

# HIOSH DIRECTIVE

<b>DIRECTIVE NO.:</b> CPL 02-00-166	<b>EFFECTIVE DATE:</b> October 1, 2022
<b>SUBJECT:</b> Communicating HIOSH Fatality Inspection Procedures to a Victim's Family	

This CPL is adopted by HIOSH in its entirety.

**Purpose:** This Instruction provided guidance to ensure the Hawaii Occupational Safety and Health Division (HIOSH) of the State of Hawaii, Department of Labor & Industrial Relations communicates its fatality inspection procedures to the victim's family and facilitates the exchange of information throughout the inspection and settlement process.

**Clarifications:** For the purposes of this OSHA Program Directive adopted by HIOSH, the following terms are defined:

**Compliance Safety and Health Officer(s)/CSHO(s):** Environmental Health Specialist(s) and Occupational Safety and Health Compliance Officer(s)

**Cancellation:** CPL 02-00-153, Communicating OSHA Fatality Inspection Procedures to a Victim's Family, April 17, 2012 (HIOSH Adopted 10/1/2012).

**References:** Directive references adopted by HIOSH can be found at <http://labor.hawaii.gov/hio sh/guidelines/directives/>.

**Contact:** HIOSH Administration & Technical Support Branch  
(808) 586-9116; 830 Punchbowl St, Rm 425, Honolulu, HI 96813.

**By and Under the Authority of**

**Norman Ahu  
HIOSH Administrator**

## **Executive Summary**

This Instruction outlines HIOSH'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 – Administrator's Condolence Letter.
- Updated Appendix B – Inspection Findings and Next of Kin Closure – No Proposed Citation.
- Updated Appendix C – Inspection Findings Letter – Proposed Citation.
- Updated Appendix D – Next of Kin Closure Letter – Proposed Citation.

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- I. Purpose.  
This Instruction provides guidance to ensure HIOSH communicates its fatality inspection procedures to the victim’s family, and facilitates the exchange of information throughout the entire inspection process.
- II. Scope.  
This applies to the Hawaii State Plan of OSHA - State of Hawaii, Department of Labor & Industrial Relations, Hawaii Occupational Safety & Health Division (DLIR, HIOSH).
- III. References.
  - A. [CPL 02-00-164](#), Field Operations Manual (FOM), April 14, 2020 or current version.
  - B. [TED 01-00-019](#), Initial Training Program for OSHA Compliance Personnel, July 21, 2014 (HIOSH Adopted 7/1/16).
  - C. OTI Webinar #0032: Best Practices for Interacting with Victim’s Families, September 27, 2010.
- IV. Cancellations.  
CPL 02-00-153, Communicating OSHA Fatality Inspection Procedures to a Victim’s Family, April 17, 2012 (HIOSH adopted 10/1/2012).
- V. Federal Program Change (OSHA).  
Federal Program Change, Notice of Intent Required, Adoption Encouraged. This Instruction describes a federal program change which provides guidance and a three-phased approach for communicating with family members of victims of workplace incidents throughout the investigation of the incident and settlement process. State Plans are strongly encouraged, but not required, to adopt this Instruction and should utilize it in an “at least as effective” manner to communicate with the victim’s family members. Within 60 days of the effective date of this directive, a State Plan must submit a notice of intent indicating whether they already have similar policies and procedures in place, intend to adopt new policies and procedures, or do not intend to adopt this instruction. If a State Plan does not adopt at first, but at some later point decides to adopt this instruction or an at least as effective version of this instruction, the State Plan must notify OSHA of this change in intent. Within 60 days of adoption, the State Plan must provide an electronic copy of the policy or link to where their policy is posted on the State Plan’s website. The State Plan must also provide the date of adoption and identify differences, if any, between their policy and OSHA’s. OSHA will provide summary information on the State Plan responses to this instruction on its [website](#).
- VI. Background.  
OSHA and HIOSH place a high priority on fatality inspections, which demand a high degree of sensitivity and investigative accuracy. Historically, OSHA and HIOSH have 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.
- VII. 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.

VIII. Training.

HIOSH compliance officers attend several OSHA Training Institute courses relevant to fatality inspections. HIOSH personnel involved in fatality inspections and in communicating with the next of kin must complete training in accordance with TED 1-1-019, Initial Training Program for OSHA Compliance Personnel (adopted by HIOSH 7/1/2016), in addition to receiving on-the-job field training under the guidance of a Manager and/or an experienced compliance officer.

IX. Communications with the Next of Kin.

HIOSH 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 HIOSH 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.

NOTE: Where HIOSH 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 HIOSH, their decision shall be respected and documented in the case file activity diary sheet. The HIOSH representative will notify their supervisor of the next of kin's wished. Additionally, the HIOSH representative should ensure that all procedures are followed, as per the Field Operational Manual, Families of Victims. The HIOSH representative should provide the next of kin the point of contact information, including the HIOSH office’s telephone number, address, and an e-mail address. The next of kin should be instructed to contact the HIOSH 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, HIOSH should verify through interviews with the employer and/or local authorities, that the next of kin has been previously notified of the fatality. HIOSH should attempt to contact the next of kin via telephone prior to the initial notification letter being mailed. After the initial communication, HIOSH shall contact the next of kin to request work-related information concerning the fatality and encourage the next of kin to contact HIOSH with any additional information. If an

initial communication is not made, explain the rationale in the case file activity diary sheet.

1. The HIOSH representative should ensure the following is explained during the initial communication with the next of kin:
  - a. HIOSH inspects the worksite(s) where fatalities have occurred to determine whether a violation of HIOSH 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 HIOSH finds that the employer violated safety and health standards, the agency may issue a citation with a penalty to the employer and may make a criminal referral to the State's Department of the Attorney General. HIOSH does not issue citations or penalty solely because there was a workplace fatality.
  - d. HIOSH is barred from releasing certain information as a result of the applicability of legal privileges. HIOSH 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 concluded. If a criminal referral is under consideration or has been made, the case file cannot be released until those actions are complete.
  - e. Upon issuance of a final order, the next of kin will be afforded the opportunity to discuss the case with the Administrator or their designee.
  - f. At any time during the inspection and throughout the inspection process, the next of kin may contact the HIOSH office to inquire about the status of the case or to ask questions.
2. HIOSH contacts the next of kin early in the inspection process. This gives the HIOSH 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, HIOSH must determine if it is the appropriate time to explain HIOSH's fatality inspection process. If it is not the appropriate time, HIOSH 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. HIOSH should explain the investigative process of the fatality inspection and ensure that the next of kin

understands the role of HIOSH as noted in Paragraph (A)(1) above. HIOSH 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 HIOSH for inspection. Law enforcement and HIOSH inspections are conducted independently. HIOSH 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 HIOSH's inspection. In some cases, HIOSH will obtain information from the coroner as part of the inspection.

4. The Administrator's condolence letter (Appendix A) will be sent within five working days after contact with the next of kin, as per the Field Operations Manual, Families of Victims.
5. The Safety or Health Branch Manager will email the Secretary to the Administrator to initiate the Administrator's condolence letter. In addition to the letter, there should be (1) a detailed explanation of the events leading to the fatality, (2) name of the company, (3) the inspection number, and (4) a sufficient address for the next of kin. Where there are discrepancies, erroneous and/or missing information, the Administrator's Secretary will contact the appropriate Branch Manager. After signature, the letter is mailed by the Administrator's Secretary and a copy forwarded to the appropriate Branch Manager.  
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, including the Administrator's condolence letters, are maintained in the case file and activity fully documented in the case diary sheet.

B. Follow-up Communications.

Follow-up communications are vital to the exchange of information. These communications allow HIOSH to provide updates on the status of the inspection and

provide next of kin with an opportunity to ask questions. However, HIOSH 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. HIOSH'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 HIOSH representative and the next of kin.
2. HIOSH will explain various aspects of the inspection, including the inspection findings letter (Appendix B or Appendix C), HIOSH citations and penalties, the informal conference process, and any Uniform Information Practices Act (UIPA) issues. The form letter should be modified as necessary.
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 HIOSH representative must respect the decision, notify their Manager, and inform the next of kin that they may inquire about the status of the case at a later date, if desired. The HIOSH representative will fully document the next of kin's decision in the case file activity diary sheet.

#### C. Post-Inspection Communications.

After the inspection, HIOSH will make every effort to contact the next of kin via telephone to explain findings, address any questions, and give the family an opportunity to provide input. Depending on the case, HIOSH may issue a press release. If a press release is planned, HIOSH will make every attempt to notify the family by telephone before the information is released to the public. HIOSH may also provide a copy of the press release to the family.

##### 1. No Proposed Citations.

If citations are not issued, the HIOSH representative should explain the findings of the inspection during the post-inspection communication with the next of kin. Additionally, the HIOSH representative should be prepared to discuss and explain the following:

- a. HIOSH does not issue citations solely because there was a workplace fatality.
- b. HIOSH inspected the worksite(s) to determine whether a violation of HIOSH 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. HIOSH should make the next of kin aware of the Uniform Information Practices Act (UIPA), as it pertains to HIOSH's inspection file.
- d. Within five days of closing the case, the case closure letter should be sent to the next of kin (Appendix B). The form letter should be modified as necessary.
- e. All communications will be in the documented case file activity diary sheet.

2. Proposed Citations.

After confirmation that the employer has received the citations, HIOSH should begin post-inspection communications with the next of kin to explain the alleged violation(s), proposed penalties, any penalty adjustment factors, violation classification, abatement requirements, settlement procedures, and Uniform Information Practices Act (UIPA) requests, as it pertains to HIOSH's inspection. HIOSH should explain that communications between HIOSH and the next of kin will continue until the case becomes a final order. Periodic communications with the next of kin should reflect a time agreed to between the HIOSH representative and the next of kin.

NOTE: HIOSH should emphasize that although civil penalties were proposed, penalties under the 396 HRS are not based on the occurrence of a fatality. HIOSH 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, HIOSH should clarify penalty adjustment factors for history, good faith, and size. Furthermore, HIOSH should explain penalties may be reduced to secure prompt correction of hazards.

- a. Upon confirmation that the employer received the citation(s), HIOSH should ensure that the inspection findings letter (Appendix C) with a copy of the citation(s), HIOSH Citations and Penalties fact sheet, and the HIOSH Fatality inspection fact sheet are sent to the next of kin. The form letter should be modified as necessary.
  - b. HIOSH 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, HIOSH will inform the next of kin of the settlement and explain the outcome. Issues associated with the settlement agreement or HLRB 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, HIOSH should again make the next of kin aware of the Uniform Information Practices Act (UIPA), as it pertains to HIOSH'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 D). 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

### ADMINISTRATOR'S CONDOLENCE LETTER

Victim's family member first and last name  
Street Address  
City, State Zip Code

Dear [**First and Last Name**]:

Please accept my heartfelt condolences on the tragic death of [**victim's name**].

The State of Hawaii, Department of Labor & Industrial Relations Hawaii Occupational Safety and Health Division (HIOSH) is investigating the circumstances surrounding the death of [**victim's name**]. The investigation may take up to six months. We will share the results of our findings when our investigation is complete.

Enclosed is some information about HIOSH fatality inspections. If you believe you, another family member, or friend may have information to assist in our investigation, please contact us so that we can discuss this with you.

If you have any questions about our inspection or any of the information enclosed, please contact me:

Administrator  
HIOSH  
830 Punchbowl St, #425  
Honolulu, HI 96813

Telephone: (808) 586-9116  
E-Mail: DLIR.HIOSH@hawaii.gov

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

Sincerely,

HIOSH Administrator

Enclosures

**(Enclosure)**

## **HIOSH CITATIONS AND PENALTIES**

HIOSH citations state the specific safety and health standards the company is alleged to have violated. They note, both by number and name, the individual sections of HIOSH standards that the employer allegedly failed to follow. (A complete listing of HIOSH standards is available for review at the HIOSH area office or can be accessed on the division's Internet site at [www.labor.hawaii.gov/hiosh/](http://www.labor.hawaii.gov/hiosh/) under "Standards - Administrative Rules.")

Citations specify the location in the facility or on the work site where the violation occurred and the circumstances surrounding the violation. Citations must be issued within six months following identification of the alleged violations. Even if the employer disagrees with the findings, employers must post a copy of each citation at or near the place where the alleged violation occurred or where workers can see the citations for three working days or until the violation is abated, whichever is longer.

Citations identify required abatement dates (the dates when the hazards must be corrected) and proposed penalties for each alleged violation. For violations that are easy to fix, immediate abatement may be appropriate. If an employer must purchase equipment or significantly modify the workplace, a longer period is permitted.

HIOSH proposes citations when a standard has been violated. The civil penalty amounts, if any, associated with citations are adjusted based on employer size, good faith on the part of the employer (those implementing the safety and health program), and inspection history. The maximum penalty amounts can be found at <https://www.labor.hawaii.gov/hiosh/>

Violations are classified as willful if HIOSH has evidence that the employer intentionally disregarded the requirements of the Hawaii Revised Statutes (HRS) 396 and/or was plainly indifferent to the safety of employees. Violations are identified as serious if there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm, is classified as other-than-serious. Violations may also be characterized as repeat if HIOSH has cited the company for a substantially similar hazard within the past five years.

HIOSH proposes penalties as a result of violations. Employers can contest (challenge) alleged violations, proposed penalties, or abatement dates before the State of Hawaii, Department of Labor & Industrial Relations, Hawaii Labor Relations Board (HLRB). If the employer decides to challenge any part of HIOSH's findings, they must do so within 20 calendar days after the employer receives the citations.

Employers may request a meeting with HIOSH to discuss the issued citations and possibly to enter into an informal settlement of the case. In some cases, penalties may be reduced when a company secures prompt correction of hazards and is able to provide documentation of actions aimed at securing sustainable improvements in order to protect other employees at the work site, and when a company is willing to evaluate and potentially implement these sustainable improvements at other locations. HIOSH's primary concern remains prevention of injuries, illnesses, and deaths rather than collection of funds.

If an employer acknowledges the violations, agrees to pay the proposed penalties, and certify the hazard has been corrected then the citations as issued or amended automatically become a final order. The employer pays the penalties and the case is closed. The employer may also contest a part of a citation and pay part of the penalties assessed, or contest the entire case. Contested cases proceed through the State of Hawaii, Department of Labor & Industrial Relations, Hawaii Labor Relations Board (HLRB). The employer or HIOSH may further appeal the case in the appropriate court, if dissatisfied with the HLRB's decision.

When an employer willfully violates a HIOSH standard and the alleged violation was the direct cause of, or a contributing factor to, an employee's death, HIOSH may refer the case to the State of Hawaii, Department of the Attorney General (DAG) to seek criminal prosecution of the employer. These are difficult cases to prove; few cases reach court, and convictions are rare.

**(Enclosure)**

## **HIOSH FATALITY INSPECTIONS**

The Occupational Safety and Health Administration (OSHA) was established under the OSH Act to provide for the enforcement of standards developed under the Act. There are both Federal and State OSHA programs. HIOSH was certified as the State OSHA program for Hawaii on May 9, 1978.

HIOSH inspects the worksites where fatalities have occurred to determine whether a violation of HIOSH safety and health standards occurred. These inspections are often comprehensive in nature, but at times may be limited to the area in which the fatality occurred. If HIOSH finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the State of Hawaii, Department of the Attorney General (DAG) for possible criminal prosecution.

HIOSH does not issue citations solely because there was a workplace fatality. However, if during any inspection, HIOSH finds that the employer violated safety and health standards, the agency may issue citations and seek civil or criminal penalties against the employer.

Upon written request, HIOSH will provide you with the portions of the inspection file that may be released under the Uniform Information Practices Act (UIPA). In an effort to keep the next of kin apprised of developments during an inspection, HIOSH sends them copies of citations (the formal notice of alleged hazards in the workplace), appeal letters (the employer's notice of disagreement with the issued citations), and informal settlements (a binding agreement between HIOSH and the employer to settle the case) as soon as the documents are issued. Furthermore, HIOSH is committed to the exchange of information with the next of kin as follows:

- Any time during the inspection or the resulting litigation, the next of kin may contact the local HIOSH office to inquire about the status of the case or to ask questions.
- If the next of kin has information or evidence that can assist in the inspection, they are encouraged to take a proactive role and share this information by writing, calling, or e-mailing the HIOSH office.
- The next of kin is encouraged to follow up and inquire about any information they have sent to HIOSH or on information received from HIOSH. In such cases, they are free to write or call the HIOSH office.
- Upon issuance of the final order, the next of kin will be afforded the opportunity to meet with overseeing Branch Manager to answer questions and explain the settlement decision.
- HIOSH will notify the next of kin when the case is closed. At that time, the portions of the file that can be released under UIPA will be made available to family members, at no charge, upon written request.

## APPENDIX B

### INSPECTION FINDINGS AND NEXT OF KIN CLOSURE LETTER – NO PROPOSED CITATION

Victim's family member first and last name  
Street Address  
City, State Zip Code

Dear [**First and Last Name**]:

I am writing to share with you the findings of the recent Hawaii Occupational Safety and Health Division (HIOSH) inspection into the death of [**victim's name**].

**[If possible, insert one or two sentences on the workplace hazard(s) that may have contributed to the incident or death.]**

HIOSH inspects the worksites where these tragedies have occurred to determine whether a violation of HIOSH safety and health standards occurred. These inspections are often comprehensive in nature, but at times are limited to the area in which the fatality occurred. If HIOSH finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the State of Hawaii, Department of the Attorney General (DAG) for possible criminal prosecution. However, HIOSH does not issue citations solely because there was a workplace fatality.

HIOSH inspected [**name of company**] to determine whether a violation of HIOSH safety and health standards related to the incident had occurred. The workplace inspection found that no alleged violation(s) of safety and health standards had occurred related to the incident, and therefore, no citations or proposed penalties were issued to [**name of company**].

Despite the inspection indicating that the employer did not violate safety and health standards, we know that this offers little comfort to you for the loss you and your family have suffered and your lives have been changed forever because of this tragedy. I would like to express to you my deepest sympathy.

If you have any questions about our inspection please contact me:

Administrator  
HIOSH  
830 Punchbowl St, #425  
Honolulu, HI 96813

Telephone: (808) 586-9116  
E-Mail: DLIR.HIOSH@hawaii.gov

The Uniform Information Practices Act (UIPA) governs the release of information concerning incident inspections conducted by HIOSH. Upon written request, HIOSH will provide you with the portions of the inspection file that may be released under UIPA.

Sincerely,

Administrator

## APPENDIX C

### INSPECTION FINDINGS LETTER – PROPOSED CITATION(S)

Victim's family member first and last name  
Street Address  
City, State Zip Code

Dear [**First and Last Name**]:

I am writing to share with you the findings of the recent Hawaii Occupational Safety and Health Division (HIOSH) inspection into the death of [**victim's name**]

**[Insert one or two sentences on the workplace hazard(s) that may have contributed to the incident or death, if possible.]**

Enclosed is a copy of the citations and proposed penalties against [**name of company**]. HIOSH citations state the alleged violations of safety and health standards at the worksite. They also note which alleged violations HIOSH has determined to be specifically associated with [**victim's name**]'s death.

I would like to emphasize that, under the Hawaii Revised Statutes (HRS) 396, civil penalties that HIOSH proposes are not based on the occurrence of a fatality. Instead, the gravity of the violation is the primary consideration in determining penalty amounts. The penalty for each violation is determined by combining the severity of injury and the probability of occurrence. In some cases, penalties may be reduced from the maximum allowable by law based on the company's size and history of previous violations. Enclosed is a brief fact sheet that further explains HIOSH's citation and penalty.

We know that no amount of money or compensation can measure the loss you and your family have suffered, and your lives have been changed forever because of this tragedy. I would like to express to you my deepest sympathy. If you have any questions about our inspection or any of the information enclosed, please contact me:

Administrator  
HIOSH  
830 Punchbowl St, #425  
Honolulu, Hawaii 96813

Telephone: (808) 586-9116  
E-Mail: DLIR.HIOSH@hawaii.gov

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Sincerely,

Administrator

Enclosures

**(Enclosure)**

## **HIOSH CITATIONS AND PENALTIES**

HIOSH citations state the specific safety and health standards the company is alleged to have violated. They note, both by number and name, the individual sections of HIOSH standards that the employer allegedly failed to follow. (A complete listing of HIOSH standards is available for review at the HIOSH area office or can be accessed on the division's Internet site at [www.labor.hawaii.gov/hiosh/](http://www.labor.hawaii.gov/hiosh/) under "Standards - Administrative Rules.")

Citations specify the location in the facility or on the work site where the violation occurred and the circumstances surrounding the violation. Citations must be issued within six months following identification of the alleged violations. Even if the employer disagrees with the findings, employers must post a copy of each citation at or near the place where the alleged violation occurred or where workers can see the citations for three working days or until the violation is abated, whichever is longer.

Citations identify required abatement dates (the dates when the hazards must be corrected) and proposed penalties for each alleged violation. For violations that are easy to fix, immediate abatement may be appropriate. If an employer must purchase equipment or significantly modify the workplace, a longer period is permitted.

HIOSH proposes citations when a standard has been violated. The civil penalty amounts, if any, associated with citations are adjusted based on employer size, good faith on the part of the employer (those implementing the safety and health program), and inspection history. The maximum penalty amounts can be found at <https://www.labor.hawaii.gov/hiosh/>

Violations are classified as willful if HIOSH has evidence that the employer intentionally disregarded the requirements of the Hawaii Revised Statutes (HRS) 396 and/or was plainly indifferent to the safety of employees. Violations are identified as serious if there is substantial probability that death or serious physical harm could result and that the employer knew, or should have known, of the hazard. A violation that has a direct relationship to job safety and health, but probably would not cause death or serious physical harm, is classified as other-than-serious. Violations may also be characterized as repeat if HIOSH has cited the company for a substantially similar hazard within the past five years.

HIOSH proposes penalties as a result of violations. Employers can contest (challenge) alleged violations, proposed penalties, or abatement dates before the State of Hawaii, Department of Labor & Industrial Relations, Hawaii Labor Relations Board (HLRB). If the employer decides to challenge any part of HIOSH's findings, they must do so within 20 calendar days after the employer receives the citations.

Employers may request a meeting with HIOSH to discuss the issued citations and possibly to enter into an informal settlement of the case. In some cases, penalties may be reduced when a company secures prompt correction of hazards and is able to provide documentation of actions aimed at securing sustainable improvements in order to protect other employees at the work site, and when a company is willing to evaluate and potentially implement these sustainable improvements at other locations. HIOSH's primary concern remains prevention of injuries, illnesses, and deaths rather than collection of funds.

If an employer acknowledges the violations, agrees to pay the proposed penalties, and certify the hazard has been corrected then the citations as issued or amended automatically become a final order. The employer pays the penalties and the case is closed. The employer may also contest a part of a citation and pay part of the penalties assessed, or contest the entire case. Contested cases proceed through the State of Hawaii, Department of Labor & Industrial Relations, Hawaii Labor Relations Board (HLRB). The employer or HIOSH may further appeal the case in the appropriate court, if dissatisfied with the HLRB's decision.

When an employer willfully violates a HIOSH standard and the alleged violation was the direct cause of, or a contributing factor to, an employee's death, HIOSH may refer the case to the State of Hawaii, Department of the Attorney General (DAG) to seek criminal prosecution of the employer. These are difficult cases to prove; few cases reach court, and convictions are rare.

**(Enclosure)**

## **HIOSH FATALITY INSPECTIONS**

The Occupational Safety and Health Administration (OSHA) was established under the OSH Act to provide for the enforcement of standards developed under the Act. There are both Federal and State OSHA programs. HIOSH was certified as the State OSHA program for Hawaii on May 9, 1978.

HIOSH inspects the worksites where fatalities have occurred to determine whether a violation of HIOSH safety and health standards occurred. These inspections are often comprehensive in nature, but at times may be limited to the area in which the fatality occurred. If HIOSH finds that the employer violated safety and health standards, the agency may issue citations and seek civil penalties against the employer, and may also refer the case to the State of Hawaii, Department of the Attorney General (DAG) for possible criminal prosecution.

HIOSH does not issue citations solely because there was a workplace fatality. However, if during any inspection, HIOSH finds that the employer violated safety and health standards, the agency may issue citations and seek civil or criminal penalties against the employer.

Upon written request, HIOSH will provide you with the portions of the inspection file that may be released under the Uniform Information Practices Act (UIPA). In an effort to keep the next of kin apprised of developments during an inspection, HIOSH sends them copies of citations (the formal notice of alleged hazards in the workplace), appeal letters (the employer's notice of disagreement with the issued citations), and informal settlements (a binding agreement between HIOSH and the employer to settle the case) as soon as the documents are issued. Furthermore, HIOSH is committed to the exchange of information with the next of kin as follows:

- Any time during the inspection or the resulting litigation, the next of kin may contact the local HIOSH office to inquire about the status of the case or to ask questions.
- If the next of kin has information or evidence that can assist in the inspection, they are encouraged to take a proactive role and share this information by writing, calling, or e-mailing the HIOSH office.
- The next of kin is encouraged to follow up and inquire about any information they have sent to HIOSH or on information received from HIOSH. In such cases, they are free to write or call the HIOSH office.
- Upon issuance of the final order, the next of kin will be afforded the opportunity to meet with overseeing Branch Manager to answer questions and explain the settlement decision.
- HIOSH will notify the next of kin when the case is closed. At that time, the portions of the file that can be released under UIPA will be made available to family members, at no charge, upon written request.

**APPENDIX D**

**NEXT OF KIN CLOSURE LETTER – PROPOSED CITATION(S)**

Victim’s family member first and last name  
Street Address  
City, State Zip Code

Dear **First and Last Name**:

I am writing to share with you the post-inspection and abatement results of the Hawaii Occupational Safety and Health Division (HIOSH) inspection into the death of [**victim’s name**], and to inform you that the case has been closed as of [**insert final order date**].

**[Insert one or two sentences to explain results of the final order and any abatement.]**

I would like to emphasize that, under the Hawaii Revised Statutes (HRS) 396, any penalties proposed by HIOSH as a result of a citation are not based on the occurrence of a fatality. Instead, the gravity of the violation is the primary consideration in determining penalty amounts. The penalty for each violation is determined by combining the severity of the injury and the probability of its occurrence. In some case, penalties may be reduced from the maximum allowable by law based on the company’s size and history of previous violations.

The Uniform Information Practices Act (UIPA) governs the release of information concerning incident inspections conducted by HIOSH. Upon written request, HIOSH will provide you with the portions of the inspection file that may be released under UIPA.

If you have any questions about our inspection, please contact me:

Administrator  
HIOSH  
830 Punchbowl St, #425  
Honolulu, Hawaii 96813

Telephone: (808) 586-9116  
E-Mail: DLIR.HIOSH@hawaii.gov

Again, I would like to express to you my deepest sympathy.

Sincerely,

Administrator

**APPENDIX E  
HIOSH'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>Administrator 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>No proposed citation</b>	
	<b>Citation(s) proposed</b>	
<b>POST-INSPECTION COMMUNICATIONS</b>	<b>Communicate inspection findings with next of kin</b>	
	<b>No proposed citation</b>	<b>Inspection Findings &amp; Next of Kin Closure Letter – No Proposed Citation Appendix B</b>
	<b>Confirmation of receipt of citation(s)</b>	<b>Inspection Findings Letter – Proposed Citation(s) Appendix C</b>
	<b>Case becomes final order</b>	<b>Next of Kin Closure Letter – Proposed Citation(s) Appendix D</b>