



The Honorable Douglas L. Parker
Assistant Secretary of Labor
Occupational Safety and Health Administration (OSHA)
U.S. Department of Labor
200 Constitution Avenue, NW
Washington D.C. 20210

June 17, 2022

RE: Public Comment, Docket No. OSHA-2021-0012

Dear Assistant Secretary Parker,

In your most recent federal register notice you indicate that OSHA proposes to reconsider and revoke Arizona's 18E Final Approval, which if completed, would once again enable OSHA a more active role in protecting Arizona workers.ⁱ While modification of Final Approval **DOES NOT** eliminate the Arizona Division of Occupational Safety and Health (ADOSH) or Arizona's ability to administer its state plan, it does once again give OSHA and the Department of Labor the authority to provide a needed check and balance when workers are put at risk where the state has demonstrated either a reluctance or inability to ensure commensurate workplace safety for Arizona's workers.^{ii iii iv}

Since the creation of the Arizona Chapter of American Society of Safety Professionals (ASSP) in 1960 and the Southern Arizona Chapter in 1972, ASSP has been representing the interests of Arizona's safety professionals as we work to ensure the safety and health of Arizona workers. With more than 700 members in the State of Arizona, our members are dedicated to creating safe work environments by preventing workplace fatalities, injuries, and illnesses. Sound safety practices are both socially responsible and good business, leading to increased productivity and profits, a better reputation, and higher employee satisfaction.

One of ASSP's fundamental canons is that we shall hold paramount the protection of people, property, and the environment by advising employers, clients, employees, or appropriate authorities when our professional judgment indicates that the protection of people, property or the environment is unacceptably at risk.^v

Arizona State 23-403(A) requires that all workers be provided a safe work environment and that companies follow occupational safety and health rules and guidelines.^{vi} The Industrial Commission of Arizona (ICA) has the duty and responsibility to ensure workers are provided a safe work environment and that companies adhere to rules the ICA adopts to ensure workplace safety.^{vii} As has been documented in numerous FAME reports, for more than a decade, Arizona does NOT meet several of its own regulatory benchmarks, goals, and rubrics related to Arizona's worker safety agreement and obligations under the OSH ACT.^{viii ix x xi xii} Arizona continually returns or fails to spend grant funding it requests from OSHA and maintains less Compliance Safety and Health Officers on staff than it did more than 45 years ago.^{xiii} It is perplexing that our state would pass laws related to workplace safety and then not ensure the laws are followed by having and supporting ADOSH's ability to administer that State Plan.^{xiv}

Therefore, we support the course of action that increases and sustains worker safety in Arizona, whether that is the ICA & ADOSH implementing changes based on the deficiencies identified by OSHA; or, it is the revocation of 18E Final Status and concurrent jurisdiction between OSHA & ADOSH until such a time that OSHA feels ADOSH is operating at least as effective as OSHA.

As safety professionals and members of the Arizona Chapters of ASSP we have a paramount responsibility to uphold and advance the integrity, honor, and dignity of the safety, health, and environmental profession by being honest, impartial and professional while serving the public, employers, and clients with fidelity. We extend our appreciation to you and Secretary Walsh for your commitment to ensure ALL workers are as effectively protected in our Nation's 48th state as workers are across the country. We look forward to continued engagement with the Industrial Commission of Arizona and the State of Arizona as they work to improve our State Plan to acceptable minimum standards which protect all workers in every industry sector amicably. ^{xv}

We look forward to working with you, the U.S. Department of Labor/ Occupational Safety & Health Administration, and the Industrial Commission of Arizona/ Arizona Division of Occupational Safety & Health in re-establishing Arizona's promise to the working families of our state. Regardless of the outcome, we want to thank you and Secretary Walsh for providing action which will guide our State Plan back to those who it is supposed to protect, the workers of Arizona.

Respectfully,



Christopher Brandon
President
Arizona Chapter ASSP



Charity Madrid-Torres
President
Southern Arizona Chapter ASSP

ⁱ Federal OSHA retains the authority to promulgate, modify, or revoke occupational safety and health standards under Section 6 of the OSH Act. In the event that federal OSHA resumes concurrent jurisdiction, those federal standards will be enforced. Federal OSHA also retains the authority to monitor the State Plan under Section 18(f) of the OSH Act. <https://www.osha.gov/stateplans/az>

ⁱⁱ The Secretary may by rule promulgate, modify, or revoke any occupational safety or health standard... https://www.osha.gov/laws-regs/oshact/section_6

ⁱⁱⁱ 1 Section 2(b)(11) of the federal Occupational Safety and Health (OSH) Act (29 U.S.C. 651 (b)(11)) ("(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources.

^{iv} ICA Meeting minutes October 7, 2021;

<https://www.azica.gov/sites/default/files/media/October%207%2C%202021%20Minutes.pdf>

^v <https://az.assp.org/our-code/>

^{vi} 23-403. Employer's duty: A. Each employer shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees. B. Each employer shall comply with occupational safety and health standards and all regulations and orders issued pursuant to this article. <https://www.azleg.gov/ars/23/00403.htm>

vii A. The commission has full power, jurisdiction and authority to 1. Formulate and adopt rules and regulations for effecting the purposes of this article. 2. Administer and enforce all laws for the protection of life, health, safety and welfare of employees in every case and under every law when such duty is not specifically delegated to any other board or officer, and, when such duty is specifically delegated, to counsel, advise and assist in the administration and enforcement of such laws and for such purposes may conduct investigations.

<https://www.azleg.gov/viewdocument/?docName=https://www.azleg.gov/ars/23/00107.htm>

viii Arizona FAME 2020: <https://www.osha.gov/sites/default/files/2021-07/Arizona-FY-2020-Follow-up-FAME-Report.pdf>

ix Arizona FAME 2019 https://www.osha.gov/sites/default/files/2020-07/arizona_2019.pdf;

Arizona Response https://www.osha.gov/sites/default/files/2020-07/arizona_fr_2019.pdf

x Arizona FAME 2018: https://www.osha.gov/sites/default/files/2019-06/arizona_2018.pdf

Arizona Response: https://www.osha.gov/sites/default/files/2019-06/arizona_fr_2018.pdf

xi Arizona FAME 2017: https://www.osha.gov/sites/default/files/2019-06/arizona_2017.pdf

Arizona Response: https://www.osha.gov/sites/default/files/2019-06/arizona_fr_2017.pdf

xii Arizona FAME 2016: https://www.osha.gov/sites/default/files/2019-07/arizona_2016.pdf

Arizona Response: https://www.osha.gov/sites/default/files/2019-07/arizona_fr_2016.pdf

xiii A CSHO is specifically tasked to ensure compliance with safety regulations promulgated by OSHA and the State of Arizona via the Industrial Commission of Arizona/ ADOSH.

https://www.osha.gov/sites/default/files/enforcement/directives/CPL_02-00-163.pdf

xiv 1952.19(c) Under the terms of the 1978 Court Order in AFL-CIO v. Marshall, compliance staffing levels (benchmarks) necessary for a "fully effective" enforcement program were required to be established for each State operating an approved State plan. In September 1984, Arizona in conjunction with OSHA, completed a reassessment of the levels initially established in 1980 and proposed revised compliance staffing benchmarks of 9 safety and 6 health compliance officers. After opportunity for public comment and service on the AFL-CIO, the Assistant Secretary approved these revised staffing requirements on June 20, 1985.

xv 1 Section 2(b)(11) of the federal Occupational Safety and Health (OSH) Act (29 U.S.C. 651 (b)(11)) ("(b) The Congress declares it to be its purpose and policy, through the exercise of its powers to regulate commerce among the several States and with foreign nations and to provide for the general welfare, to assure so far as possible every working man and woman in the Nation safe and healthful working conditions and to preserve our human resources-- ... (11) by encouraging the States to assume the fullest responsibility for the administration and enforcement of their occupational safety and health laws by providing grants to the States to assist in identifying their needs and responsibilities in the area of occupational safety and health, to develop plans in accordance with the provisions of this Act, to improve the administration and enforcement of State occupational safety and health laws, and to conduct experimental and demonstration projects in connection therewith; ...).