

**Remarks of
Joseph A. Main, Assistant Secretary of Labor
for Mine Safety and Health
Cincinnati, OHIO
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Thank you for inviting me here today to discuss MSHA's initiatives to improve mine health and safety. I believe the actions we are taking at MSHA and by many in the industry, are moving safety and health in the right direction.

When I took the job as Assistant Secretary, I had a clear purpose – to implement and enforce the nation's mine safety and health laws so miners in this country can go to work, do their jobs, and return home to their families safe and healthy at the end of every shift.

When I arrived, MSHA was already facing many challenges that demanded my immediate attention. A backlog of over 80,000 contested citations and orders overwhelming the system, mine emergency response in need of improvement, a relatively inexperienced MSHA workforce and concerns about inconsistency.

As I have said on a number of occasions, -- the tragedy on April 5, 2010, at the Upper Big Branch mine, just months after my appointment, unquestionably shook the very foundation of mine safety and caused us all to take a deeper look at the weaknesses in the safety net expected to protect the nation's miners and to redouble our efforts to instill a culture of prevention in mining.

Following that disaster, one of my most significant challenges was keeping MSHA focused on our overall mission and agenda to advance mine safety. The impact that tragedy had on the families of the miners lost and the mining community is not measureable. There has been an intense examination of that tragedy, and MSHA and the mining industry have undergone significant change as we have sought to find and fix deficiencies in mine safety and health. MSHA's extensive investigation of that tragedy identified a workplace culture promoted by the operator that valued production over safety, including practices that intimidated and disrespected workers and fostered and encouraged non-compliance.

The tragedy identified that more needed to be done to provide miners with a voice in the workplace, and that MSHA needed to more aggressively use its tools under the Mine Act to enforce the law.

In addition, on March 6, 2012, the agency released the results of its internal review report, with recommendations for improving MSHA's effectiveness.

Immediately after the tragedy, we began changing how we do business at MSHA and have instituted several corrective actions, such as a comprehensive review and overhaul of our policy directives system, improvements to agency oversight and increased training for our staff. Once and for all, we are addressing shortcomings repeatedly identified in past internal reviews.

While we know there are mine operators who comply with the safety and health rules and protect their miners from injury, illness and death every day, we also know that there are those that do not. Bringing those that do not up to the standards of those that do---to better protect miners--- should be a goal of all in the mining industry.

We have also implemented several initiatives to bring noncompliant operators into compliance, most notably the impact inspection and the revised Pattern of Violations programs, as well as our "Rules to Live By" initiative aimed at eliminating the most common causes of mining deaths. We have in addition focused our attention on miners' health by improving monitoring at metal nonmetal mines to prevent occupational illness.

Improving mine emergency response preparedness is another important initiative at MSHA. Changes in processing citations and orders have also been made, including the implementation of pre-contest conferencing.

Finally, I have changed the way we implement new initiatives, meeting with stakeholders on the front end and providing them with the same training MSHA inspectors receive.

One of the enhanced enforcement strategies we implemented after Upper Big Branch was our impact inspection program that targets mines meriting increased attention and enforcement due to their poor compliance or other particular concerns. From April 2010 through May 2012, we conducted 452 impact inspections, which resulted in 8,106 citations, 811 orders and 32 safeguards, for a total of 8,949 issuances.

A recent review shows that overall compliance is improving at mines after receiving impact inspections. Since September 2010, when MSHA launched the program, violations per inspection hour are down 13 percent after mines received an initial impact inspection; significant and substantial (S&S) violation rates are down 21 percent; 104(d) orders, down 43 percent and the total lost time injury rate down 13 percent.

Unfortunately, there are still mines that haven't gotten the message. The egregious problems found during some of these impact inspections and the extreme measures MSHA had to take to find them – arriving off-shift and commandeering mine phones -- validate the Administration's support of focused improvements to the Mine Act that will give MSHA the tools it needs to address chronic violators.

We have in addition made a number of changes to the Pattern of Violation program, which we believe are also improving safety.

Mines are screened to determine if they meet potential pattern of violations (PPOV) criteria and, if so, are required to make compliance improvements to avoid POV closure orders and sanctions where S&S violations are found. We have strengthened the process and conducted our second screening with the revised criteria. Since November 2010, and of the over 14,000 mines that MSHA inspects, we have issued 28 PPOV notices at 26 mines and issued two POV notices. It was the first time we successfully placed a mine on POV and issued closure orders in the Mine Act's 33-year history. 17 mines were placed on PPOV based on our November 2010 screening – four of those after agency audits revealed that operators had under-reported injuries. Following the 2011 screening, MSHA issued PPOV notices at eight mines, down from the 2010 levels. We are encouraged by this result.

A recent review of enforcement data on the 14 mines that received PPOV notices in 2010 found that their total violation rate is down 23 percent, the total S&S violation rate is down 42 percent, the rate of 104(d) orders, down 64 percent, and the lost time injury rate, down 44 percent.

In the two-year history of this program, three metal nonmetal mines have been identified as PPOV mines and have made the necessary improvements to avoid being placed on a POV.

We are conducting these PPOV screenings openly and transparently. The criteria we use for them are posted on our website, and in April 2011, we created a new on-line tool, which permits any operator, miner or member of the public to determine, based on the most recent data available, how a specific mine matches up with the criteria for a PPOV.

Any operator can use the tool and implement immediate action to improve safety and avoid PPOV actions.

Compliance data also shows that improvements are occurring in the industry as a whole. In 2011, MSHA inspected about 14,170 mines and issued

157,613 citations and orders. This number is down from 2010, when MSHA issued 170,909 citations and orders. Of the total number, metal nonmetal issued 63,983 citations and orders in 2011, down from 74,095 in 2010.

We have seen improvements in the number of S&S citations and orders and unwarrantable failure orders as well. In 2011, MSHA issued 49,379 S&S and 2,894 unwarrantable failure citations and orders; in 2010, 56,078 S&S and 3,292 unwarrantable failures were issued.

The drop from 2010 to 2011 in total citations and orders amounts to about 8 percent. S&S citations and unwarrantable failure orders each decreased by 12 percent during this period.

In metal 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. In 2010, we published on our website a power point guide providing detailed compliance information on guarding conveyor belts.

This guide was piloted through several state aggregate groups, presented to several stakeholder audiences and reviewed with our inspectors and supervisors. This guarding initiative, which we have worked on jointly with the aggregate associations and other stakeholders, has resulted in increased compliance: guarding citations and orders are down 39% from 2010 levels.

A sequel to the conveyor belt guarding power point has been developed and will soon be ready for release. The new guide will provide compliance information on all types of equipment guarding other than belt conveyors. We are now piloting that guide with our Alliance partners, including NSSGA and other stakeholders, and we are receiving comments and recommendations. After a review of all comments, we will train our inspectors and present the final guide at a stakeholders meeting.

These improvements in operator compliance show that the culture in mine safety and health is moving in the right direction- but more needs to be done.

In 2011, 37 miners died at the nation's mines– the second lowest since statistics have been recorded. There were 16 metal- nonmetal fatalities last year compared with 23 in 2010. 2009 saw the lowest fatality numbers with 34 total deaths, including 16 in metal and nonmetal. The industry also finished fiscal year 2011 with the lowest number of mining deaths ever recorded in a fiscal year.

As low as the fatality numbers have been in recent years, we all know that one death is one too many and that mining deaths are preventable. When the 1977 Mine Act was enacted, there were 273 total mining deaths in the US; 134 were in metal nonmetal. We've seen those numbers continue to fall since then, and the distance to zero is much shorter now than it was in 1977. I know we all share the goal of zero fatalities.

Last year, I began a new initiative by providing detailed quarterly information on mining deaths to the industry, as well as training for the instructors and state grantees that provide training directly to miners, and posting that on our website. I want to ensure that operators, miners and trainers receive this critical information to better train and protect miners. To prevent mining deaths we must make certain that we are always focused on what caused them.

We are continuing our "Rules to Live By" fatality prevention initiative that we launched in January 2010 to focus attention on the most common mining deaths and standards associated with them. The second phase followed in November 2010; in January of this year, we announced "Rules to Live By III," which highlights those safety standards cited as a result of at least five mining accidents and resulting in at least five fatalities during the 10-year period from 2001 through 2010. Surface fatalities accounted for the highest number of fatalities in 2011 and the new "Rules to Live By" program addresses mostly surface mining deaths and standards.

I implemented a different approach in the rollout of these and other new initiatives. Stakeholder outreach and education occurs in advance so everyone will know what the program is about and what we expect before the program begins. Training of our MSHA inspection personnel follows through a distance learning program. The training program is then posted on the MSHA website, available to all, including miners, training instructors and state grant recipients, so everyone receives the same training and message before the enforcement component is initiated.

Consistency in the application and enforcement of standards remains a key concern to the industry, and we are improving consistency. As I noted when I became Assistant Secretary, a number of inspectors had retired, and as a result, about 55% of the coal mine inspectors and 38% of metal nonmetal inspectors had been conducting inspections for MSHA for two years or less. Many supervisors were also relatively new. I quickly directed that a new training program for field office supervisors who oversee MSHA's inspection program, be developed to occur every other year. To date, all field office supervisors have completed this first round of training, which includes training on issues identified in agency audits and internal reviews.

In addition, on June 21 of this year, and with input from the aggregates industry and other stakeholders, MSHA published a policy letter modeled after OSHA's standard clarifying the situations in which the MSHA's fall protection standard applies. There had been general confusion about the standard and some inconsistencies in enforcement as a result. This clarified policy will go a long way to ensuring consistency in enforcement of the standard, as well as the safety of miners. We intend to look at more of these types of situations.

Other initiatives MSHA is taking to improve consistency include the regular review of enforcement actions as well as national and field office audits, all designed to assess compliance with policies and procedures.

MSHA, working its stakeholders, including the industry, has also made significant progress in developing technologies to aid in mine rescue. We are improving our command and control capabilities and increasing mine emergency response training.

In addition, we recently implemented a new pre-assessment conferencing process in MSHA districts, where operators and miners' representatives can request a conference before filing a formal contest with the Federal Mine Safety and Health Review Commission (FMSHRC). This allows MSHA and a company to settle disputes before they are contested and will help us reduce the backlog of cases pending at FMSHRC. All metal nonmetal districts are participating.

I believe the pre-assessment conferencing process will result in improved communication, and it should increase enforcement accuracy and consistency. I have also strongly encouraged operators, miners' representatives and our inspectors to use the actual inspection and the closeout conference to fully discuss the enforcement actions taken. I am a strong believer in improving communication at every level.

To benefit the mine community, we are also developing revisions to the Part 100 Penalty rules to improve efficiency and consistency. MSHA plans to publish a proposed rule to revise the process for proposing civil penalties. The assessment of civil penalties is a key component in MSHA's strategy to enforce safety and health standards.

MSHA has placed an increased emphasis on health and on exposure monitoring at metal nonmetal mines to ensure better worker protection from overexposure to harmful airborne contaminants. Some health conditions can take a long time to develop and may not be apparent at the time of

exposure. Exposure monitoring programs to identify unhealthful levels of contaminants are critical to disease prevention.

We have held meetings with stakeholders to discuss our increased focus on 30 CFR 56.5002 and 57.5002, which require operators to conduct dust, gas, mist and fume surveys for harmful airborne contaminants' fumes to determine the adequacy of control measures.

We will be working closely with the mining community to implement this initiative. This includes assistance to small mines from our small mines program. And I am asking for your help. Ultimately, the goal is improved health protection for metal nonmetal miners and help for all operators to better understand and meet the requirements of this standard.

We are also making changes and improving the Small Mines Office. We believe the Office will be more efficient and provide more opportunities to help the mining community. We hope to have it completely staffed by the end of next month. We are developing plans for the small mines program to work more closely with the state aggregates associations, and we will be seeking their assistance in conducting outreach and education to locate needed resources and help small operators understand and comply with the law.

There are a number of other efforts in which the aggregates industry and MSHA have been collaborating to advance the health and safety of miners. These include: the ongoing work of with the NSSGA aimed at improving enforcement consistency and compliance; work with the Industrial Minerals Association (IMA) on the use of compressed air stations to remove dust from miners' uniforms; and coordination with the Lime Association on safety defects on mobile equipment.

Improving mine safety and instilling a culture of prevention in the industry is of great importance to President Obama, Secretary of Labor Hilda Solis, myself---and I am sure---everyone here today. The Secretary has articulated a forward-looking vision of assuring "good jobs" for every worker in the United States, which includes safe and healthy workplaces, particularly in high risk industries, and a voice in the workplace for workers as critical elements of a "good job." In addition, ensuring that the aggregates industry not only survives, but thrives is also important to this Administration.

On July 6, President Obama signed the Transportation and Student Loan Interest Rate bill into law, which will increase the funds available for rebuilding the nation's infrastructure. President Obama also previously

signed an executive order directing Federal agencies to expedite the permitting and review decisions for key infrastructure projects. These and other actions should result in increased mine activity, and we need to have safety and health ready to meet that as more workers enter the mining workforce.

I look forward to continuing to work with you on these important issues.