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OSHA / CONSTRUCTION

Michaels Recommends Higher Penalties and Improved Whistleblower Protections

Employers who ignore OSHA's rules and risk workers' lives should pay higher penalties, Assistant Secretary Michaels told Congress March 16. Michaels was on Capitol Hill giving testimony supporting the goals of the Protecting America's Workers Act (PAWA). "Safe jobs exist only when employers have adequate incentives to comply with OSHA's requirements. Meaningful penalties provide an important incentive to do the right thing," said Michaels to the House Subcommittee on Workforce Protections. Monetary penalties for violations of the OSH Act have been increased only once in 40 years.

Michaels offered a revealing disparity between OSHA penalties and those of other agencies: *In 2001, a tank full of sulphuric acid exploded at a refinery killing a worker and literally dissolving his body. OSHA's penalty was only \$175,000. Yet, in the same incident, thousands of dead fish and crabs were discovered, allowing an EPA Clean Water Act violation amounting to \$10 million — 50 times higher.*

"Unscrupulous employers who refuse to comply with safety and health standards as an economic calculus will think again if there is a chance that they will go to jail for ignoring their responsibilities to their workers."

During the testimony, Michaels shared the Department of Labor's views on the **Protecting America's Workers Act (PAWA)**, particularly the issue of enhanced penalties.

Until 1970 there was no national guarantee that workers throughout America would be protected from workplace hazards. In that year the Congress enacted a powerful and far-reaching law—the **Occupational Safety and Health Act of 1970 (OSH Act)**. The results of this law speak for themselves. The annual injury/illness rate among American workers has decreased by 65 percent since 1973, and while there are many contributing factors, the OSH Act is unquestionably among them.

However, good jobs are safe jobs, and American workers still face unacceptable hazards. More than 5,000 workers are killed on the job in America each year, more than 4 million are injured, and thousands more will become ill in later years from present occupational exposures. Moreover, the workplaces of 2010 are not those of 1970: the law must change as our workplaces have changed. The vast majority of America's environmental and public health laws have undergone significant transformations since they were enacted in the 1960s and 70s, while the OSH Act has seen only minor amendments.

The Administration strongly supports the goals of the **Protecting America's Workers Act (PAWA)**. Many provisions in the Act would enable OSHA more effectively to accomplish its mission to "assure safe and healthful working conditions for working men and women," which is also a key component of Secretary of Labor Solis' vision of **Good Jobs for Everyone**. Stronger OSHA enforcement will save lives.

We need to make employers **who ignore real hazards to their workers' safety and health** think again. **Swift, certain and meaningful penalties** provide an important incentive to **"do the right thing."** However, **OSHA's** current penalties are not large enough to provide **adequate incentives.**

Monetary penalties for violations of the **OSH Act** have been increased only **once** in **40 years** despite inflation during that period. **Negligent employers** often consider it more cost effective to **pay the minimal OSHA penalty** and continue to operate an **unsafe workplace** than to **correct** the underlying health and safety problem. **Current penalties** do not provide an **adequate deterrent.** This is apparent when compared to **penalties** that **other agencies are allowed to assess.**

PAWA makes much needed increases in both **civil** and **criminal penalties** for every type of violation of the **OSH Act** and would increase penalties for **willful** or **repeat violations** that involve a **fatality** to as much as **\$250,000.** These increases are **not inappropriately large.** In fact, **for most violations,** they raise penalties only to the level where they will have the **same value,** accounting for **inflation,** as they **had in 1990.** **OSHA penalties must be increased** to provide a **real disincentive** for employers **not to accept injuries** and worker deaths as a **cost of doing business.**

OSHA has not adjusted its own penalty formulas **over the last two decades.** Therefore, in addition to our **strong support** of the necessary statutory changes that **PAWA** would make to **OSHA's penalty structure,** we are planning to implement **long-overdue** internal changes in our penalty proposal policies.

Serious violations of the OSH Act that results in death or serious bodily injury **should be felonies** like insider trading, tax crimes, customs violations and anti-trust violations.

PAWA would amend the **OSH Act** to change the burden of proof from **"willfully"** to **"knowingly"**.....any employer who **"knowingly"** violates any standard, rule or order that results in the **death of an employee,** is subject to a fine **and** not more than 10 years in prison.

In addition to making much needed changes to the **OSH Act's** penalty provisions, **PAWA** would **cover all public employees.** There are more than 10 million Federal, State and local

government employees who **do not receive** the full range of protections from the **OSH Act.** According to 2008 BLS data, the **total recordable case injury and illness incidence rate** for state government employees was **21% higher** than the private sector rate. The rate for local government employees was **79% higher.** Clearly, **some public sector jobs** are **extremely dangerous.** Public employees **deserve** to be **safe on the job,** just as private-sector employees do.

Go to [testimony](#) for more information.

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**WE CAN HELP YOU REMAIN IN COMPLIANCE
AND AVOID UNNECESSARY PENALTIES.**

Michaels tells *Business Week*.... incomplete recordkeeping may be hiding worker injuries

An article in the March 11 issue of *Business Week* magazine, "[Caution: Stats May Be Slippery](#)," highlighted **OSHA** efforts to **ensure accurate recordkeeping** on worker injuries and illnesses. The article, **which featured interviews with workers and corporate safety representatives,** quoted Assistant Secretary of Labor for **OSHA** David Michaels' **concerns** that **safety achievements** may have been **exaggerated** at some industrial companies. Michaels revealed in the article that the **statistics OSHA has on workplace injuries are incomplete** and, in some cases, **inaccurate.** His **concerns** grew after a Government Accountability Office report last year **revealed that some workers don't report serious injuries** — such as broken arms and gashed legs — **out of fear of being fired.** The report also found that **some employers underreport worker injuries** to reduce their insurance premiums.

FMCSA DELAYS CSA 2010; Rollout Pushed back to November

FMCSA has been testing CSA (Comprehensive Safety Analysis program) in nine states, including Colorado, and said that in those states it will “carry out the full array of CSA 2010 interventions after the test concludes in June.” For the other 41 states, the new CSA interventions will be phased in next year, the agency said. That phase-in period is scheduled to take place during the spring and summer of 2011.

The **Federal Motor Carrier Safety Administration** said last week it is pushing back the start of its new safety monitoring system, CSA 2010, until late this year, to give itself time to respond to criticisms and suggestions, and give fleets time to fix safety deficiencies.

Full-scale, nationwide enforcement using the new system will be delayed until 2011, but the agency said carriers can begin reviewing data that it will use to target unsafe carriers, and will be able to view their relative rankings by August.

The Comprehensive Safety Analysis 2010 compliance measurement system was originally slated to go live in June. However, meetings with industry stakeholders and field testing have FMCSA considering changes to the methodology used to measure compliance with the federal regulations.

FMCSA officials confirmed that motor carriers would be able to preview CSA 2010 data from April 12 through July 31.

Beginning Aug. 1, the agency will begin using the system to assess the compliance of motor carriers with the regulations. The period for carriers to check their data is extended, allowing reviews through Nov. 30. The information will go live to the public on Nov. 30, and corrective actions against motor carriers could be imposed at that time.

In the meantime, FMCSA officials plan to complete field testing of the CSA 2010 system sometime in June. As of early April, the agency had collected approximately 26 months' worth of roadside inspection and crash report data.

All violations listed on inspections, whether a citation is issued or not, is entered into the CSA 2010 database. Those violations and crash report data will be chewed through quite a bit of math to determine a motor carrier's percentile ranking in the seven different categories.

During the initial phase, carriers would be able to see only their violations but not their scores, FMCSA said, but “beginning in August, after the refinements to the measurement system are complete, motor carriers will be able to see an assessment of their violations through CSA 2010. By extending the period before enforcement starts, the agency said it hopes carriers will use the time to identify and take actions to correct deficiencies.

Beginning Nov. 30, FMCSA will replace SafeStat with CSA 2010's new measurement system. SafeStat is the current system FMCSA uses to target carriers for increased roadside inspections and compliance reviews. Once SafeStat is replaced, the agency will use CSA data to issue warning letters to carriers as a first step toward enacting a new range of national enforcement procedures.

ATA and other industry groups have pushed the agency to adjust CSA in three main areas: accounting for crash responsibility, weighing how an individual violation counts against a carrier's score and defining a fleet's exposure to crashes. FMCSA stated it is “currently considering refinements” to the measurement system in all three areas.

Once the system goes live, FMCSA can decide on a variety of interventions based on the severity of a motor carrier's non-compliance in any one of those categories.

"If, during this delay, **FMCSA can implement those changes**, that would be good," said Tom Whitaker, executive director of the Kansas Motor Carriers Association. However, Whitaker said that **fleets in pilot states**, such as Kansas, may be at a **disadvantage during the delay**.

"**There is a concern** that there are **carriers** in Kansas who are **put on a different level of intervention** until it is **implemented nationwide**," he said. Whitaker has proposed **reducing fines** for carriers in **test states** until the program is **fully operational nationwide**.

Lana Batts, a managing partner of Transport Capital Partners, said the **split implementation** means there will be "**costs incurred** by the carriers in the **pilot states** who are in compliance," and those companies could find themselves at a **competitive disadvantage** with carriers **not** in compliance.

In its delay, **FMCSA** did not address its plans to change how the agency **rates carriers' relative safety fitness**.

Agency officials have said they intend to **publish a proposal changing safety fitness determinations** but only **after the new measurement system is launched publicly**. However, **some industry officials** said they believe that, too, **will be delayed**.

"I think that it is reasonable to assume that we **won't see that rulemaking** until later in 2012," said Rob Abbott, ATA's vice president of safety policy, adding that a **final rule is "several years off at this point."**

Steve Keppler, interim executive director of the Commercial Vehicle Safety Alliance, said there is **still a chance FMCSA** may try to hold to its **original timetable** for the **fitness determination rule**. "There's a lot of **moving parts** to this, but things **don't necessarily** need to be **done in series**; some things can be **done in parallel**," he said.

A spokeswoman for the agency said she was unaware of any change in the schedule for the fitness determination rule. A report on the rules the agency is working on stated that a proposed rule is slated for early October.

FMCSA Sets New State Registration Fees



In a final rule, the **Federal Motor Carrier Safety Administration** set **new state registration fees** that are **higher than current fees** but **lower than what the agency proposed last year**.

In **setting the new structure**, the agency set aside **trucking concerns** about the **economic impact of the higher fees in a recessionary time**. It said that under the law, it is **obliged to set the fees** at a level that will provide **sufficient revenue to the states** that participate in the **Unified Carrier Registration Plan**. It also said that the fee hike is in fact **relatively small** in the context of industry revenues - **less than 0.04 percent of revenue per power unit**.

The **process of setting the fee schedule** begins with a recommendation from a **15-member board**, including representatives of **FMCSA, state agencies and the industry**. But in this instance, the board was **not able to agree on how best to levy the fees**, so the agency **did its own analysis** and settled on a fee schedule that **presumes a significant improvement** in compliance. The agency says that **stepped-up enforcement efforts** are starting to **pay off**.

The problem is that the fees in place now have not produced enough revenue: some states have collected what they need, but taken as a whole the states have come up between \$27 million and \$31 million short each year since the program began in 2007. The shortfall is primarily due to inadequate enforcement and to miscounting when carriers report how many power units they have.

HERE'S THE NEW FEE SCHEDULE:

- Up to two vehicles - raise the fee from \$39 to \$76 (the proposed fee was \$87)
- Three to five vehicles - from \$116 to \$227 (\$256)
- Six to 20 vehicles - from \$231 to \$452 (\$514)
- 21 to 100 vehicles - from \$806 to \$1,576 (\$1,793)
- 101 to 1,000 vehicles - from \$3,840 to \$7,511 (\$8,541)
- 1,001 to 200,000 vehicles - from \$37,500 to \$73,346 (\$83,412)

These fees apply only to power equipment. Formerly, the term "vehicle" included trailers as well as tractors.

Private and for-hire carriers as well as freight forwarders, brokers and leasing companies must pay the fees, although the cost varies depending on the type of operation: brokers and leasing companies pay the smallest fee in the schedule.

States use this money to fund their safety programs, as well as other transportation expenses. Payment of the fees is supposed to be enforced at roadside inspections through an online search of state data. The agency said that overall the states have been getting better at this, although the enforcement effort is not the same in each state.

The new fees went into effect on April 27.

Motor carriers can begin filing UCR fees on May 3.

FMCSA Chooses Strictest Electronic Recorder Option

The **Federal Motor Carrier Safety Administration** opted for the **strictest approach** it could take in its new requirement for **electronic onboard recorders** to track driver hours of service. The final rule announced today will **affect nearly 5,700 trucking companies**.

The rule, **which will go into effect June 1, 2012**, says carriers that **violate hours of service rules** 10 percent of the time, based on single compliance review, **must use electronic onboard recorders** to track driver hours. The lesser option would have been to **target carriers based on two compliance reviews conducted within a 2-year period**.

The rule – published Monday, April 5, in the Federal Register – is **significantly more stringent** than the regulation proposed in January 2007 when the agency planned to **mandate EOBRs** based on a **review of HOS records** during each of two compliance reviews conducted within a two-year period.

The **stricter rule** will affect close to **5,700 interstate carriers** after its first year of implementation, compared to the **approximately 1,000 carriers** that would have been targeted under the lesser option.

Both groups of carriers have a **crash rate** that is significantly **higher than the industry average**, the agency said. Carriers that **violate hours rules** 10 percent of the time in two compliance reviews have a **crash rate 90 percent higher** than the general population. Those that break the 10 percent barrier in just one review have a **rate that is 40 percent higher than the general population**.

Carriers that violate the standard will have to install recorders on all of their trucks, regardless of when the truck was built, and **use the recorders to track driver hours for at least two years**. There will be an **exception** for carriers that **install automatic onboard recorders** before the compliance review finds them in violation.

Carriers that violate the standard but do not install recorders will not be allowed to operate in interstate commerce. For-hire carriers also risk losing their operating authority.

The new EOBR performance standards replace the current standards that have been in place for more than 20 years for what previously have been called Automatic Onboard Recording Devices (AOBRDs). The new standards will be required for EOBRs installed in CMVs manufactured on or after June 4, 2012, regardless of whether those EOBRs are installed voluntarily or subject to an FMCSA remedial directive.

FMCSA estimates the rule's cost at \$139 million a year and safety-related benefits at \$182 million for a net benefit of \$43 million annually. In so doing, the agency said that it assumed carriers would use the least expensive device that satisfies the requirements of the rule — the RouteTracker sold by Turnpike Global and using the Sprint network.

In addition, FMCSA's cost estimates take into account carriers that already use AOBRDs that can still be used as long as the truck is in service and fleet management systems that would allow compliance just by activating hardware or software functions on existing devices. The agency also accounted for the savings carriers would realize because they no longer would have to purchase and process paper logs.

Going Further

The agency acknowledged that it is under pressure from Congress, the National Transportation Safety Board and numerous other interests to move to an even stricter mandate. It could not go farther in this rule due to procedural limitations, but it is going to start a new rulemaking proceeding to consider a significantly broader mandate, the agency said. As part of that proceeding the agency will look at how the growth in voluntary adoption of recorders is affecting the cost of the devices.

Meanwhile, the greatest safety benefit comes from mandating recorders for high-risk carriers, the agency said.

"We are committed to cracking down on carriers and drivers who put people on our roads and highways at risk," said Transportation Secretary Ray LaHood in a statement. "This gives us another tool to enforce hours of service restrictions on drivers who attempt to get around the rules."

Rule Requires Ties to Engine

The rule clarifies a key technical question: EOBRs will have to be integrally synchronized to the truck's engine. In the proposal leading up to this final rule the agency had considered allowing non-synchronized devices, such as wireless GPS systems, but ultimately decided that synchronization is necessary in order to ensure accuracy.

The rule also sets new performance standards for recorders. Recorders will have to automatically track the truck's location at each change of duty status and while the truck is in motion. They must comply with security requirements. Drivers will be able to add information to the record but the device must keep the original information as well as the annotations. And, the device must provide a digital file for safety enforcement officials to read.

The information recorded must include the driver's name, duty status including on-duty/not driving, driving time, sleeper berth and off-duty, as well as the date, time, truck location and distance traveled. Recorders will have to use global positioning technology or another tracking system.

The carriers that already use recorders may keep using them through the life of the truck. Recorders installed in trucks built starting in April 2012, will have to meet the new standards.

And as an incentive to promote voluntary use, the agency will no longer require supporting documents related to driving time, such as toll receipts, for carriers that install recorders. Also, carriers that use recorders will get more liberal compliance review procedures.

The published version and supporting documents are available at <http://www.regulations.gov> by searching FMCSA-2004-18940.

Fatality Prevention - Rules to Live By

“*Rules to Live By*” is an initiative to improve the prevention of fatalities in mining. Through a first phase of industry outreach and education followed by enhanced enforcement, the focus will be on 24 frequently cited standards (11 in coal mining and 13 in metal/nonmetal mining) that cause or contribute to fatal accidents in the mining industry in 9 accident categories.

In 2009, mining fatalities fell to an all-time low for the second straight year. While the mining community achieved a record-setting low of 35 mining deaths in the United States and has seen a significant decline in fatal mining accidents during the past 10 years, too many miners still lose their lives in preventable accidents. The loss of even one miner causes devastation and pain to the victim's family and friends. From CY 2000 - 2008, 589 miners lost their lives, mostly in single and double fatality accidents. MSHA analyzed these fatal accidents to identify conditions and practices that contributed to the 589 deaths, safety standards violated, root causes, and abatement practices. MSHA's analysis identified 24 standards - 13 in metal and nonmetal mining and 11 in coal mining - frequently cited in fatal accident investigations.



These violations fell into 9 different categories:

PRIORITY STANDARDS: METAL/NONMETAL

- [§56.9101](#) Operating speeds and control of equipment
- [§56.12017](#) Work on power circuits
- [§56.14101\(a\)*](#) Brake performance
- [§56.14105](#) Procedures during repairs or maintenance
- [§56.14130\(g\)](#) Seat belts shall be worn by equipment operators
- [§56.14131\(a\)](#) Seat belts shall be provided and worn in haul trucks
- [§56.14205](#) Machinery, equipment, and tools used beyond design
- [§56.14207](#) Parking procedures for unattended equipment
- [§56.15005](#) Safety belts and lines
- [§56.16002\(c\)](#) Bins, hoppers, silos, tanks, and surge piles
- [§56.16009](#) Persons shall stay clear of suspended loads
- [§56.20011](#) Barricades and warning signs
- [§57.3360](#) Ground support use

PRIORITY STANDARDS: COAL

- [§75.202*](#) Roof, face, and ribs shall be supported and no person shall work or travel under unsupported roof
 - [§75.220\(a\)\(1\)](#) Develop and follow approved roof control plan
 - [§75.511](#) No electrical work shall be performed on energized low, medium, or high-voltage distribution circuits or equipment ...
 - [§75.1403-10\(i\)](#) Off-track haulage roadways shall be maintained...
 - [§75.1725\(a\)](#) Equipment shall be maintained in safe operating condition or, removed from service
 - [§75.1725\(c\)](#) No repairs until power off and blocked
 - [§77.404\(c\)](#) No repairs or maintenance shall be performed until the power is off and machinery is blocked
 - [§77.1607\(g\)](#) All persons shall be clear before starting or moving equipment
 - [§77.1607\(n\)](#) Mobile equipment shall not be left unattended unless brakes are set, chocked...
 - [§77.1710\(g\)](#) Safety belts and lines shall be used where there is a danger of falling
 - [§77.1710\(i\)](#) Seatbelts shall be worn in a vehicle where there is a danger of overturning and where roll protection is provided
- *includes all subparts

THE NINE ACCIDENT CATEGORIES ARE:

- Falls from Elevation
- Falls of Roof and Rib
- Operating Mobile Equipment (Surface)
- Operating Mobile Equipment (Underground)
- Maintenance
- Lock and Tag Out
- Struck by Mobile Equipment (Surface)
- Struck by Mobile Equipment (Underground)
- Blocking Against Motion

Many miners over the years have lost their lives in these types of accidents. All of us - **MSHA, mine operators, contractors, miners' representatives and miners** - must focus on **why these accidents happen** and **how to stop them**. MSHA will provide operators program and resource information, such as **engineering suggestions**, and **reach out to miners and miners' representatives** during inspections to **ensure that mine operators and miners** have information to **address and eliminate workplace hazards**.

Compliance with safety and health standards is the **responsibility of mine operators**. While **MSHA** supports **education and outreach efforts to assist the mining industry** in improving mine safety and health, **MSHA** is charged with **ensuring consistent and strict compliance** with safety and health standards, and **expects operators to foster a culture of zero tolerance** for violations in their operations, **including violations by contractors**.

MSHA has **compiled reference material** on this page to **help operators, contractors, supervisors, miners' representatives, miners, and other members of the mining community** to focus on these **24 standards and 9 categories** and **improve safety and health** in America's mines.

It is possible to **eliminate fatalities** in our nation's mining industry, and **working together can accomplish that**.



MSHA Safety Contest

"Accident Buster Tip" Contest

Submit your safety suggestions to **MSHA**, and if adopted as an Accident Buster Safety Awareness Tip and posted on the **MSHA** web site, you will receive a Limited Edition Collectors Series sticker and cloth shoulder patch. In addition, you and your employer will receive a letter of recognition and appreciation from the Director of Technical Support.

HOW TO ENTER:

- Email your suggestion to zzMSHA-MinersTips@dol.gov
- Put your name and suggestion on an MSHA postcard and mail it in (postcards be provided at every mine site).
- Mail your suggestion in a letter to:
MSHA Accident Reduction Program
765 Technology Drive
Triadelphia, WV 26059

SPRING WEATHER WORKING CONDITIONS

Spring is with us again, and in the Colorado area, that can mean a blizzard one minute and soaring heat waves the next. These climate extremes can make planning a safe work day difficult. As the weather temperatures increase, it is important to remember that working in these extreme conditions can be a potential health hazard if you are not prepared. Keep the following in mind as you work through this spring.

IS THERE A TEMPERATURE AT WHICH WORK BECOMES DANGEROUS AND SHOULD BE STOPPED?

The short answer is **yes**. Both **very cold and very hot temperatures could be dangerous** to your health. **Excessive exposure to heat is referred to as heat stress and excessive exposure to cold is referred to as cold stress.**

- **In a very hot environment**, the most serious concern is **heat stroke**. In absence of immediate medical attention, **heat stroke could be fatal. Heat stroke fatalities do occur every summer.**
- **Heat exhaustion and fainting (syncope) are less serious** type illnesses **which are not fatal but interfere with a person's ability to work.**

At very cold temperatures, **the most serious concern is the risk of hypothermia or dangerous overcooling of the body.** Another serious effect of cold exposure is **frostbite or freezing of the exposed extremities such as fingers, toes, nose and ear lobes.** **Hypothermia could be fatal** in absence of immediate medical attention.

WHAT ARE THE WARNING SIGNS OF HEAT STROKE AND HYPOTHERMIA?

The victims of heat stroke and hypothermia are **unable to notice the symptoms**, and therefore, their **survival depends on co-workers' ability to identify symptoms and to seek medical help.**

While symptoms can vary from person to person, the **warning signs of heat stroke can include:**

- Complaints of sudden and **severe fatigue, nausea, dizziness, lightheadedness**, and
- may or may not include sweating.

If a co-worker appears to be disorientated or confused (including euphoria), or has unaccountable irritability, malaise or flu-like symptoms, the worker should be moved to a cool location and seek medical advice.

Warning signs of hypothermia can include:

- **Complaints of nausea, fatigue, dizziness, irritability or euphoria.**
- **Workers can also experience pain in their extremities** (hands, feet, ears, etc), and **severe shivering.**

Workers should be moved to a heated shelter and seek medical advice when appropriate.

What are the exposure limits for working in hot environments?

Two types of exposure limits are often used: occupational exposure limits and thermal comfort limits. Occupational exposure limits are to protect industrial workers from heat-related illness.