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**DEPARTMENT OF BUSINESS AND INDUSTRY
DIVISION OF INDUSTRIAL RELATIONS
OCCUPATIONAL SAFETY & HEALTH ADMINISTRATION**

August 9, 2018

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

Re: NV OSHA Response to the FFY2017 FAME

Dear Ms. Goto,

Thank you for the opportunity to provide the Nevada Occupational Safety and Health Administration's (NV OSHA) formal response to OSHA's FFY 2017 Federal Annual Monitoring and Evaluation (FAME) report. NV OSHA continues to work with regional and state OSHA representation to develop a proactive and mutually beneficial relationship between the two agencies. With the support of regional and state representation of OSHA, the Nevada program has effectively addressed previous findings and is working to address the identified findings from the FFY 2017 Federal evaluation.

The NV OSHA state plan program continues to improve its processes and efforts in protecting the working population of Nevada from exposure, on-the-job injuries and illnesses. The FFY 2017 FAME report on NV OSHA's program validates Nevada's efforts to improve processes and NV OSHA appreciates any recognition of these efforts when included in a FAME evaluation report. NV OSHA values the opportunity to post a formal response to the FFY 2017 FAME and to provide comment on two of the findings that it believes are not warranted.

With respect to Section 3, Subsection B (2), Finding 2017-02, NV OSHA believes that the federal monitoring program's approach to Other-Than-Serious (OTS) violation rates is short-sighted. Currently, the federal monitoring program has labeled the OTS rate as having a cap. In other words, it can be exceeded and this exceedance warrants a "Further Review Level" or FRL (which is set at 1.19 OTS violations per inspection on average). Under further review, the state monitors push the mentality that OTS violations need further scrutiny or development while Compliance Safety and Health Officers (CSHO's) are in the field. The monitoring program presses state plans to "keep digging" for conditions and evidence to develop the OTS into a "Serious" violation of standards. NV OSHA does recognize that staff skill levels and experience levels lends to a heightened OTS rate. The heightened OTS rate will address itself with any reduction in staff turnover and increased skill levels. With recognition of these conditions, NV OSHA thinks the federal program has lost its core approach with business which is seeking compliance with the standards.

NV OSHA believes that a slightly increased OTS rate is indicative of a more comprehensive application of the standards and a progressive approach in working with business. Further, NV OSHA feels that seeking to drive down the OTS rate is not a productive approach for the agency, the working men and women of Nevada or Nevada businesses. NV OSHA thinks that a better method to address a Serious violation rate that is below the FRL is to scrutinize the programmed inspection practices and ensure that CSHO's are active at businesses or industries that have a heightened injury and illness rate.

With respect to Section 3, Sub-section B (4), Finding 2017-09, NV OSHA believes that proper notification of intent was given in a timely fashion. NV OSHA does recognize that the final rule adoptions in questions were not timely but the circumstances for the lack of timeliness were out of NV OSHA's control. In all three instances the adoption would have to be approved by the Nevada legislature that convenes every two years. The deadline for Bill Draft submission by an agency comes in May of the year before the legislative assembly. In all three instances the FR Standard Date was after May which did not allow NV OSHA to properly introduce the needed documentation for submission into the assembly. In two of the instances NV OSHA provided a response with intent to adopt identical.

NV OSHA believes that the federal program should consider these unique situations into account when it monitors state plans.

In closing, NV OSHA appreciates that opportunity to respond to the FFY 2017 FAME and looks forward to many productive years of active protection of the working men and women of the great State of Nevada. To accomplish this NV OSHA will continue to seek guidance from and work in unison with our peers in the Federal OSHA program. If you should have any questions feel free to contact me at 720.486.9046.

Sincerely

Jess Lankford
Chief Administrative Officer
Nevada Occupational Safety & Health Administration

Cc: Ray Fierro, Interim Administrator