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PROTECTING AMERICA'S WORKERS: AN ENFORCEMENT UPDATE FROM THE MINE SAFETY AND HEALTH ADMINISTRATION

HEARING

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

FIRST SESSION

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PROTECTING AMERICA'S WORKERS: AN ENFORCEMENT UPDATE FROM THE MINE SAFETY AND HEALTH ADMINISTRATION

Thursday, April 23, 2015
U.S. House of Representatives
Subcommittee on Workforce Protections
Committee on Education and the Workforce
Washington, D.C.

The subcommittee met, pursuant to call, at 9:03 a.m., in Room 2175, Rayburn House Office Building, Hon. Tim Walberg (Chairman of the subcommittee) presiding.

Present: Representatives Walberg, Rokita, Brat, Bishop, Russell, Stefanik, Wilson, Pocan, Adams, and DeSaulnier.

Also present: Representatives Kline, Scott, and Courtney.

Staff present: Janelle Belland, Coalitions and Members Services Coordinator; Ed Gilroy, Director of Workforce Policy; Callie Harman, Staff Assistant; Christie Herman, Professional Staff Member; Nancy Locke, Chief Clerk; John Martin, Professional Staff Member; Zachary McHenry, Legislative Assistant; Brian Newell, Communications Director; Krisann Pearce, General Counsel; Molly McLaughlin Salmi, Deputy Director of Workforce Policy; Alissa Strawcutter, Deputy Clerk; Juliane Sullivan, Staff Director; Loren Sweatt, Senior Policy Advisor; Alexa Turner, Legislative Assistant; Joseph Wheeler, Professional Staff Member; Tylease Alli, Minority Clerk/Intern and Fellow Coordinator; Austin Barbera, Minority Staff Assistant; Melissa Greenberg, Minority Labor Policy Associate; Carolyn Hughes, Minority Senior Labor Policy Advisor; Brian Kennedy, Minority General Counsel; Richard Miller, Minority Senior Labor Policy Advisor; and Amy Peake, Minority Labor Policy Advisor.

Chairman WALBERG. A quorum being present, the subcommittee will come to order.

Good morning, Assistant Secretary Main. We are very pleased to have you with us and appreciate your attention to this request; and it has been a little while since we have had a chance to talk, and it is good to—well, I guess I should say it has been a little while since we have had a chance to talk in this forum, but I appreciated the opportunity that we had yesterday, as well.

You have an important job to do, and we appreciate the time you have taken to participate in this oversight hearing.

Today's hearing is timely for two important reasons. First, in just a few days our nation will observe Workers' Memorial Day, a time

to remember the men and women who have been injured or killed at work. It is also a time to reaffirm our commitment to tough, responsible policies that will help protect the health and safety of America's workers in the workplace of the twenty-first century.

And secondly, just a few weeks ago the people of Montcoal, West Virginia and neighbors in surrounding communities observed the five-year anniversary of the Upper Big Branch mining disaster. There is no doubt that the families of the 29 miners who died live each and every day with the painful memory of this tragic event. Our thoughts and our prayers are with these families and every family that has lost a loved one while on the job.

Upper Big Branch is a terrible reminder that bad actors will look for ways to cut corners and jeopardize the well-being of their workers despite a moral and legal obligation to make safety the number one priority. I am pleased that those who had a hand in the Upper Big Branch tragedy are being held responsible. It is taking some time, but justice is being served.

An independent report from the National Institute for Occupational Safety and Health underscored why bad actors must be held accountable. The report said, and I quote: "If the Mine Safety and Health Administration had engaged in timely enforcement of the *Mine Act* and applicable standards and regulations, it would have lessened the chances of and possibly could have prevented the Upper Big Branch explosion."

That is why time and again this Committee has urged MSHA to do better and use every tool it has to keep miners safe. Under your leadership, Assistant Secretary Main, the agency has implemented a number of changes to its regulatory and enforcement practices.

The purpose of today's hearing is to examine these efforts and determine whether they serve the best interests of America's miners. We have a lot of ground to cover in a short period of time, including controversial changes to pattern of violations regulations, revised standards governing exposure to respirable coal dust, changes to the agency's citations and penalty policies, and new rules on the use of proximity detectors on continuous mining machines.

Clearly you have been busy, Secretary Main. As you know, we haven't agreed on every issue, and when we haven't, we have expressed our concerns and encouraged the agency to move in a different direction. However, when the agency does take responsible steps to improve health and safety enforcement, you have and will continue to have our full support.

Both your agency and this Committee share the same goal: We want to ensure strong enforcement policies that are in place so that every miner returns home to his or her loved ones at the end of their shift.

I look forward to a frank and robust discussion today and continuing our work together to help reach that shared goal.

Again, I would like to thank you, Assistant Secretary Main, for joining us this morning.

And I now recognize Ranking Member Wilson for her opening remarks.

[The statement of Chairman Walberg follows:]

AS PREPARED FOR DELIVERY
April 23, 2015

CONTACT: Press Office
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Opening Statement of Rep. Tim Walberg (R-MI)
Chairman, Subcommittee on Workforce Protections
Hearing on "Protecting America's Workers: An Enforcement Update from the Mine Safety and Health Administration"
April 23, 2015

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An independent report from the National Institute for Occupational Safety and Health underscored why bad actors must be held accountable. The report said: "If [the Mine Safety and Health Administration] had engaged in timely enforcement of the Mine Act and applicable standards and regulations, it would have lessened the chances of – and possibly could have prevented – the UBB explosion."

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(*More*)

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# # #

Ms. WILSON. Thank you. Mr. Chairman, I want to thank you for holding this hearing today, this very important hearing.

Assistant Secretary Main, I thank you so much for testifying here today.

And to Deputy Assistant Secretary, Patricia Silvey, thank you for being with us in the audience.

This month marks the five-year anniversary of the disaster at the Upper Big Branch Mine, where 29 miners were killed in a preventable coal dust explosion.

To the friends and families of these 29 miners, please know that we continue to remember your loss and are committed to taking steps to prevent tragedies like this in the future.

It has been three years since the Committee's last hearing on mine safety. At that hearing, we heard testimony on five investigation reports that showed the mine operator at Upper Big Branch repeatedly violated mandatory safety standards.

Number one, they failed to maintain adequate ventilation, which allowed flammable methane to build up. Number two, they failed to adequately rock dust the mine, which allowed explosive coal dust to accumulate. Number three, they also failed to properly maintain water sprays, which would have prevented ignition.

We also heard how the mine operator concealed its noncompliance. They kept two sets of mine examination books: one for management, and a sanitized version for MSHA inspectors. Mine management also routinely warned foremen when mine safety inspectors were on the property, giving foremen the opportunity to conceal unsafe conditions from inspectors.

Although mine operators are ultimately responsible for safety of miners, MSHA plays a vital role in holding mine operators accountable.

We know that in the 18 months prior to the Upper Big Branch explosion, MSHA issued 692 citations and orders to this mine operator. During 2009 MSHA issued 53 withdrawal orders for unsafe conditions—more than any other mine in the nation. But even this was not enough.

Since Upper Big Branch, MSHA has enacted many reforms. MSHA is using impact inspections to target high-risk mines. MSHA has issued final regulations for its most powerful administrative enforcement tool, the pattern of violations sanction, which is intended to bring serial violators into greater compliance.

MSHA has issued a final rule increasing the required amount of rock dust to be deposited in underground mines, which will decrease the likelihood of coal dust explosion. MSHA has also issued a rule requiring continuous mining machines have proximity detection devices designed to prevent crushing or pinning miners.

The tragedy at Upper Big Branch also brought to light weaknesses in the *Mine Act*. That is why yesterday I joined with Ranking Member Bobby Scott to reintroduce the *Robert C. Byrd Mine Safety Protection Act*. This bill gives MSHA the tools it needs to provide greater protections for mine workers.

An important provision of this bill provides MSHA with greater subpoena authority. This means that MSHA would have the authority to compel the production of documents and witnesses during an inspection and investigation. Unlike other laws, the 1977

Mine Act gave MSHA limited subpoena authority, forcing MSHA to ask the few states that have subpoena authority for their assistance.

By contrast, Congress provided expansive subpoena authority under the OSHA to better protect worker safety. Similarly, Congress provided subpoena authority to the Labor Department under the *Fair Labor Standards Act* to ensure workers get the wages they are due. Congress has even provided subpoena authority to the Agriculture Department under crop promotion laws, such as the *Watermelon Research and Promotion Act*; the *Pecan Promotion and Research Act*; and the *Popcorn Promotion, Research, and Consumer Information Act*.

I would ask that we join in a bipartisan effort to enact legislation to provide MSHA with expanded subpoena authority. Although it is only a piece of the Byrd bill, I hope we can reach a compromise on this issue.

The *Mine Act* states that the first priority of the industry must be the health and safety of its most precious resource: the miner. By giving MSHA this investigative tool, we can advance the safety of the miners. By enacting this provision, we also respect requests from the families of deceased miners who have asked for our help in strengthening the law.

Mr. Main, I thank you for all of your dedicated and sincere service towards protecting workers. We are the Workforce Protections Subcommittee, and I look forward to your testimony.

I yield back the balance of my time.

[The statement of Ms. Wilson follows:]

Opening Statement of the
Honorable Frederica Wilson, Ranking Member,
Subcommittee on Workforce Protections
at the April 23, 2015 hearing entitled
"Protecting America's Workers: An Enforcement Update from the Mine Safety and Health Administration"

Mr. Chairman, I want to thank you for holding this hearing today. This month marks the five-year anniversary of the disaster at the Upper Big Branch Mine, where 29 miners were killed in a preventable coal dust explosion. To the friends and families of these 29 miners, please know that we continue to remember your loss and are committed to taking steps to prevent tragedies like this in the future.

It has been three years since the Committee's last hearing on mine safety. At that hearing, we heard testimony on 5 investigation reports that showed the mine operator at Upper Big Branch repeatedly violated mandatory safety standards.
They failed to maintain adequate ventilation, which allowed flammable methane to build up.

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They also failed to properly maintain water sprays, which would have prevented the ignition.

We also heard how the mine operator concealed its non-compliance. They kept two sets of mine examination books—one for management and a sanitized version for MSHA inspectors. Mine management also routinely warned foremen when mine safety inspectors were on the property, giving foremen the opportunity to conceal unsafe conditions from inspectors.

Although mine operators are ultimately responsible for safety of miners, MSHA plays a vital role in holding mine operators accountable.

We know that in the 18 months prior to the Upper Big Branch explosion, MSHA issued 692 citations and orders to this mine operator. During 2009, MSHA issued 53 "withdrawal orders" for unsafe conditions, more than any other mine in the nation. But even this was not enough.

Since Upper Big Branch, MSHA has enacted many reforms.

MSHA is using "impact inspections" to target high risk mines.

MSHA has issued final regulations for its most powerful administrative enforcement tool—the Pattern of Violations sanction—which is intended to bring serial violators into greater compliance.

MSHA has issued a final rule increasing the required amount of rock dust to be deposited in underground mines, which will decrease the likelihood of coal dust explosions.

MSHA has also issued a rule requiring continuous mining machines have "proximity detection" devices designed to prevent crushing or pinning miners.

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The Mine Act states that the first priority of the industry "must be the health and safety of its most precious resource—the miner."

By giving MSHA this investigative tool, we can advance the safety of the miners.
By enacting this provision, we also respect requests from the families of deceased miners who have asked for our help in strengthening the law.

I thank Mr. Main for appearing here today, and look forward to his testimony.
I yield back the balance of my time.

###

Chairman WALBERG. I thank the gentlelady.

Pursuant to committee rule 7(c), all subcommittee members will be permitted to submit written statements to be included in the permanent hearing record. And without objection, the hearing record will be open for 14 days to allow statements, questions for the record, and other extraneous material referenced during the hearing to be submitted in the official hearing record.

It is now my pleasure to formally introduce today's witness. The Honorable Joseph A. Main is the Assistant Secretary of Mine Safety and Health at the U.S. Department of Labor and has served in this position since 2009.

Mr. Main began working in coal mines in 1967 and quickly became an advocate for miner safety and health. Mr. Main worked for the United Mine Workers of America in various positions from 1974 to 2002 and was head of the UMWA's Occupational Health and Safety Department for 22 years.

Before he accepted President Obama's nomination, Mr. Main worked as a mine safety consultant. His recent work focused on research and analysis on prevention of mine accidents and disasters; development of training programs and facilities to prepare miners, rescue teams, and emergency responders for mine emergencies; and international mine safety issues.

He also has had a successful record in taking the chairman of this subcommittee into mines and bringing him out alive.

And I thank you for that.

I will now ask our witness to stand and to raise your right hand. This is the first time you have ever had to do this. It is a policy that we have now, and so, Secretary Main, if you would stand?

[Witness sworn.]

Let the record reflect the witness answered in the affirmative.

You may be seated.

Before I recognize you to provide your testimony, let me briefly remind you of our lighting system. And you have done this, you have mentioned to me, 25 times appeared before Committees and subcommittees. You know the lighting system. It is a question whether I and my colleagues know the lighting system as well as we should.

So we will certainly give you your five minutes of time. We won't hold you to a strict time because we want to hear what you have to say, but we will have plenty of opportunity for questions, as well.

And so I now recognize our witness, Assistant Secretary MAIN.

TESTIMONY OF HON. JOSEPH A. MAIN, ASSISTANT SECRETARY, MINE SAFETY AND HEALTH, U.S. DEPARTMENT OF LABOR, ARLINGTON, VA

Mr. MAIN. Chairman Walberg, Chairman Kline, thank you very much for the opportunity to be here, Ranking Members Wilson, and I believe Courtney was here a few minutes ago. I do appreciate the opportunity to appear here today to report on mine safety and health.

We have made progress on many fronts, particularly in the last five years, following implementation of reforms that began in 2010.

The steps that we have taken along with the industry are changing, I believe, the culture of safety in a positive way.

From 2010 through 2014, 46 miners died annually. That is half of the 96 deaths each year that we were seeing in the 1990s, when employment was roughly the same.

At the same time, industry compliance has improved. In 2014 there were 44 fatalities. Sixteen were at coal mines, which was the lowest number ever recorded in the coal mining industry; 28 were at metal-nonmetal mines, and that was part of an increasing trend that began back in October of 2013. These increases are concerning, especially after years of historic lows in mining deaths.

But we still face challenges, including reversing the increases in metal and nonmetal deaths. We are making, I think, significant strides.

On April 5, 2015 we observed the fifth anniversary of the Upper Big Branch Mine explosion. 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, and extensive outreach and assistance to the mining community—to carry out our responsibilities under the *Mine Act*

In 2010, MSHA revised its pattern of violations procedures and began to conduct strategic impact inspections. The troubled mines receiving impact inspections, or undergoing the POV process, or both, have significantly improved their compliance.

We have stepped up enforcement in metal-nonmetal mines, reaching out to the mining community, sharing best practices with them and asking them to assist as we work to reverse the trend—the recent trend of mining deaths.

MSHA's other initiatives include the End Black Lung—ACT NOW campaign and a Rules to Live By program, which is aimed at preventing the most common types of fatalities.

On schedule, we completed action on about 100 reforms from reviews of MSHA's actions at the Upper Big Branch Mine. We built accountability into MSHA's internal process and developed a direct system to provide better oversight of agency policies.

We are improving assistance to the mining community. In 2014 MSHA combined its Educational Field Services and Small Mines program to expand MSHA services, and we now hold quarterly calls with industry trainers.

We use technology to assist operators who want to do the right thing, and to support our enforcement for operators who do not, including an online POV tool which allows an operator to monitor whether a mine is approaching a POV. Last month we rolled out two more tools that allow operators, MSHA, and others to track a mine's compliance with other key safety standards.

We want to ensure that stakeholders understand and are aware of our initiative. MSHA's leadership and I have crisscrossed the country to meet with them.

Our outreach has led to initiatives that address stakeholder concerns. When the industry raised issues about some metal and nonmetal standards, we were able to clarify them, which has improved enforcement, mine safety, and compliance.

We reduced MSHA's backlog of contested violations by about 70 percent from its highest levels in 2010 and revised our pre-contest

conferencing procedures, conferencing over 15,000 violations since 2012, as well.

An essential component of preventing accidents is to allow miners to exercise their rights to report safety and health problems. Since 2010, MSHA has filed about 185 discrimination cases and 157 actions for temporary reinstatement to help enforce those rights.

MSHA finalized a number of rules critical to mine safety and health, including the recent respirable coal mine dust rule aimed at preventing black lung.

MSHA has been conducting extensive outreach and support to the industry and before each phase of the dust rule goes into effect. Since phase one went into effect on August 1, 2014 through March 31, 2015 we have seen nearly a 99 percent compliance with over 41,000 samples collected from mines by operators at MSHA.

With the mining community, we have made needed improvements to our mine emergency response capacity and capabilities. MSHA has taken the lead in development of game-changing technologies to make mine rescue safer and quicker, and we will equip our mobile mine sites with them very soon.

The state grants program is being funded at $8.4 million at the fiscal year 2015 budget level, and the President's request includes funding for 2016.

With that, Mr. Chairman, just a quick oversight of what we are doing, what the industry is doing on mine safety, and appreciate the opportunity to answer any questions you may have.

Thank you.

[The statement of Mr. Main follows:]

STATEMENT OF

JOSEPH A. MAIN
ASSISTANT SECRETARY OF LABOR
FOR MINE SAFETY AND HEALTH

BEFORE THE

SUBCOMMITTEE ON WORKFORCE PROTECTIONS

COMMITTEE ON EDUCATION AND THE WORKFORCE
UNITED STATES HOUSE OF REPRESENTATIVES

APRIL 23, 2015

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.

Chairman WALBERG. Thank you. Thanks for your testimony.

Now, I will recognize myself for five minutes of questioning.

MSHA finalized the Pattern of Violation (POV) regulation on January 23, 2013. Currently, there are two lawsuits pending regarding the regulation and its application.

In November of 2014, an administrative law judge for the Federal Mine Safety and Health Review Commission vacated citations against a mine that MSHA placed in POV status. The decision states, and I quote: "Dismissal of the pattern notice rested on two grounds: the Secretary's process is inconsistent with procedural due process, and it is also inconsistent with the expeditious resolution of pattern matters."

Secretary Main, how do you respond to that statement?

Mr. MAIN. Well, you know, probably a couple things. One is, as we all know, this is an issue in litigation and we are paying close attention to what is going on in the litigation process. And I need to, you know, probably not delve too much into this, in terms of the legal issues of this report.

But I think it is important for folks to understand this, and I think—last year we didn't have any mine that was placed on a pattern of violation, and I think this is a standard that should be in place across the country. There is no reason for any mine, I believe, to be on a pattern of violation if they follow the rules and use the tools that we have made to their disposal.

We inspect about 13,000 to 14,000 mines a year, and the number of mines that we are seeing that are even subject to the pattern is so small that if you look historically, I think we had 51 mines when we first started our screening process back in 2010. In 2014 there was only 12 mines out of around 13,500 that even met the screening. And because of actions they took and, I think, actions that we have taken as well, they met the standard.

I think it is achievable. No mine should be on a pattern of violation.

If you look at the program that has been in place, I think this has probably been one of the biggest game-changers in really reining in chronic violators in this country. The 51 mines that we identified back in 2010, the screening tool that we used is the same one that we used in 2014. There was a reduction of about 76 percent in the total number of mines that we identified in that same screening.

And if you look at, as well, mines that have undergone either the potential pattern of violation in the prior system or the pattern of violations program currently, you are going to see a dramatic drop in the violations that we are issuing at those mines, particularly the serious violations. And one of the greater benefits is the reduced injuries we are seeing, cutting the injuries in half after these mines go through the program.

So I think, you know, we are looking carefully at litigation that is ongoing and issues that you have raised as we move forward, but——

Chairman WALBERG. Well, let me expand on that more specifically, regarding the Pattern of Violations regulations. Stakeholders have expressed concerns that the criteria for placing a mine in

POV status was not contained in the actual regulation, which means MSHA can change the criteria at any time.

You have publicly stated, and even this morning, that MSHA would seek comments prior to changing the criteria. Future assistant secretaries will not be bound by this statement.

So I guess the question comes, how did MSHA determine it was not necessary to include the criteria in the regulatory text?

Mr. MAIN. So the criteria that we had been using for the screening process is basically the same criteria that we have for the screening process now. And that is what I was referring to when I said the screening process we used in 2014 and the mines that were identified were—the mines in 2014 were, you know, identified through the same screening process that we had used.

And I understand there was, during the comment period on the rule, an urge by some stakeholders to set a specific standard, but I can tell you, one of the concerns that I have in terms of changing—of setting that in stone is because of the change of the landscape; we may wake up one morning and say, you know, the criteria that we have established——

Chairman WALBERG. But doesn't that leave some type of limbo of concern?

Mr. MAIN. Well, I think if you—we are—you know, we are staying with the same criteria that we have today—or, I mean, that we had back in 2014.

Chairman WALBERG. Well, my time is expired. Appreciate the response.

Now I recognize Mr. Scott, Ranking Member of the full Committee, for your five minutes of questioning.

Mr. SCOTT. Thank you, Mr. Chairman.

And thank you, Mr. Main, for all that you do. Your work really means life or death for many mine workers, so we appreciate your work.

As the Ranking Member indicated, we have introduced the *Robert C. Byrd Mine Safety Protection Act of 2015*, and we would appreciate whatever analysis that your office could give about the provisions in that act. And if you could provide those as soon as you have had an opportunity to review it, we would appreciate it.

Mr. MAIN. Okay.

Mr. SCOTT. There are a couple of elements to it. One is the issue of subpoena power.

As I understand it, the—you do not have general subpoena power for investigations. Is that true? And why would subpoena power be important?

Mr. MAIN. So under our statute we have a very, very limited authority for subpoena power. It requires us to call for—hold a public hearing to be able to use it. Having said that, beyond that, we do lack subpoena authority and power.

And if you look back at the mine disaster we were investigating back in 2010 in West Virginia, we had to rely on the state of West Virginia to exercise their subpoena power and authority to seek further questions of witnesses. And, you know, across the country, you know, there are a number of states that don't provide that opportunity for us to do that.

So yes, we have a limitation on our ability to use subpoena authority, which, during normal investigations, we basically don't have it.

Mr. SCOTT. And most other investigatory authorities do have this power?

Mr. MAIN. There are a number of other agencies, and I think the ranking member acknowledged some of those today, and I understand there are a number of other agencies that do have the authority.

Mr. SCOTT. Thank you. Now, when you find violations do you frequently assess fines? Do you have problems collecting the fines?

Mr. MAIN. So on the collection of penalties, and I know this has been a discussion for quite some time, at MSHA we believe we have one of the better collection rates in the—of any federal agency. We are collecting about 90 percent of the penalties that are final orders of the commission. And I think out of the last five or so years we have met that, with the exception of one year, which is—I think it is extraordinary.

Having said that, there are still mine operators that make decisions to accrue violations that place miners at risk and do not pay their penalties. There is a mining company—I think it is in Tennessee—for example, that used that model, and at a point in time they just closed the mine and moved on, racking up several violations, and I don't think they paid a dime in penalties. And we refer to those sometimes, as I think the normal person would, as scofflaws.

So, you know, if you look at someone who may get speeding tickets and throw them in the back seat and decide to move out of the state on a given day and, you know, leave the speeding tickets, there are mine operators that, unfortunately, do that.

Mr. SCOTT. What effect has the budget had on your ability to conduct investigations and inspections?

Mr. MAIN. I am sorry?

Mr. SCOTT. What effect has the budget cuts had on your ability to do inspections?

Mr. MAIN. Well, you know, I think if you go back to the internal reviews that I spoke about and looked at what impact, you know, stagnant budgets or budget cuts have, I think there is a story that is in that internal review about MSHA.

When I arrived at MSHA one of the things that I was learning about the time I was getting confirmed was that the agency had lost so much staff that the average experience of half the inspectors was two years or less. I am sure that was concerning to everybody. It sure was to me.

And, you know, what had happened was I think just with the budgeting process over the years leading up to that left MSHA with a lot of inexperienced folks, and in particular, the mine that was in question in West Virginia where the explosion occurred, we had inspectors who had just received their, what we call their authorized representative cards.

In terms of where we have been over the last few years, we have been on, you know, somewhat of a similar cycle. But, you know, from where I sit, I try to do everything that I can to make sure that we have money to allocate to staff-up the agency so I never

leave another assistant secretary in a spot that I arrived at. And I think that is something that is important for everyone to take into consideration that, you know, an agency like MSHA does have to have the forward-looking budgets because it takes us about two years to train up our inspectors before they ever get to their A.R. card. So it is, you know, it is a concern.

Chairman WALBERG. The gentleman's time is expired. I thank the gentleman.

I now recognize my good friend, the gentleman from Oklahoma, Mr. Russell.

Mr. RUSSELL. Thank you, Mr. Chairman.

And thank you, sir, for being here today and all of the service that you have provided in this field for many years.

MSHA has requested $394 million for the fiscal year 2016. The office of coal enforcement is slated for $175 million of that, while the metal-nonmetal has almost $94 million, although the number of nonmetal mines is more than three times the number of coal mines. Do you believe your budget request will adequately address safety enforcement issues in the metal-nonmetal sector?

Mr. MAIN. That is a good question, and in terms of where we are at with our budgeting process, you know, we continue to look at that on a constant basis. We are trying to be more efficient at MSHA to utilize staff that we have. We actually have received some help from the coal side to help currently with the metal-nonmetal inspection process.

And probably going forward into the future with the changing landscape on the coal side, we probably will be doing more of that to help supplement our work. We are looking at training models to help us more efficiently do that. But as these changes occur in the mining industry, trying to be a more versatile agency.

The one thing that I have looked at is trying to keep our authorized representative staffing levels up at MSHA, because it takes us 18 months to two years to replace someone who loses that. So part of what we will be doing is looking at how we can use more efficiencies in having, as I say, on the coal side some help placed over to metal-nonmetal with training that is going to go with that to keep our staff levels up.

And I think if you look back at the report that came out of Upper Big Branch and where there was a loss, and it was both the coal and the metal-nonmetal side, as far as AR's that had to be—you know, took a couple years to get ramped back up. You can appreciate why we are trying to do that kind of a balance.

Mr. RUSSELL. Well, I appreciate that. And with your long safety experience and observation of many of these issues over the years, you have highlighted an initiative to prevent fatalities in mining called Rules to Live By in speeches and public announcements. Can you describe what those are and how it is impacting the culture of the mining community?

Mr. MAIN. Sure. The first program I actually launched when I arrived at MSHA in 2009 was the End Black Lung—ACT NOW campaign, and that was to deal with the disease that we are seeing on the coal side. In general, I believe that we need to have a focus.

There are a lot of regulations that the industry has to look at, at MSHA has to look at to see they are in place, and what I felt

that we needed was a focus on the core standards that were most commonly found following investigations of mining deaths. Let's make sure that we are looking at the top end.

So we took a look at mining deaths over a several-year period—I think the first one was for about nine or 10 years—and identified the standards that were connected with the most common causes of mining deaths. And we launched—I think it was around February—the Rules to Live By.

We brought in the mining associations, the NSSGA, different state organizations that were—associations we work with, labor organizations—and walked them through the program. And there was a change also made with this as we kicked it off is that I started to develop the training model that—the training we were giving our inspectors to implement this program, we gave the same training program to the industry. I think it is still on our website.

But it was to get a focus of the top standards that was linked to the most common mining deaths in the country.

We, in about two years later, updated that, adding another component that dealt with catastrophic-type violations that were or could lead to mine explosions or disasters, and that became Rules to Live By II. And then we took another sweep, a 10-year look back—it was about two years ago—of the mining deaths that were most commonly identified, again, and we came out with Rules to Live By III, which actually included a lot of surface standards.

So we recently launched a tool. About two months ago we had our stakeholders in and created a tool where every mine in the country can now punch in their I.D. number and see where they stack up in terms of compliance with those Rules to Live By standards, and it is a sort of like a green light, red light. If your text is green you are on the better half of the industry; if you are on the red you have work to do.

And I know that the NSSGA just held a webinar to help—and they have been working with us as well as other associations to really focus attention on it. But the bottom line is, these are the standards that are most often cited when we have mining deaths.

Mr. RUSSELL. Well, thank you. And speaking of red lights, I am out of time. And thank you, sir.

And thank you, Mr. Chairman.

Chairman WALBERG. Thank the gentleman.

Now I recognize the Ranking Member, the gentlelady from Florida.

Ms. WILSON. Thank you, Mr. Chair.

Mr. Main, you have so eloquently described how subpoena power would help, but that is just a small part of the *Robert C. Byrd Mine Safety Protection Act* that was filed—reintroduced yesterday.

Since it is named after such an important senator—we called him the miner's senator—Robert C. Byrd, I wonder if you can reiterate to us today what provisions would be the most helpful, other than subpoena power, to MSHA in protecting miners, the workers.

Mr. MAIN. Well, I think, you know, I have testified before a number of committees since the Upper Big Branch tragedy and when the bill was—the previous legislation was being crafted or had been introduced and noted there was—there are a number of issues that

would be helpful to provide MSHA with greater tools and improve mine safety.

We talked about the scofflaw issue a bit ago, and that is something that has been discussed a lot publicly, and it is an issue that if we had a better tool to deal with that it would help us rein in mines that decide that they do not want to pay their penalties quicker.

I think there is a judge in Utah following litigation over a disaster that happened there in 2008 that probably best described frustration from that level over the weakness in our criminal penalty process of holding folks more accountable. And I think the statement by the judge—and I don't want to say it because I will probably get it wrong, but I think there was clear frustration from his voice about the lack of tools that the judge had in his particular tool bag to deal with the issues that were of criminal nature that was brought before him. I think that is something that, you know, does strike a need.

You know, one of the things that—I think we have, as far as the reporting system with mine operators in this country, a pretty good one. I think there was realization that not everybody fully complies with it. But when it comes to contractors, I think there is a weakness there.

And this is one where it would be helpful for us to have more information—more valid information—about, you know, contractor man hours and injuries at a worksite. And I am going to give you a bit of a reason why that is probably even more important.

If you look at the fatalities that we have been talking about that have occurred over the last 30 or—about the last 18 months, we are up to about 42 mining deaths now. A large number of those was contractors—I think actually 10 of the deaths.

We had, in 2012, the lowest number of contractors ever to die on the job at five. In 2013 we had four, which became the lowest. In 2014—I think it was eight contractor deaths out of the 28 that occurred.

And, you know, and there is a concern that the recent rise that we have seen in the mining deaths, if you look at where most are—you know, what is the top line of those, if you look at the 38 there is I think 10 supervisors, 10 were contractors, about 11 or 12 were miners or laborers, and I think there are about 10 of those that was truck drivers. You are talking about three-fourths of them.

But the contractor issue that is on the rise there has us concerned. And I am not sure we know what we need to know about how many is really out there, you know, and all the information about their injuries. So that would be another issue.

Ms. WILSON. That would be another issue. Well, thank you so much.

In your remaining 20 months, what are your top priorities for improving protections for our miners?

Mr. MAIN. Well, you know, I think there is—for folks who know what I have done for the last five and a half years—and that is really spending quality time out at mines, out with our stakeholders, having a lot of discussions with them, still trying to figure out what is it we can do more so that every miner has a chance to go to work and really go home free of injury and illness every

day. And, you know, the kind of things that we are doing—I am going to give you some examples of our stakeholder outreach that I think has been—and we are still trying to flesh out more.

In 2010 we identified, of course, the top-cited standard in the metal-nonmetal sector was guarding. We launched a program piloted with the industry. Actually NSSGA provided mines for us to go out and do actual video shots of what a guarding should actually look like or be.

We put it together. We piloted it with a number of the stakeholders, state associations, put it in place, and since 2010 we have dropped the number of citations that we are issuing on orders 43 percent on guarding in this country. It is an effort that we collectively worked together with them.

We have put together a similar effort on fall protection to reduce the number of violations and injuries and illnesses from falls, and we have basically adopted, in part, the OSHA standard, which was something supported by both labor and industry. We have seen a improvement in number of citations we are issuing in that direction.

My view is to keep plowing away at fixing things like proximity detection. Miners getting crushed in underground coal mines is replacing, really, falls of roof as a leading cause. We just implemented the standard for continuous miners that stops this huge piece of machinery in this confined space from crushing a miner when a miner gets too close.

We have worked with the industry to get us where we are at. As a matter of fact, I announced that rule at the Gibson Mine arm-in-arm with Alliance Resources, who was a pioneer to help us get that rule prepared. I think we had 80-some pieces of their continuous mining equipment equipped with these proximity detection devices.

And we are now looking forward to moving on to other pieces of equipment that are on a mining section like scoops, coal-haulers, and we are well ahead of the day with that, with the mining industry having I think somewhere around 160 pieces of equipment now equipped with that life-saving device.

Chairman WALBERG. Time is expired, but we look forward to hearing more of those successes, as well, and appreciate that.

Ms. WILSON. Thank you.

Chairman WALBERG. Thank the gentlelady.

I now recognize the gentleman from Michigan, Mr. Bishop.

Mr. BISHOP. Thank you, Mr. Chair.

Thank you very much for your testimony this morning. I appreciate your comments and your insight.

The coal mining industry has seen substantial change over the past 10 years. The number of coal mines—working coal mines—in this country has sharply declined.

I am wondering if you might comment on the impact that has had on the industry itself, and also reflect a little bit about how it has impacted MSHA and number of inspectors you have, and what may be going on inside MSHA to respond to the number of mine closures in this country.

Mr. MAIN. It is an issue that has all of our attention without question at MSHA. And our role in life is to make sure whatever

mines are operating on a daily basis that we are implementing the *Mine Act* there in the ways that Congress had intended for us to do.

If you look at the boom and bust periods in the coal industry, it is a term that has been stated quite a lot. Pretty steep this time, there is no question about it.

So as an agency, what we have to be able to do is have a staffing in place to make sure that we are out conducting the inspections that we need to carry out the *Mine Act*. And what that means in areas where we have lost mines, that we need to be—we need to understand that and be able to make adjustments in our inspection applications.

In line with some of the things we talked about this morning where there has been some flat-line budgets that has—and it affects every federal agency, not just us—it has made some—a difference in the funding that we have available, which is not the same as it was. I think our budget is about $3 million over what it was in 2012, and with inflationary costs.

So the short message is that we are shifting our resources to areas where they are in need. As of late, coal has been out providing support to the metal-nonmetal industry, with the increase of fatalities.

You know, we all look at where the market may go and try to adjust to that, as others do. But, you know, from the standpoint, yes, there is reduction on the coal side and we are trying to make all the adjustments we can to keep up with that.

As a matter of fact, our average inspection hours, which I look at, has stayed pretty standard from 2012, 2013, 2014, so I know the amount of times, at least the data we are pulling in, that we are spending at mines is staying pretty much the same.

Mr. BISHOP. Thank you, sir.

Let me switch gears real quick. I have a limited amount of time.

Very interested and grateful for—appreciate your focus on safety. One of those areas of interest in this category has to do with refuge chambers, and I am wondering if you might be able to share with us exactly what that is and also address the concerns raised by the National Institute of Occupational Safety and Health regarding heat generation and purging noxious air in those refuge chambers.

Mr. MAIN. So one of the acts of Congress in the passage of the 2006 *MINER Act* was to put into motion greater protections for miners during mine emergencies, and the outgrowth of that was the creation of standards that—and provisions under the *MINER Act* itself to require refuge—alternative to refuge units to be placed in coal mines—underground coal mines for miners. These were standards that were basically set back in, oh, I guess about 2007, 2008, and have basically been in place since then, as far as the design and use of refuge alternatives.

NIOSH is taking a look at some different factors. The heat temperature is one of those, and there are a few other issues, as well, that they are looking at.

About two years ago I issued a request for information to really take a—just a thorough look at our whole refuge alternative standards. Is there a better model that we can build? What could we do

differently here? And not only that, to deal as well with miners' escape.

I have been in a number of mine emergencies myself, going back to Wilberg, which was—we lost 27 miners in a fire. Took us a year to find the last miner that was lost.

The Greenwich, Homer City mine explosions, where miners were lost. Unfortunately, they didn't survive.

We all know the case of Sago and miners who tried to build a temporary barricade that didn't work, and by the time MSHA arrived it was too late. I set a course in 2010 to overhaul our mine emergency response program so we can get to those miners quicker if that happens again.

And with the initiative that I have launched to really just take a hard look at what systems we need to have in place—refuge alternatives. We just closed the record on that I think April 2, and that is one of my plans.

What do I expect to do before I get out of here, working with industry and everybody, is try to come up with a better model so we have miners with the best protections. But that is a very live issue.

Chairman WALBERG. I thank the gentleman. Gentleman's time is expired.

I now recognize the gentleman from Wisconsin, Mr. Pocan.

Mr. POCAN. Thank you, Mr. Chairman.

And thank you, Mr. Main, not only for your work with MSHA, but really your lifelong commitment to mining and to the workers. You know, I know from our conversations you started very young in life working in the mines, and here you are making sure that all those workers can get home to their families every single night, and we really appreciate that commitment.

I want to ask—you talked just a little bit about the situation in Utah. I would just like to ask a little bit more about that—back in August 2007, when six miners were killed inside the Crandall Canyon Mine and then three more would-be rescuers, including an MSHA employee, were killed—crushed 10 days later. Following criminal referrals from this Committee and the Department of Labor, the U.S. attorney eventually charged a Murray Energy subsidiary with two misdemeanors and assessed a $250,000 fine for each, which was the maximum available under the *Mine Act*.

And I think the judge you referred to was U.S. Federal District Judge David Sam, who was actually appointed under President Reagan, who said during sentencing that he was outraged because of the miniscule amount provided by the criminal statute in this matter.

So I guess my question specifically is if a knowing and willful violation of the mandatory safety standard that causes the death or injury of a miner is a mere misdemeanor under the *Mine Act*, however if you make a false statement it is actually a felony under the *Mine Act*, does it make sense that killing a worker is a mere misdemeanor, however lying about the matter is a felony? And is there adequate deterrence in that current law?

Mr. MAIN. Two things. I want to first say that my heroes are those who say, "I want to volunteer to be a mine rescuer." And at Crandall Canyon there were those that were engaged in that that lost their lives. And if you understood what mine rescue really in-

volved, I think we would all be taking our hats off in a thankful way.

With regard to that protector issue, I think, you know—and I go back to this: I think the judge looked at the case that he had before him. He looked at the circumstances he had. He looked at the *Mine Act*, of which he had to be controlled by in the decisions he made, and found it inadequate.

And I think that that speaks louder than anything that I could say with regard to the limitations of the *Mine Act*. A judge was faced with making a decision and felt that he couldn't do what he wanted to do.

Mr. POCAN. So, you know, in the *Robert C. Byrd Mine Safety Act* those penalties are increased. Have you had a chance to look at that? And what is your opinion on that?

Mr. MAIN. So, you know, I think the need to have additional tools in our tool bag to deter folks from making decisions that has a judge like the judge in Utah having to render a decision—it is what we really need to do.

Mr. POCAN. Thank you.

Black lung has taken the lives of about 76,000 miners since 1968. Your agency just issued some new health standards in this area, yet some mine operators have sued to try to block the implementation of these.

Are the mine operators able to comply with the new requirements? And have mine operators gamed the system by underreporting miner exposures to coal dust that caused this disease?

Mr. MAIN. You know, I have to say this: The reason that one of my first actions as assistant secretary was to launch the End Black Lung—ACT NOW campaign was to rid an industry of a disease that I think has long passed its time for action to be taken.

And I am a believer that miners are still getting this disease. And just look at the miners whose autopsies were reviewed by the medical examiner in West Virginia that found 17 out of those 24 of those miners, I believe, was the number that was diagnosed with pneumoconiosis, some as few as five years' mining experience.

This is a disease that, in regards to what Joe may say or someone else, if you look at the 76,000 deaths, as I understand it, those came from death certificates collected, filled out by physicians and medical examiners across the country that CDC's NIOSH collects. So there is some, I think, independence here about, you know, the depth of this disease. It is one that without question I think we all need to come to terms with.

We proposed a rule as part of our End Black Lung—ACT NOW campaign that was aimed directly at changing the way that we make sure that we have dust under control in the mines, because if you look at that data, it says that that wasn't happening, okay?

And I think the good news is that in phase one, which we spent a lot of time out working with the mining industry—I know Kevin Stricklin, who is behind me, and his staff ran from one end of this country to the other to work with any mine operator to get them ready for the phase one of the rule. And the great news out of that is after 41,000-plus samples, half by MSHA, half by the mine operators, we have pretty close to 99 percent compliance. And I think that speaks highly of both the—this rule being able to be effectively

put in place and with the industry really stepping up to the plate to implement it.

I will tell you this, though: The first part of the End Black Lung—ACT NOW campaign was really education and outreach. It was beefing up the enforcement of what we had.

And since we put that in place in 2009, every year we were able to drop the dust levels in coal mines and the dust dislocations to historical levels every year. We were able to get in place better dust control systems that were in place more often than they ever had been before.

This is making sure, these next steps, that we keep them there and rid the disease.

As a personal story, a friend of mine named Mike South was out of the mines I believe in his 50s with black lung. Got so bad Mike and I would get from that door to that door, you might as well take about five minutes because the oxygen in his lungs were so depleted he couldn't breathe.

He got a double lung transplant. Called me from the hospital just thanking God that someone gave up two lungs for him, only just a few months later to die because it didn't work.

Chester Flack, who is a poster child, to a certain extent, for folks who really have this disease, he was an individual went through the same thing that Mike did—double lung transplant, died. The transplant didn't take.

We are really working hard with the industry and everyone to have measures in place that really ends—rids the coal industry of this terrible disease, and——

Chairman WALBERG. I thank the gentleman.

And I now recognize the gentlelady from New York, Ms. Stefanik.

Ms. STEFANIK. Thank you, Mr. Chairman.

In May 2012, Chairman Kline wrote to you about the injury and illness rate of mine inspectors, and in your reply to his letter you noted latent hearing loss as one of the primary reasons for the high incidence rate levels. In 2014, the injury and illness incident rate for mine inspectors was 5.2 per 100 employees, whereas last year the industry average was 2.43 per 100. What is MSHA doing to protect inspectors?

Mr. MAIN. I am sorry, I didn't catch that last part.

Ms. STEFANIK. What is MSHA doing to protect these—their inspectors?

Mr. MAIN. So I think everyone probably pretty well understands that the folks that we hire are mining veterans that come to us from the mining industry. I am a believer in that five-year rule in the *Mine Act*, that we should have at least five years' mining experience, should be the order of the day.

So you have some folks that come to work with us that have already had, you know, whatever experience they have had. As a matter of fact, that is the reason, I have to say, drills in my left ear sort of, you know, had changed, you know, my hearing as well.

So we have that, plus we have these mine inspectors going back into these same conditions with exposures. We provide them with the best protections that we can, the best guidance and training that we can. And it is something that concerns us, as well. I want

our miners to be—our inspectors to be as safe if not safer than the mines, you know, that they inspect.

So we are looking at a number of things to try to improve that. But I think if you look at both the terrain that they travel into and their backgrounds when they come to us as inspectors that there are some issues like that we have to address.

Ms. STEFANIK. Thank you.

My second question relates to the consistency among inspectors, which is an issue that we continue to hear from stakeholders about. For example, one inspector may see a hazard and prescribe abatement in order for the operator to avoid future citations, whereas in another case another inspector arrives and in the same work area finds faults with that abatement and issues a different directive, requiring additional efforts to mitigate to address those concerns.

What is being done to prevent these inconsistencies from happening?

Mr. MAIN. I think if you look back—when I arrived here there was a number of things in place. The *MINER Act* had just went into effect. I think there was an escalation of enforcement—probably the heaviest for the first time in history on the metal-nonmetal side.

MSHA had just overhauled the penalty system that increased penalties from, you know, levels in the $20 million range up to the $140 million, $160 million range, in terms of the aftermath of the disasters that happened in 2006. And, as I noted, when I came here about half of the inspectors that was onboard at the time had 2 years' or less inspections.

One of the very first things that we did to—and things have—from 2010 to now I can guarantee you things have changed. And I just talked to the industry folks out there who I just came from California, one of my last visits, that we talked about how much things have changed because of the actions we have taken.

Those included setting up a training program for our front line field supervisors that are responsible for overseeing the inspections. We put into place, actually in May 2010, a training program that requires every field office advisor every two years to go through at least a week's training. We are plowing back any inconsistency issues in that training.

We have pretty much retrained most of our inspectors on the coal side and the metal-nonmetal side. We have rewritten the handbooks, and I know probably more extensively on the coal side we retrained everybody to those.

I personally am out at mine sites, out meeting with our stakeholders across the country, and we have used that to reconnect the dialogue between our agency and our stakeholders out there.

I put back in place a critical piece of helping to resolve issues, which is the pre-contest conferencing process. Went in effect in 2012, and what this is is when a mine operator receives a citation, instead of waiting 'til the lawyers line up before the Review Commission, they can call up the district office, say, "We need to sit down; your fact is wrong here," and settle those before you even assign a penalty to it.

We have done 15,000 violations since that time, and about 55 percent of those have never went on to litigation as ways to resolve it.

These meetings we have across the country in the Midwest with about eight or 10 aggregate associations, I think I am getting ready for my seventh trip since I have been here to go out. We just came from Texas about two weeks ago, California a couple weeks ago. But we are out basically on the front lines talking to folks.

And violations are down. Penalties are down. Special assessments are down considerably; I think they are about half of what they were in 2010.

We know these things are working. Our efforts to continue on with our stakeholders and meet and greet and have discussions, have workshops, they have got us where we are at and we are going to continue to do that.

Ms. STEFANIK. Thank you for the thoughtful answers.

I yield back.

Chairman Walberg. I thank the gentlelady.

I now recognize the gentleman from Indiana, Mr. ROKITA.

Mr. ROKITA. I thank the chair.

Thank you, Mr. MAIN. Appreciate you coming back. Been following your work now for a couple years and I have got a couple things I want to get through.

First has to do with silica. In your 2014 regulatory agenda you suggest that you are going to do silica rules by October 2015. Now, you don't have to abide by the *Small Business Regulatory Enforcement Act*, but are you going to consider the impact of these proposed rules on smaller mining operations?

Mr. MAIN. Well, I think the short answer is we are going to consider the impact on the whole mining industry, whether it is small or——

Mr. ROKITA. But not specifically the small mines?

Mr. MAIN. Well, small and large. And whatever requirements we have, we are going to follow those. But I can tell you, in our rulemaking process we are a pretty good listener as far as commenters from the public.

Mr. ROKITA. With regard to that listening, are you taking a look at the scientific documents that were provided to OSHA during the comment period?

Mr. MAIN. I am sorry?

Mr. ROKITA. The scientific documents that were provided to OSHA during the comment period regarding your silica regulation.

Mr. MAIN. So, yes, their rulemaking is separate from ours, but I think the path that we are on is sort of looking to see what is going on at OSHA on their standard——

Mr. ROKITA. Will you commit to look at this weighing the scientific documents?

Mr. MAIN. Oh, yes. I mean, you know, we are going to have—we are going to take a good look at the, you know, the development of the rule on the OSHA side.

Mr. ROKITA. As to the scientific documents that were provided as comments to the rule, can you take——

Mr. MAIN. We will take a look at all the pertinent—yes.

Mr. ROKITA. Okay.

Back to small mines, you know, there have been fatalities in the metal-nonmetal division, as you know. Your testimony notes that the Small Mines Consultation Program was moved to the Educational Field Services Division. Why the move, and can you provide data demonstrating more outreach to small mines actually has occurred with this move?

Mr. MAIN. Okay. So why did we do it? As I sat down and looked at our resources that we had and how we were deploying those resources and I started looking at our field operations, what I found out is that we had two different staff that was in our training wing, our EFS Field Services Division and our Small Mines.

And our Small Mines, which was a smaller staff, was not strategically located in places that I thought we ought to be in the country. As a matter of fact, some of the states with a large number of small mines, we didn't have anybody there. And we had our EFS folks passing our Small Mines folks to go take care of business.

So the logic is, let's make everybody a field service trainer, which means that everybody is a small mines, you know—has the responsibility, as well as EFS.

The other thing that happened is I had discussions—I have met with the state associations across the country. We have had this dialogue. It was ongoing for some time.

And so one of the components that I had added to this was as we formed this new total service to the mining industry for all of our folks to go out and meet with all the state associations, the labor organizations, the state mining associations so we could let them know what we were doing and get feedback. And the bigger thing I have asked of them, "We want to leverage your resources." And I know Joe Casper, who is in the audience here from NSSGA, has been in a few of these discussions where we have——

Mr. ROKITA. Do you have data? Does your office track those meetings?

Mr. MAIN. Pardon?

Mr. ROKITA. Do you have data that you can provide that would demonstrate that outreach?

Mr. MAIN. Yes.

Mr. ROKITA. How many associations have you been to, what your outreach visits——

Mr. MAIN. Yes. Well over 100 outreach visits that we have made. And to put the onus on my whole staff that this is done while I go out and meet with stakeholders, I sort of encourage, "If you haven't heard from them, call them and let us know."

I can tell you this, that I am a firm believer that if we can leverage our resources together—because there is a number of these associations has far more contact and communication than we do, and we want to leverage what training resources that they have to help us get out to the small mines who have the——

Mr. ROKITA. Yes. Do you keep track of those—these meetings? Do you write them down?

Mr. MAIN. Yes. I am sure that our training——

Mr. ROKITA. Could you provide——

Mr. MAIN. Yes.

Mr. ROKITA [continuing]. The committee that?

Mr. MAIN. Yes.

Mr. ROKITA. How long will it take you to do that?

Mr. MAIN. Maybe a very short period of time.

Mr. ROKITA. Send us a letter.

Mr. MAIN. I know that the last——

Mr. ROKITA. Can you do it in two weeks?

Mr. MAIN. I think we can do that, yes.

Mr. ROKITA. Okay. I will put down two weeks then, okay?

In January, MSHA issued proposed rulemaking changing the citation process and the assessment of civil penalties and suggested that the proposed rule was designed to eliminate subjectivity in the citation process. There has been controversy around this, specifically with the Mine Safety and Health Review Commission.

Do you think that when you assess a penalty the commission has to abide by it?

Mr. MAIN. So as you see with all the rules we put out there—proposed rules—we get input from the public, and what we have done is put out proposed changes, and we put out the issues that we have requested comment back on to get some guidance. I can tell you this: Before we wrap that rule up we will be looking hard at all the comments that came in and making judgments that parallels both the law, our requirements, and really the valued input of the constituents.

So I can't really—since it is in the regulatory process I can't really talk about what we are going to do because that, you know——

Mr. ROKITA. But you are going to have lawyers assess—and I gotta yield back—you are going to have lawyers assess the legality of trying to enforce a separate commission to do that.

Mr. MAIN. Yes. We have noted a lot of comments, you know, one way or the other.

If you go back to 2010 when I appeared before the full Committee, I believe it was, this is something I had talked about as far as reforms to deal with the backlog that we had. For those that may not be aware, we had a backlog the day I came here of about 80,000 citation orders that was contested. That jumped up from an average that the agency was handling from about 5,000 to 6,000 just a few years before. You can imagine, you know, what was going on.

So we started looking at reforms: How can we both resolve the backlog, but forward-looking make some changes that removes litigation issues and gets us to a better process for mine operators and for miners?

And part of this is reforms that we had from back in 2010, and a couple simple ones, that when an inspector goes out and looks at a mine they have to make a decision on five different levels of negligence: no negligence, low negligence, medium negligence, high negligence, reckless disregard. Sort of like a yes-no reckless disregard approach is what you will see as a proposed rule.

They have to make a determination of how many miners was affected by that violation: one, five, 10, 20? And every one of those added penalty points and added fines.

So when we come out with a proposal, you know, I am an old farm kid, went to work in the mines. Yes or no. Either folks were exposed or they weren't. And trying to do some of those kind of

things to resolve some of the—of what I thought was unnecessary litigation issues, quite frankly.

So yes, there are a lot of moving pieces to the rule, but we are going to really listen well to the public and making hopefully some good determinations.

Chairman WALBERG. I thank the gentleman.

I now recognize the gentleman from California, Mr. DeSaulnier.

Mr. DESAULNIER. Mr. Chairman, I would like to yield my time to the Ranking Member.

Chairman WALBERG. Without objection.

Ms. WILSON. Thank you, Mr. DeSaulnier, for that.

Following the Upper Big Branch Mine disaster, MSHA began impact inspections in mines with a history of safety problems. When MSHA arrives at a mine site, one of the first actions is to seize the phones or electronic communication.

Why does MSHA do this? Is there a problem with operators providing a tipoff? Would stronger sanctions, such as a felony, deter this kind of misconduct? What tools do you need to prevent mine operators from giving tipoffs?

Mr. MAIN. Yes, we do that on occasion. It is just part of our impact inspections where our enforcement folks have some concern about advanced notice being provided to the workplace to change the conditions before they get there and do inspections. And I think if you look at some of the impact inspection reports that we issue, it identifies, you know, that concern quite well.

There have been a number of impact inspections we have done where we have went in, say an underground coal mine, and been able to avoid notice that we were present and got to the mining section to find the ventilation controls not in place. Ventilation controls are necessary to control the dust that causes black lung; it is necessary to control methane that liberates from the coal seam to prevent mine explosions.

Things like that have been evidenced by, you know, by our inspections where we have had to, as we say, capture the phones to get there.

And I think that mines that operate like that, although I think they are fewer than what we were seeing back in 2010, still exist. And if you look at some of the more recent examples we have used, I know mines in Virginia and southern West Virginia where we have found those kind of concerning issues.

So as we look forward, what next steps could be taken as far as other tools to remedy that, I think is something that is very worthwhile looking at, and I think at least in the Byrd bill there are some provisions that try to address that. One of them is the—increasing the attention on criminal actions that could be taken at the end of the day.

Ms. WILSON. Another point I would like to bring up during this hearing: MSHA has accumulated or referred approximately $72 million in delinquent fines to the Treasury Department. The Robert C. Byrd mine safety bill that was filed yesterday gives MSHA a new tool to address this problem. It authorizes MSHA to issue a withdrawal order to order miners out of the mine if fines are not paid within 180 days of a final order or a payment plan has not been put into place.

What is your view about this approach?

Mr. MAIN. A tool like that, with the Wilberg mine that I talked about earlier, would probably change the attitude of that mine operator and it would require them to—it would put them on notice that the violations that you accrue putting miners in danger, you are going to be held accountable for them, which otherwise left the mine just to rack up violations, not pay any fines, and leave. So yes, that is a tool that would be helpful there.

Ms. WILSON. You touched on it a bit but I would like for you to go into detail about the inexperience of mine inspectors and how budget cuts factor into that. And what caused this problem that MSHA had so many inexperienced inspectors? Did this allow violations to go undetected?

Mr. MAIN. So I think we are in much better shape today, as far as the experience of our inspectors, than we were back in, you know, 2010. And it is something that we are very concerned about trying to shift whatever resources we can to make sure that we keep our inspectors hired up.

If you do slip back to where we were back in 2000—probably about 2009 would have been more difficult, and even 2010, when I think there was a hiring that took place of about 170 coal inspectors around 2007 that were added to the mix that were not eligible inspectors for about two years. So if you look back into that era, you have got to be concerned about not getting there again.

Ms. WILSON. Thank you.

Chairman WALBERG. I thank the gentlelady.

Now I recognize the gentleman from Virginia, and I guess the representative of Assistant Secretary Main as well, Mr. Brat.

Mr. BRAT. Yes. Thanks for being here today.

I have no questions so I am going to yield back to my Chairman. Thank you.

Mr. MAIN. If I could just make a comment, I live in—north—just right on—north of Lake Anna——

Mr. BRAT. Oh, very good.

Mr. MAIN [continuing]. So this is my congressman.

Mr. BRAT. I was told and thank you for being here today.

And I yield back my time to the chairman.

Chairman WALBERG. Gentleman yield to——

Mr. BRAT. Yield my time to the chairman.

Chairman WALBERG. I thank the gentleman.

Mr. Main, when MSHA finalized the respirable coal dust regulation it expanded the NIOSH standards for occupational exposure to respirable coal dust by making significant changes to the medical surveillance program.

Did you consider implementing a mandatory medical surveillance program? And I guess the follow up to that was, what are some of the issues that would need to be considered with respect to implementing such a program?

Mr. MAIN. So I think in the record you are going to find that there was probably pros and cons about, you know, the mandatory medical—is that the issue that we are——

Chairman WALBERG. Yes. The mandatory medical surveillance——

Mr. MAIN. So yes, and coming from a mining culture that I did, and with the issue of black lung benefits, and with the issue of miners afraid that they may not get hired at mines, there has been for years an apprehension that I have seen, you know, outside of all this of concerns about a mandated chest x-ray that a mine operator may get to see. And it has been an issue that has been around for quite some time.

I think in a record there was expression of folks that we should have this as a mandatory requirement. There was recommendations that it should not be. At the end of the day, I chose to leave the law where it was at.

Chairman WALBERG. Okay.

Take a little bit of time—and it is impressive, the amount of time you and Kevin and your team have spent going out to stakeholders, going out to the mines, meeting with people. Just talk a little bit about what you have seen on the other side of—well, not on the other side of ledgering—cooperation with the industry itself and the stakeholders, specifically mine operators, mine owners, in developing best case—best practices in the mining operation, working with their miners who, you know, as I have had an opportunity to meet with miners myself, impressive that every day they go to work and do a job that many of us wouldn't do, and yet they enjoy doing it. They want to do that. That is their life.

Talk to us a little bit about what you have seen in industry as best practices, what they are attempting to roll up their sleeves and bring about mine safety.

Mr. MAIN. So about every mine I go to—and I spend a lot of time at mines; that is my favorite place with this job—but if you just go out and see where the rubber is meeting the road and what is going on, I think it plays into this narrative that the statistics tells us that we are seeing a cultural change of improvement in mine safety.

I was at the—we took Secretary of Labor Perez to the Cumberland Mine in Pennsylvania, sit down and talk to folks. This was a mine that has been able to operate steadily in the Pittsburgh Seam, and they attribute their labor management, you know, dialogue and communications and working together as their success story.

The next day we were at the Emerald Mine looking more at the technological changes at that mine. It is a sister mine to Cumberland. And we got to see one of the most innovative rock dusting systems that the miners working for management created, and may be on my website soon; they just sent it to me so I could show it.

I saw probably some of the best state-of-the-art dust controls on the long wall that was designed by the miners that worked on that long wall, in conjunction with management, with the manufacturer, I think, in Germany, that they were able to develop that has them not worried about, you know, the MSHA dust standard because of the work they have done.

I was just at two quarries out in California about two weeks ago, one of them been in operation since—for 100 years. And I believe this was the one that as far back, we could never find they had a

lost-time accident. I went to another quarry that afternoon and had, I think, one since 2004.

I said, "What is your secret of success here?" They empower the workers, have a good dialogue with the workers, and our training is minimal training to them, in terms of how they train folks up.

I was at a coal mine in Alabama, one of the deepest in the country, the Jim Walter No. 7 mine, a few months ago. And when you look at transfer points in coal mines where the coal comes and dumps, you have a lot of spillage, you have a lot of dust. This was one of the cleanest ones I ever seen.

They reengineered their whole transfer point to where it is worker friendly—you don't have to take a shovel in; you could take a water hose—and the way they designed it to—I mean, these are the kind of things—the Leeds cement plant I was in Alabama, 100-year-old cement plant on its last leg, had all kinds of safety and injury problems. New management came in, management, the Steelworkers who represented the workers there, got together with our local MSHA office. And when I was there I got to see the benefits of a success story where that 100-year-old cement plant was able to go from the bottom of the barrel, about ready to not be around anymore in this economy, to one of the better plants that the company had.

So, you know, there are a lot of things that are going on out there that we are trying to get these best practices sort of like embedded through the industry. And, of course, the one of the proximity detection, if it wasn't for companies like Alliance, CONSOL, that spent the energy and money to build our proximity system to where it is at, we probably would have a more difficult time putting those rules in.

Chairman WALBERG. Well, I appreciate that and your testimony. Thanks for taking the time to join us here. It has been a good update, and I am sure we have other questions, but that will come at a time.

I now recognize my colleague and ranking member, Ms. Wilson, for her closing statement.

Ms. WILSON. Thank you, Mr. Chair.

Very, very quickly, Mr. Chairman, I want to thank you again for holding this hearing and giving all of us an opportunity to hear about the reforms MSHA is undertaking and how we here in Congress can support MSHA in its efforts to increase mine safety. This was very enlightening to me, and I appreciate all of your testimony, Honorable Mr. MAIN.

I also want to thank our witness, Assistant Secretary Joe Main, for his testimony today, which I just did.

You were fantabulous. This is new to me, and I really learned a lot just hearing your testimony and begin exposed to all of the questions today. I feel we are on the right track and I look forward to working with you in the future.

As we have heard, since the tragedy of Upper Big Branch MHSA has taken substantial steps to better protect the safety of our miners, and that is what our committee is all about. These reforms include beginning monthly impact inspections and finalizing rules that prevent black lung disease and crushing injuries.

We applaud the work that has been done and the reforms that have been made. Last year, fatalities in coal mining dropped to 16, the lowest levels in years.

However, we cannot forget that the preventable tragedy in Upper Big Branch took place a year after mine fatalities also hit record lows. We also cannot forget that last year metal-nonmetal mining fatalities reached a seven-year high.

This reminds us that we must continue to be diligent. We here in Congress must ensure MSHA has the tools and funding it needs to check the mine operators that disregard the safety of miners. We are the Workforce Protections Subcommittee.

And the *Robert C. Byrd Mine Safety Protection Act* provides MSHA with those much-needed tools, including expanded subpoena power.

I hope, Chairman Walberg, that you and I can discuss legislation that gives MSHA expanded subpoena power. I look forward to working with you on this issue, and I yield back the balance of my time. Thank you.

Chairman WALBERG. I thank the gentlelady. And we will certainly continue to work together in the best way possible where we meet necessary concerns.

Again, Assistant Secretary Main, thank you for the work you do. Thanks for paying attention to our concerns, answering questions.

And thank you for being out amongst the field. I know you enjoy being there, and that is a good thing.

I think our concerns today are the fact that yes, we do, as has been mentioned by my colleague, we have a record now of success. We have safety that has been offered.

The 16 deaths—or the 38 deaths, I guess, that you mentioned, last year cannot be discounted. And yet, the continued improvement that we have seen in the last several years has evidenced something that we ought to applaud and celebrate and build upon.

I would just encourage continued working with the mining industry themselves on pattern of violation issues of concern, making sure that the clarity is there. I mean, the efforts that have been undertaken to deal with proximity detector regulations I think has shown how important and valuable and productive it is in working hand-in-hand with the industry itself.

We have heard support from the industry on what has gone on there. I think that support is offered and will continue as you expand proximity detectors in other equipment and machine operations.

Having stood next to and between the wall and the continuous mining machine, which is an awesome machine, from my uneducated evaluation, I can see why there is a need there. And yet, to hear that industry is producing and developing that is something that says that there has to continue being a teamwork aspect.

Training and best practices—having been on site at some of the industry-provided training centers, that can be helpful not only for mining operations in this nation but also worldwide. The impact that could have, again, comes from the private sector and working in partnership—public—federal government working with the private sector. I think that can be extremely positive.

And then the funding area. As we look at the funds that have been used for the coal mining operations and the decrease in coal mining operations, which personally I would like to see that slide stop because there are jobs and there are people that depend upon those mining operations, and I think energy in our country and the world depend upon that, as well.

Yet, we have seen dollars go there that could have gone to the metal-nonmetal operations, and I appreciate the testimony you have given about reconsidering and looking at that and shifting dollars to meet those needs.

So I guess in conclusion I would say I think from what I have heard today versus what I heard several years ago, there have been successes. There have been improvements. And that continues.

The concern that I will continue to express—maybe not so much a concern, but a direction from this subcommittee—is to make sure that we work hand in hand, a partnership with business and industry as well as with the regulator to make sure it is a partnership that promotes success and long-term growth in this industry.

Having said that, I thank you again.

I thank my colleagues for your attention to this hearing.

And with no other concerns that come before the Committee at this time, it is adjourned.

[Additional submission by Mr. Rokita follows:]

Stakeholder Partnership Initiative

Contacts	Contact Date	State	Organization/Association
1	2/18/15	Alabama	Bevill State (state Grant)
1	2/23/15	Alabama	Alabama Coal Association
3	10/29; 11/04; and 11/06/14	Alaska	Alaska Miners Association
2	10/29; and 11/04/14	Alaska	Associated General Contractors of AK
1	10/29/14	Alaska	Alaska Geological Society
2	10/29/14; and 11/03/14	Alaska	Alaska Coal Association
1	11/04/14 .	Alaska	Resource Development Council for Alaska, Inc.
2	11/04; and 11/06/14	Alaska	Alaska Department of Natural Resources
2	11/04; and 11/06/14	Alaska	Hecla Greens Creek Mining Company
1	10/16/14	Arizona	Arizona Rock Products Association
1	12/3/14	Arizona	Office of Arizona State Mine Inspector
1	11/18/14	Arizona	Arizona Mining Association
1	12/16/14	Arizona	Navajo Nation Minerals Department
1	1/22/15	Arizona	Navajo Tribal Council
1	10/20/14	Arizona	Pipe Fitter's Union Local #469
1	10/20/14	Arizona	International Brotherhood of Electrical Workers Local #518
1	10/20/14	Arizona	United Steelworkers Local #915
1	10/21/14	Arizona	International Association of Machinists Local # 519
1	10/28/14	Arizona	United Steelworkers Local #937
1	10/28/14	Arizona	International Union of Operating Engineers Local # 428
1	11/4/14	Arizona	Boilermakers Local #627
1	12/2/14	Arizona	Boilermakers Local #361
1	3/2/15	Arkansas	Arkansas Department of Labor (state grant)
1	10/28/14	California	California Construction and Industrial Materials Association (CalCIMA)
1	12/16/14	Connecticut	Connecticut Asphalt & Aggregate Producers Association
1	3/19/15	Florida	Florida State Grant
1	11/9/14	Florida	Florida Concrete and Products Association
1	11/12/14	Florida	Florida Limerock & Aggregate Institute
1	2/23/15	Georgia	Oconee Fall Line Technical College
1	3/10/15	Georgia	Chattahoochee Technical College
1	2/20/15	Georgia	Georgia mining Association
1	2/18/15	Georgia	Eberton Granite Association
1	2/27/15	Georgia	Oconee Fall Line Technical College
1	10/27/14	Idaho	Idaho Mining Association
1	10/24/14 .	Idaho	Crescent Silver, LLC Cresent Mine
1	11/04/14 .	Idaho	Idaho AGC
1	11/07/14 .	Idaho	U. S. Silver - Idaho, Inc.

Stakeholder Partnership Initiative

Contacts	Contact Date	State	Organization/Association
1	1107/14 .	Idaho	Hecla Limited Lucky Friday Mine
2	10/24; and 11/07/14.	Idaho	Hecla Silver Valley, Inc. Star Mine
2	10/24; and 11/07/14	Idaho	Placer Mining Corporation Bunker Hill Mine
2	10/24; and 11/07/14	Idaho	Silver Opportunity Partners, LLC Sunshine Mine
1	12/9/14	Illinois	Illinois Aggregate Producers Assc.
1	11/3/14	Indiana	Indiana Mineral Aggregates Association
1	11/3/2014	Indiana	Indiana Mineral Aggregates Association
1	12/9/14	Iowa	Iowa Limestone Producers Association
1	10/24/2014 3/12/2015	Kentucky	Kentucky Coal Association
1	10/14/14	Kentucky	Kentucky Crushed Stone Association
1	12/3/2014	Kentucky	Kentucky Coal Operators Association
1	*3/11/2015*	Kentucky	Kentucky Laborers' Joint Apprenticeship & Training Trust Fund
1	11/6/2014	Kentucky	USWA - Southern
1	11/6/2014	Kentucky	USWA - Southern
1	10/27/2014	Kentucky	UMWA- 1793
1	10/28/2014	Kentucky	UMWA- 2470
1	11/5/2014	Kentucky	UMWA
1	10/23/2014	Kentucky	USWA
1	11/5/2014	Kentucky	USWA
1	10/29/2014	Kentucky	USWA
1	10/29/2014	Kentucky	USWA
1	11/5/2014	Kentucky	USWA
1	11/29/2014	Kentucky	USWA
1	10/28/2014	Kentucky	USWA
1	10/28/2014	Kentucky	USWA
1	12/3/2014	Kentucky	USWA
1	11/4/14	Louisiana	Concrete and Aggregates Association of LA
10	11/19/14-Ongoing	Maine	Maine Aggregate Association
1	12/3/2014	Maryland	Maryland Transportation Builders & Materials Association
1	12/9/2014	Maryland	Local Union #307
1	12/9/14	Massachusetts	Massachusetts Aggregates and Asphalt Producers Associations
1	12/8/2014	Massachusetts	Dept. of Labor Standards(state grants)
1	10/1/2014	Michigan	Michigan Aggregates Association
1	10/21/2014	Michigan	Detroit Diesel Corp.
1	10/29/2014	Michigan	Coal Ash Asso.
10	1/28/2015/ongoing	Michigan	Local 324 JATF
1	10/9/14	Minnesota	Aggregate and Ready Mix Association of Minnesota
1	4/14/15	Mississippi	Mining and Reclamation Division (state grant)

Stakeholder Partnership Initiative

Contacts	Contact Date	State	Organization/Association
1	10/21/14	Mississippi	Mississippi Manufacturers Association
1	12/9/14	Missouri	Construction Industry Laborers
1	10/22/2014	Minnesota	Iron Range Resources and Rehabiliation Board
1	10/1/2014	Minnesota	USWA Local 6115
1	10/9/2014	Minnesota	USWA Local 1938
1	10/9/2014	Minnesota	USWA Local 2660
1	10/14/2014	Minnesota	USWA Local 460 and 460G
1	10/20/2014	Minnesota	IUOE Local 49
1	10/20/2014	Minnesota	USWA Local 2705
1	12/4/2014	Minnesota	IUOE Local 139
1	4/20/2015	Minnesota	Minnesota Mine Safety Association (MMSA)
1	Fall 2014/ongoing	Montana	Montana Mining Association
1	12/10/2014	Nevada	Southwest Carpenter's Training Fund MSHA ID# A3358
1	10/28/14	Nevada	Nevada Mining Association
1	12/4/2014	New Hampshire	National Safety Council of New England
1	10/17/14	New Mexico	New Mexico Mining Association
1	11/3/14	New Mexico	New Mexico Bureau of Mine Safety
1	10/14/14	New Mexico	International Union of Operating Engineers, Local #953
1	11/14/14	New York	New York Construction Materials Association
1	11/14/14	New York	NY DOL (grantee)
		North Carolina	North Carolina Aggregates Association
1	3/27/2015	North Carolina	North Carolina Aggregate Association
1	10/30/2014	Ohio	Ohio Coal Association
1	10/27/2014	Ohio	Ohio Dept. of Natural resources
1	11/13/2014	Ohio	Ohio Aggregates & Industrial Minerals Association
1	11/18/2014	Ohio	Operating Engineers Local 18
1	10/30/2014	Ohio	Operating Engineers Local 18
1	10/27/2014	Ohio	Upper Ohio Valley Labor Council
1	10/29/2014	Ohio	Teansters Local 436
1	3/11/2015	Ohio	USW Local 1966
1	2/25/2015	Oklahoma	Oklahoma Miner Training Institute (State Grant Program) Eastern Oklahoma State College Wilburton, OK
1	10/8/14	Oklahoma	Oklahoma Aggregates Association
1	10/29/14	Oklahoma	Oklahoma Aggregates Association
1	12/2/14	Oklahoma	Oklahoma Department of Mines
1	3/11/2015	Oklahoma	Kiamichi Technology Center
1	3/25/2015	Oklahoma	John Deere Equipment Co
1	12/18/14	Oregon	Oregon Independent Aggregate Association
2	4/22 & 23/2015	Pennsylvania	UMWA International Union.

Stakeholder Partnership Initiative

Contacts	Contact Date	State	Organization/Association
1	10-23-14.	Pennsylvania	UMWA International
1	10/29/2014	Pennsylvania	Ironworkers Local 404
1	3/10/2015	Pennsylvania	United Steel workers International Convention
1	3/10/2015	Pennsylvania	United Steel Workers International
2	10/21/2014 12/11/2014	Pennsylvania	PAAggregates & Concrete Association (PACA)
1	10/30/14	Pennsylvania	Independent Miner's and Associates
1	12/5/14	SD	AGC Associatin of General Contractors
1	3/2/15	South Carolina	Mining Association of South Carolina
1	10/28/14	Texas	Texas Mining and Reclamation Association
1	10/28/14	Texas	Texas Aggregates and Concrete Association
1	10/8/14	Texas	Internatioal Brotherhood of Electrical Workers, District 7
1	10/15/14	Texas	IBEW, Local #520
1	11/4/14	Texas	IBEW Local #738
1	11/4/14	Texas	IBEW Local #2078
1	11/13/14	Texas	IBEW Local #2337
1	12/15/14	UT	Utah Mining Association
1	11/6/2014	VA	
1	12/3/2014	Vermont	AGC-VT Vermont State Grants
3	10/29; 11/04; and 11/05/14	Washington	Washington Aggregates & Concrete Association
1	10/29/14	Washington	American Exploration and Mining Association (formerly Northwest Mining Assoc)
1	11/04/14 .	Washington	Washington Department of Natural Resources - Mining Regulation Programs
1	11/6/2014	West Virginia	UMWA International
1	10/9/2014	Wisconsin	Association of Equipment Manufacturers
1	11/14/14	Wisconsin	Aggregate Producers of Wisconsin
1	12/9/14	Wisconsin	IUOE Local 139
1	12/18/14	Wisconsin	Operating Engineers Local 139
2	10/9/2014 11/-5/2014	WY	Wyoming Mining Association

[Questions submitted for the record and their responses follow:]

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August 12, 2015

The Honorable Joseph A. Main
Assistant Secretary
Mine Safety and Health Administration
201 12th Street South
Arlington, VA 22202

Dear Assistant Secretary Main:

Thank you for testifying at the April 23, 2015, Subcommittee on Workforce Protections hearing entitled "Protecting America's Workers: An Enforcement Update from the Mine Safety and Health Administration." I appreciate your participation.

Enclosed is an additional question submitted by a subcommittee member following the hearing. Please provide written response no later than August 27, 2015, for inclusion in the official hearing record. The response should be sent to Loren Sweatt of the Committee staff, who can be contacted at (202) 225-7101.

Thank you again for your contribution to the work of the Committee.

Sincerely,

TIM WALBERG
Chairman
Subcommittee on Workforce Protections

Questions for the Record
"Protecting America's Workers:
An Enforcement Update from the Mine Safety and Health Administration"
Subcommittee on Workforce Protections
April 23, 2015

Questions from Ranking Member Bobby Scott (VA-3):

1. The Robert C. Byrd Mine Safety Protection Act of 2015 (H.R. 1926) was reintroduced on April 22, 2015. At the April 23, 2015 hearing you discussed the value of the additional investigation and enforcement tools that this legislation provides to MSHA in several areas. Could MSHA provide an analysis of the legislation as it impacts miners' safety and whether this legislation fills gaps in MSHA's authorities?

U.S. House of Representatives
Committee on Education and the Workforce, Workforce Protections Subcommittee
Hearing on "Protecting America's Workers: An Enforcement Update from the Mine Safety and Health Administration"
April 23, 2015
Questions for the Record

Ranking Member Scott (VA)
The Robert C. Byrd Mine Safety Protection Act of 2015 (H.R. 1926) was reintroduced on April 22, 2015. At the April 23, 2015 hearing you discussed the value of the additional investigation and enforcement tools that this legislation provides to MSHA in several areas. Could MSHA provide an analysis of the legislation as it impacts miners' safety and whether this legislation fills gaps in MSHA's authorities?

Response: In the past, MSHA has worked with Congress and provided technical assistance, and I have testified before this Committee regarding legislative efforts to strengthen the Mine Act to improve miner safety and health. The following are areas where Congress could clarify and fill gaps in MSHA's existing authority that would have a meaningful impact on miner safety and health: increasing criminal penalties, issuing withdrawal orders to hold accountable mine operators who fail to pay debts, improving contractor reporting, strengthening the agency's ability to respond to accidents to protect miners, and enhancing existing subpoena authority.

Section 303 of the Byrd Bill would increase criminal penalties, including providing for felony actions for repeat offenders and those who give advance notice of inspections with intent to frustrate an MSHA inspection. The Mine Act's criminal provisions do not currently provide an adequate deterrent to prevent the most egregious conduct. This was best explained by the federal judge who presided over the Crandall Canyon criminal case when he stated: "My initial take on this [plea deal] is outrage at the miniscule amount of penalty."

Section 305(b) of the Byrd Bill would provide MSHA with an effective new tool to hold mine operators accountable for not paying their delinquent debts. The legislation would enhance MSHA's enforcement and scofflaw program by allowing the Agency to issue a withdrawal order at any mine where the operator has failed to pay or agree to a payment plan within 180 days after the civil penalty became a final order.

Section 104(c) of the proposed legislation would make explicitly clear in the statute that independent contractors are responsible for reporting accidents, occupational injuries and illnesses, and man-hours to MSHA for each mine for the miners under their authority. This would help MSHA obtain additional information about independent contractor activities at mine sites, thus providing a fuller picture of a mine's safety and health record. Moreover, this change is important given the recent increase in contractor fatalities in the metal and nonmetal mining industry.

When an accident occurs at a mine, section 103 of the Mine Act, in addition to preventing the destruction of evidence relevant to any accident investigation, authorizes MSHA to take certain actions, including issuing orders to protect the safety of any person in the mine. Section 104(c)

of the proposed legislation would strengthen MSHA's ability to respond to accidents by clarifying that the Agency has the authority to issue these types of orders irrespective of whether an inspector is physically present at the mine where the accident occurred. Such a clarification is called for because the extent of MSHA's authority has been a matter of dispute. Furthermore, such a clarification would better protect miners, especially given the distances and time it takes for some MSHA personnel to be physically present at the mine site. The need for such a clarification has been noted by the Department of Labor's Inspector General[1], including in the Inspector General's most recent Semiannual Report to Congress.[2]

Under the Mine Act, MSHA's subpoena authority to compel witness testimony is limited to public hearings associated with accident investigations. It is often essential—as it was during the Upper Big Branch investigation—for MSHA to get all necessary evidence as soon as possible after an accident and before a public hearing can be held. MSHA has needed to rely on the authority of state mining agencies, like the one in West Virginia, to subpoena witnesses outside of public hearings. Given these limitations, MSHA could conduct more effective inspections and investigations with enhanced subpoena authority.

Subpoena power would allow MSHA to require witnesses to speak with MSHA, although it is true that some may exercise 5th Amendment rights and decline to provide information. Subpoena power would allow MSHA swifter and surer access to information by virtue of the enhanced enforcement authority afforded by subpoenas. A subpoena may be enforced in court through the court's contempt power.

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[1] "We recommend that MSHA take immediate action, to include seeking legislative changes if necessary, to resolve the conflict between its existing practice and the language in Section 103(k) of the Mine Act that requires an inspector to be present to issue a closure order." Memorandum from the U.S. Department of Labor Office of Inspector General to the Mine Safety and Health Administration (Jan. 9, 2009) available at http://www.oig.dol.gov/public/reports/oa/2009/05-09-002-06-001.pdf.

[2] "[T]he OIG recommends a technical review of the existing language under Section 103(k) to ensure that the Mine Safety and Health Administration's (MSHA's) long-standing and critically important authority to take whatever actions may be necessary to protect miner health and safety, including issuing verbal mine closure orders, is clear and not vulnerable to challenge." U.S. Department of Labor Office of Inspector General, Semiannual Report to Congress: October 1, 2014-March 31, 2015, at 42, available at https://www.oig.dol.gov/public/semiannuals/73.pdf.

[Whereupon, at 10:31 a.m., the subcommittee was adjourned.]

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