

Remarks of
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for Mine Safety and Health
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I appreciate the opportunity to be here today to discuss mine safety and health, and the actions MSHA, as well as the mining industry, has taken and is taking to improve it. During my administration, we have made several mine safety and health enforcement, regulatory, training and other changes, including improved stakeholder outreach and education. I believe these actions and initiatives are making a positive difference overall and moving mine safety and health in the right direction.

The mining industry has been making several changes as well, and I want to thank those of you who have made the safety and health of your employees a priority.

This year is also the 35th Anniversary of the 1977 Federal Mine Safety and Health Act. That legislation simply put – improved mine safety and health, reduced injuries and illnesses and saved lives. That legislation transferred mine safety and health enforcement authority from the U S Department of Interior to the U S Department of Labor, which is also celebrating its 100 year anniversary this year.

Metal and nonmetal miners gained the most under the 1977 Mine Act---including mandated inspections, twice a year at surface mines and four times a year at underground mines; stringent enforcement provisions and mandatory standards, protections

already in the 1969 Coal Mine Health and Safety Act covering coal mining.

The new law added the authority to promulgate emergency temporary standards; enhanced civil penalties; increased emphasis on the health of miners; increased compensation during periods when a mine is idled due to a withdrawal order; strengthened anti-discrimination provisions that give miners the right to request temporary reinstatements back to their jobs when their cases are pending; protection against loss of pay for the time a miner's representative spends accompanying MSHA during a mine inspection; and training for miners.

In addition, the Act provided new enforcement tools for MSHA, including the authority to issue citations and orders for

“unwarrantable failure” violations and the Pattern of Violations (POV) enhanced enforcement tool to address chronic violators.

This POV tool, which we revised in 2010, was effectively used by MSHA for the first time in history in 2011 when mines were issued 104 closure orders for violations.

These provisions have made a significant difference in the lives of miners and their families– and still do.

The fatality and injury data best illustrate the positive impact of the 1977 Act. Prior to the 1977 Act, on average, one miner was killed and 66 were injured each day in mining accidents. In 1977, there were 273 mining fatalities in the U.S., 134 of which occurred in metal and nonmetal mines. In 2012, there were 35 fatalities, 16 were in metal and nonmetal.

In 1977, the total all-injury rate at all mines in the U.S. was 9.55 injuries per 200,000 work hours. For metal and nonmetal it was 6.63. By 2011, this number had fallen by 71% to 2.73 injuries, and in metal and nonmetal, by 66% to 2.28 injuries. In 1977, the fatality rate was .0645, and .0600 in metal and nonmetal. By 2011, it decreased nationally 82% and 86% in metal and nonmetal.

When I arrived at MSHA in late 2009, my goal was to implement and enforce the nation's mine safety laws and to improve health and safety conditions in the nation's mines so miners can go to work, do their jobs, and return home to their families safe and healthy at the end of every shift.

We had many challenges to address at MSHA at that time, including a significant loss of agency experience, leadership gaps,

concerns about inconsistency, and a backlog of about 80,000 contested citations and orders. While we responded to those issues, we also began work to make other needed improvements, such as the “Rules to Live By” initiative first implemented in 2010, intended to prevent the most common causes of mining deaths, the End Black Lung – Act Now campaign and mine emergency response.

We also implemented a number of initiatives to increase stakeholder education and outreach, to improve MSHA’s enforcement consistency and to give miners a greater voice in the workplace. In addition, MSHA took actions to improve training, and we worked jointly with our stakeholders, such as the NSSGA, to implement other programs designed to improve health and safety, such as our guarding initiative to improve compliance and

better protect miners. In looking back, I believe we have made progress in each of those areas, and some were significant.

The April 5, 2010 tragedy at the Upper Big Branch underground coal mine in West Virginia that needlessly took the lives of 29 miners, highlighted the need to improve mine safety.

Investigations of that tragedy found a workplace culture that valued production over safety, hid conditions, encouraged non-compliance and prevented workers from speaking out about unsafe and unhealthy conditions. The tragedy caused us all to take a deeper look at the weaknesses in the safety net expected to protect the nation's miners, pointed out that the culture affecting mine safety and health had to change, and that MSHA needed to more aggressively use its tools under the Mine Act to enforce the law.

We began taking strategic actions immediately: these activities included notices to the mining industry on its responsibility to comply with specific laws and regulations, our enhanced enforcement programs, such as our impact inspection and revised Pattern of Violations (POV) programs, and targeted rulemaking.

We implemented or began some organizational and administrative changes within MSHA including our reorganization of the Office of Assessments to better manage and support our special enforcement programs, such as impact inspections, POV and scofflaws; investigation programs including miners' rights and 110 Mine Act investigations; and our enforcement auditing program.

We have made several changes and improvements affecting the coal sector, which I think we all would agree needed the most attention.

Changes were needed at our Small Mines Office to improve efficiency and outreach to the small mining community. To accomplish this, the Small Mines Consultation Program (SMCP) was implemented to better serve that community. I also began a partnership between MSHA and the state aggregates associations to better leverage our resources. Our first project was the 5002 initiative, designed to assist operators in protecting miners from harmful airborne contaminants for dust, gas and mist.

The SMCP is now staffed with 19 field professionals located across the country. To date, these specialists have met with more than 20 state or local aggregate associations representing

aggregate mine operators or other groups of small operators on the 5002 initiative. At these meetings, SMCP staff also discusses the purpose of the consultation program and other issues of interest to the industry, such as the “Rules to Live By” program, our guarding initiatives and a new accident prevention initiative developed by MSHA that anticipates the needs of contractors who perform work on mine property on a regular basis. At these meetings, associations are asked to prioritize the small or medium-sized mining operations in their states that could most benefit from their consultation program.

These partnerships are working, and the groups have identified several operators in need of assistance. SMCP specialists have been providing operators courtesy inspections and helping them, as well as their contractors, understand MSHA rules and regulations and how to comply with the law.

Several small mine operators and associations, such as the Elberton Granite Association, the Aggregate Producers of Wisconsin and the Montana Mining Association, have reported to the SMCP that the checklists developed by MSHA as part of the 5002 initiative are being used by operators and have greatly assisted them in their efforts to protect miners health. During these operator visits, SMCP specialists explain the rule and show operators and miners how to use the checklist.

In 2012, I directed that MSHA also began work to reconsolidate agency directives and policy guidance into one system. This will help MSHA better develop and manage Agency policies.

In January of last year I implemented a new pre-contest conferencing process in both coal and nonmetal. That process was

designed to allow mine operators and miners the opportunity to meet with MSHA to resolve matters of dispute over citations and orders before they become a matter for litigation. In addition, when I arrived at MSHA, we began work to bring the agency into the 21st century. We now have state of the art teleconferencing installed in 18 sites to more efficiently communicate with our staff.

Just to give you an update on pre-contest conferencing and the backlog, which I spoke of earlier. In 2012, MSHA conferenced over 4,800 citations and orders; and 2,500 or 52% of those were metal and nonmetal violations. For metal and nonmetal, 67% were resolved without being contested. MSHA's Western District led the pack and conferenced 876 violations, followed by over 500 in the Rocky Mountain District. In addition, the agency, along with the Solicitor of Labor is chipping away at its backlog

of contested cases that existed when I first arrived at MSHA. The total backlog was reduced from a high of about 89,000 violations in January, 2011 to about 50,000 violations as of December 31, 2012. During this same period, MSHA resolved more than 100,000 violations.

When I arrived at MSHA, we were receiving a number of complaints about consistency in the application and enforcement of our standards. In addition to some of the improvements I described earlier, we immediately implemented new training for MSHA personnel. One of the key areas was for our front line field office supervisors. My policy calls for supervisor training to occur every other year. The training helps us better manage implementation of our inspection programs, improve consistency and improve mine safety and health. I also directed improvements to our regular refresher training for our inspectors

and implemented training with the FBI for our MSHA investigators.

In 2011, I changed how we delivered information to the mining community and began providing quarterly information on deaths, including best practices to prevent them, to the mining industry and trainers. Again, I believe we need to make sure those who train miners get this information so they can let miners know about the hazards so they can be better protected. In addition, when we notice a particular hazard or trend, we notify the industry immediately. For example, in January of this year, MSHA, with OSHA, published a health hazard alert regarding exposure to Diesel Particulate Matter (DPM) caused by exhaust from diesel engines. The alert laid out MSHA standards for underground metal and nonmetal and coal mines and the measures that could be taken to limit exposure.

In addition, we recently issued a safety alert about the two metal and nonmetal miners were killed in January of this year and urging operators to assess the hazards associated with every work task that is conducted in their mines, particularly those not frequently done, and to take action to remove or control those hazards.

Since my arrival at MSHA I have traveled across the country meeting with mining associations, organizations and mine operators and miners. That included the opportunity to visit a number of mines and mining facilities where we have the opportunity to discuss mine safety and health. Administrator Merrifield and I have been meeting with the metal and nonmetal industry on issues of mutual concern. In July, 2012, we went to Cincinnati, Ohio to meet with the Illinois, Indiana, Iowa,

Kentucky, and Ohio state aggregate associations. This was my third trip to the Midwest attended by a number of state aggregate associations. And then in September, for my second trip west, we traveled to Washington State to meet with the Washington, Oregon, California, and Arizona aggregates. We have had the opportunity to attend mining conferences including the Southeast Mine Safety and Health Conference and have also met with individual associations, including New Mexico and Georgia. We are planning a second trip to Pennsylvania to attend the new Northeast Mine Safety and Health conference. NSSGA has participated in some of these meetings, where we discussed MSHA's and the industry's activities and how we can work together to improve mine safety and health.

These meetings have been very productive, and MSHA continues to improve our successful programs---such as Rules To Live By

and our guarding initiative---based on the positive feedback we have received. We have also expanded our working relationship through alliances with stakeholders, including the NSSGA, the Portland Cement Association, the Industrial Minerals Associations; work with regional and state aggregates associations; work with national labor organizations; and work with state mining agencies, particularly with the Interstate Mining Compact Commission (IMCC). One of the issues that MSHA's Metal and Nonmetal program and the IMCC are currently working on together is identifying and inspecting active impoundments throughout the country.

We are continuing one of our key fatality prevention initiatives, the "Rules to Live By" program that we launched in January, 2010 to focus attention on the most common mining deaths and standards associated with them. If we are to prevent mining

deaths, we must focus attention on the most common mining deaths and standards associated with them.

Another important tool for MSHA is its rulemaking authority. MSHA has taken a targeted approach to rulemaking focusing our efforts on those rules that will have the biggest impact on miner safety and health.

On January 23, 2013, MSHA issued a final rule on the POV enforcement tool, aligning the rule with the original intent of Congress to rein in chronic violators. We have updated our POV web tool that allows mine operators to track compliance and prevent POV actions by implementing safety and health measures.

We believe that all these collective actions and initiatives are improving mine safety and health in the nation's mines, are reducing injuries, illnesses and deaths, and improving compliance. Let me share some of the results starting with some of our key enforcement initiatives.

MSHA has conducted 565 impact inspections and issued over 9,800 citations, more than 900 orders and 40 safeguards since the program began in April, 2010 through January, 2013. Those new strategic inspections targeted mines that merit increased agency attention and focus due to their poor compliance history or other particular concerns.

A review of mines that received impact inspections between September, 2010 and September, 2012, shows that these impact inspections are making a real difference. As of

December 31, 2012, violations per inspection hour were down 16%, S&S violations down 21%, unwarrantable failures down 50% and lost time injury rates, down 10%.

However, we are unfortunately still seeing some mines that fail to address recurring problems that put miners at risk such as those highlighted in the monthly impact inspection announcements.

As I said previously, MSHA has revised the POV process, and has been using the POV enforcement tool provided by the 1977 Act to more aggressively deal with chronic violators.

In our first year screening following those revisions in 2010, fifty-three mines were identified and 17 mines received Proposed Pattern of Violation (PPOV) notices as a result. By October 2012, during the third screening, 20 mines were identified and thus far

only 4 mines received PPOV notices, showing a significant reduction using the same measuring stick. This is out of a total of over 14,000 mines we inspect each year.

MSHA has also reviewed the violation and injury records of the 3 metal/nonmetal mines and 19 coal mines that received PPOV notices and have had at least one complete inspection since undergoing the PPOV process. As of December 31, 2012, the total violation rate among these mines was down 34 percent; the total S&S violation rate down 56 percent; the rate of unwarrantable failure violations down 80 percent; and the lost time injury rate down 39 percent.

When I arrived at MSHA we began to pay more attention to the enforcement of the anti-discrimination provisions contained in the 1977 Act. This was reinforced by the tragedy at the Upper Big

Branch mine. For the four years prior to the disaster, no one working at Upper Big Branch had filed a hazard complaint, even though post-disaster investigations documented long-standing problems at that mine.

MSHA has distributed materials directly to miners and has beefed up its special investigations staff to work on claims of retaliation. In 2011, MSHA updated its Miners' Rights Handbook and developed new training tools, which are available online. In 2012, the Agency, working with the Department of Labor, filed 46 temporary reinstatement (TR) requests and 34 105(c) discrimination cases on behalf of miners, the most ever in a year, according to MSHA records.

In metal and nonmetal, we have taken several actions to improve compliance. When I arrived at MSHA, the most commonly cited

violations involved guarding of equipment and conveyor belts.

We worked jointly with our Alliance partners, including NSSGA, Portland Cement, the International Mineral Association, the Lime Association and regional and state aggregates associations, such as California's CalCIMA, as well as labor organizations and have published on our website two power point guides, Guarding I and II, providing detailed compliance criteria. Guarding I, which we implemented in June 2010, addresses guarding conveyor belts. On October 4, 2012, during a stakeholder meeting we rolled out Guarding II, which concerns guarding all other types of equipment. We have also trained our inspectors on the guidance in both Guarding I and Guarding II, and provided that to the mining industry as well so we all have the same training and expectations. This is a good example of how we have changed how we roll out MSHA's initiatives to stakeholders by providing

information before implementation, so that everyone understands what we are working to accomplish.

Our guarding initiatives have improved compliance and fewer operators are being cited for violations. In FY2012, guarding citations and orders were down 36% from 2010 levels. In the first five months of FY2013, this number has dropped even further. In addition, in June 2012, and again with input from industry and labor, MSHA published a policy letter, which recognizes OSHA standards and clarifies the situations in which the MSHA fall protection standard applies. There had been general confusion about the standard, and some inconsistencies in enforcement as a result. Compliance has improved and citations and orders have dropped as a result. In FY2012, MSHA issued 325 citations and orders for violations of the fall protection standard. From the

start of FY2013 through March 10 (over 5 months), that number has decreased, with 92 issued.

There are a number of other efforts in which the aggregates industry and MSHA have been collaborating to advance the health and safety of metal and nonmetal workers. These include: Safety Pro in a Box, an online publication, which contains tools and resources for operators to use in their operations, as well as “Rip-N-Share” articles that MSHA writes for publication in aggregates trade magazines on a variety of topics of interest to the industry.

As a result of these activities, including the technical taskforce we formed with the NSSGA to advise us on enforcement consistency and compliance, compliance by mine operators is improving. In 2012, MSHA citations and orders were down 11% from 2011; this

is on top improved compliance resulting in a reduction of 8% in 2011 from 2010. Metal and nonmetal compliance has also improved with citations and orders decreasing 5% in 2012 from 2011 on top of a 14% reduction in 2011 from 2010.

While all these improvements have occurred, the most important are those affecting the miners that return home each day to their families and free of injury or illness. And the results show that what we are all doing is working to improve mine safety and health in the nation's mines. In 2011, the total all-injury rates at all mines in the U.S. was 2.73 injuries per 200,000 work hours the lowest ever recorded in mining. In 2011, the fatality rate was .0114 -the lowest ever recorded in mining history. The all-injury rate for metal and nonmetal was 2.28, and the fatal rate was .0084 for 2011. These were both the lowest injury and fatal rates ever in metal and nonmetal.

Preliminary numbers for 2012 show that fatality rates and all injury rates have decreased even further, with 2012 being the safest year on record in the mining industry. We will be posting the preliminary data for 2012 shortly.

As low as fatalities have come in recent years, we all know that one death is one too many and that they are preventable, and more needs to be done to protect our nation's miners.

We were all quickly reminded of that recently when 6 underground coal miners lost their lives within a 25 day period between January 26th and February 19th of this year.

To date, eight miners, including two in metal and nonmetal, have lost their lives this year in mining accidents. While we all

recognize the exceptionally low number of deaths in the metal non metal mining industry, we also know we must continue to do whatever we can to maintain the progress made and to prevent deaths and injuries.

While we have made progress and are moving mine safety and health in the right direction, there is still much more to be done to provide miners the opportunity to go to work, put in their shift and return home safe and healthy each day. That is our mission and that is our goal. Together we can make that happen. We owe the nation's miners that much.

Improving mine safety and health is of great importance to President Obama, Acting Secretary of Labor Seth Harris, myself--- and I am sure---everyone here today. The President has articulated a forward-looking vision of a thriving middle class

and a strong economy, which include safe and healthy workplaces, particularly in high risk industries, and a voice in the workplace for workers. The President's plan would create jobs and help businesses by fixing the roads, bridges and other infrastructure most in need of repair first.

Going forward, and despite the sequestration, which has placed budgetary constraints on the agency, we will continue to focus on our mission to prevent death, disease and injury and to promote safe and healthy workplaces for all miners.