



DIRECTIVE NUMBER: CPL 02-00-137

EFFECTIVE DATE: April 14, 2005

SUBJECT: Fatality/Catastrophe Investigation Procedures

ABSTRACT

- Purpose:** This instruction provides comprehensive guidance for the conduct of fatality and catastrophe investigations and subsequent enforcement activities.
- Scope:** This instruction applies OSHA-wide.
- References:** See paragraph III.
- Cancellations:** OSHA Instruction CPL 02-00-113 (2.113), Fatality Inspection Procedures. Memorandum dated March 12, 2003 from Deputy Assistant Secretary R. Davis Layne regarding letters to victims' families related to fatalities.
- State Plan Impact:** State adoption not required; see paragraph V.
- Action Office:** National, Regional and Area Offices.
- Originating Office:** Directorate of Enforcement Programs.
- Contact:** Directorate of Enforcement Programs
200 Constitution Avenue, NW, Room N3112
Washington, DC 20210
(202) 693-1850

By and Under the Authority of

Jonathan L. Snare
Acting Assistant Secretary

Executive Summary

This instruction provides guidance for conducting fatality/catastrophe investigations. It defines key terms and identifies appropriate training for OSHA personnel who investigate such incidents. This instruction outlines a procedure for interviewing witnesses, and provides guidance on the appropriate course of action when dealing with the family members of victims. It addresses documenting, recording and tracking fatality/catastrophe investigations, as well as pre-citation, post-citation, and audit procedures. This instruction emphasizes the importance of a fatality/catastrophe investigation because of its complexity and its value for assisting the Agency in building a database which can be of use in preventing future fatalities and catastrophes. Furthermore, fatality investigations are of particular importance because of the potential for criminal referral by OSHA/DOL to the Department of Justice. The relationship between fatality/catastrophe investigations and other OSHA programs and activities is addressed, as are potential jurisdictional issues.

Significant Changes

- Appropriate training for OSHA personnel conducting fatality/catastrophe investigations is identified.
- Specific witness interview procedures are presented.
- Additional information on recording fatality-related data and tracking fatality/catastrophe investigations is provided.
- Provisions regarding fatality/catastrophe investigations and the relationship between such an investigation and other OSHA programs and activities have been added.
- Areas where there are questions about OSHA's jurisdiction are addressed.

TABLE OF CONTENTS

I.	PURPOSE.....	1
II.	SCOPE	1
III.	REFERENCES.	1
IV.	CANCELLATIONS.	2
V.	STATE PLAN IMPACT.....	2
VI.	BACKGROUND	3
VII.	DEFINITIONS.....	3
	<i>A.Fatality</i>	3
	<i>B.Catastrophe</i>	3
	<i>C.Hospitalization</i>	3
	<i>D.Incident of national significance</i>	3
VIII.	TRAINING.	3
	<i>A.Initial Compliance Course (1000)</i>	4
	<i>B.Basic Accident Investigation (1020)</i>	4
	<i>C.Inspection Techniques and Legal Aspects (1410)</i>	4
	<i>D.Advanced Accident Investigation (2020)</i>	4
	<i>E.Criminal Investigation Training Program (3420)</i>	4
IX.	INITIAL REPORT.....	4
X.	FATALITY/CATASTROPHE INVESTIGATIONS.	4
XI.	INTERVIEW PROCEDURES.	5
XII.	INVESTIGATION DOCUMENTATION.....	6
XIII.	POTENTIAL CRIMINAL VIOLATIONS.....	6

XIV.	FAMILIES OF VICTIMS.....	7
XV.	PUBLIC INFORMATION POLICY	8
XVI.	RECORDING AND TRACKING.....	8
	A.Fatality/Catastrophe Report Form (OSHA-36).....	8
	B.Investigation Summary Report (OSHA-170)	9
	C.Immigrant Language Questionnaire (IMMLANG)	10
	D.Related Event Code (REC).	10
XVII.	PRE-CITATION REVIEW.....	10
XVIII.	POST-CITATION PROCEDURES.....	11
	A.Informal Settlement Agreements	11
	B.Formal Settlement Agreements.....	11
	C.Abatement Verification.....	11
XIX.	AUDIT PROCEDURES	12
XX.	RELATIONSHIP TO OTHER PROGRAMS AND ACTIVITIES.....	12
	A.Rescue Operations	12
	B.OSHA’s Response to Significant Events of Potentially Catastrophic Consequences	12
	C.Homeland Security.....	13
	D.Enhanced Enforcement Program	13
	E. Significant Enforcement Cases	13
	F. Special Emphasis Programs.....	13
	G.Cooperative Programs.....	13
XXI.	JURISDICTIONAL ISSUES.....	14
	A.Heart Attack.	14
	B. Workplace Violence.....	14
	C.Motor Vehicle Accidents.	14

APPENDIX A	A-1
APPENDIX B	B-1
APPENDIX C	C-1
APPENDIX D	D-1

- I. Purpose. This instruction provides comprehensive guidance for the conduct of fatality and catastrophe investigations and subsequent enforcement activities.
- II. Scope. This instruction applies OSHA-wide.
- III. References.
 - A. [OSHA Instruction CPL 02-00-103 \(2.103\)](#), Field Inspection Reference Manual (FIRM).
 - B. [OSHA Instruction CPL 02-00-114 \(2-0.114\)](#), Abatement Verification Regulations, 29 CFR 1903.19 – Enforcement Policies and Procedures.
 - C. [OSHA Instruction CPL 02-00-080 \(2.80\)](#), Handling of Cases to be Proposed for Violation-by-Violation Penalties.
 - D. [OSHA Instruction CPL 02-00-094 \(2.94\)](#), OSHA Response to Significant Events of Potentially Catastrophic Consequences.
 - E. [OSHA Instruction HSO 01-00-001](#), National Emergency Management Plan (NEMP).
 - F. [OSHA Instruction IRT 01-00-007 \(ADM 1-1.31\)](#), The IMIS Enforcement Data Processing Manual for use with the NCR Computer System.
 - G. [OSHA Instruction CPL 02-00-098 \(2.98\)](#), Guidelines for Case File Documentation for use with Videotapes and Audiotapes.
 - H. [Reporting fatalities and multiple hospitalizations to OSHA](#), 29 CFR 1904.39.
 - I. [OSHA’s policy on employee rescue activities](#), 29 CFR 1903.14.
 - J. [Policy on Employee Rescue Efforts](#), *Federal Register*, December 27, 1994 (59 FR 66612-66613).
 - K. [Abatement Verification](#), 29 CFR 1903.19.
 - L. Memorandum dated September 30, 2003 to Regional Administrators from Deputy Assistant Secretary R. Davis Layne regarding [Interim Implementation of OSHA’s Enhanced Enforcement Program \(EEP\)](#).
 - M. Memorandum dated March 24, 2004 to Regional Administrators from Deputy Assistant Secretary R. Davis Layne regarding [Procedures for Significant Enforcement Cases](#).
 - N. Memorandum dated December 16, 2003, to the Regional Administrators from Deputy Assistant Secretary R. Davis Layne regarding [IMMLANG Procedures](#).

- O. Memoranda dated September 12 and 13, 2000 to the Region Administrators from H. Berrien Zettler, Deputy Director, Directorate of Construction (via email) regarding transmittal of information on construction fatalities to the University of Tennessee.
- P. Memoranda dated May 14, 2003 and February 18, 2004 from Deputy Assistant Secretary R. Davis Layne regarding transmittal of information on construction fatalities to the University of Tennessee.

IV. Cancellations.

- A. OSHA Instruction CPL 02-00-113 (2.113), Fatality Inspection Procedures, dated April 1, 1996.
- B. Memorandum dated March 12, 2003 from Deputy Assistant Secretary R. Davis Layne regarding letters to victims' families related to fatalities.

- V. State Plan Impact. This instruction describes a Federal program change for which State adoption is not required. States are encouraged to adopt comparable procedures for fatality and catastrophe investigations, particularly with regard to: (1) training; (2) early determinations as to potential for criminal violations and appropriate case development; (3) contact with family members; and (4) pre-citation review.

Special provisions for State plans:

- A. IMIS Forms – States must submit all IMIS data relating to fatalities as discussed in this directive, with the following exceptions:
 - 1. States **are required** to complete the OSHA-170 (see paragraph XVI.B) **only for fatalities**, as this is OSHA's means of counting fatalities investigated.
 - 2. States are encouraged but not required to submit the IMMLANG questionnaire on the OSHA-170 abstract (see paragraph XVI.C).
- B. Notification of fatalities – States are required to follow procedures for completing the OSHA-36 form for all fatalities, and are asked to fax the form to the Office of State Programs as soon as possible after learning of an incident. States are also encouraged to notify their Regional Administrator in advance of issuing citations as a result of a fatality or catastrophe investigation.
- C. Rescue Operations – Neither Federal OSHA nor State plans have authority to direct rescue operations. However, unlike Federal OSHA, State Plan States have the authority to monitor and inspect the working conditions of State and local government employees engaged in rescue operations (see paragraph XX.A). In incidents of national significance, States are encouraged to provide initial technical assistance and consultation in coordinating the protection of response and recovery workers (see paragraph XX.C).

- VI. Background. This instruction provides comprehensive guidance for conducting fatality and catastrophe investigations and supplements guidance provided in the Field Inspection Reference Manual, CPL 02-00-103 (2.103). The Agency places a very high priority on fatality and catastrophe investigations, which demand a high degree of sensitivity and investigative accuracy. To the extent practical, only trained and experienced CSHOs will be assigned to investigate such incidents.

Fatality investigations are frequently complex because OSHA personnel typically must examine past events to determine whether violations occurred. Moreover, the potentially criminal nature of violations resulting in the death of an employee necessitates that investigations surrounding such incidents be complete and thoroughly documented. Emphasis is, therefore, placed on the importance of interviewing first responders, emergency medical personnel, and employees/witnesses with first-hand knowledge of the events surrounding the incident early in the investigation.

Additionally, due to the regrettable nature of these cases, care must be taken to ensure that appropriate tact is exercised during the course of an investigation and in subsequent communications with affected persons.

Because of the importance of coordination between all levels of the Agency in fatality and catastrophe cases, the Instruction provides a mechanism to ensure that Area Directors inform Regional Administrators of all proposed actions regarding fatality/catastrophe investigations, and sets forth guidance for advising the National Office of significant fatality investigations and cases appropriate for potential criminal prosecution.

VII. Definitions.

- A. *Fatality.* An employee death resulting from a work-related incident or exposure; in general, from an accident or an illness caused by or related to a workplace hazard.
- B. *Catastrophe.* The hospitalization of three or more employees resulting from a work-related incident or exposure; in general, from an accident or an illness caused by a workplace hazard.
- C. *Hospitalization.* Being admitted as an **in-patient** to a hospital or equivalent medical facility for examination, observation or treatment.
- D. *Incident of national significance.* An incident involving multiple fatalities, extensive injuries, massive toxic exposures, extensive property damage, or one that presents potential worker injury and generates widespread media interest.

- VIII. Training. The OSHA Training Institute offers several classes relevant to investigating fatalities and catastrophes. OSHA personnel who may be involved in such investigations are encouraged to enroll in these classes and demonstrate proficiency in the relevant areas addressed. Each of these classes feature fatality case studies.

- A. *Initial Compliance Course (1000).*
- B. *Basic Accident Investigation (1020).*
- C. *Inspection Techniques and Legal Aspects (1410).*
- D. *Advanced Accident Investigation (2020).*
- E. *Criminal Investigation Training Program (3420).*

IX. Initial Report. The **Fatality/Catastrophe Report Form (OSHA-36)** is a pre-inspection form that must be completed for all fatalities or catastrophes unless knowledge of the event occurs during the course of an inspection at the establishment involved. The purpose of the OSHA-36 is to provide OSHA with enough information to determine whether or not to investigate the event. Please refer to Section XVI for detailed instructions on processing the OSHA-36 (see also Appendix A). If, after the initial report, the Area Office becomes aware of information that affects the decision to investigate, the OSHA-36 should be updated. If the additional information does not affect the decision to investigate, or the investigation has been initiated or completed, the OSHA-36 need not be updated. Subsequent to updating the OSHA-36 it should be re-submitted to the National Office. See XVI.B.2 for resubmission details.

X. Fatality/Catastrophe Investigations.

- A. All fatalities and catastrophes will be thoroughly investigated in an attempt to determine the cause of the event, whether a violation of OSHA safety and health standards or the general duty clause occurred, and any effect the violation had on the accident.
 1. The investigation should be initiated as soon as possible after receiving report of the incident, ideally within one working day, by an appropriately trained and experienced compliance officer assigned by the Area Director.
 2. The Area Director determines the scope of the fatality/catastrophe investigation. Complete all such investigations in an expeditious manner.
- B. OSHA encourages the use of videotaping as a method of documentation and gathering evidence. Inspections following fatalities or catastrophes should include videotaping when appropriate. Refer to OSHA Instruction CPL 02-00-098 (2.98), Guidelines for Case File Documentation for use with Videotapes and Audiotapes, for more information on electronic documentation.
- C. Under no circumstances should OSHA personnel conducting fatality/catastrophe investigations be unprotected against a hazard encountered during the course of an investigation. OSHA personnel must use appropriate personal protective equipment and take all necessary precautions to prevent occupational exposure to potential hazards that may be encountered.

XI. Interview Procedures.

A. Identify and interview all persons with first-hand knowledge of the incident, including first responders, police officers, medical responders, and management, as early as possible in the investigation. Refer to the FIRM, Chapter II.A.4.e, Interviews, for additional guidance.

1. The sooner a witness is interviewed, the more accurate and candid the witness's statement will be.
2. If a union is actively involved in the inspection, it can serve as a valuable resource by assisting in identifying employees who might have information relevant to the investigation.
3. Conduct employee interviews privately, outside the presence of the employer. Employees are not required to inform their employer that they provided a statement to OSHA.
4. Properly document the contact information of all parties because follow-up interviews with a witness are sometimes necessary.
5. Reduce interviews to writing and have the witness sign the writing. Transcribe video and audio taped interviews and have the witness sign the transcription.
6. Read the statement to the witness and attempt to obtain agreement. Note any witness refusal to sign or initial his or her statement.
7. Ask the interviewee to initial any changes or corrections made to his or her statement.

B. Informer's Privilege.

1. The informer's privilege allows the government to withhold the **identity** of individuals who provide information about the violation of laws, including OSHA rules and regulations.
2. The identity of witnesses will remain confidential to the extent possible. However, inform each witness that disclosure of his or her identity *may* be necessary in connection with enforcement or court actions.
3. The informer's privilege also protects the contents of statements to the extent that disclosure would reveal the witness's identity. When the contents of a statement will not disclose the identity of the informant (i.e., statements that do not reveal the witness's job title, work area, job duties, or other information that would tend to reveal the individual's identity), the privilege does not apply and such statements may be released.

4. Inform witnesses that his or her interview statements may be released if he or she authorizes such a release or if he or she voluntarily discloses the statement to others, resulting in a waiver of the privilege.
- C. Inform witnesses in a tactful and non-threatening manner that making a false statement to a CSHO during the course of an investigation could be a criminal offense.
- XII. Investigation Documentation. Document all fatality and catastrophe investigations in accordance with the guidance provided in the FIRM or successor guidance. (Refer to Appendix B for a list of potentially applicable items to be documented.)
- XIII. Potential Criminal Violations.
- A. Section 17(e) of the OSH Act provides criminal penalties for an employer who is convicted of having willfully violated an OSHA standard, rule or order when the violation results in the death of an employee. However, section 17(e) does not apply to violations of the general duty clause. When there are violations of an OSHA standard, rule or order, or a violation of the general duty clause, criminal provisions relating to false statements and obstruction of justice may also be relevant.
- B. The circumstances surrounding all occupationally-related fatalities will be evaluated to determine whether the fatality was caused by a willful violation of a standard, thus creating the basis for a possible criminal referral. The evidence obtained during a fatality investigation is of paramount importance and must be carefully gathered and considered.
- C. Early in the investigation, the Area Director, in consultation with the investigator, should make an initial determination as to whether there is potential for a criminal violation. Refer to Chapter III.C.2.e, Criminal/Willful Violations, for additional information. The decision will be based on consideration of the following:
1. A fatality has occurred.
 2. There is evidence that an OSHA standard has been violated and that the violation contributed to the death.
 3. There is reason to believe that the employer was aware of the requirements of the standard and knew that he was in violation of the standard, or that the employer was plainly indifferent to employee safety.
- If the Regional Administrator agrees with the Area Director's assessment of the case, the Regional Administrator will notify the Regional Solicitor.
- D. At the discretion of the Regional Administrator and the Area Director, and dependent upon Regional procedures in place, a Regional team or trained criminal investigator may assist in or perform portions of an investigation, as appropriate.

- E. In addition to criminal prosecution under Section 17(e) of the OSH Act, employers may potentially face prosecution under a number of other sections of the United States Code, including, but not limited to:
- Crimes and Criminal Procedures, for actions such as conspiracy, making false statements, fraud, obstruction of justice, and destruction, alteration or falsification of records during a federal investigation
 - The Clean Water Act
 - The Clean Air Act
 - The Resource Recovery and Conservation Act (RCRA)
 - The Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA)
- F. When a case is forwarded from the Regional Office to the Regional Solicitor for criminal review, use the format in Appendix C to advise the Director of Enforcement Programs at (202) 693-2100 (or, when appropriate, the Director of Construction Programs).
- G. Using the format in Appendix C, provide follow-up reports to indicate any subsequent actions.

XIV. Families of Victims.

- A. Whenever practical, contact family members of employees involved in fatal or catastrophic occupational accidents or illnesses at an early point in the investigation and give the family an opportunity to discuss the circumstances of the accident or illness. OSHA staff who contact family members must exercise special tact and good judgment.
- B. The standard information letter will normally be sent to the individual(s) listed as the emergency contact on the victim's employment records (if available) and/or the otherwise determined next of kin within 5 working days of determining the victim's identity and verifying the proper address where communications should be sent (see Appendix D).

NOTE: In some circumstances, it may not be appropriate to follow these procedures to the letter; i.e., in the case of a small business, the owner or supervisor may be a relative of the victim. Modify the form letter to take any special circumstances into account or do not send the letter, as appropriate.

- C. In addition to the standard information letter sent by the Area Director, the Assistant Secretary also sends a letter to victim's emergency contact or otherwise

verifiable next of kin.

- D. When taking a statement from families of the victim(s), explain that the interview will be handled following the same procedures as those in effect for witness interviews. Great sensitivity and professionalism are required for such an interview. Carefully evaluate the information received and attempt to corroborate it during the investigation.
 - E. Maintain follow-up contact with key family members or other contact persons so that these parties can be kept up-to-date on the status of the investigation. Provide family members or their legal representatives with a copy of all citations, subsequent settlement agreements or Review Commission decisions as these are issued, or as soon thereafter as possible.
 - F. The releasable portions of the case file will not be made available to family members until after the contest period has passed and no contest has been filed. If a contest is filed, the case file will not be made available until after the litigation is complete. Additionally, if a criminal referral is under consideration or has been made, the case file cannot be released to the family. Notify the family of these policies and inform the family that it is necessary so that potential litigation is not compromised.
- XV. Public Information Policy. The OSHA public information policy regarding response to fatalities and catastrophes is to explain Federal presence to the news media. It is not to issue periodic updates on the progress of the investigation. The Area Director and his/her designee will normally handle responses to media inquiries.
- XVI. Recording and Tracking.
- A. **Fatality/Catastrophe Report Form (OSHA-36).** The OSHA-36 is a pre-inspection form that must be completed for all fatalities and catastrophes unless knowledge of the event occurs during the course of an inspection at the establishment involved. Processing of the OSHA-36 shall be as follows:
 1. The Area Office shall complete and enter into IMIS an OSHA-36 for all fatalities and catastrophes as soon as possible after learning of the event. As much information as is known at the time of the initial report should be provided; however, all items on the OSHA-36 need not be completed at the time of this initial report. The essential items are included in Appendix A.
 2. If additional information relating to the event becomes available that affects the decision to investigate, the OSHA-36 should be updated and re-submitted via fax to the National Office.
 3. The Regional Office or Area Office must fax an OSHA-36 for each event that will be investigated to the Director of Enforcement Programs at (202) 693-1861 within 48 hours of receipt.

4. In addition, the Regional Administrator shall telephone the Deputy Director of Enforcement Programs at (202) 693-2100 to ensure prompt notification of the National Office of major events, such as those likely to generate significant public or congressional interest.

B. Investigation Summary Report (OSHA-170). The OSHA-170 is used to summarize the results of investigations of all events that involve fatalities, catastrophes, amputations, hospitalizations of two or more days, have generated significant publicity, and/or have resulted in significant property damage. An OSHA-170 must be opened and logged into IMIS **at the beginning** of the fatality or catastrophe investigation. The information on this form enables the Agency to track fatalities and summarizes the circumstances surrounding the event.

NOTE: The two day hospitalization criterion is an arbitrary cutoff to preclude completing an OSHA-170 for events that may not be serious. There is no relationship between this criterion and the Field Inspection Reference Manual definitions of hospitalizations.

1. For fatality/catastrophe investigations, the OSHA-170 shall be:
 - Opened in IMIS at the beginning of the investigation, even if most of the data fields are left blank, so that that Agency can track fatality/catastrophe investigations in a close to “real time” fashion.
 - Updated with all data fields completely and accurately completed at the conclusion of the investigation, including a thorough narrative description of the incident.
2. The OSHA-170 narrative should not be a copy of the summary provided on the OSHA-36 pre-inspection form. The OSHA-170 narrative must comprehensively describe the characteristics of the worksite; the employer and its relationship with other employers, if relevant; the employee task/activity being performed; the related equipment used; and other pertinent information in enough detail to provide a third party reader of the narrative with a mental picture of the fatal incident and the factual circumstances surrounding the event.
3. Only one OSHA-170 should be submitted for an event, regardless of how many inspections ensue. If a subsequent event occurs during the course of an inspection, a new OSHA-170 for that event should be submitted.

EXAMPLE: A fatality occurs in employer’s facility in August. Both a safety inspection and a health inspection result from that fatality. One OSHA-170 should be filed to summarize the results of the inspections that resulted from the August fatality. However, in September, while employer’s facility is still undergoing the inspections, a second fatality occurs. In this case, a *second*

OSHA-170 should be submitted for the second fatality and an additional inspection should be opened.

- C. **Immigrant Language Questionnaire (IMMLANG).** The [IMMLANG questionnaire](#) is designed to allow the Agency to track fatalities among Hispanic and immigrant workers and to assess the impact of potential language barriers and training deficiencies on fatal accidents.
1. The IMMLANG Questionnaire shall be completed before the conclusion of a fatality investigation according to the procedures outlined in the December 16, 2003 Memorandum from Deputy Assistant Secretary R. Davis Layne to the Regional Administrators.
 2. The IMMLANG Questionnaire should be completed only if “IMMLANG-Y” is indicated on the OSHA-1 (N-10 Optional Information Code). The Questionnaire is not to be completed if “IMMLANG-N” is indicated on the OSHA-1.
 3. The IMMLANG Questionnaire shall be submitted via the internet. A copy of the completed questionnaire should be printed and placed in the case file.
- D. **Related Event Code (REC).** The OSHA-1B provides specific supplemental information documenting hazards and violations. If any item cited is directly related to the occurrence of the fatality or catastrophe, the related event code “**A**” shall be entered in block 13. If multiple related event codes apply, the only code that has priority over relation to a fatality/catastrophe (“**A**”) is relation to an imminent danger (“**I**”).

XVII. Pre-citation Review.

- A. Because cases involving a fatality may result in civil or criminal enforcement actions, the Area Director is responsible for reviewing all fatality and catastrophe investigation case files to ensure that the case has been properly developed and documented in accordance with the procedures outlined in this instruction.
- B. The Area Director is also responsible for ensuring that an OSHA-170 for each incident is reported to IMIS (see XVI.B).
- C. Conduct that review of any proposed violation-by-violation penalties in accordance with CPL 02-00-080 (2.80).
- D. Carry out the review of citations covered by Regional OSHA/SOL workload in accordance with those agreements.
- E. Each Regional Administrator should establish a procedure to ensure that each fatality or catastrophe is thoroughly investigated and processed in accordance with established policy.

XVIII. Post-citation Procedures.

- A. **Informal Settlement Agreements.** Area Directors are authorized to enter into Informal Settlement Agreements on fatality and catastrophe cases in accordance with the guidance provided in the FIRM, Chapter IV.D.4.a-c, Settlement of Cases by Area Directors, and any Regional Instructions that govern the conduct of Informal Conferences.
- B. **Formal Settlement Agreements.** Following the filing of a notice of contest, the Area Director should refer the case to the Regional Solicitor's Office in accordance with both the procedures established by the Regional OSHA/SOL Workload Agreements and with the FIRM, Chapter IV.D.4.
- C. **Abatement Verification.** The regulation governing abatement verification is found at 29 CFR 1903.19, and OSHA's enforcement policies and procedures for this regulation are outlined in CPL 02-00-114 (2-0.114).
1. Due to the transient nature of many of the worksites where fatalities occur and because the worksite may be destroyed by the catastrophic event, it is frequently impossible to conduct follow-up inspections. In such cases, the Area Director should obtain abatement verification from the employer, along with an assurance that appropriate safety and health programs have been implemented to prevent the hazard(s) from recurring.
 2. While site closure due to the completion of the cited project is an acceptable method of abatement, it can only be accepted as abatement without certification where a CSHO directly verifies that closure; otherwise, certification by the employer is required. Follow-up inspections need not be conducted if the CSHO has verified abatement during the inspection or if the employer has provided other proof of abatement.
 3. Where the worksite continues to exist, OSHA will normally conduct a follow-up inspection if serious citations have been issued.
 4. Include abatement language and safety and health program implementation language in any subsequent settlement agreement.
 5. If there is a violation that requires abatement verification according to CPL 02-00-114 (2-0.114), field 22 on the OSHA-1B shall be completed with the date abatement was verified.
 6. If the case is an Enhanced Enforcement Program (EEP) case, follow-up inspections will be conducted in accordance with paragraph A of the September 30, 2003 memorandum to Regional Administrators from R. Davis Layne (regarding implementation of the EEP) or superseding guidance. Follow-up inspections will normally be conducted even if abatement of cited violations has been verified through abatement verification.

XIX. Audit Procedures. The following procedures will be implemented to evaluate compliance with and the effectiveness of this directive:

- A. In accordance with this instruction, the Regional Offices will incorporate the review and analysis of fatality/catastrophe files into their audit functions and include their findings in the regular audit reports to the National Office. The review and analysis will utilize random case file reviews to address the following:
1. Inspection Findings. Ensure that hazards have been appropriately addressed and violations have been properly classified. Also ensure that criminal referrals are made when appropriate.
 2. Documentation. Ensure that the OSHA-170 narrative and data fields and the OSHA-1B narrative have been completed accurately and in sufficient detail to allow for analysis at the national level of the circumstances of fatal incidents. Ensure that the IMMLANG Questionnaire is completed, if relevant.
 3. Construction Fatalities. Ensure that the case file has been copied and forwarded to the University of Tennessee in accordance with the memoranda to the Region Administrators from H. Berrien Zettler, Deputy Director, Directorate of Construction, dated September 12 and 13, 2000 (via email) and from Deputy assistant Secretary R. Davis Layne dated May 14, 2003 and February 18, 2004.
 4. Settlement Terms. Ensure that settlement terms are appropriate, including violation reclassification, penalty reductions, and additional abatement language.
 5. Abatement Verification. Ensure that abatement verification has been obtained.
- B. Review IMIS reports to identify any trends or cases that may indicate that a further review of those cases may be necessary.

XX. Relationship to Other Programs and Activities.

- A. **Rescue Operations.** OSHA has no authority to direct rescue operations. Such operations are the responsibility of the employer and/or local political subdivisions or state agencies. OSHA does have the authority to monitor and inspect working conditions of covered employees engaged in rescue operations to ensure that all necessary procedures are in place to protect the lives of the rescuers, and to provide technical assistance where appropriate. See 29 CFR 1903.14, OSHA's Policy on Rescue Activities; see also Interpretive Rule, Policy on Employee Rescue Efforts, dated December 27, 1994.
- B. **OSHA's Response to Significant Events of Potentially Catastrophic Consequences.** A catastrophic event is defined in CPL 02-00-094 (2.94) as an occupationally related incident involving multiple fatalities, extensive injuries,

massive toxic exposures, extensive property damage, or one which presents potential worker injury and generates widespread media interest. As such, a fatality/catastrophe investigation may well overlap with a significant event of potentially catastrophic consequences. When such an incident does occur, follow the procedures outlined in CPL 02-00-094 (2.94) for responding to the significant event, while also following, to the extent possible, the instructions in this directive for conducting fatality/catastrophe investigations.

- C. **Homeland Security.** OSHA's National Emergency Management Plan (NEMP), as contained in Instruction HSO 01-00-001, clarifies the procedures and policies for OSHA's National Office and Regional Offices during responses to incidents of national significance. Generally, OSHA will provide technical assistance and consultation in coordinating the protection of response worker and recovery worker safety and health. When the President makes an emergency declaration under the Stafford Act, the National Response Plan (NRP) is activated. The NEMP can then be activated by the Assistant Secretary, the Deputy Assistant Secretary, or by request from a Regional Administrator. Whether OSHA will conduct a formal fatality or catastrophe investigation in such a situation will be determined on a case-by-case basis.
- D. **Enhanced Enforcement Program.** Any fatality investigation in which OSHA finds a high gravity serious, willful, or repeated violation related to the death is considered an Enhanced Enforcement Program Case. In such a case, the instructions outlined in the Interim Implementation of OSHA's Enhanced Enforcement memorandum of September 30, 2003 (or superseding instruction) shall be followed closely to ensure that the proper measures are taken regarding classification, coding and treatment of the case.
- E. **Significant Enforcement Cases.** Significant enforcement cases are defined as inspection cases, including Federal Agency cases, with initial proposed penalties over \$100,000. An inspection resulting from a worker fatality or a workplace catastrophe may well be a significant enforcement case and, therefore, thorough documentation is necessary, because all significant enforcement cases must be adequately documented to sustain legal sufficiency. In the case of such an action involving a fatality or catastrophe, the procedures outlined in the March 24, 2004 memorandum from Deputy Assistant Secretary R. Davis Layne to the Regional Administrators regarding Procedures for Significant Enforcement Cases (or superceding instruction) should be closely followed.
- F. **Special Emphasis Programs.** If a fatality or catastrophe investigation arises with respect to an establishment that is also in the current inspection cycle to receive a programmed inspection under any Site Specific Targeting program, the investigation and the inspection may be conducted either concurrently or separately.
- G. **Cooperative Programs.** If the fatality or catastrophe occurred at a Voluntary Protection Program (VPP) or OSHA Strategic Partnership Program (OSPP) site,

the Regional VPP Manager or OSPP Coordinator, as well as the Director of the Directorate of Cooperative and State Programs, should be notified. When enforcement activity has concluded, the Regional VPP Manager or OSPP Coordinator should be informed so that the site can be reviewed for program issues.

XXI. Jurisdictional Issues.

A. **Death by Natural Causes.**

According to 29 CFR 1904.39(b)(5), workplace fatalities caused by natural causes must be reported by the employer and the local OSHA Area Office Director will decide whether to investigate the incident, depending on the circumstances.

B. **Workplace Violence.**

As with heart attacks, fatalities caused by incidents of workplace violence must be reported by the employer. The local Area Director will determine whether or not the incident will be investigated.

C. **Motor Vehicle Accidents.**

OSHA does not have jurisdiction over motor vehicle accidents that occur on public roads or highways unless the accident occurs in a construction work zone. Although employers who are required to keep records must record vehicle accidents in their OSHA 300 Log of Work Related Injuries and Illnesses, OSHA does not investigate such accidents.

Appendix A

Completing the OSHA-36

Essential information to be provided:

- (1) Area Office Name – where report originated
- (2) Establishment Name
- (3) Event Address
- (4) Type of Business – include primary SIC and NAICS (if known)
- (5) Classification
- (6) Event Date
- (7) Event Time
- (8) Number of Fatalities
- (9) Number of Hospitalized Injuries
- (10) Number of Non-Hospitalized Injuries
- (11) Number Unaccounted For
- (12) Type of Event
- (13) Preliminary Description
- (14) Inspection Planned – Provide time when OSHA personnel are expected to arrive at the scene, if applicable.

Appendix B

Investigation Documentation

Where pertinent, investigation documentation may include:

A. Personal Data – Victim.

1. Name
2. Address
3. Telephone
4. Age
5. Sex
6. Job title
7. Date of employment
8. Time in position
9. Job being done at the time of the incident.
10. Training for job being performed at time of the incident
11. Employee deceased/injured
12. Nature of injury – fracture, amputation, etc.
13. Prognosis of injured employee

B. Incident Data.

1. How and why did the incident occur?
2. Physical layout
3. Sketches/drawings
4. Measurements
5. Video/audio/photos – identify sources
6. Was the accident work-related?

C. Equipment or Process Involved.

1. Equipment type
2. Manufacturer
3. Model
4. Manufacturer's instructions
5. Kind of process
6. Condition
7. Misuse
8. Maintenance program
9. Equipment inspection (logs, reports)
10. Warning devices (detectors)
11. Tasks performed
12. How often equipment is used
13. Energy sources and disconnecting means identified
14. Supervision or instruction provided to employees involved in accident

D. Witness Statements.

1. Public
2. Fellow employees
3. Management
4. Emergency responders
5. Medical Personnel

E. Safety and Health Management System.

1. Does employer have a safety and/or health management system?
2. Does the system address the type of hazard that resulted in the fatality/catastrophe?

F. Multi-Employer Work Site – describe the contractual relationship of the employer with the other employers involved with the work being performed at the worksite.

Appendix C

Notification of Referral for Potential Criminal Prosecution

Establishment name: _____

Inspection number: _____

Date referred to Regional Office: _____

Description of the possible criminal activity: _____

Standards involved: _____

Update Information:

Date of Report: _____

Date case declined for litigation: _____

Organization that declined litigation: _____

Reason for declining: _____

Date Regional Office referred case to Regional Solicitor: _____

Date Regional Solicitor referred to National Solicitor or US Attorney: _____

Date National Solicitor referred to DOJ: _____

Date Department of Justice assigned to USA: _____

Current status: _____

Appendix D

OSHA Fatality Investigations

The Occupational Safety and Health Administration (OSHA) investigates workplace fatalities and catastrophes resulting in the hospitalization of three or more workers. Employers must report these incidents to OSHA within eight hours.

OSHA inspects the worksites where these tragedies have occurred to determine whether a violation of OSHA safety and health standards related to the accident occurred and what effect the alleged violation had on the accident. 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 Department of Justice for possible criminal prosecution.

OSHA is unable to release full details on its inspection findings until the investigation is over, any resulting litigation is completed, and the case is closed. This process may take years. In an effort to keep the families of deceased workers apprised of developments during an investigation, OSHA sends them copies of citations, appeal letters, and the results of any informal settlements as soon as the document is issued.

Once any resulting legal actions are completed and OSHA is able to release the portions of the investigation file normally subject to release under the Freedom of Information Act, this information will be provided to family members, **without charge**, upon written or oral request.

Family Information 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 wanted you to know that the Occupational Safety and Health Administration (OSHA) is investigating the circumstances surrounding Mr./Ms. _____'s death. We will be in touch to let you know about our findings when our investigation is complete.

Enclosed is some information about OSHA fatality investigations. 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 investigation or any of the information enclosed, please contact me:

Area Director
USDOL/OSHA
Somewhere Street
Anywhere, State 12345

Telephone -----

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

Sincerely,

Area Director

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 an alleged violation occurred for three days or until the violation is abated, whichever is longer.

Citations identify required abatement dates 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. Other-than-serious violations may carry penalties or there may be no penalty proposed for these violations. Reductions in the amount of each proposed penalty can be made for small employers, good faith on the part of the employer and no previous history of violations.

Violations are classified as willful if OSHA has evidence that the employer intentionally and knowingly committed the violation. 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 problem within the past three years.

OSHA does not actually have the authority to levy fines. That authority is granted by law to the Occupational Safety and Health Review Commission (OSHRC). OSHRC is an administrative review board. It is completely separate from OSHA and the Department of Labor. Employers can contest alleged violations, proposed penalties or abatement dates before this board. If they decide to challenge any part of OSHA's findings, they must do so within 15 working days after the citations are issued. Employees may only challenge abatement dates.

Employers may also 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, which has the authority to levy fines. The employer pays the penalties and the case is closed. The employer

may also contest part and pay part, 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 Review Commission's decision.

When an employer is charged with willful violation of an OSHA standard and that alleged violation results in the death of an employee, OSHA may ask the Justice Department to seek criminal prosecution of the employer. This is a difficult case to prove; as such, 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.

Family Citation Letter

Dear _____:

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

[Insert one or two sentences on the cause of the accident or death if possible. For example, “OSHA’s investigation 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, although the civil penalties that OSHA imposes are based in part on the severity of the violations, they are in no way a measurement of the magnitude of the death that has occurred. 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. If you have any questions about our investigation or any of the information enclosed, please contact me:

Area Director
USDOL/OSHA
Somewhere Street
Anywhere, State 12345

Telephone _____

Although no amount of money or compensation can measure the loss you and your family have suffered, I would like to express to you my deepest sympathy. I hope the enclosed information will be useful to you.

Sincerely,

Area Director

Enclosures

Assistant Secretary Condolence Letter

Dear Mr./Ms./Mrs. Lastname:

Please accept my heartfelt condolences on the tragic death of your (describe relationship: husband, wife, child, etc.), victim Firstname Lastname. 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. Lastname's death. We realize that the results of this investigation are very important to you, so we will let you know about our findings as soon as the investigation 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 investigation. If you have any questions about the investigation (ref: OSHA Inspection No. #####), or any information you think might be helpful, please do not hesitate to contact Firstname Lastname, Area Director, at the following address:

USDOL/OSHA
Street Address
City, State ZIP
Phone: (XXX) XXX-XXX
Fax: (XXX) XXX-XXX

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