



# TOSHA INSTRUCTION

TENNESSEE DEPARTMENT OF LABOR &  
WORKFORCE DEVELOPMENT

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**DIRECTIVE NUMBER:** CPL-TN 02-00-166 | **EFFECTIVE DATE:** August 25, 2021

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**SUBJECT:** Communicating TOSHA 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 TOSHA-wide.

**References:** See paragraph III.

**Cancellations:** CPL 02-00-153, Communicating TOSHA Fatality Inspection Procedures to a Victim's Family, April 17, 2012.

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By and Under the Authority of

Wendylee Fisher  
Assistant Commissioner  
Tennessee OSHA

## **Executive Summary**

This Instruction outlines TOSHA'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 – Initial Condolence Letter.
- Updated Appendix B – Next of Kin, No Citations Letter.
- Updated Appendix C – Next of Kin Citations.
- Updated Appendix D – Next of Kin Informal Conference.
- Updated Appendix E – Next of Kin Contested.

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- I. Purpose.  
This Instruction provides guidance to ensure TOSHA communicates its fatality inspection procedures to the victim's family and facilitates the exchange of information throughout the entire inspection process.
- II. Scope.  
Tennessee OSHA
- III. References.
  - A. [CPL 02-00-064](#), Implementation of a Construction Fatality Information Dissemination System, June 5, 1985.
  - B. TOSHA Field Operations Manual (FOM), June 8, 2020.
  - C. [TED 01-00-019](#), Initial Training Program for TOSHA 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 TOSHA Fatality Inspection Procedures to a Victim's Family, April 17, 2012.
- V. Background.  
TOSHA places a high priority on fatality inspections, which demand a high degree of sensitivity and investigative accuracy. Historically, TOSHA 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.
- VI. 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.
- VII. Training.  
TOSHA compliance officers attend several OSHA Training Institute courses relevant to fatality inspections. TOSHA personnel involved in fatality inspections and in communicating with the next of kin must complete training in accordance with TED-TN 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.
- VIII. 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 TOSHA 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 Tennessee Occupational Safety and Health Review Commission.

NOTE: Where TOSHA 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 TOSHA, their decision shall be respected and documented in the case file activity diary sheet. Additionally, the TOSHA representative (typically the Area Supervisor) should ensure that all procedures are followed, as per the Field Operations Manual. The TOSHA 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 TOSHA 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, TOSHA should verify through interviews with the employer and/or local authorities, that the next of kin has been previously notified of the fatality. TOSHA should attempt to contact the next of kin via telephone prior to the initial notification letter being mailed. After the initial communication, TOSHA should attempt to contact the next of kin to request work-related information concerning the fatality and encourage the next of kin to contact TOSHA with any additional information. If an initial communication is not made, explain the rationale in the case file activity diary sheet.

1. The TOSHA representative should ensure the following is explained during the initial communication with the next of kin:
  - a. TOSHA inspects the worksite(s) where fatalities have occurred to determine whether a violation of TOSHA 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 TOSHA finds that the employer violated safety and health standards, the agency may issue a citation with a penalty to the employer.
  - d. TOSHA will explain that the releasable portions of the case file will not be made available to the next of kin until the inspection is completed.
  - e. Upon issuance of an TOSHA Review Commission final order, the next of kin will be afforded the opportunity to discuss the case with the Section Manager.
  - f. At any time during the inspection and throughout the inspection process, the next of kin may contact the local TOSHA office to inquire about the status of

the case or to ask questions.

2. TOSHA contacts the next of kin early in the inspection process. This gives the TOSHA 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, TOSHA must determine if it is the appropriate time to explain TOSHA's fatality inspection process. If it is not the appropriate time, TOSHA 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. TOSHA should explain the investigative process of the fatality inspection and ensure that the next of kin understands the role of TOSHA as noted in Paragraph (A)(1) above. TOSHA 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 TOSHA for inspection. Law enforcement and TOSHA inspections are conducted independently. TOSHA 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 TOSHA's inspection. In some cases, TOSHA will obtain information from the coroner as part of the inspection.

4. The initial condolence letter (Appendix A) should be sent within five working days after contact with the next of kin, as per the FOM.
5. The central office staff will prepare the TOSHA Administrator's condolence letter.

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, are maintained in the case file.

B. Follow-up Communications. Follow-up communications are vital to the exchange of information. These communications allow TOSHA to provide updates on the status of the inspection and provide next of kin with an opportunity to ask questions. However, TOSHA 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 TOSHA representative and the next of kin.
2. OSHA will explain various aspects of the inspection.
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 TOSHA 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 TOSHA representative should fully document the next of kin's decision in the case file activity diary sheet.

C. Post-Inspection Communications.

After the inspection, TOSHA will make every effort to contact the next of kin via letter to explain findings, address any questions, and give the family an opportunity to provide input.

1. No Proposed Citations.

If citations are not issued, the TOSHA representative should explain the findings of the inspection during the post-inspection communication with the next of kin. Additionally, the TOSHA 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 TOSHA 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 Public Records Act, as it pertains to TOSHA's inspection file.
- d. Within five days of closing the case, NOK No Citations letter should be sent to the next of kin (Appendix C). The form letter should be modified as necessary.
- e. All communications should be documented on the case file activity diary sheet.

2. Proposed Citations.

TOSHA will send a letter to the next of kin on the same day citations are sent to the employer. The letter to the next of kin will explain the alleged violation(s), proposed penalties, any penalty adjustment factors, violation classification, abatement requirements, settlement procedures, and Public Records Act requests, as it pertains to TOSHA's inspection. TOSHA should explain that communications between TOSHA and the next of kin will continue until the case becomes a final order of the TOSHA RC. Periodic communications with the next of kin should reflect a time agreed to between the TOSHA representative and the next of kin.

NOTE: TOSHA should emphasize that although civil penalties were proposed, penalties under the OSH Act are not based on the occurrence of a fatality. TOSHA 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, TOSHA should clarify penalty adjustment factors for history, good faith, quick fix, and size. Furthermore, TOSHA should explain penalties may be reduced to secure prompt correction of hazards.

- a. Upon confirmation that the employer received the citation(s), TOSHA should ensure that the inspection findings letter (Appendix D) with a copy of the citation(s), TOSHA Citations and Penalties fact sheet, and the TOSHA 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, TOSHA will inform the next of kin of the settlement and explain the outcome. Issues associated with the settlement agreement or TOSHA Review Commission 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, TOSHA should again make the next of kin aware of the Tennessee Open Records Act, as it pertains to TOSHA'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

### INITIAL CONDOLENCE LETTER

\${ThisLetterDate}

\${NOKfirstname} \${NOKlastname}  
\${NOKstreetaddress1} [#if NOKstreetaddress2 != 'UNKNOWN'],  
\${NOKstreetaddress2} [/#if]  
\${NOKcity}, \${NOKstate} \${NOKzip}

RE: \${establishmentname}

Dear \${NOKhonorific} \${NOKlastname}:

Please accept our sympathies for the loss your family has suffered in the death of your family member, \${Victimhonorific} \${VictimFirstName} \${VictimLastName}.

The Tennessee Occupational Safety and Health Administration (TOSHA) will investigate the circumstances surrounding the tragic event and the results will be made available to you. Please let us know if you would like to have a copy of the releasable portions of our investigative file. If violations of the TOSHA standards are documented during this investigation, citations and monetary penalties may be issued to the employer. Our office will notify you of our findings and any alleged violations or citations issued. The investigation process may take up to six months.

If you, or another family member, have questions about our ongoing investigation or information you would like to provide to our investigator, please contact:

\${TOSHAOfficeSupervisor}  
TDLWD – TOSHA  
\${TOSHAOfficeStreet}  
\${TOSHAOfficeCity}, TN \${TOSHAOfficeZIP}  
\${TOSHAOfficePhone}

If you wish to receive a copy of the final inspection report, please contact the TOSHA Manager of Standards and Procedures, at 1-800-249-8510.

Sincerely,

FIRSTNAME LASTNAME  
Administrator, Tennessee OSHA

## APPENDIX B

### NEXT OF KIN, NO CITATIONS

\${ThisLetterDate}

\${NOKfirstname} \${NOKlastname}  
\${NOKstreetaddress1} [#if NOKstreetaddress2 != 'UNKNOWN'],  
\${NOKstreetaddress2} [/#if]  
\${NOKcity}, \${NOKstate} \${NOKzip}

RE: \${establishmentname}

Dear \${NOKhonorific} \${NOKlastname}:

Please accept our sympathies for the loss your family has suffered in the death of your family member, \${Victimhonorific} \${VictimFirstName} \${VictimLastName}.

The Tennessee Occupational Safety and Health Administration (TOSHA) will investigate the circumstances surrounding the tragic event and the results will be made available to you. Please let us know if you would like to have a copy of the releasable portions of our investigative file. If violations of the TOSHA standards are documented during this investigation, citations and monetary penalties may be issued to the employer. Our office will notify you of our findings and any alleged violations or citations issued. The investigation process may take up to six months.

If you, or another family member, have questions about our ongoing investigation or information you would like to provide to our investigator, please contact:

\${TOSHAOfficeSupervisor}  
TDLWD – TOSHA  
\${TOSHAOfficeStreet}  
\${TOSHAOfficeCity}, TN \${TOSHAOfficeZIP}  
\${TOSHAOfficePhone}

If you wish to receive a copy of the final inspection report, please contact the TOSHA Manager of Standards and Procedures, at 1-800-249-8510.

Sincerely,

Administrator, Tennessee OSHA

## APPENDIX C

### NEXT OF KIN, CITATIONS

\${NOKfirstname} \${NOKlastname}  
\${NOKmailingaddress1} [#if NOKmailingaddress2 != 'UNKNOWN']  
\${NOKmailingaddress2} [/#if]  
\${NOKcity}, \${NOKstate} \${NOKzip}

RE: \${establishmentname}

Dear \${honorific} \${NOKlastname}:

We are writing to share with you the findings of the recent Tennessee Occupational Safety and Health Administration (TOSHA) investigation into the death of your family member, \${VictimFirstName} \${VictimLastName}.

[Insert one or two sentences on the cause of the accident or death if possible. For example: It appears, based on TOSHA's investigation, 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 likely increased the risk of a cave-in]

Enclosed is a copy of the Citation and Notification of Penalty that was issued to \${establishmentname}. TOSHA citations state the alleged violations of safety and health standards at the worksite.

[Describe which, if any, citations were determined by TOSHA to be associated with the fatality. Example: TOSHA alleges that Citation [X], Item [X] was specifically associated with Mr./Ms. \_\_\_\_\_'s death OR In this case none of the alleged violations were determined by TOSHA to be specifically associated with Mr./Ms. \_\_\_\_\_'s death.]

We would like to emphasize that, under the Tennessee Occupational Safety and Health Act, although civil penalties that TOSHA 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. Our office will notify you of any modifications to the citations or penalties in this case. Please let us know if you would like to have a copy of the releasable portions of our investigative file.

If you have any questions about our investigation or any of the information enclosed please contact us at 1-800-249-8510. We hope the enclosed information will be useful to you.

Sincerely,

`#{Supervisor}`  
Area Office Supervisor

## APPENDIX D

### NEXT OF KIN, INFORMAL CONFERENCE

\${ThisLetterDate}

\${NOKfirstname} \${NOKlastname}  
\${NOKstreetaddress1} [#if NOKstreetaddress2 != 'UNKNOWN'],  
\${NOKstreetaddress2} [/#if]  
\${NOKcity}, \${NOKstate} \${NOKzip}

RE: \${establishmentname}

Dear \${NOKhonorific} \${NOKlastname}:

We are writing to share with you recent events concerning the Tennessee Occupational Safety and Health Administration (TOSHA) investigation into the death of your family member, \${VictimFirstName} \${VictimLastName}.

We previously provided you with a copy of the Citation and Notification of Penalty which was issued as a result of our investigation. We conducted an informal conference with the employer on \${InfConfDate}. That conference resulted in

an Informal Settlement Agreement that settled this case for our purposes. [Provide a brief description of the Informal Settlement Agreement conditions and stipulations]. Attached is a copy of the amended citation for your information.

OR

no agreement

We will keep you informed of any future significant actions related to this case. If we may be of further assistance with this tragic matter, please do not hesitate to contact us at 1-800-249-8510.

Sincerely,

\${Supervisor}  
Supervisor

## APPENDIX E

### NEXT OF KIN CONTESTED

\${ThisLetterDate}

\${NOKfirstname} \${NOKlastname}  
\${NOKstreetaddress1} [#if NOKstreetaddress2 != 'UNKNOWN'],  
\${NOKstreetaddress2} [/#if]  
\${NOKcity}, \${NOKstate} \${NOKzip}

RE: \${establishmentname}

Dear \${NOKhonorific} \${NOKlastname}:

We are writing to share with you recent events concerning the Tennessee Occupational Safety and Health Administration (TOSHA) investigation into the death of your family member, \${VictimFirstName} \${VictimLastName}.

We previously provided you with a copy of the Citation and Notification of Penalty which was issued as a result of our investigation. The employer had 20 calendar days after the receipt of the citations to appeal our findings. In this case, the employer appealed our findings to the Tennessee Occupational Safety and Health Review Commission.

It is TOSHA policy to disclose only citations and notices of contest when an appeal has been filed since disclosure of other portions of the case file could interfere with the litigation process. The TOSHA legal staff will keep you informed of any significant activities related to this case.

If we may be of further assistance with this tragic matter, please do not hesitate to contact us at 1-800-249-8510.

Sincerely,

Wendylee K. Fisher  
Administrator, Tennessee OSHA

**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>Initial Condolence Letter Appendix A</b>
<b>FOLLOW-UP COMMUNICATIONS</b>	<b>Throughout inspection</b>	<b>Periodic exchange of information with next of kin</b>
<b>POST-INSPECTION COMMUNICATIONS</b>	<b>Communicate inspection findings with next of kin</b>	
	<b>No proposed citation</b>	<b>NOK No Citation Appendix B</b>
	<b>Confirmation of receipt of citation(s)</b>	<b>NOK Citations Appendix C</b>
	<b>Informal Conference  Contested Case</b>	<b>NOK Informal Conference Appendix D NOK Contested Appendix E</b>