



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** CPL 02-00-166

**EFFECTIVE DATE:** July 7, 2021

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

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## ABSTRACT

- 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 III.
- Cancellations:** CPL 02-00-153, Communicating OSHA Fatality Inspection Procedures to a Victim's Family, April 17, 2012.
- State Plan Impact:** Notice of intent required and adoption encouraged; see paragraph V.
- Action Offices:** National, Regional, Area, State Plan, and Consultation Offices.
- Originating Office:** Directorate of Enforcement Programs.
- Contact:** Directorate of Enforcement Programs  
Office of General Industry Enforcement  
200 Constitution Avenue, NW, N3119  
Washington, D.C. 20210  
(202-693-1850)

By and Under the Authority of

James S. Frederick  
Acting 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 issued citations, proposed penalties, settlement, and closure of the case.

## **Significant Changes**

- Updated Appendix A – Area Director's Condolence Letter.
- Updated Appendix B – Assistant Secretary's Condolence Letter.
- Updated Appendix C – Inspection Findings and Next of Kin Closure – No Proposed Citation.
- Updated Appendix D – Inspection Findings Letter – Proposed Citation.
- Updated Appendix E – Next of Kin Closure Letter – Proposed Citation.

# TABLE OF CONTENTS

I.	Purpose.....	1
II.	Scope.....	1
III.	References.....	1
IV.	Cancellations.....	1
V.	Federal Program Change.....	1
VI.	Background.....	1
VII.	Definitions.....	1
VIII.	Training.....	2
IX.	Communications with the Next of Kin.....	2
	A. Initial Communication.....	2
	B. Follow-up Communications.....	4
	C. Post-Inspection Communications.....	5
	APPENDIX A – AREA DIRECTOR’S CONDOLENCE LETTER.....	8
	APPENDIX B – ASSISTANT SECRETARY’S CONDOLENCE LETTER.....	12
	APPENDIX C – INSPECTION FINDINGS AND NEXT OF KIN CLOSURE LETTER – NO PROPOSED CITATION.....	13
	APPENDIX D – INSPECTION FINDINGS LETTER – PROPOSED CITATION(S).....	15
	APPENDIX E – NEXT OF KIN CLOSURE LETTER – PROPOSED CITATION(S).....	20
	APPENDIX F – OSHA’S BASIC FATALITY INSPECTION COMMUNICATION PROCESS.....	21

- 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. References.
  - A. [CPL 02-00-064](#), Implementation of a Construction Fatality Information Dissemination System, June 5, 1985.
  - B. [CPL 02-00-164](#), Field Operations Manual (FOM), April 14, 2020.
  - C. [TED 01-00-019](#), Initial Training Program for OSHA Compliance Personnel, July 21, 2014.
  - D. OTI Webinar #0032: Best Practices for Interacting with Victim’s Families, September 27, 2010.
- IV. Cancellations.  
CPL 02-00-153, Communicating OSHA Fatality Inspection Procedures to a Victim’s Family, April 17, 2012.
- 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 incidents throughout the investigation of the incident and settlement process. State Plans are strongly encouraged, but not required, to adopt this Instruction and should utilize it in an “at least as effective” manner to communicate with the victim’s family members. Within 60 days of the effective date of this directive, a State Plan must submit a notice of intent indicating whether they already have similar policies and procedures in place, intend to adopt new policies and procedures, or do not intend to adopt this instruction. If a State Plan does not adopt at first, but at some later point decides to adopt this instruction or an at least as effective version of this instruction, the State Plan must notify OSHA of this change in intent. Within 60 days of adoption, the State Plan must provide an electronic copy of the policy or link to where their policy is posted on the State Plan’s website. The State Plan must also provide the date of adoption and identify differences, if any, between their policy and OSHA’s. OSHA will provide summary information on the State Plan responses to this instruction on its [website](#).
- VI. Background.  
OSHA places a high priority on fatality inspections, which demand a high degree of sensitivity and investigative accuracy. Historically, OSHA has communicated with surviving family members both to express sympathy and to gather information about the deceased. This instruction guides the communication with next of kin to ensure they are treated with the utmost respect.
- VII. Definitions.

- A. Fatality. A worker death resulting from a work-related incident or exposure; in general, from an incident 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 exists; 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 01-00-019, 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 next of kin after a workplace fatality. Care must be taken to ensure sensitivity and tact are exercised during all communications. Interactions with 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 ensures that OSHA receives the necessary information about the victim, job history, co-workers, and keeps next of kin informed at each phase of the fatality investigation 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 documented in the case file activity diary sheet. If the victim’s next of kin declines to speak with OSHA, their decision shall be respected and documented in the case file activity diary sheet. Additionally, the OSHA representative should ensure that all procedures are followed, as per [CPL 02-00-164, FOM, Chapter 11, Section G, Family of Victims](#). The OSHA representative should provide the next of kin the 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. All communications, written or oral, with the next of kin should be fully documented in the case file activity diary sheet.

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 next of kin via telephone prior to the initial notification letter being mailed. After the initial communication, OSHA shall 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. If an

initial communication is not made, explain the rationale in the case file activity diary sheet.

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 incident.
  - 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 a citation with a penalty to the employer and may make a criminal referral to the United States Department of Justice. OSHA does not issue citations or penalty 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 the inspection is closed. 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 an 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 contacts 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. Medical Examiner and/or 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's condolence letter (Appendix A) will be sent within five working days after contact with the next of kin, as per [CPL 02-00-164, FOM, Chapter 11, Section G, Family of Victims](#). In addition to the Area Director's 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 using [next of kin letter mailbox](#). (zzoshanok@dol.gov) In addition to the letter, there should be (1) a detailed explanation of the events leading to the fatality, (2) name of the company, (3) the inspection number, and (4) a sufficient address for the next of kin. Where there are discrepancies, erroneous and/or missing information, DEP contacts the appropriate Area Office 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 consider any special circumstance or a form letter should not be sent. If a letter is not sent, explain the rationale in the case file activity diary sheet.

6. Copies of all written communication with the next of kin, including the Area Director and Assistant Secretary's condolence letters, are maintained in the case file activity diary sheet.

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 next of kin with an opportunity to ask questions. However, OSHA must not divulge any privileged information (such as the names 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 as per [CPL 02-00-164, FOM Chapter 16, Disclosure Under the Freedom of Information Act](#). The form letter should be modified as necessary.
3. All oral communications are documented in the case file activity diary sheet.

NOTE: If the next of kin declines to participate in 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 they may inquire about the status of the case at a later date, if desired. The OSHA representative will fully document the next of kin's decision in the case file activity diary sheet.

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 may 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 with the next of kin. 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). The form letter should be modified as necessary.
- e. All communications will be in the documented case file activity diary sheet.

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 penalty adjustment 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. OSHA should explain the gravity of the violation is the primary consideration in determining penalty amounts and that the gravity-based penalty for each violation is determined by combining the severity of the injury and the probability of its occurrence. Additionally, OSHA should clarify penalty adjustment factors for history, good faith, quick fix, and size. Furthermore, OSHA should explain penalties may be reduced to secure prompt correction of hazards.

- 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. The form letter should be modified as necessary.
  - b. OSHA will explain that the releasable portions of the case file will not be made available to the next of kin until the inspection is closed. 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 documented in the case file activity diary sheet.
3. Upon receipt of a final order, a signed informal settlement agreement, or a formal settlement agreement, OSHA will 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). The form letter should be modified as necessary.
- b. All communications with the next of kin should be documented in the case file activity diary sheet.

**APPENDIX A**

**AREA DIRECTOR'S CONDOLENCE LETTER**

Victim's family member first and last name  
Street Address  
City, State Zip Code

Dear [**First and Last Name**]:

Please accept my heartfelt condolences on the tragic death of [**victim's name**].

The Occupational Safety and Health Administration (OSHA) is investigating the circumstances surrounding the death of [**victim's name**]. The investigation may take up to six months. We will share the results of our findings, when our investigation is complete.

Enclosed is some information about OSHA fatality inspections. If you believe you, another family member, or friend may have information to assist in our investigation, 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 my 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 [ww.osha.gov](http://www.osha.gov) under "Standards.")

Citations specify the location in the facility or on the work 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 alleged violations. Even if the employer disagrees with the findings, employers must post a copy of each citation at or near the place where the alleged violation occurred or where workers can see the citations 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.

OSHA proposes citations when a standard has been violated. The civil penalty amounts, if any, associated with citations are adjusted based on employer size, good faith on the part of the employer (those implementing the safety and health program), and inspection history. The maximum penalty amounts can be found at <https://www.osha.gov/penalties>.

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 United States 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. In some cases, penalties may be reduced when a company secures prompt correction of hazards and is able to provide documentation of actions aimed at securing sustainable improvements in order to protect other employees at the work site, and when a company is willing to evaluate and potentially implement these sustainable improvements at other locations. OSHA's primary concern remains prevention of injuries, illnesses, and deaths rather than collection of funds. (All penalty monies go directly to the United States Treasury; they are not part of OSHA's budget or credited to the agency.)

If an employer acknowledges the violations, agrees to pay the proposed penalties, and certify the hazard has been corrected 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 United States Court of Appeals, if dissatisfied with the OSHRC's decision.

When an employer willfully violates an OSHA standard and the alleged violation was the direct cause of, or a contributing factor to, an employee's death, OSHA may refer the case to the United States Department of Justice to seek criminal prosecution of the employer. These are difficult cases to prove; 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 United States 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 will provide you with the portions of the inspection file that may be released under the Freedom of Information Act (FOIA). 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 documents are 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'S CONDOLENCE LETTER

Mr./Ms./Mrs. First Name Last Name  
Street or Postal Address  
City, State ZIP Code

Dear Mr./Ms./Mrs. Last Name

Please accept my heartfelt condolences on the tragic death of your (describe relationship: husband, wife, child, etc.), First Name Last Name.

Please be assured OSHA is investigating the circumstances surrounding Mr./Ms./Mrs. Last Name's death. We realize that the results of this investigation are very important to you, so we will inform you of our findings as soon as the investigation is completed.

OSHA is committed to preventing injuries and illnesses on the job. Given our mission of assuring employers provide safe workplaces, we understand that each worker's death is a personal loss and tragedy.

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

Area Director  
Street Address  
City, State ZIP Code  
Phone: (XXX) XXX-XXXX  
Fax: (XXX) XXX-XXXX

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

Sincerely,

Assistant Secretary

APPENDIX C

**INSPECTION FINDINGS AND NEXT OF KIN CLOSURE LETTER – NO PROPOSED CITATION**

Victim’s family member first and last name  
Street Address  
City, State Zip Code

Dear [**First and Last Name**]:

I am writing to share with you the findings of the recent Occupational Safety and Health Administration (OSHA) inspection into the death of [**victim’s name**].

**[Insert one or two sentences on the workplace hazard(s) that may have contributed to the incident or death, if possible.]**

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 States Department of Justice for possible criminal prosecution. However, OSHA does not issue citations solely because there was a workplace fatality.

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

Despite the inspection indicating that the employer did not violate safety and health standards, we know that this offers little comfort to you for 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 Code

Telephone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_@dol.gov



The Freedom of Information Act (FOIA) governs the release of information concerning incident inspections conducted by OSHA. Upon written request, OSHA will provide you with the portions of the inspection file that may be released under FOIA.

Sincerely,

Area Director

**APPENDIX D**

**INSPECTION FINDINGS LETTER – PROPOSED CITATION(S)**

Victim’s family member first and last name  
Street Address  
City, State Zip Code

Dear [**First and Last Name**]:

I am writing to share with you the findings of the recent Occupational Safety and Health Administration (OSHA) inspection into the death of [**victim’s name**]

**[Insert one or two sentences on the workplace hazard(s) that may have contributed to the incident or death, if possible.]**

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 [**victim’s name**]’s death.

I would like to emphasize that, under the Occupational Safety and Health Act, civil penalties that OSHA proposes are not based on the occurrence of a fatality. Instead, the gravity of the violation is the primary consideration in determining penalty amounts. The penalty for each violation is determined by combining the severity of injury and the probability of occurrence. In some cases, penalties may be reduced from the maximum allowable by law based on the company’s size and history of previous violations. Enclosed is a brief fact sheet that further explains OSHA’s citation and penalty.

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 Code

Telephone: \_\_\_\_\_  
E-Mail: \_\_\_\_\_@dol.gov

The Freedom of Information Act (FOIA) governs the release of information concerning incident inspections conducted by OSHA. Upon written request, OSHA will provide you with the portions of the inspection file that may be released under FOIA.

Sincerely,

Area Director

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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](http://www.osha.gov) under "Standards.")

Citations specify the location in the facility or on the work 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 alleged violations. Even if the employer disagrees with the findings, employers must post a copy of each citation at or near the place where the alleged violation occurred or where workers can see the citations 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.

OSHA proposes citations when a standard has been violated. The civil penalty amounts, if any, associated with citations are adjusted based on the employer size, good faith on the part of the employer (those implementing the safety and health program), and inspection history. The maximum penalty amounts can be found at <https://www.osha.gov/penalties>.

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 United States 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. In some cases, penalties may be reduced when a company secures prompt correction of hazards and is able to provide documentation of actions aimed at securing sustainable improvements in order to protect other employees at the work site, and when a company is willing to evaluate and potentially implement these sustainable improvements at other locations. OSHA's primary concern remains prevention of injuries, illnesses, and deaths rather than collection of funds. (All penalty monies go directly to the United States Treasury; they are not part of OSHA's budget or credited to the agency.)

If an employer acknowledges the violations, agrees to pay the proposed penalties, and certify the hazard has been corrected 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 United States Court of Appeals, if dissatisfied with the OSHRC's decision.

When an employer willfully violates an OSHA standard and the alleged violation was the direct cause of, or a contributing factor to, an employee's death, OSHA may refer the case to the United States Department of Justice to seek criminal prosecution of the employer. These are difficult cases to prove; 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 United States 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 will provide you with the portions of the inspection file that may be released under the Freedom of Information Act (FOIA). 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 documents are 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 CITATION(S)

Victim's family member first and last name  
Street Address  
City, State Zip Code

Dear **First and Last Name**:

I am writing to share with you the post-inspection and abatement results of the Occupational Safety and Health Administration (OSHA) inspection into the death of [victim's name], and to inform you that the case has been closed as of [insert final order date].

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

I 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 is the primary consideration in determining penalty amounts. The penalty for each violation is determined by combining the severity of the injury and the probability of its occurrence. In some case, penalties may be reduced from the maximum allowable by law based on the company's size and history of previous violations.

The Freedom of Information Act (FOIA) governs the release of information concerning incident inspections conducted by OSHA. Upon written request, OSHA will provide you with the portions of the inspection file that may be released under FOIA.

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

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

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**

<b>PHASES</b>	<b>STAGES</b>	<b>ACTIONS</b>
<b>INITIAL COMMUNICATION</b>	<b>After incident and within 5 workdays of opening conference</b>	<b>Area Director Condolence Letter Appendix A</b>
		<b>Assistant Secretary Condolence Letter Appendix B</b>
<b>FOLLOW-UP COMMUNICATIONS</b>	<b>Throughout inspection</b>	<b>Periodic exchange of information with next of kin</b>
	<b>No proposed citation</b>	
	<b>Citation(s) proposed</b>	
<b>POST-INSPECTION COMMUNICATIONS</b>	<b>Communicate inspection findings with next of kin</b>	
	<b>No proposed citation</b>	<b>Inspection Findings &amp; Next of Kin Closure Letter – No Proposed Citation Appendix C</b>
	<b>Confirmation of receipt of citation(s)</b>	<b>Inspection Findings Letter – Proposed Citation(s) Appendix D</b>
	<b>Case becomes final order</b>	<b>Next of Kin Closure Letter – Proposed Citation(s) Appendix E</b>