



# OSHA INSTRUCTION

U.S. DEPARTMENT OF LABOR

Occupational Safety and Health Administration

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**DIRECTIVE NUMBER:** CPL 02-00-167      **EFFECTIVE DATE:** September 3, 2021

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**SUBJECT:** Guidelines for Administrating Corporate-Wide Settlement Agreements

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## ABSTRACT

**Purpose:** The purpose of this instruction is to revise the guidelines for the administration of corporate-wide settlement agreements (CSAs) by the Occupational Safety and Health Administration (OSHA). This instruction cancels CPL 02-00-152 issued on June 22, 2011.

**Scope:** This instruction applies OSHA-wide.

**References:** See Section III.

**Cancellations:** CPL 02-00-152, Guidelines for Administration of Corporate-Wide Settlement Agreements, June 22, 2011.

**State Impact:** Notice of Intent and Equivalency required; see Section VI.

**Action Offices:** National, regional, area, and State Plan Offices.

**Originating Office:** Directorate of Enforcement Programs.

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By and Under the Authority of:

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## Executive Summary

This instruction cancels and replaces OSHA Instruction CPL 02-00-152, Guidelines for Administration of Corporate-Wide Settlement Agreements (“CSAs”) issued June 22, 2011. This instruction clarifies the procedures for selection of cases suitable for a CSA, the negotiation process, and oversight and enforcement of CSAs.

### Significant Changes

- Emphasizes the importance of corporate-wide or enterprise-wide enforcement and the significance of corporate-wide settlement agreements.
- Describes potential advantages to the Agency of corporate-wide settlements.
- Identifies the elements that make cases suitable for corporate-wide settlements.
- Provides, under certain circumstances, for delegation of the negotiation and the monitoring of a CSA covering workplaces in multiple regions to a lead region.
- Highlights the importance of good faith negotiations and a timetable for promptly concluding negotiations.
- Clarifies division of responsibility for CSAs among OSHA area offices, regional offices, and the national office (NO).
- Emphasizes the importance of the communication and collaboration between OSHA (area offices, regional offices, national office) and the Solicitor of Labor (SOL Regional Offices and SOL National Office) in deciding when pursuit of a corporate-wide settlement agreement is appropriate. When determining the appropriate terms of such a settlement agreement arising during litigation, including litigation in which enterprise-wide abatement is sought, communications between SOL and OSHA will include consideration of all relevant factors, such as the long-term value of a potential settlement, litigation considerations, and policy issues.

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## **I. Purpose.**

The purpose of this instruction is to revise the guidelines for the administration of corporate-wide settlement agreements (CSAs) by OSHA. This instruction cancels CPL 02-00-152, issued June 22, 2011.

## **II. Scope.**

This instruction applies OSHA-wide.

## **III. References.**

- OSHA Instruction [CPL 02-00-080, Handling of Cases to be Proposed for Violation-By-Violation Penalties](#), October 21, 1990.
- OSHA Instruction [CPL 02-00-164 - Field Operations Manual \(FOM\)](#), April 14, 2020.
- OSHA Instruction [CPL 02-00-149, Severe Violator Enforcement Program \(SVEP\)](#), June 18, 2010.
- OSHA Instruction [CSP 01-00-005, State Plan Policies and Procedures Manual](#), May 6, 2020.
- Title 29 United States Code 651, [Occupational Safety and Health Act of 1970](#).
- 29 CFR Part 1960, [Basic Program Elements for Federal Employee Occupational Safety and Health Programs and Related Matters](#), October 21, 1980, and as amended.
- 29 CFR Part [1903.19, Abatement Verification](#).
- 29 CFR Part [2200.37, Petitions for Modification of the Abatement Period](#).

## **IV. Cancellations.**

OSHA Instruction CPL 02-00-152, Guidelines for Administration of Corporate-Wide Settlement Agreements, issued June 22, 2011.

## **V. Action Information.**

### **A. Responsible Offices.**

Directorate of Enforcement Programs (DEP) and Directorate of Construction (DOC).

## **B. Action Offices.**

National, regional, and area offices.

## **C. Information Offices.**

State Plans, OSHA Training Institute, consultation project managers, Voluntary Protection Program managers and coordinators, OSHA Strategic Partnership coordinators, compliance assistance coordinators, compliance assistance specialists, and regional Severe Violators Enforcement Program (SVEP) coordinators.

# **VI. Federal Program Change.**

## **A. Notice of Intent Required, Adoption Encouraged.**

This Instruction describes a federal program change that revises the guidelines for administration of Federal CSAs by OSHA to a range of enforcement cases, particularly where an employer has a significant pattern of non-compliance with the Occupational Safety and Health Act (OSH Act) across multiple site locations. State Plans are encouraged, though not required, to adopt these guidelines. Within 60 days of the date of issuance of this instruction, State Plans must submit a notice of intent indicating whether a similar policy is already in place, the state intends to adopt new policies and procedures, or the state does not intend to adopt this instruction. If a State Plan does not adopt at first, but at some later time 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 the website at [www.osha.gov/dcsp/osp/index.html](http://www.osha.gov/dcsp/osp/index.html).

Federally-issued CSAs will be posted on OSHA's website. Although it is not feasible to involve State Plans in the negotiation of individual federal CSAs, OSHA will notify State Plans once an agreement has been executed and provide a copy whenever such an agreement has been negotiated with employers who have establishments covered by a State Plan.

Notwithstanding a State Plan's decision to adopt or not to adopt this Instruction, when federal OSHA develops a CSA with an employer who also has locations covered by a State Plan federal OSHA will inform the state of the CSA's provisions. The State Plan must notify OSHA if it will (1) honor the terms of the federal agreement at corporate sites covered by the State Plan; (2) enter into a separate state settlement agreement with the employer subject to the Federal CSA that either accepts the terms and conditions of the federal settlement, or establishes different but equivalent or more stringent terms and conditions; or (3) continue to enforce all applicable state standards and regulations without regard to the federal CSA, i.e., not honor the federal agreement. Further,

regardless of whether a State Plan adopts this Instruction, any State Plan entering into a state-wide, multi-establishment CSA for corporate entities not otherwise subject to a federal agreement must assure that such agreements either follow the policies and procedures as set out in this Instruction or at least as effective alternative policies and procedures, and must provide the Regional Administrator a copy of any state-wide corporate settlement agreement concluded with an employer for review and monitoring. See section XVIII. State Plans for additional information.

## **VII. Significant Changes.**

### **A. Following are the significant changes in this instruction:**

- Emphasizes the importance of corporate-wide or enterprise-wide enforcement and the significance of corporate-wide settlement agreements.
- Describes potential advantages for achieving corporate-wide abatement and enhanced safety and health protective measures.
- Identifies the elements that make cases suitable for corporate-wide settlements.
- Provides, under certain circumstances, for delegation of the negotiation and the monitoring of a CSA covering workplaces in multiple regions to a lead region.
- Highlights importance of good faith negotiations and a timetable for concluding negotiations.
- Clarifies division of responsibility for CSAs among OSHA area offices, regional offices, and the national office.
- Emphasizes the importance of the communication and collaboration between OSHA (area offices, regional offices, national office) and SOL (RSOL, NO-SOL) in deciding when pursuit of a corporate-wide settlement agreement is appropriate. When determining the appropriate terms of such a settlement agreement arising during litigation, including litigation in which enterprise-wide abatement is sought, communications between SOL and OSHA will include consideration of all relevant factors, such as the long-term value of a potential settlement, litigation considerations, and policy issues.

## **VIII. Background – Corporate-Wide Enforcement.**

Corporate-wide enforcement in selected cases is a major agency priority. Corporate-wide enforcement activities are aimed at requiring an employer to correct a non-complying condition or conditions at multiple worksites. This strategic approach to addressing corporate non-compliance centers on enforcement mechanisms that accomplish the most comprehensive health and safety protections for workers, enables OSHA to leverage enforcement resources more



efficiently, and is geared towards changing the corporate culture. These enforcement tools may include inspections, investigations, citations, litigation, and settlement agreements.

Many workplaces are owned or operated as part of a larger corporate entity or enterprise with establishments in several locations. When OSHA finds serious hazards during an inspection at one establishment of a larger enterprise, and the facts suggest the same hazard may be occurring at one or more of the employer's other establishments, an investigation of potential corporate-wide non-compliance should be pursued. In such situations, OSHA should investigate whether the violative conditions result from workplace-specific actions or from a corporate-wide policy or practice(s). The broader investigation into corporate-wide practices is necessary to ensure that workers at other workplaces are not exposed to similar hazards.

The investigation into corporate policies and practices must be conducted when serious hazards found at one establishment involve agency enforcement priorities listed in section XI. In such cases, an investigation to determine whether the violative condition exists at other establishments of the same employer is essential. Therefore, achieving corporate-wide abatement is especially valuable in furthering agency goals.

Consideration of corporate-wide enforcement is independent of the Severe Violators Enforcement Program (SVEP). Considerations for qualifying criteria for CSA and SVEP do not necessarily intersect.

In corporate-wide enforcement actions, the central question is whether the same hazardous conditions that endanger workers at one workplace exist, or are likely to exist, at other workplaces because of corporate-wide policies or practices. OSHA Compliance Safety and Health Officers (CSHOs) should therefore inquire: Is the violative condition the result of a workplace-specific condition, a decision or policy of local management, or does it reflect decisions or policies that originate at the corporate level?

When conducting an inspection of a worksite owned by a larger entity, the CSHO should collect information bearing on corporate-wide responsibility when there is a significant non-compliance and the investigative evidence shows that decisions leading to the non-compliance were made at the corporate, rather than just the local facility, level. The collection of such information should start during the initial inspection, and may be obtained through interviews with managers and staff and review of documents. The area office should consult with the regional office and regional solicitor as appropriate.

If the investigation reveals that the non-compliance is likely to exist at other workplaces of the enterprise, all enforcement tools and actions shall be considered to bring about compliance corporate-wide. Area and regional office staff should work closely with the regional solicitor's office to develop an effective strategy. Inspections at other workplaces may be conducted when the agency has reasonable grounds to believe the same or similar hazards may exist there (See Appendix B). As a result of those inspections, citations may be issued. If the initial citations are contested and OSHA has found evidence of violative conditions at multiple worksites, SOL, in consultation with OSHA, may request the Occupational Safety and Health Review Commission (the Review Commission) to order corporate-wide abatement measures pursuant to its authority

under Section 10(c) of the OSH Act. A corporate-wide settlement may be the appropriate means to settle all violations and obtain enterprise-wide abatement to include enhanced protective measures.

By entering into a CSA, an employer formally recognizes the existence or potential existence of specific hazards at its worksites and the obligation to abate those hazards. CSAs potentially provide several important benefits to OSHA for the protection of workers, which include the following:

- Broader and faster abatement as compared with the time for inspecting and potentially litigating individual citations at multiple workplaces.
- Effective and strategic tool to leverage the agency's resources.
- Program and process requirements that go beyond the requirements of cited standards, such as hiring independent consultants and auditors and strengthening the employer's internal safety and health management system to address the specific situations where OSHA has found non-compliance.
- Better specification of employer obligations under performance standards and the general duty clause. Negotiated terms may serve to promote consistent abatement, provide clear notice of the employer's obligations, and serve as a model for other corporate entities.
- High-level corporate attention and commitment to abatement.
- Establishing a framework under which a company that has been found to have systemic safety and health deficiencies can commit to improvement by implementing a comprehensive and effective safety and health management system.
- Addressing hazards subject to a national emphasis program (NEP) or similar agency initiative can be featured as a cooperative venture between OSHA and employers in DOL releases and publications, and can increase public awareness of the hazard.

## **IX. Definitions.**

*Corporate-wide enforcement* – Enforcement activities aimed at requiring an employer to correct non-complying conditions in multiple workplaces. Corporate-wide enforcement is sometimes referred to as enterprise-wide enforcement.

*Corporate-Wide Settlement Agreement (CSA)* – Settlement agreement involving multiple workplaces of the same employer/enterprise.

*National Corporate-Wide Settlement Agreement (NCSA)* – Settlement agreements involving workplaces of the same employer located in multiple regions (as distinct from regional CSAs), where DEP and SOL-OSH will exercise primary negotiation and oversight responsibilities.

*Regional Corporate-Wide Settlement Agreement (RCSA)* – Settlement agreements where, based on the location(s) of workplaces within a region(s), primary authority to negotiate an agreement and exercise oversight responsibilities has been delegated to a region based on discussions by DEP, SOL-OSH, the OSHA RA, and the RSOL.

*Lead Regional Administrator* – The Regional Administrator for the lead region.

*National Corporate-Wide Settlement Coordinator (NCSC)* – Designated national office representative in DEP responsible for providing overall coordination of NCSAs among the national, regional, and solicitor’s offices, including negotiation, implementation, and monitoring.

*Regional Corporate-Wide Settlement Coordinator (RCSC)* – Designated regional office representative responsible for providing overall coordination of RCSAs among the regional, national, and solicitor’s offices, including negotiation, implementation, and monitoring.

*Technical Coordinator* – Subject matter expert designated by the DEP director in complex cases requiring particular expertise.

*Initiating Inspection(s)* – The original inspection that resulted in citations and subsequent negotiations leading to a corporate-wide settlement agreement.

## **X. Mutual Commitment**

A CSA is the product of a voluntary negotiation process. A successful CSA requires the mutual commitment of all participating parties: OSHA, the employer, and any designated third party. Commitment to the abatement of cited safety and health hazards throughout the employer’s covered worksites is essential. The parties must undertake negotiations for a CSA in good faith established early in the negotiations to facilitate coordination of meetings, site visits, technical discussions, requests for information, and to ensure progress toward a mutually acceptable agreement. Demonstration of good faith includes the presence at the negotiation table of party representatives who have the knowledge and authority to make decisions required for the CSA. If, at any time, OSHA, in consultation with SOL, determines that reasonable cooperation is not present or a party is not negotiating in good faith, OSHA may cease negotiations.

Where, under Review Commission rules, an “authorized employee representative” or an “affected employee” has been granted party status, the third party shall participate in negotiations and execution of the CSA.<sup>1</sup> OSHA and SOL will ensure that the authorized employee representative and/or the affected employee that has been granted party status has the opportunity for reasonable participation at the earliest practicable stage of the negotiation.

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<sup>1</sup> Under Review Commission rules, an “authorized employee representative” means a labor organization that has a collective bargaining relationship with the cited employer and represents affected employees. “Affected employee” means an exposed employee of the cited employer.

Internally, CSAs are a joint product of SOL and OSHA. OSHA, having developed the case and issued citations, shall coordinate additional input from the field, other Agency staff, and any employee representative(s) with party status during the settlement process. SOL, in consultation with OSHA, shall be responsible for the negotiation of the agreement.

## **XI. Suitability of Cases for CSAs -- General Considerations**

CSAs should be considered when the safety and health issues involved are systemic and circumstances are conducive to securing abatement at other worksites of an employer. All proposed CSAs will be evaluated by OSHA and SOL to determine the benefits to worker safety and health and effective deployment of resources, such as monitoring compliance. The evaluation shall be based upon information provided in response to Appendix A and any other available information.

Whenever appropriate, the agreement shall include enhanced abatement measures beyond those stated in the original citations, including general safety and health program enhancements, when compliance problems identified in the inspection are indicative of a broader pattern of corporate-wide non-compliance. (Appendix B provides guidance to the CSHO in the identification of potential issues of corporate-wide non-compliance).

## **XII. Safety and Health High Impact Enforcement Cases**

### **A. CSAs may be suitable when the following circumstances are involved:**

1. Egregious enforcement actions.
2. Significant cases.
3. Fatality/Catastrophe cases.
4. SVEP cases (*see* [CPL 02-00-149](#)).
5. Cases involving NEPs and other major agency initiatives such as grain handling and oil/gas well drilling and servicing.
6. Cases in which an agreement can clarify abatement obligations for serious hazards, such as cases involving the following:
  - Outdated, or general performance standards.
  - Recognized hazards not addressed by a standard (i.e., Section 5(a)(1) cases).
  - Novel hazards presenting complex workplace hazards.
  - Other situations where an agreement may influence standard industry practices.
7. Cases in which corporate inspection history, or other available information, demonstrates that an employer with multiple worksites has a systemic pattern of noncompliance associated with one or more specific OSHA standards or subparts, and/or injuries or fatality trends stemming from the same or similar conditions.

### **B. Extensive Recordkeeping Deficiency Cases**

Recordkeeping cases in which systemic deficiencies or extensive problems are evident on a corporate-wide basis may be the subject of a CSA. Examples include when recordkeeping decisions are made by a corporate official, corporate instructions provide erroneous guidance, or the corporation provides no training to individuals charged with making recordkeeping decisions.

### C. Types of CSAs

1. Cases suitable for a CSA will be handled as a National CSA or a Regional CSA.

a) National CSA - Cases involving multiple workplaces of the same employer located in more than one region will be handled as a National CSA (NCSA) unless the DEP or DOC Director determines, in light of the considerations listed below, that it would be appropriate to delegate primary responsibility for negotiation and oversight of the CSA to a particular region.

NOTE: If a national company wants to enter into an agreement that covers only worksites within one region, DEP approval is required.

b) Regional CSA - Cases involving multiple workplaces of the same employer located in one region, or more than one region, will be handled as a Regional CSA if the DEP or DOC Directors and SOL-OSH determine that it would be appropriate to delegate primary responsibility for negotiating and oversight to a lead region. Determination of a regional delegation will include consideration of the following:

- (1) The size of the CSA (i.e., whether the number and size of covered workplaces permits the region to administer the CSA);
- (2) The geographical distribution of covered workplaces (e.g., whether the covered workplaces are located primarily in or near the region, or the corporate headquarters is located within the region);
- (3) The region's experience and expertise in issues addressed by the CSA;
- (4) The region's role in developing an effective corporate enforcement strategy targeting the hazardous condition;
- (5) Whether the CSA involves novel and/or national policy issues;
- (6) Whether abatement issues are straightforward or raise novel/complex issues; and
- (7) Any other considerations relevant to effective and efficient negotiation and administration of the CSA.

Where the DEP Director has delegated primary responsibility for negotiating the terms of a CSA to a lead Regional Administrator, that RA shall seek input from SOL-OSH, RSOL and NO-OSHA to ensure that CSAs are consistent across

regions. Far-reaching complex cases, novel 5(a)(1) issues, and workplace violence cases are more likely to be handled as a National CSA.

### **XIII. Notification and Negotiation Procedures**

#### **A. Initial Actions to Pursue a CSA**

1. A CSA may be suggested by OSHA, in consultation with SOL, or by the employer. DEP and SOL-OSH shall be notified of any intention to pursue a CSA, regardless of which party suggests the agreement or whether the CSA would cover workplaces in one, or more than one, region.

2. To assist determining whether a CSA may be appropriate, the area office, in coordination with the regional Solicitor's Office and the OSHA regional office, shall complete Appendix A, Evaluating Employers for a Corporate-Wide Settlement Agreement. At any point during development, the regional OSHA office may discuss the matter informally with DEP. If the Regional Administrator decides that a CSA should be pursued, the region shall formally notify DEP and, if appropriate, the Directorate of Construction, by sending the completed Appendix A to the respective director.

3. In situations where an employer contacts OSHA's National Office or SOL-OSH to pursue a CSA, DEP and SOL-OSH shall inform their respective affected regional administrator(s) and regional solicitor(s).

4. Where a CSA would include workplaces in more than one region, the following would apply:

a) In conjunction with affected regional offices, DEP will develop a company profile to include possible employer locations, OSHA and/or other DOL violation history, open inspection activity, and any other relevant information. This profile will be considered by OSHA regional offices and SOL and will be used during negotiations with the employer.

b) DEP, along with the initiating regional office, will coordinate discussion among the other affected OSHA regional offices and SOL to identify other open and/or contested cases with the employer, and to decide if a CSA is an option. Appendix A will be shared with the other affected regions to gather their feedback.

c) OSHA will not enter negotiations for a CSA that includes workplaces in more than one region without the concurrence of the DEP Director. DEP will notify the initiating regional office of its concurrence or non-concurrence within 30 days of receipt of Appendix A.

d) A CSA that would cover workplaces in more than one region will

be treated as a National CSA unless the DEP Director decides, with the concurrence of the region, to designate the matter as a Regional CSA.

## **B. Negotiating and Executing the CSA**

### 1. General Principles Covering Negotiation

a) Before beginning negotiations with the employer, OSHA and SOL shall agree upon a framework for the negotiations that will include the Agency's interests and objectives and the general nature of the terms that will form an acceptable basis for settlement. This framework may be revisited as necessary during the course of the negotiations. For CSAs that cover workplaces in more than one region, discussions will include DEP and SOL-OSH as well as affected regions.

b) A timeline for concluding negotiations shall be developed and discussed with the employer. If, at any time, OSHA, in consultation with SOL, determines that significant progress has not been made in reaching an agreement, the agency will consider whether to cease negotiations. (See section X.)

c) An essential principle is communication and collaboration between OSHA (area offices, regional offices, national office) and SOL (RSOL, SOL-OSH) in negotiating the terms of a corporate-wide settlement agreement arising during litigation. OSHA and SOL will discuss and consider all relevant factors, such as value of a potential settlement, litigation considerations, and policy issues, when determining appropriate terms of a settlement agreement.

d) In all cases, OSHA and SOL will assist in developing the written first draft for both Regional and National CSAs.

e) In cases where a designated employee representative has obtained party status pursuant to OSHRC rules of procedure, OSHA and SOL shall seek input from such designated employee representative(s) and provide them an opportunity, as appropriate, to participate in the CSA. To identify such employee representatives/employees at locations affected by a CSA, the employer shall provide a list of any labor organizations that have a collective bargaining relationship with the employer at each of those locations.

f) As described below, the designation of the CSA as national (NCSA) or regional (RCSA) will determine how negotiations are conducted.

2. National Corporate-Wide Settlement Agreements

a) NCSAs shall not be executed without the prior knowledge, involvement, and concurrence of DEP,RSOL, and SOL-OSH. The DEP Director and the involved SOL office must concur with the terms of the final NCSA before submission to the employer.

b) NCSAs are negotiated on OSHA's behalf by SOL-OSH. DEP will normally represent the agency during the negotiation process. SOL-OSH will obtain support and concurrence from the RSOL and DEP during negotiation of the CSA. It is the responsibility of SOL-OSH to obtain input from the DEP Director and to regularly consult with the DEP director during negotiations. The DEP Director will obtain input and involve the appropriate Regional Administrator throughout the negotiations. Upon entry of an order terminating the proceedings from OSHRC, SOL-OSH will send a copy of the termination order and the CSA to the National Corporate Settlement Coordinator (NCSC) in DEP.

c) DEP will appoint the NCSC with responsibility for oversight of corporate-wide agreements. The NCSC will undertake the following:

(1) Receive the electronic copy of the completed Appendix A - Evaluating Employers for a Corporate-Wide Settlement with the Regional Administrator's concurrence and inform the region of DEP's concurrence or non-concurrence.

(2) Coordinate input from the national office (OSHA and SOL) and the regions (OSHA and SOL) during the settlement process.

(3) In consultation with SOL-OSH, the NCSC will provide instructions to the Regional Administrator(s) and RCSC(s) for addressing any current inspections or cases in informal settlement discussions that may be affected by the NCSA.

(4) Share a copy of the proposed agreement with the necessary national office directorates.

(5) Upon execution of the NCSA, be responsible for transmitting copies of the NCSA to affected OSHA regional offices.

(6) Input the information into DEP's CSA tracking system.

3. Regional Corporate-Wide Settlement Agreements.

a) Regional CSAs will not be committed to or executed without the



prior notification, involvement, and concurrence of the lead Regional Administrator, as well as advance notification to DEP.

- b) RCSAs are negotiated on OSHA's behalf by RSOL, in consultation with SOL-OSH. The Lead Regional Administrator or their designee(s) will normally represent the Agency during the negotiation process. Where an RCSA involves multiple workplaces of the same employer in more than one region, the Director of DEP, in consultation with the affected Regional Administrators, will delegate primary negotiation authority to a lead Regional Administrator. The lead RA shall timely apprise all other affected Regional Administrators and DEP of the progress of negotiations and obtain their input.
- c) Each Regional Administrator shall in turn coordinate input from area directors in their regions during the settlement process.
- d) The lead Regional Administrator will forward a signed electronic copy of the RCSA to "zzOSHA-CSA."
- e) The lead Regional Administrator will work with the NCSAC to update the monthly CSA tracker.

### **C. Posting the CSA and file content.**

1. All CSAs will be posted on the Corporate-Wide Settlement Agreement Page of the OSHA public website as well as on DEP's internal homepage and, where appropriate, on DOC's internal homepage.
2. DEP will ensure that an electronic copy of every CSA (national and regional) is provided to the Salt Lake City Technical Center (SLCTC) within 30 days after the effective date. SLCTC will post a copy of the agreement to the Corporate-Wide Settlement Agreement Page of the OSHA public website within five days of receipt.
3. National, regional, and area offices shall maintain a file for each CSA that includes the information in Appendix C.

NOTE: Only area offices that have sites in their geographic jurisdiction covered by the CSA need to maintain a file.

### **D. State Plan Notification**

1. Regional Administrators shall inform the State Plans within their regions of any CSA where the employer has establishments located within their states and shall provide them copies of the signed CSA.

## **E. Filing for Enforcement under Section 11(b)**

1. Promptly after execution of each CSA and entry of a final order by the Review Commission, SOL-OSH shall file a petition for summary enforcement of the Agreement in an appropriate court of appeals.

## **XIV. Content of CSAs**

### **A. Hazard Abatement, Safety and Health Management Program Enhancements, OSHA Monitoring, and Employee Notification/Non-Discrimination**

1. All CSAs must include provisions that set forth comprehensive abatement measures and verification of abatement for the cited hazards. CSAs should also include additional measures that address the conditions, operations, and programmatic issues found in the inspection that are associated with or underlie the specific cited hazards, in order to provide enhanced protection for employees.
2. The following provisions shall be considered for inclusion in all CSAs:
  - a) Hazard Abatement
    - (1) The CSA must include provisions that address abatement of cited conditions and specific abatement verification. In general, CSAs should include a requirement that the employer hire third-party consultants with specialized expertise to assist in monitoring and implementing corrective measures.
  - b) Abatement of cited hazards: The CSA must require abatement of the cited conditions at all workplaces covered by the agreement and prescribe methods and processes that the employer will use, and actions it will take, to abate the hazards, including agreed-upon abatement measures that exceed, or are more specific than, those stated in the cited standard(s). Whenever employee exposure to a hazard continues before final abatement is completed, the CSA must include interim controls that will adequately protect the employees until full abatement is completed. Where the employer's non-compliance is related to specific weaknesses in its internal safety program or work processes, the CSA should include provisions requiring the employer to address and improve the program or process.
  - c) Third-party safety and health consultants: A provision for the employer to hire, at its expense, an independent, third-party safety and health professional with relevant expertise in the cited workplace hazards/processes, should be considered in situations such as complex abatement requiring specialized expertise, presence of a large number workplaces, or employer history of failing to meet abatement

commitments. The consultant would assist in developing and implementing abatement measures set forth in the agreement, as well as verifying the employer's performance of the required actions. The agreement's third-party consultant provision shall include OSHA's right to approve the employer's choice of consultant, a requirement for the consultant to conduct an assessment of the employer's worksites covered in the CSA, and that copies of the consultant's assessment report(s) shall be provided at time intervals to OSHA and the authorized employee representative(s).

d) Abatement verification: The CSA must require the employer to verify that it has taken all the abatement actions required by the agreement, including any abatement enhancements agreed to, in accordance with the abatement verification regulation, 29 CFR 1903.19. As described in more detail below in section XIII.B.3, verification may include specific abatement plans, progress reports, documentation, photographs, and certification of final abatement.

### 3. Safety and Health Management Program Enhancements

a) Negotiation of a CSA provides employers an opportunity to make systemic safety and health improvements. The CSA must include provisions that address safety and health program enhancements, especially where the inspection has revealed a broader pattern of non-compliance at other establishments. The following are examples of safety and health program elements that should be considered:

b) Establishment and implementation of overall comprehensive written safety and health program: This would include implementation of a safety and health management system (SHMS) that incorporates the principles outlined in Job Hazard Analysis, OSHA Publication 3071 (2002 Revised), Recommended Practices for Safety and Health Programs, OSHA Publication 3885 ([October 2016](#)), or other similar programs developed to address conditions or hazards unique to a workplace. (See Appendix E).

c) Improvements to an existing safety and health management program: This provision should require the employer to enhance its existing safety and health management system by correcting deficiencies and weaknesses and making revisions that will proactively identify and prevent future occurrence of hazards cited by OSHA. The employer's program should be tailored to the hazards, operations, and other relevant conditions of its workplaces and institute changes that demonstrate a commitment to implementing a comprehensive and effective internal

SHMS.

d) Designated safety and health staff: Settlement language should include a provision requiring the employer to hire or designate one or more full-time staff to manage, coordinate, and implement its health and safety programs. Designated or hired staff should have specific expertise in workplace safety. The employer may elect to provide additional training to key staff with existing safety and health responsibilities.

e) Safety and health inspections of all covered facilities: This provision should include the employer's agreement to hire an independent outside safety and health consultant with the expertise to conduct a comprehensive safety and health evaluation of each of the facilities covered in the agreement. The provision must include OSHA's right to approve the employer's selection of the consultant, and it must require that the consultant prepare a report that identifies safety and health hazards at the workplace, provides a plan and schedule for complete abatement of identified hazards, states whether the hazards have been abated, and if abatement has not occurred, details the reasons it has not been accomplished. The consultant must provide a copy of the report to OSHA. Also, the CSA must include a requirement that the consultant conduct periodic safety and health inspections for the term of the agreement and provide a report to OSHA and the authorized employee representative(s) detailing results.

f) Publication of corporate newsletter: Under this provision the employer would be encouraged to publish a corporate newsletter, regularly distributed to all workers, covering relevant health and safety issues for the period of the agreement.

g) Involvement of chief executive officer (CEO), president, and senior executive leadership: the CEO, president, and senior executive leadership should receive training regarding corporate responsibility for workplace safety and health, including becoming familiar with implementing the SHMS, and the requirements of the CSA. Further, the provision should provide that managers will regularly review and monitor the company's compliance with the CSA.

h) Enhanced safety and health training: Employees should receive safety and health training related to the cited workplace hazards and other hazards, employee rights under the OSH Act, and their role under the employer's safety and health program and the CSA.

i) Establishment of a safety and health committee: the employer should establish a safety and health committee comprised of both managerial and non-managerial employees that will normally be involved

in the development and implementation of the SHMS. Where employees are represented by an authorized employee representative, the employer must negotiate the establishment of a committee with that representative. Where there is no authorized employee representative, SOL will provide advice to ensure compliance with labor laws.

4. OSHA Follow-up and Monitoring Inspections

a) The CSA shall provide that OSHA has an unfettered right of entry to conduct any follow-up or monitoring inspections necessary to verify compliance with the provisions in the CSA . The CSA shall therefore include a provision that the employer will consent to unfettered monitoring inspections without OSHA needing to obtain a warrant. Further, the provision should acknowledge that although the monitoring or follow-up inspection is limited to verification of compliance with the settlement provisions, OSHA may expand the inspection to include hazardous conditions observed in plain view.

5. Employee Notification, Consultation and Non-Discrimination/Anti-Retaliation

a) The CSA must include a provision requiring the employer to notify all affected employees of the agreement's terms. Additionally, it should include language prohibiting the employer from discriminating and/or retaliating against an employee who exercises their rights under the OSH Act. The following are examples of notification, non-discrimination, and anti-retaliation provisions to be considered:

(1) Posting of CSA and Summary: The employer must post copies of the CSA at each covered workplace. The agreement should also provide that the parties will agree to a written summary of the CSA terms that will be posted at each covered workplace. The summary should be written in plain English and explain the terms of the agreement, including the specific abatement actions to be taken, the schedule of future abatement measures, and the procedures to inform OSHA and the employer of any concerns and complaints regarding the CSA (See Appendix D). If necessary, the summary should be translated into the language spoken by the employees at a facility, if that language is not English. The CSA and the summary shall be posted in a prominent location that provides easy access for employees. Both documents should remain posted for the life of the CSA. Pursuant to 29 C.F.R. 1903.19(g), the employer must inform affected employees and their representative(s) regarding all abatement activities by posting a copy of each document related to abatement verification submitted to the agency, or a summary of them, near the place where the violation occurred.

(2) Consultation with affected employees: When conducting hazard evaluation, abatement implementation, and monitoring activities under the CSA, the employer, and any retained safety and health professional should consult with, and consider input from, affected employees and their representatives.

(3) Non-discrimination, Anti-Retaliation policy: This provision should provide that the employer agrees to develop and implement a policy prohibiting adverse action, or discrimination, or retaliating against any employee who makes a complaint or raises concerns regarding non-compliance with the CSA, or exercises their rights under the CSA or the Occupational Safety and Health Act, or any other anti-retaliation statute or regulation that OSHA enforces. The employer's policy should provide notice to employees that complaints of unfair treatment because of the employee's race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability, or genetic information, and be filed with the Equal Employment Opportunity Commission (EEOC). Further, the employer shall agree to post OSHA's Workers' Rights Poster in a conspicuous location for employees to view, including a digital copy on the employer's website, if applicable.

## **B. Administrative Provisions of CSAs**

1. Worksite Information

a) This information will be used by OSHA for monitoring and tracking purposes, as well as to notify State Plans. CSAs shall include the following:

(1) The names and addresses of the covered worksites.

(2) The employer's agreement to provide additional background information for use in monitoring. This includes names, titles, telephone numbers, and email addresses of corporate and local management. In addition, where applicable, employee representative(s) information should be obtained for both the national and the local representative(s) at each covered worksite.

(3) A list of all locations within State Plans with the same or similar operations as locations covered under the CSA.

(4) The employer's affirmation that it has identified the authorized employee representative(s) at each covered workplace that has such a representative or that there are no representatives.

(5) A provision addressing the application of the agreement to facilities acquired by the employer during the life of the agreement, including a requirement to notify OSHA promptly of any and all acquisitions. Additionally, prompt notice shall be given to OSHA if there has been a sale or a shutdown of any facility covered under the agreement.

(6) A provision that, if ownership of a covered facility changes during the life of the CSA, the successor shall be deemed legally obligated to continue the terms of the agreement and that a copy of the agreement will be sent by the original owner to the new successor company along with a letter summarizing the current status of the CSA.

2. State Plan Provision

a) Each CSA shall contain a provision stating that the agreement does not apply to corporate sites located in State Plans, but that affected states will be informed of the agreement by their federal Regional Administrator. Employers shall be encouraged to follow the terms of a federal CSA or enter into an implementing or similar alternative agreement at all of their facilities, in coordination with the respective State Plans. For full details on procedures for states to interact with their Regional Administrator and

federal OSHA, see section XVIII.

3. Abatement and other performance provisions

a) CSAs shall contain the following provisions:

(1) Abatement dates for each citation and specific development and implementation provisions of corrective measures, including interim abatement actions, if any, and corresponding abatement verification requirements (including, as appropriate, dates for submitting abatement plans and progress reports).

(2) Site-specific abatement plans where worksite-specific information is set forth to effectively monitor the agreement.

(3) Dates for reporting the development and implementation of abatement controls, as well as interim progress reports where appropriate.

(4) Abatement certification for each covered worksite shall include plans, progress reports, final corrective action certification, and other forms of abatement documentation (See [CPL 02-00-164 - Field Operations Manual \(FOM\)](#), April 14, 2020 for abatement certification requirements).

(5) Address and contact information for the OSHA office to which abatement documents are to be sent. As a general rule, documents regarding abatement efforts that are corporate-wide in nature (e.g., development of a training plan) shall be sent to the DEP for NCSAs and to the lead Regional Administrator for RCSAs; documents relating to abatement at a specific worksite shall be sent to the area office in which the worksite is located. However, where appropriate, the CSA may provide for combining abatement reporting for multiple worksites into a single document and sending to the designated regional or national office.

(6) Any special requirements for filing Petitions for Modification of Abatement (PMA).

4. Enforcement

a) Each CSA shall contain provisions that include the following execution language:



- (1) Agreement by the parties that the underlying affirmed citations are amended to include all terms of the agreement, including all specified abatement measures.
- (2) The employer has withdrawn its notice of contest and the underlying citations, as amended, and all the terms included in the CSA constitute a final, enforceable order of the Review Commission.
- (3) The employer agrees that its failure to comply with the CSA is enforceable by issuance of notices for failure to abate pursuant to Sections 10 and 17 of the OSH Act, and/or by enforcement under Section 11(b). The language for enforcement under Section 11(b) shall include that the employer will not object to OSHA seeking enforcement in the appropriate U.S. Court of Appeals.
- (4) The employer agrees that passage of the termination date of the agreement cannot be alleged as a defense to the employer's failure to comply during the lifetime of the agreement with any of the terms in the agreement.

5. Termination Provisions

- a) Each CSA shall include a termination date and/or sunset clause. OSHA will not enforce compliance with any of the terms of the CSA for events or conduct occurring after the termination date. If a proposed termination date extends beyond two years from the date of execution, approval of the DEP director shall be sought.
- b) In limited circumstances, a CSA may be renewed or extended at OSHA's discretion based on the mutual agreement of the parties. This may occur only after reviewing the effectiveness of the original agreement requirements with the affected regions to determine if renewal is appropriate. Renewals must be approved by DEP and the Regional Administrator from each affected region.

6. Posting

- a) All National and Regional Corporate-Wide Settlement Agreements shall be posted on OSHA's public website within 30 days of execution.

**XV. Oversight of CSAs**

**A. General Tracking**

1. All CSAs will be tracked and monitored to ensure compliance with the agreement. OSHA will use a combination of tools, including review of abatement verification materials and onsite monitoring, to ensure compliance.

## **B. Abatement Information and Reports**

1. The employer and all its workplaces covered by the CSA are subject to the requirements of the abatement verification regulation, 29 CFR 1903.19, and any reporting requirements specified in the CSA.
2. Each OSHA office will review submitted abatement information and reports pursuant to the CSA in accordance with section XIII.B.3.g. This includes abatement plans and progress reports, abatement documentation and certification, and any other reports required under the CSA. The office will determine whether documents are submitted in a timely manner, contain the information required by the CSA, and demonstrate progress toward or completion of abatement in accordance with the CSA. If the materials required are not submitted, or if submitted materials raise questions about compliance, the office will proceed in accordance with the FOM. The procedures outlined in section XVI of this directive will be followed for enforcement of CSAs.

## **C. Monitoring Plan and Inspections**

1. A monitoring plan will be developed for all CSAs. The NCSC and the Lead RCSC will oversee the development of a monitoring plan, in coordination with any other affected Regional Administrators. The NCSC or RCSC will provide the technical coordinator, if applicable, and the Solicitor's Office with an opportunity for feedback in developing the plan. All worksites covered by the CSA will be considered for inclusion in the CSA monitoring plan. Inspections under the monitoring plan shall include monitoring inspections and follow-up inspections.
2. Monitoring inspections will assess the employer's compliance with the CSA. Once an employer submits verification that all abatement action has been completed at a covered workplaces, an inspection may be initiated in accordance with the monitoring plan. Employees and their representatives shall be consulted during monitoring inspections in accordance with the FOM.
3. No later than 60 days after the effective date of the CSA, the NCSC or RCSC will select a representative number of worksites to receive monitoring inspections to determine whether the employer has comprehensively complied with the terms of the CSA.
4. Several factors should be considered in determining the number of worksites to receive monitoring inspections: whether abatement can be readily verified as compared to complex technical or programmatic abatement; whether the CSA includes audits by third-party consultants; the effectiveness of the employer's internal safety and health management system; whether a union is

assisting in the implementation and can serve as a source of compliance information; whether the employer has a history of willful violations or failing to report injuries/illnesses and abatement verification; and the severity and scope of the hazard addressed by the CSA.

5. The DEP director (NCSAs) and the lead Regional Administrator (RCSAs) may modify the plan by adjusting the number of required monitoring and follow-up inspections based upon the findings of initial inspections and review of employer-submitted abatement reports.

6. If a site is selected for an inspection under the plan (including modifications), an onsite inspection will be conducted regardless of submitted abatement verification.

7. Where the CSA covers workplaces in more than one region, the monitoring plan will also establish a schedule for submission of briefing reports on monitoring activities and abatement progress by the regional offices. The reports will be submitted to DEP (for NCSAs) and to the lead Regional Administrator (for RCSAs). The schedule may vary depending on the complexity of the agreement and will correlate with the abatement due dates and progress reports schedule established by the CSA. Where appropriate, the annual report to DEP required under section XV.A. for all CSAs can satisfy this requirement.

#### **D. Compliance and Abatement Issues**

1. Issues regarding the adequacy and verification of abatement at individual workplaces will ordinarily be handled at the area office and regional office levels under both national and regional CSAs. It may be difficult to achieve uniformity of abatement throughout a corporation because of local site conditions. Differences may arise regarding the adequacy of abatement measures instituted at different establishments of the same corporation. Such abatement issues should be resolved through coordination among affected Regional Administrators and regional solicitors. Cases that give rise to differences that cannot be resolved locally shall be referred to DEP.

2. Compliance and abatement issues other than issues regarding the adequacy and verification of abatement at an individual worksite will be handled by DEP for NCSAs, or the lead Regional Administrator for RCSAs. These issues may include adequacy of corporate-level compliance with its agreed upon obligations or issues regarding interpretation of the agreement.

3. DEP must approve resolution of any issues that may potentially impact national enforcement policy.

#### **E. Petitions for Modification of Abatement**

1. The CSA shall provide terms for PMA by the employer if they differ from

the provisions of the field operations manual (FOM). To be considered, the company should file a PMA with the area director having jurisdiction over the affected workplace no later than the agreed-upon date specified by the CSA. Upon approval, the company shall provide copies of the PMA to the employee representative(s) (if applicable) and post a copy in any affected workplace for the employees as required in 29 CFR 1903.14a.

2. If the employer requests more than a 90-day extension, or the PMA affects multiple sites, the area director shall undertake the following:

- a) Ensure that all the current requirements for the PMA have been met at the covered establishment(s) in accordance with the FOM and §1903.14a or the terms of the agreement.
- b) Immediately forward a copy of the PMA request to the Regional Administrator.
- c) Make a preliminary recommendation to the Regional Administrator as to whether the PMA should be granted or denied, as soon as possible, but no later than five working days from receipt of the PMA. PMA requests that have national implications will be noted.
- d) Forward any objections received from affected workers or their representatives at any covered facility in accordance with the FOM and 29 CFR 1903.14a.
- e) Evaluate the need for a monitoring inspection, considering the employer's record, objections from employees, and the nature of the hazard(s). If a monitoring inspection is performed, it shall be performed under the procedures for PMAs and monitoring inspections in the FOM, and should be completed as soon as possible. The results of the inspection will be forwarded to the Regional Administrator immediately upon completion.
- f) Upon receipt, the Regional Administrator shall forward a copy of the PMA to the NCSC, and also to the lead Regional Administrator. The NCSC or the RCSC will notify all affected Regional Administrators of the receipt of the PMA if it has national implications.

3. Decisions on PMAs involving abatement obligations at individual worksites will ordinarily be made by the Regional Administrator for the region in which the worksite is located, unless the PMA raises issues of national consistency. DEP (for NCSAs) must approve any such PMA decision. Decisions on PMAs involving corporate-wide abatement obligations will ordinarily be made by the office with primary responsibility for the CSA: DEP for NCSAs and the lead Regional Administrator for RCSAs. DEP or the lead Regional Administrator

will consult with any (other) affected Regional Administrators and SOL before making a decision. DEP must approve any decision that would impact national enforcement policy.

4. Upon approval, Regional Administrators shall notify all affected area directors. The area director who originally received the PMA will proceed in accordance with the FOM.

5. In the event a PMA is disapproved, Regional Administrators shall notify all affected area directors. The area director will then proceed in accordance with the FOM and SOL will file an objection to the PMA with the OSHRC. Other affected area directors will be notified promptly through their Regional Administrators.

#### **F. Abatement Not Satisfactorily Completed**

1. In the absence of an approved PMA, the employer's failure to accomplish any action or to adhere to any final abatement date or agreed-upon measures or milestones at any covered location in the CSA may be considered for enforcement in accordance with section XVI.

#### **G. Abatement Satisfactorily Completed**

1. After all regions have reported pursuant to section XV.B that abatement was satisfactorily completed, and all other terms of the CSA have been met, the NCSC (or the Lead Regional Administrator) will inform all Regional Administrators having covered establishments that the employer has fulfilled its obligations under the CSA. In the case of RCSAs, the Regional Administrator will make this determination after receiving final summary reports pursuant to Section XVII.B from each area office with covered establishments. The Regional Administrator will notify the affected area directors and, as appropriate, State Plans that the employer has fulfilled its obligations under the agreement.

### **XVI. Regional and Area Office Reporting on CSAs**

#### **A. Regional Briefing Reports for all CSAs**

a) All regions shall submit an annual CSA briefing report to DEP by January 31 each year. DEP may establish a different due date for CSAs initiated late in the preceding year. The report shall include the information designated in the monthly tracking system for each CSA affecting a region during the preceding year. The CSA briefing report should include the following:

- (1) A list of the monitoring inspections and/or follow-up inspections conducted under the CSA monitoring plan and a summary of the outcome.
- (2) A summary of facility efforts, including a brief evaluation of the worksite's progress on abatement verification (certification, documentation, abatement plan, progress reports, worker notification, and other terms of the agreement).
- (3) If applicable, information regarding any anticipated and/or granted PMA requests.
- (4) Any problems or deficiencies in meeting the requirements of the CSA should be detailed in the report. This should include information about any citations issued for failure to verify abatement or enforcement of the agreement.
- (5) If applicable, Regional Administrators should request and include input from any State Plans that implemented the CSA.

## **B. Final Summary Report for all CSAs**

1. The area director will submit a one-page summary report to the Regional Administrator after all required follow-up inspections have been conducted, and the submitted abatement verification is reviewed and found to be complete. The report will be submitted to the Regional Administrator 30 days after closing the final follow-up inspection.
2. Multiple corporate locations covered by a CSA should be consolidated by the Regional Administrator into one report indicating that final abatement and terms of the agreement are completed at each location within the region. This report will be submitted to DEP (and the lead Regional Administrator for RCSAs) within 60 days of the final follow-up inspection.
3. At the discretion of the DEP director, for CSAs covering workplaces in more than one region, the NCSC (for NCSAs) or RCSC (for RCSAs) shall consolidate the final reports from each region together into a final overall summary report. The report will include, where useful, a brief discussion summarizing achievements, problems, and lessons learned under the CSA. The overall summary report will be circulated to regional offices that participated under the CSA and will be subsequently archived.

## **XVII. Enforcement of CSAs**

### **A. Non-compliance/violation of CSA Terms**

1. If OSHA determines that the employer is not complying and is violating the terms of the CSA, appropriate action shall be taken, depending on the nature of the non-compliance. Initially, efforts may be made to resolve issues pursuant to the terms of a dispute resolution provision in the agreement. Other appropriate actions may include enforcement action under section 11(b) of the OSH Act, or failure-to-abate notices.

## **B. Enforcement Procedures**

If an area director believes that the employer is not fulfilling the abatement responsibilities agreed upon in the CSA and the employer has not filed a PMA, these procedures should be followed:

1. As soon as practicable, the area director will contact the employer for an explanation and document the response in the file.
2. If the employer appears to be making a good-faith effort to abate and this is corroborated by the employee representative or the affected employees, enforcement action may be postponed, provided the employer agrees to promptly remedy the deficiency.
3. If the employer has no reasonable explanation for the deficiency or refuses to remedy it in a timely manner, the area director will recommend an appropriate enforcement action after consultation with the SOL-OSH and RSOL.
4. Any proposed enforcement action related to issues covered in a CSA must be submitted to the Regional Administrator for approval before action is taken.
  - a) For RCSAs, the Regional Administrator will contact the lead Regional Administrator. The lead Regional Administrator will consult with the Regional Administrators, DEP, and SOL and decide upon a course of action.
  - b) For NCSAs, the Regional Administrator will contact DEP. The DEP director will consult with the region and SOL-OSH and decide upon a course of action.
  - c) SOL-OSH, in coordination with the appropriate RSOL(s), must approve and will handle the filing of an enforcement action in the court of appeals under Section 11(b) of the Act.

## **XVIII. Inspections Not Related to CSAs**

### **A. Notification of the Regional Administrator and NCSC**

1. If a programmed or unprogrammed inspection is to be conducted in an

establishment covered under a CSA, the area director will contact the Regional Administrator for guidance before initiating onsite inspection activity to determine whether any portion of the inspection will include items covered by the CSA. If the matter is uncertain, the Regional Administrator shall consult with the lead Regional Administrator (for RCSAs) or NCSC (for NCSAs).

2. The Regional Administrator and area director may determine that a follow-up or monitoring inspection can be conducted in conjunction with the programmed or unprogrammed activity.

## **B. Programmed and Unprogrammed Inspections**

1. Programmed and unprogrammed inspections are not normally affected by CSAs, although there may be limitations on the extent to which citations may be issued based on provisions (including dispute resolution) in the CSA.

2. Formal complaints concerning conditions covered by the CSA for which valid progress reports have been received do not necessarily require an inspection.

3. Instead, the area director will contact the complainant and inform him/her of the progress being made.

4. If the complainant insists that the employer's reports do not accurately describe the action being taken in the establishment, the area director should schedule a follow-up or monitoring inspection.

## **C. Open Inspections**

1. DEP (NCSAs) or the lead Regional Administrator (for RCSAs) will provide guidance for handling inspections that are in progress at the time of execution of the CSA.

## **XIX. State Plans**

The Regional Administrators shall inform the State Plan(s) within their region of any CSA when the employer has establishments located within their states and shall provide them a copy of the signed CSA. Any relevant information provided by the State Plan administrator shall be forwarded to DEP and the Directorate of Cooperative and State Programs (DCSP). Although CSAs negotiated by OSHA are not applicable to corporate sites located in State Plans, it is desirable for CSAs to have a uniform nationwide impact, and employers are encouraged to follow the terms of a CSA at all their facilities in cooperation with the states, as set forth herein.

### **A. State Responses to Federal CSAs**

1. When federal OSHA develops a CSA with an employer who also has facilities under State Plan(s) coverage, the State Plan will have the option of (1)



honoring the terms of the federal agreement at corporate sites within its coverage area; (2) entering into a separate state settlement agreement with the employer subject to the federal CSA that either accepts the terms and conditions of the federal settlement, or establishes different but equivalent or more stringent terms and conditions; or (3) continuing to enforce all applicable state standards and regulations without regard to the federal CSA (i.e., not honor the federal agreement).

2. When a new federal CSA with potential applicability to an employer with facilities in a State Plan is provided, the State Plan must notify the Regional Administrator which of these options it will follow and provide a copy of any agreement reached with the subject employer. State Plans that adopt the full scope of a federal CSA (option 1) will be listed on the federal OSHA public website in connection with postings regarding that federal CSA. Separate state settlement agreements (option 2) must address all the technical provisions as described in section XIII.A, and any differences in terms must be at least as effective as the federal provisions. State Plans are asked to keep Regional Administrators informed of any ongoing state negotiations related to a federal CSA. These include negotiations aimed at implementing a federal CSA, a separate state agreement, and any other settlement negotiations with a company with which OSHA has entered into a CSA or is engaged in such negotiations. State Plans may request technical assistance from OSHA through their Regional Administrator with regard to any aspect of administering federal CSAs.

3. State Plans electing options 1 or 2 above should follow CSA monitoring procedures comparable to OSHA's as set forth in this Instruction and must make the monitoring results for corporate entities subject to a federal CSA, as accepted or modified by the State Plan, available to the Regional Administrator for review and evaluation. State Plans should also advise their Regional Administrators of specific enforcement actions that may be taken under the terms of individual CSAs with employers that have sites in their states, such as approving petitions to modify abatement, or issuing citations for failure to verify abatement or notifications for failure to abate.

## **B. Other State CSAs**

1. State Plans entering into state-wide, multi-establishment CSAs for corporate entities not otherwise subject to a federal agreement must ensure that such agreements either follow the policies and procedures outlined in this instruction or provide at least as effective alternative policies and procedures. State Plans must provide the Regional Administrator a copy of any state-wide corporate settlement agreement concluded with an employer for review and monitoring.

## **XX. OIS Coding**

### **A. Inspection Activity of CSA**

All inspection activity conducted pursuant to a corporate-wide settlement agreement shall be recorded in the OSHA Information System (OIS) database. OIS users will follow the procedures as outlined in the establishment's monitoring plan to ensure all data codes and unique identifiers are properly designated in OIS.

Example: All activity conducted pursuant to this settlement agreement shall be coded by selecting the following in the *Additional Codes* section of the *Inspection*:

Type: N  
ID: 30  
Value: CompanyCSA  
Description: CSA-related inspections

### **B. Violations found during the inspection Not Covered by the CSA**

Violations not covered in the settlement agreement shall be entered the same way any other violation is entered; no additional or special actions are needed.

### **C. Non-compliance with the CSA**

Data is being collected on hazards observed that are covered by the CSA. When a non-compliant item related to a CSA is identified during an inspection, the CSHO shall record and enter all the facts pertinent to the violative condition(s) into OIS using the following procedures.

A Hazard Alert Letter (HAL) will be used to document a Dispute Resolution Letter (DRL) in OIS for recording purposes. A separate HAL is required for each item that is non-compliant with the CSA. The item will be entered as the violation type of *Hazard Alert Letter (HAL)*.

CSHOs shall enter the standard in the "standard" box and then describe the DRL item in the "Hazard Description." The "Recommend Abatement Actions" box should also be used to document the corrective actions needed. This allows the CSHO to use OIS to generate the Dispute Resolution Letter and the CSHO will not have to re-enter this information as the system will pull it into the letter automatically. The following information, at a minimum, must also be entered into OIS: the identity of the exposed employee, the hazard to which the employee was exposed, the employee's proximity to the hazard, the employer's knowledge of the condition, the manner in which important measurements were obtained, and how long the condition has existed.

In addition to the regular data points entered on the violation, *Dispute Resolution Letter* must also be selected in the *Special Enforcement Type* section, of the *Violation Item*. This will allow tracking of the hazardous conditions found during a CSA inspection that are non-compliant with the CSA.

After entering the HAL for the DRL items, the CSHO will finalize the violations and issue them in the system using the HAL citation assembly type. This will then insert an issuance date and allow the items to be tracked on reports.

After issuing the HALs/DRL in OIS, the CSHO will need to generate the actual Dispute Resolution Letter. This is done by choosing the “CSA – Dispute Resolution Letter” in the letter generation section.

NOTE: No citations related to non-compliance with the Agreement will be issued until after it is addressed via the Agreement’s “Dispute Resolution” provision.

**APPENDIX A: EVALUATING EMPLOYERS FOR A CORPORATE-WIDE SETTLEMENT AGREEMENT**

- I. Industry: [Select item]
  
- II. Agreement Initiator:  
 OSHA  
 Employer – *[If Employer, identify the name and position of employer representative who initiated the potential CSA.]*
  
- III. Other Open Inspections Activity:  
 No  
 Yes – *[If yes, briefly explain.]*
  
- IV. Inspection History:  
*[If applicable, provide a list of previous inspections and standards cited.]*

Inspection number – Name of Establishment				
Severity Probability	STANDARD	DESCRIPTION	Opening Date	Current Status
<b>VIOLATIONS</b>				
[HG]	[Standard #]	[Brief description of hazard]	[Date]	[Contested]

- V. Scope of Agreement: [Select item]
  
- VI. Corporate-Wide Settlement Agreement Justification:  
*[Identify category of Safety and Health High Impact Enforcements case that is involved.]*  
*[Describe any evidence of extensive recordkeeping deficiencies.]*  
*[Describe the extent of the hazards known to exist throughout the employer’s worksites.]*  
*[Describe evidence of corporate wide non-compliance, for example, corporate policies/procedures.]*
  
- VII. Hazards/Deficiencies to be addressed by the Agreement:  
*[Click here to enter text.]*
  
- VIII. Describe proposed abatement for Hazards to be addressed by the Agreement:  
*[Click here to enter text.]*
  
- IX. Describe Additional Safety and Health Program Enhancements for Consideration:  
*[Click here to enter text.]*
  
- X. Strategic Plan Initiatives Targeted by the Agreement:  
*[Identify hazards addressed by NEPs, LEPs, SEPs, etc.]*



National Office

- Concur
- Concur with Comments
- Non-Concurrence

National Solicitors Office

- Concur
- Concur with Comments
- Non-Concurrence

XXII. Notification of Single Regional Corporate-Wide Settlement Agreement:

Regional Office(s)

- Concur
- Concur with Comments
- Non-Concurrence

Regional Solicitors Office

- Concur
- Concur with Comments
- Non-Concurrence

## **APPENDIX B: CSHO GUIDANCE TO IDENTIFY POTENTIAL ISSUES OF CORPORATE-WIDE NON-COMPLIANCE**

As discussed in this Directive, a CSA is a form of corporate-wide enforcement action. During the initial inspection, the opportunity exists for the CSHO to gather facts regarding whether compliance problems are localized or are likely to exist at other facilities owned and operated by the same corporation. This appendix is provided as guidance to assist the CSHO in gathering facts to determine whether violations at one workplace are symptomatic of broader company policies, procedures, and practices which may result in similar violations at other company-owned workplaces.

During the initial investigation, the CSHO should be attentive to factual indicators of possible corporate-wide non-compliance issues. For example, do the managers at the inspected facility follow corporate-wide safety and health policies? Are those corporate-wide policies related or contributing to violative conditions? Do the managers at the inspected facility rely on corporate-level involvement to correct violative conditions? If, during the initial inspection, the CSHO discovers facts that tend to show that violative condition(s) may exist corporate-wide, then the CSHO should broaden the investigation. A broader investigation should include an expanded review of the corporation's OSHA history, interviews with corporate-level managers, and a request for corporate documents.

The following guidance can be useful in developing issues of corporate non-compliance:

Review of OSHA History: A comprehensive, nationwide review of the company's OSHA history of OSHA citations should be conducted. Such review should include open or contested cases, complaints, referrals, and prior violations at the corporation's other facilities. Also, any previous settlement agreements should be reviewed. The history should be reviewed to assess whether similar violative condition(s) have existed or currently exist at multiple locations of the same company.

### Document Review

The following types of documents should be reviewed:

- Corporate-wide safety and health policies, programs, procedures, instructions, and guidelines.
- Written safety and health management system documents.
- Written safety and health programs required by OSHA standards.
- Corporate safety and health audits.
- Results of corporate safety and health audits including recommendations and abatement measures and verification.

- Results of corporate-conducted accident/incident investigations and resulting abatement measures and verification.
- Corporate-conducted safety and health trend analysis and resulting abatement measures and verification.

A thorough review of these documents should be conducted to evaluate corporate-level involvement in worksite conditions that caused the violation(s). For example, is the violative condition(s) the result of following corporate instructions? Are managers at the corporate level aware of, or contributing to, the violative condition(s)? Have the managers at the corporate level interacted with managers at the various locations regarding how to address the violative condition(s)? These types of factual inquiries are more fully addressed in the suggested interview questions.

Interviews: Interviews of managers, supervisors, and front-line employees at the inspected facility should include questions related to the corporate documents (above). Additionally, interviews with corporate-level personnel, such as safety managers and loss and control managers, should be conducted.

The following topics—and related questions—should be explored during the interviews to determine whether the violative condition(s) is a result of company-wide safety and health policies, decisions, or interpretations concerning a standard or hazardous condition and the likelihood that similar conditions exist at other worksites.

Suggested Topics and Questions:

*Corporate-level involvement/knowledge of violative condition(s) at inspected workplace:*

Is the violative condition(s) addressed by a corporate-wide policy or procedure?  
 If so, how is the issue addressed?  
 Have corporate safety and health personnel addressed the standard or condition?  
 If so, how? Who was involved and what was their involvement?  
 How was the corporate-wide policy/procedure communicated to the workplaces throughout the company?

*Existence of similar violative conditions at other workplaces:*

Does the company have workplaces other than the one being inspected that do similar or substantially similar work, use similar processes or equipment, or produce like products?  
 If so, where are those workplaces?  
 Is corporate-level management aware of similar hazardous conditions at other workplaces? If not, are there reasons why corporate-level management should be aware of the conditions?



*Corporate safety and health unit:*

Does the company have a corporate-level department that is responsible for health and safety issues at all the workplaces owned by the company?  
What is the name of the department and what is the structure of that department?  
What are the positions in that department, the names of the individuals in those positions, and the job responsibilities of those individuals?  
Do corporate-level personnel conduct safety and health audits of the workplaces?<sup>2</sup>  
If so, who conducts the audits? Are reports produced? Are reports provided to workplaces, and who is responsible for reviewing reports?

*Communication between corporate headquarters and workplaces:*

What type of communication takes place regarding safety and health issues between corporate personnel and managers at the workplaces?  
Is there a formal process by which corporate-level managers review the safety and health programs/policies at the workplaces?  
Do personnel from company headquarters visit workplaces? Are visits on a regular or irregular basis? What subjects are covered during visits?  
Are workplaces required to report safety and health data to the corporate safety and health department? If so, how frequently? What type of follow-up occurs?

*Corporate-level safety and health management:*

Does the company have a written company-wide safety and health management program? If so, how is it communicated to all workplaces?  
At the corporate level, who is responsible for enforcement of the safety and health management program?  
Is responsibility for enforcement delegated to the worksites? If so, how is it delegated?  
Are there corporate-wide goals for safety and health? If so, how are they measured?

*Corporate Safety and Health Training:*

Does the company provide safety and health training programs/policies to the workplaces?  
Does corporate-level management expect the workplaces to implement the training programs/policies for employees at all workplaces?  
If so, how are these training programs/policies implemented at the workplaces?  
Does corporate-level management follow-up to ensure implementation?

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<sup>2</sup> See also OSHA's self-audit policy at [https://www.osha.gov/pls/oshaweb/owadisp.show\\_document?p\\_table=FEDERAL\\_REGISTER&p\\_id=16434](https://www.osha.gov/pls/oshaweb/owadisp.show_document?p_table=FEDERAL_REGISTER&p_id=16434).

Are there any other reasons why you (the interviewee) believe the hazardous conditions are, or are not, the responsibility of corporate-level management—and are, or are not, present at many or all locations?

## **APPENDIX C: CORPORATE-WIDE SETTLEMENT AGREEMENT FILE INFORMATION**

### **National Corporate-Wide Settlement File** (National Office).

A CSA file will be created for each NCSA and maintained by DEP. The file will contain the following establishment information for each worksite included in the agreement:

- **A copy of the Agreement**
- Employer's name for each worksite (if applicable include legal/corporate name).
- Address.
- Name, title, email address, and telephone number for the primary management point of contact.
- Names, addresses, and contact persons of all worker representatives and unions who are party to the CSA.
- Duration of the agreement (not to exceed two years).
- Court docket numbers.
- Primary SIC/NAICS codes involved.
- Type of agreement (recordkeeping, ergonomics, etc.).
- Signature and expiration date of the corporate-wide settlement agreement.
- Table of settlement provisions and final abatement dates in the agreement.
- Name and contact information for DOL attorney who executed the agreement.
- Name and contact information for the attorney who executed the agreement for the employer.
- Briefing reports submitted by the regional offices.
- Petition to Modify Abatement (PMA) requests and decisions.
- Dispute resolution information.
- Corporate correspondence impacting multiple regions.
- Any special designation, such as severe violator enforcement program (SVEP) participant.
- E-mails.

### **1. Regional Corporate File** (regional office).

Contains the same information identified in the national office file but on a regional scale. The file may also include, but is not limited to, the following:

- Unusual abatement information discussed with regional representatives.
- Determination between the regional and area office regarding the number of follow-up and monitoring inspections including the operations plan.
- Monitoring and follow-up inspection information.
- Area office briefing reports.

### **2. Local Worksite File(s)** (area office).

The file will contain a comprehensive record for every worksite covered by the CSA

within the area offices' jurisdiction. Information in this file is similar to the regional corporate file but local contact information for the agreement will be included. A file for each worksite will include the following:

- Facility name and address.
- Site contact and all relevant contact information.
- Copy of the original CSA.
- Site SIC/NAICS codes.
- Names, addresses, and contact persons of all worker representatives and/or unions.
- Number of workers.
- Activity type.
- Primary business operation and function of each worksite.
- Initiating (original) inspection number.
- Diary sheet containing CSA activity.
- Monitoring and follow-up inspection information.
- Abatement and progress reports submitted by the employer:
  - Receipt and review dates.
  - Whether it was sent for external review.
  - Dunning letters.
  - Date abatement verified, accepted, and notification made to the regional office.
- PMA requests.
- Briefing reports submitted to the regional office.

## APPENDIX D: SUMMARY OF NOTICE TEMPLATE

Company Name

OSHA/Agency Logo

OFFICIAL NOTICE to ALL EMPLOYEES:

### SUMMARY OF TERMS OF NATION-WIDE SETTLEMENT AGREEMENT BETWEEN OSHA AND (COMPANY)

This NOTICE summarizes the safety and health actions that the (COMPANY) will take, informs employees how to notify OSHA and (Company) of issues related to the settlement and explains employee protections against discrimination.

OSHA and (Company) have entered into a written settlement agreement regarding the citations that OSHA issued to (Company) based on the inspection of (name of worksite). The OSHA Citations and Notification of Penalties were posted (where, when) and a full copy can be reviewed on [www.osha.gov](http://www.osha.gov) and is posted at \*\*\*\*\*. This settlement agreement completely resolves those citations. Also, in this agreement, (Company) agrees to put into place certain safety and health protections for employees in workplaces nationwide.

In this settlement, (Company) has agreed to (as clearly as possible describe the settlement terms ... for example, ... “put into place procedures that will keep all exit aisles in the stockrooms free from any obstruction, such as boxes, equipment, or other inventory, in order to allow employees access to the identified exit doors at all times”). (COMPANY) has agreed to take these actions in stores nationwide. Also, (Company) has agreed to take actions to further protect all employees. The effective date of the settlement agreement is \*\*\*\*\* and the agreement ends on \*\*\*\*\*.

#### Background

This section can be used to summarize allegations, identify parties to the agreement (including third-party employee representatives), and discuss participation of a union during negotiations. It should name any employee representatives. It can refer to the appendix that identifies locations of worksites nationwide that are covered by the agreement.

#### Major Points of the Settlement

This section should set out in understandable terms the abatement actions and the implementation timetable. Such information may include engineering and administrative controls; safety and health management program implementation and/or review; and training. If appropriate, a bulleted list may be used to break out the terms with headings.

#### Resolution of the issued citations/penalties

If employee representatives are to receive any reports under the terms of the settlement agreement, identify those reports and the time frame for receipt.

### Other Settlement Agreement Enhancements

This section should describe in understandable terms and/or a bulleted list the agreed-upon actions and abatement time frames for additional enhancements included in the agreement (for example, enhanced training, third-party monitoring, internal corporate monitoring).

### Employee Reporting of Complaints Regarding this Settlement Agreement

OSHA and Company encourage all employees to immediately notify both OSHA and (Company) management of any concerns regarding (identify specific hazards covered by agreement) and of any concerns regarding the implementation of the terms of the settlement agreement. As explained below, employees are protected against retaliation for raising these concerns. Employees in (initial inspection facility) may raise concerns with (Company) manager \*\*\*\*\* and OSHA (area office). All other employees should contact (provide contact information).

### Employee Protection from Retaliation

(Company) will not discriminate or retaliate in any manner against employees who report concerns related to the terms of this settlement agreement. Also, the *Occupational Safety and Health Act* (OSH Act) prohibits employers from retaliating against any employee who has exercised a right protected by the OSH Act. These rights include complaints to the employer, to OSHA, or to other government agencies about unsafe or unhealthful working conditions in the workplace.

Protection from workplace retaliation means that an employer cannot take an adverse action against workers, such as firing or laying off, blacklisting, reducing pay or hours, demoting, denying overtime or promotion, disciplining, failing to hire or rehire, intimidation/harassment, making threats, and reassignment affecting prospects for promotion, or any other materially adverse action that is reasonably likely to discourage the legitimate exercise of employee rights.

If you have been punished or retaliated against for exercising your rights under the OSH Act, you must file a complaint with OSHA **within 30 days of the alleged reprisal**. Complaints of retaliation may be filed directly with OSHA. Your communication with OSHA is confidential. For more information about OSHA or if you think your job is unsafe and you have questions, contact OSHA's toll-free number at 1 (800) 321-OSHA (6742) or visit OSHA's website at [www.osha.gov](http://www.osha.gov). For further information about filing a whistleblower complaint go to <https://www.osha.gov/whistleblower/WBComplaint.html>. Also, look for the "It's the Law" Health and Safety Poster in your workplace that explains protections under the OSH Act.

If you feel you have been subjected to unfair treatment or harassment because of your race, color, religion, sex (including pregnancy, gender identity, and sexual orientation), national origin, age (40 or older), disability (including denial of a reasonable accommodation), genetic information, or retaliation for filing a complaint of discrimination on any of the above bases, you may file a charge of discrimination with the Equal Employment Opportunity Commission (EEOC). Additional information on filing a charge of discrimination with the EEOC, please visit the following website:

## **APPENDIX E: SUGGESTED SAFETY AND HEALTH MANAGEMENT SYSTEM (SHMS) ENHANCEMENTS**

In order to have continuing, long-term improvements in the safety and health conditions in the workplace, as well as to ensure compliance with OSHA standards, the employer must develop, institute, and maintain in its establishment a SHMS. The SHMS must provide policies, procedures, and practices that are adequate to recognize and protect their employees from occupational safety and health hazards before injuries and illnesses occur. The SHMS will include identification, evaluation, and prevention or control of workplace hazards, which may arise from routine operations, non-routine operations, and process and equipment changes.

The employer will develop a written SHMS program including guidance to ensure clear communications of policies and priorities and consistent and fair application of rules. The employer's SHMS will be consistent with OSHA's [2016 Recommended Practices for Safety and Health Programs](#).