

DEPARTMENT OF LABOR**Occupational Safety and Health Administration****29 CFR Part 1952****Alaska State Plan; Approval of Plan Supplement; Level of Federal Enforcement**

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of OSHA's approval of a change to the Alaska occupational safety and health state plan excluding coverage from the plan of Alaska Native health care facilities that are federally owned and contractor operated, and of certain military installations. The Native health care facilities include those owned by the U.S. Department of the Interior, Indian Health Service; the U.S. Department of Defense; or the U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and operated by Tribal organizations under contract with the Indian Health Service. The military installations include four missile defense facilities and four U.S. Coast Guard facilities. Accordingly, federal OSHA will exercise enforcement authority over these facilities in Alaska. The State retains jurisdiction over construction and contract maintenance at these Native health care facilities. OSHA is amending its description of the State plan to reflect this change in the level of Federal enforcement in the State.

EFFECTIVE DATE: April 19, 2004.

FOR FURTHER INFORMATION CONTACT:

Paula O. White, Director, Cooperative and State Programs, Occupational Safety and Health Administration, U.S. Department of Labor, Room N3700, 200 Constitution Avenue NW., Washington, DC 20210, Telephone: (202) 693-2200.

SUPPLEMENTARY INFORMATION:

A. Background

Section 18 of the Occupational Safety and Health Act of 1970 (the Act), 29 U.S.C. 667, provides that states which wish to assume responsibility for developing and enforcing their own occupational safety and health standards may do so by submitting, and obtaining federal approval of, a state plan. State plan approval occurs in stages which include initial approval under section 18(c) of the Act and, ultimately, final approval under section 18(e).

The Alaska state plan was initially approved on July 31, 1973, with notice published August 10, 1973 (38 FR 21630). On September 28, 1984, OSHA announced the final approval of the Alaska state plan pursuant to section 8(e) and amended Subpart R of 29 CFR Part 1952 to reflect the Assistant Secretary's decision (49 FR 38252). As a result, federal OSHA relinquished its authority with regard to occupational safety and health issues covered by the Alaska plan. Federal OSHA retained its authority over safety and health in private sector maritime employment; marine-related private sector employment at worksites on the navigable waters, such as floating seafood processing plants, marine construction, employments on artificial islands and offshore oil drilling platforms, and diving operations afloat; private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community and the Denali (Mt. McKinley) National Park; federal government agencies; and the U.S. Postal Service.

Alaska Native Health Care Facilities

In September 2000, Alaska Occupational Safety and Health (AKOSH) representatives were denied entry to conduct an inspection of the Kakanak Hospital operated by the Bristol Bay Area Health Corporation at Kakanak, Alaska. The Alaska Attorney General determined that since the hospital is owned by the federal government and operated under contract with the Indian Health Service, AKOSH would not have jurisdictional authority to pursue compulsory process. AKOSH has since determined that there are a number of similarly operated health facilities owned by the federal government over which AKOSH does not have enforcement authority. The OSH Act does not provide specific authority for state plans to include within their jurisdiction those federal instrumentalities which are government owned but contractor operated (GOCO) facilities. (See *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174 (1988).) Accordingly, these facilities are deemed to be an issue no longer covered by the Alaska state plan. On July 10, 2001, AKOSH signed a memorandum of understanding (MOU) with federal OSHA agreeing to relinquish jurisdiction over Native health care facilities in Alaska that are federally owned and contractor operated. These include all Native health care facilities owned by the U.S. Department of the Interior, Indian Health Service; the U.S. Department of Defense; or the U.S. Department of Commerce, National

Oceanic and Atmospheric Administration; and operated by Tribal organizations under contract with the Indian Health Service. Federal OSHA is assuming jurisdiction and enforcement responsibility for these facilities.

Construction and contract maintenance activities at these facilities will remain under the jurisdiction of the State of Alaska, AKOSH, in accordance with a determination by the Alaska Attorney General that jurisdiction over such activities is permissible under state law. However, the Metlakatla Indian Community, Annette Island (Health) Service Unit, remains entirely under federal OSHA jurisdiction pursuant to an earlier modification to the state plan. (See 49 FR 4469.)

AKOSH retains jurisdiction over other Native health care facilities that are leased or owned by Tribal organizations, or city, county and state municipalities, again with the exception of the Metlakatla Indian Community. AKOSH will also provide consultation and training services at all Native health care facilities, upon request.

Military Installations

On February 11, 2004, the Alaska Commissioner of Labor requested that federal OSHA assume jurisdictional responsibilities for private contractors at certain military installations. Alaska noted that it was infeasible to obtain the security clearances necessary for highly classified and/or restricted areas at these military bases, and that private contractor compliance ultimately required negotiation with controlling federal agencies on hazard abatement and other compliance issues. Alaska requested that OSHA assume responsibility for conducting safety and health inspections of the operations of private contractors within the borders and confines of four missile defense facilities and four U.S. Coast Guard facilities: Cape Lisburne Long Range Missile Base (U.S. Air Force), Point Lay Short Range Missile Base (U.S. Air Force), Eareckson Air Station (Shemya Island—Department of Defense), Fort Greeley Missile Defense (Delta Junction—U.S. Army), the U.S. Coast Guard's Integrated Support Commands in Kodiak and Ketchikan, the U.S. Coast Guard Air Station in Sitka, and the U.S. Coast Guard 17th District Command in Juneau.

Accordingly, these establishments are deemed to be issues no longer covered by the Alaska state plan. Federal OSHA is assuming jurisdiction and enforcement responsibility for these facilities. AKOSH retains jurisdiction over all other military installations and will conduct safety and health

inspections of private contractors operating on military bases not listed above.

Changes to Description of State Plan

OSHA is amending its description of the state plan to reflect this change in the level of federal enforcement. In addition, 29 CFR 1952.243 and 1952.244 are reorganized into subparagraphs for readability.

B. Location of Supplement for Inspection and Copying

A copy of the Memorandum of Understanding referenced in this notice and related correspondence may be obtained from: Office of State Programs, Directorate of Cooperative and State Programs, Occupational Safety and Health Administration, Room N3700, 200 Constitution Avenue, NW, Washington, DC 20210, (202) 693-2244, fax (202) 693-1671; Office of the Regional Administrator, Occupational Safety and Health Administration, 1111 Third Avenue, Suite 715, Seattle, Washington, 98101-3212, (206) 553-5930, fax (206) 553-6499; and the State of Alaska, Department of Labor and Workforce Development, 1111 W. 8th Street, Room 306, Juneau, Alaska 99802-1149, (907) 465-4855, fax (907) 465-6012. Other information about the Alaska state plan is posted on the State's Web site at <http://www.labor.state.ak.us/lss/>. For an electronic copy of this notice, see OSHA's Web site at <http://www.osha.gov>.

C. Public Participation

Under 29 CFR 1953.3(e), the Assistant Secretary may prescribe alternative procedures to expedite the review process or for other good cause which may be consistent with applicable laws. Alaska's determination that certain Native health care operations and certain military installations are no longer issues covered under the State's plan is already in effect per agreement with OSHA as a result of the State's inability to exercise legal authority. Additionally, under the terms of Alaska's Final Approval determination, which was issued in 1984 after an opportunity for public comment, federal standards and enforcement apply to safety or health issues that the State is unable to cover under its state plan. Accordingly, OSHA finds that further public participation is unnecessary, and this notice of approval is effective upon publication in the **Federal Register**.

List of Subjects in 29 CFR Part 1952

Indians, Intergovernmental relations, Law enforcement, Military installations, Occupational safety and health.

Signed at Washington, DC, this 6th day of April, 2004.

John L. Henshaw,
Assistant Secretary.

■ For the reasons set out in the preamble, 29 CFR Part 1952 is amended as set forth below:

PART 1952—[AMENDED]

■ 1. Revise the authority citation for Part 1952 to read as follows:

Authority: Sec. 18 of the Occupational Safety and Health Act of 1970, 84 Stat. 1608 (29 U.S.C. 667); 29 CFR part 1902; Secretary of Labor's Order No. 5-2002 (67 FR 65007, October 22, 2002).

■ 2. Amend § 1952.243 by revising paragraph (b) to read as follows:

§ 1952.243 Final approval determination.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Alaska. The plan does not cover:

- (1) Private sector maritime employment;
- (2) Worksites located on the navigable waters, including artificial islands;
- (3) Native health care facilities that are Federally owned and contractor operated, including those owned by the U.S. Department of the Interior—Indian Health Service, the U.S. Department of Defense, or the U.S. Department of Commerce—National Oceanic and Atmospheric Administration, and operated by Tribal organizations under contract with the Indian Health Service;
- (4) Operations of private sector employers within the Metlakatla Indian Community on the Annette Islands;
- (5) Operations of private sector employers within Denali (Mount McKinley) National Park;
- (6) Operations of private contractors at Cape Lisburne Long Range Missile Base, Point Lay Short Range Missile Base, Eareckson Air Station on Shemya Island, Fort Greeley Missile Defense in Delta Junction, the U.S. Coast Guard Integrated Support Commands in Kodiak and Ketchikan, the U.S. Coast Guard Air Station in Sitka, and the U.S. Coast Guard 17th District Command in Juneau;

(7) Federal government employers and employees;

(8) The U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-

operated facilities engaged in USPS mail operations; or

(9) The enforcement of the field sanitation standard, 29 CFR 1928.110, and the enforcement of the temporary labor camps standard, 29 CFR 1910.142, with respect to any agricultural establishment where employees are engaged in "agricultural employment" within the meaning of the Migrant and Seasonal Agricultural Worker Protection Act, 29 U.S.C. 1802(3), regardless of the number of employees, including employees engaged in hand packing of produce into containers, whether done on the ground, on a moving machine, or in a temporary packing shed, except that Alaska retains enforcement responsibility over agricultural temporary labor camps for employees engaged in egg, poultry, or red meat production, or the post-harvest processing of agricultural or horticultural commodities.

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■ 3. Amend § 1952.244 by revising paragraph (b) to read as follows:

§ 1952.244 Level of Federal enforcement.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Alaska plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan.

(1) Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments.

(2) Federal jurisdiction will be retained over marine-related private sector employment at worksites on the navigable waters, such as floating seafood processing plants, marine construction, employments on artificial islands, and diving operations in accordance with section 4(b)(1) of the Act.

(3) Federal jurisdiction is also retained and exercised by the Employment Standards Administration, U.S. Department of Labor (Secretary's Order 5-96, December 27, 1996) with respect to the field sanitation standard, 29 CFR 1928.110, and the enforcement

of the temporary labor camps standard, 29 CFR 1910.142, in agriculture, as described in § 1952.243(b).

(4) Federal jurisdiction is also retained for Native health care facilities that are Federally owned and contractor operated, including those owned by the U.S. Department of the Interior, Indian Health Service; the U.S. Department of Defense; or the U.S. Department of Commerce, National Oceanic and Atmospheric Administration; and operated by Tribal organizations under contract with the Indian Health Service. However, the State retains jurisdiction over construction and contract maintenance activities at these facilities with the exception of the Metlakatla Indian Community, Annette Island Service Unit, which is entirely under Federal jurisdiction. (The State also retains jurisdiction over Native health care facilities that are leased or owned by Tribal organizations, except for the Metlakatla Indian Community.)

(5) Federal jurisdiction is also retained with regard to the operations of private contractors at Cape Lisburne Long Range Missile Base, Point Lay Short Range Missile Base, Eareckson Air Station on Shemya Island, Fort Greeley Missile Defense in Delta Junction, the U.S. Coast Guard Integrated Support Commands in Kodiak and Ketchikan, the U.S. Coast Guard Air Station in Sitka, and the U.S. Coast Guard 17th District Command in Juneau.

(6) Federal jurisdiction is also retained for private sector worksites located within the Annette Islands Reserve of the Metlakatla Indian Community, for private sector worksites located within the Denali (Mount McKinley) National Park, for Federal government employers, and for the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

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DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1952

Washington State Plan; Approval of Plan Supplement; Level of Federal Enforcement

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Final rule.

SUMMARY: This document gives notice of OSHA's approval of a change to the State of Washington's occupational safety and health state plan excluding coverage of establishments where the employer is either a federally recognized Indian Tribe or an enrolled member of a federally recognized Indian Tribe, and the establishment is located within the borders of an Indian reservation in the State, or on lands outside these reservations that are held in trust by the federal government for these Tribes. This extends a State plan exclusion previously established for establishments of the Yakama Indian Nation and Colville Confederated Tribes to all other recognized Tribes and their members. Accordingly, federal OSHA will exercise enforcement authority over such establishments in the State of Washington. The State retains jurisdiction over non-member private sector and State and local government employers located within the reservations or on Trust lands, and member employers located outside the reservations or Trust lands. OSHA is amending its description of the State plan to reflect this change in the level of federal enforcement in the State.

EFFECTIVE DATE: April 19, 2004.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

A. Background

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On January 26, 1973, OSHA published notice in the **Federal Register** (38 FR 2421) announcing the approval of the Washington state plan, as administered by the Washington Department of Labor and Industries, and the adoption of subpart F to 29 CFR part 1952 containing the decision and describing the state plan. On May 30,

1975, OSHA and the State of Washington entered into an operational status agreement which suspended the exercise of concurrent federal enforcement authority in all except specifically identified areas. OSHA and the State of Washington have subsequently amended this operational status agreement on several occasions. The pertinent provisions concerning the level of federal occupational safety and health enforcement in the State appear at 29 CFR 1952.122.

In April, 1987 and November, 1989 the State of Washington amended its plan to exclude coverage of establishments of the Yakama Indian Nation and the Colville Confederated Tribes. OSHA announced approval of these changes and assumption of federal enforcement responsibility for Indian or Tribally owned facilities within the Yakama and Colville reservations on March 30, 1990 (55 FR 11906) and September 12, 1990 (55 FR 37465), respectively.

The decision by the State of Washington to exclude coverage of member and Tribal employers of all federally recognized Indian Tribes from its state plan follows a refusal by another Tribe, the Makah Indian Tribe, to allow State entry to conduct a discrimination investigation and a safety and health complaint inspection. Based on this and similar denials of entry and questions as to the State's legal authority to regulate Indian-owned or Tribal workplaces, the State subsequently requested that OSHA assume jurisdiction over establishments operated by member and Tribal employers of all federally recognized Indian Tribes within the borders of Indian reservations or on lands held in Trust for the various Tribes in Washington State. Accordingly, these establishments are deemed to be an issue no longer covered by the Washington state plan. OSHA and the State of Washington signed an addendum to their operational status agreement on August 31, 2000. That addendum, which was effective upon signature, relinquishes State jurisdictional and enforcement authority and responsibility for all occupational safety and health matters at establishments of employers who are either federally recognized Indian Tribes or enrolled members of these Tribes, where such employers' establishments are located within the borders of Indian reservations in the State, or on lands outside these reservations that are held in trust by the federal government for these Tribes. Accordingly, federal OSHA is assuming jurisdiction and enforcement authority