

North Carolina Department of Labor
Occupational Safety and Health Division
Bureau of Compliance

Field Operations Manual
Chapter VIII – Fatality and Catastrophe Investigations



Table of Contents

A. [General](#)

B. [Action](#)

1. Pre-investigation Activities
2. Investigation Procedures

C. [Reports](#)

1. Notification of Division Management

D. [Special Situations](#)

1. Preemption
2. Use of Expert Assistance
3. Rescue Operations
4. Public Information Policy
5. Additional Media Policy Regarding Significant Events
6. Terrorist/Criminal Activity
7. Natural/Manmade Disaster Recovery Operations

Chapter VIII

Fatality and Catastrophe Investigations

A. General.

1. Policy. Job-related fatalities, catastrophes, and significant events, however reported, will be investigated as a high priority as defined in Chapter II.E.1- Inspection Priorities. All fatalities, catastrophes and significant event inspections shall be opened within one (1) working day of the Occupational Safety and Health (OSH) Division's notification (or awareness of an incident). The division has also established a goal for the issuance of citations to be issued within 90 calendar days from the opening conference date.
2. Definitions. The following definitions apply for purposes of this chapter:
 - a. Fatality. An employee death resulting from an employment accident or illness; in general, from an accident or illness caused by or related to a workplace hazard.
 - b. Catastrophe. The hospitalization of three or more employees, but no deaths, resulting from an employment accident or illness; in general, from an accident or illness caused by a workplace hazard.
 - c. Hospitalization. Formal admission to the in-patient service of a hospital or clinic for care or treatment. It excludes admission for diagnostic testing or observation only. Treatment in an Emergency Room only is not reportable.
 - d. Significant Event. An occupationally related incident involving multiple fatalities, extensive injuries, massive toxic exposures, extensive property damage, or one which presents potential workers injury and generates widespread media interest.
 - e. Natural/Man-made Disaster. An event resulting in disruption of the infrastructure of an area of the state. These may be the result of severe weather conditions, such as, but not limited to, hurricanes, floods, and tornadoes, or any event resulting from criminal or terrorist activities, causing disruption of things such as but not limited to electrical power distribution, highway transportation, or water supply. During the recovery operations following a disaster, OSH Division personnel may be mobilized as "state safety and Health advisors" if the Governor or the State Emergency Response Commission requests assistance from NCDOL.
 - f. "Non-Work" Related Fatality. An employee death attributed to natural causes that occur during on-the-job work hours. The death is determined to have not been as a result of exposure to any workplace hazard(s).
3. Nonfatality/Noncatastrophe Incidents. The division does not limit its investigation of accidents to only those that result in a fatality or catastrophe. Employers are required to report within 24 hours any work related accident or illness that results in the formal admission of one or more employees to the inpatient service of a hospital or clinic for care or treatment. Additionally, all employers are required to report any work related amputations or loss of an eye within 24 hrs. These non-fatal incident reports will be tracked and reviewed upon intake and some of these could result in inspections and/or

investigations. Also, incidents involving significant publicity may also be investigated and/or inspected. Non-fatality/non-catastrophe incidents reported to OSH involving an employee injury that is assigned for investigation or inspections will be designated as an accident investigation. These reports will be processed as a complaint or referral depending on the source of notification. The OSH Division will not create an OSHA-170 or OSHA-36 for accidents not resulting in a fatality. Any incident/accident inspected by means other than a complaint that does not involve an employee injury, should be classified as a referral. This requires the completion of an OSHA-90 that lists the referral source (the OSH Division, the media, another state, or a federal or local agency, etc.).

4. Fatality/Catastrophe/Significant Event Investigations. Upon initial contact the employer will be informed by the CSHO that an investigation will be conducted and extensive interviews with witnesses will be necessary. The purpose of an accident investigation will be explained; namely, to determine:
 - a. The cause of the accident.
 - b. Whether a violation of OSH safety or health standards related to the accident occurred.
 - c. What effect the standard violation had on the occurrence of the accident.
 - d. If OSH standards should be revised to correct the hazardous working condition that led to the accident.

B. Action.

1. Preinvestigation Activities. It is essential to the proper conduct of a fatality, catastrophe, or significant event investigation that preparations are carefully made. The division is often the subject of public scrutiny during the course of such investigations, and it is imperative that the inspection be complete and professionally conducted.
 - a. Supervisor Responsibilities.
 - i. If the initial notification of a fatality, catastrophe, or significant event comes into a field office and appears to require an investigation, the supervisor will ensure the CSHO completes the required Microsoft WORD accident or fatality notification form and forwards the form electronically to the OSH complaint desk (for coordination) within 24 hours. The WORD notification forms are located on the One Stop Shop in the Forms section. The complaint desk will enter the applicable form (i.e. OSHA-36, OSHA-7, OSHA-90 and serious injury/fatality report) in OSHA Express and forward the information via email to the fatality group. In the event of a catastrophe or significant event, the supervisor will also report to the bureau chief.
 - ii. If a fatality is determined to be “non-work” related and it appears on the Planning, Statistics and Information Management (PSIM) Bureau’s OFIR report, the supervisor should immediately notify the appropriate

bureau chief. The bureau chief should contact PSIM to ensure the “non-work” related fatality has been removed from the OFIR report.

- iii. If the 90-day inspection goal is not accomplished for each investigation, the supervisor must provide a written explanation to the bureau chief when the report is submitted. The district supervisor will meet weekly with the bureau chief for inspections that take longer than 90 days to complete.
- iv. Communication between supervisor and CSHO is essential, and an effort will be made by the supervisor to give fatality investigations a top priority. The CSHO will meet with the supervisor at least weekly to track the status of the investigation. The weekly meeting will keep both the CSHO and supervisor current on what needs to be done for the investigation. The supervisor will verify that all required contact with the family of victims/NOK has been completed and documented on the case file summary sheet. The weekly meeting also will help to keep those CSHOs who are less experienced on track and provide them with guidance on how to proceed.
- v. Field offices will run the OPEN inspection report weekly, and the supervisor will review the report to track the status of fatality investigations. Top priority is obviously important when an initial response is required at the accident site within one working day; however, the top priority status must continue throughout the entire investigation process. Review of the open inspection report should also alert the supervisor as to how work is distributed in the district. If personnel are unavailable, assistance should be requested from other districts.
- vi. Supervisors and bureau chiefs will thoroughly review a case before sending it to citation review. Supervisors have the responsibility to make sure all necessary documentation is included in the file. The citation review process will not be a complete review of the casefile, but a time to consider questions of law including making sure the correct citations are written to the correct company and that employer knowledge is established.

b. Compliance Safety and Health Officer (CSHO) Responsibilities.

- i. After opening an inspection within one working day, the CSHO will determine as quickly as possible following the initiation of a fatality investigation whether or not the incident was work related. If the CSHO determines that fatality is “non-work” related, the investigation should be discontinued and should be entered as a “000” and classified as a no-inspection (even if an opening conference has been held). The “000” file should contain a brief explanation that indicates why the fatality is considered “non-work” related (e.g., no hazards, medical examiner determined natural causes, etc.)

- ii. The case file summary sheet maintained by the CSHO will reflect certain milestones and represent a complete and thorough description of investigation activity. This will include the date of initial contact and all other activity and issues related to the investigation. All delays in securing information, witnesses, etc. should be documented on the case file summary sheet.
 - iii. Whenever a case file is turned over to the attorney assigned by the section head at the Attorney General's (AG) office or the director's office, the status of the file will be tracked by the CSHO. The transfer of the case file to another person does not eliminate the processing responsibilities assigned to the CSHO or supervisor.
 - iv. Initial involvement from the AG's office with fatality investigations should reduce the review time by the citation review committee. CSHOs will contact the attorney assigned by the section head at the AG's office soon after opening an investigation and prior to citation review. The purpose of early contact is to begin the process of developing an effective investigation strategy including proper documentation.
 - v. The CSHO and other OSH personnel will work with the same attorney throughout the inspection process to eliminate the need for duplicate discussion.
 - vi. The sixth-month statute of limitations in the act must be used when responding to fatality investigations but should be used as a goal. N.C.G.S 95-137 states that the director should "with reasonable promptness issue a citation to the employer." The CSHO should be diligent in following this statutory guidance when responding to all fatality investigations.
- c. Preliminary Investigation. The OSH complaint desk or district office, upon notification of an accident involving a fatality, catastrophe, or significant event, will gather as much information as is available prior to notifying the appropriate Supervisor. If possible, this will be done immediately through discussion with the person reporting the accident. If knowledge of the accident is received through the media or sources other than a representative of the employer, and insufficient information is available to conduct an inspection, the employer will be contacted as soon as possible to obtain additional information whenever the director's office believes that such contact will result in a more effective inspection. Such contact will be considered advance notice and the procedures for advance notice will be followed.
- d. Investigation Team. An investigation team may be assembled and assigned to complete an investigation. If an investigation team composed of experts in specific disciplines is required, the supervisor will advise the bureau chief. An investigative team leader (ITL) will be designated by the supervisor to coordinate all the investigation activities for the team. The ITL will normally be a supervisor or CSHO II. If resources beyond those available within the district office will be required to compose the team, the bureau chief will designate the

ITL. North Carolina Occupational Safety and Health (OSH) Division personnel will be the first choice as team members. Any available personnel within other bureaus in the division will be called upon as team members when necessary. The team will proceed promptly to the scene and will function as a unit in all phases of the investigation until officially directed to return to normal functions. If a potential criminal violation becomes apparent during the inspection, arrangements should also be made to initiate the criminal investigation process per the guidelines in Chapter III on inspection procedures. If the employer refuses OSH access to the site, an expedited warrant will be obtained in accordance with the FOM. While the warrant is being prepared, the investigation team will continue offsite activities, including gathering information from other agencies, taking photographs, making videos, and interviewing witnesses. If the denial occurs during a weekend or holiday, the director will determine if a warrant is needed prior to the next business day and contact the attorney general's office to obtain the warrant.

e. Investigative Team Leader (ITL) Responsibilities.

- i. The ITL will inform the Incident Command System (ICS) that NCDOL is present on-site upon arrival.
- ii. The ITL will confer with the Communications Division about establishing a communications officer early in the investigative process. The designated communications officer will maintain contact with the NCDOL Communications Division and other media during the course of the investigation. The ICS public information officer will be utilized whenever possible.
- iii. Prior to entering a potentially hazardous area at the incident site, the ITL/CSHO will determine if any hazards may be encountered.
- iv. No compliance officer will enter any area where level A (as defined in Appendix B of 1910.120) protection is required without the specific approval of the director.
- v. The ITL is responsible for coordinating and directing the investigation. The ITL or designee will report findings to the director on a daily basis or more often if critical information is obtained.
- vi. The ITL must be aware of the direction and findings of other investigators as well as those of the team. Thus, the ITL's direct investigative work must necessarily be limited since much time and effort must be spent in effectively managing these coordinating functions.
- vii. The ITL must assimilate information from all sources and make prompt decisions regarding the utilization of resources, which are at the leader's disposal and must promptly communicate needs and findings.
- viii. The ITL will maintain a concise chronology to include not only events

related directly to the incident but also brief notes on meetings, telephone conversations, video and audio recordings, and decision process, including dates and times.

- ix. The ITL should conduct daily planning sessions with the team and other agencies as necessary in order to be apprised of findings as well as to plan strategy and clearly communicate future investigative activities.
 - x. The ITL or their designee will be the OSH site safety officer; however, the incident commander at the site determines who the safety officer for the site will be.
 - xi. The ITL will decide, even in the presence of police security, whether it is necessary to obtain a restraining order to place the site under 24 hour a day observation. Assistance of the on scene incident commander will be obtained if possible. Such observations must continue until all necessary physical evidence is obtained. In no case will the ITL/CSHO attempt to exert authority without such an order.
 - xii. The ITL may need to negotiate a written agreement with the employer and any other controlling authority to ensure that evidence involved with the accident site is not disturbed without the consent of the ITL.
 - xiii. The ITL will designate the format for the daily journals that are to be maintained by all the CSHOs on the team.
 - xiv. If the employer at the site will not or cannot provide adequate office space for the team to work, the ITL will secure an office, mobile office, or motel room to serve as the division's site location.
 - xv. The ITL will submit a written weekly update to NCDOL management (e.g. district supervisor, bureau chief, assistant director, director, and communications director). The update will summarize the team's accomplishments for the week and the plans for the upcoming week.
 - xvi. The ITL will designate the CSHO(s) responsible for writing and assembling the final case file. Although each team member develops parts of the case file, all the parts must be assembled into a complete product.
 - xvii. After receiving authorization from the director, the ITL will conduct closing conference(s). The ITL will determine whether separate conferences for employee representatives and other agencies are necessary. The ITL will approve all closing conference attendees.
- f. Selection of CSHO. If the supervisor determines that an investigation team effort is not necessary, a CSHO will be selected and sent to the site as soon as possible. The designated CSHO will assume the ITL responsibilities described at B.1.e where applicable.

- g. Equipment. Prior to leaving for the accident scene, the ITL or CSHO, as applicable, should select the test equipment and the personal protective equipment necessary to support the investigation.
 - h. Other Agencies. If other federal, state, or local agencies are responsible for or participating in the investigation, the director will ensure that the CSHO/ITL is fully instructed in the division's relationship with each agency and each agency's area of responsibility.
- 2. Investigation Procedures. Every reasonable effort will be made to determine the cause of the accident. Otherwise, the same general division policies and inspection procedures, as outlined in Chapter III – Inspection Procedures, are applicable for the investigation of fatalities, catastrophes, and significant events, except as otherwise provided in this chapter. No investigation activity is so important as to place the life or health of the CSHO in danger. During fatality investigations that involve potential for criminal violations, emphasis must be placed on the "willfulness" of the violation.
 - a. Scope of Inspection. Accident investigations will normally be partial scope inspections of the establishment, focusing on the accident. However, the scope may be expanded in certain circumstances as outlined below.
 - i. Appropriations Act. Prior to conducting the inspection or considering expanding the inspection scope, CSHOs and supervisors must reference CPL 02-00-051 - Enforcement Exemptions and Limitations under the Appropriations Act and the CPL's current Appendix A to determine any potential limitations to inspection activity per the Appropriations Act.
 - ii. Programmed Assignment/Targeting Schedules. The supervisor will check the various targeting schedules to ascertain if the employer's site has also been selected for a comprehensive programmed inspection. If the site appears on a targeting schedule, a comprehensive inspection has not been conducted in the past three years, and the employer has not been deferred from programmed planned inspections by CSB or ETTA (Star), a comprehensive inspection should be conducted. The unprogrammed and programmed assignments will both be noted in the narrative.
 - iii. Records Review. The CSHO will review all injury and illness records required by the OSH Act. Programs associated with the unprogrammed activity will be evaluated fully. A review of the employer's general safety and health program will be conducted as support for penalty reductions as outlined in FOM Chapter VI - Penalties, but programs unrelated to the original assignment will not be evaluated unless the scope of the inspection is expanded to cover those areas.
 - iv. Items Brought to the Attention of the CSHO. The CSHO has the authority to evaluate the following, without it being considered an expansion of the scope:
 - A. Any item brought to their attention by any employee or representative of an employee during the course of the inspection. CSHOs will document the details of the alleged hazards and how that information was presented to the CSHO.

- B. Any "plain view" hazards, meaning hazards noted by any of the senses (e.g., sight, sound, smell, touch or taste). CSHOs must document in the case file how the hazard was identified. Examples may include the following:
 - 1. Details on the circumstances in which the hazard was observed.
 - 2. Information supplied during an employee interview that alleges a violation.
 - 3. An explanation of how review of the related programs suggests a more widespread problem.
 - 4. How the nature of the unprogrammed activity suggests a more widespread problem.
- b. Expanding the Inspection Scope. The courts have ruled that it violates the employer's Fourth Amendment right against unreasonable searches and seizures to conduct a comprehensive inspection without evidence of hazards throughout the workplace. The district supervisor will determine, in conjunction with the CSHO, as to whether the inspection's scope will be further expanded. Where it is not clear that probable cause can be established, the district supervisor will consult with the bureau chief for guidance and for securing a warrant (if necessary). The results of the discussion and reasoning for the final decision should be documented in the inspection narrative. The district supervisor and CSHO should evaluate the following when considering expansion:
 - i. Observation of Serious "Plain View" Hazards. CSHOs should notify the district supervisor when serious hazards outside the scope of the inspection are observed. Situations where supervisors may consider expanding the scope include, but are not limited to, inspections with more than five serious hazards outside the original inspection scope, inspections with hazards that fall within the top four hazards categories (i.e., falls, struck –by, caught-in/between and electrocutions), or exposures to highly hazardous chemicals.

NOTE: Ordinarily, injury and illness data from the OSHA 300 logs alone will not be sufficient to support a broader inspection. However, OSHA 300 data in conjunction with other specific evidence, including incident report information from OSHA 301 forms, employee statements, or plain view observations, can be used to support an expanded inspection when the particular injuries or illnesses found in the OSHA 300 logs can be tied to a specific violative condition in the workplace.
 - ii. The Industry is Covered by an Operational Procedure Notice (OPN) or Special Emphasis Program (SEP). In the event that OSHNC has an OPN and/or an SEP that covers an employer or one of the employer's processes for which an accident investigation is being assigned, the CSHO should initially obtain the employer's consent to conduct the inspection related to the accident. After employer consent to conduct the initial inspection is obtained and if the employer has not had a comprehensive inspection in the previous three years, the CSHO should

notify the employer that their work site or process is currently also covered under an OPN or SEP.

The OPN inspection requirements shall be discussed during the opening conference and the CSHO shall attempt to obtain consent from the employer's management representative to expand the scope of the inspection in accordance with the applicable OPN or SEP. The employer's consent to conduct the accident inspection and separately the consent or denial to expand the inspection scope to include areas covered by an OPN or SEP shall be documented in the narrative. If an employer only consents to the accident related inspection, the CSHO should only proceed with the accident related inspection, unless there is also an assignment for a comprehensive programmed inspection.

- c. Advising Participants of Extended Scope. Whenever the scope of the inspection will be extended, the CSHO will advise the employer and the employee representatives of the extended scope at the opening conference or at the earliest opportunity.
- d. Abbreviated Opening Conference. In most cases, investigations of fatalities, catastrophes, and significant events require that the CSHO get to the location of the alleged hazard as promptly as possible. Therefore, the CSHO will reduce the time spent in the opening conference by limiting remarks to the bare essentials of identification, the purpose of the visit and the request for an escort by employee and employer representatives. The CSHO will inform the employer that a records review will be conducted as soon as practicable after inspection of the accident. In addition, a more extensive discussion of other opening conference topics will be conducted before the inspection is closed.
- e. Physical Evidence. For many accidents, there is often physical evidence that, with the proper testing and study, gives information about the cause of the incident. This might include soil samples, fasteners, ropes, electrical cords, damaged equipment, etc. If at all possible, the CSHO should claim the evidence for the investigation file.
 - i. It is very important that chain of custody be established. Using the Receipt of Evidence/Property Form, the CSHO will provide the owner with a receipt in exchange for the item. A copy of this form will be included in the case file. The evidence must be properly secured (e.g., locked in a limited access area) during the entire time it is within the possession of the division.
 - ii. The supervisor and bureau chief will be involved with any contracting of destructive and non-destructive testing. If other concerned parties (e.g. insurance companies) are interested in test results, effort will be made to coordinate testing and study.
 - iii. Physical evidence can be disposed of when a case is closed, the final order entered and the time to file an appeal has expired per the NCDOL Compliance Bureau, Safety and Health, East and West and ASH Bureau

records Retention and Disposition Schedule agreement with the NC Department of Cultural Resources, Office of Archives and History, Division of Archives and Records. The proper method of disposal is to either return all pieces of physical evidence to the original owner or, in the case of soil samples, discard the items in a proper manner. Information on disposal will be entered on the Receipt of Evidence/Property Form and Case File Summary.

- f. Tracking. CSHOs have the responsibility to track case files using the Case File Summary to reflect certain milestones and represent a complete and thorough description of investigation activity. This should include the date of the initial contact and all other activity and issues related to the investigation. Also, all delays in securing information, witnesses, etc. could be documented on the case file summary sheet. The CSHOs will meet with the supervisors at least weekly to track the status of the investigation.
- g. Review Process. For all significant cases the CSHO will follow the procedures outlined in APN 16. Contact will be made with the attorney assigned by the section head at the AG's office as early as possible, and at least before citation review to discuss citations that may require legal interpretation. The supervisor will thoroughly review all significant cases to ensure that all appropriate information is included in the case file before submitting it to the bureau chief for review and approval. Upon review and approval of the case file the bureau chief will forward the draft citations, OSHA-1, narrative, OSHA-1B's and other pertinent documents to the assistant director's office.
- h. Medical Examiner's Reports. Medical Examiner's (ME) reports are not needed in all accident investigations, and in most cases, securing a report should not delay the fatality investigation. Typical accident investigations that might require a ME report include, but not limited to, those involving chemical exposures, electrocutions, and heat-related illnesses.
- i. Families of Fatality Victims/Next of Kin. Family members of employees involved in fatal occupational accidents or illnesses will be contacted at an early point in the investigation and given an opportunity to discuss the circumstances of the accident or illness. All contact with the victim's family will be documented by the CSHO on the Case File Summary to include the type of contact (telephone, personal interviews, written correspondence via letter or email, etc.). Copies of all letters and correspondence (i.e.; emails) with the victim's family will be included in the case file.

Note: Contact with family members requires special tact and good judgment on the part of the CSHO. In some situations, these procedures should not be followed to the letter; e.g., in some small businesses, the employer, owner, or supervisor may be a relative of the victim. In such circumstances, such steps as issuance of the form letter without some editing may not be appropriate.

- i. The CSHO will prepare and send an information letter to the family member or person listed as the emergency contact as indicated on the

victims' employment records within 5 working days of the time their identities have been established. The minimum contents of this initial contact letter will be as follows:

- A. The purpose and scope of the division's investigation.
 - B. A brief outline of the civil enforcement process, including standards, citations, and penalty system.
 - C. A request for information relevant to the investigation. This request will include an offer to meet personally with appropriate persons to discuss any information they may have to offer.
 - D. A statement offering OSH's assistance throughout the investigation.
- ii. If the family member or contact person does not respond to the information letter, once copies of the citations or results of the inspection have been mailed to them, no further contact need be attempted.
 - iii. The CSHO, when taking a statement pursuant to this policy, will explain that the interview will be kept confidential to the extent allowed by law. The greatest sensitivity and professionalism is required for such an interview. The information received must be carefully evaluated and corroborated during the investigation.
 - iv. Follow-up contact will be maintained with a key family member or other contact person, when requested, so that the survivors can be kept up-to-date on the status of the investigation. Such contact can be by personal visit, telephone or letter, as requested, by the family member. Within 5 working days of receiving verification that the company received the citations or in compliance letter, the victim's family members will be provided a letter and a copy of all citations issued or an in compliance letter explaining the results of the accident investigation. The district supervisor will issue these letters.

Note: All next-of-kin letters referenced in this section are located on OSHA Express. CSHO's & supervisors will use the appropriate letter provided and will not draft their own versions of these letters except for the required inspection specific information and as noted in B.2.g. Examples of the next-of-kin letters are located in the FORMS folder in the FIS.

- v. Subsequent settlement agreements, OSH Review Commission decisions, or any other file documents may be provided by the PSIM Bureau upon written request from the next-of-kin. If the NCDOL Communications Division or PSIM Bureau requests citations from a case file for release to the public or the media and the next of kin has not received the citations or the results of the inspection, the CSHO will immediately attempt to contact the next-of-kin after the citations have been confirmed as

delivered to the employer. If the next-of-kin cannot be contacted, the CSHO will contact the next-of-kin ombudsman to provide information related to the request. See also Paragraph D.4.d. below.

- vi. All OSH staff is cautioned, when discussing the release of information with the family, not to mislead them about the speed with which they can obtain a copy of disclosed file information from the Planning, Statistics and Information Management (PSIM) Bureau prior to closing the case file. Staff is further cautioned that the employer's rights must be protected. There will be no premature release of facts or findings during any meeting with non-OSH personnel, before the investigation and subsequent litigation is completed.
- vii. If the victim's family members need additional information or assistance, they will be referred to the next-of-kin ombudsman in the director's office. If they would like an expunged copy of the case file, they may request it in writing from the PSIM Bureau. (See B.2.g.iv. above.).
- j. Non-fatal Accident Victims/Next of Kin. Upon request, the OSH Division will provide victims of non-fatal accidents or their next-of-kin with an investigation explanation letter and a copy of all citations issued as a result of any related OSH inspection. Also upon request, the CSHO will send a letter explaining the results of the accident investigation if no citations were issued. Standard letters are located within the electronic management system.

Upon written request from the victim or their next-of-kin, the PSIM Bureau will release subsequent inspection related settlement agreements, OSH Review Commission decisions or other requested case file documents per disclosure procedures referenced in FOM Chapter XIII.

- k. Criminal Willful. NCGS 95-139 provides criminal penalties for an employer who is convicted of having willfully violated the Act when that violation caused the death of an employee. In an investigation of this type, therefore, the nature of the evidence available is of paramount importance. There will be close liaison between division employees and the attorney assigned by the Section Head at the AG's Office in any finding that might involve a violation of NCGS 95-139. Appropriate staff with criminal investigation training will be assigned at an early stage to assist in developing the case. Note that not all fatalities where the proximate cause conditions receive willful citations will be presented to or pursued by the community district attorney.
- l. NC Industrial Commission Fraud Investigations Unit of the Insurance Compliance and Fraud Investigation Section (FIU). N.C. General Statute 95-136(e)(1) permits the commissioner of labor to share the names and statements of witnesses and complainants to other public officials for the performance of their public duties. In cooperation with the N.C. Industrial Commission, a determination has been made for the OSH Division to share some accident/fatality case related information. Fatality and accident witnesses interviewed by CSHOs will be informed that if an FIU criminal investigator

requests their contact information from OSH, it will be provided. If a criminal investigator from FIU contacts a CSHO or supervisor and requests accident or fatality associated witness contact information (phone number, address, etc.), the information may be provided verbally (information will not be transmitted to the FIU investigator via fax, email, mail, etc.). Witness contact information should only be shared verbally with FIU after the CSHO has conducted their initial interviews of all pertinent witnesses. Written case file documentation and/or copies of witness statements will not be provided to the FIU investigator by the CSHO or supervisor. Arrangements may be made to allow the FIU investigator to view case file related materials, but copies will not be provided. The FIU must forward a written request to PSIM to obtain any documents from a case file. The FIU investigator should include any OSH information obtained from PSIM in their criminal investigation files. This information should be protected from disclosure by FIU under the Public Records Act pursuant to N.C. General Statute 95-132.1.4.

C. **Reports.**

1. **Notification of Division Management.** OSH Division management should be notified of all fatalities, catastrophes, and significant events as soon after the occurrence as possible.
 - a. **Major Events.** Fatalities, catastrophes, and significant events will be reported to the complaint desk by telephone and by email using the procedures set forth in this section. They will compile the information and forward it to the OSH managers and the fatality group.
 - b. **Pertinent information.** It is important that the OSH Division management receive, as soon as possible, all pertinent information that can be obtained from newspapers or other sources. All the pertinent facts may not be available at the time of the initial telephone call. As more facts become available, they should be relayed to the complaint desk in subsequent email messages. Where the initial notification comes into a field office, the district supervisor and CSHO are responsible for contacting the complaint desk within 24 hours to provide pertinent data to facilitate notification to the fatality group.
 - c. **Fatality Information to be provided to the fatality group.** First reports and subsequent follow-up notices should provide as much of the following information as possible:
 - i. Employer name and address
 - ii. Event address
 - iii. Number of employees at establishment
 - iv. SIC/NAICS code and type of business (if construction, indicate commercial or residential)
 - v. City and county codes
 - vi. Date and time of accident
 - vii. Number of fatalities
 - viii. Name of each deceased
 - ix. Gender of each deceased
 - x. Race of each deceased

FOM Chapter VIII, cont'd

- xi. Age of each deceased
- xii. Date of birth of each deceased
- xiii. Type of event (e.g., fire, explosion, building collapse, etc.)
- xiv. Event description
- xv. Inspection scheduled? Y or N
- xvi. Field office assigned
- xvii. Supervisor assigned
- xviii. Number of persons hospitalized
- xix. Number of persons still missing
- xx. When the CSHO assigned is expected to arrive at the scene
- xxi. Identify who is in charge at scene (if immediately known)
- xxii. Name, address and relationship of next of kin when fatality is involved
- xxiii. Point of contact for further information

- d. Accident/Fatality Information to be provided to the FIU. The PSIM Bureau will provide the FIU with a redacted copy of the information provided to the fatality group above. The information provided to FIU will also include an OSH supervisor's name and phone number. The supervisor and/or assigned CSHO are permitted to provide an FIU criminal investigator the information described in Paragraph B.2.i of this chapter.

D. **Special Situations.**

- 1. Preemption. There may be situations where it is not clear whether division authority to investigate fatalities, catastrophes, or significant events has been preempted. In such cases the division's general inspection procedures will be observed with the following special considerations:
 - a. General. If it is reasonably certain that division coverage has not been preempted, the director's office will start the investigation at once and not let potential NCGS 95-128 problems interfere with either notification or investigation. Where there is an active incident command structure in place at the event site, DOL personnel will follow the incident command structure. The lead CSHO (or ITL) will report to the incident commander and make every effort to become a part of the unified incident command structure.
 - i. If there appears to be a preemption problem at the local level, all pertinent information will be relayed to the director's office, along with additional facts as they become available. A clear interpretation will be provided as soon as possible.
 - ii. Where prior determinations have been made that division authority has been preempted, such as certain mining or maritime accidents, no investigation will be conducted.
 - iii. If division jurisdiction has been preempted only partially, the investigation will be conducted as usual; and all apparent violations will be noted, including those for which jurisdiction has been preempted. A referral will be made to the local office of the appropriate agency for such violations as soon as practicable.

- b. Agency Cooperation. The OSH Division cannot abrogate its responsibility in favor of another agency, but every effort will be made as quickly as possible by the ITL to exchange information and to arrange for control of the accident site. If other agencies will be involved and are on site, the CSHO/ITL will work with the other agencies as closely as possible to:
 - i. Obtain all available information concerning the fatality, catastrophe, or significant event.
 - ii. Assist each other in inspection of the accident site.
- 2. Use of Expert Assistance. The decision as to the need for experts to assist in the conduct of the investigation should be made as soon as possible after the CSHO/ITL has arrived on site. That decision will be made by the bureau chief in consultation with the director's office upon the recommendation of the CSHO/ITL.
 - a. Choice of Experts. OSH Division personnel will be the first choice as team members. Any available personnel within other bureaus in the division will be called upon as team members when necessary.
 - i. If an expert from another district office is required, the bureau chief will coordinate with the supervisor to make the necessary arrangements.
 - ii. Outside experts will generally be selected only when no qualified person is available within the division.
 - b. Private Consultants. In general, a consultant or "outside expert" is a person from the private sector paid a fee for special expertise. Procedures for identifying and obtaining the services of a consultant will be established by the director's office.
 - c. Legal Advice. The advice of an attorney may be necessary at a very early stage of the investigation. The director's office will contact the department's general counsel if assistance is required.
- 3. Rescue Operations. OSH Division personnel do not have the authority to direct rescue operations or serve as the incident commander. Rescue operations are the responsibility of the Incident Commander and/or the employer. The presence of OSH Division personnel should not hinder or complicate rescue or emergency response activities. Changes in the accident scene may be necessary to complete the rescue operations. The CSHO will carefully document changes made during the rescue operations. The division does have the authority to monitor and inspect the working conditions of covered employees engaged in rescue operations to make certain that all necessary procedures are being taken to protect the lives of the rescuers.
 - a. Consultation. The division is available for consultation on the safest or most effective way to conduct rescue operations. This information, based on technical knowledge of competent division personnel at the scene, should be given freely, if requested.

FOM Chapter VIII, cont'd

- b. Rescue Operations. If the CSHO is aware that the employer intends to use some rescue procedure that may be in violation of a standard or the general duty clause and the CSHO believes other, less hazardous procedures are more desirable, the employer will be advised of this belief. The employer will be encouraged to use the personnel and facilities of local fire and police departments for their specialized knowledge and training in rescue operations.
 - c. Application of Standards. If the employer performs rescue work, OSH standards are applicable. The employer is required to take such steps as are necessary to eliminate, if at all possible, or to minimize recognized hazards likely to cause death or serious physical harm considering the urgency in a particular rescue operation.
 - d. Emergency Situations. Emergencies created by fatalities, catastrophes, or significant events generally necessitate immediate rescue work, firefighting, etc.; and any loss of time may increase injuries and/or fatalities. OSH will maintain an advisory role when assistance is requested in the aftermath of any natural disaster. However, any "imminent danger" situations will be addressed immediately in accordance with FOM Chapter VII, Imminent Danger. The OSH Division does not intend to engage in any activities that would have the effect of impeding emergency response. Therefore, when non-standard equipment; e.g., tractors, bulldozers, etc., without rollover protection, is available for use in an emergency situation, the division may permit its use without citing the employer rather than cause a delay waiting for equipment which meets OSH standards. The use of such equipment by private employers will be limited to the actual emergency situation of fighting fire, rescue work, etc. Use in cleanup or reconstruction work will warrant the issuance of citations when appropriate.
4. Public Information Policy. There are two aspects of media coverage that may be pertinent following a fatality, catastrophe or significant event: 1) providing information to the media and 2) obtaining information from the media.
- a. It is reasonable to expect that reporters from radio, TV and newspapers will make every effort to obtain all available information relative to an emergency situation.
 - b. The NCDOL Communications Division will normally handle responses to media inquiries, including those relating to fatality, catastrophe, and significant event investigations.
 - c. Although the Communications Division will normally be the media contact, any OSH Division compliance officer or OSH Division management representative may make the following statements to the media:
 - i. The OSH Division is investigating or is on the way to the scene of the event; and,
 - ii. The OSH Division's purpose in investigating is to determine the cause of the incident and to determine whether any standards have been violated;

- d. If the Communications Division or the PSIM Bureau requests citations from a case file prior to receiving verification that the employer has received the citations, as soon as the report is completed and approved the supervisor needs to immediately contact the employer via phone, either fax or hand deliver copies of the citations, and explain that we have received a request for a copy of the citations. As soon as the citations are confirmed received by the employer, copies may be faxed to the Communications Division or the PSIM Bureau (there should be no delay). If citations were faxed to the employer to expedite delivery, then the supervisor should also ensure that a hard copy is sent through the mail. If the NCDOL Communications Division or the PSIM Bureau requests citations from a case file for release to the public or the media, the CSHO will immediately attempt to contact the next-of-kin after the citations have been delivered to the employer. If the next-of-kin cannot be contacted, the CSHO will contact the next-of-kin ombudsman to provide information related to the request.
 - e. After citations, if any, have been received by the employer, the NCDOL may provide copies of those citations to third parties, upon request. Any NCDOL management representative may release the citations, after they are received by the employer. The Communications Division should be notified of all third party requests for citations. All other release of case file information must be processed by PSIM in accordance with OSH disclosure policies.
 - f. Names of members of the investigation team will not be given to the media.
5. Additional Media Policy Regarding Significant Events. To better ensure that only appropriate information is released to the media and that the investigation integrity is not compromised, only the Communications Division, the OSH Division director, OSH Division assistant director or their designee will discuss the situation with reporters, following the occurrence of a significant event. Where there is an active Incident Command structure in place at the event site, NCDOL personnel will follow the Incident Command structure, including coordinating any release of information with the Incident Commander.
- a. If reporters call or contact employees within the NCDOL regarding a significant event, they should be directed to the director, assistant director or their designee. No attempt will be made to answer questions related to the investigative findings, or to identify the individual compliance officers involved in the investigation.
 - b. The director, assistant director or their designee will make attempts to get to the significant event scene in as timely a manner as possible.
 - c. The director, assistant director or their designee will be available for media inquiries. Depending on the number of inquiries, a press conference may be held at site of the event.
6. Terrorist/Criminal Activity. If terrorist or criminal activity is suspected, the director will make every effort to ensure the security of division personnel. The director will contact the State Bureau of Investigation or local law enforcement officials as soon as possible.

7. Natural/Manmade Disaster Recovery Operations. North Carolina General Statute 166A establishes the authority and responsibilities of the governor, state agencies, and local government for emergency management in North Carolina. The State Emergency Management Plan (SEMP) provides guidance for the organization, preparation and commitment of NCDOL resources in support of the governor's preparation for response and recovery from all significant hazards and disasters affecting North Carolina. In the event of a natural/manmade disaster, a state of emergency may be declared. At the governor's request, the commissioner of labor has the authority to cease all compliance activity in the affected areas. NCDOL may then be called upon to provide assistance to the state emergency response team (SERT) in the form of state safety and health advisors. OSH activities in non-affected counties will continue as normal. Division personnel will assist the state recovery effort in the field or at the State Emergency Operations Center, as needed. Division personnel will refer to the SEMP for responsibilities and assignments. The SEMP is located on the One Stop Shop under NC OSH Resources, Homeland Security.