

HIOSH DIRECTIVE

DIRECTIVE NO.: CPL 02-00-010	EFFECTIVE DATE: March 1, 2022
SUBJECT: Procedure for Expedited Informal Settlement Agreements (EISA)	

ABSTRACT

- Purpose:** This instruction implements the State of Hawaii Department of Labor and Industrial Relation's Hawaii Occupational Safety and Health Division's (HIOSH) policy for expedited informal settlement agreements (EISAs).
- Scope:** HIOSH-wide.
- Reference:** CPL 02-00-164, Field Operations Manual (FOM), September 13, 2019 (or current version)
- Cancellations:** None.
- Action Offices:** HIOSH
Safety Branch (OS), Health Branch (OH), & Administration and Technical Support Branch (ATS) – The HIOSH Consultation Program will be informed of this Instruction.
- Originating Branch:** HIOSH Administration and Technical Support Branch (ATS)
- Contact:** HIOSH Administration and Technical Support Branch. 830 Punchbowl St, Rm 425, Honolulu, HI 96813. (808) 586-9116

By and Under the Authority of

NORMAN AHU
HIOSH Administrator

EXECUTIVE SUMMARY

This Instruction establishes procedures for the expedited informal settlement of enforcement cases, thereby saving employers and HIOSH time and resources and ensures timely hazard abatement and verification of abatement. It will have additional benefits such as reducing the demand for litigation resources.

This Instruction employs post-citation settlement tools and penalty reductions to reduce the contest rate, ensure abatement, and promote comprehensive workplace safety and health. As a result, the process will also lead to a more efficient use of resources. All procedures are in accordance with current HIOSH and OSHA policy.

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I. PURPOSE

This Instruction implements a HIOSH policy (adopted from an OSHA Region 9 and 10 regional policy) for Expedited Informal Settlement Agreements (EISAs) within HIOSH.

II. SCOPE

This Instruction implements an EISA procedure, which applies to all HIOSH enforcement offices under the jurisdictional boundaries as defined in the current Operational Status Agreement between the State of Hawaii and the Occupational Safety and Health Administration (OSHA), Region 9.

III. REFERENCES

- A. Chapter 396, Hawaii Revised Statutes (HRS), the Hawaii Occupational Safety and Health Law.
- B. HIOSH Adopted Directives
 - CPL 02-00-159, Field Operations Manual (FOM), adopted by HIOSH April 15, 2016 (or current version).
 - *For current HIOSH adopted references, revisions, or subsequent replacements, go to www.labor.hawaii.gov/hiosh/guidelines/directives
- C. Operational Status Agreement Under Section 18(e) of the Occupational Safety and Health Act of 1970, April 2017 (or current version) including addendums.

IV. CANCELLATIONS.

None.

V. BACKGROUND

The EISA program will ensure verification of abatement is received and reviewed timely by the HIOSH enforcement branches. The HIOSH Administrator and/or their designee are authorized to enter into informal settlement agreements with employer under Instruction CPL 02-00-159, Field Operations Manual (FOM) [or current version]. By this authority, the HIOSH Administrator and/or their designee may change abatement dates, reclassify violations, modify or withdraw a penalty, and/or modify or withdraw a citation or citation item. Historically, the most recurrent issue of dispute is the penalty amount. For these uncomplicated cases, this Instruction will provide a procedure to execute an EISA entirely through mail, fax, in-person, or electronic mail, thereby obtaining quicker abatement and eliminating time-consuming face to face informal conferences.

VI. PROGRAM PROCEDURES

The EISA procedures shall be implemented as follows:

A. PRE-CITATION EXPLANATION OF THE EISA PROGRAM

During the closing conference, the Environmental Health Specialist/Occupational Safety & Health Compliance Officer (EHS/OSHCO) will provide abatement suggestions and discuss the abatement verification rule (a copy will be mailed with the citation). This discussion will be documented in the case file accordingly. The EHS/OSHCO will, whenever possible, obtain abatement verification prior to leaving the worksite. They will further explain and leave information as to the statutory penalty maximums for each violation. The employer will be provided a current copy of the HIOSH-10, Employers Rights and Responsibilities as Discussed in the Closing Conference.

B. IDENTIFYING CASES FOR EISA APPLICATION

The Branch Manager or Supervisor will review each case file prior to citation issuance to determine whether the inspection and employer are eligible for an EISA. The inspection and employer **are not entitled** to an EISA if any of the following are present:

1. The case is a fatality or catastrophe investigation, including media referrals.
2. The case contains any egregious, willful, repeat, or failure-to-abate violations.
3. The case contains any high-gravity serious violations.
4. The case is eligible for a 10 percent (10%) increase in penalty due to history of any high-gravity serious, willful, repeat, or failure-to-abate violations within the previous five years.
5. The employer is actively delinquent on penalty payments.
6. There are other factors, in the opinion of the HIOSH Administrator, Branch Managers and/or Supervisors, which indicate the employer or case is not a suitable candidate for an EISA, or that the reduced penalty amount would not serve the necessary deterrent effect. Such factors may include, but are not limited to, consideration of the employer's history, cooperation and commitment to employee safety and health, and whether the case is novel or has received media attention.

C. EISA PROCESSING PROCEDURES

For cases that have been identified as eligible candidates, a letter explaining the EISA (Appendix A), a description of the EISA (Appendix B) and the actual fully prepared Expedited Informal Settlement Agreements (Appendix C), shall be delivered to the employer at the time of the citation issuance. The EISA shall include the following provisions:

1. The employer shall abate all violation by the date set forth in the citations, and

comply with § 12-51-22 Hawaii Administrative Rules (HAR) regarding abatement verification.

2. HIOSH will reduce the total proposed penalty by 30%, however, any penalty reduction shall not be less than the minimum penalties set by policy and can be found in the Annual Adjustments to OSHA Civil Penalties Memorandum.
3. The employer shall agree to post copies of the EISA, upon execution, and all abatement verification information submitted to HIOSH, for a minimum period of three (3) days. In addition, a copy of the EISA shall be provided to the designated employee representative, where applicable.
4. In the event the employer fails to remit payment per the agreement, or fails to meet the abatement dates for citations, or fails to submit abatement verification information required by § 12-51-22 HAR, both the unpaid amended penalties and an additional penalty equal to fifty percent (50%) of the total amended penalties shall become immediately due and owing (as written in the EISA).

VII. EVALUATION

Each fiscal year (Federal fiscal year), the Administration and Technical Support Branch (ATS) will conduct an evaluation that will, at minimum, address the following:

- A. Total number of inspections/investigations that resulted in citations issued to the employer during the fiscal year.
- B. Total number of employees exposed to the hazard.
- C. Total number of violations abated.
- D. Total number of informal conferences held during the fiscal year.
- E. Total number of EISAs completed during the fiscal year.
- F. Total number of violations abated as a result of an EISA.
- G. An estimate of the HIOSH resource time saved by this procedure.

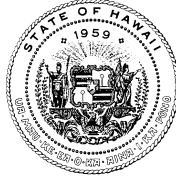
VIII. RECORDING IN OIS

EISA information can be retrieved through the OIS Inspection Summary and Scan Summary reports, however, the Branch Managers, Branch Supervisors, and/or ATS must ensure the ISA tab is completed for any case where an EISA is offered, whether or not the EISA is accepted.

APPENDIX A

GOVERNOR

LIEUTENANT GOVERNOR



DIRECTOR

DEPUTY DIRECTOR

ADMINISTRATOR

**STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
HAWAII OCCUPATIONAL SAFETY AND HEALTH DIVISION**

830 PUNCHBOWL STREET, ROOM 425
HONOLULU, HAWAII 96813

www.labor.hawaii.gov/hiosh

Phone: (808) 586-9116 / Fax: (808) 586-9104

Email: dliir.hiosh@hawaii.gov

[Date]

[Company Name]
[Street Address]
[City, State, Zip Code]

Dear Employer,

The recent inspection of your workplace revealed no incidents of Repeated, Willful, or Failure-to-Abate, or high-gravity serious violations. Additionally, it has been reported that you have a good understanding of the actions necessary to correct the violations that were cited, and that you are willing to make those corrections by the date(s) specified in the citation.

These factors, along with the good faith you have exhibited, make your firm eligible for an expedited informal settlement agreement (EISA). Under this program, an employer and the Hawaii Occupational Safety and Health Division (HIOSH) can enter into an informal settlement agreement without going through the procedure of meeting in the HIOSH office.

If you decide to enter into the EISA, you should be aware that you relinquish your right to contest the citations and penalties.

The EISA can be used only where the sole issue of dispute is the dollar amount of proposed penalties. If you wish to discuss, change, or object to any other aspect of the inspection or citations - including abatement dates, validity of violations, classification of violations - then the EISA cannot be used. Under those circumstances, you may request an informal conference and/or exercise your contest rights as explained in HIOSH-10, Employers Rights and Responsibilities as Discussed in the Closing Conference.

The EISA calls for HIOSH and the employer to agree to a 30 percent (30%) reduction in the total penalty amount proposed. The employer must agree to correct the violations by the abatement date(s) set forth in the citation(s); provide evidence for corrective actions taken; and provide written certification that all items have been abated at the time of final abatement. If the employer elects to participate in an informal conference, rather than signing the EISA, the penalties assessed on the citations will be the starting point for any penalty negotiations.

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Please note that failure to comply with any of the terms agreed to by HIOSH and the employer will result in both the unpaid amended penalties and an additional penalty equal to fifty percent (50%) of the total amended penalties becoming immediately due and owing (as written in the EISA).

If you choose to hand deliver the signed agreement to HIOSH, a check for the full amount of the reduced penalty must be delivered prior to the expiration of the contest period. Checks shall be made payable to the “**Director of Budget and Finance**”. The contest period expires 20 calendar days after the employer receives the citations. If you choose to mail the signed agreement, the envelope must be postmarked no later than the day that the 20-calendar-day contest period ends. A check for the full amount of the reduced penalty must be included with the signed agreement.

If you have any questions regarding the EISA, please contact this office at [Branch Phone Number].

Sincerely,

[HIOSH Authorizer Name], [Title]
[HIOSH Branch]

Enclosures

**Important Information About
Penalty Reductions Under
Expedited Informal Settlement Agreement**

WHAT IS AN EXPEDITED INFORMAL SETTLEMENT AGREEMENT (EISA)?

An EISA is a way to cut HIOSH penalties by 30 percent (30%), but not less than required annual minimum per serious violation, and to obtain quicker abatement of hazards to remove employees from exposure and to reduce the employer's time and resources spent in an informal conference.

WHY IS THIS OFFER BEING MADE?

HIOSH is committed to ensuring employers understand their obligations regarding the Hawaii Revised Statutes § 396 and the applicable rules under Hawaii Administrative Rules Chapter 12. A key part of understanding this obligation is to put forth efforts to correct and prevent future occurrences of hazardous conditions through a Safety and Health Management System (SHMS). The EISA is offered because the recent inspection of your workplace uncovered no repeated, willful, or failure-to-abate violations and no high-gravity serious violations of HIOSH standards, and you are willing to correct the violations that were found no later than the dates shown on the citations. In addition, this was not an accident, fatality, or catastrophe inspection, nor are you currently delinquent with penalty payments.

WHAT DO I HAVE TO DO?

Correct the Hazards: You have to agree to correct all the violations **BY THE DATES** shown on the citations and provide evidence of the corrections. Additionally, you **MUST** prepare a written Abatement Certification (page 4 of the Citation and Notification of Penalty) that all of the violations have been corrected. A copy of the certification must be posted for employees to see, and a copy must be mailed, emailed, faxed or dropped off to the HIOSH office.

STEP-BY-STEP, HOW WOULD I PROCEED?

1. Read and understand the EISA available to you.
2. If the terms are agreeable, sign the EISA and return it to HIOSH with a check for the full reduced penalty amount. The agreement **MUST** be signed by you **AND POSTMARKED** no later than the end of the 20-calendar-day contest period (20 calendar days after the employer receives the citations). HIOSH will then sign the EISA and send a copy back to you for your records.
3. Correct the violations. Corrections **MUST** be made **BY THE DATES** on the citations and post marked no later than the 20-calendar-day contest period.
4. Send evidence of the corrections made (e.g., photographs, purchase orders, etc.) where the citation noted that documentation of abatement is required. If you want, you can hold your

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evidence of corrections until everything has been corrected and then send it along with the Abatement Certification form by the last abatement date shown on the citations.

5. Fill out and sign the Abatement Certification form certifying that all of the violations have been corrected. Post one copy for your employees to see and send one copy to this HIOSH office. Abatement Certification can be found on page 4 of the Citation and Notification of Penalty.

WHAT IF I RUN INTO PROBLEMS AND CANNOT CORRECT ALL OF THE VIOLATIONS BY THE DATES INDICATED ON THE CITATION?

Contact HIOSH as soon as you determine that you will not be able to correct the violations by the dates on the citation. If you can show a good reason for the delay, a new abatement date can be agreed to.

WHAT HAPPENS IF I DO NOT FULLFILL ALL OBLIGATIONS UNDER THIS AGREEMENT?

In the event the employer fails to remit payment per the agreement, both the unpaid amended penalties and an additional penalty equal to fifty percent (50%) of the total amended penalties shall become immediately due and owing (as written in the EISA).

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STATE OF HAWAII
DEPARTMENT OF LABOR AND INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY & HEALTH DIVISION

In the Matter of:

Inspection No.
Inspection Site:

EXPEDITED INFORMAL SETTLEMENT AGREEMENT

The undersigned Employer and the Director of Labor and Industrial Relations, Hawaii Occupational Safety and Health Division (Director), in settlement of the Citation and Notification of Penalty issued on [Date Notification of Citation and Penalty Issued], which is incorporated by reference and made a part of this Settlement Agreement (Agreement), and attached as Exhibit 1, hereby agree as follows:

1. The Employer agrees to correct the violations as cited in the included Citation and Notification of Penalty.
2. The Employer agrees to provide evidence of the actions taken to correct the cited violations.
3. Upon correction of all violations, the Employer agrees to provide written certification (and documentation where required by the citation) to the Branch Manager or Supervisor that all of the violations have been corrected. The Employer agrees to post a copy of the written certification for a period of three (3) working days.
4. The Citation is amended as follows:

[Citation #, Item #]	30% Penalty Reduction	\$
“	“	“

TOTAL AMENDED PENALTIES	_____
	\$

5. Except for the stipulated amendments described in paragraph 1, the Citation is confirmed in all other respects.
6. The amended penalties as described in paragraph 1 shall be paid in full within twenty (20) days of the date of this Agreement.
7. All penalty payment checks shall be made payable to the "**Director of Budget and Finance.**" The inspection number must be written on the remittance to ensure that

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payment is properly credited. Payments shall be mailed or delivered to the following address:

State of Hawaii
Dept. of Labor and Industrial Relations
Hawaii Occupational Safety and Health Division
830 Punchbowl Street, Rm. 425
Honolulu, Hawaii 96813

8. If the Employer fails to pay the total amended penalties as described in paragraph 1 within twenty (20) days of the date of this Agreement, fails to meet the abatement dates for citations, and/or fails to submit abatement verification information required by § 12-51-22 HAR an additional penalty equal to fifty percent (50%) of the total amended penalties shall be added onto any unpaid amended penalties. Both the unpaid amended penalties and the additional 50% penalty shall become immediately due and owing. This additional penalty shall not affect the finality of this Agreement.
9. The Employer agrees to pay all fees and costs incurred, including reasonable attorney's fees, to collect any unpaid penalties and the additional penalty stated in paragraph 5.
10. Any payments made by the Employer shall be credited to the Employer and retained by the Director.
11. The Employer, by signing this Agreement, waives its rights to contest this Agreement and the Citation, as amended.
12. The Employer understands and agrees that this Agreement and the Citation, as amended, may be offered, used, or admitted into evidence in any proceeding, litigation, or action brought by the Director for enforcement or review under the Hawaii Occupational Safety and Health Law. The Director may use this Agreement as a basis to cite a repeat or willful violation in the future.
13. The Employer agrees to immediately post a copy of this Agreement in a prominent place at or near the location of the violation(s) referred to above. This Agreement must remain posted until the violations cited have been corrected, or for three (3) working days (excluding weekends and State holidays), whichever is longer.
14. The Employer agrees to continue to comply with the Hawaii Occupational Safety and Health Law and the Hawaii Administrative Rules adopted pursuant to the Hawaii Occupational Safety and Health Law.
15. This signed Agreement and the Citation, as amended, is a final order of the Director.
16. If any term of this Agreement is held invalid, illegal or unenforceable, such term shall

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be excluded to the extent of such invalidity, illegality, or unenforceability. All other terms shall continue to be valid, legal, and enforceable.

[Employer Signer Name, Title]
[Employer Name]

[HIOSH Authorizer Name, Title]
[HIOSH Branch]

Date: _____

Date: _____

NOTICE TO EMPLOYERS

Signed and dated EISAs shall be mailed and delivered to:

State of Hawaii DLIR - HIOSH
830 Punchbowl Street, Rm 425
Honolulu, HI 96813
Phone: (808) 586-9116
Fax: (808) 586-9104