

U.S. DEPARTMENT OF LABOR
Occupational Safety and Health Administration
1111 Third Avenue, Suite 715
Seattle, WA 98101-3212

Refer to: FSO/jgs
OR SIC 98-1

DATE: December 1, 1998

MEMORANDUM FOR: Paula O. White
Director
Directorate of Federal and State Operations

FROM: Richard S. Terrill
Regional Administrator
Region X

SUBJECT: Addendum to the Operational Status Agreement
Transfer of Jurisdiction of Tribal and Indian-owned
Enterprises

Attached is an addendum to the Operational Status Agreement entered into between OSHA and the state of Oregon. The addendum is a state-initiated change to the Oregon state plan. It relinquishes back to federal OSHA jurisdictional and enforcement authority for conducting safety and health inspections and Section 11(c) investigations and for all private sector employment, including tribal and Indian-owned enterprises for several Indian tribes within Oregon.

Region X recommends approval of this state-initiated change.

Attachment

cc: Peter De Luca

November 25, 1998

Richard Terrill
Acting Regional Administrator
US Dept. Of Labor - OSHA
1111 Third Ave Suite 715
Seattle WA 98101-3212

Re: STATE-INITIATED CHANGE TO THE OREGON STATE PLAN

Subject: Temporary transfer, effective December 1, 1998, and request for Permanent transfer of jurisdiction from Oregon OSHA to federal OSHA for private sector employment, including tribal and Indian owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the:

- Confederated Tribes of the Grand Ronde Community of Oregon Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde Tribes);
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw (Coos Tribes);
- Confederated Tribes of Siletz Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Siletz (Siletz Tribes);
- Cow Creek Band of Umpqua Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Cow Creek Band of Umpqua (Cow Creek);
- Klamath Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Klamath Tribe (Klamath Tribe);
- Coquille Indian Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Coquille Indian Tribe (Coquille Tribe);
- Burns Paiute Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Burns Paiute Tribe (Burns Paiute Tribe).

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In accordance with Part 29, CFR 1953, and OSHA Instruction STP 2-1.18, The Oregon Occupational Safety and Health Division hereby submits the state-initiated change to the Oregon State Plan regarding: federal enforcement authority on Indian lands in Oregon.

Enclosed are six (6) copies of the document that provides the following items:

1. Effects of the change to the Oregon Plan;
2. Impact on the State Plan according to STP 2-1.18 (4)(a)(1)(g)(iv).

Enclosed is a final copy of State Plan replacement pages for: I., E. Interagency and Jurisdictional Agreements, General, that become effective upon publishing in the Federal Register. Also enclosed is the Addendum to the Operational Status Agreement.

If you have any questions, please call.

Peter De Luca, Administrator
Oregon Occupational Safety and Health Division
(503) 378-3272

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cc: J. Spear
R. Tsunehara
C. Halgren

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CHANGE TO OREGON STATE PLAN

The change affects I. Legal Authority, E. Interagency and Jurisdictional Agreements, GENERAL, G-1, General Jurisdictional Agreement Between federal OSHA and OR-OSHA, and the Operational Status Agreement of the plan.

No legislative action is required on the part of the state.

This change will not require an extension of the developmental time schedule.

There will be no monetary impact on the 23(g) grant.

Requested Action:

Effective December 1, 1998 a limited resumption of federal OSHA enforcement authority is requested for all private sector employment, including tribal and Indian owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the:

- Confederated Tribes of the Grand Ronde Community of Oregon Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde Tribes);
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw (Coos Tribes);
- Confederated Tribes of Siletz Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Siletz (Siletz Tribes);
- Cow Creek Band of Umpqua Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Cow Creek Band of Umpqua (Cow Creek);
- Klamath Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Klamath Tribe (Klamath Tribe);
- Coquille Indian Tribe Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Coquille Indian Tribe (Coquille Tribe);
- Burns Paiute Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Burns Paiute Tribe (Burns Paiute Tribe);

until the permanent proposal regarding this action is completed and published in the Federal Register. This action follows a similar request processed for the Confederated Tribes of the Umatilla Indian Reservation in 1997, that became final with its publication in the Federal Register on September 24, 1997 at the request of Oregon OSHA.

This document also proposes a permanent change in the level of federal enforcement authority in Oregon. The Department of Consumer and Business Services, Occupational Safety and Health Division (OR-OSHA) is proposing the permanent transfer of jurisdiction to federal OSHA, from the Oregon State Plan, for all private sector employment, including tribal and Indian owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the:

- Confederated Tribes of the Grand Ronde Community of Oregon Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde Tribes);
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw (Coos Tribes);
- Confederated Tribes of Siletz Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Siletz (Siletz Tribes);
- Cow Creek Band of Umpqua Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Cow Creek Band of Umpqua (Cow Creek);
- Klamath Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Klamath Tribe (Klamath Tribe);
- Coquille Indian Tribe Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Coquille Indian Tribe (Coquille Tribe);
- Burns Paiute Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Burns Paiute Tribe (Burns Paiute Tribe).

As a result, the U.S. Department of Labor, Occupational Safety and Health Administration (OSHA) is requested to assume coverage for all private sector employment, including tribal and Indian owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the:

- Confederated Tribes of the Grand Ronde Community of Oregon Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde Tribes);
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw (Coos Tribes);
- Confederated Tribes of Siletz Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Siletz (Siletz Tribes);
- Cow Creek Band of Umpqua Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Cow Creek Band of Umpqua (Cow Creek);
- Klamath Tribe Indian Reservation, and on lands outside the reservation that are held in

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- trust by the Federal government for the Klamath Tribe (Klamath Tribe);
- Coquille Indian Tribe Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Coquille Indian Tribe (Coquille Tribe);
- Burns Paiute Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Burns Paiute Tribe (Burns Paiute Tribe).

The effective date of the permanent proposed change is the date of federal OSHA acceptance through publication in the Federal Register.

Rationale:

Numerous federal case law decisions regarding government jurisdiction on Indian lands have impacted enforcement jurisdiction with regard to state agency safety and health laws within Indian reservations and on Indian trust lands outside the reservations. The accumulated restrictions and prohibitions on the exercise of state jurisdiction on Tribal lands, and the desire by individual Indian tribes in Oregon for federal jurisdiction, requires action be taken to assure the timely protection of Oregon workers.

The pattern of legal decisions that has developed across the nation, since the 1978 transfer of state authority over the Warm Springs Reservation to federal OSHA, has created growing questions in Oregon regarding the correct legal procedures to follow in exercising OR-OSHA jurisdiction on Indian reservations and on other lands held in trust by the federal government for Indian tribes. The specific facts and required legal procedures in multiple cases have resulted in OR-OSHA not being able to fully or effectively exercise its jurisdiction. This prevented timely actions in response to employee complaints, and to known hazards observed or reported at fixed and mobile work sites on tribal lands, belonging to both Indian and non-Indian owned businesses and Tribes, inside the established boundary of the Indian reservations, and on lands held in trust for the Indian tribes by the Federal Government.

The temporary action requested in this document is covered within the terms of the existing Operational Status Agreement as modified in 1991, see item 4 in the revised agreement signed by James Lake, Regional Administrator on November 27, 1991 and included in correspondence dated December 6, 1991, to Bruce Hillenbrand, Director Federal State Operations. The Operational Status Agreement provides the State an avenue, and perceived responsibility, to take action to resolve jurisdictional limitations on the state enforcement authority that function to protect Oregon workers on Tribal lands.

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OR-OSHA has experienced difficulty to date involving employee complaints at several tribal casinos and health centers, and consistently with prime and subcontractors engaged in construction at work sites owned by Indian tribes. OR-OSHA has experienced similar difficulty in the state at work sites outside traditional reservations, on lands held in trust by the federal government for Indian tribes. As more tribal facilities become operational, an emerging concern is how to timely and fully protect the employees working in the on-going hotel, motel, casino, cultural center, RV park, golf course and other operations. The revenue from new tribal operations is also resulting in tribal business acquisitions and the development of more traditional business enterprises, in addition to those that have been operating for some time. OR-OSHA in its desire to assure appropriate occupational safety and health protections continue to be provided to all employees working inside Indian reservation boundaries and on Indian trust lands outside formal reservations, finds the transfer of state authority over private sector work sites to federal OSHA is necessary, and assures the States compliance with the the terms of the existing federal-state Operational Status Agreement.

The growing number of legal decisions and multiple legal tests creates uncertainty regarding the preparation of documents to successfully secure warrants as needed to gain entry to conduct regularly scheduled inspections of tribal, Indian and non-Indian owned businesses inside the reservation boundary and on lands outside the reservation that have been acquired by Indian tribes and then placed in trust with the federal Government. In spite of the combined best efforts of state and federal OSHA staff, and Oregon Department of Justice representatives, these unique and changing legal processes have delayed or prevented the exercise of state jurisdiction in numerous cases. Because these legal processes show no signs of providing predictable or expeditious entry to carry out state enforcement actions on these lands, the permanent transfer of jurisdiction to federal OSHA is necessary to provide safety and health protection at private sector establishments, including all tribal and Indian owned enterprises.

Because the protection of all Oregon workers on Indian reservations will require the combined jurisdiction of OR-OSHA and federal OSHA, and will benefit from the cooperation of tribal leaders and their representatives, it was clear the effective and expeditious protection of workers needed to involve each Indian tribe in Oregon. To accomplish this combined objective the state/tribal government to government Executive Order No.96-30 process was used, beginning in September, 1997, to assure needed communication with all the Indian tribes with continuing State jurisdiction was carried out. This State Plan change is the result of this effort and is prepared to address all private sector employment, including tribal and Indian owned enterprises, on all Indian and non-Indian lands within the currently established boundaries of all the listed Indian Reservations, and on lands outside the reservations that are held in trust by the federal government for the listed Tribes.

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This approach appropriately recognized the respective federal and state agreements to treat each Tribe as a separate and unique nation. The clear result of the efforts through the Oregon Legislative Commission on Indian Services, an October 1998 Open Letter to all nine Tribal Nations, follow communications with each tribe, and additional discussions at the November 16-17, 1998 Government to Government was a strong and consistent desire by each tribe for the return to the federal government, of the jurisdiction the state has exercised, that resulted from the 1972 transfer of jurisdiction to the state as part of the states initial State Plan application approval.

The jurisdiction to protect non-federal public sector employees in Oregon continues to be solely vested in DCBS, OR-OSHA. OR-OSHA will continue to pursue the protection of public sector workplaces on the Indian lands described above. To assure the timely recognition, by the listed Tribes, of OR-OSHA's public sector jurisdiction on the reservation and on other tribal trust lands, OR-OSHA and representatives of each Tribes will need to develop a Memorandum of Understanding (MOU). These documents, when mutually approved, will be submitted to federal OSHA as an addendum to this state-initiated plan change.

Tribal or Indian owned business enterprises and their employees while operating outside the established boundary of the listed Indian Reservations or off tribal trust lands would remain under DCBS, OR-OSHA jurisdiction, as encompassed in the current federal-state Operational Agreement.

This State Plan action is proposed with the advice and concurrence of the Oregon Department of Justice.

The proposed temporary and permanent actions are intended to provide a reasonable level of certainty regarding federal and state jurisdiction for all employers and employees when they are performing work inside the listed Reservation boundaries. This is needed to ensure employers know when to follow federal OSHA vs OR-OSHA regulations for voluntary compliance purposes, and which agency will be carrying out enforcement actions, given the sometimes patchwork nature of privately held fee owned lands inside some Reservation boundaries. The actions as proposed results in all private sector businesses when operating on fee owned land or on rented or tribal leased land inside the boundary of the listed Reservations, or on tribal trust lands, being under federal OSHA regulations and enforcement jurisdiction.

This permanent action will help provide clear federal/state jurisdiction expectations in the face of the likely expansion of Indian owned business enterprises and private businesses on the listed Reservation and trust lands. The future incorporation of the anticipated OR-OSHA/tribal MOU's will help address anticipated increased state and local public agency activity on the listed Reservations related to utility services and highway reconstruction. These actions will also address the potential conversion of additional fee owned lands into Indian trust land status,

outside the currently established Reservation boundaries.

E. Interagency and Jurisdictional Agreements

GENERAL

G-1 General Jurisdictional Agreement Between Federal OSHA and OR-OSHA

This jurisdictional agreement was signed and effective February 4, 1987, and revised and newly effective on October 1, 1992¹². **It was further reformatted in a Memorandum Of Understanding signed October 20, 1992. A State Initiated Plan Change dated March 15, 2004, returning jurisdiction to federal OSHA for the Grand Ronde, Coos, Siletz, Cow Creek, Coquille, Klamath and Burns Paiute Indian Reservations, further modifies the MOU and this General Agreement. The MOU with the State Initiated Plan Change describes in greater detail the level of federal enforcement in Oregon as stated in the initial and subsequent revisions to the operational agreement. It contains the agreement for jurisdictional boundaries in the following areas:**

**Shipyards and Boatyards
Longshoring / Marine Terminals
Marine Construction
Commercial Diving
U.S. Military Reservations
Confederated Tribes of Warm Springs Indian Reservation
Confederated Tribes of Umatilla Indian Reservation
Confederated Tribes of Grand Ronde Indian Reservation
Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indian Reservation
Confederated Tribes of Siletz Indian Reservation
Cow Creek Band of Umpqua Indian Reservation
Coquille Indian Reservation
Klamath Indian Reservation
Burns Paiute Indian Reservation
Superfund Sites**

¹² See Appendix F

Addendum to the Operational Status Agreement

On January 23, 1975, an Operational Status Agreement was entered into between The Occupational Safety and Health Administration (OSHA) and the State of Oregon. Notwithstanding any provision of that agreement to the contrary, the agreement is hereby amended to provide as follows:

Jurisdictional and enforcement authority are here by relinquished back to federal OSHA for conducting safety and health inspections and Section 11c investigations for discrimination, for all private sector employment, including tribal and Indian owned enterprises, on all Indian and non-Indian lands within the currently established boundary of the:

- Confederated Tribes of the Grand Ronde Community of Oregon Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of the Grand Ronde Community of Oregon (Grand Ronde Tribes);
- Confederated Tribes of Coos, Lower Umpqua and Siuslaw Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Coos, Lower Umpqua and Siuslaw (Coos Tribes);
- Confederated Tribes of Siletz Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Confederated Tribes of Siletz (Siletz Tribes);
- Cow Creek Band of Umpqua Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Cow Creek Band of Umpqua (Cow Creek);
- Klamath Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Klamath Tribe (Klamath Tribe);
- Coquille Indian Tribe Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Coquille Indian Tribe (Coquille Tribe);
- Burns Paiute Tribe Indian Reservation, and on lands outside the reservation that are held in trust by the Federal government for the Burns Paiute Tribe (Burns Paiute Tribe).

This agreement becomes fully operational when signed by both the Regional Administrator of OSHA Region X and the Administrator of the Occupational Safety and Health Division (OR-OSHA), Department of Consumer and Business Services.

Signed this ____ day of _____, 1998, by

Peter DeLuca, OR-OSHA Administrator
Department of Consumer & Business Services

Signed this ____ day of _____, 1998, by

Richard Terrill, Acting Regional Administrator, Region
Occupational Safety and Health Administration

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X

Addendum to the Operational Status Agreement