

**North Carolina Department of Labor
Occupational Safety and Health Division**

Raleigh, NC

Field Information System

Operational Procedure Notice 142

Subject: Expedited Informal Settlement Agreements

- A. **Purpose.** This operational procedure notice establishes a North Carolina program for Expedited Informal Settlement Agreements (EISAs).
- B. **Action.** Any OSH Division compliance personnel authorized to conduct informal conferences are also authorized to change abatement dates, reclassify violations, modify or withdraw a penalty, and/or modify or withdraw a citation or citation item. In many cases, the only issue of dispute is the penalty amount. For matters relating only to penalty amount disputes, this instruction provides a procedure to execute an EISA entirely through the mail, thereby eliminating the need for an informal conference.
- C. **Procedures.**
1. Every investigative file will be reviewed, prior to the issuance of citations, to determine whether the employer meets the following eligibility requirements for EISA:
 - a. The case is not an accident and/or fatality/catastrophe investigation.
 - b. The case does not include failure-to-abate, repeated, or willful violations, or more than two serious violations classified as high severity and greater probability (high/greater).
 - c. The employer has not been delinquent in submitting required progress reports or penalty payments due to the NC Department of Labor, OSH Division, particularly where an EISA had been offered.
 - d. The employer has at least a basic safety and health program which qualifies for at least a 25 percent good faith credit, according to the guidelines in FOM Chapter VI.
 - e. The employer has not refused delivery of citations.
 - f. The employer has not refused to abide by past EISA or Informal Settlement Agreement terms.
 - g. There are no other factors which would indicate that the employer is not a suitable candidate for the EISA. Other factors might be poor history of previous penalty payments, poor cooperation, and the lack of a safety and health program. Such factors will be explained in the file.
 2. Special considerations for a joint safety and health or internal referral inspections:
 - a. CSHOs participating in a joint inspection must use the combined number of citations issued when evaluating an EISA recommendation. CSHOs must assure that the same good faith credit rating is applied and used in the evaluation of an EISA. The procedures in C.1.d. above will be followed, and an EISA offering will be the same for both case files.

- b. When conducting an inspection based on a CSHO referral, each case file will be judged on its own criteria. CSHOs are not required to use the combined number of citations from the current inspection and the inspection which created the referral. Good faith credit may also vary between the two case files.
- 3. Employers who have been identified as eligible candidates will be mailed, along with the citations, the EISA Cover Letter located on the NCR explaining the EISA process (see example letter in Appendix A) and a fully prepared EISA located on the NCR (see example agreement in Appendix B). This agreement will include the following requirements:
 - a. The employer must abate all violations by the abatement date set forth in the citation.
 - b. The employer must provide evidence of abatement actions along with written, certified, verification of abatement upon final completion of abatement. Failure to provide verification will result in reinstatement of the original penalty amounts. The final verification notice must be posted at the worksite for a period of three working days. If the employer does not fully comply with the EISA, the Failure to Comply Letter located on the NCR (see example letter in Appendix C) will be sent to the employer within 30 calendar days of the expiration date of the EISA.
 - c. The OSH Division will agree to a 30 percent reduction in the penalty if the employer agrees to and follows the EISA stipulations.
- 4. The OSH Division will track employers who will not be offered EISAs on the Active Non-qualifying EISA List.
 - a. Employers not qualifying for an EISA include the following:
 - i. An employer delinquent in submitting any required progress reports or penalty payments on previous OSH Division inspections, particularly those where an EISA had been offered.
 - ii. An employer that has refused delivery of citations.
 - iii. An employer that has refused to abide by past EISA or ISA terms.
 - b. Adding/Deleting Entries to the Active Non-qualifying EISA List.
 - i. Upon approval of the bureau chief, an employer's name will be added to the list of employers who will not be offered EISAs for a period of time. The list will be updated by the compliance bureaus chiefs and posted on the One Stop Shop under the Inspection Resources heading. A notice will be sent out to the Compliance Bureaus when the list has been updated.
 - ii. The CSHO and/or district supervisor will review the list prior to issuance of citations to determine whether the employer has been placed on the Active Non-Qualifying EISA List. If the name appears and it is current, an EISA will not be offered on the current file.
 - iii. Employers will remain on the list until they have made all necessary payment(s), accepted delivery of citations, submitted necessary progress reports, completed abatement, and complied with past EISA or ISA terms, for a minimum of three years.

5. Administrative Support Procedures for Offering EISAs
 - a. Along with the citation package, an employer who eligible for an EISA will be mailed the cover letter located on the NCR explaining the EISA process (see example letter in Appendix A), with a district supervisor's signature.
 - b. The employer will also be mailed a fully prepared EISA located on the NCR (see example in Appendix B) which will include at least the following elements:
 - i. The establishment name as it appears on the referenced citation.
 - ii. The inspection number(s) as it appears on the referenced citation.
 - iii. The amended total penalty amount (70% of the original total penalty amount) and the original total penalty amount, as it appears on the invoice.
 - c. The EISA will be signed by the appropriate district supervisor. It will be sent by certified mail along with the cover letter, the unaltered citations, and other standard mailing attachments.
 - d. For every case in which an EISA is sent to an employer, administrative support personnel who process citation packets will enter "N" "20" "EISA" for the Optional Information in item 42.
 - e. A copy of the executed EISA will be placed in the case file and, where necessary, provided to the employee representative(s).
 - f. Incoming EISA paperwork will be date-stamped and forwarded to the appropriate district supervisor. Any EISA correspondence containing checks will be handled in accordance with current penalty payment procedures.
 - g. Administrative support staff will determine timeliness from the signed EISA form and certified mail (green card). If timely, modifications will be made to the penalty amount in appropriate data bases. EISAs determined by the administrative support staff not to be timely will be routed to the appropriate district supervisor. If the EISA is determined untimely, the file will be routed to the Budget Division for processing.
6. Procedures for Tracking EISA Compliance
 - a. If the final progress report for an EISA is overdue and no extension has been granted, the district supervisor will follow policies and procedures to ensure abatement of all cited items.
 - b. The district supervisor will determine whether further actions, such as the following, are needed:
 - i. Within 30 calendar days of the expiration of the EISA, issue a Failure to Comply Letter to the employer, requesting full payment of original penalty (see example letter in Appendix C.)
 - ii. Not offering EISAs to the same employer in the future.

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- D. **Effective Date.** This OPN is effective on the date of signature. It will remain in effect until revised or canceled by the director.

Signed on Original
Tim Childers
West Compliance Bureau Chief

Signed on Original
Allen McNeely
Director

10/05/2012
Date of Signature

Appendix A: OSHNC EISA Cover Letter

Subject: CITATION AND NOTIFICATION OF PENALTY for Alleged Occupational Safety and Health Violations and Eligibility for Expedited Informal Settlement Agreement (EISA)

A recent inspection of a place of employment under your operation, ownership, or control has resulted in the enclosed Citation and Notification of Penalty which describes alleged violations of the North Carolina Occupational Safety and Health Act of 1973. Please read carefully and follow instructions listed under EMPLOYER AND EMPLOYEE RIGHTS AND RESPONSIBILITIES on the citation and the following discussion of your eligibility for an EISA.

This inspection revealed no instances of Repeated, Willful, or Failure-to Abate violations, nor were there more than two serious violations classifies as high severity and greater probability. Additionally, the Compliance Safety and Health Officer (CSHO) has 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 dates specified in the Citation and Notification of Penalty.

These factors, along with the good faith you have exhibited, make your company eligible for an EISA. Under this program, an employer can obtain an immediate 30 percent (30%) penalty reduction by entering into an informal settlement agreement with OSH NC, without going through the formal contest procedure.

If you decide to enter into an Expedited Informal Settlement Agreement (EISA), you should be aware that you waive your right to contest any part of the Citation and Notification of Penalty. Also, you cannot contest a portion of the Citation and Notification of Penalty and obtain an EISA on the remaining portion.

The EISA can be used only where the sole issue of dispute is the dollar amount of the OSHNC penalty. If you wish to discuss, change, or object to any other aspect of the inspection or citations, then the EISA cannot be used. Under those circumstances, you may request an informal conference or file a notice of contest according to the instructions contained on the Citation and Notification of Penalty and the attached Informal Conference/Notice of Contest request form.

You should carefully read the enclosed EISA to determine whether the terms of the agreement are acceptable to you. Key elements of the agreement include:

- OSHNC agrees to a 30% reduction in the total penalty amount;
- The employer agrees to post the EISA with the citation;
- The employer agrees to abate the violations by the date shown in the citations (an employer acting in good faith may request an extension of the original abatement date);
- The employer agrees to provide evidence of corrective action and submit a written progress report to OSHNC within 30 days of citation issuance and every 30 days thereafter until all items are abated. Written progress reports must be submitted to OSHNC to show that you have completed all corrections as of the "date by which the violation must be abated" shown on the citation;
- The employer agrees to pay the full amount of the reduced penalty at the time that the original signed EISA is returned to OSHNC. Payment may also be made on- line at www.nclabor.com. Please include a copy of any on-line payment receipt along with the signed and dated EISA form.

The original signed EISA and payment of reduced penalty (70% of the total original penalty amount) must be received by OSHNC within 15 working days following your receipt of the Citation and Notification of Penalty.

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Federal OSHA publishes information on inspection and citation activity on the Internet under the provisions of the Electronic Freedom of Information Act. The information related to your inspection will be available 30 calendar days after the Citation Issuance Date. You are encouraged to review the information concerning your establishment at www.osha.gov. If you have any dispute with the accuracy of the information displayed, please contact this office.

If you have any questions regarding the citation or this Expedited Informal Settlement Agreement offer, please contact me at **[PHONE]**.

Sincerely,

[OSHNC SUPERVISOR]

District Supervisor

North Carolina Department of Labor

Division of Occupational Safety and Health

Enclosure: Expedited Informal Settlement Agreement (EISA) Description

Expedited Informal Settlement Agreement (EISA) Description

WHAT IS EISA?

It is a way to reduce OSHNC penalties by 30 percent.

WHY IS THIS OFFER BEING MADE TO THE EMPLOYER?

The recent inspection of your workplace uncovered no repeated, willful, or failure to abate violations of OSHNC 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 and/or fatality/catastrophe inspection, and you are not currently delinquent with OSHNC penalty payments.

WHAT DO I HAVE TO DO?

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 Certificate of Correction 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 sent to this OSHNC office. For your convenience, a copy of the certificate has been provided with this mailing.

STEP-BY-STEP, HOW WOULD I PROCEED?

1. Read and understand the EISA.
2. If the terms are agreeable, sign either EISA option and return it to this office with a check for the reduced penalty amount. The agreement must be signed by you and postmarked no later than the end of the 15-working-day contest period. OSHNC will then sign the EISA and send it back to you.
3. Correct the violations. (Corrections must be made by the dates on the citations)
4. Send evidence of the corrections made (e.g., photographs, purchase orders, etc.). If you want, you can hold your evidence of corrections until everything has been corrected and then send it all out together along with the Certification of Correction by the last abatement date shown on the citations.

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

Contact this office 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 set.

Appendix B: OSHNC Expedited Informal Settlement Agreement

In the matter of:

[ESTABLISH] [INSNUM] [CITISSUEDATE]

EXPEDITED INFORMAL SETTLEMENT AGREEMENT (EISA)

[ESTABLISH] (EMPLOYER), by its undersigned representative and North Carolina Department of Labor, Division of Occupational Safety and Health (OSHNC) by its undersigned representative, in settlement of the above referenced Citation and Notification of Penalty (CITATION), hereby agree to the disposition of this matter on the following terms:

1. The EMPLOYER agrees to abate the violations as cited, on or before the abatement dates set out in the CITATION.
2. The EMPLOYER agrees to provide evidence of the actions taken to abate the violations by submitting written progress reports to OSHNC by the abatement date(s) on the CITATION or within 30 days of CITATION issuance, whichever is earlier. If all violations were abated at the time of inspection, a progress report does not need to be returned to OSHNC.
3. Upon correction of all violations, the EMPLOYER agrees to post for a period of fifteen working days a copy of the final progress report certifying that all violations have been abated in the place where the CITATION is posted.
4. OSHNC agrees that the total penalty amount is amended to **[EISAAMT]**. The EMPLOYER agrees to submit full payment of the amended amount along with this original signed Settlement Agreement within 15 working days following the EMPLOYER'S receipt of the CITATION. Please submit the agreement and payment to: NC Department of Labor/OSH Compliance, **[Insert Field Office Address]**
5. In consideration of the foregoing amendment, the EMPLOYER hereby waives its right to contest the CITATION pursuant to the Occupational Safety and Health Act of North Carolina, North Carolina General Statutes 95-126 to -155, to contest any CITATION, penalty(ies), or abatement date(s) listed on the NIOSHA-2 before the Safety and Health Review Commission of North Carolina and/or any other tribunal. It is understood and agreed by OSHNC and the EMPLOYER that the CITATION as amended by this agreement shall be deemed a final order not subject to review by any court or agency.
6. The EMPLOYER agrees to immediately post a copy of this Settlement Agreement in the same manner and place as the CITATION is required to be posted. The signature of the EMPLOYER representative on this Settlement Agreement is understood to be certification of this posting.
7. The EMPLOYER agrees that its failure to comply with any term of this agreement shall cause the original penalty amount of **[ORIGPEN]** to become due and owing to OSHNC.
8. Each party hereby agrees to bear its own fees and other expenses incurred with this proceeding and the EMPLOYER further agrees to waive all claims it may have, now and in the future, under North Carolina General Statutes 95-126 to -155 for fees and expenses arising out of this case.

----- Employer Representative ----- Title ----- Signature ----- Date Signed	[OSHNC SUPERVISOR] ----- OSHNC Representative District Supervisor ----- Title ----- Signature ----- Date Signed
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NOTICE TO EMPLOYER

Please return this ORIGINAL DOCUMENT along with:

- Completed verification of abatement if abatement dates (as specified in your citation material) indicate that one is now due; and,
- The entire reduced penalty amount specified in item 4 on the first page of this document. Payment may also be made on-line at www.nclabor.com. Please include a copy of any on-line payment receipts along with the signed and dated EISA form.

NOTICE TO EMPLOYEES

Any employee or authorized employee representative, who has an objection to the abatement dates in this agreement, has the right to contest any abatement date set if they believe the date to be unreasonable. The written notice of contest must be mailed to the North Carolina Department of Labor at the address shown above, within 15 working days of the receipt by the EMPLOYER of this Expedited Informal Settlement Agreement.

Appendix C: OSHNC Failure to Comply Letter

[DATE]

[ESTABLISH]
[ESTABLISHADDRESS]

RE: OSHNC Inspection, Citation issuance date: [ISSUE DATE]

Dear Employer:

The attached copy of the certified mail return receipt indicates that you received the above citation(s) on [GREENCARDDATE]. On [EISARECEIVEDDT], the NC Department of Labor Division of Occupational Safety and Health received your Expedited Informal Settlement Agreement Form (EISA) and a check in the amount of [CHECKAMOUNT].

Since the certified mail return receipt shows that you did not contest this completed EISA within the 15 working day time period, the Citation and Notification of Penalty became a final order on [final order date].

Since the employer did not comply with paragraph 2 and paragraph 4 of the EISA, the remaining penalty amount of [PENALTY OWED] now becomes due and owing to the NC Department of Labor. Send payment to NC Department of Labor, 1101 Mail Service Center, Raleigh, NC, 27699-1101, or pay online at www.nclabor.com.

If you have any further questions or concerns, please contact our office at [PHONE]. Thank you for your attention and cooperation.

Sincerely,

[OSHNCSUPERVISOR]
District Supervisor
North Carolina Department of Labor
Division of Occupational Safety and Health

Attachment: Copy of certified mail return receipt
cc: file

OPN 142 cont'd.

Appendix D: Active Non-qualifying EISA List

Employer	Reason for Adding to the List	Added to List by (Supv ID)	Date Added to List	Expiration Date	Date Removed