



OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR Occupational Safety and Health Administration

DIRECTIVE NUMBER: CPL 02-00-153 **EFFECTIVE DATE:** April 17, 2012

SUBJECT: Communicating OSHA Fatality Inspection Procedures to a Victim's Family

Purpose: This Instruction provides guidance to ensure the Occupational Safety and Health Administration (OSHA) communicates its fatality inspection procedures to the victim's family and facilitates the exchange of information throughout the inspection and settlement process.

Scope: This Instruction applies OSHA-wide.

References: See paragraph IV.

Cancellations: None.

State Impact: Notice of intent and equivalency required; see paragraph V.

Action Offices: National, Regional, Area, State Plan and Consultation Offices.

Originating Office: Directorate of Enforcement Programs.

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By and Under the Authority of

David Michaels, PhD, MPH
Assistant Secretary

Executive Summary

This Instruction outlines OSHA's commitment to communicating with a victim's family, or a designated representative, throughout the fatality inspection process. This initiative will keep the family informed of the status of the inspection, preliminary findings, any proposed citations, and settlement and closure of the case.

Significant Changes

This is a new Instruction.

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I. Purpose.

This Instruction provides guidance to ensure OSHA communicates its fatality inspection procedures to the victim's family and facilitates the exchange of information throughout the entire inspection process.

II. Scope.

This applies OSHA-wide.

III. Cancellations.

None.

IV. References.

- A. CPL 02-00-064, Implementation of a Construction Fatality Information Dissemination System, June 5, 1985.
- B. STP 01-01-029, Final Rule on Reporting of Fatality or Multiple Hospitalization Incidents, June 7, 1994.
- C. CPL 02-00-150, Field Operations Manual (FOM), April 22, 2011.
- D. TED 01-00-018, Initial Training Program for OSHA Compliance Personnel, August 6, 2008.
- E. Fatality Investigation Procedures, Regional Instruction, Region VII, May 28, 2010.
- F. OTI Webinar #0032: Best Practices for Interacting with Victim's Families, September 27, 2010.

V. Federal Program Change.

Federal Program Change, Notice of Intent Required, Adoption Encouraged. This Instruction describes a Federal program change which provides guidance and a three-phased approach for communicating with family members of victims of workplace accidents throughout the investigation of the accident and settlement process. States are strongly encouraged to adopt this Instruction and should utilize it in an "at least as effective" manner to communicate with the victim's family members.

States must submit a notice of intent indicating if the State has or will adopt policies and procedures for communicating with family members of victims of workplace accidents and if so, whether the State's policies and procedures are or

will be identical to or different from the Federal program. OSHA will post summary information on the State responses to this Instruction on its website.

VI. Background.

This Instruction provides guidance for communication with the next of kin following a workplace fatality. OSHA places a high priority on fatality inspections, which demand a high degree of sensitivity and investigative accuracy. Only trained and experienced OSHA representatives should be assigned to interact with families of the deceased.

VII. Definitions.

- A. Fatality. A worker 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.
- B. Next of Kin. Individual(s), often a family member, listed as the emergency contact(s) on the victim's employment records; another person identified by the employer if an emergency contact is not identified on the employment records or no such record exist; or a representative designated by the next of kin.

VIII. Training.

OSHA compliance officers attend several OSHA Training Institute courses relevant to fatality inspections. OSHA personnel involved in fatality inspections and in communicating with the next of kin must complete training in accordance with TED 01-00-018, Initial Training Program for OSHA Compliance Personnel, in addition to receiving on-the-job field training under the guidance of a supervisor and/or an experienced compliance officer.

IX. Communications with the Next of Kin.

OSHA places a high priority on communicating with families after a workplace fatality. Care must be taken to ensure sensitivity and tact are exercised during all communications. Interactions with the next of kin can typically be accomplished by using a “three- phase approach” which includes: an initial communication; follow-up communications throughout the inspection; and post-inspection communications. This will ensure that OSHA receives the necessary information about the victim, job history, co-workers, and keeps the next of kin informed from the beginning of the inspection and through the progression of the inspection until the case is either closed or becomes a final order of the Occupational Safety and Health Review Commission.

NOTE: Where OSHA is not able to identify the victim’s next of kin, all attempts shall be fully documented in the case file.

If the victim's next of kin do not want to speak with OSHA, their wishes should be respected. However, the OSHA representative should notify his/her supervisor of the next of kin's wishes, make a notation in the case file, and ensure that all procedures of CPL 02-00-150, Field Operations Manual, Chapter 11, Section G, Family of Victims are followed. The OSHA representative should provide the next of kin with his/her point of contact information, including the Area Office's telephone number, address and an e-mail address. The next of kin should be instructed to contact the OSHA representative with any questions regarding the inspection.

A. Initial Communication.

Prior to any initial communication, OSHA should verify through interviews with the employer and/or local authorities, that the next of kin has been previously notified of the fatality. OSHA should attempt to contact the family via telephone prior to the initial notification letter being mailed. After the initial communication, OSHA will then contact the next of kin to request work-related information concerning the fatality and encourage the next of kin to contact OSHA with any additional information.

1. The OSHA representative should ensure the following is explained during the initial communication with the next of kin:
 - a. OSHA inspects the worksite(s) where fatalities have occurred to determine whether a violation of OSHA safety and health standards has occurred and what effect the alleged violation had on the accident.
 - b. These inspections are often comprehensive in nature, but at times are limited to safety and health hazards that may be associated with the fatality. The inspection may take up to six months to complete.
 - c. If OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil or criminal penalties against the employer. OSHA does not issue citations or seek civil penalties solely because there was a workplace fatality.
 - d. OSHA is barred from releasing certain information as a result of the applicability of legal privileges. OSHA will explain that the releasable portions of the case file will not be made available to the next of kin until after the employer contest period has passed or no contest has been filed. In situations where the case is contested, the case file will not be made

available until after litigation is concluded. If a criminal referral is under consideration or has been made, the case file cannot be released until those actions are complete.

- e. Upon issuance of a Occupational Safety and Health Review Commission (OSHRC) final order, the next of kin will be afforded the opportunity to discuss the case with the Area Director.
 - f. At any time during the inspection and throughout the inspection process, the next of kin may contact the local OSHA office to inquire about the status of the case or to ask questions.
2. OSHA will contact the next of kin early in the inspection process. This gives the OSHA representative the opportunity to establish a trusting and working relationship with the next of kin and communicate that the incident is being investigated. Care must be taken to ensure sensitivity and tact are exercised during all communications.

NOTE: During the initial communication with the next of kin, OSHA must determine if it is the appropriate time to explain OSHA's fatality inspection process. If it is not the appropriate time, OSHA will inquire if there might be a better time to talk and provide the next of kin with point of contact information, while briefly explaining the nature of future communications with the agency.

3. After receiving next of kin information, initial communication with the next of kin should normally occur within five working days. OSHA should explain the investigative process of the fatality inspection and ensure that the next of kin understands the role of OSHA as noted in Paragraph (A)(1) above. OSHA should also explain the role of each party below:

- a. Law Enforcement.

Generally, first responders such as local police and fire personnel arrive at the incident scene within minutes of the event. If local law enforcement determines that foul play did not contribute to the incident, they will release jurisdiction of the site to OSHA for inspection. Law enforcement and OSHA inspections are conducted independently. OSHA will determine whether any workplace health and safety laws were violated, while the police consider possible criminal matters.

b. Coroner.

Coroners identify possible causal factors related to some workplace fatalities. The coroner's report is also independent of OSHA's inspection. In some cases, OSHA will obtain information from the coroner as part of the inspection.

4. The Area Director condolence letter (Appendix A), as per CPL 02-00-150, *Field Operations Manual*, Chapter 11, Section G, Family of Victims, will be sent within five working days after contact with the next of kin. In addition to the Area Director condolence letter, the Assistant Secretary sends a condolence letter to next of kin (Appendix B).
5. The Area Office should email the Assistant Secretary's condolence letter to the Directorate of Enforcement Programs. In addition to the letter, there should be a sufficient explanation of the events leading to the fatality. Where there are discrepancies, erroneous and/or missing information, the appropriate Regional Office will be contacted for clarification. After signature, the letter is mailed by the National Office to the next of kin and a copy forwarded to the appropriate Area Office.

NOTE: In some circumstances, it may not be appropriate to follow these procedures (e.g., in the case of a small business, the owner or supervisor may be a relative of the victim). The form letter should be modified to take any special circumstance into account or a form letter should not be sent. If a letter is not sent, explain the rationale in the case file.

6. All communication with the next of kin, including the Area Director and Assistant Secretary condolence letters, will be noted in the case file.

B. Follow-up Communications.

Follow-up communications are vital to the exchange of information. These communications allow OSHA to provide updates on the status of the inspection and provide the next of kin with an opportunity to ask questions. However, OSHA may not divulge any privileged information (such as the name of potential witnesses) during the course of these discussions. This exchange should occur periodically until the inspection is completed and findings are communicated to the next of kin.

OSHA's commitment to exchange information with the next of kin shall be as follows:

1. Updated information to the next of kin should continue on a periodic basis; for example, once every 30 days or at a time agreed to between the OSHA representative and the next of kin.
2. OSHA will explain various aspects of the inspection, including the inspection findings letter (Appendix C or Appendix D), OSHA citations and penalties, the informal conference process, and Freedom of Information Act (FOIA) issues.
3. All communications will be noted in the case file.

NOTE: If the next of kin opts out of the exchange of information, initially or during the inspection, the OSHA representative must respect the decision, notify their supervisor, and inform the next of kin that he/she may inquire about the status of the case at a later date, if desired.

C. Post-Inspection Communications.

After the inspection, OSHA will make every effort to contact the next of kin via telephone to explain findings, address any questions and give the family an opportunity to provide input. Depending on the case, OSHA may issue a press release. If a press release is planned, OSHA will make every attempt to notify the family by telephone before the information is released to the public. OSHA will also provide a copy of the press release to the family.

1. No Proposed Citations.

If citations are not issued, the OSHA representative should explain the findings of the inspection during the post-inspection communication. Additionally, the OSHA representative should be prepared to discuss and explain the following:

- a. OSHA does not issue citations solely because there was a workplace fatality.
- b. OSHA inspected the worksite(s) to determine whether a violation of OSHA safety and health standards had occurred. The workplace inspection found no alleged violation(s) of safety and health standards and, as a result, no citations were issued to the employer.
- c. OSHA should make the next of kin aware of the Freedom of Information Act (FOIA), as it pertains to OSHA's inspection file.

- d. Within five days of closing the case, the case closure letter should be sent to the next of kin (Appendix C).
 - e. All communications will be noted in the case file.
2. Proposed Citations.

After confirmation that the employer has received the citations, OSHA should begin post-inspection communications with the next of kin to explain the alleged violation(s), proposed penalties, any reduction factors, violation classification, abatement requirements, settlement procedures, and Freedom of Information Act (FOIA) requests, as it pertains to OSHA's inspection. OSHA should explain that communications between OSHA and the next of kin will continue until the case becomes a final order of the OSHRC. Periodic communications with the next of kin should reflect a time agreed to between the OSHA representative and the next of kin.

NOTE: OSHA should emphasize that although civil penalties were proposed, penalties under the OSH Act are not based on the occurrence of a fatality. Instead, the gravity of the violation, which factors in severity of injury and probability of occurrence, is one of several considerations in penalty calculation.

- a. Upon confirmation that the employer received the citation(s), OSHA should ensure that the inspection findings letter (Appendix D) with a copy of the citation(s), OSHA Citations and Penalties fact sheet, and the OSHA Fatality inspection fact sheet are sent to the next of kin.
 - b. OSHA will explain that the releasable portions of the case file will not be made available to the next of kin until after the employer contest period has passed or no contest has been filed. In situations where the case is contested, the case file will not be made available until after litigation is completed. If a criminal referral is under consideration or has been made, the case file cannot be released until those actions are complete.
 - c. All communications with the next of kin should be noted in the case file.
3. Upon receipt of a final order resulting from a signed informal settlement agreement or a formal settlement agreement, OSHA should inform the next of kin of the settlement and explain the outcome. Issues associated with the settlement agreement or OSHRC decision (i.e., amended abatement dates, reclassification

of violations, and the modification or withdrawal of a penalty, a citation, or a citation item) may be discussed. Finally, OSHA should again make the next of kin aware of the Freedom of Information Act (FOIA), as it pertains to OSHA's inspection.

- a. Within five days of a final order closing the case, the case closure letter should be sent to the next of kin (Appendix E).
- b. All communications with the next of kin should be noted in the case file.

APPENDIX A

AREA DIRECTOR CONDOLENCE LETTER

Dear _____:

Please accept our sincerest sympathy in the tragic death of [**victim's name**]. We deeply regret the loss of your [**husband's, mother's, friend's, son's, etc.**] life.

We want you to know that the Occupational Safety and Health Administration (OSHA) is investigating the circumstances surrounding Mr./Ms. _____'s death. We will share our findings when our inspection is complete, which may take up to six months.

Enclosed is some information about OSHA fatality inspections. If you believe you or another family member or friend may have information concerning your [**husband's, mother's, friend's, son's, etc.**] death, please contact us so that we can discuss this with you.

If you have any questions about our inspection or any of the information enclosed, please contact me:

Area Director
USDOL/OSHA
Street Address
City, State Zip Code

Telephone: _____
E-Mail: _____@dol.gov

Again, please accept our heartfelt condolences and let us know if we can be of any assistance to you, your family or friends.

Sincerely,

Area Director

Enclosures

(Enclosure)

OSHA CITATIONS AND PENALTIES

OSHA citations state the specific safety and health standards the company is alleged to have violated. They note, both by number and name, the individual sections of OSHA standards that the employer allegedly failed to follow. (A complete listing of OSHA standards is available for review at the OSHA area office or can be accessed on the agency's Internet site at www.osha.gov under "Standards.")

Citations specify the location in the plant or on the site where the violation occurred and the circumstances surrounding the violation. The Area Director of the local OSHA office that conducted the inspection signs and issues the citations. Citations must be issued within six months following identification of the violations. Even if they disagree with the findings, employers must post a copy of each citation at or near the place where an alleged violation occurred for three days or until the violation is abated, whichever is longer.

Citations identify required abatement dates (the dates when the hazards must be corrected) and proposed penalties for each alleged violation. For violations that are easy to fix, immediate abatement may be appropriate. If an employer must purchase equipment or significantly modify the workplace, a longer period is permitted.

Proposed penalties may range as high as \$70,000 for a willful violation or \$7,000 for a serious violation. These amounts were set into law by Congress in 1991. Other-than-serious violations may carry penalties or there may be no penalty proposed for these violations. OSHA proposes citations when a standard has been violated. The amount of each proposed citation can be adjusted based on the employer size, good faith on the part of the employer (those implementing the safety and health program), and inspection history.

Violations are classified as willful if OSHA has evidence that the employer intentionally disregarded the requirements of the Occupational Safety and Health Act of 1970 (OSH Act) and/or was plainly indifferent to the safety of employees. Violations are identified as serious if there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm, is classified as other-than-serious. Violations may also be characterized as repeat if OSHA has cited the company for a substantially similar hazard within the past five years.

OSHA proposes penalties as a result of violations, but does not actually have the authority to impose fines. That authority is granted by law to the Occupational Safety and Health Review Commission (OSHRC), an administrative review board that is completely separate from OSHA and the U.S. Department of Labor. Employers can contest (challenge) alleged violations, proposed penalties or abatement dates before this board. If the employer decides to challenge any part of OSHA's findings, they must do so within 15 working days after the employer receives the citations.

Employers may request a meeting with OSHA to discuss the issued citations and possibly to enter into an informal settlement of the case. This may involve reductions in penalties in exchange for promptly correcting violations. OSHA's primary concern remains prevention of injuries, illnesses and deaths rather than collection of funds. (All penalty monies go directly to the U.S. Treasury; they are not part of OSHA's budget or credited to the agency.)

If an employer acknowledges the violations and agrees to pay the proposed penalties, then the citations as issued or amended automatically become a final order of OSHRC. The employer pays the penalties and the case is closed. The employer may also contest a part of a citation and pay part of the penalties assessed, or contest the entire case. Contested cases proceed through an administrative review process at the OSHRC. The employer or OSHA may further appeal the case in the appropriate U.S. Court of Appeals, if dissatisfied with the OSHRC's decision.

When an employer is charged with a willful violation of an OSHA standard and that alleged violation results in the death of an employee, OSHA may ask the U. S. Department of Justice to seek criminal prosecution of the employer. These are difficult cases to prove and few cases reach court and convictions are rare. However, should an employer be convicted, he or she could face a fine of up to \$250,000 individually and/or a jail term of up to six months. A corporation could receive a fine of as much as \$500,000.

(Enclosure)

OSHA FATALITY INSPECTIONS

Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) to assure safe and healthful working conditions for working men and women. The Occupational Safety and Health Administration (OSHA) was established under the OSH Act to provide for the enforcement of standards developed under the Act. There are both Federal and State OSHA programs.

OSHA inspects the worksites where fatalities have occurred to determine whether a violation of OSHA safety and health standards occurred. These inspections are often comprehensive in nature, but at times may be limited to the area in which the fatality occurred. If OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the U.S. Department of Justice for possible criminal prosecution.

OSHA does not issue citations solely because there was a workplace fatality. However, if during any inspection, OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil or criminal penalties against the employer.

Upon written request, OSHA can release the portions of the inspection file normally available to release under the Freedom of Information Act (FOIA) and this information will be provided to next of kin, **without charge**. In an effort to keep the next of kin apprised of developments during an inspection, OSHA sends them copies of citations (the formal notice of alleged hazards in the workplace), appeal letters (the employer's notice of disagreement with the issued citations), and informal settlements (a binding agreement between OSHA and the employer to settle the case) as soon as the document is issued. Furthermore, OSHA is committed to the exchange of information with the next of kin as follows:

- Any time during the inspection or the resulting litigation, the next of kin may contact the local OSHA office to inquire about the status of the case or to ask questions.
- If the next of kin has information or evidence that can assist in the inspection, they are encouraged to take a proactive role and share this information by writing, calling or e-mailing the local OSHA office.
- The next of kin is encouraged to follow up and inquire about any information they have sent to OSHA or on information received from OSHA. In such cases, they are free to write or call the local OSHA office.
- Upon issuance of the final order, the next of kin will be afforded the opportunity to meet with Area Director to answer questions and explain the settlement decision.
- OSHA will notify the next of kin when the case is closed. At that time, the portions of the file that can be released under FOIA will be made available to family members, at no charge, upon written request.

APPENDIX B

ASSISTANT SECRETARY CONDOLENCE LETTER

Dear Mr./Ms./Mrs. Last Name:

Please accept my heartfelt condolences on the tragic death of your [**describe relationship: husband, wife, child, etc.**], [**victim First Name Last Name**]. We deeply regret the loss of his/her life.

Please be assured that the Occupational Safety and Health Administration (OSHA) is investigating the circumstances surrounding [**Mr./Ms./Mrs. Last Name's**] death. We realize that the results of this inspection are very important to you, so we will share our findings as soon as the inspection is completed.

We are committed to preventing injuries and illnesses on the job. Given our mission of providing safer workplaces, we understand that each worker's death is a personal loss and tragedy.

Since your [**husband's/wife's/child's etc.**] death occurred in [**State**], which is part of OSHA's Region #, our investigators from the region will be handling the inspection. If you have any questions about the inspection (ref: OSHA Inspection No. #####), or any information you think might be helpful, please do not hesitate to contact [**First Name Last Name**], Area Director, at the following address:

USDOL/OSHA
Street Address
City, State ZIP
Phone: (XXX) XXX-XXXX
Fax: (XXX) XXX-XXXX
E-Mail: _____@dol.gov

Again, please accept my sincere sympathy and regret for your loss. If OSHA can be of any assistance to you, your family, or friends, please do not hesitate to contact us.

Sincerely,

Assistant Secretary

APPENDIX C

INSPECTION FINDINGS AND NEXT OF KIN CLOSURE LETTER – NO PROPOSED CITATIONS

Dear _____:

We are writing to share with you the findings of the recent Occupational Safety and Health Administration (OSHA) inspection into the death of your [husband, mother, son, etc.].

[Insert one or two sentences on the workplace hazard(s) that may have contributed to accident or death if possible. For example, "OSHA's inspection determined that the trench Mr. Jones was working in was not properly sloped or shored and no cave-in protection such as a trench box was provided. Rain on the day of the accident and heavy equipment operating nearby increased the risk of cave-in."]

OSHA inspects the worksites where these tragedies have occurred to determine whether a violation of OSHA safety and health standards occurred. These inspections are often comprehensive in nature, but at times are limited to the area in which the fatality occurred. If OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the United State Department of Justice for possible criminal prosecution. However, OSHA does not issue citations solely because there was a workplace fatality.

OSHA inspected the worksite(s) of [name of company] to determine whether a violation of OSHA safety and health standards related to the accident had occurred. The workplace inspection found that no alleged violation(s) of safety and health standards had occurred related to the accident, and therefore, no citations or proposed penalties were issued to the employer.

Despite the inspection indicating that the employer did not violate safety and health standards, we know that no amount of money or compensation can measure the loss you and your family have suffered and your lives have been changed forever because of this tragedy. I would like to express to you my deepest sympathy.

If you have any questions about our inspection please contact me:

Area Director
USDOL/OSHA
Street Address
City, State ZIP

Telephone: _____
E-Mail: _____@dol.gov

The Freedom of Information Act (FOIA) governs the release of information concerning accident inspections conducted by OSHA. The releasable portions of the file will be made available to

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you upon written request. OSHA's policy is to waive fees for Freedom of Information Act requests in these circumstances, subject to the requirements of 29 CFR Part 70.

Sincerely,

_____, Area Director

NOTICE: This document is presented here as historical content, for research and review purposes only.

APPENDIX D

INSPECTION FINDINGS LETTER – PROPOSED CITATIONS

Dear _____:

We are writing to share with you the findings of the recent Occupational Safety and Health Administration (OSHA) inspection into the death of your **[husband, mother, son, etc.]**.

[Insert one or two sentences on the workplace hazard(s) that contributed to accident or death, if possible. For example, "OSHA's inspection determined that the trench Mr. Jones was working in was not properly sloped or shored and no cave-in protection such as a trench box was provided. Rain on the day of the accident and heavy equipment operating nearby increased the risk of cave-in."]

Enclosed is a copy of the citations and proposed penalties against **[name of company]**. OSHA citations state the alleged violations of safety and health standards at the worksite. They also note which alleged violations OSHA has determined to be specifically associated with Mr./Ms. _____'s death.

We would like to emphasize that, under the Occupational Safety and Health Act, civil penalties that OSHA imposes are not based on the occurrence of a fatality. Instead, the gravity of the violation, which factors in severity of injury and probability of occurrence, is one consideration in penalty calculation. Penalties may be reduced from the maximum allowable by law based on the company's size and history of previous violations. In some cases, penalties may be reduced in exchange for a company's prompt correction of problems in order to protect other employees at the site and to resolve the hazards promptly.

Enclosed is a brief fact sheet that further explains OSHA's citation and penalty policy and should help in understanding the citations. We know that no amount of money or compensation can measure the loss you and your family have suffered and your lives have been changed forever because of this tragedy. I would like to express to you my deepest sympathy. If you have any questions about our inspection or any of the information enclosed, please contact me:

Area Director
USDOL/OSHA
Street Address
City, State ZIP

Telephone: _____
E-Mail: _____@dol.gov

The Freedom of Information Act (FOIA) governs the release of information concerning accident inspections conducted by OSHA. The releasable portions of the file will be made available to

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Sincerely,

_____, Area Director

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OSHA CITATIONS AND PENALTIES

OSHA citations state the specific safety and health standards the company is alleged to have violated. They note, both by number and name, the individual sections of OSHA standards that the employer allegedly failed to follow. (A complete listing of OSHA standards is available for review at the OSHA area office or can be accessed on the agency's Internet site at www.osha.gov under "Standards.")

Citations specify the location in the plant or on the site where the violation occurred and the circumstances surrounding the violation. The Area Director of the local OSHA office that conducted the inspection signs and issues the citations. Citations must be issued within six months following identification of the violations. Even if they disagree with the findings, employers must post a copy of each citation at or near the place where an alleged violation occurred for three days or until the violation is abated, whichever is longer.

Citations identify required abatement dates (the dates when the hazards must be corrected) and proposed penalties for each alleged violation. For violations that are easy to fix, immediate abatement may be appropriate. If an employer must purchase equipment or significantly modify the workplace, a longer period is permitted.

Proposed penalties may range as high as \$70,000 for a willful or violation \$7,000 for a serious violation. These amounts were set into law by Congress in 1991. Other-than-serious violations may carry penalties or there may be no penalty proposed for these violations. OSHA proposes citations when a standard has been violated. The amount of each proposed citation can be adjusted based on the employer size, good faith on the part of the employer (those implementing the safety and health program), and inspection history.

Violations are classified as willful if OSHA has evidence that the employer intentionally disregarded the requirements of the Occupational Safety and Health Act of 1970 (OSH Act) and/or was plainly indifferent to the safety of employees. Violations are identified as serious if there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm, is classified as other-than-serious. Violations may also be characterized as repeat if OSHA has cited the company for a substantially similar hazard within the past five years.

OSHA proposes penalties as a result of violations, but does not actually have the authority to impose fines. That authority is granted by law to the Occupational Safety and Health Review Commission (OSHRC), an administrative review board that is completely separate from OSHA and the U.S. Department of Labor. Employers can contest (challenge) alleged violations, proposed penalties or abatement dates before this board. If the employer decides to challenge any part of OSHA's findings, they must do so within 15 working days after the employer receives the citations.

Employers may request a meeting with OSHA to discuss the issued citations and possibly to enter into an informal settlement of the case. This may involve reductions in penalties in exchange for promptly correcting violations. OSHA's primary concern remains prevention of injuries, illnesses and deaths rather than collection of funds. (All penalty monies go directly to the U.S. Treasury; they are not part of OSHA's budget or credited to the agency.)

If an employer acknowledges the violations and agrees to pay the proposed penalties, then the citations as issued or amended automatically become a final order of OSHRC. The employer pays the penalties and the case is closed. The employer may also contest a part of a citation and pay part of the penalties assessed, or contest the entire case. Contested cases proceed through an administrative review process at the OSHRC. The employer or OSHA may further appeal the case in the appropriate U.S. Court of Appeals, if dissatisfied with the OSHRC's decision.

When an employer is charged with a willful violation of an OSHA standard and that alleged violation results in the death of an employee, OSHA may ask the U. S. Department of Justice to seek criminal prosecution of the employer. These are difficult cases to prove and few cases reach court and convictions are rare. However, should an employer be convicted, he or she could face a fine of up to \$250,000 individually and/or a jail term of up to six months. A corporation could receive a fine of as much as \$500,000.

(Enclosure)

OSHA FATALITY INSPECTIONS

Congress enacted the Occupational Safety and Health Act of 1970 (OSH Act) to assure safe and healthful working conditions for working men and women. The Occupational Safety and Health Administration (OSHA) was established under the OSH Act to provide for the enforcement of standards developed under the Act. There are both Federal and State OSHA programs.

OSHA inspects the worksites where fatalities have occurred to determine whether a violation of OSHA safety and health standards occurred. These inspections are often comprehensive in nature, but at times may be limited to the area in which the fatality occurred. If OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the U.S. Department of Justice for possible criminal prosecution.

OSHA does not issue citations solely because there was a workplace fatality. However, if during any inspection, OSHA finds that the employer violated safety and health standards, the agency may issue citations and seek civil or criminal penalties against the employer.

Upon written request, OSHA can release the portions of the inspection file normally available to release under the Freedom of Information Act (FOIA) and this information will be provided to next of kin, **without charge**. In an effort to keep the next of kin apprised of developments during an inspection, OSHA sends them copies of citations (the formal notice of alleged hazards in the workplace), appeal letters (the employer's notice of disagreement with the issued citations), and informal settlements (a binding agreement between OSHA and the employer to settle the case) as soon as the document is issued. Furthermore, OSHA is committed to the exchange of information with the next of kin as follows:

- Any time during the inspection or the resulting litigation, the next of kin may contact the local OSHA office to inquire about the status of the case or to ask questions.
- If the next of kin has information or evidence that can assist in the inspection, they are encouraged to take a proactive role and share this information by writing, calling or e-mailing the local OSHA office.
- The next of kin is encouraged to follow up and inquire about any information they have sent to OSHA or on information received from OSHA. In such cases, they are free to write or call the local OSHA office.
- Upon issuance of the final order, the next of kin will be afforded the opportunity to meet with Area Director to answer questions and explain the settlement decision.
- OSHA will notify the next of kin when the case is closed. At that time, the portions of the file that can be released under FOIA will be made available to family members, at no charge, upon written request.

APPENDIX E

NEXT OF KIN CLOSURE LETTER – PROPOSED CITATIONS

Dear _____:

We are writing to share with you the post-inspection and abatement results of the Occupational Safety and Health Administration (OSHA) inspection into the death of your [**husband, mother, son, etc.**], and to inform you that the case has been closed as of the [**insert final order date**].

[Insert one or two sentences to explain results of the final order and any abatement.]

We would like to emphasize that, under the Occupational Safety and Health Act, any penalties proposed by OSHA as a result of a citation are not based on the occurrence of a fatality. Instead, the gravity of the violation, which factors in severity of injury and probability of occurrence, is one consideration in penalty calculation.

The Freedom of Information Act (FOIA) governs the release of information concerning accident inspections conducted by OSHA. Now that the inspection file is a final order, the releasable portions of the file will be made available to you upon written request. OSHA's policy is to waive fees for Freedom of Information Act requests in these circumstances, subject to the requirements of 29 CFR Part 70.

If you have any questions about our inspection, please contact me:

Area Director
USDOL/OSHA
Street Address
City, State ZIP

Telephone: _____

E-Mail: _____@dol.gov

Again, I would like to express to you my deepest sympathy.

Sincerely,

_____, Area Director

**APPENDIX F
OSHA's BASIC FATALITY INSPECTION COMMUNICATION PROCESS**

PHASES	STAGES	ACTIONS
INITIAL COMMUNICATION	After accident and within 5 workdays of opening conference	Area Director Condolence Letter Appendix A
		Assistant Secretary Condolence Letter Appendix B
FOLLOW-UP COMMUNICATIONS	Throughout inspection	Periodic exchange of information with next of kin
	No proposed citations	
	Citations proposed	
POST-INSPECTION COMMUNICATIONS		Communicate inspection findings with next of kin
	No Proposed Citations	Inspection Findings & Next of Kin Closure Letter – No Proposed Citations Appendix C
	Confirmation of receipt of citations	Inspection Findings Letter – Proposed Citations Appendix D
	Case becomes final order	Next of Kin Closure Letter – Proposed Citations Appendix E