Nevada.
- g. **CAO** - The term refers to Chief Administrative Officer, aka Chief.

5. **PROFESSIONALISM - Professionalism, employer/employee, and fellow employee relations:**

- We work in a public agency that is, in some people's view, controversial at best. There can be several reasons for this. Some people do not like the government sticking its nose into their business. In addition, our agency has been vested with certain regulatory powers, and we sometimes take action-involving employers that can result in significant monetary

penalties. We can also require employers to change the way they do business, in order to meet a code requirement, sometimes at great expense. Employees working in these situations have been disciplined, and on occasion terminated, because they were not following code requirements during a NVOSHA inspection. For these and a multitude of other reasons, employers and employees alike often fear our agency.

- As public servants, it is vital that we conduct ourselves professionally and ethically, at all times. This includes how we treat our fellow employees both in the office, and in the field when working as a team. Always put your "best foot" forward and treat everyone professionally. Treat people like you would like to be treated in the same situation.
- If an encounter with an employer, employee, and/or fellow employee becomes disagreeable and/or unprofessional, do not react. Attempt to resolve the situation politely and professionally. If confrontation or disruption continues, disengage and contact your supervisor for direction.
- Unprofessional, sarcastic, demeaning conduct on our part, towards anyone, is unacceptable. We must always respond in a professional and ethical way. As NVOSHA employees dealing with the public, we are on a stage being watched by everyone in the area. Professional, courteous conduct on our part is always the appropriate response.
- Let us all work towards the common goal of making NVOSHA the best that we can be. Utilizing professional judgment, treating others as you would want to be treated, and understanding how individuals that we deal with on a daily basis can be intimidated by our agency, are essential keys to achieving that success.

## Chapter 2

### PROGRAM PLANNING

**1.INTRODUCTION** - NVOSHA's mission is to assure the safety and health of the State of Nevada's working men and women by promulgating and enforcing standards and regulations; providing training, outreach, and education; establishing partnerships; and encouraging continual improvement in workplace safety and health as well as the development of comprehensive Written Safety and Health Programs. Effective and efficient use of resources requires careful, flexible planning. In this way, the overall goal of hazard abatement and employee protection is best served.

#### **2.DISTRICT OFFICE RESPONSIBILITIES -**

- a. **PROVIDING ASSISTANCE TO SMALL EMPLOYERS - NRS 618.257** - Sections for Enforcement and for Safety and Health Consultation, Education, Information and Training; Establishment; duties; certain programs and services for small employers.
  - 1. The Administrator shall establish:
    - A. Within the Division a Section for:
      - i. Enforcement; and
      - ii. Safety and Health Consultation, Education, Information and Training
    - B. Such duties, in addition to the duties described below.
  - 2. If authorized by the Secretary of Labor, the Section for Enforcement shall develop a program for small employers to eliminate or abate hazards to the safety and health of employees. Except as otherwise provided by federal law, if a small employer complies with the program for small employers, the Section for Enforcement may reduce any penalty, fine or interest imposed pursuant to this chapter.
  - 3. The Section for Safety and Health Consultation, Education, Information and Training shall establish:
    - A. A toll-free telephone number within this State to provide advice to a small employer who seeks assistance in complying with the requirements of this chapter; and
    - B. A program designed to assist a small employer in complying with the requirements of this chapter, including, as appropriate, the preparation and dissemination of pamphlets describing the requirements of this chapter.
- b. **OUTREACH PROGRAM** - The CAO of SCATS maintains an outreach program appropriate to local conditions and the needs of the service area. The plan may include support services, assistance services including assistance in developing Written Safety and Health Programs, training and education services, referral services, cooperative programs, abatement assistance, and technical services.
- c. **RESPONDING TO REQUESTS FOR ASSISTANCE** - All requests from employers or employees for compliance information or assistance shall receive timely, accurate, and

helpful responses from NVOSHA. See the section on Information Requests in this chapter for additional information.

**3.COOPERATIVE PROGRAMS OVERVIEW -** NVOSHA, with SCATS, offer a number of avenues for businesses and organizations to work cooperatively with the Division. CSHOs should discuss the various cooperative programs with employers.

- a. **VOLUNTARY PROTECTION PROGRAM (VPP)** - The VPP is designed to recognize and promote effective safety and health management. A hallmark of VPP is the principle that management, labor, and NVOSHA can work together in pursuit of a safe and healthy workplace. A VPP participant is an employer that has successfully designed and implemented a health and safety management program at its worksite and it is exempt from programmed inspections, as well as complaints and referrals that do not involve imminent danger situations.

NOTE: See *Nevada VPP Policies and Procedures Manual*, for additional information.

b. **ONSITE CONSULTATION PROGRAM -**

1. SCATS offer a variety of services at no cost to employers. These services include assisting in the development and implementation of an effective Written Safety and Health Program, and offering training and education to the employer and employees at the worksite. Smaller businesses in high hazard industries or those involved in hazardous operations receive priority. SCATS is separate from NVOSHA's enforcement efforts. Under the consultation programs, no citations are issued, nor are penalties proposed.
2. Safety and Health Achievement Recognition Program (SHARP)
  - A. Another program that recognizes employers' efforts to create a safe workplace and exempts them from programmed inspections is the SHARP. This program is administered by SCATS and is partially funded under Section 21(d) of the Act.
  - B. SHARP is designed to provide incentives and support those employers that implement and continuously improve effective Written Safety and Health Program at their worksite. SHARP participants are exempted from NVOSHA programmed inspections.

NOTE: See *Nevada Consultation Policies and Procedures Manual*, for additional information.

- c. **ALLIANCE PROGRAM** - Through the Alliance Program, SCATS works with groups committed to safety and health, including businesses, trade or professional organizations, unions and educational institutions, to leverage resources and expertise to develop compliance assistance tools and resources and share information with employers and employees to help prevent injuries, illnesses and fatalities in the workplace. SCATS and the organization sign a formal agreement with goals that address training and education, outreach and communication, and promote the national dialogue on workplace safety and health.

**4.ENFORCEMENT PROGRAM SCHEDULING**

- a. **GENERAL** –

1. NVOSHA’s priority system for conducting inspections is designed to allocate available NVOSHA resources as effectively as possible to ensure that maximum feasible protection is provided to working men and women. The District Manager or designee will ensure that inspections are scheduled within the framework of this chapter that they are consistent with the objectives of the Division, and that appropriate documentation of scheduling practices is maintained.
  2. The District Manager or designee will also ensure that NVOSHA resources are effectively distributed during inspection activities. If an inspection is of a complex nature, the District Manager or designee may consider utilizing Federal OSHA resources (i.e., the Health Response Team). In other circumstances, the use of outside resources may aid the District Office to deploy available resources more effectively. The District Office will retain control of the inspection.
- b. **INSPECTION PRIORITY CRITERIA** - Generally, priority of accomplishment and of assigning staff resources for inspection categories is as shown in Table below:

**Table: Inspection Priorities**

| Priority | Category               |
|----------|------------------------|
| First    | Imminent Danger        |
| Second   | Fatality/Catastrophe   |
| Third    | Complaints/Referrals   |
| Fourth   | Programmed Inspections |

1. Efficient Use Of Resources - Deviations from this priority list are allowed so long as they are justifiable, lead to the efficient use of resources, and promote effective employee protection. An example of such a deviation would be when the Division, CAO or a District Manager commits a certain percentage of resources to programmed Special Emphasis Program (SEP) inspections such as a National Emphasis Program (NEP), a Local Emphasis Program (LEP), or Regional Emphasis Program (REP). Inspection scheduling deviations must be documented in the case file.
2. Follow-Up Inspections - In cases where follow-up inspections are necessary, they shall be conducted as promptly as resources permit. In general, follow-up inspections shall take priority over all programmed inspections and any unprogrammed inspection in which the hazards are anticipated to be other-than-serious. See Chapter 7, Post-Citation Procedures, and Abatement Verification, for additional information.

3. Monitoring Inspections - When a monitoring inspection is necessary, the priority is the same as for a follow-up inspection. See Chapter 7, Post-Citation Procedures, and Abatement Verification, for additional information.
  4. Employer Information Requests - Contacts for technical information initiated by employers or their representatives will not trigger an inspection, nor will such employer inquiries protect the requesting employer against inspections conducted pursuant to existing policy, scheduling guidelines, and inspection programs established by the Division.
  5. Reporting Of Imminent Danger, Catastrophe, Fatality, Amputations, Accidents, Referrals, Or Complaints- The District Manager or designee will act in accordance with established inspection priority procedures. **NRS 618.378** See Unprogrammed Activity – Hazard Evaluation and Inspection Scheduling, for additional information.
- c. **EFFECT OF CONTEST** - If an employer has contested a citation and/or a penalty from a previous inspection at a specific worksite, and the case is still pending before the Review Board; the following guidelines apply to additional inspections of the employer at that worksite:
1. If the employer has contested the penalty only, the inspection will be scheduled as if there were no contest;
  2. If the employer has contested the citation itself or any items therein, then programmed and unprogrammed inspections will be scheduled, but all under contest will be excluded from the inspection unless a potential imminent danger is involved.

NOTE: See Inspection Priority Criteria in this chapter for additional information.

d. **ENFORCEMENT EXEMPTIONS AND LIMITATIONS** -

1. In providing funding for Federal OSHA, Congress has consistently placed restrictions on enforcement activities for two categories of employers: small farming operations and small employers in low-hazard industries. Congress may place exemptions and limitations on Federal OSHA activities through the annual Appropriations Act.
2. Before initiating an inspection of an employer in these categories, the District Office will evaluate whether the Appropriations Act for the fiscal year would prohibit the inspection. Where this determination cannot be made beforehand, the CSHO will determine the status of the small farming operation or a small employer in a low-hazard industry upon arrival at the workplace. If the prohibition applies, the inspection shall immediately be discontinued unless directed otherwise by the DM or designee.

NVOSHA abides by the aforementioned exemptions and limitations unless directed by the District Manager or Supervisor to accomplish complaints, referrals and FAT/CAT at which time the CSHO will use "N 09 100%", 100% percent state funding for an exempted SIC, in the optional information of the OSHA-1.

NOTE: See [CPL 02-00-051, Enforcement Exemptions, and Limitations under the Appropriation Act](#), dated May 28, 1998, for additional information.

e. **PREEMPTION BY A FEDERAL AGENCY** -



1. Section 4(b)(1) of the Act states that the Act does not apply to working conditions over which other federal agencies exercise statutory responsibility to prescribe standards for safety and health.
2. If a question arises, usually upon receipt of a complaint, referral, or other inquiry, consult the list of Memorandums of Understanding (MOU) on the Federal OSHA website to determine if the issue has been previously addressed. A MOU is an agreement created to address/resolve coverage issues and to improve the working relationships between other Federal agencies and organizations regarding employee safety and health.
3. At times, an inspection may have already begun when the coverage jurisdiction question arises. Any such situation will be brought to the attention of the District Manager or designee as soon as they arise, and dealt with on a case-by-case basis.
4. Two examples of MOUs include the [\*Mine Safety and Health Administration \(MSHA\) - Interagency Agreement between the MSHA and Federal OSHA\*](#), dated 3/29/79 and the [\*United States Coast Guard/U.S. Department of Transportation - Authority of Coast Guard and Federal OSHA regarding enforcement of safety and health standards aboard vessels inspected and certified by the Coast Guard\*](#), dated 3/4/83.

**f. UNITED STATES POSTAL SERVICE -**

1. NVOSHA has elected not to cover the U.S. Postal Service (USPS) so Federal OSHA retains authority nationwide which covers employees and contract employees engaged in USPS mail operations to include contractor-operated facilities engaged in mail operations and postal stations in public or commercial facilities. NVOSHA covers private sector contractors working on USPS sites who are not engaged in USPS mail operations, such as building maintenance and construction employees. See the [\*Final Rule on State Plans Coverage of the U.S. Postal Service\*](#) (*Federal Register*, June 9, 2000 (65 FR 36618))
2. Violations documented during inspections initiated at a USPS site will be cited with penalties in accordance with the NOM and other applicable NVOSHA policies for the private sector.

**g. HOME-BASED WORKSITES -**

1. NVOSHA will not perform any inspections of employees' home offices. A home office is defined as office work activities in a home-based setting/worksites (i.e., filing, keyboarding, computer research, reading, and writing) and may include the use of office equipment (i.e., phone, fax, computer, copy machine, desk, and file cabinet).
2. NVOSHA will only conduct inspections of other home-based worksites, such as home manufacturing operations, when it receives a complaint or referral alleging that a violation of a safety or health standard exists that threatens physical harm, that an imminent danger is present, or that there was a work-related fatality. See [\*CPL 02-00-125, Home-Based Worksites\*](#), dated February 25, 2000, for additional information.

**h. INSPECTION/INVESTIGATION TYPES**

1. Unprogrammed

- A. Inspections scheduled in response to alleged hazardous working conditions identified at a specific worksite are classified as unprogrammed. This type of inspection responds to:
- i. Imminent Dangers
  - ii. Fatalities/catastrophes
  - iii. Complaints and
  - iv. Referrals
- B. It also includes follow-up and monitoring inspections scheduled by the District Office.

NOTE: This category includes all employers/employees directly affected by the subject of the unprogrammed inspection activity, and is especially applicable on multi-employer worksites.

NOTE: Not all complaints and referrals qualify for an inspection. See Chapter 9, Complaint and Referral Processing, for additional information.

NOTE: See [CPL 02-00-124, Multi-Employer Worksite Citation Policy](#), 12/10/99.

2. Unprogrammed Related

- A. Inspections of employers at multi-employer worksites whose operations are not directly addressed by the subject of the conditions identified in a complaint, accident, or referral are designated as unprogrammed related.
- B. An example would be - A trenching inspection conducted at the unprogrammed worksite where the trenching hazard was not identified in the complaint, accident report, or referral.

3. Programmed - Inspections of worksites, which have been scheduled, based upon objective or neutral selection criteria are programmed inspections, such as NVOSHA's Inspection Targeting Plans (ITPs). The worksites are selected according to State scheduling plans for safety and for health or under local, regional, and national special emphasis programs.

4. Program Related - Inspections of employers at multi-employer worksites whose activities were not included in the programmed assignment, such as a low injury rate employer at a worksite where programmed inspections are being conducted for all high rate employers.

**5. UNPROGRAMMED ACTIVITY – HAZARD EVALUATION AND INSPECTION**

**SCHEDULING** - Enforcement procedures relating to unprogrammed activity are located in subject specific chapters of this manual:

- Chapter 11, Imminent Danger, Fatality, Catastrophe, and Emergency Response.
- Chapter 9, Complaint, and Referral Processing.
- Chapter 7, Post-Citation Procedures, and Abatement Verification (Follow-ups and Monitoring)

## 6. PROGRAMMED INSPECTIONS –

- a. **INSPECTION TARGETING PROGRAM (ITP)** - In order to achieve NVOSHA’s goal of reducing the number of injuries and illnesses that occur at individual worksites, the ITP program directs enforcement resources to those worksites where the highest rate of injuries and illness have occurred. The ITP is NVOSHA’s primary programmed inspection plan for non-construction worksites. The worksites are selected based on a State-developed high hazard inspection targeting system.

Primarily, NVOSHA uses state data such as the most current injury and illness rates compiled by the BLS. NVOSHA may also consider other factors including national scheduling plans for safety and health, or local, regional, and NEP programs.

NOTE: For in-depth information on how the ITP program works, see NVOSHA’s most recent Inspection Targeting Program.

- b. **SCHEDULING FOR CONSTRUCTION INSPECTIONS** - Due to the mobility of the construction industry, the transitory nature of construction worksites and the fact that construction worksites frequently involve more than one employer, inspections are scheduled from a list of construction worksites rather than construction employers.

NVOSHA’s inspection scheduling for Construction focuses on projects that meet the criteria described in the Nevada Administrative Code (NAC), Chapter **618**. The Division uses information from a monthly construction publication, Dodge, A Notice of Construction Project in accordance with **NAC 618.494 and .505**, and local information in compiling its list of construction worksites for inspection.

- c. **SCHEDULING FOR MARITIME INSPECTIONS** - Marine inspection activities will be covered in the *Maritime Chapter*.

Note: Nevada has very limited activity related to marine-related industries and does not have an Inspection Targeting Program (ITP) for this industry.

1. Marine Cargo Handling Industry - The marine cargo handling industry is made up of longshoring activities (i.e., cargo handling aboard vessels) and activities within marine terminals (i.e., cargo handling ashore). Due to the unique differences among these activities, several scheduling methods are necessary. Consequently, marine cargo handling industry inspections can be scheduled as NEPs, SST, LEPs, or from lists developed in accordance with [CPL 02-00-025, Scheduling System for Programmed Inspections](#), 1/4/95. [See CPL 02-00-139, Longshoring and Marine Terminals “Tool Shed” Directive](#), 5/23/06, for more information.
2. Shipbreaking - [CPL 02-00-136, NEP on Shipbreaking](#), 3/16/05, describes policies and procedures to reduce or eliminate workplace hazards associated with shipbreaking operations. Also, Federal OSHA has entered into a Memorandum of Agreement (MOA) on Interagency Coordination and Cooperation for Ship Scrapping (i.e., shipbreaking) between DOD, DOT, EPA, and DOL-OSHA, 11/16/99.
3. Shipyard Employment - The shipyard employment industry is made up of several industrial activities and due to the unique differences among these activities, several scheduling methods are necessary. Consequently, shipyard employment inspections can

be scheduled under NEPs, SST, LEPs, or from lists developed in accordance with [CPL 02-00-025, Scheduling System for Programmed Inspections](#), 1/4/95. See [CPL 02-00-142, Shipyard Employment "Tool Bag" Directive](#), 8/3/06.

- d. **SPECIAL EMPHASIS PROGRAMS (SEPs)** - SEPs provide for programmed inspections of establishments in industries with potentially high injury or illness rates that are not covered by other programmed inspection scheduling systems or, if covered, where the potentially high injury or illness rates are not addressed to the extent considered adequate under the specific circumstances. SEPs are also based on potential exposure to health hazards. SEPs may also be used to develop and implement alternative scheduling procedures or other departures from national procedures. SEPs can include NEPs, REPs, and LEPs.
  - 1. Identification Of SEP - The description of the particular SEP shall be identified by one or more of the following:
    - A. Specific industry
    - B. Trade/craft
    - C. Substance or other hazard
    - D. Type of workplace operation
    - E. Type/kind of equipment; and
    - F. Other identifying characteristic
  - 2. SEP Scope - The reasons for and the scope of a SEP shall be described; and may be limited by geographic boundaries, size of worksite, or similar considerations.
  - 3. Pilot Programs - National or local pilot programs may also be established under SEP. Such programs may be conducted for the purpose of assessing the actual extent of suspected or potential hazards, determining the feasibility of new or experimental compliance procedures, or for any other legitimate reason.
- e. **NATIONAL EMPHASIS PROGRAMS (NEPs)** - Federal OSHA develops NEPs to focus outreach efforts and inspections on specific hazards in a workplace.
- f. **LOCAL EMPHASIS PROGRAMS (LEPs) AND REGIONAL EMPHASIS PROGRAMS (REPs)** - LEPs and REPs are types of special emphasis program in which one or more District Offices participate. LEPs and REPs are generally based on knowledge of local industry hazards or local industry injury/illness experience. LEPs and REPs must be developed and approved when one or more District Offices target inspections to a specific industry(ies), hazard(s), or other workplace characteristic(s), i.e., as part of, or in conjunction with, a local initiative or problem-solving project.
- g. **OTHER SPECIAL PROGRAMS** - The Division may develop programs to cover special categories of inspections, which are not covered under the ITP or under a SEP.
- h. **INSPECTION SCHEDULING AND INTERFACE WITH COOPERATIVE PROGRAM PARTICIPANTS** -
  - 1. Employers who participate in voluntary compliance programs may be exempt from programmed inspections and eligible for inspection deferrals or other enforcement

incentives. The District Manager or designee will determine whether the employer is actively participating in a Cooperative Program that would impact inspection and enforcement activity at the worksite being considered for inspection. Where possible, this determination should be made prior to scheduling the inspection.

2. Information regarding a facility's participation in the following programs should be available prior to scheduling inspection activity:
  - A. VPP Program; and
  - B. Pre-SHARP and SHARP Participants;
3. Voluntary Protection Program
  - A. VPP Program Coordinator Responsibilities - The Program Coordinator must keep the District Manager(s) or his/her designee informed regarding VPP applicants and the status of participants in the VPP. This will prevent unnecessary scheduling of programmed inspections at VPP sites and ensure efficient use of resources. District Manager(s) or his/her designee should be informed:
    - That the site can be removed from the programmed inspection list. Such removal may occur no sooner than the determination that a site will be initiated in NV-VPP;
    - Of the site's approval for the VPP program;
    - Of the site's withdrawal or termination from the VPP program; and
    - If the Program Coordinator is the first person notified by the site of an event requiring enforcement, the Program Coordinator must instruct the site to contact the appropriate District Office.
  - B. Programmed Inspections and VPP Participation
    - Inspection Deferral - Approved sites must be removed from any programmed inspection lists for the duration of participation, unless a site chooses otherwise. The applicant worksite will be deferred starting no more than 75 calendar days prior to the commencement of its scheduled pre-approval onsite review.
    - Inspection Exemption - The exemption from programmed inspections for approved VPP sites will continue for as long as they continue to meet VPP requirements. Sites that have withdrawn or have been terminated from VPP will be returned to the programmed inspection list, if applicable, at the time of the next inspection cycle.
  - C. Unprogrammed Enforcement Activities At VPP Sites - When a District Office receives a complaint, or a referral other than from the NVOSHA VPP onsite team, or is notified of a fatality, catastrophe, or other event requiring an enforcement inspection at a VPP site, the District Manager or designee must initiate the inspection following normal NVOSHA enforcement procedures.
    - The District Office must immediately notify the Program Coordinator of any fatalities, catastrophes or other accidents or incidents occurring at a VPP worksite

that require an enforcement inspection; as well as of a referral or complaint that concerns a VPP worksite, including complaint inquiries that would receive a letter response. If the VPP is a national VPP, the National Office should be notified.

- If the Program Coordinator is the first person notified by the site of an event requiring an enforcement inspection, the Program Coordinator must instruct the site to contact the appropriate District Office and the National Office if the fatality is on a National VPP site.
- The inspection will be limited to the specific issue of the unprogrammed activity. If citations are issued as a result of the inspection, a copy of the citation will be sent to the Program Coordinator. See the Nevada Voluntary Protection Program (VPP) Policies and Procedures Manual.
- The District Manager will send the Program Coordinator a copy of any report resulting from an enforcement case.

#### 4. Consultation

##### Consultation Visit In Progress

- If an onsite consultation visit is in progress, it will take priority over NIOSHA programmed inspections as outlined below. An onsite consultation visit will be considered "in progress" in relation to the working conditions, hazards, or situations covered by the visit from the beginning of the opening conference through the end of the correction due dates and any extensions thereof. If an onsite consultation visit is already in progress it will terminate when the following kind of NIOSHA compliance inspection is about to take place:
  - Imminent danger inspection;
  - Fatality/catastrophe inspection;
  - Complaint inspections; and/or
  - Other critical inspections, as determined by the CAO.
  - Other "such critical inspections" may include, but are not limited to, referrals as defined in Chapter 9, Complaint, and Referral Processing. Following an evaluation of the hazards alleged in a referral, if the CAO determines that enforcement action is required prior to the end of an abatement period established by the state consultation project, the consultation visit in progress shall be immediately terminated to allow for an enforcement inspection.
- For purposes of efficiency and expediency, an employer's worksite shall not be subject to concurrent consultation and enforcement-related visits. The following excerpts from Nevada Consultation Policies and Procedures Manual, Relationship to Enforcement to clarify the interface between enforcement and consultation activity at the worksite:
  - Full Service OnSite Consultation Visits - While a worksite is undergoing a full service onsite consultation visit for safety and health, programmed enforcement



activity may not occur until after the end of the worksite’s visit “In Progress” status.

- Full Service Safety or Health OnSite Consultation Visits - When an onsite consultation visit “in Progress” is discipline-related, whether for safety or health; programmed enforcement activity may not proceed until after the end of the worksite’s visit “in Progress” status, and is limited to the discipline examined, safety or health.
- Limited Service OnSite Consultation Visits - If a worksite is undergoing a limited service onsite consultation visit, whether focused on a particular type of work process or a hazard, programmed enforcement activity may not proceed while the consultant is at the worksite. The re-scheduled enforcement activity must be limited only to those areas that were not addressed by the scope of the consultative visit (posted List of Hazards).
- Enforcement Follow-Up and Monitoring Inspections - If an enforcement follow-up or monitoring inspection is scheduled while a worksite is undergoing an onsite consultation visit, the inspection shall not be deferred; however, its scope shall be limited only to those areas required to be covered by the follow-up or monitoring inspection. In such instances, the consultant must halt the onsite visit until the enforcement inspection is completed. In the event NVOSHA issues a citation(s) as a result of the follow-up or monitoring inspection, an onsite consultation visit may not proceed until the citation(s) becomes a final order(s).

5. Pre-Safety and Health Achievement Recognition Program (PRE-SHARP) Status

- A. Those employers who do not meet the SHARP requirements, but who exhibit a reasonable promise of achieving agreed-upon milestones and time frames for SHARP participation, may be granted Pre-SHARP status. Pre-SHARP participants receive a full service, comprehensive consultation visit that involves a complete safety and health hazard identification survey, including a comprehensive assessment of the worksite’s Written Safety and Health Program.
- B. The deferral time frame recommended by the State Consultation Project Manager must not exceed a total of 18 months from the expiration of the latest hazard correction due date(s), including extensions. Upon achieving Pre-SHARP status, employers may be granted a deferral from NVOSHA programmed inspections. The following types of incidents can trigger an NVOSHA enforcement inspection at Pre-SHARP sites:
  - Imminent danger;
  - Fatality/catastrophe; and
  - Formal complaints

6. Safety And Health Achievement Recognition Program (SHARP) - SHARP is designed to provide support and incentives to those employers that implement and continuously improve effective Written Safety and Health Program at their worksite. SHARP participants are exempted from NVOSHA programmed inspections.

- A. Duration of SHARP Status - All initial approvals of SHARP status will be for a period of up to two years, commencing with the date the SCATS Office approves an employer's SHARP application. After the initial approval, all SHARP renewals will be for a period of up to two years.
- B. NVOSHA Inspection(s) at SHARP Worksites - As noted above, employers that meet all the requirements for SHARP status will have the names of their establishments deleted from NVOSHA's Programmed Inspection Schedule. However, the following types of incidents can trigger an NVOSHA enforcement inspection at SHARP sites: imminent danger; fatality/catastrophe; or formal complaints.

NOTE: See Nevada Consultation Policies and Procedures Manual, Safety and Health Achievement Recognition Program (SHARP) and Pre-SHARP, for additional information.

- 7. Alliances - Unlike NVOSHA's VPP, and SHARP programs, Alliances, which are performed by SCATS, do not require applications, data collection, verification, or evaluation. Alliances also do not offer incentives, such as focused inspections or inspection deferral, to their signatories.



## Chapter 3

# INSPECTION PROCEDURES

1. **INSPECTION PREPARATION** - The conduct of effective inspections requires judgment in the identification, evaluation, and documentation of safety and health conditions and practices. Inspections may vary considerably in scope and detail depending on the circumstances of each case.
2. **INSPECTION PLANNING** - It is important that the CSHO adequately prepare for each inspection. Due to the wide variety of industries and associated hazards likely to be encountered, pre-inspection preparation is essential to the conduct of a quality inspection.
  - a. **REVIEW OF INSPECTION HISTORY** - CSHOs will carefully review data available at the District Office for information relevant to the establishment scheduled for inspection. This may include inspection files and source reference material relevant to the industry and on the internet using the establishment search. CSHOs will also conduct an establishment search by accessing the OIS database. CSHOs should use name variations and address matching in their establishment search to maximize their efforts due to possible company name changes and status (i.e., LLC, Inc.).
  - b. **REVIEW OF COOPERATIVE PROGRAM PARTICIPATION** - CSHOs will access the SCATS website or contact their office to obtain information about employers who are currently participating in cooperative programs. CSHOs will verify whether the employer is a current program participant during the opening conference. CSHOs will be mindful of whether they are preparing for a programmed or unprogrammed inspection, as this may affect whether the inspection should be conducted and/or its scope. See Review of Voluntary Compliance Programs.
    1. Referrals received by NVOSHA related to alleged hazards at SHARP participant sites will be forwarded to SCATS for handling. ~~See Review of Voluntary Compliance Programs.~~
  - c. **SAFETY AND HEALTH ISSUES RELATING TO CSHOs**
    1. Hazard Assessment - If the employer has a written certification that a hazard assessment has been performed pursuant to §1910.132(d), the CSHO shall request a copy. If the hazard assessment itself is not in writing, the CSHO shall ask the person who signed the certification to describe all potential workplace hazards and then select appropriate protective equipment. If there is no hazard assessment, the CSHO will determine potential hazards from sources such as the OSHA 300 Log of injuries and illnesses and shall select personal protective equipment accordingly.
    2. Respiratory Protection - CSHOs must wear respirators when and where required, and must care for and maintain respirators in accordance with the CSHO training provided.
      - A. CSHOs should conduct a pre-inspection evaluation for potential exposure to chemicals. Prior to entering any hazardous areas, the CSHO should identify those work areas, processes, or tasks that require respiratory protection. The hazard

assessment requirement in §1910.132(d) does not apply to respirators; see [CPL 02-02-054, Respiratory Protection Program Guidelines](#), dated July 14, 2000. CSHOs should review all pertinent information contained in the establishment file and appropriate reference sources to become knowledgeable about the industrial processes and potential respiratory hazards that may be encountered. During the opening conference, a list of hazardous substances should be obtained or identified, along with any air monitoring results. CSHOs should determine if they have the appropriate respirator to protect against chemicals present at the work site.

B. CSHOs must notify their supervisor:

- If a respirator no longer fits well, request a replacement that fits properly;
- If CSHOs encounter any respiratory hazards during inspections or on-site visits that they believe have not been previously or adequately addressed during the site visit; or
- If there are any other concerns regarding the program

3. Safety And Health Rules And Practices - **NAC 618.6434(3)** requires that CSHOs comply with all safety and health rules and practices at the establishment and wear or use the safety clothing or protective equipment required by OSHA standards or by the employer for the protection of employees.

**NAC 618.6434(3)** - In taking photographs and sampling, an inspector shall take such reasonable precautions as are necessary to ensure that his actions with any flash, spark-producing or other type of equipment is not hazardous. An inspector shall comply with all safety and health rules established by the employer for that place of employment, and shall wear and use appropriate protective clothing and equipment.

4. RESTRICTIONS - CSHOs will not enter any area where special entrance restrictions apply until the required precautions have been taken. It shall be the District Manager's responsibility to determine that an inspection may be conducted without exposing the CSHO to hazardous situations and to procure whatever materials and equipment are needed for the safe conduct of the inspection.

d. **ADVANCE NOTICE**

1. Policy

- A. **NRS 618.455 and .695(1)** contain a general prohibition against the giving of advance notice of inspections, except as authorized by the CAO, or his/her designee. The NVOSH Act regulates many conditions that are subject to speedy alteration and disguise by employers. To forestall such changes in worksite conditions, the NVOSH Act prohibits unauthorized advance notice.

**NRS 618.455** - It is unlawful for anyone to give advance notice of an inspection except as authorized by the Administrator.

**NRS 618.695(1)** - Any person who gives advance notice of any inspection of a workplace to be conducted under this chapter, without authority from the Administrator shall be punished by a fine of not more than \$2,000 or by

imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment.

- B. Advance Notice Exceptions - There may be occasions when advance notice is necessary to conduct an effective investigation. These occasions are narrow exceptions to the statutory prohibition against advance notice. Advance notice of inspections may be given only with the authorization of the District Manager or designee and only in the following situations:
- In cases of apparent imminent danger to enable the employer to correct the danger as quickly as possible;
  - When the inspection can most effectively be conducted after regular business hours or when special preparations are necessary;
  - To ensure the presence of employer and employee representatives or other appropriate personnel who are needed to aid in the inspection; and
  - When giving advance notice would enhance the probability of an effective and thorough inspection; i.e., in complex fatality investigations.

**NAC 618.6431 -**

1. *Advance notice of an inspection may be given only in a situation where:*
- (a) *There appears to be an imminent danger and advance notice is needed to enable the employer to correct the danger as quickly as possible;*
  - (b) *The inspection can most effectively be conducted after regular business hours or where special preparations are necessary;*
  - (c) *The district manager determines that the presence of the employer, the representative of the employees or the appropriate personnel are needed to aid in the inspection; or*
  - (d) *The district manager determines that giving advance notice will increase the probability of carrying out an effective and thorough inspection.*
2. *When an advance notice of an inspection is received, the employer shall give notice of the inspection to the representative of the employees if the employer knows the identity of the representative. If the identity of the representative is not known, the employer shall notify a reasonable number of employees.*
- C. Delays - Advance notice exists whenever the District Office sets up a specific date or time with the employer for the CSHO to begin an inspection. Any delays in the conduct of the inspection shall be kept to an absolute minimum. Lengthy or unreasonable delays shall be brought to the attention of the District Manager or designee. Advance notice generally does not include non-specific indications of potential future inspections.

In unusual circumstances, the District Manager or designee may decide that a delay is necessary. In those cases, the employer or the CSHO shall notify affected

employee representatives, if any, of the delay and shall keep them informed of the status of the inspection.

D. Documentation - The conditions requiring advance notice and the procedures followed shall be documented in the case file.

e. **PRE-INSPECTION COMPULSORY PROCESS -**

1. **NAC 618.6452** authorizes the district to seek a warrant in advance of an attempted inspection if circumstances are such that “pre-inspection process (is) desirable or necessary.”

**NAC 618.6452 –**

*1. If an inspector, while in the exercise of his official duties, is refused entry into any place of employment, he shall try to ascertain the reason for the refusal and shall immediately report the refusal and the reason to his district manager.*

*2. The district manager shall consult with the Chief and may request him to take appropriate action, which may include an application ex parte for a warrant to conduct or complete the inspection.*

*3. If entry is allowed but the employer interferes with or limits any aspect of the inspection, including a review of his records, the questioning of persons or the right of a representative of the employees to accompany the inspector, the inspector shall try to ascertain the reason for the refusal and shall immediately report the refusal and any reason for it to his district manager.*

*4. The district manager shall consult with the Chief and may request him to take appropriate action as provided in [NRS 618.325](#), [618.435](#), [618.515](#), [618.665](#) and [618.705](#).*

2. Although the Division generally does not seek warrants without evidence that the employer is likely to refuse entry, the District Manager, or designee may seek compulsory process in advance of an attempt to inspect or investigate whenever circumstances indicate the desirability of such warrants.

NOTE: Examples of such circumstances include evidence of denied entry in previous inspections, or awareness that a job will only last a short time or that job processes will be changing rapidly.

3. Administrative subpoenas may also be issued prior to any attempt to contact the employer or other person for evidence related to a NVOSHA inspection or investigation. See Chapter 15, *Legal Issues*.

f. **PERSONAL SECURITY CLEARANCE** - State of Nevada will request assistance from Federal OSHA when personal security clearances are required.

g. **EXPERT ASSISTANCE**

1. The District Manager or designee shall arrange for a specialist and/or specialized training, preferably from within NVOSHA, to assist in an inspection or investigation when the need for such expertise is identified.

2. NVOSHA specialists may accompany CSHOs or perform their tasks separately. CSHOs must accompany outside consultants. NVOSHA specialists and outside consultants shall be briefed on the purpose of the inspection and personal protective equipment to be utilized.

3. **INSPECTION SCOPE** - Inspections, either programmed or unprogrammed, fall into one of two categories depending on the scope of the inspection:

- a. **COMPREHENSIVE** - A comprehensive inspection is a substantially complete and thorough inspection of all potentially hazardous areas of the establishment. An inspection may be deemed comprehensive even though, as a result of professional judgment, not all potentially hazardous conditions or practices within those areas are inspected.
- b. **PARTIAL** - A partial inspection is one whose focus is limited to certain potentially hazardous areas, operations, conditions, or practices at the establishment.
  1. A partial inspection may be expanded based on information gathered by the CSHO during the inspection process consistent with the NVOSH Act and District Office priorities.
  2. CSHOs shall use pre-determined criteria from their offices to determine the necessity for expanding the scope of an inspection, based on information gathered during records or program review and walkaround inspection.

#### 4. **CONDUCT OF INSPECTION**

##### a. **TIME OF INSPECTION**

1. Inspections shall be made during regular working hours of the establishment except when special circumstances indicate otherwise.
2. The District Manager or designee and the CSHO shall determine if alternate work schedules are necessary regarding entry into an inspection site during other than normal working hours.

##### b. **PRESENTING CREDENTIALS**

1. CSHOs are to present their credentials whenever they make contact with management representatives, employees (to conduct interviews), or organized labor representatives while conducting their inspections. At no time are CSHOs to relinquish control of their agency-issued credentials to anyone other than authorized representatives of NVOSHA.
2. At the beginning of the inspection, the CSHO shall locate the owner representative, operator, or agent in charge at the workplace and present credentials. On construction sites, this will most often be the representative of the general contractor.
3. When neither the person in charge nor a management official is present, contact may be made with the employer to request the presence of the owner, operator, or management official. The inspection shall not be delayed unreasonably to await the arrival of the employer representative. This delay should normally not exceed one hour. On occasions when the CSHO is waiting for the employer representative, the workforce may begin to leave the jobsite. In this situation, the CSHO should contact the District Manager or designee for guidance.

- c. **REFUSAL TO PERMIT INSPECTION AND INTERFERENCE - NRS 618.325(2)** provide that CSHOs may enter without delay and at reasonable times, any establishment covered under the NVOSH Act for the purpose of conducting an inspection. Unless the circumstances constitute a recognized exception to the warrant requirement (i.e., consent, third party consent, plain view, open field, or exigent circumstances) an employer has a right to require that the CSHO seek an inspection warrant prior to entering an establishment and may refuse entry without such a warrant.

**NRS 618.325(2)** - Upon presenting appropriate credentials to any employer, the Administrator, or his representative may:

- (a) Enter without delay and at reasonable times any place of employment; and
- (b) Inspect and investigate during regular working hours or at other reasonable times and within reasonable limits, that place of employment and all pertinent conditions, structures, machines, apparatus, devices, equipment and materials therein, and question privately any employer or an employee.

NOTE: On a military base or other Federal Government facility, the following guidelines do not apply. Instead, a representative of the controlling authority shall be informed of the contractor's refusal and asked to take appropriate action to obtain cooperation.

State of Nevada will request assistance from Federal OSHA when personal security clearances are required to enter military base or other Federal facilities.

#### 1. Refusal Of Entry or Inspection

- A. When the employer refuses to permit entry upon being presented proper credentials, or allows entry but then refuses to permit or hinders the inspection in some way, an attempt shall be made to obtain as much information as possible about the establishment. See Chapter 15, *Legal Issues*, for additional information.
- B. If the employer refuses to allow an inspection of the establishment to proceed, the CSHO shall fill out the Denial Entry form and immediately report the refusal to the District Manager or designee. The District Manager shall notify the Division Counsel.
- C. If the employer raises no objection to inspection of certain portions of the workplace but objects to inspection of other portions, this shall be documented. Normally, the CSHO shall continue the inspection, confining it only to those certain portions to which the employer has raised no objections.
- D. In either case, the CSHO shall advise the employer that the refusal will be reported to the District Manager or designee and that the Division may take further action, which may include obtaining legal process.
- E. On multi-employer worksites, valid consent can be granted by the owner, general contractor or managing contractor, for site entry.

2. Employer Interference - Where entry has been allowed but the employer interferes with or limits any important aspect of the inspection, the CSHO shall determine whether or not to consider this action as a refusal. Examples of interference are refusals to permit



the walkaround, the examination of records essential to the inspection, the taking of essential photographs and/or Video Recordings, the inspection of a particular part of the premises, private employee interviews, or the refusal to allow attachment of sampling devices. See NAC 618.6452(3).

3. Forcible Interference with Conduct Of Inspection Or Other Office Duties - Whenever a NVOSHA official or employee encounters forcible resistance, opposition, interference, etc., or is assaulted or threatened with assault while engaged in the performance of official duties, all investigative activity shall cease.
    - A. If a CSHO is assaulted while attempting to conduct an inspection, they shall contact the proper authorities such as the local police and immediately notify the District Manager.
    - B. Upon receiving a report of such forcible interference, the District Manager or designee shall immediately notify the CAO, or designee.
    - C. If working at an offsite location, CSHOs should leave the site immediately pending further instructions from the District Manager or designee.
  4. Obtaining Compulsory Process - If it is determined, upon refusal of entry or refusal to produce evidence required by subpoena, that a warrant will be sought, the District Manager shall proceed according to established guidelines and procedures.
- d. **EMPLOYEE PARTICIPATION** - CSHOs shall advise employers that NRS 618.435 (2), (3) & (4) require that an employee representative be given an opportunity to participate in the inspection.

**NRS 618.435 (2), (3), & (4):**

2. An opportunity must be afforded to a representative of the employer and an authorized representative of the employees to accompany the representative of the Division during the physical inspection of the place of employment or, where there is no authorized representative of the employees, consultation must be had with a reasonable number of employees, but no more than one employee may accompany the Division’s representative during the inspection.
  3. Any employee of the employer who accompanies the representative of the Division during the inspection pursuant to subsection 2 is entitled to be paid by the employer at his regular rate of pay for the time spent with the representative of the Division inspecting the place of employment if he would have otherwise been compensated for working during that time.
  4. For the purposes of this section, “representative of an employee” means a person previously identified to the Division as an authorized representative of the employee bargaining unit of a labor organization, which has a collective bargaining relationship with the employer and represents the affected employees.
1. CSHOs shall determine as soon as possible after arrival whether the employees at the inspected worksite are represented and, if so, shall ensure that employee representatives are afforded the opportunity to participate in all phases of the inspection.

2. If an employer resists or interferes with participation by employee representatives in an inspection and the interference cannot be resolved by the CSHO, the resistance shall be construed as a refusal to permit the inspection and the District Manager or designee shall be contacted.

e. **RELEASE FOR ENTRY**

1. CSHOs shall not sign any form or release or agree to any waiver. This includes any employer forms concerned with trade secret information.
2. CSHOs may obtain a pass or sign a visitor's register, or any other book or form used by the establishment to control the entry and movement of persons upon its premises. Such signature shall not constitute any form of a release or waiver of prosecution of liability under the NVOSH Act.

f. **BANKRUPT OR OUT OF BUSINESS**

1. If the establishment scheduled for inspection is found to have ceased business and there is no known successor, the CSHO shall report the facts to the District Manager or designee.
2. If an employer, although bankrupt, is continuing to operate on the date of the scheduled inspection, the inspection shall proceed.
3. An employer must comply with the NVOSH Act until the day the business actually ceases to operate.

g. **EMPLOYEE RESPONSIBILITIES**

1. NRS 618.405(3) - "Each employee shall comply with occupational safety and health standards and all rules, which are applicable to his own actions and conduct." The NVOSH Act does not provide for the issuance of citations or the proposal of penalties against employees. Employers are responsible for employee compliance with the standards.
2. In cases where CSHOs determine that employees are systematically refusing to comply with a standard applicable to their own action and conduct, the matter shall be referred to the District Manager who shall consult with the CAO.
3. Under no circumstances are CSHOs to become involved in an onsite dispute involving labor-management issues or interpretation of collective-bargaining agreements. CSHOs are expected to obtain sufficient information to assess whether the employer is using its authority to ensure employee compliance with the NVOSH Act. Concerted refusals to comply by employees will not bar the issuance of a citation if the employer has failed to exercise its control to the maximum extent reasonable, including discipline and discharge.

- h. **STRIKE OR LABOR DISPUTE** - Plants or establishments may be inspected regardless of the existence of labor disputes, such as work stoppages, strikes, or picketing. If the CSHO identifies an unanticipated labor dispute at a proposed inspection site, the District Manager or designee shall be consulted before any contact is made.



1. Programmed Inspections - Programmed inspections may be deferred during a strike or labor dispute, either between a recognized union and the employer or between two unions competing for bargaining rights in the establishment.
2. Unprogrammed Inspections
  - A. Unprogrammed inspections (complaints, fatalities, referrals, etc.) will be performed during strikes or labor disputes. However, the credibility and veracity of any complaint shall be thoroughly assessed by the District Manager or designee prior to scheduling an inspection.
  - B. If there is a picket line at the establishment, CSHOs shall attempt to locate and inform the appropriate union official of the reason for the inspection prior to initiating the inspection.
  - C. During the inspection, CSHOs will make every effort to ensure that their actions are not interpreted as supporting either party or the labor dispute.
- i. **VARIANCES** - The employer's requirement to comply with a standard may be modified through granting of a variance, as outlined in NRS 618.415, 417, 419 & 421 and NAC 618.630-634.
  1. An employer will not be subject to citation if the observed condition is in compliance with an existing variance issued to that employer.
  2. In the event that an employer is not in compliance with the requirement(s) of the issued variance, a violation of the applicable standard shall be cited with a reference in the citation to the variance provision that has not been met.

## 5. OPENING CONFERENCE

- a. **GENERAL** - CSHOs shall attempt to inform all affected employers of the purpose of the inspection, provide a copy of the complaint or referral if applicable, and include any employee representatives, unless the employer objects. The opening conference should be brief so that the compliance officer may quickly proceed to the walkaround. Conditions of the worksite shall be noted upon arrival, as well as any changes that may occur during the opening conference. At the start of the opening conference, CSHOs will inform both the employer and the employee representative(s) of their rights during the inspection, including the opportunity to participate in the physical inspection of the workplace. If the inspection will be limited/specific in scope, such as a complaint or referral, the CSHO will inform the employer and the employee representative(s) that if a hazard outside the scope is identified in plain sight during the walkaround, the CSHO will also address this hazard(s). The CSHO will fill out the opening conference form(s), address all other items on the form, and have the employer and employee representative, (if applicable), sign the form.

*NAC 618.6434 - Powers and duties of inspector -*

*1. At the beginning of an inspection, an inspector shall:*

*(a) Present his credentials to the owner, operator, or agent in charge at the place of employment to be inspected*

*(b) Explain the nature and purpose of the inspection*

(c) Indicate generally the scope of the inspection; and

(d) Designate the records he wishes to review, but such a designation does not preclude access to additional records.

2. An inspector may take environmental samples and take or obtain photographs related to the purpose of the inspection, employ other reasonable investigative techniques in conducting the inspection, and question privately any employer, owner, agent, or employee of the place of employment being inspected. As used in this subsection, the phrase “employ other reasonable investigative techniques” includes, without limitation, the use of devices to measure the exposure of employees to hazardous elements and the attachment of personal sampling equipment such as dosimeters, pumps, badges and other similar devices to employees to monitor the exposure of the employees.

3. In taking photographs and sampling, an inspector shall take such reasonable precautions as are necessary to ensure that his actions with any flash, spark-producing or other type of equipment is not hazardous. An inspector shall comply with all safety and health rules established by the employer for that place of employment, and shall wear and use appropriate protective clothing and equipment.

4. An inspection must be conducted in such a manner as to preclude unreasonable disruption of the operations of the place of employment being inspected.

5. At the conclusion of his inspection, an inspector shall confer with the employer or his representative to advise the employer or representative informally of any apparent safety or health violations disclosed by the inspection. During such a conference, the inspector shall afford the employer or his representative the opportunity to bring to the attention of the inspector any pertinent information regarding conditions at the place of employment.

**NAC 618.6437 - Persons authorized to accompany inspector.**

1. Except as provided in subsections 6 and 7, an inspector may permit a representative of an employer or the employees, or both, to accompany him on an inspection if he determines that the representative or representatives will aid the inspection.

2. Each representative of the employees must be a person selected by the employees of the employer being inspected.

3. A different representative of the employer or employees may be permitted to accompany the inspector during each phase of an inspection if this arrangement will not interfere with the conduct of the inspection.

4. An inspector shall resolve all disputes as to who the representative is authorized by the employer or employees.

5. A third person, such as an industrial hygienist or safety inspector, may be permitted to accompany the inspector if he determines that the person is

*reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace.*

*6. A representative of the employees and any third person accompanying the inspector must be authorized by the employer to enter any area containing trade secrets.*

*7. Only persons authorized to have access to information classified by an agency of the United States Government in the interest of national security may accompany an inspector in areas containing such information.*

**NAC 618.6449 - Trade secrets** - *If, during the conference at the beginning of an inspection, the employer identifies areas in the establishment which contain or might reveal a trade secret, the inspector shall label any information obtained in those areas, including negatives and prints of photographs and environmental samples, as "confidential-trade secrets" and shall not disclose the information except in accordance with NRS 618.365.*

CSHOs shall request a copy of the written certification that a hazard assessment has been performed by the employer in accordance with §1910.132(d). CSHOs should then ask the person who signed the certification about any potential worksite exposures and select appropriate personal protective equipment.

1. Attendance At Opening Conference
  - A. CSHOs shall conduct a joint opening conference with employer and employee representatives unless either party objects.
  - B. If there is objection to a joint conference, the CSHO shall conduct separate conferences with employer and employee representatives.
2. Scope Of Inspection - CSHOs shall outline in general terms the scope of the inspection, including the need for private employee interviews, physical inspection of the workplace and records, possible referrals, rights during an inspection, discrimination complaints, and the closing conference(s).
3. Video/Audio Recording - CSHOs shall inform participants that a video camera and/or an audio recorder may be used to provide a visual and/or audio record, and that the videotape and audiotape may be used in the same manner as handwritten notes and photographs in NVOSHA inspections.
 

NOTE: If an employer clearly refuses to allow video recording during an inspection, CSHOs shall contact the District Manager to determine if video recording is critical to documenting the case. If it is, this may be treated as a denial of entry.
4. Immediate Abatement - CSHOs should explain to employers the advantages of immediate abatement, including that there are no certification requirements for violations quickly corrected during the inspection. See Chapter 7, *Post-Inspection Procedures, and Abatement Verification*.
5. Quick Fix Penalty Reduction - CSHOs shall advise both the employer and employee representatives, if applicable, that the Quick-Fix penalty reduction may be applied to

each qualified violation (i.e., those which meet the criteria noted in Chapter 6), which the employer immediately abates during the inspection and is visually verified by the CSHO. CSHOs shall explain the Quick-Fix criteria and answer any questions concerning the program. See Chapter 6, *Penalties, and Debt Collection*.

6. Recordkeeping Rule
  - A. The recordkeeping regulation at §1904.40(a) states that once a request is made, an employer must provide the required recordkeeping records within four (4) business hours.
  - B. Although the employer has four hours to provide injury and illness records, the compliance officer is not required to wait until the records are provided before beginning the walkaround portion of the inspection. As soon as the opening conference is completed, the compliance officer is to begin the walkaround portion of the inspection.
7. Abbreviated Opening Conference - An abbreviated opening conference shall be conducted whenever the CSHO believes that circumstances at the worksite dictate the walkaround begin as promptly as possible.
  - A. In such cases, i.e. accident investigation, the opening conference shall be limited to presenting credentials, purpose of the visit, an explanation of rights, and a request for employer and employee representatives. The CSHO will fill out the opening conference form(s), address all other items on the form, and have the employer and employee representative (if applicable) sign the form prior to leaving the site.
  - B. Pursuant to **NRS 618.435 and NAC 618.6437**, the employer and the employee representatives shall be informed of the opportunity to participate in the physical inspection of the workplace.
- b. **REVIEW OF APPROPRIATION ACT EXEMPTIONS AND LIMITATION -** CSHOs shall determine if the employer is covered by, any exemptions or limitations noted in the current Appropriations Act. See [CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act](#), dated May 28, 1998.
- c. **REVIEW SCREENING FOR PROCESS SAFETY MANAGEMENT (PSM) COVERAGE -** CSHOs shall request a list of the chemicals on site and their respective maximum intended inventories. CSHOs shall review the list of chemicals and quantities, and determine if there are highly hazardous chemicals (HHCs) listed in [§1910.119, Appendix A](#) or flammable liquids or gases at or above the specified threshold quantity. CSHOs may ask questions, conduct interviews, or a walkaround to confirm the information on the list of chemicals and maximum intended inventories.
  1. If there is an HHC present at or above threshold quantities, CSHOs shall use the following criteria to determine if any exemptions apply:
    - A. CSHOs shall confirm that the facility is not a retail facility, oil or gas well drilling or servicing operation, or normally unoccupied remote facility (§1910.119(a)(2)). If the facility is one of these types of establishments, PSM does not apply.

- B. If management believes that the process is exempt, CSHOs shall ask the employer to provide documentation or other information to support that claim.
- 2. According to §1910.119(a)(1)(ii), a process could be exempt if the employer can demonstrate that the covered chemical(s) are:
  - A. Hydrocarbon fuels used solely for workplace consumption as a fuel (i.e., propane used for comfort heating, gasoline for vehicle refueling), if such fuels are not a part of a process containing another highly hazardous chemical covered by the standard, or
  - B. Flammable liquids stored in atmospheric tanks or transferred, which are kept below their normal boiling point without the benefit of chilling or refrigeration.

NOTE: Current agency policies for applying exemptions can be found on the Federal OSHA website.

- d. **REVIEW OF VOLUNTARY COMPLIANCE PROGRAMS** - Employers who participate in selected voluntary compliance programs may be exempted from programmed inspections. CSHOs shall determine whether the employer falls under such an exemption during the opening conference.

- 1. On-Site Consultation Visits

- A. In accordance with §1908.7 and Nevada Consultation Policies and Procedures Manual, CSHOs shall ascertain at the opening conference whether a SCATS visit is in progress. A consultation Visit in Progress extends from the beginning of the opening conference to the end of the correction due dates (including extensions).
- B. An on-site consultation Visit in Progress has priority over programmed inspections except for imminent danger investigations, fatality/ catastrophe investigations, complaint investigations, and other critical inspections as determined by the CAO, or designee.

- 2. Safety and Health Achievement Recognition Program (SHARP)

- A. Upon verifying that the employer is a current participant, the CSHO shall notify the District Manager or designee so that the company can be removed from the NVOSHA General Programmed Inspection Schedule for the approved exemption period, which begins on the date the NVOSHA approves the employer's participation in SHARP.
- B. The initial exemption period is up to two years. The renewal exemption period is up to two years, based on the recommendation of the SCATS CAO.

- 3. Voluntary Protection Program (VPP) - Inspections at a VPP site may be conducted in response to referrals, formal complaints, fatalities, and catastrophes.

NOTE: A Compliance Officer who was previously a VPP on-site team member cannot conduct an enforcement inspection at that VPP site for the following 2 years or until the site is no longer a VPP participant, whichever occurs first. See Nevada Voluntary Protection Programs (VPP): Policies and Procedures Manual.

- e. **DISRUPTIVE CONDUCT** - CSHOs may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. See NAC 618.6452(3). If disruption or interference occurs, the CSHO shall contact the District Manager or designee as to whether to suspend the walkaround or take other action. The employee representative shall be advised that during the inspection matters unrelated to the inspection shall not be discussed with employees.
- f. **CLASSIFIED AREAS** - In areas containing information classified by an agency of the U.S. Government in the interest of national security, only persons authorized to have access to such information may accompany a CSHO on the inspection. NAC 618.6446 - An inspector shall obtain the appropriate authorization before inspecting areas containing information, which is classified by an agency of the United States Government in the interest of national security.

## 6. REVIEW OF RECORDS

### a. SAFETY AND HEALTH AND OTHER RECORD REVIEWS

1. All necessary information relative to documentation of violations shall be obtained during the inspection, to include but not limited to notes, audio/video recordings, photographs, employer and employee interviews, and employer maintained records.
2. During the walkaround, the CSHO shall inform the employer of the violations noted and what information will be required for reviewed upon completion of the walk. This information will be reviewed on-site and an employer request letter is discouraged unless the information can only be obtained from an outside source such as corporate headquarters.

### b. INJURY AND ILLNESS RECORDS

#### 1. Collection Of Data

- A. All CSHOs on all inspections must review and record the establishment's injury and illness records for the three prior calendar years except for exempt and partially exempt employees. See 1904.1 - Partial exemption for employers with 10 or fewer employees, 1904.2 - Partial exemption for establishments in certain industries, and 1904 Subpart B App A - Partially Exempt Industries for exemptions.
- B. At the start of each inspection, the CSHO shall review the employer's injury and illness records for three prior calendar years. Also obtain a copy of the OSHA-300 and 300A for each year, and enter the data into OIS. This shall be done for all general industry, construction, maritime, and agriculture inspections and investigations.
- C. CSHOs shall use these data to calculate the Days Away, Restricted, or Transferred (DART) rate and to observe trends, potential hazards, types of operations and work-related injuries.

#### 2. Information To Be Obtained



- A. CSHOs shall request copies of the OSHA-300 Logs, the total hours worked and the average number of employees for each year, and a roster of current employees.
- B. If CSHOs have questions regarding a specific case on the log, they shall request the OSHA-301s or equivalent form for that case.
- C. CSHOs shall check if the establishment has an on-site medical facility and/or the location of the nearest emergency room where employees may be treated.

NOTE: The total hours worked and the average number of employees for each year can be found on the OSHA-300A for all past years.

- 3. Automatic Dart Rate Calculation - CSHOs will not normally need to calculate the Days Away, Restricted, or Transferred (DART) rate since it is automatically calculated when the OSHA-300 data are entered into OIS. If one of the three years is a partial year, so indicate and the software will calculate accordingly.
- 4. Manual Dart Rate Calculation - If it is necessary to calculate rates manually, the CSHO will need to calculate the DART Rates individually for each calendar year using the following procedures. The DART rate includes cases involving days away from work, restricted work activity, and transfers to another job. The formula is  $(N/EH) \times (200,000)$  where:
  - *N* is the number of cases involving days away and/or restricted work activity and job transfers.
  - *EH* is the total number of hours worked by all employees during the calendar year; and
  - *200,000* is the base number of hours worked for 100 full-time equivalent employees.

EXAMPLE 3-1: Employees of an establishment (XYZ Company), including management, temporary and leased workers, worked 645,089 hours at XYZ company. There were 22 injury and illness cases involving days away and/or restricted work activity and/or job transfer from the OSHA-300 Log (total of column H plus column I). The DART rate would be  $(22 \div 645,089) \times (200,000) = 6.8$ .

- 5. Construction - For construction inspections/investigations, the OSHA-300 information for the prime/general contractor and sub-contractor need to be recorded where such records exist and are maintained.
- 6. Recording Criteria - Employers must record new work-related injuries and illnesses that meet one or more of the general recording criteria or meet the recording criteria for specific types of conditions.
  - A. Death;
  - B. Days Away from Work;
  - C. Restricted Work;
  - D. Transfer to another job;
  - E. Medical treatment beyond first aid;
  - F. Loss of consciousness;
  - G. Diagnosis of a significant injury or illness; or

- H. Meet the recording criteria for Specific Cases noted in §1904.8 through §1904.11.
7. Recordkeeping Deficiencies
- A. If recordkeeping deficiencies are suspected, the CSHO and the District Manager or designee may request assistance from the Program Coordinator. If there is evidence that the deficiencies or inaccuracies in the employer's records impairs the ability to assess hazards, injuries and/or illnesses at the workplace, a comprehensive records review shall be performed.
- B. Other information related to this topic:
- i. See [CPL 02-00-135, Recordkeeping Policies and Procedures Manual, dated September 3, 2004](#), and [CPL 02-02-072, Rules of Agency Practice and Procedure concerning Federal OSHA Access to Employee Medical Records for Policy Regarding Review of Medical and Exposure Records, dated August 22, 2007](#).
  - ii. Other NVOSHA and Federal OSHA programs and records will be reviewed including hazard communication, lockout/tagout, emergency evacuation, and personal protective equipment. Additional programs will be reviewed as necessary.
  - iii. Many standard-specific directives provide additional instruction to CSHOs requesting certain records and/or documents at the opening conference.

**7. WALKAROUND INSPECTION** - The main purpose of the walkaround inspection is to identify potential safety and/or health hazards in the workplace. CSHOs shall conduct the inspection in such a manner as to avoid unnecessary personal exposure to hazards and to minimize unavoidable personal exposure to the extent possible. The walkaround will be conducted as expeditiously as possible.

- a. **WALKAROUND REPRESENTATIVES** - Persons designated to accompany CSHOs during the walkaround are considered walkaround representatives, and will generally include those designated by the employer and employee. At establishments where more than one employer is present or in situations where groups of employees have different representatives, it is acceptable to have a different employer/employee representative for different phases of the inspection. More than one employer and/or employee representative may accompany the CSHO throughout or during any phase of an inspection if the CSHO determines that such additional representatives will aid, and not interfere with, the inspection.

**NRS 618.435(2)** - An opportunity must be afforded to a representative of the employer and an authorized representative of the employees to accompany the representative of the Division during the physical inspection of the place of employment or, where there is no authorized representative of the employees, consultation must be had with a reasonable number of employees, but no more than one employee may accompany the Division's representative during the inspection.

1. Employees Represented By A Certified Or Recognized Bargaining Agent - During the opening conference, the highest-ranking union official or union employee



representative onsite shall designate who will participate in the walkaround. NAC 618.6437 gives the CSHO the authority to resolve all disputes as to whom is the representative authorized by the employer and employees. NRS 618.435 states that the representative authorized by the employees shall be an employee of the employer. If in the judgment of the CSHO, good cause has been shown why accompaniment by a third party who is not an employee of the employer (such as an industrial hygienist or a safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany CSHOs during the inspection.

**NAC 618.6437** – *Persons authorized to accompany inspector.*

1. *Except as provided in subsections 6 and 7, an inspector may permit a representative of an employer or the employees, or both, to accompany him on an inspection if he determines that the representative or representatives will aid the inspection.*
2. *Each representative of the employees must be a person selected by the employees of the employer being inspected.*
3. *A different representative of the employer or employees may be permitted to accompany the inspector during each phase of an inspection if this arrangement will not interfere with the conduct of the inspection.*
4. *An inspector shall resolve all disputes as to who the representative is authorized by the employer or employees.*

**NRS 618.435** - *Complaint of violation before or during inspection of workplace; review of refusal to issue citation; accompaniment of Division's representative during inspection*

1. *Except as provided in subsections 6 and 7, an inspector may permit a representative of an employer or the employees, or both, to accompany him on an inspection if he determines that the representative or representatives will aid the inspection.*
2. *An opportunity must be afforded to a representative of the employer and an authorized representative of the employees to accompany the representative of the Division during the physical inspection of the place of employment or, where there is no authorized representative of the employees, consultation must be had with a reasonable number of employees, but no more than one employee may accompany the Division's representative during the inspection.*
3. *Any employee of the employer who accompanies the representative of the Division during the inspection pursuant to subsection 2 is entitled to be paid by the employer at his regular rate of pay for the time spent with the representative of the Division inspecting the place of employment if he would have otherwise been compensated for working during that time.*
4. *For the purposes of this section, "representative of an employee" means a person previously identified to the Division as an authorized representative of the*

*employee bargaining unit of a labor organization, which has a collective bargaining relationship with the employer and represents the affected employees.*

2. No Certified Or Recognized Bargaining Agent - Where employees are not represented by an authorized representative, there is no established safety committee, or employees have not chosen or agreed to an employee representative for NVOSHA inspection purposes (regardless of the existence of a safety committee), CSHOs shall determine if other employees would suitably represent the interests of employees on the walkaround. If selection of such an employee is impractical, CSHOs shall conduct interviews with a reasonable number of employees during the walkaround.
  3. Safety Committee - Employee members of an established safety committee or employees at large may designate an employee representative for NVOSHA inspection purposes.
- b. **EVALUATION OF WRITTEN SAFETY AND HEALTH PROGRAM** - The employer's Written Safety and Health Program shall be evaluated to determine its good faith for the purposes of penalty calculation. See Chapter 6, *Penalties, and Debt Collection* and Chapter 18, *Written Safety Program*.
- c. **RECORD ALL FACTS PERTINENT TO A VIOLATION**
1. Safety and health violations shall be brought to the attention of employer and employee representatives at the time they are documented.
  2. CSHOs shall record, at a minimum, the identity of the exposed employee(s), the hazard to which the employee(s) was exposed, the employee's proximity to the hazard, the employer's knowledge of the condition, the manner in which important measurements were obtained and how long the condition has existed.
  3. CSHOs will document interview statements in a thorough and accurate manner; including names, dates, times, locations, type of materials, positions of pertinent articles, witnesses, etc. Documentation of the interviews shall be on the NVOSHA Interview Forms.
- NOTE: If employee exposure to hazards is not observed, the CSHO shall document facts on which the determination is made that an employee had been or could be exposed. See Chapter 4, *Violations* and Chapter 5, *Case File Preparation and Documentation*.
- d. **TESTIFYING IN HEARINGS** - CSHOs may be required to testify in hearings on NVOSHA's behalf, and shall be mindful of this fact when recording observations during inspections. The case file shall reflect conditions observed in the workplace as accurately and detailed as possible.
- e. **TRADE SECRETS** - A trade secret, as referenced in NRS 618.365(3) & (4) and NAC 618.6449 includes information concerning or related to processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association.

*NRS 618.365(3) & (4) – Scope of chapter; limited disclosure of information of Division; protection of trade secrets.*

*3. Any report of investigation or inspection or any information concerning trade secrets or secret industrial processes obtained under this chapter must not be disclosed or open to public inspection, except:*

*(a) As such information may be disclosed to other officers or employees concerned with carrying out this chapter;*

*(b) When relevant in any court proceeding under this chapter; or*

*(c) As otherwise provided in NRS 618.341*

*4. The Division, the courts, and where applicable, the review board may issue such orders as may be appropriate to protect the confidentiality of trade secrets.*

**NAC 618.6449** – Trade secrets. If, during the conference at the beginning of an inspection, the employer identifies areas in the establishment, which contain or might reveal a trade secret, the inspector shall label any information obtained in those areas, including negatives and prints of photographs and environmental samples, as “confidential-trade secrets” and shall not disclose the information except in accordance with NRS 618.365.

1. Policy - It is essential to the effective enforcement of the NVOSH Act that CSHOs and NVOSHA personnel preserve the confidentiality of all information and investigations, which might reveal a trade secret.
2. Restriction And Controls - When the employer identifies an operation or condition as a trade secret, it shall be treated as such. Information obtained in such areas, including all photographs, Video Recordings, and NVOSHA documentation forms, shall be labeled: “Confidential-Trade Secrets”
  - A. Under NRS 618.365(3) & (4) and NAC 618.6449 all information reported to or obtained by CSHOs in connection with any inspection or other activity which contains or which might reveal a trade secret shall be kept confidential. Such information shall not be disclosed except to other NVOSHA officials concerned with the enforcement of the NVOSH Act or, when relevant, in any proceeding under the NVOSH Act.
  - B. Trade secret materials shall not be labeled as “Top Secret,” or “Secret,” nor shall these security classification designations be used in conjunction with other words unless the trade secrets are also classified by an agency of the U.S. Government in the interest of national security.
3. If the employer objects to the taking of photographs and/or Video Recordings because trade secrets would or may be disclosed, CSHOs should advise the employer of the protection against such disclosure afforded by NRS 618.365(3) & (4) and NAC 618.6449. If the employer still objects, CSHOs shall contact the District Manager or designee.

f. **COLLECTING SAMPLES**

1. CSHOs shall determine early in the inspection whether sampling such as, but not limited to, air sampling and surface sampling is required, by utilizing the information collected during the walk around and from the pre-inspection review.
2. Summaries of the results shall be provided on request to the appropriate employees, including those exposed or likely to be exposed to a hazard, employer representatives, and employee representatives.

g. **PHOTOGRAPHS AND VIDEO RECORDINGS**

1. Photographs and/or Video Recordings, whether digital or otherwise, shall be taken whenever CSHOs determine there is a need. Each photo taken during the inspection will be reviewed and hazards identified in the photos shall be addressed through citation or explanation in the case file.
  - A. Photographs supporting each violation shall be printed on the OSHA-4 Photo Form, labeled, and attached to the appropriate violation worksheet.
  - B. CSHOs shall ensure that any photographs, etc., relating to confidential or trade secret information, are copied to a CD, and placed in TAB 9 of the Case File.
2. All photographs and videotape obtained during the inspection, whether created by the employer, CSHO, or third party shall be retained in the case file. Video Recordings and photographs shall be placed on CD(s), labeled, and placed in TAB 8 of the Case File.

h. **VIOLATIONS OF OTHER LAWS** - If a CSHO observes apparent violations of laws enforced by other government agencies, such cases shall be referred to the appropriate agency. Referrals shall be made using appropriate State procedures.

i. **INTERVIEWS OF NON-MANAGERIAL EMPLOYEES** - A free and open exchange of information between CSHOs and employees is essential to an effective inspection. Interviews provide an opportunity for employees to supply valuable factual information concerning hazardous conditions, including information on how long workplace conditions have existed, the number and extent of employee exposure(s) to a hazardous condition, and the actions of management regarding correction of a hazardous condition.

1. Background

- A. **NRS 618.325(2)** authorizes CSHOs to privately question any employee during regular working hours or at other reasonable times during the course of an inspection. The purpose of such interviews is to obtain whatever information CSHOs deem necessary or useful in carrying out inspections effectively. The mandate to interview employees in private is NVOSHA's right.

*NRS 618.325(2) – Upon presenting appropriate credentials to any employer, the Administrator, or his representative may:*

- (a) Enter without delay and at reasonable times any place of employment; and
- (b) Inspect and investigate during regular working hours or at other reasonable times and within reasonable limits, that place of employment and all pertinent

*conditions, structures, machines, apparatus, devices, equipment and materials therein, and question privately any employer or an employee.*

- B. Employee interviews are an effective means to determine if an advance notice of inspection has adversely affected the inspection conditions, as well as to obtain information regarding the employer's knowledge of the workplace conditions or work practices in effect prior to, and at the time of, the inspection. During interviews with employees, CSHOs should ask about these matters.
  - C. CSHOs should also obtain information concerning the presence and/or implementation of a safety and health program to prevent or control workplace hazards.
  - D. If an employee refuses to be interviewed, the CSHO shall use professional judgment, in consultation with the District Manager or designee, in determining the need for the statement.
2. Employee Right Of Complaint - CSHOs may consult with any employee who desires to discuss a potential violation. Upon receipt of such information, CSHOs shall investigate the alleged hazard, where possible, and record the findings.
  3. Time And Location Of Interview - CSHOs are authorized to conduct interviews during regular working hours and at other reasonable times, and in a reasonable manner at the workplace. Interviews often occur during the walkaround, but may be conducted at any time during an inspection. If necessary, interviews may be conducted at locations other than the workplace. CSHOs should consult with the District Manager or Supervisor if an interview is to be conducted somewhere other than the workplace. Where appropriate, NVOSHA has the authority to subpoena an employee to appear at the District Office for an interview.
  4. Conducting Interviews Of Non-Managerial Employees In Private - CSHOs shall inform employers that interviews of non-managerial employees will be conducted in private. CSHOs are entitled to question such employees in private regardless of employer preference. If an employer interferes with a CSHOs ability to do so, the CSHO should request that the District Manager consult with the Division Counsel determine appropriate legal action. Interference with a CSHOs ability to conduct private interviews with non-managerial employees includes, but is not limited to, attempts by management officials or representatives to be present during interviews.
  5. Conducting Employee Interviews
    - A. General Protocols
      - At the beginning of the interview, CSHOs should identify themselves to the employee by showing their credentials, and provide the employee with a business card. This allows employees to contact CSHOs if they have further information at a later time.
      - CSHOs should explain to employees that the reason for the interview is to gather factual information relevant to a safety and health inspection. It is not appropriate to assume that employees already know or understand the

Division's purpose. Particular sensitivity is required when interviewing a non-English speaking employee. In such instances, CSHOs should initially determine whether the employee's comprehension of English is sufficient to permit conducting an effective interview. If an interpreter is needed, CSHOs should use the District Office's protocol for interpreters.

- Every employee should be asked to provide his or her name, home address, and phone number. CSHOs should request identification and make clear the reason for asking for this information.
  - CSHOs shall inform employees that NVOSHA has the right to interview them in private and of the protections afforded under NRS 618.445.
  - In the event an employee requests that a representative of the union be present, CSHOs shall make a reasonable effort to honor the request.
  - If an employee requests that his/her personal attorney be present during the interview, CSHOs should honor the request and, before continuing with the interview, consult with the District Manager for guidance if needed.
  - Rarely, an attorney for the employer may claim that individual employees have also authorized the attorney to represent them. Such a situation creates a potential conflict of interest. CSHOs should ask the affected employees whether they have agreed to be represented by the attorney. If the employees indicate that they have, CSHOs should consult with the District Manager, who will contact the Division Counsel.
- B. Interview Statements - Interview statements of employees or other persons shall be obtained whenever CSHOs determine that such statements would be useful in documenting potential violations. Interviews shall normally be reduced to writing and written in the first person in the language of the individual. Employees shall be encouraged to sign and date the statement. Documentation of the interviews and statements shall be made on the most current NVOSHA Statement and Interview Form.
- Any changes or corrections to the form shall be initialed by the interviewee. The forms shall not otherwise be changed or altered in any manner.
  - Forms shall include the words, "I request that my statement be held confidential to the extent allowed by law" and end with the following; "I have read the above, and it is true to the best of my knowledge."
  - If the person making the declaration refuses to sign, the CSHO shall note the refusal on the form. The form shall, nevertheless, be read back to the person in an attempt to obtain agreement and noted in the case file.
  - A transcription of any recorded statement shall be made when necessary to the case.
  - If a management employee requests a copy of his/her form(s), one shall be given to them.



- C. If a non-management employee requests a copy of his/her interview form(s), one shall be provided to them via mail or email. In addition to providing the non-management employee with a copy of his/her interview, the CSHO will include an acknowledgment that doing so removes NVOSHA's ability to ensure the confidentiality of his/her identity and statements contained within the interview.

D. The Informant Privilege

- The informant privilege allows the government to withhold the identity of individuals who provide information about the violation of laws, including NVOSHA rules and regulations. CSHOs shall inform employees that their statements will remain confidential to the extent permitted by law. However, each employee giving a statement should be informed that disclosure of his or her identity might be necessary in connection with enforcement or court actions.

NOTE: Whenever CSHOs make an assurance of confidentiality as part of an investigation (i.e. informs the person giving the statement that their identity will be protected), the pledge shall be reduced to writing and included in the case file.

- The privilege also protects the contents of statements to the extent that disclosure may reveal the witness's identity. Where the contents of a statement will not disclose the identity of the informant (i.e., does not reveal the witness' job title, work area, job duties, or other information that would tend to reveal the individual's identity), the privilege does not apply. Interviewed employees shall be told that they are under no legal obligation to inform anyone, including employers, that they provided information to NVOSHA. Interviewed employees shall also be informed that if they voluntarily disclose such information to others, it may impair the Division's ability to invoke the privilege.
- j. **MULTI-EMPLOYER WORKSITES** - On multi-employer worksites (in all industry sectors), more than one employer may be cited for a hazardous condition that violates a NVOSHA or Federal OSHA standard. A two-step process must be followed in determining whether more than one employer is to be cited. See [CPL 02-00-124, Multi-Employer Citation Policy](#), dated December 10, 1999, for further guidance.
- k. **ADMINISTRATIVE SUBPOENA** - Whenever there is a reasonable need for records, documents, testimony and/or other supporting evidence necessary for completing an inspection scheduled in accordance with any current and approved inspection scheduling system or an investigation of any matter properly falling within the statutory authority of the Division, the CAO, or authorized District Manager or designee, may issue an administrative subpoena. See Chapter 15, *Legal Issues*.
1. **EMPLOYER ABATEMENT ASSISTANCE**
1. Policy - CSHOs shall offer appropriate abatement assistance during the walkaround as to how workplace hazards might be eliminated. The information shall provide guidance to the employer in developing acceptable abatement methods or in seeking

appropriate professional assistance. CSHOs shall not imply NVOSHA endorsement of any product through use of specific product names when recommending abatement measures. The issuance of citations shall not be delayed.

2. Disclaimers - The employer shall be informed that:
  - A. The employer is not limited to the abatement methods suggested by NVOSHA;
  - B. The methods explained are general and may not be effective in all cases; and
  - C. The employer is responsible for selecting and carrying out an effective abatement method, and maintaining the appropriate documentation.

## 8. CLOSING CONFERENCE

- a. **PARTICIPANTS** - At the conclusion of an inspection, CSHOs shall conduct a closing conference with the employer and the employee representatives, jointly or separately, as circumstances dictate. The closing conference may be conducted on-site or by telephone, as CSHOs deem appropriate. If the employer refuses to allow a closing conference, the circumstances of the refusal shall be documented in the narrative and the case shall be processed as if a closing conference had been held. The CSHO shall mail a "Closing Conference Letter" by certified mail to the employer with the closing conference information to include the proposed citations and the NVOSHA Form 3000.

NOTE: When conducting separate closing conferences for employers and labor representatives (where the employer has declined to have a joint closing conference with employee representatives), CSHOs shall normally hold the conference with employee representatives first, unless the employee representative requests otherwise. This procedure will ensure that worker input is received before employers are informed of violations and proposed citations.

- b. **DISCUSSION ITEMS**

1. The CSHO will fill out the closing conference form(s), address all other items on the form, to include items below, and sections c. thru h. below, and then have the employer and employee representative (if applicable), sign the form.
2. CSHOs shall discuss the apparent violations and other pertinent issues found during the inspection and note relevant comments on the Violation Worksheet, including input for establishing correction dates.
3. CSHOs shall give employers the publication, "Employer Rights and Responsibilities Following an NVOSHA Inspection," (NVOSHA-3000 or equivalent) which explains the responsibilities and courses of action available to the employer if a citation is issued. They shall then briefly discuss the information in the booklet and answer any questions. All matters discussed during the closing conference shall be documented in the case file, including a note describing printed materials distributed.
4. CSHOs shall discuss the strengths and weaknesses of the employer's Written Safety and Health Program and any other applicable programs, and advise the employer of the



benefits of an effective program(s) and provide information, such as, SCAT’s website, describing program elements.

5. Both the employer and employee representatives shall be advised of their rights to participate in any subsequent conferences, meeting or discussions, and their contest rights. Any unusual circumstances noted during the closing conference shall be documented in the case file.
6. Since CSHOs may not have all pertinent information at the time of the first closing conference, a second closing conference may be held by telephone or in person.
7. CSHOs shall advise employee representatives that:
  - A. Under NAC 618.698, if an employer contests a citation, the employees have a right to elect “party status” before the Review Board;

**NAC 618.698 -**

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

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

*(b) For good cause shown, the Board allows him 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 notifies the Board and all parties at least 30 days before the beginning of the hearing of his desire to participate.*

- B. The employer should notify them if a notice of contest or a petition for modification of abatement date is filed;
- C. They have NRS 618.445 rights; and
- D. They have a right to contest the abatement date. Such contests must be in writing and must be postmarked within 15 working days after receipt of the citation.

**c. ADVICE TO ATTENDEES**

1. The CSHO shall advise those attending the closing conference that a request for an informal conference with the District Manager is encouraged as it provides an opportunity to:
  - A. Resolve disputed citations and penalties without the need for litigation which can be time consuming and costly;
  - B. Obtain a more complete understanding of the specific safety or health standards which apply;
  - C. Discuss ways to correct the violations;

- D. Discuss issues concerning proposed penalties;
  - E. Discuss proposed abatement dates;
  - F. Discuss issues regarding employee safety and health practices; and
  - G. Learn more of other NVOSHA programs and services available.
2. If a citation is issued, an informal conference or the request for one does not extend the 15 working-day period in which the employer or employee representatives may contest.
  3. Verbal disagreement with, or intent to, contest a citation, penalty or abatement date during an informal conference does not replace the required written Notice of Contest.
  4. Employee representatives have the right to participate in informal conferences or negotiations between the District Manager and the employer in accordance with the guidelines given in Chapter 7, *Informal Conferences*.
- d. **PENALTIES** - CSHOs shall explain that penalties must be paid within 15 working days after the employer receives a citation and notification of penalty. If, however, an employer contests the citation and/or the penalty, penalties need not be paid for the contested items until the final order date.
- e. **FEASIBLE ADMINISTRATIVE, WORK PRACTICE AND ENGINEERING CONTROLS** - Where appropriate, CSHOs will discuss control methodology with the employer during the closing conference.
1. Definitions
    - A. *Engineering Controls* - Consist of substitution, isolation, ventilation, and equipment modification.
    - B. *Administrative Controls* - Any procedure, which significantly limits daily exposure by control or manipulation of the work schedule, or manner in which work is performed is considered a means of administrative control. The use of personal protective equipment is not considered a means of administrative control.
    - C. *Work Practice Controls* - A type of administrative controls by which the employer modifies the manner in which the employee performs assigned work. Such modification may result in a reduction of exposure through such methods as changing work habits, improving sanitation and hygiene practices, or making other changes in the way the employee performs the job.
    - D. *Feasibility* - Abatement measures required to correct a citation item are feasible when they can be accomplished by the employer. The CSHO, following current directions and guidelines, shall inform the employer, where appropriate, that a determination will be made as to whether engineering or administrative controls are feasible.
    - E. *Technical Feasibility* - The existence of technical know-how as to materials and methods available or adaptable to specific circumstances, which can be applied to a cited violation with a reasonable possibility that employee exposure to occupational hazards will be reduced.

F. *Economic Feasibility* - Means that the employer is financially able to undertake the measures necessary to abate the citations received.

NOTE: If an employer's level of compliance lags significantly behind that of its industry, allegations of economic infeasibility will not be accepted.

2. Documenting Claims Of Infeasibility

A. CSHOs shall document the underlying facts, which give rise to an employer's claim of infeasibility.

B. When economic infeasibility is claimed, the CSHO shall inform the employer that, although the cost of corrective measures to be taken will generally not be considered as a factor in the issuance of a citation, it may be considered during an informal conference or during settlement negotiations.

C. Complex issues regarding feasibility should be referred to the District Manager or designee for determination.

f. **REDUCING EMPLOYEE EXPOSURE** - Employers shall be advised that, whenever feasible, engineering, administrative or work practice controls must be instituted, even if they are not sufficient to eliminate the hazard (or to reduce exposure to or below the permissible exposure limit). They are required in conjunction with personal protective equipment to further reduce exposure to the lowest practical level.

g. **ABATEMENT VERIFICATION** - **During** the closing conference, the CSHO should thoroughly explain to the employer the abatement verification requirements. See Chapter 7, *Post Inspection Procedures, and Abatement Verification*.

1. Abatement Certification - Abatement certification is required for all citation item(s), which the employer received except for those citation items, which are identified as "Abated During Inspection."

2. Abated During Inspection (ADI) - The violation(s) that will reflect on-site abatement and will be identified in the citations as "Abated During Inspection" shall be reviewed at the closing conference.

3. Abatement Documentation - Abatement documentation, the employer's physical proof of abatement, is required to be submitted along with each violation. To minimize confusion, the distinction between abatement certification and abatement documentation should be discussed.

4. Placement Of Abatement Verification Tags - The required placement of abatement verification tags or the citation must also be discussed at the closing conference, if it has not been discussed during the walkaround portion of the inspection. See NAC 618.6465.

5. Requirements For Extended Abatement Periods - Where extended abatement periods are involved, the requirements for abatement plans and progress reports shall be discussed.

h. **EMPLOYEE DISCRIMINATION** - The CSHO shall emphasize that the NVOSH Act prohibits employers from discharging or discriminating in any way against an employee

who has exercised any right under the NVOSH Act, including the right to make safety or health complaints or to request a NVOSHA inspection.

## 9.SPECIAL INSPECTION PROCEDURES

### a. FOLLOW-UP AND MONITORING INSPECTIONS

1. The primary purpose of a follow-up inspection is to determine if the previously cited violations have been corrected. Monitoring inspections are conducted to ensure that hazards are being abated and employees protected, whenever a long period of time is needed for an establishment to come into compliance (or to verify compliance with the terms of granted variances). Issuance of willful, repeated and high gravity serious violations, failure to abate notifications, and/or citations related to imminent danger situations are examples of prime candidates for follow-up or monitoring inspections. This type of inspections will not normally be conducted when evidence of abatement is provided by the employer or employee representatives.
2. Failure To Abate
  - A. A failure to abate exists when a previously cited violation continues unabated and the abatement date has passed or the abatement date is covered under a settlement agreement, or the employer has not complied with interim measures within the allotted time specified in a long-term abatement plan.
  - B. If previously cited items have not been corrected, a Notice of Failure to Abate Alleged Violation shall normally be issued. If a subsequent inspection indicates the condition has still not been abated, the Division Counsel shall be consulted for further guidance.
 

NOTE: If the employer has demonstrated a good faith effort to comply, a late Petition for Modification of Abatement (PMA) may be considered in accordance with Chapter 7, *Petition for Modification of Abatement*.
  - C. If an originally cited violation has, at one point been abated, but subsequently recurs, a citation for a repeated violation may be appropriate.
3. Reports
  - A. For any items found to be abated, a copy of the previous OSHA-1B, OSHA-1B-IH, Violation Worksheets or citation can be notated with "corrected" written on it, along with a brief explanation of the abatement measures taken. This information may alternately be included in the narrative of the investigative file.
  - B. In the event that any item has not been abated, complete documentation shall be included on a Violation Worksheet.
4. Follow-Up Files - Follow-up inspection reports shall be included with the original (parent) case file.

**b. CONSTRUCTION INSPECTIONS**

1. Standards Applicability - The standards published as 29 CFR Part 1926 have been adopted as occupational safety and health standards under NRS 618.295(8) and §1910.12. They shall apply to every employment and place of employment of every employee engaged in construction work, including non-contract construction.
2. Definition - The term "construction work" as defined by §1926.32(g) means work for construction, alteration, and/or repair, including painting and decorating. These terms are also discussed in §1926.13. If any question arises, as to whether an activity is construction or not, the Supervisor, District Manager, or CAO shall be consulted.
3. Employer Worksite
  - A. Inspections of employers in the construction industry are not easily separable into distinct worksites. The worksite is generally the site where the construction is being performed (i.e., the building site, the dam site). Where the construction site extends over a large geographical (i.e., road, building), the entire job will be considered a single worksite. In cases when such large geographical areas overlap between District Offices, generally only operations of the employer within the jurisdiction of any District Office will be considered as the worksite of the employer.
  - B. When a construction worksite extends beyond a single District Office and the CSHO believes that the inspection should be extended, the affected District Managers shall consult with each other and take appropriate action.
4. Upon Entering The Workplace
  - A. CSHOs shall ascertain whether there is a representative of a Federal contracting agency at the worksite. If so, they shall contact the representative, advise him/her of the inspection and request that they attend the opening conference.
  - B. If the inspection is being conducted because of a complaint **or referral**, a copy of the complaint **or referral** is to be furnished to the general contractor and any affected sub-contractors.
5. Closing Conference - Upon completion of the inspection, the CSHO shall confer with the general contractors and all appropriate subcontractors or their representatives, together or separately, and advise each one of all the apparent violations disclosed by the inspection to which each one's employees were exposed, or violations which the employer created or controlled. Employee representatives participating in the inspection shall also be afforded the right to participate in the closing conference(s).

## Chapter 4

### VIOLATIONS

#### 1. BASIS OF VIOLATIONS

##### a. STANDARDS AND REGULATIONS

1. **NRS 618.295(8)** – Regulations and standards; medical examination for exposure to hazard - All federal occupational safety and health standards, which the Secretary of Labor promulgates, modifies or revokes, and any amendments thereto, shall be deemed Nevada occupational safety and health standards unless the Division, in accordance with federal law, adopts regulations establishing alternative standards that provide protection equal to the protection provided by those federal occupational safety and health standards.
2. The specific standards and regulations are found in Title 29 Code of Federal Regulations (CFR) 1900 series. Subparts A and B of 29 CFR 1910 specifically establish the source of all the standards, which serve as the basis of violations. Standards are subdivided as follows:

| Subdivision Naming Convention | Example |
|-------------------------------|---------|
| Title                         | 29      |
| Part                          | 1910    |
| Section                       | 305     |
| Paragraph                     | (j)     |
| Subparagraph                  | (6)     |
| Item                          | (ii)    |
| Subitem                       | (A)     |
| Subitem 2                     | (2)     |

NOTE: The most specific provision of a standard shall be used for citing violations.

3. Definition And Application Of Vertical And Horizontal Standards - Vertical standards are standards that apply to a particular industry or to particular operations, practices, conditions, processes, means, methods, equipment, or installations. Horizontal standards are other (more general) standards applicable to multiple industries. See §1910.5(c).
4. Application Of Horizontal And Vertical Standards - If a CSHO is uncertain whether to cite under a horizontal or a vertical standard when both may be applicable, the supervisor or the District Manager shall be consulted. The following guidelines shall be considered:
  - A. When a hazard in a particular industry is covered by both a vertical (i.e., 29 CFR 1915) and a horizontal (i.e., 29 CFR 1910) standard, the vertical standard shall take precedence even if the horizontal standard is more stringent.

- B. In situations covered by both a horizontal (general) and a vertical (specific) standard where the horizontal standard appears to offer greater protection, the horizontal (general) standard may be cited only if its requirements are not inconsistent or in conflict with the requirements of the vertical (specific) standard. To determine whether there is a conflict or inconsistency between the standards, an analysis of the intent of the two standards must be performed. For the horizontal standard to apply, the analysis must show that the vertical standard does not address the precise hazard involved, even though it may address related or similar hazards.

EXAMPLE 4-1: When employees are connecting structural steel, §1926.501(b)(15) may not be cited for fall hazards above 6 feet since that specific situation is covered by §1926.760(b)(1) for fall distances of more than 30 feet.

- C. If the particular industry does not have a vertical standard that covers the hazard, then the CSHO shall use the horizontal (general industry) standard.
  - D. When determining whether a horizontal or a vertical standard is applicable to a work situation, the CSHO shall focus attention on the particular activity an employer is engaged in rather than on the nature of the employer's general business.
  - E. Hazards found in construction work that are not covered by a specific 29 CFR 1926 standard shall not normally be cited under 29 CFR 1910 unless that standard has been identified as being applicable to construction. See [\*Incorporation of General Industry Safety and Health Standards Applicable to Construction Work, 58 FR 35076\*](#) (June 30, 1993).
  - F. If a question arises as to whether an activity is deemed construction for purposes of the NVOSH Act, contact the Supervisor, District Manager, or CAO. See §1910.12, Construction Work.
5. Violation Of Variances - The employer's requirement to comply with a standard may be modified through granting of a variance, as outlined in NAC 618.630-634.
- A. In the event that the employer is not in compliance with the requirements of the variance, a violation of the controlling standard shall be cited with a reference in the citation to the variance provision that has not been met.
  - B. If, during an inspection, CSHOs discover that an employer has filed a variance application regarding a condition that is an apparent violation of a standard, the District Manager or designee shall determine whether the variance request has been granted. If the variance has not been granted, a citation for the violative condition may be issued.
- b. **EMPLOYEE ACCESS** - A hazardous condition that violates an NVOSHA and/or Federal OSHA standard or the general duty clause shall be cited only when employee exposure can be documented. The exposure(s) must have occurred within the six months immediately preceding the issuance of the citation to serve as a basis for a violation, except where the employer has concealed the violative condition or misled NVOSHA, in which case the



citation must be issued within six months from the date when NVOSHA learns, or should have known, of the condition. The Division Counsel should be consulted in such cases.

1. **Determination Of Employer/Employee Relationship** -Whether or not exposed persons are employees of a particular employer depends on several factors, the most important of which is who controls the manner in which employees perform their assigned work. The question of who pays these employees may not be the key factor. Determining the employer of exposed employees may be a complex issue, in which case the District Manager shall seek the advice of the Division Counsel.
2. **Proximity To The Hazard** - The actual and/or potential proximity of the employees to a hazard shall be thoroughly documented, (i.e., photos, measurements, employee interviews).
3. **Observed Access**
  - A. Employee exposure is established if CSHOs witness, observe, or monitor the proximity or access of an employee to the hazard or potentially hazardous condition.
  - B. The use of personal protective equipment may not, in itself, adequately prevent employee exposures to a hazardous condition. Such exposures may be cited where the applicable standard requires the additional use of engineering and/or administrative (including work practice) controls, or where the personal protective equipment used is inadequate.
4. **Unobserved Access** - Where employee exposure is not observed, witnessed, or monitored by CSHOs, employee exposure may be established through witness statements or other evidence that exposure to a hazardous condition has occurred or may continue to occur.
  - A. **Past Access** - In fatality/catastrophe (or other “accident/incident”) investigations, prior employee exposure(s) may be established if CSHOs establish, through written statements or other evidence, that exposure(s) to a hazardous condition occurred at the time of the accident/incident. Additionally, prior exposures may serve as the basis for a violation when:
    - The hazardous condition continues to exist, or it is reasonably predictable that the same or similar condition could recur;
    - It is reasonably predictable that employee exposure to a hazardous condition could recur when:
      - The employee exposure has occurred in the previous six months;
      - The hazardous condition is an integral part of an employer’s normal operations; and
      - The employer has not established a policy or program to ensure that exposure to the hazardous condition will not recur.



B. Potential Access - Potential exposure to a hazardous condition may be established if there is evidence that employees have access to the hazard, and may include one or more of the following:

- When a hazard has existed and could recur because of work patterns, circumstances, or anticipated work requirements;
- When a hazard would pose a danger to employees simply by their presence in an area and it is reasonably predictable that they could come into that area during the course of the work, to rest or to eat, or to enter or exit from an assigned work area; or
- When a hazard is associated with the use of unsafe machinery or equipment or arises from the presence of hazardous materials and it is reasonably predictable that an employee could again use the equipment or be exposed to the materials in the course of work; *however*;
- If the inspection reveals an adequately communicated *and* effectively enforced safety policy or program that would prevent or minimize employee exposure, including accidental exposure to the hazardous condition, it would not be reasonably predictable that employee exposure could occur. In such circumstances, no citation should be issued in relation to the condition.

C. Documenting Employee Access - CSHOs shall thoroughly document exposure, both observed and unobserved, for each potential violation. This includes:

- Statements by the exposed employees, the employer (particularly the immediate supervisor of the exposed employee), other witnesses (other employees who have observed exposure to the hazardous condition), union representatives, engineering personnel, management, or members of the exposed employee's family;
- Signed written statements;
- Photographs, Video Recordings, and/or measurements; and
- All relevant documents (i.e., autopsy reports, police reports, job specifications, site plans, OSHA-300/301, equipment manuals, employer work rules, employer sampling results, employer safety and health programs, and employer disciplinary policies, etc.).

c. **REGULATORY REQUIREMENTS** - Violations of NRS 618.375(3), NAC 618.6428, NAC 618.6467 (REGULATORY), and 29 CFR 1904 (OTHER-THAN-SERIOUS) shall be documented and cited when an employer does not comply with posting, recordkeeping, and reporting requirements of the regulations contained in these parts as provided by agency policy.

NOTE: If prior to the lapse of the 8-hour reporting period, the District Manager becomes aware of an incident required to be reported under NRS 618.378(1) through means other than an employer report, there is no violation for failure to report.

- d. **HAZARD COMMUNICATION** - Section 1910.1200 requires chemical manufacturers and importers to assess the hazards of chemicals they produce or import, and applies to these employers even though they may not have their own employees exposed. Violations of this standard by manufacturers or importers shall be documented and cited, irrespective of any employee exposure at the manufacturing or importing location. See [CPL 02-02-079, Inspection Procedures for the Hazard Communication Standard \(HCS 2012\)](#), dated July 9, 2015.
- e. **EMPLOYER/EMPLOYEE RESPONSIBILITIES**
1. Employer Responsibilities -

**NRS 618.375(1)** states: “Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.”

**NRS 618.295(8)** states “All federal occupational safety and health standards which the Secretary of Labor promulgates, modifies or revokes, and any amendments thereto, shall be deemed Nevada occupational safety and health standards unless the Division, in accordance with federal law, adopts regulations establishing alternative standards that provide protection equal to the protection provided by those federal occupational safety and health standards.”
  2. Employee Responsibilities
    - A. **NRS 618.405(3)** states: “Each employee shall comply with occupational safety and health standards and all rules, which are applicable to his or her own actions and conduct.” The NVOSH Act does not provide for the issuance of citations or the proposal of penalties against employees. Employers are responsible for employee compliance with the standards.
    - B. In cases where the CSHO determines that employees are systematically refusing to comply with a standard applicable to their own actions and conduct, the matter shall be referred to the District Manager who shall consult with the CAO or designee.
    - C. The CSHO is expected to obtain information to ascertain whether the employer is exercising appropriate oversight of the workplace to ensure compliance with the NVOSH Act. Concerted refusals by employees to comply will not ordinarily bar the issuance of a citation where the employer has failed to exercise its authority to adequately supervise employees, including taking appropriate disciplinary action.
  3. Affirmative Defenses - An affirmative defense is a claim, which, if established by the employer, will excuse it from a violation, which has otherwise been documented by the CSHO. Although affirmative defenses must be proved by the employer at the time of the hearing, CSHOs should preliminarily gather evidence to rebut an employer’s potential argument supporting any such defenses. See Chapter 5, *Affirmative Defenses*, for additional information.
  4. Multi-Employer Worksites - On multi-employer worksites in all industry sectors, more than one employer may be cited for a hazardous condition that violates a NVOSHA or

Federal OSHA standard. For specific and detailed guidance, see the multi-employer policy contained in [CPL 02-00-124, Multi-Employer Citation Policy](#), dated December 10, 1999.

## 2. SERIOUS VIOLATIONS

- a. **NRS 618.625(2)** – "A serious violation exists in a place of employment if there is a substantial probability that death or serious physical harm could result from a condition which exists, or from one or more practices, means, methods, operations or processes which have been adopted or are in use in that place of employment unless the employer did not and could not, with the exercise of reasonable diligence, know of the presence of the violation."

### b. ESTABLISHING SERIOUS VIOLATIONS

1. CSHOs shall consider four factors in determining whether a violation is to be classified as serious. The first three factors address whether there is a substantial probability that death or serious physical harm could result from an accident/incident or exposure relating to the violative condition. The probability that an incident or illness will occur is not to be considered in determining whether a violation is serious, but is considered in determining the relative gravity of the violation. The fourth factor addresses whether the employer knew or could have known of the violative condition.
2. The classification of a violation need not be completed for each instance. It should be done once for each citation or, if violation items are grouped in a citation, once for the group.
3. If the citation consists of multiple instances or grouped violations, the overall classification shall normally be based on the most serious item.
4. The four-factor analysis outlined below shall be followed in making the determination whether a violation is serious. Potential violations of the general duty clause shall also be evaluated based on these steps to establish whether they may cause death or serious physical harm.

### c. FOUR STEPS TO BE DOCUMENTED

1. Type Of Hazardous Exposure(s) - The first step is to identify the type of potential exposures to a hazard that the violated standard or the general duty clause is designed to prevent.
  - A. CSHOs need not establish the exact manner in which an exposure to a hazard could occur. However, CSHOs shall note all facts, which could affect the probability of an injury or illness resulting from a potential accident or hazardous exposure.
  - B. If more than one type of hazardous exposure exists, CSHOs shall determine which hazard could reasonably be predicted to result in the most severe injury or illness and shall base the classification of the violation on that hazard.
  - C. The following are examples of some types of hazardous exposures that a standard is designed to prevent:

EXAMPLE 4-2: Employees are observed working at the unguarded edge of an open-sided floor 30 feet above the ground in apparent violation of §1926.501(b)(1). The regulation requires that the edge of the open-sided floor be guarded by standard guardrail systems. The type of hazard the standard is designed to prevent is a fall from the edge of the floor to the ground below.

EXAMPLE 4-3: Employees are observed working in an area in which debris is located in apparent violation of §1915.91(b). The type of hazard the standard is designed to prevent here is employees tripping on debris.

EXAMPLE 4-4: An 8-hour time-weighted average sample reveals regular, ongoing employee overexposure to methylene chloride at 100 ppm in apparent violation of §1910.1052. This is 75 ppm above the PEL mandated by the standard.

2. The Type Of Injury Or Illness - The second step is to identify the most serious injury or illness that could reasonably be expected to result from the potential hazardous exposure identified in Step 1.

A. In making this determination, CSHOs shall consider all factors that would affect the severity of the injury or illness that could reasonably result from the exposure to the hazard. CSHOs shall not give consideration at this point to factors relating to the probability that an injury or illness will occur.

B. The following are examples of types of injuries that could reasonably be predicted to result from exposure to a particular hazard:

EXAMPLE 4-5: If an employee falls from the edge of an open-sided floor 30 feet to the ground below, the employee could die, break bones, suffer a concussion, or experience other serious injuries that would substantially impair a body function.

EXAMPLE 4-6: If an employee trips on debris, the trip may cause abrasions or bruises, but it is only marginally predictable that the employee could suffer a substantial impairment of a bodily function. If, however, the area is littered with broken glass or other sharp objects, it is reasonably predictable that an employee who tripped on debris could suffer deep cuts, which could require suturing.

C. For conditions involving exposure to air contaminants or harmful physical agents, the CSHO shall consider the concentration levels of the contaminant or physical agent in determining the types of illness that could reasonably result from the exposure. [OSHA's Chemical Sampling Information resource webpage](#), shall be used to determine both toxicological properties of substances listed and a Health Code Number.

D. In order to support a classification of serious, a determination must be made that exposure(s) at the sampled level could lead to illness. Thus, CSHOs must document all evidence demonstrating that the sampled exposure(s) is representative of employee exposure(s) under normal working conditions, including identifying and recording the frequency and duration of employee exposure(s). Evidence to be considered includes:

- The nature of the operation from which the exposure results;
- Whether the exposure is regular and on-going or is of limited frequency and duration;
- How long employees have worked at the operation in the past;

- Whether employees are performing functions which can be expected to continue; and
  - Whether work practices, engineering controls, production levels, and other operating parameters are typical of normal operations.
- E. Where such evidence is difficult to obtain or inconclusive, CSHOs shall estimate frequency and duration of exposures from any evidence available. In general, if it is reasonable to infer that regular, ongoing exposures could occur, CSHOs shall consider such potential exposures in determining the types of illness that could result from the violative condition. The following are some examples of illnesses that could reasonably result from exposure to a health hazard:

EXAMPLE 4-7: If an employee is exposed regularly to methylene chloride at 100 ppm, it is reasonable to predict that cancer could result.

EXAMPLE 4-8: If an employee is exposed regularly to acetic acid at 20 ppm, it is reasonable that the resulting illnesses would be irritation to eyes, nose and throat, or occupational asthma with chronic rhinitis and sinusitis.

3. Potential For Death Or Serious Physical Harm - The third step is to determine whether the type of injury or illness identified in Step 2 could include death or a form of serious physical harm. In making this determination, the CSHO shall utilize the following definition of “serious physical harm:”

Impairment of the body in which part of the body is made functionally useless or is substantially reduced in efficiency on or off the job. Such impairment may be permanent or temporary, chronic or acute. Injuries involving such impairment would usually require treatment by a medical doctor or other licensed health care professional.

- A. Injuries that constitute serious physical harm include, but are not limited, to:
- Amputations (loss of all or part of a bodily appendage);
  - Concussion;
  - Crushing (internal, even though skin surface may be intact);
  - Fractures (simple or compound);
  - Burns or scalds, including electric and chemical burns;
  - Cuts, lacerations, or punctures involving significant bleeding and/or requiring suturing;
  - Sprains and strains; and
  - Musculoskeletal disorders
- B. Illnesses that constitute serious physical harm include, but are not limited, to:
- Cancer;
  - Respiratory illnesses (silicosis, asbestosis, byssinosis, etc.);
  - Hearing impairment;
  - Central nervous system impairment;
  - Visual impairment; and
  - Poisoning
- C. The following are examples of injuries or illnesses that could reasonably result from an accident/incident or exposure and lead to death or serious physical harm:

EXAMPLE 4-9: If an employee falls 15 feet to the ground, suffers broken bones or a concussion, and experiences substantial impairment of a part of the body requiring treatment by a medical doctor, the injury would constitute serious physical harm.

EXAMPLE 4-10: If an employee trips on debris and because of the presence of sharp debris or equipment suffers a deep cut to the hand requiring suturing, the use of the hand could be substantially reduced. This injury would be classified as serious.

EXAMPLE 4-11: An employee develops chronic beryllium disease after long-term exposure to beryllium at a concentration in air of 0.004 mg/m<sup>3</sup>, and his or her breathing capacity is significantly reduced. This illness would constitute serious physical harm.

NOTE: The key determination is the likelihood that death or serious harm will result IF an accident or exposure occurs. The likelihood of an accident occurring is addressed in penalty assessments and not by the classification.

4. Knowledge Of Hazardous Condition - The fourth step is to determine whether the employer knew or, with the exercise of reasonable diligence, could have known, of the presence of the hazardous condition.
  - A. The knowledge requirement is met if it is established that the employer actually knew of the hazardous condition constituting the apparent violation. Examples include the employer saw the condition, an employee or employee representative reported it to the employer, or an employee was previously injured by the condition and the employer knew of the injury. CSHOs shall record any/all evidence that establishes employer knowledge of the condition or practice.
  - B. If it cannot be determined that the employer has actual knowledge of a hazardous condition, the knowledge requirement may be established if there is evidence that the employer could have known of it through the exercise of reasonable diligence. CSHOs shall record any evidence that substantiates that the employer could have known of the hazardous condition. Examples of such evidence include:
    - The violation/hazard was in plain view and obvious;
    - The duration of the hazardous condition was not brief;
    - The employer failed to regularly inspect the workplace for readily identifiable hazards; and
    - The employer failed to train and supervise employees regarding the particular hazard.
  - C. The actual or constructive knowledge of a supervisor who is aware of a violative condition or practice can usually be imputed to the employer for purposes of establishing knowledge. In cases where the employer contends that the supervisor's own conduct constituted an isolated event of employee misconduct, the CSHO shall attempt to determine whether the supervisor violated an established work rule, and the extent to which the supervisor was trained in the rule and supervised regarding compliance to prevent such conduct.

3. **GENERAL DUTY REQUIREMENTS - NRS 618.375(1)**"Every employer shall: Furnish employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees."



a. **EVALUATION OF GENERAL DUTY REQUIREMENTS** - In general, Review Board and court precedent have established that the following elements are necessary to prove a violation of the general duty clause:

1. The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
2. The hazard was recognized;
3. The hazard was causing or was likely to cause death or serious physical harm; and
4. There was a feasible and useful method to correct the hazard.

A general duty citation must involve both the presence of a serious hazard and exposure of the cited employer's own employees.

b. **ELEMENTS OF A GENERAL DUTY REQUIREMENT VIOLATION**

1. Definition Of A Hazard

- A. The hazard in a **NRS 618.375(1)** citation is a *workplace condition* or practice to which employees are exposed, creating the *potential for death or serious physical harm* to employees.
- B. These conditions or practices must be clearly stated in a citation to apprise employers of their obligations and must be ones the employer can reasonably be expected to prevent. The hazard must therefore be defined in terms of the presence of hazardous conditions or practices that present a particular danger to employees.

2. Do Not Cite The Lack Of A Particular Abatement Method

- A. General duty clause citations are not intended to allege that the violation is a failure to implement certain precautions, corrective actions, or other abatement measures but rather addresses the failure to prevent or remove a particular hazard. **NRS 618.375(1)** therefore does not mandate a particular abatement measure but only requires an employer to render the workplace free of recognized hazards by any feasible and effective means the employer wishes to utilize.
- B. In situations where a question arises regarding distinguishing between a dangerous workplace condition or practice and the lack of an abatement method, the District Manager shall consult with the CAO or designee, or the Division Counsel for assistance in correctly identifying the hazard.

EXAMPLE 4-12: Employees are conducting sanding operations that create sparks in the proximity of magnesium dust (workplace condition or practice) exposing them to the serious injury of burns from a fire (potential for physical harm). One proposed method of abatement might be engineering controls such as adequate ventilation. The "hazard" is sanding that creates sparks in the presence of magnesium that may result in a fire capable of seriously injuring employees, not the lack of adequate ventilation.

EXAMPLE 4-13: Employees are operating tools that generate sparks in the presence of an ignitable gas (workplace condition) exposing them to the danger of an explosion (physical harm). The hazard is use of tools that create sparks in a volatile atmosphere that may cause an explosion capable of seriously injuring employees, not the lack of approved equipment.

EXAMPLE 4-14: In a workplace situation involving high- pressure machinery that vents gases next to a work area where the employer has not installed proper high-pressure equipment, has improperly installed the equipment that is in place, and does not have adequate work rules addressing the dangers of high pressure gas, there are three abatement measures the employer has failed to take. However, there is only one hazard (i.e., employee exposure to the venting of high-pressure gases into a work area that may cause serious burns from steam discharges).

3. The Hazard Is Not A Particular Accident/Incident

The occurrence of an accident/incident does not necessarily mean that the employer has violated NRS 618.375(1) although the accident/incident may be evidence of a hazard. In some cases, a NRS 618.375(1) violation may be unrelated to the cause of the accident/incident. Although accident/incident facts may be relevant and shall be documented, the citation shall address the hazard in the workplace that existed prior to the accident/incident, not the particular facts that led to the occurrence of the accident/incident.

EXAMPLE 4-15: A fire occurred in a workplace where flammable materials were present. No one was injured by the fire but an employee, disregarding the clear instructions of his supervisor to use an available exit, jumped out of a window and broke a leg. The danger of fire due to the presence of flammable materials may be a recognized hazard causing or likely to cause death or serious physical harm, but the action of the employee may be an instance of unpreventable employee misconduct. The citation must address the underlying workplace fire hazard, not the accident/incident involving the employee.

4. The Hazard Must Be Reasonably Foreseeable - The hazard for which a citation is issued must be reasonably foreseeable. Not all of the factors that could cause a hazard need be present in the same place or at the same time in order to prove foreseeability of the hazard; i.e., an explosion need not be imminent.

EXAMPLE 4-16: If combustible gas and oxygen are present in sufficient quantities in a confined area to cause an explosion if ignited, but no ignition source is present or could be present, no NRS 618.375(1) violation would exist. However, if the employer has not taken sufficient safety precautions to preclude the presence or use of ignition sources in the confined area, then a foreseeable hazard may exist.

NOTE: It is necessary to establish the reasonable foreseeability of the workplace hazard, rather than the particular circumstances that led to an accident/incident.

EXAMPLE 4-17: A titanium dust fire spreads from one room to another because an open can of gasoline was in the second room. An employee who usually worked in both rooms is burned in the second room as a result of the gasoline igniting. The presence of gasoline in the second room may be a rare occurrence. However, it is not necessary to demonstrate that a fire in both rooms could reasonably occur, but only that a fire hazard, in this case due to the presence of titanium dust, was reasonably foreseeable.

5. The Hazard Must Affect The Cited Employer’s Employees

A. The employees exposed to the NRS 618.375(1) hazard must be the employees of the cited employer. An employer who may have created, contributed to, and/or controlled the hazard normally shall not be cited for a NRS 618.375(1) violation if his own employees are not exposed to the hazard.

B. In complex situations, such as multi-employer worksites, where it may be difficult to identify the precise employment relationship between the employer to be cited and the exposed employees, the District Manager shall consult with the CAO or



designee and the Division Counsel to determine the sufficiency of the evidence regarding the employment relationship.

- C. The fact that an employer denies that exposed workers are his/her employees is not necessarily determinative of the employment relationship issue. Whether or not exposed persons are employees of an employer depends on several factors, the most important of which is who controls the manner in which the employees perform their assigned work. The question of who pays employees in and of itself may not be the determining factor to establish a relationship.
6. The Hazard Must Be Recognized - Recognition of a hazard can be established based on employer recognition, industry recognition, or “common-sense” recognition. The use of common sense as the basis for establishing recognition shall be limited to special circumstances. Recognition of the hazard must be supported by the following evidence and adequate documentation in the file:

A. Employer Recognition

- A recognized hazard can be established by evidence of actual employer knowledge of a hazardous condition or practice. Evidence of employer recognition may consist of written or oral statements made by the employer or other management or supervisory personnel during or before the NVOSHA inspection.
- Employer awareness of a hazard may also be demonstrated by a review of company memorandums, safety work rules that specifically identify a hazard, operations manuals, standard operating procedures, and collective bargaining agreements. In addition, prior accidents/incidents, near misses known to the employer, injury and illness reports, or workers' compensation data, may also show employer knowledge of a hazard.
- Employer awareness of a hazard may also be demonstrated by prior NVOSHA inspection history, which involved the same hazard.
- Employee complaints or grievances and safety committee reports to supervisory personnel may establish recognition of the hazard, but the evidence should show that the complaints were not merely infrequent, off-hand comments.
- An employer's own corrective actions may serve as the basis for establishing employer recognition of the hazard if the employer did not adequately continue or maintain the corrective action or if the corrective action did not afford effective protection to the employees.

NOTE: CSHOs are to gather as many of these facts as possible to support establishing a NRS 618.375(1) violation.

B. Industry Recognition

- A hazard is recognized if the employer's relevant industry is aware of its existence. Recognition by an industry other than the industry to which the employer belongs is generally insufficient to prove this element of a NRS 618.375(1) violation. Although evidence of recognition by an employer's

similar operations within an industry is preferred, evidence that the employer's overall industry recognizes the hazard may be sufficient. The District Manager shall consult with the CAO or designee on this issue. Industry recognition of a hazard can be established in several ways:

- Statements by safety or health experts who are familiar with the relevant conditions in industry (regardless of whether they work in the industry);
- Evidence of implementation of abatement methods to deal with the particular hazard by other members of the industry;
- Manufacturers' warnings on equipment or in literature that are relevant to the hazard;
- Statistical or empirical studies conducted by the employer's industry that demonstrate awareness of the hazard. Evidence such as studies conducted by the employee representatives, the union or other employees must also be considered if the employer or the industry has been made aware of them;
- Government and insurance industry studies, if the employer or the employer's industry is familiar with the studies and recognizes their validity;
- State and local laws or regulations that apply in the jurisdiction where the violation is alleged to have occurred and which currently are enforced against the industry in question. In such cases, however, corroborating evidence of recognition is recommended; and/or
- If the relevant industry participated in the committees drafting national consensus standards such as the American National Standards Institute (ANSI), the National Fire Protection Association (NFPA), and other private standard-setting organizations, this can constitute industry recognition. Otherwise, such private standards normally shall be used only as corroborating evidence of recognition. Preambles to these standards that discuss the hazards involved may show hazard recognition as much as, or more than, the actual standards. However, these private standards **cannot** be enforced as NVOSHA or Federal OSHA standards, but they may be used to provide evidence of industry recognition, seriousness of the hazard or feasibility of abatement methods.

In cases where State and local government agencies have codes or regulations covering hazards not addressed by NVOSHA or Federal OSHA standards, the District Manager, upon consultation with the CAO or designee, shall determine whether the hazard is to be cited under NRS 618.375(1) or referred to the appropriate local agency for enforcement.

EXAMPLE 4-18: A safety hazard on a personnel elevator in a factory is documented during an inspection. It is determined that the hazard may not be cited under NRS 618.375(1) but there is a local code and a local agency enforces the code. The situation normally shall be referred to the local enforcement agency in lieu of citing NRS 618.375(1).

- References that may be used to supplement other evidence to help demonstrate industry recognition include the following:

- NIOSH criteria documents
  - EPA publications
  - National Cancer Institute and other agency publications
  - Federal OSHA Hazard Alerts
  - Federal OSHA Technical Manual
- C. Common Sense Recognition - If industry or employer recognition of the hazard cannot be established in accordance with (a) and (b), hazard recognition can still be established if a hazardous condition is so obvious that any reasonable person would have recognized it. This form of recognition should only be used in flagrant or obvious cases.

EXAMPLE 4-19: In a general industry situation, courts have held that any reasonable person would recognize that it is hazardous to use an unenclosed chute to dump bricks into an alleyway 26 feet below where unwarned employees worked. In construction, NRS 618.375(1) could not be cited in this situation because §1926.252 or §1926.852 applies. In the context of a chemical processing plant, common sense recognition was established where hazardous substances were being vented into a work area.

#### 7. The Hazard Was Causing Or Likely To Cause Death Or Serious Physical Harm

- A. This element of a NRS 618.375(1) violation is virtually identical to the substantial probability element of a serious violation under NRS 618.645. Serious physical harm is defined in this chapter.
- B. This element of a NRS 618.375(1) violation can be established by showing that:
- An actual death or serious injury resulted from the recognized hazard, whether immediately prior to the inspection or at other times and places; or
  - If an accident/incident occurred, the likely result would be death or serious physical harm.

EXAMPLE 4-20: An employee is standing at the edge of an unguarded floor 25 feet above the ground. If a fall occurred, death or serious physical harm (i.e., broken bones) is likely to result.

- C. In the health context, establishing serious physical harm at the cited levels may be challenging if the potential for illness/harm requires the passage of a substantial period of time. In such cases, expert testimony is crucial to establish there is probability that long-term serious physical harm will occur from such illnesses or harm. It will generally be less difficult to establish this element for acute illnesses, since the immediacy of the effects will make the causal relationship clearer. In general, the following must be shown to establish that the hazard causes, or is likely to cause, death or serious physical harm when such illness or death will occur only after the passage of time:
- Regular and continuing employee exposure at the workplace to the toxic substance at the measured levels could reasonably occur;
  - An illness reasonably could result from such regular and continuing employee exposures; and

- If illness does occur, its likely result is death or serious physical harm.
8. The Hazard May Be Corrected By A Feasible and Useful Method
- A. To establish a NRS 618.375(1) violation, the agency must also identify the existence of a measure(s) that is feasible, available, and likely to correct the hazard. Evidence regarding feasible abatement measures shall indicate that the recognized hazard, rather than a particular accident/incident, is preventable.
- B. If the proposed abatement method would eliminate or significantly reduce the hazard beyond whatever measures the employer may be taking, a NRS 618.375(1) citation may be issued. A citation will not be issued merely because the Division is aware of an abatement method different from that of the employer, if the proposed method would not reduce the hazard significantly more than the employer's method. In some cases, only a series of abatement methods will materially reduce a hazard and then all potential abatement methods shall be listed. For example, abatement noted shall be included on the AVD of the Violation Worksheet and NVOSHA-2 such as “Among other methods, one feasible and acceptable means of abatement would be to \_\_\_\_.” (Fill in the blank with the specified abatement recommendation.)
- C. Examples of such feasible and acceptable means of abatement include, but are not limited, to:
- The employer's own abatement method,/ which existed prior to the inspection but was not implemented;
  - The implementation of feasible abatement measures by the employer after the accident/incident or inspection;
  - The implementation of abatement measures by other employers/companies; and
  - Recommendations made by the manufacturer addressing safety measures for the hazardous equipment involved, as well as suggested abatement methods contained in trade journals, national consensus standards, and individual employer work rules. National consensus standards shall not solely be relied on to mandate specific abatement methods.

EXAMPLE 4-21: An ANSI standard addresses the hazard of exposure to hydrogen sulfide gas and refers to various abatement methods, such as the prevention of the buildup of materials that create the gas and the provision of ventilation. The ANSI standard may be used as general evidence of the existence of feasible abatement measures.

In this example, the citation shall state that the recognized hazard of exposure to hydrogen sulfide gas was present in the workplace and that a feasible and useful abatement method existed; i.e., preventing the buildup of gas by providing an adequate ventilation system. It would not be correct to base the citation on the employer's failure to prevent the buildup of materials that could create the gas and to provide a ventilation system, as both of these are abatement methods, not recognized hazards.

- D. Evidence provided by expert witnesses may be used to demonstrate feasibility of abatement methods. In addition, although it is not necessary to establish that an industry recognizes a particular abatement measure, such evidence may be used if available.

c. **USE OF THE GENERAL DUTY CLAUSE**

1. The general duty clause shall be used only where there is no standard that applies to the particular hazard and in situations where a recognized hazard is created in whole or in part by conditions not covered by a standard. See 1910.5(f).

EXAMPLE 4-22: A hazard covered only partially by a standard would be construction employees exposed to a collapse hazard because of a failure to properly install reinforcing steel. Construction standards contain requirements for reinforcing steel in wall, piers, columns, and similar vertical structures, but do not contain requirements for steel placement in horizontal planes, i.e., a concrete floor. A failure to properly install reinforcing steel in a floor in accordance with industry standards and/or structural drawings could be cited under the general duty clause.

EXAMPLE 4-23: The powered industrial truck standard at §1910.178 does not address all potential hazards associated with forklift use. For instance, while that standard deals with the hazards associated with a forklift operator leaving his vehicle unattended or dismounting the vehicle and working in its vicinity, it does not contain requirements for the use of operator restraint systems. An employer's failure to address the hazard of a tipover (forklifts are particularly susceptible to tipovers) by requiring operators of powered industrial trucks equipped with restraint devices or seat belts to use those devices could be cited under the general duty clause. See [CPL 02-01-028, Compliance Assistance for the Powered Industrial Truck Operator Training Standards](#), dated November 30, 2000, for additional guidance.

2. The general duty clause may also be applicable to some types of employment that are inherently dangerous (fire brigades, emergency rescue operations, confined space entry, etc.).
- A. Employers involved in such occupations must take the necessary steps to eliminate or minimize employee exposure to all recognized hazards that are likely to cause death or serious physical harm. These steps include an assessment of hazards that may be encountered, providing appropriate protective equipment, and any training, instruction, or necessary equipment.
- B. An employer, who has failed to take such steps and allows its employees to be exposed to a hazard, may be cited under the general duty clause.

d. **LIMITATIONS OF USE OF THE GENERAL DUTY CLAUSE - NRS 618.375(1)** is to be used only within the guidelines given in this chapter.

1. **NRS 618.375(1)** Shall Not be Used When a Standard Applies to a Hazard - As discussed above, NRS 618.375(1) may not be cited if an NVOSHA or Federal OSHA standard applies to the hazardous working condition. If there is a question as to whether a standard applies, the District Manager shall consult with the CAO or designee. The Division Counsel will assist the CAO or designee in determining the applicability of a standard prior to the issuance of a citation.

EXAMPLE 4-24: NRS 618.375(1) shall not be cited for electrical hazards as 1910.303(b) and 1926.403(b) require that electrical equipment is to be kept free from recognized hazards that are likely to cause death or serious physical hard to employees.

2. **NRS 618.375(1)** Shall Normally Not Be Used To Impose A Stricter Requirement Than That Required By The Standard

EXAMPLE 4-25: A standard provides for a permissible exposure limit (PEL) of 5 ppm. Even if data establish that a 3-ppm level is a recognized hazard, **NRS 618.375(1)** shall not be cited to require that the lower level be achieved. If the standard has only a time-weighted average permissible exposure level and the hazard involves exposure above a recognized ceiling level, the District Manager shall consult with the CAO or designee, who shall discuss any proposed citation with the Division Counsel.

NOTE: An exception to this rule may apply if it can be proven that “an employer knows a particular safety or health standard is inadequate to protect his employees against the specific hazard it is intended to address.” See, [\*Int. Union UAW v. General Dynamics Land Systems Division\*](#), 815 F.2d 1570 (D.C. Cir. 1987). Such cases shall be subject to pre-citation review.

3. **NRS 618.375(1)** Shall Normally Not Be Used To Require Additional Abatement Methods Not Set Forth In An Existing Standard - If a toxic substance standard covers engineering control requirements but not requirements for medical surveillance, NRS 618.375(1) shall not be cited to additionally require medical surveillance. District Managers shall evaluate the circumstances of special situations in accord with guidelines stated herein and consult with the CAO or designee to determine whether a NRS 618.375(1) citation can be issued in those special cases.

4. Alternative Standards - The following standards shall be considered carefully before issuing a NRS 618.375(1) citation for a health hazard.

- A. There are a number of general standards that shall be considered rather than NRS 618.375(1) in situations where the hazard is not covered by a particular standard. If a hazard not covered by a specific standard can be substantially corrected by compliance with a personal protective equipment (PPE) standard, the PPE standard shall be cited. In general industry, §1910.132(a) may be appropriate where exposure to a hazard may be prevented by the wearing of PPE.
- B. For a health hazard, the particular toxic substance standard, such as asbestos and coke oven emissions, shall be cited where appropriate. If those particular standards do not apply, however, other standards may be applicable; i.e., the air contaminant levels contained in §1910.1000 in general industry and in §1926.55 for construction.
- C. Another general standard is §1910.134(a), which addresses the hazards of breathing harmful air contaminants not covered under §1910.1000 or another specific standard, and which may be cited for failure to use feasible engineering controls or respirators.
- D. Violations of §1910.141(g)(2) may be cited when employees are allowed to consume food or beverages in an area exposed to a toxic material, and §1910.132(a) where there is a potential for toxic materials to be absorbed through the skin.
- e. **CLASSIFICATION OF VIOLATIONS CITED UNDER THE GENERAL DUTY CLAUSE** - Only hazards presenting serious physical harm or death may be cited under the general duty clause (including willful and/or repeated violations that would otherwise



qualify as serious violations). Other-than-serious citations shall not be issued for general duty clause violations.

f. **PROCEDURES FOR IMPLEMENTATION OF NRS 618.375 ENFORCEMENT -**

To ensure that citations of the general duty clause are defensible, the following procedures shall be followed:

1. Gathering Evidence And Preparing The File

- A. The evidence necessary to establish each element of a NRS 618.375(1) violation shall be documented in the file. This includes all photographs, Video Recordings, sampling data, witness statements, and other documentary and physical evidence necessary to establish the violation. Additional documentation includes evidence of specific and/or general awareness of a hazard, why it was detectable and recognized, and any supporting statements or reference materials.
- B. If copies of documents, relied on to establish the various NRS 618.375(1) elements, cannot be obtained before issuing the citation, these documents shall be accurately cited and identified in the file so they can be obtained later if necessary.
- C. If experts are necessary to establish any element(s) of a NRS 618.375(1) violation, such experts, and Division Counsel shall be consulted prior to the citation being issued and their opinions noted in the file.

2. Pre-Citation Review - The District Manager shall review and approve all proposed NRS 618.375(1) citations. These citations shall undergo additional pre-citation review as follows:

- A. The CAO or designee and the Division Counsel shall be consulted prior to the issuance of all NRS 618.375(1) citations where complex issues or exceptions to the outlined procedures are involved; and
- B. If a standard does not apply and all criteria for issuing a NRS 618.375(1) citation are not met, yet the District Manager determines that the hazard warrants some type of notification, a Hazard Alert Letter shall be sent to the employer and employee representative describing the hazard and suggesting corrective action.

4. **OTHER-THAN-SERIOUS VIOLATIONS** - This type of violation shall be cited in situations where the accident/incident or illness that would be most likely result from a hazardous condition would probably not cause death or serious physical harm, but would have a direct and immediate relationship to the safety and health of employees.

5. **WILLFUL VIOLATIONS** - A willful violation exists under the NVOSH Act where an employer has demonstrated either an intentional disregard for the requirements of the NVOSH Act or a plain indifference to employee safety and health. District Managers are encouraged to consult with Division Counsel when developing willful citations. The following guidance and procedures apply whenever there is evidence that a willful violation may exist:

- a. **INTENTIONAL DISREGARD VIOLATIONS** - An employer commits an intentional and knowing violation if:



1. An employer was aware of the requirements of the NVOSH Act or of an applicable standard or regulation and was also aware of a condition or practice in violation of those requirements, but did not abate the hazard; or
2. An employer was not aware of the requirements of the NVOSH Act or standards, but had knowledge of a comparable legal requirement (i.e., state or local law) and was also aware of a condition or practice in violation of that requirement.

NOTE: Good faith efforts made by the employer to minimize or abate a hazard may sometimes preclude the issuance of a willful violation. In such cases, CSHOs should consult the District Manager or designee if a willful classification is under consideration.

3. A willful citation also may be issued where an employer knows that specific steps must be taken to address a hazard, but substitutes its judgment for the requirements of the standard. See the internal memorandum on Procedures for Significant Cases, and [CPL 02-00-080, Handling of Cases to be Proposed for Violation-by-Violation Penalties](#), dated October 21, 1990.

EXAMPLE 4-26: The employer was issued repeated citations addressing the same or similar conditions, but did not take corrective action.

**b. PLAIN INDIFFERENCE VIOLATIONS**

1. An employer commits a violation with plain indifference to employee safety and health where:
  - A. Management officials were aware of a NVOSHA and/or Federal OSHA requirement applicable to the employer's business but made little or no effort to communicate the requirement to lower level supervisors and employees.
  - B. Company officials were aware of a plainly obvious hazardous condition but made little or no effort to prevent violations from occurring.

EXAMPLE 4-27: The employer is aware of the existence of unguarded power presses that have caused near misses, lacerations, and amputations in the past and does nothing to abate the hazard.

- C. An employer was not aware of any legal requirement, but knows that a condition or practice in the workplace is a serious hazard to the safety or health of employees and makes little or no effort to determine the extent of the problem or to take the corrective action. Knowledge of a hazard may be gained from such means as insurance company reports, safety committee, or other internal reports, the occurrence of illnesses or injuries, or complaints of employees or their representatives.

NOTE: Voluntary employer self-audits that assess workplace safety and health conditions shall not normally be used as a basis of a willful violation. However, once an employer's self-audit identifies a hazardous condition, the employer must promptly take appropriate measures to correct a violative condition and provide interim employee protection. See Federal OSHA's [Policy on Voluntary Employer Safety and Health Self-Audits](#) (Federal Register, July 28, 2000 (65 FR 46498)).

- D. Willfulness may also be established despite lack of knowledge of a legal requirement if circumstances show that the employer would have placed no importance on such knowledge.

EXAMPLE 4-28: An employer sends employees into a deep unprotected excavation containing a hazardous atmosphere without ever inspecting for potential hazards.

2. It is not necessary that the violation be committed with a bad purpose or malicious intent to be deemed “willful.” It is sufficient that the violation was deliberate, voluntary or intentional as distinguished from inadvertent, accidental or ordinarily negligent.
3. CSHOs shall develop and record on the Violation Worksheet all evidence that indicates employer knowledge of the requirements of a standard, and any reasons for why it disregarded statutory or other legal obligations to protect employees against a hazardous condition. Willfulness may exist if an employer is informed by employees or employee representatives regarding an alleged hazardous condition and does not make a reasonable effort to verify or correct the hazard. Additional factors to consider in determining whether to characterize a violation as willful include:
  - A. The nature of the employer's business and the knowledge regarding safety and health matters that could reasonably be expected in the industry;
  - B. Any precautions taken by the employer to limit the hazardous conditions;
  - C. The employer's awareness of the NVOSH Act and of its responsibility to provide safe and healthful working conditions; and
  - D. Whether similar violations and/or hazardous conditions have been brought to the attention of the employer through prior citations, accidents, warnings from NVOSHA or officials from other government agencies or a safety committee regarding the requirements of a standard.

NOTE: This includes prior citations or warnings.

4. Also, include facts showing that even if the employer was not consciously violating the NVOSH Act, they were aware that the violative condition existed and made no reasonable effort to eliminate it.

**c. Violation Worksheet (formerly OSHA-1B)**

1. In order to establish that a violation may be potentially classified as willful, facts shall be documented either to show that the employer knew of the applicable legal requirements and intentionally violated them or that the employer showed plain indifference to employee safety or health. For example, document facts that the employer knew that the condition existed and that the employer was required to take additional steps to abate the hazard. Such evidence could include prior NVOSHA citations, previous warnings by a CSHO, insurance company or city/state inspector regarding the requirements of the standard(s), the employer's familiarity with the standard(s), contract specifications requiring compliance with applicable standards, or warnings by employees or employee safety representatives of the presence of a hazardous condition and what protections are required by NVOSHA or Federal OSHA standards.
2. Also, include facts showing that even if the employer was not consciously or intentionally violating the Act, the employer acted with such plain indifference for employee safety that had the employer known of the standard, it probably would not have complied anyway. This type of evidence would include instances where an employer

was aware of an employee exposure to an obviously hazardous condition(s) and made no reasonable effort to eliminate it.

### 3. Willful Justification

- Description of violation/AVD -
  - Include a separate explanation for each willful violation and for each instance of a grouped willful violation. It is important to include specific details to paint the picture of what the violation is, and why it is willful.
  - The willful justification must include an explanation of the factors which make each violation willful, and, in particular, the evidence supporting each of the following elements:
    - Actual knowledge of the requirements of the Act or of a standard or actual recognition of a hazard covered under NRS 618.375 [the latter for exposing employers only];
    - Actual knowledge of a workplace condition or practice that is in violation of the standard or of NRS 618.375;
    - Actual knowledge of employee exposure to violative conditions or hazardous conditions or practices. Additionally,
    - Document the evidence showing the employer's intentional disregard of the requirements of the standard and its failure to take effective steps to correct the hazardous conditions or practices; or
    - Document the evidence supporting the employer's plain indifference to the safety or health of its employees (or, when applicable, over the employees of other employers over which it exercises control).
- If employer knowledge is based on OSHA inspection history, this section must also contain a brief explanation of the current abatement status of the cited violations that we are using to support employer knowledge -- whether the District Office has received abatement documentation/ certification from the employer, or if abatement had been verified on-site.

6. **CRIMINAL/WILLFUL VIOLATIONS - NRS 618.685** provides that: “Any employer who willfully violates any requirement of this chapter, or any standard, rule, regulation or order promulgated or prescribed pursuant to this chapter, where the violation causes the death of any employee, shall be punished: 1) For a first offense, by a fine of not more than \$50,000 or by imprisonment in the county jail for not more than 6 months, or by both fine and imprisonment. 2) For a second or subsequent offense, by a fine of not more than \$100,000 or by imprisonment in the county jail for not more than 1 year, or by both fine and imprisonment. See Chapter 6, *Penalties, and Debt Collection*, regarding criminal penalties.

- a. **DISTRICT MANAGER COORDINATION** - The District Manager, in coordination with the Division Counsel, shall carefully evaluate all willful cases involving employee deaths to determine whether they may involve criminal violations of NRS 618.685. Because the quality of the evidence available is of paramount importance in these investigations, there

shall be early and close discussions between the CSHO, the District Manager, the CAO or designee, and the Division Counsel in developing all evidence when there is a potential NRS 618.685 violation.

- b. **CRITERIA FOR INVESTIGATING POSSIBLE CRIMINAL/WILLFUL VIOLATIONS** - The following criteria shall be considered in investigating possible criminal/willful violations:
    - 1. In order to establish a criminal/willful violation NVOSHA must prove that:
      - A. The employer violated an NVOSHA or Federal OSHA standard. A criminal/willful violation cannot be based on violation of NRS 618.375(1).
      - B. The violation was willful in nature.
      - C. The violation of the standard caused the death of an employee. In order to prove that the violation caused the death of an employee, there must be evidence, which clearly demonstrates that the violation of the standard was the direct cause of, or a contributing factor to, an employee's death.
    - 2. If asked during an investigation, CSHOs should inform employers that any violation found to be willful that has caused or contributed to the death of an employee is evaluated for potential criminal referral to the District Court.
    - 3. Following the investigation, if the District Manager decides to recommend criminal prosecution, a memorandum shall be forwarded promptly to the CAO, or designee. It shall include an evaluation of the possible criminal charges, taking into consideration the burden of proof requiring that the State's case be proven beyond a reasonable doubt. In addition, if correction of the hazardous condition is at issue, this shall be noted in the transmittal memorandum, because in most cases prosecution of a criminal/willful case stays the resolution of the civil case and its abatement requirements.
    - 4. The District Manager shall normally issue a civil citation in accordance with current procedures even if the citation involves charges under consideration for criminal prosecution. The CAO shall be notified of such cases. In addition, the case shall be promptly forwarded to the Division Counsel for possible referral to the District Court.
  - c. **WILLFUL VIOLATIONS RELATED TO A FATALITY** - Where a willful violation is related to a fatality and a decision is made not to recommend a criminal referral, the District Manager shall ensure the case file contains documentation justifying that conclusion. The file documentation should indicate which elements of a potential criminal violation make the case unsuitable for referral.
7. **REPEATED VIOLATIONS**
- a. **VIOLATIONS** - An employer may be cited for a repeated violation if that employer has been cited previously for the same or substantially similar condition or hazard and the citation has become a final order of the Review Board. A citation may become a final order by operation of law when an employer does not contest the citation, or pursuant to court decision or settlement.

- b. **IDENTICAL STANDARDS** - Generally, similar workplace conditions or hazards can be demonstrated by showing that in both situations, the identical standard was violated, but there are exceptions.

EXAMPLE 4-28: A citation was previously issued for a violation of §1910.132(a) for not requiring the use of safety-toe footwear for employees. A recent inspection of the same establishment revealed a violation of §1910.132(a) for not requiring the use of head protection (hardhats). Although the same standard was involved, the hazardous conditions in each case are not substantially similar and therefore a repeated violation would not be appropriate.

- c. **DIFFERENT STANDARDS** - In some circumstances, similar conditions or hazards can be demonstrated even when different standards are violated.

EXAMPLE 4-29: A citation was previously issued for a violation of §1910.28(d)(7) for not installing standard guardrails on a tubular welded frame scaffold platform. A recent inspection of the same employer reveals a violation of §1910.28(c)(14) for not installing guardrails on a tube and coupler scaffold platform. Although different standards are involved, the conditions and hazards (falls) present during both inspections were substantially similar, and therefore a repeated violation would be appropriate.

NOTE: There is no requirement that the previous and current violations occur at the same workplace or under the same supervisor.

- d. **OBTAINING INSPECTION HISTORY** - For purposes of determining whether a violation is repeated, the following criteria shall apply:

1. High Gravity Serious Violations

- A. When high gravity serious violations are to be cited, the CSHO or Supervisor shall obtain a history of citations previously issued to this employer at all of its identified establishments statewide.
- B. If these violations have been previously cited within the time limitations (described in this chapter) and have become a final order of the Review Board, a repeated citation may be issued.

2. Violations Of Lesser Gravity - When violations are of lesser gravity than high gravity serious, Supervisor or CSHO should obtain a statewide inspection history whenever the circumstances of the current inspection would result in multiple serious, repeat, or willful citations.

e. **TIME LIMITATIONS**

1. Although there are no statutory limitations on the length of time that a prior citation was issued as a basis for a repeated violation, the following policy shall generally be followed. A citation will be issued as a repeated violation if:
- A. The citation is issued within 5 years of the final order date of the previous citation or within 5 years of the final abatement date, whichever is later; or
- B. The previous citation was contested, within 5 years of the Review Board's final order or the District Court final mandate.
2. When a violation is found during an inspection and a repeated citation has previously been issued for a substantially similar condition, the violation may be classified as a second instance repeated violation with a corresponding increase in penalty.

EXAMPLE 4-30: An inspection is conducted in an establishment and a violation of §1910.217(c)(1)(i) is found. That citation is not contested by the employer and becomes a final order of the Review Board on October 17, 2010. On December 8, 2011, a citation for repeated violation of the same standard was issued. The violation found during the current inspection may be treated as a second instance repeated.

3. In cases of multiple prior repeated citations, the CAO or designee shall be consulted for guidance.
- f. **REPEATED V. FAILURE TO ABATE** - A failure to abate exists when a previously cited hazardous condition, practice or non-complying equipment has not been brought into compliance since the prior inspection (i.e., the violation is continuously present) and is discovered at a later inspection. If, however, the violation was corrected, but later reoccurs, the subsequent occurrence is a repeated violation.
- g. **DISTRICT MANAGER OR DESIGNEE RESPONSIBILITIES** - After the CSHO makes a recommendation for a repeat violation, the District Manager shall:
  1. Ensure that the violation meets the criteria outlined in the preceding subparagraphs of this section;
  2. Ensure that the case file includes a copy of the citation for the prior violation, the Violation Worksheet (OSHA 1B) describing the prior violation that serves as the basis for the repeated citation, and any other supporting evidence that describes the violation.
  3. OIS information shall not be used as the sole means to establish that a prior violation has been issued.
  4. In circumstances when it is not clear that the violation meets the criteria outlined in this section, consult with the CAO or designee before issuing a repeated citation.
  5. If a repeated citation is issued, ensure that the cited employer is fully informed of the previous violations serving as a basis for the repeated citation by notation in the Alleged Violation Description (AVD) portion of the citation, using the following or similar language, such as the standard language included in OIS:

THE (employer name) WAS PREVIOUSLY CITED FOR A VIOLATION OF THIS OCCUPATIONAL SAFETY AND HEALTH STANDARD OR ITS EQUIVALENT STANDARD (name previously cited standard), WHICH WAS CONTAINED IN NVOSHA INSPECTION NUMBER \_\_\_\_\_, CITATION NUMBER \_\_\_\_\_, ITEM NUMBER \_\_\_\_\_ AND WAS AFFIRMED AS A FINAL ORDER ON (date).

(Attach a copy of the previous citation and if applicable ISA, Post Contest, Review Board final order and/or court decision)

8. **DE MINIMIS CONDITIONS** - De minimis conditions are those where an employer has implemented a measure different from one specified in a standard, that has no direct or immediate relationship to safety or health. Whenever de minimis conditions are found during an inspection, they shall be documented in the same manner as violations.
  - a. **CRITERIA** - The criteria for finding a de minimis condition are as follows:



1. An employer complies with the intent of the standard, yet deviates from its particular requirements in a manner that has no direct or immediate impact on employee safety or health. These deviations may involve, for example, distance specifications, construction material requirements, use of incorrect color, and minor variations from recordkeeping, testing, or inspection regulations.

EXAMPLE 4-31: §1910.27(b)(1)(ii) allows 12 inches as the maximum distance between ladder rungs. Where the rungs are 13 inches apart, the condition is de minimis.

EXAMPLE 4-32: §1910.217(e)(1)(ii) requires that mechanical power presses be inspected and tested at least weekly. If the machinery is seldom used, inspection and testing prior to each use is adequate to meet the intent of the standard.

2. An employer complies with a proposed NVOSHA or Federal OSHA standard or amendment or a consensus standard rather than with the standard in effect at the time of the inspection and the employer's action clearly provides equal or greater employee protection.
  3. An employer complies with a written interpretation issued by NVOSHA or Federal OSHA.
  4. An employer's workplace protections are “state of the art” and technically more enhanced than the requirements of the applicable standard and provides equivalent or more effective employee safety or health protection.
- b. **PROFESSIONAL JUDGMENT** - Professional judgment should be exercised in determining whether noncompliance with a standard constitutes a de minimis condition.
  - c. **DISTRICT MANAGER RESPONSIBILITIES** - District Managers shall ensure that all proposed de minimis notices meet the criteria set out above.

9. **CITING IN THE ALTERNATIVE** - In rare cases, the same factual situation may present a possible violation of more than one standard.

EXAMPLE 4-33: The facts which support a violation of §1910.28(a)(1) may also support a violation of §1910.132(a), if no scaffolding is provided and the use of safety belts is not required by the employer.

- a. Where it appears that more than one standard is applicable to a given factual situation and that compliance with any of the applicable standards would effectively eliminate the hazard, it is permissible to cite alternative standards using the words “in the alternative.” A reference in the citation to each of the standards involved shall be accompanied by a separate AVD that clearly alleges all of the necessary elements of a violation of that standard. Only one penalty shall be proposed for the violative condition.

10. **COMBINING AND GROUPING VIOLATIONS**

- a. **COMBINING** - Separate violations of a single standard, for example §1910.212(a)(3)(ii), having the same classification found during the inspection of an establishment or worksite generally shall be combined into one alleged citation item. SAVEs will always include the full paragraph of the standard being cited. Each instance of the violation shall be separately listed in the AVD.



NOTE: Except for standards which deal with multiple hazards (i.e., Tables Z-1, Z-2 and Z-3 cited under §1910.1000 (a), (b), or (c)), the same standard may not normally be cited more than once on a single citation. However, the same standard may be cited on different citations based on separate classifications and facts on the same inspection.

**b. GROUPING**

1. Grouping Related Violations - If violations classified either as serious or other than serious are so closely related they may constitute as a single hazardous condition, such violations shall be grouped, and the overall classification shall normally be based on the most serious item.
2. Penalties For Grouped Violations - If penalties are to be proposed for grouped violations, the penalty shall be written across from the first violation item appearing on the Form NVOSHA-2, Citation and Notification of Penalty.

**c. WHEN NOT TO GROUP OR COMBINE**

1. Multiple Inspections - Violations discovered during multiple inspections of a single establishment or worksite may not be grouped. Where only one OSHA-1 has been completed, an inspection at the same establishment or worksite shall be considered a single inspection even if it continues for a period of more than one day, or is discontinued with the intention of later resuming it.
2. Separate Establishments Of The Same Employer - The employer shall be issued separate citations for each establishment or worksite where inspections are conducted, either simultaneously or at different times. If CSHOs conduct inspections at two establishments belonging to the same employer and instances of the same violation are discovered during each inspection, the violations shall not be grouped.
3. General Duty Clause - Because a NRS 618.375(1) citation covers all aspects of a serious hazard where no standard exists, there shall be no grouping of separate NRS 618.375(1). This policy, however, does not prohibit grouping a NRS 618.375(1) violation with a related violation of a specific standard.
4. Egregious Violations - Violations, which are proposed as instance-by-instance citations, shall not normally be combined or grouped. See [CPL 02-00-080, Handling of Cases to be Proposed for Violation-by-Violation Penalties](#), dated October 21, 1990.
5. Where circumstances warrant, at the discretion of the District Manager, high gravity serious violations related to standards identified in the SVEP may be cited as separate violations, each with its own proposed penalty.

**11. HEALTH STANDARD VIOLATIONS**

- a. **CITATION OF VENTILATION STANDARDS** - In cases where a citation of a ventilation standard is appropriate, consideration shall be given to standards intended to control exposure to hazardous levels of air contaminants, prevent fire or explosions, or regulate operations that may involve confined spaces or specific hazardous conditions. In such cases, the following guidelines shall be observed:
  1. Health-Related Ventilation Standards

- A. Where an over-exposure to an airborne contaminant is present, the appropriate air contaminant engineering control requirement shall be cited; i.e., §1910.1000(e). Citations of this standard shall not be issued to require specific volumes of air to reduce such exposures.
  - B. Other requirements contained in health-related ventilation standards shall be evaluated without regard to the concentration of airborne contaminants. Where a specific standard has been violated and an actual or potential hazard has been documented, a citation shall be issued.
2. Fire And Explosion-Related Ventilation Standards - Although not normally considered health violations, the following guidelines shall be observed when citing fire and explosion related ventilation standards:
- A. Adequate Ventilation - An operation is considered to have adequate ventilation when both of the following criteria are present:
    - The requirement(s) of the specific standard has been met, AND;
    - The concentration of flammable vapors is 25 percent or less of the lower explosive limit (LEL).

Exception: Some maritime standards require that levels be kept to 10 percent of the LEL (i.e. §1915.36(a)).
  - B. Citation Policy - If 25 percent (10 percent when specified for maritime operations) of the LEL has been exceeded and:
    - The standard's requirements have not been met, violations of the applicable ventilation standard normally shall be cited as serious.
    - If there is no applicable ventilation standard, NRS 618.375(1) shall be cited in accordance with the guidelines in the General Duty Requirements.
- b. **VIOLATIONS OF THE NOISE STANDARD** - Current enforcement policy regarding §1910.95(b)(1) allows employers to rely on personal protective equipment and a hearing conservation program, rather than engineering and/or administrative controls, when hearing protectors will effectively attenuate the noise to which employees are exposed to acceptable levels. (See Tables G-16 or G-16a of the standard).
1. Citations for violations of §1910.95(b)(1) shall be issued when technologically and economically feasible engineering and/or administrative controls have not been implemented; and
    - A. Employee exposure levels are so elevated that hearing protectors alone may not reliably reduce noise levels received to levels specified in Tables G-16 or G-16a of the standard. (i.e., Hearing protectors, which offer the greatest attenuation, may reliably be used to protect employees when their exposure levels border on 100 dba). See [CPL 02-02-035, 29 CFR 1910.95\(b\)\(1\), Guidelines for Noise Enforcement; Appendix A](#), dated December 19, 1983; or
    - B. The costs of engineering and/or administrative controls are less than the cost of an effective hearing conservation program.

2. When an employer has an ongoing hearing conservation program and the results of audiometric testing indicate that existing controls and hearing protectors are adequately protecting employees, no additional controls may be necessary. In making this assessment, factors such as exposure levels present, number of employees tested, and duration of the testing program shall be considered.
3. When employee noise exposures are less than 100 dBA but the employer does not have an ongoing hearing conservation program, or results of audiometric testing indicate that the employer's existing program is inadequate, the CSHO shall consider whether:
  - A. Reliance on an effective hearing conservation program would be less costly than engineering and/or administrative controls.
  - B. An effective hearing conservation program can be established or improvements made in an existing program, which could bring the employer into compliance with Tables G-16 or G-16a.
  - C. Engineering and/or administrative controls are both technically and economically feasible.
4. If noise workplace levels can be reduced to the levels specified in Tables G-16 or 16a by means of hearing protectors along with an effective hearing conservation program, a citation for any missing program elements shall be issued rather than for lack of engineering controls. If improvements in the hearing conservation program cannot be made or, if made, cannot reasonably be expected to reduce exposures, but feasible controls exist to address the hazard, then §1910.95(b)(1) shall be cited.
5. When hearing protection is required but not used and employee exposures exceed the limits of Table G-16, §1910.95(i)(2)(i), the employer shall be cited and classified as serious (see (8), below) whether or not the employer has instituted a hearing conservation program. §1910.95(a) shall no longer be cited except in the case of the oil and gas drilling industry.  
NOTE: Citations of 1910.95(i)(2)(ii)(b) shall also be classified as serious.
6. Where an employer has instituted a hearing conservation program and a violation of one or more elements (other than §1910.95(i)(2)(ii)(b) or (i)(2)(ii)(b)) is found, citations for the deficient elements of the noise standard shall be issued if exposures equal or exceed an 8-hour time-weighted average of 85 dB.
7. If an employer has not instituted a hearing conservation program and employee exposures equal or exceed an 8-hour time-weighted average of 85 dB, a citation for §1910.95(c) only shall be issued.
8. Violations of §1910.95(i)(2)(i) may be grouped with violations of §1910.95(b)(1) and classified as serious when employees are exposed to noise levels above the limits of Table G-16 and:
  - A. Hearing protection is not utilized or is not adequate to prevent overexposures; or
  - B. There is evidence of hearing loss that could reasonably be considered:
    - To be work-related, and

- To have been preventable, if the employer had been in compliance with the cited provisions.
9. No citation shall be issued where, in the absence of feasible engineering or administrative controls, employees are exposed to elevated noise levels, but effective hearing protection is being provided and used, and the employer has implemented a hearing conservation program.
12. **VIOLATIONS OF THE RESPIRATORY PROTECTION STANDARD (§1910.134)** - If an inspection reveals the presence of potential respirator violations, [CPL 02-00-120, \*Inspection Procedures for the Respiratory Protection Standard\*](#), dated September 25, 1998, shall be followed.
13. **VIOLATIONS OF AIR CONTAMINANT STANDARDS (§1910.1000)**
- a. **REQUIREMENTS UNDER THE STANDARD:**
    1. Sections 1910.1000(a) through (d) provide ceiling values and 8-hour time – weighted averages applicable to employee exposure to air contaminants.
    2. Section 1910.1000(e) provides that to achieve compliance with those exposure limits, administrative or engineering controls shall first be identified and implemented to the extent feasible. When such controls do not achieve full compliance, personal protective equipment shall be used. Whenever respirators are used, their use shall comply with §1910.134.
    3. Section §1910.134(a) provides that when effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used.
    4. There may be cases where workplace conditions require that employers provide engineering controls as well as administrative controls (including work practice controls) **and** personal protective equipment. Section 1910.1000(e) allows employers to implement feasible engineering controls and/or administrative and work practice controls in any combination, provided the selected abatement means eliminates the overexposure.
    5. Where engineering and/or administrative controls are feasible but do not, or would not, reduce air contaminant levels below applicable ceiling values or threshold limit values, an employer must nevertheless institute such controls to reduce the exposure levels. In cases where the implementation of all feasible engineering and administrative controls fails to reduce the level of air contaminants below applicable levels, employers must additionally provide personal protective equipment to reduce exposures.
  - b. **CLASSIFICATION OF VIOLATIONS OF AIR CONTAMINANT STANDARDS** - Where employees are exposed to a toxic substance in excess of the PEL established by Federal OSHA standards (without regard to the use of respirator protection), a citation for exceeding the air contaminant standard shall be issued. The violation shall be classified as serious or other-than-serious on the criteria set forth in the Chemical Sampling Information web page and based on whether respirators are being used. Classification of these violations is dependent upon the determination that an illness is reasonably predictable at the measured exposure level.

1. Classification Considerations - Exposure to regulated substances shall be characterized as serious if exposures could cause impairment to the body as described in this chapter.
  - A. In general, substances having a single health code of 13 or less shall be considered as posing a serious health hazard at any level above the Permissible Exposure Limit (PEL). Substances in categories 6, 8 and 12, however, are not considered serious at levels where only mild, temporary effects would be expected to occur.
  - B. Substances causing irritation (i.e., categories 14 and 15) shall be considered other-than-serious up to levels at which "moderate" irritation could be expected.
  - C. For a substance having multiple health codes covering both serious and other-than-serious effects (i.e., cyclohexanol), a classification of other-than-serious is appropriate up to levels where serious health effect(s) could be expected to occur.
  - D. For a substance, having an ACGIH Threshold Limit Value (TLV) or a NIOSH recommended value but no Federal OSHA PEL, a citation for exposure in excess of the recommended value may be considered under NRS 618.375(1). Prior to citing a NRS 618.375(1) violation under these circumstances, it is essential that CSHOs document that a *hazardous exposure* is occurring or has occurred at the workplace, not just that a recognized occupational exposure recommendation has been exceeded. See instructions in the *General Duty Requirements*.
  - E. If an employee is exposed to concentrations of a substance below the PEL, but in excess of a recommended value (i.e., ACGIH TLV or NIOSH recommended value), citations will not normally be issued. CSHOs shall advise employers that a reduction of the PEL has been recommended.
 

NOTE: An exception to this may apply if it can be documented that an employer knows that a particular safety or health standard fails to protect his workers against the specific hazard it is intended to address.
  - F. For a substance having an 8-hour PEL with no ceiling PEL but ACGIH or NIOSH has recommended a ceiling value, the case shall be referred to the CAO in accordance with this chapter. If no citation is issued, CSHO shall advise employers that a ceiling value is recommended.

2. Additive And Synergistic Effects

- A. Substances which have a known additive effect and, therefore, result in a greater probability/severity of risk when found in combination with each other shall be evaluated using the formula found in 1910.1000(d)(2). Use of this formula requires that exposures have an additive effect on the same body organ or system.
- B. If CSHOs suspect that synergistic effects are possible, they shall consult with their supervisor, who shall then refer the question to the District Manager or the CAO. If a synergistic effect of the cited substances is determined to be present, violations shall be grouped to accurately reflect severity and/or penalty.

14. **CITING IMPROPER PERSONAL HYGIENE PRACTICES** - The following guidelines apply when citing personal hygiene violations:

- a. **INGESTION HAZARDS** - A citation under 1910.141(g)(2) and (4) shall be issued where there is reasonable probability that, in areas where employees consume food or beverages (including drinking fountains), a significant quantity of a toxic material may be ingested and subsequently absorbed.
    - 1. For citations under 1910.141(g)(2) and (4), wipe sampling results shall be taken to establish the potential for a serious hazard.
    - 2. Where, for any substance, a serious hazard is determined to exist due to potential for ingestion or absorption for reasons other than the consumption of contaminated food or drink (i.e., smoking materials contaminated with the toxic substance), a serious citation shall be considered under NRS 618.375(1).
  - b. **ABSORPTION HAZARDS** - A citation for exposure to materials that may be absorbed through the skin or can cause a skin effect (i.e., dermatitis) shall be issued where appropriate personal protective clothing is necessary, but is not provided or worn. If a serious skin absorption or dermatitis hazard exists that cannot be eliminated with protective clothing, a NRS 618.375(1) citation may be considered. Engineering or administrative (including work practice) controls may be required in these cases to prevent the hazard. See §1910.132(a).
  - c. **WIPE SAMPLING** - In general, wipe samples, not measurements for air concentrations, will be necessary to establish the presence of a toxic substance posing a potential absorption or ingestion hazard. (See [TED 01-00-015, Federal OSHA Technical Manual](#), dated January 20, 1999, for sampling procedures)
  - d. **CITATION POLICY** - The following criteria should be considered prior to issuing a citation for ingestion or absorption hazards:
    - 1. A health risk exists as demonstrated by one of the following:
      - A. A potential for an illness, such as dermatitis, and/or
      - B. The presence of a toxic substance that may be potentially ingested or absorbed through the skin, (See the Chemical Sampling Information web page)
    - 2. The potential for employee exposure by ingestion or absorption may be established by taking both qualitative and quantitative wipe samples. The substance must be present on surfaces that employees contact (such as lunch tables, water fountains, work areas etc.) or on other surfaces, which, if contaminated, present the potential for ingestion or absorption.
    - 3. The sampling results must reveal that the substance has properties and exists in quantities that pose a serious hazard.
15. **BIOLOGICAL MONITORING** - If an employer has been conducting biological monitoring, CSHOs shall evaluate the results of such testing. These results may assist in determining whether a significant quantity of the toxic substance is being ingested or absorbed through the skin.



## Chapter 5

### CASE FILE PREPARATION AND DOCUMENTATION

1. **INTRODUCTION** - These instructions are provided to assist CSHOs in determining the minimum level of written documentation necessary in preparation of an inspection case file. CSHOs shall develop detailed information for the case file to establish the specific elements of each violation.
2. **INSPECTION CONDUCTED, CITATIONS BEING ISSUED** - All case files must include the following forms and documents:
  - a. **Inspection Report (Former OSHA 1)** - The CSHO shall obtain available information to complete the Inspection Report and other appropriate forms.
  - b. **Inspection Narrative** - The Inspection Narrative shall list the following:
    1. Establishment Name, the Legal Name found through license(s);
    2. Inspection Number;
    3. Additional Citation Mailing Addresses;
    4. Names and Addresses of all Organized Employee Groups;
    5. Names, Addresses and Phone Numbers of Authorized Representatives of Employees;
    6. Employer Representatives contacted and the extent of their participation in the inspection;
    7. CSHOs evaluation of the Employer's Written Safety and Health Program, and if applicable, a discussion of any penalty reduction for good faith;
    8. A written narrative containing accurate and concise information about the employer and the worksite;
    9. Date the closing conference(s) was held and description of any unusual circumstances encountered;
    10. Any other relevant comments/information CSHOs believe may be helpful, based on his/her professional judgment;
    11. Names, Addresses and Phone Numbers of other persons contacted during the inspection, such as the police, coroner, attorney, etc.;
    12. Names, Addresses, and Phone Numbers of employees contacted, interviewed and exposed to hazards.
    13. Names and Job Titles of any individuals who accompanied the CSHO on the inspection;
    14. Calculation of the DART rate (at least three full calendar years and the current year);
    15. Discussion clearly addressing all items on the Complaint or Referral;



16. Type of Legal Entity [Indicate whether the employer is a corporation, partnership, sole proprietorship, etc. (Do not use the word “owner.”) If the employer named is a subsidiary of another firm, indicate that.]; and

17. Coverage Information

c. **Violation Worksheet (Former OSHA-1B)**

1. A separate Violation Worksheet should normally be completed for each alleged violation. Describe the observed hazardous conditions or practices, including all relevant facts, and all information pertaining to how and/or why a standard is violated. Specifically identify the hazard the employees were or could be exposed to. Describe the type of injury or illness which the violated standard was designed to prevent in this situation, or note the name and exposure level of any contaminant or harmful physical agent to which employees are, have been, or could be potentially exposed. If employee exposure was not actually observed during the inspection, state the facts on which the determination was made (i.e., tools left inside an unprotected trench) that an employee has been or could have been exposed to a safety or health hazard.
2. The following information shall be documented:
  - A. Explanation of the hazard(s) or hazardous condition(s);
  - B. Identification of the machinery or equipment (such as equipment type, manufacturer, model number, serial number);
  - C. Specific location of the hazard and employee exposure to the hazard;
  - D. Injury or illness likely to result from exposure to the hazard;
  - E. Employee proximity to the hazard and specific measurements taken, (describe how measurements were taken, identify the measuring techniques and equipment used, identify those who were present and observed the measurements being made, include calibration dates of equipment used);
  - F. For contaminants and physical agents, any additional facts that clarify the nature of employee exposure. A representative number of Material Safety Data Sheets should be collected for hazardous chemicals that employees may potentially be exposed to;
  - G. Names, addresses, phone numbers, and job titles for exposed employees;
  - H. Approximate duration of time the hazard has existed and frequency of exposure to the hazard;
  - I. Employer knowledge;
  - J. Any and all facts which establish that the employer actually knew of the hazardous condition, or what reasonable steps the employer failed to take (including regular inspections of the worksite) that could have revealed the presence of the hazardous condition. The mere presence of the employer in the workplace is not sufficient evidence of knowledge. There must be evidence that demonstrates why the employer reasonably could have recognized the presence of the hazardous condition. Avoid relying on conclusory statements such as “reasonable diligence” to establish employer

- knowledge. See Chapter 4, *Knowledge of the Hazardous Condition*, for additional information.
- In order to establish that a violation may be potentially classified as willful, facts shall be documented to show either that the employer knew of the applicable legal requirements and intentionally violated them or that the employer showed plain indifference to employee safety or health (See Chapter 4, *Willful Violations*). For example, document facts that the employer knew that the condition existed and that the employer was required to take additional steps to abate the hazard. Such evidence could include prior NVOSHA citations, previous warnings by a CSHO, insurance company or city/state inspector regarding the requirements of the standard(s), the employer's familiarity with the standard(s), contract specifications requiring compliance with applicable standards, or warnings by employees or employee safety representatives of the presence of a hazardous condition and what protections are required by NVOSHA or Federal OSHA standards.
  - Also, include facts showing that even if the employer was not consciously or intentionally violating the NVOSH Act, the employer acted with such plain indifference for employee safety that had the employer known of the standard, it probably would not have complied anyway. This type of evidence would include instances where an employer was aware of an employee exposure to an obviously hazardous condition(s) and made no reasonable effort to eliminate it.
  - Any relevant comments made by the employer or employee during the walkaround or closing conference, including any employer comments regarding why it violated the standard, which may be characterized as admissions of the specific violations described; and
- K. Include any other facts, which may assist in evaluating the situation or in reconstructing the total inspection picture in preparation for testimony in possible legal actions.
- L. Appropriate and consistent abatement dates should be assigned and documented for abatement periods longer than 30 days. The abatement period shall be the shortest interval within which the employer can reasonably be expected to correct the violation. An abatement period should be indicated in the citation as a specific date, not a number of days. When abatement is witnessed by the CSHO during an inspection, the abatement period shall be listed on the citation as "ABATED DURING INSPECTION."
- M. The establishment of the shortest practicable abatement date requires the exercise of professional judgment on the part of the CSHO. Abatement periods exceeding 30 days shall not normally be offered, particularly for simple safety violations. Situations may arise, however, especially for complex health or program violations, where abatement cannot be completed within 30 days (i.e., ventilation equipment needs to be installed, new parts or equipment need to be ordered, delivered and installed or a process hazard analysis needs to be performed as part of a PSM

program). When an initial abatement date is granted that is in excess of 30 calendar days, the reason should be documented in the case file.

3. Records obtained during the course of the inspection, which the CSHO determines, are necessary to support the violations.
4. For violations classified as repeated, the file shall include a copy of the previous citation(s) on which the repeat classification is based and documentation of the final order date of the original citation.

**3.INSPECTION CONDUCTED BUT NO CITATIONS ISSUED** - For inspections that do not result in citations being issued, a lesser amount of documentation may be included in the case file. At a minimum, the case file shall include the Inspection Report, and the Inspection Narrative, which must include a general narrative/statement that at the time of the inspection no conditions were observed in violation of any standard, and a complaint/referral response letter, if appropriate shall clearly address all of the item(s).

**4.NO INSPECTION** - For “No Inspections,” the CSHO shall include in the case file an Inspection Report and Inspection Narrative, which indicates the reason why no inspection was conducted. If there was a denial of entry, the information necessary to obtain a warrant or an explanation of why a warrant is not being sought shall be included. The case file shall also include a complaint/referral response letter, if appropriate, which explains why an inspection was not conducted.

## **5.HEALTH INSPECTIONS**

- a. **DOCUMENT POTENTIAL EXPOSURE** - In addition to the documentation indicated above, CSHOs shall document all relevant information concerning potential exposure(s) to chemical substances or physical agents (including, as appropriate, collection and evaluation of applicable Material Safety Data Sheets), such as symptoms experienced by employees, duration and frequency of exposures to the hazard, employee interviews, sources of potential health hazards, types of engineering or administrative controls implemented by the employer, and personal protective equipment being provided by the employer and used by employees.
- b. **EMPLOYER WRITTEN SAFETY AND HEALTH PROGRAM** - CSHOs shall request and evaluate the program per Chapter 18.

**6.AFFIRMATIVE DEFENSES** - An affirmative defense is a claim, which, if established by the employer and found to exist by the CSHO, will excuse the employer from a citation that has otherwise been documented.

- a. **BURDEN OF PROOF** - Although employers have the burden of proving any affirmative defenses at the time of a hearing, CSHOs must anticipate when an employer is likely to raise an argument supporting such a defense. CSHOs shall keep in mind all potential affirmative defenses and attempt to gather contrary evidence, particularly when an employer makes an assertion that would indicate raising a defense/excuse against the violation(s). CSHOs shall bring all documentation of hazards and facts related to possible affirmative defenses to the attention of the District Manager or designee.

b. **EXPLANATIONS** - The following are explanations of common affirmative defenses:

1. Unpreventable Employee or Supervisory Misconduct or “ISOLATED EVENT”

A. To establish this defense, employers must show all the following elements:

- A work rule adequate to prevent the violation;
- Effective communication of the rule to employees;
- Methods for discovering violations of work rules; and
- Effective enforcement of rules when violations are discovered

B. CSHOs shall document whether these elements are present, including if the work rule at issue tracks the requirements of the standard addressing the hazardous condition.

EXAMPLE 5-1: An unguarded table saw is observed. However, the saw has a guard, which is reattached while the CSHO watches. Facts to be documented include:

- Who removed the guard and why?
- What type of cutting was being done? Crosscut, ripping, covered as in dadoing or rabbeting?
- Did the employer know that the guard had been removed?
- How long or how often had the saw been used without the guard?
- Were there any supervisors in the area while the saw was operated without a guard?
- Did the employer have a work rule that the saw only be operated with the guard on?
- How was the work rule communicated to employees?
- Did the employer monitor compliance with the rule?
- How was the work rule enforced by the employer when it found noncompliance?

2. Impossibility/Infeasibility Of Compliance - Compliance with the requirements of a standard is impossible or would prevent performance of required work and the employer took reasonable alternative steps to protect employees or there are no alternative means of employee protection available.

EXAMPLE 5-2: An unguarded table saw is observed. The employer states that a guard would interfere with the nature of the work. Facts to be documented include:

- Would a guard make performance of the work impossible or merely more difficult?
- Could a guard be used some of the time or for some of the operations?
- Has the employer attempted to use a guard?
- Had the employer / employee tried a different type of saw to cut the material?
- Has the employer considered any alternative means of avoiding or reducing the hazard?

3. **Greater Hazard** - Compliance with a standard would result in a greater hazard(s) to employees than would noncompliance and the employer took reasonable alternative protective measures, or there are no alternative means of employee protection. Additionally, an application for a variance would be inappropriate.

EXAMPLE 5-3: The employer indicates that a saw guard had been removed because it caused the operator to be struck in the face by particles thrown from the saw. Facts to be documented include:

- Was the guard initially properly installed and used?
- Would a different type of guard eliminate the problem?
- How often was the operator struck by particles and what kind of injuries resulted?
- Would personal protective equipment such as safety glasses or a face shield worn by the employee solve the problem?
- Was the operator's work practice causing the problem and did the employer attempt to correct the problem?
- Was a variance requested?

## 7. INTERVIEW STATEMENTS

- a. GENERALLY** - Interview statements of employees or other individuals shall be obtained to adequately document a potential violation. Statements shall normally be in writing and the individual shall be encouraged to sign and date the statement. Whenever possible, CSHOs are encouraged to take verbatim, contemporaneous notes, as these tend to be more credible than later general recollections. Statements and/or Interviews shall be documented on the NVOSHA Interview or Statement Forms.
- b. CSHOs SHALL OBTAIN WRITTEN STATEMENTS WHEN:**
1. There is an actual or potential controversy as to any material facts concerning a violation;
  2. A conflict or difference among employee statements as to the facts arises;
  3. There is a potential willful or repeated violation; and
  4. In accident investigations, when attempting to determine if potential violations existed at the time of the accident
- c. INTERVIEWS OF MANAGEMENT OFFICIALS:**
1. Regardless of the inspection type or scope, every effort shall be made by the CSHO to conduct an interview with all management representatives who may have knowledge of conditions or practices relevant to the inspection.
  2. Interviews of management officials shall be recorded on NVOSHA Interview Forms.
- d. LANGUAGE AND WORDING OF STATEMENT** - Interview statements shall normally be written in the first person and in the language of the individual when feasible. (Statements taken in a language other than English shall be subsequently translated.) The wording of the statement shall be understandable to the individual and reflect only the information that has been brought out in the interview. The individual shall initial any changes or corrections to the statement; otherwise, the statement shall not be modified, added to, or altered in any way.

The statement shall end with the wording: “I have read the above, or the statement has been read to me, and it is true to the best of my knowledge.” Where appropriate, the statement shall also include the following: “I request that my statement be held confidential to the extent allowed by law.” Only the individual interviewed may later waive the confidentiality of the statement. The individual shall sign and date the interview statement and the CSHO shall sign it as a witness.

- e. **REFUSAL TO SIGN STATEMENT** - If the individual refuses to sign the statement, the CSHO shall note such refusal on the statement. Statements shall be read to the individual and an attempt made to obtain an agreement. A note to this effect shall be documented in the case file. Recorded statements shall be transcribed whenever possible.
- f. **VIDEO AND AUDIO RECORDING STATEMENTS** - Interview statements may be videotaped or Audio Recording, with the consent of the person being interviewed. The statement shall be reduced to writing in egregious, fatality/catastrophe, willful, repeated, failure to abate, and other significant cases so that it may be signed. CSHOs are encouraged to produce the written statement for correction and signature as soon as possible, and identify the transcriber.
- g. **ADMINISTRATIVE DEPOSITIONS** - When necessary to document or develop investigative facts, a management official or other individual may be administratively deposed.

NOTE: See Chapter 3, Interviews of Non-Managerial Employees, for additional guidance regarding interviews of non-managerial employees.

- 8. **PAPERWORK AND WRITTEN PROGRAM REQUIREMENTS** - In certain cases, violations of standards requiring employers to have a written program to address a hazard or make a written certification (i.e., hazard communication, personal protective equipment, permit required confined spaces and others) are considered paperwork deficiencies. However, in some circumstances, violations of such standards may have an adverse impact on employee safety and health. See [CPL 02-00-111, Citation Policy for Paperwork and Written Program Requirement Violations](#), Nevada Revised Statute and Nevada Administrative Codes.
- 9. **GUIDELINES FOR CASE FILE DOCUMENTATION FOR USE WITH VIDEO RECORDINGS AND AUDIO RECORDING** - The use of video recording as a method of documenting violations and of gathering evidence for inspection case files is encouraged. Other methods of documentation, such as handwritten notes, audiotaping, and photographs, continue to be acceptable and can be used whenever they add to the quality of the evidence and whenever video recording equipment is not available. See [CPL 02-00-098, Guidelines for Case File Documentation for use with Videotapes and Audiotapes](#), dated October 12, 1993.
- 10. **CASE FILE ACTIVITY DIARY SHEET** - All case files shall contain an activity diary sheet, which is designed to provide a ready record and summary of all actions relating to a case. It will be used to document important events or actions related to the case, especially those not noted elsewhere in the case file. Diary entries should be clear, concise, and legible and should be dated in chronological order to reflect a timeline of the case development. Information provided should include, at a minimum, the date of the action or event, a brief description of the action or event and the initials of the person making the entry.



NOTE: AA's will annotate what they have accomplished on the Case File Cover Sheet only and not the Diary Form. Chief Administrative Officer, District Managers, Supervisors, and CSHOs will use the Diary Sheet.

**11. CITATIONS - NRS 618.465 and NAC 618.6458** address the form and issuance of citations.

NRS 618.465 provides "...Each citation must be in writing and describe with particularity the nature of the violation, including a reference to the section of this chapter or the provision of the standard, rule, regulation, or order alleged to have been violated. In addition the citation must fix a reasonable time for the abatement of the violation..."

a. **STATUTE OF LIMITATIONS** - NRS 618.465(3) provides "No citation may be issued under this section after 6 months following the occurrence of any violation."

b. **ISSUING CITATIONS**

1. Citations shall be sent by certified mail. Hand delivery of citations to the employer or an appropriate agent of the employer, or use of a mail delivery service other than the United States Postal Service, may be used in addition to certified mail if it is believed that these methods would effectively give the employer notice of the citation. A signed receipt shall be obtained whenever possible. The circumstances of delivery shall be documented in the Case File Cover Sheet.
2. Citations shall be mailed to employee representatives after the Certified Mail Receipt card is received by the District Office. Citations shall also be mailed to any employee upon request and without the need to make a written request under the statute. In the case of a fatality, the family of the victim shall be provided with a copy of the citations without charge or the need to make a written request.

c. **AMENDING/WITHDRAWING CITATIONS AND NOTIFICATION OF PENALTIES**

1. Amendment Justification - Amendments to, or withdrawal of, a citation shall be made when information is presented to the CAO, District Manager, or designee, which indicates a need for such action and may include administrative or technical errors such as:
  - A. Citation of an incorrect standard;
  - B. Incorrect or incomplete description of the alleged violation;
  - C. Additional facts not available to the CSHO at the time of the inspection establish a valid affirmative defense;
  - D. Additional facts not available to the CSHO at the time of the inspection establish that there was no employee exposure to the hazard; or
  - E. Additional facts establish a need for modification of the abatement date or the penalty, or reclassification of citation items.
2. When Amendment Is Not Appropriate - Amendments to, or withdrawal of, a citation shall not be made by the CAO, District Manager, or designee for any of the following:
  - A. Timely Notice of Contest received;



- B. The 15 working days for filing a Notice of Contest has expired and the citation has become a Final Order; or
  - C. Employee representatives were not given the opportunity to present their views (unless the revision involves only an administrative or technical error).
- d. **PROCEDURES FOR AMENDING OR WITHDRAWING CITATIONS** - The following procedures apply whenever amending or withdrawing citations.

NOTE: The instructions contained in this section, with appropriate modifications, are also applicable to the amendment of the NVOSHA-2B, Notification of Failure to Abate Alleged Violation.

1. Withdrawal of, or modifications to, the citation and notification of penalty, shall normally be accomplished by means of Informal or Formal (Post Contest) Settlement Agreements.
2. In exceptional circumstances, the CAO, District Manager, or designee may initiate a change to a citation and notification of penalty without an informal conference. If proposed amendments to citation items (individual violations) change the original classification of the items, such as willful to repeated, the original items shall be withdrawn and the new, appropriate items will be issued. The amended Citation and Notification of Penalty Form (NVOSHA-2) shall clearly indicate that the employer is obligated under the NVOSH Act to post the amendment to the citation along with the original citation, until the amended violation has been corrected, or for three working days, whichever is longer.
3. The 15 working day contest period for the amended portions of the citation will begin on the day following the day of receipt of the amended Citation and Notification of Penalty.
4. The contest period is not extended for the unamended portions of the original citation. A copy of the original citation shall be attached to the amended Citation and Notification of Penalty Form when the amended form is forwarded to the employer.
5. When circumstances warrant, the CAO, District Manager, or designee may withdraw a citation and notification of penalty in its entirety. Justification for the withdrawal must be noted on the Diary Sheet. A letter withdrawing the Citation and Notification of Penalty shall be sent to the employer. The letter, signed by the CAO, District Manager, or designee, shall refer to the original citation and notification of penalty, state that they are withdrawn and direct that the employer post the letter for three working days in the same location(s) where the original citation was posted. When applicable, a copy of the letter shall also be sent to the employee representative(s) and/or complainant.

## 12. INSPECTION RECORDS

### a. GENERALLY

1. Inspection records are any record made by a CSHO that concern, relate to, or are part of, any inspection, or are a part of the performance of any official duty.
2. All official forms and notes constituting the basic documentation of a case must be part of the case file. All original field notes are part of the inspection record and shall be maintained in the file. Inspection records also include photographs (including digital photographs), Video

Recordings, DVDs, CDs and Audio Recording. Inspection records are the property of the State of Nevada and not the property of the CSHO and are not to be retained or used for any private purpose.

- b. **RELEASE OF INSPECTION INFORMATION** - The information obtained during inspections is confidential, but may be disclosable or non-disclosable based on criteria established in the statute. Requests for release of inspection information shall be directed to the District Manager or designee.

***NRS 618.341** - Records of Division: Public inspection; copying; confidentiality; exception.*

*1. Except as otherwise provided in this section, the public may inspect all records of the Division, which contain information, regarding:*

*(a) An oral or written complaint filed by an employee or a representative of employees alleging the existence of an imminent danger or a violation of a safety or health standard that threatens physical harm;*

*(b) The manner in which the Division acted on any such complaint;*

*(c) Any citation issued by the Division to an employer and the reason for its issuance; and*

*(d) Any penalty imposed by the Division on an employer and the reason therefor.*

*2. The Division shall, upon oral or written request and payment of any applicable charges, provide to any person a copy of any record of the Division which is open to public inspection pursuant to subsection 1.*

*3. Except as otherwise provided in subsection 4 and NRS 239.0115, the Division shall keep confidential:*

*(a) The name of any employee who filed any complaint against an employer or who made any statement to the Division concerning an employer; and*

*(b) Any information, which is part of a current investigation by the Division, but the fact that an investigation is being conducted, is public information. As used in this subsection, "current investigation" means any investigation conducted before the issuance of a citation or notice of violation or, if no citation or notice of violation is issued, an investigation, which is not closed.*

*4. The Division shall, upon the receipt of a written request from a law enforcement agency, disclose otherwise confidential information to that law enforcement agency for the limited purpose of pursuing a criminal investigation.*

- c. **CLASSIFIED AND TRADE SECRET INFORMATION**

***NAC 618.6449** - Trade secrets - If, during the conference at the beginning of an inspection, the employer identifies areas in the establishment which contain or might reveal a trade secret, the inspector shall label any information obtained in those areas, including negatives and prints of photographs and environmental*

*samples, as “confidential-trade secrets” and shall not disclose the information except in accordance with NRS 618.365.*

1. Any classified or trade secret information and/or personal knowledge of such information by Division personnel shall be handled in accordance with NVOSHA codes. Trade Secrets are matters that are not of public or general knowledge. A trade secret, as referenced in NAC 618.6449 includes information concerning or related to processes, operations, style of work, or apparatus, or to the identity, confidential statistical data, amount or source of any income, profits, losses, or expenditures of any person, firm, partnership, corporation, or association. The collection of such information and the number of personnel with access to it shall be limited to the minimum necessary for the conduct of investigative activities. CSHOs shall specifically identify any classified and trade secret information in the case file.
2. It is essential to the effective enforcement of the NVOSH Act that CSHOs and all NVOSHA personnel preserve the confidentiality of all information and investigations, which might reveal a trade secret. When the employer identifies an operation or condition as a trade secret, it shall be treated as such (unless, after following proper procedures, including consulting with the Division Counsel, the Division determines that the matter is not a trade secret). Information obtained in such areas, including all photographs, Video Recordings and documentation forms shall be labeled: “Confidential-Trade Secrets”
3. Under NRS 618.365(2), (3), & (4) all information reported to or obtained by CSHOs in connection with any inspection or other activity, which contains or may reveal a trade secret shall be kept confidential. Such information shall not be disclosed except to other NVOSHA officials concerned with the enforcement of the NVOSH Act or, when relevant, in any proceeding under the NVOSH Act.
4. Trade secret materials shall not be labeled as “Top Secret,” or “Secret,” nor shall these security classification designations be used in conjunction with other words, unless the trade secrets are also classified by an agency of the U. S. Government in the interest of national security.
5. If the employer objects to the taking of photographs and/or Video Recordings because trade secrets would or may be disclosed, CSHOs should advise employers of the protection against such disclosure afforded by NAC 618.6449 and NRS 618.365(2), (3) & (4). If the employer still objects, CSHOs shall contact the District Manager or designee for guidance.

## Chapter 6

### PENALTIES AND DEBT COLLECTION

#### 1. GENERAL PENALTY POLICY

##### ***NRS 618.625(1) and (3)***

*1. The Division may assess administrative fines provided for in this chapter, giving due consideration to the appropriateness of the penalty with respect to the size of the employer, the gravity of the violation, the good faith of the employer and the history of previous violations.*

*3. Administrative fines owed under this chapter must be paid to the Division. The fines may be recovered in a civil action in the name of the Division brought in a court of competent jurisdiction in the county where the violation is alleged to have occurred or where the employer has his principal office.*

##### ***NAC 618.6482***

*The district manager shall determine the amount of any proposed penalty and may, at the employer's request, explain to him, in an informal conference, how the proposed penalty was determined.*

*An appropriate penalty may be proposed with respect to an alleged violation even though, after being informed of the alleged violation by the inspector, the employer immediately abates or initiates steps to abate the alleged violation.*

*The penalty structure in NRS 618.635 - .705 is designed primarily to provide an incentive for preventing or correcting violations voluntarily, not only to the cited employer, but also to other employers. While penalties are not designed as punishment for violations, Nevada Legislation and Congress have made clear their intent that penalty amounts should be sufficient to serve as an effective deterrent to violations.*

*Proposed penalties, therefore, serve the public policy purpose intended under the NVOSH ACT; and criteria approved for such penalties by the Division are based on accomplishing this purpose.*

*The penalty structure described in this chapter is part of NVOSHA's general enforcement policy and shall normally be applied as set forth below. If, in a specific case, the District Manager determines that it is warranted to depart from the general policy in order to achieve the appropriate deterrent effect, the extent of the departure and the reasons for doing so should be fully explained in the case file.*

#### 2. CIVIL PENALTIES & ADMINISTRATIVE FINES

- a. **STATUTORY AUTHORITY FOR CIVIL PENALTIES - NRS 618.635 - .705** provides the Division with the statutory authority to propose civil penalties for violations of the NVOSH Act. Civil penalties advance the purposes of the NVOSH ACT by encouraging

compliance and deterring violations. Proposed penalties are the penalty amounts NVOSHA issues with citation(s). NAC 618.692 - All penalties assessed by the Enforcement Section are civil penalties. **See current statutes for penalties as follows:**

1. **NRS 618.635** - Any employer who willfully or repeatedly violates the NVOSH Act...
2. **NRS 618.645** - Any employer who has received a citation for an alleged violation of the NVOSH Act, which is determined to be of a serious or nonserious nature...
3. **NRS 618.655** - Any employer who fails to correct a violation for which a citation has been issued ... for each day during which such failure or violation continues...
4. **NRS 618.675** - When a violation of a posting requirement is cited... Also, an employer who fails to maintain the notice or notices and records required by this chapter...

NOTE: While NVOSHA proposes penalties, the Occupational Safety and Health Review Board assess penalties.

5. **NRS 618.665** - Any employer who willfully refuses to submit his records for inspection, as provided by **NRS 618.325**, to the Administrator or his representative...for each offense.
6. **NRS 618.705** - Any person who:
  - A. Knowingly makes a false statement or representation of a material fact;
  - B. Knowingly files a false oral or written complaint alleging that a violation of a safety or health standard exists that threatens physical harm, or that an imminent danger exists;
  - C. Knowingly fails to disclose a material fact in any document, report or other information; or
  - D. Willfully makes a false entry in, or willfully conceals, withholds or destroys any books, records or statements required under the provisions of this chapter, shall be punished...
7. **NRS 618.715** - Each violation of any provision of this chapter, or any part or portion thereof, is a separate and distinct offense, and in the case of a violation continuing past the abatement date, each day's continuance thereof constitutes a separate and distinct offense.
8. Reporting - Employers are required to report to NVOSHA within 8 hours, any occurrence of an employment accident which is fatal to one or more employees or which results in the hospitalization of three or more employees.
  - A. A regulatory citation will be issued for failure to report such an occurrence. The unadjusted penalty will be \$5,000.
  - B. If the District Manager determines that it is appropriate to achieve the necessary deterrent effect, an unadjusted penalty of \$7,000 may be assessed.
  - C. Nevada Regulations - Nevada has adopted regulations pertaining to Written Safety Program requirements, notification of certain construction projects, construction personnel hoist, and cranes that erect and dismantle tower cranes.

- D. A regulatory citation will be issued for failure to have each of the required elements of a Written Safety Program (NAC 618.540). The unadjusted penalty will be \$1,000.
- E. A regulatory citation will be issued for failure to notify NVOSHA of a regulated construction project (NAC 618.505). The unadjusted penalty will be \$1,000.
- F. A regulatory citation will be issued for failure to install an elevator or personnel hoist at certain construction sites (NAC 618.507). The unadjusted penalty will be \$5,000.
- G. A regulatory citation will be issued for failure to comply with the crane regulations (NAC 618.342 - 618.397). The unadjusted penalty will be \$5,000.

- b. **APPROPRIATION ACT RESTRICTIONS** - In providing funding for Federal OSHA, Congress has placed restrictions on enforcement activities regarding two categories of employers: small farming operations and small employers in low-hazard industries. The Appropriations Act contains limits for OSH Act activities on a year-by-year basis.

NOTE: See [CPL 02-00-051, Enforcement Exemptions, and Limitations under the Appropriations Act](#), issued May 28, 1998, for additional information. Appendix A of that directive contains the list of low-hazard industries, which is updated annually. NVOSHA adopts this yearly change to the CPL.

NOTE: NVOSHA abides by the aforementioned exemptions and limitations unless directed by the District Manager or Supervisor to accomplish complaints, referrals and FAT/CAT. If an exempt location is selected for inspection, the CSHO will provide an explanation of the circumstances warranting the inspection in the inspection narrative.

- c. **MINIMUM PENALTIES** - Penalties will be in accordance with current OIS procedures except as noted above in the Nevada Regulations, Statutes, and Codes.
- d. **MAXIMUM PENALTIES** - The administrative fines amounts included in NRS 618.635 - .705 are generally maximum amounts before any permissible reductions are taken.

3. **PENALTY FACTORS - NRS 618.625(1)** of the NVOSH Act provides that penalties shall be assessed giving due consideration to four factors:

- Size of the employer,
- The gravity of the violation,
- The good faith of the employer, and
- The history of previous violations

- a. **GRAVITY OF VIOLATION** - The gravity of the violation is the primary consideration in determining penalty amounts. It shall be the basis for calculating the basic penalty for serious and other-than-serious violations. To determine the gravity of a violation, the following two assessments shall be made:

- The severity of the injury or illness, which could result from the alleged violation
- The probability that an injury or illness could occur as a result of the alleged violation



1. Severity Assessment - The classification of an alleged violation as serious or other-than-serious is based on the severity of the potential injury or illness and is the first step. The following categories shall be considered in assessing the severity of potential injuries or illnesses:
  - A. For Serious:
    - High Severity: Death from injury or illness; injuries involving permanent disability; or chronic, irreversible illnesses
    - Medium Severity: Injuries or temporary, reversible illnesses resulting in hospitalization or a variable but limited period of disability
    - Low Severity: Injuries or temporary, reversible illnesses not resulting in hospitalization and requiring only minor supportive treatment
  - B. For Other-Than-Serious: Minimal Severity: Although such violations reflect conditions which have a direct and immediate relationship to the safety and health of employees, the most serious injury or illness that could reasonably be expected to result from an employee's exposure would not be low, medium or high severity and would not cause death or serious physical harm.
2. Probability Assessment - The probability that an injury or illness will result from a hazard has no role in determining the classification of a violation, but does affect the amount of the proposed penalty.
  - A. Probability shall be categorized either as greater or as lesser.
    - Greater Probability: Results when the likelihood that an injury or illness will occur is judged to be relatively high.
    - Lesser Probability: Results when the likelihood that an injury or illness will occur is judged to be relatively low.
  - B. How to Determine Probability - The following factors shall be considered, as appropriate, when violations are likely to result in injury or illness:
    - Number of employees exposed;
    - Frequency of exposure or duration of employee overexposure to contaminants;
    - Employee proximity to the hazardous conditions;
    - Use of appropriate personal protective equipment;
    - Medical surveillance program;
    - Youth and inexperience of employees, especially those under 18 years old; and
    - Other pertinent working conditions

EXAMPLE 6-1: Greater probability may include an employee exposed to the identified hazard for four hours a day, five days a week. Lesser probability may be present when an employee is performing a non-routine task with two previous exposures within the previous year and no injuries or illnesses are associated with the identified hazard.
  - C. Final Probability Assessment - All of the factors outlined above shall be considered in determining a final probability assessment. When adherence to the probability



assessment procedures would result in an unreasonably high or low gravity, the assessment may be adjusted at the discretion of the District Manager as appropriate. Such decisions shall be fully explained in the case file.

3. Gravity-Based Penalty (GBP)

- A. The gravity-based penalty (GBP) for each violation shall be determined by combining the severity assessment and the final probability assessment.
- B. GBP is an unreduced penalty and is calculated in accordance with the procedures below.

NOTE: Throughout the NOM when the term “unreduced penalty” is used, it is the same as GBP.

4. Serious Violation & GBP

- A. The gravity of a violation is defined by the GBP
- B. The highest gravity classification (high severity and greater probability) shall normally be reserved for the most serious violative conditions, such as those situations involving danger of death or extremely serious injury or illness.
- C. For serious violations, the GBP shall be assigned based on the current penalties in the OIS except as noted above in the Nevada Regulations, Statutes, and Codes.  $Severity + Probability = GBP$

5. Other-Than-Serious Violations & GBP

- A. For other-than-serious safety and health violations, there is only minimal severity.
- B. If the District Manager determines that it is appropriate to achieve the necessary deterrent effect, a GBP of \$7,000 may be proposed. Such discretion should be exercised based on the facts of the specific case. The reasons for this determination shall be fully explained in the case file.

6. Exception to GBP Calculations - For some cases, a GBP may be assigned without using the severity and the probability assessment procedures outlined in this section when these procedures cannot appropriately be used. In such cases, the assessment assigned and the reasons for doing so shall be fully explained in the case file.

7. Egregious Cases - In egregious cases, violation-by-violation penalties are applied. Such cases shall be handled in accordance with [CPL 02-00-080, \*Handling of Cases to be Proposed for Violation-By-Violation Penalties\*](#), dated October 21, 1990. Penalties calculated under this policy shall not be proposed without the concurrence of the CAO and Division Counsel.

8. Gravity Calculations for Combined or Grouped Violations - Combined or grouped violations will be considered as one violation with one GBP. The following procedures apply to the calculation of penalties for combined and grouped violations:

NOTE: Multiple violations of a single standard may be combined into one citation item. When a hazard is identified which involves interrelated violations of different standards and can be abated with one action, the violations may be grouped into a single item.

- A. Combined Violations - The severity and probability assessments for combined violations shall be based on the instance with the highest gravity. It is not necessary to complete the penalty calculations for each instance or sub item of a combined or grouped violation once the instance with the highest gravity is identified.
- B. Grouped Violations - The following shall be adhered to:
- Grouped Severity Assessment - There are two considerations for calculating the severity of grouped violations:
    - The severity assigned to the grouped violation shall be no less than the severity of the most serious reasonably predictable injury or illness that could result from the violation of any single item; AND
    - If the injury or illness that is reasonably predictable from the grouped items is more serious than that from any single violation item, the more serious injury or illness shall serve as the basis for the calculation of the severity factor.
  - Grouped Probability Assessment - There are two factors for calculating the probability of grouped violations:
    - The probability assigned to the grouped violation shall be no less than the probability of the item which is most likely to result in an injury or illness; AND
    - If the overall probability of injury or illness is greater with the grouped violation than with any single violation item, the greater probability of injury or illness shall serve as the basis for the calculation of the probability assessment.

## b. PENALTY REDUCTION FACTORS

### 1. General

- A. Penalty reduction calculations may exceed 100 percent of the initial penalty, depending upon the employer's "history of previous violations," "good faith," "quick-fix" and "size" (number of employees). Reductions will be in accordance with current OIS procedures except as noted in the Nevada Regulations, Statutes and Codes.
- B. However, no penalty reduction can be more than 100 percent of the initial assessment. Since these reduction factors are based on the general character of an employer's safety and health performance, they shall be calculated only once for each employer.
- C. In no case will any violation classified as Serious be issued with a penalty amount of less than \$100.
- D. After the classification (as serious or other-than-serious) and the gravity-based penalty have been determined for each violation, the penalty reduction factors (for history, good faith, quick fix, size) shall be applied subject to the following limitations:
- Penalties proposed for violations classified as repeat shall be reduced only for size.

- Penalties proposed for violations classified as willful, shall be reduced only for size and history.
  - Penalties proposed for serious violations classified as high severity/greater probability shall be reduced only for size and history.
- E. When circumstances warrant, District Managers will retain the authority to determine if a size or history reduction should be granted. If a District Manager believes that imposing the full gravity-base penalty is necessary to achieve the appropriate deterrent effect, he or she may do so after fully documenting the rationale on the Case File Diary Sheet.
- F. For individual violations for hazards identified in the SVEP, District Managers must consider the adequacy of the proposed penalty and may, as appropriate, limit adjustment for good faith, history, or size when necessary to achieve the appropriate deterrent effect. The rationale for limited adjustments must be fully documented on the Case File Diary Sheet.
2. Size Reduction
- A. Size reduction percentages will be in accordance with current OIS procedures except as noted in the Nevada Regulations, Statutes, and Codes.
- B. “Size of employer” shall be calculated based on the maximum number of employees of an employer at all workplaces statewide, at any one time during the previous 12 months.
- C. When an employer with 1-25 employees has one or more serious violations of high gravity or a number of serious violations of moderate gravity indicating a lack of concern for employee safety and health, the CSHO may recommend that only a partial reduction in penalty shall be permitted for size. If the District Manager approves the partial reduction, the justification is to be fully explained on the Case File Diary Sheet.
3. Good Faith Reduction - A penalty reduction is permitted in recognition of an employer’s effort to implement an effective Written Safety and Health Program in the workplace. The following apply to reductions for good faith:
- A. Reduction not Permitted
- No reduction shall be given for high gravity serious violations.
  - No reduction shall be given if a willful violation is found. Additionally, where a willful violation has been documented, no reduction for good faith can be applied to any of the violations found during the same inspection.
  - No reduction shall be given for repeated violations. If a repeated violation is found, no reduction for good faith can be applied to any of the violations found during the same inspection.
  - No reduction shall be given if a failure to abate violation is found during an inspection. No good faith reduction shall be given for any violation in the inspection in which the FTA was found.
  - No reduction shall be given to employers being cited under abatement verification for any 1903.19 violations.

- No reduction shall be given if the employer has no Written Safety and Health Program, or if there are major deficiencies in the program.
- B. Twenty-Five Percent Reduction - A 25 percent reduction for “good faith” normally requires an effective Written Safety and Health Program.

To qualify for this reduction, the employer’s Written Safety and Health Program must include all of the requirements of NRS 618.383, NAC 618.540 and .542, and provide for:

- Appropriate management commitment and employee involvement;
  - Worksite analysis for the purpose of hazard identification;
  - Hazard prevention and control measures;
  - Safety and health training;
  - Where young persons (i.e., less than 18 years old) are employed, the CSHOs evaluation must consider whether the employer’s Written Safety and Health Program appropriately addresses the particular needs of such employees, relative to the types of work they perform and the potential hazards to which they may be exposed;
  - Where persons who speak limited or no English are employed, the CSHOs evaluation must consider whether the employer’s Written Safety and Health Program appropriately addresses the particular needs of such employees, relative to the types of work they perform and the potential hazards to which they may be exposed; **and**
  - Full implementation (Effective Process) is completed as described in Chapter 18.
- C. Fifteen Percent Reduction - A 15% reduction for good faith shall normally be given if the employer has a documented and effective Written Safety and Health Program as described in Chapter 18, with only incidental deficiencies.
- D. Allowable Percentages - Only these percentages (15% or 25%) may be used to reduce penalties due to the employer’s good faith.

#### 4. History

- A. Allowable Percent - A reduction, increase or no reduction shall be in accordance with the current OIS procedures.
- B. Time Limitation and Final Order - The 5-year history of no prior citations (within the State) shall be calculated from the opening conference date of the current inspection. Only citations that have become a final order of the Review Board within the 5 years immediately before the opening conference date shall be considered.
- C. Reduction Will Not Be Given
- For a repeated violation, or
  - To employers being cited under abatement verification for any 1903.19 violations

5. Total Reduction - The total penalty reduction will be applied Serially, History, Good Faith, Quick-Fix and Size.

**4.EFFECT ON PENALTIES IF EMPLOYER IMMEDIATELY CORRECTS** - Appropriate penalties will be proposed with respect to an alleged violation even though, after being informed of the violation by the CSHO, the employer immediately corrects or initiates steps to abate the hazard. In limited circumstances, this prompt abatement of a hazardous condition may be taken into account in determining the amount of the proposed penalties under the Quick-Fix penalty reduction.

- a. **QUICK FIX-PENALTY REDUCTION** - Quick Fix is an abatement incentive program meant to encourage employers to immediately abate hazards found during an NVOSHA inspection and thereby quickly prevents potential employee injury, illness, and death. Quick Fix does not apply to all violations.
- b. **QUICK FIX REDUCTION SHALL APPLY TO:**
  1. All general industry, construction, maritime and agriculture employers
  2. All sizes of employers in all Standard Industrial Classification (SIC) codes and North American Industry Classification System (NAICS) codes
  3. Both safety and health violations, provided hazards are immediately abated during the inspection, once identified by the CSHO (i.e., on the day the condition was pointed out to the employer, or within 24 hours of being discovered by the CSHO)
  4. Violations classified as other-than-serious, “low gravity serious” or “moderate gravity serious”
  5. Individual violations, i.e., not to the citation or penalty as a whole
  6. Corrective actions that are permanent and substantial, not temporary or cosmetic (i.e., installing a guard on a machine rather than removing an employee from the zone of danger, including administrative controls, or other specific measures to abate a violation)
- c. **QUICK FIX REDUCTIONS SHALL NOT APPLY TO:**
  1. Violations classified as “high gravity serious,” “willful,” “repeated,” or “failure-to-abate.”
  2. Violations related either to a fatal injury or illness, or to any incidents resulting in serious injuries to employees.
  3. Blatant violations that are easily corrected (i.e., turning on a ventilation system to reduce employee exposure to a hazardous atmosphere, or putting on hard hats that are readily available at the workplace).
- d. **REDUCTION AMOUNT**
  1. A Quick-Fix penalty reduction of 15 percent shall be applied to an individual violation’s GBP.
  2. The penalty adjustment factors will be applied serially and in this order: History, Good Faith, Quick-Fix, and Size. No proposed penalty shall exceed the statutory limit for a serious violation.

## 5. REPEATED VIOLATIONS

### a. GENERAL

1. Each repeat violation shall be evaluated as serious or other-than-serious, based on current workplace conditions, and not on hazards found in the prior case.
2. A Gravity-Based Penalty (GBP) shall then be calculated for repeat violations based on facts noted during the current inspection.
3. Only the reduction factor for size, appropriate to the facts at the time of the reinspection, shall be applied.

NOTE: NRS 618.635 provides that an employer who repeatedly violates the NVOSH ACT may be assessed...

### b. PENALTY INCREASE FACTORS - The amount of any increase to a proposed penalty for repeated violations shall be determined by the size of the employer's business.

1. Small Employers - For employers with 250 or fewer employees statewide, the GBP shall be multiplied by a factor of 2 for the first repeated violation and multiplied by 5 for the second repeated violation. The GBP may be multiplied by 10 in cases where the District Manager determines that it is necessary to achieve the deterrent effect. The reasons for imposing a high multiplier factor shall be explained in the case file Diary Sheet.
2. Large Employers - For employers with more than 250 employees statewide, the GBP shall be multiplied by a factor of 5 for the first repeated violation and, by 10 for the second repeated violation.

### c. OTHER-THAN-SERIOUS, NO INITIAL PENALTY - For a repeated other-than-serious violation that otherwise would have no initial penalty, the penalty will be in accordance with current OIS procedures.

NOTE: These penalties shall not be subject to the Penalty Increase factors as discussed in the PENALTY INCREASE FACTORS noted above.

### d. REGULATORY VIOLATIONS

1. For calculating the GBP for regulatory violations, see III.a.5 and Section X.
2. For repeated instances of regulatory violations, the initial penalty (of current inspection) shall be multiplied by 2 for the first repeated violation and multiplied by 5 for the second repeated violation. If the District Manager determines that it is necessary to achieve the proper deterrent effect, the initial penalty may be multiplied by 10.

## 6. WILLFUL VIOLATIONS - NRS 618.635 provides that an employer who willfully violates the NVOSH Act may be assessed an administrative fine of...

### a. GENERAL

1. Each willful violation shall be classified as serious or other-than-serious.
2. There shall be no reduction for good faith.
3. In no case shall the proposed penalty for a willful violation (serious or other-than-serious) after reductions be less than...

- b. **SERIOUS WILLFUL PENALTY REDUCTIONS** - The reduction factors for size for serious willful violations shall be in accordance with current OIS procedures.
- c. **WILLFUL REGULATORY VIOLATIONS**
  - 1. For calculating the GBP for regulatory violations, see Paragraph III.a.5 and Section X for other-than-serious violations.
  - 2. In the case of regulatory violations that are determined to be willful, the GBP penalty shall be multiplied by 10. In no event shall the penalty, after reduction for size and history, be less than \$5,000.

## 7. PENALTIES FOR FAILURE TO ABATE - NAC 618.6491

### a. GENERAL

- 1. Failure to Abate penalties shall be proposed when:
  - A. A previous citation issued to an employer has become a final order of the Review Board; and
  - B. The condition, hazard or practice found upon re-inspection is the same for which the employer was originally cited and has never been corrected by the employer (i.e., the violation was continuous).
- 2. The citation has to have become a final order of the Review Board. Citations become a final order of the Review Board when the abatement date for that item passes, if the employer has not filed a notice of contest prior to that abatement date.
- 3. See Chapter 15, *Legal Issues*, for information on determining final dates of uncontested citations, settlements, and Review Board decisions.

### b. CALCULATION OF ADDITIONAL PENALTIES

- 1. Unabated Violations - A GBP for unabated violations is to be calculated for failure to abate a serious or other-than-serious violation based on the facts noted upon reinspection. This recalculated GBP, however, shall not be less than that proposed for the item when originally cited.
  - A. Exception: When the CSHO believes and documents in the case file that the employer has made a good faith effort to correct the violation and had an objective reasonable belief that it was fully abated, the District Manager may reduce or eliminate the daily-proposed penalty.
  - B. For egregious cases see [CPL 02-00-080 Handling of Cases to be Proposed for Violation-By-Violation Penalties](#), dated October 21, 1990.
- 2. No Initial Proposed Penalty - In instances where no penalty was initially proposed, an appropriate penalty shall be determined after consulting with the District Manager. In no case shall the GBP be less than \$1,000. per day.
- 3. Size Only Permissible Reduction Factor - Only the reduction factor for size – based upon the circumstances noted during the reinspection – shall be applied to arrive at the daily-proposed penalty.



4. Daily Penalty Multiplier - The daily-proposed penalty shall be multiplied by the number of calendar days that the violation has continued unabated, except as provided below:
  - A. The number of days unabated shall be counted from the day following the abatement date specified in the citation or the final order. It will include all calendar days between that date and the date of reinspection, excluding the date of reinspection.
  - B. Normally the maximum total proposed penalty for failure to abate a particular violation shall not exceed 30 times the amount of the daily-proposed penalty.
  - C. At the discretion of the District Manager, a lesser penalty may be proposed. The reasoning for the lesser penalty shall be fully explained (i.e., achievement of an appropriate deterrent effect) in the case file.
  - D. If a penalty in excess of the normal maximum amount of 30 times the amount of the daily proposed penalty is deemed necessary by the District Manager to deter continued non-abatement, the case shall be treated pursuant to the violation-by-violation (egregious) penalty procedures established in [CPL 02-00-080 Handling of Cases to be Proposed for Violation-By-Violation Penalties](#), dated October 21, 1990.

c. **PARTIAL ABATEMENT**

1. When a citation has been partially abated, the District Manager may authorize a reduction of 25 to 75 percent to the amount of the proposed penalty calculated as outlined above.
2. When a violation consists of a number of instances and the follow-up inspection reveals that only some instances of the violation have been corrected, the additional daily-proposed penalty shall take into consideration the extent of the abatement efforts.

EXAMPLE 6-3: Where three out of five instances have been corrected, the daily-proposed penalty (calculated as outlined above, without regard to any partial abatement) may be reduced by 60 percent.

**8.VIOLATION-BY-VIOLATION (EGREGIOUS) PENALTY POLICY**

- a. **PENALTY PROCEDURE** - Each instance of non-compliance shall be considered a separate violation with individual proposed penalties for each violation. This procedure is known as the egregious or violation-by-violation penalty procedure.
- b. **CASE HANDLING** - Such cases shall be handled in accordance with CPL02-00-080.
- c. **CALCULATION OF PENALTIES** - Penalties calculated using the violation-by-violation policy shall not be proposed without the concurrence of the CAO or his/her designee.

**9.SIGNIFICANT ENFORCEMENT ACTIONS**

- a. **DEFINITION** - A significant enforcement action (aka significant case) is one, which results from an investigation in which the total proposed penalty is \$100,000 or more.
- b. **MULTI-EMPLOYER WORKSITES** - Several related inspections involving the same employer, or involving more than one employer in the same location (such as multi-employer worksites) and submitted together, may also be considered to be a significant enforcement action if the total aggregate penalty is \$100,000 or more.
- c. **CAO's CONCURRENCE** - The CAO's concurrence is normally required for issuing citations in significant enforcement cases.

10. **PENALTY AND CITATION POLICY FOR NRS, REGULATORY, AND 1904, OTHER-THAN-SERIOUS REQUIREMENTS - NRS 618.675** provides that any employer who violates posting and recordkeeping requirements shall be assessed administrative fines. Penalties may also be applied for 1904 recordkeeping violations as outlined in [CPL 02-00-135, Recordkeeping Policies and Procedures Manual](#), dated December 30, 2004. Gravity-Based Penalties (GBPs) for regulatory violations, including posting requirements, shall be reduced for size and history (excluding willful violations, see Chapter 4, *Willful Violations*).

a. **POSTING REQUIREMENTS UNDER NEVADA REVISED STATUTES** - Penalties for violation of posting requirements shall be proposed as follows:

1. Failure to Post the Nevada OSHA Notice (Poster) – NRS 618.375(3), NRS 618.675, and NAC 618.6428 - A citation for failure to post the Nevada Notice is warranted if:

- A. The pattern of violative conditions for a particular establishment demonstrates a consistent disregard for the employer’s responsibilities under the Nevada Occupational Safety and Health Act of 1973 (Act); AND
- B. Interviews show that employees are unaware of their rights under the NVOSH ACT;  
OR
- C. The employer has been previously cited or advised by NVOSHA of the posting requirement.
- D. If the criteria above are met and the employer has not displayed (posted) the notice furnished by the NVOSHA as prescribed in NRS 618.675(1), a REGULATORY citation shall normally be issued with a penalty in accordance with the statute.

2. Failure to Post a Citation - **NRS 618.675**

A. If an employer received a citation that was not posted as prescribed in NRS 618.675(1), a REGULATORY citation shall normally be issued with a penalty in accordance with the statute.

**NRS 618.675(2)** - An employer who fails to maintain the notice or notices and records required by this chapter must be assessed an administrative fine in accordance with the statute.

B. For information regarding the OSHA-300A form, see [CPL 02-00-135, Recordkeeping Policies and Procedures Manual](#), December 30, 2004.

b. **ADVANCE NOTICE OF INSPECTION – NRS 618.695 REGULATORY** Unauthorized advance notice of inspection. Any person who gives advance notice of any inspection of a workplace to be conducted under this chapter, without authority from the Administrator shall be punished by a fine and imprisonment in the county jail **in accordance with the statute**.

c. **ABATEMENT VERIFICATION REGULATION VIOLATIONS**

1. General

A. The penalty provisions of NRS 618.465 and NRS 618.635 thru .705 of the NVOSH ACT apply to all citations issued under this regulation.

No “Good Faith” or “History” reduction shall be given to employers when proposing penalties for any NAC 618.6494 thru NAC 618.6497 violations. Only the reduction factor for “Size” shall apply.

B. See Chapter 7, Post-Citation Inspection Procedures, and Abatement Verification, for detailed guidance.

2. Penalty for Failing to Certify Abatement

A. A penalty for failing to submit abatement certification documents, 1903.19(c) (1), shall be in accordance with current OIS procedures.

B. A penalty for failure to submit abatement verification documents will not exceed the penalty for the entire original citation.

C. No “Good Faith” or “History” reductions shall be given to employers cited for failure to certify abatement.

3. Penalty for Failing to Notify and Tagging - Penalties for not notifying employees and tagging movable equipment NAC 618.6465 will follow the same penalty structure as for Failure to Post a Citation.

d. **INJURY AND ILLNESS RECORDS AND REPORTING UNDER PART 1904**

1. Part 1904 violations are always other-than-serious.

2. Repeated and Willful penalty policies in this Chapter, may be applied to recordkeeping violations.

3. OSHA’s egregious penalty policy may be applied to recordkeeping violations. See [CPL 02-00-080 Handling of Cases to be Proposed for Violation-By-Violation Penalties](#), October 21, 1990.

4. See [CPL 02-00-135 Recordkeeping Policies and Procedures Manual](#), dated December 30, 2004; and [CPL 02-00-111 Citation Policy for Paperwork and Written Program Requirement Violations](#), November 27, 1995, specifically Chapter 2, Inspection and Citation Procedures

11. **FAILURE TO PROVIDE ACCESS TO MEDICAL AND EXPOSURE RECORDS 1910.1020**

a. **PROPOSED PENALTIES** - If an employer is cited for failing to provide access to records as required under §1910.1020 for inspection and copying by any employee, former employee, or authorized representative of employees, a GBP of...shall normally be proposed for each record (i.e., either medical record or exposure record, on an individual employee basis). A maximum GBP may be proposed for such violations. See [CPL 02-02-072, Rules of Agency Practice, and Procedure Concerning Federal OSHA Access to Employee Medical Records](#), dated August 22, 2007.

EXAMPLE 6-4: If the evidence demonstrates that an authorized employee representative requests both exposure and medical records for three employees and the request was denied by the employer, a citation would be issued for six instances (i.e., one medical record and one exposure record (total two) for each of three employees) of a violation of §1910.1020.

b. **USE OF VIOLATION-BY VIOLATION PENALTIES** - The above policy does not preclude the use of violation-by-violation or per employee penalties where higher penalties

are appropriate. See [CPL 02-00-080 Handling of Cases to be Proposed for Violation-By-Violation Penalties](#), October 21, 1990.

## 12. CRIMINAL PENALTIES

- a. **NEVADA OSH ACT** - The Nevada OSH Act provide for criminal penalties in the following cases:
  1. Willful violation of an NVOSHA or Federal OSHA standard, rule, or order causing the death of an employee; NRS 618.685(1) & (2);
  2. Giving unauthorized advance notice; NRS 618.695(1);
  3. Knowingly giving false information; NRS 618.705(1), (2), (3), & (4); and
  4. Killing of a CSHO while engaged in the performance of investigative, inspection or law enforcement functions; NRS 199.300
- b. **COURTS** - Criminal penalties are imposed by the courts after trials and not by Nevada OSHA or the Nevada Occupational Safety and Health Review Board.

## APPENDIX A

### PROBABILITY ASSESSMENT - SAFETY AND HEALTH

The probability that an injury will result from an accident has no role in determining the classification of a violation but does affect the amount of the penalty to be proposed. The probability factor will be calculated by averaging up to five probability factors in which an appropriate numerical value will be assigned in accordance with the relative contributions of each as follows. A minimum of three probability factors must be used in the calculation (#1, #2, and #3). The results of the calculated average of the included factors will determine that a lesser probability exists or a greater probability exists that an injury or illness could occur from the employee(s) being exposed to the hazardous condition(s).

The probability factor will be categorized either as a greater or as a lesser probability.

Greater probability results when the possibility that an injury or illness will occur is judged to be relatively high. The factor calculation average result would range from 6 to 10.

Lesser probability results when the possibility that an injury or illness will occur is judged to be relatively low. The factor calculation average result would range from 0 to 5.

#### SAFETY PROBABILITY FACTOR CALCULATIONS:

| Circumstances identified with the hazardous condition  | Numerical Factor |
|--|------------------|
| 1. Number of employees exposed   |                  |
| a. Each employee up to 10  | 1 – 10           |
| 2. Frequency of exposure   |                  |
| a. Any exposure up to once a week  | 2                |
| b. Once a week to daily, but not continuous  | 5                |
| c. Continuous daily exposure   | 10               |
| 3. Employee proximity:   |                  |
| a. Fringe of danger zone   | 2                |
| b. Near danger zone  | 5                |
| c. At point of danger  | 10               |
| 4. Other Pertinent Working conditions including environmental and other factors (i.e., speed of operations, lighting, temperature, weather conditions, noise, housekeeping, etc.) which influence the likelihood of any injury-producing incident. |                  |
| a. Low stress/good conditions  | 0                |
| b. Moderate stress/fair conditions   | 5                |
| c. High stress/poor conditions   | 10               |

| <b>Circumstances identified with the hazardous condition (continued)</b>   | <b>Numerical Factor</b> |
|--|-------------------------|
| 5. Youth, Experience and Training of Employees   |                         |
| a. The employees exposed to the hazardous condition cited had been trained to recognize the unsafe conditions. The employer also had a policy and/or procedure pertaining to how to work in this type of situation safely  | 0                       |
| b. The employer had a policy and/or procedure pertaining to the identified hazard, but the employees exposed to the hazardous situation had not been trained; or employees were of an age that they lacked material experience necessary to safely perform the work regardless of training.                      | 5                       |
| c. The employer did not have a policy and/or procedure implemented pertaining to the hazardous condition identified, and the exposed employees had not been trained to recognize the hazards associated with the job they were assigned to complete; or underage employees were employed and exposed to hazards. | 10                      |
| 6. Use of appropriate personal protective equipment (PPE):   |                         |
| a. PPE is used by all exposed employees and a good program is in effect  | 0                       |
| b. PPE is used by all exposed employees but there are deficiencies in the program  | 5                       |
| 7. Evaluation of the medical surveillance program (if there is no applicable surveillance program, this category will not be considered.):   |                         |
| a. The medical surveillance program effectively protects the employees   | 0                       |
| b. The medical surveillance program partially protects the employees   | 5                       |
| c. There is no medical surveillance program or the program does not effectively protect the employees  | 10                      |
| 8. If, in the opinion of the CSHO, any of the above factors do not significantly influence the likelihood to an injury-producing accident, that factor will not be entered into the likelihood calculation.  |                         |
| 9. To determine the overall likelihood, the factors will be averaged, for example:   |                         |
|  |                         |
| <b>Circumstances identified with the hazardous condition</b>   | <b>Numerical Factor</b> |
| 8 employees exposed to the identified hazard   | 8                       |
| The employees worked in the condition daily but not continuously   | 5                       |
| The proximity was at the point of danger   | 10                      |
| The weather was rainy and the conditions were poor   | 10                      |
| The employees were not trained and no policy existed pertaining to the hazard  | 10                      |
| Total point calculation 43   |                         |
| 43 divided by 5 = 8.6 rounded up to 9  |                         |
| The calculation result of 9 would be a greater likelihood result   |                         |

### 13. NVOSHA PENALTY PROCEDURES (DISTRICT OFFICES)

- a. District Manager (DM) reviews case file and approves/disapproves penalty proposed by CSHO.
- b. Upon Approval:
  1. Administrative Assistant III (AAIII) records inspection activity, including proposed penalty, on District Office Case Control Log.
  2. AAIII enters necessary data into OIS to produce Citation and Notification of Penalty NVOSHA-2, for DM's review and signature.
  3. AAIII or AAII mails NVOSHA-2 to employer via certified mail (original).
- c. Employer has 15 working days from receipt of NVOSHA-2 to pay the proposed penalty, request an informal conference, or file a contest with the Nevada Occupational Safety & Health Review Board.
- d. If contested, the penalty and abatement is in abeyance until a Review Board decision is issued.
  1. If Review Board changes or drops the penalty, AAIII records appropriate date on District Office Case Control Log, and files Review Board documents in the case file upon receipt.
  2. AAIII enters data changes into OIS and issues an amended citation to employer.
- e. When the AAI or AAII open the mail they:
  1. Endorse the check,
  2. Enter the check on the check register,
  3. Forward the check to the AAII for processing.
- f. The AAII processes the penalty payments as follows:
  1. Writes in the upper left-hand corner of the check, records date of receipt, Case Control Log Number, Inspection Number and initials. If cash, issues a receipt and records same date in Remarks. Three copies of the check are made and distributed to:
    - A. AAIII
    - B. AAII
    - C. ASU
  2. AAII records monies received on NVOSHA Check/Cash Register.
  3. AAII fills out a deposit slip and takes monies to the bank for deposit.
  4. AAII faxes copies of the check and bank deposit to ASU.
  5. AAIII records amount of penalty and date of receipt on District Office Case Log.
- g. If penalty payment is not received in a timely fashion: See NVOSHA Debt Collection Procedures

### 14. CITATION RECEIVABLE PROCEDURES - DEPOSITS

- a. **PURPOSE:** To process citation payments when received by mail in the Nevada Occupational Safety & Health Administration (NVOSHA) District Office.
- b. **PROCEDURE:**
  1. Citation checks are endorsed with stamp and entered on the check register sheet by AAII. The checks, along with back up, are sent to ASU.
  2. The check register is initialed by the AAI or AAII in receipt of checks.
  3. The AAII will collect the checks from all of the AA's and write out the deposit slip.
  4. The citation checks, received by the Henderson and Reno offices, are entered on check register sheet and deposited directly in the Bank of America account. A copy of the



deposit slip and back up are faxed to ASU to be entered into the State Controller's paperless deposit system "Advantage – IFS."

15. **COLLECTION**

- a. **FOR CITATIONS WITH PENALTIES:** See NVOSHA Debt Collection Procedures
- b. Refer to OIS Enforcement User Manual for specific procedures regarding debt collection processing.

## Chapter 7

### POST-CITATION PROCEDURES AND ABATEMENT VERIFICATION

#### 1. CONTESTING CITATIONS, NOTIFICATIONS OF PENALTY OR ABATEMENT

**DATES** - CSHOs shall advise the employer that the citation, the penalty and/or the abatement date may be contested in cases where the employer does not agree to the citation, penalty or abatement date or any combination of these.

- a. **NOTICE OF CONTEST** - CSHOs shall inform employers that if they intend to contest, the District Manager must be notified in writing and such notification must be postmarked no later than the 15th working day after receipt of the citation and notification of penalty (working days are Monday through Friday, excluding weekends and state holidays), otherwise the citation becomes a final order of the Review Board and not subject to review by any court or agency. See NRS 618.475. The division has no authority to modify the contest period. It shall be emphasized that oral notices of contest do not satisfy the requirement to give written notification. See also NRS 618.605, NAC 618.6485, and NAC 618.683
  1. An employer's Notice of Intent to Contest must clearly state what is specifically being contested. It must identify which item(s) of the citation, penalty, the abatement date, or any combination of these is being objected to. CSHOs shall ask the employer to read the NVOSHA-3000 pamphlet that is given to them at the closing conference for additional details and the information is also included in the citation packet.
    - A. If the employer only requests a later abatement date and there are valid grounds to consider the request, the District Manager should be contacted. The District Manager may issue an amended citation changing an abatement date prior to the expiration of the 15 working day period.
    - B. If the employer contests only the penalty or some of the citation items, all uncontested items must still be abated by, the dates indicated on the citation and the corresponding penalties paid within 15 days of notification.
  2. CSHOs shall inform the employer that the NVOSH ACT provides that employees or their authorized representative(s) have the right to contest in writing any or all of the abatement dates set for a violation if they believe the date(s) to be unreasonable.
- b. **CONTEST PROCESS** - The CSHO shall explain that when a Notice of Intent to Contest is properly filed (i.e., received in the District Office and postmarked as described in the note to a.1. of this chapter), the District Manager is required to forward the case to the Chief. The Chief will have any such notice of contest filed with the Board. NAC 618.6485
  1. NVOSHA will normally cease all investigatory activities once an employer has filed a notice of contest. Any action relating to a contested case must first have the concurrence of the Division Counsel.

2. Upon receipt of the Notice of Intent to Contest, the Review Board will schedule a hearing in a public place close to the workplace.

## 2. INFORMAL CONFERENCES

### a. GENERAL

1. Pursuant to NAC 618.6488 the employer, any affected employee, or the employee representative may request an informal conference for the purpose of discussing any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest.
2. The informal conference will be conducted within the 15 working day contest period. The conference or any request for such a conference shall not operate as a stay of the 15 working day contest period.
3. If the employer's intent to contest is not clear, the District Manager or designated representative will make an effort to contact the employer for clarification.
4. Informal conferences may be held by any means practical, but meeting in person is preferred.

- b. **ASSISTANCE OF COUNSEL** - In the event that an employer is bringing its attorney to an informal conference, the District Manager or his or her designee may contact the Division Counsel's Office and ask for the assistance of counsel.

### c. OPPORTUNITY TO PARTICIPATE

1. If an informal conference is requested by the employer, an affected employee or his representative shall be afforded the opportunity to participate. If the conference is requested by an employee or an employee representative, the employer shall be afforded an opportunity to participate.
2. If the affected employee or employee representative chooses not to participate in the informal conference, an attempt will be made to contact that party and to solicit their input prior to the informal conference. Attempts to contact the party will be noted on the Informal Conference Worksheet.

NOTE: In the event of a settlement, it is not necessary to have the employee representative sign the informal settlement agreement.

3. If any party objects to the attendance of another party or the District Manager believes that a joint informal conference would not be productive, separate informal conferences may be held.
  4. During the conduct of a joint informal conference, separate or private discussions will be permitted if either party so requests.
- d. **NOTICE OF INFORMAL CONFERENCES** - District Manager shall document in the case file notification to the parties of the date, time, and location of the informal conference. In addition, the Case File Cover Sheet or equivalent shall indicate the date of the informal conference.

### e. POSTING REQUIREMENT

1. The District Manager will ask the employer at the beginning of the informal conference whether the form in the citation package indicating the date, time, and location of the conference has been posted as required.
  2. If the employer has not posted the form, the District Manager may postpone the informal conference until such action is taken.
- f. **CONDUCT OF THE INFORMAL CONFERENCE** - The informal conference will be conducted in accordance with the following guidelines:
1. Conference Subjects
    - A. Purpose of the informal conference;
    - B. Rights of participants;
    - C. Contest rights and time constraints;
    - D. Limitations, if any;
    - E. Potential for settlements of citations; and
    - F. Other relevant information (i.e., if no employee or employee representative has responded, whether the employer has posted the notification form regarding the informal conference, etc.).
  2. Subjects Not to be Addressed
    - A. No opinions regarding the legal merits of an employer's case shall be expressed during the informal conference.
    - B. There should be no discussion with employers or employee representatives concerning the potential for referral of fatality inspections to the Department of Justice or local District Attorney for criminal prosecution under the NVOSH Act.
  3. Closing Remarks
    - A. At the conclusion of the conference, all main issues and potential courses of action will be summarized and documented on the Informal Conference Worksheet.
    - B. A copy of the Informal Conference Worksheet, together with any other relevant notes of the discussion made by the District Manager, will be placed in the case file.
  4. Informal Conference Process
    - A. Goal: Issue appropriate, well documented, legally sufficient, and well-reviewed citations and penalties as outlined in the Nevada Operations Manual and Nevada OSHA policies and procedures.
    - B. During the Informal conference, attempt to settle cases using this process. Don't forget to tell the employer representative that the penalties are set by the US Congress and State of Nevada Legislature, and that a reduction has been considered/applied for history, good faith, quick-fix and size. Also, explain that the grouping policies are set by Nevada OSHA.

**3. PETITION FOR MODIFICATION OF ABATEMENT DATE (PMA)** - An employer may file a petition for modification of abatement date when it has made a good faith effort to comply with abatement requirements, but such abatement has not been completed due to circumstances beyond its control. See NAC 618.647 THRU 618.6479. If the employer requests additional abatement time after the 15 working day contest period has passed, the following procedures for PMAs are to be observed:

- a. **FILING** - A PMA must be filed in writing with the District Manager who issued the citation on or before the original date set for the abatement. NAC 618.6473(2)
  1. If a PMA is submitted orally, the employer shall be informed that NVOSHA cannot accept an oral PMA and that a written petition must be mailed by the end of the next working day after the abatement date. If there is not sufficient time to file a written petition, the employer shall be informed of the requirements below for late filing of the petition.
  2. A late petition may be accepted only if accompanied by the employer's statement of exceptional circumstances explaining the delay.
- b. **WHERE FILING REQUIREMENTS ARE NOT MET** - If the employer's written PMA does not meet all the requirements of NAC 618.6473, the employer shall be contacted within 10 working days and notified of the missing elements. A reasonable amount of time for the employer to respond shall be specified during this contact.
  1. If no response is received or if the information returned, is still insufficient, a second attempt (by telephone or in writing) shall be made. The employer shall be informed that if it fails to respond in a timely or adequate manner, the PMA will not be granted and the employer may be found to not have abated.
  2. If the employer responds satisfactorily by telephone and the District Manager determines that the requirements for a PMA have been met, that finding shall be documented in the case file.
  3. Although NVOSHA policy is to handle PMAs as expeditiously as possible, there may be cases where the District Manager's decision may be delayed because of deficiencies in the PMA, the need to conduct a monitoring inspection. Requests for additional time (i.e., 45 days) for the District Manager to reach a decision shall be noted on the Diary Sheet. A letter conveying this request shall be simultaneously sent to the employer and the employee representatives.
- c. **APPROVAL OF PMA** - After the expiration of 15 working days following the posting of a PMA, the District Manager shall agree with or objecting to the request within 10 working days. In the absence of a timely objection, the PMA shall be deemed granted even if not explicitly approved. The following action shall be taken:
  1. If the PMA requests an abatement date, that is two years or less from the issuance date of the citation, the District Manager has the authority to approve or object to the petition.
  2. Any PMA requesting an abatement date that is more than two years from the issuance date of the citation requires the approval of the CAO or designee as well as the District Manager.

3. If the PMA is approved, the District Manager shall notify the employer and the employee representatives by letter.
  4. If the district manager denies a petition for a modification of the time for the abatement of a serious violation, the employer may request an informal review by the Chief. After considering all written and oral statements presented, the Chief will affirm, modify, or reverse the determination of the district manager. The Chief's determination is final in accordance with NAC 618.6479. Both the employer and the employee representatives shall be notified of this action by letter, with return receipt requested.
    - A. Letters notifying the employer or employee representative of the objection shall be mailed on the same date that the Division objection to the PMA is sent to the Chief Administrative Officer.
    - B. When appropriate a failure to abate notification may be issued in conjunction with the objection to the PMA.
- d. **OBJECTION TO PMA** - Affected employees or their representatives may file a written objection to an employer's PMA with the District Manager within 10 working days of the date of posting of the PMA by the employer or its service upon an authorized employee representative. NAC 618.6476
1. Failure to file such a written objection with the 10 working day period constitutes a waiver of any further right to object to the PMA.
  2. If an employee or an employee representative object to the extension of the abatement dates, all relevant documentation shall be sent to the Chief Administrative Officer.
    - A. Confirmation of this action shall be mailed (return receipt requested) to the objecting party as soon as it is accomplished.
    - B. Notification of the employee objection shall be mailed (return receipt requested) to the employer on the same day that the case file is forwarded to the Review Board.

#### 4. NEVADA OSHA's ABATEMENT VERIFICATION REGULATION, NAC 618.6494 THRU .6497 –

*NAC 618.6494 - Except as otherwise provided in subsection 3, within 10 calendar days after the date of abatement, an employer shall certify to the Enforcement Section on a form provided or approved by the Division that each violation or hazard set forth in a citation has been abated.*

NOTE: Abatement Certification and Abatement Verification are required for each unabated violation no matter what type of violation was cited. The employer will provide proof of abatement; the Supervisor / CSHO will review the abatement and find it adequate prior to closing the case file.

#### a. IMPORTANT TERMS AND CONCEPTS

1. Abatement

- A. Abatement means action by an employer to comply with a cited standard or regulation or to eliminate a recognized hazard identified by NVOSHA during an inspection.
  - B. For each inspection, except follow-up inspections, NVOSHA shall open an employer-specific case file. The case file remains open throughout the inspection process and is not closed until the Division is satisfied that abatement has occurred. If abatement was not completed, annotate the circumstances or reasons in the case file and enter the proper code in OIS.
  - C. Employers are required to verify in writing that they have abated cited conditions, in accordance with NAC 618.6494.
2. Abatement Verification - Abatement verification includes abatement certification, documents, plans, and progress reports.
  3. Abatement Certification - Employers must certify that abatement is complete for each cited violation. The written certification must include: the employer's name and address; the inspection number; the citation and item numbers; a statement that the information submitted is accurate; signature of the employer or employer's authorized representative; the date and method of abatement for each cited violation; and a statement that affected employees and their representatives have been informed of the abatement. NAC 618.6496
  4. Abatement Documents - Documentation submitted must establish that abatement has been completed, and include evidence such as the purchase or repair of equipment, photographic or video evidence of abatement, or other written records verifying correction of the violative condition. NAC 618.6494
  5. Affected Employee - Affected employee means those employees who are exposed to the hazards(s) identified as violations(s) in a citation.
  6. Final Order Dates
    - A. Uncontested Citation Item - For an uncontested citation item, the final order date is the day following the 15th working day after the employer's receipt of the citation.
    - B. Contested Citation Item - For a contested citation item, the final order date is as follows:
      - The last date on which both parties have signed the post contest settlement agreement; or
      - The date on which the stipulation has been signed and no final order is pending; or
      - The date on which the Nevada Occupational Safety and Health Review Board's final order has been signed; or
      - The date on which the District or Supreme Court issues a decision.



C. **Informal Settlement Dates** - The final order date is when, within the 15 working days to contest a citation, the ISA is signed by both parties. See also Chapter 15, *Citation Final Order Dates*.

## 7. Abatement Dates

A. **Uncontested Citations** - For uncontested citations, the abatement date is the later of the following dates:

- The abatement date identified in the citation;
- The extended date established as a result of an employer's filing for a Petition for Modification of Abatement (PMA);
- The abatement date has been extended due to an amended citation; or
- The date established by an informal settlement agreement.

B. **Contested Citations** - For contested citations for which the Review Board has issued a final order, the abatement date is the later of the following dates:

- The date identified in the final order for abatement;
- Where there has been a contest of a violation or abatement date (not penalty), the date computed by adding the period allowed in the citation for abatement to the final order date;
- Add the number of original abatement due days from the Violation Worksheet to the final order date to get the new abatement due date; or
- The date established by a formal settlement agreement.

C. **Contested Penalty Only** - Where an employer has contested only the proposed penalty, the abatement period continues to run unaffected by the contest. The abatement period is subject to the time periods set forth above.

8. **Movable Equipment** - Movable equipment means a hand-held or non-hand-held machine or device, powered or non-powered, that is used to do work and is moved within or between worksites.

Hand-held equipment is equipment that is hand-held when operated and can generally be picked up and operated with one or two hands, such as a hand grinder, skill saw, portable electric drill, nail gun, etc.

## 9. Worksite

A. For the purpose of enforcing the Abatement Verification regulation, the worksite is the physical location specified within the "Alleged Violation Description" of the citation.

B. If no location is specified, the worksite shall be the inspection site where the cited violation occurred.

b. **WRITTEN CERTIFICATION** - The Abatement Verification Regulation, NAC 618.6494 requires those employers who have received a citation(s) for violation(s) of the NVOSH

ACT to certify in writing that they have abated the hazardous condition for which they were cited and to inform affected employees of their abatement actions.

- c. **VERIFICATION PROCEDURES** - The verification procedures to be followed by an employer depend on the nature of the violation(s) identified and the employer's abatement actions. The abatement verification regulation establishes requirements for the following:
  1. Abatement Certification
  2. Abatement Documentation
  3. Abatement Plans
  4. Progress Reports
  5. Tagging for Movable Equipment
- d. **SUPPLEMENTAL PROCEDURES** - Where necessary, NVOSHA supplements these procedures with follow-up inspections and onsite monitoring inspections. For additional information, see *OnSite Visits: Procedures for Abatement Verification and Monitoring*.
- e. **REQUIREMENTS** - Except for the application of warning tags or citations on movable equipment NAC 618.6465, the abatement verification regulation does not impose any requirements on the employer until a citation item has become a final order of the Review Board. For moveable hand-held equipment, the warning tag or citation must be attached immediately after the employer receives the citation. For other moveable equipment, the warning tag or citation must be attached prior to moving the equipment within or between worksites. NAC 618.6494

## 5.ABATEMENT CERTIFICATION

- a. **MINIMUM LEVEL** - Abatement certification is the minimum level of abatement verification and is required for all violations once they become Review Board final orders. An exception exists where the CSHO observed abatement during the onsite portion of the inspection and the violation is listed on the citation as "ABATED DURING INSPECTION (ADI)" or "Quick-Fix." See *CSHO Observed Abatement*.
- b. **CERTIFICATION REQUIREMENTS** - The employer's written certification that abatement is complete must include the following information for each cited violation:
  1. The date and method of abatement and a statement that affected employees and their representatives have been informed of the abatement;
  2. The employer's name and address;
  3. The inspection number to which the submission relates;
  4. The citation and item numbers to which the submission relates;
  5. A statement that the information submitted is accurate; and
  6. The signature of the employer or the employer's authorized representative.

A non-mandatory example of an abatement certification letter is available in the NVOSHA FORM 3000.

c. **CERTIFICATION TIMEFRAME**

1. All citation items, which have become final orders, regardless of their characterizations, require written abatement certification within 10 calendar days of the abatement date.
2. A PMA received and processed in accordance with the guidance of the NOM will suspend the 10-day time period for receipt of the abatement certification for the item for which the PMA is requested.
  - A. Thus, no citation will be issued for failure to submit the certification within 10 days of the abatement date.
  - B. If the PMA is denied, the 10-day time period for submission to NVOSHA begins on the day the employer receives notice of the denial.

6. **ABATEMENT DOCUMENTATION** - When a violation requires abatement documentation, in addition to certifying abatement, the employer must submit documents demonstrating that abatement is complete. NAC 618.6494 - Except as otherwise provided in subsection 3, within 10 calendar days after the date of abatement, an employer shall certify to the Enforcement Section on a form provided or approved by the Division that each violation or hazard set forth in a citation has been abated.

a. **ADEQUACY OF ABATEMENT DOCUMENTATION**

1. Abatement documentation must be accurate and describe or portray the abated condition adequately. It may be submitted in electronic form, if approved by the District Manager.
2. The abatement regulation does not mandate a particular type of documentary evidence for any specific cited conditions.
3. The adequacy of the abatement documentation submitted by the employer will be assessed by NVOSHA using the information available in the citation and the Division's knowledge of the employer's workplace and history.
4. Examples of documents that demonstrate that abatement is complete include, but are not limited to:
  - A. Photographic or video evidence of abatement;
  - B. Evidence of the purchase or repair of equipment;
  - C. Evidence of actions taken to abate;
  - D. Bills from repair services;
  - E. Reports or evaluations by safety and health professionals describing the abatement of the hazard or a report of analytical testing;
  - F. Documentation from the manufacturer that the article repaired is within the manufacturer's specifications;
  - G. Records of training completed by employees if the citation is related to inadequate employee training; and

H. A copy of program documents if the citation was related to a missing or inadequate program, such as a deficiency in the employer’s respirator or hazard communication program.

5. Abatement documentation (photos, employer programs, etc.) shall be retained in accordance with State of Nevada requirements.

**b. CSHO OBSERVED ABATEMENT**

1. Employers are not required to certify abatement for violations, which they promptly abate during the onsite portion of the inspection and observed, by the CSHO.
  - A. District Managers may use their discretion in extending the “24 hour” time limit to document abated conditions during the inspection.
  - B. Observed abatement will be documented on the Violation Worksheet for each violation and must include the date and method of abatement.
2. If the observed abatement is for a violation that would normally require abatement documentation by the employer, the documentation in the case file must also indicate that abatement is complete. Where suitable, the CSHO may use photographs or video evidence. For additional information regarding adequacy of abatement documentation, see *Adequacy of Abatement Documentation*.
3. When the abatement has been witnessed and documented by the CSHO, a notation reading “ABATED DURING INSPECTION” shall be made on the citation. Immediate abatement of some violations may qualify for penalty reductions under NVOSHA’s “Quick-Fix” incentive program. These incentives are discussed with the employer during the opening conference. See Chapter 6, Quick-Fix Penalty Adjustment.
4. Notation stating “ABATED DURING INSPECTION,” shall not be made on the citation in cases where there is evidence of a continuing violative practice by an employer (i.e., failure to provide fall protection is a recurring condition based on citation history or other indications suggesting widespread violations of the same or similar standards at other establishments or construction worksites).

**7. MONITORING INFORMATION FOR ABATEMENT PERIODS GREATER THAN 90 DAYS**

- a. **ABATEMENT PERIODS GREATER THAN 90 DAYS** - For abatement periods greater than 90 calendar days, the regulation allows the District Manager flexibility in either requiring or not requiring monitoring information. NAC 618.6495
  1. The requirement for abatement plans and progress reports must be specifically associated to the citation item to which they relate.
  2. Progress reports may not be required unless abatement plans are specifically required.
  3. If the number of days given to an employer for abatement is more than 90 days, the employer may be required to submit to the Enforcement Section a plan for abatement for each violation or hazard set forth in a citation on a form provided or approved by the Division. If the employer is required to submit a plan for abatement pursuant to this

subsection, the Enforcement Section shall set forth in the citation the requirement and for which violation or hazard the requirement must be met. NAC 618.6495(1)

4. The regulation places an obligation on employers, where necessary, to identify how employees are to be protected from exposure to the violative condition during the abatement period. One way of ensuring that interim protection is included in the abatement plan is to note this requirement on the citation. See §1903.19, Non-Mandatory Appendix B, for a sample of an Abatement Plan and Progress Report.

**b. ABATEMENT PLANS**

1. The District Manager may require an employer to submit an abatement plan for each qualifying cited violation.
  - A. The requirement for an abatement plan must be indicated in the citation.
  - B. The citation may also call for the abatement plan to include interim measures.
2. Within 25 calendar days from the final order date, the employer must submit an abatement plan for each violation that identifies the violation and the steps to be taken to achieve abatement. The abatement plan must include a schedule for completing the abatement and, where necessary, the method for protecting employees from exposure to the hazardous conditions in the interim until the abatement is complete NAC 618.6495.
3. In cases where the employer cannot prepare an abatement plan within the allotted time, a PMA must be submitted by the employer to amend the abatement date.

**c. PROGRESS REPORTS**

1. An employer that is required to submit an abatement plan may also be required to submit periodic progress reports for each cited violation. In such cases, the citation must indicate:
  - A. That periodic progress reports are required and the citation items for which they are required;
  - B. The date on which an initial progress report must be submitted, which may be no sooner than 30 calendar days after the due date of an abatement plan;
  - C. Whether additional progress reports are required; and
  - D. The date(s) on which additional progress reports must be submitted.
2. For each violation, the progress report must identify in a single sentence if possible, the action taken to achieve abatement and the date the action was taken. There is nothing in this policy or the regulation prohibiting progress reports as a result of settlement agreements.

**d. SPECIAL REQUIREMENTS FOR LONG-TERM ABATEMENT**

1. Long-term abatement is abatement, which will be completed more than one year from the citation issuance date.
2. The District Manager must require the employer to submit an abatement plan for every violation with an abatement date in excess of one year.

3. Progress reports are mandatory and must be required at a minimum every six months. More frequent reporting may be required at the discretion of the District Manager.

## **8.EMPLOYER FAILURE TO SUBMIT REQUIRED ABATEMENT CERTIFICATION NAC 618.6494, NAC 618.6496**

### **a. ACTIONS PRECEDING CITATION FOR FAILURE TO CERTIFY ABATEMENT**

1. If abatement certification, or any required documentation, is not received within 10 calendar days after the abatement date the following procedures should be followed:
  - A. Remind the employer by telephone of the requirement to submit the material and tell the employer that a citation will be issued if the required documents are not received within seven calendar days after the telephone call.
  - B. During the conversation with the employer, determine why it has not complied and document all communication efforts in the case file. Discuss NVOSHA's PMA policy and explain that a late petition to modify the abatement date can be accepted only if accompanied by the employer's statement of exceptional circumstances explaining the delay.
  - C. Issue a follow-up letter to the employer the same day as the telephone call.
  - D. The employer may be allowed to respond via fax or email where appropriate.
2. If the certification and/or documentation are not received within the next seven calendar days, a single other-than-serious citation will be issued.
3. Normally citations for failure to submit abatement certification for violations of §1903.19(c) shall not be issued until the above procedures have been followed and the employer has been provided additional opportunity to comply. These pre-citation procedures also apply when abatement plans or progress reports are not received within 10 days of the due date.

### **b. CITATION FOR FAILURE TO CERTIFY**

1. Citations for failure to submit abatement verification (certification, documentation, abatement plans, or progress reports) can be issued without formal follow-up activities by following the procedures identified below.
2. A single other-than-serious citation will be issued combining all the individual instances where the employer has not submitted abatement certification and/or abatement documentation.
  - A. This "other" citation will be issued under the same inspection number, which contained the original violations cited.
  - B. The abatement date for this citation shall be set 30 days from the date of issuance.

NOTE: Each violation of NAC 618.6494 thru .6497 with respect to each original citation item is a separate item.

3. For those situations where the abatement date falls within the 15 day informal conference time period, and an informal conference request is likely, enforcement activities should

be delayed for these citations until it is known if the citation's characterization or abatement period is to be modified.

4. For those rare instances where the reminder letter is returned to the District Office by the Post Office as undeliverable and telephone contact efforts fail, the District Manager has the discretion to stop further efforts to locate the employer and document in the case file the reason for no abatement certification.

**c. CERTIFICATION OMISSIONS**

1. An initial minor or non-substantive omission in an abatement certification (i.e., lack of a definitive statement stating that the information being submitted is accurate) should be considered a de minimis condition of the regulation.
2. If there are minor deficiencies, such as omitting the inspection number, signature, or date, the employer should be contacted by telephone to verify that the documents received were the ones they intended to submit. If so, the date stamp of the District Office can serve as the date on the document.
3. A certification with an omitted signature should be returned to the employer to be signed.

- d. PENALTY ASSESSMENT FOR FAILURE TO CERTIFY** - The penalty provisions of NRS 618.465, .635, .645, .655, .665, .675, .705, and NAC 618.342, .397, .505, .507 and .540 apply to all citations issued under this regulation. See Chapter 6, Penalties, and Debt Collection, for additional information. NRS 618.625

**9. TAGGING FOR MOVABLE EQUIPMENT**

- a. TAG-RELATED CITATIONS** - Tag-related citations must be observed by CSHOs prior to the issuance of a citation for failure to initially tag cited movable equipment.
1. See §1903.19, Non-mandatory Appendix C, for a sample warning tag. NVOSHA must be able to prove the employer's initial failure to act (tag the movable equipment upon receipt of the citation).
  2. Where there is insufficient evidence to support a violation of the employer's initial failure to tag or post the citation on the cited movable equipment, a citation may be issued for failure to maintain the tag or copy of the citation using NAC 618.6465(3)(b).
- b. EQUIPMENT, WHICH IS MOVED** - Tags are intended to provide an interim form of protection to employees through notification for those who may not know of the citation or the hazardous condition.
1. For non hand-held equipment, CSHOs should make every effort to be as detailed as possible when documenting the initial location where the violation occurred. This documentation is critical to the enforcement of the tagging requirement NAC 618.6465(2) because the tagging provision is triggered upon *movement* of the equipment.
  2. For hand-held equipment, employers must attach a warning tag or copy of the citation *immediately* after the employer's receipt of the citation. The attachment of the tag is not dependent on any *subsequent* movement of the equipment.



## 10. FAILURE TO NOTIFY EMPLOYEES BY POSTING

- a. **EVIDENCE** - Like tag-related citations, CSHOs shall investigate an employer's failure to notify employees by posting.
- b. **LOCATION OF POSTING** - Where an employer claims that posting at the location where the violation occurred would ineffectively inform employees NAC 618.6467(2) the employer may post the document or a summary of the document in a location where it will be readily observable by affected employees and their representatives. Employers may also communicate by other means with affected employees and their representatives regarding abatement activities.
- c. **OTHER COMMUNICATION** - The CSHO must determine not only whether the documents or summaries were appropriately posted, but also whether, as an alternative, other communication methods, such as meetings or employee publications, were used.

## 11. ABATEMENT VERIFICATION FOR SPECIAL ENFORCEMENT SITUATIONS

### a. CONSTRUCTION ACTIVITY CONSIDERATIONS

1. Construction activities pose situations requiring special consideration.
  - A. Construction site closure or hazard removal due to completing of the structure or project will only be accepted as abatement without certification where the District Office CSHO verifies the site closure/completion and where closure/completion effectively abates the condition cited.
  - B. In all other circumstances, the employer must certify to NVOSHA that the hazards have been abated by the submission of an abatement certification. In rare cases, the verification may have to cease and the abatement action closed through cessation of work or verification with the general contractor of the site to verify abatement.
2. Equipment-related and all program-related (i.e., crane inspection, hazard communication, respirator, training, competent person, qualified persons, etc.) violations *will always* require employer certification of abatement regardless of construction site closure.
3. Where the violation specified in a citation is the employer's general practice of failing to comply with a requirement (i.e., the employer routinely fails to provide fall protection at its worksites), closure/completion of the individual worksite will not be accepted as abatement.
4. For situations where the main office of the employer being cited is physically located in another Nevada jurisdiction, the District Manager having the jurisdiction over the work site will proceed as if the employer's main office were in the District Manager's own jurisdiction, and notify the affected Nevada Office of the communication with the employer.
5. Where a follow-up inspection to verify abatement is deemed necessary, the affected District Offices will determine the most efficient and mutually beneficial approach to conducting the inspection.

- b. **FIELD SANITATION AND TEMPORARY LABOR CAMPS** - Under [Secretary's Order 3-2000](#), the authority to conduct inspections and issue citations for field sanitation and most

temporary labor camps in agricultural employment has been delegated to the Employment Standards Administration (ESA).

1. An employer's obligation under the abatement verification regulation still applies. However, NVOSHA's delegation of authority to ESA does not extend to other NVOSHA or Federal OSHA regulations or standards, including NAC 618.6494, .6495, .6496, and .6497.
2. In situations where ESA determines employers are in violation of NAC 618.6494, .6495, .6496, and .6497, the following procedures are to be followed:
  - A. Wage and Hour Area Directors, after following the procedures outlined in *Employer Failure to Submit Required Abatement Certification*, send a copy of the inspection case file or a summary memorandum to the NVOSHA CAO's Office for referral following established practice.
  - B. The CAO's Office shall forward appropriate case files to the District Office having jurisdiction to open a NEW inspection (coded as a Referral) and process citation(s) for failure to comply with NAC 618.6494, .6495, .6496, and .6497. Upon receipt of the abatement verification documents related to the ESA inspection, NVOSHA will fax them to ESA.

NOTE: All field sanitation and temporary labor camp cases will automatically comply with the Appropriations Act rider because the field sanitation standard does not apply to employers with 10 or fewer employees and the rider does not apply to temporary labor camps.

- C. Penalties will be collected and processed following normal procedures. Upon receipt of penalties for the NVOSHA-issued NAC 618.6494, .6495, .6496 and .6497 citations, NVOSHA's case file will be closed.
- D. In situations where an employer does not respond to NVOSHA's issuance of violations of NAC 618.6494, .6495, .6496 and .6497 and dunning efforts fail, ESA shall be informed through memorandum and the NVOSHA case file closed with the penalties referred for debt collection.

NOTE: See also to Chapter 10, Industry Sectors, and Chapter 12, Specialized Inspection Procedures, for additional information.

- c. **FOLLOW-UP POLICY FOR EMPLOYER FAILURE TO VERIFY ABATEMENT -** Follow-up or monitoring inspections would not normally be conducted when evidence of abatement is provided by the employer or employee representatives. For further information on exceptions for Severe Violator Enforcement Program (SVEP) refer to the most current revision of the Nevada OSHA Severe Violator Enforcement Program.

NOTE: For further information on extended abatement periods, see *Monitoring Information for Abatement Periods Greater than 90 Days*, and *Monitoring Inspections*, in this chapter.

1. Where the employer has not submitted the required abatement certification or documentation within the time permitted by the regulation, the District Manager has discretion to conduct a follow-up inspection.

2. Submission of inadequate documents may also be the basis for a follow-up inspection.
3. This inspection should not generally occur before the end of the original 15-day contest period except in unusual circumstances.

## 12. ONSITE VISITS: PROCEDURES FOR ABATEMENT VERIFICATION AND MONITORING

- a. **FOLLOW-UP INSPECTIONS** - The primary purpose of a follow-up inspection is to determine if the previously cited violations have been corrected.
- b. **SEVERE VIOLATOR ENFORCEMENT PROGRAM (SVEP) FOLLOW-UP**
  1. For any inspection issued on or after June 18, 2010, which results in an SVEP case, an enhanced follow-up inspection will normally be conducted even if abatement of the cited violations has been verified. The primary purpose of follow-up inspections is to assess both whether the cited violation(s) were abated and whether the employer is committing similar violations.
  2. If there is a compelling reason not to conduct a follow-up inspection, the reason must be documented in the file. The Districts shall also report these cases to the Chief Administrative Officer, along with the reason why a follow-up was not initiated.
  3. Grouped and combined violations from the original inspection will be counted as one violation for SVEP purposes.
  4. For further information on exceptions for Severe Violator Enforcement Program (SVEP) cases, see the most current revision of the Nevada OSHA Severe Violator Enforcement Program.
- c. **INITIAL FOLLOW-UP**
  1. The initial follow-up is the first follow-up inspection after issuance of the citation.
  2. If a violation is found not to have been abated, the CSHO shall inform the employer that the employer is subject to a Notification of Failure to Abate Alleged (FTA) Violation and proposed additional daily penalties while such failure or violation continues.
  3. Failure to comply with enforceable interim abatement dates involving multi-step abatement shall be subject to a FTA Violation.
  4. Where the employer has implemented some controls, but the control measures were inadequate during follow-up monitoring, and other technology was available which would have brought the process into compliance, a FTA Violation normally shall be issued. If the employer has exhibited good faith, a late PMA for extenuating circumstances may be considered.
  5. Where an apparent failure to abate by means of engineering controls is found to be due to technical infeasibility, no failure to abate notice shall be issued; however, if proper administrative controls, work practices or personal protective equipment are not utilized, a FTA Violation shall be issued.
- d. **SECOND FOLLOW-UP**

1. Any subsequent follow-up after the initial follow-up inspection dealing with the same violations is considered a second follow-up.
  - A. After the FTA Violation has been issued, the District Manager shall allow a reasonable time for abatement of the violation before conducting a second follow-up. The employer must ensure that employees are adequately protected by other means until the violations are corrected.
  - B. If the employer contests the proposed additional daily penalties, a follow-up inspection shall still be scheduled to ensure correction of the original violation.
2. If a second follow-up inspection reveals the employer still has not corrected the original violations, a second FTA Violation with additional daily penalties shall be issued if the District Manager, after consultation with the CAO and Division Counsel, believes it to be appropriate.
3. If a FTA Violation and additional daily penalties are not to be proposed because of an employer's flagrant disregard of a citation or an item on a citation, the District Manager shall immediately contact the CAO, in writing, detailing the circumstances so the matter can be referred to the Division Counsel for action, as appropriate.

e. **FOLLOW-UP INSPECTION REPORTS**

1. Follow-up inspection reports shall be included with the original initial inspection case file. The applicable identification and description sections of the Violation Worksheet Form shall be used for documenting correction of willful, repeated, and serious violations and failure to correct items during follow-up inspections.
2. If Serious, Willful, or Repeat violation items were appropriately grouped in the Violation Worksheet in the original case file, they may be grouped on the follow-up Violation Worksheet; otherwise, individual Violation Worksheets shall be used for each item. The correction of other-than-serious violations may be documented in the narrative portion of the case file.

3. **DOCUMENTATION OF HAZARD ABATEMENT BY EMPLOYER**

- A. The hazard abatement observed by the CSHO shall be specifically described in the Violation Worksheet, including any applicable dimensions, materials, specifications, personal protective equipment, engineering controls, measurements, or readings, or other conditions.
- B. Brief terms such as "corrected" or "in compliance" will not be accepted as proper documentation for violations having been corrected.
- C. When appropriate, this written description shall be supplemented by a photograph and/or a video recording to illustrate correction circumstances.
- D. Only the item description and identification blocks need be completed on the follow-up Violation Worksheet with an occasional inclusion of an applicable employer statement concerning correction under the employer knowledge section, if appropriate.

4. **SAMPLING**

- A. CSHOs conducting a follow-up inspection to determine abatement of violations of air contaminant or noise standards, shall decide whether sampling is necessary and if so, what kind (i.e., spot sampling, short-term sampling, or full-shift sampling).
  - B. If there is reasonable probability that a FTA Violation will be issued, full-shift sampling is required to verify exposure limits based on an 8-hour time-weighted average.
5. **NARRATIVE** - The CSHO must include in the narrative the findings pursuant to the inspection, along with recommendations for action. In order to make a valid recommendation, it is important to have all the pertinent factors available in an organized manner.
  6. **FAILURE TO ABATE** - In the event that any item has not been abated, complete documentation shall be included on an OSHA-2B.

### 13. MONITORING INSPECTIONS

- a. **GENERAL** - Monitoring inspections are conducted to ensure that hazards are being corrected and employees are being protected, whenever a long period is needed for an establishment to come into compliance. Such inspections may be scheduled, among other reasons, as a result of:
  - Abatement dates in excess of one year.
  - A petition for modification of abatement date (PMA).
  - A Corporate Wide Settlement Agreement.
  - To ensure that terms of a permanent variance are being carried out.
  - At the request of an employer requesting technical assistance granted by the District Manager.
- b. **CONDUCT OF MONITORING INSPECTION (PMAs AND LONG-TERM ABATEMENT)** - Monitoring inspections shall be conducted in the same manner as follow-up inspections. An inspection shall be classified as a monitoring inspection when a safety/health inspection is conducted for one or more of the following purposes:
  - Determine the progress an employer is making toward final correction.
  - Ensure that the target dates of a multi-step abatement plan are being met.
  - Ensure that an employer's petition for the modification of abatement dates is made in good faith and that the employer has attempted to implement necessary controls as expeditiously as possible.
  - Ensure that the employees are being properly protected until final controls are implemented.
  - Ensure that the terms of a permanent variance are being carried out.
  - Provide abatement assistance for items under citation.
- c. **ABATEMENT DATES IN EXCESS OF ONE YEAR**
  1. Monitoring visits shall be scheduled to check on progress made whenever abatement dates extend beyond one year from the issuance date of the citation.
  2. These inspections shall be conducted approximately every six months, counted from the citation date, until final abatement has been achieved for all cited violations.

- A. If the case has been contested, the final order date shall be used as a starting point, instead of the citation date.
  - B. A settlement agreement may specify an alternative monitoring schedule.
3. If the employer is submitting satisfactory quarterly progress reports and the District Manager agrees after careful review, that these reports reflect adequate progress on implementation of control measures and adequate interim protection for employees, a monitoring inspection may be conducted every twelve months.
  4. Such inspections shall have priority equal to that of serious formal complaints. The seriousness of the hazards requiring abatement shall determine the priority among monitoring inspections.

**d. MONITORING ABATEMENT EFFORTS**

1. The District Manager shall take the steps necessary to ensure that the employer is making a good faith attempt to bring about abatement as expeditiously as possible.
2. Where engineering controls have been cited or required for abatement, a monitoring inspection shall be scheduled to evaluate the employer's abatement efforts. Failure to conduct a monitoring inspection shall be fully explained in the case file.
3. Where no engineering controls have been cited but more time is needed for other reasons not requiring assistance from NVOSHA, such as delays in receiving equipment, a monitoring visit need not normally be scheduled.
4. Monitoring inspections shall be scheduled as soon as possible after the initial contact with the employer and shall not be delayed until actual receipt of the PMA.
5. CSHOs shall decide during the monitoring inspection whether sampling is necessary and, if so, to what extent; i.e., spot sampling, short-term sampling, or full-shift sampling.
6. CSHOs shall include pertinent findings in the narrative along with recommendations for action. To reach a valid conclusion when recommending action, it is important to have all the relevant factors available in an organized manner. The factors to be considered may include, but are not limited to the following:
  - A. Progress reports or other indications of the employer's good faith, demonstrating effective use of technical expertise and/or management skills, accuracy of information reported by the employer, and timeliness of progress reports.
  - B. The employer's assessment of the hazards by means of surveys performed by in-house personnel, consultants, and/or the employer's insurance agency.
  - C. Other documentation collected by District Office personnel including verification of progress reports, success and/or failure of abatement efforts, and assessment of current exposure levels of employees.
  - D. Employer and employee interviews.
  - E. Specific reasons for requesting additional time including specific plans for controlling exposure and specific calendar dates.
  - F. Personal protective equipment.



G. Medical programs.

H. Emergency action plans.

- e. **MONITORING CORPORATE-WIDE SETTLEMENT AGREEMENTS** -Corporate-wide Settlement Agreements (CSA) extend abatement requirements to all covered locations of the company. These agreements may require baseline, periodic and follow-up monitoring.

#### 14. NOTIFICATION OF FAILURE TO ABATEMENT (FTA)

- a. **VIOLATION** - A FTA Violation (OSHA-2B) shall be issued in cases where violations have not been corrected as required, as verified by an onsite inspection or follow-up inspection.
- b. **PENALTIES** - FTA penalties shall be applied when an employer has not corrected a previously cited violation, which had become a final order of the Review Board.
- c. **CALCULATION OF ADDITIONAL PENALTIES**
1. A Gravity Based Penalty (GBP) for unabated violations is to be calculated for failure to abate a serious or other-than-serious violation on the basis of the facts noted upon re-inspection.
  2. Detailed information on calculating FTA penalties is included in Chapter 6, *Penalties and Debt Collection*.

#### 15. CASE FILE MANAGEMENT

- a. **CLOSING OF CASE FILE WITHOUT ABATEMENT CERTIFICATION** - The closing of a case file without abatement certification(s) must be justified through a statement in the case file by the District Manager or his/her designee, addressing the reason for accepting each uncertified violation as an abated citation.
- b. **REVIEW OF EMPLOYER-SUBMITTED ABATEMENT** - District Offices are encouraged to review employer-submitted abatement verification materials as soon as possible but no later than 30 days after receipt. If the review will be delayed, notify the employer that the material will be reviewed by a certain date, and that the case will be closed if appropriate, after that time.
- c. **WHETHER TO KEEP ABATEMENT DOCUMENTATION** - Abatement documentation (photos, employer programs, etc.) shall be retained in accordance with State of Nevada requirements.

16. **ABATEMENT SERVICES AVAILABLE TO EMPLOYERS** - Employers requesting abatement assistance shall be informed that NVOSHA is willing to work with them even after citations have been issued and provides incentives for immediate onsite abatement of certain types of violations. For further information, see Chapter 6, *Effect on Penalties if Employer Immediately Corrects*.



## Chapter 8

### SETTLEMENTS

**1.SETTLEMENTS OF CASES BY CAO & DM** - The CAO & DM are granted settlement authority and shall follow these instructions when negotiating settlement agreements.

**a. GENERAL**

1. Except for egregious cases, or cases that affect other jurisdictions, District Managers may enter into Informal Settlement Agreements with employers prior to the employer filing a written notice of contest.

NOTE: After the employer has filed a written notice of contest, the CAO may proceed toward a Formal Settlement Agreement (Post Contest) with the concurrence and participation of the Division Counsel.

2. District Managers may amend abatement dates, reclassify violations (i.e., willful to serious, serious to other-than-serious), and modify or withdraw a penalty, a citation, or a citation item, where evidence establishes during the informal conference that the changes are justified.
3. District Managers may actively negotiate the amount of proposed penalties, depending on the circumstances of the case and the particular improvements in employee safety and health that can be obtained.
4. District Managers are authorized to offer up to a 30 percent penalty reduction to employers; any reduction over 30 percent will have to be approved by the Chief Administrative Officer. District Managers are also authorized to offer an employer with 250 or fewer employees an additional 20 percent reduction if that employer agrees to retain an outside safety and health consultant.
5. Furthermore, the District will no longer allow penalty adjustments to an employer where the employer has an outstanding penalty balance owed to NVOSHA for the establishment in question or any other locations. However, if the employer is on a penalty payment plan and is making timely payments, this provision would not apply.
6. Employers shall be informed that they are required by NAC 618.6467 to post copies of all amendments or changes to citations resulting from informal conferences. Employee representatives must also be provided with copies of any agreements.
7. Cases or issues relating to potential NRS 618.625 THRU .705 & NRS 199.300 settlements shall be handled in accordance with established Division procedures.

**b. PRE-CONTEST SETTLEMENT (INFORMAL SETTLEMENT AGREEMENT)** - Pre-contest settlement discussions will generally occur during or immediately following the information conference and prior to the expiration of the 15 working day contest period.

1. In the event that an employer is bringing an attorney to an informal conference, District Managers or their designees **may choose** to contact the Division Counsel and ask for the assistance of counsel.

2. If a settlement is reached during the informal conference, an Informal Settlement Agreement (ISA) shall be prepared and the employer will be asked to sign it. It will be effective upon signature of both the employer and the District Manager (who shall sign last), provided the contest period has not expired. Both parties will date the documents on the day of actual signature.
  3. If the employer is not present to sign the ISA, the District Manager shall send the agreement to the employer for signature. After signing, the employer must return the agreement to the District Manager by hand delivery or via facsimile within the 15-day contest period.
    - A. In every case, District Managers shall give employers notice in writing that the citation will become final and unreviewable at the end of the contest period, unless the employer signs the proposed agreement or files a written notice of contest.
    - B. If an employer wishes to make any changes to the text of the agreement, the District Manager must agree to and authorize the proposed changes prior to the expiration of the contest period.
      - If the changes proposed by the employer are acceptable to the District Manager, the exact language written into the agreement shall be mutually agreed upon. Employers shall be instructed to incorporate the agreed-upon language into the agreement, sign it, and return to the District Office by hand delivery or via facsimile.
      - Annotations incorporating the exact language of any changes authorized shall be made to the retained copy of the agreement and signed and dated by the District Manager.
    - C. Upon receipt of the ISA signed by the employer, the District Manager will ensure, prior to his/her signature that any modifications to the agreement are consistent with the notations made in the case file.
      - In these cases, the citation record will then be updated in OIS in accordance with current procedures.
      - If an employer's changes substantially alter the original terms, the agreement signed by the employer will be treated as a notice of contest and handled accordingly. The employer will be informed of this as soon as possible.
    - D. A reasonable time will be allowed for return of the agreement from the employer.
      - If an agreement is not received within the 15-day contest period, the District Manager will presume the employer did not sign the agreement, and the citation will be treated as a final order.
      - The employer will be required to certify that the informal settlement agreement was signed prior to the expiration of the contest period.
  4. If settlement efforts are unsuccessful and the employer contests the citation, the District Manager will state the terms of the final settlement offer on the Informal Conference Checklist.
- c. **PROCEDURES FOR PREPARING THE INFORMAL SETTLEMENT AGREEMENT** - The ISA shall be prepared and processed in accordance with current

NVOSHA policies and practices. For guidance in determining final dates of settlement and Review Board orders, see Chapter 15, *Citation Final Order Dates*.

- d. **POST-CONTEST SETTLEMENT (FORMAL SETTLEMENT AGREEMENT)** Post-contest settlements will normally occur before the complaint is filed with the Review Board. NAC 618.6488
  - 1. Following the filing of a notice of contest, the CAO shall (unless other procedures have been agreed upon) notify the Division Counsel when it appears that negotiations with the employer may produce a settlement. This notification shall occur at the time the notice of contest sent to the Division Counsel. Documentation of the meeting and proposed settlement agreement will be noted on the Post Contest Worksheet.
  - 2. If a settlement is later requested by the employer, the CAO will communicate the proposed terms to the Division Counsel, who will then draft and execute the agreement.
- e. **CORPORATE-WIDE SETTLEMENT AGREEMENT** - Corporate-wide Settlement Agreements (CSAs) may be entered into under special circumstances to obtain formal recognition by the employer of cited hazards and formal acceptance of the obligation to seek out and abate those hazards throughout all workplaces under its control.

## Chapter 9

# COMPLAINT AND REFERRAL PROCESSING

### 1. SAFETY AND HEALTH COMPLAINTS AND REFERRALS

#### a. DEFINITIONS

1. Complaint - Notice of an alleged safety or health hazard (over which NVOSHA has jurisdiction), or a violation of the NVOSH ACT, submitted by a current employee or representative of employees.
  - A. Formal - Complaint made by a current employee or a representative of employees that meets all of the following requirements:
    - Asserts that an imminent danger, a violation of the NVOSH ACT, or a violation of a NVOSHA or Fed OSHA standard exposes employees to a potential physical or health harm in the workplace;
    - Is reduced to writing or submitted on an OSHA-7 form; and
    - Is signed by at least one current employee or employee representative.
  - B. Non-Formal - Any complaint alleging safety or a health violation that does not meet all of the requirements of a formal complaint identified above, and does not come from one of the sources identified under the definition of Referral, below.
2. Inspection - An onsite examination of an employer's worksite conducted by a NVOSHA CSHO, initiated as the result of a complaint or referral, and meeting at least one of the criteria identified in *Criteria Warranting an Inspection*, below.
3. Inquiry - A process conducted in response to a complaint or a referral that does not meet one of the identified inspection criteria as listed in *Criteria Warranting an Inspection*. It does not involve an onsite inspection of the workplace, but rather the employer is notified of the alleged hazard(s) or violation(s) by letter. The employer is then requested to provide a response, and NVOSHA will notify the complainant of that response via letter.
4. Electronic Complaint - A complaint submitted via Federal OSHA's public website. All complaints submitted via Federal OSHA's public website are considered non-formal.
5. Permanently Disabling Injury or Illness - An injury or illness that has resulted in permanent disability or an illness that is chronic or irreversible. Permanently disabling injuries or illnesses include, but are not limited to amputation, blindness, a standard threshold shift in hearing, lead or mercury poisoning, paralysis or third-degree burns.

6. Referral - An allegation of a potential workplace hazard or violation received from one of the sources listed below.
  - A. CSHO - Information based on the direct observation of a CSHO. (On the Referral Report, field 14b – A. *CSHO (Within Office).*)
  - B. Safety and Health Agency – From sources including, but not limited to: NIOSH, consultation, and state or local health departments, as well as safety and/or health professionals in Federal agencies. (As appropriate, field 14b – B. *Federal OSHA*; F. *Consultation*; G. *State/Local Government*; or J. *Other.*)
  - C. Discrimination – Made by a discrimination investigator when an employee alleges that he or she was retaliated against for complaining about safety or health conditions in the workplace, refusing to do an allegedly imminently dangerous task, or engaging in other activities related to occupational safety or health (field 14b – D. *Discrimination.*)
  - D. Other Government Agency – Made by other Federal, State, or local government agencies or their employees, including local police and fire departments. (As appropriate, field 14b – E. *Other Federal Agency* or G. *State/Local Government.*)
  - E. Media Report – Either news items reported in the media or information reported directly to NVOSHA by a media source. (field 14b – H. *Media.*)
  - F. Employer Report – Of accidents other than fatalities and catastrophes. (field 14b – J. *Other.*)
  - G. Anonymous – A source of allegations which cannot be classified as a complainant, and chooses to remain anonymous. (field 14b – I. *Anonymous*)
  - H. Former Employee of Referred Employer – Information received from a source who at one time worked as an employee of the employer against which allegations are made, but is not currently employed by the referred employer. (field 14b – J. *Other*)
7. Representative of Employees - Any of the following:
  - A. An authorized representative of the employee bargaining unit, such as a certified or recognized labor organization.
  - B. An attorney acting for an employee.
  - C. Any other person acting in a bona fide representative capacity, including, but not limited to, members of the clergy, social workers, spouses and other family members, and government officials or nonprofit groups and organizations acting upon specific complaints and injuries from individuals who are employees.

NOTE: The representative capacity of the person filing complaints on behalf of another should be ascertained unless it is already clear. In general, the affected employee should have requested, or at least approved, the filing of the complaint on his or her behalf.

- b. **DOCUMENTATION OF ACTION TAKEN** - Document all complaint and referral letter responses and actions taken on the Complaint and Referral Checklist form and in the OIS unprogrammed activity record.
- c. **INPUTTING INFORMATION INTO OIS** - The AA will input all of the information recorded on the Complaint, the Referral, and the Complaint and Referral Checklist forms into the applicable OIS forms.
- d. **CLASSIFYING AS A COMPLAINT OR A REFERRAL** - Whether the information received is classified as a complaint or a referral, an inspection of a workplace is normally warranted if at least one of the conditions in the *Criteria Warranting an Inspection* is met.
- e. **CLASSIFYING THE COMPLAINT OR REFERRAL**

- 1. **Imminent Danger** – The existence of any condition or practice in a workplace which could reasonably be expected to immediately cause death or serious physical harm to any employee if operations were to proceed in the workplace or if employees were to enter it before the condition or practice is eliminated.

The following conditions must be present to be considered an imminent danger:

- Death or serious harm must be threatened; AND
- It must be reasonably likely that a serious accident could occur immediately OR, if not immediately, then before abatement would otherwise be implemented.

For a health hazard, exposure to the toxic substance or other hazard must cause harm to such a degree as to shorten life, be immediately dangerous to life and health (IDLH), or cause substantial reduction in physical or mental efficiency or health, even though the resulting harm may not manifest itself immediately.

- 2. **Serious** – Impairment of the body in which part of the body is made functionally useless or is substantially reduced in efficiency on or off the job. Such impairment may be permanent or temporary, chronic or acute. Injuries involving such impairment would usually require treatment by a medical doctor or other licensed health care professional.

A. Injuries include, but are not limited, to:

- Amputations (loss of all or part of a bodily appendage)
- Concussion
- Crushing (internal, even though skin surface may be intact)
- Fractures (simple or compound)
- Burns or scalds, including electric and chemical burns
- Cuts, lacerations, or punctures involving significant bleeding and/or requiring suturing
- Sprains and strains
- Musculoskeletal disorders

B. Illnesses include, but are not limited, to:

- Cancer
- Respiratory illnesses (silicosis, asbestosis, byssinosis, etc)
- Hearing impairment
- Central nervous system impairment
- Visual impairment

- Poisoning.
3. Other-Than-Serious - Where the accident/incident or illness that would be most likely result from a hazardous condition would probably not cause death or serious physical harm, but would have a direct and immediate relationship to the safety and health of the employees.
- f. **CRITERIA WARRANTING AN INSPECTION** - An inspection is normally warranted if at least one of the conditions below is met (also see *Scheduling an Inspection of an Employer in an Exempt Industry*):
1. A valid formal complaint is submitted. Besides the Formal Complaint requirements at the beginning of the chapter, the complainant must state the reason for the inspection and there must be reasonable grounds to believe either that a violation of the NVOSH ACT, NVOSHA or Federal OSHA standards exists that exposes employees to physical harm or of imminent danger of death or serious injury, per NRS 618.425.
  2. The written complaint alleges that a recordkeeping deficiency indicates the existence of a potentially serious safety or health violation.
  3. The information alleges that a permanently disabling injury or illness has occurred as a result of the complained of hazard(s), and there is reason to believe that the hazard or related hazards still exist.
  4. The information concerns an establishment and an alleged hazard covered by a local, regional, or national emphasis program, or the Inspection Targeting Plan (ITP).
  5. The employer fails to provide an adequate response to an inquiry, or the individual who provided the original information provides further evidence that the employer's response is false or does not adequately address the hazard(s). The evidence must be descriptive of current, on-going or recurring hazardous conditions.
  6. The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeated citations within the District Office's jurisdiction during the past 5 years or at a related establishment in the Severe Violator Enforcement Program (SVEP). However, if the employer has previously submitted adequate documentation for these violations demonstrating that they were corrected and that programs have been implemented to prevent a recurrence of hazards, the District Manager will normally determine that an inspection is not necessary.
  7. A discrimination investigator or Supervisor requests that an inspection be conducted in response to an employee's allegation that the employee was discriminated against for complaining about safety or health conditions in the workplace, refusing to perform an allegedly dangerous job or task, or engaging in other activities related to occupational safety or health.
  8. If an inspection is scheduled or has begun at an establishment and a complaint or referral that would normally be handled via inquiry is received, that complaint or referral may, at the District Manager's discretion, be incorporated into the scheduled or ongoing inspection. If such a complaint is formal, the complainant must receive a written response addressing the complaint items.



9. If the information gives reasonable grounds to believe that an employee under 18 years of age is exposed to a serious violation of a safety or health standard or a serious hazard, an onsite inspection will be initiated if the information relates to construction, manufacturing, agriculture, or other industries as determined by the District Manager. Limitations placed on NVOSHA’s activities in agriculture by Appropriations Act provisions will be observed. See [CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act](#), dated May 28, 1998. A referral to Wage and Hour should also be initiated.

NOTE: The information does not need to allege that a child labor law has been violated.

10. If no other criteria warrant an on-site inspection, and the supervisor reviewing the complaint or referral believes reasonable grounds exist to investigate the allegations by on-site inspection, the supervisor may direct an inspection to take place. The supervisor shall provide a detailed explanation of his reasons for ordering an inspection in the applicable comments fields in the complaint or referral report.

- g. **SCHEDULING AN INSPECTION OF AN EMPLOYER IN AN EXEMPT INDUSTRY** - In order to schedule an inspection of an employer in an exempt industry classification as specified by Appropriations Act provisions:

NOTE: See [CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act](#), dated May 28, 1998.

1. The information must come directly from a current employee; OR
2. It must be determined and documented in the case file that the information came from a representative of the employee (see *Representative of Employees*), with the employee’s knowledge of the representative’s intended action.

- h. **ELECTRONIC COMPLAINTS RECEIVED VIA THE FEDERAL OSHA PUBLIC WEBSITE**

1. Electronic complaints submitted via the Federal OSHA public website are automatically forwarded via email to the District Offices.
2. Each District Office manages a “Complaints” mailbox and processes electronic complaints the same as a regular complaint. The complaints mailbox is monitored daily and every incoming complaint is reviewed for jurisdiction.
  - A. If the complaint falls within the jurisdiction of the District Office, the complaint is entered into OIS and processed as usual.
  - B. If the complaint falls within the jurisdiction of Federal OSHA or another agency, the complaint is forwarded appropriately.
3. Complete an OSHA-7 form for all complaint information received. In order to facilitate the tracking of electronic complaints, enter the following code in the Optional Information field:

**N-11-LOGXXXXXX**

- Where N-11 indicates that the complaint was filed electronically; and

- The digits following LOG are the unique complaint ID/log numbers assigned to the electronic complaint when processed by the Salt Lake Technical Center. The log number may vary and does not have to be exactly six digits. In entering the code, there is no space between the word LOG and the digits that follow.
4. Information received electronically from a current employee is considered a non-formal complaint until that individual provides a signed copy of the information. The employee can send or fax a signed copy of the information, request that an OSHA-7 form be sent, or sign the information in person at the District Office. Normally a complainant has five working days to formalize an electronic complaint. The District Office must actively follow up on information received electronically in order to provide the employee with the opportunity to formalize the complaint. The District Office will follow the complaint procedures in this NOM for either an inquiry or and inspection as appropriate.
  5. All complaint-related material received electronically should be printed and date stamped with the date the material was submitted and received. When these dates are not the same, the District Manager will determine the appropriate date for the incoming material.

**i. INFORMATION RECEIVED BY TELEPHONE**

1. While speaking with the caller, NVOSHA personnel will attempt to obtain the following information:
  - A. Whether the caller is a current employee or an employee representative.
  - B. The exact nature of the alleged hazard(s) and the basis of the caller’s knowledge. The individual receiving the information must determine, to the extent possible, whether the information received describes an apparent violation of NVOSH or Federal OSHA standards or the NVOSH Act.
  - C. The employer’s name, address, email address, telephone and fax numbers, as well as the name of a contact person at the worksite.
  - D. The name, address, telephone number, and email address of any union and/or employee representative at the worksite.
2. As appropriate, NVOSHA will provide the caller with the following information:
  - A. Describe the complaint process, and if appropriate, the concepts of “inquiry” and “inspection,” as well as the relative advantages of each.
  - B. If the caller is a current employee or a representative of employees, explain the distinction between a formal complaint and a non-formal complaint, and the rights and protections that accompany filing a formal complaint. These rights and protections include:
    - The right to request an onsite inspection.
    - Notification in writing if an inspection is deemed unnecessary because there are no reasonable grounds to believe that a violation or danger exists.
    - The right to obtain review of a decision not to inspect by submitting a request for review in writing. NAC 618.6455 – Denial of request for investigation -

If the district manager determines that an employee requesting an investigation pursuant to NRS 618.425 has not complied with the provisions of that section, the district manager shall notify him of his determination. Such a determination does not preclude the employee from filing a new complaint concerning the same violation or danger.

If the district manager determines that an inspection is not warranted with respect to a complaint made under NRS 618.425, he shall notify the employee in writing of his determination and the reasons for it. The district manager's determination is final.

- Discrimination rights must be communicated to the complainant/ referrer when they call and file a complaint/referral even if they do not allege discrimination at the time of the call. (NRS 618.445)
3. Information received by telephone from a current employee is considered a non-formal complaint until that individual provides a signed copy of the information. The employee can send or fax a signed copy of the information, request that an OSHA-7 form be sent, or sign the information in person at the District Office. Normally a complainant has five working days to formalize a complaint.
  4. If appropriate, inform the complainant of rights to confidentiality in accordance with NRS 618.341 for private sector employees, and ask whether the complainant wishes to exercise this right. When confidentiality is requested, the identity of the complainant is protected regardless of the formality of the complaint.
  5. The Complaint Questionnaire, found at the end of this chapter, and/or the "NVOSHA Checklist Receiving Complaints and Referrals" form maybe used as a tool to assist in completing the complaint and referral forms.
  6. Upon completion of the Complaint or Referral form, the form will immediately be turned in/emailed to their Supervisor. If the Supervisor is not in the office due to sickness, school, leave, etc., the Complaint or Referral will be forwarded to the next Supervisor available after ensuring that supervisor is in the office. Imminent Danger complaints or referrals will be immediately reported to the Senior Management Official on duty.

j. **PROCEDURES FOR HANDLING COMPLAINTS FILED IN MULTIPLE DISTRICT OFFICES**

1. When a District Office determines that both offices within the State have received the same complaint, the District Managers will contact the CAO.
2. If the District Office suspects the same complaint has been filed in multiple Federal Regions, the District Office should notify the Area Director. District Offices should indicate in OIS that the Federal Region complaint(s) have been transferred to the National Office. On the OSHA-7, in field 45a., select *A. Federal OSHA*; in field 45b., select *00 – National Office*. Those complaints should then be closed.

k. **PROCEDURES FOR AN INSPECTION**

1. Upon receipt of a complaint or referral, the District Manager (or his or her designee) will evaluate all available information to determine whether there are reasonable grounds to believe that a violation or hazard exists.
  - A. The District Manager or Supervisor may contact the individual who provided the information if necessary, to answer questions raised in the complaint or referral.
  - B. The District Manager may determine not to inspect a facility if he/she has a substantial reason to believe that the condition complained of is being or has been abated.
2. Despite the existence of a complaint, if the District Manager believes there are no reasonable grounds that a violation or hazard exists; no inspection or inquiry will be conducted.
  - A. Where a formal complaint has been submitted, the complainant will be notified in writing of NVOSHA's intent not to conduct an inspection, the reasoning behind the determination, and the right to have the determination reviewed under NAC 618.6455. The justification for not inspecting will be noted in the NVOSHA Complaint/Referral Checklist.
  - B. In the event of a non-formal complaint or referral, if possible, individual providing the information will be notified by appropriate means of NVOSHA's intent not to conduct an inquiry or inspection. The justification for not inspecting or conducting an inquiry will be noted in the NVOSHA Complaint/Referral Checklist.
3. If the information contained in the complaint or referral meets at least one of the inspection criteria listed in this chapter, *Criteria Warranting an Inspection*, and there are reasonable grounds to believe that a violation or hazard exists, the District Office is authorized to conduct an inspection.
  - A. If appropriate, the District Office will inform the individual providing the information by mail that an inspection will be scheduled and that he or she will be advised of the results.
  - B. After the inspection, the District Office will send the individual a letter addressing each information item, with reference to the citation(s) or a sufficiently detailed explanation for why a citation was not issued.
4. If an inspection is warranted, it will be initiated as soon as resources permit. Inspection resulting from formal complaints of serious hazards will normally be initiated within 14 days of formalizing.
  - A. Should the District Manager or Supervisor determine that an inspection will be conducted on complaints and referrals, other than the formal complaint alleging serious hazards, the inspection will be initiated as soon as possible but no later than 14 days.
  - B. Unless there is a substantial probability that death or serious physical harm could result from the violation or danger, then the investigation must be made immediately after receiving the notice to determine whether a violation or imminent danger exists.

- C. The Division need not investigate a complaint within the times if, from the facts stated in the complaint, it is determined that the complaint is intended solely to harass the employer. If the Division determines that there are no reasonable grounds to believe that a violation or imminent danger exists, it shall notify the employees or other person who gave the notice of such determination within 14 days after receiving the notice. (NRS 618.425)

## 1. PROCEDURES FOR AN INQUIRY

1. If the valid complaint or referral does not meet the criteria for initiating an onsite inspection, an inquiry will be conducted. NVOSHA will promptly mail a letter to the employer addressing the alleged Other-Than-Serious hazards. The District Manager or Supervisor may contact the employer if necessary, to answer questions raised in the complaint or referral.
2. The inquiry letter will advise the employer of what information is needed to answer the inquiry and encouraged to respond by fax or email. Employers are encouraged to do the following:
  - A. Immediately investigate and determine whether the complaint or referral information is valid and make any necessary corrections or modifications.
  - B. Advise the District Manager either in writing or via email within five working days of the results of the investigation into the alleged complaint or referral information. At the discretion of the District Manager, the response time may be longer or shorter than five working days, depending on the circumstances. Additionally, although the employer is requested to respond within the above time frame, the employer may not be able to complete abatement action during that time, but is encouraged to do so.
  - C. Post a copy of the letter from NVOSHA where it is readily accessible for review by all employees.
  - D. Return a copy of the signed Certificate of Posting to the District Office.
  - E. If there is a recognized employee union or safety and health committee in the facility, provide it with a copy of NVOSHA's letter and the employer's response.
  - F. **The employer will provide** the District Manager with supporting documentation of the findings, including any applicable measurements or monitoring results, and photographs and/or videos that the employer believes would be helpful, as well as a description of any corrective action the employer has taken or is in the process of taking.
3. Form letters to complainants and employers are accessed in OIS. Note that some of these letters are for private sector use and some are for Federal Agency use. If email is an acceptable means of responding, this should be indicated in the notification letter and the proper email address should be provided.
4. If the employer doesn't respond within the allotted five working days in the inquiry letter, or the response received is inadequate, the AA will call the employer to request a reply to the alleged violations. Should the employer still not respond, provide an inadequate

response, or if NVOSHA determines from other information that the condition has not been or is not being corrected, an inspection will be scheduled.

5. The complainant will be sent a letter advising him/her of the employer's response, as well as the complainant's rights to dispute that response, and if the alleged hazard persists, of the right to request an inspection. When NVOSHA receives an adequate response from the employer and the complainant does not dispute or object to the response, an onsite inspection normally will not be conducted.
6. If the complainant is a current employee or a representative of employees and wishes to dispute the employer's response, the disagreement must be submitted in writing and signed, thereby making the complaint formal.
  - A. If the employee disagreement takes the form of a written and signed formal complaint, see *Procedures for an Inspection*.
  - B. If the employee disagreement does not take the form of a written and signed formal complaint, some discretion is allowed in situations where the information does not justify an onsite inspection. In such situations, the complainant will be notified of NVOSHA's intent not to conduct an inspection and the reasoning behind the determination. The justification for not conducting an inquiry will be noted on the case file diary sheet.
7. If a signed complaint is received after the complaint inquiry process has begun, the District Manager will determine whether the alleged hazard is likely to exist based on the employer's response and by sending a letter to the complainant. The letter will state that the inquiry has begun and that the complainant retains the right to request an onsite inspection if he/she disputes the results and believes the hazard still exists.
8. The complaint must not be closed until NVOSHA verifies that the hazard has been abated.

**m. COMPLAINANT AND REFERRER PROTECTION**

1. Identity of the Complainant and Referrer - Upon request of the complainant, his or her identity will be withheld from the employer in accordance with NRS 618.341. No information will be given to the employer that would allow the employer to identify the complainant.
2. Discrimination Protection
  - A. NRS 618.445 provides protection for employees who believe that they have been the subject of an adverse employment action in retaliation for engaging in activities related to workplace safety or health. Any employee who believes that he or she has been discharged or otherwise retaliated against by any person as a result of engaging in such activities may file a discrimination complaint. The complaint must be filed within 30 days of the discharge or other retaliation.
  - B. Complainants and Referrers should always be advised of their NRS 618.445 rights and protections upon initial contact with NVOSHA and whenever appropriate in subsequent communications.

**RECORDING IN OIS** - Information about complaint and referral inspections or inquiries must be recorded in OIS following current instructions given in the *OIS Enforcement User Guide*.

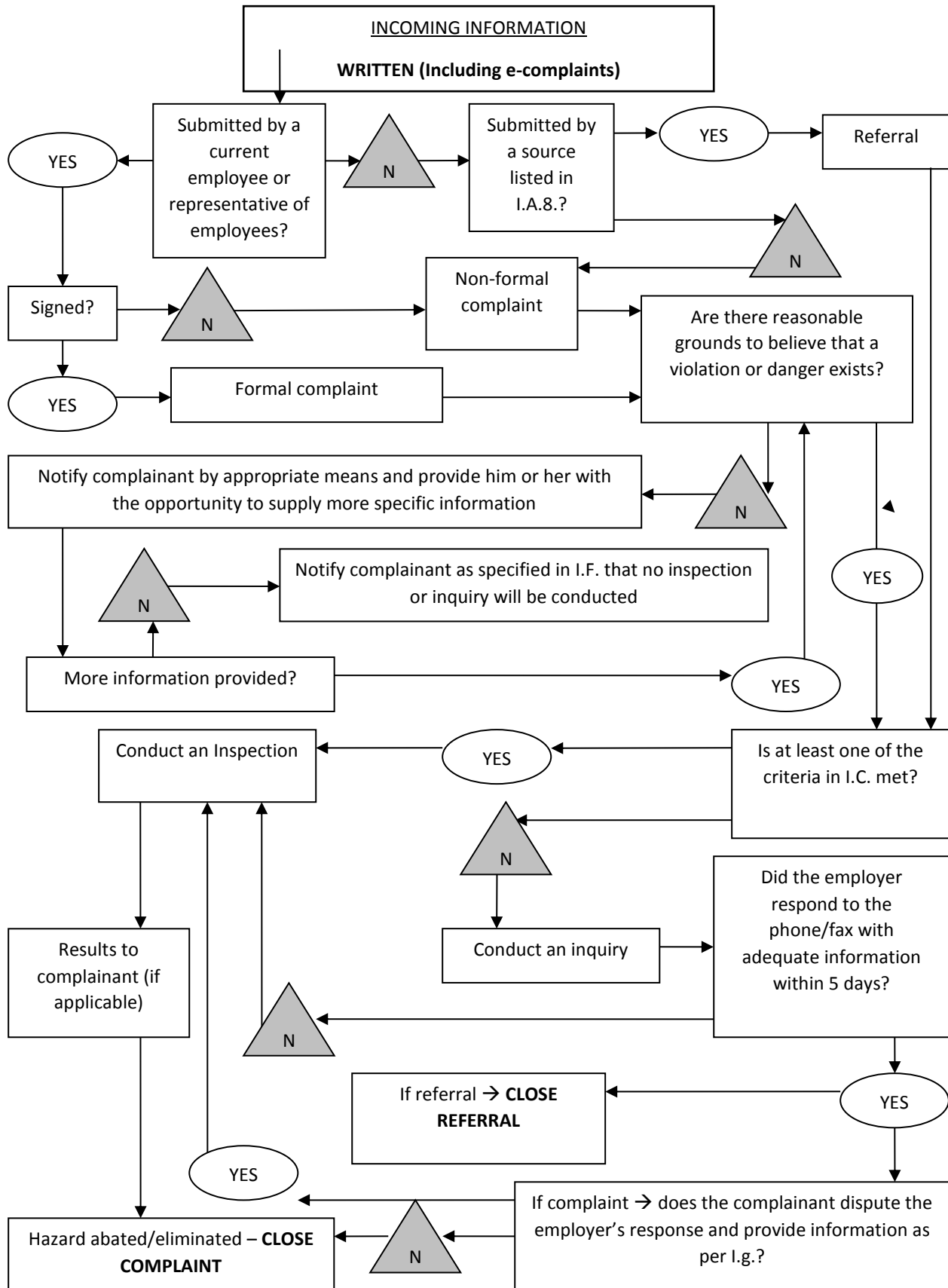
**2. DISCRIMINATION COMPLAINTS – NRS 618.445**

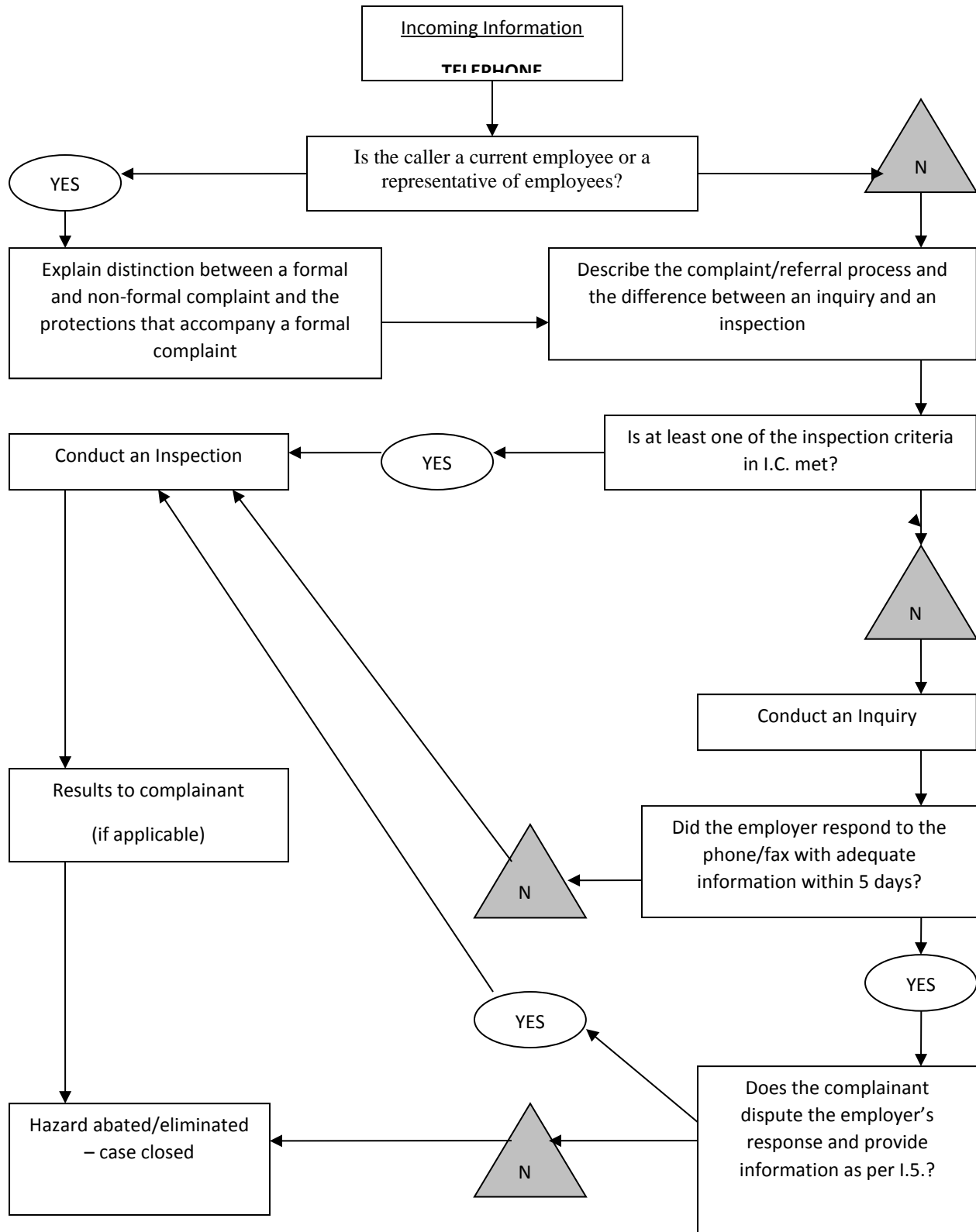
- a. NVOSHA enforces only the discrimination provisions of the NVOSH Act.
- b. When a retaliation complaint is made under any of the whistleblower statutes enforced by Federal OSHA other than the NVOSH Act, the complainant will be referred promptly to Federal OSHA because the requirements for filing complaints under those statutes vary from those of the NVOSH Act. They should also be advised that there are statutory deadlines for filing these complaints.
- c. In the context of an OSHA enforcement action or a consultation activity, the complainant will be advised of the protection against retaliation afforded by NRS 618.445. A Discrimination complaint may be in any form, including an oral complaint made to a CSHO. Thus, if a person alleges that he has suffered an adverse action because of activity protected under NRS 618.445, the CSHO will record that person’s identifying information and the date and time of this initial contact and immediately forward this information to the Whistleblower Investigations Unit for processing.
- d. The Whistleblower Investigations Unit will process the complaint, which includes reducing the complaint allegations to a written document.
- e. In State Plan States, employees may file occupational safety and health retaliation complaints with Federal OSHA, the State, or both. Federal OSHA normally refers such complaints to the State Plan States for investigation.

**3. DECISION TREES**

- a. See the first tree for NVOSHA enforcement action or consultation activity when information is obtained in writing.
- b. See the second tree for NVOSHA enforcement action or consultation activity when information is obtained orally.







**COMPLAINT QUESTIONNAIRE** - Obtain information from the caller by asking the following questions, where relevant.

**For All Complaints:**

1. What is the specific safety or health hazard?
2. Has the hazardous condition been brought to the employer's attention? If so, when? How?
3. How are employees exposed to this hazard? Describe the unsafe or unhealthful working conditions; identify the location.
4. What work is done in the unsafe/unhealthful area? Identify, as well as possible, the type and condition of equipment in use, the materials (i.e., chemicals) being used, the process/operation involved, and the kinds of work being done near the hazardous area. Have there been any recent chemical spills, releases, or accidents?
5. With what frequency are employees doing the task that leads to the exposure? Continuously? Every day? Every week? Rarely? For how long at one time? How long has the condition existed (so far as can be determined)? Has it been brought to the employer's attention? Have any attempts been made to correct the condition, and, if so, who took these actions? What were the results?
6. How many shifts are there? What time do they start? On which shift does the hazardous condition exist?
7. What PPE (i.e., hearing protection, gloves or respirators) is required by the employer relevant to the alleged exposure? Is it used by employees? Include all PPE and describe it as specifically as possible. Include the manufacturer's name and any identifying numbers.
8. How many people work in the establishment? How many are exposed to the hazardous conditions? How near do they get to the hazard?
9. Is there an employee representative or a union in the establishment? Include the name, address, and telephone number of the union and/or the employee representative(s).

**For Health Hazards**

10. Has the employer administered any tests to determine employee exposure levels to the hazardous conditions or substance? Describe these tests. Can the employees get the results (as required by the standard)? What were the results?
11. What engineering controls are in place in the area(s) in which the exposed employees work? For instance, are there any fans or acoustical insulation in the area, which may reduce exposure to the hazard?
12. What administrative or work practice controls has the employer put in place?
13. Do any employees have any symptoms that may have been caused by exposure to hazardous substances? Have any employees ever been treated by a physician for a work-related disease or condition? What was it?
14. Have there been any "near-miss" incidents?

15. Are respirators worn to protect against health hazards? If so, what kind? What exposures are they protecting against?
16. If the complaint is related to noise, what, if any, hearing protection is provided to and worn by the employees?
17. Do employees receive audiograms on a regular basis?

**For Safety Hazards:**

18. Under what adverse or hazardous conditions are employees required to work? This should include conditions contributing to stress and “other” probability factors.
19. Have any employees been injured as a result of this hazardous condition? Have there been any “near-miss” incidents?

## Chapter 10

# INDUSTRY SECTORS

### 1. AGRICULTURE

- a. **INTRODUCTION** - Special situations arising in the agriculture industry, which is regulated under 29 CFR Part 1928 and the NRS 618.375 (General Duty) are discussed in this section. Part 1928 covers “agricultural operations,” which include, but are not limited to, egg farms, poultry farms, livestock grain and feed lot operations, dairy farms, horse farms, hog farms, fish farms, and fur-bearing animal farms. NVOSHA or Federal OSHA has very few standards that are applicable to this industry. Part 1928 sets forth a few standards in full and lists particular Part 1910 standards, which apply to agricultural operations. Part 1910 standards not listed do not apply. The General Duty Clause may be used to address hazards not covered by these standards.
- b. **DEFINITIONS**
  1. **Agricultural Operations** - This term is not defined in 29 CFR Part 1928. Generally, agricultural operations would include any activities involved in the growing and harvesting of crops, plants, vines, fruit trees, nut trees, ornamental plants, egg production, the raising of livestock (including poultry and fish), as well as livestock products. The Federal Occupational Safety and Health Commission has ruled that activities integrally related to these core “agricultural operations” are also included within that term. *Darragh Company*, 9 BNA OSHC 1205, (Nos. 77-2555, 77-3074, and 77-3075, 1980) (delivery of feed to chicken farmer by integrator of poultry products is agricultural operation); *Marion Stevens dba Chapman & Stephens Company*, 5 BNA OSHC 1395 (No.13535, 1977) (removal of pipe to maintain irrigation system in citrus grove is agricultural operation). Post-harvest activities not on a farm, such as receiving, cleaning, sorting, sizing, weighing, inspecting, stacking, packaging and shipping produce, are not “agricultural operations.” *J. C. Watson Company*, 22 BNA OSHC 1235 (Nos. 05-0175 and 05-0176, 2008) (employer’s onion packing shed was not an agricultural operation); *J.C. Watson Company v. Solis*, DC Cir. 08-1230 (April 17, 2009).
  2. **Agricultural Employee** - Federal OSHA regulation §1975.4(b) (2) states that members of the immediate family of the farm employer are not regarded as employees.
  3. **Farming Operation** - This term is used in Federal OSHA’s Appropriations Act, and has been defined in [CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act](#), dated May 28, 1998, to mean any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or related activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operations.

EXAMPLE: These are employers engaged in businesses that have a two digit Standard Industrial Classification (SIC) of 01 and three digit North American Industry Classification System (NAICS) of 111 (Agricultural Production - Crops); and NAICS 112 (Agricultural Production - Livestock and Animal Specialties); six

digit NAICS 115112 (Soil Preparation Services); NAICS 115112 (Crop Planting, Cultivating, and Protecting); NAICS 115113 (Crop Harvesting, Primarily by Machine); NAICS 115115 (Farm Labor Contractors and Crew Leaders); NAICS 115116 (Farm Management Services).

4. Post-Harvesting Processing - This is a term that is used in [CPL 02-00-051, \*Enforcement Exemptions and Limitations under the Appropriations Act\*](#), dated May 28, 1998, in discussing enforcement guidance for small farming operations. Generally, post-harvest processing can be thought of as changing the character of the product (canning, making cider or sauces, etc.) or a higher degree of packaging versus field sorting in a shed for size.

#### c. **APPROPRIATIONS ACT EXEMPTIONS FOR FARMING OPERATIONS**

1. Exempt Farming Operations - Federal OSHA is limited by provisions in its Appropriations Act as to which employers it may inspect. Some of the Appropriations Act exemptions and limitations apply to small farming operations. Specifically, Federal OSHA shall not inspect farming operations that have 10 or fewer employees **and** have had no temporary labor camp (TLC) activity within the prior 12 months.
2. Non-Exempt Farming Operations - A farming operation with 10 or fewer employees that maintains a temporary labor camp or has maintained a temporary labor camp within the last twelve months **is not** exempt from inspection.
3. State Plan States - States with OSHA-approved State Plans may enforce on small farms and provide consultation or training, provided that 100% state funds are used and the state has an accounting system in place to assure that no federal or matching state funds are expended on these activities.
4. Enforcement Guidance for Small Farming Operations - Federal OSHA's Appropriations Act exempts qualifying small farming operations from enforcement or administration of **all** rules, regulations, standards or orders under the Occupational Safety and Health Act, including rules affecting consultation and technical assistance or education and training services..

Table 10-1, on the next page, provides an at-a-glance reference to Federal OSHA activities under its funding legislation.

Table 10-1: Federal OSHA's Appropriation Act Exemptions for Farming Operations

| Federal OSHA Activity                        | Farming operations with 10 or fewer employees (EEs) and no TLC activity within 12 months | Farming operations with more than 10 EEs or a farming operation with an active TLC within 12 months |
|--|--|---|
| Programmed Safety Inspections                | Not Permitted  | Permitted   |
| Programmed Health Inspections                | Not Permitted  | Permitted   |
| Employee Complaint                           | Not Permitted  | Permitted   |
| Fatality and/or two or more Hospitalizations | Not Permitted  | Permitted   |
| Imminent Danger                              | Not Permitted  | Permitted   |
| 11(c) (whistleblower investigation)          | Not Permitted  | Permitted   |
| Consultation & Technical Assistance          | Not Permitted  | Permitted   |
| Education & Training                         | Not Permitted  | Permitted   |
| Conduct Surveys & Studies                    | Not Permitted  | Permitted   |

NOTE: See [CPL 02-00-051, Enforcement Exemptions and Limitations under the Appropriations Act](#), May 28, 1998, for additional information.

d. **STANDARDS APPLICABLE TO AGRICULTURE** - Federal OSHA has very few standards that apply to employers engaged in agricultural operations. Activities that take place after harvesting are considered general industry operations and are covered by NVOSHA and Federal OSHA's general industry standards.

1. Agricultural Standards (Part 1928)

- A. Rollover Protective Structures (ROPS) for Tractors (1928.51, 1928.52, and 1928.53).
- B. Guarding of Moving Machinery Parts of Farm Field Equipment, Farmstead Equipment, and Cotton Gins (1928.57).
- C. Field Sanitation (1928.110) - See [Wage & Hour/Federal OSHA Shared Authority under Secretary's Order](#), regarding Wage & Hour authority. Federal OSHA has no authority to issue any citations under this standard.

2. General Industry Standards (PART 1910)

- A. Temporary Labor Camps (1910.142), Chapter 12.
- B. Storage and Handling of Anhydrous Ammonia (1910.111(a) and (b))
- C. Logging Operations (1910.266)
- D. Specifications for Accident Prevention Signs and Tags – Slow-Moving Vehicle Emblem (1910.145(d) (10))
- E. Hazard Communication (1910.1200)
- F. Cadmium (1910.1027)
- G. Retention of Department of Transportation Markings, Placards and Labels (1910.1201)



H. Except to the extent specified above, the standards contained in subparts B through T and subpart Z of Part 1910 of Title 29 do not apply to agricultural operations.

3. General Duty Clause - As in any situation where no standard is applicable, NRS 618.375(1) may be used; all the elements for a NRS 618.375(1) citation must be met. See Chapter 4, *General Duty Clause*.

e. **PESTICIDES**

1. Coverage

A. Pursuant to the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA), the Environmental Protection Agency (EPA) has jurisdiction over employee protection relating to pesticides (which also includes herbicides, fungicides and rodenticides). The EPA Worker Protection Standard (WPS) protects employees on farms, forests, nurseries, and greenhouses from occupational exposure to agricultural pesticides. The WPS includes provisions for personal protective equipment, labeling, employee notification, safety training, safety posters, decontamination supplies, emergency assistance, and restricted field entry. See [40 CFR Part 170, Worker Protection Standard](#). Also refer to the memorandum of understanding between NIOSH and the Nevada Department of Agriculture.

B. The regulation covers two types of employees:

- Pesticide Handlers - Those who mix, load, or apply agricultural pesticides; clean or repair pesticide application equipment; or assist with the application of pesticides in any way.
- Agricultural Workers - Those who perform tasks related to the cultivation and harvesting of plants on farms or in greenhouses, nurseries, or forests – such as carrying nursery stock, repotting plants, or watering – related to the production of agricultural plants on an agricultural establishment.

C. For all pesticide use, including uses not covered by 40 CFR Part 170, it is a violation of FIFRA to use a registered pesticide in a manner inconsistent with its labeling. Thus, Federal OSHA has no authority to issue any citations related to pesticide exposures. In the event that a CSHO should encounter any cases of pesticide exposure or the lack of an appropriate pesticide label on containers, a referral shall be made to the local EPA office or to state agencies administering pesticide laws.

D. EPA also has jurisdiction in non-agriculture situations where pesticides are being applied by pest control companies. This would include, but not be limited to, applications in and around factories, warehouses, office buildings, and personal residences. Federal OSHA may not cite its Hazard Communication standard in such situations.

2. OSHA Hazard Communication Standard - Although Federal OSHA will not cite employers covered under EPA's WPS with regard to hazard communication requirements for pesticides, agricultural employers otherwise covered by Federal OSHA are still responsible for having a hazard communication program for all hazardous chemicals that are not considered pesticides.

- f. **WAGE & HOUR/FEDERAL OSHA SHARED AUTHORITY UNDER SECRETARY’S ORDER** - The Wage & Hour Division (WHD) of the Employment Standards Administration (ESA) has had shared authority with Federal OSHA over two standards: the Field Sanitation standard, 1928.110, and the Temporary Labor Camp standard, 1910.142.
1. Field Sanitation Standard
    - A. The WHD has sole federal enforcement authority for this standard, including the issuing of citations.
    - B. Federal OSHA, therefore, shall not issue citations under this standard.
    - C. The provisions of the Field Sanitation standard are also applicable to reforestation activities involving “hand-labor operations” as defined by the standard. This position regarding reforestation activities was developed through extensive intra-agency discussions and was intended to provide, in the absence of a clear and unambiguous exemption of this activity from the provisions of the standard, the broadest possible coverage for these employees.
  2. Temporary Labor Camp (TLC) Standard - Under the Secretary’s Order, enforcement authority for the TLC standard is split between the WHD and Federal OSHA. See Chapter 12, *Temporary Labor Camps*, for a detailed discussion.
  3. Compliance Interpretations Authority - WHD has sole interpretation authority for both the Field Sanitation and the Temporary Labor Camp standards, even over those temporary labor camp areas for which Federal OSHA has enforcement authority.
  4. Standard Revision and Variance Authority - Federal OSHA retains all authority for revisions of the Field Sanitation and the Temporary Labor Camp standards, as well as the evaluation and granting of temporary and permanent variances.
  5. State Plan States - Nevada has retained enforcement authority for the Field Sanitation and Temporary Labor Camp standards in agriculture. Refer to the MOU between NVOSHA and Federal Wage & Hour Division, Region 9.

## 2.CONSTRUCTION [Reserved]

## 3.MARITIME

## Chapter 11

### IMMINENT DANGER, FATALITY, CATASTROPHE, AND EMERGENCY RESPONSE

#### 1. IMMINENT DANGER SITUATIONS

##### a. GENERAL

1. Definition - NAC 618.6413 – “Imminent danger means the existence of any condition or practice in a workplace which could reasonably be expected immediately to cause death or serious physical harm to any employee if operations were to proceed in the workplace or if employees were to enter it before the condition or practice is eliminated.”
2. Conditions - The following conditions must be present in order for a hazard to be considered an imminent danger:
  - A. Death or serious harm must be threatened; AND
  - B. Most likely, a serious accident would occur immediately OR, if not immediately then before abatement was completed.

NOTE: For a health hazard, exposure to the toxic substance or other hazard must cause harm to such a degree as to shorten life, be immediately dangerous to life and health (IDLH), or cause substantial reduction in physical or mental efficiency or health, even though the resulting harm may not manifest itself immediately.

##### b. PRE-INSPECTION PROCEDURES

1. Imminent Danger Report Received by the Field
  - A. After the District Manager or designee receives a report of imminent danger, he/she will evaluate the inspection requirements and assign a CSHO to conduct the inspection.
  - B. Make every effort to open the imminent danger inspection on the same day the District Office received the report. In any case, open the inspection no later than the day after the receiving the report.
  - C. When an immediate inspection cannot be made, the District Manager or designee will contact the employer immediately, obtain as many pertinent details as possible about the situation, and attempt to have any employee(s) affected by the imminent danger voluntarily removed, if necessary.
    - A record of what steps, if any, the employer intends to take in order to eliminate the danger will be included in the case file.
    - This notification is considered an advance notice of inspection to be handled in accordance with the advance notice procedures described below.
2. Advance Notice - NAC 618.6431
  - A. Advance notice of an inspection may be given only in a situation where:

- i. There appears to be an imminent danger and advance notice is needed to enable the employer to correct the danger as quickly as possible.
  - ii. The inspection can most effectively be conducted after regular business hours or where special preparations are necessary
  - iii. The district manager determines that the presence of the employer, the representative of the employees or the appropriate personnel are needed to aid in the inspection; or
  - iv. The district manager determines that giving advance notice will increase the probability of carrying out an effective and thorough inspection.
- B. When an advance notice of an inspection is received, the employer shall give notice of the inspection to the representative of the employees if the employer knows the identity of the representative. If the identity of the representative is not known, the employer shall notify a reasonable number of employees.
- C. If the inspection is in response to a formal NRS 618.425 complaint, the complainant will be informed of the inspection unless this will cause a delay in speeding the elimination of the hazard.
- c. **IMMINENT DANGER INSPECTION PROCEDURES** - All alleged imminent danger situations brought to the attention of or discovered by CSHOs while conducting any inspection will be inspected immediately. Additional inspection activity will take place after the imminent danger condition has been resolved.
1. Scope of Inspection - CSHOs may consider expanding the scope of an imminent danger inspection based on additional hazards discovered or brought to their attention during the inspection.
  2. Procedures for Inspection
    - A. Every imminent danger inspection will be conducted as quickly as possible.
    - B. CSHOs will offer the employer and employee representatives the opportunity to participate in the worksite inspection, unless the immediacy of the hazard makes it impractical to delay the inspection in order to afford time to reach the area of the alleged imminent danger.
    - C. Tell the employer of the hazard(s) as soon as possible after discovering the violation or practices that create an imminent danger. Ask the employer to notify the affected employees and to remove them from the imminent danger area. Ask the employer to voluntarily abate the hazard to quickly eliminate the danger.
- d. **ELIMINATION OF THE IMMINENT DANGER**
1. Voluntary Elimination of the Imminent Danger
    - A. How to Voluntarily Eliminate a Hazard
      - Voluntary elimination of the hazard has been accomplished when the employer:
        - Immediately removes affected employees from the danger area;
        - Immediately removes or abates the hazardous condition; and

- Gives satisfactory assurance that the dangerous condition will remain abated before permitting employees to work in the area.
- Satisfactory assurance can be evidenced by:
  - After removing the affected employees, immediate corrective action is initiated, designed to bring the dangerous condition, practice, means or method of operation, or process into compliance, which, when completed, would permanently eliminate the dangerous condition; or
  - A good faith representation by the employer that permanent corrective action will be taken as soon as possible, and that affected employees will not be permitted to work in the area of the imminent danger until the condition is permanently corrected; or
  - A good faith representation by the employer that permanent corrective action will be instituted as soon as possible. Where personal protective equipment can eliminate the imminent danger, such equipment will be issued and its use strictly enforced until the condition is permanently corrected.

NOTE: Through onsite observations, CSHOs shall ensure that any/all representations from the employer that an imminent danger has been abated are accurate.

- B. Where a Hazard is Voluntarily Eliminated - If an employer voluntarily and completely eliminates the imminent danger without unreasonable delay:
- No imminent danger legal proceeding shall be instituted;
  - NVOsha-8, “EMERGENCY RESTRAINING ORDER TO REMOVE ALLEGED IMMINENT DANGER” does not need to be completed. An appropriate citation(s) and notice(s) of penalty will be proposed for issuance with an appropriate notation on the Violation Worksheet to document corrective actions; and
  - CSHOs will inform the affected employees or their authorized representative(s) that, although an imminent danger had existed, danger has been eliminated. They will also be informed of any steps taken by the employer to eliminate the hazardous condition.

## 2. Refusal to Eliminate an Imminent Danger

- A. If the employer does not or cannot voluntarily eliminate the hazard or remove affected employees from the exposure and the danger is immediate -
- i. The CSHO shall inform the affected employees and employers of the danger and that he or she is recommending to the District Manager that an emergency order be issued. Per NRS 618.545 - the Administrator may issue an emergency order to restrain any conditions or practices in any place of employment, which are such that a danger exists which, could reasonably be expected to cause death or serious physical harm immediately or before the imminence of the danger can be eliminated through the other enforcement procedures. Any order issued under this section may require such steps to be

taken as may be necessary to avoid, correct or remove the imminent danger and prohibit the employment or presence of any person in locations or under conditions where the imminent danger exists, except persons whose presence is necessary to avoid, correct or remove the imminent danger or to maintain the capacity of a continuous process operation to resume normal operations without a complete cessation of operations or, where a cessation of operations is necessary, to permit it to be accomplished in a safe and orderly manner.

- ii. The CSHOs will immediately consult with the District Manager or designee and obtain permission to post an NVOSHA-8, “EMERGENCY RESTRAINING ORDER TO REMOVE ALLEGED IMMINENT DANGER.”

NOTE: The Division has no authority to order the closing of a worksite or to order affected employees to leave the area of the imminent danger or the workplace.

- iii. An order issued becomes effective upon delivery to the employer or other person in charge of the place of employment where the danger exists. If, within 15 days after the effective date of the order, the employer fails to notify the Division that the employer wishes to contest the order, the order shall be deemed a final order and is not subject to review by any court or agency. If the employer contests the order within 15 days after the effective date of the order and the Division does not rescind or modify the order as requested, the employer may petition the court for relief. Upon the filing of such a petition, the district court may grant injunctive relief or a temporary restraining order pending the outcome of an enforcement proceeding per this chapter.

- B. CSHOs will notify affected employees and the employee representative that an NVOSHA-8; has been posted and will advise them of the NRS 618.445 discrimination protections under the NVOSH Act. Employees will be advised that they have the right to refuse to perform work in the area where the imminent danger exists.
- C. The District Manager or designee and the CAO, in consultation with the Division Counsel, will assess the situation and, if warranted, arrange for the expedited initiation of court action, or instruct the CSHO to remove the NVOSHA-8.

### 3. When Harm will Occur Before Abatement is Required

- A. If CSHOs have clear evidence that harm will occur before abatement is required (i.e., before a final order of the Review Board in a contested case), they will confer with the District Manager or designee to determine a course of action.

NOTE: In some cases, the evidence may not support the finding of an imminent danger at the time of the physical inspection, but rather after further evaluation of the case file or presence of additional evidence.

- B. If the CSHO is not satisfied that the employer will eliminate the danger, the CSHO shall (NAC 618.6464):

- i. Inform the employer and the affected employees of the danger and that he will recommend that the Administrator issue an emergency order per NRS 618.545; and
- ii. Upon the approval of the Administrator, deliver, or cause to be delivered Form NVOSHA-8, Emergency Restraining Order to Remove Alleged Imminent Danger, to the employer or his representative.

## 2.FATALITY AND CATASTROPHE INVESTIGATIONS

### a. DEFINITIONS

1. Fatality - An employee's death resulting from a work-related incident or exposure; in general, from an accident or an illness caused by or related to, a workplace hazard.
2. Catastrophe - The hospitalization of three or more employees resulting from a work-related incident or exposure, in general, from an accident or an illness caused by a workplace hazard.
3. Hospitalization - Being admitted as an inpatient to a hospital or equivalent medical facility for examination, observation, or treatment.
4. Representative of the Deceased or Injured Employee
  - A. A person previously identified to NVOSHA as an authorized representative of the employee bargaining unit of a labor organization, which has a collective bargaining relationship with the employer of the employee and represents the employee.
  - B. An attorney acting on behalf of the employee
  - C. A person designated by a court to act as the official representative for the employee or the estate of the employee.
5. The Immediate Family of each Deceased or Injured Employee - Individual(s) listed as the emergency contact(s) on the victim's employment records or identified through the investigation process.
6. Incident Requiring a Coordinated Federal Response - An incident involving multiple fatalities, extensive injuries, massive toxic exposures, extensive property damage, or one that presents potential employee injury and generates widespread media interest.

### b. TRAINING

1. The OSHA Training Institute offers several classes relevant to investigating fatalities and catastrophes. NVOSHA personnel who conduct accident investigations are required to enroll in these classes and demonstrate proficiency in the relevant areas addressed:
  - A. Initial Compliance Course
  - B. Accident Investigation
  - C. Inspection Techniques and Legal Aspects
  - D. Investigation Interviewing Techniques
  - E. Criminal Investigation Training Program (non-mandatory but encouraged to attend)



2. The NVOSHA Operations Support Unit will also provide training for the NVOSHA staff.

- c. **WRITTEN SAFETY AND HEALTH PROGRAM(S) (WSP)** - During all FAT / CAT investigations, evaluate the WSP for all involved companies. (An employer who has 10 or fewer employees is exempted from the provisions of this section unless the employer has employees engaged in the manufacture of explosives.)

Confirm that the program(s) were implemented by reviewing the following, though not all inclusive, materials and information:

1. Persons involved in the FAT / CAT, review safety and health training and the outlines or materials, used to conduct the training, for at least the past 5 years. In addition, request specific training related to the accident such as work processes, job tasks, equipment, machinery, etc.
2. Employees trained in a language they understand and the translator(s) knowledgeable on the subject(s) being taught. Ensure the translators are not a fellow co-worker that does not understand the safety and health standards or the standard procedures being taught.
3. Review all Safety and Health Programs related to the investigation being conducted. For example, a piece of machinery involved in the FAT / CAT investigation was not locked out; the company's LOTO program shall be evaluated as part of the investigation.
4. Complete the Safety and Health Program Evaluation Checklist. Attach the completed checklist to the appropriate tab in the case file.
5. During interviews, ask both the employees and the employer representatives about the company safety program.

d. **INITIAL REPORT**

1. Complete the Fatality/Catastrophe Report Form (OSHA-36) form for all fatalities or catastrophes. The purpose of the OSHA-36 is to provide NVOSHA with enough information to determine whether or not to investigate the event. It is also used as a research tool by NVOSHA and other agencies.

NOTE: The CSHO will finalize the OSHA-36 on the date it is completed or as soon as possible.

2. If, after the initial report, the District Office becomes aware of information that affects the decision to investigate, update the OSHA-36. If the additional information does not affect the decision to investigate, or the investigation has been initiated or completed, the OSHA-36 need not be updated. After updating the OSHA-36, it should be resubmitted to the National Office via the OIS.
3. See additional details on completing the OSHA-36 in *Recording and Tracking for Fatality/ Catastrophe Inspections*.

e. **INVESTIGATION PROCEDURES**

1. Thoroughly investigate all fatalities and catastrophes in an attempt to determine the cause of the event, whether there was a violation of NVOSHA or Federal OSHA safety and health standards, regulations, or the general duty clause, and any effect the violation had on the accident.

2. An appropriately trained and experienced compliance officer assigned by the District Manager or designee should initiate the investigation as soon as possible after receiving an initial report of the incident, ideally within one working day. The District Manager or designee determines the scope of the fatality/catastrophe investigation. Complete the investigation in an expeditious manner.
3. Inspections following fatalities or catastrophes should include video recording as a method of documentation and gathering evidence when appropriate. The use of photography is also encouraged in documenting and evidence gathering.
4. As in all inspections, under no circumstances should NVOSHA personnel conducting fatality/catastrophe investigations be unprotected against a hazard encountered during the course of an investigation. NVOSHA personnel must use appropriate personal protective equipment and take all necessary precautions to avoid and/or prevent occupational exposure to potential hazards that may be encountered.

f. **INTERVIEW PROCEDURES**

1. Identify and Interview Persons

- A. Identify and interview all persons with firsthand knowledge of the incident, including first responders, police officers, medical responders, and management, as early as possible in the investigation. Interviewing the witness as soon as possible will give a more accurate and candid statement.
- B. If an employee representative is actively involved in the inspection, he or she can serve as a valuable resource by assisting in identifying employees who might have information relevant to the investigation.
- C. Conduct employee interviews **privately**, outside the presence of the employer. Employees are not required to inform their employer that they provided a statement to NVOSHA.
- D. Document all Statements and/or Interviews on the NVOSHA Interview or Statement Forms.
- E. When interviewing:
  - Properly document the contact information of all parties because follow-up interviews with a witness are sometimes necessary.
  - When appropriate, reduce interviews to writing and have the witness sign the document. Transcribe video- and audio-taped interviews and have the witness sign the transcription.
  - Read the statement to the witness and attempt to obtain agreement. Note any witnesses' refusal to sign or initial his/her statement.
  - Ask the interviewee to initial any changes or corrections made to his/her statement.
  - Advise interviewee of NVOSHA discrimination protection.

- F. See Chapter 3, *Inspection Procedures*, for additional information on conducting interviews.
2. Informer's Privilege
- A. The informer's privilege allows the government to withhold the identity of individuals who provide information about the violation of laws, including NVOSHA rules and regulations. The identity of witnesses will remain confidential to the extent possible. However, inform each witness that disclosure of his/her identity may be necessary in connection with enforcement or court actions.
- B. The informer's privilege also protects the contents of statements to the extent that disclosure would reveal the witness' identity. When the contents of a statement will not disclose the identity of the informant (i.e., statements that do not reveal the witness' job title, work area, job duties, or other information that would tend to reveal the individual's identity), the privilege does not apply, and such statements may be released.
- C. Inform each witness that his/her interview statements may be released if he or she authorizes such a release or if he or she voluntarily discloses the statement to others, resulting in a waiver of the privilege.
- D. Inform witnesses in a tactful and nonthreatening manner that making a false statement to a CSHO during the course of an investigation could be a criminal offense. Making a false statement, upon conviction, is punishable in accordance with the statute NRS 618.705
- g. **INVESTIGATION DOCUMENTATION** - Document all fatality and catastrophe investigations thoroughly.
1. Personal Data, Victim - Potential items to be documented include: Name; Address; Email address; Telephone; Age; Sex; Nationality; Job Title; Date of Employment; Time in Position; Job being done at the time of the incident; Training for job being performed at time of the incident; Employee deceased/injured; Nature of injury – fracture, amputation, etc.; and Prognosis of injured employee.
  2. Incident Data - Potential items to be documented include: How and why did the incident occur; the physical layout of the worksite; sketches/drawings; measurements; video/audio/photos to identify sources, and whether the accident was work-related.
  3. Equipment or Process Involved - Potential items to be documented include: Equipment type; Manufacturer; Model; Manufacturer's instructions; Kind of process; Condition; Misuse; Maintenance program; Equipment inspection (logs, reports); Warning devices (detectors); Tasks performed; How often equipment is used; Energy sources and disconnecting means identified; and Supervision or instruction provided to employees involved in the accident.
  4. Witness Statements - Potential witnesses include the Public; Fellow employees; Management; Emergency responders (i.e., police department, fire department), and Medical personnel (i.e., medical examiner).

5. Safety and Health Program - Potential questions include: Does the employer have a safety and/or health program? Does the program address the type of hazard that resulted in the fatality/catastrophe? How are the elements of the program specifically implemented at the worksite?
6. Multi-Employer Worksite - Describe the contractual and in practice relationships of the employer with the other employers involved with the work being performed at the worksite.
7. Records Request - Potential records include Disciplinary Records, Training Records, and Next of Kin information.

NOTE: Family information should be gathered as soon as possible to ensure that condolence letters can be sent in a timely manner.

#### **h. POTENTIAL CRIMINAL PENALTIES IN FATALITY AND CATASTROPHE CASES**

##### **1. Criminal Penalties**

- A. NRS 618.685 - Any employer who willfully violates any requirement of this chapter, or any standard, rule, regulation or order promulgated or prescribed per this chapter, where the violation causes the death of any employee, shall be punished in accordance with this statute.
- B. When there are violations of an OSHA standard, rule or order, or a violation of the general duty clause, criminal provisions relating to false statements and obstruction of justice may also be relevant.
- C. Evaluate the circumstances surrounding all occupationally related fatalities to determine whether the fatality was caused by a willful violation of a standard, thus creating the basis for a possible criminal referral. The evidence obtained during a fatality investigation is of paramount importance and must be carefully gathered and considered.
- D. Early in the investigation, the District Manager or designee, in consultation with the investigator, should make an initial determination as to whether there is potential for a criminal violation. The decision will be based on consideration of the following:
  - A fatality has occurred.
  - There is evidence that an NVOSHA or Federal OSHA standard has been violated and that the violation contributed to the death.
  - There is reason to believe that the employer was aware of the requirements of the standard and knew it was in violation of the standard, or that the employer was plainly indifferent to employee safety.
  - If the CAO agrees with the District Manager or designee's assessment of the case, the CAO will notify the Division Counsel. At the discretion of the CAO and the District Manager or designee, and dependent upon Regional procedures in place, a Regional team or trained criminal investigator may assist in or perform portions of an investigation.

- When there is a potential criminal referral in a case, it is essential that the CAO and/or the District Manager involve the Division Counsel in the early stages of the investigation during the evidence gathering process.
2. Procedures for Criminal Referral - NVOSHA will consult with DIR Legal on the procedures to be followed.

i. **FAMILIES OF VICTIMS, DECEASED AND INJURED (FAT & CAT)**

1. Contacting Family Members - Family members of employees involved in fatal or catastrophic occupational accidents or illnesses shall be contacted early in the investigation and given the opportunity to discuss the circumstances of the accident or illness. NVOSHA staff contacting family members must exercise tact and good judgment in their discussions. Family members must also be advised of discrimination rights afforded to them and the injured employee.

A. NRS 618.480 –

- i. During an investigation of the accident occurring in the course of employment which is fatal to one or more employees, the Division shall use its best efforts to interview the immediate family of each deceased employee to obtain any information relevant to the investigation, including, without limitation, information which the deceased employee shared with the immediate family.
  - ii. If, after the investigation of the accident, the Division issues a citation, the Division shall offer to enter into a discussion with the immediate family of each deceased or injured employee within a reasonable time after the Division issues the citations.
  - iii. During the discussion described in ii, the Division shall provide each family with –
    - Information regarding the citation and abatement process;
    - Information regarding the means by which the family may obtain a copy of the final investigation report and abatement decision; and
    - Any other information the District Manager deems relevant and necessary to inform the family of the outcome of the investigation.
- B. If the victim's family does not want to speak with NVOSHA initially or during the inspection, their wishes should be respected. The CSHO should inform the family that they may inquire about the status of the case at a later date, if desired. The CSHO should then notify their supervisor of the family's decision.

NOTE: Document all verbal communications on the Case File Diary Sheet.

NOTE: When NVOSHA is not able to identify the victim's family, document all attempts on the Case File Diary Sheet.

- C. After the inspection is complete and no citations are to be proposed, the CSHO should contact the family and explain the inspection findings to include:
  - i. NVOSHA does not issue citations solely because there was a workplace fatality.

- ii. NVOSHA inspected the worksite(s) to determine whether a violation of NVOSHA and/or OSHA safety and health standards had occurred. The workplace inspection found no alleged violation(s) of safety and health standards and, as a result, no citations were issued to the employer.
- iii. NVOSHA will provide a copy of the inspection should the family request it in writing.

## 2. Fatality and Catastrophe Letters

### ***NRS 618.3785***

*1. If an accident or motor vehicle crash occurs in the course of employment which is fatal to one or more employees or which results in the hospitalization of three or more injured employees, the Division shall, as soon as practicable:*

*(a) Provide to each injured employee, the immediate family of each deceased or injured employee and each representative of each deceased or injured employee a written description of the rights of such persons with regard to an investigation of the accident; and*

*(b) Notify each injured employee, the immediate family of each deceased or injured employee and each representative of each deceased or injured employee of:*

*(1) The commencement by the Division of any investigation of the accident;*

*(2) The result of any informal conference between the employer and the Division;*

*(3) The finalization of any agreement between an employer and the Division, which formally settles an issue, related to the accident;*

*(4) The issuance of any citation under the provisions of this chapter related to the accident;*

*(5) The receipt by the Division of notice from an employer that the employer wishes to contest or appeal any action or decision of the Division which relates to the accident; and*

*(6) The completion by the Division and, if applicable, the Board of any investigation of the accident and any proceeding related to the accident.*

*2. As used in this section, "representative of each deceased or injured employee" means:*

*(a) A person previously identified to the Division as an authorized representative of the employee bargaining unit of a labor organization, which has a collective bargaining relationship with the employer of the employee and represents the employee.*

*(b) An attorney acting on behalf of the employee*

*(c) A person designated by a court to act as the official representative for the employee or the estate of the employee.*

- Double check the spelling of names, dates, etc. as the family will be sensitive to such things.
  - NOTE: In some circumstances, it may not be appropriate to follow these procedures to the letter; i.e., in the case of a small business, the owner or supervisor may be a relative of the deceased or injured employee. Modify the form letter to consider any special circumstances or do not send the letter, as appropriate. Document these decisions on the Case File Diary Sheet.
  - Sample letters are available in the local public directory.
  - Document the mailing of the letter on the Letter Checklist.
  - Letters will be mailed to the Injured Employee, Immediate Family and the Representative(s) of each Deceased or Injured Employee unless otherwise noted below.
- A. Initial Letter - Provide to each injured employee, the immediate family of each deceased or injured employee and each representative of each deceased or injured employee a written description of the rights of such persons with regard to an investigation of the accident and when the commencement by NVOSHA of any investigation of the accident.
- i. Send the CAO Condolence Letter to the immediate family within 5 working days of determining the injured or deceased's identity and verifying the mailing address.
    - CAO Condolence Letter – FAT ONLY
  - ii. The DM initial information letter is sent to the Injured Employee, Immediate Family and the Representative(s) of each Deceased or Injured Employee within 5 working days of determining the injured or deceased's identity and verifying the mailing address. Also, enclose the pamphlet "When a Worker Dies on the Job."
    - DM Initial Information Letter – FAT ONLY
    - DM Initial Information Letter – CAT ONLY
- B. Proposed Citation Letter –
- i. The issuance of any citation related to the accident. Within one day of verifying (i.e., receipt of green card) that the employer has received the citations, the DM citation letter will be sent to the Injured Employee, Immediate Family and the Representative(s) of each Deceased or Injured Employee.
  - ii. In addition to providing a copy of the citations, attach the brief fact sheet explaining NVOSHA's citation and penalty policy to the letter.
    - DM Letter After Investigation with Citation Information – FAT ONLY
    - DM Letter After Investigation with Citation Information – CAT ONLY



- C. Informal Settlement Agreement Letter – Within one day of verifying (i.e., receipt of green card), that the employer has received the amended citations, the DM ISA Results Letter, a copy of the amended citations, and a copy of the settlement agreement will be sent to the Injured Employee, Immediate Family and the Representative(s) of each Deceased or Injured Employee.

- DM Letter with ISA Results – FAT & CAT

- D. Contesting or Appeal Letter – NVOSHA received a notice (letter) from an employer that the employer wishes to contest or appeal any action or decision of NVOSHA which relates to the accident. After the case file receives the contest number from the CAO AA, the letter will be sent to the Injured Employee, Immediate Family and the Representative(s) of each Deceased or Injured Employee.

- DM Letter Employer Contesting or Appealed any Action or Decision – FAT & CAT

- E. Post Contest Letter – The finalization of any agreement between an employer and NVOSHA that formally settles an issue related to the accident. Within one day of verifying (i.e., receipt of green card), that the employer has received the amended citations, the CAO Post Contest Results Letter and a copy of the settlement agreement will be sent to the Injured Employee, Immediate Family and the Representative(s) of each Deceased or Injured Employee.

- CAO Letter with Post Contest Results – FAT & CAT

- F. Amended Citation Letter – The completion by NVOSHA and, if applicable, the Board, or Court of any investigation of the accident and any proceeding related to the accident. Within one day of verifying (i.e., receipt of green card) that the employer has received the amended citations, the DM Letter after Review Board and/or Court Contest/Amended Citation Results Letter, a copy of the amended citations, and a copy of the Final Order will be sent to the Injured Employee, Immediate Family and the Representative(s) of each Deceased or Injured Employee.

- DM Letter after Review Board and/or Court, Contest/Amended Citation Results – FAT & CAT

### 3. Interviewing the Family

- A. When taking a statement from families of the victim(s), explain that the interview will be handled following the same procedures as those in effect for witness interviews. Sensitivity and professionalism are required during these interviews. Carefully evaluate the information received and attempt to corroborate it during the investigation.
- B. Maintain follow-up contact with key family members or other contact persons so that these parties can be kept up-to-date on the status of the investigation. Provide family members or their legal representatives with a copy of all citations, subsequent settlement agreements, or Review Board decisions as noted in the FATALITY AND CATASTROPHE LETTERS. However, such information will only be provided to family members after it has been provided to the employer.

- C. The releasable portions of the case file will not be made available to family members until after the contest period has passed and no contest has been filed. If a criminal referral is under consideration or has been made, the case file may not be released to the family. Notify the family of these policies and inform them that this is necessary so that any potential litigation is not compromised.
4. Review Board
- A. If an employer notifies NVOSHA that the employer wishes to contest a citation or proposed assessment of penalty, NVOSHA shall provide the Board with information as to how to contact the immediate family of each deceased employee.
  - B. Prior to any formal fact-finding hearing the Board shall notify the immediate family of each deceased employee of the time and place of the hearing and the fact that the hearing is open to the public.
  - C. 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.
- j. **PUBLIC INFORMATION POLICY** - NVOSHA's public information policy regarding response to fatalities and catastrophes is to explain NVOSHA presence to the news media. It is not to issue periodic updates on the progress of the investigation. The Division's Public Information Officer will normally handle response to media inquiries.
- k. **RECORDING AND TRACKING FOR FATALITY/CATASTROPHE INVESTIGATIONS**
1. Fatality/Catastrophe (unprogrammed activity)-The FAT/CAT unprogrammed activity is a pre-inspection form that must be completed for all fatalities and catastrophes. Processing of the unprogrammed activity shall be as follows:
    - A. The CSHO will complete an OIS unprogrammed activity for all fatalities and catastrophes as soon as possible after learning of the event. Input as much information as needed to save the form as final/complete and then later go back in when more information is gathered. Wherever possible, the age of the victim(s) should be provided, because this information is used for research by Federal OSHA and other agencies.
    - B. The Program Coordinator will fax or email an unprogrammed activity record or equivalent form to the National Office and Region 9 within 48 hours of initiating the investigation or next business day after the weekend.
    - C. The CSHO will provide the Program Coordinator printed copies of the unprogrammed activity and OIS investigation report preferably no later than one week from the start of the investigation.
    - D. If additional information relating to the event becomes available, that affects the decision to investigate, update the unprogrammed activity and resubmitted via fax to the National Office and Region 9.

E. In addition, the CAO or designee will contact the National Office and Region 9 for major events, such as those likely to generate significant public or congressional interest.

## 2. Investigation Summary Report

A. The investigation report is used to summarize the results of investigations of all events that involve fatalities, catastrophes, amputations, hospitalizations of two or more days, have generated significant publicity, and/or have resulted in significant property damage. An investigation report must be opened, logged into OIS, and saved as final as soon as the Division becomes aware of a workplace fatality and determines that it is within its jurisdiction, even if most of the data fields are left blank. The information on this form enables Federal OSHA to track fatalities and summarizes circumstances surrounding the event.

NOTE: NVOSHA will complete an investigation report for all events where a FAT/CAT unprogrammed activity was accomplished.

B. For fatality/catastrophe investigations, the investigation report will be:

- Opened in OIS at the beginning of the investigation and saved as final, even if most of the data fields are left blank, so that Federal OSHA can track fatality/catastrophe investigations in a close to “real time” fashion.
- Modified as needed during the investigation to account for updated information.
- Updated with all data fields completely and accurately completed at the conclusion of the investigation, including a thorough narrative description of the incident.

C. The investigation report narrative should not be a copy of the summary provided on the unprogrammed activity pre-inspection form. The narrative must comprehensively describe the characteristics of the worksite; the employer and its relationship with other employers, if relevant; the employee task/activity being performed; the related equipment used; and other pertinent information in enough detail to provide a third party reader of the narrative with a mental picture of the fatal incident and the factual circumstances surrounding the event.

D. Only one investigation report should be submitted for an event, regardless of how many inspections take place. If a subsequent event occurs during the course of an inspection, a new investigation report for that event should be submitted. All inspections related to the event should be associated with the event according to OIS procedures for associating inspection activities.

EXAMPLE 11-1: A fatality occurs in employer’s facility in August. Both a safety and health inspection are initiated. One investigation report should be filed to summarize the results of the inspections that resulted from the August fatality. However, in September, while the employer’s facility is still undergoing the inspections, a second fatality occurs. In this case, a second investigation report should be submitted for the second fatality and an additional inspection should be opened.

NOTE: The CSHO will provide the CAO AA printed copies of the Coroner’s Report of Investigation/Autopsy Results, Toxicology Report, etc. when they become available. Do not keep copies of these documents in the case file.

3. Immigrant Language Questionnaire (IMMLANG)
  - A. The IMMLANG Questionnaire allows Federal OSHA to track fatalities among Hispanic and immigrant employees and to assess the impact of potential language barriers and training deficiencies on fatal accidents. Collect the information for this questionnaire early in the investigation, as the availability of immigrants for questioning later in the process is often uncertain.
  - B. Complete the IMMLANG Questionnaire before the conclusion of a fatality investigation per the procedures outlined in the December 16, 2003, memorandum from Deputy Assistant Secretary R. Davis Layne to the Regional Administrators. Only complete the questionnaire when facts obtained during the inspection indicate non-english speaking persons were injured, killed, or otherwise involved in the event. In this case, IMMLANG – Y should be entered in the OIS inspection report. (*Inspection Type tab; Special Codes; N-10-IMMLANG –Y*)
  - C. Complete the IMMLANG Questionnaire contained in the OIS investigation module.
4. Related Event Code (REC) - The Violation Worksheet provides specific supplemental information documenting hazards and violations. If any item cited is directly related to the occurrence of the fatality or catastrophe, the related event code “FAT/CAT/Accident” shall be entered in the “more information” section of the violation item tab. If multiple related event codes apply, the only code that has priority over relation to a fatality/catastrophe (“FAT/CAT/Accident”) is relation to an imminent danger (“Imminent Danger”).

#### 1. PRE-CITATION REVIEW

1. Because cases involving a fatality may result in civil or criminal enforcement actions, the District Manager is responsible for reviewing all fatality and catastrophe case files to ensure that the case has been properly developed and documented in accordance with the procedures outlined here.
2. The District Manager is responsible for ensuring that an **investigation report** is entered in OIS for each incident (see *Investigation Summary Report*).
3. Review all proposed violation-by-violation penalties in accordance with [CPL 02-00-080, Handling of Cases to be Proposed for Violation-by-Violation Penalties](#), dated October 21, 1990.
4. FAT/CAT citations or significant case should be reviewed with DIR Division Counsel.
5. The CAO should establish a procedure to ensure that each fatality or catastrophe is thoroughly investigated and processed in accordance with established policy.

#### m. POST CITATION PROCEDURES/ABATEMENT VERIFICATION

Abatement verification regulations are found at **NAC 618.6494**, and NVOSHA’s enforcement policies and procedures for this regulation are outlined in Chapter 7, *Post-Citation Procedures, and Abatement Verification*.

1. Due to the transient nature of many of the worksites where fatalities occur and because the worksite may be destroyed by the catastrophic event, it is frequently impossible to conduct follow-up inspections. In such cases, the District Manager should obtain

abatement verification from the employer, along with an assurance that appropriate safety and health programs have been implemented to prevent the hazard(s) from recurring.

2. While site closure due to the completion of the cited project is an acceptable method of abatement, it can only be accepted as abatement without certification where a CSHO directly verifies that closure; otherwise, certification by the employer is required. Follow-up inspections need not be conducted if the CSHO has verified abatement during the inspection or if the employer has provided other proof of abatement.
  3. Where the worksite continues to exist, NVOSHA will normally conduct a follow-up inspection if serious citations have been issued.
  4. Include abatement language and WSP implementation language in any subsequent settlement agreement.
  5. If there is a violation that requires abatement verification, complete field 22 on the Violation Worksheet with the verified abatement date.
  6. If the case is a Severe Violator Enforcement Program (SVEP) case, conduct follow-up inspections per the most current revision of Nevada OSHA's Severe Violator Enforcement Program . Normally follow-up inspections will be conducted even if abatement of cited violations has been verified through abatement verification.
- n. **AUDIT PROCEDURES** - The following procedures will be implemented to evaluate compliance with, and the effectiveness of, fatality/catastrophe investigation procedures:
- The CAO Staff will incorporate the review and analysis of fatality/catastrophe files into their audit functions. The review and analysis will utilize all FAT/CAT case files to address the following:
1. Inspection Findings - Ensure that hazards have been appropriately addressed and violations have been properly classified. Also, ensure that criminal referrals are made when appropriate.
  2. Documentation - Ensure that the Investigation Report narrative and data fields and the Violation Worksheet narrative have been completed accurately and with sufficient detail to allow for analysis of the circumstances of fatal incidents. Ensure that the IMMLANG Questionnaire is completed, if relevant.
  3. Settlement Terms - Ensure that settlement terms are appropriate, including violation reclassification, penalty reductions, and additional abatement language.
  4. Abatement Verification - Ensure that abatement verification has been obtained.
  5. OIS Reports - Review OIS reports to identify any trends or cases that may indicate that a further review of those cases may be necessary.
- o. **RELATIONSHIP OF FATALITY AND CATASTROPHE INVESTIGATIONS TO OTHER PROGRAMS AND ACTIVITIES**
1. Severe Violator Enforcement Case
    - A. Any inspection that meets one or more of the following criteria at the time that the citations are issued will be considered a severe violator enforcement case.

- i. Willful and repeated citations and failure-to-abate notices must be based on serious violations, except for recordkeeping, which must be egregious (e.g., per-instance citations).
- ii. Fatality/Catastrophe Criterion - A fatality/catastrophe inspection in which OSHA finds one or more willful or repeated violations or failure-to-abate notices based on a serious violation related to a death of an employee or three or more hospitalizations.

NOTE: The violations under this criterion do not have to be High-Emphasis Hazards as defined in Nevada OSHA's Severe Violator Enforcement Program.

- iii. Non-Fatality/Catastrophe Criterion Related to High-Emphasis Hazards - An inspection in which OSHA finds two or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on high gravity serious violations related to a High-Emphasis Hazard as defined in Nevada OSHA's Severe Violator Enforcement Program.
- iv. Non-Fatality/Catastrophe Criterion for Hazards Due to the Potential Release of a Highly Hazardous Chemical (Process Safety Management) - An inspection in which OSHA finds three or more willful or repeated violations or failure-to-abate notices (or any combination of these violations/notices), based on high gravity serious violations related to hazards due to the potential release of a highly hazardous chemical, as defined in the PSM standard.
- v. Egregious Criterion - All egregious (e.g., per-instance citations) enforcement actions will be considered SVEP cases.

B. In such cases, follow the instructions outlined in the most current revision of Nevada OSHA's Severe Violator Enforcement Program, to ensure that the proper measures are taken regarding classification, coding, and treatment of the case.

2. FAT/CAT Investigation Expansion - If a fatality or catastrophe investigation arises with respect to an establishment that is also in the current inspection cycle to receive a programmed inspection under any Site Specific Targeting program, the investigation and the inspection may be conducted either concurrently or separately.
3. Cooperative Programs - If a fatality or catastrophe occurs at a Voluntary Protection Program (VPP) or OSHA's Safety and Health Achievement Recognition Program (SHARP), the Program Coordinator should be notified. When enforcement activity has concluded, VPP Manager and/or Consultation Project Manager should be informed so that the site can be reviewed for program issues.

p. **SPECIAL ISSUES RELATED TO WORKPLACE FATALITIES**

1. Death by Natural Causes - The employer must report workplace fatalities caused by natural causes, including heart attacks. The District Manager will then decide whether to investigate the incident, understanding that Heat Stress may have played a role in the incident.



2. Workplace Violence - The employer must report fatalities caused by incidents of workplace violence to NVOSHA. The District Manager or designee will determine whether or not the incident will be investigated.
3. Motor Vehicle Accidents
  - A. NVOSHA does not require reporting motor vehicle accidents that occur on public roads or highways, unless the accident occurs in a construction work zone, parking lot, or delivery/dock area.
  - B. Although employers who are required to keep records must record vehicle accidents in their OSHA-300 Log of Work-Related Injuries and Illnesses, NVOSHA does not investigate such accidents. See 1904.39(b) (3).

### 3. RESCUE OPERATIONS AND EMERGENCY RESPONSE

#### a. NVOSHA's AUTHORITY TO DIRECT RESCUE OPERATIONS

1. Direction of Rescue Operations - NVOSHA has no authority to direct rescue operations. These are the responsibility of the employer and/or local political subdivisions or state agencies.
2. Monitoring and Inspecting Working Conditions of Rescue Operations - NVOSHA may monitor and inspect working conditions of covered employees engaged in rescue operations to ensure compliance with standards that protect rescuers, and to provide technical assistance where appropriate.

#### b. VOLUNTARY RESCUE OPERATIONS PERFORMED BY EMPLOYEES - NVOSHA recognizes that an employee may choose to place himself/herself at risk to save the life of another person. The following provides guidance on NVOSHA citation policy toward employers whose employees perform, or attempt to perform, rescues of individuals in life-threatening danger.

1. Imminent Danger - Section 1903.14(f) provides that no citation may be issued to an employer because of a rescue activity undertaken by an employee of that employer with respect to an individual in imminent danger [i.e., the existence of any condition or practice that could reasonably be expected to cause death or serious physical harm before such condition or practice can be abated] unless:
  - A. Such employee is designated or assigned by the employer to have responsibility to perform or assist in rescue operations, AND The employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or
  - B. Such employee is directed by the employer to perform rescue activities in the course of carrying out the employee's job duties, AND The employer fails to provide protection of the safety and health of such employee, including failing to provide appropriate training and rescue equipment; or
  - C. Such employee is employed in a workplace that requires the employee to carry out duties that are directly related to a workplace operation where the likelihood of life-threatening accidents is foreseeable, such as operations where employees are located in confined spaces or trenches, handle hazardous waste, respond to emergency



situations, perform excavations, or perform construction over water; AND Such employee has not been designated or assigned to perform or assist in rescue operations and voluntarily elects to rescue such an individual; AND The employer has failed to instruct employees not designated or assigned to perform or assist in rescue operations of the arrangements for rescue, not to attempt rescue, and of the hazards of attempting rescue without adequate training or equipment.

2. Citation for Voluntary Actions - If an employer has trained his or her employees in accordance with 1903.14, no citation will be issued for an employee's voluntary rescue actions, regardless of whether they are successful.

c. **EMERGENCY RESPONSE**

1. Role in Emergency Operations - While it is NVOSHA's policy to respond, as quickly as possible to significant events, that may affect the health or safety of employees, the Division does not have authority to direct emergency operations.
2. Response to Catastrophic Events (Note: these are not NVOSH Act requirements) - NVOSHA responds to catastrophic events promptly and acts as an active and forceful protector of employee safety and health during the response, cleanup, removal, storage, and investigation phases of these incidents, while maintaining a visible but limited role during the initial response phase.
3. NVOSHA's Role
  - A. For inspections of an ongoing emergency response or post-emergency response operation where there has been a catastrophic event, or where OSHA is acting under the National Emergency Management Plan (NEMP), the CAO will determine the overall role that OSHA will play. See [CPL 02-02-073, Inspection Procedures for 29 CFR 1910.120 and 1926.65](#), Paragraph (q): Emergency Response to Hazardous Substance Releases, 8/27/07.
  - B. During an event that is covered by the NEMP, Federal OSHA has a responsibility and authority to both enforce its regulations and provide technical advice and assistance to the Federal on-scene coordinator. If such an event occurs in a State Plan State, Federal OSHA will coordinate with the State Plan agency to ensure their involvement in the response.
  - C. For details on OSHA's response to occupationally related incidents involving multiple fatalities, extensive injuries, massive toxic exposures, extensive property damage, or potential employee injury that generates widespread media interest. See [CPL 02-00-094, Federal OSHA's Response to Significant Events of Potentially Catastrophic Consequences](#), dated July 22, 1991.

## CHAPTER 12

### SPECIALIZED INSPECTION PROCEDURES

1. **MULTI-EMPLOYER WORKPLACE/WORKSITE** [Reserved] - See [CPL 02-00-124, Multi-Employer Citation Policy](#), 12/10/99.

#### 2. **TEMPORARY LABOR CAMPS**

- a. **INTRODUCTION** - 29 CFR 1910.142, the Temporary Labor Camp standard, is applicable to both agricultural and non-agricultural workplaces.
- b. **DEFINITIONS** - NOTE: Section 1910.142 does not contain a definition section. The following definitions reflect Federal OSHA's interpretation of the standard.
  1. **Temporary** - The term temporary in §1910.142 refers to employees who enter into an employment relationship for a discrete or defined time period. As a result, the term temporary refers to the length of employment, and not to the physical structures housing employees.
  2. **Temporary Labor Camp Housing** - Temporary labor camp housing is required employer-provided housing that, due to company policy or practice, necessarily renders such housing a term or condition of employment. See [Frank Diehl Farms v. Secretary of Labor, 696 F.2d 1325 \(11th Cir. 1983\)](#).
  3. **New Construction** - All agriculture housing construction started on or after April 3, 1980, including totally new structures and additions to existing structures, will be considered new construction. Cosmetic remodeling work on pre-1980 structures will not be considered new construction and should be treated as existing housing.
- c. **WAGE & HOUR/OSHA SHARED AUTHORITY UNDER SECRETARY'S ORDER** - Per a Secretary's Order, the Wage & Hour Division (WHD) of the Employment Standards Administration (ESA) has shared authority with OSHA over the Temporary Labor Camp standard (§1910.142). See Delegation of Authorities and Assignment of Responsibilities to the Assistant Secretary for Employment Standards and Other Officials in the Employment Standards Administration ([Federal Register, January 2, 1997 \(62 FR 107\)](#)) and [Secretary's Order 5-2002: Delegation of Authority and Assignment of Responsibility to the Assistant Secretary for Occupational Safety and Health, Federal Register, October 22, 2002 \(67 FR 65007\)](#). **MOU between NVOSHA & Federal W & H Region 9.**

#### 1. Enforcement Authority

- A. **WHD Responsibility** - WHD has enforcement authority with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed. See [ADM 01-00-003](#), Appendix A, Paragraph 4.a.2., Redelegation of Authority, and Responsibility of the Assistant Secretary for Occupational Safety and Health, 3/6/03.

- B. OSHA Responsibility - OSHA retains enforcement authority over temporary labor camps for egg, poultry, red meat production, post-harvesting processing of agricultural and horticultural commodities, and any non-agricultural TLCs. See [ADM 01-00-003](#), Appendix A, Paragraph 4.a.2.b.
  - 2. Compliance Interpretation Authority - WHD has sole interpretation authority for the Temporary Labor Camp standard, even over those temporary labor camp areas for which OSHA has enforcement authority.
  - 3. Standard Revision and Variance Authority - OSHA retains all authority for revisions of the Temporary Labor Camp standard, as well as the evaluation and granting of temporary and permanent variances.
  - 4. State Plan States - Nevada has retained enforcement authority for the Temporary Labor Camp standards in agriculture for the State of Nevada.
- d. **ENFORCEMENT OF TEMPORARY LABOR CAMP STANDARDS FOR AGRICULTURE**
- 1. Choice of Standards on Construction Prior to April 3, 1980. Prior to walkaround inspections of temporary labor camps built before April 3, 1980, employers providing the housing will be asked to specify their preference of applicable departmental standards. Choices shall be limited to Subpart E of 29 CFR Part 654, or 1910.142 or provisions contained in variances from these standards. If an employer has been issued a variance, it shall produce copies upon request. See Housing for Agricultural Employees, 29 CFR 500.132.
    - A. In instances where Subpart E of Part 654 is specified as the governing standard for existing housing, hazardous conditions violating both the Employment and Training Administration (ETA) and OSHA requirements shall be cited under the OSHA standard. Do not cite hazardous conditions found in violation of ETA standards, but in compliance with 1910.142.
    - B. In instances where conditions are deemed in violation of the ETA standard and not covered by the NVOSHA or Federal OSHA standard, either the NRS 618.375(1) shall be cited (only serious violations) or such deficiencies shall be brought to the employer's attention and correction shall be encouraged.
    - C. In instances where 1910.142 is selected by the employer as the governing standard for the existing facility or is applicable in the case of "new construction," all requirements of that standard shall apply and shall be cited when violations are found.
    - D. Under no circumstances shall Subpart E of Part 654 be cited by CSHOs, since no authority exists within the Act to cite standards not adopted under the Act.
  - 2. Informing Employers - Prior to the inspection of an agriculture housing facility, employers shall be made aware of the foregoing policy and procedures during the opening conference. This policy applies to all employment-related agriculture housing covered by NVOSHA, regardless of whether or not employees housed in the facility are recruited through the U.S. Employment Service's inter-intrastate clearance system.

3. Agriculture Worksites under Federal OSHA Responsibility - For agriculture worksites that Federal OSHA has responsibility for, 1928.21 lists, which Part 1910 standards apply.
- e. **OSHA ENFORCEMENT FOR NON-AGRICULTURE WORKSITES**
1. For non-agriculture worksites other Part 1910 standards may be cited for hazards which are not covered under 1910.142. For non-agriculture worksites, the TLC standard has no provisions that specifically apply to fire protection, so those standards are not explicitly pre-empted by the TLC standard. The same is true for 1910.36 and 37 (exit routes). However, 1910.38 (emergency action plans) applies only where an emergency action plan is required by a particular OSHA standard, so it cannot be used with TLCs.
  2. Examples of temporary labor camp housing for non-agriculture worksites would be for the construction industry, oil and gas industry, and garment industry in the Pacific territories. Such housing for these industries may also be found in large cities and rural areas in various parts of the United States.
  3. The choice of standards issue, discussed in Paragraph d.1., Choice of Standards on Construction Prior to April 3, 1980, does not apply to non-agriculture temporary housing.
- f. **EMPLOYEE OCCUPIED HOUSING** - Generally, conduct occupied housing facility inspections as soon as feasible so that any hazards identified may be corrected early in the work season.
1. Since employees may not speak English, or may only speak English as a second language, every effort shall be made to send a bilingual CSHO on the inspection or have a bi-lingual person accompany the CSHO to translate conversations with employees.
  2. CSHOs shall conduct inspections in a way that minimizes disruptions to those living in the housing facilities. If an occupant of a dwelling unit refuses entry for inspection purposes, CSHOs shall not insist on entry and shall continue the rest of the inspection unless the lack of access to the dwelling unit involved would substantially reduce the effectiveness of the inspection. In that case, valid consent should be obtained from the owner of the unit. If the owner also refuses entry, the procedures for refusal of entry shall be followed. See Chapter 15, *Legal Issues*. The same shall apply in cases where employers refuse entry to the housing facility and/or to the entire worksite.
  3. During inspections, CSHOs shall encourage employers to correct hazards as quickly as possible. Pay particular attention to identifying instances of failure to abate and repeated violations from season to season or past occupancy. Cite these violations per normal procedures.
- g. **PRIMARY CONCERNS** - When conducting a housing inspection, CSHOs shall be primarily concerned with those facilities or conditions that most directly relate to employee safety and health. Accordingly, all housing inspections shall address at least the following:
1. Site
    - A. Review the location of the site for adequate drainage in relation to periodic flooding, swamps, pools, sinkholes, and other surfaces where water may collect and remain for extended periods.

- B. Determine whether the site is adequate in size to prevent overcrowding and whether it is located near (within 500 feet of) livestock.
  - C. Evaluate the site for cleanliness and sanitation; i.e., free from rubbish, debris, wastepaper, garbage, and other refuse.
2. Shelter
- A. Determine whether the shelter provides protection against the elements; has the proper floor elevation and floor space; whether rooms are used for combined purposes of sleeping, cooking, and eating; and whether all rooms have proper ventilation and screening.
  - B. Determine which rooms are used for sleeping purposes, the number of occupants, size of the rooms, and whether beds, cots, or bunks and lockers are provided.
  - C. Determine what kind of cooking arrangements or facilities are provided, and whether all heating, cooking, and water heating equipment are installed in accordance with state and local codes.
3. Water Supply - Determine whether the water supply for drinking, cooking, bathing, and laundry is adequate and convenient, and has been approved by the appropriate local health authority.
4. Toilet Facilities - Determine the type, number, location, lighting, and sanitary conditions of toilet facilities.
5. Sewage Disposal - Determine, in camps where public sewers are available, whether all sewer lines and floor drains are connected.
6. Laundry, Handwashing, and Bathing Facilities
- A. Determine the number, kind, locations, and conditions of these facilities, and whether there is an adequate supply of hot and cold running water.
  - B. Determine also whether such facilities have appropriate floors, walls, partitions, and drains.
7. Lighting
- A. Determine whether electric service is available, and if so, if appropriate light levels, number of ceiling-type light fixtures, and separate floor- or wall-type convenience outlets are provided.
  - B. Determine also whether the light fixtures, floor and wall outlets are properly grounded and covered.
8. Refusal Disposal and insect and Rodent Control - Determine the type, number, locations and conditions of refuse disposal containers, and whether there are any infestations of animal or insect vectors or pests.
9. First Aid Facilities - Determine whether adequate first-aid facilities are available and maintained for emergency treatment.
- h. **DIMENSIONS** - The relevant dimensions and ratios specified in §1910.142 are mandatory; however, CSHOs may exercise discretion to not cite minor variations from specific

dimensions and ratios when such violations do not have an immediate or direct effect on safety and health. In those cases in which the standard itself does not refer to specific dimensions or ratios but instead uses adequacy as the test for the cited conditions and facilities, the District Manager shall make the determination as to whether a violation exists on a case-by-case basis considering all relevant factors.

- i. **DOCUMENTATION FOR HOUSING INSPECTIONS** - The following facts shall be carefully documented:
  1. The age of the dwelling unit, including any additions. For recently built housing, date the construction was started.
  2. Number of dwelling units, number of occupants in each unit.
  3. Approximate size of area in which the housing is located and the distance between dwelling units and water supply, toilets, livestock and service building.
- j. **CONDITION OF EMPLOYMENT** - The Act covers only housing that is a term and condition of employment. Factors in determining whether housing is a term and condition of employment include situations where:
  1. Employers require employees to live in the housing.
  2. The housing is in an isolated location or the lack of economically comparable alternative housing makes it a practical necessity to live there.
  3. Additional factors to consider in determining whether the housing is a term and condition of employment include, but are not limited to:
    - A. Cost of the housing to the employee – is it provided free or at a low rent?
    - B. Ownership or control of the housing – is the housing owned or controlled or provided by the employer?
    - C. Distance to the worksite from the camp, distance to the worksite from other non-camp residences – is alternative housing reasonably accessible (distance, travel, cost, etc.) to the worksite?
    - D. Benefit to the employer -- does the employer make the camp available in order to ensure that the business is provided with an adequate supply of labor?
    - E. Relationship of the camp occupants to the employer – are those living in the camp required to work for the employer upon demand?

## Chapter 13

### FEDERAL AGENCY SAFETY AND HEALTH PROGRAMS

FEDERAL AGENCY PROGRAMS – FEDERAL OSHA ONLY

## Chapter 14

### HEALTH INSPECTION ENFORCEMENT PROGRAMS

HEALTH ENFORCEMENT PROGRAMS [Reserved]



## Chapter 15

### LEGAL ISSUES

#### 1. ADMINISTRATIVE SUBPOENAS

- a. **WHEN TO ISSUE** - An Administrative Subpoena may be issued whenever there is a need for records, documents, testimony, or other supporting evidence necessary for completing an inspection or an investigation of any matter falling within NVOSHA's authority.
1. The Administrator has the authority to issue subpoenas, and hereby delegates to the Chief Administrative Officer, Division Counsel, and District Managers the authority to issue routine administrative subpoenas.
  2. The issuance of an administrative subpoena requires the signature of the District Manager, Chief Administrative Officer, or Division Counsel.
  3. NRS 618.325 – Powers of Administrator and representatives; entry and inspection of places of employment.

The Administrator and his representatives appointed under this chapter shall act with full power and authority to carry out and enforce the orders, standards, and policies fixed by the Division, and for the purposes, set forth in this chapter may:

- Certify to official acts;
- Take depositions;
- Issue subpoenas;
- Compel the attendance of witnesses; and
- Compel the production of books, papers, records, documents and testimony.

- b. **TWO TYPES OF SUBPOENAS** - There are two types of subpoenas used to obtain evidence during an NVOSHA investigation:
1. A *Subpoena Duces Tecum* is used to obtain documents. It orders a person or organization to appear at a specified time and place and produce certain documents, and to testify to their authenticity. Employers are not required to create a new record in order to respond to these types of subpoenas.
  2. A *Subpoena Ad Testificandum* commands a named individual or corporation to appear at a specified time and place, such as the District Office, to provide testimony under oath. A verbatim transcript is made of this testimony.
- c. **CHIEF ADMINISTRATIVE OFFICER, DISTRICT MANAGER AND DIVISION COUNSEL DELEGATED AUTHORITY TO ISSUE ADMINISTRATIVE SUBPOENAS**
1. The Chief Administrative Officer, District Managers and Division Counsel are delegated authority to issue administrative subpoenas for any record or document relevant to an inspection or investigation under the Act, including:

- A. Injury and illness records such as the OSHA-301 and the OSHA-300 See [CPL 02-02-072, Rules of Agency Practice and Procedure Concerning OSHA Access to Employee Medical Records](#), dated August 22, 2007, and 29 CFR 1913.10(b)(6);
  - B. Hazard communication program;
  - C. Lockout/tagout program;
  - D. Safety and health program: and
  - E. Safety and health training documentation.
2. Information shall be requested from the employer or holder of records, documents, or other information-containing materials.
- A. If this person/entity refuses to provide requested information or evidence, the NVOSHA representative shall explain the reason for the request.
  - B. If there is still a refusal to produce the information or evidence requested, the NVOSHA representative shall inform the person/entity that the Division may take further legal action.
3. The official issuing the subpoena is responsible for evaluating the circumstances and deciding whether to issue a subpoena. In cases when it is not clear whether to issue a subpoena, Division Counsel should be contacted for concurrence on whether the subpoena should be issued.
- d. **CHIEF ADMINISTRATIVE OFFICER, DISTRICT MANAGERS, AND DIVISION COUNSEL AUTHORITY TO ISSUE SUBPOENAS**
- The Chief Administrative Officer, District Managers, and Division Counsel have authority to issue subpoenas for any appropriate purpose.
- 1. Issuance of a *Subpoena Ad Testificandum* to require the testimony of any company official, employee, or other witness;
  - 2. Issuance of a subpoena for the production of personally identifiable medical records for which a medical access order has been obtained See [CPL 02-02-072, Rules of Agency Practice and Procedure Concerning Federal OSHA Access to Employee Medical Records](#), dated August 22, 2007, and §1913.10(b)(6); and
  - 3. Issuance of a subpoena for the production of physical evidence, such as samples of materials.
- e. **ADMINISTRATIVE SUBPOENA CONTENT AND SERVICE**
- 1. Division Counsel provides model administrative subpoenas for use by the District Offices. If the District Manager believes that there is reason for any departure from the models due to circumstances of the case, the Division Counsel shall be consulted.
  - 2. The subpoena shall be prepared for the appropriate party and will normally be served by personal service (delivery to the party named in person). Leaving a copy at a place of business or residence is not personal service.
    - A. In exceptional circumstances, service may be by certified mail with return receipt requested.

- B. Where no individual's name is available, the subpoena can be addressed to a business or organization's "Custodian(s) of Records."
- 3. Examples of language for a routine *Subpoena Duces Tecum* are provided below. This language should be expanded when requesting additional or more detailed information for accident, catastrophe, referral, or fatality investigations.
  - A. "Copies of any and all documents, including information stored electronically, which reflect training procedures for the lockout/tagout procedures and hazard communication program in effect at the [insert site name] in [insert city, state], during the period [insert month/day/year], to present."
  - B. "Copies of the OSHA-300 and the OSHA-301 forms, for the entire site, during calendar years [insert year] and [insert year]."
  - C. "Copies of any and all documents, including information stored electronically, such as safety and health program handbooks, minutes of safety and health meetings, training certification records, audits and reprimands for violations of safety and health rules by employees of the [insert site name] in [insert city, state], that show [insert employer's name] had and enforced safety rules relating to the use of trench boxes during the period [insert month/day/year], to present."

NOTE: Where particular information is being sought, a subpoena's description should be narrow and specific in order to increase the likelihood for prompt compliance with the request.

- 4. A copy of the subpoena, signed by the District Manager, shall also be maintained at the District Office.

The District Managers shall establish procedures to track all administrative subpoenas issued. These procedures shall include instructions for completing the return of service.

- f. **COMPLIANCE WITH THE SUBPOENA** - The person/entity served may comply with the subpoena by making the information or evidence available to the compliance officer immediately upon service, or at the time and place specified in the subpoena.
  - 1. With respect to any record required to be made or kept per any statute or regulation, the subpoena shall normally allow five working days from the date of service for production of the required information although a shorter period may be appropriate.
  - 2. With respect to other types of records or information, such as safety programs or incident reports, the subpoena shall normally allow at least five working days from the date of service for production of the required information.
  - 3. Separate subpoenas for items 1 and 2 above may be necessary.
  - 4. Any witness fees or mileage costs potentially associated with administrative subpoenas should be discussed with the Division Counsel prior to the issuance.
- g. **REFUSAL TO HONOR SUBPOENA**
  - 1. If the person/entity served refuses to comply with (or only partially honors) the subpoena, the compliance officer shall document all relevant facts and advise the District Manager before taking further action.

2. To enforce a subpoena, the District Manager shall follow the procedures outlined for *obtaining warrants*, and shall refer the matter, to the Division Counsel for appropriate action.

- h. **ANTICIPATORY SUBPOENA** - Generally, Division policy is to seek voluntary production of evidence before an administrative subpoena is issued. However, a subpoena may be executed and served without making a prior request where there is reason to believe that the corporate entity and/or person from whom information is sought will not voluntarily comply, or where there is an urgent need for the information. Anticipatory subpoenas require consultation with Division Counsel.

NOTE: For example, pre-inspection preparation of subpoenas for issuance at the opening conference is appropriate in cases where the employer has previously denied access to records or where complex inspections, involving extensive review of records, are planned.

## 2.SERVICE OF SUBPOENA ON NVOSHA PERSONNEL

- a. **PROCEEDINGS TO WHICH THE NVOSHA IS A PARTY** - If any NVOSHA personnel are served with a subpoena or order either to appear or to provide testimony in, or information for, a proceeding where the NVOSHA is a party, they shall immediately contact the Division Counsel for instructions regarding the manner in which to respond. If a CSHO is served with a subpoena, they shall notify the District Manager immediately who shall then refer the matter to the Division Counsel.

NOTE: Review Board rules provide that any person served with a subpoena, whether to testify in any Review Board hearing or to produce records and testify in such hearing shall, within five days after date of service, move to revoke the subpoena if the person does not intend to comply with its terms. (NAC 618.791) Therefore, expeditious handling of any subpoena served on NVOSHA employees is essential. When any such subpoena is served, the Division Counsel must immediately be notified by telephone or email.

- b. **PROCEEDINGS TO WHICH THE NVOSHA IS NOT A PARTY**
1. If any NVOSHA personnel are served with a subpoena or order either to appear or to provide testimony in, or information for, a proceeding to which the NVOSHA is not a party (i.e., a private third party tort suit for damages associated with a workplace injury), they shall immediately contact the Division Counsel.
  2. The Division Counsel is responsible for responding to such requests and will take appropriate steps to have the subpoena quashed or provide the necessary permission, as appropriate, to allow an employee to comply with an issued order.

## 3.OBTAINING WARRANTS

- a. **WARRANT APPLICATIONS**
1. Upon refusal of entry, or if there is reason to believe an employer will refuse entry, the District Manager may initiate the compulsory process with approval of the Division Counsel. Warrant applications should be processed as rapidly as circumstances allow to preserve the integrity of the inspection process.
  2. Warrant applications for establishments where consent has been denied for a limited scope inspection (i.e., complaint, referral, and accident investigation) shall normally be

limited to the specific working conditions or practices forming the basis of the inspection. However, a broad scope warrant may be sought if there is evidence of potentially pervasive violative conditions or if the establishment is on a current list of establishments targeted for a comprehensive inspection.

- b. **GENERAL INFORMATION NECESSARY TO OBTAIN A WARRANT** - The District Manager shall consult with the Division Counsel to determine if a warrant is appropriate. When the decision is made to obtain a warrant, provide appropriate information to Division Counsel including:
1. District Office, telephone number, and name of District Manager or designee involved;
  2. Name of CSHO attempting inspection and the inspection number, if assigned Identify whether the inspection to be conducted will include safety items, health items or both;
  3. Legal name(s) of establishment and address, including City, State, and County Include site location if different from mailing address;
  4. Estimated number of employees at inspection site;
  5. Standard Industrial Classification (SIC) or North American Industry Classification System (NAICS) Code and high hazard ranking for that specific industry within the State, as obtained from statistics provided by the National Office;
  6. Summary of all facts leading to the refusal of entry or limitation of inspection, including:
    - A. Date and time of entry/attempted entry;
    - B. Date and time of denial;
    - C. Stage of denial (entry, opening conference, walkaround, etc.);
  7. A narrative of all actions taken by the CSHO leading up to, during, and after refusal, including:
    - A. Full name and title of the person(s) to whom CSHO presented credentials;
    - B. Full name and title of person(s) who refused entry;
    - C. Reasons stated for the denial by person(s) refusing entry;
    - D. Response, if any, by CSHO to the denial name and address (if known) of any witnesses to denial of entry.
  8. Any information related to past inspections, including copies of previous citations.
  9. Any previous requests for warrants, attach details, if applicable.
  10. All completed information related to the current inspection report, including documentation of any observations of violations in plain view discovered prior to denial.
  11. If a construction site involving work under contract from any agency of the Federal Government, the name of the agency, the date of the contract, and the type of work involved.

12. Other pertinent information, such as the description of the workplace; the work processes; machinery, tools and materials used; known hazards and injuries associated with the specific manufacturing process or industry.
  13. Investigative procedures that may be required during the proposed inspection, i.e., interviewing of employees/witnesses, personal sampling, photographs, audio/Video Recordings, examination of records, access to medical records, etc.
- c. **SPECIFIC WARRANT INFORMATION BASED ON INSPECTION TYPE** - Document all specific reasons for the selection of the establishment to be inspected, including proposed scope of the inspection:
1. Imminent Danger
    - A. Description of alleged imminent danger situation;
    - B. Date information received and source of information;
    - C. Original allegation and copy of typed report, including basis for reasonable expectation of death or serious physical harm and immediacy of danger; and
    - D. Whether all current imminent danger investigative procedures have been followed.
  2. Fatality/Catastrophe - The OSHA-36 Form should be completed with as much detail as possible.
  3. Complaint or Referral
    - A. Original complaint or referral and copy of typed complaint or referral;
    - B. Reasons NIOSH believes that a violation threatening physical harm or imminent danger exists, including possible standards that could be violated if the complaint or referral is credible and representative of workplace conditions;
    - C. Whether all current complaint or referral processing procedures have been followed; and
    - D. Any additional information pertaining to the evaluation of the complaint or referral.
  4. Programmed
    - A. Targeted safety – general industry, maritime, construction;
    - B. Targeted health; and/or
    - C. Special emphasis program--Special Programs, Local Emphasis Program, Migrant Housing Inspection, etc.
  5. Follow-Up
    - A. Date of initial inspection;
    - B. Details and reasons follow-up was conducted;
    - C. Copies of previous citations which served as the basis for initiating the follow-up;
    - D. Copies of settlement agreements and final orders, if applicable; and/or
    - E. Previous history of failure to correct, if any.

6. Monitoring
  - A. Date of original inspection;
  - B. Details and reasons monitoring inspection is to be conducted;
  - C. Copies of previous citations and/or settlement agreements that serve as the basis for the monitoring inspection; and/or
  - D. Petition for Modification of Abatement Date (PMA) request, if applicable.
- d. **WARRANT PROCEDURES** - Where a warrant has been obtained, CSHOs are authorized to conduct the inspection in accordance with the terms of the warrant. Refer all questions from employers concerning the reasonableness of a compulsory process inspection to the District Manager and the Division Counsel.
  1. Action Taken upon receipt of Warrant (Compulsory Process)
    - A. The inspection will normally begin as soon as possible but not later than 24 hours of receipt of a warrant or from the date authorized by the warrant for initiating the inspection.
    - B. Upon completion of the inspection, if the warrant includes a return of service space for entering inspection dates, CSHOs shall complete the return of service on the original warrant, sign and forward it to the District Manager or designee for appropriate action.
  2. Serving a Subpoena for Production of Records - Where appropriate, even where the scope of an inspection is limited by a warrant or an employer's consent to specific conditions or practices, any subpoena for production of records shall be served in accordance with the section on administrative subpoenas in this chapter.
- e. **SECOND WARRANT** - Under certain circumstances, a second warrant may be sought to expand an inspection based on a records review or "plain view" observations of other potential violations discovered during a limited scope walkaround.
- f. **REFUSED ENTRY OR INTERFERENCE**
  1. When an apparent refusal to permit entry or inspection is encountered upon presenting the warrant, CSHOs shall specifically inquire whether the employer is refusing to comply with the warrant.
  2. If the employer refuses to comply or if consent is not clearly given, CSHOs shall not attempt to conduct the inspection at that time, and shall leave the premises and contact the District Manager or designee regarding further action.
    - A. CSHOs shall fully document all facts relevant to the refusal (including noting all witnesses to the denial of entry or interference).
    - B. District Managers shall then contact the Division Counsel and the Chief Administrative Officer, who shall jointly decide the action to be taken.
- g. **LAW ENFORCEMENT ASSISTANCE** - When serving a warrant, CSHOs shall be accompanied by sworn law enforcement officers. The CSHO shall coordinate with



municipal, county or state law enforcement agencies as appropriate to the location and jurisdiction of the location to be inspected.

**4. NOTICE OF CONTEST** - The Occupational Safety and Health Review Board is an independent agency appointed by the governor to decide contests of citations or penalties resulting from NVOSHA inspections. The Review Board, therefore, functions as an administrative court, with established procedures for conducting hearings, receiving evidence and rendering decisions. The Act states that the Review Board operate as an independent agency (i.e., not part of another State or Division department) to ensure that parties to agency cases receive impartial hearings.

***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 per 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.*

The Board conducts its activities under the Rules of Practice of the Occupational Safety and Health Review Board in NAC 618.650 - 618.848.

**a. TIME LIMIT FOR FILING A NOTICE OF CONTEST**

1. The Act provides employers fifteen working days following its receipt of a notice of a citation to notify NVOSHA of the employer's desire to contest a citation and/or proposed assessment of penalty.
2. Where a notice of contest was not mailed, i.e., postmarked, within the 15 working day period allowed for contest, Division Counsel shall follow the instructions for Late Notices of Contest. A copy of any untimely notice of contest shall be retained in the case file.

**b. CONTEST OF ABATEMENT PERIOD ONLY** - If the notice of contest is submitted to the District Manager after the 15 working day period, but contests only the reasonableness of the abatement period, it shall be treated as a Petition for Modification of Abatement and handled in accordance with PMA procedures.

**c. COMMUNICATION WHERE THE INTENT TO CONTEST IS UNCLEAR**

1. If a written communication is received from an employer containing an objection, criticism or other adverse comment as to a citation or proposed penalty, but which does not clearly appear to contest the citations, the District Manager shall contact the employer to clarify the intent of the communication.

After receipt of the communication, any clarification should be obtained within the 15 working day contest period, so that if a determination is made that it is a notice of contest, the file may be timely forwarded to the Review Board.

NRS 618.605(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. If a District Manager determines that the employer intends the document to be a notice of contest, it shall be transmitted to Division Counsel. If contact with the employer reveals a desire for an informal conference, the employer shall be informed that the conference does not stay the running of the 15 working day contest period.

NOTE: Settlement is permitted at any stage of Review Board proceedings.

#### 5.LATE NOTICE OF CONTEST

- a. **FAILURE TO NOTIFY NVOSHA OF INTENT TO CONTEST** - If the employer fails to notify NVOSHA of its intent to contest a citation or penalty within 15 working days following the receipt of a citation, the citation and proposed penalties become final orders of the Review Board.
- b. **NOTICE RECEIVED AFTER THE CONTEST PERIOD** - In every case where NVOSHA receives notice of an employer’s intent to contest a citation and/or proposed assessment of penalty beyond the 15 working day period, the District Managers shall inform employers that the case is now a final order of the Review Board.
- c. **RETENTION OF DOCUMENTS**
  1. District Offices shall maintain all documents reflecting the date on which the employer received the proposed penalty, and the employer’s notice of contest was received, as well as any additional information pertinent to demonstrating failure to file a timely notice of contest.
  2. Written or oral statements from the employer or its representative explaining the employer’s reason for missing the filing deadline shall also be maintained (notes shall be taken to memorialize oral communications).

#### 6.CONTESTED CASE-PROCESSING PROCEDURES

**NAC 618.6485 -**

*1. An employer’s notice of his intention to contest a citation or proposed penalty must:*

- (a) Be in writing;*
- (b) Be filed with the district manager; and*
- (c) Specify whether it is directed to:*

- (1) The citation; or*
- (2) The proposed penalty, or both.*
- 2. A notice by an employee or the representative of the employees of his or their intention to contest the reasonableness of the period allowed for abatement of a violation must be:*
  - (a) In writing; and*
  - (b) Filed with the district manager.*
- 3. The district manager shall immediately transmit a notice of contest to the Chief.*
- 4. The Chief will have any such notice of contest filed with the Board.*

**NAC 618.746 -**

- 1. The Chief shall file a complaint with the Board no later than 20 days after his 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 his complaint to amend his citation or proposed penalty, he shall give the reasons for amendment and state with particularity the change sought.*

**NAC 618.749 -**

- 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.*

**NRS 618.605 -**

- 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.*

**a. TRANSMITTAL OF NOTICE OF CONTEST TO REVIEW BOARD**

NAC 618.719 - All relevant documents must be sent to the Board with the notice of appeal or contest.

1. Documents to Review Board -In most cases, the envelope sent to the Review Board will contain the following three documents:
  - A. Employer's original letter contesting OSHA's action;
  - B. One copy of the Citation and Notification of Penalty Form (OSHA-2) or of the Notice of Failure to Abate Form (OSHA-2B); and
  - C. Certification form.
2. Notices of Contest - The original notice of contest shall be transmitted to the Review Board and a copy retained in the case file. The envelope containing the notice of contest shall be retained in the case file with the postmark intact.
3. Contested Citations and Notice of Proposed Penalty or Notice of Failure to Abate - A signed copy of each of these documents shall be sent to the Review Board and a copy retained in the case file.
4. Contest Checklist
  - A. Contest Checklist form shall be used for all contested cases and a copy retained in the case file.
  - B. The Review Board will notify family members of victims and the employer of the hearing date and other official actions on the case.

**b. TRANSMITTAL OF FILE TO DIVISION COUNSEL – NAC 618.746**

1. The Chief shall file a complaint with the Board no later than 20 days after his 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 his complaint to amend his citation or proposed penalty, he shall give the reasons for amendment and state with particularity the change sought.
4. Under the Review Board's Rules of Procedure, Division Counsel is required to file a complaint with the Review Board within 20 calendar days after NVOSHA's receipt of a notice of contest.
5. Immediately after receiving a notice of contest, the District Manager shall send the notice of contest to the CAO. The District Manager will have a copy of the entire case file made, with original digital photographs attached to the copied citation worksheets. The case file shall be provided to Division Counsel within 15 calendar days after receipt of a notice of contest file (including photos and video) to the Division Counsel. Division Counsel will then forward necessary copies to the Review Board.

## **7.COMMUNICATIONS WHILE PROCEEDINGS ARE PENDING BEFORE THE REVIEW BOARD**

### **a. CONSULTATION WITH DIVISION COUNSEL**

1. After a notice of contest is filed and the case is within the jurisdiction of the Review Board, there shall be no subsequent investigations of, or conferences with, the employer or employee representatives that have sought party status relating to any issues underlying the contested citations, without prior clearance from the Division Counsel.
2. Once a notice of contest has been filed, all inquiries relating to the Citation and Notification of Penalty shall be referred promptly to the Division Counsel. This includes inquiries from the employer, affected employees, employee representatives, prospective witnesses, insurance carriers, other Government agencies, attorneys, and any other party.

### **b. COMMUNICATIONS WITH REVIEW BOARD REPRESENTATIVES WHILE PROCEEDINGS ARE PENDING BEFORE THE REVIEW BOARD - CSHOs, District Managers, the CAO, or the Administrator, or other field personnel shall not have any direct or indirect communication relevant to the merits of any open case with employees of the Review Board, or any of the parties or interveners. All inquiries and communications shall be handled through the Division Counsel.**

### **c. DEPOSITION AND TESTIMONY CSHOs should be aware that they might be deposed and/or examined at hearing on the interrogatory answers provided.**

### **d. PRODUCTION OF DOCUMENTS**

1. If a request for production of documents is served on Division Counsel and that request is forwarded to the District Office CSHOs, or staff member, they should immediately make all documents relevant to that discovery demand available to the Division Counsel.
2. While portions of those materials may be later withheld based on governmental privileges or doctrine (i.e., statements that would reveal the identity of an informer), CSHOs must not withhold any information from the Division Counsel.
3. It is Division Counsel's responsibility to review all material and to assert any applicable privileges that may justify withholding documents/ materials that would otherwise be discoverable.

- e. **DEPOSITIONS** - Depositions permit an opposing party to take a potential witness' pre-hearing statement under oath in order to better understand the witness's potential testimony if the matter later proceeds to a hearing. CSHOs or other NVOSHA personnel may be required to offer testimony during a deposition. In such cases, a Division Counsel attorney will be present with the witness.

8. **TESTIFYING IN HEARINGS** - While instructions provided by Division Counsel Attorneys take precedence, particularly during trial preparation, the following considerations will generally enhance the hearing testimony of CSHOs:

- a. **REVIEW DOCUMENTS AND EVIDENCE** - In consultation with Division Counsel, CSHOs should review documents and evidence relevant to the inspection or investigation before the proceeding so that when testifying, they are very familiar with the evidence and need not regularly refer to the file or other documents.
- b. **ATTIRE** - Wear appropriate clothing that reflects the Division's respect for the court or other tribunal before which you are testifying. This also applies when appearing before a magistrate to seek an administrative warrant.
- c. **RESPONSES TO QUESTIONS** - Answer all questions directly and honestly. If you do not understand a question, indicate that and ask that the question be repeated or clarified.
- d. **REVIEW BOARD INSTRUCTION(S)** - Listen carefully to any instruction provided by the Review Board and, unless instructed to the contrary by Division Counsel, follow the Review Board instruction.

#### 9. CITATION FINAL ORDER DATES

- a. **CITATION/NOTICE OF PENALTY NOT CONTESTED** - The Citation/Notice of Penalty and abatement date becomes a final order of the Review Board on the date the 15 working day contest period expires. For purposes of computing the 15 working day period, the day the employer receives the citation is not counted.

Example 15-1: An employer receives the Citation/Notice of Penalty on Monday, August 4th. The day the employer receives the Citation/Notice of Penalty is not counted. Therefore, the final order date would be Monday, August 25th.

- b. **CITATION/NOTICE OF PENALTY RESOLVED BY INFORMAL SETTLEMENT AGREEMENT (ISA)** - Because there is no contest of the citation, an ISA becomes final, with penalties due and payable, on the date of the last signature of the parties. See also Chapter 8, (An ISA is effective upon signature by both the District Manager and the employer representative as long as the contest period has not expired).

NOTE: A later due date for payment of penalties may be set by the terms of the ISA.

- c. **CITATION/NOTICE OF PENALTY RESOLVED BY FORMAL SETTLEMENT AGREEMENT (FSA)** - The Citation/Notice of Penalty becomes final 30 days after docketing of the Review Board's Order approving the parties' stipulation and settlement agreement, assuming there is no direction for review. The Review Board's Notice of Docketing specifies the date upon which the decision becomes a final order. If the FSA is approved by an order of the full Review Board, it will become final after 60 days.

- d. **REVIEW BOARD DECISION REVIEW BY COURT** - The County District Court' or Nevada Supreme Court decision becomes final when the court issues its mandate or decision.



## Chapter 16

### DISCLOSURE UNDER THE NEVADA OPEN RECORDS LAW

**1.DISCLOSURE-** Certain records maintained by NVOSHA pertaining to agency activities are public records as defined by NRS 239. Disclosure of public records maintained by the agency shall be in accordance with the requirements of NRS 239 and NRS 618.341 and NRS 618.425

**2.PROCEDURES-** The District Offices maintain specific procedures for fulfilling open records requests. In all cases, District Office personnel shall comply with the guidance found in the most current revision of the [Nevada Public Records Act Manual for State Agencies](#).

## Chapter 17

# PUBLIC EMPLOYERS OCCUPATIONAL SAFETY AND HEALTH PROGRAMS

1. **PURPOSE** - The purpose of the public employers' safety program is to reduce occupational injuries and illnesses among employees of public employers within Nevada. The Governor of Nevada assigned NVOSHA as the designated agency to administer the Nevada Occupational Safety and Health Act of 1973. In accepting this responsibility, the Chief Administrative Officer (CAO) of NVOSHA intends to assist and support all state, city, and county governmental agencies in planning and developing safety programs designed to reduce the likelihood of accidents in these agencies.
2. **SCOPE** - Programs are created to serve and protect state and other governmental employees. The federal occupational Safety and Health Act and parallel state legislation (NRS Chapter 618) greatly expand the NVOSHA CAO's responsibility for the safety of state government employees. While there are basic differences between public and private employers as covered in the Act, these differences merge and become negligible when we consider their employees. A public employee is now entitled to the same protection as an employee in a private company.
3. **POLICY**
  - a. **COMPLAINTS** - The same as private employers
  - b. **COVERAGE** - NVOSHA has been qualified to administer the federal Occupational Safety and Health Act in the State of Nevada. One prerequisite for this qualification is that the state include in its plan, a program that will assure a safety and health plan for all employees of public agencies of the state and its political subdivisions. The program must be as fully effective as that provided for private industry, but the public program must not extend beyond what is permitted by state law. Penalties may be assessed for public agencies.
  - c. **INSPECTIONS**
    1. NVOSHA will conduct inspections of public employers. These inspections will include general schedule inspections, complaint investigations, and accident investigations. During these inspections, the same criteria will be followed with regard to format as is followed for a private employer. The inspection will include an opening conference, the inspection, employee involvement, and a closing conference. The primary difference between a public employer and a private employer will be as follows:
      - A. Penalties will be proposed to public employers for serious violations only. Penalties will be calculated using the same formula as for private employers with one exception. To avoid a problem as to whether the responsibility is departmentwide, divisionwide or divided by sections, credit for size will be based on the number of employees frequently exposed to a violation.

- B. Any hazard which has been identified by a public employer and abatement scheduled will be included in the citation; however, the abatement date may be as suggested by the employer.
  - C. Abatement periods will generally be longer for a public employer.
2. The closing conference will be as outlined in private employers. The CSHO should explain the Division is not currently proposing nonserious violation penalties for public employers. The employer should be made aware; however, this is an administrative decision, which can be changed. Also during the closing conference, the CSHO should explain the availability of consultation staff to assist the employer in meeting these requirements.
  3. In determining abatement dates, the CSHO and District Manager should consider such facts as budget restrictions and delays in purchasing through competitive bids. Any hazard, which a public employer can show evidence, has been recognized through the employer's own program, and corrective action has been taken, or abatement is in progress; will be noted by the CSHO. These items will be included on the citation; however, abatement dates provided by the employer will be accepted if they are not totally out of line with normally established abatement dates for public employers. This should be explained at both the opening and closing conference.
  4. Scheduling of public employers will include all of those areas covered as private employers. This includes responding to complaints, charges of discrimination, catastrophe, and/or fatality investigations. In addition, the District Manager will schedule some random inspections in public agencies. Particular attention will be given in scheduling to those employers who are not meeting NVOSHA criteria. Past monitoring data will be used to determine these employers. Scheduling will be such that approximately 5% of the total inspections in a District will be conducted in public agencies. This is only a goal. It is recognized that District Offices do not schedule complaints and accident investigations, which may vary the percentage.
  5. The same procedure used for private employers in issuing citations and requiring abatement will be used for public employers.

#### **4.NEVADA REVISED STATUTES, CHAPTER 618**

- a. The Nevada Occupational Safety and Health Act of 1973 (NRS Chapter 618) authorizes adoption, development and enforcement of standards to assure safe and healthful working conditions for employees in the public sector. NRS 618.195 also makes each agency head responsible for establishing and maintaining an effective and comprehensive voluntary compliance program for employees consistent with the standards adopted or promulgated by the CAO of NVOSHA and consistent with the provisions of the Act. A voluntary compliance program does not replace the NVOSHA enforcement effort in public agencies.
- b. It shall be the responsibility of each administrative department, commission, board, division or other agency of the state and of counties, cities, towns, and subdivisions of government to establish and maintain an effective and comprehensive occupational safety and health program, which is consistent with the standards and regulations adopted under the Act. The head of each agency shall:

1. Assign a qualified person to develop and to be in charge of the agency's safety program.
2. Develop a safety plan to include a program of self-administration of voluntary compliance with OSHA standards in cooperation with NVOSHA.
3. Provide safe and healthful places and conditions of employment consistent with the standards and regulations required by the Act.

**REFERENCE:**

*NRS 618.195 State agencies and local governments to establish safety and health programs and comply with standards*

*1. Each state agency and local government shall establish and maintain an effective and comprehensive occupational safety and health program consistent with the provisions promulgated under this chapter.*

*2. The state and local governments shall provide their employees with conditions of employment consistent with the objectives of this chapter, and comply with standards developed under NRS 618.295.*

## CHAPTER 18

### WRITTEN SAFETY AND HEALTH PROGRAM (WSP)

#### 1. WSP, NRS 618.383, NAC 618.538, NAC 618.540, AND NAC 618.542

- a. The employer shall establish a WSP and carry out the requirements of the program within 90 days after it is established with the following exceptions - An employer who has 10 or fewer employees is exempt from establishing a WSP unless the employees manufacture explosives. An employer in the mining industry is not a manufacturer of explosives.
- b. An employer who enters into business in the State of Nevada after May 18, 1994, shall, within 60 days after the date on which his or her eleventh employee is hired in this State, establish a WSP in accordance with NRS 618.383 and NAC 618.538 to 618.544, inclusive.
- c. In lieu of establishing a WSP in accordance with NAC 618.540(1) & (2), an employer may establish an equivalent WSP if the employer obtains the approval of the Administrator.
- d. Explosives
  1. Explosives are:
    - A. Gunpowders
    - B. Powders used for blasting
    - C. All forms of high explosives
    - D. Blasting materials
    - E. Fuses other than electric circuit breakers
    - F. Detonators and other detonating agents
    - G. Smokeless powders
    - H. Other explosive or incendiary devices and any chemical compound, mechanical mixture or device that contains any oxidizing and combustible units, or other ingredients, in such proportions, quantities or packing that ignition by fire, friction, concussion, percussion or detonation of the compound, mixture or device or any part thereof may cause an explosion
  2. Explosives does not include:
    - A. Ammunition for small arms, or any component thereof;
    - B. Black powder commercially manufactured in quantities that do not exceed 50 pounds, percussion caps, safety and pyrotechnic fuses, quills, quick and slow matches, and friction primers that are intended to be used solely for sporting, recreation or cultural purposes:
      - i. In an antique firearm, as that term is defined in 18 U.S.C. § 921(a)(16), as that section existed on January 1, 1999; or

- ii. In an antique device which is exempted from the definition of “destructive device” per 18 U.S.C. § 921(a)(4), as that section existed on January 1, 1999; or
- iii. Any explosive that is manufactured under the regulation of the U.S. military or that is distributed to, or possessed or stored by, the military or naval service or any other agency of the United States, or an arsenal, a navy yard, a depot or any other establishment owned by or operated on behalf of the United States.

e. **THE WSP MUST INCLUDE:**

1. A statement explaining that the managers, supervisors and employees are responsible for carrying out the program
2. An explanation of the methods used to identify, analyze and control new and existing hazardous conditions
3. The procedures that must be followed to investigate an accident which has occurred and the corrective actions that are to be initiated
4. A method for ensuring that employees comply with the safety rules and work practices
5. Training – An explanation of the methods used to ensure that employees receive the appropriate safety and health training before performing their work duties.
  - A. A workplace safety-training program for employees, particularly in those areas where there have been recurring injuries or where explosives are manufactured.
  - B. The WSP and all training programs must be conducted and made available in a language and format that is understandable to each employee (especially if English, Spanish, etc., is not their first language).
  - C. An employer who contracts with a temporary employment service shall provide specialized training concerning safety for the employees of the service before they begin work at each site or as soon as possible thereafter.
  - D. Written Records – The employer shall keep written records of the attendance of employees participating in the training program. These records will be maintained for 3 years and available for review by NVOSHA upon request.
6. Safety Committee - If an employer has more than 25 employees, or employees manufacture explosives, the employer must establishment a safety committee.
  - A. The Safety Committee section of the WSP will include:
    - i. The manner in which members of the committee are selected.
    - ii. The purpose and duties of the committee.
    - iii. The frequency of the meetings of the committee.
    - iv. A representative(s) of the employees.
      - If the employees are represented by a labor organization, the representatives must be selected by the employees and not appointed by the employer.

- The employee representative(s), while engaging in the business of a safety committee including attendance at meetings, authorized inspections, or any other activity of the committee, must be paid by their employer as if that employee were engaged in the employee's usual work activities.

B. Written Records - The employer shall keep written records of the safety and health issues discussed, and of persons attending, the safety committee meetings. These records will be maintained for 3 years and available for review by NIOSHA upon request.

## 2. RIGHTS AND RESPONSIBILITIES, NRS 618.376 AND NAC 618.544

- a. Every employer shall, upon hiring an employee, provide the employee with a document or videotape setting forth the rights and responsibilities of employers and employees to promote safety in the workplace.
  1. The document, or evidence of receipt of the videotape, must be signed by the employer and employee and placed in the employee's personnel file.
  2. The document or videotape shall not be deemed a part of any employment contract.
- b. The contents of the document must conform with "Nevada Workplace Safety: Your Rights and Responsibilities," SCATS Form IE, 0-302.
- c. The contents of the videotape must conform with the "Safety in the Workplace," produced by SCATS.

## 3. EVALUATION AND IMPLEMENTATION OF THE WRITTEN SAFETY AND HEALTH PROGRAM (WSP) - The employer's WSP(s) will be evaluated and reviewed for implementation and content as follows:

- a. **DURING A COMPREHENSIVE INSPECTION:**
  1. If the WSP has never been evaluated, the CSHO will evaluate the WSP program using the WSP Evaluation form, and this Chapter.
  2. If the WSP has been previously evaluated but over five years ago, the CSHO will evaluate the WSP program using the WSP Evaluation form and this Chapter.
  3. If the program was evaluated and reviewed for implementation and content during a prior inspection and deficiencies were found, the CSHO will re-evaluate the deficient portions of the WSP program and ensure implementation was completed.
  4. Other programs – If violations were found during the walkaround, the CSHO will request the applicable program(s) and evaluate and reviewed them for implementation and content, i.e., a fall protection hazard, ask for the fall protection program, procedures, etc.
- b. **DURING A COMPLAINT OR REFERRAL INSPECTION:**
  1. If the complaint or referral includes alleged deficiencies or of a WSP, and/or observed hazards during the walkaround indicate deficiencies with the WSP, the CSHO will review the portions of the program in the deficient areas and ensure implementation.
  2. Other programs related to the complaint/referral alleged hazards, the CSHO will evaluate those program(s) including implementation.



3. If necessary, the CSHO will conduct a full evaluation of the WSP program using the WSP Evaluation form and this Chapter.

c. **DURING A FATALITY OR CATASTROPHE INVESTIGATION:**

1. The CSHO will evaluate the entire WSP program using the WSP Evaluation form, and this Chapter, and implementation.
2. Other programs related to the FAT/CAT, the CSHO will evaluate those program(s) including implementation.
3. Also see Chapter 11

d. **DURING AN ACCIDENT INVESTIGATION**

1. Sections of the WSP applicable to the circumstances surrounding the accident, the CSHO will review only the applicable portions of the program and ensure implementation.
2. If necessary, the CSHO will conduct a full evaluation of the WSP program using the WSP Evaluation form and this Chapter.

#### 4. PROCEDURES

- a. **FORM:** When reviewing the Employer's Written Safety and Health Program, the CSHO must use and record findings on the WSP Evaluation Form.

b. **SAFETY AND HEALTH PROGRAMS AND CITATIONS:**

1. If Safety and Health Program citation(s) will be proposed –
  - A. The CSHO will attach to the Violation Worksheet, the WSP Evaluation Form (if it is a WSP program), the deficient portions of the program, as well as the cover sheet and table of contents. The rest of the program will not be included in the case file and will be returned to the employer.
  - B. The CSHO will note the review of the program in the inspection narrative.
2. If no Safety and Health Program citations will be proposed –
  - A. The CSHO will post the WSP Evaluation Form in Tab 8 of the case file, if applicable. The actual WSP program will not be included in the case file and will be returned to the employer.
  - B. The CSHO will note the review of the program in the narrative
  - C. For programs other than a WSP, the CSHO will document the review of the program(s) in the narrative. Paper copies of the actual program will not be included in the case file and will be returned to the employer. Programs relevant to hazards or violations noted during the inspection are to be scanned and included as an electronic document in the case file.

- c. **NRS 618.376, .383, NAC 618.538, and .540** - The CSHO will also evaluate and ensure the implementation of these statutes and codes.

- d. **EFFECTIVE PROCESS** – To ensure implementation of the employer program(s), the CSHO will:

1. Request the following, as applicable, for review and evaluation, at the employer's place of business or copies taken back to the NVOSHA District Office –
  - A. Safety and health inspections.
  - B. Safety and health disciplinary action.
  - C. Safety committee meeting minutes and attendance records for the past 3 years.
  - D. Employee safety and health training and training materials, to include toolbox safety meetings, tailgate safety forms, safety program / manual, safety talks, new employee safety orientation, job specific safety orientation, and any other safety and health training for the past 3 years.
  - E. Documented employee training and training materials, manuals, procedures, etc., applicable to the work processes, equipment, machinery, operator's manual, for the job tasks being accomplished.
  - F. Preliminary and final written accident reports and corrective measures/action taken to prevent recurrence, long-term corrective action and root causes.
  - G. Reports concerning incidents, accidents, and near misses that are similar in nature to the current accident/incident. Determine if the corrective actions were long lasting and fit the incident.
  - H. Written hazard assessment, certification for personal protective equipment, and job hazard analysis.
  - I. Other written procedures involving the inspection / investigation being conducted.  
Note: If necessary, request other information from the employer to complete the review/evaluation.
2. Employee Interviews –
  - A. Ask about the program(s); have they seen the programs, what do they include, where are the programs located.
  - B. What kind of training have they received, are the program(s) and training taught in a language the employees understands and do the translator(s) understand the information being taught.