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**MEMO OE 4**

**To:** OSH Compliance Bureaus

**From:** Scott Mabry, Assistant Deputy Commissioner

**Date:** February 22, 2021

**Re:** "No Inspection" Fatality Case File Review

A. **Purpose.** This memo describes the review process for fatality cases determined to have a "No Inspection" scope. These cases are commonly referred to by CSHOs as "triple zero" fatality files since they are not official OSH Compliance inspections and therefore have an Optional Report Number that includes "000."

B. **Intent.** The review process for "No Inspection" or "000" case files is meant to be a collaborative effort ensuring that NCOSH is correctly classifying the work-relatedness of fatalities and if these fatalities fall under the jurisdiction of the OSH Division. The review process will also ensure that enough evidence has been collected and documented to support the OSH Division's position on the work-relatedness of these fatalities.

C. **Background.** During fiscal year (FY) 2020, the OSH Division received 245 reports of an alleged workplace fatality. Of the reported fatalities, 78 fatality inspections were conducted while the remaining reported fatalities were classified as "No Inspection" (68%). Data shows that most fatalities were determined to be either non-work related or outside the jurisdiction of the OSH Division. With the large disparity between the number of fatalities and the number of fatality inspections conducted, OSH Division management has decided to set forth criteria for the review of fatalities considered "No Inspection."

D. **Review Criteria.** Below are the criteria including examples for determining if cases classified as "No Inspection" require further review to the bureau chief (BC) and director's office (DO) level.

1. **Obvious "natural cause" medical cases, suicides, and non-work zone traffic accidents.** These cases can be closed following supervisor review/approval. They comprise the vast majority of "No Inspection" fatalities and would include heart attacks, strokes, and other medical conditions where a person collapses at work. The workplace violence CPL (02-01-052) should be reviewed in homicide cases to ensure a "no inspection" is appropriate. It is encouraged that CSHOs in training conduct these investigations as provides valuable experience and allows released CSHOs to focus their time on inspection activities.

2. **Fatalities due to a traumatic event in the workplace (other than those listed above), questionable “natural cause” medical cases or ones involving a victim younger than 40 years of age, or fatalities where the supervisor believes further review is necessary.** These “No Inspection” files require BC review and approval before being closed. The BC will copy the DO on the review comments for these cases, so they will also be aware. Most of these investigations will likely require the CSHO to visit the jobsite and interview employees. CSHOs in training with sufficient training and experience may conduct an initial on-site investigation independently, at the discretion of the district supervisor. The assigned CSHO and supervisor are encouraged to schedule a fatality meeting with the BC and DO’s staff within 30-45 days to discuss the events.

**EXAMPLE:** The cause of death (on the ME report or death certificate) is traumatic in nature, but that traumatic event was due to a medical condition unrelated to the work environment. Examples include an employee who died due to “blunt force trauma to the head” following a fall, but evidence supports the fall itself was precipitated by a cardiac condition that caused frequent fainting spells – or a lifeguard who drowned in a pool after suffering a seizure while taking a water sample from the pool deck.

**EXAMPLE:** The victim dies from a traumatic event during the workday, but it did not occur in the work environment. An example would be an employee asking a co-worker to bring fill dirt from a job site to his house and being struck-by the truck when it slid down a hill.

**EXAMPLE:** There was a traumatic death on a jobsite, but the person killed didn’t fall under OSH jurisdiction since they were not an employee of an employer, such as the sole owner of a painting company falling-off a ladder – or the person at a logging site who is there to buy wood being struck by a falling tree.

**EXAMPLE:** The victim suffered an apparent medical event (e.g. heart attack), but was doing work at the time that could have exposed him/her to hazards not recognized by the employer or first responders, such as working on or near energized conductors, carbon monoxide exposure, or potential heat stress situations. We need to conduct a site visit to rule-out those other possible “work-related” causes.

**EXAMPLE:** The victim suffered an apparent medical event (e.g. heart attack) but is of an age where that event is not likely, such as a 22-year old woman who collapsed while working on an assembly line.

**EXAMPLE:** Questionable “natural cause” fatalities would include fatalities with no witnesses that are reported as apparent heart attacks where the victim may have been exposed to hazardous substances in the workplace; and/or was working on or near electrical equipment; and/or there was a possibility of an oxygen deficient atmosphere.

3. **Family members or other persons disputing classification.** In situations where the OSH Division’s decision on work-relatedness is disputed by a family member or someone else, the supervisor will make a reasonable effort to educate those individuals on the OSH Division’s policies and procedures for determining work-relatedness. If the dispute persists, the BC will be consulted to determine if an on-site inspection is warranted. These “No Inspection” files require BC review and approval before being closed. The BC will copy the DO on the review comments for these cases, so they will also be aware.

**EXAMPLE:** The evidence supports it is not work-related or under OSH jurisdiction, but a family member or someone else disputes that determination, such as an apparent drug overdose where the mother calls to disagree with that determination.