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LAURA L. MCGRORY, DIRECTOR

July 24, 2015

Ms. Barbara Goto
Acting Regional Administrator, OSHA
90 – 7th Street, Suite 18100
San Francisco, CA 94103

RE: ADOSH Response to the FFY 2014 FAME

Dear Ms. Goto:

Thank you for the opportunity to provide a formal response to OSHA's FFY 2014 Federal Annual Monitoring and Evaluation (FAME) report. The required Corrective Action Plan (CAP) response regarding the findings and recommendations of the FAME will be submitted to OSHA by August 10, 2015, as requested in your July 10, 2015 letter.

The Arizona Division of Occupational Safety and Health (ADOSH) and federal OSHA (OSHA) have engaged in a constructive dialogue that has effectively resolved concerns raised by both sides. With the exception of some areas, I consider the FFY 2014 FAME to be a thorough review of ADOSH's FFY 2014 activities and agree with the overall findings regarding the effectiveness of ADOSH's program. I also appreciate OSHA's efforts to include some positive findings in the FAME, along with the findings where corrections are recommended. However, as some of the FAME findings and recommendations continue to represent non-substantive issues that have little to no impact on the overall effectiveness and quality of Arizona's program, I believe that resolution of these issues should be resolved informally, rather than as a part of a formal evaluation process. I look forward to discussing this with you in the future. At this time, I will take this opportunity to respond to the more substantive issues identified in the FAME.

OSHA has identified "Fall Protection" as a "Major New Issue." With OSHA's rejection of State Plan Change 133 on February 6, 2015, all of the Arizona state-specific residential fall protection standards in A.R.S. §§ 23-492 through 492.09 were deemed automatically repealed by operation of law. Effective 12:01 a.m. on Saturday, February 7, 2015, ADOSH began enforcement of the federal residential fall protection standards in 29 CFR 1926.501 et seq. (known as Subpart M). I believe that residential fall protection is not a "major new issue" and has been resolved.

With respect to the discussion regarding Strategic Goal 1.1, Nursing Homes and Residential Care Facilities, to better focus its resources and consistent with the expiration of OSHA's National Emphasis Program on Nursing Homes, ADOSH has replaced this goal in a revised five-year strategic plan for FFY 2016-2020 that has been submitted to OSHA for review and approval. It is believed that this revised strategic plan will have a greater impact on occupational safety and health in Arizona.

I also have concerns with issues that appear in the FAME as unresolved and open findings. With regard to State Activity Mandated Measures (SAMM) 1 and 2, which measure average response time to initiate inspections and average time to initiate investigations, I question the accuracy of the data, which was pulled from OSHA's old legacy NCR system. As you know, in April 2014, ADOSH experienced two major crashes of the NCR hard drive. ADOSH was required to send the hard drive to OSHA's Washington DC office for reimaging and repair. ADOSH has had numerous discussions with OSHA regarding whether all of the FFY 2014 data was recovered and ADOSH's continued inability to obtain SAMM reports from the old NCR system. I continue to question whether all of the data transferred, which is the reason that I question the data reported in the FAME for these two measures. I would also like to point out that, under OSHA's new OIS system, the average time for ADOSH to initiate inspections and investigations is 3.52 days and 1.84 days respectively. Regardless of the accuracy of the FFY 2014 data, this data demonstrates a marked improvement compared to previous FAME findings.

With respect to the findings regarding SAMM 9(a) (which measures the average number of serious, willful, repeat violations per inspection with violations), ADOSH has adopted the OSHA Field Operations Manual (FOM), uses classification procedures from the FOM that are the equivalent of Federal OSHA, and has trained each compliance officer in hazard recognition. ADOSH believes that it is, in fact, classifying citations properly. It should also be noted that while OSHA may initially classify more citations as serious than does ADOSH, it also deletes and reclassifies more citations than ADOSH at the back end. As ADOSH has previously stated, this continued finding by OSHA does not mean that the ADOSH program is less effective than the OSHA program. OSHA has not provided any data showing that because ADOSH cited a particular hazard as non-serious rather than serious, Arizona employees are at greater risk of injury.

With respect to SAMM 20 (which measures the in-compliance rate of inspections), while I question the accuracy of the underlying data, ADOSH is nevertheless working to hard to better focus its resources and improve its targeting efforts. ADOSH is seeing improvement in its in-compliance rates as evidenced by the most recent OIS SAMM report which shows in-compliance rates of 37.72 and 26.29 for safety and health respectively.

With respect to the findings regarding SAMM 17 (which measures the number of inspections conducted), due to retirements and resignations, ADOSH experienced a 79% retention rate of compliance officers in FFY14. This resulted in a decrease of inspections. Even with this challenge, though, ADOSH averaged 71.7 inspections per compliance officer in FFY 2014.

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In closing, I appreciate the opportunity to respond to the FAME and look forward to working with you and your staff to keep Arizona workers safe. If you have questions, please feel free to contact me.

Sincerely,

Bill Warren,
ADOSH Director

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