

**STATEMENT OF RICHARD E. STICKLER
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BEFORE THE
SUBCOMMITTEE ON EMPLOYMENT AND WORKFORCE SAFETY
COMMITTEE ON HEALTH, EMPLOYMENT, LABOR AND PENSIONS
UNITED STATES SENATE**

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Chairwoman Murray, Senator Isakson, and other Members of the Subcommittee, thank you for the opportunity to share with you the many changes and enhancements we are making at the Mine Safety and Health Administration (MSHA) including nearing completion of our implementation of the Mine Improvement and New Emergency Response Act of 2006 (MINER Act or “the Act”).

Since I arrived at MSHA, I have been focused on improving the way MSHA approaches its core mission of protecting the safety and health of our nation’s miners.

The MINER Act was the first major change to the Federal Mine Safety and Health Act in 30 years. In the last two years since the MINER Act was signed into law, MSHA has worked diligently to implement the Act and to improve the overall safety and health of our nation’s miners.

For example, MSHA has:

- Published six final rules in the *Federal Register*;
- Issued an Emergency Temporary Standard;
- Proposed four additional rules.

MSHA also has implemented changes and policy clarifications for MSHA employees and mine operators through more than 75 Program Information Bulletins (PIBs), Program Policy Letters (PPLs), or Procedure Instruction Letters (PILs). Many of these changes are a result of the MINER Act, but we have also revised policies and procedures that are not covered by the MINER Act.

We have concluded three major accident investigations and related internal reviews. MSHA has made improvements to our inspection and training procedures by taking action on all 153 recommendations derived from these internal reviews. We are planning a follow-up meeting in November 2008 for all managers and supervisors in our Coal division to review progress and to update the training they received on these 153 items in July 2007.

We are also nearing completion of our accident investigation regarding Crandall Canyon and are awaiting the accident report, as well as the Independent Review team’s report on MSHA’s actions at Crandall Canyon.

We have improved our hiring practices to address staffing issues due to attrition and retirements. Since June 2006, we have hired 322 coal enforcement personnel, and the

majority of the hires made in FYs 2006 and 2007 are on track to complete their training and receive their AR cards by the end of this fiscal year. While the net increase, due to attrition, is 163 additional inspectors, the overall number of coal enforcement personnel is at its highest level since 1994.

We have strengthened and updated our citation and penalty structure. While the amount of penalties is not a measure of our success as an agency, penalties are a critical enforcement tool in ensuring compliance with the law and regulations.

Nationwide, between FYs 2003 and 2007:

- The number of citations and orders issued to coal mine operators increased by 42%.
- The rate of citations and orders issued per coal mine inspection hour increased by 62%.
- Elevated enforcement at coal mines, including unwarrantable failures (high negligence) and imminent danger orders, increased by 98%.

The ultimate measure of MSHA's success is in how well we protect miners from harm. While we recognize more work needs to be done, the trends are encouraging. The coal all-injury rate, which is the reported injuries per 200,000 employee work hours, declined 24% between FYs 2003 and 2007.

Recently MSHA received a separate report from the Department of Labor's Office of Inspector General (OIG), as well as a report on conclusions made by the Senate Health, Education, Labor, and Pensions Committee, relating to the Crandall Canyon tragedy. We also received an unrelated report on the separate issue of Emergency Response Plans from the Government Accountability Office (GAO). Although it would be inappropriate to go into depth about the findings of the two reports on the Crandall Canyon accident before the official MSHA accident investigation team has made its report, I want to report to the Subcommittee that MSHA has already begun to implement reforms to address all of the recommendations, including some reforms that were already in progress before receiving the reports.

For example, MSHA has been working closely with the Department of the Interior's Bureau of Land Management (BLM) since September 2007 and developed a Memorandum of Understanding (MOU) with BLM to facilitate the communication of information on geological conditions or mining practices that impact the health and safety of miners. In response to the OIG and GAO reports, MSHA immediately began to create a more uniform and formal set of criteria for all Districts to use when approving roof control plans and emergency response plans.

Implementation of the MINER Act

Implementation of the MINER Act has been a top priority for MSHA since the Act was signed into law two years ago. We have made significant progress, which I outline below by section of the Act.

SECTION 2 - EMERGENCY RESPONSE

A major component of the MINER Act is the requirement for each underground coal mine operator to have an Emergency Response Plan (ERP). In March 2006, three months prior to the MINER Act being signed into law, MSHA issued an Emergency Temporary Standard (ETS) on emergency mine evacuation. We published subsequent guidance specifically addressing ERPs in October, and issued a final rule in December 2006. Highlights of the final rule include:

- *Self-Contained Self-Rescue (SCSR) Devices:* The rule requires coal mine operators to provide additional SCSRs for each miner in areas such as underground working places, on mantrips, in escapeways, and where outby crews work or travel. The rule also requires that SCSRs be readily accessible in the event of an emergency.
- *Multi-Gas Detectors:* The rule goes beyond the requirements of the MINER Act by requiring coal mine operators to provide multi-gas detectors to miners working alone and to each group of miners.
- *Lifelines:* The rule requires coal mine operators to install directional lifelines in all primary and alternate escape routes out of the mine. Lifelines help guide miners in poor visibility conditions toward evacuation routes and SCSR storage locations. In accordance with the MINER Act, lifelines must be fire-resistant by June 15, 2009.
- *Training:* The rule requires coal mine operators to conduct quarterly training for miners in how to don SCSRs and especially how to transfer from one SCSR to another at a cache location. SCSR training units for annual expectations training have now been developed. On March 30, 2007, MSHA published a notice in the *Federal Register* notifying mine operators that the units were available. Mine operators had to have a purchase order for these training units by April 30, 2007, and conduct training with them within 60 days of receipt of the units.
- *Accident Notification:* The rule requires all mine operators to “immediately contact” (i.e., at once without delay and within 15 minutes) MSHA after an accident.

I am pleased to announce that ERPs have been approved and are being implemented for all underground coal mines as specified in the Act, except where manufacturers of SCSRs and refuge chambers are unable to keep up with demand. As of June 9, 2008, there are 559 fully approved ERPs, and one partially approved ERP. The partially approved ERP was received within the last six months, and MSHA continues to work with mine operators to bring about full compliance. MSHA reviews each of these ERPs every six months and, where necessary, requires underground coal mine operators to implement improvements.

In February 2007, MSHA issued guidance to mine operators about acceptable options for providing breathable air in underground coal mines. Options included:

- Drilling boreholes within 2,000 feet of the working sections of mines;
- Having 48 hours of breathable air located within 2,000 feet of working sections coupled with contingency plans for drilling boreholes if miners are not rescued within 48 hours;
- Having 96 hours of breathable air within 2,000 feet of working sections or other options that provide equivalent protection.

We are also working on a Refuge Alternatives rule, which is discussed later, under SECTION 13 of the MINER Act.

In addition to post-accident breathable air, the ERPs must address post accident communications. The MINER Act requires mine operators to submit plans to install two-way wireless communications and electronic tracking systems by June 2009. In the meantime all mines have installed redundant communications systems as required by the MINER Act. As of May 28, 2008, MSHA has observed testing or demonstration of 49 communications and/or tracking systems at various mine sites. We have met with representatives from 62 communications and tracking system companies. To date, we have had discussions with various vendors regarding 168 different proposals for the development of mine communications and tracking systems.

MSHA is currently focusing resources on the evaluation of approval applications for communications and tracking technology. Since the beginning of 2006, we have issued 45 new or revised approvals for communications and tracking products. Last month, we issued a Program Policy Letter to establish approval guidelines for communications and tracking devices under the provisions of the MINER Act. We are currently investigating 48 approval applications for communications and tracking technology.

We are continuing to work with the Communications Partnership Working Group sponsored jointly by the National Mining Association and the Bituminous Coal Operators Association to arrange for demonstrations of additional systems. Should technology take longer to develop, the MINER Act allows for alternative means of compliance if the truly wireless technologies, meaning that no wired component of the system exists underground where it may be damaged by fire or explosion, are not fully developed by June 2009. MSHA is working with NIOSH and plans to provide guidance on performance-based criteria for acceptable technological alternatives by January 2009.

SECTION 4 - MINE RESCUE TEAMS

On February 8, 2008, MSHA published a final rule that implements Section 4 of the MINER Act by addressing composition and certification of mine rescue teams and improving their availability and training. The final rule increases training, as well as improves overall mine rescue capability, mine emergency response time, and mine rescue team effectiveness. Components of the final rule include:

- Requires a person knowledgeable in mine emergency response to be present at each mine on each shift and receive annual emergency response training using an MSHA-prescribed course.
- Requires two certified mine rescue teams for each mine and includes criteria for certifying the qualifications of a mine rescue team.
- Requires mine rescue team members to be available at the mine within one hour from the mine rescue station.

- Requires team members to participate in training at each mine serviced by the team (a portion of which must be conducted underground), and be familiar with the operations and ventilation of the mine.
- Requires team members to participate annually in two local mine rescue contests.
- Provides for four types of mine rescue teams: mine-site, composite, contract and state-sponsored.
- Requires annual training in smoke, simulated smoke or an equivalent environment.
- Increases required training from 40 to 96 hours annually.

SECTION 5 - PROMPT INCIDENT NOTIFICATION

MSHA addressed prompt notification in the Emergency Mine Evacuation rule published on December 8, 2006 and in the civil penalty regulations published on March 22, 2007. The new rule established a National Call Center with a toll free phone number for use in reporting mine accidents to MSHA at once without delay and within 15 minutes after an operator knows or should know that an accident occurred.

SECTION 7 - REQUIREMENT CONCERNING FAMILY LIAISON

On November 1, 2006, Secretary of Labor Elaine L. Chao signed Secretary's Order #17-2006 directing MSHA to develop the MSHA Family Liaison Program. MSHA issued PPL P06-V-11 on family liaison and primary communicator functions on December 22, 2006 implementing section 7 of the MINER Act. To date, MSHA has trained 21 family liaisons with the assistance of the National Transportation Safety Board and the American Red Cross.

MSHA has completed an exhaustive review and updated our Headquarters' Mine Emergency Response Procedures. Some new procedures are intended to improve coordination between the Family Liaison and Primary Communicator in addressing the needs of a miner's family following a mine accident. For example, all Districts are required to maintain Family Liaisons who are specifically trained to assist families in the event of an emergency. The Family Liaisons establish a 24-hour rotation schedule to ensure a continuing presence. They also coordinate with the Primary Communicator and interact with local officials. The Liaisons remain accessible to family members by telephone, cellular phone, e-mail, and conventional mail. Liaisons also maintain a log of all significant events.

Additionally, each MSHA District is required to maintain Primary Communicators to establish contact with and brief representatives of miners, the mine operator, media and state agencies. Primary Communicators also brief the Department of Labor's Office of Public Affairs and likewise maintain a log of all significant events. Another important improvement involved the efforts of network personnel from our Program Evaluation and Information Resources (PEIR) division who have enhanced MSHA's mobile voice and data communication capabilities with new satellite phones and enhanced coverage.

SECTIONS 5 & 8 - PENALTIES

After passage of the MINER Act, MSHA immediately implemented increased penalties for late accident notification and “unwarrantable failure” violations which are characterized by a high degree of negligence. On October 26, 2006, MSHA issued Procedure Instruction Letter (PIL) NO. I06-III-4 to implement the “flagrant” violation provision of the MINER Act. On March 22, 2007, MSHA published a final rule to increase civil penalty amounts for all mine safety and health violations. This rule goes beyond the requirements of the MINER Act and demonstrates MSHA’s commitment to strong enforcement. As of June 6, 2008, MSHA has already assessed 53 flagrant violations, seven of which were assessed fines at the \$220,000 maximum. These are the largest proposed penalties in the agency’s history. These actions have resulted in a doubling of civil penalties issued from \$35 million in Calendar Year (CY) 2006, to \$75 million in CY 2007.

As prescribed by the MINER Act, the final rule:

- Establishes a maximum penalty of \$220,000 for “flagrant” violations, as proposed in the President’s previous budgets.
- Sets minimum penalty amounts of \$2,000 and \$4,000 for “unwarrantable failure citations and orders.”
- Imposes a minimum penalty of \$5,000 (up to a maximum of \$70,000) for failing to notify MSHA within 15 minutes of a death or an injury or entrapment with a reasonable potential to cause death.

Other major provisions of the final rule applicable to all mine operators and contractors include:

- Significantly increases civil penalties overall by an estimated 179% using 2005 violation data – targeting the most serious safety and health violations with escalating penalties.
- Adds a new provision to increase penalties – notwithstanding the severity – for operators who *repeatedly* violate MSHA standards.
- Replaces the \$60 single penalty with higher formula assessments for non-Significant and Substantial (non-S&S) violations.

SECTION 10 - SEALING OF ABANDONED AREAS

On April 18, 2008, MSHA published a final rule replacing the May 22, 2007 ETS that increased protections for miners who work in underground coal mines with sealed off abandoned areas. Although Section 10 of the MINER Act gave MSHA until December 2007 to issue a new standard on mine seals, MSHA concluded that an emergency temporary standard was necessary in May 2007 to protect miners, based on MSHA’s accident investigations of the Sago and Darby mine explosions, in-mine seal evaluations, and reports on explosion testing and modeling. The final rule and ETS went beyond the MINER Act – which requires that the standard for mine seals be greater than the 20 pounds per square inch (psi) requirement established in 1992 – to include requirements to strengthen the design, construction, maintenance and repair of seals, as well as requirements for sampling and controlling atmospheres behind seals.

The final rule has a number of protections that will improve miner safety, including:

- Air sampling behind seals that are built to withstand less than 120 psi and withdrawal of miners when the atmosphere behind a seal is explosive.
- Removal of potential ignition sources from sealed areas. If insulated cables cannot be removed safely, the seal must be constructed to withstand at least 120 psi.
- A three-tiered approach as in the ETS, which requires additional seal strength where sealed atmospheres are more dangerous.
- Operator certification and recordkeeping requirements for: (1) sampling; (2) construction and repair of seals; and (3) training.
- Increased training for those involved in seal sampling, construction and repair.
- Requirements for certification of seal designs.
- Enhanced recordkeeping to demonstrate compliance.

Seal manufacturers and mine operators have six months to submit revised seal applications and ventilation plans, respectively, to comply with the final rule.

SECTION 11 - TECHNICAL STUDY PANEL

Section 11 of the MINER Act requires that MSHA respond to a report by the Technical Study Panel (Panel), within 180 days, containing a description of the actions, including regulatory changes, on the recommendations of the Panel. The Secretary established the Panel in accordance with the MINER Act. The Panel conducted an independent scientific engineering review, and issued its report on December 20, 2007, on the Utilization of Belt Air and the Composition and Fire Retardant Properties of Belt Material in Underground Coal Mining. On June 19, 2008, MSHA will publish in the *Federal Register* a proposed rule that implements the recommendations of the Panel.

SECTION 13 - RESEARCH CONCERNING REFUGE ALTERNATIVES

Section 13 of the MINER Act requires that MSHA respond to a research report by the National Institute for Occupational Safety and Health (NIOSH), within 180 days, containing a description of the actions, including proposing regulatory changes, on refuge alternatives in underground coal mines. NIOSH published its “Research Report on Refuge Alternatives for Underground Coal Mines” in January 2008. MSHA had a follow-up meeting with NIOSH on March 14, 2008. On June 16, 2008, MSHA published in the *Federal Register* a proposed rule to require that underground coal mines provide refuge alternatives to protect miners when a life-threatening event occurs that makes escape impossible. MSHA’s proposed rule is based on the Agency’s data and experience, recommendations from the NIOSH report, research on available and developing technology, and the regulations of several states.

Under the proposed rule, a refuge alternative would provide a protected, secure space with an isolated atmosphere that creates a life-sustaining environment to protect miners and assist them with escape in the event of a mine emergency. The proposed rule includes requirements that the manufacturer or third party test a refuge alternative and its components, such as breathable air and air monitoring, prior to obtaining MSHA approval. The proposed rule

allows the use of several types of refuge alternatives and requires that persons who examine refuge alternatives be trained.

SECTION 14 - BROOKWOOD-SAGO MINE SAFETY GRANTS

On July 25, 2007, MSHA published a *Federal Register* notice soliciting applications for Brookwood-Sago grants. In October 2007, MSHA awarded approximately half a million dollars in grants to seven organizations to develop new training modules and best practices materials to improve miner training. MSHA intends to once again issue these grants in the next fiscal year, with the solicitation for grant applications to be published this summer.

To date, MSHA has reviewed three of the grants and will continue to monitor the remaining four until they are completed. Those reviewed include:

- Vincennes University, where a program to improve communications in the command center during a mine emergency was developed and tested. We monitored a mine emergency exercise and received positive feedback from participants interviewed.
- The Virginia Department of Mines, Minerals and Energy who developed a responsible person training program to assist in the training of “responsible persons” as required in MSHA’s Mine Rescue Teams final rule, published earlier this year (February 8, 2008). We have reviewed their training materials and have determined that it supports our responsible person training requirement.
- Penn State University’s grant program focused in part, on improving escape in the event of a mine emergency. MSHA recently participated in and monitored a town hall meeting that brought together experts to share mine emergency escape best practices with the mining industry.

Post Crandall Canyon Ground Control Action

In addition to implementing provisions of the MINER Act, MSHA has worked steadily to improve the safety and health of our nation’s miners in other ways as well. Since the Crandall Canyon tragedy, MSHA has taken important actions aimed at improving safety at deep cover mines. These actions include the following:

Retreat Mining Plans. Last August, during the Crandall Canyon rescue effort we determined it was necessary to re-examine retreat mining plans under deep cover and mine plans in bump prone areas. We rescinded our approval of all retreat mining plans (other than longwall plans) for mines with cover depths of 1,500 feet or more in District 9 which has some of the deepest cover in the country. These mines were required to resubmit their mine plans to MSHA for re-evaluation.

Ground Control Investigations. We also conducted ground control investigations at 17 coal mines with identified bump prone conditions. These investigations were conducted by our Technical Support personnel beginning in August 2007 and

continuing through early February 2008. Recommendations stemming from these investigations addressed such important safety protections as: mine design to improve ground stability; a more thorough evaluation of geologic hazards; the use of personal protective equipment; the installation of guards on longwall face equipment; and the implementation of administrative controls to keep personnel out of high-risk or bump prone areas during the mining cycle.

Targeted Staff. In February 2008, MSHA detailed a Technical Support engineer to the District 9 Denver office to serve as the acting roof control supervisor pending selection of a new supervisor. The District 9 roof control supervisory position was permanently filled, effective June, 8, 2008.

Best Practices. In February 2008, MSHA posted on its Web site, www.MSHA.gov, a list of Best Practices addressing “Ground Control for Deep Cover Coal Mines.”

Ground Control Analytical Tools. To improve ground control analytical tools, MSHA has been working with researchers from NIOSH to determine how best to improve the Analysis of Retreat Mining Pillar Stability (ARMPS) computer program which was updated in December 2007. The ARMPS computer program is the most widely used program by ground control specialists to model and analyze pillar design during room and pillar retreat mining operations. MSHA recently issued a PIB concerning “Precautions for the use of the ARMPS computer program.” These precautions will provide guidance on the proper use of the ARMPS program.

Roof Control Plan Enhancements. To further strengthen roof control plans submitted to MSHA, we have instituted a comprehensive, national checklist for all plan submissions and reviews. We are asking mine operators to justify and provide to us detailed information for non-typical roof control plans and a process has been established to involve Technical Support in the review of non-typical and potentially problematic roof control plans. Our inspection personnel will visit all retreat mining sections at least monthly to evaluate the retreat mining plans and will assure that the plans are effective and that the miners are familiar with their plans.

Additional Training. MSHA provided training for 60 of its employees in November and December 2007 on ARMPS and another commercially available computer modeling program for roof and pillar stability. The commercial software program was purchased and installed in both Coal Mine Safety and Health and Metal and Non Metal districts, as well as in MSHA headquarters, and the Triadelphia and Pittsburgh Offices of Technical Support. MSHA and NIOSH are coordinating additional training for the future.

Reengineered Roof Control Plan Approval Process. MSHA has developed a revised roof control plan approval process that includes specific criteria and a detailed checklist to document the steps of the plan review and issued guidance to District Managers for the review of roof control plans specifying those plans that should also be reviewed by Pittsburgh Tech Support.

Comprehensive Enforcement

I believe that our recently implemented comprehensive approach to enforcement has greatly improved our effectiveness. This approach consists of increasing MSHA's presence at mine sites, improving the quality of each MSHA inspection, increasing the amount of penalties and aggressively going after scofflaw mine operators.

Through this comprehensive enforcement effort, MSHA has:

- Increased our number of enforcement personnel;
- Implemented a new inspection tracking system;
- Improved inspector training;
- Enhanced overall inspection quality; and
- Better utilized enforcement tools to aggressively deal with flagrant and repeat violators.

Since June 2006, we have hired 322 coal mine enforcement personnel. Once fully trained, I strongly believe the increased presence of these MSHA enforcement staff at the job sites will have a positive impact on mine safety and health.

To make sure MSHA has an increased presence at mining operations, and complies with the Mine Act's requirement for mandated inspections of both coal and metal/nonmetal mines, last October I announced the launch of MSHA's 100 Percent Inspection Plan. The successful implementation of this plan will mark the first time in the history of the Agency that we have completed all of our mandated regular safety and health inspections of both coal and metal and nonmetal mines. The Plan calls for the temporary reassignment of MSHA inspectors to areas where they are most needed, and it provides for increased overtime and travel needed to complete inspections until all of our new enforcement personnel who were hired in 2006 and 2007 have completed their training and are fully certified. We have developed a monthly Key Indicator report to track progress in each field office and District toward reaching the 100% completion rate. Since we instituted this program, I am pleased to say that all mandated regular inspections for the first half of the year have been completed (in both coal and metal and nonmetal), and we are firmly on target to meet our requirements moving forward.

We have also implemented changes to improve overall quality and oversight of our inspections. We developed a new inspection handbook that clearly defines all 172 items that must be inspected as part of a complete, regular underground mine inspection. The handbook was developed in response to MSHA internal reviews and also addresses concerns raised in a report by the OIG last November. Additionally, the handbook establishes documentation requirements for each item to be inspected, which will assist in the management and oversight of the process.

MSHA also developed an Inspection Tracking System (ITS) to supplement the inspection handbook. The ITS is fully integrated with the handbook and provides a uniform way for inspectors to document each item they inspect. Coal field office supervisors will be required to document that an inspection is thorough before it is counted as complete.

MSHA has also taken steps to improve the quality of inspections by strengthening supervisory and managerial oversight. Steps include the following directives:

- Supervisors are to accompany inspectors four times per month to evaluate whether inspections are complete.
- Supervisors are to annually visit each producing mine to assess the level of enforcement.
- Assistant district managers must visit a mine at least monthly to ensure enforcement activity is consistent with conditions at the mine.
- District Managers are to visit a mine with a poor compliance record at least monthly. These mines have citation records above the national average (for their mine type and classification) for Significant and Substantial (S&S) violations and elevated enforcement.
- Peer reviews and supervisory reviews must include an inspection of belt conveyor entries.
- Eleven Key Indicator reports we developed for review of critical data are to be used by managers and supervisors to monitor inspections and enforcement. Reports are distributed monthly and include a completion rate report.
- Headquarters Accountability review process was revised to evaluate District and Field Office inspection and enforcement activities. Headquarters is required to conduct a minimum of four Coal and two Metal/Nonmetal Districts reviews per year. These reviews are rotated to ensure that each District is reviewed, at a minimum, every three years.
- Performance plans of all supervisors and managers were revised to hold them accountable for using MSHA Key Indicators to direct resources, monitor and improve enforcement performance and quality, and ensure that the completion rate of all “complete” inspections is 100%.

Another component of the comprehensive enforcement approach is increasing penalties to a level that truly gets an operator’s attention. Monetary fines can not be thought of as “the cost of doing business.” The ability to impose a meaningful penalty is an essential component of our enforcement plan. MSHA has taken several actions toward that end.

We have also implemented several changes to improve our civil penalty payment process to streamline debt collection and make the process more efficient. I believe that this increased penalty structure will provide a greater incentive for operators to ensure that safety and health laws are followed, which will result in safer working conditions for miners.

We continue to be particularly aggressive with those mine operators who repeatedly violate MSHA standards. The Mine Act authorizes MSHA to issue a withdrawal order for each S&S violation after the mine operator has been given a pattern of violations notice. MSHA has instituted this pattern of violations process under the Mine Act to address mines with an inspection history of recurrent S&S violations that show a mine operator’s disregard for the health and safety of miners. MSHA developed a database and computer screening process to objectively identify those mines that may have a potential pattern of violations and has to date

sent out three rounds of notices to mines that exhibit a potential pattern of violations. The notices identified the potential pattern and contained a set of criteria and timeframes the operator had to meet in order to not be issued a pattern of violations notice.

The first round of notices was sent in June 2007 to eight mining operations. Seven of the operators met or exceeded the necessary criteria for reducing violation rates. They successfully and dramatically reduced their S&S violation rates - on average, by 50%, but we strongly encourage these operators to continue to improve their compliance record. The eighth operator has been inactive since July 2007.

In December of last year, we notified 20 additional mine operators that they met the criteria for potential pattern of violations. These mine operators all instituted corrective action plans and MSHA closely monitored their progress in reducing serious violations. The results were dramatic; with 20 mines reducing S&S violation rates an average of 65%. Although MSHA regulations require an annual screening of mines to identify those exhibiting a potential pattern of violations, the agency has performed its third screening since last June. The third screening identified 14 coal mines with notifications to the mine operators delivered on June 12, 2008.

These and other efforts to enhance enforcement under the Mine Act resulted in a 100% increase in the percent of violations contested by mine operators in CY 2007. At current contest rates, we expect the number of violations contested to continue to significantly increase. We continue to work with the Department's Office of the Solicitor to ensure that all these contests are handled thoroughly and timely, and that high priority enforcement cases involving flagrant violations, pattern of violations, fatal accidents and scofflaw operators are fully supported.

Assessments

Several months ago, MSHA discovered a systemic problem with the assessment of violations. While 99.6% of all citations have been properly assessed since 1995, less than one half of one percent were not assessed over this period of time. We identified two issues that led to the small percentage of un-assessed citations. The first was a technical issue with the MSHA Standardized Information System (MSIS). The computer system was erroneously changing the type of assessment for some violations from a computer-generated fine to one requiring a manual penalty assessment. The second was identified as management oversight deficiencies that, once discovered, were immediately addressed.

District Managers have been directed to immediately mark "assessment ready" all un-assessed violations that are between 13 and 18 months past the issue date and to monitor system reports to ensure that all future citations and orders are marked "assessment ready" within 11 months of the date of issuance.

Revisions have been made to the Un-assessed Violation Report which is now transmitted automatically each month to District Managers, Administrators, Director of Assessments, Deputy Assistant Secretaries, and the Assistant Secretary as a Key Indicator report.

Management and Oversight

We have also made important changes to hold ourselves to strict standards. MSHA's Accountability Program has been revised based on the internal review findings after the Sago, Aracoma, and Darby accidents and the findings of an August 2007 Audit by the OIG on the prior Accountability Program. Last June, I announced the creation of a new Office of Accountability (OA) that has been integrated into MSHA's overall Accountability Program approach and associated Handbook. The purpose of this office is to increase focused oversight and examination of existing enforcement programs within the agency. This new division conducts oversight reviews, including in-mine inspections, to ensure that management controls are in place and fully implemented to maintain consistent and effective enforcement policies and procedures, and to ensure the implementation of actions recommended as a result of MSHA audits and internal reviews. The Director of this office reports directly to the Office of the Assistant Secretary.

The Accountability Office has already audited MSHA oversight of five underground Coal mines in five districts and three MNM mines in two districts. The mines are selected through an analysis of the enforcement data, trends of injuries and the rate of violations written per day per inspector.

The audits focused on current "in mine" roof control conditions and plan adequacy, MINER Act ERP adequacy and enforcement of ERPs. On site inspection of self-contained self-rescuers (SCSR) maintenance and storage, and miner interviews about hands-on expectations training were conducted. Audit subjects included documentation of complete and thorough inspections of both underground and surface mines, and assessment of the level of enforcement and MSHA management oversight.

Other Rulemaking

In addition to the rulemaking required by the MINER Act and the other safety enhancements mentioned above, MSHA also issued a final rule on Asbestos Exposure Limits on February 29, 2008. MSHA is also working on a final rule addressing Mine Rescue Team Equipment and Fire Extinguishers in Underground Coal Mines. In addition, MSHA is working on a proposed rule on the Prohibition of and Testing for the Use of or Impairment from Alcohol and Drugs by Miners Working in Coal and Metal and Nonmetal Surface and Underground Mines. Finally, in an important non-rulemaking action, MSHA issued a notice of a practical sampling strategy concerning enforcement of the diesel particulate matter (DPM) final exposure limit at metal and nonmetal mines on May 20, 2008.

Conclusion

We have made significant changes and improvements to mine safety over the last two years. We look forward to continuing our efforts to bring about needed reforms at MSHA. Implementing provisions of the MINER Act and improving MSHA's effectiveness remain my top priorities.

Thank you for inviting me to testify today. I look forward to answering your questions and to working with this committee to continue to improve mine safety.