Utah Occupational Safety & Health

Field Operations Manual

May 2020

(Version 2)

TABLE OF CONTENTS

Chapter 1
INTRODUCTION

Chapter 2
PROGRAM PLANNING

Chapter 3
INSPECTION PROCEDURES

Chapter 4
VIOLATIONS

Chapter 5
CASE FILE PREPARATION & DOCUMENTATION

Chapter 6
PENALTIES & DEBT COLLECTION

Chapter 7
POST-CITATION PROCEDURES & ABATEMENT VERIFICATION

Chapter 8
SETTLEMENTS

Chapter 9
COMPLAINT & REFERRAL PROCESSING

Chapter 10
INDUSTRY SECTORS

Chapter 11
IMMINENT DANGER, ACCIDENT & EMERGENCY RESPONSE

Chapter 12
SPECIALIZED INSPECTION PROCEDURES

Chapter 13
LEGAL ISSUES

Chapter 1

Introduction

Chapter 1
INTRODUCTION

I. Purpose

To provide the Utah Occupational Safety and Health Division (UOSH) of the State of Utah Labor Commission (Commission) with policy and procedures concerning the enforcement of occupational safety and health standards and to provide current information to ensure occupational safety and health standards are enforced with uniformity.

This Field Operations Manual (FOM) is intended to provide instruction regarding some of the internal operations of UOSH and is solely for the benefit of the State of Utah pertaining to the implementation of the Utah Occupational Safety and Health Act, 34A-6-101 et seq., Utah Code Ann., 1953 as amended (Utah OSH Act).

The contents of this FOM are not enforceable by any person or entity against the Commission or UOSH.

II. Scope

UOSH-wide

III. References

A. Utah Code - Statutes and Constitution

- Title 34A - Utah Labor Code
- Chapter 6 - Utah OSH Act

B. Utah Administrative Code (UAC)

- Title R600 - Labor Commission, Administration
- Title R614 - Labor Commission, Occupational Safety and Health

C. United States Code, The Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) (the Act)

- Code of Federal Regulations (CFR)
- Title 29 - Labor
- Subtitle B - Regulations Relating to Labor
- Chapter XVII - Occupational Safety and Health Administration, (OSHA), Department of Labor

D. Regulations (Standards – 29 CFR)

-Part 1904 Recording and Reporting Occupational Injuries and Illness

-Part 1908 Consultation Agreements

-Part 1910 Occupational Safety and Health Standards

-Part 1926 Safety and Health Regulations for Construction

E. Federal OSHA Directives

- Compliance (CPLs)

- CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriation Act*, May 28, 1998
- CPL 02-00-080, *Handling of Cases to be Proposed for Violation-by-Violation Penalties*, dated October 21, 1990
- CPL 02-00-111, *Citation Policy for Paperwork and Written Program Violations*, dated November 27, 1995
- CPL 02-00-121, *Providing Assistance to Smaller Employers*, March 12, 1998
- CPL 02-00-125, *Home-Based Worksites*, February 25, 2000
- CPL 02-00-135, *Recordkeeping Policies &Procedures Manual*, December 30, 2004
- CPL 02-00-149, *Severe Violator Enforcement Program (SVEP)*, June 18, 2010
- CPL 02-00-152, *Guidelines for Administration of Corporate-Wide Settlement Agreements*, dated June 22, 2011
- CPL 02-00-158, *Inspection Procedures for the Respiratory Protection Standard*, dated June 26, 2014
- CPL 02-01-028, *Compliance Assistance for the Powered Industrial Truck Operator Training Standards*, dated November 30, 2000
- CPL 02-02-035, *29 CFR 1910.95(b)(1), Guidelines for Noise Enforcement; Appendix A*, dated December 19, 1983
- CPL 02-02-079, *Inspection Procedures for the Hazard Communication Standard (HCS 2012)*, dated July 9, 2015
- CPL 03-00-021, *PSM Covered Chemical Facilities National Emphasis Program*, dated January 17, 2017
- CPL 04-00-002, *Procedures for the Approval of Local Emphasis Programs (LEPs*), November 13, 2018

- Cooperative and State Programs (CSPs)

- CSP 02-00-003, *Consultation Policies and Procedures Manual*, November 19, 2015
- CSP 03-01-005, *Voluntary Protection Programs (VPP): Policies and Procedures Manual*, January 30, 2020.

IV. Cancellations

This instruction supersedes the UOSH Field Operations Manual (FOM) issued on February 16, 2017, and the UOSH FOM issued on January 1, 2003. This FOM is designed to be updated on a regular basis by amending chapters or sections thereof to embody modifications and clarifications to UOSH's general compliance policies and procedures.

V. Effective / Amendment Dates

Effective: February 16, 2017
Amended: May 01, 2020

VI. Significant Changes for 2020 Update

- Updated UAC R614-1 references in accordance with new rules which became effective on December 23, 2019.
- Removed requirement to upload documents and pictures into OIS.
- Updated *Enforcement Follow-Up and Monitoring Inspections* in Chapter 2, Section V.C.3.b.
- Updated *Inspection Preparation and Planning* in Chapter 3, Section I.A.
- Updated *Inspection Scope* in Chapter 3, Section II.B.
- Updated *Refusal to Permit Inspection and Interference* in Chapter 3, Section III.C.1.
- Updated *Procedures for an Inspection* in Chapter 9, Section I.G.5.
- Updated *Accident Investigations* in Chapter 11, Section II.D.2.

VII. Acronyms, Definitions and Terminology

AAG - State of Utah Assistant Attorney General

ACGIH - American Conference of Governmental Industrial Hygienists

The Act - The Williams-Steiger Occupational Safety and Health Act of 1970 (29 U.S.C. § 651 et seq.)

Adjudication - State of Utah Labor Commission Adjudication Division

AG - State of Utah Attorney General

ALJ - Administrative Law Judge

ANSI - American National Standards Institute

Assistant Secretary - Assistant Secretary of Labor for the Occupational Safety and Health Administration

AVD - Alleged Violation Description

BLS - Bureau of Labor Statistics

CFR - Code of Federal Regulations

Citation - Citation and Notification of Penalty and the Notice of Unsafe or Unhealthful Working Conditions

Commission - State of Utah Labor Commission

Commissioner - Utah Labor Commissioner

Compliance Operations Manager - Compliance Field Operations Manager

Compliance Supervisor - Safety and Health Compliance Supervisor

Consultant - Safety and Health Consultants

Consultation - UOSH Consultation and Education Services

CPL - Compliance

CSA - Corporate-Wide Settlement Agreements

CSP - Cooperative and State Programs

CSHO - Safety and Health Compliance Officers and Industrial Hygienists

DART - Days Away, Restricted, or Transferred rate

dcART - Debt Collection Agency Reporting Tool

DEM - Utah Department of Public Safety, Division of Emergency Management

Director - Director/Administrator of UOSH

EOC - Emergency Operations Center

EPA - Environmental Protection Agency

ESF #10 - State of Utah Emergency Operations Plan, Emergency Support Functions #10 – Hazardous Materials

Fat/Cat - Fatalities/Catastrophes

FIFRA - Federal Insecticide, Fungicide, and Rodenticide Act

FOM – Field Operations Manual

FSA - Formal Settlement Agreement

GBP - Gravity Based Penalty

GRAMA - Government Records Access Management Act

Health Inspection – A UOSH inspection where the CSHO identifies, assesses and evaluates health hazards in a workplace. Hazards that may affect an employee's health include, but are not limited to, exposure to chemicals, noise, particulates, fumes and temperature extremes.

HHC - Highly Hazardous Chemical

Industrial Accidents - State of Utah Labor Commission Industrial Accidents Division

ISA - Informal Settlement Agreement

LEP - Local Emphasis Program

MOU - Memorandums of Understanding

NAICS - North American Industry Classification System

NEP - National Emphasis Program

NFPA - National Fire Protection Agency

NIOSH - National Institute for Occupational Safety and Health

OIS - Occupational Safety and Health Administration Information System

OSDC - Utah Office of State Debt Collection

OSHA - Federal Occupational Safety and Health Administration

PEL - Permissible Exposure Limit

PMA - Petition for Modification of Abatement Date

PPE - Personal Protective Equipment

PRA - Penalty Reduction Agreement

PSM - Process Safety Management

REL - Recommended Exposure Limit

SBREFA - Small Business Regulatory Enforcement Fairness Act

SDSs - Safety Data Sheets

SHARP - Safety and Health Achievement Recognition Program

STD - Standard

SVEP - Severe Violator Enforcement Program

TLC - Temporary Labor Camp

TLV - Threshold Limit Value

TWA - Time-Weighted Average

UAC - Utah Administrative Code

Utah OSH Act - Utah Occupational Safety and Health Act, 34A-6-101 et seq., Utah Code Ann., 1953 as amended (UOSHA), initially approved on January 04, 1973

VPP - Voluntary Protection Program

Workplace and Worksite - The terms workplace, worksite, or site are interchangeable. Workplace is used more frequently in general industry, while worksite or site are more commonly used in the construction industry.

WPS - Environmental Protection Agency's Agricultural Worker Protection Standard

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 2

Program Planning

Chapter 2
PROGRAM PLANNING

I. Introduction

In accordance with Utah Code Ann. § 34A-6-102, the Legislative Intent of the Utah Occupational Safety and Health Act of 1973 (the Utah OSH Act) is: (1) to preserve human resources by providing for the safety and health of workers; and (2) to provide a coordinated state plan to implement, establish, and enforce occupational safety and health standards as effective as the standards under the Williams-Steiger Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. Sec. 651 et seq.

In order to fulfill the Legislative Intent of Utah Code Ann. § 34A-6-102, the Utah Occupational Safety and Health Division (UOSH) of the Utah Labor Commission (Commission) promulgates and enforces standards and regulations; provides training, outreach, and education; establishes cooperative programs; and encourages continual improvement in workplace safety and health as well as the development of comprehensive safety and health management systems. 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.

II. Responsibilities

UOSH Compliance is 50% federally funded under Section 23(g) of the Act and UOSH Consultation and Education Services (Consultation) is 90% federally funded under Section 21(d) of the Act. In order to receive such funding, UOSH must be as effective as the federal Occupational Safety and Health Administration (OSHA) and provide assistance and outreach programs.

A. Enforcement of Regulations and Standards

UOSH conducts inspections and investigations to ensure maximum feasible protection is provided to working men and women through enforcement of regulations and standards.

B. Providing Assistance to Small Employers

1. In 1996, the Congress passed the Small Business Regulatory Enforcement Fairness Act (SBREFA) to respond to the concern expressed by the small business community that federal regulations were too numerous and complex, and that small business needed special assistance in understanding and complying with those regulations.

2. Under the SBREFA, OSHA requires UOSH to have in place programs to provide guidance and compliance assistance. These programs must contain procedures to answer inquiries by small entities (small businesses). These programs also provide information on and advice about compliance with the statutes and regulations, interpretations and applications of the law to specific sets of facts supplied by the small entity.

NOTE: See CPL 02-00-121, *Providing Assistance to Smaller Employers*, March 12, 1998.

C. Outreach Programs

The Director/Administrator of UOSH (Director) or designee will ensure that UOSH maintains an outreach program appropriate to local conditions and the needs of the service area. The plan may include support services, compliance assistance, including assistance in developing safety and health management systems, training and education services, referral services, cooperative programs, abatement assistance and technical services.

D. Responding to Requests for Assistance

All requests from employers or employees for compliance information or assistance shall receive timely, accurate, and helpful responses from UOSH.

III. Cooperative Programs Overview

UOSH offers a number of avenues for businesses and organizations to work cooperatively with the Division. Compliance Safety and Health Officers (CSHOs) and Safety and Health Consultants (Consultants) should discuss the various cooperative programs with employers.

A. Voluntary Protection Program

The Voluntary Protection Program (VPP) is designed to recognize and promote effective safety and health management systems. The principle of VPP is that employers, employees and UOSH can work together in pursuit of a safe and healthy workplace. A VPP participant is an employer that has successfully developed and implemented a safety and health management system at its worksite, and is exempt from programmed compliance inspections.

B. UOSH Consultation and Education Services

1. Consultation offers a variety of no-cost services to employers. These services include assisting in the development and implementation of an effective safety and health management system 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 program priority.

a. Consultation is separate from UOSH's Compliance efforts. There are no citations issued, nor penalties proposed under on-site Consultation visits.

b. Consultation is under Section 21(d) agreement(s) with OSHA.

2. Safety and Health Achievement Recognition Program

a. Another program that recognizes employers' efforts to create a safe and healthful workplace and exempts them from programmed compliance inspections is the Safety and Health Achievement Recognition Program (SHARP). This program is administered by Consultation and is funded under Section 21(d) of the Act.

b. SHARP is designed to provide incentives and support to employers that implement and continuously improve effective safety and health management systems at their workplace. SHARP participants are exempt from programmed compliance inspections as long as they continue to meet SHARP requirements.

NOTE: See CSP 02-00-003, *Consultation Policies and Procedures Manual*, November 19, 2015, for additional information.

C. Strategic Partnerships

[RESERVED]

D. Alliance Programs

[RESERVED]

IV. Compliance Program Scheduling

A. General

1. UOSH's priority system for conducting inspections is designed to allocate available UOSH resources as effectively as possible to ensure that maximum feasible protection is provided to working men and women. The Director or designee will ensure inspections are scheduled within the framework of this chapter, that they are consistent with the objectives of the Commission, and appropriate documentation of scheduling practices is maintained.

2. The Director or designee will also ensure that UOSH resources are effectively distributed during inspection activities. If an inspection is of a complex nature, the Director or designee may consider utilizing additional OSHA resources that are available to UOSH (e.g., OSHA's Health Response Team). UOSH will always maintain control of the inspection if additional OSHA resources are utilized.

B. Inspection Priority Criteria

Inspections will be prioritized according to the following table:

Table 2-1: Inspection Priorities

Priority	Category
First	Imminent Dangers
Second	Fatalities/Catastrophes (Fat/Cat), non-Fat/Cat accidents
Third	Complaints/Referrals
Fourth	Programmed Inspections

1. Efficient Use of Resources

Deviations from the priority list detailed in Table 2-1 are allowed so long as they are justifiable, lead to the efficient use of resources, and promote effective employee protection.

2. Follow-up Inspections

It is the responsibility of UOSH to assure verification of abatement. In cases where follow-up inspections are necessary, they will 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.

NOTE: See Chapter 7, *Post-Citation Procedures and Abatement Verification,* for additional information.

3. Monitoring Inspections

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).

When a monitoring inspection is necessary, the priority is the same as for a follow-up inspection.

NOTE: 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 UOSH.

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 UOSH adjudication process, 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 violative conditions under contest will be excluded from the inspection unless a potential imminent danger is involved.

D. Enforcement Exemptions and Limitations

1. UOSH Compliance is 50% federally funded under Section 23(g) of the Act. In providing funding for OSHA, Congress has consistently placed restrictions on Compliance activities for two categories of employers: small farming operations and small employers in low-hazard industries. Congress may place exemptions and limitations on OSHA activities through the annual Appropriations Act. The exemptions and limitations placed on OSHA activities by Congress have been accepted by UOSH, and are in effect until superseded.

2. Before initiating an inspection of an employer in these categories, UOSH will evaluate whether the Appropriations Act for the federal 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.

NOTE: See CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriation Act*, May 28, 1998, for additional information.

E. Preemption by Another Agency

1. Per Utah Code Ann. § 34A-6-104, the Utah OSH Act does not apply to working conditions of employees with respect to which federal agencies and other state agencies acting under section 274 of the Atomic Energy Act of 1954, as amended, 42 USC § 2021, exercise statutory authority to prescribe or enforce standards or regulations affecting occupational safety or health; or any workplace or employer not subject to the provisions of the federal Williams-Steiger Occupational Safety and Health Act of 1970 and any amendments to that act or any regulations promulgated under that act.

2. UOSH has jurisdiction over all public and private sector places of employment in the state, with the exception of areas that fall under the jurisdiction of the Mine Safety and Health Administration (MSHA) and those that are subject to OSHA jurisdiction which include federal employees, the United States Postal Service (USPS), private sector maritime, Hill Air Force Base, and Tooele Army Depot, which includes the Tooele Chemical Demilitarization Facility.

3. If a jurisdictional question arises, upon receipt of a complaint, referral or other inquiry, it shall be brought to the attention of the Director or designee and dealt with on a case-by-case basis. The list of Memorandums of Understanding (MOU) on the OSHA website (https://www.osha.gov/laws-regs/mou/publicationdate)
may be used as a guide to help determine jurisdiction. A MOU is an agreement created by OSHA to address/resolve coverage issues and to improve the working relationships between federal agencies and organizations regarding employee safety and health. An example of an MOU is the Mine Safety and Health Administration – Interagency Agreement between the Mine Safety and Health Administration and OSHA, dated March 29, 1979 (https://www.osha.gov/laws-regs/mou/1979-03-29).

4. At times, an inspection may have already begun when the coverage jurisdiction question arises. Any such situations will be brought to the attention of the Director or designee as soon as they arise and dealt with on a case-by-case basis.

5. UOSH and other State Plan States have elected not to cover the USPS. Thus, OSHA retains authority to cover the USPS. Federal coverage in the State of Utah encompasses USPS employees and contract employees engaged in USPS mail operations. Federal coverage includes contractor-operated facilities engaged in mail operations and postal stations in public or commercial facilities. UOSH continues to exercise jurisdiction over all other private sector contractors working on USPS sites who are not engaged in USPS mail operations, such as building maintenance and construction employees.

NOTE: See the Final Rule on *State Plans Coverage of the USPS* (65 FR 33618, June 9, 2000).

F. Home-Based Worksites

UOSH may conduct inspections of home-based worksites if they are covered by an emphasis program, when it receives a complaint or referral alleging that a violation of a safety or health standard exists that threatens physical harm, an imminent danger is present, or there was a work-related accident resulting in serious injury, illness or fatality.

G. Inspection/Investigation Types

1. Unprogrammed

a. Inspections scheduled in response to alleged hazardous working conditions are classified as unprogrammed and include the following:

- Imminent Dangers; (see Chapter 11)
- Fat/Cat, non-Fat/Cat accidents; (see Chapter 11)
- Complaints; and (see Chapter 9)
- Referrals. (see Chapter 9)

b. Unprogrammed inspections also include follow-up and monitoring inspections scheduled by UOSH (see Chapter 7).

NOTE:

- This category includes all employers/employees directly affected by the subject of the unprogrammed inspection activity.
- Not all complaints and referrals qualify for an inspection. See Chapter 9, Complaint and Referral Processing, for additional information.

2. Unprogrammed Related

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.

An example would be: A complaint inspection conducted at a fixed establishment where outside contractors are exposed to the alleged hazards mentioned in the complaint at that establishment.

3. Programmed

Worksites are selected and programmed inspections are conducted according to criteria defined in Local Emphasis Programs (LEPs) and National Emphasis Programs (NEPs) adopted by UOSH.

4. Program Related

Inspections of employers at multi-employer worksites whose activities were not included in the programmed assignment.

V. Programmed Inspections

A. UOSH Local Emphasis Programs

1. LEP Selection

In order to achieve UOSH's goal of reducing the number of injuries and illnesses that occur at worksites, UOSH's LEPs direct Compliance resources to worksites where the highest rate of injuries and illness have occurred or to establishments classified in high hazard industries. An LEP may be based on data collected by the Bureau of Labor Statistic (BLS), the State of Utah Labor Commission Industrial Accidents Division (Industrial Accidents) and/or UOSH. A database search may be conducted to determine employers in a focused North American Industry Classification System (NAICS) and may include an injury and illness coding category. The LEP includes policies and strategies designed to identify and reduce workplace hazards that cause or are likely to cause serious injury, illness or fatality.

2. General Industry Inspection Scheduling

Employers that have a higher injury and illness rate than the BLS industry average for that NAICS may be added to an inspection scheduling list. Employers may also be added to the list if they are classified in high hazard industries regardless of their injury and illness rates. Government sources, telephone directories, trade manuals and other available sources may be used to develop an LEP inspection scheduling list of establishments. Programmed inspections are randomly assigned from this list.

3. Construction Industry Inspection Scheduling

Due to the mobility of the construction industry and the transitory nature of construction worksites, inspections are scheduled by a specific LEP. Inspection scheduling lists may include geographical areas that are more likely to have active construction sites. Programmed inspections are randomly assigned from this list.

NOTE: See CPL 04-00-002, *Procedures for Approval of Local Emphasis Programs (LEPs*), November 13, 2018, for additional information.

B. National Emphasis Programs

OSHA develops NEPs to focus outreach efforts and inspections on specific hazards in a workplace. UOSH may adopt NEPs based on the need to direct resources to industries where the highest rate of injuries and illness occur. UOSH may be required to adopt an NEP due to nationally recognized hazards in a specific industry.

C. Inspection Scheduling and Interface with Cooperative Program Participants

1. Voluntary Compliance Program Participation

Employers who participate in voluntary compliance programs may be exempt from programmed inspections and eligible for inspection deferrals. The Director or designee will determine whether the employer is actively participating in a Cooperative Program that would impact inspection and Compliance activity at the worksite being considered for inspection. Where possible, this determination should be made prior to scheduling the inspection.

Information regarding a facility's participation in the following programs should be available prior to scheduling inspection activity:

- VPP Participants; and
- SHARP and Pre-SHARP Participants.

2. Voluntary Protection Program

a. UOSH VPP Coordinator Responsibilities

The UOSH VPP Coordinator must keep the Director or 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. The Director or designee should be informed:

- That the site can be removed from the programmed inspection list. Such removal may occur no more than 75 days prior to the on-site evaluation;
- Of the site's approval for the VPP program;
- Of the site's withdrawal or termination from the VPP program; and
- If notified by the site of an event requiring enforcement.

b. Programmed Inspections and VPP Participation

- **Inspection Deferral.** Approved sites will be removed from any programmed inspection lists for the duration of participation. The applicant worksite will be deferred starting no more than 75 calendar days prior to the commencement of its scheduled pre-approval on-site 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 Compliance Activities at VPP Sites

When UOSH receives a complaint, or a referral other than from the UOSH VPP on-site team, or is notified of a fatality, catastrophe, or other event requiring an enforcement inspection at a VPP site, an inspection must be initiated following normal UOSH enforcement procedures.

- The Director or designee will be notified 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.
- The inspection will be limited to the specific issue of the unprogrammed activity. The CSHO will inform the VPP Coordinator and Compliance Operations Manager if citations are issued as a result of the inspection.

  NOTE: See CSP 03-01-005, *Voluntary Protection Programs (VPP): Policies and Procedures Manual*, January 30, 2020, for more information.

3. Consultation

a. Consultation Visit in Progress

- If an on-site Consultation visit is in progress, it will take priority over UOSH programmed and referral inspections as outlined below. An on-site 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 (including extensions).
- If an on-site Consultation visit is already in progress, it will terminate when the following kind of UOSH compliance inspection is about to take place:
  - Imminent danger;
  - Fat/Cat, non-Fat/Cat accident; and/or
  - Complaint.
- For purposes of efficiency and expediency, an employer's worksite shall not be subject to concurrent Consultation and Compliance-related visits. The bullets below contain information that clarifies the interface between Compliance and Consultation activity at the worksite:
  - **Full Service On-Site Consultation Visits.** While a worksite is undergoing a full service on-site Consultation visit for safety and health, programmed Compliance activity may not occur until the end of the Consultation visit.
  - **Full-Service Safety, Full-Service Health, and Limited-Service On-site Consultation Visits.** An on-site Consultation visit-in-progress status is discipline related. If a worksite is undergoing a full-service safety, full-service health, or a limited-service visit, programmed or referral Compliance activity may not occur until after the end of the Consultation visit.
  - **On-site Consultation visit scheduled.**
    - Programmed or referral Compliance activity may not occur until the end of the Consultation visit if a worksite is scheduled to have an on-site

Consultation visit within 5 working days of the planned Compliance activity.

- Programmed or referral Compliance activity may not occur until after the end of the Consultation visit if a worksite is scheduled to have an on-site Consultation visit more than 5 working days from the planned Compliance activity AND the employer agrees to reschedule the on-site Consultation visit to within 5 working days of the initial planned Compliance activity date. If the employer breaches the agreement, Compliance activity will commence.

  NOTE: Refer to Chapter 3, IV.D.1, *UOSH On-Site Consultation Visits*.

b. Enforcement Follow-up and Monitoring Inspections

If an enforcement follow-up or monitoring inspection is to be conducted while a worksite is undergoing an on-site Consultation visit, the inspection shall not be deferred. However, the scope of the follow-up/monitoring inspection shall be limited to those areas required to be covered by the follow-up or monitoring inspection, unless there is a reasonable belief, based on specific evidence (e.g., injuries or illnesses recorded in both OSHA forms 300 and 301, employee statements or "plain view" observations), that violative conditions may be found in other areas of the workplace. See Chapter 3, Section III.C.1.c, *Refusal of Entry or Inspection*, for steps to take when the employer objects to a broader inspection. In either case, the consultant must halt the on-site visit until the enforcement inspection is completed. In the event UOSH issues a citation as a result of a follow-up or monitoring inspection, an on-site Consultation visit may not proceed until the citation becomes a final order.

c. On-Site Consultation Follow-up and/or Training and Assistance Visits

On-site Consultation follow-up and/or training and assistance visits must be deferred if a UOSH Compliance inspection is to be conducted. The consultant may continue with follow-up and/or training and assistance activity only after Compliance inspection activity at the worksite is final and any cited item(s) have become final order(s).

d. Severe Violator Enforcement Program (SVEP)

A company identified on OSHA's Severe Violator Enforcement Program (SVEP) list may still receive On-Site Consultation Services. Although the company is receiving consultation services, Consultation visit-in-progress status does not block enforcement from performing an inspection.

4. Safety and Health Achievement Recognition Program

SHARP is designed to provide support and incentives to those employers that implement and continuously improve effective safety and health management system(s) at their worksite. SHARP participants are exempted from UOSH programmed inspections under 29 CFR 1908.7(b)(4).

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 Director or designee approves an employer's SHARP application. After the initial approval, SHARP renewals may be for a period of up to three years.

b. UOSH Inspection(s) at SHARP Worksites

As noted above, employers that meet all the requirements for SHARP status will have the names of their establishments removed from UOSH's Programmed Inspection Schedule. However, pursuant to 29 CFR 1908.7(b)(4)(ii), the following types of incidents can trigger a UOSH Compliance inspection at SHARP sites:

- Imminent danger;
- Fat/Cat, non-Fat/Cat accident; and/or
- Formal complaints.

NOTE: See CSP 02-00-003, *Consultation Policies and Procedures Manual,* November 19, 2015, Chapter 8: *OSHA's Safety and Health Achievement Recognition Program (SHARP) and Pre-SHARP,* for additional information.

5. Pre-Safety and Health Achievement Recognition Program Status

An employer who meets all the initial eligibility requirements for SHARP, corrects all hazards identified during the Consultation visit, and shows reasonable promise of achieving SHARP status within the time frames agreed upon with the Consultation Manager, may be approved as a Pre-SHARP participant. This Pre-SHARP status gives the employer a deferral from UOSH's programmed inspections. The deferral time frame recommended by the Consultation Manager, including extensions, must not exceed a total of 18 months from the expiration of the correction due date(s).

6. UOSH Strategic Partnership Program

(RESERVED)

7. Alliances

(RESERVED)

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 3

Inspection Procedures

Chapter 3
INSPECTION PROCEDURES

I. Inspection Preparation and Planning

Conducting effective workplace safety and health 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. 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 conducting a quality inspection.

A. Review of Inspection History and Research

1. CSHOs will review information relevant to the establishment scheduled for inspection. The following may be included in the review:

a. The employer's UOSH inspection history by conducting an establishment search on the OSHA Information System (OIS) database.

b. Establishment search on the OSHA web page (www.osha.gov).

c. Case files of previous inspections at the establishment; relevant prior violations, together with other evidence, can be used to support a warrant for inspection where necessary or to support a repeat violation.

NOTE: CSHOs should use name variations and address in the establishment search due to possible company name changes and status (e.g., LLC, Inc.).

d. CSHOs shall document in their case file that the history review has been conducted, even if there is no prior inspection history.

2. CSHOs will review information relevant to the industry in which the establishment's work activity is classified. The following may be included in the review:

a. Technical reference material about potential hazards and industrial processes that may be encountered.

b. Typical hazards found under the NAICS.

c. Relevant standards.

B. Review of Cooperative Program Participation

CSHOs will access UOSH's web page on the Labor Commission UOSH website to obtain information about employers who are currently participating in cooperative programs. CSHOs will verify with UOSH management the employer is a current program participant. 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 Section IV.D. of this chapter, *Review of Voluntary Compliance Programs*.

C. Inspection Materials and Equipment

It is the responsibility of the Compliance Operations Manager to ensure all materials and equipment required for an on-site inspection are available to the CSHO. The CSHO is responsible for taking and using the equipment needed for the on-site inspection.

1. **Forms and Handouts.** The CSHO should use the appropriate case file folders with required forms. CSHOs must have sufficient quantities of all other materials (e.g., sampling forms, witness statement forms (see Appendix 3-1), Consultation brochures, business cards, etc.) to conduct the on-site inspection.

2. **CSHO Safety and Health Considerations.** All necessary personal protective equipment (PPE) must be used. The Compliance Operations Manager must ensure that the equipment is available for use and the CSHO has been trained in its use and limitations.

3. **Respiratory Protection.** Prior to conducting an inspection, CSHOs should evaluate the potential for exposure to chemicals. CSHOs should identify work areas, processes or tasks that may be potentially hazardous that would require respiratory protection prior to entering.

   CSHOs must wear respirators when and where required, and must care for and maintain respirators in accordance with training and UOSH's respiratory protection program.

   CSHOs must notify their Supervisor or the respiratory protection program administrator if a respirator no longer fits properly and request a replacement.

D. Advance Notice

1. **Policy**

   a. Utah Code Ann. § 34A-6-307(5)(b) and UAC R614-1-6-F contains a general prohibition against the giving of advance notice of inspections, except as authorized by the Director or designee. The Utah OSH Act regulates many conditions that are subject to alteration and may be concealed by employers. To prevent such changes in worksite conditions, Utah Code Ann. § 34A-6-307(5)(b) prohibits unauthorized advance notice and Utah Code Ann. § 34A-6-301(1)(a)(i) authorizes UOSH to enter worksites without delay.

   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 Director or designee and only in the following situations:

   - In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible.
   - In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection.

- Where necessary to assure the presence of the employer or representative of the employer and employees or the appropriate personnel needed to aid the inspection; and
- In other circumstances where the Director or designee determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

c. Delays. Advance notice exists whenever UOSH sets up a specific date or time with the employer for the CSHO to begin an inspection. Any delays in conducting the inspection shall be kept to a minimum. Lengthy or unreasonable delays shall be brought to the attention of the Director or designee. Advance notice generally does not include non-specific indications of potential future inspections.

In unusual circumstances, the Director or designee may decide 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. UAC R614-1-6.D.3 authorizes UOSH to seek a warrant in advance of an attempted inspection or investigation if, in the judgment of the Director or designee circumstances exist which make such pre-inspection process desirable or necessary. Some examples of circumstances in which it may be desirable or necessary to seek compulsory process in advance of an attempt to inspect or investigate include, but are not limited to:

a. When the employers past practice either implicitly or explicitly puts the Director on notice that a warrantless inspection will not be allowed;

b. When an inspection is scheduled far from the UOSH office and procuring a warrant prior to leaving to conduct the inspection would avoid, in case of refusal of entry, the expenditure of significant time and resources to return to the office, obtain a warrant and return to the work-site;

c. When an inspection includes the use of special equipment or when the presence of an expert or experts is needed in order to properly conduct the inspection, and procuring a warrant prior to an attempt to inspect would alleviate the difficulties or costs encountered in coordinating the availability of such equipment or expert.

2. Utah Code Ann. § 34A-6-104(1)(d) authorizes the Commission to issue administrative subpoenas to obtain relevant information. The Commission may in its discretion administer oaths, take depositions, subpoena witnesses, compel production of documents, books, and accounts in any inquiry, investigation, hearing or proceeding in any part of the State of Utah. At the discretion of the Director, administrative subpoenas may be issued prior to any attempt to contact the employer or other person for evidence related to a UOSH inspection or investigation.

F. Personal Security Clearance

1. Some establishments have areas that contain material or processes that are classified by the U.S. Government in the interest of national security. Whenever an inspection is scheduled for an establishment containing classified areas, the Compliance Supervisor or the Compliance Operations Manager will assist the CSHO to obtain the appropriate security clearances.

2. Resistance to CSHO's with the proper clearances which can be verified by telephone shall constitute an unwarranted resistance and shall be immediately brought to the attention of the Director or designee.

3. Any personal knowledge of classified information and/or trade secrets by UOSH personnel shall be handled in accordance with the regulations and requirements of the responsible entity. The collection of such information and the number of personnel shall be limited to the minimum necessary to conduct Compliance activities.

G. Expert Assistance

1. The Director or designee shall arrange for a specialist and/or an individual with specialized training, preferably from OSHA, to assist in an inspection or investigation when the need for such expertise is identified.

2. CSHOs must always accompany OSHA specialists and outside consultants during their tasks. OSHA specialists and outside consultants shall be briefed on the purpose of the inspection and personal protective equipment to be utilized. CSHOs will maintain control of the inspection process.

H. Workplace Violence – CSHO Training and Workplace Violence Prevention Programs

1. CSHO Training.

Prior to conducting an inspection in response to a complaint of workplace violence, the CSHO must have received training that addresses the issues of workplace violence. Such training should include OSHAcademy Preventing Workplace Violence, Course #720, UOSH in-house training or other similar course work.

2. Commission Workplace Violence Prevention Policy.

CSHOs must be aware of and familiar with the Commission’s Workplace Violence Policy.

II. 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 scope is limited to certain potentially hazardous areas, operations, conditions or practices at the establishment.

1. Generally, unprogrammed inspections (i.e., inspections resulting from an employee complaint, referral, reported accident or incident, etc.) will be conducted as partial inspections. The scope of the partial inspection should be limited to the specific work areas, operations, conditions, or practices forming the basis of the unprogrammed inspection.

2. A partial inspection can be expanded based on information gathered by the CSHO during the inspection process, including from injury and illness records found in both OSHA forms 300 and 301, employee interviews and plain view observations. The CSHO should not expand a partial inspection based on 300 data alone.

3. CSHOs shall consult established written guidelines and criteria, such as UOSH policies and LEPs, in conjunction with information gathered during the records or program review and walkaround inspection, to determine whether expanding the scope of an inspection is warranted.

4. Generally, in a low-hazard industry the inspection shall be limited to the inspection/investigation. If, however, the CSHO believes the scope of the inspection should be expanded because of information indicating the likelihood of serious hazards in other portions of the plant, the Compliance Operations Manager or designee shall be contacted. Reasons for expansion may include; the CSHO observed serious hazards prior to the opening conference or during the inspection/investigation; review of the employer's injury and illness records, Industrial Accident's and employer injury report shows an unusual number or type of injuries has occurred in one time period, area or operation; or a formal complaint alleging serious hazards was received while conducting the inspection/investigation.

A decision shall be made on the basis of information available whether the scope of the inspection should be expanded.

III. 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 Compliance Supervisor or the Compliance Operations Manager 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.

2. At the beginning of the inspection, the CSHO will normally locate the owner, 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. If the person in charge at the workplace cannot be determined, record the extent of the inquiry in the case file and proceed with the physical inspection. If the person in charge arrives during the inspection, an abbreviated opening conference shall be held and the person shall be informed of the status of the inspection and included in the continued walkaround.

C. Refusal to Permit Inspection and Interference

Utah Code Ann. § 34A-6-301(1)(a)(i) provides the division or its representatives, upon presenting appropriate credentials to the owner, operator, or agent in charge, may enter without delay at reasonable times any workplace where work is performed by an employee of an employer for the purpose of conducting an inspection. An employer has a right to require the CSHO to seek an inspection warrant prior to entering an establishment and may refuse entry without such a warrant.

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 establishment.

b. If the employer refuses to allow an inspection of the establishment to proceed, the CSHO shall leave the premises and immediately report the refusal to the Compliance Supervisor or the Compliance Operations Manager. The Director or designee must be informed of the refusal and will notify the State of Utah Assistant Attorney General (AAG).

c. If the employer raises no objection to inspection of certain areas of the workplace but objects to inspection of other areas, this shall be documented. The CSHO shall continue the inspection, confining it only to those certain areas to which the employer has raised no objections. If, however, during the limited scope inspection the CSHO becomes aware there may be violative conditions in other portions of the workplace, the CSHO shall inform the employer and request permission to inspect those areas. If the employer continues to object, the CSHO shall report this refusal to the Director or its designee. The Director or designee shall then consult with the AAG to determine if an inspection warrant is needed.

d. In either case, the CSHO shall advise the employer that the refusal will be reported to the Director or designee and UOSH may take further action, which may include obtaining an inspection warrant. In accordance with Utah Code Ann. § 34A-6-301(1)(b), the division, upon an employer's refusal to permit an inspection, may seek a warrant pursuant to the Utah Rules of Criminal Procedure.

e. On multi-employer worksites, valid consent can be granted by the owner, or another employer with employees at the worksite, for site entry.

f. When permission to enter or inspect is not clearly given, the CSHO shall make an effort to clarify the employer's intent.

g. If it becomes clear the employer is refusing permission to enter, the CSHO shall contact the Compliance Operations Manager or designee, who shall then attempt to contact the employer representative and ascertain the reason for such refusal, as well as discuss the provisions of Utah Code Ann. §34A-6-301(1) and UAC R614-1-6.C.1. If access is still denied, the CSHO shall leave the premises and the Compliance Supervisor or the Compliance Operations Manager shall immediately report the refusal to the Director or designee. The Director or designee shall notify the AAG.

2. Employer Interference

Where entry has been allowed but the employer interferes 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, examination of records essential to the inspection, the taking of essential photographs and/or video, the inspection of a particular part of the premises, private employee interviews, or the refusal to allow attachment of sampling devices. See UAC R614-1-6.G.2.

3. Forcible Interference with Conduct of Inspection or Other Official Duties

Whenever a UOSH 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 and the CSHO shall leave the site immediately pending further instructions from the Director or designee.

a. If a CSHO is assaulted while attempting to conduct an inspection, they shall contact the proper authorities such as the local law enforcement and immediately notify the Compliance Supervisor or the Compliance Operations Manager.

b. Upon receiving a report of such forcible interference, the Compliance Supervisor or the Compliance Operations Manager shall immediately notify the Director 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 Director or designee shall contact the AAG in order to begin the warrant process.

D. Employee Participation

CSHOs shall advise employers that Utah Code Ann. § 34A-6-301(5) and UAC R614-1-6.H.1 require an employee representative be given an opportunity to participate in the inspection.

1. CSHOs shall determine as soon as possible after arrival whether the employees at the worksite to be inspected 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 Director 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 Utah OSH Act.

3. If the employer requires a release be signed before entering the establishment, the CSHO shall inform the employer of the authority designated by Utah Code Ann. § 34A-6-301(1) and UAC R614-1-6.C.1. If the employer is adamant about the CSHO signing a release, the CSHO shall contact the Compliance Supervisor or the Compliance Operations Manager, who shall then attempt to contact the employer representative and discuss the provisions of Utah Code Ann. § 34A-6-301(1) and UAC R614-1-6.C.1. If the employer is still requiring the CSHO to sign a release prior to entering, the Compliance Operations Manager or designee shall consider the situation as a refusal of entry. The CSHO shall leave the premises and the Compliance Operations Manager or designee shall immediately report the refusal to the Director or designee. The Director or designee shall notify the AAG.

4. In case of any doubt, the CSHO shall consult with the Compliance Supervisor or the Compliance Operations Manager before signing any document.

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 Compliance Supervisor or Compliance Operations Manager.

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 Utah OSH Act until the day the business actually ceases to operate.

G. Employee Responsibilities

1. Utah Code Ann. § 34A-6-201(2) states that: "Each employee shall comply with occupational safety and health standards and the rules and orders issued pursuant to this chapter that are applicable to the employee's own actions and conduct." The Utah OSH 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 CSHO's determine employees are systematically refusing to comply with a standard applicable to their own action and conduct, the matter shall be referred to the Compliance Supervisor or the Compliance Operations Manager.

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 Utah OSH 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 Compliance Supervisor or the Compliance Operations Manager 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, accidents, fatalities, referrals, etc.) will be performed during strikes or labor disputes. However, the credibility and validity of any complaint shall be thoroughly assessed by the Director 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 their actions are not interpreted as supporting either party to 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 Utah Code Ann. § 34A-6-202.

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 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.

IV. Opening Conference

A. General

CSHOs shall attempt to inform all affected employers of the purpose of the inspection, provide a copy of the complaint if applicable, and include any employee representatives. The opening conference should be kept as brief as possible, normally not to exceed one hour, so the CSHO 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, pursuant to UAC R614-1-6.H.1.

During the opening conference, the CSHO shall ascertain whether there are any other employers working at the establishment and/or worksite, and determine if additional inspections should be opened with those employers, based on the purpose of the inspection and potential employee exposure. If any question arises as to whether or not additional inspections should be opened with other employers at the establishment or worksite, the CSHO shall contact the Compliance Supervisor or the Compliance Operations Manager.

If additional inspections are to be opened, both employer and employee representatives of the other employer(s) shall be invited to the opening conference, however, the inspection shall not be delayed unreasonably, waiting for the arrival of the representatives. This delay should normally not exceed one hour.

The CSHO shall ask the employer representative to briefly describe the work process and conditions to determine the PPE needed to safely conduct the inspection. Appropriate personal protective equipment shall be selected and used based on this information.

CSHOs should identify hazardous substances at the worksite that may be present which would require the use of respiratory protection. CSHOs should determine if they have the appropriate respirator to protect against such hazardous substances present at the worksite.

CSHOs shall comply with all employer safety and health rules and practices at the establishment being inspected, and shall wear and use appropriate protective clothing and equipment required by UOSH or by the employer for the protection of employees.

CSHOs must not enter any area where special entrance restrictions apply until the required precautions have been taken. CSHOs shall inform the Compliance Supervisor or the Compliance Operations Manager of the entrance restrictions; it is the Compliance Supervisor's and the Compliance Operations Manager's responsibility to determine that an inspection may be conducted without exposing the CSHO to hazardous situations and to procure materials and equipment needed for the safe conduct of the inspection.

1. Purpose of Inspection

The employer shall be informed as to the reason for the inspection as follows:

a. Imminent Danger Situations. When responding to an alleged imminent danger situation, the CSHO is required to get to the location of the alleged hazard(s) as quickly as possible. Under these circumstances, an expedited opening conference shall be conducted by limiting activities to presenting credentials and explaining the nature, scope and purpose of the inspection.

(1) Potential safety and health hazards that may be encountered during the inspection shall be identified and appropriate steps taken to provide for personal protection.

(2) The presence of employer and employee representatives shall be requested; however, the inspection shall not be unreasonably delayed to await their arrival.

(3) The employer shall be advised that, because of the abbreviated nature of the opening conference, there will be a more extensive discussion at the closing conference.

(4) Unreasonable delays shall be reported immediately to the Compliance Operations Manager or designee.

b. Accident/Fatality/Catastrophe/ Investigations. The employer shall be informed that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation shall be explained, namely, to determine:

(1) The causal elements of the accident.

(2) Whether a violation of UOSH safety or health standards related to the accident occurred.

c. Complaint Inspections. For a complaint inspection, the CSHO shall inform the employer that the inspection is a result of a complaint and provide a copy of the complaint(s) to the employer and employee representatives at the beginning of the opening conference.

d. Referral Inspections. During the opening conference of a referral inspection, the CSHO shall inform the employer that the inspection is a result of a referral (e.g., from another agency, from a previous UOSH inspection, from the media or in response to a report of an alleged imminent danger situation at a worksite).

e. Health Inspections. During a health inspection, the CSHO shall conduct the opening conference in accordance with the following additional procedures:

(1) Request process flow charts and plant layouts relevant to the inspection. If the plant layout and process flow charts are not available, sketch a plant layout as necessary during the course of the inspection, identifying the operations and the relative dimensions of the work area. Distribution of major process equipment, including engineering controls in use, shall also be included on the sketch.

(2) Make an examination of all workplace records pertinent to the inspection.

- If detailed review is necessary, the CSHO may wish to proceed to the walkaround and then later return to examine the records more thoroughly.
- Valuable insights can be determined from required and other records (e.g., symptomatology which may relate to workplace exposure, frequency of injuries or illnesses, dermatitis, PPE usage, monitoring data, audiometric test results, ventilation tests, process flow charts and a list of hazardous raw, intermediate, and final product materials) to ensure a more effective inspection.
- In some plants, sampling for obvious health hazards can be initiated soon after the opening conference. Details of the walkaround can be accomplished while collecting the samples.

f. Programmed Planned Inspections. The CSHO shall inform the employer that the inspection is a result of an emphasis program (e.g., a national or local emphasis program) and shall provide the employer with a copy of the applicable emphasis program.

2. 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.

3. 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).

4. Video/Audio Recording

CSHOs shall inform participants a video camera and/or an audio recorder may be used to provide a visual and/or audio record, and the recording may be used in the same manner as handwritten notes and photographs in UOSH inspections.

NOTE: If an employer clearly refuses to allow video recording during an inspection, CSHOs shall contact the Compliance Supervisor/Compliance Operations Manager to determine if video recording is critical to documenting the case. If it is, this may be treated as a denial of entry.

5. Immediate Abatement

CSHOs should explain to employers the advantages of immediate abatement, including that there are no abatement certification requirements for violations quickly corrected during the inspection. See Chapter 7, *Post-Citation Procedures and Abatement Verification*.

6. Quick-Fix Penalty Reduction

CSHO's shall advise both the employer and employee representatives, if applicable, the Quick-Fix penalty reduction may be applied to each qualified violation (i.e., those which meet the criteria noted in Chapter 6, *Penalties and Debt Collection*), 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*.

7. Handouts and Additional Items

During the opening conference of an inspection, the CSHO shall provide:

a. The employer representatives with information on how to obtain copies of applicable laws, standards and regulations. Informational handouts and materials shall be given to the employer. The CSHO shall also inform the employer representatives of procedures for obtaining additional copies of any materials of which the CSHO may not have a sufficient quantity on hand.

b. The employee representatives with information on how to obtain copies of applicable laws, standards, regulations and informational handouts and materials from the UOSH Office.

8. Other Opening Conference Topics

The CSHO shall ascertain at the beginning of the opening conference:

a. Employer Name. The correct legal name of the employer, the type of legal entity, and whether it is a subsidiary of any other business entity.

b. Potential Hazards. Whether there are any safety and health hazards to which the walkaround party may be exposed during the inspection. The CSHO shall ensure all members of the inspection party are advised as to the appropriate PPE that is required based on this information.

c. Trade Secrets. Whether the employer wishes to identify areas in the establishment which contain or might reveal trade secrets. If trade secrets are identified, the CSHO will explain that UOSH is required by law to preserve the confidentiality of all information which might reveal a trade secret in accordance with UAC R614-1-6.I. (See VI.E., *Trade* Secrets, in this Chapter for further instructions).

9. Recordkeeping Rule

a. The recordkeeping regulation at 29 CFR 1904.40(a) states once a request is made by an authorized government representative, an employer must provide the required recordkeeping records within four (4) business hours.

b. Although the employer has four (4) hours to provide injury and illness records, the CSHO 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 CSHO is to begin the walkaround portion of the inspection.

10. Abbreviated Opening Conference

An abbreviated opening conference shall be conducted whenever the CSHO believes circumstances at the worksite dictate the walkaround begin as promptly as possible.

a. In such cases, the opening conference shall be limited to presenting credentials, stating the purpose of the visit, explaining employer and employee rights, and requesting for employer and employee representatives. All other elements shall be fully addressed in the closing conference.

b. Pursuant to Utah Code Ann. § 34A-6-301(5) and UAC R614-1-6.H.1, 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 Limitations

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 29 CFR 1910.119, Appendix A or flammable liquids or gases at or above the specified threshold quantity. CSHOs may ask questions, conduct a walkaround or conduct interviews to confirm the information on the list of chemicals and maximum intended inventories.

1. If there is an HHC, flammable liquid or gas present at or above the specified threshold quantity, CSHOs who do not have the required PSM training will document this information and continue with the inspection, with the exception of processes that may be covered by the PSM standard. The CSHO should provide this information to the Compliance Supervisor or Compliance Operations Manager by the next working business day. A PSM trained CSHO will be assigned to determine if the PSM standard is applicable to the process. If applicable, a PSM inspection may be conducted.

2. The following criteria shall be used to determine if any exemptions apply:

a. CSHOs shall confirm the facility is not a retail facility, an oil or gas well drilling or servicing operation or normally unoccupied remote facility [29 CFR 1910.119(a)(2)]. If the facility is one of these types of establishments, PSM does not apply.

b. If the employer believes the process is exempt, CSHOs shall ask the employer to provide documentation or other information to support this claim.

3. According to 29 CFR 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 (e.g., propane used for comfort heating, gasoline for vehicle refueling), if such fuels are not part of a process containing another highly hazardous chemical covered by the standard, or

b. Flammable liquids with a flashpoint below 100˚F (37.8˚C) stored in atmospheric tanks or transferred, which are kept below their normal boiling point without the benefit of chilling or refrigeration.

NOTE: See CPL 03-00-021, *PSM Covered Chemical Facilities National Emphasis Program*, dated January 17, 2017, found on the OSHA website, for UOSH's policies for applying exemptions.

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. UOSH On-Site Consultation Visits

a. In accordance with 29 CFR 1908.7 and Chapter 7 of CSP 02-00-003, *Consultation Policies and Procedures Manual*, November 19, 2015, CSHOs should ascertain at

the opening conference whether a UOSH Consultation visit is in progress. A Consultation visit in progress is defined as a Consultation on-site visit in regards 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. If a Consultation on-site visit is already in progress, it will terminate when one of the following UOSH Compliance inspections is about to take place:

i. Imminent danger;

ii. Fat/Cat, non-Fat/Cat accident; and/or

iii. Complaint.

b. For purposes of efficiency and expediency, an employer's worksite shall not be subject to concurrent Consultation and Compliance-related visits. The following paragraphs clarify the interface between Compliance and Consultation activity at the worksite:

i. Full-Service Both On-site Consultation Visits. If a worksite is undergoing a full-service both on-site Consultation visit, which provides a complete safety and health hazard survey of all working conditions, equipment, processes, and OSHA-mandated safety and health programs at the worksite, programmed or referral Compliance activity may not occur until after the end of the Consultation visit.

ii. Full-Service Safety, Full-Service Health, and Limited-Service On-site Consultation Visits. An on-site Consultation visit-in-progress status is discipline related. If a worksite is undergoing a full-service safety, full-service health, or a limited-service visit, programmed or referral Compliance activity may not occur until after the end of the Consultation visit.

iii. Compliance Follow-up and Monitoring Inspections. If a Compliance follow-up or monitoring inspection is to be conducted while a worksite is undergoing an on-site Consultation visit, the Compliance 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 these instances, the consultant must halt the on-site Consultation visit until the Compliance inspection has been completed. In the event Compliance issues a citation as a result of the follow-up or monitoring inspection, the on-site Consultation visit may not proceed regarding the newly cited item(s) until they have become final order(s).

iv. On-site Consultation Follow-up and/or Training and Assistance Visits. On-site Consultation follow-up and/or training and assistance visits must be deferred if a Compliance inspection is to be conducted. The consultant may continue with follow-up and/or training and assistance activity only after Compliance inspection activity at the worksite is final and any cited item(s) have become final order(s).

c. Programmed planned and referral inspections. If the employer states they are scheduled to have or are undergoing an on-site Consultation visit, the CSHO shall ask the employer for a copy of the request confirmation letter they received from Consultation. The CSHO must contact the Compliance Operations Manager or designee and inform him/her that the employer stated they are scheduled to have or are undergoing an on-site Consultation visit. The confirmation number on the letter, if applicable, will be provided by the CSHO. The Compliance Operations Manager or designee will contact the Consultation Manager or designee to determine if a Consultation visit is in progress or if a visit has been scheduled with the employer. Determination on whether to proceed with the programmed planned or referral inspection will be based on information provided by the Consultation Manager or designee.

i. Consultation visit is in progress. If a Consultation visit is in progress, the CSHO will be informed by the Compliance Operations Manager or designee to leave the site. A Compliance inspection will not be conducted.

ii. Consultation visit is scheduled.

1. If the Consultation visit is scheduled within 5 working days from the opening conference date, the CSHO will be informed by the Compliance Operations Manager or designee to leave the site. An inspection will not be conducted.

2. If the Consultation visit is scheduled for more than 5 working days from the opening conference date, the Compliance Operations Manager or designee will inform the CSHO to ask the employer if they are willing to have a Consultation visit within 5 working days.

a. If the employer chooses not to have a Consultation visit within 5 working days, the CSHO will proceed with the programmed planned or referral inspection.

b. If the employer desires to have a Consultation visit within 5 working days, the CSHO will leave the site.

i. The Compliance Operations Manager or designee will notify the Consultation Manager or designee, via email, and request a visit confirmation date, to be within 5 working days from the date the CSHO visited the site to conduct the Compliance inspection.

ii. The Consultation Manager or designee will email the Compliance Operations Manager or designee, confirming the Consultation visit will be conducted within 5 working days.

iii. If the employer fails to comply with the agreement for a Consultation visit within 5 working days, the Consultation Manager or designee will inform the Compliance Operations Manager or designee via email. The Compliance Operations Manager or designee will assign a CSHO to conduct the programmed planned or referral inspection.

2. Safety and Health Achievement Recognition Program

a. UOSH Inspection(s) at SHARP Worksites. Employers that meet all the requirements for SHARP status will have the names of their establishments removed from UOSH's Programmed Inspection Schedule. The initial exemption period for programmed inspections is up to two years. The renewal exemption period is up to three years, based on the recommendation of the Consultation Manager.

b. Pursuant to 29 CFR 1908.7(b)(4)(ii), the following types of incidents can trigger a Compliance inspection at SHARP sites: imminent danger; Fat/Cat, non-Fat/Cat accident; or formal complaints.

c. Upon verifying the employer is a current SHARP participant, the CSHO shall notify the Director or designee so that the company is removed from the UOSH programmed inspection schedule for the approved exemption period, which begins on the date the Director approves the employer's participation in SHARP.

3. Voluntary Protection Program

Inspections at a VPP site may be conducted in response to referrals, formal complaints, fatalities, catastrophes and accidents.

NOTE: A CSHO who was previously a VPP on-site team member cannot conduct a Compliance inspection at that VPP site for the following 2 years or until the site is no longer a VPP participant, whichever occurs first. See CSP 03-01-005, *Voluntary Protection Programs Policies and Procedures Manual*, dated January 30, 2020.

E. Disruptive Conduct

CSHOs may deny the right of accompaniment to any person whose conduct interferes with a full and orderly inspection. See UAC R614-1-6.H.4. If disruption or interference occurs, the CSHO shall contact the Compliance Supervisor or the Compliance Operations Manager as to whether to suspend the walkaround or take other actions. 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. See UAC R614-1-6.H.4.

G. Special Situations

1. Preemption by a Federal or another State Agency. Utah Code Ann. § 34A-6-104 states that the Utah OSH Act does not apply to working conditions over which other state and federal agencies exercise statutory responsibility. The determination of preemption by another state or federal agency is in many cases a highly complex matter. To preclude as

much as possible any misunderstanding with other agencies and to avoid consequent adverse actions by employers (or agencies) the Compliance Operations Manager or designee shall observe the following guidelines whenever a situation arises involving a possible Utah Code Ann. § 34A-6-104 question:

a. The Compliance Operations Manager or designee shall be alert to potential conflicts with other agencies at all times. If a question arises, usually upon receipt of a complaint, referral, or other inquiry, the OSHA Directives System shall immediately be consulted to determine if the issue is addressed in an MOU with the agency involved. A list of MOUs is located on the OSHA website (https://www.osha.gov/laws-regs/mou/publicationdate).

b. If the issue is not addressed in an MOU, the Director or designee shall provide clarification of the issue after consulting with the state agency or federal agency's local or regional office.

NOTE: Routine contact with other state agencies and federal agencies at the local and regional levels is highly desirable where Utah Code Ann. § 34A-6-104 issues may arise. The Director or designee will maintain active liaison with federal and state agencies to ensure full cooperation in the event a situation requires clarification.

c. If unable to clarify the issue, the Director or designee may consult with the Regional Administrator.

d. At times an inspection may have already begun when the Utah Code Ann. § 34A-6-104 question arises. In such cases the CSHO shall interrupt the inspection and contact the Compliance Operations Manager or designee for guidance.

e. If, following an inspection, there remains any doubt as to UOSH coverage, the proposed citation and penalty shall be cleared by the Director prior to issuance.

2. Employee Representatives Not Employees of the Employer. Walkaround representatives authorized by employees will almost always be employees of the employer.

NOTE: If, however, in the judgment of the CSHO, unique circumstances make the presence of a nonemployee third party (industrial hygienist, safety engineer or other experienced safety or health person) necessary or helpful to the conduct of an effective and thorough physical inspection of the workplace, such person may be designated by the employees as their representative to accompany the CSHO during the inspection as identified in UAC R614-1-6.H.3. Questionable circumstances, including any unreasonable delays, will be referred to the Compliance Operations Manager or designee. A nonemployee representative shall be cautioned by the CSHO not to discuss matters pertaining to operations of other employers during the inspection.

3. More Than One Representative. At establishments where more than one employer is present or in situations where groups of employees have different phases of the inspection, more than one employer and/or employee representative may accompany the CSHO throughout any phase of an inspection if the CSHO determines such additional representatives will aid and not interfere with the inspection (UAC R614-1-6.H.1).

a. Whenever appropriate to avoid a large group, the CSHO shall encourage multiple employers to agree upon and chose a limited number of representatives for walkaround accompaniment purposes. If necessary, during the inspection, employer representatives not on the walkaround shall be contacted to participate in particular phases of the inspection.

b. As an alternative, the CSHO shall divide a multi-employer inspection into separate phases; e.g., excavation, steel erection, mechanical, electrical, etc., and encourage different phases, as appropriate.

c. The same principles shall govern the selection of employee representatives when several are involved.

V. Review of Records

A. Injury and Illness Records

1. Collection of Data

a. At the start of each inspection, CSHOs shall request copies of the OSHA-300 Injury and Illness Logs and 300A Summary of Work-Related Injuries and Illnesses for the current and prior 3 years. If an OSHA 300A summary is not available for any year requested, CSHOs shall request the total hours worked and average number of employees for that year. The CSHO shall review the employer's injury and illness records and enter the employer's OSHA-300 Log data into the OIS system. This shall be done for all general industry and construction inspections and investigations.

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.

NOTE: In accordance with 29 CFR 1904.1 and 1904.2, employers may be exempt from keeping OSHA-300 Injury and Illness Logs and the 300A Summary.

b. CSHOs shall use the data to calculate the Days Away, Restricted, or Transferred (DART) rate and to observe trends, potential hazards, types of operations and work-related injuries.

c. If CSHOs have questions regarding a specific case on the log, they shall request the OSHA-301s or equivalent form for that case.

d. 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.

2. 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 years is a partial year, so indicate and the software will calculate accordingly.

3. 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) x (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). DART rate would be (22 ÷ 645,089) x (200,000) = 6.8.

4. State and/or Political Subdivisions

State and/or political subdivisions injury and illness recording and reporting requirements shall comply with UAC R614-1-5.B.1., UAC R614-1-7., and 29 CFR 1904.

B. 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.

1. Death;
2. Days Away from Work;
3. Restricted Work;
4. Transfer to another job;
5. Medical treatment beyond first aid;
6. Loss of consciousness;
7. Diagnosis of a significant injury or illness; or
8. Meet the recording criteria for specific cases noted in 29 CFR 1904.8 through 29 CFR 1904.11.

C. Recordkeeping Deficiencies

1. If recordkeeping deficiencies are suspected and 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 may be performed.

2. Other information related to this topic:

a. There are several types of workplace policies and practices that could discourage employee reports of injuries and could constitute a violation of Utah Code Ann. § 34A-6-203 of the Utah OSH Act. These policies and practices, otherwise known as employer safety incentive and disincentive policies and practices, may also violate UOSH's recordkeeping regulations. If recordkeeping deficiencies or unsound employer safety incentive policies are discovered, the CSHO should request assistance from the Compliance Operations Manager or designee. For guidance, see Richard E. Fairfax Memo, Employer Safety Incentive and Disincentive Policies and Practices (March 12, 2013) at: http://www.osha.gov/as/opa/whistleblowermemo.html.

b. Other UOSH programs and records will be reviewed including hazard communication, lockout/tagout, emergency evacuation and PPE. Additional programs will be reviewed as necessary.

c. Many standard-specific OSHA directives provide additional guidance to CSHOs requesting certain records and/or documents at the opening conference.

VI. 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.

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(s). 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 such additional representatives will aid, and not interfere with, the inspection. See UAC R614-1-6.H.1.

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. UAC R614-1-6.H. gives the CSHO the authority to resolve all disputes as to whom is the representative authorized by the employer and employees. UAC R614-1-6.H.3 states "the representative(s) authorized by employees shall be an employee(s) of the employer.

However, 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 safety engineer) is reasonably necessary to the conduct of an effective and thorough physical inspection of the workplace, such third party may accompany the CSHO during the inspection."

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 UOSH inspection purposes (regardless of the existence of a safety committee), CSHOs may determine if other employees would suitably represent the interests of employees on the walkaround. CSHOs shall conduct interviews with a reasonable number of employees during the walkaround.

In some cases, workers without a certified or recognized bargaining agent may authorize third party organizations and/or individuals to be their representatives during an inspection. As with non-employee representatives authorized by workers with a recognized bargaining agent, allowing the category of third party representative to accompany CSHOs on an inspection is appropriate if the representative will help achieve an effective and thorough health and safety inspection. The purpose of a walkaround representative is to assist the inspection by helping the CSHO receive valuable health and safety information from workers who may not be able or willing to provide such information absent the third party participants.

3. Safety Committee

Employee members of an established safety committee or employees in general can designate an employee representative for UOSH inspection purposes.

B. Evaluation of Safety and Health Management System

The employer's safety and health management system shall be evaluated to determine its good faith for the purposes of penalty calculation. See Chapter 6, *Penalties and Debt Collection*.

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 discovered.

2. CSHOs shall record, at a minimum, the identity of the exposed employee(s), the work the exposed employee(s) was performing, the hazard to which the employee(s) was exposed, the location of the hazard in the workplace, the proximity of the employee(s) to the hazard, machine and/or equipment identifiers (e.g., serial number, make, manufacturer, etc), 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.

NOTE: If employee exposure to hazards is not observed, the CSHO shall document facts on which the determination is made that an employee has 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 UOSH'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

In accordance with Utah Code Ann. § 13-24-2(4), "Trade secret" means information, including a formula, pattern, compilation, program, device, method, technique, or process, that: (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use; and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

1. Policy

It is essential to the effective enforcement of the Utah OSH Act that CSHOs and UOSH personnel preserve the confidentiality of all information and investigations which might reveal a trade secret.

2. Restriction and Controls

At the commencement of an inspection, the employer may identify areas in the establishment which contain or which might reveal a trade secret. If the CSHO has no clear reason to question such identification, information obtained in such areas, including all negatives and prints of photographs, video and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with the provisions of Section § 34A-6-306 of the Act and UAC R614-1-6.I.

3. If the employer objects to the taking of photographs and/or video because trade secrets would or may be disclosed, CSHOs should advise the employer of the protection against such disclosure afforded by Utah Code Ann. § 34A-6-306 and UAC R614-1-6.I. If the employer still objects, CSHOs shall contact the Director 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 walkaround and from the pre-inspection review.

2. Summaries of the sampling results shall be provided to the employer and employee representatives.

G. Photographs and Video

1. Photographs and/or video, whether digital or otherwise, shall be taken whenever CSHOs determine there is a need.

a. Photographs that support violations shall be properly labeled and attached to the appropriate Inspection Worksheet.

b. CSHOs shall ensure photographs relating to confidential or trade secret information are identified as such and are kept separate from other evidence.

2. All negatives, photographs and video shall be retained in the case file. If lack of storage space does not permit retaining the negatives, photographs and video with the file, they may be stored elsewhere with a reference to the corresponding inspection. Video shall be properly labeled.

H. Violations of Other Laws

If a CSHO observes apparent violations of laws enforced by other government agencies, the Director or designee shall be informed. Such cases shall be referred by the Compliance Operations Manager or designee to the appropriate agency as determined by the Director or designee.

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 the hazardous conditions have existed, the number and the extent of employee exposure(s) and the actions of management regarding correction of the hazardous conditions.

1. Background

a. Utah Code Ann. § 34A-6-301 and UAC R614-1-6.C.1 authorize CSHOs to question any employee privately during regular working hours or at other reasonable times during the course of a UOSH inspection. The purpose of such interviews is to obtain whatever information CSHOs deem necessary or useful in carrying out inspections effectively.

b. Employee interviews are an effective means 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 presence and/or implementation of a safety and health system to prevent or control workplace hazards.

d. If an employee refuses to be interviewed, the CSHO shall use professional judgment, in consultation with the Compliance Supervisor or the Compliance Operations Manager, in determining the need for the statement.

2. Employee Right of Complaint

CSHOs shall 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 Compliance Supervisor or the Compliance Operations Manager if an interview is to be conducted someplace other than the workplace. Where appropriate, UOSH has the authority to subpoena an employee to appear at the UOSH 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 will inform the Compliance Supervisor who will then inform the Compliance Operations Manager and/or Director. The Compliance Operations Manager and/or Director will consult with the AAG to determine appropriate legal action. Interference with a CSHO's 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 employees already know or understand UOSH'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 UOSH's protocol for interpreters.

- Every employee should be asked to provide his or her name, home address and phone number. CSHOs should make clear the reason for asking for this information.
- CSHOs shall inform employees that UOSH has the authority to interview them in private and of the retaliation protections afforded under Utah Code Ann. § 34A-6-203.
- In the event an employee requests a representative of the union be present, CSHOs shall make a reasonable effort to honor the request.
- If an employee requests his/her personal attorney be present during the interview, CSHOs should honor the request and, before continuing with the interview, consult with the Director or designee for guidance.
- 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 they have, CSHOs should consult with the Director or designee.

b. Documenting Interviews

- Properly document the contact information of all parties because follow-up interviews with a witness are sometimes necessary.
- Interviews should be video recorded by the CSHO. If the witness refuses to be video recorded, a statement should be completed and signed by the witness.
- Refusals by a witness to be video recorded or to complete and/or sign a statement shall be noted in the case file by the CSHO. In the event a witness refuses to be video recorded and refuses to complete a written statement, the CSHO shall summarize the best they can the content of the interview with the witness and include the summary in the case file.

c. Informer's Privilege

- The informer's privilege shall be governed by Utah Rules of Evidence 505. This Rule allows the government to withhold the identity of individuals who provide information about the violation of laws, including UOSH rules and regulations. This privilege may be claimed by counsel for the government. No privilege exists if the informer voluntarily discloses his or her own identity and information and if the informer appears as a witness for the government.
- 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.

- Inform each witness his/her interview statements may be released if he or she authorizes such a release, if he or she voluntarily discloses the statement to others, or if he or she appears as a witness for the government, resulting in a waiver of the privilege.
- Inform witnesses in a tactful and nonthreatening manner that any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Utah OSH Act is guilty of a class A misdemeanor in accordance with Utah Code Ann. § 34A-6-307(5)(c).

J. Multi-Employer Worksites

In accordance with UAC R614-1-6.U., Multi-Employer worksites, more than one employer may be cited for a hazardous condition that violates a UOSH standard. Refer to Chapter 12, Section I., *Multi-Employer Workplace/Worksite*, for inspection procedures on multi-employer worksites.

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 Director or designee may issue an administrative subpoena.

L. 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 UOSH 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 UOSH;

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.

VII. Closing Conference

A. Participants

At the conclusion of an inspection, CSHOs shall conduct a closing conference with the employer and 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, circumstances of the refusal shall be documented in the case file narrative and the case shall be processed as if a closing conference had been held.

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 worker input is received before employers are informed of violations and proposed citations.

B. Discussion Items

1. CSHOs shall discuss the apparent violations and other pertinent issues found during the inspection, including input for establishing correction dates, and note relevant comments on the Inspection Worksheet.

2. CSHOs shall explain the employer's rights and responsibilities following a UOSH inspection and courses of action available to the employer if a citation is issued. All matters discussed during the closing conference shall be documented in the case file, including a note describing printed materials distributed.

3. CSHOs shall discuss the strengths and weaknesses of the employer's occupational safety and health system and any other applicable programs, and advise the employer of the benefits of an effective program(s) and provide information, such as, UOSH's website, OSHA's website, etc., describing program elements.

4. Both the employer and employee representatives shall be advised of their rights to participate in subsequent conferences, meetings or discussions and contest rights. Any unusual circumstances noted during the closing conference shall be documented in the case file.

5. 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.

6. CSHOs shall advise employee representatives that:

a. The employer should notify them if a notice of contest or a petition for modification of abatement date is filed;

b. They have Utah Code Ann. § 34A-6-203 rights; and

c. They have a right to contest the abatement date. Such contests must be in writing and must be postmarked within 30 calendar days after receipt of the citation.

C. Advice to Attendees

1. The CSHO shall inform those attending the closing conference that they may request an informal conference with the Director or designee, 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 UOSH programs and services available.

2. If a citation is issued, an informal conference or the request for one does not extend the 30 calendar-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 Intent to Contest.

4. Employee representatives have the right to participate in informal conferences or negotiations between the Director or designee and the employer in accordance with the guidelines given in Chapter 7, Section II., *Informal Conferences*.

D. Penalties

CSHOs shall explain penalties must be paid within 30 calendar days after the employer receives a Citation and Notification of Penalty (Citation). 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 expertise as to materials and methods available or adaptable to specific circumstances, which can be applied to a cited condition with a reasonable possibility that employee exposure to occupational hazards will be reduced.

   f. **Economic Feasibility.** Means 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 Director or designee for determination.

F. Reducing Employee Exposure

Employers shall be advised, 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 (PEL)]. They are required in conjunction with PPE 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-Citation 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 "Corrected During Inspection."

2. Corrected During Inspection

The violation(s) that will reflect on-site abatement and will be identified in the citations as "Corrected 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 serious, repeat and willful violation. To minimize confusion, the distinction between abatement certification and abatement documentation should be discussed.

4. 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 Utah OSH Act prohibits employers from discharging or retaliating in any way against an employee who has exercised any right under the Act, including the right to make safety or health complaints or to request a UOSH inspection.

VIII. 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 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. These 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 after the abatement due date and the final order date of the original citation have passed 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 Notification of Failure to Abate Alleged Violations shall normally be issued. If a subsequent inspection indicates the condition has still not been abated, the AAG 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, Section III, Petition for Modification of Abatement (PMA).

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 Inspection Worksheet 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 case file.

b. In the event any item has not been abated, complete documentation shall be included on an Inspection Worksheet.

4. Follow-up Files

Follow-up inspection reports shall be included with the original (parent) case file.

B. Construction Inspections

See Chapter 10, Section III. *Construction.*

C. Federal Agency Inspections

UOSH does not have jurisdiction over Federal Agencies.

APPENDIX 3-1. Witness Statements, English & Spanish

UTAH LABOR COMMISSION
Utah Occupational Safety and Health Division

UOSH WITNESS STATEMENT

Event Date:	Event Time:	Statement Recorded ☐ **Yes** ☐ **No**
Event Location:		
Employer:		Employer Phone:
Name of Witness:		
Home Address:		
City:	State:	Zip:
Day Time Phone:		Evening Phone:
Is this statement in the handwriting of the Witness? ☐ **Yes** ☐ **No**, *If No*, Who? _____		

-Statement may be continued on back of page, Please initial last line of statement-

To the best of my knowledge and recollection, the above statement is true and factual. If not written by witness, the witness has had an opportunity to correct any misinformation.

_____ _____

Signature of Witness **Date**

UTAH LABOR COMMISSION
Utah Occupational Safety and Health Division

División De Seguridad Y Salud Laboral De Utah
DEPOSICIÓN DEL TESTIGO

Fecha del acontecimiento:	Hora del acontecimiento:	¿Se grabó la deposición?: ☐**Si** ☐**No**
Dirección en el que el acontecimiento ocurrió:		
Nombre del empleador:	Teléfono del empleador:	
Nombre del Testigo:		
Dirección residencial del testigo:		
Teléfono de uso diurno:	Teléfono de uso nocturno:	
¿La deposición esta escrita por el mismo testigo? ☐**Si** ☐**No** ***Si la respuesta es no, ¿Quién escribió la declaración***?_____		

-Puede continuar la declaración al reverso de esta página, Por favor, inicie al final de la declaración-

La afirmación anterior es cierta y correcta de acuerdo a mi memoria y conocimiento de los hechos. Si la deposición no ha sido escrita por el testigo, el testigo ha tenido la oportunidad de corregir cualquier equivocación.

_____ _____

Firma del Testigo **Fecha**

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 4

Violations

Chapter 4
VIOLATIONS

I. Basis of Violations

A. Standards and Regulations

1. Utah Code Ann. § 34A-6-201(1)(b) states each employer has a responsibility to comply with the standards promulgated under the Utah OSH Act, which includes standards incorporated by reference. For example, the American National Standards Institute (ANSI) standard A92.2 – 1969, "Vehicle Mounted Elevating and Rotating Work Platforms," including appendix, is incorporated by reference as specified in 29 CFR 1910.67. Only the mandatory provisions, i.e., those containing the word "shall" or other mandatory language of standards incorporated by reference, are adopted standards under the Utah OSH Act.

2. The specific standards and regulations are found in Utah Code Ann. § 34A Chapter 6, UAC R614, 29 CFR 1910, 29 CFR 1926, and 29 CFR 1904. UAC R614-1-4 Incorporation of Federal Standards and UAC R614-1-5 Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders establish the source of all the standards which serve as the basis of violations. Standards are subdivided as follows per OIS application. For example, 29 CFR 1910.305(j)(6)(ii)(A)(2) would be entered as follows:

Subdivision Naming Convention	Example
Title	29
Part	1910
Section	305
Paragraph	(j)
Subparagraph	(6)
Item	(ii)
Sub-item	(A)
Sub-item 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.

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 Compliance Operations Manager shall be consulted. The following guidelines shall be considered:

a. When a hazard in a particular industry is covered by both a vertical (specific) and a horizontal (general) standard, the vertical standard shall take precedence even if the horizontal standard is more stringent.

b. In situations covered by both a vertical and a horizontal standard where the horizontal standard appears to offer greater protection, the horizontal standard may be cited only if its requirements are not inconsistent or in conflict with the requirements of the vertical 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 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, 29 CFR 1926.501(b)(15) may not be cited for fall hazards above 6 feet since that specific situation is covered by 29 CFR1926.760(b)(1) for fall distances of more than 30 ft.

c. If the particular industry does not have a vertical standard that covers the hazard, then the CSHO shall use the horizontal 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.

f. If a question arises as to whether an activity is deemed construction for purposes of the Utah OSH Act, the Supervisor or the Compliance Operations Manager shall be consulted.

5. Violation of Variances

The employer's requirement to comply with a standard may be modified through granting of a variance, as outlined in Utah Code Ann. § 34A-6-202(4)(a) through (4)(c) of the Utah OSH Act.

a. In the event 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 an employer has filed a variance application regarding a condition that is an apparent violation of a standard, the Director 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 Exposure

A hazardous condition that violates a UOSH 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.

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 Director or designee shall seek the advice of the AAG.

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 Exposure

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 exposure(s) to a hazardous condition. Such exposure(s) 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 Exposure

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 Exposure

In fatality/catastrophe (or other "accident/incident") investigations, prior employee exposure(s) may be established if CSHOs establish, through verbal/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 exposure to the hazardous condition will not recur.

b. Potential Exposure

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 they could come into that area during the course of 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 an employee could again use the equipment or be exposed to the materials in the course of work; however
- If the inspection reveals a work rule in place to adequately prevent the violation in question, effective communication of the work rule to employees, an effective means of discovering violations of the work rule and effective enforcement of the rule when violations occur 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 Exposure

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 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;
- Recorded statements or signed written statements;
- Photographs, video, and/or measurements; and
- All relevant documents (e.g., autopsy reports, police reports, job specifications, site plans, OSHA-300/301 (or equivalent) forms, equipment manuals, employer work rules, employer sampling results, employer safety and health programs, and employer disciplinary policies, etc.).

C. Regulatory Requirements

Violations of UAC R614-1-5.B., UAC R614-1-6., UAC R614-1-7., and 29 CFR 1904 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 Division policy. See also CPL 02-00-111, *Citation Policy for Paperwork and Written Program Violations,* dated November 27, 1995.

NOTE: *If prior to the lapse of the 8-hour reporting period, UOSH becomes aware of an incident required to be reported under UAC R614-1-5.B through means other than an employer report, there is no violation for failure to report.*

D. Hazard Communication

29 CFR 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

Utah Code Ann. § 34A-6-201(1) of the Utah OSH Act states each employer shall:

a. Furnish to each of its employees employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees; and

b. Comply with occupational safety and health standards promulgated under this chapter.

2. Employee Responsibilities

a. Utah Code Ann. § 34A-6-201(2) of the Utah OSH Act states: "Each employee shall comply with the occupational safety and health standards, orders, and rules made under this chapter." The Utah OSH 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 employees are systematically refusing to comply with a standard applicable to their own actions and conduct, the matter shall be referred to the Director 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 Utah OSH 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, Section VI, *Affirmative Defenses*, for additional information.

4. Multi-Employer Worksites

In accordance with UAC R614-1-6.U., 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 UOSH standard. See Chapter 12, *Specialized Inspection Procedures,* Section I., *Multi-Employer Workplace/Worksite,* for additional information.

II. Serious Violations

A. Utah Code Ann. § 34A-6-307(1)(b)

Utah Code Ann. § 34A-6-307(1)(b) states "...A violation is only serious if: (i) it arises from a condition, practice, method, operation, or process in the workplace of which the employer knows or should know through the exercise of reasonable diligence; and (ii) there is a substantial possibility the condition, practice, method, operation, or process could result in death or serious physical harm."

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 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 on the basis of 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 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 ground in apparent violation of 29 CFR 1910.23(c)(1). The regulation requires the edge of 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 which debris is located in apparent violation of 29 CFR 1910.141(a)(3)(i). The type of hazard the standard is designed to prevent is employees tripping on debris.

EXAMPLE 4-4: An 8-hour time-weighted average (TWA) sample reveals regular, ongoing employee overexposure to methylene chloride at 100 ppm, which is 75 ppm above the 25 ppm PEL, an apparent violation of 29 CFR 1910.1052(c)(1).

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 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 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 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. Chemical Sampling Information, on the OSHA website, 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 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;
- 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 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 cancer could result.

EXAMPLE 4-8: If an employee is exposed regularly to acetic acid at 20 ppm, it is reasonable 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:

> 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 an extremity);
- 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, illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body. Some examples of such illnesses include:

- 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 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 3, and his or her breathing capacity is significantly reduced. This illness would constitute serious physical harm.

NOTE: *The key determination is the likelihood death or serious* harm *will result* ***IF*** *an accident or exposure occurs.* ***The likelihood (probability) 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 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 the employer has actual knowledge of a hazardous condition, the knowledge requirement may be established if there is evidence the

employer could have known of it through the exercise of reasonable diligence. CSHOs shall record any evidence that substantiates 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 supervisor represents the employer and the actual or constructive knowledge of a supervisor who is aware of a violative condition or practice usually establishes employer knowledge of the condition. In cases where the employer contends 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.

III. General Duty Requirements

Utah Code Ann. § 34A-6-201(1)(a) of the Utah OSH Act states: "Each employer shall furnish to each of its employees employment and a place of employment that are free from recognized hazards that are causing or are likely to cause death or serious physical harm to its employees."

A. Evaluation of General Duty Requirements

In general, Commission and court precedent have established the following elements are necessary to prove a violation of the general duty clause:

- The employer failed to keep the workplace free of a hazard to which employees of that employer were exposed;
- The hazard was recognized;
- The hazard was causing or was likely to cause death or serious physical harm; and
- 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 Utah Code Ann. § 34A-6-201(1)(a) 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 so as 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 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. Utah Code Ann. § 34A-6-201(1)(a) 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 Supervisor or the Compliance Operations Manager shall consult with the Director or designee 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 may 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 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 the employer has violated Utah Code Ann. § 34A-6-201(1)(a), although the accident/incident may be evidence of a hazard. In some cases, a Utah Code Ann. § 34A-6-201(1)(a) 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. All of the factors that could cause a hazard need not be present in the same place or at the same time in order to prove foreseeability of the hazard; e.g., 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 Utah Code Ann. § 34A-6-201(1)(a) 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 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 Utah Code Ann. § 34A-6-201(1)(a) 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 Utah Code Ann. § 34A-6-201(1)(a) violation if the employer's own employees are not exposed to the hazard. Under these circumstances, a citation under UAC R614-1-5.C.3 may be warranted.

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 Supervisor or the Compliance Operations Manager shall consult with the Director or designee and the AAG to determine the sufficiency of the evidence regarding the employment relationship.

c. The fact that an employer denies 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 on the basis of 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 UOSH 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 UOSH, OSHA, or another OSHA State Plan State 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 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 Utah Code Ann. § 34A-6-201(1)(a) 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 Utah Code Ann. § 34A-6-201(1)(a) 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 Supervisor or the Compliance Operations Manager shall consult with the Director 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 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 UOSH 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 UOSH standards, the Supervisor or the Compliance Operations Manager, upon consultation with the Director or designee, shall determine whether the hazard is to be cited under Utah Code Ann. § 34A-6-201(1)(a) 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 Utah Code Ann. § 34A-6-201(1)(a), but there is a local code that addresses this hazard and a local agency actively enforces the code. The situation normally shall be referred to the local enforcement agency in lieu of citing Utah Code Ann. § 34A-6-201(1)(a).

- References that may be used to supplement other evidence to help demonstrate industry recognition include the following:
  - National Institute for Occupational Safety and Health (NIOSH) criteria documents.
  - Environmental Protection Agency (EPA) publications.
  - National Cancer Institute and other agency publications.
  - OSHA Hazard Alerts.
  - OSHA Technical Manual.

- Chemical Sampling Information.
- Articles in medical and/or scientific journals.

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, Utah Code Ann. § 34A-6-201(1)(a) could not be cited in this situation because 29 CFR 1926.252 or 29 CFR 1926.852 applies.

7. The Hazard Was Causing or Likely to Cause Death or Serious Physical Harm

a. This element of a Utah Code Ann. § 34A-6-201(1)(a) violation is virtually identical to the substantial probability element of a serious violation under Utah Code Ann. § 34A-6-307(1)(b) of the Utah OSH Act. See Section II.C.3. of this chapter.

b. This element of a Utah Code Ann. § 34A-6-201(1)(a) violation can be established by showing that:

- A death or serious injury resulted from the recognized hazard, whether immediately prior to the inspection or at another time and place; or
- If an accident/incident occurred, the likely result would be death or serious 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 (e.g., 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. 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 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 Utah Code Ann. § 34A-6-201(1)(a) violation, the division 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 Utah Code Ann. § 34A-6-201(1)(a) citation may be issued. A citation will not be issued merely because UOSH 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, an abatement note shall be included on the violation worksheet and Citation/Notice of Unsafe or Unhealthful Working Conditions 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 the recognized hazard of exposure to hydrogen sulfide gas was present in the workplace and a feasible and useful abatement method existed; e.g., 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 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.

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, e.g., 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 29 CFR 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 tip over (forklifts are particularly susceptible to tip overs) 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

Utah Code Ann. § 34A-6-201(1)(a) is to be used only within the guidelines given in this chapter.

1. Utah Code Ann. § 34A-6-201(1) Shall Not be Used When a Standard Applies to a Hazard

As discussed above, Utah Code Ann. § 34A-6-201(1)(a) may not be cited if a UOSH standard applies to the hazardous working condition. If there is a question as to whether a standard applies, the Supervisor or the Compliance Operations Manager shall consult with the Director or designee. The AAG may assist the Director or designee in determining the applicability of a standard prior to the issuance of a citation.

EXAMPLE 4-24: Utah Code Ann. § 34A-6-201(1)(a) shall not be cited for electrical hazards as 29 CFR 1910.303(b) and 29 CFR 1926.403(b) require that electrical equipment is to be kept free from recognized hazards that are likely to cause death or serious physical harm to employees.

2. Utah Code Ann. § 34A-6-201(1)(a) Shall Normally Not be Used to Impose a More Stringent Requirement than that Required by the Standard

EXAMPLE 4-25: A standard provides for a PEL of 5 ppm. Even if data establish that a 3 ppm level is a recognized hazard, Utah Code Ann. § 34A-6-201(1)(a) shall not be cited to require that the lower level be achieved. If the standard has only a TWA-PEL and the hazard involves exposure above a recognized ceiling level, the Supervisor or the Compliance Operations Manager shall consult with the Director or designee.

3. Utah Code Ann. § 34A-6-201(1)(a) 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, Utah Code Ann. § 34A-6-201(1)(a) shall not be cited to additionally require medical surveillance. The Supervisor or the Compliance Operations Manager shall evaluate the circumstances of special situations in accordance with guidelines stated herein and consult with the Director or designee to determine whether a Utah Code Ann. § 34A-6-201(1)(a) citation can be issued.

4. Alternative Standards

The following standards shall be considered carefully before issuing a Utah Code Ann. § 34A-6-201(1)(a) citation for a health hazard.

a. There are a number of general standards that shall be considered rather than Utah Code Ann. § 34A-6-201(1)(a) 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 PPE standard, the PPE standard shall be cited. In general industry, 29 CFR 1910.132(a) may be appropriate where exposure 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; e.g., the air contaminant levels contained in 29 CFR 1910.1000 in general industry and in 29 CFR 1926.55 for construction.

c. Another general standard is 29 CFR 1910.134(a), which addresses the hazards of breathing harmful air contaminants not covered under 29 CFR 1910.1000 or another specific standard, and which may be cited for failure to use feasible engineering controls or respirators.

d. Violations of 29 CFR 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 29 CFR 1910.132(a) where there is potential for toxic materials to be absorbed through 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 Utah Code Ann. § 34A-6-201(1)(a)

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 Utah Code Ann. § 34A-6-201(1)(a) violation shall be documented in the file. This includes all photographs, video, 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 Utah Code Ann. § 34A-6-201(1)(a) 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 Utah Code Ann. § 34A-6-201(1)(a) violation, such experts and the AAG shall be consulted prior to the citation being issued and their opinions noted in the file.

2. Pre-Citation Review

The Director or designee shall review and approve all proposed Utah Code Ann. § 34A-6-201(1)(a) citations. These citations shall undergo additional pre-citation review as follows:

a. The Director or designee and the AAG shall be consulted prior to the issuance of all Utah Code Ann. § 34A-6-201(1)(a) 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 Utah Code Ann. § 34A-6-201(1)(a) citation are not met, yet the Director or designee determines that the hazard warrants some type of notification, a Notice in Lieu of Citation shall be sent to the employer and employee representative describing the hazard and suggesting corrective action.

IV. Other-than-Serious Violations

This type of violation shall be cited in situations where the accident/incident or illness that would be most likely to 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.

V. Willful Violations

A willful violation exists where an employer has demonstrated either an intentional disregard for the requirements of the Utah OSH Act or a plain indifference to employee safety and health. The Director or designee should consult with the AAG when developing willful citations. The following guidance and procedures apply whenever there is evidence that a willful violation may exist:

A. Intentional Disregard of Violations

An employer commits an intentional and knowing violation if:

1. An employer was aware of the requirements of the Utah OSH 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 Utah OSH Act or standards, but had knowledge of a comparable legal requirement (e.g., 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 Director 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 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 where:

a. Management officials were aware of a UOSH 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.*

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 Utah OSH 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 UOSH or officials from other government agencies or an employee safety committee regarding the requirements of a standard.

NOTE: *This may include prior citations or warnings from federal OSHA or other OSHA State Plan State officials.*

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

VI. Criminal/Willful Violations

Utah Code Ann. § 34A-6-307(5)(a) provides that "Any employer who willfully violates any standard, code, rule, or order issued under Utah Code Ann. § 34A-6-202, or any rule made under this chapter, is guilty of a class A misdemeanor if the violation caused the death of an employee. If the violation causes the death of more than one employee, each death is considered a separate offense."

Note that this provision of the Utah OSH Act does not apply to Utah Code Ann. § 34A-6-201(1)(a) violations classified as willful. See Chapter 6, Section XII, *Penalties and Debt Collection*, regarding criminal penalties.

A. Director Coordination

The Director or designee, in coordination with the AAG, shall carefully evaluate all willful cases involving employee deaths to determine whether they may involve criminal violations of Utah Code Ann. § 34A-6-307(5)(a). Because the quality of the evidence available is of paramount importance in these investigations, there shall be early and close discussions between the CSHO, Supervisor, Compliance Operations Manager, Director or designee, and the AAG in developing all evidence when there is a potential Utah Code Ann. § 34A-6-307(5)(a) 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, UOSH must prove that:

a. The employer violated a UOSH standard. A criminal/willful violation cannot be based on violation of Utah Code Ann. § 34A-6-201(1)(a).

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 will be

referred to the AAG for evaluation of potential criminal penalties in accordance with Utah Code Ann. § 34A-6-307(5)(a).

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 Director or designee 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.

VII. Repeated Violations

A. Identical Standards

1. An employer may be cited for a repeated violation for the same or substantially similar condition or hazard if that employer has been previously cited, by UOSH, for violating the same standards, code, rule or order, and the citation has become a final order of the Commission. 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.

Prior citations by federal OSHA and/or other OSHA State Plan States cannot be used as a basis for UOSH repeated violations. Only violations that have become final orders of the Commission may be considered.

2. In certain circumstances, although the same standard was previously cited at a workplace, the hazardous conditions in each case may not be similar and a repeated violation would not be appropriate.

EXAMPLE 4-28: A citation was previously issued for a violation of 29 CFR 1910.132(a) for not requiring the use of flame retardant clothing for employees. A recent inspection of the same establishment revealed a violation of 29 CFR 1910.132(a) for not requiring the use of chaps while operating a chainsaw to trim trees. 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.

B. Geographical Limitations

For purposes of determining whether a violation is repeated, the following criteria shall apply:

For purposes of considering whether a violation is repeated, citations issued to employers having fixed establishments (e.g., factories, terminals, stores) shall be normally limited to the cited establishment. In instances where there is more than one site and there is a communicated knowledge of conditions cited by UOSH between sites, to those with the authority to make corrections, a repeated citation may be issued.

EXAMPLE 4-30: A company was cited at plant A for a violation of 29 CFR 1910.135 for not wearing head protection. Subsequent to the citation at plant A becoming a final order, an inspection at plant B was conducted which revealed the same violation. The company safety director had participated in the inspection at plant A and was directly responsible for the correction of unsafe conditions at both plants. A repeated citation could be issued.

Because the determination of knowledge between fixed sites is very complex, the Director or designee should be consulted whenever the CSHO has reason to believe that a repeated violation may be present based on conditions at another fixed site belonging to the same company.

For employers engaged in businesses having no fixed establishments, repeated violations will be alleged based on prior violation occurring at the same construction site or same drilling rig, or when there is a communicated knowledge of cited conditions from one site to another. Communicated knowledge could be inferred if the second site was controlled by the same supervisor as the first site where the violation occurred. Other means of communicating the knowledge of violations could be the presence of an overall safety director with specific knowledge of the first violation and direct responsibility for correction of unsafe conditions at all sites, or specific written instruction containing information about the violative conditions at the first site to other site supervisors.

EXAMPLE 4-31: Where the construction site extends over a large area and/or the scope of the job is unclear (such as road construction), that portion of the workplace specified in the employer's contract which falls within Utah's jurisdiction is the establishment. An employer's history of violations outside of the state of Utah will not be used as a basis for repeat citations.

EXAMPLE 4-32: A trenching company was cited for violations of 29 CFR 1926.652 for not sloping trench walls in Provo. Subsequent to that citation becoming a final order, a site in Ogden had the same violation occur with the same foreman present as on the first site. A repeat citation may be issued.

C. Obtaining Inspection History

For purposes of determining whether a violation is repeated, the CSHO shall obtain an inspection history of citations previously issued, within the last three years, to the employer at all of its identified establishments in the State of Utah. If these violations have been previously cited within the time limitations outlined below in Section VII.F. and have become final orders of the Commission, a repeated citation may be issued.

D. Time Limitations

1. A citation will be issued as a repeated violation if the citation is issued within three years of the final order date of the previous citation as determined by the following:

a. Uncontested Citation - For an uncontested citation item, the final order date is:

- The day immediately following the thirtieth calendar day after the employer’s receipt of the citation;

- If applicable, the effective date as indicated in an Informal Settlement Agreement (ISA); or
- If applicable, the effective date as indicated in a Penalty Reduction Agreement (PRA).

b. Contested Citation - For a contested citation item, the final order date is:

- The day the Order is signed by an Administrative Law Judge (ALJ), if the case is before the State of Utah Labor Commission Adjudication Division (Adjudication); or
- The day the Order is signed by a judge, if the case is before the District Court in the State of Utah, the Utah Court of Appeals, or the Utah Supreme Court.

2. When a violation is found during an inspection and a repeated citation for violating the same standard, code, order or rule 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. The previously issued repeated citation must have become a final order of the Commission prior to the opening conference date of the inspection where the similar condition was observed.

EXAMPLE 4-33: An inspection was conducted at an establishment and a violation of 29 CFR 1910.217(c)(1)(i) was found. That citation was not contested by the employer and became a final order of the Commission on October 17, 2012. On a later date, a citation for a repeated violation of the same standard was issued and became a final order of the Commission on December 8, 2014. A violation of the same standard found during an inspection conducted after December 8, 2014 and before October 17, 2015 may be treated as a second instance repeated.

3. In cases of multiple prior repeated citations, the Director or designee shall be consulted for guidance.

E. 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 follow-up inspection. If, however, the violation was corrected, but later reoccurs, the subsequent occurrence is a repeated violation.

F. Director Responsibilities

After the CSHO makes a recommendation that a violation should be cited as repeated, the Director or designee 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, violation worksheets describing the prior violation that serves as the basis for the repeated citation, and any other supporting evidence that describes the violation. If the prior violation citation is not available, the basis for the repeated citation shall, nevertheless, be adequately documented in the case file. The file shall also include all documents showing that the citation is a final order and on what date it became final, as follows: if the case was not contested, the certified mail card (final 30 calendar days from employer's receipt of the citation); signed ISA/PRA (the date of the last signature of both parties); Formal Settlement Agreements (FSA); or Judge's Decision.

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 Director 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:

   The (employer name) was previously cited for a violation of this occupational safety and health standard (name previously cited standard), which was contained in UOSH inspection number _____ , citation number _____ , item number _____ and was affirmed as a final order on (date), with respect to a workplace located at _____ .

VIII. Combining and Grouping Violations

A. Combining

1. Separate violations of a single standard, for example 29 CFR 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. Different options presented in the Standard Alleged Violation Elements (SAVEs) of the same standard shall normally also be combined. Each instance of the violation shall be separately set out within that item of the citation.

   EXAMPLE 4-34: During the inspection of a single establishment, the CSHO documents five instances of unguarded open-sided platforms in five different locations throughout the facility in serious violation of 29 CFR 1910.23(c)(1). These five instances of the violation are combined into one serious citation item containing five subparts (bulleted).

   EXAMPLE 4-35: During the inspection of a single establishment, the CSHO documents three instances of unguarded open-sided platforms and two instances of

platforms without required toe-boards in different locations throughout the facility in serious violation of 29 CFR 1910.23(c)(1). These five instances of the violation are combined into one serious citation item using the two options of 29 CFR 1910.23(c)(1).

NOTE: *Except for standards which deal with multiple hazards (e.g.,29 CFR Tables Z-1, Z-2 and Z-3 cited under 29 CFR 1910.1000 (a), (b), or (c)), the same standard may not normally be cited more than once on a single citation.*

2. For the purpose of applying these guidelines in the construction industry, an establishment is normally the site of the construction job (e.g., the building site, the dam site, etc.). Where the construction site extends over a large geographical area (e.g., road construction), the entire site shall be considered a single establishment. All instances of the same violation with the same classification discovered during a single inspection at the site shall constitute one alleged violation.

B. Grouping

When a source of a hazard is identified which involves interrelated violations of different standards, the violations may be grouped into a single violation. The following situations normally call for grouping violations:

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.

EXAMPLE 4-36: If during an inspection, the CSHO observes violations of both 29 CFR 1910.215(a)(4) and 29 CFR 1910.215(b)(9) on a bench grinder, they may be grouped into one citation item.

2. Grouping Other-than-Serious Violation Where Grouping Results in a Serious Violation

When two or more violations are found which, if considered individually, represent other-than-serious violations, but together create a substantial probability of death or serious physical harm, the violations shall be grouped as a serious violation.

3. Where Grouping Results in High Gravity Other-than-Serious Violation

Where the CSHO finds, during the course of the inspection, that a number of other-than-serious violations are present, the violations shall be considered in relation to each other to determine the overall gravity of possible injury resulting from an accident or incident involving the hazardous condition. The violations may be grouped in a manner similar to that indicated in the preceding paragraph, although the resulting citation will be for an other-than-serious violation.

4. Penalties for Grouped Violations

If penalties are to be proposed for grouped violations, the penalty shall be applied only to the first violation for that grouping of violations in the violation worksheet.

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 inspection report 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 the inspection.

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 Utah Code Ann. § 34A-6-201(1)(a) citation covers all aspects of a serious hazard where no standard exists, there shall be no grouping of separate Utah Code Ann. § 34A-6-201(1)(a) violations. This policy, however, does not prohibit grouping a Utah Code Ann. § 34A-6-201(1)(a) violation with a related violation of a specific standard.

IX. 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; e.g., 29 CFR 1910.1000(e) in general industry or 29 CFR 1926.55(b) in the construction industry. 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.
- The concentration of flammable vapors is 25 percent or less of the lower explosive limit (LEL).

b. Citation Policy

If 25 percent 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, Utah Code Ann. § 34A-6-201(1)(a) shall be cited as appropriate. Citations issued under Utah Code Ann. § 34A-6-201(1)(a) shall be in accordance with the guidelines in Section III of this chapter, *General Duty Requirement*.

B. Violations of the Noise Standard

1. General Industry

Current enforcement policy regarding 29 CFR 1910.95(b)(1) allows employers to rely on PPE 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 29 CFR 1910.95 Table G-16 or 29 CFR 1910.95 Appendix A Table G-16a).

a. Citations for violations of 29 CFR 1910.95(b)(1) shall be issued when technologically and economically feasible engineering and/or administrative controls have not been implemented; and

- 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 29 CFR 1910.95. (e.g., 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
- The costs of engineering and/or administrative controls are less than the cost of an effective hearing conservation program.

b. 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.

c. 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:

- Reliance on an effective hearing conservation program would be less costly than engineering and/or administrative controls.
- An effective hearing conservation program can be established or improvements can be made in an existing program which could bring the employer into compliance with 29 CFR 1910.95 Table G-16 or 29 CFR 1910.95 Appendix A, Table G-16a.
- Engineering and/or administrative controls are both technically and economically feasible.

d. If noise workplace levels can be reduced to the levels specified in 29 CFR 1910.95 Table G-16 or 29 CFR 1910.95 Appendix A, Table G-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 29 CFR 1910.95(b)(1) shall be cited.

e. When hearing protection is required, provided, but not used, and employee exposures exceed the limits of Table G-16, 29 CFR 1910.95(i)(2)(i) shall be cited and classified as serious (see (i), below), whether or not the employer has instituted a hearing conservation program.

NOTE: *Citations of 29 CFR 1910.95(i)(2)(ii)(b) shall also be classified as serious.*

f. When hearing protection is required but not provided and employee exposures exceed the limits of Table G-16, 29 CFR 1910.95(a) shall be cited and classified as serious.

g. Where an employer has instituted a hearing conservation program and a violation of one or more elements is found, citations for the deficient elements of the noise standard shall be issued if exposures equal or exceed an 8-hour TWA of 85 dBA.

h. If an employer has not instituted a hearing conservation program and employee exposures equal or exceed an 8-hour TWA of 85 dBA, a citation for 29 CFR 1910.95(c) only shall be issued.

i. Violations of 29 CFR 1910.95(i)(2)(i) may be grouped with violations of 29 CFR 1910.95(b)(1) and classified as serious when employees are exposed to noise levels above the limits of Table G-l6 and:

- Hearing protection is not utilized or is not adequate to prevent overexposures;
- 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.

NOTE: 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.

2. Drilling Industry

a. In the drilling industry, when hearing protection is required but not provided and employee exposures exceed the levels listed in Table 1 of UAC R614-2-3, UAC R614-2-3.I.1. or UAC R614-2-3.I.2. shall be cited, as appropriate, based on the effectiveness of the administative and/or engineering controls utilized, and classified as serious.

b. In the drilling industry, when hearing protection is required but not used and employee exposures exceed the limits of Table 1, UAC R614-2-3.I.2. shall be cited and classified as serious.

3. Construction Industry

a. In the construction industry, when hearing protection is required but not provided and employee exposures exceed the limits of 29 CFR 1926.52 Table D-2, 29 CFR 1926.52(a) or 29 CFR 1926.52(b) shall be cited, based on the effectiveness of the administative and/or engineering controls utilized, and classified as serious.

b. In the construction industry, when hearing protection is required but not used and employee exposures exceed the limits of 29 CFR 1926.52 Table D-2, 29 CFR 1926.52(b) shall be cited and classified as serious.

X. Violations of the Respiratory Protection Standard (29 CFR 1910.134)

If an inspection reveals the presence of potential respirator violations, CPL 02-00-158, *Inspection Procedures for the Respiratory Protection Standard,* dated June 26, 2014, shall be followed.

NOTE: *29 CFR 1926.103 Respiratory Protection in the Construction Industry states "the requirements applicable to construction work under this section are identical to those set forth at 29 CFR 1910.134 of this chapter."*

XI. Violations of Air Contaminant Standards (29 CFR 1910.1000 & 29 CFR 1926.55)

A. Requirements under the Standards:

1. 29 CFR 1910.1000(a) through (d) in general industry and 29 CFR 1926.55(a) in the construction industry provide ceiling values and 8-hour TWA-PELs applicable to employee exposure to air contaminants.

2. 29 CFR 1910.1000(e) in general industry and 29 CFR 1926.55(b) in the construction industry provide 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, PPE shall be used. Whenever respirators are used, their use shall comply with 29 CFR 1910.134.

3. 29 CFR 1910.134(a)(1) provides that when effective engineering controls are not feasible, or while they are being instituted, appropriate respirators shall be used. Their use shall comply with requirements contained in 29 CFR 1910.134 which provides for appropriate respirator selection, employee training, medical fitness, fit testing and proper maintenance of the respirator.

4. There may be cases where workplace conditions require that employers provide engineering controls as well as administrative controls (including work practice controls) and PPE. 29 CFR 1910.1000(e) in general industry and 29 CFR 1926.55(b) in the construction industry allow employers to implement feasible engineering controls and/or administrative and work practice controls in any combination, provided the selected means of abatement eliminates the overexposure.

5. Where engineering and/or administrative controls are feasible but do not, or would not, reduce air contaminant levels below the applicable PELs (ceiling values, short term exposure limits (STEL), 8-hour TWA, etc.), an employer must nevertheless institute such controls to reduce the exposure levels. In cases where the implementation of all feasible engineering and administrative controls fail to reduce the level of air contaminants below applicable levels, employers must additionally provide PPE to reduce exposures. In such cases, usage of PPE shall be required.

6. No violation of 29 CFR 1910.1000 or 29 CFR 1926.55 would exist where the exposure level of an identified employee is above that specified in the standard, but all feasible engineering and administrative controls are utilized and PPE is provided, worn and maintained in accordance with the provisions of 29 CFR 1910.134.

B. Classification of Violations of Air Contaminant Standards

Where employees are exposed to a toxic substance in excess of the PEL established by UOSH 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 based on:

- Toxicity of the substance.
- Criteria set forth in the Chemical Sampling Information web page.
- Respiratory protection used.
- Effectiveness of the employer's respiratory protection program.

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 Section II.C.3. of this chapter.

a. In general, substances having a single health effect code of 13 or less shall be considered as posing a serious health hazard at any level above the 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 effect codes covering both serious and other-than-serious effects (e.g., cyclohexanol), a classification of other-than-serious is appropriate up to levels where a serious health effect(s) could be expected to occur.

d. For a substance having an American Conference of Governmental Industrial Hygienists (ACGIH) threshold limit value (TLV) or a NIOSH recommended exposure limit (REL), but no OSHA PEL, a Notice in Lieu of Citation will initially be issued for exposures in excess of recommended values. If a subsequent inspection reveals employees are still exposed in excess of recommended values that were included in the original Notice in Lieu of Citation, a citation may be considered under Utah Code Ann. § 34A-6-201(1)(a) of the Utah OSH Act. Prior to citing Utah Code Ann. § 34A-6-201(1)(a) violation under these circumstances, it is essential CSHOs document a hazardous exposure is occurring or occurred at the workplace, not just that a recognized occupational exposure recommendation exceeded. Citations issued under Utah Code Ann. § 34A-6-201(1)(a) of the Act shall be in accordance with guidelines in Section III of this chapter, *General Duty Requirement*.

e. If an employee is exposed to concentrations of a substance below the PEL, but in excess of a recommended value (e.g., ACGIH TLV or NIOSH REL), citations will not be issued.

f. For a substance having an 8-hour TWA-PEL with no ceiling-PEL, but ACGIH or NIOSH has recommended a ceiling value, the case shall be referred to the Supervisor or the Compliance Operations Manager in accordance with Section III.D.2. of this chapter. If no Notice in Lieu of Citation or citation is issued, the CSHO shall advise the employer 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 29 CFR 1910.1000(d)(2). Use of this formula requires exposures have an additive effect on the same body organ or system.

b. If CSHOs suspect synergistic effects are possible they shall consult with their Supervisor, who shall then refer the question to the Compliance Operations Manager. If a synergistic effect of the cited substances is determined to be present, violations shall be grouped to accurately reflect severity and/or penalty.

XII. Citing Improper Personal Hygiene Practices

The following guidelines apply when citing personal hygiene violations:

A. Citation Considerations for Ingestion and Absorption Hazards

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 B and C of this Section and Chemical Sampling Information on the OSHA web page.)

2. Sampling

a. 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, *OSHA Technical Manual*, dated January 20, 1999, for sampling procedures.)

b. 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.

c. The sampling results must reveal the substance has properties and exists in quantities that pose a serious hazard.

B. Ingestion Hazards

1. A citation under 29 CFR 1910.141(g)(2) and (4) in general industry or 29 CFR 1926.51(g) in the construction industry shall be issued where there is reasonable probability that, in areas where employees consume food or beverages (including drinking fountains), a toxic material may be ingested.

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 (e.g., smoking materials contaminated with the toxic substance), a serious citation shall be considered under Utah Code Ann. § 34A-6-201(1)(a) of the Utah OSH Act. Citations issued under Utah Code Ann. § 34A-6-201(1)(a) shall be in accordance with the guidelines in Section III of this chapter, *General Duty Requirement*.

C. Absorption Hazards

A citation for exposure to materials that may be absorbed through the skin or can cause a skin effect (e.g., dermatitis) shall be issued where appropriate personal protective clothing is necessary, but is not provided or worn (see Table Z-1 of 29 CFR 1910.1000 for substances

marked as "skin designation" in general industry and 29 CFR 1926.55 Appendix A for substances marked as "skin designation" in the construction industry). If a serious skin absorption or dermatitis hazard exists that cannot be eliminated with protective clothing, a citation may be considered under Utah Code Ann. § 34A-6-201(1)(a) of the Utah OSH Act. Engineering or administrative (including work practice) controls may be required in these cases to prevent the hazard. See 29 CFR 1910.132(a) in general industry or 29 CFR 1926.95(a) in the construction industry.

NOTE: *Skin designation notation in Table Z-1 of 29 CFR 1910.1000 indicates a major portion of the dose can be absorbed through the skin.*

XIII. 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.

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 5

Case File Preparation & Documentation

Chapter 5
CASE FILE PREPARATION & DOCUMENTATION

I. Introduction

These instructions are provided to assist CSHOs in determining the minimum level of written documentation necessary in preparation of an inspection case file. All necessary information relative to documentation of violations shall be obtained during the inspection, (including but not limited to notes, audio/video, photographs, employer and employee interviews, and employer maintained records). CSHOs shall develop detailed information for the case file to establish the specific elements of each violation.

CSHOs and the Director or designee may consult with the AAG when an inspection involves important or unique facts or presents potentially complex litigation issues. If consultation with the AAG is necessary, it shall be conducted at the earliest possible stage of the inspection.

II. Inspection Conducted, Citations Being Issued

All case files must include the following forms and documents.

A. Inspection Report

The CSHO shall obtain available information to complete the Inspection Report and other appropriate forms.

B. Inspection Field Notes/Narrative

The Inspection Field Notes/Narrative shall list the following:

1. Establishment name;

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. CSHO's evaluation of the employer's safety and health system, 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 opening and closing conference(s) were 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 and job titles of any individuals who accompanied the CSHO on the inspection;

13. Calculation of the DART rate (at least three full calendar years and the current year);

14. Discussion clearly addressing all items on the Complaint or Referral;

15. 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

16. Scope and purpose of inspection.

C. Violation Worksheet

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 to which employees have been or could be exposed. 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 safety data sheets (SDSs) should be collected for hazardous chemicals that employees may 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;

- Any and all facts which establish 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 demonstrate 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, Section II.C.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 Section V. of Chapter 4, *Willful Violations).* For example, document facts that the employer knew the condition existed and that the employer was required to take additional steps to abate the hazard. Such evidence could include prior UOSH citations, previous notices by a CSHO, insurance company or city/state inspector documentation 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 UOSH standards.

- Also include facts showing that even if the employer was not consciously or intentionally violating the Utah OSH 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 employee exposure to an obviously hazardous condition(s) and made no reasonable effort to eliminate it.

- Include 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. 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.

j. Appropriate and consistent abatement dates should be assigned and documented. 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 "Corrected During Inspection."

k. The establishment of the shortest practical 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 [e.g., 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 process safety management (PSM) program]. When an initial abatement date is granted that is in excess of 30 calendar days, the reason(s) 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 shall be included in the file.

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.

III. 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, the inspection Field Notes/Narrative with a general narrative/statement that at the time of the inspection no conditions were observed in violation of any standard. A complaint/referral response letter, if appropriate, shall clearly address all of the item(s).

IV. No Inspection

For "No Inspections," the CSHO shall include in the case file an Inspection Report, 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.

V. 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 SDSs), 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 PPE being provided by the employer and used by employees.

B. Employer's Occupational Safety and Health System

CSHOs shall request and evaluate information on the following aspects of the employer's occupational safety and health system as it relates to the scope of the inspection:

1. Monitoring

The employer's system for monitoring safety and health hazards in the establishment should include a program for self-inspection. CSHOs shall discuss the employer's maintenance schedules and inspection records. Additional information shall be obtained concerning activities such as sampling and calibration procedures, ventilation measurements, preventive maintenance procedures for engineering controls, and laboratory services. Compliance with the monitoring requirements of any applicable substance-specific health standards shall be determined.

2. Medical

CSHOs shall determine whether the employer provides the employees with pre-placement and periodic medical examinations. The medical examination protocol shall be requested to determine the extent of the medical examinations and, if applicable, compliance with the medical surveillance requirements of any applicable substance-specific health standards.

3. Records Program

CSHOs shall determine the extent of the employer's records program, such as whether records pertaining to employee exposure and medical records are being maintained in accordance with 29 CFR 1910.1020 and UAC R614-1-10 or where a vertical standard has provisions for employee access to the records.

4. Engineering Controls

CSHOs shall identify any engineering controls present, including substitution, isolation, general dilution and local exhaust ventilation, and equipment modification.

5. Work Practice and Administrative Controls

CSHOs shall identify any control techniques, including personal hygiene, housekeeping practices, employee job rotation, employee training and education. Rotation of employees as an administrative control requires employer knowledge of the extent and duration of exposure.

NOTE: *Employee rotation is not permitted as a control under some standards.*

6. Personal Protective Equipment

An effective PPE program should exist at the worksite. A detailed evaluation of the program shall be documented to determine compliance with specific standards, such as, 29 CFR 1910.95, 29 CFR 1910.132, and 29 CFR 1910.134.

7. Regulated Areas

CSHOs shall determine compliance with the requirements for regulated areas as specified by certain standards. Regulated areas must be clearly identified and known to all appropriate employees. The regulated area designation must be maintained according to the prescribed criteria of the applicable standard.

8. Emergency Action Plan

CSHOs shall evaluate the employer's emergency action plan when such a plan is required by a specific standard. When standards provide that specific emergency procedures be developed where certain hazardous substances are handled, CSHO's evaluation shall determine if: potential emergency conditions are included in the written plan, emergency conditions are explained to employees and there is a training program for the protection of affected employees, including use and maintenance of PPE.

VI. 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 by UOSH.

A. Burden of Proof

Although employers have the burden of proving any affirmative defenses at the time of the hearing, the CSHO must anticipate whenever the employer is likely to raise an argument supporting such a defense. The CSHO 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 Director 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 in most jurisdictions, employers must show all of 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. The saw, however, has a guard which is reattached while the CSHO watches. Facts to be documented include:

- Who removed the guard and why?
- Did the employer know 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 in place that only table saws with guards can be operated?
- 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 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 part of the time or for some of the operations?
- Has the employer attempted to use a guard?
- Has the employer considered any alternative means or methods of avoiding or reducing the hazard?

3. Greater Hazard

Compliance with a standard would result in 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; and additionally, an application for a variance would be inappropriate.

EXAMPLE 5-3: The employer indicates 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 PPE 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?

VII. Interview Statements

A. General

Interview statements of employees or other individuals shall be obtained whenever the CSHO determines that such statements are necessary to document an apparent violation.

B. CSHOs Shall Obtain 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. Language and Wording of Statement

1. Audio/Video Recorded Statements

Interview statements shall normally be audio or video recorded, with the consent of the person being interviewed. Before the interview begins, the CSHO shall ensure the following information is recorded:

- Consent from interviewee to record interview
- Name and job title of interviewee
- The date of the interview
- Establishment name
- CSHO's name and job title

2. Written Statements

a. If recording an interview statement is not possible, it shall be written by the individual giving the statement. The individual shall initial any changes or

corrections; otherwise, the statement shall not be modified, added to or altered in any way. The statement shall end with the wording "This statement is true to the best of my knowledge." The individual shall sign and date the interview statement and the CSHO shall sign it as a witness. Statements taken in a language other than English shall be subsequently translated. See Chapter 3 Appendix 3-1 for Statement forms.

b. In circumstances where recording an interview statement is not possible and an individual is unable to make a written statement, CSHOs should take verbatim notes, as these tend to be more credible than later general recollections. The wording of the statement shall be in third person (e.g., he/she/her/him/they/them/etc.), 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; 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." The individual shall sign and date the interview statement and the CSHO shall sign it as a witness.

D. 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.

E. Administrative Depositions

When necessary to document or develop investigative facts, a management official or other individual may be administratively deposed.

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

VIII. 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 (e. g., hazard communication, PPE, 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. For guidance, see CPL 02-00-111, *Citation Policy for Paperwork and Written Program Requirement Violations*, dated November 27, 1995. A violation of written program or paperwork requirements would most likely be classified as other-than-serious if all elements of the program are in place.

IX. Guidelines for Case File Documentation for Use with Video and Audio

The use of video as a method of documenting violations and of gathering evidence for inspection case files is encouraged. Certain types of inspections, such as fatalities, imminent danger and ergonomics shall include video recording. Other methods of documentation, such as handwritten notes, audio recording, and photographs, continue to be acceptable and are encouraged to be used whenever they add to the quality of the evidence and whenever video equipment is not available.

X. Citations

Utah Code Ann. § 34A-6-302 addresses the form and issuance of citations.

Utah Code Ann. § 34A-6-302 provides: "Each citation shall be in writing; and describe with particularity the nature of the violation, including a reference to the provision of the chapter, standard, rule, or order alleged to have been violated. The citation shall fix a reasonable time for the abatement of the violation…."

A. Statute of Limitations

Utah Code Ann. § 34A-6-302(3) provides. "A citation may not be issued under this section after the expiration of six months following the occurrence of any violation". Accordingly, a citation shall not be issued where any alleged violation last occurred six months or more prior to the date on which the citation is actually signed, dated and served by certified mail, Federal Express or hand delivery. In some cases, particularly those involving fatalities or accidents, the six-month period begins to run from the date of the incident, not from the opening conference date.

B. Issuing Citations

1. A copy of the Citation shall be sent by certified mail or by Federal Express with return receipt requested. In addition to sending by certified mail or Federal Express, hand delivery of the Citation to the employer or an appropriate agent of the employer, or use of a mail delivery service other than the United States Postal Service or Federal Express, may be used if it is believed these methods would effectively give the employer notice of the Citation. A signed receipt shall be obtained whenever possible. The method of delivery shall be documented in the UOSH Case Notes sheet.

NOTE: A PRA form shall be sent with the copy of the Citation to employers who qualify for the PRA. (See Chapter 8, Section II. *Penalty Reduction Agreements*).

2. Citations shall be mailed to employee representatives after the mail receipt card is received by UOSH. Citations shall also be mailed to any employee upon written request under the Government Records Access Management Act (GRAMA). In the case of a formal complaint, the complainant shall be provided with a copy of the Citation without charge or the need to make a written request. In the case of a fatality, the family of the victim shall be provided with a copy of the Citation without charge or the need to make a written request.

C. Amending/Withdrawing Citations and Notification of Penalties

1. Amendments/Withdrawal Justification

Amendments to, or withdrawal of, a citation shall be made when information is presented to the Director 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, assessment of the penalty, or reclassification of citation items.

2. Contested Cases Amendment to, or withdrawal of, a citation shall not be made by the Director or designee if a timely Notice of Contest is received. If contested, amendment to, or withdrawal of, a citation can only be made as a result of an FSA, or an Order by Adjudication or a court of competent jurisdiction.

3. Uncontested Cases

If a Notice of Contest has not been filed within 30 calendar days of receipt of the Citation by employer, the Director or designee may amend or withdraw the citation if:

a. Formalized by an ISA agreed upon by all parties; or

b. The Citation contained a technical or administrative 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 Notification of Failure to Abate Alleged Violations.*

1. Withdrawal of, or modifications to, the Citation shall normally be accomplished by means of an ISA or FSA.

2. In exceptional circumstances, the Director or designee may initiate a change to a Citation 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 form shall clearly indicate the employer is obligated under the Utah OSH 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 30 calendar day contest period for the amended portions of the citation will begin on the day following the day of receipt of the amended Citation.

4. The contest period is not extended for the un-amended portions of the original citation. A copy of the original citation shall be attached to the amended Citation form when the amended form is forwarded to the employer.

5. When circumstances warrant, the Director or designee may withdraw a Citation in its entirety. Justification for the withdrawal must be noted in the case file. A letter withdrawing the Citation shall be sent to the employer. The letter, signed by the Director or designee, shall refer to the original Citation, state it is 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.

XI. Inspection Records

A. General

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), negatives of photographs, video/audio recordings and DVDs. Inspection records are the property of the State of Utah 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 GRAMA. Requests for release of inspection information shall be directed to the Director or designee.

C. Classified and Trade Secret Information

1. Any classified or trade secret information and/or personal knowledge of such information by UOSH personnel shall be handled in accordance with Utah Code Ann. § 34A-6-306 and UAC R614-1-6.I. Trade secrets are matters that are not of public or general knowledge. A trade secret, as referenced in Utah Code Ann. § 34A-6-306, 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.

2. It is essential to the effective enforcement of the Utah OSH Act that CSHOs and all UOSH 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 AAG, UOSH determines the matter is not a trade secret). Information obtained in such areas, including all negatives, photographs, video and documentation forms shall be labeled as "confidential-trade secret" in accordance with UAC R614-1-6.I.2.

3. Under Utah Code Ann. § 34A-6-306 and UAC R614-1-6.I, 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 UOSH officials concerned with the enforcement of the Utah OSH Act or, when relevant, in any proceeding under the Utah OSH Act.

4. If the employer objects to the taking of photographs and/or video because trade secrets would or may be disclosed, CSHOs should advise employers of the protection against such disclosure afforded by Utah Code Ann. § 34A-6-306 and UAC R614-1-6.I. If the employer still objects, CSHOs shall contact the Director or designee for guidance.

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 6

Penalties & Debt Collection

Chapter 6
PENALTIES & DEBT COLLECTION

I. General

The penalty structure in Utah Code Ann. § 34A-6-307 is designed primarily to provide an incentive for preventing or correcting violations voluntarily, not only to the cited employer, but also to other employers. Penalties are not intended as a punishment for violations nor as a source of income. While penalties are not designed as punishment for violations, the intent of the Utah OSH Act is that penalty amounts should be sufficient to serve as an effective deterrent to violations.

The penalty structure described in this chapter is part of UOSH's general enforcement policy and shall normally be applied as set forth below. The Director or designee may exercise discretion to depart from the penalty policy in cases where penalty adjustments do not advance the deterrent goal of the Utah OSH Act. The application of penalty adjustments can therefore result in the issuance of citations with all or zero adjustments. The extent of the departure and the reasons for doing so should be fully explained in the case file. An inspection should maintain consistent penalty adjustments throughout all recommended citations.

A decision not to apply the penalty adjustments should normally be based on consideration of one or more of the factors listed below. However, this list is not intended to be exhaustive. The factors to be considered include:

- The employer is currently on the Severe Violator Enforcement Program (SVEP) list;
- The proposed citations meet the requirements for inclusion in SVEP;
- The proposed citations are related to a fatality/catastrophe;
- The proposed citations are being considered for an egregious case;
- The proposed failure to abate notification is based on a previous citation for which the employer failed to submit abatement verification;
- The employer has received a willful or repeat violation within the past three years related to a fatality;
- The employer has been referred to debt collection for past unpaid UOSH penalties;
- The employer has numerous recordkeeping violations related to a large number or rate of injuries and illnesses at the establishment; or
- The employer has failed to report a work-related fatality, disabling, serious, or significant injury or an occupational disease incident pursuant to the requirements of UAC R614-1-5.B.1.

NOTE: Utah law does not provide for penalty assessments toward state agencies or political subdivisions; CSHO's need not calculate assessments for violations or citations recommended against these entities.

II. Civil Penalties

A. Statutory Authority for Civil Penalties

Utah Code Ann. § 34A-6-307 provides that the Commission may assess civil penalties against any employer (with the exclusion of state agencies and political subdivisions) who has received a citation under Utah Code Ann. § 34A-6-302. Civil penalties advance the purposes of the Utah OSH Act by encouraging compliance and deterring violations. **Proposed penalties** are the penalty amounts UOSH issues with citation(s).

1. Utah Code Ann. § 34A-6-307(1)(a) provides that except as provided in Utah Code Ann. § 34A-6-307(1)(b) through (d), the Commission may assess up to $7,000 for each cited violation.

2. Utah Code Ann. § 34A-6-307(1)(b) provides that the Commission may not assess less than $250 nor more than $7,000 for each cited serious violation.

3. Utah Code Ann. § 34A-6-307(1)(c) provides that the Commission may not assess less than $5,000, nor more than $70,000, for each cited willful violation.

4. Utah Code Ann. § 34A-6-307(1)(d) provides that the Commission may assess up to $70,000 for each cited violation if the employer has previously been found to have violated the same standards, code, rule, or order.

5. Utah Code Ann. § 34A-6-307(1)(e) provides that after the expiration of the time permitted to an employer to correct the cited violation, the Commission may assess up to $7,000 for each day the violation continues uncorrected.

6. Utah Code Ann. § 34A-6-307(2) provides that the Commission may assess a civil penalty of up to $7,000 for each violation of any posting requirement under this chapter.

B. Appropriation Act Restrictions

UOSH Compliance is 50% federally funded under Section 23(g) of the Act. In providing funding for OSHA, Congress has placed restrictions on Compliance activities for two categories of employers: small farming operations and small employers in low-hazard industries. Congress may place exemptions and limitations on OSHA activities through the annual Appropriations Act. The exemptions and limitations placed on OSHA activities by Congress have been accepted by UOSH, and are in effect until superseded.

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.

C. Minimum Penalties

The following policies apply:

1. The proposed penalty for any willful violation shall not be less than $5,000. The $5,000 penalty is a statutory minimum and not subject to administrative discretion. This minimum penalty applies to all willful violations, whether serious or other-than-serious.

2. When the proposed penalty for a serious violation (citation item) would amount to less than $250, a $250 penalty shall be proposed for that violation.

3. When the proposed penalty for an other-than-serious violation (citation item) would amount to less than $100, no penalty shall be proposed for that violation. This does not include regulatory and posting violations.

4. When the proposed penalty for a posting violation (citation item) would amount to less than $100, a $100 penalty shall be proposed for that violation.

5. When the proposed penalty for an OSHA 300 Injury and Illness recordkeeping violation (citation item) would amount to less than $250, a $250 penalty shall be proposed for that violation.

6. When the proposed penalty for not notifying UOSH within 8 hours of occurrence of any work-related fatality, or of any disabling, serious, or significant injury and of any occupational disease incident (citation item) would amount to less than $500, a $500 penalty shall be proposed for that violation.

7. When the proposed penalty for removing or destroying tools, equipment, materials or other evidence that may have pertained to the cause of an accident, that is reportable to UOSH, prior to authorization by the Commission or one of its CSHOs (citation item) would amount to less than $500, a $500 penalty shall be proposed for that violation.

D. Maximum Penalties

The civil penalty amounts included in Utah Code Ann. § 34A-6-307 are generally maximum amounts before any permissible reductions are taken.

Table 6-1 below summarizes the maximum amounts for proposed civil penalties:

Table 6-1
Maximum Amounts for Civil Penalties

Type of Violation	Penalty Maximum
Serious	$7,000 per violation
Other-Than-Serious	$7,000 per violation
Willful or Repeated	$70,000 per violation
Posting Requirements	$7,000 per violation
Failure to Abate	$7,000 per day unabated beyond the abatement date [generally limited to 30 days maximum]*

* In accordance with Utah Code Ann. § 34A-6-303, the period of corrective action does not begin to run until entry of a final order by the Commission.

III. Penalty Factors

Utah Code Ann. § 34A-6-307(3) of the Utah OSH Act provides that in deciding the amount to assess for a civil penalty, the Commission shall consider all relevant factors, including:

(a) The gravity of the violation;

(b) Size of the employer's business;

(c) The good faith of the employer; and

(d) The employer's 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 assessments shall be made:

- The **severity** of the injury or illness which could result from the alleged violation.
- The **probability** 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 for 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 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 over-exposure to contaminants;
- Employee proximity to the hazardous conditions;
- Use of appropriate personal protective equipment;
- Medical surveillance program;
- Age of employees;
- Training on the recognition and avoidance of the hazardous condition; 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 Director or designee 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 FOM 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:

- A high gravity violation is one with a GBP of $5,000 or greater.
- A moderate gravity violation is one with a GBP of $2,000, $2,500 or $3,500.
- A low gravity violation is one with a GBP of $1,500.

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. If the Director determines it is appropriate to achieve the necessary deterrent effect, a GBP of $7,000 may be proposed instead of $5,000. Such discretion should be exercised based on the facts of the case. The reasons for this determination shall be fully explained in the case file.

d. For serious violations, the GBP shall be assigned on the basis of the following scale in Table 6-2:

Severity + Probability = GBP

Table 6-2

Serious Violations

Severity	Probability	GBP	Gravity	OIS Code
High	Greater	$5,000 (or $7,000)	High	10
Medium	Greater	$3,500	Moderate	5
Low	Greater	$2,500	Moderate	4
High	Lesser	$2,500	Moderate	3
Medium	Lesser	$2,000	Moderate	2
Low	Lesser	$1,500	Low	1

5. Other-Than-Serious Violations & GBP

a. For other-than-serious safety and health violations, there is only minimal severity.

b. If the Director determines 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.

Table 6-3

Other-Than-Serious Violations

Severity	Probability	GBP
Minimal	**Greater**	**$1,000 - $7,000**
Minimal	**Lesser**	**$0**

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. For guidance in handling such cases, see 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 Director and AAG.

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, 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 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 reductions will vary depending upon the employer's "size" (maximum number of employees), "good faith," and "history of previous violations."

- A maximum of 60 percent (80 percent for serious willful violations) reduction is permitted for **size;**
- A maximum of 25 percent reduction for **good faith;** and
- A 10 percent reduction may be given for **history.**

b. Since these reduction factors are based on the general character of an employer's safety and health performance, they shall be calculated once for each employer.

c. 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 size, good faith, history) shall be applied subject to the following limitations:

- Penalties proposed for violations classified as **repeated** 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.**

2. Size Reduction

a. A maximum penalty reduction of 60 percent is permitted for small employers (80 percent for serious willful violations, see Table 6-6). "Size of employer" shall be calculated on the basis of the maximum number of employees of an employer statewide, at any one time during the previous 12 months.

b. The rates of reduction to be applied are as follows.

Employees	Percent Reduction
1-25	60
26-100	40
101-250	20
251 or more	None

3. Good Faith Reduction

A penalty reduction is permitted in recognition of an employer's effort to implement an effective safety and health management system 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 any **repeated violations.** If a repeated violation is found, no reduction for good faith can be applied to **that specific** violation.
- No reduction shall be given if a **failure to abate violation** (FTA) 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 if the employer has **no safety and health management system,** or if there are **major deficiencies** in the program.

b. Twenty-Five Percent Reduction

A 25 percent reduction for "good faith" normally requires a written safety and health management system. In exceptional cases, CSHO's may recommend a 25 percent reduction for employers with 1-25 employees who have implemented an effective safety and health management system, but has not reduced it to writing.

To qualify for this reduction, the employer's safety and health management system must 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; and
- Where **young persons** (i.e., less than 18 years old) are employed, the CSHO's evaluation must consider whether the employer's safety and health management system 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 CSHO's evaluation must consider whether the employer's safety and health management system appropriately addresses the particular needs of such employees, relative to the types of work they perform and potential hazards they may be exposed.

  NOTE: One example of an effective safety and health management system is given in *Safety and Health Program Management Guidelines; Issuance of Voluntary Guidelines (Federal Register, January 16, 1989 (54 FR 3904)).*

c. Fifteen Percent Reduction

A 15 percent reduction for good faith shall normally be given if the employer has a documented and effective safety and health management system, with only incidental deficiencies.

EXAMPLE 6-2: An acceptable program should include minutes of employee safety and health meetings, documented employee safety and health training sessions, or any other evidence of measures advancing safety and health in the workplace.

d. Allowable Percentages

Only these percentages (15% or 25%) may be used to reduce penalties due to the employer's good faith.

4. History Reduction

a. Allowable Percent

A reduction of 10 percent shall be given to employers who have not been cited by UOSH statewide for any serious, willful, or repeated violations in the prior three years.

b. Time Limitation and Final Order

The three-year history of no prior citations shall be calculated from the opening conference date of the current inspection. Only citations that have become a final order of the Commission within the three 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 UAC R614-1-6.S for failure to correct an alleged violation.

5. Total Reduction

The total reduction will normally be the sum of the reductions for each factor. Table 6-4 provides an overview of the percent of penalty reductions applicable to serious, other-than-serious, and repeated violations.

6. Penalty Table

Table 6-4 may be used for determining appropriate reduced penalties for serious and other-than-serious violations.

Table 6-4: Penalty Table

Percent Reduction	Penalty in Dollars							
0	$1,000	$1,500	$2,000	$2,500	$3,000	$3,500	$5,000	$7,000
10	$900	$1,350	$1,800	$2,250	$2,700	$3,150	$4,500	$6,300
15	$850	$1,275	$1,700	$2,125	$2,550	$2,975	$4,250*	$5,950*
20	$800	$1,200	$1,600	$2,000	$2,400	$2,800	$4,000	$5,600
25	$750	$1,125	$1,500	$1,875	$2,250	$2,625	$3,750*	$5,250*
30	$700	$1,050	$1,400	$1,750	$2,100	$2,450	$3,500	$4,900
35	$650	$975	$1,300	$1,625	$1,950	$2,275	$3,250*	$4,550*
40	$600	$900	$1,200	$1,500	$1,800	$2,100	$3,000	$4,200
45	$550	$825	$1,100	$1,375	$1,650	$1,925	$2,750*	$3,850*
50	$500	$750	$1,000	$1,250	$1,500	$1,750	$2,500	$3,500
55	$450	$675	$900	$1,125	$1,350	$1,575	$2,250*	$3,150*
60	$400	$600	$800	$1,000	$1,200	$1,400	$2,000	$2,800
65	$350	$525	$700	$875	$1,050	$1,225	$1,750*	$2,450*
70	$300	$450	$600	$750	$900	$1,050	$1,500	$2,100
75	$250	$375	$500	$625	$750	$875	$1,250*	$1,750*
85	$150**	$225**	$300	$375	$450	$525	$750*	$1,050*
95	$50**	$75**	$100**	$125**	$150**	$175**	$250*	$350*

***** *Single starred figures represent penalty amounts that would not normally be proposed for high gravity serious violations because no reduction for good faith is made in such cases. They may occasionally be applicable for other-than-serious violations where the Director has determined a high unreduced penalty amount to be warranted.*

****** *When the proposed penalty for a serious violation would amount to less than $250, a $250 penalty shall be proposed for the violation. Sections II, X, and XI have minimum set penalties for specific other-than-serious violations.*

IV. 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 a UOSH inspection and thereby quickly preventing 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, and agriculture employers.

2. All sizes of employers in all North American Industry Classification System (NAICS) codes.

3. Both safety and health violations, provided that the hazards are immediately abated during the inspection (e.g., 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 (e.g., installing a guard on a machine rather than removing an employee from the zone of danger).

C. Quick-Fix Reductions Shall <u>Not</u> 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 (e.g., 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. After the 15 percent **Quick-Fix** reduction is applied, the reductions for size, good faith, and history will then be applied. Table 6-5, below, provides an overview of the program.

Table 6-5
Quick-Fix Penalty Reduction Factor

Reduction Factor	Restrictions	Application	Percent Reduction	Comments
Quick -Fix	No Reduction Factor for: Violations classified as: - High gravity serious - Willful - Repeated - Failure to Abate penalty Violations related to a fatal injury or illness, or a serious incident resulting in serious injuries Blatant violations that are easily corrected	All general industry, construction, & agriculture employers All sizes of employers in all NAICS codes Safety & health violations, provided hazards are immediately abated during the inspection Violations classified as: - Other-than-serious - Low gravity serious - Moderate gravity serious Only to individual violations Only to a corrective action that is permanent and substantial	After the GBP has been calculated, a 15% reduction is applied. After the 15% Quick-Fix reduction is applied, the reductions for size, good faith and history are applied.	No penalty for a serious violation shall be less than $250

V. Repeated Violations

A. General

1. Each repeated 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 repeated 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 re-inspection, shall be applied.

NOTE: Utah Code Ann. § 34A-6-307(1)(d) provides that the Commission may assess up to $70,000 for each cited violation if the employer has previously been found to have violated the same standards, code, rule, or order.

B. Penalty Increase Factors

The amount of any increase to a proposed penalty for repeated violations shall be determined by the employer's number of employees.

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 Director determines it is necessary to achieve the deterrent effect. The reasons for imposing a high multiplier factor shall be explained in the case file.

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, a GBP penalty of $200 shall be proposed for the first repeated violation, $500 for the second repeated violation, and $1,000 for a third repetition.

NOTE: These penalties shall not be subject to the Penalty Increase factors as discussed in Paragraph V.B. of this chapter.

D. Regulatory Violations

1. For calculating the GBP for regulatory violations, see Paragraph III.A.5. and Section X.

2. For repeated instances of regulatory violations, the initial penalty (for the current inspection) shall be multiplied by 2 for the first repeated violation and multiplied by 5 for the second repeated violation. If the Director determines it is necessary to achieve the proper deterrent effect, the initial penalty may be multiplied by 10.

VI. Willful Violations

Utah Code Ann. § 34A-6-307(1)(c) provides that the Commission may not assess less than $5,000 nor more than $70,000 for each cited willful violation. See Minimum Penalties at Paragraph II.C. of this chapter.

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 $5,000.

B. Serious Willful Penalty Reductions

The reduction factors for size for serious willful violations shall be applied as shown in the following chart. This chart helps minimize the impact of large penalties for small employers with 50 or fewer employees. However, in no case shall the proposed penalty be less than the statutory minimum, i.e., $5,000 for these employers.

NOTE: For violations that are not serious willful, use the size chart in Paragraph III.B.2.

Employees	Percent Reduction
10 or fewer	80
11-20	60
21-30	50
31-40	40
41-50	30
51-100	20
101-250	10
251 or more	0

The reduction factor for history shall be applied.

The proposed penalty shall then be determined from Table 6-6. (Next Page)

Table 6-6

Penalties to be proposed for Serious Willful Violations

Total percent reduction For size and/or history	High Gravity	Moderate Gravity	Low Gravity
0%	$70,000	$55,000	$40,000
10%	$63,000	$49,500	$36,000
20%	$56,000	$44,000	$32,000
30%	$49,000	$38,500	$28,000
40%	$42,000	$33,000	$24,000
50%	$35,000	$27,500	$20,000
60%	$28,000	$22,000	$16,000
70%	$21,000	$16,500	$12,000
80%	$14,000	$11,000	$8,000
90%	$7,000	$5,500	$5,000

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.

VII. Penalties for Failure to Abate

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 Commission; 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 Commission. A citation may become a final order of the Commission by operation of law when an employer does not contest the citation within 30 calendar days after the employer receives the citation, or pursuant to settlement or decision by Adjudication or a court of competent jurisdiction.

3. If the employer fails to abate a hazard by the date provided on a formal settlement agreement or decision by Adjudication or court of competent jurisdiction, the Compliance Operations Manager or designee must inform the AAG of such failure. If the AAG is not able to obtain abatement verification from the employer's representative, the Compliance Operations Manager or designee may conduct a follow-up inspection and issue a failure to abate penalty as warranted (see paragraph VII.A.1. above).

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 on the basis of the facts noted upon re-inspection. 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 Director may reduce or eliminate the daily proposed penalty.

b. For guidance on 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 Director. In no case shall the GBP be less than $250 per day.

3. Size Only Permissible Reduction Factor

Only the reduction factor for size, based upon the circumstances noted during the re-inspection, 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 after the final order date, using the number of days provided to the employer to correct the hazard. Example, if an employer is provided 15 calendar days to correct a hazard, the final order date was January 15, 2016, the number of days unabated would start from January 31, 2016.

b. Normally the maximum total proposed penalty for failure to abate a particular violation shall not exceed 30 times the amount of the daily penalty.

c. At the discretion of the Director, a lesser penalty may be proposed. The reasoning for the lesser penalty shall be fully explained (e.g., 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 Director 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 Director may authorize a reduction of 25 to 75 percent of the proposed penalty calculated as outlined above.

2. When a violation consists of a number of instances and the follow-up inspection reveals 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.

VIII. Violation-by-Violation (Egregious) Penalty Policy

A. Penalty Procedure

Each instance of noncompliance 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, *Handling of Cases to be proposed for Violation-By-Violation Penalties*, dated October 21, 1990.

C. Calculation of Penalties

Penalties calculated using the violation-by-violation policy shall not be proposed without the concurrence of the Director.

IX. Significant Enforcement Actions

A. Definition

A significant enforcement action (a.k.a. significant case) is one which results from an investigation in which the total proposed penalty is $100,000 or more or involves novel enforcement issues, regardless of penalty.

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. State Agencies or Political Subdivisions Significant Cases

For state agencies or political subdivisions, the action is considered significant if penalties of $100,000 or more would have been applied if it were a private sector employer.

1. Significant state agencies or political subdivisions cases shall be developed, documented, and reviewed with the same rigorousness required for private sector cases.

2. In addition, Notices of Unsafe or Unhealthful Working Conditions in state agencies or political subdivisions cases shall be issued no later than six months following the occurrence of any violation, thereby paralleling the six month statutory limit in private sector cases set by the Utah OSH Act.

D. Director Concurrence

The Director's or designee's concurrence is normally required prior to issuing citations related to significant enforcement cases resulting in penalties greater than $100,000 and novel cases.

X. Penalty and Citation Policy for UAC R614-1-5.B., UAC R614-1-6 and 29 CFR 1904 Regulatory Requirements

Utah Code Ann. § 34A-6-307(2) provides that the Commission may assess a civil penalty of up to $7,000 for each violation of any posting requirement (this includes recordkeeping violations). The following policy and procedure document should be consulted for review of these policies: CPL 02-00-111, *Citation Policy for Paperwork and Written Program Requirement Violations*, issued November 27, 1995.

A. Posting Requirements under UAC R614-1-6 and 29 CFR 1904

Penalties for violation of posting requirements shall be proposed as follows:

1. Failure to Post the UOSH Notice (Poster) – UAC R614-1-6.B.

A citation for failure to post the UOSH 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 Utah OSH Act; AND

b. Interviews show that employees are unaware of their rights under the Utah OSH Act; OR

c. The employer has been previously cited or advised by UOSH of the posting requirement.

If the criteria above are met and the employer has not displayed (posted) the notice furnished by UOSH as prescribed in UAC R614-1-6.B., an other-than-serious citation shall normally be issued. An unadjusted assessment of $100.00 shall be proposed.

2. Failure to Post a Citation – UAC R614-1-6.Q.

If employer received a citation that was not posted as prescribed in UAC R614-1-6.Q., an other-than-serious citation shall normally be issued. An unadjusted assessment of $250.00 shall be proposed.

3. Failure to Post OSHA-300A Summary – 29 CFR 1904.32

a. If an employer fails to post the OSHA-300A Summary by February 1st and/or has not kept the posting in place until April 30th, an other-than-serious citation shall normally be issued. An unadjusted assessment of $250.00 shall be proposed.

b. For information regarding the OSHA-300A form, see 29 CFR 1904 Recording and Reporting Occupational Injuries and Illness and CPL 02-00-135, *Recordkeeping Policies and Procedures Manual*, December 30, 2004.

B. Advance Notice of Inspection – UAC R614-1-6.F.

When an employer has received advance notice of an inspection and fails to notify the authorized employee representative as required by UAC R614-1-6.F.2., an other-than-serious citation shall be issued. An unadjusted assessment of $250.00 shall be proposed.

C. Injury and Illness Records and Reporting under UAC R614-1-5.B. and 29 CFR 1904

1. UAC R614-1-5.B. and/or 29 CFR 1904 violations are always other-than-serious.

2. If an employer, upon request, fails to provide records required by 29 CFR 1904 to an authorized government representative, an other-than-serious citation shall be recommended. An unadjusted assessment of $250.00 shall be proposed.

3. UAC R614-1-5.B. requires employers to report to UOSH, within 8 hours of occurrence, any work-related fatality, disabling, serious, or significant injury and any occupational disease/illness incident. An other-than-serious citation shall be recommended for failure to report such an occurrence. An unadjusted assessment of $500.00 shall be proposed.

"Disabling and Serious" includes, but is not limited to the following: any injury or illness resulting in immediate admittance to the hospital, permanent or temporary impairment in which part of the body is made functionally useless or is substantially reduced in efficiency on or off the job which would usually require treatment by a medical doctor (examples of such injuries are any amputation, fracture, deep cuts, severe burns, electric shock, sight impairment, loss of consciousness, and concussions); illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body (examples of such illnesses include cancer, silicosis, asbestosis, byssinosis, hearing impairment and visual impairment).

4. Repeated and Willful penalty policies in paragraphs V.D. and VI.C., respectively, of this Chapter, may be applied to recordkeeping violations.

5. UOSH'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.

See CPL 02-00-135, *Recordkeeping Policies and Procedures Manual*, dated December 30, 2004; specifically Chapter 2, Section II, Inspection and Citation Procedures.

XI. Failure to Provide Access to Medical and Exposure Records – 29 CFR 1910.1020

A. Proposed Penalties

If an employer is cited for failing to provide access to records as required under 29 CFR 1910.1020 for inspection and copying by any employee, former employee, or authorized representative of employees, a citation with a GBP of $500 shall normally be proposed (i.e., either medical record or exposure record). A maximum GBP of $7,000 may be proposed for such violations.

EXAMPLE 6-4: If the evidence demonstrates 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 29 CFR 1910.1020, with a GBP of $500.

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.

XII. Criminal Penalties

A. Utah OSH Act

The Utah OSH Act provides for criminal penalties in the following cases:

1. Willful violation of a UOSH standard, rule, or order causing the death of an employee; Utah Code Ann. § 34A-6-307(5)(a);

2. Giving unauthorized advance notice; Utah Code Ann. § 34A-6-307(5)(b); and

3. Knowingly giving false information; Utah Code Ann. § 34A-6-307(5)(c).

B. Courts

Criminal penalties are imposed by the courts after trials and not by UOSH or the Commission.

XIII. Handling Monies Received from Employers

A. Responsibility of the Director

Pursuant to its statutory authority, it is UOSH policy to collect all penalties owed to the government. The Director is responsible for:

1. Informing employers of UOSH's debt collection procedures;

2. Collecting assessed penalties from employers;

3. Reporting penalty amounts collected and those due;

4. Referring and transferring cases with uncollected penalties to the Utah Office of State Debt Collection (OSDC);

5. Posting collected monies in accordance with UOSH procedures; and

6. Reviewing the Commission bankruptcy notices.

B. Receiving Payments

The Director shall be guided by the following with regard to penalty payments:

1. **Methods of Payment**

   Employers assessed penalties shall remit the total payment to the Commission by certified check, personal check, company check, postal money order, bank money order, or by credit card payment payable to UOSH**.** Payment in cash will only be accepted at the Commission front reception desk. Upon request of the employer and for good cause, alternate methods of payment are permissible, such as payments in installments.

2. Identifying Payment

The Inspection Number(s) **MUST BE included on/with the form of payment**. The date of receipt **MUST BE STAMPED** on a copy of the payment. The copy of the payment must be scanned into OIS and placed in the Inspection Case File.

3. Incorrect, Unhonored, or Foreign Payments

a. Payment instruments which have been returned due to insufficient funds, must be paid within 10 days or the case will be sent to OSDC for further collection efforts. A fee for such returns due to insufficient funds will be assessed by the Commission.

b. Payments drawn on non-U.S. banks **WILL BE RETURNED to Sender.**

4. Endorsing Payments

All payment instruments shall be endorsed as follows:

PAY TO THE ORDER OF
U.S. BANK OF UTAH
SALT LAKE CITY, UT 84114
124000041
FOR DEPOSIT ONLY
UTAH STATE TREASURER
LABOR COMMISSION

5. Depositing Payments

All payments shall be kept in a safe place and, unless otherwise indicated, transmitted daily in accordance with current State of Utah Division of Finance policy and procedures.

6. Records

A copy of the penalty payment instrument shall be included in the case file. Additional accounting records shall also be included in the case file in accordance with current procedures.

C. Refunds

In cases of later penalty modifications by UOSH or by the Commission or a court, refunds to the employer shall be made by the Commission through the State of Utah Division of Finance.

XIV. Debt Collection Procedures

A. Policy

Utah Code Ann. § 63A-3-502 provides for the assessment of interest, administrative charges, and additional costs for nonpayment of debts arising under the UOSH program. Under the regulations of the Commission, penalties assessed by UOSH are considered as debts. It is OSDC policy to exercise the authority provided under Utah Code Ann. § 63A-3-502 to assess additional charges on delinquent debts. It is UOSH policy to forbear collection of penalties until the employer has exhausted its right to challenge them administratively, as well as in all legal forums.

B. Time Allowed for Payment of Penalties

The date when penalties become due and payable depends on whether or not the employer contests.

1. Uncontested Penalties

When citations and/or proposed penalties are uncontested, the penalties are due and payable 30 calendar days following the employer's receipt of the Citation or, in the case of an ISA, 15 calendar days after the employer's receipt of the ISA.

2. Contested Penalties

When citations and/or proposed penalties are contested, the date penalties are due and payable will depend upon whether the case is resolved by a formal settlement agreement, an administrative law judge decision, or a court judgment.

3. Partially Contested Penalties

When only part of a citation and/or a proposed penalty is contested, the due date for payment as stated in paragraph XIV.B.1., *Uncontested Penalties*, shall be used for the uncontested items and the due date stated in Paragraph XIV.B.2., *Contested Penalties*, for the contested items.

NOTE: *This provision notwithstanding, formal debt collection procedures will not be initiated in partially contested cases until a final order for the outstanding citation items has been issued.*

C. Notification Procedures

It is UOSH policy to notify employers (the "Notice") that debts are payable and due, and to inform them of OSDC policy debt collection procedures prior to assessing any applicable delinquent charges. A copy of the "Notice" shall be retained in the case file.

D. Notification of Overdue Debt

The Director or designee shall send a demand letter to the employer when the debt has become delinquent and shall retain a copy of the demand letter in the case file. A debt becomes delinquent 30 calendar days after due date, which is the same as final order date.

1. Uncontested Case with Penalties

If payment of any applicable penalty is not received within 30 calendar days after the date of the expiration of the 30 calendar day contest period, or after the date of the last signature if an ISA has been signed (unless a later due date for payment of penalties is agreed upon in the settlement), a demand letter shall be mailed.

2. Contested Case with Penalties

If payment of any applicable penalty is not received within the time set forth in a Formal Settlement Agreement, within 30 calendar days of a Final Order, or within the time set forth in any Order by Adjudication, Utah District Court or Utah Court of Appeals, UOSH shall send a demand letter or a letter notifying the employer that the penalty is past due.

3. Exceptions to Sending the Demand Letter

The demand letter will not be sent in the following circumstances:

a. The employer is currently making payments under an approved installment plan or other satisfactory payment arrangement. Such plan or arrangement shall be set forth in writing and signed by the employer and UOSH's Senior Business Analyst.

NOTE: *If the employer enters into a* ***written*** *plan establishing a set payment schedule within one calendar month of the due date, but subsequently fails to make a payment within one calendar month of its scheduled due date, a payment default letter shall be sent to the employer. If the employer fails to respond satisfactorily to that letter within one month, the unpaid portion of the debt shall be handled in accordance with Paragraph XIV.F., Assessment Procedures.*

b. The employer has partially contested the case (even if the penalty has not been contested). In such circumstances, a demand letter shall not be sent until a final order has been issued.

E. Assessment of Additional Charges

Additional charges shall be assessed in accordance with Utah Code Ann. § 63A-3-502.

1. Interest

Interest on the unpaid principal amount shall be assessed on a monthly basis at the current annual rate if the debt has not been paid within one calendar month of the date on which the debt (penalty) was transferred to OSDC. Interest is not assessed if an acceptable repayment schedule has been established in a written plan by the due date.

NOTE: *Interest and delinquent charges are not compounded; only the unpaid balance of the penalty amount is used to calculate these additional charges.*

2. Administrative Costs

Administrative costs may be assessed for each demand letter sent in an attempt to collect the unpaid debt. Costs are not assessed for payment default letters.

F. Assessment Procedures

If the penalty has not been paid within 30 calendar days of being transferred, OSDC may implement the following procedures:

1. Interest may be assessed at the current interest rate on the unpaid balance of the debt. The rate of interest shall remain fixed for the duration of the debt.

2. The demand letter shall be sent to the employer requesting immediate payment of the debt. The demand letter shall show the total amount of the debt, including the unpaid penalty amount, interest and administrative costs.

3. Employers may respond to the demand letter in several ways:

a. The entire debt may be paid. In such cases no further collection action is necessary.

b. A repayment plan may be submitted or offered.

c. A partial payment may be made; the unpaid portion of the debt shall be treated in accordance with Paragraph XIV.F. of this chapter.

4. If any portion of the debt remains unpaid after one calendar month from the time the demand letter was sent by OSDC to the employer, OSDC may institute one of the following:

a. Outstanding debts less than $100 may be written off.

b. If the employer made a payment after receiving the demand letter, OSDC may send a receipt letter or contact the employer to request the balance due on the debt.

5. After a case has been referred to OSDC for collection, the UOSH has no further responsibilities with regard to penalty collection related to that case.

6. If, after a case has been referred to OSDC, the employer mistakenly sends a payment to UOSH, the case is subsequently contested, or new information regarding the debt or employer is obtained, the Director or designee shall contact OSDC immediately.

7. OSDC shall update their Debt Collection Agency Reporting Tool (dcART) database to reflect all penalty collection actions taken by their office. Detailed information on subsequent debt collection activity on each case is available in dcART.

8. The responsibility for closing the case remains with the Director. Once final collection action has been completed, the case may be closed whenever appropriate.

G. Application of Payments

Payments that are for less than the full amount of the debt shall be applied to satisfy the following categories in order of priority:

1. Administrative charges;

2. Delinquent charges;

3. Interest;

4. Outstanding principal.

H. Uncollectible Penalties

There may be cases where a penalty cannot be collected, regardless of any action that has been or may be undertaken. Examples might be when a demand letter is not deliverable, a company is no longer in business and has no successor, or the employer is bankrupt. In such cases, the Director shall notify OSDC to write off the debt. The database shall be updated following current OIS procedures to reflect the most recent action.

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 7

Post-Citation Procedures & Abatement Verification

Chapter 7
POST-CITATION PROCEDURES & ABATEMENT VERIFICATION

I. Contesting Citations, Notifications of Penalty and 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 citation, abatement, or proposed penalty, Adjudication must be notified in writing and such notification must be received no later than the 30th calendar day after receipt of the Citation, otherwise the citation, abatement, and assessment, as proposed, becomes a final order of the Commission and is not subject to review by any court or Agency. UOSH has no authority to modify the contest period. Employers should also be apprised their notice of contest can be sent to Adjudication electronically via email to casefiling@utah.gov or by fax to (801) 530-6333 within the 30 calendar day period. It shall be emphasized that oral notices of contest do not satisfy the requirement to give written notification.

NOTE: *Upon receipt of all notices of contest, Adjudication will process the claim, open a case and notify the parties involved.*

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.

a. If the employer only requests a later abatement date and there are valid grounds to consider the request, the Director or designee should be contacted. The Director or Designee may issue an amended citation changing an abatement date prior to the expiration of the 30 calendar 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 30 calendar days of notification.

2. CSHOs shall inform the employer that UAC R614-1-6.R.2. 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 a notice of contest filed with Adjudication begins the formal adjudication process at which time the case is considered to be in litigation.

1. UOSH 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 Director or designee, who may further consult with the AAG.

2. Upon receipt of the Notice of Intent to Contest, Adjudication assigns the case to an administrative law judge, who will schedule a hearing.

II. Informal Conferences

A. General

1. Pursuant to UAC R614-1-6.T., at the request of an affected employer, employee, or representative of employees, the Director or designee may hold 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. A request for an informal conference must be made within the 30 calendar day contest period from the employer's receipt of citation.

2. The informal conference may be held after the expiration of the 30 calendar day contest period. The informal conference or any request for such a conference shall not operate as a stay of the 30 calendar day contest period.

3. If the employer's intent to contest is not clear, the Director or designee 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 an employer is bringing its attorney to an informal conference, the Director or designee may ask the AAG to be present during the informal conference.

C. Opportunity to Participate

1. If an informal conference is requested by the employer, an affected employee or his/her representative shall be afforded the opportunity to participate. If the conference is requested by an affected 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 may be made to contact that party and to solicit their input prior to the informal conference. Attempts to contact the party should be noted in the case file.

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

3. If any party objects to the attendance of another party or the Director or designee believes 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

The Director or designee shall document in the case file notification to the parties of the date, time and location of the informal conference. In addition, the date of the informal conference shall be documented in the case file.

E. Posting Requirement

1. The Director or designee should 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 Director or designee 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 (e.g., 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

There should be no discussion with employers or employee representatives concerning the potential for referral of fatality inspections to the AAG for criminal prosecution under the Utah OSH Act.

3. Closing Remarks

a. At the conclusion of the informal conference, all main issues and potential courses of action will be summarized and documented.

b. A copy of the summary, together with other relevant notes of the discussion made by the Director or designee, will be placed in the case file.

III. Petition for Modification of Abatement Date (PMA)

UAC R614-1-6.O. governs the disposition of PMAs. The Director or designee is authorized to evaluate and make decisions regarding PMAs. An employer may file a PMA (see Appendix 7-1 for PMA request form) 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 UAC R614-1-6.O.1. If the employer requests additional abatement time after the 30 calendar 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 Director or designee who issued the citation no later than the close of the next working day following the date on which abatement was originally required. (See UAC R614-1-6.O.3.)

1. If a PMA is submitted orally, the employer shall be informed that UOSH cannot accept an oral PMA and a written petition must be mailed, faxed, or emailed, by the end of the next working day following the date on which abatement was originally required. 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-filed petition may be accepted only if accompanied by the employer's statement of exceptional circumstances explaining the delay. (See UAC R614-1-6.O.3.)

B. Where Filing Requirements Are Not Met

If the written PMA does not meet the minimum requirements, the employer should 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 he or she 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 Director or designee determines the requirements for a PMA have been met, that finding shall be documented in the case file.

3. Although UOSH policy is to handle PMAs as expeditiously as possible, there may be cases where the Director's or designee's decision may be delayed because of deficiencies in the PMA or where there may be a need to conduct a monitoring inspection.

C. Approval of PMA

Pursuant to UAC R614-1-6.O.3.d, the Director or designee must not approve a PMA until the expiration of ten (10) working days from the date the petition was posted or served to an authorized employee representative.

If the PMA is approved, the Compliance Operations Manager or designee shall notify the employer in writing of the approval and where affected employees are represented by an authorized representative, the said representative may also be provided with a copy of the written approval.

D. Objection to PMA

1. If the Compliance Operations Manager or designee rejects the PMA, both the employer and the employee representatives shall be notified.

2. Affected employees or their representatives may file a written objection to an employer's PMA with the Director or designee within ten (10) working days of the date of posting of the PMA by the employer or its service upon an authorized employee representative. (See UAC R614-1-6.O.3.b.)

a. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Director or designee per UAC R614-1-6.O.3.b.

b. Upon receipt, the Director or designee shall schedule and notify all interested parties of a formal hearing before the Director or designee(s).

c. Within ten (10) working days after conclusion of the hearing, a written opinion by the Director will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

3. When appropriate, a failure to abate notification may be issued in conjunction with the rejection of the PMA.

IV. UOSH Abatement Verification

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 UOSH during an inspection.

b. For each inspection, except follow-up and monitoring inspections, UOSH shall open an employer-specific case file. The case file will remain open throughout the inspection process and will not be closed until UOSH is satisfied that the abatement has occurred and penalties have been paid. If abatement was not completed, the circumstances or reasons shall be annotated in the case file and the proper code entered into OIS.

c. Employers must verify in writing they have abated cited conditions, unless the cited condition has been corrected at time of inspection as indicated on the issued citation.

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 site address; the inspection number; the citation and item numbers; a statement 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.

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.

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 immediately following the thirtieth calendar day after the employer's receipt of the Citation;

- If applicable, the execution date as indicated on an ISA; or
- If applicable, the execution date as indicated on a Penalty Reduction Agreement (PRA).

b. Contested Citation Item

For a contested citation item, the final order date is:

- The day the Order is signed by an ALJ, if the case is before Adjudication; or
- The day the Order is signed by a judge, if the case is before the District Court in the State of Utah, the Utah Court of Appeals, or the Utah Supreme Court.

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; or
- The extended date established as a result of an employer's filing for a PMA; or
- The abatement date that has been extended due to an amended citation; or
- The date established by an ISA.

b. Contested Citations

For contested citations for which the Commission has issued a final order or upheld 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; or
- The date established by an FSA.

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. Worksite

a. For the purpose of Abatement Verification, 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

Employers who have received a citation(s) for violation(s) of the Utah OSH Act are to certify in writing they have abated the hazardous condition for which they were cited and informed 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. Abatement verification includes the following:

1. Abatement Certification
2. Abatement Documentation
3. Abatement Plans
4. Progress Reports

D. Supplemental Procedures

Where necessary, UOSH supplements these procedures with follow-up inspections and on-site monitoring inspections. For additional information see Section IX of this chapter, *On-Site Visits: Procedures for Abatement Verification and Monitoring.*

V. Abatement Certification

A. Minimum Level

Abatement certification is the minimum level of abatement verification and must be submitted for all violations once they become final orders of the Commission. An exception exists where the CSHO observed abatement during the on-site portion of the inspection and the violation is listed on the citation as "Corrected During Inspection" or "Quick-Fix." See Paragraph VI.D. of this chapter, 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 site 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.

C. Certification Timeframe

1. A written abatement certification must be submitted by the abatement due date for all citation items which have become final orders, regardless of their characterizations, unless the cited condition has been corrected at the time of the inspection as indicated on the issued citation.

2. A PMA received and processed in accordance with UAC R617-1-6.O. will suspend the time period for receipt of the abatement certification for the item for which the PMA is requested.

VI. Abatement Documentation

More extensive documentation of abatement must be submitted for the most serious violations. When a violation necessitates abatement documentation, in addition to certifying abatement, the employer must submit documents demonstrating that abatement is complete.

A. Required Abatement Documentation

Documentation of abatement is needed for the following:

1. Willful violations;

2. Repeat violations; and

3. Serious violations where UOSH determines such documentation is necessary as indicated on the citation. For further information, see Paragraph VI.C. of this chapter, *Abatement Documentation for Serious Violations.*

B. 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.

2. A particular type of documentary evidence for any specific cited conditions is not required.

3. The adequacy of the abatement documentation submitted by the employer will be assessed by UOSH using the information available in the citation and UOSH's knowledge of the employer's workplace and history.

4. Examples of documents that demonstrate the 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.) will be placed in the inspection case file.

C. Abatement Documentation for Serious Violations

1. High Gravity Serious Violations

- **a.** UOSH's policy is generally that all high gravity serious violations will require abatement documentation.
- **b.** Where, in the opinion of the Compliance Supervisor or the Compliance Operations Manager, abatement documentation is not required for a high gravity serious violation, the reasons for this must be set forth in the case file.

2. Moderate or Low Gravity Serious Violations

Moderate or low gravity serious violations should not normally require abatement documentation, except the Compliance Supervisor or the Compliance Operations Manager will need evidence of abatement for moderate and low gravity serious violations under the following circumstances:

- **a.** If the establishment has been issued a citation for a willful violation or a failure-to-abate notice for any standard which has become final order in the previous three years; or
- **b.** If the employer has any history of a violation that resulted in a fatality or an OSHA-300 log entry indicating serious physical harm to an employee in the past three years. The standard being cited must be similar to the standard cited in connection with the fatality or serious injury or illness.

D. CSHO Observed Abatement

1. Employers do not need to certify abatement for violations which they promptly abate during the on-site portion of the inspection and observed by the CSHO. 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 necessitate abatement documentation by the employer, the documentation in the case file must also indicate abatement is complete. Where suitable, the CSHO may use photographs or video evidence. For additional information regarding adequacy of abatement documentation, see Paragraph VI.B of this chapter, *Adequacy of Abatement Documentation*.

3. When the abatement has been witnessed and documented by the CSHO, a notation reading "Corrected during Inspection" shall be made on the citation. Immediate abatement of some violations may qualify for penalty reductions under UOSH's "Quick-Fix" incentive program. These incentives are discussed with the employer during the opening conference. See Chapter 6, Section IV, *Effect on Penalties if Employer immediately Corrects*.

4. Notations stating "Corrected during Inspection" shall not be made on the citation in cases where an employer was previously cited for the same violative condition within three years from opening conference date.

VII. Monitoring Information for Abatement Periods Greater than 30 Days

Abatement Periods Exceeding 30 Calendar Days. Abatement periods exceeding 30 calendar days should not normally be necessary, particularly for safety violations. Situations may arise, however, especially for health violations, where additional time is required; e.g., a condition where extensive structural changes are necessary or where new equipment or parts cannot be delivered within 30 calendar days.

A. Abatement Periods Greater than 30 Days

1. When an abatement date is recommended that is in excess of 30 calendar days, an explanation for this action shall be placed in the inspection case file.

2. For abatement periods greater than 30 calendar days, the Director or designee is allowed flexibility in either requiring or not requiring monitoring information (i.e, multi-step abatement plans and progress reports).

3. The necessity for abatement plans and progress reports must be specifically associated to the citation item to which they relate.

4. Progress reports may not be required unless abatement plans are specifically required.

5. The employer, where necessary, shall identify how employees are to be protected from exposure to the violative condition during the abatement period.

6. Abatement dates in excess of one year shall follow the provisions of paragraph D of this section, *Special Requirements for Long-Term Abatement*, and may only be granted by the Director or designee.

7. Monitoring inspections for abatement dates in excess of one year shall be conducted in accordance with Section X, Paragraphs B and C.

B. Abatement Plans

1. The Director or designee may request an employer to submit an abatement plan for each qualifying cited violation.

a. The necessity 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. The employer must submit an abatement plan for each violation that identifies the violation and the steps to be taken to achieve abatement by the due date listed on the citation. The abatement plan must include a schedule for completing the abatement and, where necessary, the methods for protecting employees from exposure to the hazardous conditions in the interim until the abatement is complete.

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 in accordance with UAC R614-1-6.O.

C. Progress Reports

1. An employer that needs to submit an abatement plan may also need to submit periodic progress reports for each cited violation. In such cases, the citation must indicate:

a. That periodic progress reports are needed and the citation items for which they are needed;

b. The date on which an initial progress report must be submitted;

c. Whether additional progress reports are needed; and

d. The date(s) on which additional progress reports must be submitted.

2. For each violation, the progress report must identify the action taken to achieve abatement and the date the action was taken. There is nothing in this policy 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 employer must submit an abatement plan for every violation with an abatement date in excess of one year.

3. Progress reports are necessary and must be submitted at a minimum of every six months. More frequent reporting may be requested at the discretion of the Director or designee.

VIII. 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 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 UOSH 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 (e.g., crane inspection, hazard communication, respirator, training, competent person, qualified persons, etc.) violations will always necessitate 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 (e.g., 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 state, the Director or designee will proceed as if the employer's main office were in the State of Utah.

5. Where a follow-up inspection to verify abatement is deemed necessary, the Compliance Supervisor or Compliance Operations Manager will determine the most efficient and mutually beneficial approach to conducting the inspection.

B. 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 SVEP cases, see OSHA Instruction CPL 02-00-149, *Severe Violator Enforcement Program (SVEP)*, June 18, 2010.

NOTE: *For further information on extended abatement periods, see Section VII, Monitoring Information for Abatement Periods Greater than 30 Days, and Section X, Monitoring Inspections, both of this chapter.*

1. Where the employer has not submitted abatement certification or documentation within the time permitted, the Director or designee 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 occur before the day following the original 30 calendar day contest period plus the number of days provided to the employer to abate the hazard. For instance, if the employer was given 5 calendar days to abate the hazard and the final order date was on January 15, 2016, a follow-up inspection should not occur prior to January 21, 2016.

IX. On-Site 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 conducted 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.

3. Grouped and combined violations from the original inspection will be counted as one violation for SVEP purposes.

4. For more information on SVEP cases, including exceptions, see OSHA Instruction CPL 02-00-149, *Severe Violator Enforcement Program (SVEP)*, June 18, 2010.

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 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 *Notification of Failure to Abate Alleged 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 *Notification of Failure to Abate Alleged Violation* normally shall be issued. If the employer has exhibited good faith, a late PMA for exceptional circumstances may be considered with appropriate justification. See UAC R614-1-6.O.3.

5. Where an apparent failure to abate by means of engineering controls is found to be due to technical infeasibility, no failure to correct abate notice shall be issued; however, if proper administrative controls, work practices or personal protective equipment are not utilized, a *Notification of Failure to Abate Alleged Violation* shall be issued.

D. Second Follow-Up

1. Any subsequent follow-up after the initial follow-up inspection dealing with the same violation(s) is considered a second follow-up.

a. After the *Notification of Failure to Abate Alleged Violation* has been issued, the Director or designee shall wait 30 calendar days (period of contest) before conducting a second follow-up. The employer must ensure 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 *Notification of Failure to Abate Alleged Violation* with additional daily penalties may be issued if the Director or designee believes it to be appropriate.

3. If a second *Notification of Failure to Abate Alleged Violation* has been issued and the employer continues to disregard the citations and penalties, the Director or designee shall determine the appropriate action.

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* 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* in the original case file, they may be grouped on the follow-up *Violation*; otherwise, individual *Violation* 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*, 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 may be supplemented by a photos, video, or other media to illustrate correction circumstances.

d. Only the item description and identification blocks need to be completed on the follow-up *Violation* 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 a *Notification of Failure to Abate Alleged Violation* will be issued, full-shift sampling is required to verify exposure.

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 any item has not been abated, complete documentation shall be included on the follow-up *Violation*.

X. Monitoring Inspections

A. General

Monitoring inspections are conducted to ensure that hazards are being corrected and employees are being protected, whenever a long period of time 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.
- PMA.
- A Corporate Wide Settlement Agreement (CSA). See CPL 02-00-152, *Guidelines for Administration of Corporate-Wide Settlement Agreements,* dated June 22, 2011.
- To ensure terms of a permanent variance are being carried out.
- At the request of an employer requesting technical assistance granted by the Director or designee.

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 the target dates of a multi-step abatement plan are being met.
- Ensure an employer's PMA is made in good faith and that the employer has attempted to implement necessary controls as expeditiously as possible.
- Ensure the employees are being properly protected until final controls are implemented.
- Ensure 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 issuance 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 Director or designee 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 Director or designee shall take the steps necessary to ensure 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 UOSH, 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 UOSH 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 (CSAs)

CSAs extend abatement requirements to all covered locations of the company. These agreements may require baseline, periodic and follow-up monitoring. Additional information regarding abatement related to CSA may be found in CPL 02-00-152, *Guidelines for Administrating of Corporate-Wide Settlement Agreements*, dated June 22, 2011.

XI. Notification of Failure to Abate

A. Violation

A Notification of Failure to Abate an Alleged Violation 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

Failure to abate penalties shall be applied when an employer has not corrected a previously cited violation which had become a final order of the Commission.

C. Calculation of Additional Penalties

1. The 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 failure to abate penalties is included in Chapter 6, *Penalties and Debt Collection.*

XII. 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 Director or designee, addressing the reason for accepting each uncertified violation as an abated citation.

B. Review of Employer-Submitted Abatement

A review of employer-submitted verification abatement documents should be made as soon as possible but no later than 30 calendar days after receipt. If the review will be delayed, notify the employer and let them know 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 the inspection case file.

XIII. Abatement Assistance Available to Employers

Employers requesting abatement assistance shall be informed that UOSH is willing to work with them even after citations have been issued and provides incentives for immediate onsite abatement of certain types of violations. Employers will be informed that Consultation may provide them with abatement assistance only after the citations have become a final order of the Commission. See Chapter 6, Section IV, *Effect on Penalties if Employer Immediately Corrects*.

Appendix 7-1. Petition for Modification of Abatement Date Form (PMA)

UTAH LABOR COMMISSION
Utah Occupational Safety and Health Division

PETITION FOR MODIFICATION OF ABATEMENT DATE (PMA)

Company Name:	
Contact Name(s) For Company:	
Company Address:	**Phone:**
City, State, Zip:	**Fax:**
Company Email:	

Inspection #:	**Request Date:**

Citation:	**Item #:**	***Must fill out form completely for each citation item***

(a) Actions taken to achieve compliance (include date of each action). (R614-1-7.O.1.a):

(b) Requested new abatement date. (R614-1-7.O.1.b):

(c) Reasons such additional time is necessary. (R614-1-7.O.1.c):

(d) List all temporary steps taken to safeguard employees against cited hazard(s) during abatement period. (R614-1-7.O.1.d):

(e) By signing you are certifying the information is true and accurate and the petition has been posted and, if appropriate, served on the authorized representative of affected employees. (R614-1-7.O.3.e) and a certification of the date of such posting and service was made.

Date Petition Posted:	Date Petition Served: (If Applicable)
Company Representative Printed Name:	Date:
Signature:	

UOSH Admin PMA: ☐ Approve ☐ Denied Employer notified in writing of response by: Email ☐ Fax ☐ Mail ☐

UOSH Administrator or Designee Printed Name:	Date:
Signature:	

UTAH LABOR COMMISSION
Utah Occupational Safety and Health Division

PETITION FOR MODIFICATION OF ABATEMENT DATE (PMA)

R614-1-7.O Petitions for modification of abatement date.

1. An employer may file a petition for modification of abatement date when he has made a good faith effort to comply with the abatement requirements of the citation, but such abatement has not been completed because of factors beyond his reasonable control.

2. A petition for modification of abatement date shall be in writing and shall include the following information.

a. All steps taken by the employer, and the dates of such action, in an effort to achieve compliance during the prescribed abatement period.

b. The specific additional abatement time necessary in order to achieve compliance.

c. The reasons such additional time is necessary, including the unavailability, of professional or technical personnel or of materials and equipment, or because necessary construction or alteration of facilities cannot be completed by the original abatement date.

d. All available interim steps being taken to safeguard the employees against the cited hazard during the abatement period.

e. A certification that a copy of the petition has been posted and, if appropriate, served on the authorized representative of affected employees, in accordance with paragraph R614-1-7.O.3.a. and a certification of the date upon which such posting and service was made.

3. A petition for modification of abatement date shall be filed with the Administrator who issued the citation no later than the close of the next working day following the date on which abatement was originally required. A later-filed petition shall be accompanied by the employer's statement of exceptional circumstances explaining the delay.

a. A copy of such petition shall be posted in a conspicuous place where all affected employees will have notice thereof or near such location where the violation occurred. The petition shall remain posted for a period of ten (10) days. Where affected employees are represented by an authorized representative, said representative shall be served with a copy of such petition.

b. Affected employees or their representatives may file an objection in writing to such petition with the aforesaid Administrator. Failure to file such objection within ten (10) working days of the date of posting of such petition or of service upon an authorized representative shall constitute a waiver of any further right to object to said petition.

c. The Administrator or his duly authorized agent shall have authority to approve any petition for modification of abatement date filed pursuant to paragraphs R614-1-7.O.2. and 3. Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Act.

d. The Administrator or his authorized representative shall not exercise his approval power until the expiration of ten (10) days from the date of the petition was posted or served pursuant to paragraphs R614-1-7.O.3.a. and b. by the employer.

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the Administrator per R614-1-7.O.3.b. Upon receipt the Administrator shall schedule and notify all interested parties of a formal hearing before the Administrator or his authorized representative(s). Minutes of this hearing shall be taken and become public records of the Commission. Within ten (10) days after conclusion of the hearing, a written opinion by the Administrator will be made, with copies to the affected employees or their representatives, the affected employer and to the Commission.

After you have completed the PMA, return it to:

LABOR COMMISSION
UTAH OCCUPATIONAL SAFETY & HEALTH DIVISION (UOSH)
160 EAST 300 SOUTH, 3rd Floor
P O BOX 146650
SALT LAKE CITY, UT 84114-6650
Telephone: (801) 530-6901
FAX Number: (801) 530-7606

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 8

Settlements

Chapter 8
SETTLEMENTS

I. Settlement of Cases by the Director

The Director or designee is granted settlement authority and shall follow these instructions when negotiating settlement agreements. Settlement authority will not normally be delegated below the Compliance Supervisor level.

The Compliance Operations Manager or designee will have delegated authority for settlement negotiation, but only the Director or the Acting Director will have final signature authority for ISAs and FSAs.

A. General

1. The Director or designee may enter into an ISA with employers prior to the employer filing a written notice of contest.

NOTE: *After the employer has filed a written notice of contest and the parties wish to enter into a settlement agreement, the Director or designee may proceed toward a FSA.*

2. Amendments to the Citation may only occur through an ISA where evidence provided during the informal conference indicates the Citation was improperly issued and the Citation has not been formally contested.

3. The Director or designee may amend abatement dates, reclassify violations (e.g., willful to serious, serious to other-than-serious), and modify or withdraw a penalty, a citation, or a citation item. Reasons for amending a Citation through an ISA may include the following:

a. Incorrect pre-citation penalty reduction (e.g., size, good faith, history, quick fix);

b. Misclassification of citation;

c. Improper citation reference;

d. Improper assignment of a citation to company (employees did not work for company);

e. Employee(s) not exposed to cited hazard;

f. The company followed and enforced proper procedures, applicable laws and rules and the violation was due to employee misconduct; and

g. Extend abatement due date(s) in order to provide the employer an adequate period of time to complete the abatement.

4. An ISA may not be offered by UOSH if the employer has signed a PRA. The execution date on the PRA is the final order date of the Citation.

5. Employers shall be informed that they need to post copies of all amendments or changes to Citations resulting from informal conferences for 3 working days or until the violation has been abated, whichever is later.

6. Justification for all modifications to Citations during the settlement agreement process shall be documented and included in the inspection casefile.

B. Pre-Contest Settlement (Informal Settlement Agreement)

Pre-contest settlement discussions will generally occur prior to the expiration of the 30 calendar day contest period.

1. In the event an employer is bringing an attorney to an informal conference, the Director or designee will request the presence of the AAG at the informal conference.

2. Informal Conference Guidance

a. The Director or designee shall provide the attendee(s) information regarding the purpose of the informal conference. This will include the following:

i. Why the inspection was conducted. Explicitly, the difference between a programmed and unprogrammed inspection. For example, "UOSH conducted an unprogrammed inspection of your facility because one of your employees filed a formal complaint alleging blocked exit routes."

ii. The rights of the employer(s). Specifically, the Director or designee will inform the employer(s) of their contest rights. The Director or designee will provide the employer(s) an overview of UOSH's contest procedures. Furthermore, the Director or designee should indicate that if the employer(s) decide to contest the citation(s), any settlement offer made during the informal conference will no longer be available to the employer(s). Once a case is contested, the Director or designee should explain the AAG will be handling the case.

iii. The Director or designee should inform the employer that (for settlement purposes) he/she has the authority to change the citation's classification and adjust the total proposed penalty. However, the Director or designee should clarify this can only be done if the employer has evidence that the issued citation(s) and/or penalty was incorrect.

iv. Potential for settlement of citation(s). The Director or designee should inform the employer that if an agreement is reached, the ISA must be signed by both parties. Additionally, the Director or designee will inform the employer(s) that by signing the ISA, the employer(s) forfeit their right to contest the citation(s).

b. Once the employers understand why the inspection was conducted and the procedures of the informal conference are explained, the Director or designee should start a discussion regarding the citations.

c. As the citation(s) are discussed, the Director or designee must thoroughly document what was stated by all parties (employers, employee representatives, AAG, CSHOs and Director or designee).

d. If the alleged violation was not corrected during the inspection, the Director or designee should ask for both the signed abatement certification and abatement documentation (if required). For example, the employer(s) should provide abatement verification that clearly proves the facilities' exit routes are unobstructed. Abatement verification can include photographs (time/date stamped) of the corrected violative condition. This process should be followed for any additional items and/or citations arising from the inspection.

e. Once the discussion of the citation(s) is concluded, the Director or designee should determine the expectations of the employer(s), (if any). Usually, the employer(s) will ask for penalty reductions, citation reclassification, both reduction and reclassification, or possibly vacating the citation(s). If information provided by the employer indicates that issued citation(s) and/or penalties were incorrect, the Director or designee may discuss a settlement offer with the employer for purposes of correcting the issue(s).

f. There will be occasions where employers will ask for a payment plan. The Director or designee shall follow the guidelines in the FOM, Chapter 6, pertaining to collecting payments.

g. Employers may ask for a PMA. The Director or designee will follow procedures outlined in the FOM to ensure PMAs do not adversely affect the safety and health of employees.

h. Enforceability of ISA. If the parties agree to modify in any way a Citation through an ISA, the terms of the ISA shall govern.

i. The Director or designee will advise the employer of UOSH's Whistleblower protections programs, which ensures workers are free to participate in safety and health activities. Utah Code Ann. § 34A-6-203 prohibits any person from discharging or in any way retaliating against any employee for exercising rights under the Utah OSH Act.

3. If a settlement is reached as a result of the informal conference, the Director or designee shall send the ISA to the employer for signature. After signing, the employer must return the original signed ISA to the Director or designee by mail or by hand delivery within 15 calendar days after the employer's receipt of the ISA.

a. In every case, the Director or designee 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 ISA or files a written notice of contest.

b. If an employer wishes to make any changes to the text of the ISA, the Director or designee must agree to and authorize the proposed changes.

c. Upon receipt of the ISA signed by the employer, the Director or designee will ensure the ISA has not been modified by the employer, unless such modification was approved by the Director or designee.

d. Both the Director or Acting Director and Compliance Operations Manager or designee shall sign the ISA only after the employer has signed the agreement.

e. The ISA will be effective upon signature of the employer, Compliance Operations Manager or designee and the Director or Acting Director (who shall sign last). All parties with signatory authority must date the documents on the day of the actual signature.

4. If settlement efforts are unsuccessful and the employer contests the Citation, the Director or designee will state the terms of the final settlement offer in the case file.

C. Procedures for Preparing the ISA

The ISA shall be prepared and processed in accordance with current UOSH policies and practices.

D. Post-Contest Settlement (Formal Settlement Agreement)

Post-contest settlements will normally occur after the Notice of Contest is filed with Adjudication.

1. Following the filing of a Notice of Contest, communication regarding the proposed terms of settlement, if applicable, will generally be between the AAG and the employer.

2. The AAG must consult with the Director or designee to determine the proposed terms of final settlement based on the facts of the case.

3. Communication regarding the terms of settlement may be between the Director or designee and employer if requested by the AAG and agreed upon by the Director or designee.

4. The AAG will draft the formal settlement agreement with agreed upon proposed terms for signature by the employer and the Director or Acting Director.

II. Penalty Reduction Agreements

A. PRA Eligibility

An employer shall be eligible to receive a PRA for a penalty associated with a corresponding Citation if the following criteria are met:

1. The current Citation does not contain any willful, repeat or failure-to-abate violations;

2. The inspection which resulted in the current Citation was not conducted as a result of a fatality and/or catastrophe (3 or more employees hospitalized); and

3. The employer has not received any UOSH Citations containing any serious, willful, repeat or failure-to-abate violations in the three (3) years immediately prior to the inspection date related to the current Citation. Citation history used for penalty reduction purposes may only be used if the Citations of those inspections within the last three (3) years are a final order of the Commission.

B. Terms of PRA

1. The PRA amount shall be 50% of the Proposed Penalty amount in the Citation. This amount shall be offered to employers who meet the above-listed criteria with the following exceptions:

   i. A PRA shall not be offered for other-than-serious administrative violations such as, but not limited to:

      1. Recordkeeping violations;

      2. Posting of notices (e.g., UOSH poster);

      3. Posting of Citation;

      4. Violations for not reporting an accident within 8 hours of occurrence; or

      5. Violations for removing or destroying tools, materials, equipment, etc. which may have pertained to the cause of the accident.

   ii. Utah Code Ann. § 34A-6-307(1)(b) provides that the commission may not access less than $250 for each cited serious violation, therefore, any serious violations may not be reduced to less than $250 in a PRA.

2. If an employer is eligible for a PRA based on the above-mentioned criteria, a PRA Form (see Appendix 8-1) shall be completed and included with the Citation. The PRA Form shall be delivered to the employer with the Citation.

3. UOSH shall honor the terms of the PRA if the following conditions are met:
   i. All violations indicated in the Citation have been abated timely and satisfactorily; and

ii. The completed Abatement Certification form, supporting abatement documents, signed PRA and reduced penalty payment are submitted to UOSH within **15 calendar days** of the employer's receipt of the Citation and PRA.

iii. If the items listed above are not completed within **15 calendar days**, the PRA becomes null and void and shall cause the reduced penalty amount to revert to the initially proposed penalty amount.

III. Corporate-Wide Settlement Agreement

With the approval of the Director or designee, 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. See CPL 02-00-152 *Guidelines for Administering Corporate-Wide Settlement Agreements*, dated June 22, 2011, for additional guidance.

Appendix 8-1. Penalty Reduction Agreement Form (PRA)

Utah Labor Commission
Utah Occupational Safety & Health Division
Penalty Reduction Agreement

Employer: <Employer>

Inspection #: 0

CSHO Id: <Csho Id>

Inspection Date: 1/1/2001

Citation Issued: 1/1/2001

This Penalty Reduction Agreement ("PRA") is made this <Day> day of <Month>, by and between the Utah Occupational Safety & Health Division (UOSH) and **<Employer>** ("Employer"). UOSH and Employer may herein be individually referred to as a "Party" and collectively referenced as the "Parties."

WHEREAS, the Parties understand and acknowledge that an inspection was performed by a UOSH Compliance Safety and Health Officer (CSHO) or a UOSH Industrial Hygienist (IH) on **1/1/2001**, Inspection # **0**;

WHEREAS, the parties understand and acknowledge that the CSHO/IH observed violations of safety and health standards during the inspection and issued a Citation and Notification of Penalty (Citation) to Employer on **1/1/2001**, which contained an initial proposed penalty in the amount of **$0.00** (Proposed Penalty);

WHEREAS, the Parties understand and acknowledge that this PRA shall not become effective until it is signed by all Parties and the complete original is received by UOSH;

WHEREAS, the Parties understand and acknowledge that if the terms and conditions of this PRA are not met within **15 calendar days** of receipt by Employer of the Citation and this PRA, the PRA shall become null and void and the Reduced Penalty amount shall revert to the Proposed Penalty amount;

WHEREAS, the parties understand and acknowledge that by executing this PRA, Employer waives its right to formally contest the Citation issued by UOSH;

WHEREAS, the Parties understand and acknowledge that the Citation, as amended by this PRA, shall be deemed a final order not subject to review by any court or agency; and

WHEREAS, the Parties desire to compromise, settle, and release any and all claims arising out of and relating to the Citation.

NOW THEREFORE in consideration of the mutual promises and covenants set forth herein, the Parties agree as follows:

1. **Settlement.** The Parties herein desire to settle each and every claim against each other related to the Citation. The consideration for this PRA is expressed herein.

Utah Labor Commission
Utah Occupational Safety & Health Division
Penalty Reduction Agreement

2. **Employer.**

Within 15 calendar days after receipt of the Citation and this PRA Employer agrees to:

a. Provide to UOSH the original fully executed PRA;

b. Correct all violations identified in the Citation and provide to UOSH the completed Certification of Abatement and documentation of corrective actions taken;

c. Provide to UOSH full payment of the reduced penalty amount in the amount of **$0.00** (Reduced Penalty); and

d. If applicable, voluntarily withdraw any formal contest filed with the Utah Adjudication Division relative to the Citation.

Employer further agrees to:

a. Post a copy of the fully executed PRA in a prominent place at or near the location of the violation(s) identified in the Citation. The PRA must remain posted until the identified violations have been corrected, or for three business days, whichever is longer; and

b. Comply with the applicable provisions of Utah Code Ann. §34A-6-101, *et seq*., the Utah Occupational Safety and Health Act (the "Act), and all applicable safety and health standards incorporated by the State of Utah.

3. **UOSH.**

UOSH agrees to:

a. Amend the penalty amount from the Proposed Penalty amount of $0.00 to the Reduced Penalty amount of **$0.00**.

4. **Notification Details.** The fully executed PRA, abatement documentation and any payments required under this PRA shall be sent to UOSH at the following location:

State of Utah Labor Commission
Utah Occupational Safety and Health Division
160 East 300 South, 3rd Floor
P.O. Box 146650
Salt Lake City, Utah 84114-6650

5. **Successors-in-Interest.** This PRA shall be binding upon and inure to the benefit of the heirs, executors, administrators, and successors of the Parties.

Utah Labor Commission
Utah Occupational Safety & Health Division
Penalty Reduction Agreement

6. **No Admission.** By entering into this PRA, Employer does not admit that it violated the cited standards referenced in the Citation for any litigation or purpose other than subsequent UOSH proceedings under the Utah Occupational Safety and Health Act.

7. **Authorized Signatures.** Any person signing on behalf of the Parties and their affiliated entities and persons warrants that said person is duly and fully authorized to do so.

UOSH	**EMPLOYER**
Signature:_____	Signature:_____
Printed Name:_____	Printed Name:_____
Title:_____	Title:_____
Date:_____	Date:_____

THIS PENALTY REDUCTION AGREEMENT SHALL NOT BECOME EFFECTIVE UNTIL IT IS SIGNED BY ALL PARTIES AND THE COMPLETE ORIGINAL IS RECEIVED BY UOSH.

IF THE TERMS AND CONDITIONS OF THIS PRA ARE NOT MET WITHIN 15 CALENDAR DAYS OF RECEIPT BY EMPLOYER OF THE CITATION AND THIS PRA, THE PRA SHALL BECOME NULL AND VOID AND SHALL CAUSE THE REDUCED PENALTY AMOUNT TO REVERT TO THE PROPOSED PENALTY AMOUNT.

Utah Labor Commission
Utah Occupational Safety & Health Division
Penalty Reduction Agreement

Penalty Reduction Agreement Summary

A PRA is offered to employers who meet the following criteria:

a. The current Citation does not contain any willful, repeat or failure-to-abate violations;
b. The inspection which resulted in the current Citation was not conducted as a result of a fatality and/or catastrophe (3 or more employees hospitalized); and
c. The employer has not received any UOSH Citations containing any serious, willful, repeat or failure-to-abate violations in the three (3) years immediately prior to the inspection date for the current Citation.

The Reduced Penalty amount shall be no greater than 50% of the Proposed Penalty amount in the Citation. This amount shall be offered to employers who meet the above criteria with the following exceptions:

a. A PRA shall not be offered for other-than-serious administrative violations such as, but not limited to:
    1. Recordkeeping violations;
    2. Violations for not reporting an accident within 8 hours of occurrence; or
    3. Violations for removing or destroying tools, materials, equipment, etc. which may have pertained to the cause of the accident.

b. A PRA shall not result in a penalty amount of less than $250.00 for each serious violation.

The Proposed Penalty assessed for this Citation reflects initial reductions that have been granted for the size, good faith and prior violation history of the Employer.

PROPOSED PENALTY AMOUNT	$0.00
REDUCED PENALTY AMOUNT	**$0.00**

For questions regarding this PRA, the abatement or any other information related to the Citation, contact UOSH at (801) 530-6901 and ask for the Compliance Officer assigned to your case. Please have your inspection number available when you call.

IF THE TERMS AND CONDITIONS OF THIS PRA ARE NOT MET WITHIN 15 CALENDAR DAYS OF RECEIPT BY EMPLOYER OF THE CITATION AND THIS PRA, THE PRA SHALL BECOME NULL AND VOID AND SHALL CAUSE THE REDUCED PENALTY AMOUNT TO REVERT TO THE PROPOSED PENALTY AMOUNT.

Chapter 9

Complaint & Referral Processing

Chapter 9
COMPLAINT AND REFERRAL PROCESSING

I. Safety and Health Complaints and Referrals

A. Definitions

1. Complaint

Notice of an alleged safety or health hazard (over which UOSH has jurisdiction), or a violation of the Utah OSH Act. There are two types; formal and non-formal.

a. Formal Complaint

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 Utah OSH Act, or a violation of a UOSH standard exposes employees to a potential physical or health harm in the workplace;
- Is reduced to writing or submitted on a Complaint Form; and
- Is signed by at least one current employee or employee representative.

b. Non-formal Complaint

Any complaint alleging safety or health violations 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 CSHO, initiated as the result of a complaint or referral, and meeting at least one of the criteria identified in Paragraph I.C., *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 Paragraph I.C. 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 telephone, fax, email, or by letter if necessary. The employer is then requested to provide a response. If a formal complaint was received, UOSH will notify the complainant of that response via appropriate means.

4. Electronic Complaint

A complaint submitted via the UOSH or OSHA public websites. All unsigned complaints submitted via the UOSH or OSHA public websites are considered non-formal. See Paragraph I.E.4.of this chapter to determine whether electronic complaints are to be considered 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 referral – information based on the direct observation of a CSHO.

b. Safety and health agency referral – from sources including, but not limited to: NIOSH, state programs, consultation, and state or local health departments, as well as safety and/or health professionals in other Federal, State or local agencies.

c. Retaliation **complaint referral** – made by a whistleblower investigator when an employee alleges 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.

d. Other government agency referral – made by other Federal, State or local government agencies or their employees, including local police and fire departments.

e. Media report – either news items reported in the media or information reported directly to UOSH by a media source.

f. Employer/Employer Representative report - of accidents other than fatalities and catastrophes.

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. 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 Paragraph C, *Criteria Warranting an Inspection*, is met.

C. Criteria Warranting an Inspection

An inspection is normally warranted if **at least one** of the conditions below is met (but see also Paragraph I.D. of this chapter, *Scheduling an Inspection of an Employer in an Exempt Industry*):

1. A valid formal complaint is submitted. Specifically, the complaint must be reduced to writing or submitted on a Complaint Form, be signed by a current employee or representative of employees, and state the reason for the inspection request with reasonable particularity. Additionally, there must be reasonable grounds to believe either that a violation of the Utah OSH Act or a UOSH standard that exposes employees to physical harm exists, or that an imminent danger of death or serious injury exists, as provided in Utah Code Ann. § 34A-6-301(6)(a)(i)(A).

2. The information received in a signed, written complaint from a current employee or employee representative that alleges a recordkeeping deficiency that 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 alleges that an imminent danger situation exists.

5. The information concerns an establishment and an alleged hazard covered by a local emphasis program or by a regional or national emphasis program that has been adopted by UOSH.

6. 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.

7. The establishment that is the subject of the information has a history of egregious, willful, failure-to-abate, or repeated citations within UOSH's jurisdiction during the past three years, or is an establishment or related establishment in the 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 Director or designee will normally determine an inspection is not necessary.

8. The whistleblower investigator or the Compliance Supervisor or Compliance Operations Manager requests 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.

9. 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 Director or designee 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.

10. If the information gives reasonable grounds to believe 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 related industry is within UOSH's jurisdiction. Limitations placed on UOSH'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 by the Compliance Operations Manager to the Utah Labor Commission, Antidiscrimination and Labor Division, should also be initiated.

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

D. 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 (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 Paragraph I.A.7. of this chapter, *Representative of Employees*), with the employee's knowledge of the representative's intended action.

E. Electronic Complaints Received via the UOSH and/or OSHA Public Websites

1. Electronic complaints submitted via the UOSH and/or OSHA public websites are automatically forwarded via email to the Compliance Operations Manager and Compliance Supervisor to process, distribute, and/or assign as required.

2. The Compliance Operations Manager or designee will manage the complaint electronic mailbox and process complaints according to internal complaint processing procedures. The complaints mailbox is monitored daily and every incoming complaint is reviewed for jurisdiction.

a. If the complaint falls within the jurisdiction of UOSH, the complaint is entered into OIS and processed as usual.

b. If the complaint falls within the jurisdiction of another agency, the complaint is forwarded appropriately.

3. The Compliance Operations Manager or designee will complete a Complaint Form in OIS for all complaint information received. In order to facilitate tracking of electronic complaints, the sequential number that has been assigned to the electronic complaint will be entered into the Electronic Complaint Number Section of the unprogrammed activity (UPA) form.

4. Electronic complaints where a current employee or representative of a current employee has provided their name **and** checked the *"This constitutes my electronic signature"* box shall be considered a formal complaint and processed accordingly.

5. All complaint-related material received electronically should be printed and date stamped with the date the material was submitted and received. The Compliance Operations Manager or designee will determine the appropriate date for the incoming material.

F. Information Received by Telephone

1. While speaking with the caller, UOSH 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 UOSH standards or the Utah OSH 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, UOSH 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 a violation or danger exists.
- The right to obtain review of a decision not to inspect by submitting a written statement of position with the Director or designee.

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 submit a complaint form electronically (see Paragraph I.E.), mail, email or fax a signed copy of the information, request a complaint form be sent, or sign the information in person at the UOSH Office.

4. If appropriate, inform the complainant that his or her identity and information will not be released by UOSH unless he or she authorizes such a release, voluntarily discloses his or her own identity and information to others, or appears as a witness for the government. See Paragraph I.I., *Complainant Protection*.

5. Explain whistleblower rights to employees and retaliation protection provided by Utah Code Ann. § 34A-6-203.

G. Procedures for an Inspection

1. Upon receipt of a complaint or referral, the Director or designee will evaluate all available information to determine whether there are reasonable grounds to believe that a violation or hazard exists.

a. If necessary, reasonable attempts will be made to contact the individual who provided the information in order to obtain additional details or to clarify issues raised in the complaint or referral. See the Complaint Questionnaire beginning on page 9-14 for guidance.

b. The Director or designee may determine not to inspect a facility if they have 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 Director or designee believes there is 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 UOSH's intent not to conduct an inspection, the reasoning behind the determination, and the right to have the determination reviewed under UAC R614-1-6.L. The justification for not inspecting will be noted in the case file.

b. In the event of a non-formal complaint or referral, if possible, the individual providing the information will be notified by appropriate means of UOSH's intent not to conduct an inquiry or inspection. The justification for not inspecting or conducting an inquiry will be noted in the case file.

3. If the information contained in the complaint or referral meets at least one of the inspection criteria listed in Paragraph I.C. of this chapter, *Criteria Warranting an Inspection*, and there are reasonable grounds to believe a violation or hazard exists, UOSH is authorized to conduct an inspection.

   a. If appropriate, UOSH will inform the individual providing the information that an inspection will be scheduled and he or she will be advised of the results.

   b. After the inspection, UOSH will send the individual filing the formal complaint a letter addressing each alleged hazard identified, with a sufficiently detailed explanation of the findings.

4. If an inspection is warranted, it will be initiated as soon as resources permit. Inspections resulting from complaints of serious hazards will normally be initiated within five working days of formalizing.

5. As a general rule, the scope of a complaint/referral inspection must bear an appropriate relationship to the alleged violative conditions. The CSHO must have probable cause to expand the inspection beyond the violations alleged in the complaint/referral. See Chapter 3, Section II, *Inspection Scope*, for more information.

H. Procedures for an Inquiry

1. If the complaint or referral does not meet the criteria for initiating an onsite inspection, an inquiry will be conducted. UOSH will promptly contact the employer to notify it of the complaint or referral and its allegation(s), and fax, mail or email a confirming letter.

2. If a non-formal complaint is submitted by a current employee or a representative of employees that does not meet any of the inspection criteria, the complainant may be given five working days to make the complaint formal.

   a. The complainant may come into the UOSH Office and sign the complaint, submit a complaint form electronically (see Paragraph E), or mail, email or fax a signed complaint letter to UOSH. Additionally, a complaint form can be mailed or faxed to the complainant, if appropriate.

   b. If the complaint is not made formal after five working days, after making a reasonable attempt to inform the complainant of the decision, UOSH will proceed with the inquiry process.

3. The employer will be advised 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 UOSH 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 Director or designee, 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. Provide UOSH with supporting documentation of the findings, including any applicable measurements or monitoring results, and photographs and/or videos 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.

d. Post a copy of UOSH's letter and the notice of alleged safety or health hazards for a period of 3 days where it is readily accessible for review by all employees.

e. If there is a recognized employee union or employee representative, provide them with a copy of UOSH's letter and the employer's response.

4. As soon as possible after contacting the employer, a notification letter will be emailed or faxed to the employer, or mailed where no email or fax is available. If email is an acceptable means of responding, this should be indicated in the notification letter and the proper email address should be provided.

5. If no employer response or an inadequate employer response is received after the allotted five working days, additional contact with the employer may be made before an inspection is scheduled. After additional contact, if the employer still provides no response or an inadequate response, or if UOSH determines from other information that the condition has not been or is not being corrected, an inspection will be scheduled.

6. If this inquiry was due to a formal complaint, the complainant will be advised 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 UOSH 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.

7. If the complainant is a current employee or 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, then see Paragraph I.G. of this chapter, *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 UOSH's intent not to conduct an inspection and the reasoning behind the determination. This decision should be thoroughly documented in the case file.

8. If a signed complaint is received after the complaint inquiry process has begun, the Director or designee will determine whether the alleged hazard is likely to exist based on the employer's response and by contacting the complainant. The complainant will be informed that the inquiry has begun and the complainant retains the right to request an onsite inspection if he/she disputes the results and believes the hazard still exists.

9. The complaint must not be closed until UOSH verifies the hazard(s) has been abated.

10. The justification for not conducting an inquiry will be noted in the case file.

I. Complainant Protection

1. Identity of the Complainant

a. In accordance with Utah Code Ann. § 34A-6-301(6)(a)(i)(C), upon request of an employee who makes a formal safety and health complaint, his or her name and the names of individual employees referred to in the complaint shall not appear in such copy or on any record published, released or made available pursuant to Utah Code Ann. § 34A-6-301(7).

b. The informer's privilege shall be governed by Utah Rules of Evidence 505. This Rule allows the government to withhold the identity of individuals who provide information about the violation of laws, including UOSH rules and regulations. This privilege may be claimed by counsel for the government. No privilege exists if the informer voluntarily discloses his or her own identity and information to others and if the informer appears as a witness for the government.

c. The informer's privilege also protects the contents of statements to the extent that disclosure would reveal the complainant's 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.

2. Whistleblower Protection

a. Utah Code Ann. § 34A-6-203 provides protection for employees who believe 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 he or she has been discharged or otherwise retaliated against by any person as a result of engaging in such activities may file a whistleblower complaint. The complaint must be filed within thirty days of the discharge or other retaliation.

b. Complainants should always be advised of their whistleblower rights and protections upon initial contact with UOSH and whenever appropriate in subsequent communications.

J. Recording in OIS

Information about complaint and referral inspections or inquiries must be recorded in OIS following current instructions given in the OIS manual.

II. Whistleblower Complaints

A. UOSH enforces the whistleblower provisions of the Utah OSH Act. This statute generally provides that employers may not discharge or in any way retaliate against an employee because the employee has reported an alleged violation related to the statute to an employer or a government agency, or otherwise exercised any rights provided to employees by the statute.

B. When a retaliation complaint is made under a whistleblower statute not enforced by UOSH, but falls under a whistleblower statute enforced by OSHA, the complainant should be referred promptly to OSHA because the requirements for filing complaints under those statutes vary from the Utah OSH Act. They should be advised that there are statutory guidelines for filing these complaints.

C. In the context of a UOSH enforcement action or a consultation activity, the complainant will be advised of the protection against retaliation afforded by Utah Code Ann. § 34A-6-203. A Utah Code Ann. § 34A-6-203 complaint may be in any form, including an oral complaint made to a CSHO. Thus, if a person alleges he or she has suffered an adverse action because of activity protected under Utah Code Ann. § 34A-6-203, CSHOs will record that person's identifying information and the date and time of this initial contact on a UOSH Whistleblower Intake Form and forward it to the Compliance Program Manager or designee for processing.

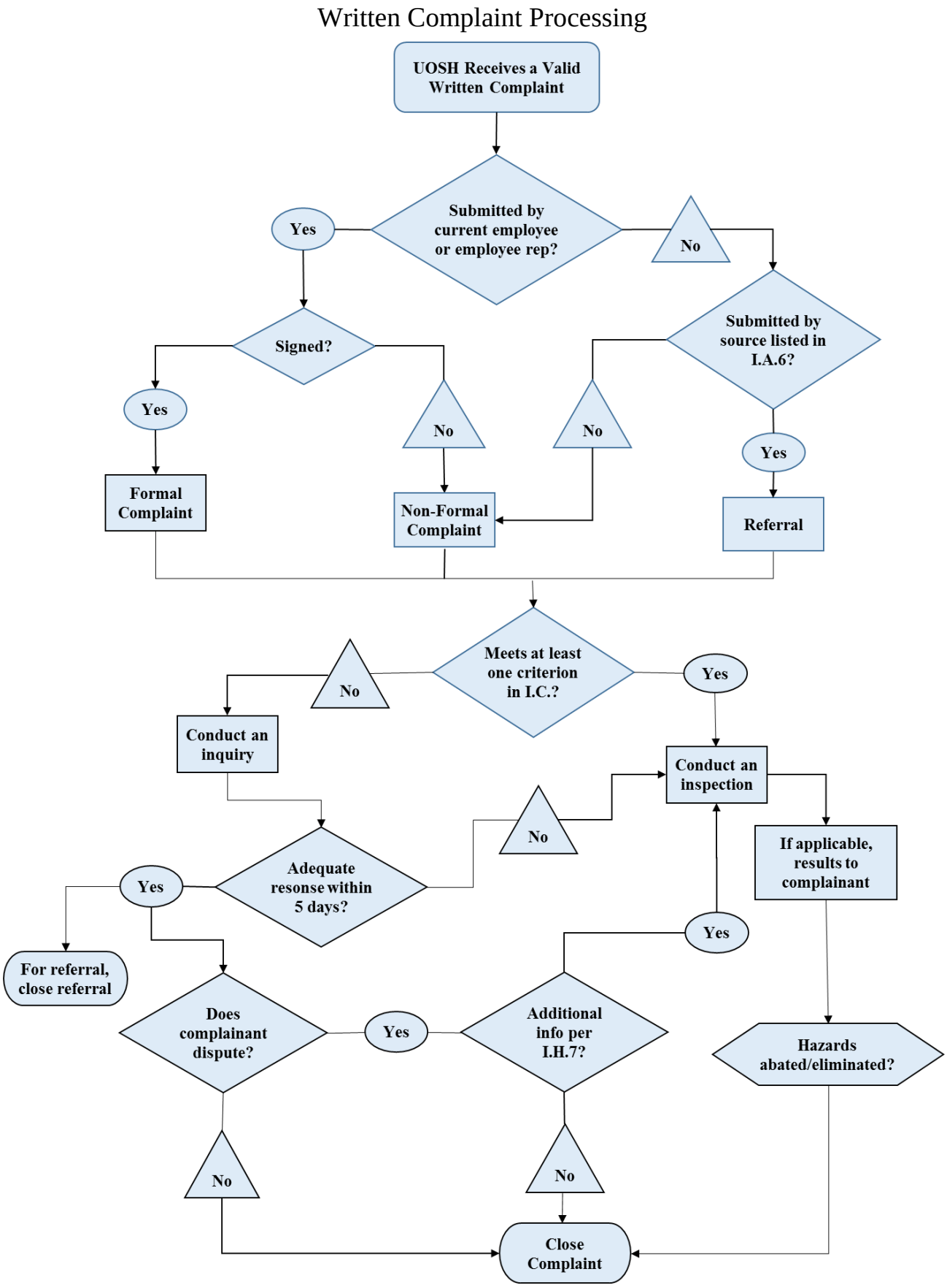
D. Employees may file occupational safety and health retaliation complaints with UOSH, OSHA, or both. OSHA normally refers whistleblower complaints within UOSH's jurisdiction to UOSH for investigation.

III. Decision Trees

A. See Decision Tree 1 on page 9-12 for UOSH enforcement action when information is obtained in writing.

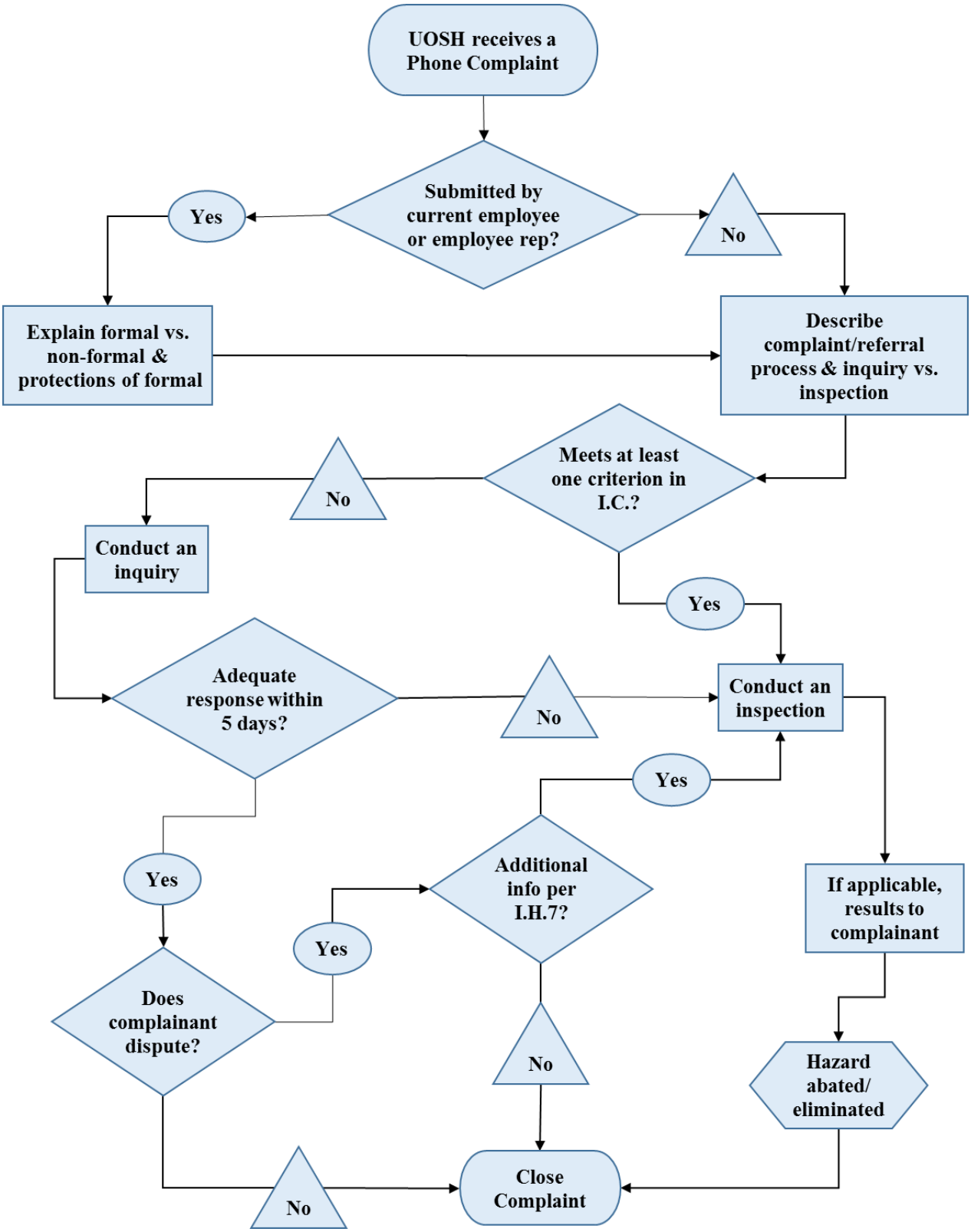
B. See Decision Tree 2 on page 9-13 for UOSH enforcement action when information is received via telephone.

Decision Tree 1 - UOSH enforcement action when information is obtained in writing.



Decision Tree 2 - UOSH enforcement action when information is received via telephone.

Telephone Complaint Processing



IV. 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 (e.g., chemicals) used, the process / operation involved, and the kinds of work done near the hazardous area. Have there been any recent chemical spills, releases, or accidents?

_____

_____

_____

5. What frequency are employees doing the task that leads to the exposure? Continuously? Every day? Every week? Rarely? For how long at a time? How long has the condition existed (as 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 personal protective equipment (e.g., 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?

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 10

Industry Sectors

Chapter 10
INDUSTRY SECTORS

I. Farming Operations

A. General

NOTE: *FR Vol 62, No. 12, Friday, January 17, 1997, Pages 2558 to and including 2565, "Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands and Wyoming State Plans; Approval of Plan Supplements; Levels of Federal Enforcement; Final Rule" is incorporated by reference.*

This change amends OSHA's regulations to reflect the Assistant Secretary's decision approving amendments to nine (9) State plans to exclude coverage of the field sanitation standard and the temporary labor camp standard as it applies to agriculture (with the exception of temporary labor camps for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities) from their State Plans. The states of Alaska, Indiana, Iowa, Kentucky, Minnesota, South Carolina, Utah, Virgin Islands, and Wyoming have elected to follow the jurisdictional transfer of authority as effected by Secretary of Labor's Orders 5-96 and 6-96, published in the Federal Register on January 2, 1997, between the Employment Standards Administration (ESA) and OSHA with regard to these two OSHA standards. OSHA is hereby amending pertinent sections of its regulations on approved State plans to reflect this relinquishment of State jurisdiction and transfer of OSHA enforcement authority to ESA in these nine (9) States.

UAC R614-3 covers farming operations, with the exception of temporary labor camps (TLCs) for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities which are covered under 29 CFR 1910.142, and sets forth standards in full and lists particular 29 CFR 1910 standards which apply to farming operations. 29 CFR 1910 standards not listed in UAC R614-3 do not apply to farming operations. In addition, the general duty clause (Utah Code Ann. § 34A-6-201) may be used to address hazards where no standard is applicable; all the elements for a general duty citation must be met. See Chapter 4, Section III., *General Duty Requirements*.

B. Definitions

1. Employee

Any person suffered or permitted to work by an employer. In accordance with UAC R614-3-2.A., family members of farm employers shall not be regarded as employees when making the determination as to number.

2. Farming Operations

Any operation involved in the growing or harvesting of crops, the raising of livestock or poultry, or similar activities conducted by a farmer on sites such as farms, ranches, orchards, dairy farms or similar farming operation.

3. Labor Camp

Farm housing directly related to the seasonal or temporary employment of migrant farm workers. In this context, "housing" includes both permanent and temporary structures under the control of the employer, located on or off the property, and is provided as a condition of employment.

4. Post-Harvesting Processing

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. Exempt Farming Operations

The exemptions and limitations placed on UOSH activities by Congress, accepted by the Director, are in effect until superseded. The exemptions and limitations are contained in OSHA Directive number CPL 02-00-051, *Enforcement Exemptions and Limitations under the Appropriations Act*, effective date of May 28, 1998. This directive explains the limits on inspection activities under the Appropriations Act.

Enforcement Guidance for Small Farming Operations. UOSH is limited by provisions of UAC R614-3-2.A. and by the Federal Appropriations Act to which employers it may inspect. UAC R614-3 contains Occupational Safety and Health Standards applicable to farming operations, for farms employing eleven (11) or more employees during any part of a year **or** maintain a labor camp.

1. A farming operation is exempt from all UOSH activities if it:

a. Employs 10 or fewer employees currently and at all times during the last 12 months; and

b. Has not had an active TLC during the preceding 12 months.

Note: *Immediate family members of farm employers are not counted when determining the number of employees.*

2. A farming operation with 10 or fewer employees that maintains a TLC or has maintained a TLC within the last twelve months is not exempt from inspection. For UOSH, the inspection may include all working conditions covered by UOSH standards except for Field Sanitation, 29 CFR 1928.110, and except as noted, Temporary Labor Camps, 29 CFR 1910.142, with the exception of TLCs for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities which are covered under 29 CFR 1910.142. The inspection may include working conditions covered by UAC R614-3, Farming Operation Standards, which contains provisions for field sanitation and labor camps.

NOTE: For those camps of employees engaged in eggs or poultry production (SIC 025) or red meat production (SIC 021) or engaged in the post-harvest processing of agricultural or horticultural commodities, the inspection may include all working

conditions covered by 29 CFR 1910.142. 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 (washing, bundling and bagging carrots) versus field sorting in a shed for size.

D. Enforcement of Standards in the Farming Industry

1. Before initiating enforcement activities, UOSH will decide whether UAC R614-3-2.A prohibits UOSH enforcement. Where this determination cannot be made beforehand, the CSHO will determine the status of the small farming operation upon arrival at the workplace. If the prohibition applies, the inspector must immediately discontinue the inspection activities and leave the premises as soon as possible. Table No. 10-1 provides an at-a-glance reference to UOSH's activities under the funding measure.

Table 10-1

(Exceptions and Limitations)

TLC = Temporary Labor Camp EEs = Employees

UOSH Activity	Farm with 10 or fewer EEs and no TLC activity within 12 months.	Farm with more than 10 EEs or a farm with an active TLC within 12 months.
Programmed Safety Inspections	Not Permitted	Can Inspect
Programmed Health Inspections	Not Permitted	Can Inspect
Employee Complaint	Not Permitted	Can Inspect
FAT/CAT and Accidents	Not Permitted	Can Inspect
Imminent Danger	Not Permitted	Can Inspect
Utah Code Ann. § 34A-6-203 (whistleblower investigation)	Not Permitted	Can Inspect
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.

2. If it has been determined that an inspection can be conducted, the following standards shall be applicable to the farming operation:

   a. UAC R614-3 Farming Operations Standards

   b. 29 CFR 1910.111 Storage and Handling of Anhydrous Ammonia

   c. 29 CFR 1910.266 Pulpwood Logging

   d. UAC R614, where no UAC R614-3, 29 CFR 1910.111 and 29 CFR 1910.266 standards are applicable

   e. Utah Code Ann. § 34A-6-201, where no standard is applicable.

   NOTE: 29 CFR 1910 standards not listed in R614-3 do not apply to farming operations.

E. Temporary Labor Camps

TLCs in the farming industry are regulated under UAC R614-3 Farming Operations Standards, with the exception of TLCs for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities which are covered under 29 CFR 1910.142 Temporary Labor Camps. Refer to Chapter 12, *Specialized Inspection Procedures*, for TLC inspection procedures.

II. Pest Control

In accordance with UAC R614-3-12, pesticide storage, use and clean up shall meet the provisions required by the Utah Department of Agriculture under Title 4, Chapter 14, Utah Pesticide Control Act; the EPA; and, the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA).

A. Coverage

1. Pursuant to FIFRA, the EPA has jurisdiction over employee protection relating to pesticides (which also includes herbicides, fungicides and rodenticides). EPA's Agricultural Worker Protection Standard (WPS) protects employees on farms, forests, nurseries, and greenhouses from occupational exposure to agricultural pesticides. The WPS includes provisions for PPE, labeling, employee notification, safety training, safety posters, decontamination supplies, emergency assistance, and restricted field entry. See 40 CFR Part 170, Worker Protection Standard.

2. The regulation covers two types of employees:

   a. 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.

b. 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.

3. 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, UOSH has no authority to issue any citations related to pesticide exposures. In the event 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 EPA or to other state agencies administering pesticide laws.

4. 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. UOSH may not cite 29 CFR 1910.1200 in such situations.

III. Construction

A. General Responsibilities

Responsibilities for construction inspections are the same as for general inspections. Special situations arising in the construction industry are discussed in this chapter.

B. Standards

1. Applicability

The specific standards and regulations are found in Utah Code Ann. § 34A Chapter 6, UAC R614, 29 CFR 1926, and 29 CFR 1904. UAC R614-1-4 Incorporation of Federal Standards and UAC R614-1-5 Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders establish the source of all the standards which serve as the basis of violations. They shall apply to every employment and place of employment of every employee engaged in construction work, including non-contract construction. If any question arises as to whether an activity is deemed to be construction for purposes of the Utah OSH Act, the Compliance Supervisor or the Compliance Operations Manager shall be consulted.

2. Definition

The term "construction work," as defined by 29 CFR 1926.32(g), means work for construction, alteration, and/or repair, including painting and decorating.

3. General Industry Standards Applicable to Construction

Certain 29 CFR 1910 standards have been identified as being applicable to construction work. The Compliance Operations Manager/Supervisor shall ensure that they are enforced as appropriate, consistent with their scopes and definitions. Citing a general industry standard other than one identified as being applicable to construction work shall not be recommended without the approval from the Director. See Table 10-2 for general industry standards that are applicable to construction work; this table is not all-inclusive.

Table 10-2

29 CFR 1910 Standards Applicable to Construction Work

Subpart	Title	Construction Standard	Applicable General Industry Standard
D	Ionizing Radiation	1926.53(c)-(r)	1910.1096(a)-(p)
D	Gases, vapors, fumes, dusts, and mists-specific to airborne asbestos, tremolite, anthophyllite, actinolite dust	1926.55(a)-(b)	1910.1101
D	Gases, vapors, fumes, dusts, and mists-specific to formaldehyde	1926.55(a)-(b)	1910.1048
D	Hazard Communication	1926.59	1910.1200
D	Retention of DOT markings, placards and labels	1926.61	1910.1201
E	Respiratory protection	1926.103	1910.134
O	Material handling equipment-Powered industrial truck operator training	1926.602(d)	1910.178(l)
Y	Scope and application	1926.1071	1910.401
Y	Definitions	1926.1072	1910.402
Y	Qualifications of dive team	1926.1076	1910.410
Y	Safe practices manual	1926.1080	1910.420
Y	Pre-dive procedures	1926.1081	1910.421
Y	Procedures during dive	1926.1082	1910.422
Y	Post-dive procedures	1926.1083	1910.423
Y	SCUBA diving	1910.1084	1910.424
Y	Surface-supplied air diving	1926.1085	1910.425

Y	Mixed-gas diving	1926.1086	1910.426
Y	Live boating	1926.1087	1910.427
Y	Equipment	1926.1090	1910.430
Y	Recordkeeping requirements	1926.1091	1910.440
Z	Coal tar pitch volatiles; interpretation of term	1926.1102	1910.1002
Z	13 Carcinogens (4-Nitrobiphenyl, etc.)	1926.1103	1910.1003
Z	1926.1104 - alpha-Naphthylamine	1926.1104	1910.1003
Z	Methyl chloromethyl ether	1926.1106	1910.1003
Z	3,3'-Dichlorobenzidine (and its salts)	1926.1107	1910.1003
Z	bis-Chloromethyl ether	1926.1108	1910.1003
Z	beta-Naphthylamine	1926.1109	1910.1003
Z	Benzidine	1926.1110	1910.1003
Z	4-Aminodiphenyl	1926.1111	1910.1003
Z	Ethyleneimine	1926.1112	1910.1003
Z	beta-Propiolactone	1926.1113	1910.1003
Z	2-Acetylaminofluorene	1926.1114	1910.1003
Z	4-Dimethylaminoazobenzene	1926.1115	1910.1003
Z	N-Nitrosodimethylamine	1926.1116	1910.1003
Z	Vinyl chloride	1926.1117	1910.1017
Z	Inorganic Arsenic	1926.1118	1910.1018
Z	Benzene	1926.1128	1910.1028
Z	Coke oven emissions	1926.1129	1910.1029
Z	1,2-dibromo-3-chloropropane	1926.1144	1910.1044
Z	Acrylonitrile	1926.1145	1910.1045
Z	Ethylene oxide	1926.1147	1910.1047
Z	Formaldehyde	1926.1148	1910.1048

4. Enforcement

In the event of violations, citations shall be recommended and civil assessments derived in accordance with procedures set forth in Chapters 4, 5 and 6.

C. Employer Workplace

Inspections of employers in the construction industry are not easily separable into distinct establishments. The establishment is generally the site where the construction is being performed (e.g., the building site, the dam site). Where the construction site extends over a large geographical area (e.g., road construction), the entire job will be considered a single worksite. In cases when such large geographical areas overlap between states, only operations of the employer within the State of Utah will be considered as the worksite of the employer for UOSH inspection purposes. In such cases, the Director or designee may consult with the applicable Federal or other State Plan OSHA Office and refer potential safety and/or health hazards if warranted. For instructions regarding multi-employer worksites, see Chapter 12, Section I.

D. Advance Notice

1. General

The same general policies and procedures on advance notice set forth in Chapter 3 are applicable to construction inspections. Thus, in general, advance notice will be given only where it will enhance the effectiveness of the inspection.

2. Authorized

When advance notice is authorized, the CSHO shall contact the general contractor's office by telephone. If there is more than one general contractor (e.g., if two or more general contractors have formed a joint venture for purposes of the job in question), the CSHO shall attempt to ascertain the identity of all such general contractors and contact each of them. The general contractor(s) shall be told to advise all subcontractors working on the job that the inspection will take place. The general contractor shall also be asked to advise the labor organizations representing employees and to instruct each subcontractor to take similar action, in accordance with the requirement of UAC R614-1-6.F.2. Where there are no labor organizations of other representatives of employees, advance notice need not be given to the employees.

E. Entry of the Workplace

1. Severe Weather Conditions

If severe weather conditions encountered during an inspection cause construction activities to shut down, the inspection shall be continued when weather permits. If the work continues and the weather creates hazardous working conditions, these facts shall be reported, since they may be the subject of citations and civil assessments based on a specific standard or, if no such standard is applicable, the general duty clause.

2. Opening Conference

In conducting the opening conference the CSHO shall follow the procedures outlined in Chapter 3. Upon arrival at the construction site, the CSHO shall contact the "prime" or general contractor's representative in charge of the job; usually this will be the superintendent or project manager. The CSHO shall advise this individual that the purpose of the visit is to conduct an inspection to determine compliance with the requirements of the Utah OSH Act.

a. Subcontractors. Normally, there will be several subcontractors at the site. In such cases, the individual in charge shall be asked to identify them and to provide the name of the individual in charge of each subcontractor's operations at the site. A joint or separate opening conference may be held with subcontractors as decided by the CSHO. A subcontractor who has not been notified of the inspection should not be included in the inspection unless a serious violation has been observed by the CSHO.

b. Employee Representatives. Authorized representatives of employees for each contractor and subcontractor, if any, shall be informed of the inspection and invited to the opening conference. Conferences may be joint conferences with employers. If there is objection to a joint conference, the CSHO shall conduct separate conferences as circumstances dictate.

c. Closing Conference. The CSHO shall advise all employers and employee representatives that a closing conference will be held with each of them following the complete inspection and request that each of them arrange to have a representative available.

d. Complaints

i. If the inspection is being conducted as a result of a complaint, a copy of the complaint is to be furnished as follows:

- A copy of every complaint, including complaints against subcontractors, shall be provided to the general contractor.
- A copy of every complaint against the general contractor shall, if possible, be provided to every subcontractor whose employees may be exposed to the alleged hazard.
- A copy of every complaint against a subcontractor shall be provided to that subcontractor and, if possible, to others whose employees may be exposed to the alleged hazard.

ii. Care shall be taken to protect the identity of the complainant.

iii. Refer to Chapter 9 for further details regarding complaint processing.

3. Selecting Employer and Employee Representatives

The CSHO shall conduct a walkaround inspection in accordance with the provisions of Chapter 3.

a. Authorized Representative. Each employer is entitled to select an authorized representative to accompany the CSHO during the inspection. Similarly, the employees of each employer have the right to select an authorized representative for this purpose. If the job is organized, then the labor organization representing the employees shall select the authorized employee representative. If there is no representative, the CSHO shall normally interview a reasonable number of employees to determine whether hazards exist. A reasonable number of employees shall include at least some employees of each employer and each trade on the job.

b. Employee Interviews. Pursuant to UAC R614-1-6.J., during the walkaround the CSHO shall consult with individual employees as well as the employee representative concerning working conditions, as judged appropriate by the CSHO.

c. Walkaround Provisions. A representative of the employer and a representative authorized by employees shall be given an opportunity to accompany the CSHO during the physical inspection for the purpose of aiding such 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 such additional representatives will aid, and not interfere with, the inspection. However, if the CSHO determines that the large number of persons involved during the walkaround interferes with an effective and thorough inspection, or work is being unduly disrupted, the CSHO may deny accompaniment. In accordance with UAC R614-1-6.H.4., CSHOs are authorized to deny the right of accompaniment to any person whose conduct interferes with a fair and orderly inspection.

The main difficulty in implementing the "walkaround" provisions on construction sites derives from the fact that there may be numerous employers on the job. If all employers and groups of employees selected a different representative to accompany the CSHO on the inspection, the group participating in the inspection could be so large that work on the worksite might be disrupted and the effectiveness of the inspection would be diminished.

i. An attempt shall be made to encourage employer and employees to select, respectively, a limited number of representatives for accompaniment purposes. It shall be pointed out by the CSHO that this arrangement makes an effective inspection possible without diminishing the accompaniment rights. If any matter comes up during the course of the inspection that requires special knowledge, the representative of the appropriate employer or employees shall be called in to participate in that phase of the inspection.

ii. The CSHO may also divide the inspection into separate phases; e.g., excavation work followed by electrical work, and so forth. If this procedure is followed, the number of employer and employee representatives for each phase of the inspection can be limited to those immediately involved. The CSHO shall avoid, to the extent possible, inspecting the same areas of the worksite more than once.

F. Closing Conference

1. Upon completion of the inspection, the CSHO shall conduct a closing conference with the general contractor(s), subcontractor(s) and employee representatives, jointly or separately, and advise of the apparent violations observed during the inspection. If there is objection to a joint conference, the CSHO shall conduct separate conferences as circumstances dictate. In conducting the closing conference, the CSHO shall follow the procedures outlined in Chapter 3.

2. The CSHO shall make certain before leaving the worksite that the names and addresses of the general contractor(s) and all other inspected employers at the worksite have been obtained.

G. Citations and Civil Assessments

1. Mailing

The original Citation shall be sent to the mailing address provided by the employer during the inspection and as indicated on the Inspection Report.

2. Where to Post Citations

a. A copy of the citation shall be posted at a location where employees are required to report on a daily basis. At many construction sites, the employer (whether general contractor or subcontractor) provides a trailer or other worksite office. Where such a facility is provided and employees are likely to be in the vicinity of the facility on a daily basis, the citation shall be posted at that location. In some situations, such a location would be the employer's main or branch office. In other situations, such as highway construction, the location would be the place where employees actually work.

b. No Place to Post Citation. Where no obvious place for posting the citation exists, such as in highway construction where the trailer may be a considerable distance away and employees do not report to the trailer, the employer shall be required to furnish a suitable object on which to post the citation in a conspicuous location or immediately adjacent to the worksite. In any case, where the citation will be exposed to rain or snow, the citation shall be protected from the elements.

IV. Other Unique UOSH Standards Covered under UAC R614

A. General Industry

1. UAC R614-1-5.D.6. Lockout and Tagout
2. UAC R614-2. Drilling Industries (Oil and Gas Drilling, Servicing, and Production and, Other than Oil and Gas)
3. UAC R614-4. Flammable Solids, Explosives and Blasting Agents

4. UAC R614-5-1. Crawler Locomotive and Truck Cranes
5. UAC R614-5-2. Conveyors
6. UAC R614-6-1. Crushing, Screening, and Grinding Equipment
7. UAC R614-6-2. Window Cleaning
8. UAC R614-6-3. House and Building Moving
9. UAC R614-6-4. Industrial Railroads
10. UAC R614-6-6. Motor Vehicle Transportation of Workers
11. UAC R614-6-7. Hot Metallurgical Operations (for example, Foundries)
12. UAC R614-6-8. Elevators, Escalators, Aerial Trams, Manlifts, Workers' Hoists, Etc.
13. UAC R614-6-9. Filters and Centrifuges
14. UAC R614-6-10. Food Processing

B. Construction Industry

1. UAC R614-7-1. Roofing, Tar-Asphalt Operations
2. UAC R614-7-2. Grizzlies Over Chutes, Bins, and Tank Openings
3. UAC R614-7-3. Cranes and Derricks
4. UAC R614-7-4. Residential-Type Construction, Raising Framed Walls

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 11

Imminent Danger, Accident & Emergency Response

Chapter 11
IMMINENT DANGER, ACCIDENT & EMERGENCY RESPONSE

I. Imminent Danger Situations

A. General

1. Definition of Imminent Danger

Utah Code Ann. § 34A-6-103(1)(l) of the Utah OSH Act defines imminent danger as "…a danger exists which reasonably could be expected to cause an occupational disease, death, or serious physical harm immediately, or before the danger could be eliminated through enforcement procedures…"

2. Conditions of Imminent Danger

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. It must be reasonably likely a serious accident could occur immediately or, if not immediately, before abatement would otherwise be implemented.

NOTE: For a health hazard, exposure to the toxic substance or other hazard must cause harm to such a degree as to shorten life or 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

a. After the Compliance Supervisor or the Compliance Operations Manager receives a report of imminent danger, he or she will evaluate the inspection requirements and assign a CSHO to conduct the inspection.

b. Every effort will be made to conduct the imminent danger inspection on the same day the report is received. In any case, the inspection will be conducted no later than the next working day after the report is received.

c. When an immediate inspection cannot be made, the Compliance Supervisor or the Compliance Operations Manager 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.

i. 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.

ii. This notification is considered an advance notice of inspection to be handled in accordance with the advance notice procedures described below.

2. Advance Notice

a. UAC R614-1-6.F. authorizes advance notice of an inspection of potential imminent danger situations in order to encourage employers to eliminate dangerous conditions as quickly as possible.

b. Where an immediate inspection cannot be made after UOSH is alerted to an imminent danger condition and advance notice will speed the elimination of the hazard, the Compliance Supervisor or the Compliance Operations Manager, at the direction of the Director or designee, will give notice of an impending inspection to the employer.

c. Where advance notice of an inspection is given to an employer, it shall also be given to the authorized employee representative, if present. If the inspection is in response to a formal Utah Code Ann. § 34A-6-301(6) 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 only after the imminent danger condition has been resolved.

1. Scope of Inspection

CSHO's 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 expeditiously 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. As soon as reasonably practicable after discovery of existing conditions or practices constituting an imminent danger, the employer shall be informed of such hazards. The employer shall be asked to notify affected employees and to remove them from exposure to the imminent danger hazard. The employer should be encouraged to voluntarily take appropriate abatement measures to promptly eliminate the danger.

D. Elimination of the Imminent Danger

1. Voluntary Elimination of the Imminent Danger

a. How to Voluntarily Eliminate a Hazard.

i. 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.

ii. 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 PPE 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 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:

i. No imminent danger legal proceeding shall be instituted;

ii. Appropriate citation(s) and notice(s) of penalty will be proposed for issuance with an appropriate notation on the Violation to document corrective actions; and

iii. CSHOs will inform affected employees and authorized employee representative(s) that, although an imminent danger had existed, the 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, CSHOs will immediately consult with the Director or designee.

b. The employer will be advised that in accordance with Utah Code Ann. § 34A-6-305, district courts have the jurisdiction, upon petition of the Director, to grant injunctive relief or temporary restraining orders to restrain any conditions or practices that pose an imminent danger to employees.

NOTE: UOSH 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.

c. The CSHO shall inform the affected employees and employers of the danger and that the CSHO is recommending to the Director that relief be sought and will advise them of the Utah Code Ann. § 34A-6-203 discrimination protections under the Utah OSH Act. Employees will be advised they have the right to refuse to perform work in the area where the imminent danger exists.

d. The Director or designee, in consultation with the AAG, will assess the situation and, if warranted, make arrangements for the expedited initiation of court action.

3. When Harm Will Occur Before Abatement is Required

If CSHO's have clear evidence that harm will occur before abatement is required (i.e., before a final order of the Commission in a contested case or before injunctive relief or a temporary restraining order can be obtained), they will confer with the Director 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.

II. Accident Investigations

A. Definitions

1. Fatality - An employee 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 - In-patient hospitalization is the formal admission to the inpatient service of a hospital or clinic for care or treatment. It excludes admission for diagnostic testing or observation only.

4. Serious physical harm

a. 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. Examples of such serious injuries include, but are not limited to, amputations, fractures, deep cuts, severe burns, sight impairment, loss of consciousness and concussions.

b. Illnesses that could shorten life or significantly reduce physical or mental efficiency by inhibiting the normal function of a part of the body. Examples of such serious illnesses include, but are not limited to, cancer, silicosis, asbestosis, byssinosis, hearing impairment and visual impairment.

B. Initial Report

1. The Accident Report Intake Form is a pre-inspection form that must be completed for all work-related accidents unless knowledge of the event occurs during the course of an inspection at the establishment involved. The purpose of the intake form is to provide UOSH with enough information to determine whether or not to investigate the event. It is also used as a research tool by UOSH.

2. If, after the initial report, UOSH becomes aware of information that affects the decision to investigate, the Accident Intake Report Form should be updated. If the additional information does not affect the decision to investigate, or the investigation has been initiated or completed, the form need not be updated.

3. The Compliance Operations Manager or designee shall report work-related fatalities and catastrophes directly and immediately to the Director.

C. Pre-Investigation Activities

It is essential to the proper conduct of an investigation that preparations be carefully made. UOSH will often be the subject of public scrutiny in the conduct of such investigations, and it is imperative they be thorough and professionally competent.

1. If a fatality or catastrophe appears to require a UOSH investigation (i.e., it is or may be occupationally related and UOSH's jurisdiction is not preempted), the Compliance Operations Manager or designee shall report the event to the Director and give all pertinent information as soon as it is verified that a work-related fatality/catastrophe within UOSH's jurisdiction has occurred.

2. Where determinations have been made that UOSH's authority has been preempted by a Federal or another State Agency, no investigation shall be conducted. See Paragraph IV.G.1. of Chapter 3, Preemption by a Federal or another State Agency.

3. **Preliminary Investigation** - The Compliance Operations Manager or designee, upon notification of an accident involving a fatality, catastrophe or serious injury, shall gather as much information as is available prior to scheduling an inspection. If possible, this shall be done immediately through discussion with the person reporting the accident. If knowledge of the accident is received through the media or sources other than a representative of the employer, the employer shall be contacted as soon as possible to obtain additional information whenever the Compliance Operations Manager or designee believes that such contact will result in a more effective inspection. Such contact shall be considered advance notice and the procedures for advance notice shall be followed.

4. **Investigation Team** - If an investigation team composed of experts in specific disciplines is required, the Compliance Operations Manager or designee shall so advise the Director. If resources beyond those available within the UOSH Office will be required to compose the team, the Director shall determine representation on the team and shall direct the investigation or delegate a CSHO to serve as an authorized representative who will maintain control of the inspection process. The team, as directed by the Compliance Operations Manager or designee, shall proceed promptly to the scene and shall function as a unit in all phases of the investigation until officially directed to return to normal operation.

5. **Selection of CSHO** - If the Compliance Operations Manager or designee determines that an investigation team effort is not required, a CSHO with expertise in the particular industry or operation involved in the accident or illness shall be selected and sent to the establishment as soon as possible (where possible, 2 CSHOs shall be sent to investigations involving fatalities and catastrophes).

6. **Equipment** - Prior to leaving for the accident scene, the team or CSHO, as applicable, shall select the test equipment and the PPE necessary to conduct the investigation.

7. **Other Agency** - If a federal or other state agency is responsible for or participating in the investigation, the Compliance Operations Manager or designee shall ensure the CSHO and/or the team members are fully instructed in the relationship and the areas of responsibility.

D. Investigation Procedures

1. All work-related fatalities and catastrophes will be thoroughly investigated in an attempt to determine the cause of the event, whether a violation of UOSH safety and health standards, regulations, or the general duty clause occurred, and any effect the violation had on the incident. The Director or designee will establish a procedure to ensure that each fatality or catastrophe is thoroughly investigated and processed in accordance with established policy.

2. The investigation should be initiated as soon as possible after receiving an initial report of the incident, ideally within one working day, by an appropriately trained and experienced CSHO assigned by the Compliance Operations Manager or designee. The

Compliance Operations Manager or designee shall determine the appropriate scope of the fatality/catastrophe investigation based on such factors as a prior history of willful, serious, or repeat violations, reports of near misses/close calls, an evaluation of violations in plain view, or the existence of an NEP or LEP. To the extent circumstances allow, all investigations must be completed in an expeditious manner.

3. Investigations 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 UOSH personnel conducting fatality/catastrophe/accident investigations be unprotected against a hazard encountered during the course of an investigation. UOSH personnel must use appropriate PPE and take all necessary precautions to avoid and/or prevent occupational exposure to potential hazards that may be encountered.

5. Legal Advice - The advice of an attorney may be necessary at a very early stage of the investigation. The Compliance Operations Manager or designee shall contact the AAG if assistance is required.

6. The scope of the inspection will be determined after consultation between the CSHO and Compliance Operations Manager or designee. See Section II. of Chapter 3, *Inspection Scope*.

7. Inspection Strategy When a Complete Inspection Is To Be Performed - Depending on the circumstances surrounding the accident, it may be necessary to conduct the complete inspection of the workplace, before, concurrent with, or after the accident investigation. Other areas or operations in the establishment may have hazards similar to those that caused the accident; and, if so, they shall be brought to the employer's attention immediately.

8. Abbreviated Opening Conference - In most cases, investigations of accidents resulting in fatalities, catastrophes and serious injuries require the CSHO get to the location of the alleged hazard as promptly as possible. Therefore, the CSHO shall reduce the time spent in the opening conference by limiting remarks to the bare essentials of identification, the purpose of the visit and the request for an escort by employee and employer representatives. The CSHO shall inform the employer that a complete inspection may be conducted as soon as practicable after inspection of the accident. In addition, a more extensive discussion of other opening conference topics will be conducted at the closing conference.

E. 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. The sooner a witness is interviewed, the more accurate and candid the witness statement will be.

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 they provided a statement to UOSH.

d. When interviewing:

i. Properly document the contact information of all parties because follow-up interviews with a witness are sometimes necessary.

ii. Interviews should be video recorded by the CSHO. If the witness refuses to be video recorded, a statement should be completed and signed by the witness.

iii. Refusals by a witness to be video recorded or to complete and/or sign a statement shall be noted in the case file by the CSHO. In the event a witness refuses to be video recorded and refuses to complete a written statement, the CSHO shall summarize the best they can the content of the interview with the witness and include the summary in the case file.

iv. The CSHO will advise the interviewee of UOSH whistleblower protections.

e. See Chapter 3, *Inspection Procedures*, for additional information on conducting interviews.

2. Informer's Privilege

a. The informer's privilege shall be governed by Utah Rules of Evidence 505. This Rule allows the government to withhold the identity of individuals who provide information about the violation of laws, including UOSH rules and regulations. This privilege may be claimed by counsel for the government. No privilege exists if the informer voluntarily discloses his own identity and information to others and if the informer appears as a witness for the government.

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 his/her interview statements may be released if he or she authorizes such a release, if he or she voluntarily discloses the statement to others, or if he or she appears as a witness for the government, resulting in a waiver of the privilege.

d. Inform witnesses in a tactful and nonthreatening manner that any person who knowingly makes a false statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Utah OSH Act is guilty of a class A misdemeanor in accordance with Utah Code Ann. § 34A-6-307(5)(c).

F. Investigation Documentation

Document all accident 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 the incident occurred; 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; serial number; 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 (e.g., police department, fire department); and medical personnel (e.g., medical examiner).

5. **Safety and Health Program -** Potential questions include:
   - **a.** Does the employer have a safety and/or health program?
   - **b.** Does the program address the type of hazard(s) that resulted in the serious injury/fatality/catastrophe?
   - **c.** How 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; next of kin information; medical examiner's reports; and emergency responder reports.

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

G. Potential Criminal Penalties in Fatality Cases

Criminal Penalties.

1. Utah Code Ann. § 34A-6-307(5)(a) provides "that any employer who willfully violates any standard, code, rule, or order issued under Section 34A-6-202, or any rule made under this chapter, is guilty of a class A misdemeanor if the violation caused the death of an employee. If the violation causes the death of more than one employee, each death is considered a separate offense."

2. The Compliance Operations Manager or designee, in coordination with the Director, shall carefully evaluate all cases involving employees' deaths to determine whether they involve a criminal violation of Utah Code Ann. § 34A-6-307.

3. In cases where an employee's death has occurred which may have been caused by a willful violation of a UOSH standard, the Compliance Operations Manager or designee shall be consulted prior to the completion of the investigation to determine whether evidence exists and whether further evidence is necessary to establish the elements of the criminal/willful violation. The Compliance Operations Manager or designee shall consult with the Director and the AAG after the initial determination has been made concerning a possible willful violation.

4. In order to establish a criminal/willful violation, UOSH must prove that:

a. The employer violated a UOSH standard and the violation contributed to the employee's death.

NOTE: A criminal/willful violation cannot be based on violation of Utah Code Ann. § 34A-6-201.

b. The violation was willful in nature; i.e.,

i. The employer had knowledge of the hazardous working conditions. Knowledge could be demonstrated through such evidence as the foreman having been in the vicinity of an un-shored, un-sloped trench in which employees are working.

ii. The employer had knowledge of the requirements of the applicable standard.

- Proving knowledge of the requirements of the applicable standard. Evidence of knowledge of the applicable standard gained through a prior citation, discussions with UOSH or other safety personnel of the requirements of the standard, or other similar evidence would be sufficient to support this element of knowledge.
- In addition, it may be possible to establish willfulness, even in the absence of specific knowledge of the UOSH standard, where the requirements of the standard are known to the employer. Where it can be shown that it was recognized by the employer that certain precautions must be taken in order to make a trench safe, either through the employer's past practice of shoring or sloping, through employee complaints, or otherwise, knowledge of the standard's requirement will have been shown.

iii. Finally, in particularly flagrant situations, willfulness can be proved where employees are exposed to a working condition which a reasonably prudent employer should have recognized as being hazardous and requiring corrective action. Even in the absence of evidence that an employer knew specific precautions should have been taken, if the working conditions are so obviously hazardous and the accepted industry practice is to take certain precautions, an employer's conduct could constitute willful violation.

NOTE: It must be emphasized that, particularly with regard to this situation, a key element of willfulness is flagrancy of the conduct and the employer's plain indifference to employee safety.

5. If the Compliance Operations Manager or designee determines that additional assistance is needed to prove the causal connection between an apparent violation of the standard and the death of an employee, such assistance should be obtained after consultation with the Director or designee and AAG.

6. Following the investigation, if the Compliance Operations Manager or designee, after consultation with the Director, decides to recommend criminal prosecution, a memorandum containing that recommendation shall be forwarded promptly to the AAG.

NOTE: The memo shall include an evaluation of the possible criminal charges, taking into consideration the greater burden of proof which requires that the government's case be proven beyond a reasonable doubt. In addition, if the correction of the hazardous condition appears to be an issue, this shall be noted in the transmittal memorandum because in most cases the prosecution of a criminal/willful case delays the affirmance of the civil citation and its correction requirements.

The AAG will refer the case to the prosecutor in the city or county where the fatality took place in order to prosecute the case. If the prosecutor chooses not to prosecute, UOSH will refer the case to the criminal division of the State of Utah, Office of the Attorney General (AG) for prosecution. The AG's office will decide to prosecute or not.

7. The Director shall normally issue a civil citation in accordance with current procedures even if the citation involves allegations under consideration for criminal prosecution.

H. Families of Victims

1. Contacting Family Members

Family members of employees involved in fatal or catastrophic occupational accidents or illnesses should be contacted early in the investigation and given the opportunity to discuss the circumstances of the accident or illness. UOSH staff contacting family members must exercise tact and good judgment in their discussions.

2. Next of Kin

a. A standard information letter (next of kin letter) will normally be sent to the individual(s) listed as the emergency contact on the victim's employment records (if available) and/or the otherwise determined next of kin within 5 working days of determining the victim's identity and verifying the proper address where communications should be sent.

NOTE: In some circumstances, it may not be appropriate to follow these exact procedures; i.e., in the case of a small business, the owner or supervisor may be a relative of the victim. Modify the next of kin form letter to take any special circumstances into account or do not send the letter, as appropriate.

b. UOSH will provide next of kin or their legal representatives with a copy of all citations, subsequent settlement agreements or Commission decisions as these are issued, or as soon thereafter as possible. However, such information will only be provided after it has been provided to the employer.

c. The releasable portions of the case file will be made available to next of kin or their legal representatives after those portions have been provided to the employer.

3. Interviewing the Family

When taking a statement from families of the victim(s), explain that the interview will be handled following the same procedure 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.

I. Public Information Policy

CSHOs shall not respond to any media inquiries. If a CSHO should be approached by the news media, the CSHO shall provide such with contact information for the Commission's Public Information Officer and request that the news media contact this person.

J. Recording and Tracking for Accident/Fatality/Catastrophe Investigations

1. Accident Report Intake Form

The Accident Report Intake Form is a pre-inspection form that must be completed for all work-related accidents, fatalities and catastrophes unless knowledge of the event occurs during the course of an inspection at the establishment involved. Processing of the Accident Report Intake Form shall be as follows:

UOSH staff will complete and enter into the Accident Report Intake Form all accidents resulting in serious injuries, fatalities and catastrophes as soon as possible after learning of the event. As much information as is known at the time of the initial report should be provided; however, all items on the Accident Report Intake Form need not be completed at the time of this initial report. Wherever possible, the age of the victim(s) should be provided, because this information may be used for research by UOSH.

2. Fatality/Catastrophe (FAT/CAT) Report Form

In addition to the Accident Report Intake Form, a FAT/CAT Report Form must be completed for all fatalities and catastrophes. Processing of the FAT/CAT Form shall be as follows:

a. The CSHO conducting the investigation will complete and enter into OIS a FAT/CAT Report Form for all fatalities and catastrophes as soon as possible after opening the investigation. Wherever possible, the age of the victim(s) should be provided, because this information may be used for research by UOSH, OSHA and other agencies.

b. UOSH will provide a copy of the completed FAT/CAT Report Form to the OSHA Region VIII Office within 48 hours of completion of the form.

c. If additional information relating to the event becomes available that affects the decision to investigate, the FAT/CAT Report Form is to be updated.

3. Investigation Summary Report

a. The Investigation Summary Report is used to summarize the results of investigations of all events that involve fatalities and catastrophes. An Inspection Summary Report must be opened in OIS at the beginning of the investigation, and saved as final as soon as UOSH becomes aware of a workplace fatality or catastrophe and determines it is within its jurisdiction, even if most of the data fields are left blank. The information on this form enables UOSH and OSHA to track fatalities and catastrophes and summarizes circumstances surrounding the event.

b. The Investigation Summary Report will be modified as needed during the investigation to account for updated information and accurately completed with all data fields at the conclusion of the investigation, including a thorough narrative description of the incident.

c. The Investigation Summary Report narrative should not be a copy of the summary provided on the Accident Intake or FAT/CAT Report Forms. 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 or catastrophic incident and the factual circumstances surrounding the event.

d. In addition, a single fatality or catastrophe event shall normally result in only one fatality [catastrophe] inspection of the employer of the deceased employee(s) [injured employees], but one event at a multi-employer worksite may possibly lead to one or more unprogrammed related inspection(s) of other involved employers. The exception to this would occur if an event involves multiple fatalities of workers of two or more employers, resulting in more than one fatality inspection.

e. UOSH will provide a copy of the completed Investigation Summary Report to the OSHA Region VIII Office within 48 hours of completion of the form.

f. Only one Investigation Summary 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 report for that event should be submitted.

EXAMPLE 11-1: A fatality occurs in employer's facility in August. Both a safety and health inspection are initiated. One Investigation Summary 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 Summary Report should be submitted for the second fatality and an additional inspection should be opened.

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, select FAT/CAT/Accident. If multiple related event codes apply, the only code that has priority over relation to a fatality/catastrophe is imminent danger.

K. Pre-Citation Review

1. Because cases involving a fatality or catastrophe may result in civil or criminal enforcement actions, the Director or designee is responsible for reviewing all fatality and catastrophe investigation case files to ensure that the case has been properly developed and documented in accordance with the procedures outlined here.

2. The Director or designee is responsible for ensuring that an Investigation Summary Report is entered into OIS for each incident. See Paragraph II.J.3. of this chapter, *Investigation Summary Report*.

3. The Director or designee shall review all proposed violation-by-violation penalties.

4. The Director or designee should establish a procedure to ensure each fatality or catastrophe is thoroughly investigated and processed in accordance with established policy.

L. Post-Citation Procedures/Abatement Verification

UOSH's enforcement policies and procedures for abatement verification is 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 Director or designee 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, UOSH will normally conduct a follow-up inspection if serious citations have been issued.

4. Include abatement language and safety and health system implementation language in any subsequent settlement agreement.

5. If there is a violation that requires abatement verification, the date of abatement verification must be entered in the abatement information section on the Violation Worksheet in OIS.

6. If the case is a SVEP case, follow-up inspections will be conducted in accordance with OSHA Instruction CPL 02-00-149, *Severe Violator Enforcement Program (SVEP)*, June 18, 2010. Follow up inspections will normally be conducted even if abatement of cited violations have been verified through abatement verification.

M. Audit Procedures

The following procedures will be implemented to evaluate compliance with, and the effectiveness of, fatality/catastrophe investigation procedures:

1. The Director or designee will incorporate the review and analysis of fatality/catastrophe files into their audit functions. The review and analysis will utilize random case files to address the following:

   a. **Inspection Findings -** Ensure that hazards have been appropriately addressed and violations have been properly classified.

   b. **Documentation -** Ensure that the Investigation narrative and data fields and the Violation narrative have been completed accurately and detailed enough to allow for analysis of the circumstances of fatal incidents.

   c. **Settlement Terms** - Ensure that settlement terms are appropriate, including violation reclassification, penalty reductions, and additional abatement language.

   d. **Abatement Verification** - Ensure that abatement verification has been obtained.

   e. **OIS Reports** - Review OIS reports to identify any trends or cases that may indicate a further review of those cases may be necessary.

N. Relationship of Fatality and Catastrophe Investigations to Other Programs and Activities

1. Severe Violator Enforcement Program

a. Inspections that result in citations being issued for at least one of the following are considered SVEP cases:

i. A fatality/catastrophe inspection in which UOSH 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;

ii. An inspection in which UOSH 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 Section XII. of OSHA Instruction CPL 02-00-149, *Severe Violator Enforcement Program (SVEP)*, June 18, 2010;

iii. An inspection in which UOSH 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; or

iv. All egregious (e.g., per-instance citations) enforcement actions.

b. In such cases, the instructions outlined in OSHA Instruction CPL 02-00-149, *Severe Violator Enforcement Program (SVEP)*, June 18, 2010, shall be followed to ensure that the proper measures are taken regarding classification, coding and treatment of the case.

2. Significant Enforcement Cases

Significant enforcement cases are defined as inspection cases with initial proposed penalties over $100,000 or which involve novel enforcement issues, regardless of penalty. An inspection resulting from an employee fatality or a workplace catastrophe may well be a significant enforcement case and, therefore, particularly thorough documentation is necessary to sustain legal sufficiency.

3. Emphasis Programs

If a fatality or catastrophe investigation arises at an establishment that is covered by an LEP or an NEP that has been adopted by UOSH, the investigation and a programmed inspection may be conducted either concurrently or separately. The CSHO and Compliance Supervisor will review the applicable emphasis program and inspection history of the establishment to determine if a programmed inspection is warranted.

4. Cooperative Programs

If a fatality or catastrophe occurs at a VPP or SHARP worksite,VPP), , the VPP Coordinator, Compliance Supervisor, Compliance Operations Manager and Director should be notified. When enforcement activity has concluded, the VPP Coordinator,

Compliance Supervisor and Compliance Operations Manager should be informed so the site can be reviewed for program issues.

O. Special Issues Related to Workplace Fatalities

1. Death by Natural Causes

Workplace fatalities caused by natural causes, including heart attacks, must be reported by the employer. The Director or designee will then decide whether to investigate the incident.

2. Workplace Violence

As with heart attacks, fatalities caused by incidents of workplace violence must be reported to UOSH by the employer. The Director or designee will determine whether or not the incident will be investigated.

3. Motor Vehicle Accidents

a. UOSH will investigate work-related motor vehicle accidents that occur on private roads or highways and accidents that occur in construction work zones. Employers are required to report such accidents within 8 hours of occurrence if resulting injuries were disabling, serious, significant or fatal.

b. Although employers who are required to keep records must record vehicle accidents in their OSHA-300 Log of Work- Related Injuries and Illnesses, UOSH does not require employers to report motor vehicle accidents that occur on public roads or highways, unless the accident occurs in a construction work zone. UOSH does not investigate such accidents. See 29 CFR 1904.39(b)(3).

III. Rescue Operations and Emergency Response

A. Direction of Rescue Operations

UOSH has no authority to direct rescue operations. This is the responsibility of the employer and/or local political subdivisions or state agencies.

B. Monitoring and Inspecting Working Conditions of Rescue Operations

UOSH may monitor and inspect working conditions of covered employees engaged in rescue operations to make certain all necessary procedures are being taken to protect the lives of the rescuers.

1. UOSH shall be available for deliberation on the safest or most effective way to conduct rescue operations. This information, based on technical knowledge of competent UOSH personnel at the scene, shall be given freely, if requested.

2. Employer Rescue Operations. If the CSHO is aware that the employer intends to use some rescue procedure that may be in violation of a standard or the general duty clause and the CSHO believes other, less hazardous procedures are more desirable, the employer shall be advised of this belief. The employer shall be encouraged to use the personnel and facilities of local fire and police departments for their specialized knowledge and training in rescue operations.

3. Application of Standards. If rescue work is performed by the employer, UOSH standards are applicable. The employer is required to take such steps as are necessary to eliminate, if at all possible, or to minimize recognized hazards likely to cause death or serious physical harm, considering the urgency in a particular rescue operation.

4. Emergency Situations. Emergencies created by fatalities or catastrophes generally necessitate immediate rescue work, fire-fighting, etc.; any loss of time may increase injuries and/or fatalities. Therefore, when nonstandard equipment; e.g., tractors, bulldozers, etc., without rollover protection, is available for use in an emergency situation, UOSH shall permit its use without citing the employer rather than cause a delay waiting for equipment which meets UOSH standards.

NOTE: The use of such equipment by private employers shall be limited to the actual emergency situation of fighting fire, rescue work, etc. Use in cleanup or reconstruction work shall warrant the recommendation of citations when appropriate.

C. Voluntary Rescue Operations Performed by Employees

UOSH recognizes an employee may choose to place himself/herself at risk to save the life of another person. The following provides guidance on UOSH citation policy toward employers whose employees perform, or attempt to perform, rescues of individuals in life-threatening danger.

1. Imminent Danger

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

No citation will be issued for an employee's voluntary rescue actions, regardless of whether they are successful, if an employer has trained his or her employees in all of the following:

a. the arrangements for rescue;

b. not to attempt rescue; and,

c. the hazards of attempting rescue without adequate training or equipment.

D. Emergency Response

Role in Emergency Operations and Catastrophic Events.

1. While it is UOSH's policy to respond as quickly as possible to significant events that may affect the health or safety of employees, UOSH does not have authority to direct emergency operations.

2. UOSH may act under the State of Utah Emergency Operations Plan, Emergency Support Functions #10 – Hazardous Materials (ESF #10) Annex to provide support to local governments in response to an actual or potential discharge and/or release of hazardous materials resulting from an incident. ESF #10 may be activated by the Utah Department of Public Safety, Division of Emergency Management (DEM) under one of the following conditions:

a. In response to those incidents for which the DEM determines that state assistance is required to supplement the response efforts of the local governments.

b. In anticipation of an incident that is expected to result in a declaration from the governor and subsequent federal disaster declarations under the Robert T. Stafford Disaster and Emergency Assistance Act.

3. UOSH's role and responsibilities under ESF #10 include the following:

a. May temporarily suspend compliance enforcement during incident responses.

b. During incidents, may provide hazard monitoring and sampling equipment.

c. During cleanup and recovery, may provide safety consulting and education to authorized volunteers and employees.

d. May serve as a resource to provide information and guidance to protect the health and safety of employees.

e. Will be available to collaborate, when requested, with Policy, Planning, Safety and/or other groups as needed in the Emergency Operations Center (EOC).

UTAH
LABOR COMMISSION
Utah Occupational Safety and Health Division

Chapter 12

Specialized Inspection Procedures

Chapter 12
SPECIALIZED INSPECTION PROCEDURES

I. Multi-Employer Workplace/Worksite

Pursuant to Utah Code Ann. § 34A-6-201, violation of an applicable standard adopted under Utah Code Ann. § 34A-6-202 at a multi-employer worksite (in all industry sectors) may result in a citation issued to more than one employer. An employer on a multi-employer worksite may be considered a creating, exposing, correcting or controlling employer.

A. Two-Step Process

A two-step process must be followed in determining whether more than one employer is to be cited.

1. **Step 1.** The first step is to determine whether the employer is a creating, exposing, correcting or controlling employer. The definitions in paragraphs B – E below explain and give examples of each. An employer may have multiple roles; however, no employer may be cited for the same violation under multiple categories of employers. Once the role of the employer has been determined, go to Step Two to ascertain if a citation is appropriate

   NOTE: Only exposing employers can be cited for General Duty Clause violations.

2. **Step 2.** If the employer falls into one of these categories, it has obligations with respect to UOSH requirements. Step Two is to determine if the employer's actions were sufficient to meet those obligations. The extent of the actions required of employers varies based on which category applies. Note that the extent of the measures a controlling employer must take to satisfy its duty to exercise reasonable care to prevent and detect violations is less than what is required of an employer with respect to protecting its own employees.

B. Creating Employer

1. **Step 1: Definition**: A creating employer is one that created a hazardous condition on the worksite.

2. **Step 2: Action:** A creating employer who has the ability or authority to correct or remove the hazard may be cited if:

   a. Its own employees and/or employees of another employer at the site are exposed to this hazard; and

   b. It did not take prompt and effective steps to alert employees of other employers of the hazard and correct or remove the hazard.

3. If the creating employer does not have the ability or authority to correct or remove the hazard, it may be cited if it did not notify the controlling or correcting employer of the hazard.

4. **Example 1:** Employer Host operates a factory. It contracts with Company S to service machinery. Host fails to cover drums of a chemical despite S's repeated requests that it do so. This results in airborne levels of the chemical that exceed the Permissible Exposure Limit.

   Analysis:

   Step 1: Host is a creating employer because it caused employees of S to be exposed to the air contaminant above the PEL.

   Step 2: Host failed to implement measures to prevent the accumulation of the air contaminant. It could have met its obligation by implementing the simple engineering control of covering the drums. Having failed to implement a feasible engineering control to meet the PEL, Host is citable for the hazard.

5. **Example 2:** Employer M hoists materials onto Floor 8, damaging perimeter guardrails. Neither its own employees nor employees of other employers are exposed to the hazard. It takes effective steps to keep all employees, including those of other employers, away from the unprotected edge and informs the controlling employer of the problem. Employer M lacks authority to fix the guardrails itself.

   Analysis:

   Step 1: Employer M is a creating employer because it caused a hazardous condition by damaging the guardrails.

   Step 2: While it lacked the authority to fix the guardrails, it took immediate and effective steps to keep all employees away from the hazard and notified the controlling employer of the hazard. Employer M is not citable since it took effective measures to prevent employee exposure to the fall hazard.

C. Exposing Employer

1. Step 1: Definition: An exposing employer is one that exposed its own employees to a hazard. If the exposing employer created the hazard, it is citable as the creating employer, not the exposing employer.

2. Step 2: Action: If the exposing employer did not create the hazard, it may be cited as the exposing employer if:
   - **a.** It knew of the hazard and failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees; or
   - **b.** It did not regularly and diligently inspect the worksite in order to discover the hazard.

3. An exposing employer must exercise reasonable care to discover a hazard by demonstrating is has regularly and diligently inspected the worksite.

4. If the exposing employer has the authority to correct or remove the hazard, it must correct or remove the hazard with reasonable diligence. If the exposing employer lacks such authority, it may still be cited if it fails to do each of the following:

   a. Make a good effort to ask the creating and/or controlling employer to correct the hazard;

   b. Inform its employees of the hazard; and

   c. Take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. **Example 3:** Employer Sub S is responsible for inspecting and cleaning a work area in Plant P around a large, permanent hole at the end of each day. An OSHA standard requires guardrails. There are no guardrails around the hole and Sub S employees do not use personal fall protection, although it would be feasible to do so. Sub S has no authority to install guardrails. However, it did ask Employer P, which operates the plant, to install them. P refused to install guardrails.

   Analysis:

   Step 1: Sub S is an exposing employer because its employees are exposed to the fall hazard.

   Step 2: While Sub S has no authority to install guardrails, it is required to comply with UOSH requirements to the extent feasible. It must take steps to protect its employees and ask the employer that controls the hazard - Employer P - to correct it. Although Sub S asked for guardrails, since the hazard was not corrected, Sub S was responsible for taking reasonable alternative protective steps, such as providing personal fall protection. Because that was not done, Sub S is citable for the violation.

6. **Example 4:** Unprotected rebar on either side of an access ramp presents an impalement hazard. Sub E, an electrical subcontractor, does not have the authority to cover the rebar. However, several times Sub E asked the general contractor, Employer GC, to cover the rebar. In the meantime, Sub E instructed its employees to use a different access route that avoided most of the uncovered rebar and required them to keep as far from the rebar as possible.

   Analysis:

   Step 1: Since Sub E employees were still exposed to some unprotected rebar, Sub E is an exposing employer.

   Step 2: Sub E made a good faith effort to get the general contractor to correct the hazard and took feasible measures within its control to protect its employees. Sub E is not citable for the rebar hazard.

D. Correcting Employer

1. **Step 1: Definition:** A correcting employer is one responsible for correcting a hazardous condition, such as installing or maintaining safety and health devices or equipment, or implementing appropriate health and safety procedures.

2. **Step 2: Action:** Reasonable care to prevent and discover hazards at the worksite shall be determined by the scale, nature and pace of the work, and the amount of activity of the worksite. A correcting employer may be cited if it does not exercise such care in preventing and discovering hazards and does not ensure such hazards are corrected in a prompt manner.

3. **Example 5:** Employer C, a carpentry contractor, is hired to erect and maintain guardrails throughout a large, 15-story project. Work is proceeding on all floors. C inspects all floors in the morning and again in the afternoon each day. It also inspects areas where material is delivered to the perimeter once the material vendor is finished delivering material to that area. Other subcontractors are required to report damaged/missing guardrails to the general contractor, who forwards those reports to C. C repairs damaged guardrails immediately after finding them and immediately after they are reported. On this project few instances of damaged guardrails have occurred other than where material has been delivered. Shortly after the afternoon inspection of Floor 6, workers moving equipment accidentally damage a guardrail in one area. No one tells C of the damage and C has not seen it. A UOSH inspection occurs at the beginning of the next day, prior to the morning inspection of Floor 6. None of C's own employees are exposed to the hazard, but other employees are exposed.

   Analysis:

   Step 1: C is a correcting employer since it is responsible for erecting and maintaining fall protection equipment.

   Step 2: The steps C implemented to discover and correct damaged guardrails were reasonable in light of the amount of activity and size of the project. It exercised reasonable care in preventing and discovering violations; it is not citable for the damaged guardrail since it could not reasonably have known of the violation.

E. Controlling Employer

1. **Step 1: Definition:** A controlling employer is one with general supervisory authority over a worksite. This authority may be established either through contract or practice and includes the authority to correct safety and health violations or require others to, but it is separate from the responsibilities and care to be exercised by a correcting employer.

2. **Step 2: Action:** A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of measures the controlling employer must take to satisfy this duty is less than what is required of an employer with respect to protecting its employees. A controlling employer is not

required to inspect for hazards or violations as frequently or demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

3. **Factors Relating to Reasonable Care Standard.** Factors that affect how frequently and closely a controlling employer must inspect to meet its standard of reasonable care include:

   a. The scale of the project;

   b. The nature and pace of the work, including the frequency with which the number or types of hazards change as the work progresses;

   c. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

   d. The implementation and monitoring of safety and health precautions for the entire worksite requiring that other employers on the worksite comply with their respective obligations and standards of care for the safety of employees;

   e. A graduated system of discipline for non-compliant employees and/or employers;

   f. Regular worksite safety meetings;

   g. When appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

   h. The frequency of worksite inspections, particularly at the commencement of a project or the commencement of work on the project by other employers that come under its control. As work progresses, the frequency and sufficiency of such inspections shall be determined in relation to other employers' compliance with their respective obligations and standards of care as required by UAC R614-1-6.U.

   i. More frequent inspections are normally needed if the controlling employer knows the other employer has a history of non-compliance. Greater inspection frequency may also be needed, especially at the beginning of the project, if the controlling employer had never before worked with this other employer and does not know its compliance history.

   j. Less frequent inspections may be appropriate where the controlling employer sees strong indications the other employer has implemented effective safety and health efforts. The most important indicator of an effective effort by the other employer is a consistently high level of compliance. Other indicators include the use of an effective, graduated system of enforcement for non-compliance with safety and health requirements coupled with regular jobsite safety meetings and training.

4. **Evaluating Reasonable Care.** In evaluating whether a controlling employer has exercised reasonable care in preventing and discovering violations, consider questions such as whether the controlling employer:

   a. Conducted worksite inspections of sufficient frequency (frequency should be based on the factors listed in G.3.);

b. Implemented an effective system for identifying hazards and promptly notified employers under its control of the hazard to ensure compliance;

c. Implemented a graduated system of discipline for non-compliant employees and/or employers with their respective safety and health requirements;

d. Performed follow-up inspections to ensure hazards were corrected; and

e. Performed other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

5. Types of Controlling Employers

a. Control Established by Contract. In this case, the employer has a specific contract right to control safety: To be a controlling employer, the employer must be able to prevent or correct a violation or to require another employer to prevent or correct the violation. One source of this ability is explicit contract authority. This can take the form of a specific contract right to require another employer to adhere to safety and health requirements and to correct violations the controlling employer discovers.

i. Example 6: Employer GH contracts with Employer S to do sandblasting at GH's plant. Some of the work is regularly scheduled maintenance and so is general industry work; other parts of the project involve new work and are considered construction. Respiratory protection is required. Further, the contract explicitly requires S to comply with safety and health requirements. Under the contract, GH has the right to take various actions against S for failing to meet contract requirements, including the right to have non-compliance corrected by using other workers and back-charging for that work. S is one of two employers under contract with GH at the work site, where a total of five employees work. All work is done within an existing building. The number and types of hazards involved in S's work do not significantly change as the work progresses. Further, GH has worked with S over the course of several years. S provides periodic and other safety and health training and uses a graduated system of enforcement of safety and health rules. S has consistently had a high level of compliance at its previous jobs and at this site. GH monitors S by a combination of weekly inspections, telephone discussions and a weekly review of S's own inspection reports. GH has a system of graduated enforcement that it has applied to S for the few safety and health violations that had been committed by S in the past few years. Further, due to respirator equipment problems, S violates respiratory protection requirements two days before GH's next scheduled inspection of S. The next day there is a UOSH inspection. There is no notation of the equipment problems in S's inspection reports to GH and S made no mention of it in its telephone discussions.

Analysis:

Step 1: GH is a controlling employer because it has general supervisory authority over the worksite, including contractual authority to correct safety and health violations.

Step 2: GH has taken reasonable steps to try to make sure that S meets safety and health requirements. Its inspection frequency is appropriate in light of the low number of workers at the site, lack of significant changes in the nature of the work and types of hazards involved, GH's knowledge of S's history of compliance and its effective safety and health efforts on this job. GH has exercised reasonable care and is not citable for this condition.

ii. **Example 7:** Employer GC contracts with Employer P to do painting work. GC has the same contract authority over P as Employer GH had in Example 6. GC has never before worked with P. GC conducts inspections that are sufficiently frequent in light of the factors listed above in (G)(3). Further, during a number of its inspections, GC finds P has violated fall protection requirements. It points the violations out to P during each inspection but takes no further actions.

Analysis:

Step 1: GC is a controlling employer since it has general supervisory authority over the site, including a contractual right of control over P.

Step 2: GC took adequate steps to meet its obligation to discover violations. However, it failed to take reasonable steps to require P to correct hazards since it lacked a graduated system of enforcement. A citation to GC for the fall protection violations is appropriate.

iii. **Example 8:** Employer GC contracts with Sub E, an electrical subcontractor. GC has full contract authority over Sub E, as in Example 6. Sub E installs an electric panel box exposed to the weather and implements an assured equipment grounding conductor program, as required under the contract. It fails to connect a grounding wire inside the box to one of the outlets. This incomplete ground is not apparent from a visual inspection. Further, GC inspects the site with a frequency appropriate for the site in light of the factors discussed above in (G)(3). It saw the panel box but did not test the outlets to determine if they were all grounded because Sub E represents it is doing all of the required tests on all receptacles. GC knows that Sub E has implemented an effective safety and health program. From previous experience it also knows Sub E is familiar with the applicable safety requirements and is technically competent. GC had asked Sub E if the electrical equipment is OK for use and was assured it is.

Analysis:

Step 1: GC is a controlling employer since it has general supervisory authority over the site, including a contractual right of control over Sub E.

Step 2: GC exercised reasonable care. It had determined that Sub E had technical expertise, safety knowledge and had implemented safe work practices. It conducted inspections with appropriate frequency. It also made some basic inquiries into the safety of the electrical equipment. Under these circumstances GC was not obligated to test the outlets itself to determine if they were all grounded. It is not citable for the grounding violation.

b. Control Established by a Combination of Other Contract Rights: Where there is no explicit contract provision granting the right to control safety, or where the contract says the employer does not have such a right, an employer may still be a controlling employer. The ability of employer to control safety in this circumstance can result from a combination of contractual rights, which together, give it broad responsibility at the site involving almost all aspects of the job. Its responsibility is broad enough so that its contractual authority necessarily involves safety. The authority to resolve disputes between subcontractors, set schedules and determine construction sequencing are particularly significant because they are likely to affect safety.

NOTE: citations should only be issued in this type of case after consulting with the AAG.

i. Example 9: Construction manager M is contractually obligated to: set schedules and construction sequencing, require subcontractors to meet contract specifications, negotiate with trades, resolve disputes between subcontractors, direct work and make purchasing decisions, which affect safety. However, the contract states that M does not have a right to require compliance with safety and health requirements. Further, Subcontractor S asks M to alter the schedule so S would not have to start work until Subcontractor G has completed installing guardrails. M is contractually responsible for deciding whether to approve S's request.

Analysis:

Step 1: Even though its contract states that M does not have authority over safety, the combination of rights actually given in the contract provides broad responsibility over the site and results in the ability of M to direct actions that necessarily affect safety. For example, M's contractual obligation to determine whether to approve S's request to alter the schedule has direct safety implications. M's decision relates directly to whether S's employees will be protected from a fall hazard. M is a controlling employer.

Step 2: In this example, if M refused to alter the schedule, it would be citable for the fall hazard violation.

ii. Example 10: Employer ML's contractual authority is limited to reporting on subcontractors' contract compliance to owner/developer O and making contract payments. Although it reports on the extent to which the subcontractors are complying with safety and health infractions to O, ML does not exercise any control over safety at the site.

Analysis:

Step 1: ML is not a controlling employer because these contractual rights are insufficient to confer control over the subcontractors and ML did not exercise control over safety. Reporting safety and health infractions to another entity does not, by itself (or in combination with these very limited contract rights), constitute an exercise of control over safety.

Step 2: Since it is not a controlling employer, it had no duty under the Utah OSH Act to exercise reasonable care with respect to enforcing the subcontractors' compliance with safety; there is therefore no need to go to Step 2.

c. Architects and Engineers: Architects, engineers, and other entities are controlling employers only if the breadth of their involvement in a construction project is sufficient to bring them within the parameters discussed above.

i. Example 11: Architect A contracts with owner O to prepare contract drawings and specifications, inspect the work, report to O on contract compliance, and to certify completion of work. A has no authority or means to enforce compliance, no authority to approve/reject work and does not exercise any other authority at the site, although it does call the general contractor's attention to observed hazards noted during its inspections.

Analysis:

Step 1: A's responsibilities are very limited in light of the numerous other administrative responsibilities necessary to complete the project. It is little more than a supplier of architectural services and conduit of information to O. Its responsibilities are insufficient to confer control over the subcontractors and it did not exercise control over safety. The responsibilities it does have are insufficient to make it a controlling employer. Merely pointing out safety violations did not make it a controlling employer.

NOTE: In a circumstance such as this, it is likely that broad control over the project rests with another entity.

Step 2: Since A is not a controlling employer it had no duty under the Utah OSH Act to exercise reasonable care with respect to enforcing the subcontractors' compliance with safety; there is therefore no need to go to Step 2.

ii. Example 12: Engineering firm E has the same contract authority and functions as in Example 9.

Analysis:

Step 1: Under the facts in Example 9, E would be considered a controlling employer.

Step 2: The same type of analysis described in Example 9 for Step 2 would apply here to determine if E should be cited.

d. Control Without Explicit Contractual Authority. Even where an employer has no explicit contract rights with respect to safety, an employer can still be a controlling employer if, in actual practice, it exercises broad control over subcontractors at the site (see Example 9).

NOTE: Citations should only be issued in this type of case after consulting with the AAG.

i. **Example 13:** Construction manager MM does not have explicit contractual authority to require subcontractors to comply with safety requirements, nor does it explicitly have broad contractual authority at the site. However, it exercises control over most aspects of the subcontractors' work anyway, including aspects that relate to safety.

Analysis:

Step 1: MM would be considered a controlling employer since it exercises control over most aspects of the subcontractor's work, including safety aspects.

Step 2: The same type of analysis on reasonable care described in the examples in (G)(5)(a) would apply to determine if a citation should be issued to this type of controlling employer.

CSHOs shall consult with the Compliance Field Operations Manager and/or Compliance Supervisor to determine if a citation is appropriate for the controlling employer.

F. Multiple Roles

1. A creating, correcting or controlling employer will often also be an exposing employer. Consider whether the employer is an exposing employer before evaluating its status with respect to these other roles.

2. Exposing, creating and controlling employers can also be correcting employers if they are authorized to correct the hazard.

G. Issuance of Citation. On multi-employer worksites, citations of the standards violated may be issued to the creating, exposing, correcting and/or controlling employer(s) if analysis indicates it has failed to exercise reasonable care for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

H. Case File Documentation. CSHOs shall document the category (creating, exposing, correcting and/or controlling) of each affected employer on multi-employer worksites. The documentation shall include a reasonable care analysis based on the category to which the employer belongs. The reasoning for recommending or not recommending citations, based on the analysis, shall be included in the case file.

II. Temporary Labor Camps

TLCs in the farming industry are regulated under UAC R614-3 Farming Operations Standards, with the exception of TLCs for employees engaged in egg, poultry or red meat production, or the post-harvest processing of agriculture or horticultural commodities which are covered under 29 CFR 1910.142 Temporary Labor Camps. TLCs in non-agricultural industries are regulated under 29 CFR 1910.142. Examples of TLC housing for non-agriculture worksites would be for the construction industry and oil and gas industry.

A. Exemptions in Farming Industry

A farming operation is exempt from all UOSH activities, including inspection of TLCs, if it:

1. Employs 10 or fewer employees currently and at all times during the last 12 months; and

2. Has not had an active TLC during the preceding 12 months.

See Chapter 10, *Industry Sectors*, Section I., *Farming Operations*, for enforcement guidance for farming operations.

B. Inspection Procedures

1. These inspection procedures shall apply to all non-exempt temporary labor camps.

a. Inspections. TLC inspections will include accident investigations and complaint, referral, follow-up and programmed planned inspections. Camp inspections shall be scheduled during regular working hours in accordance with procedures in Chapter 2, *Program Planning*, and Chapter 3, *Inspection Procedures*. Inspections conducted in response to complaints shall be conducted in accordance with Chapter 9, *Complaint and Referral Processing*. Complaint and referral inspections shall be acted on as promptly as possible, resources permitting.

b. Worker Occupied Housing. Generally, inspections shall be conducted when housing facilities are occupied. Inspections shall be scheduled as soon as feasible after workers occupy housing so that, when possible, hazards may be corrected early in the work season. Preoccupancy inspections shall be conducted only in order to accommodate scheduling difficulties, provided that, at the time of the inspection, it is reasonably predictable workers will imminently occupy the facilities.

c. Reasonable efforts should be made to communicate with employees in a TLC in a language they understand.

d. The CSHO shall conduct inspections in such a manner as to minimize disruptions to the personal lives of those living in the housing facilities. If an occupant of a dwelling unit refuses entry for inspection purposes, the CSHO shall not insist on entry and shall continue the inspection unless, in the judgment of the CSHO, the lack of access to the dwelling unit involved would substantially reduce the effectiveness of the inspection. In that case, the procedures for refusal of entry shall be followed. Procedures for refusal of entry shall apply in cases where employers refuse entry to the housing facility and/or to the entire farm.

e. During inspections, CSHOs shall encourage employers to correct hazards as quickly as possible. Particular attention shall be paid to identifying instances of failure to correct and violations repeated from season to season. These violations shall be recommended for citation in accordance with normal procedures.

f. Primary Concern. In conducting a TLC inspection, the CSHO shall be primarily concerned with those facilities or conditions which most directly relate to employee safety and health. Accordingly, all housing inspections shall address at least the following:

i. Site. The location of the site in relation to swamps, pools, sinkholes and other surfaces where water may collect and remain for extended periods. The site shall be in a clean and sanitary condition; i.e., free from rubbish, debris, waste paper, garbage and other refuse.

ii. Shelter. Whether the shelter provides protection against the elements and whether the rooms are used for combined purposes of sleeping, cooking and eating. For rooms used for sleeping purposes, determine the number of occupants and size of the rooms. Determine for all rooms whether there is proper ventilation and screening.

iii. Water Supply. Whether the water supply has been approved by the appropriate local health authority; determine the location of hydrants.

iv. Toilet Facilities. The type, number, location and sanitary conditions of toilet facilities.

v. Laundry, Handwashing and Bathing Facilities. The number, locations and conditions of these facilities.

vi. Solid Wastes. Determine the type, number, locations and conditions of solid waste containers, and whether there are any infestations of insects or rodents.

vii. First Aid Facilities. First aid facilities shall be readily available.

g. Dimensions. The relevant dimensions and ratios specified in 29 CFR 1910.142 or UAC R614-3 are mandatory; however, it is inappropriate to recommend a citation for minor variations from specific dimensions and ratios when a violation does not have an immediate or direct effect on safety and health. In those cases in which the standard itself does not make reference to specific dimensions or ratios but instead uses adequacy as the test for the cited conditions and facilities, the Compliance Operations Manager/Supervisor shall make the determination as to whether a violation exists on a case-by-case basis considering all relevant factors.

2. Documentation for Housing Inspections. The following facts shall be carefully documented:

a. The age of dwelling unit, including additions. For recently built housing, date construction started.

b. Number of dwelling units, number of occupants in each unit.

c. Approximate size of area in which the housing is located and the distance between dwelling units and water supply, toilets, livestock and service building.

d. Employer identity. The identity of the employer is often a complex matter involving numerous criteria, the most important of which is who determines the manner in which workers are to perform their tasks. Other criteria are who pays their wages, who employees consider to be their employer, who has the power to hire and fire, and who establishes wage rates. In farming operations, usually the grower rather than the crew leader will be the employer of migrant workers. In many situations both may be the employer for UOSH citation purposes, but citations shall normally be recommended to the grower since that employer is best positioned to correct any UOSH violations.

e. The housing provided or made available by the employer shall be related to the employment of the worker. Housing shall be treated as employment-related if:

i. Employers require employees to live in the housing; or

ii. Isolated location or the lack of economically comparable alternative housing makes it a practical necessity to do so; and/or

iii. The housing is provided or made available as a benefit to the employee. Applicable migrant housing standards shall be enforced if any of the following factors in any given case indicate that operation of the camp is directly related to the employment of its occupants:

- Cost of the housing to the employee--is it provided free or at a low rent?
- Ownership or control of the housing--is the housing owned or controlled or provided by the employer?
- Distance to the worksite from the camp, distance to the worksite from other non-camp residences--is alternative housing accessible (distance, travel, cost, etc.) to the worksite?
- The camp's benefit to the employer--does the employer make the camp available in order to ensure that his business is provided with an adequate supply of labor?
- Relationship of the camp occupants to the employer--are those living in the camp required to work for the employer upon demand?

Chapter 13

Legal Issues

Chapter 13
LEGAL ISSUES

I. [Reserved]