**R614. Labor Commission, Occupational Safety and Health.**

**R614-1. General Provisions.**

**R614-1-1. Authority.**

A. Title R614 and all subsequent revisions, as approved and promulgated by the Labor Commission (Commission), Utah Occupational Safety and Health Division (UOSH), are authorized pursuant to the Utah Occupational Safety and Health Act, Section 34A-6-101 et seq., of 1973.

B. The intent and purpose of this chapter is stated in Section 34A-6-102 of the Utah OSH Act.

C. In accordance with legislative intent, Title R614 provides for the safety and health of workers and for the administration of this chapter by UOSH.

**R614-1-2. Scope.**

Title R614 consists of administrative procedures of UOSH, incorporating by reference applicable federal standards from 29 CFR 1904, 1908, 1910 and 1926, and the Utah initiated occupational safety and health standards found in Rules R614-1 through R614-7.

**R614-1-3. Definitions.**

A. "Access" means the right and opportunity to examine and copy.

B. "Adjudication" means the Adjudication Division within the Labor Commission.

C. "Administrator" means the director of UOSH.

D. "AG's Office" means the Utah Office of the Attorney General.

E. "CFR" means the Code of Federal Regulations.

F. "Commission" means the Labor Commission.

G. "CSHO" means a compliance safety and health officer authorized by UOSH to conduct inspections and investigations.

H. "Days" means calendar days, including Saturdays, Sundays, and holidays. The day of receipt of any notice shall not be included, and the last day of any time frame shall be included. If the last day of any time period is a Saturday, Sunday, or legal holiday, the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday.

I. "Disabling, serious or significant injury" means any injury resulting in:

1. Admittance to the hospital; or

2. Permanent or temporary impairment, where function of any part of the body is substantially reduced or made useless and which would require treatment by a physician or other licensed health care professional. Examples of a disabling, serious or significant injury include, amputation, fracture, deep laceration, severe burn including thermal, chemical, etc., electrical burn, sight impairment, loss of consciousness and concussion.

J. "Division" means UOSH.

K. Employee medical record.

1. "Employee medical record" means a record concerning the health status of an employee which is made or maintained by a physician, nurse, or other health care personnel, or technician including:

a. Medical and employment questionnaires or histories including job description and occupational exposures;

b. The results of medical examinations and laboratory tests including x-ray examinations and all biological monitoring not defined as an "employee exposure record" in 29 CFR 1910.1020(c)(5);

c. Medical opinions, diagnoses, progress notes, and recommendations;

d. Descriptions of treatments and prescriptions; and

e. Employee medical complaints.

2. "Employee medical record" does not include the following:

a. Physical specimens like blood or urine samples, which are routinely discarded as a part of normal medical practice;

b. Records concerning health insurance claims if maintained separately from the employer's medical program and its records, and not accessible to the employer by employee name or other direct personal identifier like social security number, payroll number, etc.;

c. Records created solely in preparation for litigation which are privileged from discovery under the applicable rules of procedure or evidence; or

d. Records concerning voluntary employee assistance programs if maintained separately from the employer's medical program and its records.

L. "Establishment" means a single physical location where business is conducted or where services or industrial operations are performed. For example: A factory, mill, store, hotel, restaurant, movie theater, farm, ranch, bank, sales office, warehouse, or central administrative office. Where distinctly separate activities are performed at a single physical location, such as contract construction activities from the same physical location as a lumber yard, each activity shall be treated as a separate physical establishment, and separate notices shall be posted in each establishment to the extent that such notices have been furnished by UOSH.

M. "Exposure" or "exposed" means that an employee is subjected to a toxic substance or harmful physical agent in the course of employment through any route of entry and includes past exposure and potential exposure, but does not include situations where the employer can demonstrate that the toxic substance or harmful physical agent is not used, handled, stored, generated, or present in the workplace in any manner different from typical non-occupational situations.

N. "Hearing" means a proceeding conducted by the Commission.

O. "Imminent danger" means 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 under the Utah OSH Act.

P. "Inspection" means any inspection of an employer's factory, plant, establishment, construction site, or other area, workplace or environment where work is performed by an employee of an employer, and includes any inspection conducted pursuant to a complaint filed under Subsection R614-1-6(K)(1) and (3), any re-inspection, follow-up inspection, accident investigation or other inspection conducted under Subsection 34A-6-301(1) of the Utah OSH Act.

Q. "OSHA" means the federal Occupational Safety and Health Administration (OSHA).

R. "Serious injury" -- refer to definition for "disabling, serious or significant injury."

S. "Standard" means an occupational health and safety standard or group of standards which requires conditions, or the adoption or use of one or more practices, means, methods, operations, or processes, reasonably necessary to provide safety and healthful employment and places of employment.

T. "Toxic substance or harmful physical agent" means any chemical substance, biological agent or physical stress, like noise, heat, cold, vibration, repetitive motion, ionizing and non-ionizing radiation, hypo or hyperbaric pressure, etc. which:

1. Is listed in the latest printed edition of the National Institute for Occupational Safety and Health (NIOSH) Registry of Toxic Effects of Chemical Substances (RTECS) which is incorporated by reference as specified in 29 CFR 1910.6;

2. Has yielded positive evidence of an acute or chronic health hazard in human, animal, or other biological testing conducted by, or known to the employer; or

3. Is the subject of a safety data sheet kept by or known to the employer indicating that the material may pose a hazard to human health.

U. "UOSH" means the Utah Occupational Safety and Health Division within the Labor Commission.

V. "Utah OSH Act" means the Utah Occupational Safety and Health Act, Section 34A-6-101 et seq., of 1973.

**R614-1-4. Incorporation of Federal Standards.**

A. The following federal occupational safety and health standards are incorporated:

1. 29 CFR 1904, July 1, 2021, is incorporated by reference, except 29 CFR 1904.36 and the workplace fatality, injury and illness reporting requirements found in 29 CFR 1904.1, 1904.2, 1904.7 and 1904.39. Workplace fatalities, injuries and illnesses shall be reported pursuant to the more specific Utah standards in Subsection 34A-6-301(3)(b)(ii) of the Utah OSH Act and Subsection R614-1-5(B)(1).

2. 29 CFR 1908, July 1, 2015, is incorporated by reference.

3. 29 CFR 1910.6 and 1910.21 through the end of part 1910, of the July 1, 2021, edition are incorporated by reference.

4. 29 CFR 1926.6 and 1926.20 through the end of part 1926, of the July 1, 2021, edition are incorporated by reference.

5. Federal Register Vol. 88. No. 139, Friday, July 21, 2023, Rules and Regulations, pages 47254 to and including 47349, "Improve Tracking of workplace Injuries and Illnesses: Final Rule" is incorporated by reference.

**R614-1-5. Adoption and Extension of Established Federal Safety Standards and State of Utah General Safety Orders.**

A. Scope and Purpose.

1. This rule adopts and extends the applicability of established Federal Safety Standards and Title R614 with respect to every employer, employee and employment in the state of Utah, covered by the Utah OSH Act.

2. All standards and rules, including emergency and temporary, promulgated under the Williams-Steiger Occupational Safety and Health Act of 1970 (84 Stat. 1590 et seq., 29 U.S.C. 651 et seq.) shall be accepted as part of the standards, rules and regulations under the Utah OSH Act, unless specifically revoked or deleted.

B. Reporting Requirements.

1. Each employer shall within 8 hours of occurrence, notify UOSH of any work-related fatalities, of any disabling, serious, or significant injury and of any occupational disease incident. Call (801) 530-6901.

2. Tools, equipment, materials or other evidence that might pertain to the cause of such accident shall not be removed or destroyed until so authorized by UOSH or one of its CSHOs.

3. Each employer shall investigate or cause to be investigated all work-related injuries and occupational diseases and any sudden or unusual occurrence or change of conditions that pose an unsafe or unhealthful exposure to employees.

C. Employer and Employee Responsibility.

1. It shall be the duty and responsibility of any employee upon entering the employee's place of employment, to examine carefully such working place and ascertain if the place is safe, if the tools and equipment can be used with safety, and if the work can be performed safely. After such examination, it shall be the duty of the employee to make the place, tools, or equipment safe. If this cannot be done, then it becomes the employee's duty to immediately report the unsafe place, tools, equipment, or conditions to the supervisor.

2. Employees must comply with all safety rules of their employer and with all the rules and regulations promulgated by UOSH which are applicable to their type of employment.

3. Management shall inspect or designate a competent person to inspect frequently for unsafe conditions and practices, defective equipment and materials, and where such conditions are found, it shall take appropriate action to correct such conditions immediately.

4. Management shall warn all employees of any dangerous condition and permit no one to work in an unsafe place, except for making it safe.

5. Each employer shall instruct its employees in a language and vocabulary that the employees can understand. Employees shall only be assigned to duties or locations where they have the necessary skills and comprehension to work in a safe manner.

D. General Safety Requirements.

1. No person shall remove, displace, bypass, destroy, or carry away any safety devices or safeguards provided for use in any place of employment, or interfere in any way with the use thereof by other persons, or interfere in any method or process adopted for the protection of employees.

2. Where there is a risk of injury from hair entanglement in moving parts of machinery, employees shall confine their hair to eliminate the hazard.

3. Loose gloves, sleeves, tails, ties, lapels, cuffs, or similar garments which can become entangled in moving machinery shall not be worn where an entanglement hazard exists. Clothing saturated or impregnated with flammable liquids, corrosive substances, irritant, oxidizing agents or other toxic materials shall be removed and shall not be worn until properly cleaned.

4. Wrist watches, rings, or other jewelry shall not be worn on the job where they constitute a safety hazard.

5. Emergency Posting Required.

A list of telephone numbers or addresses as may be applicable shall be posted in a conspicuous place so the necessary help can be obtained in case of emergency. This list shall include:

a. Responsible supervision

b. Doctor

c. Hospital

d. Ambulance

e. Fire Department

f. Sheriff or Police

6. Lockout and Tagout.

a. UOSH has incorporated, by reference, 29 CFR 1910.147, The Control of Hazardous Energy (Lockout/Tagout). See Subsection R614-1-4(1).

b. The employee performing servicing or maintenance on machines or equipment required to be locked out under 29 CFR 1910.147 shall have exclusive control of the lockout device until the job is completed or such employee is relieved from the job, such as by shift change or other assignment.

7. Safety latch-type hooks shall be used wherever possible.

8. Grizzlies Over Chutes, Bins and Tank Openings.

a. Employees shall be provided with and use approved type safety harnesses and shall be tied off securely so as to be suspended above the level of the product before entering any bin, chute or storage place containing material that might cave or run. Cleaning and barring down in such places shall be started from the top using only bars blunt on one end or having a ring type or D handhold.

b. Employees shall not work on top of material stored or piled above chutes, drawholes or conveyor systems while material is being withdrawn unless protected.

c. Chutes, bins, drawholes and similar openings shall be equipped with grizzlies or other safety devices that will prevent employees from falling into the openings.

d. Bars for grizzly grids shall be so fitted that they will not loosen and slip out of place, and the operator shall not remove a bar temporarily to let large rocks through rather than to break them.

E. Process Safety Management.

All requirements of the process safety management (PSM) standard 29 CFR 1910.119 are extended to include blister agents sulfur mustard (H, HD, HT), nitrogen mustard (HN-1, HN-2, HN-3), Lewisite (L) and halogenated oximes (CX) and the nerve agents tabun (GA), sarin (GB), soman (GD) and VX.

**R614-1-6. Inspections, Citations, and Proposed Penalties.**

A. The purpose of Section R614-1-6 is to prescribe rules and general policies for enforcement of the inspection, citation, and proposed penalty provisions of the Utah OSH Act. Where Section R614-1-6 sets forth general enforcement policies rather than substantive or procedural rules, such policies may be modified in specific circumstances where the administrator or its designee determines that an alternative course of action would better serve the objectives of the Utah OSH Act.

B. Posting of Notices; Availability of the Utah OSH Act, Regulations and Applicable Standards.

1. Each employer shall post and keep posted notices, to be furnished by UOSH, informing employees of the protections and obligations provided for in the Utah OSH Act, and that for assistance and information, including copies of the Utah OSH Act and of specific safety and health standards, employees should contact their employer or the UOSH office. Such notices shall be posted by the employer in each establishment in a conspicuous place where notices to employees are customarily posted. Each employer shall take steps to ensure that such notices are not altered, defaced, or covered by other material.

2. Where employers are engaged in activities which are physically dispersed, such as agriculture, construction, transportation communications, and electric, gas and sanitary services, the notices required shall be posted at the location where employees report each day. In the case of employees who do not usually work at, or report to, a single establishment, such as traveling salesperson, technicians, engineers, etc., such notices shall be posted in accordance with the requirements of Subsection R614-1-6(Q).

3. Copies of the Utah OSH Act, all regulations published under authority of Section 34A-6-202 of the Utah OSH Act and all applicable standards will be available at the UOSH office. If an employer has obtained copies of these materials, it shall make them available upon request to any employee or its authorized representative.

4. Any employer failing to comply with this rule shall be subject to citation and penalty in accordance with Sections 34A-6-302 and 34A-6-307 of the Utah OSH Act.

C. Authority for Inspection.

1. CSHOs are authorized to conduct inspections and investigations of any workplace covered under the Utah OSH Act, in accordance with Subsection 34A-6-301(1) of the Utah OSH Act, and to review records required by the Utah OSH Act, regulations published in Title R614, federal standards incorporated by Section R614-1-4, and other records which are directly related to the purpose of the inspection.

2. Before inspecting areas containing information which has been classified by an agency of the United States Government in the interest of national security, CSHOs shall obtain the appropriate security clearance.

D. Objection to Inspection.

1. Upon a refusal to permit the CSHO, in exercise of the CSHO's official duties, to enter without delay and at reasonable times any place of employment or any place therein, to inspect, to review records, or to question any employer, owner, operator, agent, or employee, in accordance with Subsection R614-1-6(C)(1), or to permit a representative of employees to accompany the CSHO during the physical inspection of any workplace in accordance with Subsection R614-1-6(H), the CSHO shall terminate the inspection or confine the inspection to other areas, conditions, structures, machines, apparatus, devices, equipment, materials, records or interviews concerning which no objection is raised.

2. The CSHO shall try to ascertain the reason for such refusal, and shall immediately report the refusal and the reason therefor to the administrator. The administrator shall take appropriate action, including compulsory process, if necessary.

3. Compulsory process shall be sought in advance of an attempted inspection or investigation if, in the judgment of the administrator, 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:

a. When the employer's past practice either implicitly or explicitly puts the administrator 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 before 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 worksite;

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

4. For purposes of this section, the term compulsory process shall mean the institution of any appropriate action, including ex parte application for an inspection warrant or its equivalent. Ex parte inspection warrants shall be the preferred form of compulsory process in all circumstances where compulsory process is relied upon to seek entry to a workplace under this section.

E. Entry not a Waiver.

Any permission to enter, inspect, review records, or question any person, shall not imply a waiver of any cause of action, citation, or penalty under the Utah OSH Act. CSHOs are not authorized to grant such waivers.

F. Advance Notice of Inspections.

1. Advance notice of inspections may not be given, except in the following situations:

a. In cases of apparent imminent danger, to enable the employer to abate the danger as quickly as possible;

b. In circumstances where the inspection can most effectively be conducted after regular business hours or where special preparations are necessary for an inspection;

c. Where necessary to assure the presence of representatives of the employer and employees or the appropriate personnel needed to aid the inspection; and

d. In other circumstances where the administrator determines that the giving of advance notice would enhance the probability of an effective and thorough inspection.

2. In the situations described in Subsection R614-1-6(F)(1), advance notice of inspections may be given only if authorized by the administrator, except that in cases of imminent danger, advance notice may be given by the CSHO without such authorization if the administrator is not immediately available. When advance notice is given, it shall be the employer's responsibility promptly to notify the authorized representative of employees of the inspection, if the identity of such representative is known to the employer. See Subsection R614-1-6(H)(2) as to instances where there is no authorized representative of employees. Upon the request of the employer, the CSHO will inform the authorized representative of employees of the inspection, provided that the employer furnishes the CSHO with the identity of such representative and with such other information as is necessary to enable the CSHO promptly to inform such representative of the inspection. An employer who fails to comply with its obligation under this subsection promptly to inform the authorized representative of employees of the inspection or to furnish such information as is necessary to enable the CSHO promptly to inform such representative of the inspection, may be subject to citation and penalty under Sections 34A-6-302 and 34A-6-307 of the Utah OSH Act. Advance notice in any of the situations described in Subsection R614-1-6(F)(1) shall not be given more than 24 hours before the inspection is scheduled to be conducted, except in cases of imminent danger situations and other unusual circumstances.

3. Subsection 34A-6-307(5)(b) of the Utah OSH Act provides for criminal penalties where any person gives advance notice of any inspection conducted under the Utah OSH Act without authority from the administrator or administrator's representatives.

G. Conduct of Inspections.

1. Subject to Subsection R614-1-6(C), inspections shall take place at such times and in such places of employment as the administrator or the CSHO may direct. At the beginning of an inspection, CSHOs shall present their credentials to the owner, operator, or agent in charge at the establishment; explain the nature and purpose of the inspection; and indicate generally the scope of the inspection and the records which they wish to review as specified in Subsection R614-1-6(C)(1). However, such designations of records shall not preclude access to additional records that may be related to the purpose of the inspection.

2. CSHOs shall have authority to take environmental samples and to take or obtain photographs or video recordings related to the purpose of the inspection, use other reasonable investigative techniques, and question privately any employer, owner, operator, agent or employee of an establishment. See Subsection R614-1-6(I) on trade secrets. As used in this rule, the term "use other reasonable investigative techniques" includes, the use of devices to measure employee exposures and the attachment of personal sampling equipment such as dosimeters, pumps, badges, and other similar devices to employees to monitor their exposures.

3. In taking photographs and samples, CSHOs shall take reasonable precautions to ensure that such actions with flash, spark-producing, or other equipment will not be hazardous. 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.

4. The conduct of inspections shall preclude unreasonable disruption of operations of the employer's establishment.

5. At the conclusion of an inspection, the CSHO shall confer with the employer or its representative and informally advise such of any apparent safety or health violations disclosed by the inspection. During such conference, the employer shall be given an opportunity to bring to the attention of the CSHO any pertinent information regarding conditions in the workplace.

6. Inspections shall be conducted in accordance with the requirements of Rule R614-1-6.

H. Representative of Employers and Employees.

1. CSHOs shall be in charge of inspections and questioning of persons. A representative of the employer and a representative authorized by its employees shall be given an opportunity to accompany the CSHO during the physical inspection of any workplace to aid such inspection. A CSHO may permit additional employer representatives and additional representatives authorized by employees to accompany the CSHO where the CSHO determines that such additional representatives will further aid the inspection. A different employer and employee representative may accompany the CSHO during each phase of an inspection if this will not interfere with the conduct of the inspection.

2. CSHOs shall have authority to resolve all disputes as to who is the representative authorized by the employer and employees for this rule. If there is no authorized representative of employees, or if the CSHO cannot determine with reasonable certainty who is such representative, the CSHO shall consult with a reasonable number of employees concerning matters of safety and health in the workplace.

3. The representatives authorized by employees shall be an employees 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.

4. CSHOs are authorized to deny the right of accompaniment under this rule to any person whose conduct interferes with a fair and orderly inspection. The right of accompaniment in areas containing trade secrets shall be subject to Subsection R614-1-6(I)(3). With regard to 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 in areas containing such information.

I. Trade secrets.

1. Section 34A-6-306 of the Utah OSH Act provides provisions for trade secrets.

2. 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, and environmental samples, shall be labeled "confidential-trade secret" and shall not be disclosed except in accordance with Section 34A-6-306 of the Utah OSH Act.

3. Upon the request of an employer, any authorized representative of employees under Subsection R614-1-6(H) in an area containing trade secrets shall be an employee in that area or an employee authorized by the employer to enter that area. Where there is no such representative or employee, the CSHO shall consult with a reasonable number of employees who work in that area concerning matters of safety and health.

J. Consultation with Employees.

CSHOs may consult with employees concerning matters of occupational safety and health to the extent they consider necessary for the conduct of an effective and thorough inspection. During the inspection, any employee who believes a violation of the Utah OSH Act exists in the workplace shall be given an opportunity to bring such violation to the attention of the CSHO.

K. Complaints by Employees.

1. Any employee or representative of employees who believes a violation of the Utah OSH Act exists in any workplace where such employee is employed may request an inspection of such workplace by giving notice of the alleged violation to the administrator or to a CSHO. Any such notice shall be reduced to writing, shall set forth with reasonable particularity the grounds for the notice, and shall be signed by the employee or representative of employees. A copy of the notice shall be provided to the employer or its agent by the administrator or CSHO no later than at the time of inspection, except that, upon the request of the person giving such notice, the person's name and the names of individual employees referred to therein shall not appear in such copy or on any record published, released, or made available by the administrator.

2. If upon receipt of such notification the administrator determines that the complaint meets the requirements set forth in Subsection R614-1-6(K)(1), and that there are reasonable grounds to believe that the alleged violation exists, the administrator shall cause an inspection to be made as soon as practicable. Inspections under this rule shall not be limited to matters referred to in the complaint.

3. Before or during any inspection of a workplace, any employee or representative of employees employed in such workplace may notify the CSHO, in writing, of any violation of the Utah OSH Act which they have reason to believe exists in such workplace. Any such notice shall comply with requirements of Subsection R614-1-6(K)(1).

L. Inspection not Warranted; Informal Review.

1. If the administrator determines an inspection is not warranted because there are no reasonable grounds to believe a violation or danger exists with respect to a complaint filed under Subsection R614-1-6(K), the administrator shall notify the complaining party in writing of such determination. The complaining party may obtain review of such determination by submitting a written statement of position with the administrator. The administrator, at its discretion, may hold an informal conference in which the complaining party and the employer may orally present their views. After considering all written and oral view presented, the administrator shall affirm, modify, or reverse the determination of the previous decision and again furnish the complaining party and the employer written notification of its decision and the reasons therefor.

2. If the administrator determines that an inspection is not warranted because the requirements of Subsection R614-1-6(K)(1) have not been met, the administrator shall notify the complaining party in writing of such determination. Such determination shall be without prejudice to the filing of a new complaint meeting the requirements of Subsection R614-1-6(K)(1).

M. Imminent Danger.

Section 34A-6-305 of the Utah OSH Act contains provisions for addressing imminent danger conditions and practices in any place of employment.

N. Citations.

1. The administrator shall review the inspection report of the CSHO. If, on the basis of the report the administrator believes the employer has violated a requirement of Section 34A-6-201 of the Utah OSH Act, of any standard, rule, or order promulgated pursuant to Section 34A-6-202 of the Utah OSH Act, or of any substantive rule published in this chapter, the administrator shall issue to the employer a citation. A citation shall be issued even though after being informed of an alleged violation by the CSHO, the employer immediately abates or initiates steps to abate such alleged violation. Any citation shall be issued with reasonable promptness after termination of the inspection. No citation may be issued after the expiration of 6 months following the occurrence of any violation.

2. Any citation shall describe with particularity the nature of the alleged violation, including a reference to the provisions of the Utah OSH Act, standard, rule, regulation, or order alleged to have been violated. Any citation shall also fix a reasonable time or times for the abatement of the alleged violations.

3. If a citation is issued for a violation alleged in a request for inspection under Subsection R614-1-6(K)(1) or a notification of violation under Subsection R614-1-6(K)(3), a copy of the citation shall be sent to the employee or representative of employees who made such request or notification.

4. Following an inspection, if the administrator determines a citation is not warranted with respect to a danger or violation alleged to exist in a request for inspection under Subsection R614-1-6(K)(1) or a notification of violation under Subsection R614-1-6(K)(3), the informal review procedures prescribed in Subsection R614-1-6(L)(1) shall be applicable. After considering all views presented, the administrator shall affirm the determination, order a re-inspection, or issue a citation if it believes the inspection disclosed a violation. The administrator shall furnish the complaining party and the employer with written notification of its determination and the reasons therefor.

5. Every citation shall state that the issuance of a citation does not constitute a finding that a violation of the Utah OSH Act has occurred unless there is a failure to contest as provided for in the Utah OSH Act or, if contested, unless the citation is affirmed by the Commission.

O. Petitions for Modification of Abatement Date.

1. An employer may file a petition for modification of abatement date when it 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 its 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 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; and

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 Subsection R614-1-6(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 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 working 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 administrator. Failure to file such objection within ten 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 its authorized representative shall have authority to approve any petition for modification of abatement date filed pursuant to Subsection R614-1-6(O)(2) and (3) Such uncontested petitions shall become final orders pursuant to Subsection 34A-6-303(1) of the Utah OSH Act.

d. The administrator or its authorized representative shall not exercise its approval power until the expiration of ten working days from the date the petition was posted or served by the employer pursuant to Subsection R614-1-6(O)(3)(a).

4. Where any petition is objected to by the affected employees, the petition, citation, and any objections shall be forwarded to the administrator per Subsection R614-1-6(O)(3)(b).

P. Proposed Penalties.

1. After, or concurrent with, the issuance of a citation and within a reasonable time after the termination of the inspection, the administrator shall notify the employer by certified mail or by personal service of the proposed penalty under Section 34A-6-307 of the Utah OSH Act, or that no penalty is being proposed. Any notice of proposed penalty shall state that the proposed penalty shall be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notice, the employer notifies the Adjudication Division (Adjudication) within the Commission in writing that it intends to contest the citation or the notification of proposed penalty before the Commission.

2. The administrator shall determine the amount of any proposed penalty, giving due consideration to the appropriateness of the penalty with respect to the size of the business of the employer being charged, the gravity of the violation, the good faith of the employer, and the history of previous violations, in accordance with Section 34A-6-307 of the Utah OSH Act.

3. Appropriate penalties may be proposed with respect to an alleged violation even though after being informed of such alleged violation by the CSHO, the employer immediately abates, or initiates steps to abate, such alleged violation. Penalties shall not be proposed for violations which have no direct or immediate relationship to safety or health.

Q. Posting of Citations.

1. Upon receipt of any citation under the Utah OSH Act, the employer shall immediately post such citation, or copy thereof, unedited, at or near each place an alleged violation referred to in the citation occurred, except as provided. Where, because of the nature of the employer's operations, it is not practicable to post the citation at or near each place of alleged violation, such citation shall be posted, unedited, in a prominent place where it will be readily observable by all affected employees. For example, where employees are engaged in activities which are physically dispersed (see Subsection R614-1-6(B)(2)), the citation may be posted at the location to which employees report each day. Where employees do not primarily work at or report to a single location, the citation must be posted at the location from which the employees commence their activities. The employer shall take steps to ensure that the citation is not altered, defaced, or covered by other material.

2. Each citation, or a copy thereof, shall remain posted until the violation has been abated, or for three working days, whichever is later. The filing by the employer of a notice of intention to contest under Subsection R614-1-6(R) shall not affect its posting responsibility until the Commission issues a final order vacating the citation.

3. An employer to whom a citation has been issued may post a notice in the same location where such citation is posted indicating that the citation is being contested before the Commission, and such notice may explain the reasons for such contest. The employer may also indicate that specified steps have been taken to abate the violation.

4. Any employer failing to comply with Subsections R614-1-6(Q)(1) and (2) shall be subject to citation and penalty in accordance with Section 34A-6-307 of the Utah OSH Act.

R. Employer and Employee Contests before the Commission.

1. Any employer to whom a citation or notice of proposed penalty has been issued, may under Section 34A-6-303 of the Utah OSH Act, notify Adjudication in writing that the employer intends to contest such citation or proposed penalty before the Commission. Such notice of intention to contest must be received by Adjudication within 30 days of the receipt by the employer of the citation and notice of proposed penalty. Every notice of intention to contest shall specify whether it is directed to the citation or to the proposed penalty, or both. Adjudication shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

2. An employee or representative of employee of an employer to whom a citation has been issued may, under Subsection 34A-6-303(3) of the Utah OSH Act, file a written notice with Adjudication alleging that the period fixed in the citation for the abatement of the violation is unreasonable. Such notice must be received by Adjudication within 30 days of the issuance of the citation by UOSH. Adjudication shall handle such notice in accordance with the rules of procedure prescribed by the Commission.

S. Failure to Correct a Violation for which a Citation has been Issued.

1. If an inspection discloses that an employer has failed to correct an alleged violation for which a citation has been issued within the period permitted for its correction, the administrator shall notify the employer by certified mail or by personal service by the CSHO of such failure and of the additional penalty proposed under Section 34A-6-307 of the Utah OSH Act by reason of such failure. The period for the correction of a violation for which a citation has been issued shall not begin to run until the entry of a final order of the Commission in the case of any review proceedings initiated by the employer in good faith and not solely for delay or avoidance of penalties.

2. Any employer receiving a notification of failure to correct a violation and of proposed additional penalty may, under Subsection 34A-6-303(3) of the Utah OSH Act, notify Adjudication in writing that it intends to contest such notification or proposed additional penalty before the Commission. Such notice of intention to contest shall be received by Adjudication within 30 days of receipt by the employer of the notification of failure to correct a violation and of proposed additional penalty. Adjudication shall handle such notice in accordance with the rules of procedures prescribed by the Commission.

3. Each notification of failure to correct a violation and of proposed additional penalty shall state that it shall be the final order of the Commission and not subject to review by any court or agency unless, within 30 days from the date of receipt of such notification, the employer notifies Adjudication in writing that it intends to contest the notification or the proposed additional penalty before the Commission.

T. Informal Conferences.

At the request of an affected employer, employee, or representative of employees, the administrator may hold an informal conference to discuss any issues raised by an inspection, citation, notice of proposed penalty, or notice of intention to contest. The administrator shall provide in writing the reasons for any settlement of issues at such conferences. If the conference is requested by the employer, an affected employee or employee representative shall be given an opportunity to participate, at the discretion of the administrator. If the conference is requested by an employee or representative of employees, the employer shall be given an opportunity to participate, at the discretion of the administrator. Any party may be represented by counsel at such conference. No such conference or request for such conference shall operate as a stay of any 30-day period for filing a notice of intention to contest as prescribed in Subsection R614-1-6(R).

U. Multi-Employer Worksites.

1. Pursuant to Section 34A-6-201 of the Utah OSH Act, violation of an applicable standard adopted under Section 34A-6-202 of the Utah OSH Act at a multi-employer worksite may result in a citation issued to more than one employer.

2. An employer on a multi-employer worksite may be considered a creating, exposing, correcting, or controlling employer. An employer may be cited should:

a. it meet the definition of a creating employer and be found to have failed to exercise the duty of care required by this rule for a creating employer;

b. it meet the definition of an exposing, correcting, or controlling employer and be found to have failed to exercise the duty of care required by this rule for that category of employer; or

c. even if an employer meets its duty of reasonable care applicable to one category of employer, it may still be cited should it meet the definition of another category of employer and be found to have failed to exercise the duty of care required by this rule for that category of employer. No employer will be cited for the same violation under multiple categories of employers.

3. Creating Employer. A creating employer is one that created a hazardous condition on the worksite. A creating employer may be cited if:

a. Its own employees are exposed or if the employees of another employer at the site are exposed to this hazard; and

b. The employer did not exercise reasonable care by taking prompt and effective steps to alert employees of other employers of the hazard and to correct or remove the hazard or, if the creating employer does not have the ability or authority to correct or remove the hazard, to notify the controlling or correcting employer of the hazard.

4. Exposing Employer. 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.

a. If the exposing employer did not create the hazard, it may be cited as the exposing employer if:

i. It knew of the hazard or failed to exercise reasonable care to discover the hazard; and

ii. Upon obtaining knowledge of the hazard, it failed to take prompt and reasonable precautions, consistent with its authority on the worksite, to protect its employees.

b. An exposing employer will be deemed to have exercised reasonable care to discover a hazard if it demonstrates that it has regularly and diligently inspected the worksite.

c. 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:

i. It failed to make a good faith effort to ask the creating or controlling employer to correct the hazard;

ii. It failed to inform its employees of the hazard; and

iii. It failed to take reasonable alternative measures, consistent with its authority on the worksite, to protect its employees.

5. Correcting Employer. 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. A correcting employer must exercise reasonable care in preventing and discovering hazards and ensure such hazards are corrected in a prompt manner, which shall be determined in light of the scale, nature and pace of the work, and the amount of activity of the worksite.

6. Controlling Employer. 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 do so, but it is separate from the responsibilities and care to be exercised by a correcting employer.

a. A controlling employer will not be cited if it has exercised reasonable care to prevent and detect violations on the worksite. The extent of the measures used by a controlling employer to satisfy this duty, however, is less than the extent required of an employer when protecting its own employees. A controlling employer is not required to inspect for hazards or violations as frequently or to demonstrate the same knowledge of applicable standards or specific trade expertise as the employer under its control.

b. When determining the duty of reasonable care applicable to a controlling employer on a multi-employer worksite, the factors that may be considered include:

i. The nature of the worksite and industry in which the work is being performed;

ii. The scale, nature and pace of the work, including the pace and frequency at which the worksite hazards change as the work progresses;

iii. The amount of activity at the worksite, including the number of employers under its control and the number of employees working on the worksite;

iv. 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, a graduated system of discipline for non-compliant employees and employers, regular worksite safety meetings, and when appropriate for atypical hazards, the providing of adequate safety training by employers for atypical hazards present on the worksite; and

v. 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 this rule.

c. When evaluating whether a controlling employer has demonstrated reasonable care in preventing and discovering violations, the following factors, though not inclusive, shall be considered;

i. Whether the controlling employer conducted worksite inspections with sufficient frequency as contemplated by Subsection 6(b);

ii. The controlling employer's implementation and monitoring of an effective system for identifying a hazardous condition and promptly notifying employers under its control of the hazard so as to ensure compliance with their respective duties of care under this rule;

iii. Whether the controlling employer implements a graduated system of discipline for non-compliant employees or employers with their respective safety and health requirements;

iv. Whether the controlling employer performs follow-up inspections to ensure hazards are corrected; and

v. Other actions demonstrating the implementation and monitoring of safety and health precautions for the entire worksite.

7. In accordance with Section 34A-6-110 of the Utah OSH Act, nothing in this rule shall be:

a. Deemed to limit or repeal requirements imposed by statute or otherwise recognized by law; or

b. Construed or held to supersede or in any manner affect workers' compensation or enlarge or diminish or affect the common-law or statutory rights, duties, or liabilities of employers and employees under any law with respect to injuries, occupational or other diseases, or death of employees arising out of, or in the course of employment.

**R614-1-7. Recording and Reporting Occupational Injuries and Illnesses.**

A. UOSH has incorporated, by reference, 29 CFR 1904, Recording and Reporting Occupational Injuries and Illnesses, with a few exceptions. Refer to Subsection R614-1-4(A)(1).

B. Regardless of size or type of operation, accidents and fatalities must be reported to UOSH in accordance with the requirements of Subsection R614-1-5(B).

C. Equivalent Form for OSHA 301 Injury and Illness Report Form (OSHA 301form). For employers required to keep OSHA injury and illness logs, other reports may be used as an equivalent form for the OSHA 301 form if it contains the same information, is readable and understandable, and is completed using the same instructions as the OSHA 301 form it replaces. Examples of such reports include the Employer's First report of Injury or Illness from (Utah Industrial Accidents Form 122), workers' compensation; and insurance reports.

D. Statistical Program.

1. Section 34A-6-108 of the Utah OSH Act directs the division to develop and maintain a program of collection, compilation, and analysis of occupational safety and health statistics. The program shall consist of periodic surveys of occupational injuries and illnesses.

2. The sample design encompasses probability procedures, detailed stratification by industry and size, and a systematic selection within stratification. Stratification and sampling will be carried out to provide the most efficient sample for eventual state estimates. Some industries will be sampled more heavily than others depending on the injury rate level based on previous experience. The survey should produce adequate estimates using the North American Industry Classification System (NAICS) where each industry sector and subsector is placed into the appropriate group of either goods-producing industries or service-providing industries. Full cooperation with the United States Department of Labor in statistical programs is intended.

**R614-1-8. Rules of Practice for Temporary or Permanent Variance from the Utah Occupational Safety and Health Standards.**

A. Scope.

This rule contains rules of practice for administrative procedures to grant variances and other relief under Section 34A-6-202 of the Utah OSH Act. General information pertaining to employer-employee rights, obligations and procedures are included.

B. Application for, or Petition against Variances and Other Relief.

1. The applicable parts of Section 34A-6-202 of the Utah OSH Act shall govern application and petition procedure.

2. Temporary variance.

a. Any employer or class of employers desiring a temporary variance from a standard, or portion thereof, authorized by Subsection 34A-6-202(2)(c) of the Utah OSH Act must file a written application with the administrator which shall include the following information:

(1) The name and address of applicant;

(2) The address of the place or places of employment involved;

(3) A specification of the standard or portion thereof from which the applicant seeks a variance;

(4) A representation by the applicant, supported by representations from qualified persons having first-hand knowledge of the facts represented, that the applicant cannot comply with the standard or portion thereof by its effective date and a detailed statement of the reasons therefor;

(5) A statement of the steps the applicant has taken and will take, with specific dates where appropriate, to protect employees against the hazard covered by the standard;

(6) A statement of when the applicant expects to be able to comply with the standard and of what steps it has taken and will take, with specific dates where appropriate, to come into compliance with the standard;

(7) A statement of the facts the applicant would show to establish that

i. The applicant cannot comply with a standard by its effective date because of unavailability of professional or technical personnel or of materials and equipment needed to come into compliance with the standard or because necessary construction or alteration of facilities cannot be completed by the effective date;

ii. The applicant is taking all available steps to safeguard its employees against the hazards covered by the standard; and

iii. The applicant has an effective program for coming into compliance with the standard as quickly as practicable;

(8) Any request for a hearing, as provided in this rule;

(9) A statement that the applicant has informed its affected employees of the application by giving a copy thereof to their authorized representative, posting a statement, which gives a summary of the application and specifying where a copy may be examined, at the place or places where notices to employees are normally posted, and by other appropriate means; and

(10) A description of how affected employees have been informed of the application and their right to petition the administrator for a hearing.

b. A temporary order may be granted only after notice to employees and an opportunity for a public hearing; provided, the administrator may issue one interim order effective until a decision is made, formally granting or denying a temporary variance, after public hearing.

(1) The purpose of an interim order is to permit an employer to proceed in a non-standard operation while administrative procedures are being completed. Use of this interim procedure is dependent upon need and employee safety.

(2) After determination and assurance that employees are to be adequately protected, the administrator may immediately grant, in writing, an interim order. To expedite the effect of the interim order, it may be issued at the worksite by the administrator.

3. Permanent variance.

a. Any employer desiring a permanent variance of a standard issued under Section 34A-6-202 of the Utah OSH Act must apply to the division for a rule or order for such variance. The written application must include the following information:

(1) The name and address of applicant;

(2) The address of the place or places of employment involved;

(3) A description of the conditions, practices, means, methods, operations, or processes used or proposed to be used by the applicant;

(4) A statement showing how the conditions, practices, means, methods, operations, or processes used or proposed to be used would provide employment and places of employment to employees which are as safe and healthful as those required by the standard from which a variance is sought;

(5) The methods it will use to safeguard its employees until a variance is granted or denied;

(6) A certification that the applicant has informed its employees of the application by

i. Giving a copy thereof to their authorized representative;

ii. Posting a statement giving a summary of the application and specifying where a copy may be examined or a copy of the application itself, at the place or places where notices to employees are normally posted; and

iii. By other appropriate means;

(7) Any request for a hearing, as provided in this rule; and

(8) A description of how employees have been informed of the application and their right to petition the administrator for a hearing.

4. When a proceeding on a citation or a related issue concerning a proposed penalty or period of abatement has been contested and is pending before an administrative law judge or any subsequent review under the Administrative Procedures Act, until the completion of such proceeding, the administrator may deny a variance application on a subject or an issue concerning a citation which has been issued to the employer.

C. Hearings.

1. The administrator may conduct hearings upon application or petition in accordance with Subsection 34A-6-202(4) of the Utah OSH Act if:

a. Employees, the public, or other interested groups petition for a hearing; or

b. The administrator deems it in the public or employee interest.

2. When a hearing is considered appropriate, the administrator shall set the date, time, and place for such hearing and shall provide timely notification to the applicant and the petitioners. In the notice of hearing to the applicant, the applicant will be directed to notify its employees of the hearing.

3. Notice of hearings for proposed rules under Subsection 34A-6-202(4) of the Utah OSH Act shall be published in the Utah State Bulletin. This shall include a statement that the application request may be inspected at the UOSH Office.

4. A copy of the Notice of Hearing, along with other pertinent information, shall be sent to the regional administrator for the federal OSHA.

D. Inspection for Variance Application.

1. A variance inspection may be required by the administrator or its designee before final determination of either acceptance or denial of a temporary or permanent variance.

2. A variance inspection is a single purpose, pre-announced, non-compliance inspection and shall include employee or employer representative participation or interviews where necessary.

E. Defective Applications.

1. If an application for variance does not meet the requirements of Subsection R614-1-8(B), the administrator may deny the application.

2. Prompt notice of the denial of an application shall be given to the applicant.

3. The notice of denial shall include, or be accompanied by, a brief statement of the grounds for denial.

4. A denial of an application pursuant to this subsection shall be without prejudice to the filing of another application.

5. A copy of the notice of denial shall be sent to the regional administrator for OSHA.

F. Adequate Applications.

1. The administrator may grant the request for variance provided that:

a. Data supplied by the applicant, the UOSH variance inspection, as applicable, and information and testimony affords adequate protection for the affected employees;

b. Notification of approval shall follow the pattern described in Subsections R614-1-9(C)(2) and (3);

c. Limitations, restrictions, or requirements which become part of the variance shall be documented in the letter granting the variance.

2. The administrator's decision shall be deemed final subject to Subsection 34A-6-202(6) of the Utah OSH Act.

G. Public Notice of a Granted Variance, Limitation, Variation, Tolerance or Exemption.

1. This subsection does not apply to orders issued under Section 34A-6-202 of the Utah OSH Act.

2. Final actions granting a variance, limitation, variation, tolerance or exemption under this rule shall be published in the Utah State Bulletin pursuant to Title 63G, Chapter 3, Utah Administrative Rulemaking Act. Every such final action shall specify the alternative to the standard involved which the particular variance permits.

H. Acceptance of Federally Granted Variances.

1. Where a variance has been granted by OSHA, following federal promulgation procedures, the administrator shall take the following action:

a. Compare the federal OSHA standard for which the variance was granted with the equivalent UOSH standard.

b. Identify possible application in Utah.

c. If the UOSH standard under consideration for application of the variance has exactly or essentially the same intent as the federal standard and there is the probability of a multi-state employer doing business in Utah, then the administrator shall accept the variance and promulgate it for Utah under Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

d. If the variance has no apparent application to Utah industry, or to a multi-state employer in Utah, or if it conflicts with Utah legislative intent, or established policy or procedure, the federal variance shall not be accepted. In such case, the regional administrator for OSHA will be so notified.

I. Revocation of a Variance.

1. Any variance, whether approved by UOSH or accepted by UOSH based on federal approval, may be revoked by the administrator if it is determined through on-site inspection that:

a. The employer is not complying with provisions of the variance as granted;

b. Adequate employee safety is not given by the original provisions of the variance; or

c. A more stringent standard has been promulgated, is in force, and conflicts with prior considerations given for employee safety.

2. A federally approved national variance may be revoked by UOSH for a specific worksite or place of employment within Utah for reasons cited in Subsection R614-1-8(I)(1). Such revocations must be in writing and give full particulars and reasons prompting the action. Full rights provided under the law, such as hearings, etc., must be the employer.

3. Permanent variances may be revoked or changed only after being in effect for at least six months.

J. Coordination.

All variances issued by the administrator will be coordinated with OSHA to ensure consistency and avoid improper unilateral action.

**R614-1-9. Retaliation.**

A. Section 34A-6-203 of the Utah OSH Act provides protection for employees who engage in protected activities under or related to the Utah OSH Act.

B. Engagement in Protected Activity. To establish a violation of Section 34A-6-203, the employee's engagement in protected activity need not be the sole consideration behind discharge or other adverse action. If protected activity was a substantial reason for the action, or if the discharge or other adverse action would not have taken place "but for" engagement in protected activity, Section 34A-6-203 has been violated.

C. Notification of Division's Findings.

Within 90 days of receipt of a whistleblower complaint, the division is to issue to the complainant and the respondent an order of the division's findings of whether a violation has or has not occurred, in accordance with Subsection 34A-6-203(2)(c) of the Utah OSH Act. This 90-day provision is considered directory in nature whereas there may be instances when it is not possible to meet the directory period set forth in this rule.

D. Employee Refusal to Comply with Safety Rules.

Employees who refuse to comply with occupational safety and health standards or valid safety rules implemented by the employer in furtherance of the Utah OSH Act are not exercising any rights given by the Utah OSH Act. Disciplinary measures taken by employers solely in response to employee refusal to comply with appropriate safety rules and regulations will not ordinarily be regarded as retaliatory action prohibited by Section 34A-6-203 of the Utah OSH Act.

**R614-1-10. Rules of Agency Practice and Procedure Concerning UOSH Access to Employee Medical Records.**

A. Policy.

UOSH access to employee medical records will in certain circumstances be important to the agency's performance of its statutory functions. Medical records, however, contain personal details concerning the lives of employees. Due to the substantial personal privacy interests involved, UOSH authority to gain access to personally identifiable employee medical information will be exercised only after the agency has made a careful determination of its need for this information and only with appropriate safeguards to protect individual privacy. Once this information is obtained, UOSH examination and use of it will be limited to only that information needed to accomplish the purpose for access. Personally identifiable employee medical information will be retained by UOSH only for so long as needed to accomplish the purpose for access, will be kept secure while being used, and will not be disclosed to other agencies or members of the public except in narrowly defined circumstances. This section establishes procedures to implement these policies.

B. Scope and Application.

1. Except as provided in Subsection R6141-10(6) through (10), this rule applies to all requests by UOSH personnel to obtain access to records to examine or copy personally identifiable employee medical information, whether or not pursuant to the access provision of 29 CFR 1910.1020(e).

2. For this rule, "employer" means a current employer, a former employer, or a successor employer.

3. For this rule, "personally identifiable employee medical information" means employee medical information accompanied by either direct identifiers, such as name, address, social security number, payroll number, etc. or by information which could reasonably be used in the particular circumstances indirectly to identify specific employees, such as exact age, height, weight, race, sex, date of initial employment, job title, etc..

4. For this rule, "record" means any item, collection, or grouping of information regardless of the form or process by which it is maintained.

5. Specific written consent.

a. For this rule, "specific written consent" means written authorization containing the following:

(1) The name and signature of the employee authorizing the release of medical information;

(2) The date of the written authorization;

(3) The name of the individual or organization that is authorized to release the medical information;

(4) The name of the designated representative, individual or organization, that is authorized to receive the released information;

(5) A general description of the medical information that may be released;

(6) A general description of the purpose for the release of medical information; and

(7) A date or condition upon which the written authorization will expire, if less than one year.

b. A written authorization does not authorize the release of medical information not in existence on the date of written authorization, unless this is expressly authorized, and does not operate for more than one year from the date of written authorization.

c. A written authorization may be revoked in writing at any time.

6. This rule does not apply to UOSH access to, or the use of, aggregate employee medical information or medical records on individual employees which is not in a personally identifiable form.

7. This rule does not apply to records required by 29 CFR 1904, to death certificates, or to employee exposure records, including biological monitoring records, as defined by 29 CFR 1910.1020(c)(5), or by specific occupational safety and health standards as exposure records.

8. This rule does not apply where CSHOs conduct an examination of employee medical records solely to verify employer compliance with the medical surveillance recordkeeping requirements of an occupational safety and health standard, or with 29 CFR 1910.1020. An examination of this nature shall be conducted on-site and, if requested, shall be conducted under the observation of the record holder. CSHOs shall not record and take off-site any information from medical records other than documentation of the fact of compliance or non-compliance.

9. This rule does not apply to agency access to, or the use of, personally identifiable employee medical information obtained in the course of litigation.

10. This rule does not apply where a written directive by the administrator authorizes appropriately qualified personnel to conduct limited reviews of specific medical information mandated by an occupational safety and health standard, or of specific biological monitoring test results.

11. Even if not covered by the terms of this rule, all medically related information reported in a personally identifiable form shall be handled with appropriate discretion and care befitting all information concerning specific employees. There may, for example, be personal privacy interests involved which militate against disclosure of this kind of information to the public.

C. Responsible Persons.

1. Administrator. The administrator shall be responsible for the overall administration and implementation of the procedures contained in this rule, including making final UOSH determinations concerning:

a. Access to personally identifiable employee medical information, and

b. Inter-agency transfer or public disclosure of personally identifiable employee medical information.

2. UOSH medical records officer. The administrator shall designate a UOSH official with experience or training in the evaluation, use, and privacy protection of medical records to be the UOSH medical records officer. The UOSH medical records officer shall report directly to the administrator on matters concerning this section and shall be responsible for:

a. Making recommendations to the administrator as to the approval or denial of written access orders;

b. Assuring that written access orders meet the requirements of Subsections R6141-10(D)(2) and (3) of this rule;

c. Responding to employee, collective bargaining agent, and employer objections concerning written access orders;

d. Regulating the use of direct personal identifiers;

e. Regulating internal agency use and security of personally identifiable employee medical information;

f. Assuring that the results of agency analyses of personally identifiable medical information are, where appropriate, communicated to employees;

g. Preparing an annual report of UOSH's experience under this rule; and

h. Assuring that advance notice is given of intended inter-agency transfers or public disclosures.

3. Principal UOSH investigator. The principal UOSH investigator shall be the UOSH employee in each instance of access to personally identifiable employee medical information who is made primarily responsible for assuring that the examination and use of this information is performed in the manner prescribed by a written access order and the requirements of this section. When access is pursuant to a written access order, the principal UOSH investigator shall be professionally trained in medicine, public health, or allied fields, such as epidemiology, toxicology, industrial hygiene, biostatistics, environmental health, etc.

D. Written Access Orders.

1. Requirement for written access order. Except as provided in Subsection R614-1-10(D)(4), each request by a UOSH representative to examine or copy personally identifiable employee medical information contained in a record held by an employer or other record holder shall be made pursuant to a written access order which has been approved by the administrator upon the recommendation of the UOSH medical records officer. If deemed appropriate, a written access order may constitute, or be accompanied by an administrative subpoena.

2. Approval criteria for written access order. Before approving a written access order, the administrator and the UOSH medical records officer shall determine that:

a. The medical information to be examined or copied is relevant to a statutory purpose and there is a need to gain access to this personally identifiable information;

b. The personally identifiable medical information to be examined or copied is limited to only that information needed to accomplish the purpose for access; and

c. The personnel authorized to review and analyze the personally identifiable medical information are limited to those who have a need for access and have appropriate professional qualifications.

3. Content of written access order. Each written access order shall state with reasonable particularity:

a. The statutory purposes for which access is sought;

b. A general description of the kind of employee medical information that will be examined and why there is a need to examine personally identifiable information;

c. Whether medical information will be examined on-site, and what type of information will be copied and removed off-site;

d. The name, address, and phone number of the principal UOSH investigator and the names of any other authorized persons who are expected to review and analyze the medical information;

e. The name, address, and phone number of the UOSH medical records officer; and

f. The anticipated period during which UOSH expects to retain the employee medical information in a personally identifiable form.

4. Special situations. Written access orders need not be obtained to examine or copy personally identifiable employee medical information under the following circumstances:

a. Specific written consent. If specific written consent of an employee is obtained pursuant to 29 CFR 1910.1020(e)(2)(ii), and the agency or an agency employee is listed on the authorization as the designated representative to receive the medical information, then a written access order need not be obtained. When personally identifiable employee medical information is obtained through specific written consent and taken off-site, a principal UOSH investigator shall be promptly named to assure protection of the information, and the UOSH medical records officer shall be notified of this person's identity. The personally identifiable medical information obtained shall thereafter be subject to the use and security requirements of Subsections R614-1-10(H) and (I).

b. Physician consultations. A written access order need not be obtained where a UOSH staff or contract physician consults with an employer's physician concerning an occupational safety or health issue. In a situation of this nature, the UOSH physician may conduct on-site evaluation of employee medical records in consultation with the employer's physician, and may make necessary personal notes of the UOSH physician's findings. No employee medical records however, shall be taken off-site in the absence of a written access order or the specific written consent of an employee, and no notes of personally identifiable employee medical information made by the UOSH physician shall leave the UOSH physician's control without the permission of the UOSH medical records officer.

E. Presentation of Written Access Order and Notice to Employees.

1. The principal UOSH investigator, or someone under the UOSH investigator's supervision, shall present at least two copies each of the written access order and an accompanying cover letter to the employer before examining or obtaining medical information subject to a written access order. At least one copy of the written access order shall not identify specific employees by direct personal identifier. The accompanying cover letter shall summarize the requirements of this section and indicate that questions or objections concerning the written access order may be directed to the principal UOSH investigator or to the UOSH medical records officer.

2. The principal UOSH investigator shall promptly present a copy of the written access order, which does not identify specific employees by direct personal identifier, and its accompanying cover letter to each collective bargaining agent representing employees whose medical records are subject to the written access order.

3. The principal UOSH investigator shall indicate that the employer must promptly post a copy of the written access order which does not identify specific employees by direct personal identifier, as well as post its accompanying cover letter.

4. The principal UOSH investigator shall discuss with any collective bargaining agent and with the employer the appropriateness of individual notice to employees affected by the written access order. Where it is agreed that individual notice is appropriate, the principal UOSH investigator shall promptly provide to the employer enough copies of the written access order, which does not identify specific employees by direct personal identifier, and its accompanying cover letter to enable the employer either to individually notify each employee or to place a copy in each employee's medical file.

F. Objections Concerning a Written Access Order. All employees, collective bargaining agents, and employer written objections concerning access to records pursuant to a written access order shall be transmitted to the UOSH medical records officer. Unless the agency decides otherwise, access to the record shall proceed without delay notwithstanding the lodging of an objection. The UOSH medical records officer shall respond in writing to each employee's and collective bargaining agent's written objection to UOSH access. Where appropriate, the UOSH medical records officer may revoke a written access order and direct that any medical information obtained by it be returned to the original record holder or destroyed. The principal UOSH investigator shall assure that such instructions by the UOSH medical records officer are promptly implemented.

G. Removal of Direct Personal Identifiers. When employees' medical information obtained pursuant to a written access order is taken off-site with direct personal identifiers included, the principal UOSH investigator shall, unless otherwise authorized by the UOSH medical records officer, promptly separate all direct personal identifiers from the medical information, and code the medical information and the list of direct identifiers with a unique identifying number of each employee. The medical information with its numerical code shall thereafter be used and kept secured as though still in a directly identifiable form. The principal UOSH investigator shall also hand deliver or mail the list of direct personal identifiers with their corresponding numerical codes to the UOSH medical records officer. The UOSH medical records officer shall thereafter limit the use and distribution of the list of coded identifiers to those with a need to know its contents.

H. Internal Agency Use of Personally Identifiable Employee Medical Information.

1. The principal UOSH investigator shall in each instance of access be primarily responsible for assuring that personally identifiable employee medical information is used and kept secured in accordance with this section.

2. The principal UOSH investigator, the UOSH medical records officer, the administrator, and any other authorized person listed on a written access order may permit the examination or use of personally identifiable employee medical information by agency employees and contractors who have a need for access, and appropriate qualifications for the purpose for which they are using the information. No UOSH employee or contractor may examine or otherwise use personally identifiable employee medical information unless so permitted.

3. Where a need exists, access to personally identifiable employee medical information may be provided to attorneys in the Utah Office of the Attorney General (AG's Office), and to agency contractors who are physicians or who have contractually agreed to abide by the requirements of this section and implementing agency directives and instructions.

4. UOSH employees and contractors are only authorized to use personally identifiable employee medical information for the purposes for which it was obtained, unless the specific written consent of the employee is obtained as to a secondary purpose, or the procedures of Subsections R614-1-10(D) through (G) are repeated with respect to the secondary purpose.

5. When practicable, the examination of personally identifiable employee medical information shall be performed on-site with a minimum of medical information taken off-site in a personally identifiable form.

I. Security Procedures.

1. Agency files containing personally identifiable employee medical information shall be segregated from other agency files. When not in active use, files containing this information shall be kept secured in a locked cabinet or vault.

2. The UOSH medical records officer and the principal UOSH investigator shall each maintain a log of uses and transfers of personally identifiable employee medical information and lists of coded direct personal identifiers, except as to necessary uses by staff under their direct personal supervision.

3. The photocopying or other duplication of personally identifiable employee medical information shall be kept to the minimum necessary to accomplish the purposes for which the information was obtained.

4. The protective measures established by this rule apply to all worksheets, duplicate copies, or other agency documents containing personally identifiable employee medical information.

5. Intra-agency transfers of personally identifiable employee medical information shall be by hand delivery, United States mail, or equally protective means. Inter-office mailing channels shall not be used.

J. Retention and Destruction of Records.

1. Consistent with UOSH records disposition programs, personally identifiable employee medical information and lists of coded direct personal identifiers shall be destroyed or returned to the original record holder when no longer needed for the purposes for which they were obtained.

2. Personally identifiable employee medical information which is currently not being used actively but may be needed for future use shall be transferred to the UOSH medical records officer. The UOSH medical records officer shall conduct an annual review of all centrally-held information to determine which information is no longer needed for the purposes for which it was obtained.

K. Results of an Agency Analysis Using Personally Identifiable Employee Medical Information.

The UOSH medical records officer shall, as appropriate, assure that the results of an agency analysis using personally identifiable employee medical information are communicated to the employees whose personal medical information was used as a part of the analysis.

L. Annual Report. The UOSH medical records officer shall on an annual basis review UOSH's experience under this section during the previous year, and prepare a report to the administrator which shall be made available to the public. This report shall discuss:

1. The number of written access orders approved and a summary of the purposes for access;

2. The nature and disposition of employee, collective bargaining agent, and employer written objections concerning UOSH access to personally identifiable employee medical information; and

3. The nature and disposition of requests for inter-agency transfer or public disclosure of personally identifiable employee medical information.

M. Inter-Agency Transfer and Public Disclosure.

1. Personally identifiable employee medical information shall not be transferred to another agency or office outside of UOSH, except to the Attorney General's Office. or disclosed to the public, other than to the affected employee or the original record holder, except when required by law or when approved by the administrator.

2. Except as provided in Subsection R614-1-10(M)(3), the administrator shall not approve a request for an inter-agency transfer of personally identifiable employee medical information, which has not been consented to by the affected employees, unless the request is by a public health agency which:

a. Needs the requested information in a personally identifiable form for a substantial public health purpose;

b. Will not use the requested information to make individual determinations concerning affected employees which could be to their detriment;

c. Has regulations or established written procedures providing protection for personally identifiable medical information substantially equivalent to that of this section; and

d. Satisfies an exemption to the Government Records Access and Management Act (GRAMA) to the extent that the access to records section of GRAMA applies to the requested information.

3. Upon the approval of the administrator, personally identifiable employee medical information may be transferred to:

a. NIOSH and

b. The AG's Office when necessary with respect to a specific action under the Utah OSH Act.

4. The administrator shall not approve a request for public disclosure of employee medical information containing direct personal identifiers unless there are compelling circumstances affecting the health or safety of an individual.

5. The administrator shall not approve a request for public disclosure of employee medical information which contains information which could reasonably be used indirectly to identify specific employees when the disclosure would constitute a clearly unwarranted invasion of personal privacy.

6. Except as to inter-agency transfers to NIOSH or the AG's Office, the UOSH medical records officer shall assure that advance notice is provided to any collective bargaining agent representing affected employees and to the employer on each occasion that UOSH intends to either transfer personally identifiable employee medical information to another agency or disclose it to a member of the public other than to an affected employee. When feasible, the UOSH medical records officer shall take reasonable steps to assure that advance notice is provided to affected employees when the employee medical information to be released or disclosed contains direct personal identifiers.

**KEY: safety**

**Date of Last Change: June 21, 2024**

**Notice of Continuation: June 24, 2022**

**Authorizing, and Implemented or Interpreted Law: 34A-6**