
MIOSHA

Michigan Occupational Safety and Health Administration (MIOSHA)
Department of Labor and Economic Opportunity (LEO)

AGENCY INSTRUCTION

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MIOSHA-COM-15-1R2

DATE:
August 9, 2021

SUBJECT: Indian Country Inspections/Investigations and Interventions

- I. Purpose. This instruction provides guidance for conducting safety and health inspections/investigations and consultation interventions within the borders or confines of Indian country in Michigan.
- II. Scope. This instruction applies to the Construction Safety and Health Division (CSHD), the General Industry Safety and Health Division (GISHD), and the Consultation, Education, and Training (CET) Division.
- III. References.
 - A. 29 CFR Part 1952, [Michigan State Plan; Change in Level of Federal Enforcement: Indian Tribes](#); October 12, 2011, Federal Register 76:63190-63191.
 - B. Agency Instruction MIOSHA-ADM-15-1, [Heads-up Notification to MIOSHA Administration and Case File Review](#), as amended.
 - C. Division Instruction CSHD-COM-14-1, [Focused Inspections](#), as amended.
 - D. [MIOSHA Field Operations Manual \(FOM\)](#), as amended.
- IV. Distribution. MIOSHA Staff; Federal OSHA; S-drive Accessible; and MIOSHA Messenger, and Internet Accessible.
- V. Cancellations: All previous versions of this agency instruction.
- VI. Next Review Date. This instruction will be reviewed in three years from the date of issuance.
- VII. History. History of previous versions include:
MIOSHA-COM-15-1R1, March 13, 2018
MIOSHA-COM-15-1, January 21, 2015
- VIII. Contact. [Lawrence Hidalgo](#), Director, CSHD, [Adrian Rocskay](#), Director, GISHD, and [Nella Davis-Ray, Director](#), CET Division
- IX. Originator: Barton G. Pickelman, Director
- X. Background.

On January 6, 1977, the Occupational Safety and Health Administration (OSHA) and MIOSHA entered into an Operational Status Agreement wherein OSHA granted enforcement authority of the occupational safety and health standards to the states' OSHA-approved occupational safety and health plan. OSHA retained its authority over safety and health in private sector maritime employment, federal government employers and employees, and employees of the U.S. Postal Service.

On September 28, 2004, an addendum to the Operational Status Agreement was signed by OSHA and MIOSHA. The addendum states that MIOSHA relinquishes the jurisdiction and enforcement authority to OSHA for conducting safety and health inspections/investigations and interventions within the borders of Indian country for employers who are enrolled members of Indian tribes. The addendum further stipulates that non-member employers within Indian country and member employers located outside the territorial borders of Indian country will remain under MIOSHA jurisdiction.

On October 12, 2011, the United States Department of Labor published [Michigan State Plan; Change in Level of Federal Enforcement: Indian Tribes](#) in the federal register. The final rule provides notice of OSHA's approval to the terms set forth in the 2004 Operational Status Agreement addendum.

Michigan is home to twelve federally recognized Indian tribes. Federally recognized tribes are not merely organizations of citizens who happen to be of Native American descent. Rather, these tribes are sovereign governments with rights and authority. These twelve tribes are members of the Michigan Tribal Council. A list of the Michigan Tribal Governments is located in [Appendix A](#). Many of the Michigan tribes have adopted the federal OSHA regulations and have dedicated safety and health representatives who enforce workplace safety and health at work sites and construction projects that are located within the borders or confines of Indian country. See [Michigan Tribal Governments](#) website for more information.

Several differing legal views and opinions about jurisdictional authority among the Michigan tribes and the State of Michigan have been put forth regarding whether, and the extent to which, MIOSHA may lawfully enforce the Michigan Occupational Safety and Health Act for non-Indian employers for violations that occur at workplaces located within the borders of Indian country. This instruction is not intended to resolve these issues. Rather, it is limited to providing guidelines for conducting MIOSHA safety and health inspections/investigations and interventions within the borders of Indian country. MIOSHA and Michigan's federally recognized Indian tribes have worked collaboratively to seek a better understanding of each other's point of view.

XI. Definitions.

INDIAN TRIBE means any tribe, band, nation, or other organized group or community, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians.

INDIAN RESERVATION means land established by treaty, statute, executive order, or administrative procedure for the use of a designated tribe.

INDIAN COUNTRY is a legal term that refers to the lands set aside for federally recognized Indian tribes. It includes reservations, fee land within reservation boundaries, dependent Indian communities, Indian allotments, and trust land.

ENROLLED MEMBER is a person, employee, employer, or contractor who is enrolled as a member of a specific Indian tribe at the affected worksite. The criterion for enrollment membership is specific to each individual tribe.

NON-MEMBER is a person, employee, contractor, or employer who is not an enrolled member of the specific Indian reservation (or tribe) at the affected worksite.

XII. Jurisdiction.

- A. MIOSHA does not have authority to conduct safety and health inspections or investigations of enrolled member employers who own or operate a business within the borders of Indian country, regardless of the enrolled member status of any individual employee. OSHA has this authority.
- B. MIOSHA has authority to conduct safety and health inspections/investigations of non-member employers who own or operate a business within the borders of Indian country, regardless of the enrolled member status of any individual employee. This authority is delegated to MIOSHA by federal OSHA.
- C. MIOSHA has authority to conduct safety and health inspections/investigations of enrolled member employers who own or operate a business outside the borders of Indian country.

XIII. Enforcement Activities.

- A. If MIOSHA receives a report of imminent danger, a catastrophe, a fatality, an incident, a complaint (including a discrimination complaint), or referral and it involves an employer who is an enrolled member operating within the borders or confines of Indian country, it will be referred to the Wisconsin Area OSHA Director.
- B. MIOSHA enforcement staff must ensure that a representative of the Indian tribe be informed when attempting to initiate an enforcement activity within the borders of Indian country, and be provided an opportunity to participate.
- C. GISHD: Only unprogrammed (e.g., complaints, referrals, and fatal accidents), and unprogrammed-related inspections/investigations involving non-member employers may be initiated at a worksite within the borders or confines of Indian country. A heads-up notification, in accordance with Agency Instruction, [Heads-up Notification to MIOSHA Administration and Case File Review](#) is required prior to initiating one of these types of inspections/investigations.
- D. CSHD: Programmed, programmed-related, unprogrammed, and unprogrammed-related inspections/investigations involving non-member employers may be initiated at a worksite within the borders or confines of Indian country. A heads-up notification, in accordance with Agency Instruction, [Heads-up Notification to MIOSHA Administration and Case File Review](#) required prior to initiating one of these types of inspections/investigations.

All programmed and programmed-related inspections initiated at a construction project involving non-member employers and located within the borders or confines of Indian country will be handled as a focused inspection in accordance with Division Instruction, [Focused Inspections](#), as amended.

- E. Refusal to Permit Entry or Inspection/Investigation: When a safety officer/industrial hygienist (SO/IH) is refused entry to the site or not allowed to proceed with the inspection/investigation, the SO/IH will immediately leave the premises and contact their Supervisor as prescribed in Chapter I and Chapter V of the [FOM](#). A heads-up notification will be sent to administration before any further action takes place per the Agency Instruction, [Heads-up Notification to MIOSHA Administration and Case File Review](#).

XIV. Consultation Activities.

- A. When requested, CET Division staff may conduct training and any other types of intervention with enrolled member and non-member employers operating within the borders or confines of Indian country and/or a member employer operating outside the borders or confines of Indian country.
- B. Staff must ensure that a representative of the Indian tribe be informed if the activity is to occur within the borders of Indian country and provided an opportunity to participate.

Appendix A
Michigan Tribal Governments

- [Bay Mills Chippewa Indian Community](#)
- [Grand Traverse Band of Ottawa and Chippewa Indians](#)
- [Hannahville Potawatomi Indian Community](#)
- [Keweenaw Bay Indian Community](#)
- [Lac Vieux Desert Band of Lake Superior Chippewa Indians](#)
- [Little River Band of Ottawa Indians](#)
- [Little Traverse Bay Bands of Odawa Indians](#)
- [Match-E-Be-Nash-She-Wish Band of Pottawatomi](#)
- [Nottawaseppi Huron Band of the Potawatomi](#)
- [Pokagon Band of Potawatomi Indians](#)
- [Saginaw Chippewa Indian Tribe](#)
- [Sault Ste. Marie Tribe of Chippewa Indians](#)