

STATEMENT OF
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BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE
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Chairman Walberg, Ranking Member Wilson, and Members of the Committee:

I appreciate the opportunity to appear here today on behalf of the U.S. Department of Labor, Mine Safety and Health Administration (MSHA) to report to you on the state of mine safety and health in the nation's coal and metal and nonmetal mines. We have made progress on many fronts--- particularly in the past five years following implementation of a number of reforms that began primarily in 2010. The steps we have taken, along with those in the industry, are laying the foundation for better protection for miners and changing the culture of mine safety in a positive way.

A few statistics illustrate how efforts have saved miners' lives. From 2010 through 2014, an average of 46 miners died each year in the nation's mines, half of the average of 96 deaths that occurred in the 1990's, when employment in coal and metal and nonmetal mines was roughly the same as it is today. The annual fatal injury rate, which measures the fatal injuries per 200,000 hours worked by miners, tells a similar story, averaging around .0287 in the 1990's compared to an average of about half that between 2010 and 2014. At the same time, as overall fatalities have decreased, industry compliance with MSHA's mandatory health and safety standards has improved, as evidenced by a decrease of 28 percent in the number of violations issued by MSHA in the five year period from 2010 to 2014.

At the end of the day, the most important measure of our progress is how many miners go home at the end of each shift safe and healthy. In 2014, there were 44 mining deaths, sixteen of which occurred at coal mines -- the lowest number ever recorded in a year.

The other 28 were at metal and non-metal mines, an increase from last year and part of a disturbing trend that began in October, 2013. These deaths are a matter of great concern especially after the metal/non-metal sector experienced historically low fatality rates in 2011, 2012, and FY2013. While we still face challenges, including reversing the recent increases in metal and nonmetal fatalities, we continue to make significant strides in mine safety and health.

On April 5, 2015, just a few weeks ago, we observed the 5th Anniversary of the explosion at the Upper Big Branch Mine. Our thoughts and prayers are with the families of the 29 miners who perished. We want them – and you--to know that we are using all of our tools---enforcement, education and training, extensive outreach to the mining community and stakeholder assistance--to carry out our responsibilities under the Mine Act. Today, I want to share with you what we have done since that time.

Enforcement

In April, 2010, MSHA began to conduct strategic impact inspections targeted at troubled mines that merit increased agency attention and enforcement due to their poor compliance history or particular compliance concerns. Since April 2010, we have issued 13,951 citations and 1,244 orders during nearly 900 targeted inspections. Miners are safer as a result of those inspections. While many mines have safety and health programs in place to protect miners, the ongoing need for these impact inspections illustrates that there are still mines that do not get it and are exposing their miners to serious hazards that could lead to explosions as well as health risks, such as black lung disease.

Impact inspections are key to improving compliance. A review of mines that received impact inspections between September, 2010 and December 31, 2014 shows that the number of significant and substantial violations (S&S) has dropped by 27 percent and unwarrantable failures dropped by 55 percent during this period.

Since that time we also issued new enforcement policies and alert bulletins to the mining community on the prohibition against advance notice of MSHA inspections, requirements for mine ventilation and rock dusting to prevent methane and coal dust explosions and the rights of miners to report hazards without being subject to retaliation. We have since added other policies to better protect miners, including those on further improving ventilation and changing how we take rock dust samples in underground coal mines. We are also intensifying our oversight of operators' clean-up plans for combustible materials, including coal dust in underground mines.

MSHA's revised Pattern of Violations (POV) process has substantially reduced the number of problem mines and the overall violation rates found prior to 2010. The POV process looks at mines with an inspection history of recurrent significant and substantial violations of mandatory health and safety standards. While the POV provision has been in the Mine Act for nearly 40 years, it was never fully exercised until MSHA reformed the POV process in 2010. As part of these reforms, MSHA revised its criteria for screening mines for potential patterns of violation to further identify mines that have been subject to closure orders, including closure orders for serious issues such as failing to correct violations after MSHA cites them, unwarrantable failures to comply with health or safety standards, failure to provide miners with required training and imminent dangers in the mine. MSHA revised its screening criteria to better identify mines where these tools have been used but have not been sufficient to improve compliance. During our first year of new screening in 2010, 51 mines were identified for further review. In the most recent screening conducted in the Fall of 2014, we used the same screening criteria and identified 12 mines---a 76 percent reduction. The most significant reduction was in the coal sector, which accounted for 42 screened mines in 2010 and only 6 in the most recent screening- an 86 percent reduction.

Mines that have been placed on a POV or that have been warned of a POV have significantly improved their compliance. The review of these mines shows that as of December 31, 2014, S&S violations have dropped by 63 percent and operator-reported rate of lost-time injuries by 49 percent. Notably, unwarrantable failures dropped by 82 percent. In addition, from FY2010 through FY2014, there was a 34 percent drop in S&S violations among the top 200 coal and metal and nonmetal mines ranked by S&S issuances. This indicates a broader industry improvement.

The criteria we use for POV screenings is posted on our website, and since 2011, there has been an online tool in place, which permits any mine operator, miner or member of the public to see whether a mine is meeting the criteria for a POV. Any operator can use the tool proactively to monitor its own compliance and implement immediate corrective actions if its mine even approaches a POV enforcement action.

We have also stepped up enforcement in the metal and nonmetal sector to address the increases in fatalities since October 2013 and conducted extensive outreach with the mining community. Our examination of these fatalities has found that the lack of basic protections for miners and inadequate workplace examinations and training are

contributing factors, and so we are sharing best practices with the mining community and asking mine operators to assist us in reversing this trend.

MSHA Initiatives, Education, Training and Outreach

MSHA has put into place a number of initiatives to further mine safety and health. The very first action I took when I arrived at MSHA in late 2009 was to unveil the End Black Lung – ACT NOW campaign--- involving education and outreach to the mining community, including measures and best practices to prevent the disease, and enhanced enforcement of our then existing mandatory standards---to help end the black lung disease that has afflicted thousands of miners, including in recent years, younger miners.

In 2010, we introduced the Rules to Live By program, designed to prevent the most common types of mining fatalities. We have since expanded that program to also focus on catastrophic accidents and the most commonly cited mandatory safety and health standards in fatalities that occurred from 2001 to 2010.

By the end of 2012, and on schedule, we completed action on about 100 reforms identified in the internal and independent reviews of MSHA's actions at the Upper Big Branch mine. These included revisions and the development of over 40 policy directives, including the significant revision of the Coal and Metal and Nonmetal Mine Inspection Procedures handbooks, a new Roof Control Handbook, and more than 20 training sessions for MSHA personnel on issues raised by the internal review. We also built accountability into MSHA's internal processes, including the development of a common electronic tracking system so that supervisors can track all retraining received by inspectors and a centralized directive system to provide better oversight of all the agency's directives and policy guidance to ensure consistency. These actions were in addition to the supervisory and other training we put into place for MSHA staff, as well as structural changes to our National Air and Dust Laboratory to improve processing times for critical rock dust and gas sample analyses and to our Office of Assessments to better manage and coordinate its use of special enforcement tools designed to rein in the most serious violators of the Mine Act.

We are continuously looking for ways to improve our education, training and compliance assistance to the mining community. In the summer of 2014, MSHA merged its Educational Field Services and the Small Mine Consultation Program into a single program so that field staff is now providing these services, which includes increased dialogue with industry stakeholders. Last spring we added a new stakeholder

network, holding quarterly conference calls with mine safety and health trainers across the nation to share training information and get feedback.

We are proud to be a leader among enforcement agencies in using technology to both assist operators who want to do the right thing and monitor their own compliance and to support our enforcement efforts for those operators who do not. In addition, to our online POV tool, we recently rolled out two new online tools, which will allow mine operators, miners, MSHA and others to track a mine's compliance with key safety standards. One tool allows for tracking compliance with the health and safety standards spotlighted in MSHA's Rules to Live By program, which highlights violations that commonly contribute to mining deaths. The new tool automatically flags a mine's violation rate if that rate is above the national average.

The other new tool tracks compliance with nine standards associated with hazardous conditions that pose the greatest risk to underground coal miners. In April 2012, MSHA published its final rule on *Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards* (Examination Rule), which requires underground coal mine operators to identify and correct hazardous conditions and violations of nine important health and safety standards MSHA commonly cited during inspections. These nine standards address ventilation, methane, roof control, combustible materials, rock dust, equipment guarding and other safeguards and are also consistent with the standards emphasized in MSHA's Rules to Live By initiative.

We want to ensure that all of our stakeholders are aware of and understand our initiatives and other actions we have put in place to assist them, and so with MSHA's dedicated staff, I and others in MSHA's leadership have crisscrossed the country to meet with members of the mining community on these and other issues of mutual concern. In Alabama, California, Indiana, Missouri and Pennsylvania, some of the many locations we have visited, we have seen mining operations that are putting the safety and health of their miners first. At Alpha Natural Resources' Emerald underground coal mine in Pennsylvania, we observed innovative rockdusting of conveyor belt entries to prevent coal dust explosions, state-of-the-art respirable dust controls on longwalls to prevent black lung disease and innovative and worker-friendly roof control systems. When we were at Alliance Resource Partners' L.P. Gibson mine in Illinois announcing the new rule requiring proximity detection equipment on continuous mining machines, we saw firsthand how vital this equipment is in preventing crushing injuries. Alliance, along with other mining companies, has been a pioneer in this area, installing this equipment in their mines.

At the Leeds Alabama Cement Plant, a 100 year old facility owned by the Lehigh Cement Company, we saw the positive results of efforts by mine managers, the local United Steel Workers of America union and the MSHA Southeast District office to turn this mine's once dismal compliance record around.

While in Missouri for a meeting with the Midwest Aggregate Associations, we stopped by the Martin Marietta's Stamper Mine and Damon Purcell's Rockwood Quarry, and in California we visited the Teichert Aggregates and Esparto Plant. At these four facilities, we observed how employee engagement in safety and health planning, and training above MSHA's requirements, has made these mines safer.

During these visits we often hear how MSHA could do better, and our outreach has consistently led to new initiatives that address stakeholder concerns. For example, when industry raised concerns about the application of some of our metal and nonmetal mandatory health and safety standards, MSHA was able to clarify these standards, which in turn has improved consistency in enforcement and furthered mine safety. In 2010, MSHA issued new guidance on its guarding standards, which were the most cited by MSHA at metal and nonmetal mines. Informed by our outreach to industry, we implemented the guidance by working with operators to stage implementation, starting with a pilot, and worked closely with them to ensure that our policy reflected actual mine conditions. We have proof that this collaboration worked - From FY2010, when the first phase of the guarding initiative was implemented through FY2014, guarding violations decreased by 43 percent.

Based on concerns we heard from the industry about the complexity of complying with both MSHA and OSHA regulations, we have taken steps to harmonize our regulations with our sister enforcement agency. In 2013, we issued a new policy recognizing that in many cases compliance with OSHA's fall protection standard will satisfy MSHA's standards. Again, the clarification has resulted in improved compliance, and from FY2013 through FY2014, fall protection violations decreased by 12 percent. In addition, with labor and management stakeholder encouragement, we reviewed OSHA's adoption of the global hazard communication (HazCom) standard and clarified that it meets MSHA's HazCom standard.

These actions have led to further collaborations. For example, on October 20, 2014, Secretary Tom Perez and I, convened a Roundtable of metal and nonmetal industry leaders to discuss mine safety and how the Department of Labor can assist the industry in meeting their future hiring and training needs. MSHA has a number of active

alliances with mining associations in the cement, aggregates, lime and special minerals industries and with manufacturing and labor organizations as well.

Backlog of Contested Cases

Thanks to additional funding, the Department of Labor (MSHA and the Solicitor of Labor (SOL)) and the Federal Mine Safety and Health Commission (FMSHRC) have made significant strides in the ongoing effort to reduce the number of contested MSHA violations pending at FMSHRC. The contested citations and orders reached a high of 89,000 at the end of 2010. As of February 28, 2015, the caseload consisted of 26,484 citations and orders, a 70 percent reduction from its highest levels.

In addition to the establishment of the MSHA Litigation and Backlog Project, which has paired SOL attorneys with Technical Advisors from MSHA to litigate contested violations and settle them expeditiously, MSHA has taken a number of additional actions over the years to reduce the backlog, including, in 2012, revised procedures for pre-contest conferences. Under this process, mine operators or miners' representatives can request a conference with MSHA to discuss and work to resolve areas of dispute before citations and orders are assessed a penalty and become a matter for litigation. All of MSHA's coal and metal and nonmetal districts participate in the conferences. As of April 6, 2015, MSHA had conferenced more than 15,000 violations, and 55% of these were not further contested.

MSHA's actions to improve guidance to the mining industry plus initiatives, such as regulatory and administrative changes to our POV process, impact inspections, the Examination rule and our outreach and collaboration with stakeholders, have helped reduce the backlog of violations.

The Department and FMSHRC are working on a joint report to the Senate and House Appropriations Committees, which outlines our case reduction efforts. We are currently working with FMSHRC and SOL on our projections for case load and case resolution times into the future, and when that analysis is complete, we will provide a report to Congress.

Protecting the Rights of Miners

An essential component of preventing mine accidents is to allow miners to exercise their rights to report mine safety and health problems freely. MSHA has been working hard to enforce those rights, which are enshrined in the Mine Act.

Since 2010 and through 2014, SOL filed 185 actions for discrimination and 157 actions for temporary reinstatement on behalf of affected miners. In 2014, alone we filed 49 discrimination complaints, the most in any year in MSHA history. In 2014 we filed 45 actions for temporary reinstatement, the second largest after 2012, when we filed 47.

In 2010, MSHA also issued an updated online *Guide to Miners' Rights and Responsibilities Under the Federal Mine Safety and Health Act*, and the first ever *Guide for Miners' Representatives* in 2013.

Targeted Rulemaking/Respirable Coal Mine Dust

In the past five years, MSHA has finalized a number of rules critical to mine safety and health. These rules include:

- The *Coal Mine Dust Sampling Devices* rule, published in 2010 that sets requirements for approving the use of the new cutting edge continuous personal dust monitor, or CPDM, that miners can wear to provide in real time the respirable dust levels miners are exposed to throughout the shift;
- The *Maintenance of Incombustible Content of Rock Dust in Underground Coal Mines*, issued in 2011, which raised the level of required rock dust in a mine. Rock dust is key to preventing coal dust explosions;
- The *Examinations of Work Areas in Underground Coal Mines for Violations of Mandatory Health or Safety Standards*, issued in 2012, that requires mine operators to conduct more thorough workplace examinations;
- The *Pattern of Violations* rule, issued in 2013, to better rein in chronic violators; and
- The *Proximity Detection Systems for Continuous Mining Machines in Underground Coal Mines* rule published this year that will prevent miners from being crushed by continuous mining machines.

In 2014, we also published our most significant new health standard -- the final Respirable Coal Mine Dust Rule to prevent the black lung disease that since 1968 has caused or contributed to the deaths of over 76,000 coal miners. Black lung is an insidious and debilitating disease that robs coal miners of their breath and ultimately, their lives. The rule was the culmination of the End Black Lung - ACT NOW campaign, which we began in 2009. We held seven public hearings and extended the comment period three times. We received about 2,000 pages of comments, and the final rule reflects many of the recommendations we received.

Following the announcement of the new rule in April 23, 2014, MSHA conducted extensive outreach, education and support to the mining industry in advance of the implementation of Phase I on August 1, 2014 to ensure a smooth implementation. An MSHA team led by the Administrator for Coal Mine Safety and Health, Kevin Stricklin, traveled throughout the coal mining regions in the country meeting with operators and preparing them to implement the rule. Work to assist the mining community on implementation of Phase II of the rule that goes into effect in February, 2016, has already begun.

MSHA has been compiling the results of dust samples collected by our agency and mine operators since Phase I of the Dust Rule went into effect. As of March 31, 2015, the results show extremely high compliance based on a single-shift MSHA sample or two or more operator shift samples. Under these tighter compliance requirements, 98.9 percent of the 41,321 individual shifts validly sampled met compliance levels. Of the total respirable dust samples collected in this 8-month period, 30,725 were taken from underground mines with 439 of those samples (or 1.4 percent) exceeding compliance levels used to determine if a violation has occurred. The remaining samples were taken at surface mines. Of those 10,596 samples, 99.7 percent met compliance levels.

MSHA has also issued a proposed rule to revise its civil penalty regulation that if finalized would result in more consistent and objective citations and orders, fewer areas of dispute, earlier resolution of enforcement issues and more consistent penalties. MSHA conducted four public hearings around the country on the proposal, and on February 10, 2015, published a notice clarifying its intent on the negligence and gravity criteria, as well as clarifying that the alternate good faith reduction of an additional 20 percent for timely payment would not be affected by a request for a pre-assessment conference. The comment period and rulemaking record closed on March 31, 2015 and we are reviewing the comments.

MSHA, the mining industry, NIOSH and manufacturers also continue to work on issues regarding refuges that have arisen since the 2008 publication of the rule on *Refuge Alternatives for Underground Coal Mines*, requiring their use in underground coal mines. In August, 2013, MSHA issued a Request for Information requesting data, comments and information on issues and options that may present more effective solutions than the existing rule regarding miners' escape and refuge during an underground coal mine emergency. This information will assist us in determining if changes to existing practices and regulations would improve the overall strategy for survivability, escape and training to protect miners in an emergency.

Mine Emergency Response

When I first came to the agency, I ordered a review to identify gaps in the nation's mine emergency response readiness. I have been part of many rescue and recovery efforts during my long career and have seen-first hand several critical gaps in communications, logistics and readiness. From the very beginning, we involved the mine emergency and mine rescue stakeholders in our gaps analysis. MSHA began work on needed improvements to more safely and quickly reach trapped miners. We have taken a leading role in the development of state-of-the-art technologies, including communications that provide direct communications between advancing rescue teams and the command center, tracking, mapping of explorations and monitoring of mine gases during mine rescue. These new technologies, which respond to shortcomings identified in mine rescue events, will make mine rescue safer and quicker.

On April 8, MSHA, Consol Energy, the Pennsylvania Department of Environmental Protection and the Pennsylvania Special Medical Response Team , conducted a joint mine emergency response demonstration at Consol's Harvey underground coal mine to test these game-changing systems. We expect to have work completed on them this year and will equip all four of our Mobile Emergency Operation sites with these systems. We will be following up with the mine rescue community to train mine rescue teams, expand the availability of the new technology and finalize the reforms we began in 2010.

To provide guidance and support to mine rescue responders, in 2013, the Joseph A. Holmes Mine Safety Association, an independent nonprofit organization dedicated to furthering mine safety and health, created a new national entity within its organization named the Holmes Mine Rescue Association. The Rescue Association is made up of stakeholders from all sectors of the mine rescue community. We have also readjusted the coal and metal and nonmetal national mine rescue training contests to include greater stakeholder participation.

Mine rescuers are a "special breed" who risk their lives so others can live. To honor their sacrifices, past, present and future, in 2013, we declared that each October 30th will be recognized as "Mine Rescue Day." We are working with the mine rescue community to increase national awareness of those who have dedicated themselves to mine rescue.

Funding of the State Grants program

MSHA has announced that the State Grants program will be fully funded in FY2015 at \$8.441 million. States have until May 18 to submit their applications. The Grants program is also included in the President's FY2016 budget request.

Decline in Coal Mining, MSHA's Resources

Because of the decline in coal mining, particularly in Appalachia, MSHA is judiciously realigning its resources so that it can carry out its responsibilities under the Mine Act and adequately protect miners.

Succession Planning

For the past few years, the agency has been engaging in aggressive leadership and succession planning. Like other federal agencies, many of MSHA's senior staff are at or approaching retirement age. We have established leadership and mentoring programs so that our employees have the tools and experience they need to fill leadership positions when they become available.

Conclusion

Thank you for allowing me to testify before the Subcommittee. Over the past five years, we have made considerable progress in improving health and safety for the nation's miners. The fatalities that occurred last year---historic lows in coal fatalities and increases in metal and nonmetal deaths---are a reminder of the progress we have made and the work we have left to do. We believe that zero fatalities are possible and are always working toward that goal. As we move forward, MSHA intends to continue its mission to make mines a safer and healthier place to work so miners can go to work and return home safe and healthy each shift. We owe our miners that much.